

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.

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

**VOLUME III of XIII
(PA491-737)**

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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 III OF XIII (PA491-737)** 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

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DATED this 22nd day of February, 2016.

By: /s/ Fiona Ingalls

**APPENDIX TO PETITION FOR WRIT OF PROHIBITION OR
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1 now we have a direct order from you that makes it I think --
2 and I understand the Court's feelings about the comments about
3 redactions --

4 THE COURT: Well, but the redactions were everything
5 but the date, basically, Mr. Jones, on most of the documents.

6 MR. RANDALL JONES: Everything but the date?

7 THE COURT: Yeah.

8 MR. RANDALL JONES: Well, I would respectfully
9 disagree. I think what it -- the only thing that was redacted
10 was the names of the individuals. The subject matter was not
11 redacted, and or substance of the email was not redacted.

12 THE COURT: I think on many of the documents there
13 were so many redactions it made the documents impossible to
14 review. But, you know, we didn't go through them all in
15 court, because I didn't have them all with me.

16 But I certainly understand the issue you're raising
17 now on the Hobson's choice, as you put it. And so if there's
18 anything else you want to add, please let me know. Otherwise,
19 I'm going to listen to Mr. Bice for a while.

20 MR. RANDALL JONES: Well, I would just -- I would
21 just I guess add to your last point is in my reviewing of
22 documents the only thing that -- there are personal names that
23 are referenced sometimes in the body of the email, and those
24 have been redacted. But, other than that -- and, of course,
25 we did provide a log that went with the redacted documents

1 that have been redacted thus far that indicated who the sender
2 worked for, what company or business the sender worked for,
3 and who -- the other parties whose names have been redacted
4 from the document worked for. So I do believe, Your Honor,
5 that there is no redaction of the substance of the emails
6 unless some other privilege related to attorney-client-type
7 privilege was asserted, which would obviously have a separate
8 privilege log that would not be related to the redactions per
9 Macanese law. So I -- to my knowledge there's no --

10 THE COURT: Right. And my prior order -- but my
11 prior order did not preclude you from making redactions on the
12 basis of attorney-client.

13 MR. RANDALL JONES: That's my understanding, Your
14 Honor. So my point is simply that other than the names, the
15 only redactions that occurred that were I believe inconsistent
16 with your order, certainly your most recent order, were
17 redactions of individual names that were done in compliance
18 with the Macanese law. So I just want to be clear about that.
19 That's my understanding. And I've not seen any redactions
20 that would be other than that, except for attorney-client
21 privilege.

22 THE COURT: All right. Mr. Bice.

23 MR. BICE: Yes, Your Honor. Thank you. We haven't
24 obviously had a chance to submit something in writing to you
25 on this, so I'll just try and [inaudible]. There's no

1 Hobson's choice here as part of [inaudible], other than they
2 wouldn't produce to us, and it turns out that they had it on
3 August [inaudible], which was even well before the sanctions
4 hearing. All the, you know, representations that turned out
5 not to be true were being unearthed as part of your sanctions
6 hearing [inaudible].

7 The issue about the MPDPA, I don't need to remind
8 the Court, has been raised over and over and over. You gave
9 instructions to defendants on how to address the issue by way
10 of a log. In fact, you had given them that instruction -- I
11 don't want to say two years ago, Your Honor, because that
12 doesn't seem right, but it was certainly more than a year ago.
13 And that instruction [inaudible] what happened is we were
14 simply misled about where many of the documents were at.

15 And I think it is worth reminding the defendants
16 here about another representation that they made to you that
17 they now seem to have also sort of selectively forgotten.
18 When the reality started to emerge about where these documents
19 were at, hoe many of them had been transported to the United
20 States, much more than just Mr. Jacobs's [inaudible]. What I
21 think is now sort of now infamous, what they call their joint
22 status conference statements regarding the documents, Your
23 Honor, which they held with you on June 27 -- if you recall,
24 that was one of the revelations about what had happened. Mr.
25 Jacobs's ESI -- United States --

1 THE LAW CLERK: Mr. Bice, we can't hear you. I
2 don't mean to interrupt. We can't hear you over in the
3 courtroom.

4 THE COURT: Oh. I thought it was just my cell
5 phone. So thank you, Max.

6 MR. BICE: I apologize. Is this better?

7 THE LAW CLERK: That's much clearer.

8 MR. BICE: I had my team on the speaker phone here,
9 so I don't know where you couldn't hear me at. But my point
10 was this, Your Honor. Even back in it was June, I believe,
11 June of last year when it started to emerge, the magnitude of
12 the document transfers that had occurred into Las Vegas, they
13 had represented to you in that pleading how they were going to
14 search all these additional custodians for responsive
15 jurisdictional discovery documents and that they would produce
16 them. Those documents aren't even covered by the MPDPA, as
17 they subsequently have admitted. And even to this day that
18 hasn't occurred. And those were all custodians, such as Mark
19 Brown, such as Luis Melo, all of whom those documents have
20 been here now by their own acknowledgement since I believe the
21 end of 2010 and were never searched, as well as Mr. Weber, who
22 was Mr. Jacobs's right-hand man in Macau.

23 So there is, number one, no Hobson's choice. Number
24 two, any choice that has happened here is because of the
25 Court's sanctions order which was entered clear back in

1 September because of the defendants' concealment of evidence
2 in the case. So I think it's completely inappropriate to now
3 be seeking an emergency stay of basically an effect of an
4 order that was entered last September.

5 The real issue here is -- there isn't any basis for
6 a stay. The defendants have acknowledged they're not going to
7 comply with the sanctions ruling. That process should move
8 forward. The Court could enter its ruling, and if they didn't
9 want to challenge that ruling, fine. But this attempt to
10 obtain a stay of it so that they can say, well, we don't have
11 to comply with any order, that is simply prejudicial to Mr.
12 Jacobs. This process has been dragging on. Sands China is
13 who wanted an evidentiary hearing, or so they claim, about
14 jurisdictional -- or this Court's jurisdiction. We get
15 jurisdictional discovery which they have opposed from the
16 beginning, and now they just want to bog the process down even
17 further by saying, well, we should get a stay, we're happy to
18 comply with the Court's sanctions order. There isn't any
19 basis for that.

20 THE COURT: Anything else, Mr. Bice?

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

22 THE COURT: Mr. Cassity was there anything you
23 wanted to add in addition to what Mr. Jones has said?

24 MR. CASSITY: No, Your Honor.

25 THE COURT: Mr. Jones.

1 MR. RANDALL JONES: Yes, Your Honor. Well, first of
2 all, obviously I disagree that there's a continuing effort to
3 not comply with the Court's orders. That's why we're having
4 this call right now. And I will tell the Court that we are
5 endeavoring to comply with the Court's order as we speak. I
6 just -- I verified with my colleagues before we had this call
7 -- I wanted to get as updated information as I possibly could,
8 and there's been over 100,000 more documents that were hit on
9 in the search of the additional custodians in compliance -- in
10 an attempt to comply with the order, and they found about
11 21,000 responsive documents. And these are rough numbers,
12 Your Honor. I just want you to be aware of this. We're not
13 ignoring what you've asked us to do, nor would I ever do that
14 or recommend my client do that. Of those approximate 21,000
15 responsive documents they've found about -- and these are --
16 again, these are the other 20 custodians that the Court
17 ordered us to look at by April 12th. About 12,000 of those
18 documents we believe to be privileged that are nothing to do
19 with redactions or Macanese law, that are actually attorney-
20 client-privileged-type documents, and about eight to 9,000
21 that would be produced in unredacted and some redacted format.

22 We don't believe that of those documents -- just so
23 you're aware, Your Honor, we don't believe those documents are
24 anything new for the plaintiffs. In other words, they're
25 cumulative documents based on at least the general information

1 I'm getting so far. Most of them -- about a third of them, as
2 I understand it, would be unredacted, and about a third or two
3 thirds would be redacted under Macanese law, but they're --
4 essentially they're not exact duplicates of other documents
5 that have been produced, but they're on the same subject
6 matter that would just simply be cumulative and not provide
7 any additional information to the plaintiffs. But we're in
8 the process of trying to continue to finish doing that process
9 as we speak.

10 And we do have an issue. We have an issue of first
11 impression. This issue has never been decided by the Supreme
12 Court. And I just want to mention the Hansen factors. That's
13 whether the opposition to the writ petition would be defeated
14 if the stay is denied. Well, certainly that would be true in
15 this case. And the next factor is whether the petitioner will
16 suffer irreparable or serious injury if the stay is denied.
17 The choice given us -- and I understand Mr. Bice does not
18 think there's any choice here at all. The Court has
19 recognized the choice. And we cited reference in the record
20 where you did acknowledge that we do have a problem with the
21 Macanese Government over this issue. So at least the Court --
22 even if Mr. Bice has not recognized it, this is a true problem
23 for our client. And then --

24 THE COURT: Mr. Jones, can I stop you for a minute
25 and make sure that my recollection is correct; because, please

1 remember, I'm in Washington, D.C., and I did not get to look
2 at my files the day before the hearing, although I was able to
3 reach a brief.

4 My recollection is that it was disclosed to me that
5 the Macanese Government was going to take no action against
6 either of the defendant entities related to the transport of
7 the hard drives from Macau. Is your client taking a different
8 position at this time, or do you think my recollection is in
9 error?

10 MR. RANDALL JONES: I don't -- and I'll tell you
11 candidly, Your Honor, my understanding of the situation is
12 generally what you just described. But, again, I was not
13 involved directly in the case at that time. But that's my
14 understanding from reading things.

15 But what I'm referring to is even at the February
16 28th hearing where -- and I'm quoting you -- we cited -- we
17 actually attached the transcript. I'm not saying you don't
18 have a problem -- you hadn't have problems in Macau. I
19 certainly understand you may well have problems in Macau with
20 the Macau Government. But that has to do with the --

21 THE COURT: I guess for the record I was referring
22 to those documents that were still in Macau and had not
23 previously been removed.

24 MR. RANDALL JONES: And that's what we're talking
25 about specifically with respect to the production that's

1 happened since the hearing in September and then this new
2 production that we're talking about that have been the subject
3 of redactions, not the hard drive that was removed. That's
4 the subject of our motion as I understand it. And, again, I
5 don't have a perfect understanding of all the facts,
6 unfortunately.

7 So that's -- that is the heart of our issue, is
8 where we're dealing with these redactions where we have sought
9 specific direction from the Macanese Government. I know the
10 Court's read that letter, and I know your comments about that
11 letter, the translation, and I understand that. But we've
12 also had conversations with the Macanase Government and the
13 lawyers in Macau, and they've indicated this is a violation of
14 both civil and criminal law to produce this information.

15 So that's why we get back to this question of -- and
16 I'll tell you candidly, Your Honor, we don't want to be in
17 this position. I don't like to be in this position with the
18 Court. But I have an obligation to my client to try to advise
19 them in these very difficult circumstances, and my best advice
20 is I can't tell them to violate your order, and I can't tell
21 them to violate the Chinese law, which is that -- which is,
22 you know, where they're doing business. That's a principal
23 place of business. So that's why we filed a writ. I would
24 have liked to have filed a writ sooner, candidly, so we
25 wouldn't be up against the deadline like we are. But I'm sure

1 the Court can appreciate that it's not as easy to get those
2 documents drafted and filed as one would like. So that's why
3 we're doing it, you know -- we did it in the last week, as
4 opposed to sooner.

5 THE COURT: Okay. Can I ask you another question.

6 MR. RANDALL JONES: Of course.

7 THE COURT: Since you have filed the petition with
8 the Nevada Supreme Court have you received any communication
9 from them?

10 MR. RANDALL JONES: We have not, Your Honor. And
11 that was as much to do with my direction as anything. I've
12 told my client -- I've been involved in these writs before on
13 both sides of these issues, and I've told my client we need to
14 ask Judge Gonzalez first as to whether or not she would
15 entertain a stay before we can even begin to think about
16 filing a request for a stay from the Supreme Court.

17 THE COURT: But there's been no order to answer at
18 this point?

19 MR. RANDALL JONES: There has not been. No, there
20 has not.

21 THE COURT: Okay. All right. Anything else?

22 MR. RANDALL JONES: The only other point I would
23 make would again be a reference to Hansen, and I think we
24 comply with the Hansen factors. In quoting Hansen, "When
25 moving for a stay pending an appeal or writ proceeding a

1 movant does not always have to show a probability of success
2 on the merits, but the movant must present a substantial case
3 on the merits when a serious legal question is involved and
4 show that the balance of equities weighs heavily in favor of
5 granting the stay," end quote.

6 And so I certainly would ask the Court to
7 acknowledge that it's a serious legal question. I think the
8 Court has already acknowledged that. At least that's my
9 understanding.

10 THE COURT: I think that was over a year ago I
11 acknowledged that.

12 MR. RANDALL JONES: And, Your Honor, that --
13 unfortunately, I can't do anything about that, as you know.
14 In fact I just got out of a lengthy trial, so I'm trying to
15 play a lot of catch-up here. But I understand it's a
16 balancing, and I would -- I would hope that the Court would
17 understand that this is a question that the Supreme Court
18 needs to answer, not just now, but I'm sure this issue's going
19 to come up in the future because of considerations with these
20 businesses doing -- of some the major industry in our state
21 doing business overseas, especially in China.

22 THE COURT: Okay. Thank you.

23 The motion is granted in part. I am granting a stay
24 on the production of any further documents that are not in the
25 U.S. on the removed hard drive for a period of 45 days while

1 the Nevada Supreme Court has the opportunity to make a
2 determination as to whether they are going to take briefing on
3 this issue or not.

4 If you get an order to answer or any further
5 documentation from the Nevada Supreme Court, I will be happy
6 to discuss with you an extension of the stay. But if they
7 have not acted within the 45-day period, I'm probably not
8 going to grant my stay if they haven't even ordered an answer
9 at that point.

10 MR. RANDALL JONES: Understood, Your Honor. So just
11 to be clear, make sure I understand what that means, is that
12 with respect to the documents that were not on the hard drive
13 that was removed, and I understand that was the subject of the
14 hearings last summer and then in the fall, so new documents
15 that were produced after that time that had been redacted,
16 you're granting the stay for 45 days until we find out what,
17 if anything, the Supreme Court does.

18 THE COURT: Correct. And if they order an answer, I
19 will be happy to consider whether I extend the stay.

20 MR. RANDALL JONES: And then with -- in all other
21 respects, in other words, with respect to the hearing that's
22 coming up -- and just, again, I've got a list here of what I
23 -- what relief --

24 THE COURT: I'm -- I'm granting the request as to
25 the evidentiary hearing. I'm sorry I missed that. But, yes,

1 I'm granting the request as to the evidentiary hearing,
2 because I don't think that it's appropriate to go forward when
3 there is a partial stay of the order.

4 Were there any other specific portions of the order
5 that you were asking me to stay, also, Mr. Jones?

6 MR. RANDALL JONES: Let me just make sure that I
7 don't miss anything. I'm sure Mr. Bice wants a clarification
8 for all of our sakes, as well.

9 Well, I guess, no. Staying the evidentiary hearing
10 essentially until at least that 45 days expires, that I think
11 addresses the other issues that were raised in our motion.;

12 THE COURT: But just so we're clear, Mr. Jones, I am
13 not staying the production of the documents that are on the
14 hard drive that was removed to Las Vegas. And I know there
15 were multiple storage devices based upon the testimony. For
16 purposes of that data that was removed I am not modifying my
17 order of September 14th, 2012. I still want those documents
18 to be produced that were subject to those -- that sanction
19 hearing. However, if you have additional privilege issues the
20 respect to those documents, I anticipate you will supply a
21 privilege log with those.

22 MR. RANDALL JONES: We -- we -- I will -- I note
23 that, Your Honor, as part of the order. And we -- to the
24 extent that we have any other documents that have been found
25 -- I think there were several thousand -- we will produce

1 those, as well, but have no privilege or redactions on them.
2 We will continue to comply with our obligations under the
3 discovery rules.

4 THE COURT: Okay. Anything else, gentlemen?

5 MR. BICE: Yes, Your Honor.

6 THE COURT: Mr. Bice.

7 MR. BICE: Yes. I mean, I'm a little concerned,
8 Your Honor, about vacating that hearing, because we have the
9 hearing, we have it scheduled. It's not for a month. You
10 know, my view would be --

11 THE COURT: And I've just granted a 45-day stay.

12 MR. BICE: And my request would be -- is that you
13 modify that. I don't believe that a 45-day stay is
14 appropriate. The Court entered this order I don't know how
15 long ago. If --

16 THE COURT: September 14th, 2012.

17 MR. BICE: Exactly. And if the Supreme Court wants
18 to take this matter up, they're going to do so prior to 45
19 days. And if they don't, then I don't know why we would
20 forfeit the hearing date and schedule that -- because I know
21 how busy the Court's schedule gets. And we've had a lot of
22 trouble trying to get matters on for this case, and I really
23 would prefer -- you know, I would ask that you not force us to
24 forfeit dates when there really isn't any showing that they
25 would be entitled to a stay. I mean, they have made the

1 choice to redact documents notwithstanding the Court's order,
2 and they did that in January. I understand that they say,
3 well, they don't want to have to continue to do that, and the
4 Court's saying, well, I'll give you a stay if you can convince
5 the Supreme Court that you should be excused from doing so.
6 But that doesn't in any way eliminate the noncompliance with
7 the Court's order from back in December requiring the
8 January 4th production. So I don't know why there would be a
9 stay of a hearing on that. Because all it's -- you know, my
10 client, Your Honor, is really being prejudiced by these
11 constant -- the case doesn't move anywhere because the
12 defendants want a stay of everything, which are orders that
13 have come down because of their own actions. I mean, with all
14 due respect, you know, further delays are a victory for the
15 defendants for noncompliance with orders.

16 THE COURT: Anything else, Mr. Jones?

17 MR. RANDALL JONES: Yes, Your Honor. I just -- I
18 certainly disagree with that, and in terms of prejudice Mr.
19 Jacobs's deposition has been stayed, so there's -- and there's
20 no current deposition scheduled. So I just -- I think the
21 Court's ruling was prudent in light of the fact that we have
22 this issue that is before the Supreme Court, and know the
23 Court has very busy schedule, because I have other cases in
24 front of you, but I presume that the Court could put this back
25 on pretty quickly if it needs to.

1 And the only other concern I would have is,
2 depending on when that happens, it's -- there's a great deal
3 of preparation that needs to be made by both sides if we're
4 going to have a hearing or not. And now knowing if we're
5 going to have to do that up to the date of the hearing puts us
6 all in a kind of continued state of anticipation of whether we
7 need to go or not. So I just think your -- I think that's the
8 prudent thing to do under the circumstances, and I would ask
9 to leave that as part of your order.

10 THE COURT: Thank you.

11 Max, can you make sure we vacate the evidentiary
12 hearing.

13 If there are any further issues that you need my
14 attention, please let me know. Otherwise, I'll probably have
15 a status check with you in about 30 days to see if we have
16 heard anything from the Nevada Supreme Court and where the
17 productions are. But I'm not going to schedule that today.
18 I'm going to wait till I get back in town and can look at the
19 schedule.

20 MR. RANDALL JONES: Your Honor, so on behalf of
21 everybody, to the extent we hear anything, the minute we hear
22 anything from the Supreme Court we let all parties and the
23 Court know, as well, so that --

24 THE COURT: I'd appreciate that.

25 MR. RANDALL JONES: Advise everybody quickly so

1 they'll know about it. And, Your Honor, again, I would be
2 happy to prepare the order, but run it by Mr. Bice and his
3 colleagues before we submit anything to the Court.

4 THE COURT: That would be lovely, Mr. Jones. Thank
5 you.

6 Anything else, counsel?

7 MR. RANDALL JONES: Do we have a record this time?

8 THE COURT: Jill, do we have a record today?

9 THE COURT RECORDER: I hope so.

10 THE COURT RECORDER: Yes.

11 THE COURT: Are we in our own courtroom today?

12 THE COURT RECORDER: We are.

13 THE COURT: Then there probably won't be the same
14 problem we had last time.

15 MR. RANDALL JONES: All right. Then I will try to
16 [inaudible] as possible. I will also endeavor to get the
17 transcript so I can look at that before we submit the order.

18 With respect to the order from last week, I have a
19 draft. I will try to get it to Mr. Bice --

20 I'll try to get it to you, Todd, this afternoon.

21 MR. BICE: Okay.

22 THE COURT: All right. Well, I'll be back on
23 Monday, so please feel free to send whatever you need over
24 then.

25 Thank you again. And I apologize for our technical

1 problems last week.

2 MR. RANDALL JONES: Thank you for taking the time
3 out of your day to do this. Thank you.

4 THE COURT: All right. Have a nice evening.

5 THE PROCEEDINGS CONCLUDED AT 1:27 P.M.

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CERTIFICATION

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

AFFIRMATION

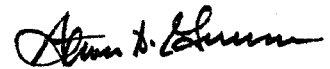
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Las Vegas, Nevada 89146**

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4/10/13

DATE



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 DEFENDANT SANDS CHINA, LTD.'S, MOTION
FOR SUMMARY JUDGMENT ON PERSONAL JURISDICTION**

TUESDAY, JULY 29, 2014

APPEARANCES:

FOR THE PLAINTIFF:

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

FOR THE DEFENDANTS:

J. STEPHEN PEEK, ESQ.
JON RANDALL JONES, ESQ.
MARK JONES, ESQ.
STEVE L. MORRIS, ESQ.

COURT RECORDER:

JILL HAWKINS
District Court

TRANSCRIPTION BY:

FLORENCE HOYT
Las Vegas, Nevada 89146

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

1 LAS VEGAS, NEVADA, TUESDAY, JULY 29, 2014, 8:25 A.M.

2 (Court was called to order)

3 THE COURT: So, since you're all here, why couldn't
4 we do the Wynn-Okada today, too, at this morning time?

5 MR. PISANELLI: There's a lot of cats in that group
6 to herd, and we had some conflicts, Your Honor.

7 THE COURT: Mr. Morris, it's nice to see you again.

8 MR. MORRIS: Good morning, Your Honor. Good to see
9 you.

10 THE COURT: Mr. Jones and Mr. Jones.

11 MR. RANDALL JONES: As always, Your Honor.

12 THE COURT: Okay, Mr. Jones. It's your motion.

13 MR. RANDALL JONES: Thank you.

14 THE COURT: I'm assuming by the filing of this that
15 you think the stay that's been imposed does not affect this
16 particular motion given the comments of the Supreme Court in
17 their order.

18 MR. RANDALL JONES: That's actually precisely right.

19 THE COURT: I'm just asking. Okay.

20 MR. RANDALL JONES: Mr. Peek is not here, and I
21 assume he would --

22 THE COURT: Is he coming?

23 MR. RANDALL JONES: I assume he was coming for --

24 MR. MORRIS: He said he was yesterday.

25 THE COURT: Then I guess I won't do your case,

1 either.

2 Is there anybody who everybody's all here? I'll go
3 get some more coffee.

4 (Court recessed at 8:26 a.m., until 8:30 a.m.)

5 THE COURT: Good morning, Mr. Peek. Thank you for
6 joining us.

7 MR. PEEK: Thank you, Your Honor.

8 THE COURT: Mr. Jones, it's your motion.

9 MR. RANDALL JONES: Good morning, Your Honor.

10 THE COURT: Good morning.

11 MR. RANDALL JONES: Well, Your Honor, in kind of
12 expanding on the point you made earlier with respect to the
13 stay I would -- I guess I would make the point to the Court
14 that we don't believe -- and I don't want to belabor the
15 point, but the stay applies in this circumstance, and it would
16 seem to be the facts -- or the case that the plaintiffs agree
17 with us, since they've filed a counter-motion for summary
18 judgment.

19 THE COURT: That was one of the reasons I thought.
20 But that brings up another point that I think we all need to
21 be cognizant of, which is our Rule 41(e) issues if the stay
22 does not apply to all issues.

23 MR. RANDALL JONES: Well, and, Your Honor, I guess
24 our position would be that as representing Sands China that
25 getting past this issue we would hope that the Court would

1 agree with our interpretation of Daimler and the Viega cases
2 and the other cases we've cited, and would determine that in
3 fact under the circumstances of this case with the discovery
4 that has been done to date that there is no jurisdiction over
5 Sands China, Ltd., so that that would presumably moot out
6 other issues related to that entity.

7 So with that said, Judge, the reason we brought this
8 while there was a stay pending and there's writs that are
9 pending is because of a see change in the law. And I'll tell
10 Your Honor this has had a direct impact on me in another case
11 which is cited by us in favor of Sands China, Ltd., where I
12 was actually on the other side of this issue and lost, the
13 Viega GmbH case, and it does --

14 THE COURT: Those were all the yellow brass pipes;
15 right?

16 MR. RANDALL JONES: Correct, Your Honor.

17 THE COURT: Okay.

18 MR. RANDALL JONES: And in fact it's my belief, and
19 one of the issues I looked at real hard when that case came
20 down in fact was -- you know, I never like to be in a position
21 where I'm arguing two different sides of the same issue. And
22 in looking at the Viega I believe the facts were substantially
23 more favorable to the plaintiffs in that case because of the
24 contacts and because of the involvement of the German entity
25 in the state of Nevada certainly than Sands China is in any

1 respect in this case, that they were distinguishable, and yet
2 the Supreme Court still found there was no jurisdiction over
3 the German entity. And, Judge, I have to tell you in looking
4 at this, I mean, the Daimler case changed what I understood to
5 be the rules of general jurisdiction that I learned in law
6 school and have been essentially arguing ever since that time.

7 And so with that said, Judge, I think that in
8 quoting the -- both the Daimler case and Viega I think it
9 makes the point. And this is a quote from Viega. "Typically
10 a corporation is at home only where it is incorporated or has
11 its principal place of business." And the Daimler court went
12 on to say that, "There could be an exceptional case where a
13 corporation's operations in a forum other than its formal
14 place of incorporation or principal place of business may be
15 so substantial and of such a nature as to render the
16 corporation at home in the state." The court went on to say,
17 "It is hard to see why much in the way of discovery would be
18 needed to determine where a corporation is at home."

19 So if that's the standard -- and before I get into
20 the specifics, Judge, you know, I like to always do in my own
21 personal analysis sort of a gut check. And if you look at the
22 facts of this case, the undeniable facts, and in fact we have
23 the complaint, the first amended complaint, paragraph 3, where
24 it was cited by the -- we cited in our motion papers where in
25 paragraph 3 the plaintiff acknowledges that this is a Cayman

1 Island corporation whose principal place of business is in
2 Macau. And all of the undeniable evidence points to that.

3 So I don't know how anybody could argue with a
4 straight face that this entity, Sands China, Ltd., is not
5 doing business in Macau and that is not its home.

6 THE COURT: Well, I don't think the issue is whether
7 it's doing business in Macau. I think we all recognize it
8 does business in Macau. The issue is where this nerve center
9 or control center is --

10 MR. RANDALL JONES: Okay. Well, let's --

11 THE COURT: -- and that's a slightly different
12 issue.

13 MR. RANDALL JONES: Well, let me just, then, ask the
14 Court a question. Is the nerve center or this executive --

15 THE COURT: "...the center of overall direction,
16 control, and coordination."

17 MR. RANDALL JONES: All right. If --

18 THE COURT: That's what it says in the Daimler case.

19 MR. RANDALL JONES: In what case?

20 THE COURT: Daimler case.

21 MR. RANDALL JONES: The Daimler case. Yes, Your
22 Honor. So if you want to take it to that point right up
23 front, then clearly without question the plaintiffs lose. And
24 they talk about Mr. Adelson being the chairman of the board,
25 who acknowledges that this is where he resides most of the

1 time, in Las Vegas, and that he has decisions over certain
2 design issues or he's made decisions over certain design
3 issues and that he is, you know, interested in the goings on
4 of the company. He does not run the day-to-day affairs of the
5 business, and there's been no evidence to suggest that he
6 does. He does have involvement in certain aspects that he's
7 acknowledged.

8 But, Judge, if you want to talk about the nerve
9 center, first of all, we don't think the nerve center test
10 applies whatsoever, because Daimler doesn't talk about nerve
11 center. Daimler does not mention nerve center. The plaintiff
12 references --

13 THE COURT: They changed the words to "center of
14 overall direction, control, and coordination" from "nerve
15 center."

16 MR. RANDALL JONES: All right.

17 THE COURT: And it's okay. I'll use the words they
18 use, but it's basically the same thing.

19 MR. RANDALL JONES: Well, the reason I think there's
20 an important distinction is, one, is that there is a reference
21 to "nerve center" in the Hertz case that is referenced by the
22 plaintiffs, which clearly does not apply in this case. That's
23 a diversity action where they're talking about a U.S.
24 corporation and they're trying to define for diversity
25 purposes where the citizenship of that company is. And so

1 they look at certain types of activities in terms of the nerve
2 center of a domestic corporation, meaning an American
3 corporation, who may be doing business in many states and
4 trying to determine, okay, where is its citizenship. That has
5 nothing to do with general jurisdiction as it relates to this
6 case.

7 But let's go and look at the analysis you just
8 brought up. If that is true, the Johnson case tells us, and
9 the evidence supports this interpretation, that you have to
10 look at where the board is. This is undeniably a holding
11 company. It owns other companies that are actually the
12 operating companies. And while plaintiff points out a few
13 places in the annual report where it talks about operations,
14 clearly the majority of the annual report talks about the fact
15 that this is a holding company who owns operating entities
16 that actually own the property and manage and run those
17 properties, integrated resorts that have gaming, retail, and
18 entertainment.

19 So when you look at that what do you have to look at
20 to determine who controls the business? And, as I said,
21 Johnson -- the Johnson case tells us you have to look at the
22 board. And there's been a number of cases that have
23 referenced that holding and that idea, as well. In other
24 words, it's where the board is that makes the major decisions
25 for the entity. And there's -- again, there's no evidence to

1 dispute this. And, again, under Rule 56 they have to come
2 forth with some evidence to refute these issues. They have
3 produced no evidence to refute these, and there is nothing in
4 the few privileged documents that have not been produced --
5 remember, the substance have been produced; we just haven't
6 given the name of some people that are on those documents, as
7 opposed to the internal substantive information of those
8 documents. And there's nothing to suggest after all this
9 discovery, hundreds and hundreds of thousands of pages of
10 discovery, to suggest that the board does not make the major
11 decisions. In fact the annual report tells us that the board
12 makes all of the important, critical decisions for the
13 company.

14 And then the issue becomes under Johnson where does
15 the board meet. Well, we know from Mr. Adelson's testimony
16 the board has never met in the state of Nevada, just has never
17 done that. We've submitted the invitations to show that
18 during the critical time period, we believe it's ever since
19 then up to the present time, but certainly during the critical
20 time period, 2009 through 2010, when Mr. Levin was there, when
21 he contends that these claims arose, that the board always met
22 either in Macau or in Hong Kong. And, Your Honor, in light of
23 the allegations -- which I have to say it would almost seem
24 like Mr. Jacobs is not being completely candid with his
25 counsel, because if you may have noted in the response, they

1 came back and said, well, that shows where the meetings were
2 noticed. One of the notices, by the way, was signed by Mr.
3 Jacobs himself. But they said, that doesn't prove that
4 anybody ever attended those meetings and that they were
5 actually held in Hong Kong or Macau.

6 Well, we have -- in light of the circumstances where
7 they have claimed that we can't prove that these board
8 meetings were actually held in Hong Kong and Macau, we have
9 the documents that have been produced. They were produced
10 back in May of 2011 in Sands China, Ltd.'s 16.1 initial list
11 of witnesses and disclosures, which is the attendant list --
12 attendees list, excuse me. And it shows that Mr. Levin
13 himself attended four out of the six meetings in either Hong
14 Kong or Macau and that in the majority of those meetings every
15 board member attended in person, physically in either Hong
16 Kong or Macau. And Mr. Levin even chaired one of those
17 meetings. Yet their counsel contended in their opposition
18 that there's no proof that these meetings were actually held
19 and people actually attended in either Hong Kong or Macau.

20 And, Your Honor, I would like to -- these were
21 designated initially as confidential, and under the
22 stipulation that was entered into by the Court we have the
23 ability under that stipulation to de-designate, and I would
24 like to submit these on the record, if I could.

25 THE COURT: Mr. Bice, any objection? Mr. Pisanelli?

1 MR. BICE: Yes. I object that they should have --
2 if they were going to rely upon these, they should have done
3 so in their pleadings, Your Honor, and attached them. Our
4 point in our brief was they didn't submit any evidence that
5 anybody actually attended.

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

7 MR. BICE: And they now seem to be trying to remedy
8 that after the fact.

9 THE COURT: Mr. Jones, I'll mark them as a Court's
10 exhibit.

11 MR. RANDALL JONES: Thank you. And, by the way, Mr.
12 Morris pointed out that I said Mr. Levin attended these
13 meetings. I meant Mr. Jacobs. Mr. Jacobs attended the
14 meetings himself on four occasions, and in fact chaired one of
15 those meetings himself. And if I may approach, Your Honor.

16 THE COURT: You may. And we'll mark those as 1.
17 Thanks. And if you could give a copy to Mr. Bice,
18 as well.

19 MR. RANDALL JONES: I did, Your Honor.

20 As you can see from the document, Your Honor,
21 there's a date when the meeting was held. "B," as you see in
22 the key, which stands for board meeting; it tells who chaired
23 the meeting; and there's a check mark down, and Number 3 shows
24 what the check mark means, has attended the meeting
25 physically. And we've highlighted those meetings on the

1 second page, as well, the dates of the board meetings, to show
2 who was there and whether they attended telephonically or in
3 person.

4 THE COURT: How do you determine if they attended
5 telephonically or in person?

6 MR. RANDALL JONES: If you look on the second page,
7 Your Honor, there's a "T" for those people who attended
8 telephonically. And if you look at the second page at the
9 top, the February 9, 2010, meeting, it was chaired by Mr.
10 Jacobs himself.

11 THE COURT: I only have the 31 December 2010
12 meeting.

13 MR. RANDALL JONES: You don't have the second page?
14 Yes. That's --

15 THE COURT: Oh. There it is. Okay. They're the
16 top two lines.

17 MR. RANDALL JONES: -- on the top -- the top entry
18 is the -- you'll see in the far left-hand corner date of the
19 meetings.

20 THE COURT: Uh-huh. I see that.

21 MR. RANDALL JONES: February 9, 2010.

22 THE COURT: Okay. Thank you.

23 MR. RANDALL JONES: So, Your Honor, with respect to
24 that argument, if you want to talk about a so-called nerve
25 center, which we believe that doesn't -- that certainly

1 doesn't apply, but the -- all of the caselaw, including
2 Daimler, supports the proposition that a company has to be at
3 home in that jurisdiction. And based on the arguments that
4 counsel has made in the past, they first argue that general --
5 they had general jurisdiction because they had systematic and
6 continuous contacts. That issue has been essentially
7 dispelled by Daimler, and the facts of this case where you
8 have them buying some products from here and having some
9 contracts for goods and services clearly does not make them at
10 home in the state of Nevada. If that were the case, then
11 Daimler AG would have been a resident of the state of
12 California or certainly would have been subject to general
13 jurisdiction. There's no question that they did -- had these
14 kind of contacts with the state of California.

15 The second issue they raised is that there was a
16 general jurisdiction because the foreign company had an agent
17 working for it. Daimler dispelled that and said, it doesn't
18 matter. "Even if there's general jurisdiction over the
19 agent," and that's exactly what was going on in California
20 with the Daimler entity in California. The court said, let's
21 presume -- because the California entity didn't dispute it was
22 the agent of the German entity, let's assume that they were,
23 and the court went on to say, well, we're not so sure that
24 they actually were the agent, but let's assume.

25 THE COURT: Because of the relationship, though,

1 between the Mercedes-Benz USA and Daimler, it didn't appear
2 that those were related to the atrocities that occurred in
3 Argentina.

4 MR. RANDALL JONES: Well, let's --

5 THE COURT: Isn't that the analysis they went
6 through in the majority opinion?

7 MR. RANDALL JONES: Well, that's certainly part of
8 the analysis. But let's talk about that. There's a couple of
9 different issues that I think you raise there, Judge. One is
10 was there anything that was done in this case alleged by Mr.
11 Jacobs that has any connection to China, either Macau or Hong
12 Kong, or Sands China. Remember, what he's done is he sued my
13 client, Sands China, for breach of an option agreement. He
14 didn't sue for wrongful termination. And he appears to
15 conflate those two issues in saying, well, the decision to
16 terminate him -- Mr. Jacobs was made in Nevada, therefore
17 there's jurisdiction over Sands China. Well, that's an absurd
18 proposition, Judge. First of all, we dispute whether or not
19 that decision was made here or other places. But let's just
20 assume for argument's sake it was made here. That decision --
21 Mr. Jacobs himself says he was an employee -- claims he was an
22 employee of Las Vegas Sands, not of Sands China. And what we
23 have is an option agreement that was granted -- was decided to
24 be granted by the remuneration committee in Macau, it was
25 provided to Mr. Jacobs in Macau, it is subject to Macanese

1 law, it is related to stock that is traded on the Hong Kong
2 Stock Exchange, and to the extent that there was a breach of
3 that agreement it occurred in Macau, not in Las Vegas.

4 And with respect to the decision, assuming again
5 there was a decision in Las Vegas to terminate Mr. Jacobs,
6 think about that. I mean, just think about it in a standard
7 jurisdictional argument. Mr. Jacobs was not a Nevada
8 resident. The cases they cite for this proposition that
9 somehow this wrongful termination relates to a breach of
10 another contract, an unrelated contract, that's where the
11 company went into that other state where jurisdiction was
12 found with a resident from that other state, negotiated a deal
13 with them, and then the breach would have an effect in that
14 resident state.

15 That's not what happened here. Mr. Jacobs didn't
16 live here, Mr. Jacobs didn't negotiate that contract here, Mr.
17 Jacobs had an agreement that would have been performed in
18 Macau, not in Las Vegas, Nevada, at any time. So that
19 argument flies out the window. There is a basic disconnect
20 between what Mr. Jacobs is trying to allege with respect to
21 the so-called termination and the option agreement that he
22 cannot reconcile ever under any set of facts, I don't care
23 what other discovery he wants to do. So that doesn't help
24 him. So where does that leave him?

25 And with respect to this agent argument, again, my

1 client does not do business here, Judge. My client has no
2 revenues from Las Vegas or the state of Nevada, period, my
3 client doesn't own any property here, my client has a
4 noncompetition deed that precludes it from doing business
5 here. Mr. Jacobs isn't here. What is the connection to
6 Nevada? None. None. The only connection he could try to
7 make is that somehow or other his alleged wrongful termination
8 somehow pulls my client from China into the state of Nevada
9 related to an option agreement that he claims was breached in
10 Macau. So that just doesn't work, period, end of story.

11 And then this de facto executive headquarters. We
12 talked about that a little bit. There is no evidence so you
13 have to suggest there's a de facto executive headquarters
14 here. You have all the major decisions, according to the
15 corporate documents, being made by the board in a holding
16 company. That's occurred -- I don't want to be redundant
17 here, but that has occurred -- all occurred in Macau. We have
18 now provided the Court the specific documents. But, again,
19 this shouldn't be a surprise to Mr. Jacobs. The reason we
20 didn't supply them earlier is because we didn't realize he was
21 going to take the position that, well, how do we know that
22 people actually attended those meetings in Macau. Again, I
23 don't necessarily blame counsel, but certainly if they would
24 have talked to their client, we would not have had to submit
25 those exhibits, because their client would have told them,

1 yeah, they did have those meetings, because I was there.

2 So, Judge, as a matter of law it doesn't matter what
3 other discovery they do, it doesn't matter how they want to
4 twist things, how much invective or hyperbolic rhetoric they
5 throw at the Court. That's what they've got to go on. They
6 come in here and they use all kinds of defamatory comments
7 about my client and the chairman of the company to try to gin
8 up some kind of anger. I think the only way you could look at
9 it and say they're trying to get this Court upset with the
10 defendants so the Court will find jurisdiction. That's not
11 the basis, Judge. That's not the basis for jurisdiction. I
12 don't care how nasty and mean spirited their arguments can
13 get, it does not confer jurisdiction over my client.

14 So, Your Honor -- do you have any other questions?
15 I'd be happy to try answer anything else you have.

16 THE COURT: No. I read the cases last night, and
17 the briefing was excellent on both sides, so --

18 MR. RANDALL JONES: As I said, I don't see any way
19 -- I can talk about special jurisdiction. If the Court wants
20 transient jurisdiction, there's no transient jurisdiction
21 here. We've got a Nevada case in addition to Daimler that
22 shows there's no transient jurisdiction, the Freedman case,
23 Second Judicial District. If you don't have transient
24 jurisdiction over the resident agent for a corporation who
25 gets served in this state -- so the corporation gets a

1 resident agent here, has them here, they get served, and the
2 Supreme Court says that does not confer jurisdiction over the
3 corporation itself, then certainly an employee of the company,
4 even an officer who lives -- happens live here and gets served
5 with a complaint, does not confer transient -- jurisdiction,
6 transient or otherwise, which, by the way, is also provided
7 for in the Daimler case.

8 And, Judge, if there was any doubt in this Court's
9 mind about whether or not there was jurisdiction in spite of
10 the Daimler decision, which, as we all know, we all have to
11 abide by that decision, our Supreme Court gave this Court
12 additional direction, and it said in the Viega case that if
13 they are not here doing business -- if this is not their
14 principal place of business, excuse me, or where they're
15 incorporated, it is presumed that this is not their place of
16 residence and you cannot get jurisdiction over them.

17 And, again, the special jurisdiction argument I
18 really kind of hit with respect to the type of activities that
19 they contend give rise to special jurisdiction. They just
20 don't work. And, Your Honor, I think it's critically
21 important for this Court to keep in mind when you're making
22 your decision to not conflate the wrongful termination
23 allegations, that that's what they want to do, against Las
24 Vegas Sands Corporation with the breach of an option agreement
25 with Sands China, Ltd., which has nothing to do with where he

1 was allegedly terminated. That's a different matter, by the
2 way. We don't think that has anything to do with this whole
3 issue. But certainly the place where he was terminated as a
4 matter of law does not confer jurisdiction, assuming it
5 occurred here, against my client or on my client.

6 THE COURT: Thank you.

7 MR. RANDALL JONES: Thank you, Your Honor.

8 THE COURT: Mr. Bice.

9 MR. BICE: Thank you, Your Honor.

10 THE COURT: Mr. Bice, is the complaint I'm operating
11 on under the original complaint that was filed?

12 MR. BICE: I apologize, Your Honor. I did not hear
13 you.

14 THE COURT: Is the complaint I'm operating under the
15 original complaint that was filed?

16 MR. BICE: It is I believe the first amended
17 complaint.

18 THE COURT: And when was that filed? Best estimate.

19 MR. BICE: The best estimate is it was the complaint
20 that added the defamation claims. I'm going to look back at
21 my colleagues to see if --

22 MR. PISANELLI: May 2011.

23 MR. BICE: May of 2011, Your Honor.

24 THE COURT: Thank you.

25 MR. BICE: That is the operative pleading at this

1 point in time, Your Honor.

2 In that regard, Your Honor, just briefly to comment
3 on it since you were told that no one could say with a
4 straight face that Sands China's principal place of business
5 isn't in Macau because we allege that in the complaint, I
6 would ask the Court to actually read paragraph 3. Counsel's
7 just misstating what the document says.

8 I would note that in paragraph 2 when we're talking
9 about Las Vegas Sands Corporation we specifically allege that
10 its principal place of business is in Las Vegas, Nevada. That
11 is not said -- we do not allege that Sands China's principal
12 of business is in Macau. Quite the contrary. So I'm not
13 quire sure why that statement was said, because it's
14 inaccurate.

15 THE COURT: It says, "Defendant Sands China, Ltd.,
16 is a Cayman Islands corporation and the majority owned
17 subsidiary of LVSC through which [unintelligible] certainly
18 the acts and omissions alleged below, LVSC is the controlling
19 shareholder of Sands China and thus has the ability to
20 exercise control over Sands China's business policies and
21 [unintelligible] Sands China through its subsidiary, Venetian
22 Macau SA, is the holder of a subconcession granted when the
23 Macau Government, that allows defendants to conduct gaming
24 operations in Macau."

25 MR. BICE: Right. No statement about the principal

1 place of business being in Macau, as was represented.

2 But, nonetheless, Your Honor, moving forward, since
3 the defendants are conceding that the stay and the Supreme
4 Court's mandate does not preclude you -- or compel you to hold
5 an evidentiary hearing and that you can resolve this matter by
6 summary judgment, assuming that the traditional rules -- the
7 traditional principles under Rule 56 are followed, let's deal
8 with those just briefly on two specific fronts that we submit
9 are a bar to their present motion, but not a bar to our own.
10 And that is, one, the two stays that they have obtained
11 relative to jurisdictional discovery, as well as to
12 jurisdictional sanctions. They have obtained a stay, as the
13 Court knows, and precluded the Court from cleaning what the
14 Court had scheduled as an evidentiary hearing concerning
15 additional sanctions over their noncompliance with Your
16 Honor's orders regarding the Macau Data Privacy Act.

17 With respect to that what they're now asking you to
18 do is they're saying, Mr. Jacobs is stayed from seeking the
19 sanctions relief to which he has been entitled to seek now for
20 at least a year, but they are attempting to say that, well,
21 they should be allowed to take advantage of that stay as a
22 shield against themselves, against Mr. Jacobs obtaining any
23 affirmative relief against them, but then they can use it as a
24 sword to say that Mr. Jacobs is precluded from proceeding so
25 that he can. And that again, Your Honor, we cite authority

1 that says that course of conduct is not permitted.

2 So we believe that their motion is procedurally
3 fatal for that fact alone and that there are two stays that
4 they are hiding behind in terms of precluding Mr. Jacobs from
5 obtaining affirmative relief and then saying that, well, but
6 they should somehow be allowed to pursue affirmative relief in
7 their own right notwithstanding the fact that Mr. Jacobs is
8 stayed in that regard.

9 Second of all, Your Honor, is the only declaration,
10 as we have noted, submitted in support of this motion was that
11 of Mr. Toh, a witness that was not identified by the
12 defendants as one of their jurisdictional witnesses. The
13 first time we received that was in response to this motion.
14 And our objection isn't to the authentication aspect of Mr.
15 Toh's declaration, it's -- our objection is that his wholesale
16 conclusion and apparent lack of information about what really
17 -- how Sands China is really being operated and who is really
18 calling the shots and from where those shots are really being
19 called, he submits a declaration first of all that was
20 defective, and they seem to acknowledge that upon information
21 and belief they've now claimed that they have corrected that
22 by just simply saying he's relying upon the universe of
23 internal records that they have not produced, and as well as
24 just make the conclusory assertion that they aren't subject to
25 jurisdiction in Nevada because -- and it's an odd argument,

1 because they're saying that it's not the standard for
2 jurisdiction, where somebody actually does business, but then
3 they turn around and say his declaration, which is the only
4 declaration and the only actual evidence submitted by them, is
5 somehow dispositive of the jurisdictional point. And, again,
6 we have objected to that declaration. It is an impermissible
7 conclusion.

8 Setting those two problems, and I would submit they
9 are fatal problems to their motion, let's turn to the merits
10 in particular, because our countermotion is really the flip
11 side of the same coin. And that comes down to this, Your
12 Honor. Where is Sands China at home? And it's odd, because
13 we're hearing again that we have these vacillating arguments
14 and we're completely lost in the thicket. But funny thing is
15 they filed essentially the same motion as a protective order I
16 think two years ago, it might have been three years ago,
17 making what is really precisely the same argument. And the
18 Court rejected that for good reason. And we can now see why
19 -- with the jurisdictional discovery that has been obtained
20 why they didn't want those facts to come to light. They tell
21 you you should not look, you should turn away from where
22 actual control, direction, and policy is emanating relative to
23 Sands China. They say that Hertz doesn't apply. Apparently
24 under their argument is that a corporation can be a resident
25 of one state for purposes of diversity, but it wouldn't be

1 subject to personal jurisdiction in very place where Hertz
2 says that it would be a resident as its principal place of
3 business. I note they cite no authority for that bizarre
4 proposition that the law would work that way, and that's
5 because there isn't any that would support such a sort of
6 tortured proposition about where jurisdiction lies.

7 The question ultimately becomes, as Daimler says,
8 where is the company's principal place of business. And what
9 the Supreme Court tells us in Hertz and what other courts tell
10 us, and we cite this -- I'm glad that they embraced the
11 Johnson decision, because I'm going to explain to you
12 precisely why the Johnson decision completely guts their
13 argument. They embrace that saying that, well, we're a
14 holding company and under Johnson a holding company is deemed
15 to be at home in the place where the board meetings are
16 actually held. Little problem with Johnson, though, in that
17 regard, and I'll explain that momentarily.

18 But going on to this they say that you shouldn't
19 look at Hertz and where the principal place of business is
20 because they know where -- who was actually calling the shots,
21 who was giving direction, who was setting policy, and where
22 all those executives are residing at. They're residing right
23 here on Las Vegas Boulevard. And they've known that since the
24 day that this lawsuit was filed. And we know that because
25 their own internal records, not self-serving declarations by

1 Mr. Toh and not convenient annual reports that they need to
2 file with the Hong Kong Stock Exchange because it's
3 inappropriate for them to be -- being operated out of Nevada
4 when they are in fact registered on the Hong Kong Exchange and
5 have never disclosed that. I get that that's why those
6 documents try and create that picture. But we're here, the
7 Court -- this is summary judgment. We're dealing with
8 admissible evidence, and in fact we cite authorities to you
9 that say these self-serving assertions by parties as to where
10 they decree their principal place of business to be are
11 irrelevant, because of course they decree them. They're
12 trying to avoid jurisdiction.

13 The question is what does the actual evidence show
14 about who was making the substantive decisions, who was
15 setting policy, and where is that occurring, where is the
16 brains of the entity, where is the nerve center of the entity,
17 where is the actual -- whether you call it de facto or
18 whatever, where's the real headquarters of this entity. Well,
19 we know that. How do we know that? We have emails from
20 people. We have emails from Mike Levin telling everyone Mr.
21 Adelson and Las Vegas make the decisions, input from Macau is
22 expected and appreciated, but all final decisions come from
23 Mr. Adelson and Las Vegas.

24 Here's another critical one that I think is amusing
25 in light of their contention that the board of directors is

1 really calling the shots. Does Her Honor recall the email
2 where Mr. Levin sent the email saying one of the problems with
3 Steve Jacobs is that he thought he reported to the board, as
4 opposed to Mr. Adelson? If the board's really calling the
5 shots, why would Mr. Levin be sending an email saying that's
6 the problem with Steve Jacobs, is he thinks he reports to the
7 board? Because the evidence shows the board really isn't the
8 one controlling this company, setting the policy, and
9 directing activities, which, not coincidentally, is precisely
10 why Mike Levin became the acting CEO of it for no additional
11 consideration, because he had been largely fulfilling that
12 role in a -- can't remember the label -- I apologize, Your
13 Honor, I can't remember the label that they used to describe
14 him -- special advisor I think is the label that they had
15 used. And Mike Levin then becomes the chief executive
16 officer, Your Honor, the person in charge. And where is he
17 based? He's based in Las Vegas. Where is he fulfilling his
18 chief executive officer role as head of the company, head of
19 policy, head of decisions, where the buck stops here? In Las
20 Vegas. That means that the nerve center of Sands China, as
21 the documents show and as the actual evidence shows, is
22 actually in Las Vegas, because that's where real decisions are
23 being made.

24 And that takes us, Your Honor, right to the Johnson
25 decision. Johnson talks about this point. That was a holding

1 company that had officers I believe it was in Pennsylvania, if
2 my memory is serving me right. And what they argued was,
3 well, that's where the corporate officers are at and so
4 therefore that's where the nerve center is. And the District
5 Court said no, and the Third Circuit affirmed, saying, that's
6 not true in this particular case because in this particular
7 case this holding company did nothing except hold assets, its
8 officers weren't empowered to do anything. So the board was
9 making these decisions, actually running the operations and
10 doing so at board meetings that were being held in Delaware.
11 And so the court said, because of these particular
12 circumstances that's where they are headquartered at and
13 that's where the nerve center is.

14 Now, contrast that against what Sands China claims
15 its role is. Sands China claims it's actually not just a
16 holding company, but in fact overseeing and controlling the
17 operations of all of the properties in Macau. That's what it
18 has affirmatively represented. And I would note, Your Honor,
19 that's why we cited them the Moore versus Johnson & Johnson
20 decision, which came after Johnson, that specifically talks
21 about the fact of what happens when you have a related
22 company, in this case Las Vegas Sands Corporation and its
23 executives wearing a Sands China hat, according to Mr. Adelson
24 and Mr. Levin. Every time they're in Las Vegas when they're
25 acting on behalf of Sands China, which is fairly constant,

1 they are wearing a Sands China hat. They switch these hats on
2 and off quite quickly, apparently, throughout the day, but
3 that's their position, and that was their testimony.

4 But this is what Moore talks about, Your Honor, in
5 terms of -- and this is a less-than-a-year-old decision
6 talking about this very point, they're talking about Johnson.
7 "Johnson confirms that Hertz is not as formalistic as the
8 plaintiffs contend, that when the facts suggest that a
9 particular corporation does not vest the relevant decision
10 making in its officers, those officers do not compromise the
11 corporation's nerve center. This court's conclusion that
12 executives of a related entity may constitute a corporation's
13 nerve center sits comfortably with the Third Circuit's
14 reasoning and holding in Johnson."

15 And, of course, that's precisely been our point.
16 This entity is really being directed, policies set,
17 substantive decisions, as the emails confirm, Your Honor.
18 This isn't just Mr. Jacobs making this. Their own internal
19 emails confirm who's actually calling the shots, who's
20 actually making the decisions, and where real policy is being
21 set and dictated from. And that is here in Las Vegas. And
22 under that that's why we have countermove for summary
23 judgment. You can't contradict your own testimony or that of
24 other officers to try and say, well, now we dispute what Mr.
25 Adelson said, we dispute what the emails show, we dispute what

1 our own witnesses have ultimately admitted to. And so there's
2 an issue of fact that precludes Mr. Jacobs's counter-motion
3 from being granted. We certainly dispute that. They cannot
4 contradict themselves.

5 That then takes us regardless of general
6 jurisdiction, Your Honor, to the issue about specific
7 jurisdiction. And on this one, you know, Mr. Jones says,
8 well, we're just completely -- I don't remember the exact
9 words he used, but -- actually, I wrote them down, that
10 there's a basic disconnect of our position and this contract.
11 I would submit that the basic disconnect is coming from Sands
12 China, because Sands China apparently wants to forget that its
13 chief executive officer, Mr. Jacobs, was performing those
14 services pursuant to a Nevada contract, that Mr. Levin had to
15 admit in his deposition was negotiated in Nevada, executed in
16 Nevada, and approved by Mr. Levin in Nevada. And, Your Honor,
17 we attached that contract as Exhibit 5 to our reply.

18 THE COURT: So, Mr. Bice, you are not just arguing
19 general jurisdiction, you are arguing alternatively specific
20 jurisdiction.

21 MR. BICE: Yes, we are, Your Honor. And that's
22 the --

23 THE COURT: Okay. I just wanted to confirm that for
24 purposes of our hearing today.

25 MR. BICE: -- subject of our counter-motion, as well.

1 Our point here being, Your Honor, if you look at Exhibit
2 Number 5, it specifically talks -- and this again -- they
3 tried to deny this originally, and in fact if the Court goes
4 back and looks at Las Vegas Sands Corporation's counterclaim,
5 they claimed that they had no contract with Mr. Jacobs.
6 That's odd, because they filed it with the Securities and
7 Exchange Commission, representing it to be his employment
8 contract. And it specifically talks about the fact that he
9 will be serving as the president and CEO of the Macau listed
10 company, which, of course, as we all know now is what? Sands
11 China, Ltd. He will be reporting to the president and COO of
12 Las Vegas Sands and the chairman of Las Vegas Sands. Again,
13 this is Sands China claiming, well, we don't know -- we have
14 no contacts in Nevada, this dispute doesn't arise out of
15 anything in Nevada. But their -- of course, their chief
16 executive officer is one who has a Nevada employment contract
17 negotiated and specifically talking about his duties and
18 obligations of reporting to Las Vegas Sands executives in
19 Nevada. It talks about his salary. It talks about the very
20 stock options that we're now hearing from these -- from Sands
21 China only pertain to issues in Macau. Well, that's odd, Your
22 Honor, because it specifically talks about the conversion
23 right in the employment agreement and the amounts of the
24 shares. So to sit there and say "the disconnect," I will
25 agree there is a disconnect. But the disconnect is putting

1 one's head in the sand, as Sands China has done, and trying to
2 act like it does not know the contract that Mr. Jacobs was
3 operating under and the contract from which the stock options
4 were granted as a result of.

5 This claim -- because, again, I heard this
6 terminology, as well -- is that these are different, unrelated
7 contracts. Really? That's -- I would submit that tells the
8 Court likely what it really needs to know, is that when Sands
9 China has to come into this court and claim this stock option
10 agreement is unrelated to this employment agreement -- the
11 only reason that the stock option agreement, Your Honor, says
12 on its face, on its face no less, that this is recognition --
13 I'll just read it so that we don't have a dispute about it.
14 "This is in recognition of his contribution and encouraging
15 continuing dedication." Well, Your Honor, how was this --
16 it's his role as CEO, and, again, what was his role as CEO
17 pursuant to? It was pursuant to a Nevada contract that had
18 been negotiated, signed in Nevada.

19 Again on the July 7, this is Exhibit K, Your Honor,
20 this is the statement to Mr. Jacobs. "I am glad to advise
21 that in consideration of your contribution and continued
22 services to Sands China" he gets these stock options. Well,
23 again, Your Honor, how is that these stock -- what services
24 was he providing and what was he providing it under? He was
25 providing it under a Nevada employment contract that Mr. Levin

1 acknowledges and that they filed with the Securities and
2 Exchange Commission. So if there is anyone -- if there is any
3 contention being made here that is absurd, it is that Sands
4 China is trying to pretend like this stock option agreement
5 does not somehow grow out of the Nevada employment contract
6 and that it is not a result of that breach of contract that
7 does not give rise to the claim for breach of the stock
8 options when it is specifically referenced.

9 And that, then, Your Honor, turns us to -- and these
10 facts are undisputed, because they don't bother to submit --
11 even Mr. Toh doesn't know anything about this. So the facts
12 about the termination, Your Honor, they can't deny that that
13 entire scheme was carried out here by people, according to Mr.
14 Adelson and Mr. Levin, wearing their Sands China hats. They
15 had those hats on the whole time that they were undertaking
16 this activity. So these gentlemen, acting as the brains and
17 the nerve center of Sands China, are in Las Vegas, directing
18 all of these teams, legal, public relations, et cetera, having
19 to manufacture fake Sands China letterhead in Las Vegas
20 because they didn't have any, to make it look Sands China was
21 taking this action in Nevada, that it was signed in Nevada,
22 Your Honor, that's where the breach occurred, that's where the
23 scheme was, and that's what happened. And you won't see a
24 single declaration from anyone disputing any of those facts,
25 because they were all admitted to in the depositions by Mr.

1 Levin and Mr. Adelson and the other executives that were
2 involved.

3 When you take that -- as Mr. Levin acknowledged,
4 Your Honor, the only connection to Mr. Jacobs's termination
5 that was had in Macau is that Mr. Levin, because he had been a
6 long-time friend of Mr. Jacobs, wanted to give him the news
7 personally, so he hopped on a plane to go tell him, as opposed
8 to picking up the phone, like Mr. Adelson had wanted Mr. Levin
9 to do. That's the extent of the Macau connection to this
10 termination. This entire event happened in Nevada, which
11 carried out from Nevada, and every substantive event of it
12 occurred in Nevada, save and except for Mike Levin getting on
13 a plane in Las Vegas and flying to Macau to basically announce
14 the decision that had been made in Nevada. And that's all
15 that they did. According to Sands China, well, it's not where
16 you make the decision, it's not where you implement it, it's
17 where you announce it that somehow is the breach and subjects
18 you to jurisdiction. That, I would submit, is the absurdity
19 of their position, Your Honor.

20 That then takes us, Your Honor -- because of that,
21 and there are no material facts that they dispute any of those
22 events happening, because they can't, all they're arguing is
23 the law, the legal consequences of it, that's why they are
24 subject to specific jurisdiction here over the breach of that
25 agreement, because, Your Honor, we point out what the Ninth

1 Circuit says about this. "Specific jurisdiction is
2 established when someone conducts activities in the forum,"
3 which is we have Mr. Levin and Mr. Adelson admitting, we had
4 on our Sands China hats when we were undertaking this activity
5 relative to Mr. Jacobs, "the claim arises out of or relates to
6 those forum-related activities," the Ninth Circuit tells us.
7 Well, is there any dispute anywhere that but for this
8 termination that was hatched and executed here in Nevada that
9 there would not have been a breach? Of course not. So does
10 the cause of action relate to those Nevada-based activities by
11 people wearing a Sands China hat, according to them? Of
12 course it does.

13 Then, Your Honor, the burden shifts to them.
14 Because those two factors are satisfied, the burden shifts to
15 them to make a compelling case that exercising jurisdiction
16 over them arising out of those circumstances is
17 constitutionally unreasonable. They don't even attempt to do
18 that, because they know that they cannot. That being the
19 case, Your Honor, they are subject to specific jurisdiction,
20 as well, over the claim that Mr. Jacobs has asserted in the
21 current complaint. As you know, coming up before you is an
22 additional amended complaint that asserts some additional
23 claims. It's not before you today.

24 But, nonetheless, that then takes us to transient
25 jurisdiction, Your Honor. And the only thing I'm going to say

1 about transient jurisdiction, the argument is, well, it's not
2 sufficient to have just a registered agent subject then to
3 jurisdiction. We agree. We have never disputed that. It's a
4 whole different matter, however, Your Honor, and we cite the
5 caselaw dealing with this, when you have an executive in the
6 jurisdiction who the company has appointed as the chief
7 executive officer to operate the company from the
8 jurisdiction. This is not a paid-for corporate service up in
9 Carson City where you just go off and drop the papers with
10 them. This is an executive operating as the chief executive
11 of Sands China from Las Vegas, performing those services on a
12 daily basis from Las Vegas. He is the head of the company
13 under corporate law, and he is based in Las Vegas and
14 operating there. And that's where he was served.

15 We cite you to Wyoming Supreme Court's decision of a
16 partnership where the managing partner was in the jurisdiction
17 performing services, was served, and the court said that
18 satisfies due process, because they were there on business,
19 performing services for the company.

20 That's particularly the case here, Your Honor,
21 considering that it was Sands China's decision to invest Mr.
22 Levin with that title and with that authority and making him
23 basically in charge of the company.

24 One last thing, Your Honor, before I sit down. On
25 the attendance records --

1 THE COURT: Court's Exhibit 1.

2 MR. BICE: -- Court's Exhibit 1, I'll withdraw my
3 objection, and I ask the Court to actually look at it. And
4 don't just look at the highlight that was given to you. Look
5 at all of the board meetings --

6 THE COURT: You want me to look at all the "Ts" that
7 were there and --

8 MR. BICE: Yeah. Look at all the --

9 THE COURT: I saw them, Mr. Bice.

10 MR. BICE: Look at all the board meetings, Your
11 Honor -- no, just with Mr. Adelson, Your Honor. Because
12 they're not highlighted. We have four highlights, but there
13 are four other board meetings that are not highlighted, and he
14 was there by telephone on all of them. In fact, if you add
15 them all up, Mr. Adelson was there in Macau as chairman 10
16 percent of the time. I mean, my math's not that great, but it
17 certainly -- it certainly isn't even close to a majority. I
18 think it was two out of -- one, two, three, four, five, six,
19 seven, eight, nine. Oh. So, no, it's more than that. It's
20 20 percent, little over 20 percent. The point being here,
21 Your Honor, is, again, where is this company -- where does the
22 evidence, not argument, not self-serving statements from Ben
23 Toh or any self-serving report that they need to cite from
24 themselves, where does the actual evidence show that Sands
25 China is being the corporate nerve center, control, direction,

1 setting of policy is actually occurring? That is occurring in
2 Las Vegas by people sitting on the Las Vegas Strip and giving
3 those directions, and that means they are subject to
4 jurisdiction -- general jurisdiction. But there can't be any
5 argument about specific jurisdiction unless one wants to argue
6 by simply ignoring what the documents and the contracts say.
7 I thank the Court for its time.

8 THE COURT: Thank you.

9 Mr. Jones.

10 MR. RANDALL JONES: Thank you, Your Honor.

11 The first point I want to make, Judge, is that one
12 of the first points that Mr. Bice raised is you've heard this
13 argument before. Well, first of all, you've heard this
14 argument -- some of this argument before some time ago, but
15 that was before Daimler --

16 THE COURT: It was.

17 MR. RANDALL JONES: -- and that was before Viega.
18 And, as I said earlier, I believe and I think that most people
19 that I know that practice law when they read those cases
20 believe that is a see change with respect to jurisdiction and
21 how --

22 THE COURT: I think most people agree with you,
23 including me.

24 MR. RANDALL JONES: So there's a big difference
25 about your decision then and your decision now in the context

1 of those cases.

2 But since the last issue raised by Mr. Bice was
3 the board meetings, again, there is clearly a disconnect
4 here without question. Mr. Bice seems to think that if
5 they're telephonic board meetings that somehow or other
6 that means that there's no legitimacy to the board meetings.
7 Your Honor --

8 THE COURT: I don't think from a corporate
9 governance standpoint he's saying that. I think he's saying
10 it from an at-home evaluation standpoint.

11 MR. RANDALL JONES: And I would submit to Your Honor
12 that is an absurd proposition. If you're talking about a mom
13 and pop company that has meetings that's a Nevada company --
14 I'll tell you right now I'm on the board of my law school. I
15 typically attend, because I don't live in California, by
16 telephone, as do several other board members who live in New
17 York and Texas and Hawaii. So in this day and age to suggest
18 that somehow that the board meeting is actually held in
19 California -- and that's what happened in this case; all of
20 those board meetings happened either in Macau or in Hong Kong,
21 and a lot of people phoned in to participate. And there is
22 caselaw that we have cited, many cases we have cited where the
23 courts have acknowledged that very point, that we no longer
24 communicate by telegraph or pony express. In this day and age
25 in the global economy that we have to suggest that

1 participating in a board meeting, whether you're a chairman or
2 not, somehow makes the board meetings illegitimate is, I will
3 say, using this word as being used a lot around here today, an
4 absurd proposition.

5 And, Judge, the only way to look at this case -- Mr.
6 Bice wants to talk about some specific issues, and I want to
7 go through some of those things. He wants to talk about
8 certain -- a couple of emails that he thinks makes his case.
9 Your Honor, what you have to do to do this analysis, and I
10 think this is patently clear from Daimler and the Viega cases,
11 you have to look at the big picture, you have to take the
12 issues in their totality. The fact that there are some emails
13 that Mr. Levin talks about the chairman wants to be involved
14 in those decisions and make the final decision, well, as we
15 pointed out in our brief, those were design issues, a very
16 specific issue that Mr. Adelson had a particular interest in.
17 And what you don't see is whether or not those are even
18 required to be board decisions as a general proposition. So
19 the --

20 THE COURT: Mr. Jones, let me ask you the question.

21 MR. RANDALL JONES: Okay.

22 THE COURT: Is it your position that the sole
23 determinative factor in determining where a corporation is at
24 home is the location of its board meetings?

25 MR. RANDALL JONES: No. I certainly don't.

1 THE COURT: Okay. What other factors do you think
2 are important for consideration?

3 MR. RANDALL JONES: I think all of the factors.
4 That it has no property in this state, that it has an
5 agreement that says it cannot do business in this state. And
6 there's been no -- other than Mr. Jacobs, there's been no
7 allegation by anybody else, no stockholder has sued saying,
8 oh, Sands China is doing business in Nevada. It has no
9 revenues from the state of Nevada. And that's irrefutable.
10 He doesn't -- you know, he points, well, self-serving
11 statements in an annual report. Well, Your Honor, I think
12 that's again another kind of absurd proposition, to suggest
13 that an annual report can't be relied upon, because, as we all
14 know, if you say something that's a material misstatement in
15 an annual report, you can be sued by shareholders. There's
16 been -- other than --

17 THE COURT: Yes, you can.

18 MR. RANDALL JONES: As this Court well knows.

19 Other than Mr. Jacobs's allegation, there's no
20 allegation that Sands China is doing business in the state of
21 Nevada that I'm aware of. And so when you look at the
22 totality of the circumstances it just doesn't add up,
23 especially when you look at the Daimler case and Viega.

24 I would also point out that Mr. -- in that vein Mr.
25 Bice talks about the Toh affidavit, and he suggests that the

1 Toh affidavit is, again, self-serving and it's the only
2 evidence we have that shows that we don't do any business
3 here. He obviously doesn't recall another affidavit that was
4 submitted and attached to the motion to dismiss filed back in
5 December of 2010 that says essentially the same thing by Ann
6 Marie Sault [phonetic]. So this is a position that has been
7 consistent, and the actual evidence, other than a few cherry-
8 picked emails, suggest that in fact -- well, all the evidence
9 shows that they don't do business here in spite of the fact
10 that they have some high-level executives that happen to live
11 here.

12 And I would also submit, Your Honor, if this Court
13 basis its decision on the idea that a corporate executive
14 cannot be on multiple boards and have -- essentially make
15 decisions, using the expression to take off the hat and put on
16 another hat, then I would like to see the caselaw that Mr.
17 Bice is suggesting to this Court shows that a corporate
18 executive that serves -- functions on multiple different
19 boards or in multiple different companies by simply residing
20 in a state and making decisions where he says he puts on his
21 other hat all of a sudden confers jurisdiction over that
22 company if they have no other business connection with that
23 state --

24 THE COURT: Even if that executive residing in our
25 state is making business decisions on a regular basis for the

1 foreign corporation?

2 MR. RANDALL JONES: Say that again, Your Honor.

3 THE COURT: Even if that executive who permanently
4 resides in our state is making business decisions on a regular
5 basis for that foreign corporation? See, that's the issue.
6 If it was just you make it once, you're flying through, you're
7 at Lake Tahoe for the summer and you make one conference call,
8 I think that would be different than if you're making it on a
9 regular basis. And that's where I'm having the concern, Mr.
10 Jones. It seems to be a pervasive decision-making process by
11 executives on behalf of Sands China here. Or at least that's
12 the argument.

13 MR. RANDALL JONES: That's certainly the argument.
14 I would absolutely categorically disagree that there is a
15 pervasive --

16 THE COURT: No. But I'm asking about the analysis,
17 as opposed to the factual basis. Because the factual basis is
18 a different issue. I don't know that I have the facts before
19 me appropriately to make that determination, but from a legal
20 analysis that jurisdiction, whether you call it transient,
21 general, it wouldn't be specific, but where you have that
22 executive of the foreign corporation in our state making
23 business decisions on behalf of the foreign corporation on a
24 regular business -- on a regular basis from our state, doesn't
25 that confer jurisdiction whether you call it general or

1 transient?

2 MR. RANDALL JONES: Not in the least.

3 THE COURT: Tell me why.

4 MR. RANDALL JONES: And Daimler says categorically
5 that that is not true.

6 THE COURT: Tell me why.

7 MR. RANDALL JONES: It's a simple analysis, Judge.
8 In Daimler what is that employee, whether they be the chairman
9 of the board or the CEO or the CFO or anything else? What is
10 that employee? That employee is an agent of the company;
11 correct, Judge?

12 THE COURT: He'd have to be; right?

13 MR. RANDALL JONES: He'd have to be an agent.

14 THE COURT: Or an employee.

15 MR. RANDALL JONES: And what Daimler say? Daimler
16 says it doesn't matter -- it categorically says it does not
17 matter if that agent resides in that forum and the agent
18 himself would be subject to general jurisdiction.

19 THE COURT: But then we have our Nevada Supreme
20 Court in the Viega case talking about the importance of
21 evaluating that agency relationship. And if the parent is
22 making absolutely no decisions other than having a member of
23 its board sit on the subsidiary and not directing day-to-day
24 operations, then, as in that case, it's appropriate not to
25 exercise jurisdiction. But it seems to me in reading these

1 cases I have to at least make that factual inquiry.

2 MR. RANDALL JONES: And, Judge, again, I think --
3 well, first of all, as we all know, the Viega case helps
4 explain the Nevada Supreme Court's interpretation of Daimler.

5 THE COURT: Absolutely.

6 MR. RANDALL JONES: Daimler is clear on its face on
7 this point, absolutely clear. It says unequivocally that even
8 if the agent is subject to general jurisdiction himself or
9 itself, whether it be an employee or another company, that
10 does not confer general jurisdiction over the entity.

11 THE COURT: But the Nevada Supreme Court is the boss
12 of me, and they have said in that Viega decision in the
13 footnote, "As stated earlier in this opinion, an agency
14 relationship might be used to establish contacts sufficient
15 for specific jurisdiction so long as the contacts as an agent
16 led to the claims at hand." And that goes with Mr. Bice's --

17 MR. RANDALL JONES: Well, let's talk about specific,
18 then. Let's talk about specific. Because what you just said
19 -- and, by the way, I would disagree, Your Honor,
20 respectfully. The U.S. Supreme Court trumps the Nevada
21 Supreme Court on this subject.

22 THE COURT: You know, the Nevada Supreme Court
23 doesn't do what the Federal Courts say they should do a lot in
24 criminal cases, and so I am very aware that frequently it
25 doesn't matter what they say in the Ninth Circuit, the U.S.

1 Supreme Court; I've got to go with what the Nevada Supreme
2 Court says, because they will send it back and tell me to do
3 it over again.

4 MR. RANDALL JONES: And that may be true. But, as
5 you recall, the Daimler case was a California case.

6 THE COURT: Out of the Ninth Circuit.

7 MR. RANDALL JONES: Well, understood. But my point
8 is that ultimately on this issue I would believe that the U.S.
9 Supreme Court would trump everybody. But, be that as it may,
10 let's go with your argument about the Viega case.

11 THE COURT: It's not my argument. I'm reading from
12 the opinion in your case -- your other case.

13 MR. RANDALL JONES: I appreciate that. I shouldn't
14 have used that terminology. Using that argument, Judge, that
15 the only way I could interpret that whatsoever -- and, by the
16 way, I disagree that that's what it says. But if you could
17 agree with it at all, it's as relates to specific
18 jurisdiction. It doesn't talk about general jurisdiction.
19 And specific jurisdiction you could always find jurisdiction
20 if you can connect specific facts to a particular party that
21 relate to the action itself.

22 And so, again, there's a disconnect. I understand
23 Mr. Bice wants to get up here and say, oh, his employment, his
24 wrongful termination is so tied in, so critically connected to
25 the option agreement that they are the basis of our specific

1 jurisdiction for the company itself. I categorically disagree
2 with that proposition. They are two different things.

3 So -- and, by the way, I want for the record to be
4 clear. We dispute that all the decisions to terminate Mr.
5 Jacobs were here in -- made here in Nevada. I disagree with
6 that. But that's -- it's irrelevant to the discussion. And I
7 know Mr. Bice is very adamant about that being the case and he
8 thinks the evidence shows that. I disagree. But that's not
9 important. That is irrelevant to the discussion that you want
10 to inquire about, Judge. The question is -- the only way they
11 can make that connection is through the wrongful termination,
12 assuming it occurred. And that doesn't have anything to do
13 with the fact that he -- again, let's take all of the facts
14 that he claims to be true as true for argument's sake, that he
15 negotiated the employment agreement in Las Vegas, that --

16 THE COURT: And the only person he's sued on that
17 claim is Las Vegas Sands.

18 MR. RANDALL JONES: That's right. That's right.

19 THE COURT: And the option he sued both Las Vegas
20 Sands and Sands China --

21 MR. RANDALL JONES: That's right.

22 THE COURT: -- under the current amended complaint.

23 MR. RANDALL JONES: That's right. So -- but let's
24 just take for argument's sake everything that Mr. Bice
25 contends is true as true, that he negotiated that agreement in

1 Las Vegas, the employment agreement; that he was terminated in
2 Las Vegas from his employment agreement. Those are the
3 connections; right? I mean, he didn't perform his employment
4 agreement. I don't think even Mr. Jacobs would say, I came to
5 Las Vegas and lived here and I did all my duties, performed
6 all my duties and services under that employment agreement in
7 Las Vegas. He's not saying that. So what -- his connection
8 to the employment agreement is that he negotiated it here, it
9 was signed by Las Vegas Sands here, according to him -- just
10 so you know, Judge, he contends in the complaint, he signed
11 it, as well. We've never seen -- to this day never seen a
12 signed copy by Mr. Jacobs. But, be that as it may, again,
13 taking these as undisputed facts for argument's sake, he
14 signed it -- the Las Vegas Sands signed it here, he negotiated
15 it here, and that he was allegedly terminated from it here.
16 So what? What does that have to do with a option agreement
17 that was negotiated in China, was provided to him in China,
18 that he allegedly accepted in China when he was a resident of
19 China, that he was performing work in China in connection with
20 trying to get those options, and that he admits he was
21 terminated -- the option agreement was terminated in China.
22 He didn't -- with respect to the option agreement he didn't
23 come to Nevada to negotiate it, he was not a resident. No
24 activities by Mr. Jacobs were directed towards the state of
25 Nevada with respect to that option agreement. And the

1 performance of that option agreement did not affect Nevada.
2 And you can't get away with that. I don't care what kind of
3 rhetoric you want to use. They cannot convince anybody,
4 because there are no facts to support it, that the option
5 agreement has a connection to the state of Nevada. That would
6 not confer specific jurisdiction.

7 And, again, ultimately presumably the Supreme
8 Court's going to tell us who's right on this issue, but I will
9 never agree with Mr. Bice that that option agreement has
10 anything to do with the state of Nevada. His termination of
11 his employment is a separate issue, period.

12 THE COURT: Okay. Thank you.

13 MR. RANDALL JONES: And with respect to the
14 transient jurisdiction the same argument holds. Daimler tells
15 us, and I believe that there's nothing in the Viega case that
16 would suggest otherwise -- and, Judge, in a global economy
17 think of what Mr. -- the can of worms that Mr. Bice is opening
18 up here if he's right.

19 THE COURT: And that seems to be the biggest
20 analysis from the Daimler, is the transnational issues.

21 MR. RANDALL JONES: And it is.

22 THE COURT: It's a huge issue.

23 MR. RANDALL JONES: And in fact we argued those
24 issues in the Viega case and we lost them. And we had I
25 believe substantially more contacts with the state of Nevada.

1 That company owned a facility in Reno. That company on its
2 Website talked about doing business in the state of Nevada and
3 how much business it did here, plumbing thousands of homes
4 under the name of the German entity. It promoted itself in
5 the state of Nevada with its product. And the Supreme Court
6 said, no, they are not at home in the state of Nevada.

7 So let's take the totality of the circumstances. So
8 I believe these are undisputable facts. We have a company
9 that is a holding company, in spite of what Mr. Bice says, it
10 is set up as a holding company. It owns stock in other
11 companies that actually run the businesses. So we know for a
12 fact any businesses that Sands China owns and runs are in
13 Macau, with property in Macau; we know its revenue is all
14 generated from there, there's no dispute that there's no
15 revenue generated from here; there's no dispute that the board
16 -- well, I don't think there's a dispute. There's certainly
17 no evidence, competent evidence under Rule 56(f) that the
18 company has its board meetings in Macau or Hong Kong. Now Mr.
19 Bice has even conceded the point by accepting the offer of
20 Court Exhibit 1. So we have a noncompetition agreement that
21 is in place, we have annual reports that all relate to it.
22 And what is the connection to Nevada that they can point to?
23 They can point to two things that they rely their entire
24 proposition on, two things, that the chairman of the board of
25 Las Vegas Sands and Sands China resides here and that Mr.

1 Levin for some period of time was acting CEO and he resided
2 here. That's what they could point to. That's it. And so
3 under either the Viega case or the Daimler case you would have
4 to determine as a matter of law that those two executives
5 living here and having obviously a role to play, a significant
6 role or insignificant role, either one, makes the company at
7 home in the state of Nevada in spite of all the other
8 evidence, principal place of business, place of incorporation,
9 noncompetition agreement, no revenue being generated here, no
10 property, board meetings, all that other evidence goes by the
11 wayside.

12 That's why I said, Judge, I always like to do a gut
13 check when I have any case, and I look at that and I look at
14 the totality of the circumstances and I say to myself, could
15 any right-minded person -- and I know Mr. Bice is an advocate.
16 He's a very good advocate. I understand why he's making as
17 strong an argument as he is. He's got a case to try to argue.
18 But if you look at it objectively, which is what the Court's
19 supposed to do, and you look at the totality of those
20 circumstances, I don't see how anybody in their right mind
21 could say that Sands China, Ltd., based on all the available
22 facts is at home in the state of Nevada under the definitions
23 that have been given to you by both the Nevada Supreme Court
24 and the United States Supreme Court. It just doesn't add up,
25 Judge.

1 And, again, you can take all of his arguments at
2 face value and assume they're true. He's got two executives
3 that live here, and in this modern global economy that's the
4 basis on which he says in spite of everything else about how
5 these companies work?

6 THE COURT: Well, not just that they live here. His
7 argument is that they live here and they do business on behalf
8 of the foreign entity and direct its conduct. That's his
9 argument.

10 MR. RANDALL JONES: And Daimler says, as you
11 acknowledge, an agent is an employee of the company, including
12 the chairman and the CEO, they're agents. And Daimler says
13 even if those agents are subject to general jurisdiction
14 themselves -- and as we know in the Daimler case, the
15 California company conceded that it had jurisdiction in the
16 case. So even --

17 THE COURT: Even though the Supreme Court disagreed
18 with whether they should have conceded that.

19 MR. RANDALL JONES: Well, but -- and that's a good
20 point. Because the Supreme Court said, we don't even think
21 that the California courts have conceded that point. But they
22 took it at face value. But they said, clearly, clearly, even
23 if that company did have -- was subject to general
24 jurisdiction and was the agent for the German entity, it did
25 not confer general jurisdiction or specific jurisdiction over

1 the German entity.

2 And that's what you're dealing with here, Judge.
3 Again, if you get caught up in the weeds -- and, again, Mr.
4 Bice does a great job of pointing out these little bitty
5 pieces of fact to say, why, this is critical, this is the
6 nerve center. That's an absurdity, too. If you think of the
7 operation of that gigantic company in China and think that Las
8 Vegas is the nerve center because two executives reside here,
9 then I respectfully disagree, and I don't think that our
10 Supreme Court is ever going to agree with that proposition.

11 THE COURT: Thank you.

12 MR. RANDALL JONES: Thank you, Your Honor.

13 THE COURT: Mr. Bice, since you have a
14 counter-motion, you get the last word.

15 MR. BICE: Thank you, Your Honor.

16 Your Honor, if they're going to play up this holding
17 company status, how many employees actually executive does
18 Sands China even have? They're telling you that two that are
19 really calling the shots here in Nevada is somehow -- that's a
20 minuscule amount. Well, holding companies, as the whole point
21 of the Johnson decision is, is that the holding company
22 typically doesn't have any executives to be making the
23 decisions. So one must wonder, well, if you're claiming now
24 that you're a holding company and that Mr. Adelson and Mr.
25 Levin, who are here exercising all this authority as evidenced

1 by their own contemporaneous emails and their own sworn
2 admissions under deposition, that they're not somehow
3 exercising ultimate control, authority, direction over the
4 company's policy and affairs, then who is? They now tell you,
5 well, it's the board and the board is meeting from all over
6 the world, but since we set up a phone bank in Macau and/or
7 Hong Kong, I guess it's in one of those two alternative
8 places, which, again, isn't the law.

9 Interestingly, I heard this argument, agents don't
10 matter. Well, Your Honor, agents are the nerve center.
11 Corporations act through agents. They have to. A chairman, a
12 chief executive officer, the CFO, however many officers you
13 have, they're all agents, Your Honor. You have to look at
14 what those agents are doing in the forum to determine who is
15 really making -- controlling this entity and from where.
16 Where is it at home? It is not where its day-to-day
17 operations are, it's not where the gambling is occurring. And
18 we cite caselaw that says you don't look at that, what you
19 look at is --

20 THE COURT: But the gambling is occurring under a
21 different subsidiary.

22 MR. BICE: Exactly, according to them.

23 THE COURT: It's the licensee of the Macanese
24 Government.

25 MR. BICE: Right. All of that stuff should be

1 irrelevant, because they don't have -- those are not their
2 businesses. They insist that those are separate and distinct
3 entities. So they can't be citing their subsidiary's contacts
4 in Macau as somehow being their own. In fact, by all accounts
5 there's no indication other than that this entity, the actual
6 brains of it, who is calling the shots are being made over
7 here.

8 THE COURT: By "over here" you mean Las Vegas
9 Boulevard?

10 MR. BICE: I mean over here on Las Vegas Boulevard.

11 THE COURT: The record doesn't show when you point,
12 Mr. Bice.

13 MR. BICE: Thank you, Your Honor.

14 THE COURT: That's why I was clarifying. Sorry.

15 MR. BICE: I understand the point.

16 And that's why we cite to you -- Mr. Jones says,
17 well, they don't cite any authority for this. This is exactly
18 what the Moore case says. Moore involved a situation where a
19 large corporation, Your Honor, a holding company nonetheless,
20 and the entity -- but the entity actually -- the executives
21 weren't the ones actually calling the shots. In fact, what
22 the court pointed out in that case is after evidence was heard
23 it was revealed that other executives of a related company
24 were the ones actually setting policy, making the substantive
25 decisions, and controlling what events were going on. And the

1 court said, thus, those executives of that related entity
2 constitute the nerve center of the corporation, which means
3 that's where it is just to jurisdiction at. And that has been
4 -- I think been largely our point regardless of the labels
5 that are thrown around, essentially since this case was
6 commenced relative to the subject matter of general
7 jurisdiction.

8 Then we go to specific. Your Honor, there's no --
9 Mr. Jones says there's no evidence. He says he disputes that
10 everything about this termination happened in Macau -- or
11 happened in Las Vegas. He can dispute it all he'd like, but
12 he is required -- if he's going to say that there's a material
13 issue of fact on that issue in the face of the evidence we
14 have presented, he is required to have presented that
15 evidence. And you will see none. Zero. Because there is no
16 evidence from anyone disputing what Mr. Levin admitted, what
17 Mr. Adelson admitted, what Mr. Goldstein admitted, and what
18 their own internal documents from their own in-house counsel
19 showed what was really going on. All Mr. Levin could say,
20 Your Honor, is, well, I got on a plane after the decision --
21 after the letter had been signed and the decision had been
22 made to go hand it to Steve Jacobs. That's the extent of the
23 Macau connection to this termination. And that's exactly what
24 the evidence shows. And there is zero evidence to the
25 contrary in the record, which is why we are entitled to

1 summary judgment on that. To come into court and say, well, I
2 vehemently dispute that, I firmly dispute it, is not a basis
3 to impose summary judgment. You have to have actual evidence.

4 THE COURT: For that specific jurisdiction to be
5 undertaken by this Court it has to be related to a particular
6 claim.

7 MR. BICE: That's right. And it has to be related
8 to a particular claim. And how does -- Your Honor, what is
9 the breach of the stock option agreement? Look at the
10 agreement, his employment agreement, Your Honor. And that is
11 Exhibit 5 to our reply. It specifically talks about all of
12 these options and the conversions of them. It specifically
13 talks about, again, him serving as the CEO of a Macau-listed
14 company. It talks about -- look at Item Number 4 in the
15 agreement governed by Nevada law. "The options will be
16 converted into the IPO of the new Macau-based entity -- the
17 future Macau entity operations in Macau," which, as you know
18 now, became Sands China. That's why it was pursuant to this
19 agreement he was performing the services that then gave rise
20 to the option agreement. And when was the option agreement
21 breached? It was breached the very moment this document was
22 breached, because they all grow out of one another, they all
23 are interrelated. And that's what -- they can try and act
24 like that's not true, but the facts are exactly otherwise.
25 You only have to look at the document to know that that's the

1 case and look at the option agreement which specifically
2 recites it is in recognition of the services that he provided,
3 services that he provided under this document that they filed
4 with the Securities and Exchange Commission, that they
5 negotiated in Nevada and signed in Nevada. And so when they
6 breached -- when they falsely and fraudulent terminated him
7 with this plan and these activities that they undertook in
8 Nevada, that was the breach of the option agreement. And
9 that's where they breached it, and that's when they breached
10 it. The fact that they -- I don't care if they flew to Macau
11 six months later and handed him the letter or announced it in
12 the newspaper and didn't even hand him the letter. The fact
13 of the breach occurred in Nevada by executives wearing their
14 Sands China hat, carrying out this scheme as alleged in the
15 complaint to deprive him of the rights to which he was
16 entitled under that employment agreement and the related stock
17 option agreement. Those breaches occurred in the state of
18 Nevada by executives acting for Sands China in Nevada, and
19 that gives rise to specific jurisdiction under the law. And
20 there's no evidence presented by the defendants -- by Sands
21 China to the contrary. It's only argument by their counsel.
22 And that's not a basis to defeat summary judgment.

23 THE COURT: Thank you, Mr. Bice.

24 Here --

25 MR. RANDALL JONES: Your Honor, I just want a point

1 of clarification. Since Mr. Bice said there's no evidence
2 that we disputed where the termination occurred, I do want to
3 refer the Court to Footnote Number 10.

4 THE COURT: I'm not worried about it, Mr. Jones.
5 Thanks.

6 MR. RANDALL JONES: Pardon me? All right. Well,
7 it's Footnote 10 on page 19. We did -- and we cite to the
8 depo testimony.

9 THE COURT: Because the parties have agreed that the
10 stay does not apply to this particular motion and that they
11 are seeking me to make factual findings under Daimler as to
12 whether Sands China's contacts with Nevada would resolve the
13 jurisdictional issue, I am addressing this motion despite the
14 stay the Nevada Supreme Court has issued.

15 Here I have three bases of jurisdiction that is
16 being asserted by the plaintiffs. I have a general
17 jurisdiction issue, a specific jurisdictional issue, and
18 transient jurisdictional issues. Basically all of those
19 issues have factual disputes related to them.

20 I need to conduct an evidentiary hearing under which
21 I can make factual findings that have been requested by the
22 Nevada Supreme Court as to. for purposes of general
23 jurisdiction, not only whether -- the location of the Sands
24 China board meetings, but also where the officers were
25 conducting their business, and oversight of day-to-day

1 activities were occurring for Sands China, Ltd., to make a
2 determination as to where Sands China, Ltd., was at home.

3 With respect to specific jurisdiction there are
4 clearly factual issues and disputes among the parties as to
5 where are the decision-making process and the delivery of that
6 decision-making process and the impact of the delivery of that
7 decision-making process was made, so I need to have an
8 evidentiary hearing.

9 With respect to transient jurisdiction, in order for
10 transient jurisdiction to apply factual issues as to the
11 extent and nature of Mr. Levin and Mr. Adelson's
12 responsibilities and day-to-day activities on behalf of Sands
13 China, Ltd. -- I guess it's just Mr. Levin, since he's the one
14 who was served -- are appropriate for me to deal with at the
15 evidentiary hearing.

16 So if somebody will one day resolve the issues on
17 the privilege issue that I have previously addressed and is up
18 on a writ with the Nevada Supreme Court, I would be happy to
19 conduct in evidentiary hearing.

20 Anything else?

21 MR. RANDALL JONES: Your Honor, is the Court just
22 going to issue an order, then?

23 THE COURT: No. One of you is going to draft it. I
24 said you have genuine issues of material fact, but I tried to
25 give you my reasons --

1 MR. RANDALL JONES: That's fine.

2 THE COURT: -- so if some day we have an evidentiary
3 hearing, because it's only been two years and we still haven't
4 resolved the issues on the documents, some day we'll have an
5 evidentiary hearing, and I want to be able to refresh my mind
6 as to the things I was thinking of today when I said we would
7 have it. Because I read a lot of cases last night.

8 MR. RANDALL JONES: Can I propose this, then?
9 Should I -- I would get a copy of the Court's comments, so
10 I'll get the transcript, and from that I will draft an order
11 and I will run it by Mr. Bice for his review.

12 THE COURT: That sounds lovely.

13 MR. RANDALL JONES: Thank you, Your Honor.

14 MR. MARK JONES: Your Honor --

15 THE COURT: Yes?

16 MR. MARK JONES: -- I'm sorry. If I may. Another
17 issue, I mean, to the extent you haven't already considered
18 this, I was going to remind the Court that we had requested
19 oral argument for the two motions that are set on chambers
20 calendar on Friday.

21 THE COURT: Oh. I haven't even seen Friday's
22 calendar yet. Do you want me to move those to oral argument?

23 MR. MARK JONES: I'm sorry, Your Honor?

24 THE COURT: Do you want me to move them to the oral
25 calendar?

1 MR. MARK JONES: We have requested those on both of
2 those motions.

3 THE COURT: Sure. What day do you want to do it?
4 Okay. Put down your stuff and look at your calendars. I'm in
5 trial, so I haven't looked at Friday's calendar yet.

6 (Pause in the proceedings)

7 THE COURT: So do you want to do it on the 14th,
8 your first day back, Mr. Bice?

9 MR. BICE: That would be fine, Your Honor.

10 THE COURT: How about I move all the motions that
11 are on the chambers calendar for the next several weeks to
12 August 13th.

13 MR. RANDALL JONES: 14th.

14 THE COURT: 14th. Sorry.

15 MR. BICE: Hold on one second, Your Honor, please.

16 THE COURT: I've got 8/1, 8/8, and 8/15. I've got
17 three sets of motions that are on chambers calendar. I might
18 as well hold them all at the same time.

19 THE CLERK: All would be on August 14 at 8:30.

20 THE COURT: Unless Mr. Bice changes his mind.

21 MR. BICE: I think that'll work, Your Honor. The
22 14th?

23 THE COURT: Yes, please.

24 MR. RANDALL JONES: 8:30 calendar; right, Your
25 Honor?

1 THE COURT: Yes. And I do and try call everybody
2 else who's on the calendar before I have you argue, because I
3 know how important these issues are and why it takes a long
4 time to argue.

5 MR. MARK JONES: Thank you, Your Honor.

6 THE COURT: Anything else? Have a lovely day. And
7 again I want to compliment counsel on the very fine briefing.
8 It was very well done.

9 THE PROCEEDINGS CONCLUDED AT 9:53 A.M.

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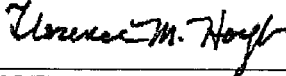
CERTIFICATION

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

AFFIRMATION

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

FLORENCE HOYT
Las Vegas, Nevada 89146



FLORENCE M. HOYT, TRANSCRIBER

130 Nev., Advance Opinion 61
IN THE SUPREME COURT OF THE STATE OF NEVADA

LAS VEGAS SANDS CORP., A NEVADA
CORPORATION; AND SANDS CHINA
LTD., A CAYMAN ISLANDS
CORPORATION,
Petitioners,

vs.

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,

Respondents,

and

STEVEN C. JACOBS,
Real Party in Interest.

No. 62944

FILED

AUG 07 2014

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *[Signature]*
CHIEF DEPUTY CLERK

Original petition for a writ of prohibition or mandamus challenging a district court order finding that petitioners violated a discovery order and scheduling an evidentiary hearing to determine appropriate sanctions.

Petition denied.

Morris Law Group and Steve L. Morris and Rosa Solis-Rainey, Las Vegas; Kemp, Jones & Coulthard, LLP, and J. Randall Jones and Mark M. Jones, Las Vegas; Holland & Hart LLP and J. Stephen Peek and Robert J. Cassity, Las Vegas,
for Petitioners.

Pisanelli Bice PLLC and Todd L. Bice, James J. Pisanelli, and Debra L. Spinelli, Las Vegas,
for Real Party in Interest.

BEFORE THE COURT EN BANC.¹

OPINION

By the Court, GIBBONS, C.J.:

In this opinion, we consider whether a Nevada district court may properly issue a discovery order that compels a litigant to violate a foreign international privacy statute. We conclude that the mere existence of an applicable foreign international privacy statute does not itself preclude Nevada district courts from ordering foreign parties to comply with Nevada discovery rules. Thus, civil litigants may not utilize foreign international privacy statutes as a shield to excuse their compliance with discovery obligations in Nevada courts. Rather, the existence of an international privacy statute is relevant to a district court's sanctions analysis if the court's discovery order is disobeyed. Here, the district court properly employed this framework when it found that the existence of a foreign international privacy statute did not excuse petitioners from complying with the district court's discovery order. And because the district court has not yet held the hearing to determine if, and the extent to which, sanctions may be warranted, our intervention at this juncture would be inappropriate. We therefore deny this writ petition.

¹The Honorable Kristina Pickering and the Honorable Ron Parraguirre, Justices, voluntarily recused themselves from participation in the decision of this matter.

FACTS AND PROCEDURAL HISTORY

This matter arises out of real party in interest Steven C. Jacobs's termination as president and chief executive officer of petitioner Sands China. After his termination, Jacobs filed a complaint against petitioners Las Vegas Sands Corp. (LVSC) and Sands China Ltd., as well as nonparty to this writ petition, Sheldon Adelson, the chief executive officer of LVSC (collectively, Sands). Jacobs alleged that Sands breached his employment contract by refusing to award him promised stock options, among other things.

Almost three years ago, this court granted a petition for a writ of mandamus filed by Sands China and directed the district court to hold an evidentiary hearing and issue findings as to whether Sands China is subject to personal jurisdiction in Nevada. *See Sands China Ltd. v. Eighth Judicial Dist. Court*, Docket No. 58294 (Order Granting Petition for Writ of Mandamus, August 26, 2011). Due to a string of jurisdictional discovery disputes that have arisen since that order was issued, the district court has yet to hold the hearing.

Throughout jurisdictional discovery, Sands China has maintained that it cannot disclose any documents containing personal information that are located in Macau due to restrictions within the Macau Personal Data Protection Act (MPDPA). Approximately 11 months into jurisdictional discovery, however, Sands disclosed for the first time that, notwithstanding the MPDPA's prohibitions, a large number of documents contained on hard drives used by Jacobs and copies of Jacobs's emails had been transported from Sands China in Macau to LVSC in the

United States.² In response to Sands's revelation, the district court sua sponte ordered a sanctions hearing. Based on testimony at that hearing, the district court determined that the transferred documents were knowingly transferred to LVSC's in-house counsel in Las Vegas and that the data was then placed on a server at LVSC's Las Vegas property. The district court also found that both in-house and outside counsel were aware of the existence of the transferred documents but had been concealing the transfer from the district court.

Based on these findings, the district court found that Sands's failure to disclose the transferred documents was "repetitive and abusive," deliberate, done in order to stall jurisdictional discovery, and led to unnecessary motion practice and a multitude of needless hearings. The district court issued an order in September 2012 that, among other things, precluded Sands from raising the MPDPA "as an objection or as a defense to admission, disclosure or production of any documents." Sands did not challenge this sanctions order in this court.

Subsequently, Sands filed a report detailing its Macau-related document production. Sands's report indicated that, with respect to all of the documents that it had produced from Macau, it had redacted personal data contained in the documents based on MPDPA restrictions prior to providing the documents to Jacobs. In response to Sands's redactions

²Sands stated that the presence of the documents in the United States was not disclosed at an earlier time because the documents were brought to the United States mistakenly, and Sands had been seeking guidance from the Macau authorities on whether they could be disclosed under the MPDPA.

based on the MPDPA, Jacobs moved for NRCP 37 sanctions, arguing that Sands had violated the district court's September 2012 order.

The district court held a hearing on Jacobs's motion for sanctions, at which the court stated that the redactions appeared to violate the September 2012 order. In its defense, Sands argued that the September 2012 order had prohibited it from raising the MPDPA as an objection or defense to "admission, disclosure or production" of documents, but not as a basis for *redacting* documents. The district court disagreed with Sands's interpretation of the sanctions order, noting:

I certainly understand [the Macau government has] raised issues with you. But as a sanction for the inappropriate conduct that's happened in this case, in this case you've lost the ability to use that as a defense. I know that there may be some balancing that I do when I'm looking at appropriate sanctions under the Rule 37 standard as to why your client may have chosen to use that method to violate my order. And I'll balance that and I'll look at it and I'll consider those issues.

Based on the above findings, the district court entered an order concluding that Jacobs had "made a prima facie showing as to a violation of [the district] [c]ourt's orders which warrants an evidentiary hearing" regarding whether and the extent to which NRCP 37 sanctions were warranted. The district court set an evidentiary hearing, but before this hearing was held, Sands filed this writ petition, asking that this court direct the district court to vacate its order setting the evidentiary hearing.

DISCUSSION

A writ of mandamus is available to compel the performance of an act that the law requires or to control an arbitrary or capricious exercise of discretion. *Aspen Fin. Servs., Inc. v. Eighth Judicial Dist.*

Court, 128 Nev. ___, ___, 289 P.3d 201, 204 (2012). A writ of prohibition may be warranted when the district court exceeds its jurisdiction. *Id.* Although a writ of prohibition is a more appropriate remedy for the prevention of improper discovery, writ relief is generally unavailable to review discovery orders. *Id.*; see also *Valley Health Sys., L.L.C. v. Eighth Judicial Dist. Court*, 127 Nev. ___, ___, 252 P.3d 676, 679 (2011) (providing that exceptions to this general rule exist when (1) the trial court issues a blanket discovery order without regard to relevance, or (2) a discovery order requires disclosure of privileged information). Nevertheless, “in certain cases, consideration of a writ petition raising a discovery issue may be appropriate if an important issue of law needs clarification and public policy is served by this court’s invocation of its original jurisdiction” *Aspen Fin. Servs., Inc. v. Eighth Judicial Dist. Court*, 129 Nev. ___, ___, 313 P.3d 875, 878 (2013) (internal quotation marks omitted). “The burden is on the petitioner to demonstrate that extraordinary relief is warranted.” *Valley Health*, 127 Nev. at ___, 252 P.3d at 678.

In its writ petition, Sands argues generally that this court’s intervention is warranted because the district court has improperly subjected Sands to discovery sanctions based solely on Sands’s attempts to comply with the MPDPA. Sands has not persuasively argued that either of this court’s two generally recognized exceptions for entertaining a writ petition challenging a discovery order apply. See *Valley Health*, 127 Nev. at ___, 252 P.3d at 679. Nevertheless, the question of whether a Nevada district court may effectively force a litigant to choose between violating a discovery order or a foreign privacy statute raises public policy concerns and presents an important issue of law that has relevance beyond the

parties to the underlying litigation and cannot be adequately addressed on appeal. Therefore, we elect to entertain the petition. See *Aspen Fin. Servs.*, 129 Nev. at ___, 313 P.3d at 878.

Foreign international privacy statutes cannot be used by litigants to circumvent Nevada discovery rules, but should be considered in a district court's sanctions analysis

The intersection between Nevada discovery rules and international privacy laws is an issue of first impression in Nevada. The Nevada Rules of Civil Procedure authorize parties to discover any nonprivileged evidence that is relevant to any claims or defenses at issue in a given action. NRCP 26(b)(1). On the other hand, many foreign nations have created nondisclosure laws that prohibit international entities from producing various types of documents in litigation. See generally Note, *Foreign Nondisclosure Laws and Domestic Discovery Orders in Antitrust Litigation*, 88 Yale L.J. 612 (1979).

The United States Supreme Court has evaluated the intersection between these two competing interests and determined that such a privacy statute does not, by itself, excuse a party from complying with a discovery order. See *Societe Nationale Industrielle Aerospatiale v. U.S. Dist. Court*, 482 U.S. 522, 544 n.29 (1987) ("It is well settled that such statutes do not deprive an American court of the power to order a party subject to its jurisdiction to produce evidence even though the act of production may violate that statute." (citing *Societe Internationale Pour Participations Industrielles et Commerciales, S.A. v. Rogers*, 357 U.S. 197, 204-06 (1958))). Generally, courts in similar situations have considered a variety of factors, including (1) "the importance to the investigation or litigation of the documents or other information requested"; (2) "the degree of specificity of the request"; (3) "whether the information originated in the

United States”; (4) “the availability of alternative means of securing the information”; and (5) “the extent to which noncompliance with the request would undermine important interests of the United States, or compliance with the request would undermine important interests of the state where the information is located.” Restatement (Third) of Foreign Relations Law § 442(1)(c) (1987); *see also Linde v. Arab Bank, PLC*, 269 F.R.D. 186, 193 (E.D.N.Y. 2010). But there is some disagreement as to when courts should evaluate such factors.

Some jurisdictions, including the United States Court of Appeals for the Second Circuit, generally evaluate these factors both when deciding whether to issue an order compelling production of documents located in a foreign nation and when issuing sanctions for noncompliance of that order. *Linde*, 269 F.R.D. at 196.³

The United States Court of Appeals for the Tenth Circuit has espoused an approach in which a court’s analysis of the foreign law issue is only relevant to the imposition of sanctions for a party’s disobedience, and not in evaluating whether to issue the discovery order. *Arthur Andersen & Co. v. Finesilver*, 546 F.2d 338, 341-42 (10th Cir. 1976). The Tenth Circuit noted that in *Societe Internationale*, the Supreme Court

³Even within the Second Circuit, there is some uncertainty as to when a court should apply these factors. *See In re Parmalat Sec. Litig.*, 239 F.R.D. 361, 362 (S.D.N.Y. 2006) (“[T]he modern trend holds that the mere existence of foreign blocking statutes does not prevent a U.S. court from ordering discovery although it may be more important to the question of sanctions in the event that a discovery order is disobeyed by reason of a blocking statute.” (quoting *In re Auction Houses Antitrust Litig.*, 196 F.R.D. 444, 446 (S.D.N.Y. 2000))).

stated that a party's reasons for failing to comply with a production order "can hardly affect the fact of noncompliance and are relevant only to the path which the [d]istrict [c]ourt might follow in dealing with [the party's] failure to comply." *Id.* at 341 (quoting *Societe Internationale*, 357 U.S. at 208). Based on this language, the Tenth Circuit determined that a court should only consider the foreign privacy law when determining if sanctions are appropriate. *Id.*; see also Wright, *Discovery*, 35 F.R.D. 39, 81 (1964) ("The effect of those laws is considered in determining what sanction to impose for noncompliance with the order, rather than regarded as a reason for refusing to order production").

In our view, the Tenth Circuit's approach is more in line with Supreme Court precedent.⁴ See, e.g., *Arthur Andersen*, 546 F.2d at 341-42; *In re Westinghouse Elec. Corp. Uranium Contracts Litig.*, 563 F.2d 992, 997 (10th Cir. 1977); Timothy G. Smith, Note, *Discovery of Documents Located Abroad in U.S. Antitrust Litigation: Recent Developments in the Law Concerning the Foreign Illegality Excuse for Non-Production*, 14 Va. J. Int'l L., 747, 753 (1974) (noting that Second Circuit cases failed to observe the Supreme Court's distinction between a court's power to compel discovery and the appropriate sanctions if a party failed to comply). We

⁴That is not to say that Nevada courts should never consider a foreign privacy statute in issuing a discovery order. Certainly, a district court has wide discretion to consider a number of factors in deciding whether to limit discovery that is either unduly burdensome or obtainable from some other sources. NRCP 26(b)(2). Thus, it would be well within the district court's discretion to account for such a foreign law in its analysis, but we decline to adopt the Second Circuit's requirement of a full multifactor analysis in ordering the production of such documents.

are persuaded by the Tenth Circuit's approach, and conclude that the mere presence of a foreign international privacy statute itself does not preclude Nevada courts from ordering foreign parties to comply with Nevada discovery rules. Rather, the existence of an international privacy statute is relevant to the district court's sanctions analysis in the event that its order is disobeyed. *Arthur Andersen*, 546 F.2d at 341-42.

Here, Sands argues that the district court never purported to balance any of the relevant factors before concluding that its MPDPA redactions were sanctionable. But in our view, the district court has yet to have that opportunity. The district court has properly indicated that it would "balance" Sands's desire to comply with the MPDPA with other factors at the yet-to-be-held sanctions hearing. Thus, Sands has not satisfied its burden of demonstrating that the district court exceeded its jurisdiction or arbitrarily or capriciously exercised its discretion. *Aspen Fin. Servs.*, 128 Nev. at ___, 289 P.3d at 204; *Valley Health*, 127 Nev. at ___, 252 P.3d at 678. Because we are confident that the district court will evaluate the relevant factors noted above in determining what sanctions, if any, are appropriate when it eventually holds the evidentiary hearing, we decline to preempt the district court's consideration of these issues by entertaining the additional arguments raised in Sands's writ petition.⁵

⁵The majority of Sands's briefing argues that the district court improperly (1) ordered discovery of documents that had no relevance to the issue of personal jurisdiction, and (2) concluded that Sands violated the technical wording of the September 2012 sanctions order. Although this first contention arguably falls within *Valley Health's* first exception, see 127 Nev. at ___, 252 P.3d at 679, the documentation accompanying Sands's writ petition does not clearly support the contention. *Id.* at ___,
continued on next page . . .


CONCLUSION

Having considered the parties' filings and the attached documents, we conclude that our intervention by extraordinary relief is not warranted. Specifically, we conclude that the mere presence of a foreign international privacy statute does not itself preclude Nevada district courts from ordering litigants to comply with Nevada discovery rules. Rather, the existence of such a statute becomes relevant to the district court's sanctions analysis in the event that its discovery order is disobeyed. Here, to the extent that the challenged order declined to excuse petitioners for their noncompliance with the district court's previous order, the district court did not act in excess of its jurisdiction or arbitrarily or capriciously. And because the district court properly indicated that it intended to "balance" Sands's desire to comply with the foreign privacy law in determining whether discovery sanctions are warranted, our intervention at this time would inappropriately preempt

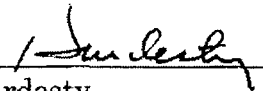
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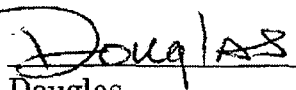
252 P.3d at 678 ("The burden is on the petitioner to demonstrate that extraordinary relief is warranted."). In fact, the district court specifically noted that Sands may withhold all documents that were only relevant to merits discovery and thus irrelevant to the district court's jurisdiction over Sands China. Sands's second contention does not fall within either of *Valley Health's* two exceptions, and Sands does not argue otherwise. *Id.* at ___, 252 P.3d at 679. Further, neither issue raises public policy concerns or presents an important issue of law that has relevance beyond the parties to the underlying litigation. *Aspen Fin. Servs.*, 129 Nev. at ___, 313 P.3d at 878. As a result, we decline to entertain Sands's remaining arguments.


the district court's planned hearing. As a result, we deny Sands's petition for a writ of prohibition or mandamus.


Gibbons C.J.

We concur:


Hardesty J.

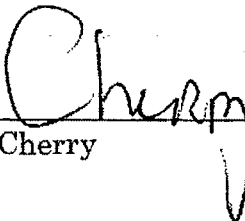

Douglas J.

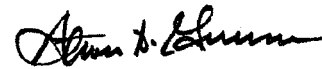

Saitta J.

CHERRY, J., concurring in the result:

I agree with the majority that our intervention by extraordinary relief is not warranted at this time. However, I do not believe that a lengthy opinion by four members of this court on the conduct leading up to the sanctions hearing, or on the factors that the district court should consider when exercising its discretion in imposing future sanctions, is necessary or appropriate at this juncture of this case, when a thorough and fact-finding evidentiary hearing has not yet been conducted by the district court.

It is premature for this court to anticipate, project, or predict the totality of findings that the district court may make after the conclusion of any evidentiary hearing. At such time as findings of fact and conclusions of law are finalized by the district court, then—and only then—should an appropriate disposition be rendered in the form of a published opinion and made public.

 J.
Cherry



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 MOTIONS

THURSDAY, AUGUST 14, 2014

APPEARANCES:

FOR THE PLAINTIFF:

TODD BICE, ESQ.
DEBRA SPINELLI, ESQ.
JORDAN SMITH, ESQ.

FOR THE DEFENDANTS:

J. STPHEN PEEK, ESQ.
JON RANDALL JONES, ESQ.
MARK JONES, ESQ.
STEVE L. MORRIS, ESQ.

COURT RECORDER:

JILL HAWKINS
District Court

TRANSCRIPTION BY:

FLORENCE HOYT
Las Vegas, Nevada 89146

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

1 LAS VEGAS, NEVADA, THURSDAY, AUGUST 14, 2014, 8:40 A.M.

2 (Court was called to order)

3 THE COURT: Jacobs versus Sands. Good morning.

4 MR. RANDALL JONES: Good morning, Your Honor.

5 MR. MORRIS: Good morning, Your Honor.

6 MR. PEEK: Good morning, Your Honor.

7 THE COURT: Does everybody have a copy of the Nevada
8 Supreme Court's order denying a rehearing dated August 7th?

9 MR. BICE: We do.

10 MR. PEEK: Yes, Your Honor, I do.

11 THE COURT: Okay. So that slightly impacts some of
12 the things we're going to talk about today. And I appreciate
13 your supplemental brief after the orders.

14 Okay. Does everybody want to identify themselves
15 for purposes of the record, since Tina is not my usual clerk.

16 MR. BICE: Yes. Good morning, Your Honor. Todd
17 Bice on behalf of plaintiff Steven Jacobs.

18 MR. PISANELLI: Good morning, Your Honor. James
19 Pisanelli on behalf of Steven Jacobs.

20 MR. SMITH: Good morning, Your Honor. Jordan Smith
21 on behalf of Steven Jacobs.

22 MS. SPINELLI: Good morning, Your Honor. Debra
23 Spinelli on behalf of Mr. Jacobs.

24 MR. RANDALL JONES: Good morning, Your Honor.
25 Randall Jones and Mark Jones on behalf of Sands China Limited.

1 MR. MORRIS: Good morning, Your Honor. Steve Morris
2 on behalf of Sheldon Adelson.

3 MR. PEEK: And good morning, Your Honor. Stephen
4 Peek on behalf of the Las Vegas Sands and Sands China Limited.

5 THE COURT: All right. Which motion would you like
6 to start with, the motion to amend the complaint?

7 MR. BICE: I leave it to the Court's pleasure.

8 THE COURT: Let's go to the motion to amend the
9 complaint first.

10 MR. BICE: Okay. Your Honor, as you are aware, at
11 this juncture, notwithstanding the fact of the age of this
12 case --

13 (Pause in the proceedings)

14 THE COURT: All right. Let's go.

15 MR. BICE: Your Honor, notwithstanding the age of
16 this case, as Your Honor is very familiar with it, Sands China
17 has not filed an answer in this action, and we have sought to
18 amend the complaint. And we would submit, Your Honor, that
19 Sands China as the basis for its opposition to this amendment
20 is in fact contrary to its arguments about jurisdiction. What
21 it is insisting to this Court is that it has to look at each
22 particular cause of action now in order to assess particularly
23 with respect to specific jurisdiction. And to do that the
24 Court obviously needs to then have before it all potential
25 claims that are being asserted or are going to be asserted in

1 order to assess that specific jurisdiction issue.

2 But now they come to you and they say, well, you
3 shouldn't, because the stay precludes you from allowing Mr.
4 Jacobs to amend his complaint. And our position on that, Your
5 Honor, as we put forth in our pleadings, is I think very
6 straightforward, is the merits stay does not in any way
7 preclude these types of amendments, because these types of
8 amendments directly relate to, to use the Supreme Court's
9 words, matters relating to the determination of personal
10 jurisdiction. We have learned through the jurisdictional
11 discovery of a lot of facts concerning the activities that
12 Sands China was undertaking in cooperating with LVSC in Las
13 Vegas and undertaking those actions that give rise to the
14 claims. And so therefore we are seeking to amendment to
15 assert those causes of action to have them before the Court,
16 because that necessarily with respect to specific jurisdiction
17 plays a role in this Court's ultimate determination on the
18 jurisdictional question. And the Supreme Court's order, Your
19 Honor, does not say -- and we cite caselaw for you for this
20 proposition -- does not say anything that precludes Mr. Jacobs
21 from making an amendment, either expressly or even implicitly.
22 We would submit to the contrary by necessary implication of
23 its directive that the Court entertain matters that are
24 relating to the determination of personal jurisdiction an
25 amendment that adds causes of action specifically predicated

1 upon Sands China's Nevada activities are appropriate. I thank
2 the Court.

3 THE COURT: Thank you.

4 Who wants to speak relative to opposition to the
5 motion?

6 MR. RANDALL JONES: Well, I will speak on behalf of
7 Sands China, Your Honor.

8 MR. RANDALL JONES: Well, I noted -- good morning,
9 Your Honor.

10 THE COURT: Good morning, Mr. Jones. How are you
11 today?

12 MR. RANDALL JONES: Well, thank you.

13 I would note that Mr. Bice said that -- very
14 unequivocally that merits stay does not stay these types of
15 amendments. And as we noted in our opposition on page 4, and
16 I'm quoting here, Mr. Bice said that, "At this point the
17 merits stay precludes Jacobs from amending his complaint," end
18 quote. He went on to say, "But when that is gone he will be
19 -- we will be amending his complaint to assert, among other
20 things, claims for abuse of process against both Sands China
21 and LVSC," end quote. And at the Supreme Court argument he
22 repeated this point by saying, quote, "Presently the District
23 Court views the merits stay as prohibiting Jacobs from
24 amending his complaint even to augment his claims which would
25 reinforce his theories for jurisdiction," end quote. That's

1 Exhibit B at page 21, note 11.

2 So Mr. Bice has acknowledged to this Court and the
3 Supreme Court that the stay does include amending the
4 complaint, including augmenting his theories of jurisdiction.
5 It cannot get any more clear than that. And I don't know how
6 he can come in here and say the exact opposite is a
7 justification for his attempts to now amend the complaint.

8 And there are other issues implicated by this, as
9 well, Your Honor, but the Daimler case tells us, as you know,
10 we have issues about -- we have to consider the issues about
11 where the defendant was at home.

12 THE COURT: And have fun defining "at home."

13 MR. RANDALL JONES: Well, that's going to be an
14 interesting discussion, Your Honor. We think it's pretty
15 straightforward. We obviously have a disagreement with Mr.
16 Bice about that subject. But with respect to specific
17 jurisdiction, which appears to be what he is trying to do now
18 with his amendment with these new claims, at least that's what
19 he appears to be saying in his motion, first of all, we
20 believe they have waived any arguments about specific
21 jurisdiction. And that I think is something the Court needs
22 to consider in making a decision with respect to this motion
23 in addition to the fact that Mr. Bice has acknowledged that he
24 can't do what he's now trying to do and should be judicially
25 estopped from trying to do it, but even if he was allowed to

1 assert these new claims against Sands China related to
2 specific jurisdiction, as the Court knows, you still have to
3 make an independent decision with respect to specific
4 jurisdiction on a case-by-case basis, which would take us back
5 to his original breach of contract claim and specific
6 jurisdiction.

7 So his new claims do nothing -- that was one of his
8 arguments, these new claims reinforce his existing arguments
9 for jurisdiction. And they don't. Because they have to be
10 looked at independently. So they don't do anything to
11 reinforce his original claims for specific jurisdiction,
12 assuming he actually had made those claims.

13 But, Your Honor, that also raises another issue,
14 that if he was allowed to amend at this late point in time --
15 and he started out his discussion by saying, we're way far
16 into this, it's been years and years. We all know the
17 history. It certainly has been a long time. So --

18 THE COURT: And you missed part of it.

19 MR. RANDALL JONES: I did miss part of it. He wants
20 to now amend the complaint to add two new claims, and we would
21 then have a right, obviously, to respond to those claims,
22 assuming the Court allowed them. And I can assure the Court
23 that we would be looking very carefully at a motion to
24 dismiss, which would further delay what Mr. Bice says he wants
25 to do right away, which is have a hearing on jurisdiction.

1 So, you know, Mr. Bice loves to get up here and make
2 pejorative statements about my client and the other parties in
3 this case at every opportunity. And one of the things he
4 loves to harp on is that he claims we've continued to cause
5 delay. What he's doing now is an attempt to delay this
6 process further. And so we would like to get to the
7 jurisdictional hearing as soon as possible, because we think
8 there is no jurisdiction against Sands China. So this attempt
9 at this late date will simply further delay this process, and
10 we think it is not justified or appropriate. And Mr. Bice, up
11 until this recent motion, had said it was not only not
12 appropriate, but he couldn't do it and that you have said he
13 couldn't do it before. So we would believe that the stay does
14 prohibit that and that there's no justification for it
15 otherwise. Thank you, Your Honor.

16 MR. PEEK: Your Honor, I have nothing to add on
17 behalf of Las Vegas Sands --

18 THE COURT: Thank you.

19 MR. PEEK: -- other than what has been argued by Mr.
20 Jones.

21 THE COURT: And, Mr. Morris, this issue doesn't
22 impact you, does it?

23 MR. MORRIS: Well, when we started -- opened this
24 hearing you remarked about denial of rehearing on August the
25 7th. I think it does have some relationship, but I'll --

1 we're now addressing the second amended complaint or the
2 proposed --

3 THE COURT: Yes. I'm not at the motion for
4 reconsideration of the defamation issues yet, which is a
5 different motion.

6 MR. MORRIS: Well, I'll speak in response to that.
7 But I still -- what I have to say does pertain to --

8 THE COURT: I'm happy to listen.

9 MR. MORRIS: Well, okay. If you're happy to
10 listen --

11 THE COURT: And I know that all these other people
12 in the audience are happy to listen, too.

13 MR. MORRIS: I'm happy to speak.

14 MR. PEEK: We might get some CLE from it, Your
15 Honor.

16 MR. MORRIS: Your Honor, with respect to the
17 defamation, that claim in the second amended complaint -- or
18 the proposed second amended complaint not only adds -- puts
19 Mr. Adelson back in the case, but it makes claims against Las
20 Vegas Sands and Sands China. I point this out because you
21 have raised it at the outset, and I think it's of
22 significance.

23 With respect to reinstatement of this defamation
24 claim this is premature. The remittitur from the Supreme
25 Court has not issued. There's 25 days from August the 7th.

1 So until that occurs, Your Honor, there isn't any occasion
2 with respect to the jurisdiction of this Court to entertain a
3 motion to dismiss.

4 But, having said that, I was not here, and I'm sorry
5 that I wasn't now, in the meeting before last when a point
6 came up that I think is of some consequence. We wish to file
7 a motion to -- against the proposed second amended complaint
8 when it is appropriate to do so, and that is when remittitur
9 has run.

10 THE COURT: So you're saying it's not appropriate to
11 do that until September.

12 MR. MORRIS: Yes, that's my point. And we would
13 like to -- and that motion, of course, because it is against
14 the defamation claim and it brings up and we'll bring before
15 you a point that the Supreme Court addressed in its decision,
16 it's four-three decision reversing dismissal of the defamation
17 claim in 2012, it brings up the Anzelone case and conditional
18 privilege, and we would like the opportunity, since you are
19 the person who in the first instance will consider the
20 applicability of that privilege, we would like the opportunity
21 to move against the filing of this second amended complaint on
22 the ground that the conditional privilege applies, which is a
23 point that the Supreme Court said you did not address, and it
24 is among those things that the Court said --

25 THE COURT: That's what happens when I decide it's

1 an absolute privilege. I don't look at the conditional
2 privilege.

3 MR. MORRIS: Of course. And I'm not quarrelling
4 with that. But we made alternative arguments before you and
5 before the Supreme Court, and the Supreme Court said -- in
6 substance what the Supreme Court said is, take it to Judge
7 Gonzalez first.

8 THE COURT: They said that in three opinions. So
9 we're going to talk about some of those others in a minute.

10 So your position, Mr. Morris, is because the second
11 amended complaint attempts to resolve the defamation issue
12 which was on appeal and which is now the subject of soon-to-be
13 remitted, we should delay consideration of this because of the
14 fifth cause of action?

15 MR. MORRIS: Yes.

16 THE COURT: Thank you.

17 Mr. Bice.

18 MR. BICE: Your Honor, the second amended complaint
19 does not alter a single word of the defamation claim that's
20 already before the Court. So I'm not quite sure where Mr.
21 Morris is coming from, because that's just simply not
22 accurate. That defamation issue and the issuance of the
23 remittitur has nothing to do with this motion to amend with
24 respect to Las Vegas Sands and Sands China.

25 What Mr. Morris is really trying to do, I guess, is

1 argue that the stay only applies to Mr. Jacobs but it doesn't
2 apply to the defendants, because he says, well, we want to
3 brief a bunch of merits motions against -- and that's true
4 regardless of whether the second amended complaint is filed or
5 not, apparently, because the defamation claim is completely
6 untouched by it. So that is a complete red herring and an
7 attempt to simply delay what we believe, Your Honor, is
8 inevitable under the law.

9 Now, Mr. Jones says that we are the parties here in
10 engaged in double speak about what's the proper scope of the
11 stay. And we certainly disagree with that, Your Honor. As we
12 point out in our reply brief, this is an issue that they took
13 the position. This Court expressed some concern about that in
14 the past. We think that that is wrong. We have acknowledged
15 that that's what the Court's view was, and if we
16 misinterpreted the Court, then so be it. But the fact of the
17 matter is we're bringing this motion. And you'll notice they
18 don't address the point we make about the caselaw that we cite
19 that specifically says that the stay cannot impact our ability
20 to amend on this particular issue, because it relates to the
21 Court's personal jurisdiction determination. And, as which,
22 the Supreme Court's stay order cannot and should not be
23 interpreted as somehow precluding it.

24 Now, if the Court is of the view that it did in the
25 past, well, we think that that is mistaken, and we are asking

1 the Court to rectify that. If we misinterpreted what your
2 view was in the past, well, then, that was our mistake. But,
3 nonetheless, with all due respect, an absurd argument of
4 judicial estoppel? We're not the parties who obtained any
5 benefit from this position. The party here who's trying to
6 engage in flip-flopping is the party who was here before
7 telling you that the stay didn't apply to their proposed
8 amendments. So --

9 THE COURT: My concern, though, Mr. Bice, is a
10 little different. I have thought that with respect to merits
11 issues I should not be doing additional work given the
12 language of the writ that was issued to me. When I am looking
13 at many of the allegations that you've included in the second
14 amended complaint it reinforces those concerns, although they
15 do in some ways relate to the jurisdictional issues, which is
16 why we're having this discussion this morning.

17 And so my concern whether we're opening a can of
18 worms that can be opened a little bit later, after I've
19 clarified some of the jurisdictional issues.

20 MR. BICE: I don't -- you know, the problem that
21 that presents for us is we're going to hear Sands China claim
22 that, well, you know, specific jurisdiction has to be
23 addressed on a claim-specific basis. That's exactly what
24 their argument has been. And now they're saying, well, that
25 claim isn't currently before the Court because you haven't

1 allowed them to amend, so you can't use that as one of the
2 bases for determining specific jurisdiction over Sands China.
3 And we think that that, of course, exactly reverses the
4 position that the Court is supposed to be in when it's making
5 the determination. The Court has to look at what are the
6 claims that are being asserted, do those claims arise out of
7 contacts that were performed in the state of Nevada. And on
8 these claims the answer to that is yes. And that's why an
9 amendment of this is appropriate.

10 I understand the Court's concerns about, well, we
11 can't get into the merits. And we agree with that issue,
12 because that's ultimately what the Supreme Court has said.
13 But the Supreme Court's stay should not be interpreted to say
14 that Jacobs can't amend his claims to add additional causes of
15 action which further reinforce this personal jurisdiction over
16 Sands China. Because if that's the ruling, Your Honor, then,
17 of course, we're now in a catch-22; the Court says, well, you
18 can't bring in these claims that enhance the jurisdictional
19 debate that directly relate to it but I'm going to take up
20 whether or not Sands China is subject to personal jurisdiction
21 before the Court.

22 THE COURT: I understand what you're saying, Mr.
23 Bice. It's a very difficult issue, but I understand what
24 you're saying. And the difficulty relates to the nature of
25 the stay that was issued in conjunction with the writ. But

1 that's a different issue. Anything else?

2 MR. BICE: Your Honor, that's why we cite, I believe
3 -- I don't remember exactly, I can look them up -- the case we
4 cited that specifically address this is that unless the remand
5 mandate from the Supreme Court or the Court of Appeals, in
6 this case because these are federal cases, specifically
7 dictate otherwise, parties are free to amend their complaint
8 and amend their pleadings. And here there is nothing in that
9 order that can be interpreted or should be interpreted as
10 saying that Jacobs can't amend his complaint specifically as
11 to additional claims that were gleaned out of jurisdictional
12 discovery that go directly to the issue that the Supreme Court
13 told this Court to address, which is what contacts did Sands
14 China have in the state of Nevada.

15 THE COURT: Thank you.

16 MR. BICE: Thank you, Your Honor.

17 THE COURT: I'm going to grant the motion, with the
18 exception to the fifth claim for relief against Adelson. I
19 agree that it is premature at this time for that claim to be
20 addressed. You can address that after the remittitur is
21 received.

22 With respect to the new claims, because they appear
23 to relate to jurisdictional issues that I am supposed to be
24 determining, while they may also deal with merits issues, I'm
25 going to allow the amendment, because we have to address the

1 jurisdictional issues.

2 MR. PEEK: Your Honor, I have a question from Las
3 Vegas Sands' standpoint. Am I then permitted to file motions
4 to dismiss?

5 THE COURT: Absolutely.

6 MR. PEEK: Thank you.

7 MR. RANDALL JONES: Your Honor, I just -- a point of
8 clarification, because it didn't really come up until after
9 rebuttal. But the one question I have, and it kind of relates
10 to this issue of the defamation against Mr. Adelson, is these
11 all -- these new claims relate to defamation. That's what
12 they're all grounded on. And it seems to me that until -- and
13 this goes to another motion we have this morning, and I just
14 thought I'd bring it up now, but I would like to --

15 THE COURT: I'm not to that one yet.

16 MR. RANDALL JONES: I understand. But it implicates
17 that motion and whether or not -- what relief or what ruling
18 the Court makes with respect to that motion. So I just want
19 to at least make the Court aware I think that there are issues
20 there that relate to that that I would like to at least --

21 THE COURT: I know there are issues there.

22 MR. RANDALL JONES: -- be able to revisit this
23 ruling with the Court when we get to that point, that's all.

24 THE COURT: Well, I anticipate that after the new
25 complaint is filed I'm going to see a plethora of motions to

1 dismiss on numerous issues, including the defamation issues as
2 amended and the issues that sort of pervade some of those
3 claims in the complaint.

4 MR. RANDALL JONES: Fine, Your Honor. Again, I just
5 at least wanted to raise this point with the Court.

6 THE COURT: I'm not to that motion. I'm going to
7 let you talk in a minute, but I'm not quite there.

8 MR. RANDALL JONES: Thank you.

9 THE COURT: Mr. Bice, if we could go to the motion
10 to reconsider the dismissal of the defamation claims against
11 defendants Sands and Sands China.

12 MR. BICE: Yes. Your Honor, this motion, according
13 to the defendants, is both simultaneously too late and
14 simultaneously too early is their position with respect to it,
15 and I think that pretty much proves our point, because that --
16 the motion is accurate. The Court had dismissed the
17 defamation claim on the litigation privilege, the Nevada
18 Supreme Court has overturned that ruling, and then their
19 position was, well, you've got to wait for the rehearing to be
20 decided. That was it. Now that that's been decided adverse
21 to them, now, well, now you shouldn't consider this for -- I
22 don't know what reason -- the remittitur hasn't issued. But,
23 again, that has nothing to do with Sands China or Las Vegas
24 Sands Corporation, Your Honor. The issue has been briefed, as
25 we point out, and a lot of caselaw on this point that Supreme

1 Court decisions are binding authority unless the opinion has
2 been withdrawn. Not only has the opinion not been withdrawn,
3 the petition for rehearing was denied.

4 With respect to Mr. Adelson, he doesn't have any dog
5 in this fight. He claims -- it's odd, because he's claiming
6 he's not before the Court right now because the remittitur
7 hasn't issued, but he wants to be heard on motions that don't
8 pertain to him. And so we do object to that practice.

9 But the point of the matter --

10 THE COURT: You know I'm always going to let
11 everybody wants to talk talk.

12 MR. BICE: I know, Your Honor.

13 THE COURT: You know, it's just the way I am.

14 MR. BICE: I know, Your Honor.

15 THE COURT: Sorry.

16 MR. BICE: But our point here is the basis for the
17 Court's dismissal of those claims against Sands China and
18 against Las Vegas Sands has been reversed by the Supreme
19 Court. Those claims now -- we are entitled to have them
20 reinstated. And now is an appropriate time to reinstate them,
21 because, again, they specifically tie back into the
22 jurisdictional debate with respect to Sands China.

23 Now, I've heard that we're going to hear some claim
24 that Mr. Adelson wasn't speaking on behalf of Sands China,
25 which we think will prove interesting if that's going to be

1 their position, since he's -- the defamatory statement was he
2 claimed that we have developed a number of reasons for Mr.
3 Jacobs's termination when they are simultaneously representing
4 to the Court that Mr. Jacobs was terminated by Sands China.
5 So that will prove interesting if that becomes their latest
6 story. But, again, that's a premature issue.

7 Right now the Supreme Court has ruled, the petition
8 for rehearing has been denied, and we are entitled to have the
9 defamation claims reinstated so that we can -- because, again,
10 it ties back to the jurisdictional issue, Your Honor, with
11 respect to Sands China.

12 THE COURT: Thank you.

13 MR. BICE: Thank you.

14 THE COURT: Mr. Jones, Mr. Peek.

15 MR. RANDALL JONES: Thank you, Your Honor.

16 I actually -- in one of those rare occasions I think
17 I actually agree with Mr. Bice about something. He says that
18 we argue that their motion is both too late and too early.
19 Well, in fact it is, both of those things. The claims were
20 dismissed, they did not move for reconsideration at the time,
21 and --

22 THE COURT: But don't we have a change in law of the
23 state of Nevada?

24 MR. RANDALL JONES: Well, we have a change in the
25 status of the case, I agree with that based on the Supreme

1 Court ruling. They had a right to make their motion. They
2 didn't make it, so that's undisputable. They talk about
3 inherent authority, and they talk about cases from other
4 jurisdictions that talk about what a summary judgment means.
5 We certainly think those cases are clearly distinguishable,
6 and I can go through that if the Court wants me to take the
7 time to do it. But all you have to do is look at them. Even
8 the cases they cite from the Nevada cases to talk about other
9 issues, not a reconsideration of interlocutory order. So they
10 don't have any case authority. They're basically relying on
11 this so-called inherent authority of you to do what they want
12 you to do.

13 But, Your Honor, I've been in this situation where
14 this very thing has happened. And they have to -- at least as
15 far as I've seen in other matters, they have to wait until the
16 case is over, and then they have a right to appeal that issue.
17 So that's why it's too early. That's why it's premature.
18 They have -- they lost the issue--

19 THE COURT: But I've I got the right not to get
20 reversed again when I know it's wrong, because they already
21 issued a written decision saying, Judge, you've got to
22 consider these other things.

23 MR. RANDALL JONES: Well, here's the problem with
24 that argument, Your Honor. We never addressed -- "we" being
25 Sands China. Sands China was never given the opportunity to

1 address the specific other issues that were raised. And we
2 would --

3 THE COURT: Well, absolutely you get to have that
4 right in the renewed motion to dismiss that you're going to
5 file when the second amended complaint is actually served.

6 MR. RANDALL JONES: Well, here's what I see as the
7 procedural problem with that. They didn't move pursuant to
8 54(b) to take that issue up.

9 THE COURT: Correct.

10 MR. RANDALL JONES: They picked their poison, Judge.
11 And from my perspective --

12 THE COURT: It wasn't final, so it's interlocutory,
13 and I can change it at any time if I want.

14 MR. RANDALL JONES: Well, ultimately I guess you're
15 the judge, so you can make your rulings however you want to
16 make them. But it would seem to me that if they wanted to
17 appeal that issue they could have done exactly what they did
18 with Mr. Adelson. They could have asked you to certify it
19 pursuant to 54(b), which presumably you would have done,
20 because you did it on the other issue. And they didn't do
21 that. And so there should be no, if you will, attempt for
22 them now to come back after the fact and say, well, we got
23 this one reversed, let's go back to where we were before with
24 these other matters that we did not either reconsider or move
25 to certify.

1 So, Your Honor, I -- well, I obviously understand
2 from the Court that -- put it another way. It's pretty
3 obvious you're going to grant this motion, but we want to make
4 sure we have a full opportunity --

5 THE COURT: Absolutely.

6 MR. RANDALL JONES: -- to brief these issues that
7 were never briefed and decided by the Court before.

8 THE COURT: Absolutely. I'm not precluding anybody
9 from filing anything in their motions to dismiss that I know
10 are going to be filed soon.

11 MR. RANDALL JONES: Understood, Your Honor.

12 THE COURT: All right. Mr. Peek.

13 MR. PEEK: I really have nothing to add, Your Honor.

14 THE COURT: All right. The motion's granted given
15 the Supreme Court's opinion with respect to the Adelson
16 defamation claim, because in my mind they made a clarification
17 of the law that affects my prior decision, and I'm going to
18 learn from that opinion.

19 If we could now --

20 MR. PEEK: Your Honor, just as sort of a procedural
21 issue, because we still have the issue of the motion to amend
22 and the fifth claim for relief and Adelson, and so I'm just
23 trying to kind of put all the pieces of that puzzle together.

24 THE COURT: I allowed them to amend the fifth claim
25 for relief, except as to Mr. Adelson. That means when it's

1 served on you you want to file your motion to dismiss.

2 MR. PEEK: Now that we have this motion to
3 reconsider so we still get that opportunity, then, once the --
4 if and when you allow an amendment on the fifth claim for
5 relief, that would then trigger the motion to dismiss on --

6 THE COURT: I did allow the amendment on the fifth
7 claim for relief, just not as against Mr. Adelson yet because
8 of the remittitur issue.

9 MR. PEEK: Okay.

10 THE COURT: Though you will file whatever fulsome
11 motion you think is appropriate, Mr. Peek and Mr. Jones and
12 Mr. Morris, and then I'll --

13 MR. PEEK: Want to just make sure I clarify, Your
14 Honor.

15 THE COURT: Yeah. All right. Do you want to talk
16 about the motion to extend the stay?

17 MR. RANDALL JONES: Yes, Your Honor. Your Honor, as
18 you've already noted, you have now received some direction
19 from the Supreme Court as to what you believe you're supposed
20 to do as we proceed with this matter. And one of the things
21 that we believe was instructive and is important and relevant
22 to this motion that we've filed is a determination of prior to
23 any jurisdictional discovery hearing -- or, excuse me, any
24 sanction hearing in particular some further briefing to
25 determine what documents, if any, that have been requested --

1 THE COURT: I thought was going to do an in-camera
2 review based upon their opinion. That's what I have written
3 down to discuss at the end of today's hearing.

4 MR. RANDALL JONES: Well, I do want to discuss that
5 issue, Your Honor. What I was first referring to is the Macau
6 documents.

7 THE COURT: Right.

8 MR. RANDALL JONES: And the Supreme Court has
9 essentially adopted the Internationale versus Rogers.

10 THE COURT: That's part of my balancing test when I
11 consider Rule 37 sanctions, which I said when you guys were
12 here the last time.

13 MR. RANDALL JONES: I understand. So I certainly
14 would ask this Court if we extend the stay as it relates to
15 the sanctions hearing to allow us to brief those issues,
16 because we think those issues need to be briefed before any
17 such hearing, any sanctions hearing. Those are obviously very
18 important issues to all concerned, including the Court, and
19 that we now have a test that this Court is directed to follow
20 that we need to address before we ever get to that hearing.
21 That is certainly our position. We think that's a necessary
22 prerequisite before we get to that point. And so we would ask
23 that the sanction hearing be stayed until we're allowed to do
24 that.

25 THE COURT: Well, I have to stay the sanctions

1 hearing. I was going to stay the sanctions hearing and not
2 schedule it until after I finish the in-camera review. So I
3 think the two things -- if you want to file more briefs on the
4 Macau stuff, I'm always happy to read your briefs. The
5 problem I have is I'm going to have what is going to be a very
6 difficult task before me. I'm doing an in-camera review given
7 the instructions by the Nevada Supreme Court that merely
8 having a cc on a document isn't enough for a claim of
9 attorney-client privilege, which means I have to make a very
10 careful review of the contents of each of the communications.

11 MR. RANDALL JONES: I was -- actually I did plan to
12 bring that up. That's, what, Footnote 17, I believe, of --

13 THE COURT: So, I mean, I've got some things on my
14 plate that I need to be handling, and I'm going to -- it's
15 going to take me a little while to do the in-camera review.
16 It will take me longer than it usually does, because I'm also
17 getting ready for the CityCenter trial at the same time. I
18 have 6,000 people who filled out ability to serve
19 questionnaires, and next week 300-and-some will fill out the
20 first batch of the longer questionnaires. So I've got some
21 things. So I think you have time to do some briefing, because
22 I'm not going to schedule the sanctions hearing or the
23 evidentiary hearing until I finish the in-camera review. So
24 if you want to do briefing, I'm always going to consider
25 briefing, Mr. Jones.

1 MR. RANDALL JONES: All right. Well --

2 THE COURT: So if you want to file a motion for
3 instructions or whatever you want to call it, I'm happy to
4 read it.

5 MR. RANDALL JONES: So that brings up the ultimate
6 issue. With the ruling of the Supreme Court we now have an
7 issue to produce these documents and whether we need to
8 produce them immediately. We would ask the stay be extended
9 with respect to production of the Macau documents until we've
10 had the opportunity to do this briefing based upon these five
11 factors, in particular factor number one, which essentially
12 goes to relevance, and we think that there are certainly some
13 significant issues that need to be addressed there with
14 respect to these Macau documents, especially in light of the
15 new nerve theory center -- nerve center theory, excuse me,
16 that the plaintiff now seems to be asserting.

17 So, Your Honor --

18 THE COURT: I think that's part of their at home
19 analysis. I think it's all wrapped up together, which is one
20 of the reasons I denied both the motions for summary judgment,
21 because there appear to be genuine issues of material fact as
22 to where Sands China is at home.

23 MR. RANDALL JONES: Understood. And so my point is
24 simply that, in other words, we have a ruling that was from
25 last -- well, the spring of 2013 with respect to the Macau

1 documents. We would simply ask that the Court extend that
2 stay until we finish this process out and we've been allowed
3 to do this briefing.

4 THE COURT: Let just ask you a question. How long
5 is it going to take you to do that briefing? Your part. Not
6 Mr. Bice's part, just your part.

7 MR. RANDALL JONES: I would say, Your Honor, we
8 would like at least two weeks, if not three weeks.

9 THE COURT: So you want to file a brief in three
10 weeks or so.

11 MR. RANDALL JONES: Yes.

12 THE COURT: And then Mr. Bice will have three or
13 four weeks to file a brief, and then you'll file another
14 brief, then I'll have a hearing. So if we're talking about
15 60 days or 75 days or even 90 days, I think it's going to fall
16 in the same realm as this in-camera review of the Jacobs drive
17 that I'm going to have to now do. So if you want to file a
18 motion, I'm happy to discuss it with you if that's what you
19 want to do --

20 MR. RANDALL JONES: That's what we're asking.

21 THE COURT: -- and allow you a little bit of time
22 before you produce those documents. I've already made a
23 determination you should produce them. You said you're not
24 going to. I said, okay, that's bad, I'm going to sanction
25 you. So if you still don't want to produce them, that's okay,

1 I understand, but it's part of the analysis I go through when
2 I get to the sanctions hearing. Like I said before, I've got
3 to balance those issues.

4 MR. RANDALL JONES: Understood, Your Honor. And so
5 with the time frame the Court's provided, certainly 60 to 90
6 days, I think that's certainly acceptable. We would ask that
7 the stay be extended for that time period. And we --

8 THE COURT: And the only thing you're asking to be
9 stayed is my holding the sanctions hearing.

10 MR. RANDALL JONES: Well, I'm asking the Court to
11 stay two things, to stay the sanctions hearing during that
12 time period -- we would actually like -- we think that the
13 appropriate order of discussion would be the jurisdictional
14 hearing first. Because if the Court is --

15 THE COURT: No. We're doing the sanctions hearing
16 first.

17 MR. RANDALL JONES: Well, Your Honor, at a minimum,
18 then, we would ask that if the Court is unwilling to consider
19 doing the sanctions hearing second, then we would ask that the
20 Court do these two hearings simultaneously.

21 THE COURT: That may happen. Or I may do them
22 seriatim --

23 MR. RANDALL JONES: And, Your Honor --

24 THE COURT: -- because they have overlapping issues.

25 MR. RANDALL JONES: -- there's a reason for that,

1 and the reason for that -- not, you know, just because we'd
2 like to do it that way, the sanctions analysis is going to be
3 driven, we believe, by a substantial -- in a substantial way
4 by the jurisdictional analysis. And in fact if we're correct
5 that jurisdiction against Sands China is not appropriate, that
6 will have a substantial impact, we would hope, on this Court's
7 decision as to whether or not any sanction is appropriate.
8 And so to do it otherwise would not be fair to Sands China
9 under the circumstances.

10 THE COURT: Okay. There's going to be a sanction,
11 because I already had a hearing and I made a determination
12 there is a sanction. The question is the level of the
13 sanction, which is what I'm doing the hearing, and that
14 relates to the balancing that I have to do under Rule 37,
15 because you guys decided not to comply with an order after you
16 had notice and an opportunity to have everything that I wanted
17 to consider related to those documents. And it's okay. I
18 issued an order, it was in writing, you guys decided not to
19 appeal it. In fact, some of the sanctions that were required
20 under it were paid. And then we had an issue that you just
21 didn't want to comply, and so you redacted additional stuff.
22 And that's okay. You can make that decision. But making
23 those decisions have consequences, and that's what my
24 sanctions hearing is about.

25 MR. RANDALL JONES: Your Honor, I understand. I

1 want to make sure it's clear for the record we just didn't
2 decide not to comply with that order. There were compelling
3 reasons which we hope this Court would take into account in
4 any sanctions hearing whenever it's decided.

5 THE COURT: Absolutely.

6 MR. RANDALL JONES: And so with respect to this
7 process we are simply saying that the jurisdictional issues
8 and analysis will certainly have implications on any sanction
9 this Court might consider. We think that that is the most
10 appropriate way. If not having the sanctions hearing second,
11 that at a minimum these should happen seriatim as you've said
12 you were willing to consider. We would ask the Court to do
13 that, and we would ask that the Court, since the Court hasn't
14 made a ruling on sanction -- it doesn't sound like the Court
15 is willing to do that until it's heard, have the actual
16 hearing.

17 THE COURT: I'm not going to choose the type of
18 sanctions until I have the hearing and have the opportunity to
19 have the evidence I need to make the balancing determination
20 that I always make under Rule 37.

21 MR. RANDALL JONES: So that is -- we're requesting
22 that the Court continue the stay with respect to the -- any
23 sanctions hearing whether or not any sanctions occur before
24 that time -- it sounds like the Court is going to do that --
25 and at a minimum that these hearings occur simultaneously or

1 seriatim -- in seriatim, as you say, and that -- I think
2 that's our position, Your Honor.

3 THE COURT: All right. Thanks.

4 Mr. Peek, you don't want to add anything?

5 MR. PEEK: No, Your Honor, because this really is a
6 Sands China issue.

7 THE COURT: Thank you.

8 Mr. Bice, anything you want to say?

9 MR. BICE: I apologize Your Honor.

10 THE COURT: Do you want to say anything?

11 MR. BICE: I do. I apologize.

12 Your Honor, if this argument sounds familiar to the
13 Court, it certainly sounds familiar to us, because it's --
14 basically it's a repeat of Ms. Glaser's position long ago
15 before we knew about the documents being in Las Vegas. As
16 you'll recall, she wanted -- please, we implore you, please
17 hold this evidentiary hearing before what we knew were
18 documents that hadn't been disclosed. And you're basically
19 getting the same pitch today. This motion, Your Honor, on a
20 stay is moot. The Supreme Court has rejected their contention
21 about the MPDPA as being a defense to their production. As
22 you accurately point out, they have made a choice to violate
23 the Court's order, and what they're saying is, well, we think
24 that we have a sufficient excuse. Well, that's not simply a
25 question about what's going to be the degree of sanction,

1 because we certainly dispute that. In fact, we're going to
2 show you as part of that evidentiary hearing the
3 representations that they made to the Supreme Court about what
4 your order meant completely neutered it. And so we don't
5 think that this was some, well, we had compelling reasons
6 under the MPDPA to do it; their position to the Supreme Court
7 was your order actually only applied to documents that were
8 already in the United States, the very same documents that
9 they previously told you the MPDPA doesn't even apply to once
10 they're in the United States.

11 That's why this issue about the sanctions is
12 appropriate and it's important and it goes to -- it has to
13 precede the evidentiary hearing, because one of the things
14 obviously we're going to be seeking are some evidentiary
15 sanctions as a result of that issue based upon the personal
16 jurisdiction debate.

17 And so the basis -- there is no basis to stay. This
18 Court is going to schedule the evidentiary hearing on this
19 issue when it has time to do that, and that's when it should
20 be addressed. Because we have an additional issue coming back
21 to this issue about the in-camera inspection. As the Court
22 knows, one of the issues in the other writ where the Supreme
23 Court disagreed with the Court and said that you have to look
24 at these things --

25 THE COURT: They agree with Mr. Peek.

1 MR. BICE: They agree with Mr. Peek.

2 THE COURT: For the record, they agreed with Mr.
3 Peek.

4 MR. BICE: They did. And will acknowledge that no
5 matter how badly it --

6 MR. PEEK: Does it really hurt, Todd?

7 MR. BICE: -- causes me pain in the throat, they did
8 agree with Mr. Peek's position on this. I acknowledge that,
9 Your Honor. But what they also said was -- because you'll --
10 as Her Honor will recall, our principal position on this was
11 that they had long ago waived any claim of privilege. And the
12 Supreme Court even made the point in it's Footnote Number 9
13 that the District Court is going to have to -- that being Her
14 Honor, is going to have to make findings of fact about that
15 very issue. So as part of the sanctions hearing -- and again,
16 we think that this may moot much of the in-camera review that
17 Her Honor is planning to undertake, but that's obviously up to
18 Her Honor. But, nonetheless, as part of that sanctions
19 hearing that the Court is planning we also think that we have
20 to have a hearing on our position, the very first position we
21 advanced on this issue, is that they long ago waived any
22 entitlement to claim privilege regardless of who was the
23 holder. The Supreme Court in its decision merely addresses
24 who can, quote, unquote, "waive the privilege" or who can use
25 these documents affirmatively assuming that there is a

1 privilege to assert. Our point, as the Court will recall, was
2 they don't even have the ability to assert that, because
3 they've acknowledged that they knew about these documents for
4 a long, long time, and in fact they've always insinuated, and
5 the Court's even made comment on it, that they somehow they
6 knew what he took with him at the time of his departure, and
7 did nothing about it for more than a year, which under
8 analogous federal caselaw the courts have consistently said
9 that is a complete and wholesale waiver of any claim of
10 privilege.

11 So we're going to be asking the Court as part of
12 that evidentiary hearing about the sanctions aspect to be
13 holding an evidentiary privilege also -- or an evidentiary
14 hearing also about the waiver that we maintain existed, which
15 we also think would moot much of the Court's need to conduct
16 that in-camera review. And that's why we would ask to do that
17 more promptly, rather than later, because it might streamline
18 the process and it might save the Court some time on it.
19 Because if the Court agrees with us on that waiver issue, the
20 question about in-camera review would not be necessary.

21 So at this point, Your Honor, this motion for stay
22 is moot and it just needs to be denied.

23 THE COURT: We're really talking about scheduling
24 now.

25 MR. BICE: Exactly. That's right. But I don't want

1 there to be -- I mean, the concern I have is that they try and
2 use -- get you to say, well, I'm going to grant a stay.
3 There's no basis for a stay. The Supreme Court rejected their
4 position, and now --

5 THE COURT: Well, I have a stay on merits discovery.
6 MR. BICE: What's that?
7 THE COURT: I still have a stay on merits discovery.
8 MR. BICE: That's true. I thank the Court for its
9 time.

10 THE COURT: Mr. Jones, anything else?
11 MR. RANDALL JONES: Just briefly, Your Honor. I'm
12 compelled to just disagree with most of what Mr. Bice said
13 about what we've done and what --

14 THE COURT: Except that Mr. Peek was right.
15 MR. RANDALL JONES: Except for Mr. Peek was right.
16 I would agree with that part of his discussion.
17 Your Honor, without wanting to argue the issues of
18 sanctions or not, that's not the issue today, although
19 certainly that's a subject of the issue today. We certainly
20 disagree that we have waived any rights to privilege, and --

21 THE COURT: Don't you think we should brief it? I
22 know we've briefed it a little before, but, instead of me
23 pulling those briefs out of the file again, don't you think
24 you'd rather brief it again?'

25 MR. RANDALL JONES: We certainly would, Your Honor.

1 And that's part of what we're asking and one of the
2 justifications for extending the stay before the Court does
3 anything with respect to sanctions.

4 And I have to just make the point that I completely
5 disagree with Mr. Bice about truncating the in-camera review
6 process. I think the Supreme Court was very clear about that.

7 THE COURT: I don't get to do that. I have been
8 told to do it, so I'm going to do it.

9 MR. RANDALL JONES: That's the way I understood it,
10 Your Honor.

11 THE COURT: Second time I've been told to do an in-
12 camera review, and the last time took me a month of working on
13 that only with the exception of everything else.

14 MR. RANDALL JONES: And I don't want to belabor the
15 point, but to suggest that we have waived that privilege when
16 the Supreme Court specifically said not only have we not
17 waived that privilege, that this Court needs to actually go
18 and look at those documents to see where the privilege was
19 properly asserted.

20 THE COURT: All right. So the motion is denied as
21 to stay.

22 But as to the scheduling issues that it relates to I
23 concur with Mr. Jones that it is important that the in-camera
24 review and additional briefing occur prior to the sanctions
25 hearing occurring.

1 I am going to conduct the sanctions hearing prior to
2 starting the jurisdictional hearing, but it may be right
3 before. I'm not planning to have a whole lot of time between
4 those, but part of that is going to be my schedule and the
5 status of the briefing that I get. I don't have the briefing
6 yet, so I'm not going to commit to how exactly I'm going to
7 schedule them, but my thought is to do it right before,
8 because I've got witness issues and I've got common issues,
9 and I want to have those people all here at one time, okay.
10 So that's my thought process.

11 So I'm going to be getting briefs related to the
12 issues on the sanctions, Mr. Jones, you said in about three
13 weeks, we're going to set a hearing there, and then you and
14 Mr. Bice will agree to whatever briefing schedule you do, and
15 then I will move the hearing to accommodate that briefing
16 schedule.

17 I'm going to get briefs, Mr. Bice, from you on the
18 waiver of the privilege issue. Then you and Mr. Jones are
19 going to agree on whatever schedule you agree to, and then
20 we'll set the hearing for that.

21 How am I going to get the documents to do the in-
22 camera review?

23 MR. BICE: I'm going to allow Ms. Spinelli to
24 address that, Your Honor.

25 THE COURT: They're on some -- they're in the cloud;

1 right?

2 MR. RANDALL JONES: Yes.

3 MS. SPINELLI: Your Honor, they're with the Court's
4 vendor, Advance Discovery, so I don't know if -- I notice you
5 do electronic document review for your exhibits, but we could
6 arrange, obviously, a connection with the Court, or --

7 THE COURT: I need access.

8 MS. SPINELLI: Yes.

9 MR. RANDALL JONES: Your Honor --

10 THE COURT: I need whatever the code is.

11 MS. SPINELLI: Absolutely.

12 MR. RANDALL JONES: May I just make a suggestion?

13 Why don't we get with counsel and try to figure out a protocol
14 that's acceptable to both sides about how we get those
15 documents to the Court. Does that make sense?

16 THE COURT: Well, but aren't they stored
17 electronically right now?

18 MR. RANDALL JONES: That's my understanding. They
19 are with Advance Discovery.

20 THE COURT: I can review them electronically.

21 MR. RANDALL JONES: Well, I'm just saying, because
22 we haven't talked to Advance Discovery to find out the best
23 way to do that. If we -- if we work together, I think that we
24 could come up with a protocol that's acceptable to both
25 parties, and we can talk to the Court and find out what your

1 tech people the best way to do this.

2 THE COURT: Well, it won't be that hard. I just
3 need the access code.

4 MR. RANDALL JONES: I don't think so, either, but --

5 THE COURT: Here's the other two things that I need
6 in conjunction with that. Because it's been so long since
7 this motion was originally brought, I need a new version of
8 the privilege log. I would prefer it in a Excel spreadsheet
9 format. If you give it to me in Word, I can live with it. I
10 will not take it in .pdf or paper, because I have to be able
11 to create my own column as I go through and do the in-camera
12 review to make a ruling on each of the documents as I review
13 them. So I need that privilege log in Excel or Word.

14 With respect to the player list, since there are
15 people that I do not know who are included in the documents, I
16 need an identification of who they are and what their
17 positions are, and if they are counsel, to have that
18 specifically identified and what the scope of their work was.
19 That player list needs to be exchanged so that both sides have
20 the opportunity to view it. I have in prior cases had
21 litigation or arguments about whether people on the players
22 list really were who they said they were. And I anticipate
23 that that may be an issue that we have to address.

24 MR. PEEK: May I have a moment, Your Honor?

25 THE COURT: Yes. You can have as many moments as

1 you want, Mr. Peek.

2 (Pause in the proceedings)

3 MR. RANDALL JONES: Mr. Peek raises a question I
4 guess of the breadth of the player list is that there are only
5 certain documents in which they objected to an assertion of
6 privilege that are at Advance Discovery. And so --

7 MR. BICE: That's not true. We gave some examples
8 of the -- when we filed the motion --

9 THE COURT: That was my recollection. That was why
10 I was relieved to be able to find a way to make a wholesale
11 decision, which the Supreme Court disagreed with. So I'm
12 going to go through and do an --

13 MR. PEEK: So they're objecting to all of those
14 documents upon which we claim a privilege --

15 THE COURT: That's what I've always understood.

16 MR. PEEK: -- as opposed to specific ones on the
17 log.

18 THE COURT: That's why I told you I thought this
19 would be a very difficult review for me, because I've always
20 thought I was reviewing it all.

21 MR. PEEK: Yeah. I thought that was just a smaller
22 subset of that, Your Honor. So --

23 THE COURT: Why do you think I tried to take the
24 easy way out, Mr. Peek?

25 MR. PEEK: What's that?

1 THE COURT: Never mind. I didn't say anything.

2 So, Mr. Jones, how long to get me that stuff and
3 come up with some sort of plan for us to figure out how I'm
4 going to perform my obligations of doing an in-camera review?

5 MR. RANDALL JONES: Your Honor, can we -- because
6 I'm not the tech person, can we have -- today's Thursday --
7 can we have -- is it acceptable to the Court to give us week
8 so we can get with our tech people and --

9 THE COURT: Why don't we give you two?

10 MR. RANDALL JONES: That would even be better.

11 THE COURT: Okay. So can I have a status check with
12 you on August 28th for us to talk about the followup to my in-
13 camera review. The one thing I would like exchanged at least
14 two days prior to that hearing is your player list, because I
15 think the player list, if there's going to be motion practice
16 related to the identity of those persons or their scope of
17 their work, I want to do it sooner, rather than later, and I
18 want to do it before I start the in-camera review.

19 MR. RANDALL JONES: At 8:30, Your Honor?

20 THE COURT: Yes, please. That's what time I try and
21 start my calendars.

22 MR. RANDALL JONES: Just wanted to verify.

23 THE COURT: And I apologize to Judge Earl's
24 calendar, which starts at 9:00, because I only had two things
25 this morning.

1 MR. PEEK: So 8:00 o'clock on the 28th?
2 THE COURT: 8:30, Mr. Peek.
3 MR. PEEK: 8:30 on the 28th.
4 MR. PISANELLI: Your Honor, I've got something at
5 10:00, but can --
6 THE COURT: You don't have to come.
7 MR. PISANELLI: 8:30 is fine. Any way that we could
8 know that we go first, since it's just a status conference?
9 THE COURT: I only have one or two things every
10 Thursday. It just seems --
11 MR. PISANELLI: Yeah. But if Mr. Peek is on that
12 one in front of us, that could push us way back into the
13 afternoon.
14 MR. PEEK: I'm here on the 29th, I think, Your
15 Honor.
16 THE COURT: Are you?
17 MR. PEEK: On Parametric.
18 THE COURT: Yeah, probably. Mr. Peek's very happy
19 with the decision on the privilege for that case, too.
20 Okay. Anything else? And the DISH Network case.
21 MR. RANDALL JONES: Your Honor, I take it at the
22 status check that we will have more discussion about
23 potentially scheduling some hearings in the future.
24 THE COURT: I'm going to have to get into the
25 in-camera review before I know when I'm going to be able to

1 schedule the hearing, because part of what I've been saying
2 the whole time is those documents that are part of the Jacobs
3 material, if they're going to be released, need to be released
4 prior to the jurisdictional hearing in time for the
5 plaintiff's counsel to be able to review those documents,
6 digest it, and determine if they're going to use them. If
7 they're protected by the privilege, they won't get them. But
8 if some of them aren't, they get them ahead of the hearing,
9 and then we're going to have to have a discussion. So until I
10 know how long it's going to take me to do that in-camera
11 review that I've been ordered to do -- and I cannot at this
12 point, given my CityCenter trial, just set a month aside like
13 I did the last time was ordered to do this and do it, so it's
14 going to take longer.

15 MR. RANDALL JONES: Your Honor, the only other issue
16 I had is we've submitted competing orders on the summary
17 judgment motion.

18 THE COURT: I'd love to see them in Word format.

19 MR. RANDALL JONES: Your Honor, we will provide
20 that.

21 THE COURT: We've only received one side. So if you
22 would both email them to us.

23 MR. RANDALL JONES: We submitted ours and provided a
24 copy to the --

25 MR. BICE: We will get ours to you today, Your

1 Honor.

2 THE COURT: If you would both email them to me in
3 Word format.

4 MR. BICE: We will.

5 MR. RANDALL JONES: Your Honor, there was also --

6 THE COURT: Because if I decide I don't like your
7 order, I cut and paste and change.

8 MR. RANDALL JONES: There was -- there was a motion
9 to seal, also, and also --

10 THE COURT: There is a motion to seal and a motion
11 to undesignate as confidential. I was holding that for last.

12 MR. RANDALL JONES: That's the only thing that I'm
13 aware of that still needs to be addressed.

14 THE COURT: The motion to seal is granted.

15 The motion to unseal is denied at this time without
16 prejudice to renew it at a later point in time after I finish
17 the jurisdictional hearing. At this point I'm going to leave
18 it sealed.

19 MR. RANDALL JONES: Your Honor, my question would be
20 is the protocol -- we presume the protocol is still in place,
21 and we would --

22 THE COURT: Absolutely.

23 MR. RANDALL JONES: We simply -- if they would sit
24 down with us and have a meet and confer, it may make that
25 motion moot. So we would --

1 THE COURT: It may.

2 MR. BICE: Yeah, we agree that the protocol is in
3 place, but, unfortunately, every document is designated as
4 confidential in disregard of the order.

5 THE COURT: I know, Mr. Bice. I know. And I have
6 not at this point gone through and parsed which ones should or
7 should not. At some time, unfortunately, I'm going to
8 probably have to do that if you don't reach an agreement.

9 MR. RANDALL JONES: And, Your Honor, I don't
10 appreciate Mr. Bice's comment "in disregard of the order." We
11 disagree with that statement, as you can imagine.

12 THE COURT: All right. So some day we're all going
13 to get together and have a nice discussion and work this out.
14 In the meantime, I look forward to seeing you in two weeks at
15 a status check. Have a nice day.

16 If we receive the remittitur before then, Mr.
17 Morris, then I will address on fairly short notice the issue
18 related to the fifth claim for relief in the current second
19 amended complaint as against Mr. Adelson.

20 MR. MORRIS: Very good. Thank you, Your Honor.

21 MR. BICE: Thank you, Your Honor.

22 THE PROCEEDINGS CONCLUDED AT 9:34 A.M.

23 * * * * *

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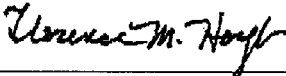
CERTIFICATION

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

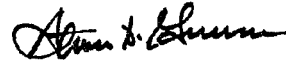
AFFIRMATION

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

FLORENCE HOYT
Las Vegas, Nevada 89146



FLORENCE M. HOYT, TRANSCRIBER



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 DEFENDANTS' MOTION TO ESTABLISH PROTOCOL

TUESDAY, SEPTEMBER 2, 2014

APPEARANCES:

FOR THE PLAINTIFF:

TODD BICE, ESQ.
DEBRA SPINELLI, ESQ.
JORDAN SMITH, ESQ.

FOR THE DEFENDANTS:

J. STEPHEN PEEK, ESQ.
JON RANDALL JONES, ESQ.
MARK JONES, ESQ.
STEVE L. MORRIS, ESQ.

COURT RECORDER:

DEBRA WINN
District Court

TRANSCRIPTION BY:

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

1 LAS VEGAS, NEVADA, TUESDAY, SEPTEMBER 2, 2014, 8:30 A.M.

2 (Court was called to order)

3 THE COURT: Jacobs versus Sands.

4 Mr. Peek's on the phone. Come on up close so Mr.
5 Peek can hear.

6 Mr. Peek, can you hear us?

7 MR. PEEK: Yes, Your Honor. And also I'm joined
8 with Michael Lackey, who is also on the phone with us.

9 THE COURT: We would love for you to spell his last
10 name.

11 MR. LACKEY: L-A-C-K-E-Y.

12 THE COURT: Okay. I am going to start --

13 MR. LACKEY: Good morning.

14 THE COURT: I'm going to start with Mr. Bice and
15 have everybody identify themselves.

16 Mr. Peek, if you cannot hear them identifying
17 themselves, it will be important for you to say, hey, Judge, I
18 didn't hear anybody, so I can make them move closer so they
19 will be able to hear you on the phone.

20 MR. PEEK: Thank you, Your Honor.

21 THE COURT: All right. Mr. Bice.

22 MR. BICE: Good morning, Your Honor. Todd Bice on
23 behalf of the plaintiff.

24 MR. PEEK: He's going to have to get closer, Your
25 Honor. It's unusual I couldn't hear Todd, but I couldn't.

1 MR. BICE: Good morning, Your Honor, and Mr. Peek.
2 Todd Bice on behalf of plaintiff.
3 MS. SPINELLI: Good morning, Your Honor. Debra
4 Spinelli on behalf of the plaintiff.
5 MR. SMITH: Jordan Smith on behalf of the plaintiff.
6 THE COURT: Huddle around the podium and let's see.
7 Mr. Morris, how about you see if Steve can hear you.
8 MR. MORRIS: Steve Morris for Sheldon Adelson.
9 THE COURT: Did you hear that, Mr. Peek?
10 MR. PEEK: I could hear Steve.
11 MR. RANDALL JONES: Randall and Mark Jones on behalf
12 of Sands China Limited.
13 THE COURT: All right. It's your motion. And I
14 don't know if it's Mark or Randall's motion.
15 MR. RANDALL JONES: It's both our motion.
16 THE COURT: And I did get the opposition and had a
17 chance to review it.
18 MR. RANDALL JONES: Yes, Your Honor.
19 Your Honor, surprising as it may seem, it appears
20 that we have some agreement on some of the issues. In
21 particular I would start with the redactions as an example.
22 And the one question that was left, at least as I understand
23 it, and I was not present, but Mr. Peek was and Mark Jones
24 were present, but the question of the attachments -- I'm
25 sorry; let me go back for a second -- with respect to the

1 redactions whether or not we would have the opportunity to
2 print them out and then actually make the redactions in the
3 hard copies and give those to the Court to review. The other
4 way to possibly do it that's been considered is to do it
5 electronically, which may actually take a longer period of
6 time to do that. So, you know, if there's some kind of a
7 protocol that can be set up so that we could print out the
8 documents that we're going to redact, and that would be the --
9 we'd make a Bates-stamped copy, we would have two copies, one
10 that we would keep, one that we would provide to the Court
11 with the understanding that obviously that we make no other
12 copies, you know, something along those lines. And I don't
13 know if that's acceptable to the Court.

14 So -- I don't know if you want to take these issue
15 by issue, but that's probably the one issue where it at least
16 appears we have some agreement.

17 THE COURT: So let me see if I can restate what you
18 said about the redaction issues. Your position is that it
19 will be easier to print them and physically redact them and
20 then deliver the redacted copy to the Court.

21 MR. RANDALL JONES: Yeah. Well, we'd also provide
22 -- I don't know if the Court needs to have the unredacted copy
23 or not. That's -- but you'll have access through Advance
24 Discovery, so you would have both.

25 THE COURT: Right. So I would have the unredacted

1 copy electronically and a redacted version that was physically
2 delivered to me.

3 MR. RANDALL JONES: Right.

4 THE COURT: Okay.

5 MR. RANDALL JONES: So I don't know if you want to
6 address that issue first or --

7 THE COURT: I don't think there's disagreement on
8 that issue. Is there, Mr. Bice?

9 MR. BICE: Well, there's a little bit of
10 disagreement, because I've never heard about this let's print
11 them off and redact them and provide a hard copy to the Court
12 and a electronic copy. My understanding --

13 THE COURT: Well, no. The electronic copy is
14 unredacted.

15 MR. BICE: I understand that. But my understanding
16 of what was going to be done was we would ask Advance
17 Discovery to create two sets, one set being the redacted set
18 and those of which they are claiming privilege over the entire
19 document; because it makes no sense for you to look at the
20 entire document if they're only claiming privilege over a
21 sentence, a paragraph, whatever. So our -- what we were
22 saying was Advance Discovery creates this bucket over here of
23 the redacted documents, that they go through and mark their
24 redactions, which they can mark them on the electronic
25 version. It'll be in the form of highlighting. That way

1 you'll actually see it and you can address them in that
2 fashion. And while they're doing that, you will then be
3 looking at the set over which they are claiming entire
4 privilege.

5 THE COURT: Well, no. I'm going to have both.
6 Regardless of what way you're going to do it I'm going to have
7 both. The question is do you object to me having a physical
8 copy so as I leaf through the electronic versions going in the
9 order they're listed on the privilege log I say, ah, that one
10 says "redacted," let me look at my stack that's redacted here,
11 ah, that's a redaction, okay, that's what they want to redact,
12 okay.

13 MR. BICE: Again, whatever works best for the Court.
14 It just seemed from what was described to me, what I thought
15 was going to be easiest was, because it was going to take them
16 some time to do the redaction, they haven't done them.

17 THE COURT: I'm aware of that.

18 MR. BICE: So the concern that I have is --

19 THE COURT: I want the quickest way.

20 MR. BICE: Yeah. And I thought that we were kind of
21 in agreement that the quickest way was to create two separate
22 sort of buckets, you look at these over here while they're
23 doing these redactions. My view was that they were going to
24 do the redactions on the database in a highlighter format,
25 which I understand can be done. Once you're done with this

1 set over here, they'll be done with this set over here, and
2 you will then just transition into those, and you can click
3 electronically through the redactions and they won't -- you'll
4 see them, because they'll just be highlighting, and then you
5 can designate what's appropriate, what's not appropriate.
6 That was how I thought it was going to work.

7 THE COURT: Why do you think it takes longer to do
8 online, rather than paper?

9 MR. RANDALL JONES: You know, I don't know that it
10 does take longer. I think that if nothing else it may be a
11 more cumbersome process. The other process -- and, again, I
12 wasn't there, but my understanding is that this was discussed
13 and Mr. Bice did not agree to this, but didn't say no to this
14 idea. And so to that extent, you know, maybe there's some
15 confusion. But if we do it the way I'm suggesting, as well,
16 assuming the Court agrees with our redactions, then we have a
17 hard copy that we can provide to them, as well, that has the
18 redactions, there's no question about it. Because otherwise
19 what we're going to have to do is we're going to have to go
20 back in and take the highlighted redacted copy and make it an
21 actual redaction, so there's another step involved in the
22 process. But, Your Honor, this is your call.

23 THE COURT: What's quickest? That's all I'm looking
24 for, is what's quickest. Because either way is going to work.

25 MR. RANDALL JONES: I think the way we're suggesting

1 is quicker, and I think it's more efficient for the Court,
2 because you could have the actual redacted document in the
3 electronic version and see --

4 THE COURT: How long is it going to take you?

5 MR. RANDALL JONES: Mr. Lackey is on the phone.
6 That's one of the reasons he's on the phone, to address those
7 issues.

8 THE COURT: Ms. Spinelli, let me hear from Mr.
9 Lackey first.

10 Mr. Lackey, how long is it going to take to get me
11 redacted documents? And however you do it I don't care.

12 MR. LACKEY: Good morning, Your Honor. We obviously
13 haven't seen the scope of the redactions yet, but talking with
14 the folks who do this a lot, they think that they can get
15 through approximately 20 to 25 documents, based on typical
16 redactions, per hour per reviewer. So the total volume there,
17 the folks in the courtroom may have a better sense of the
18 exact volume of the ADI collection. But that's in general we
19 would use a 20- to 25-document per hour per reviewer estimate
20 of a time frame.

21 THE COURT: That's actually pretty good.

22 MR. LACKEY: That is a good quick -- you know, it'd
23 be slow at the start, but after they get used to it a little
24 bit it will pick up, and that's what the experts tell us, it
25 would be around in that range.

1 MR. MARK JONES: Two people seven to ten days on an
2 estimate of about 2800 redactions. So one person -- it's just
3 two people, seven to nine days, ten days. That's the best
4 estimate.

5 MR. LACKEY: And after they complete, obviously,
6 they'll be a day or so to process it, you know, once those are
7 all there, just the physical processing to get it all done.
8 But that gives you an order of magnitude, Your Honor.

9 THE COURT: Okay. So you're looking at about two
10 weeks if two people are assigned to the task, plus some QA/QC
11 time.

12 MR. LACKEY: Yes, ma'am, I think so. That sounds --
13 that sounds about right.

14 THE COURT: Okay.

15 MR. MARK JONES: Yes, Your Honor.

16 THE COURT: Ms. Spinelli.

17 MS. SPINELLI: Your Honor, as someone who frequently
18 reviews documents and in Relativity, which is what the
19 platform is for Advance Discovery, there is --

20 MR. PEEK: Your Honor, we can't hear Debbie.

21 THE COURT: Ms. Spinelli, you've got to come to the
22 mike at the podium so Mr. Peek can hear you.

23 MS. SPINELLI: As someone who frequently reviews
24 documents --

25 THE COURT: Can you hear her now?

1 You've got to speak up now, Ms. Spinelli.

2 MR. PEEK: You've got to speak up.

3 MS. SPINELLI: Sorry about that, everybody.

4 As someone who frequently reviews documents with Mr.
5 Smith over here, I can tell you -- and we use Advance
6 Discovery at our office, Your Honor, which is -- I mean
7 Relativity, which is what Advance Discovery uses, we review
8 documents and highlight them online for the redaction, and
9 they appear kind of with a silhouette that says "redacted" so
10 you can easily review under them. As the person who does a
11 lot of the QC, it's much easier than having to go back and
12 forth between a hard document printed out with a black mark
13 over it that says "redacted." You can do it all online. And
14 that's just the only thing I wanted to say about redactions
15 and two different pieces of paper. I think it's more timely
16 for Your Honor.

17 THE COURT: All right. Anything else?

18 So I don't care which way you do it. I understand
19 what Ms. Spinelli's saying, but I've done it both ways, and I
20 can do it either way. My question is which is quicker. And
21 it sounds like the redactions online are quicker. It does.

22 MR. RANDALL JONES: Judge, I think this is your
23 call. We understand --

24 THE COURT: I want quicker, because I've got to get
25 done before I start CityCenter's motions.

1 MR. RANDALL JONES: We understand that. So we're
2 not arguing. We just thought, again, we would be more
3 efficient. If the Court thinks another way is more efficient,
4 than that's -- you're the one that's going to have to wade
5 through this stuff, so --

6 THE COURT: I think if we can do it online it's
7 going to be a little quicker.

8 MR. RANDALL JONES: Then what I would --

9 THE COURT: It doesn't matter to me.

10 MR. RANDALL JONES: What I would propose, then, is
11 we need to then talk to Advance Discovery and make sure we're
12 all on the same page about this procedure to do it online.
13 And, if I may, Your Honor, impose on Mr. Lackey that we
14 contact Advance Discovery today, that we talk to them about
15 this process, and that we get back to the Court as early as
16 hopefully tomorrow about whether or not there's -- if there
17 are any issues or problem that we perceive with doing it on an
18 online basis. Does that sound acceptable?

19 THE COURT: That's fine. Okay.

20 MR. RANDALL JONES: Well, I guess, if I may, Your
21 Honor.

22 Mr. Lackey, do you think -- can that be done by your
23 office?

24 MR. LACKEY: Yeah. I'm happy to do that. Obviously
25 we'll coordinate with Mr. Jones and whomever else wants to

1 participate.

2 MR. BICE: Yes, that's fine. We'll make ourselves
3 available today for a call.

4 THE COURT: Sounds like everybody is very
5 cooperative this morning.

6 Next? Are you going to update your privilege log on
7 the identifications of some of the folks that are on them so
8 that I don't have to do it twice?

9 MR. RANDALL JONES: With respect to the players
10 list, we did deliver that I believe on Friday.

11 THE COURT: Okay. We got it.

12 MR. RANDALL JONES: And then the other issue was a
13 Excel spreadsheet of the privilege log. We have not provided
14 that to the Court because on Friday we weren't sure what was
15 going to happen at the meet and confer and thought it might
16 change. So we can get that over to the Court by potentially
17 this afternoon or certainly latest tomorrow morning based upon
18 what happens here today.

19 THE COURT: Why don't you guys have your conference
20 with Advance Discovery and then deliver the Excel spreadsheet
21 after that.

22 MR. RANDALL JONES: We will do that, Your Honor.

23 THE COURT: Okay. Then are there any other issues
24 you want to discuss with me other than how I'm going to get
25 access?

1 MR. RANDALL JONES: Yes. With respect to the
2 unobjected-to documents -- and just, again, this is your call.

3 THE COURT: You mean the categories of unobjected-to
4 documents?

5 MR. RANDALL JONES: Yes. There are about I think
6 originally 11 categories. The one was denied -- the one
7 objection category was denied by the Supreme Court, so we have
8 10 left. Of those 10 we have the majority of the documents
9 identified within those other 10 specific objection
10 categories. We have about 5,000 documents that are not within
11 those categories. It's our belief that we have carried our
12 prime requirement that we provide a detailed privilege log.
13 We would presume, then, in that case, since they were not
14 specifically objected to, that those documents would be
15 privileged. I understand Mr. Bice has a different view of
16 that, but I wanted to bring that to the Court's attention.
17 We've got -- just the printout of the document list is about
18 4 inches high, and it would save the Court considerable time
19 if the Court didn't have to review those, since there was no
20 specific objection. But I wanted to bring that to the Court's
21 attention. They suggested I guess to some extent that I was
22 trying to somehow avoid the obligation to do this in-camera
23 review in our last hearing. I find that ironic. The Court
24 has indicated it wants to save time in this process. We think
25 that would save considerable time. But we understand that's

1 the Court's call. And if you want to review all 11,000,
2 that's certainly your prerogative. We just believe that under
3 the rule --

4 THE COURT: I have to review all 11,000. I don't
5 think it's really a lot. I'm going to review all 11,000.

6 MR. RANDALL JONES: All right. That's fine, Your
7 Honor. We just believe that we have satisfied our burden by
8 providing a detailed privilege log. And so at that point the
9 burden shifts to the plaintiff to object to any designation of
10 privilege, which they have not done for those documents, and
11 therefore we believe that is unnecessary to review those
12 documents.

13 THE COURT: Okay. But I'm going to review them
14 anyway.

15 MR. RANDALL JONES: All right. You're going to
16 review them. So then let me get on to the next issue.

17 THE COURT: And I'm not as quick as 25 documents an
18 hour.

19 MR. RANDALL JONES: I'm certainly not that quick
20 myself. So, with that said, we also have the issue of
21 attachments. And so there is an issue here about since we
22 couldn't tell you what it was about a particular attachment
23 that the original -- when I say "we," prior counsel couldn't
24 tell you based on the way that the log was set up and the
25 categories, we just want to make sure we preserve our ability

1 to respond to the Court. If the Court says, no, that
2 attachment is not privileged, that we have --

3 THE COURT: Here's what I usually do, Mr. Jones. I
4 usually as -- when you give me the Excel spreadsheet I set up
5 another column. That column is the one I caption as
6 "Rulings." Frequently for documents that have attachments, as
7 part of my minute order process I will issue a supplemental
8 request to counsel to identify if that attachment has
9 previously been produced to somebody after I've made my
10 initial review, and if it's not been previously produced, to
11 have somebody tell me why you don't think it should be
12 produced now. Because usually the attachments are documents
13 that have already been produced in the litigation in some
14 other format, and I'm trying to make sure that that is the
15 case.

16 Now, sometimes I get objections from people when I
17 use that process, and then I deal with them as we get there.
18 But I've got to get through the review process to be able to
19 make that initial determination as to whether it looks like it
20 should be produced or not.

21 MR. RANDALL JONES: And that's -- I just wanted to
22 find out what the Court's protocol is, so to speak.

23 THE COURT: Unfortunately, it's what I have had to
24 develop in doing numerous in-camera reviews.

25 MR. RANDALL JONES: And I presume that would also

1 hold true for other documents that you have determined that
2 don't meet the prima facie of showing a privilege that we
3 would at least have an opportunity to respond to those.

4 THE COURT: Not usually. Usually once I hit the in-
5 camera review stage if there is enough information on the
6 privilege log I just rule. Now, you can always ask me for
7 clarification. I've had people ask me for supplementation,
8 I've asked for supplemental information. It just depends on
9 what the documents are.

10 MR. RANDALL JONES: And that's fine, Your Honor.
11 The point is we just would like to at leave an opportunity,
12 even if it's just, you know, a day or two, to look at that and
13 briefly respond to the Court as to whether or not, you know,
14 we would like to give further information as to the Court --
15 to the Court as to why that is privileged.

16 THE COURT: I assume all of the information is on
17 your privilege log where it should be.

18 MR. RANDALL JONES: Well, we certainly hope it is.
19 But, again, some of this stuff may not be as clear to the
20 Court, having, you know, had to review it under the
21 circumstances you're going to have to review it.

22 THE COURT: I understand. Here's what I usually do,
23 Mr. Jones. And this is just so everybody's protected. I
24 finish my review, I have the column that is then -- you are
25 provided with the spreadsheet that tells you what the rulings

1 are. Some of the rulings require further work by you, some of
2 the rulings anticipate you -- from me that you will then
3 produce the documents or not produce the documents when I
4 sustain their objections. I have a period of time before that
5 production is required. If there is something you think needs
6 to happen before that production occurs, I will, of course,
7 entertain any further information. Because the goal here is
8 to do it right.

9 MR. RANDALL JONES: And that's all we're asking,
10 Judge.

11 THE COURT: But my concern is I don't want to be
12 doing it three times because the privilege log is so bad. And
13 I've had cases where that happens, and I get frustrated, and
14 then I chart by the entry where I have to go by, and it's
15 usually 50 bucks an entry that's a problem.

16 MR. RANDALL JONES: We hope that's not going to be
17 case. We don't anticipate that. But in this case, because
18 it's an electronic production and theoretically the day you
19 rule is the day they could get access to the documents, we
20 just want an opportunity --

21 THE COURT: No, no. I have a time period before the
22 production is required.

23 MR. RANDALL JONES: That's what we're concerned
24 about, Judge. That gives us at least some opportunity to
25 review it and, if appropriate, respond to the Court. And we

1 understand you're going to want to see legitimate, meritorious
2 issues raised in any --

3 THE COURT: But the goal was that it was supposed to
4 be raised in the privilege log --

5 MR. RANDALL JONES: I understand.

6 THE COURT: -- so I don't have to go through this
7 multiple times.

8 MR. RANDALL JONES: We understand. Again --

9 THE COURT: As I told you the other day, I was on my
10 third time reviewing the same set of documents because the
11 privilege log and the documents that came to me were so bad.
12 And that's a very frustrating process for me to go through.
13 And that's not your case, but it was an example of how bad
14 things can be. And given the volume of documents in this
15 case, I don't want to do them multiple times.

16 MR. RANDALL JONES: We understand, Your Honor.

17 THE COURT: If I have to do a couple of them over,
18 that's okay. But I don't want to do a wholesale review. So
19 if you think there is an issue with your privilege log not
20 having enough detail, I'd rather know now, before I start,
21 than later.

22 MR. RANDALL JONES: Your Honor, that is -- we don't
23 -- again, this happened with predecessor counsel, who's very,
24 very -- they're very good lawyers. I think Mr. Bice has even
25 worked with them, and he agrees they're good lawyers. But

1 we're just wanting to make sure we cover all the bases in the
2 event that there may be some question about a particular
3 document that we want to ask the Court to look at a second
4 time. We don't plan to do it wholesale.

5 THE COURT: So instead of giving you three days you
6 want me to give you five days before the production of the
7 documents?

8 MR. RANDALL JONES: That would be great, Your Honor.

9 THE COURT: Okay.

10 MR. RANDALL JONES: If we could have five days, I
11 think that would be a reasonable amount of time. And if we
12 could do it in a shorter period of time, we'll do it faster
13 than the five days.

14 THE COURT: All right.

15 MR. RANDALL JONES: And with that let me just confer
16 with Mark Jones and see --

17 THE COURT: Anything else?

18 (Pause in the proceedings)

19 MR. RANDALL JONES: And, Your Honor, this I think is
20 primarily a Sands China issue with these documents, but I
21 wanted to at least afford to the Court's -- at the Court's --

22 THE COURT: I was going to ask Mr. Peek if he had
23 anything to say.

24 MR. RANDALL JONES: Okay. Fair enough, Your Honor.
25 Then I think that with that said I think we don't have

1 anything else to offer.

2 THE COURT: Mr. Peek, is there anything you want to
3 say?

4 MR. PEEK: No, Your Honor. I'm happy with the
5 procedures that the Court has --

6 THE COURT: Mr. Bice. So here's what I think is
7 going to happen. I'm going to get an Excel spreadsheet, and
8 I'm going to get access to documents from Advance Discovery.
9 And then I'm going to create my column on the Excel
10 spreadsheet, and as I begin my review of the documents, if it
11 doesn't say "redacted" on it, I'm going to make a ruling. If
12 it does say "redacted," I plan to come back to that document
13 and look at it after the two-week period has done.

14 MR. BICE: That's right.

15 THE COURT: Once I've finished going through and
16 making my review I'm going to do a minute order that does all
17 the things I usually do and says, and here's my ruling and you
18 have five days to comply. If in the five-day period of time
19 they think I'm really off base, they're going to do something.

20 MR. BICE: Understood.

21 THE COURT: And then we'll talk some more.

22 MR. BICE: Okay.

23 THE COURT: What do you think?

24 MR. BICE: I think -- frankly, Your Honor, I think
25 that's the protocol that we proposed in our opposition and

1 countermotion, is our position is there should be the two
2 buckets are created, which we're in agreement to, you've got a
3 privilege log that they say satisfies their burden, you look
4 at the privilege log, if you think that the privilege log
5 shows even on its face an adequate basis for a claim of
6 privilege, then you would look at the document and check the
7 claim. If the privilege log is defective on its face on many
8 of these entries, which we feel quite confident the Court is
9 going to recognize when it starts going through this log, the
10 claim fails and the Court doesn't have to waste its time
11 looking through the document when you have a defective
12 assertion on the log. And that's why we have objected to
13 their protocol, which we view is designed to shift the burden
14 of both --

15 THE COURT: Mr. Bice, this is what I do. And I know
16 it's probably not what you want to hear. But I look at the
17 privilege log, I look at the document, and if it's clear that
18 it's an accountant-client privilege, as opposed to attorney-
19 client that they put, I note on my ruling, look, this isn't
20 the attorney-client, it's the accountant-client privilege.

21 MR. BICE: And obviously that's not what I'm talking
22 about. I'm just talking about I think you're going to see in
23 this log many bases where there are no recipients designated,
24 no authors designated, nothing from which the privilege log
25 could plausibly substantiate an assertion of privilege. And

1 that's what I'm saying. I think the law says that the Court
2 does not have to then take on the burden of the party who's
3 claiming privilege having failed to prepare a proper log.
4 That's up to Her Honor, though. I mean, this is --

5 THE COURT: I've got to get through it.

6 MR. BICE: You will do it as you see appropriate.
7 So I don't think any of us are really saying anything
8 differently, other than we obviously think that the attempt to
9 shift the burden onto us is inappropriate, that the defense is
10 trying to do to claim that because they prepare a log the
11 burden -- that anytime a party prepares a log the burden then
12 shifts to their opponent, that there's somehow a prima facie
13 showing -- the mere creation of a log is a prima facie showing
14 that shifts the burden onto the opponent to go through it one
15 by one and challenge each document. There is no law anywhere
16 that says that. And in fact we cite you the caselaw that says
17 that's not the law.

18 THE COURT: Okay. Hold on. I need to talk to Mr.
19 Lackey for a second.

20 Mr. Lackey, I do not have Relativity installed on my
21 computer, because I don't use Relativity. Am I going to be
22 able to review the documents that Advance Discovery has online
23 without that program?

24 MR. LACKEY: I don't believe so, Your Honor. I
25 believe we're going to have to get Relativity installed for

1 you. But I do not believe that's onerous, is my
2 understanding.

3 THE COURT: Okay.

4 MR. LACKEY: And those of you who've had -- someone
5 in the courtroom has had access to the Advance Discovery? I
6 thought I heard someone earlier.

7 THE COURT: Yes, some people have had access to
8 Advance Discovery. That would be the Sands China folks.

9 MR. RANDALL JONES: Ms. Spinelli said she's used
10 Advance Discovery, as well, so she --

11 MS. SPINELLI: I've used Relativity, Your Honor. In
12 our conference call that we had with Advance Discovery they
13 told us that they would just need to connect with you to get
14 you one or two things on your computer software. It shouldn't
15 take long at all, and it'd be quite easy. I think that they
16 can do it remotely, Your Honor.

17 THE COURT: So they're not in .pdfs.

18 MS. SPINELLI: They are -- well, they're in
19 electronic form, so some are .pdf, some are .tif documents.

20 THE COURT: What kind of electronic form are they
21 in?

22 MS. SPINELLI: Their original form. So some are
23 .pdfs, some are emails. They can -- they can put them in
24 whatever form you want, Your Honor, but right now they're not
25 converted into .pdf, they're just originals. So if they were

1 Mr. Jacobs's in his email account, they're emails. But you
2 can review them -- there's a -- you can click on them in
3 Relativity and review them in kind of like a .pdf form.

4 THE COURT: Well, I understand. But that means I
5 have to learn a new program, is what I'm saying. And I've had
6 a lot of complaints about Relativity recently from other
7 folks.

8 MR. BICE: I don't think that's -- they've never
9 indicated that when we were on the call with them. They
10 wanted to know whether you had a PC or a Mac. That's the only
11 question that they posed for us.

12 THE COURT: But they can't install any software on
13 my computer unless I go through some IT things within my
14 system and I get permission from my IT folks, because I don't
15 have administrative rights to add any program at all on my
16 computer.

17 MR. BICE: We don't think that that's the case, Your
18 Honor. And if that is somehow the case, I'm sure we can all
19 agree to get Her Honor a completely clean laptop --

20 THE COURT: I don't want a laptop.

21 MR. BICE: -- with Relativity installed on it so
22 that you could review it.

23 MS. SPINELLI: One thing that they do, Your Honor,
24 is you can log in remotely to their Relativity site, and so
25 it's like a log-in on the Internet.

1 THE COURT: Okay. So I don't have to have
2 Relativity installed on my computer, but I do have to use it.

3 MS. SPINELLI: It's an option. It's an option, but
4 you don't have to. But I do think you have -- it's very easy
5 to learn, I promise, Your Honor. It's a click.

6 THE COURT: Anything else?

7 MR. RANDALL JONES: Just briefly, Your Honor. I
8 just want to make it clear that Mr. Bice said about shifting
9 burdens and --

10 THE COURT: I'm not -- it doesn't matter. I'm going
11 to review them all.

12 MR. RANDALL JONES: That's fine. But I don't like
13 the comments on the record like that left unsaid. We
14 disagree. The burden has not shifted. We did a privilege
15 log. They then have an obligation to meet and confer with us,
16 which they never did, to talk about the log.

17 THE COURT: They did Friday.

18 MR. RANDALL JONES: But we didn't talk about any
19 particular item on the privilege log. So -- we talked about
20 general categories. So we believe then they have an
21 obligation to object. Where they did object we have the
22 burden. But they didn't object to over 5,000 documents. So
23 those should -- again, we assert those should have been agreed
24 to be privileged and they shouldn't have to be gone through by
25 the Court. We understand your ruling.

1 THE COURT: Okay. Does anybody want to do any
2 further briefing on the issue of whether there has been a
3 waiver by the delay in Ms. Glaser asserting the privilege?

4 MR. BICE: Yes. We are filing a motion on that.

5 THE COURT: Okay. When do you want to have that
6 briefed? When are you going to do that? Because that plays
7 into this issue I'm dealing with.

8 MR. BICE: I'm looking at my calendar, Your Honor.
9 Your Honor, we will do our best, and I think we can make it,
10 to have that motion to you by the 12th.

11 THE COURT: So you don't anticipate me ruling on
12 that motion until after I finish the privilege log -- the
13 review?

14 MR. BICE: That is my understanding of what Her
15 Honor had wanted. If I misunderstood that, then that was my
16 mistake.

17 THE COURT: No. That's okay.

18 How long before you do an opposition, do you think,
19 Mr. Jones? It's on the waiver issue to the delay by Ms.
20 Glaser.

21 MR. RANDALL JONES: Your Honor, 10 days to two
22 weeks.

23 THE COURT: How about the regular briefing schedule?

24 MR. RANDALL JONES: Yeah, I think --

25 THE COURT: Then, Mr. Bice, let's not do it on a

1 OST, let's just do it straight briefing.
2 MR. BICE: Understood, Your Honor.
3 THE COURT: And that may change how my
4 implementation of my minute order is, because I want to rule
5 on this issue before that. And it may mean that I take a
6 little bit more time reviewing it than I thought I would. And
7 we're all hopeful that this two weeks on the redactions is
8 going to work. I don't think it's going to take me -- it's
9 probably going to take me three or four weeks to get through
10 everything, because I have other obligations.
11 MR. BICE: I'm surprised by that, Your Honor.
12 THE COURT: Thanks. Anything else?
13 MR. BICE: The other obligations, I mean.
14 No. Thank you, Your Honor.
15 THE COURT: Anything else?
16 MR. RANDALL JONES: No, Your Honor.
17 THE COURT: Mr. Peek, anything else?
18 MR. PEEK: Nothing, Your Honor.
19 THE COURT: Goodbye. Have a lovely day.
20 THE PROCEEDINGS CONCLUDED AT 8:59 A.M.

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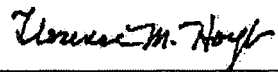
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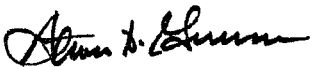
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CLERK OF THE COURT

1 TRAN

2 DISTRICT COURT
3 CLARK COUNTY, NEVADA

4 * * * * *

5
6 STEVEN C. JACOBS,)

7 Plaintiff,)

8 vs.)

9
10 LAS VEGAS SANDS CORP, SANDS)
11 CHINA LTD,)

12 Defendants.)

CASE NO. A-10-627691
DEPT. NO. XI

Transcript of Proceedings

13 BEFORE THE HONORABLE ELIZABETH GONZALEZ, DISTRICT COURT
14 JUDGE

15 **PLAINTIFF'S MOTION FOR RELEASE OF DOCUMENTS FROM ADVANCED
16 DISCOVERY ON THE GROUNDS OF WAIVER; PLAINTIFF'S MOTION ON
17 DEFICIENT PRIVILEGE LOG ON OST**

THURSDAY, OCTOBER 9, 2014

18 APPEARANCES:

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

21 For the Defendants: J. STEPHEN PEEK, ESQ.
22 JON RANDALL JONES, ESQ.
MARK JONES, ESQ.

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

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

1 THURSDAY, OCTOBER 9, 2014 8:30 A.M.

2

3 THE COURT: Good morning, Mr. Peek. How are you
4 today?

5 MR. PEEK: Good morning.

6 THE COURT: Mr. Morris called to say he had to be
7 down with Judge Denton, so he was unable to join us and
8 asked us to proceed without him. So, we're here related to
9 some motions that the plaintiffs have filed and I report
10 that I have made absolutely no progress on your case since
11 I've been in the pretrial process of CityCenter. I've
12 taken the boxes home several times, but I have not gotten
13 to them as part of what I'm trying to do with the other
14 case. I keep hoping I'll get to them, but I don't.

15 MR. PISANELLI: I know that feeling of taking the
16 work home and never quite getting it.

17 THE COURT: I've got a Yukon and I can only put so
18 much in it and then it comes back on Mondays. Most of it's
19 been read, but you're at the end.

20 MR. PISANELLI: Yeah.

21 THE COURT: So, --

22 MR. RANDALL JONES: Bring -- take my briefcase as
23 well, Your Honor. That's about it.

24 THE COURT: Well it takes me two trips to load it
25 with the boxes. So, all right. Mr. Pisanelli, are you

1 going to argue some motions this morning?

2 MR. PISANELLI: I am.

3 THE COURT: Okay.

4 MR. PISANELLI: Do you have a preference on how we
5 begin?

6 THE COURT: I don't care which one we start with.
7 They're basically the same issue. They've been bad again.
8 Their privilege log is bad. It's taking too long. They're
9 still bad, bad, bad.

10 MR. PISANELLI: Well, when you put it that way.
11 You're kind of stealing my thunder

12 THE COURT: I was summarizing the argument.

13 MR. PISANELLI: Yeah..

14 Your Honor, I know you hear -- I'm starting, by
15 the way, privilege log deficiencies, and I know you hear
16 this phrase so much you probably consider it to be a cliché
17 at this point, but I'm going to use it anyway because it
18 seems to fit the circumstances that if not know, when?

19 We know that there are consequences to failing to
20 provide an adequate privilege log. We know it from when we
21 were trained as lawyers just out of law school and we
22 certainly know it from being trained by you in this
23 courtroom. You have some very high standards for all of us
24 to conduct ourselves and we all do. Sometimes it's
25 lawyering, sometimes it's clienting, if that's a word, but

1 you understand my point. You set a high bar for us here in
2 Business Court and we all -- and when I say we, I mean all
3 of us, at both tables, do our best to try and comply with
4 it.

5 We've fallen not a little short, about as short as
6 your high standards that I can think of in any case I've
7 ever --

8 THE COURT: I've had one that's worse.

9 MR. PISANELLI: Really? Well, you see more of
10 them than I do. This is as bad as I've gotten. In the
11 totality of circumstances, not just the worst log, but when
12 you take the entire dispute into consideration, that's when
13 I think we get to the point of being comfortable with the
14 fact that what we're asking for is rather harsh.

15 And I'm not going to repeat everything that's in
16 the briefs, but I think it's important to point out just a
17 couple of very quick facts of why it is not beyond the
18 pale, it is not severe, and it is not overly harsh to say
19 that the rule that you always apply, applies here. And
20 that is that we start with when this log originally was
21 produced, coupled with our very extensive objections, which
22 followed only two weeks later and that's September 26,
23 2012.

24 You combine that fact, that we started in 2012,
25 this thing was amended once, called a final log a couple of

1 months later in December 2012, and all that final really
2 did, as you may recall, is took some stuff off it. Right?
3 But it never addressed all of the deficiencies that we
4 brought to their attention.

5 And so, we, for two years, were holding on to a
6 log that does very little. It leaves a few clues, I'll
7 give them that credit, here and there of what the actual
8 document was. It leaves a few clues, here and there, of
9 what the underlying premise was for the assertion of the
10 privilege and then that's it.

11 And we heard, for two years now, Sands China stand
12 behind it, for two years dealing with us. And now all the
13 way up to only a couple of weeks ago before you, I think
14 the quote, something to the effect of: We have carried our
15 prime requirement that we provide a detailed privilege log.

16 So, we don't have to look to any of the cases that
17 talk about a party that says: Okay, it was a bad first
18 effort, Your Honor, but I fixed it and only two weeks had
19 lapsed, only a month has lapsed, only two months have
20 lapsed, but I fixed it. It was a good faith assertion and
21 the first effort we see from some of the cases where
22 leniency was the rule that was applied and then other times
23 it was the timing of the correction that got some of the
24 parties off the hook for their bad privilege logs.

25 But here, we have a disastrous one. I think you

1 may have characterized it as awful, being kind to them, and
2 we had them standing behind stubbornly and defiantly for
3 two solid years only to come in, at the end of the day,
4 looking for the do over. And that's why I started this
5 conversation with the concept that if not now, then when?

6 THE COURT: Well, sometimes when I give do overs,
7 there are assessments of expenses that are related to it.

8 MR. PISANELLI: Sure.

9 THE COURT: And that may be part of what happens
10 after I finish, if I ever get to it, the in-camera review.

11 MR. PISANELLI: Right.

12 THE COURT: And that's, I think, where the issue
13 is -- because it's not necessarily a waiver just because
14 their privilege log is awful, or was awful before they
15 started trying to do a better job.

16 MR. PISANELLI: Yep.

17 THE COURT: But it's caused a lot of people a lot
18 of work and this isn't the first time in this case we've
19 had something like this happen.

20 MR. PISANELLI: Right.

21 THE COURT: And so the question is: I understand
22 what you're saying, but isn't the appropriate remedy some
23 sort of recompense for the expense and time that everyone
24 has had to go through?

25 MR. PISANELLI: But, I mean, how do you put that -

1 - let me start with the underlying premise. Of course
2 you're right. All right. But we bring this log to your
3 attention that says it may result in the waiver and the
4 may, of course, is the definition that's the key word to
5 all of it, it means you decide.

6 THE COURT: Judicial discretion.

7 MR. PISANELLI: Yeah. Exactly. It's up to you.
8 I'm not going to pretend it's anything other than your
9 decision and I throw this last fact into context of why now
10 is the time that it's something more than a just a writing
11 a check that seems to be irrelevant to this -- to these
12 parties because no matter how many checks they write for
13 checks, nothing seems to change.

14 We have, as I've said, a terrible log. We have
15 two years of defiance of standing behind it, but then look
16 at what we've now learned. What was put on the log was so
17 reckless that already, before you started your in-camera
18 review, 50 percent --

19 THE COURT: Well, no I actually --

20 MR. PISANELLI: -- of them gone --

21 THE COURT: -- started it, Mr. Pisanelli.

22 Remember, I started it and then I said --

23 MR. PISANELLI: And then you had to stop.

24 THE COURT: -- it was awful.

25 MR. PISANELLI: Yeah.

1 THE COURT: And then we had a -- somebody decided
2 to take a second look.

3 MR. PISANELLI: Yep. My point is only before we
4 got any benefit of your work, 50 percent of the 3,000 pages
5 are withdrawn. You have to put, I think, that into
6 context: the timing, the stubbornness to correct, and how
7 bad it was, how reckless -- reckless isn't even the right
8 word. All right. These are skilled attorneys starting at
9 MTO and moving through the roster of people whose
10 fingerprints are on this. These are skilled people who
11 knew what they were doing and before you have taken one
12 document off it, they took 50 percent of the 3,000 page
13 privilege log and said: Yeah, we shouldn't have done that.

14 So, I won't beat the dead horse. You know what my
15 position is.

16 THE COURT: I do.

17 MR. PISANELLI: Today does present the
18 circumstances where I think -- and just let me put the
19 proposal out there and Your Honor, of course, can do with
20 it as you please; but I think the fair proposal, in light
21 of the totality of the circumstances, is that it's a two-
22 step process on your in-camera review. You start at what
23 the privilege log said and if that's not good enough, it's
24 released. If it is good enough in your view, then the in-
25 camera review of the document itself can be analyzed to see

1 if it should have been on there in the first place, but
2 holding them responsible for what they put on that log in
3 the first instance, I don't think is overly harsh. They
4 didn't correct it. They knew what they were doing and now
5 it's time to pay.

6 We can't get the two years, really three years,
7 back. We can get some of our attorneys' fees back, and I
8 understand your point, but we can't get the fact that they
9 have stalled this case for three years now and we're still
10 in a jurisdictional phase because we can't seem to get a
11 good faith effort on --

12 THE COURT: And I still have to do an --

13 MR. PISANELLI: --

14 THE COURT: -- evidentiary hearing according to
15 your writ.

16 MR. PISANELLI: You understand our frustrations.
17 Sometimes --

18 THE COURT: Oh boy.

19 MR. PISANELLI: -- we've been boisterous about it.
20 Sometimes we banged our head on the table, sometimes
21 literally, other times figuratively, but you understand our
22 frustration.

23 THE COURT: Absolutely.

24 MR. PISANELLI: We think holding Sands China
25 responsible for their own conduct and choices is not overly

1 harsh and that's all we ask of you.

2 THE COURT: All right. Thank you. Mr. Jones.

3 Mr. Sorenson, I already handled your case. I'm
4 done. I granted it.

5 MR. SORENSON: Thank you, Your Honor.

6 MR. RANDALL JONES: I don't want to belabor this
7 either. I think I understand what you're suggesting, but I
8 do think it's important to point out a couple of things
9 that I just think are inaccurate.

10 First of all, the privilege log, in it and of
11 itself, I don't believe has delayed the evidentiary
12 hearing, certainly not in any material way because there
13 were other issues, as you well know, that had to do with
14 many other writs, that had -- that were really the delay
15 and the delay was as a result of stays that were issued by
16 both this Court and the Supreme Court with respect to how
17 certain things were handled, including discovery.

18 And I want to point out, you know, Mr. Bice has, I
19 think to his credit, has acknowledged that the Munger
20 Tolles law firm is a very good law firm.

21 THE COURT: But that's a really awful privilege
22 log to come out of a very good law firm then. I don't know
23 who they send it out to do, but it doesn't appear to have
24 the quality of anybody, except for one firm, that I've ever
25 seen before.

1 MR. RANDALL JONES: And I --
2 THE COURT: And that's a local firm. Sorry.
3 MR. RANDALL JONES: And I assume it's not our
4 firm, my --
5 THE COURT: Not yours.
6 MR. RANDALL JONES: -- firm.
7 THE COURT: Not even a case you're involved in.
8 MR. RANDALL JONES: But, I do want to point out,
9 in defense of Munger Tolles, and this is something that wed
10 didn't really even get into until this whole issue came up
11 after the Supreme Court ruled on the ruling that you had
12 made about a class of persons -- Mr. Jacobs being allowed
13 to take these documents because, at that point, Judge, --
14 THE COURT: Not being able to take them. That
15 wasn't what I said.
16 MR. RANDALL JONES: I'm sorry. Being --
17 THE COURT: I said being able to review them --
18 MR. RANDALL JONES: -- able to use them.
19 THE COURT: -- and use them.
20 MR. RANDALL JONES: I misspoke. That's certainly
21 what I meant and I hope the Court understood what I meant,
22 but the point is is that the privilege log became moot at
23 that point as long as that ruling was out there until we
24 heard what the Supreme Court had to do --
25 THE COURT: You're right.

1 MR. RANDALL JONES: -- or had to say.
2 THE COURT: It did. Which is why --
3 MR. RANDALL JONES: So --
4 THE COURT: -- I asked when you came back if you
5 wanted a second chance to look at it again and --
6 MR. RANDALL JONES: And --
7 THE COURT: -- initially, you guys said: No.
8 MR. RANDALL JONES: Initial -- well, what I said
9 at the -- when you put that question to me, and I'm happy
10 to stand here in front of you and tell you I said it and
11 why I said it.
12 When the District Court asks me, and I've got a
13 document which I have not had an opportunity to review, I
14 have not had an opportunity to review the protocol in any
15 detail and you ask me and you -- and I don't blame you for
16 doing it, but you put me on the spot.
17 THE COURT: Of course I did.
18 MR. RANDALL JONES: What did you expect me --
19 THE COURT: That's my job.
20 MR. RANDALL JONES: What did you expect me to say?
21 I had to stand on the document that our prior counsel had
22 offered to the Court until I knew otherwise and as soon as
23 we knew otherwise, we immediately informed the Court of
24 that and took action to correct the situation.
25 But getting back to Munger Tolles and the

1 condition of that initial log. You know, it's easy in
2 hindsight to say: You know, what a bad job they did and
3 how faulty that log was, but if you go back in the context
4 of the time and you look at what they were trying to do at
5 the time they were trying to do it -- we're talking about
6 close to 100,000 documents with a protocol that they did
7 not devise. It was a protocol that was essentially put
8 together Advanced Discovery on the categories and you have
9 to remember, Judge, the way those categories were set up
10 and this had to do with the issue of redaction f the
11 documents is just one example.

12 If any document in a chain was privileged, whether
13 it be the document that it -- that included an attachment
14 that was not privileged, it had to be -- the only way you
15 could designate it was privileged. If the attachment was
16 privileged but the e-mail that it was attached to was not
17 privileged, then you had to designate it as privileged.

18 And so, -- and they were working under, in my --
19 at least from my perspective, with 100,000 documents,
20 pretty extreme time constraints with a protocol that did
21 not allow them all the categories, that's why we had to
22 revise it, to designate these documents in the appropriate
23 fashion so that we didn't run into this mess later on.

24 And then the question becomes, and I certainly
25 understand their argument, Mr. Jacobs' argument that:

1 Well, why didn't you fix it? And, as I said before, once
2 you made your ruling that Mr. Jacobs was entitled to review
3 these documents and that there was no privilege because of
4 the class of persons that he was in, what's the point?
5 Should we have -- when it came --

6 THE COURT: It still doesn't make sense to me and
7 I know the Supreme Court has ruled, but he can't review a
8 document that he's the recipient or the author of. That
9 still doesn't make sense to me, but I understand the
10 ruling.

11 MR. RANDALL JONES: And I understand your
12 statement, Judge, but the bigger point, as it relates to
13 this motion, is: Are sanctions appropriate, of any kind,
14 based upon the timing of these issues? And --

15 THE COURT: Right now.

16 MR. RANDALL JONES: And --

17 THE COURT: At this point, I agree with you
18 they're not and I already told Mr. Pisanelli that. They
19 may be some day.

20 MR. RANDALL JONES: And I -- and because you made
21 that comment, I certainly, at least, want to give you our
22 side of the story or at least our initial side of the story
23 because if this is an argument that needs to be made later,
24 I don't want it to go un --

25 THE COURT: You know if it becomes an issue later

1 I'm going to give you an opportunity argue and if it
2 becomes an issue where reviewing the now revised privilege
3 log and revised redacted documents, most of which are
4 sitting in the vestibule of my office at the moment, if it
5 appears to me there has still been such a dramatic
6 shortfall, I think it will be a significant hearing that we
7 have.

8 If, on the other hand, it looks like that when you
9 got a fresh shot at it that you had an opportunity to do
10 the right thing and you did the right thing and what I've
11 got back there and what's on the Advanced Discovery website
12 are, in fact, arguably privileged, even though I may
13 disagree with some of them that you designated, then it's a
14 different discussion and I talk to Mr. Pisanelli about what
15 the attorneys' fees are that he's incurred in the last few
16 months as a result of this additional delay.

17 So, --

18 MR. RANDALL JONES: And, Judge, --

19 THE COURT: -- I've got these two different things
20 that I might get, but I've got to finish the review before
21 I can get there and I have to look at them more.

22 MR. RANDALL JONES: But that's -- I --

23 THE COURT: And I've told Mr. Pisanelli that. He
24 doesn't like it, but I've got to look at them all.

25 MR. RANDALL JONES: Well -- and, Your Honor, just

1 for the record, I don't like that you would still consider
2 that there would be any appropriate sanction later on
3 because I do think we've tried as best we could in good
4 faith --

5 THE COURT: Do you know how many hours I spent on
6 it the first time before you guys decided to redo it?
7 That's frustrating for a judge who already has limited
8 time, Mr. Jones, to go through that effort, come in and
9 have a discussion with counsel, and then have the
10 recognition that something should be changed and I
11 recognize that from your perspective, you were relying on
12 what you believe to be very competent prior counsel and
13 their work.

14 MR. RANDALL JONES: And I appreciate that, Your
15 Honor, and, by the way, I -- we certainly understand you
16 have a busy docket and I would hope that you would
17 understand that we don't want to do anything to increase
18 your burden unnecessarily and to the extent that there was
19 -- that did occur, and I certainly saw and heard some of
20 your frustration at some of the hearings leading up to
21 today on this subject, and I -- as it relates to prejudice,
22 I understand the Court has been -- your -- you've told us
23 that you've been significantly inconvenienced and
24 frustrated by this --

25 THE COURT: Well the biggest part is the --

1 MR. RANDALL JONES: -- process.

2 THE COURT: -- window I have from when CityCenter
3 decided they wanted to have that month continuance, that
4 window was when I was going to look at these documents.
5 Because of the hiccup, and then the secondary problem with
6 Advanced Discovery when I went on and looked at all the
7 documents and then all of a sudden they get changed in the
8 middle of my review, which I know they still haven't
9 explained, but it happened, has caused me to then have to
10 find another window of time, which may not be until my
11 December break of CityCenter, to be able to sit down there
12 and look at these documents. And that's what the real
13 issue is, Mr. Jones, is the timing issue.

14 MR. RANDALL JONES: And let me leave you with
15 this. The point about the additional review is to -- and
16 because there's a point they made about we want a do over
17 and change the privilege log. As you know, we're not
18 adding anything to the privilege log. We're taking things
19 away from the log.

20 THE COURT: Absolutely. And I appreciate that.

21 MR. RANDALL JONES: And so, the point being,
22 hopefully, whatever time was lost by the Court in the
23 review, will be made up by the reduction in the number of
24 documents that you have to review, which we believe will be
25 in excess of 50 percent based on, I think, what we're

1 seeing so far.

2 THE COURT: That's why your brother convinced me
3 to stop the review I was doing because he was telling me it
4 was going to be 30 to 40 percent and then it went up a
5 little bit. So, I'm very glad of the efforts. I'm glad to
6 not have to review all of those documents, but it did cause
7 this timing delay that is a significant issue.

8 MR. RANDALL JONES: So, I hope the Court would
9 take into account the fact that we have substantially
10 reduced the burden on the Court which would at least lesson
11 the time that it would take to review the documents at the
12 end of the day and I'll leave it at this, Your Honor.
13 Assuming, because of CityCenter, that we aren't able to get
14 to this evidentiary hearing until well after you've had a
15 chance to review the privileged documents and make your
16 ruling, then there would be no actual privilege -- or
17 prejudice to Mr. Jacobs because he will have had the
18 documents in sufficient time to prepare himself for the
19 evidentiary hearing.

20 And so, I would ask the Court to keep an open mind
21 about those issues and consider those as well as giving us
22 the opportunity at a later date, if the Court thinks it's
23 necessary, to address this issue again.

24 THE COURT: Oh, absolutely.

25 MR. RANDALL JONES: Thank you.

1 THE COURT: Mr. Pisanelli.

2 MR. PISANELLI: My final points, Your Honor, it
3 always seems -- it's always interesting to me that the
4 party that has caused delay, in this case three years,
5 seems to say no harm, no foul. I guess time is on their
6 side. If this takes 45 years to get to an actual hearing,
7 no harm, no foul because you ultimately got what you fought
8 so hard to get, which, by the way, should have been
9 voluntarily disclosed.

10 So there is not a lot of credibility that should
11 be given to an argument that they have not caused any
12 prejudice in this case.

13 I'll leave Your Honor with two points. Counsel
14 tells you that the log deficiencies for two years didn't
15 cause the delay apparently because the other bad things
16 they were doing caused delay. I'm not sure you can ever,
17 with a straight face, say: Don't sanction me for this
18 behavior because it would have happened anyway because I
19 was so bad in the other behavior. They can't really take
20 shelter from their own bad conduct which caused delay.

21 But, with that said, it's still not true. Recall
22 part of this delay was the assertion of privilege that --
23 from Sands China, for these documents. They went to the
24 Supreme Court and claimed privilege on documents, now 7,000
25 of which were never privileged in the first instance and

1 they released them after the delay had already occurred.
2 After the Supreme Court sent them back, they released 7,000
3 documents and said now that there was no causal connection
4 between that improper assertion and the delay -- this
5 current delay that we're suffering. That's just not true.

6 And, finally, Sands China says that they had no
7 opportunity to review the privilege log and that's why up
8 to only weeks ago they still stood behind them saying that
9 they had met their objection. What is left from that
10 story, Your Honor, is that we had two very important events
11 prior to Sands China standing before you and saying that
12 the log was good enough. One was extensive meet and
13 confers very recently, just before that hearing.

14 And, most importantly, Ms. Spinelli wrote a thesis
15 on the problems with this privilege log two years ago that
16 were in the possession of all counsel, past and forward.
17 And so to claim that they didn't have a chance to review
18 the log isn't exactly accurate. They chose not to review
19 the log. They chose to ignore all of the deficiencies set
20 forth in Ms. Spinelli's letter and they chose to ignore
21 what we brought to their attention in our meet and confer.
22 To suggest they didn't have a chance, poor Sands China, I
23 don't think really comports with the evidence of what we
24 know here.

25 Taking all of this into consideration, Your Honor,

1 I won't beat the dead horse but I think now is the time.
2 They've had more than enough chance. They've done what
3 they can to continue to delay this process and we think
4 there should be some consequences to it.

5 THE COURT: Okay. The motion is denied without
6 prejudice through after I finish the review of the in-
7 camera and redacted documents that -- which the claim of
8 privilege is based.

9 Is that -- did we basically combine bot of the
10 arguments, Mr. Pisanelli, or do you want to argue the one
11 separately?

12 MR. PISANELLI: No the other separate one really
13 is a different issue.

14 THE COURT: I'm happy to listen.

15 MR. PISANELLI: So this argument of waiver, Your
16 Honor, is founded upon three things, first of which, of
17 course, is the Supreme Court's mandate from its recent
18 opinion issued 2014, this year. The other is the
19 undisputed fact of Jacobs' possession and how long he's had
20 them, the manner in which he's possessed them, and the open
21 notice. And the third, which is as important as those two,
22 is the lack of evidence that was presented to you from
23 Sands China to somehow rebut that they did not waive the
24 attorney-client privilege as it relates to the documents in
25 Mr. Jacobs' possession. You'll note --

1 THE COURT: You're talking about the delay between
2 Mr. Campbell and Ms. Glaser's communications and
3 disclosures related to the documents?

4 MR. PISANELLI: We're talking about the delay from
5 when -- it really is prior to, but I'll just, for the sake
6 of debate, say the delay starts when Mr. Jacobs is escorted
7 to the border to leave Macau. That day is when this delay
8 begins, because we know from Patty Glaser's own words, when
9 she first communicates with Mr. Campbell, that she has had
10 communications with people inside of her company that led
11 her to believe that Mr. Jacobs has possession of documents.
12 Her words. That she has, quote:

13 Reason to believe, based on conversations with
14 existing and former employees and consultants of the
15 company, that Jacobs, her word, had stolen company
16 property, including, but not limited to, --

17 And then she focused on these investigative
18 reports, which were apparently quite sensitive to them that
19 they wanted back.

20 The exchange then starts with Mr. Campbell who
21 tells her: Yes, I'll have them and I'll give you the
22 originals back, but understand one thing, Mr. Jacobs, like
23 other executives who have access to privilege
24 communication, and he travels around the world and
25 continues to possess those, and were keeping copies. She

1 doesn't like that and she complains that not only she wants
2 all copies of the investigative reports back, but she also
3 says that she wants everything back. In other words, she
4 starts a letter writing campaign, a little chest pounding,
5 but doesn't do anything about it.

6 So, the delay that I'm talking about, Your Honor,
7 is starting from her claim to have actual knowledge that
8 Jacobs is possessing something to standing here today to
9 take an analysis of what did Sands China do between that
10 time in 2010, as we stand here today, what did they do, as
11 the law requires them, to somehow retrieve these documents
12 back from Mr. Jacobs? The answer, at the end of the day,
13 is nothing. They wrote some letters. The law tells us
14 that's not good enough. They communicated: We want our
15 stuff back. You stole them. That's not good enough.

16 They actually even filed, somewhere along the way,
17 motions in limine not to use them in the evidentiary
18 hearing, but you don't see a motion anywhere from Sands
19 China over that entire period of time going all the way
20 back to 2010 that they did anything about it.

21 What they did do --

22 THE COURT: Is have their friends at Las Vegas
23 Sands file something.

24 MR. PISANELLI: Do you remember that?

25 THE COURT: I don't remember anything about it.

1 MR. PISANELLI: The first time Patty Glaser --
2 THE COURT: Oh please. Please don't point at Mr.
3 Kostrinsky. He's here for something else.
4 MR. PISANELLI: And what a remarkable coincidence
5 that is.
6 So you remember it. Patty Glaser was in the front
7 row pretending not to be the puppet master on that motion
8 because Sands --
9 MR. RANDALL JONES: Your Honor, I'm going to
10 object.
11 MR. PISANELLI: -- didn't want to come up in front
12 --
13 MR. RANDALL JONES: These pejorative comments
14 about counsel are inappropriate and Mr. Pisanelli --
15 THE COURT: Overruled.
16 MR. RANDALL JONES: -- likes to --
17 MR. PISANELLI: Thank you.
18 MR. RANDALL JONES: -- do it.
19 THE COURT: Overruled.
20 MR. PISANELLI: And then the next time Sands China
21 came in here to sanction me and Todd Bice because we had
22 actually bated stamped the documents that they had already
23 disclosed, then Mr. Ma was in the back of the room, but
24 never coming across the bar to actually assert what their
25 company was obligated to assert as a retrieval of their

1 documents. It never happened in this case. So --

2 THE COURT: Well don't you think this goes to
3 maybe if they ask for that affirmative relief there might
4 be jurisdiction against them?

5 MR. PISANELLI: Of course that's the --

6 THE COURT: Okay. All right. I was just --

7 MR. PISANELLI: -- reason they did it, but --

8 THE COURT: -- trying to make --

9 MR. PISANELLI: -- do they get to --

10 THE COURT: -- sure we all understand what the
11 real reason is.

12 MR. PISANELLI: Sure. But there's a consequence
13 to that choice, too, right? That we have a company who now
14 claims that someone else was doing their bidding for them
15 and they even tried to claim that -- I think it was the
16 *Teleglobe* [phonetic] case that companies can do that.
17 Interestingly enough, *Teleglobe* [phonetic] said the exact
18 opposite. We can't ignore the corporate forum when one
19 party wants to gain an advantage here, avoiding personal
20 jurisdiction, and pretend like it's one company so that
21 their parent can go in and make their fight.

22 There's one party who owns these documents. That
23 party was a -- in the audience. They weren't a
24 participant. They didn't come in here and ask you for any
25 relief. In other words, they didn't do what the law

1 requires them to do. And so we stand here today with what
2 has to be a concession that Sands China did nothing.

3 And so, the second part of the analysis then has
4 to be: How long did they do nothing? Even if we give them
5 credit for what their parent did, which really was only one
6 motion that went nowhere, that was still a two month delay
7 by their analysis. But the truth of the matter is they
8 haven't shown anything, by way of evidence, of how long
9 they've actually known.

10 Recall what I said at the beginning. Patty Glaser
11 tells Don Campbell immediately when Steve Jacobs in 2010 is
12 discharged that we want our stuff back. They then, in this
13 case, cite to Patty Glaser and her statements, not sworn
14 statements, her statements at this very podium to say that
15 we didn't know until Colby Williams wrote a letter saying I
16 have privileged material and immaterial information, they
17 let them know. And they equate and ask Your Honor to
18 assume that the date that Colby Williams discovers there
19 may be privileged information is the same day that they
20 discovered that we had, Mr. Jacobs had privileged
21 information.

22 The question then has to be: What evidence do you
23 have Sands China, what evidence have you presented to this
24 Court, to prove that those are the same dates? Because
25 it's inconsistent with Patty Glaser -- with what Patty

1 Glaser said a year earlier, two years earlier, or a year
2 earlier, going all the way back to June of 2010.

3 Instead of giving the declaration from those past
4 and former employees that she talked about in June of 2010,
5 they ignore those. They don't even give a declaration from
6 Patty Glaser herself. They simply give the in court
7 statements at this podium when she said to you: Your
8 Honor, we didn't know until Colby Williams sent that
9 letter. I can give you some sworn testimony if you want it.
10 All right. I want it. And I imagine Your Honor wants it.

11 Where is it? Where has Sands China met its
12 evidentiary burden, as they're obligated to do, to show you
13 two things: When it was when they knew that Steve Jacobs,
14 like virtually every other executive in the world, is in
15 the possession of documents that he, as you said,
16 communicated with, on, he was a recipient of them, he was
17 an author of some of them? Where is the evidence of when
18 they knew that when they took him to the border with his
19 laptop in hand that they didn't know it was on that laptop?
20 Where's their evidence of that? It's absent. All we have
21 is Patty Glaser's words.

22 And then the second step is where is the evidence
23 of what they did to protect it? Their burden. We've cited
24 cases from federal courts, from state courts, from the
25 Nevada Supreme Court. It's everywhere. It's their burden

1 to show that this information remained confidential and
2 that they were very protective of it and tried to get it
3 back.

4 The second --

5 THE COURT: Don't you think the efforts of Las
6 Vegas Sands in trying to protect that information is
7 something that I should consider for purposes of the
8 evidentiary hearing as opposed for the waiver? Because we
9 have the same similar argument about: Okay, so we have Las
10 Vegas Sands still pulling all the strings here, which has
11 been your argument throughout.

12 MR. PISANELLI: Sure.

13 THE COURT: That's why I have additional evidence
14 by what's happened in my courtroom --

15 MR. PISANELLI: Sure.

16 THE COURT: -- about what's part of that
17 jurisdictional argument. Isn't that how you are more
18 effectively --

19 MR. PISANELLI: I think --

20 THE COURT: -- able to use that?

21 MR. PISANELLI: I think the answer, Your Honor,
22 has to be both. It has to be both that the way they're --
23 the parent is conducting their business in the jurisdiction
24 has to be taken into consideration of whether that company
25 is subject to jurisdiction of this Court, but we also have

1 to say that these documents, really that are at issue,
2 which we haven't yet had to deal with yet, the documents in
3 possession of Mr. Jacobs that are at issue of the very
4 claims that we someday litigate, that has to be governed by
5 Sands China's behavior.

6 If here is a privilege there, we have to decide:
7 Does Sands China try and set the default setting as no
8 disclosure, unless there's an at issue waiver? Do they get
9 that default setting if they never protected the documents
10 in the first place? In other words, Sands China treated
11 these documents from day one, when they escorted Mr. Jacobs
12 to the border, they treated these documents as rightly in
13 his possession. We know that because they didn't do
14 anything to get them back.

15 As I said earlier, there's no evidence in the
16 record of when they knew and so we have to assume that the
17 evidence that they didn't give us, the evidence that Patty
18 Glaser alluded to twice in a letter to Campbell and later
19 in this courtroom, since they didn't present it to you, we
20 have to conclude that it's bad for them and that all
21 evidence will point to what we probably all assume, that
22 they knew even before Jacobs was terminated what he
23 possessed.

24 And so the second step then is: What did they do
25 to protect it? If the answer is nothing, you've sat on

1 your hands for two years and done nothing, then the law
2 tells us that there is a waiver there and Mr. Jacobs can
3 defend himself with the same evidence that they're in
4 possession of and show that these communications that go to
5 the heart of the issues in this case are not only rightly
6 in his possession, but can rightly be reviewed by his
7 lawyers and presented to Your Honor or someday a jury to
8 show that the claims and the defenses put forth by Sands
9 China in this case are frivolous.

10 That's really, at the end of the day, what we're
11 doing. It's that they're trying to hide the truth. Right?
12 That's what a privilege is and I'm not making it up and
13 counsel can be angry that that's pejorative, too, but the
14 Supreme -- our Supreme Court and every court in the land
15 says that we interpret attorney-client -- the assertion of
16 the attorney-client privilege narrowly because it impedes
17 the search for the truth and that's what we're doing here.

18 They are trying to take relevant and material
19 evidence that will go the heart of this case, take them out
20 of the picture so that the truth will be something short of
21 a clean and clear picture. That's why every court that
22 addresses privilege says: Very, very narrow
23 interpretation. That's why every court that addresses this
24 issue for parties like Sands China, that does nothing,
25 nothing to protect the privilege, if it existed in the

1 first place, it's been waived.

2 So it' a very long-winded way of answering your
3 question -- say that it's both. That it has to be taken
4 into consideration as a factor for personal jurisdiction in
5 this courtroom and there -- it should be released so that
6 we can use that evidence both in the jurisdictional debate
7 and the merits debate.

8 THE COURT: Thank you.

9 MR. PISANELLI: Thank you.

10 THE COURT: Mr. Jones.

11 MR. RANDALL JONES: Yes, Your Honor. Well, Mr.
12 Pisanelli is right about one thing. He is right. I am
13 angry. I'm angry when they try to take the law, as I
14 certainly understand it, and has been interpreted by every
15 judge and the Discovery Commissioner --

16 THE COURT: Well but here's --

17 MR. RANDALL JONES: -- that I've been in front of
18 --

19 THE COURT: Here's the deal, Mr. Jones. Do you
20 know who tried to get the documents back from Mr. Jacobs?
21 Do you know who it was? It was Justin Jones. Remember?
22 Justin filed -- well, you weren't here yet. Steve
23 remembers. It was Justin Jones because we had a stay in
24 place and we had some issues, so he filed a separate
25 lawsuit.

1 MR. RANDALL JONES: I understand -- I've seen the
2 record. I've read the record.

3 THE COURT: On behalf of Las Vegas Sands, not
4 Sands China.

5 MR. RANDALL JONES: This was totally appropriate
6 under the circumstances.

7 THE COURT: And why?

8 MR. RANDALL JONES: Because in those documents,
9 Your Honor, were documents that related to privilege
10 between Las Vegas Sands and Mr. -- and other parties.

11 So there were -- in other words, Las Vegas Sands'
12 had a dog in that fight.

13 THE COURT: Well, sure. They had the drive at
14 their office.

15 MR. RANDALL JONES: Well, they had a dog in the
16 fight because they had privileged documents they wanted to
17 protect, but in addition to that, less than a month later,
18 on September 28th, Las Vegas -- or Sands China, Limited,
19 filed its own motion with this Court and you brought up an
20 issue that Mr. Pisanelli had to admit because you,
21 essentially, put it to him that the reason that Sands China
22 was hesitant initially to get into that fight is because
23 they didn't want to have to play the game of gothca with
24 Mr. Jacobs and his counsel.

25 So, -- and the Court certainly understood --

1 THE COURT: I recognize that.

2 MR. RANDALL JONES: So, you have a party who has
3 standing to bring that motion who brings and we -- I'm
4 certainly happy to go through that timeline because I think
5 that timeline not only belies everything that Mr. Pisanelli
6 has said, it shows that Mr. Pisanelli more so, in my
7 opinion, than his predecessor counsel, directly violated
8 the rules that I think I'm supposed to comply with.

9 Well let me ask you, Your Honor. Am I to be --
10 understand from you, and I've been in this situation with
11 you before on both sides of this issue, that I can receive
12 privileged documents from a third party or my client, for
13 that matter, and that I can keep these documents and I can
14 call up the other sides and say: I've got some of your
15 documents. I'm not going to tell you what they are, how
16 many they are, but I can tell you this. I've looked at
17 them a little bit and I -- enough to determine there are
18 privileged documents in here and even though you've
19 demanded a four -- excuse me, eight months before that if
20 that client has any documents of my client, that you give
21 them back immediately, even though that's happened, I get
22 to tell the other attorney: Look, I've got these
23 privileged documents. I don't know how many there are in
24 there, but I'm going to keep them. And --

25 THE COURT: You and I both know there's ethical

1 issues there --

2 MR. RANDALL JONES: Yes, there are.

3 THE COURT: -- and Nevada has not adopted clawback
4 as part of its --

5 MR. RANDALL JONES: Well --

6 THE COURT: -- rules and --

7 MR. RANDALL JONES: -- what Nevada has adopted --

8 THE COURT: -- until Nevada has adopted clawback,
9 there is a very gray ambiguity there.

10 MR. RANDALL JONES: Well, Judge, we have the --

11 THE COURT: But there's a --

12 MR. RANDALL JONES: -- *Merits and Sitive*
13 [phonetic] case that says what a duty of a lawyer is under
14 these circumstances and I certainly don't believe that in
15 this case that duty was followed. In addition to
16 professional -- Nevada Rule of Professional Conduct 4.4B,
17 which also requires full disclosure.

18 Now, what did my client get? Let's talk about
19 his timeline. That's an absurdity. It -- all you've got
20 to do is read the letter that Ms. Glaser sent. She said:
21 We think you have -- we have reason to believe you have
22 three reports and it may have other stuff. May, don't
23 know, but may. But if you have those three reports, we
24 want them back and, by the way, if you have anything else,
25 give it back to us.

1 So, counsel's on notice. Counsel sends a letter.
2 This is November 23rd of 2010. Counsel sends a letter and
3 says: I don't know what you're talking about. I haven't
4 even had a chance to talk to my client, but I'll look into
5 it and let you know. And he writes back and says: Well, I
6 do apparently have one report but I'm keeping it. I'll
7 give you the original, but I'm keeping a copy and I'll talk
8 to him about other stuff, but -- and this is where Mr.
9 Pisanelli has the audacity to say that we disclosed all of
10 these documents where Mr. -- relying on Mr. Campbell's
11 statement that -- and, by the way, I wouldn't be surprised
12 if he has other documents. Terminated employees, in my
13 experience, often, often being the operative word here,
14 have a multitude of documents they keep. So they -- we may
15 have more.

16 That is blatantly not sufficient under the *Merits*
17 *and Sitive* [phonetic] case.

18 Now, I'll give Mr. Campbell the benefit of the
19 doubt that he didn't know what other documents were had
20 because we know in July, July 8th of 2011, Mr. Williams sent
21 an e-mail confirming that they now understood from
22 documents they received a week before. So the week of July
23 1st, in his e-mail, he says: I've got 11 gigs of ESI and I
24 started looking at some of it and I realized it was
25 privileged and I stopped looking at it because Mr. Campbell

1 and Mr. Williams are good lawyers and they knew they were
2 risking being disqualified from that case as, by the way,
3 you admonished -- since they like to point at lawyers, you
4 admonished these lawyers that if they wanted to go and look
5 at this stuff while these motions were pending, they were
6 risking being disqualified.

7 THE COURT: I did tell them that.

8 MR. RANDALL JONES: Yes, you did. And guess what
9 they didn't do, at least allegedly, unless Mr. Pisanelli
10 wants to get up here and admit something to the Court?
11 They didn't look at them.

12 So, what has happened with this disclosure?
13 Nothing. We have a motion by my client, Sands China,
14 within three months of having this issue and, by the way,
15 there were at least three meet and confers by August 3rd of
16 2011 about this issue --

17 THE COURT: Mr. Jones, Ms. Glaser stood here
18 probably fifteen times and told me there was no way she was
19 producing any documents and no way she was doing anything
20 until I resolved the Motion to Dismiss.

21 I don't know if you know the history, but it was -
22 -

23 MR. RANDALL JONES: And, Your Honor, I don't know
24 the history like you do. I certainly try to get caught up
25 on the history, but with respect to this issue of whether

1 or not they complied with their duty, Mr. Pisanelli wants
2 to --

3 THE COURT: No, I --

4 MR. RANDALL JONES: -- turn the duties around.

5 THE COURT: -- understand they have duties. You
6 both have duties. And it's a --

7 MR. RANDALL JONES: And it's --

8 THE COURT: -- complex issue and the problem in
9 this case is I had somebody who didn't want to participate
10 in that process.

11 MR. RANDALL JONES: And, Your Honor, you've
12 addressed that issue. You addressed that issue, what?
13 About two years ago now. And I understand the Court still
14 has concerns about that issue, that is not what we're
15 talking about today.

16 THE COURT: I know.

17 MR. RANDALL JONES: Ms. Glaser said, as I
18 understood it, after July 8th of 2011, they did look into
19 what Mr. Jacobs may have taken, we have a different word
20 for what he did, taken from the company. And we had no
21 knowledge of ESI having been taken from the company until
22 after Mr. Williams, Colby Williams, sent that e-mail on
23 July 8th.

24 And, by the way, as you may recall, he said they
25 think they have 11 gigabytes of documents, undefined. On

1 May 6th, I think, is when they sent their original
2 disclosures and they have a paragraph that says: Oh, by
3 the way, in addition to about 237 documents, which were all
4 kind of plain vanilla stuff, we also have some ESI. Didn't
5 say what it was, didn't say how much it was, until July 8th
6 and they were only off by about 32 gigs. Instead 11 gigs,
7 I think it was 44 gigs it ultimately ended up being,
8 without any description of what it was, how they got it,
9 when they got it, what was privileged or -- excuse me,
10 other than the fact that it apparently -- some of it was
11 privileged, which is in direct violation of Nevada Supreme
12 Court precedent, the *Merits* [phonetic] case as well as the
13 Rules of Professional Conduct.

14 So, if anybody should be outraged here it should
15 be my client. You can't shift the burden, which is all
16 they want to do.

17 And here's the dilemma we are faced with, Judge.
18 There were some mistakes made. There were some mistakes
19 made early on in the discovery process by my client. The
20 Court has addressed those mistakes, but -- through an
21 evidentiary hearing and this Court has said we're going to
22 deal with that at some point in time, but what's -- the
23 problem we're facing, and I understand Mr. Pisanelli's
24 strategy and Mr. Bice's strategy, but it's to essentially
25 take events that happened in the past and relive them every

1 single hearing we're in front of you on and to try to say:
2 These guys are bad guys, they can never be reformed, and
3 we're going to hold it against them until the end of the
4 case.

5 And Mr. Pisanelli, I remember one of the first
6 cases I got here in and he made some pejorative counsel
7 about new counsel. I'm sure these are just the new people
8 on the block on a long string of bad counsel that they've
9 had and they'll be gone shortly thereafter. Well guess
10 what?

11 THE COURT: I just smiled because I knew you guys
12 were going to look at it with a fresh set of eyes.

13 MR. RANDALL JONES: And we did, Judge, and we're
14 still here and we are trying to make sure -- and I'm not --
15 I'm telling you right now in open court we're not perfect
16 and we're probably going to make some mistakes in the
17 future, but I can guarantee the Court this. We are going
18 to do everything we can to make sure we do it right and if
19 we make a mistake, we're going to do everything we can to
20 bring it to your attention immediately and to correct it.

21 And if -- I hope, I hope the Court has enough
22 experience with me and my brother and Mr. Peek and Mr.
23 Morris to give us some benefit of the doubt that we are
24 going to comply with our ethical obligations and our duties
25 to the Court and to opposing counsel and to the opposing

1 party, and we are going to do what we can to make sure that
2 we comply with the rules and mitigate any errors that may
3 have been made in the past, which I believe we have done
4 and I would ask this Court. Do not let Mr. Pisanelli turn
5 the rules on their head and make it my client's burden for
6 something they were remiss at.

7 And to suggest, in spite of the lengthy case law
8 we've suggested -- or showed to the Court otherwise, to
9 suggest that the alleged three month delay from July 8th to
10 September 28th or so is sufficient to have created a waiver
11 is an absurdity.

12 First of all, three months, we've got cases we've
13 cited where they went a couple of years and the Court made
14 reference to the fact that in those cases where the parties
15 agreed not to review the documents during the interim
16 period, which is exactly what happened here, there could be
17 no waiver because there was an agreement by counsel. In
18 this case, Mr. Williams and Mr. Campbell, who we trusted
19 when he told us he wasn't going to review the documents, we
20 believed them.

21 And so there was -- and we told them, after three
22 meet and confers where we couldn't reach an agreement about
23 getting the documents back, and they agreed to continue to
24 abstain from reviewing the documents, we would file the
25 appropriate motions, which happened by September 28th in the

1 case of *Sands China*. It happened in early September in the
2 case of *Las Vegas Sands*.

3 So, to suggest -- and, by the way, as you may
4 know, there was an interim order that said you're not going
5 to look at those documents until we get some further
6 direction from the Supreme Court. And then we had the
7 Advanced Discovery protocol in place by December. To
8 suggest that during that time, from July 8th when we
9 actually knew the extent of the documents, to then suggest
10 there's a wholesale waiver of all the privilege of all
11 those documents, when they agreed never to look at those
12 documents without further order of the Court, and then we
13 have an order imposing a prohibition on them reviewing
14 them, is an absurdity and turns the rules on their head.

15 And if that's the rule, then I assume I can tell
16 Ms. Bulla next time my client gets documents from the
17 opposing party that are privileged, that, by the way, Judge
18 Gonzalez told me I don't have to give those back to you and
19 I can look at them. That is what Mr. Pisanelli is
20 suggesting. And if so, I can't wait to get a case with Mr.
21 Pisanelli where his client's documents are provided to me
22 by my client that include all kinds of privileged
23 documents.

24 Thank you.

25 THE COURT: Thanks, Mr. Jones.

1 Mr. Pisanelli, do you want to wrap up quickly?

2 MR. PISANELLI: Sands China doth protest too much,
3 Your Honor. We hear lots of arguments about the *Merits*
4 [phonetic] decision. The *Merits* [phonetic] decision
5 doesn't have anything to do with this case. The *Merits*
6 [phonetic] decision has to do whether there's lawyer
7 misconduct on not disclosing to the other side what you may
8 have. It doesn't even touch upon the issue of the burdens
9 of the party who claims a privilege to produce evidence
10 about when they knew and what they did to retrieve it.
11 It's completely a red herring that has nothing to do with
12 anything.

13 It's also interesting to point out that in one
14 breath, they say that merits controls this issue, that
15 there was attorney misconduct. I'm not sure if he's saying
16 it was me or Don and Colby, but is he upset that we didn't
17 tell them every document we had? Because I think if I did
18 tell them every document that we had, we necessarily would
19 have had to read those documents and then we'd be hearing a
20 different argument: How dare you read the documents and
21 now we want you disqualified. So the point of it is it's a
22 circular argument that has nothing to do with Sands China.
23 It's Sands China's behavior that is the focus of our
24 motion.

25 And so, I will repeat, I heard a lot of argument.

1 I heard a lot of anger coming from Sands China, but this is
2 what I didn't hear. Where is their evidence about when
3 they knew what Steve Jacobs had? Silence. Where is the
4 even argument -- where is the point to the record of when
5 they came to this courtroom to retrieve it? Silence.

6 Instead, he pointed to you to two motions: A
7 motion in limine, which is not a motion to retrieve their
8 documents, and I think he overlooked a motion for sanctions
9 that Sands China filed against us for alleged -- for using
10 documents that were privileged but they seem to forget, you
11 may remember that motion that there -- it was based upon
12 document that they put in the record attached to their own
13 motion and then tried to have us sanctioned for referencing
14 their motion.

15 So, that's the totality of what they did to
16 protect themselves. No evidence. Nothing to protect
17 themselves.

18 The Supreme Court told us this year, Your Honor,
19 at footnote 9, in this case, the following.

20 THE COURT: Yeah, because only one judge can have
21 two writs issued against her on the same day. Same day.

22 MR. PISANELLI: We direct the District Court to
23 make findings of fact and resolve whether Sands waived
24 any privileges.

25 That's what they told you to do. In order to make

1 findings of fact and resolve whether Sands China waived any
2 privileges, we needed to see Sands China's evidence of when
3 they knew. It never came. All we had was reference to
4 Patty Glaser's argument in this courtroom. We needed to
5 see where it was they came to this courtroom and asked for
6 the documents to be returned. It never happened. There's
7 only one conclusion available. It doesn't matter how
8 loudly you yell, it doesn't matter how angry you get,
9 there's only one conclusion available and that is that they
10 waived.

11 If they think that Colby Williams, or Don
12 Campbell, or me, or Todd Bice, or Debbie Spinelli, or all
13 of us should somehow be sanctioned under the *Merits*
14 [phonetic] decision, then I invite them to file that motion
15 and we'll have that debate at the appropriate time. But
16 whether that happens or not, has nothing to do with whether
17 Sands China protected what they claim to be privileged
18 documents. The clear answer to that question is: No, they
19 did not.

20 THE COURT: And it's your position that in order
21 to protect the documents, they would have had to file
22 something in Nevada which would have caused them to submit
23 to the jurisdiction of Nevada?

24 MR. PISANELLI: I think they had to do something
25 and they did nothing. So I think they needed to come into

1 this courtroom, yes. Would that effort been dispositive as
2 to the personal jurisdiction? I don't know. That's not
3 before us now. It certainly would have been a subject of
4 debate, but they did nothing.

5 Yeah, it's -- and, again, the smartest person on
6 our team, reminds us that in her letter to Don Campbell,
7 Patty Glaser threatened that if I don't get my records
8 back, I'm either coming to Las Vegas or Macau to get them
9 back. They didn't go to Macau. Certainly no argument ever
10 could have been made that by going to Macau to get relief
11 from a Macau Court that they would have been -- subjected
12 themselves to jurisdiction here or waiving some right not
13 to subject themselves here. They didn't do anything. They
14 didn't come to you. They didn't go to Macau. Didn't go
15 anywhere.

16 So it's -- we're left with no evidence of when
17 they knew and what has to be a conceded point that they did
18 nothing.

19 THE COURT: Thank you.

20 MR. PISANELLI: Thank you.

21 THE COURT: I'm going to take this under
22 submission. I need to think about it some more. I'm going
23 to schedule it on October 24th on my chambers calendar for
24 decision.

25 MR. PISANELLI: Thank you.

1 MR. RANDALL JONES: I just point out that the
2 document that Ms. Glaser requested back was the one report
3 that they admitted they had.

4 THE COURT: No, I know what report it is.

5 MR. RANDALL JONES: So if there's any argument of
6 waiver, it's as to a couple of reports, period.

7 THE COURT: Okay. Anything else?

8 MR. PISANELLI: Thank you, Your Honor.

9 THE COURT: Have a nice day.

10 MR. RANDALL JONES: Thank you.

11

12 PROCEEDING CONCLUDED AT 9:25 A.M.

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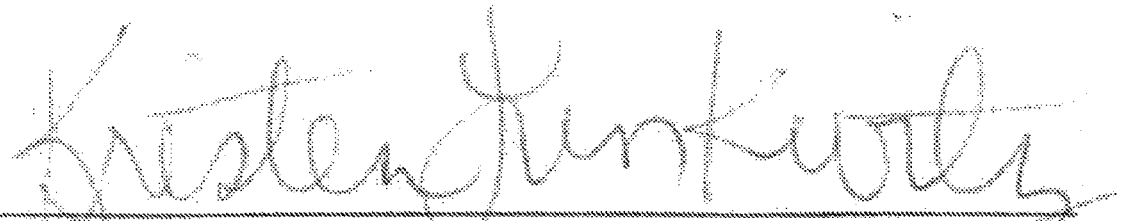
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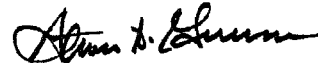
I certify that the foregoing is a correct transcript from the audio-visual recording of the proceedings in the above-entitled matter.

AFFIRMATION

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

A handwritten signature in cursive script, reading "Kristen Lunkwitz", is written over a horizontal line.

KRISTEN LUNKWITZ
INDEPENDENT TRANSCRIBER



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 RECONSIDERATION

TUESDAY, DECEMBER 2, 2014

APPEARANCES:

FOR THE PLAINTIFF:

JAMES J. PISANELLI, ESQ.
TODD BICE, ESQ.
JORDAN SMITH, ESQ.

FOR THE DEFENDANTS:

J. STEPHEN PEEK, ESQ.
JON RANDALL JONES, ESQ.
MARK JONES, ESQ.
STEVE L. MORRIS, ESQ.

COURT RECORDER:

JILL HAWKINS
District Court

TRANSCRIPTION BY:

FLORENCE HOYT
Las Vegas, Nevada 89146

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

1 LAS VEGAS, NEVADA, TUESDAY, DECEMBER 2, 2014, 8:06 A.M.

2 (Court was called to order)

3 THE COURT: Good morning, counsel.

4 MR. BICE: Good morning, Your Honor.

5 MR. PEEK: Good morning, Your Honor.

6 THE COURT: Jacobs versus Sands.

7 (Pause in the proceedings)

8 THE COURT: All right. It's your motion. By the
9 way, the Advanced Discovery site hates me, just so we're
10 clear. That Website, I'll never use it again. And it may be
11 just that I'm old and I don't learn new tricks well.

12 MR. PEEK: Which Website is that, Your Honor?

13 THE COURT: Advanced Discovery.

14 MR. PEEK: Oh. The Advanced Discovery one. Yeah.

15 MR. JONES: Your Honor, you're younger than I am,
16 and so I really try to avoid that. That's why I have very
17 smart young people who understand that stuff.

18 THE COURT: Yeah.

19 MR. JONES: Your Honor, first of all, we appreciate
20 you allowing us a hearing on this matter, as opposed to in
21 chambers.

22 THE COURT: It's an important issue, Mr. Jones.
23 Whether I agree to reconsider or not, it's still an important
24 issue.

25 MR. JONES: And I appreciate that, Your Honor. And

1 I guess it leads me to I guess a point that -- I've practiced
2 before you for many years, and I've been on both sides of
3 cases, and I know I think you have a great appreciation of the
4 discovery process, and I think the point I want to try to make
5 here, hope to make here is that, you know, discovery is very
6 important in litigation, but there are appropriate limits to
7 it. And the reason we're asking you to reconsider just one
8 part of your March 27, 2013, order as it relates to the
9 redactions is because of the current circumstances and whether
10 or not it's appropriate or necessary to essentially order
11 Sands China to produce the remaining unredacted documents --
12 excuse me, the remaining redacted documents in unredacted form
13 in light of the -- what I certainly believe to be a legitimate
14 concern about the laws of China and Macau. And so, not that
15 it's hopefully not clear already, but just to make it
16 abundantly clear, we're asking you to only reconsider that
17 part of your order that requires us to produce the documents
18 that -- the remaining redacted documents in an unredacted
19 form.

20 THE COURT: And those redacted documents that you
21 believe might be affected by the Macau Data Privacy Act.

22 MR. JONES: That's right.

23 THE COURT: Okay.

24 MR. JONES: And I --

25 THE COURT: You've got to say that part on the

1 record.

2 MR. JONES: Yes. And, Judge, just in terms of a
3 history here, you know, this thing has evolved I think beyond
4 anybody's imaginations as to how this whole case has evolved,
5 and when -- and by the way, in terms of the motion for
6 reconsideration I think the Court has acknowledged as it
7 relates to the defamation order that you reconsidered from
8 June of 2011 there was a change in the law from the Supreme
9 Court, and that's what we believe has occurred here. Not just
10 a change in the factual situation, but also the change in the
11 law in terms of this further instruction we have from both the
12 United States Supreme Court, the Supreme Court in the form of
13 the Viega -- the Nevada Supreme Court in the form of the Viega
14 case and the Uponor case, both of which, by the way, I was on
15 the plaintiff's side of.

16 THE COURT: You were on the losing side,
17 unfortunately.

18 MR. JONES: I was. And, ironically, I was on the
19 losing side where we were asking that these documents be
20 produced and that we were asking for discovery, and the
21 Supreme Court told us in light of the Daimler case, no, that's
22 not relevant, you don't get it anymore. And we didn't get to
23 do it. And I'll -- obviously I have a biased perspective,
24 because I was involved in those cases and I know the facts I
25 would presume better than anybody else in this courtroom, but

1 it's my belief that the facts showing the relationship between
2 the foreign entities and the local entities was much stronger
3 to show a connection to Nevada. In the Viega case we actually
4 had a building in the Reno area that they were involved with.
5 Now, of course, the Supreme Court didn't see it that way.
6 That's fine. But the point is that in light of the Daimler
7 case our Nevada Supreme Court has said you have to really look
8 at whether or not this is relevant and it's discoverable from
9 a jurisdictional standpoint of a foreign entity, and they said
10 no.

11 So let's take a look for a moment at what has been
12 produced. So since the order came out in March of 2013 we
13 have produced another I think it's 4100 documents from Macau
14 that are completely unredacted. So those are new documents.
15 This was based upon the expanded custodian search. And then
16 we've got a remaining I think it's 7100 documents that are
17 redacted in some -- I'm sorry, seventy-six nonprivileged
18 documents that have been produced with redactions. So that as
19 far as we're concerned this is based upon the expanded
20 custodial research that you ordered and the order that says we
21 can produce those documents and withhold privileged, but we
22 had to do a privilege log, but we couldn't redact under the
23 MPDPA. So out of a concern for violating foreign law we've --
24 we're ready to produce all this additional information, and
25 we've gone back and we've culled through the duplicates, we've

1 done whatever we can to take documents to Macau and have them
2 looked at by lawyers with the documents produced in the U.S.
3 to see where we can take a document that is redacted in Macau
4 and see if it's also been available in the U.S. Which case we
5 have that duplicate, we have then given it in an unredacted
6 form.

7 So what we're left with, Judge, is we're left
8 with --

9 Oh. And the other important point here is with
10 respect to Mr. Adelson, Mr. Leven, Mr. Goldstein, and Mr. Kay
11 we have gotten the consents from them, because they're
12 obviously senior management people. So we got their consents,
13 so we've been able to give those documents completely
14 unredacted, which, by the way, presumably would be of most
15 concern to the plaintiff, because they really are left with,
16 at least as far as I can see, this nerve center type of an
17 argument, as opposed to some of the other theories. I know
18 they say they haven't abandoned them. That's fine and --

19 THE COURT: I think that's part of the factual
20 analysis, whether you call it the nerve center or not. But
21 it's part of the factual analysis that needs to be made.

22 MR. JONES: And so the point being is that clearly
23 those people they believe to be the most critical witnesses in
24 the case they've identified. And they've taken those
25 depositions, and clearly they hold important positions within

1 the company. And they have been -- their documents have been
2 produced with their names on them unredacted. So they have
3 that information.

4 So what we're left with, Judge, is we're left with
5 essentially documents that have -- that only the name, not the
6 content, as you know, or the subject matter that's been
7 redacted. And we're talking about documents literally that
8 show -- as an example, we want to have documents that talk
9 about board meetings. Well, there's some reference here to
10 the board meeting because these board members have come in and
11 who's going to pick them up to take them -- pick them up from
12 the airport. And we've redacted that name.

13 THE COURT: Mr. Jones, these are business
14 communications. These are not personal privacy issues. If
15 you were talking to me about personal privacy issues that were
16 inadvertently included in business emails, you would have an
17 argument that I would be much more inclined to agree with.
18 And while I understand the government of Macau has their
19 rules, their rules do not operate in Nevada. And a \$5,000
20 fine and a warning after somebody makes a determination to
21 carry all of the data from Macau to Las Vegas Boulevard South
22 here in Las Vegas, Nevada, may be an appropriate determination
23 for the Macau government. But their rules don't operate here.

24 MR. JONES: Judge, I understand that. But here's
25 the dilemma, you know. And I was fascinated when I was

1 watching the case about Pistorius, the guy in South Africa,
2 and I watched how their system worked, and it's --

3 THE COURT: Different than ours.

4 MR. JONES: Very different than ours. But that's
5 their system. And some of it was actually not only confusing
6 to me, but seemed somewhat bizarre from my perspective. In
7 fact, I had an opportunity recently to go over to London with
8 the American College, and they had a mock trial in London. It
9 was fascinating. You know, we all come from the perspective
10 of English common law, and they did a civil trial with English
11 lawyers, barristers, and American lawyers.

12 THE COURT: Did they wear the wigs?

13 MR. JONES: They did. And they had a United States
14 federal judge, and then they had a senior English judge. And
15 the system there, what I thought was identical to ours, was so
16 much different. And so even though we have that connection
17 with England, we still -- our laws are different and they
18 follow different rules. So essentially that's why I believe
19 the Supreme Court has said you have to do a balancing test.

20 THE COURT: That's on sanctions. I have to do a
21 balancing test when I get to sanctions. Right now I'm on
22 discovery.

23 MR. JONES: All right.

24 THE COURT: Your client can make a business decision
25 after weighing the different interests that it has and do what

1 it needs to do. I then someday may be further addressing
2 sanctions issues. Someday. Don't know when it's going to be,
3 because I've got to get documents produced first.

4 MR. JONES: Understood. But let me address your
5 point specifically, then. So what this Court would always
6 have the right to do is to decide what information is relevant
7 and necessary in discovery irrespective of the Macanese
8 privacy laws. So if you look at this -- and this goes to sort
9 of a retailed point where they said, well, you withheld
10 documents, you put together this relevancy list. No, it was
11 not a relevancy list, it was a nonresponsive list. And sort
12 of the no good deed goes unpunished, we went beyond what was
13 required and we produced all relevant documents. What we did
14 not produce -- what we did is we did a list of documents that
15 were not responsive to the 24 requests to produce or had
16 anything to do with those custodians. That what we did --
17 that's what that list was.

18 So we have produced what we believe to be all
19 relevant documents. We have redacted a few of them. So my
20 question to the Court is what is -- and I think the Court does
21 have the right and actually I think it's totally appropriate
22 and necessary to balance the interests of the parties. So,
23 for example, I ask this Court if you're balancing the idea of
24 our client, even though we don't necessarily understand why
25 this privacy law exists -- as you said, well, what difference

1 does it make if you have just the name of somebody. I
2 personally agree with you. I understand your point. Why
3 would that make a difference? But it does make a difference
4 to the Macanese Government. They have said, without that
5 person's express permission you can't produce that
6 information. And so we are faced with this dilemma whether we
7 like it or not, and certainly I know you don't like it, but
8 what's --

9 THE COURT: Doesn't matter whether I like it or not.
10 The issue is if it's a business communication that your client
11 is involved with with someone else, one of your employees is
12 involved, and almost all of these are with your own employees
13 who are communicating among each other. That's not something
14 that I am probably going to recognize as an appropriate
15 exercise of your balancing if we ever get there. If you're
16 talking to me about third parties -- for instance, we had some
17 issues of people who became ill while they were visiting the
18 casinos and investigations related to that. If instead the
19 emails relate to those persons' individual health conditions,
20 as opposed to the government investigation related to that
21 outbreak, I think that is a very wise exercise of a data
22 privacy protection that your client may want to rely upon,
23 because it affects a third party not related to this action.
24 You've got all these employees that are your employees that if
25 you don't want to go get their consent that's okay. You have

1 the ability to get their consent. You can certainly put a
2 little screen on their email every time they sign in that
3 says, I understand that by using the email system I am
4 consenting that my emails are going to not be protected by the
5 Macau Data Privacy Act. You haven't done that. There are
6 lots of ways that your client can deal with this issue from a
7 business perspective. You haven't decided to do it, and
8 that's okay.

9 MR. JONES: Two things, Judge, two points I would
10 make. First of all, the Macanese Government doesn't recognize
11 this discretion, as you suggested. So that unfortunately is
12 not an option to my client. Secondly, the --

13 THE COURT: Your client decided to hand-walk all the
14 data out of the country.

15 MR. JONES: That data has been produced.

16 THE COURT: I understand. But your client decided
17 to make that decision. So it's sort of hard for me to listen
18 and say, gosh, Judge, we have to abide by the Macau Data
19 Privacy Act when you already decided it didn't really apply to
20 you.

21 MR. JONES: Well, actually, Judge, that I think was
22 clearly a mistake by the client, and they paid for that
23 mistake. And here's the other problem, is, you know, you make
24 the mistake once, which they did, and they got admonished for
25 it and fined for it. If they make the mistake twice, it

1 becomes a much more serious concern. And that is the concern
2 that they have had, and that's the concern they've expressed
3 to this Court. So it's not --

4 THE COURT: I understand.

5 MR. JONES: So it's not a hypothetical concern, it's
6 a legitimate concern. You have an actual law in place that
7 says we can't do this.

8 With respect to your other point, first of all, at
9 least for the record I want to make the point that they're VML
10 employees, they're not Sands China employees. But be that as
11 it may, irrespective of any other argument related to that,
12 this is after the fact. We're not talking about issues going
13 forward in the future. So we can't go back and put a note on
14 their computer screen and say, you know, in the past you did
15 this, we want you to know we're going to produce it because
16 we've now been told we have to produce it. We can't go back
17 there. And more importantly, even if we put -- it's my
18 understanding that even if we put such a disclaimer on the
19 computer screen it doesn't matter under Macanese law. That
20 doesn't work. They have to have a certificate that shows
21 they've done it completely voluntarily. And there's this
22 whole issue they have, as is put forth in the brief, of a
23 concern about a coercive effect of an employer saying, look, I
24 want you to do this but I want you to do it voluntarily. And
25 again, whether I agree with it, you agree with it, that is the

1 way it is. So that's the dilemma we're faced with.

2 So getting back --

3 THE COURT: Mr. Jones, most of the documents we're
4 talking about are communications with people here in the
5 United States. They're communications that are going through
6 the Las Vegas Sands servers. It's not like this is all
7 information that is solely housed in Macau. This is
8 information that is being communicated between Macau and Las
9 Vegas. So there's two options. Either we can have Mr. Peek
10 and his client produce it off of the servers or explain to me
11 why it's not there anymore, or your client, who was
12 communicating with people who are not Macanese citizens, can
13 go ahead and produce the information. If you decide you're
14 not, I've got other options, and I can deal with it at a
15 sanctions hearing.

16 MR. JONES: I think that there's a misunderstanding,
17 first of all, a fundamental misunderstanding about the nature
18 of the documents. It's my understanding -- and that's what it
19 says actually in the briefs -- that if we have the documents
20 here in unredacted form, in other words, they already exist in
21 the U.S., then we produce them. That's the point where we've
22 gone and where we have given that information. The documents
23 that I believe that are really at issue are internal documents
24 in Macau, employee to employee in Macau.

25 For instance -- and this is where I think -- Your

1 Honor, I would think you would understand this point, that if
2 you have somebody -- an employee, say a VML employee writing
3 to another VML employee in Macau saying, Mr. Leven is coming
4 into town today for the board meeting, who's going to pick him
5 up, and that's the subject of that email, so they're two
6 Macanese employees -- excuse me, two Macanese residents that
7 work for the company, so it's a company email, but they're
8 simply saying something to the effect that -- which, by the
9 way, they have that information, they have the substance, they
10 just don't have the names, what is the possible relevance to
11 this case on jurisdiction as to why they need that person's
12 name when it -- that's what we're talking about, Judge. For
13 the most part that's what we're talking about. They have the
14 substance. If they could point out to you an email that goes
15 to a substantive jurisdiction issue, not just that says --
16 somewhere in it they're talking about a board meeting, because
17 some of them do talk about board meetings, where's the board
18 going to have lunch, who's going to pick up the board member
19 at the airport, how --

20 THE COURT: Mr. Jones, I would love to be able to
21 say that that category of documents does not need to be
22 produced. But given the information that I went through when
23 I did the original review, not the one when she went back and
24 reviewed the privilege logs and cut a bunch of stuff off,
25 given initial review, I'm not willing to trust them. Now, if

1 you want to submit those for me to do an in-camera review on
2 whether something is relevant to the jurisdictional issues or
3 not, I've got Mondays available to do stuff like that, and I'm
4 happy to. But I'm not going to rely on your client, who's had
5 a history of not being accurate in the disclosures that
6 they've made in the privilege logs, and I'm talking about your
7 predecessor counsel, not you, and I'm not going to rely upon
8 them for that.

9 Now, if what you want me to do is to review them for
10 relevance, I'll review them, I'll get them done. If there's
11 only 7,000 documents, you can get it through it in a day.

12 MR. JONES: Your Honor, I very much appreciate your
13 comment. What we want to try to do is -- and I've said this
14 before and I'm going to say it again, we want to be a
15 transparent as we can with the Court and with opposing
16 counsel. I don't want to be in a position -- I don't ever
17 want to be in a position where the Court feels that my client
18 and I am not producing everything I'm supposed to produce.
19 This is a unique circumstance in my experience in doing this
20 for over 30 years where we have this foreign law that comes
21 into play. And I know it's very troubling to the Court, but I
22 think there is --

23 THE COURT: It's not troubling to me, Mr. Jones. I
24 am aware of the various Data Privacy Acts that exist in Europe.
25 I'm aware of the different Data Privacy Acts that exist in

1 Asia. They are very different. And while I certainly
2 understand the importance to those individual countries of
3 protecting their citizens, this is an issue of jurisdictional
4 discovery as to whether the conduct of your client that
5 occurred between citizens of the United States, activities
6 related to citizens of the United States will subject it to
7 jurisdiction.

8 MR. JONES: And I get that. So getting to your
9 comment, all we want to do is make sure that to the greatest
10 extent possible we can comply with this order -- this Court's
11 order and also comply with Macanese law in a way that gets the
12 other side all information they need for the jurisdictional
13 hearing. And I think that's a fair proposition. And I
14 understand there's been a lot of history and the Court has
15 concerns about the candor of counsel and the client producing
16 this information, but I think things have transpired in the
17 interim that give us a lot more guidance of what we need to do
18 and where we need to go, and I'm asking the Court in
19 reconsideration of the order -- because right now the order is
20 extremely board, it just says, you cannot redact under MPDPA,
21 and we would ask the Court to give us some latitude --

22 THE COURT: But I gave you other abilities to make
23 redactions [inaudible].

24 MR. JONES: And we did. And by the way, we did.
25 And we've gone back and we've unredacted thousands of

1 documents where we found the duplicates, where we found ways
2 to avoid violating the Macanese law and still comply with this
3 Court's order. So we have been trying to do it in good faith
4 and make sure that we don't get our client in trouble with the
5 Macanese Government, but also don't get the client in trouble
6 with you. And that's all we're trying to do, Judge, and we'd
7 just simply like the opportunity to do that.

8 So we would ask if you would reconsider your order
9 to that extent, that we can then -- maybe what we need to do
10 is like you said, if we need to go through and maybe be more
11 specific as to why a particular document is violative of your
12 order and gives the other side all the information they need
13 to have. And if we could have some kind of order like that,
14 that would certainly be helpful.

15 THE COURT: Okay. Thanks.

16 Mr. Pisanelli.

17 MR. PISANELLI: So let's remind ourselves, Your
18 Honor, that these problems that we're hearing about this
19 morning are all of Sands China's making, the fact that they
20 were sanctioned for the call it misbehavior and lack of
21 transparency and really untruths that were brought to your
22 attention, it is now being brushed aside as if we were just
23 having a simple new debate over whether the Macau Data Privacy
24 Act should govern how we conduct our discovery here. The
25 problem was resolved by this Court a long time ago through the

1 sanction that said, you cannot rely upon it anymore, despite
2 that they continue to do so.

3 It's also a problem of Sands China's making --

4 THE COURT: But you understand that I may make a
5 determination someday that redacting a bellman's name from an
6 email may not be enough for a sanction?

7 MR. PISANELLI: All in the balancing test of -- that
8 you're going to do on what the appropriate sanction should be.
9 I understand that. Just -- you made my point, my primary
10 point already, that being that this is -- those balancing
11 factors have to do with what the sanction will be, not whether
12 it's discoverable.

13 We also, you know, can't lose sight of the fact that
14 this problem is also of Sands China's making through this
15 dragging this matter out for several years now by pretending
16 to have nothing to do with Nevada when so much evidence that
17 we accumulate daily by pulling teeth, figuratively anyway, we
18 find more and more contacts, and we're still sitting here now
19 years later waiting for 8,000-some-odd documents to be
20 produced that were ordered to be produced long ago.

21 And so what do we have? The writing's on the wall,
22 right. Your Honor, the reason we're here, and you can see it
23 in their papers, is that Sands China has decided that it will
24 not comply with what you say either for its own business
25 motivations or because it doesn't want a \$5,000 from the Macau

1 Government or because whatever reason they're not going to
2 disclose, and it doesn't really matter, they have made it
3 clear in their papers they are not going to comply.

4 So this motion is an attempt to get you to rewrite
5 the rules. You told us, Judge -- from Sands China's
6 perspective, you told us, Judge, to do not redact for the
7 Macau Data Privacy Act anymore or there will be sanctions,
8 we've done that, we're going to be sanctioned but we're asking
9 you now to reconsider, change the rules so that the sanction
10 will be nothing. That's in essence what we're doing here.
11 And the problem is that they come to you, in our view, with
12 two fundamentally flawed bases for asking you to rewrite the
13 rules of the game and to pretend like the history of this case
14 never happened. The first, of course, is their claim, their
15 self-proclaimed declaration that what we are seeking in these
16 documents are irrelevant because the law has changed. And we
17 heard today a little added supplement on the law changing in
18 both Nevada and at the United States Supreme Court level. We
19 have cited to you, you'll see at page 7, starting with the
20 Daimler decision. The Daimler decision didn't, as Counsel
21 would have this Court believe, say that the agency theory is
22 no longer available and therefore our discovery is no longer
23 relevant. As a matter of fact, the Supreme Court specifically
24 said that it need not pass on invocation of an agency theory
25 in the context of general jurisdiction. So that issue,

1 exactly as you said, is one that will be developed on a
2 factual basis when we get to our jurisdictional hearing. The
3 agency theory, just like the nerve center theory, just like
4 specific jurisdiction are all still very much in play despite
5 what Sands China would hope.

6 Now, on the Uponor side, an unpublished opinion that
7 we've heard about, and I will never pretend even with my
8 limited involvement in the case to know as much about it as
9 Mr. Jones does, so I'm not going to dare spar him on that.
10 But what I do have the benefit of is actually reading the
11 unpublished opinion that cites the Viega case, and it says
12 quite the contrary about whether the law has changed and
13 whether this agency theory is gone. Court said there in
14 Uponor, when characterizing what it did in Viega, that, "We
15 concluded that in order to assert jurisdiction over the
16 foreign parent corporation a parent must do more than show the
17 amount of control typical and a parent-subsubsidiary
18 relationship. Rather, the plaintiff must show that the parent
19 has moved beyond the establishment of general policy and
20 direction for the subsidiary and in effect taken over
21 performance of the subsidiary's day-to-day operations in
22 carrying out that policy." That doesn't sound like an
23 abrogation of an agency theory to me. Sounds like it's a
24 standard that maybe it's a little more heightened, the same
25 way that the Daimler court did in rejecting the less stringent

1 standard of the Ninth Circuit. So to claim that now 8,000
2 documents are irrelevant because we don't have an agency
3 theory anymore, respectfully, is just not the case.

4 And the second flaw of their request to rewrite the
5 rules from you is simply that we don't need it, they said.
6 Peppered throughout this motion is Sands China's declaration
7 that we don't need these documents, we have enough already, go
8 ahead and give your best shot with what we decided to give you
9 through our own filters, through our own different sets of
10 lawyers and the judgment that was imposed on discovery
11 responses that you do have you've got enough. And again,
12 respectfully, that's not for Sands China or its counsel or its
13 chairman or its in-the-house lawyers or any of them on this
14 side of the debate tell us what we need. It's for Your Honor
15 to decide. And Your Honor already decided that going on two
16 years ago, the order that they're now asking you to
17 reconsider.

18 So what do we have left, then? We know that there
19 is no foundation for this request; but what do we have in
20 their papers of what they plan to do? We know, Your Honor,
21 that the order required the production of these documents in
22 March 2013, and we know August of this year the Supreme Court
23 rejected their attempts for a writ to stop the entire process.
24 Now, three months later, we still don't have any documents.
25 But what we do have, you'll see throughout their papers, and

1 let me just quote a sentence or two, because it is most
2 remarkable thing about this debate, is Sands China telling you
3 at page 6 of their motion that, "The documents were redacted
4 to remove all personal information." That's what it says.
5 "Since this Court declined to further extend a stay, SCL has
6 been working to prepare the documents. Those documents were
7 then redacted."

8 They then say on page 8, "SCL is prepared to produce
9 the remaining documents from Macau with personal data
10 redacted." And they even said that the four people that they
11 are congratulating themselves over, who they did get consent
12 from, that they're going to produce their documents, quote,
13 "in largely unredacted form."

14 There's the writing on the wall. They've told you,
15 they've told us that they understand your order but they're
16 not going to comply with it. They went ahead and redacted
17 anyway, and before they give them to us they're asking you to
18 change the rules of the game so that the sanction will be
19 zero, that they end up now going full circle starting with non
20 production, redacting, go through the entire two-year process
21 we did in and out of the Supreme Court only to get to the same
22 exact spot and ask you to say that there will be no
23 consequence for that behavior.

24 They also went even so far to tell us that when you
25 told them to produce the records of 20 custodians -- and we

1 all know, Your Honor's already pointed out, that one way to
2 solve this whole thing is get consents even if they had not
3 been sanctioned for all of the bad behavior that we don't need
4 to rehash, they still could have complied with the law by
5 simply getting consents, and they made the efforts to get
6 four. That's it. Now, they said that it's stringent and you
7 have to be careful on how you deal with employees. Fair
8 enough. True statement. But you notice not a single word --
9 and Counsel will correct me, but not a single word I saw that
10 they tried, that they did anything.

11 THE COURT: Well, the only people they got consents
12 for are people who live here in the Las Vegas area who are
13 U.S. citizens.

14 MR. PISANELLI: Four people who by all measures are
15 in charge of the whole mess. So not a surprise that they
16 didn't bother to do that.

17 They also told us, which was a little confusing to
18 me, they asked for relief not to have to do the relevance log,
19 and then condemn us in their reply by saying how dare we claim
20 that they have to give the relevance log that also was part of
21 Your Honor's order. If there is no relevance log, I guess
22 what they're saying is that every single document at issue
23 goes directly to the issue of jurisdiction. And they're
24 conceding that fact; otherwise we would have had all these
25 documents on some type of log that says that they're merits

1 based.

2 So, Your Honor, we know what's going on here. They
3 said that they won't comply, you told them not to redact, and
4 they redacted. You told them to do what they can to get
5 things produced in a timely manner going all the way back to
6 2013. We now stand here months after the Supreme Court has
7 ruled, still without any documents, still with the same
8 circular arguments that just never seem to get exhausted from
9 Sands China's perspective. They bemoan the fact that this
10 matter has dragged on, but we all know that it's dragged on as
11 an open choice of Sands China. And it's time to put an end to
12 it. There's no reason for reconsideration, there's no change
13 in the law, there's no change in the history of this case, and
14 there certainly hasn't been any change in the behavior of
15 Sands China. They continue to fly by their own rules, and
16 it's time to put an end to it.

17 THE COURT: Thank you.

18 Mr. Jones, anything else?

19 MR. JONES: Yes, Your Honor. First of all I would
20 say that I categorically disagree that we fly by our own
21 rules. That's not what's going on here, Judge. And I'll tell
22 you the other thing that Mr. Pisanelli said, is that he said
23 we won't comply. And that's not the case. We can't comply.
24 And there is a --

25 THE COURT: That's not true, Mr. Jones. The Nevada

1 Supreme Court said if you make a business decision not to
2 comply, which you are perfectly able to do, your client can
3 make that business decision. I am then to make a balancing
4 test and analyze the issues that you were facing in making
5 that decision in order to determine what appropriate sanctions
6 are. So it's not that you can't comply, it's not that you
7 have to follow the Macau rules. Your client has the right to
8 make a business decision. There may be consequences to that
9 business decision, but you've got the right to make the
10 decision. And then if I decide that the reasons for the
11 business decision were very valid and should be honored given
12 the long history of this case, then maybe your sanction will
13 be very minor. But if you don't go forward and do what you
14 need to do, I'm never going to get to that point of going
15 through that balancing test.

16 MR. JONES: Well, and, Judge, I want to also address
17 that point about, you know, my being referred to by Mr.
18 Pisanelli as bemoaning the time its taken. We quoted I think
19 it was Mr. Bice way back when when they said they were going
20 to make these very narrow requests related just to
21 jurisdiction. This has blown all out of proportion. Again,
22 I've never seen anything like this. We produced hundreds of
23 thousands of pages of documents. We are now down to about
24 7600 that have redactions on them of names. They don't have
25 the subject matter redacted, what we're talking about.

1 And I want to make another point. Mr. Pisanelli
2 said the balancing test only relates to sanctions. That's not
3 true. The court order from August of this year says that,
4 "The District Courts have wide discretion to consider foreign
5 policy statutes in deciding whether to limit discovery that is
6 either unduly burdensome or obtainable from other sources."
7 So that relates to discovery, not just to sanction. And
8 that's what we're asking for here.

9 THE COURT: This isn't unduly burdensome. And
10 you're telling me it's not available from other sources.

11 MR. JONES: No. And that's actually what I hope I
12 was trying to make --

13 THE COURT: Because if it's in the servers on Las
14 Vegas Boulevard South, we need to make sure that it's been
15 produced.

16 MR. JONES: They have been. And that's a point I
17 think maybe has been missed by the Court. We're not talking
18 about documents in the U.S. If we have those documents, even
19 if the same document is in Macau that's redacted, we produced
20 it unredacted in the U.S. So they have that. That's where we
21 went and we compared the documents that we had in Macau with
22 what we do already have in the U.S. And if we had it here in
23 unredacted form, we gave -- actually I should say that if we
24 had it here it wasn't redacted, we gave it to them because it
25 was already here. So just so it's clear, Judge, we're only

1 talking about documents that are in Macau that have otherwise
2 not been produced by some other source unredacted. So we have
3 complied. We're only talking about Macanese documents.

4 And with respect to the Daimler issue the point I
5 think is being missed here is -- and I certainly do know what
6 Uponor said. We're talking about an agency theory where --
7 this is their theory, not our theory. Their theory is Las
8 Vegas Sands is the principal -- excuse me, is the agent of its
9 affiliated company. That's completely opposite of what --

10 THE COURT: They're saying it's not a typical
11 parent-subsidary relationship is basically what they're
12 saying. And I don't know what the facts are, because someday
13 I'm going to do a jurisdictional hearing and make that
14 determination as your fact finder. But right now we're doing
15 discovery for the jurisdictional hearing, and I am typically,
16 just like in any other case, going to give them a little more
17 latitude than what I might admit at the hearing. Because the
18 question is is it discoverable for purposes of the
19 jurisdictional hearing. And if your client makes a decision
20 to redact the name of the bellman who was instructed to pick
21 up Mr. Leven to bring him to the board meeting, then I'm
22 probably not going to sanction you for redacting that
23 individual's name.

24 However, if the redactions are more significant and
25 relate to people who are more senior in the operation and who

1 are people who were directly involved in dealing with Las
2 Vegas Sands and delegating work and adopting a shared services
3 agreement, I think we may have a different issue.

4 So if what you're asking me to do is to pre judge
5 and tell you what the answer is to how I'm going to sanction
6 your client if they don't comply with the order, I've given
7 you a little bit of guidance.

8 MR. JONES: And, Judge, really what I was hoping to
9 do is to have you reconsider the fact that the breadth of the
10 order as it is was we thought too board and that in fact under
11 the circumstances of the case as it's evolved with the Nevada
12 Supreme Court decisions in combination with the Daimler case
13 that the information they're seeking now from these emails is
14 essentially what we're talking about is -- will not move their
15 claim forward one iota with respect to jurisdiction.

16 THE COURT: But you're not the one who gets to make
17 that decision.

18 MR. JONES: I understand. I understand. And so
19 we're asking that you balance that information again, since we
20 -- in terms of the burdensome nature of it and the ability to
21 get it from other sources. We've given the information of
22 other sources, and the burden here is in weighing that burden,
23 which we believe the Supreme Court said you do have discretion
24 to deal with at the discovery stage that the burden is
25 minimal, in fact, we don't think it exists all with respect to

1 these documents that are still redacted as to Jacobs, and the
2 burden on our client is substantial because it's not just
3 another \$5,000 fine that Mr. Pisanelli said, well, you're
4 subjecting yourself to. The point is that when you violate a
5 law twice -- and this goes to your point. You know, if we
6 essentially say to Macau at this point, well, the Judge told
7 us we had to do it, they're not going to be sympathetic to
8 that. That's the problem. They're going to say, well, you
9 made that choice and you're going to have to pay the
10 consequences and you're a licensee. And so the burden on my
11 client under these circumstances we believe far outweighs the
12 relative burden to Mr. --

13 THE COURT: Then make that choice and we'll deal
14 with it at the sanctions hearing.

15 MR. JONES: Well, Your Honor, again we would ask you
16 to reconsider your order.

17 THE COURT: The motion to reconsider is denied. But
18 I thought about it.

19 Now let me ask a followup question. I went through
20 and did the in-camera review and the review of the redacted
21 documents in camera. I issued some minute orders, and I asked
22 for some supplemental information. I have three supplemental
23 filings. I want to make sure I have everything you were going
24 to give me or you intend to give me. I have one on Campanina
25 Ferrara, I have one on Captain Sick [phonetic], which is

1 11/10, and then I have another one on Campanina Ferrara,
2 because I didn't realize that you had done one, and another
3 one on the CCKS folks, which was November 18th. Was there any
4 more you intended to give me, or is this it so I can finish up
5 the review?

6 MR. JONES: That's all from us, Your Honor.

7 THE COURT: Okay. Then I'll finish that up.

8 Anything else?

9 MR. JONES: Not today, Your Honor.

10 THE COURT: Have a lovely weekend. Oh. Today's
11 only Tuesday; right?

12 MR. PEEK: Today's only Tuesday, Your Honor.

13 THE PROCEEDING CONCLUDED AT 8:48 A.M.

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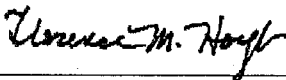
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