

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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District Court Case Number  
A627691-B

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

**VOLUME I  
(PSA2815-3000)**

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## **CERTIFICATE OF SERVICE**

Pursuant to Nev. R. App. P. 25, I certify that I am an employee of MORRIS LAW GROUP; that, in accordance therewith, I caused a copy of the **SUPPLEMENTAL APPENDIX TO PETITION FOR WRIT OF PROHIBITION OR MANDAMUS RE ORDERS DENYING MOTION TO DISQUALIFY JUDGE ELIZABETH GONZALEZ WITHOUT A HEARING – VOLUME I OF I (PSA2815 – 3000)** to be served as indicated below, on the date and to the addressee(s) shown below:

### **VIA HAND DELIVERY**

Chief Judge David Barker  
Eighth Judicial District Court of  
Clark County, Nevada  
Regional Justice Center  
200 Lewis Avenue  
Las Vegas, Nevada 89155

### **Respondent**

### **VIA ELECTRONIC SERVICE**

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DATED this 7th day of March, 2016

By: /s/Fiona Ingalls

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

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ORIGINAL

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

TRAN

DISTRICT COURT  
CLARK COUNTY, NEVADA  
\*\*\*\*\*

FEB 10 2015

STEVEN JACOBS

Plaintiff

vs.

LAS VEGAS SANDS CORP., et al..

Defendants

BY   
DULCE MARIE ROMEA, DEPUTY

CASE NO. A-627691

DEPT. NO. XI

Transcript of  
Proceedings

BEFORE THE HONORABLE ELIZABETH GONZALEZ, DISTRICT COURT JUDGE

EVIDENTIARY HEARING RE MOTION FOR SANCTIONS

MONDAY, FEBRUARY 9, 2015

A-10-827691-B  
TRANS  
Transcript of Proceedings  
4432747



APPEARANCES:

FOR THE PLAINTIFF:

JAMES J. PISANELLI, ESQ.  
TODD BICE, ESQ.  
DEBRA L. SPINELLI, ESQ.  
JORDAN T. SMITH, ESQ.

FOR THE DEFENDANTS:

J. STEPHEN PEEK, ESQ.  
JON RANDALL JONES, ESQ.  
MARK JONES, ESQ.  
IAN P. MCGINN, 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, MONDAY, FEBRUARY 9, 2015, 11:15 A.M.

2 (Court was called to order)

3 THE COURT: Is it possible to start?

4 MR. BICE: I think so.

5 MR. RANDALL JONES: Your Honor, certainly I think we  
6 ought to proceed.

7 THE COURT: Great. Does anybody feel, given the  
8 briefs you filed that I've read, that an opening statement  
9 needs to be made?

10 MR. RANDALL JONES: I'm sorry?

11 MR. PEEK: I didn't catch that.

12 THE COURT: Since you filed briefs which I read  
13 already, does anybody think you need to make an opening  
14 statement?

15 MR. RANDALL JONES: Your Honor, well, I guess I  
16 would start by saying this. I don't know if the Court has  
17 seen the briefs that have been filed this morning. There have  
18 been several briefs filed this morning, but --

19 THE COURT: I read the briefs that were filed on the  
20 break between my criminal calendar and you guys setting up.

21 MR. RANDALL JONES: As you can imagine, we have not  
22 had an opportunity to respond to those briefs, and I don't  
23 know if the Court intends to consider them. But under the  
24 circumstances there are several reasons why we believe that  
25 the supplemental designations are inappropriate under the

1 circumstances and the arguments and authority they cite in  
2 their brief should not be considered by the Court. So I  
3 wanted to at least broach that subject with the Court, see how  
4 the Court intends to deal with that.

5 THE COURT: Which particular supplemental  
6 designation are you challenging?

7 MR. RANDALL JONES: Well, they've now designated  
8 portions of transcripts of Mr. Leven's depositions, two  
9 volumes, and Mr. Goldstein's depositions, which were a part of  
10 your order at the calendar call about designation of  
11 testimony. That's certainly --

12 THE COURT: But the witnesses are now unavailable;  
13 right? Isn't that what we decided on Friday?

14 MR. RANDALL JONES: Sure. But you told us, both  
15 sides, if we wanted to designate portions of transcripts we  
16 should have done it beforehand so there could be  
17 counterdesignations. I haven't had an opportunity to do that.

18 Now, Mr. Bice even told you last week that he  
19 intended to use Mr. Leven's deposition, since he was unable to  
20 subpoena him.

21 THE COURT: On Friday.

22 MR. RANDALL JONES: He did. And so he could have  
23 and should have told us he was going to provide designations  
24 then, as opposed to this morning. At a minimum, even though  
25 it's a violation of your order, not have done it sooner. So

1 --

2 THE COURT: Well, but if he wanted to call Mr. Leven  
3 live and as a result of motion practice he's not able to,  
4 don't you think he should be able to call him by deposition?

5 MR. RANDALL JONES: No, Your Honor. In fact, it was  
6 not as a result of motion practice --

7 THE COURT: The objection is overruled. Next?

8 MR. RANDALL JONES: Can I at least make my record?

9 THE COURT: Sure. Your Honor, it was not as a  
10 result of motion practice that Mr. Leven was not allowed to be  
11 called. It was because of his failure to subpoena Mr. Leven  
12 properly prior to the evidentiary hearing where we pointed out  
13 to him and to the Court they had at least six months outside  
14 of the stay period -- I think the actual time frame is eight  
15 months -- to attempted to have noticed his deposition for the  
16 specific purpose of this hearing if they didn't think they got  
17 enough out of the first two volumes. So we believe that it  
18 had nothing to do with motion practice as to why they couldn't  
19 have properly taken a deposition or otherwise called Mr. Leven  
20 for this hearing.

21 So, Your Honor, we do believe that is an unfair  
22 advantage that they have over us to not even be allowed to  
23 have the opportunity to make counterdesignations or even  
24 decide whether or not we want to make counterdesignations.

25 THE COURT: Well, you can still make

1 counterdesignations. I'm not going to preclude you from doing  
2 that. Okay. Anything else on that issue, since I've already  
3 ruled?

4 So are there any of the exhibits that are numbered 1  
5 through 214 that you have an objection to?

6 MR. RANDALL JONES: Your Honor, I think Mr. Mark  
7 Jones has an issue.

8 MR. MARK JONES: We do, Your Honor. And we had  
9 planned on seeing what they offered, Your Honor, and then  
10 objecting at that time.

11 THE COURT: Let me ask my question differently, Mr.  
12 Jones. Are there any exhibits 1 through 214 that you  
13 stipulate to?

14 MR. MARK JONES: No, Your Honor.

15 THE COURT: Okay. Mr. Bice, are there any of the  
16 exhibits that are numbered 301 through 350 that you stipulate  
17 to?

18 MR. BICE: Your Honor, the answer to your question  
19 is we -- under the rule you have 14 days to note your  
20 objections and to serve your list of objections. We did that,  
21 and my apology is I can't remember if there were any that we  
22 did not. I'm looking at that issue really quickly. Mr.  
23 Pisanelli obviously has one related to several of their  
24 documents relating to the --

25 THE COURT: I'm just on a stipulation.



1 MR. BICE: Yes.

2 THE COURT: I'm not on objections. Because I know  
3 there are some you'll get to. I just want to know if there  
4 are any you stipulate to. And if either of you stipulate to  
5 any of the other's exhibits, that's okay. I just want to make  
6 sure that's on the record.

7 MR. BICE: Yes. And I know that we -- I know that  
8 there are some that we would, Your Honor. I just don't -- oh.  
9 I apologize, Your Honor. Perhaps if I let Mr. Smith do this  
10 and not myself we could answer your questions.

11 THE COURT: All right. It doesn't matter who on the  
12 team answers my question. I called on you because you were  
13 standing up.

14 MR. BICE: We do not to Number 19, 20, 21, or 22.

15 THE COURT: 319, 320, 321, and 322?

16 MR. BICE: That is correct, Your Honor.

17 MR. RANDALL JONES: I'm sorry. Could you repeat  
18 those again, please.

19 THE COURT: 319 through 322.

20 MR. BICE: We would also stipulate actually --

21 THE COURT: 319 through 322 are admitted.

22 (Defendants' Exhibits 319 through 322 admitted)

23 MR. BICE: We which actually stipulate to everything  
24 from Number 1 to Number 18, Your Honor.

25 THE COURT: 1 through 18 will be admitted. And

1 these are 301 through 318, Dulce.

2 MR. BICE: That is correct, Your Honor.

3 (Defendants' Exhibits 301 through 318 admitted)

4 THE COURT: So that means we're all the way up to  
5 322 is admitted by stipulation.

6 MR. BICE: I believe that is it, Your Honor.

7 THE COURT: Thank you.

8 All right. Since I had an opportunity to read the  
9 very thorough briefs in support of the evidentiary hearing  
10 that you submitted, does anybody think they want to make an  
11 opening statement?

12 MR. PISANELLI: Your Honor, before we got to the  
13 opening statements, I know you started the question, but  
14 seemed to modify it on objections. You know, we have an  
15 objection --

16 THE COURT: I know, because I read your brief.

17 MR. PISANELLI: We don't have a brief on it. That's  
18 why I want to know --

19 THE COURT: I read their brief. Do you want to say  
20 anything about the Wynn documents?

21 MR. PISANELLI: Sure. I'm going to do my best not  
22 to be completely repetitive, but we have --

23 THE COURT: The Wynn documents being Exhibit 350,  
24 Proposed 350.

25 MR. PISANELLI: Right. You know, I read this brief

1 this morning, Your Honor, and if I didn't know better --  
2 actually, if anyone in this court didn't know better in this  
3 case, you would think that we are here because the defendants  
4 were sanctioned for asserting the Macau Data Privacy Act as an  
5 objection, and therefore they say, well, the Wynn asserted  
6 that objection allegedly in some discovery response. I'm  
7 still waiting to hear who they think is going to be laying the  
8 foundation for this document. But set that issue aside. Your  
9 Honor pointed out to the defendants this isn't about the  
10 assertion of the defense, that's not why we're here; we're  
11 here because the defendants were sanctioned. They were  
12 sanctioned for their deception, they were sanctioned for lying  
13 to you, and then, after we had a full evidentiary hearing,  
14 when defense counsel and employees of the company came up and  
15 tried to explain to you what rationale they had for lying to  
16 you, for lying to us as counsel, and derailing, I should say,  
17 this lawsuit for long, Your Honor took all evidence into  
18 consideration, and you entered an order. You know this. We  
19 all know this. And the order said, one of the sanctions is  
20 you are no longer entitled to assert this objection to  
21 discovery.

22           What did they do? They said, well, we're going to  
23 do it anyway; and we're going to now present evidence to you  
24 about thousands of upon thousands of documents that they  
25 redacted in violation of your order. That's why we're here,

1 not because they asserted the objection, but because they  
2 violated your order telling them don't assert the objection.

3           So what possibly parallel can there be, then, where  
4 you have Wynn on the one hand, who is just at the beginning of  
5 the discovery process, who was real transparent in they  
6 they've been doing, even came to Your Honor to explain how  
7 they were farming their electronic discovery, keeping  
8 everything out in the open.

9           THE COURT: You did it by method of a protective  
10 order, though, as opposed to something else.

11           MR. PISANELLI: Sure.

12           THE COURT: Okay.

13           MR. PISANELLI: As opposed to deception, which these  
14 defendants did. But point is we will wrestle with our  
15 document production -- or the Wynn will, I should say, and if  
16 Mr. Okada and his team don't like those objections or they're  
17 not asserting them themselves from either Macau or Japan or  
18 somewhere else, then all the parties will come before you and  
19 we'll have an analysis and a debate of what to do about it.

20           What has not happened in Wynn is that Wynn didn't  
21 lie to you, Wynn's lawyers didn't lie to you, Wynn didn't  
22 create a deception, Wynn derail the entire lawsuit in order to  
23 hide documents or to gain an unfair advantage, all of which  
24 happened in this case. That's a very big difference. And  
25 therefore, because Wynn does not have anything in that case

1 against Okada that remotely resembles the misconduct that  
2 brings us here today, there cannot possibly be any good-faith  
3 reliance or even analogy that can be drawn from the fact that  
4 in an initial response to discovery Wynn asserted an  
5 objection. As I told you before, Ms. Spinelli signed them. I  
6 haven't even read them for purposes of this debate, because  
7 they have nothing to do with this debate.

8           So I thought they heard your message, I thought they  
9 knew that they'd been called out that this was gamesmanship.  
10 Whether it's an attempt to, you know, stick it to me and Mr.  
11 Bice, that type of game seems to be what's going on, because  
12 this group of intelligent lawyers cannot honestly believe nor  
13 can they say with a straight face to you that there is any  
14 parallel whatsoever to the conduct that they have engaged in  
15 which brings us here versus the discovery that's occurred in  
16 the very beginning stages of the Wynn-Okada case.

17           And so we'd ask that you put an end to this game and  
18 strike Exhibit 350.

19           THE COURT: Mr. Jones.

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

21           THE COURT: And I did read the brief.

22           MR. RANDALL JONES: Mr. Pisanelli brought up one  
23 point that I -- and I understand why he's doing it  
24 strategically. He wants to go back and rehash the hearing  
25 back in September of 2012. And I do think it's imperative to

1 point out to the Court, because I think even the Court made a  
2 comment that I just believe -- and I was not at those hearing,  
3 and so I can only talk about what I know from reading  
4 transcripts and looking at documents. But Mr. Pisanelli made  
5 a comment which I cannot let lie about my client and/or Las  
6 Vegas Sands being sanctioned for lying to the Court and being  
7 sanctioned for deception, I think are the two ways he phrased  
8 it. And it's imperative that I point out to the Court that  
9 there's no evidence, there is no evidence that I could find in  
10 the record that either Las Vegas or Sands China ever testified  
11 in that hearing. And so there could be no evidence that the  
12 companies themselves --

13 THE COURT: Who was the guy from IT who testified?  
14 What was his name? I know he's not there anymore. But he  
15 testified about what happened.

16 MR. RANDALL JONES: He testified about what  
17 happened, Your Honor. But there's no evidence that the  
18 company lied -- there's no evidence the company itself lied to  
19 this Court.

20 THE COURT: Well, but the company can act only  
21 through its agents, employees, and attorneys; right?

22 MR. RANDALL JONES: Well, that's what I'm talking  
23 about. But I don't believe --

24 THE COURT: And I had plenty of agents, employees,  
25 and attorneys testify.

1 MR. RANDALL JONES: You had testimony I know of  
2 attorneys. Absolutely. I do know --

3 THE COURT: I had testimony from IT folks.

4 MR. RANDALL JONES: And all I could tell you, Your  
5 Honor, is based on my reading of the documents there's no  
6 evidence the company itself, either my client or Las Vegas  
7 Sands, actually lied to this Court. But, be that as it may,  
8 be that as it may --

9 THE COURT: I'm sorry. That's what my finding was,  
10 I guess. So maybe you disagree with the factual analysis that  
11 I went through after the evidentiary hearing.

12 MR. RANDALL JONES: I do, Your Honor.

13 THE COURT: Because that was my finding.

14 MR. RANDALL JONES: I understand your finding, and I  
15 do disagree with the factual analysis of that finding.

16 THE COURT: Okay.

17 MR. RANDALL JONES: But, be that as it may, getting  
18 back to the Okada brief -- and, again, I understand why Mr.  
19 Pisanelli is doing this. He points out, as this Court pointed  
20 out last week, that there is a difference, a significant  
21 difference in his view, and it sounded like from your comments  
22 last week, your view about the fact that there was an order  
23 issued in this case with respect to the redactions. The  
24 entirely misses the point of why we believe that the Okada  
25 objections -- excuse me, the Wynn objections in the Okada case

1 are relevant to this case. They are relevant for many, many  
2 reasons. They are relate to demonstrate to this Court that  
3 counsel in this case who were seeking sanctions against my  
4 client understand the significance and seriousness of that law  
5 and have felt compelled, obviously by the document that they  
6 have submitted in response to discovery requests, to object  
7 about producing information in violation of that law. And the  
8 analogies are very, very, very close.

9 THE COURT: They think that law is so important that  
10 they hand-carried the information out of Macau and didn't tell  
11 anybody, me, for a long time that it was down on Las Vegas  
12 Boulevard South being reviewed by attorneys.

13 MR. RANDALL JONES: Well, that I understood was an  
14 incident that occurred in September -- or it was heard in  
15 September --

16 THE COURT: Well, I know. But if they think the  
17 Macau Data Privacy Act is so important, you would think they  
18 wouldn't have hand-carried all the information out of the  
19 country, apparently in violation of Macau law, stored it on  
20 Las Vegas Boulevard South, and made it available for people to  
21 review and use.

22 MR. RANDALL JONES: Well, Your Honor, it's  
23 interesting that you bring that point up, because that's where  
24 the analogy is even more appropriate in this case. Because  
25 apparently Mr. Wynn felt the same thing. Although he didn't



1 do it in this litigation, they did it where they took  
2 information out of Macau and they published it outside of  
3 Macau, and they were sanctioned for it. And so I would submit  
4 to the Court that it's quite obvious what happened.

5 From my perspective information was taken out of  
6 Macau improperly, as determined by the OPDP. Now, my client  
7 -- a mistake was made. Clearly a mistake was made by Mr. Bice  
8 and Pisanelli's client, Mr. Wynn, or the Wynn Hotels in the  
9 same vein. And they paid for that mistake. Both companies  
10 paid for that mistake, were sanctioned and told, you can't do  
11 this.

12 THE COURT: By Macau.

13 MR. RANDALL JONES: By Macau, that's right. And so  
14 the point is that both companies have had their one mistake,  
15 if you will. They've had their one strike. And both these  
16 companies that are doing business in this jurisdiction have  
17 apparently felt compelled to say to, in one case this Court  
18 and in the other case to Mr. Okada, that, we can't give you  
19 that information because we are -- if it was ever unclear to  
20 us before, it is now abundantly clear we cannot take this kind  
21 of information out. And I would submit there's a distinct  
22 difference, as well, here where my client has provided this  
23 Court with evidence that they have gone back to the Macanese  
24 Government and asked repeatedly for the ability to take  
25 information out after they had made the one mistake where they

1 got sanctioned for it and have been told repeatedly, no, you  
2 cannot.

3           So the relevance of the Okada discovery responses is  
4 precisely this. You have a company that has already been  
5 sanctioned once for what appears to be an inadvertent  
6 violation of the MPDPA, the Wynn companies in Macau, who is  
7 now in litigation in the Eighth Judicial District Court,  
8 ironically, before this very Judge, ironically, represented by  
9 Mr. Pisanelli and Mr. Bice, who is asserting the same law to  
10 protect a further violation by the Wynn Resorts of Macanese  
11 law.

12           We have my client, who has now done the same thing.  
13 The relevance, Your Honor, is to show that my clients are not  
14 acting in bad faith. If it's bad faith, Your Honor, then by  
15 definition it has to be bad faith for Mr. Pisanelli and Mr.  
16 Bice to assert that objection based upon what you've ruled in  
17 this case. If the law, as they have contended to you  
18 repeatedly, is insignificant as Mr. Bice got up and told you  
19 on Friday, this law is violated every day by Sands China,  
20 which, by the way, I believe is absolutely incorrect. But  
21 he's told you that my client really doesn't care about this  
22 law, they're only using it as a sword and a shield. First of  
23 all, there's no evidence of that whatsoever; and, secondly, it  
24 shows that he is suggesting to you this law has no teeth and  
25 is not of any significance while at the same time as asserting

1 it as an objection to appropriate discovery in another case  
2 before you under the same rules of discovery.

3           So we believe it absolutely goes to the good faith  
4 of my client in demonstrating this law is an appropriate and  
5 significant law for these companies in Macau that are doing  
6 business that they must follow. It shows that it's relevant  
7 to determine what, if any, sanction this Court thinks is  
8 appropriate if Mr. Pisanelli and Mr. Bice's client assert the  
9 same privilege -- excuse me, the same law as a barrier to  
10 their production of documents. The only difference, Your  
11 Honor, here is timing. The only difference is timing. And we  
12 think that's a factor and an issue that is relevant for this  
13 Court's consideration. And I understand the Court can  
14 consider the differences in the two situations where there is  
15 an order in place here about redactions and there's not in the  
16 Okada case yet. That's one factor the Court can into account  
17 when it makes its ruling as to how significant the objections  
18 are in the Okada case.

19           My point to you is it is clearly relevant. And I  
20 don't see how anybody who's ever been to an evidence class in  
21 law school could ever suggest that it's not relevant. The  
22 weight that this Court gives it is a different issue. But it  
23 is clearly relevant to your inquiry today. We think that the  
24 corollaries here are almost perfect, it's about as close as  
25 you can get, and that it's a factor that this Court and we

1 believe that the Supreme Court should take into account if  
2 this matter -- depending on how this matter comes up and  
3 whether either party thinks it's appropriate to appeal any  
4 decision made by this Court on the subject.

5           So, Your Honor, we think the Court should consider  
6 it, we think it's an important factor, one important factor  
7 for this Court to take into account in deciding my client's  
8 good faith in asserting this law that it is bound to honor in  
9 the jurisdiction where it does business, and the Court can  
10 give it as much weight after it considers it as it deems  
11 appropriate as a part of your overall consideration of the  
12 evidence in this case.

13           THE COURT: Thank you.

14           The objection on relevance is overruled. That does  
15 not mean the document will be admitted.

16           Anything else? Would anyone like to call a witness?

17           MR. RANDALL JONES: Your Honor, one brief issue.  
18 Well, I guess this brings up a question. They have filed a  
19 motion saying that my client has the burden under the  
20 circumstances. As you know, Mr. Raphaelson -- we had --

21           THE COURT: They have the burden of showing  
22 prejudice to them by your violation, and then you have the  
23 burden of showing what the other balancing characteristics  
24 are.

25           MR. RANDALL JONES: All right.

1           THE COURT: So there are multiple burdens here. I  
2 don't care who goes first.

3           MR. RANDALL JONES: All right. With that said, Your  
4 Honor, I also want to talk about the declaration of Mr:  
5 Fleming. We talked to you about that last week. I have --

6           THE COURT: I received an objection to the affidavit  
7 -- declaration.

8           MR. RANDALL JONES: Yeah. Your Honor, just so it's  
9 clear, we have not submitted -- we just have this declaration.  
10 We talked about this on Friday. I have not submitted it to  
11 the Court yet. I would like to have it submitted and marked  
12 as an exhibit.

13          THE COURT: Do you want to mark it as Proposed 351?

14          MR. RANDALL JONES: I do.

15          THE COURT: Sure.

16          MR. RANDALL JONES: Thank you.

17          MR. PISANELLI: Your Honor, could we have a  
18 clarification? Is this a new one we haven't seen, or the old  
19 one?

20          THE COURT: I have no idea. It's a proposed  
21 exhibit. It's going to be part of the record for somebody in  
22 Carson City to look at someday.

23          MR. PEEK: It's new, gentlemen.

24          MR. RANDALL JONES: For everybody's edification,  
25 although I thought I made it clear last week that I would get

1 a declaration, Your Honor, as we discussed, I made some  
2 representations to this Court as an officer of the court as to  
3 what I believe Mr. Fleming knew about the specific issue that  
4 you had raised about who made an express decision about the  
5 decision to redact documents. And as a result of those  
6 discussions, we have recovered or received a declaration from  
7 Mr. Fleming related to that issue. It goes directly to the  
8 issue that this Court raised about who made the decision. And  
9 that's why we were able to secure it for the Court.

10 THE COURT: Okay. Well, it's a proposed exhibit.  
11 Sometime you may offer it. You know there's been a challenge  
12 to it, so you just need to understand that when there is an  
13 objection to a declaration or affidavit it is unusual for me  
14 to admit it in evidence. I'm not saying I won't. I might  
15 give you an opportunity to tell me why, but it is unusual.  
16 Okay.

17 MR. BICE: Your Honor, just one other procedural  
18 point. We had submitted to you later on Friday some  
19 supplemental affidavits of service on witnesses, and we also  
20 have our process server here in the courtroom, Your Honor. He  
21 went to the hotel -- to the Las Vegas Sands offices after the  
22 hearing on Friday and attempted to serve, and he was told that  
23 if he did not leave he would be trespassed. And that is set  
24 forth in his declaration. He attempted to serve Mr. Adelson  
25 again, Mr. Goldstein, and -- my apologies. Well, no, not Mr.

1 Leven, because we've now been told Mr. Leven was out of the  
2 country. And Mr. Rubenstein. Our point being, Your Honor, is  
3 he's here. In light of what you had said on Friday, we didn't  
4 know if you would want him. He has provided supplemental  
5 declarations concerning what transpired on the service.

6 THE COURT: So, Mr. Peek, can you tell me why the  
7 process server couldn't go to the executive office for the  
8 receptionist to either say they were there or weren't there or  
9 whatever. Because, unlike most employer situations, here the  
10 employer is one of the parties in the litigation.

11 MR. PEEK: I can, Your Honor. And I actually have  
12 for you a brief. I didn't know whether they were going to  
13 file a supplemental brief, but in anticipation of this issue  
14 in light of the affidavits I have at least a brief which I  
15 have prepared which has affidavits from those who were in  
16 contact with the --

17 THE COURT: Could I have a copy of the brief.

18 MR. PEEK: I'm going to --

19 THE COURT: Are you going to file it in open court?

20 MR. PEEK: I am going to file it in open court. And  
21 here is your copy, Your Honor.

22 THE COURT: Thank you. Dulce wants the original.

23 MR. PEEK: I'm going to give those to her.

24 MR. PISANELLI: We've yet to see this brief, Your  
25 Honor. Can we get a copy, please?

1 THE COURT: He's handing it to you right now, Mr.  
2 Pisanelli. You've got to give him a second to turn around.

3 MR. PISANELLI: I can see a pattern here of  
4 surprising --

5 THE COURT: Gentlemen.

6 MR. PISANELLI: -- with one document after another.

7 THE COURT: Do I have to have a break for you guys  
8 to remember that we're all adults and we're going to conduct  
9 ourselves professionally and not argue amongst ourselves?

10 Mr. Peek.

11 MR. PEEK: Thank you, Your Honor. And so, Your  
12 Honor, I certainly welcome to have their process server come  
13 up and testify. But, as you will see from the affidavits, the  
14 process server did not go to that security podium outside of  
15 the executive offices where he would have been met with a  
16 security officer and where he would have at least had the  
17 opportunity for that security officer to call upstairs and  
18 find out whether or not those individuals were or were not in  
19 the office and whether or not they could or could not go up  
20 there to serve if they were there.

21 So what we have is an individual who went to a  
22 security podium outside of the cashiers' cage and demanded to  
23 be led up into the executive offices in order to serve papers.  
24 He was asked, as we can see from the affidavits, first of all  
25 who he was, who he represented, and who he wanted to see, and



1 it took quite a bit of time for the security officers and the  
2 supervisor to get the information from the individual, who  
3 didn't give his correct name, didn't give who he represented,  
4 was not going to show the papers that he had to the security  
5 officers, and he was told that this was inappropriate, that he  
6 just needed to work through legal and that he could certainly  
7 make that -- you know, talk to somebody in legal.

8 THE COURT: But legal is in the corporate offices;  
9 right?

10 MR. PEEK: Legal is both in the corporate offices,  
11 as well as in the Howard Hughes Center. It is in two places,  
12 Your Honor. So when you say "legal" for -- is Mr.  
13 Raphaelson's office there and Mr. Rubenstein's office there  
14 named Ms. Hyman's office there? Yes. But, Your Honor, as you  
15 can see from the papers that we have filed, we have a  
16 completely different story of what transpired. That's part  
17 one.

18 Part two is not one of those individuals that they  
19 attempted to serve was even in the corporate office. As we  
20 know, Mr. Adelson was out of the country, Mr. Rubenstein was  
21 not in his office, Mr. Leven was not there, and Mr. Goldstein  
22 was not there. So none of them were even in their office. So  
23 this is not something where somebody attempting to evade  
24 service. This is just game to try to use what the Court was  
25 suggesting to them as an opportunity for them to now do

1 substitute service. So I want to address the substitute  
2 service.

3 THE COURT: Are you telling me that after our  
4 discussion on Friday where I said it would be important for  
5 someone trying to serve an employee who's in the course and  
6 scope of their employment and going to testify in the course  
7 and scope of their employment, and I'm talking to you as the  
8 legal representative of the Sands, that the security officer  
9 tells him he has to go to legal?

10 MR. PEEK: Your Honor, what I can tell you without  
11 getting into the attorney-client communication and --

12 THE COURT: I don't want to know the attorney-  
13 client --

14 MR. PEEK: Let me finish, Your Honor, as opposed to  
15 -- without getting into that, is I made an effort to make sure  
16 that those individuals at the podium in front of the executive  
17 offices were instructed when approached, those individuals at  
18 that podium, when instructed -- when approached were  
19 instructed to call upstairs to find out if the individuals  
20 were available and to tell those process server whether or not  
21 they were available. That was the effort that we went  
22 through, Your Honor, in compliance with the Court's direction  
23 so as to avoid this issue. I didn't, however, or apparently a  
24 message was not sent to the entire staff of the security  
25 group, the message was sent to that individual who was

1 standing outside of the executive offices in that podium right  
2 in front of the executive offices. They chose to go to a  
3 different podium.

4 THE COURT: Well, how do they know what podium to go  
5 to?

6 MR. PEEK: I don't know, Your Honor, whether they do  
7 or not know which one to go to. But I certainly -- if you  
8 walk into the -- Your Honor, please, let me -- let me --

9 THE COURT: I'm listening.

10 MR. PEEK: I know. But you're shaking your head  
11 negatively --

12 THE COURT: I am.

13 MR. PEEK: -- as though you're not listening to what  
14 I'm trying to say.

15 THE COURT: No, I'm listening to you.

16 MR. PEEK: Because if you know where the --

17 THE COURT: I'm shaking my head in frustration, Mr.  
18 Peek, not because I'm not listening to you. I am listening to  
19 you. I'm concerned.

20 MR. PEEK: Okay. I understand that you're  
21 concerned. But there is a podium right outside the executive  
22 offices, as opposed to a general security podium where they  
23 went outside of the cashier cage. So if you walk into the  
24 Venetian, you walk into that front door by the hotel and you  
25 turn left and you go down that hallway, you will come to a

1 security podium on your left-hand side right in front of the  
2 executive offices. Now, are they marked? No. If you go to  
3 any casino in late Las Vegas, you're not going to see  
4 something that says "Executive Offices." You know that as  
5 well as I do.

6 THE COURT: That's why I asked you the question.

7 MR. PEEK: But at least here, given this has a five-  
8 year history, given that they have a client, Jacobs, who  
9 claims to have been an employee of Las Vegas Sands, who  
10 certainly from time to time was in the executive offices,  
11 because he claims to have been, he would certainly know and  
12 tell them where to go. So there are ways to find out. That  
13 individual, Mark, could have said, well, where is the security  
14 office -- security officer for the corporate offices, and been  
15 directed over there. Because I made that effort, Your Honor,  
16 to make sure that that security officer would call upstairs to  
17 find out whether or not any one of the individuals was in the  
18 office so that there would be not any inference drawn here as  
19 the Court and the counsel wants the Court to do of some  
20 adverse inference that there was an effort to evade service.

21 And I want to get substantively, actually, to that  
22 argument, because you'll see that outlined in our brief.  
23 Because I know what the Court has said. The Court has said,  
24 one, I have 14.090 and I have the inherent power. And I  
25 looked at both of those as a way for me to adopt a substitute

1 service.

2           So let's look at 14.090. 14.090 is specific and  
3 specific to a residential property where there is a guard-  
4 gated community, specific to residential. It doesn't talk  
5 about offices, it doesn't talk about commercial, it doesn't  
6 talk about if I go to the law offices of Holland & Hart and  
7 I'm not allowed to go beyond the reception area and serve Mr.  
8 Peek generally or somebody else. It doesn't address those  
9 kinds of issues. None of those are addressed.

10           What the Court is now being asked to do and what the  
11 Court was even suggesting to us on Friday is it wants to graft  
12 onto that 14.090 another rule that the legislature did not  
13 adopt and apply that rule to a situation such as this, which  
14 is commercial and which is nonresidential and analogize a  
15 security officer as though it is the guard in front of the  
16 community. So we have that.

17           And then we look, also, Your Honor, at those cases  
18 as to whether or not the Court has inherent power to use some  
19 form of substituted service, and we've cited the Court to the  
20 federal cases that say you have to serve personally, we have  
21 cited the Court to at least the one Nevada case, which has  
22 said you have to serve personally. So you're now trying to  
23 say, okay, I'm going to put into this case a new rule because  
24 based upon what is being claimed by the other side is that  
25 there is an effort to evade service. Mr. Goldstein has a

1 home. Mr. Goldstein, they could have waited outside of the  
2 corporate offices, in the parking lot, they could have gone  
3 some place to try to serve him, as opposed to the gamesmanship  
4 here. Same thing with Ms. Hyman, same thing with Mr.  
5 Rubenstein. None of them, however, were even there. So there  
6 is not something where they are being denied access to people  
7 who are there. None of them were theory. Mr. Goldstein was  
8 out of the country. Mr. Rubenstein didn't arrive back in the  
9 country until 6:00 o'clock in the evening on Friday. So what  
10 we have here is just an effort at the last minute to try to go  
11 and graft a new rule onto this case to try to get substitute  
12 service.

13 So, Your Honor, when folks are out of the country,  
14 when they don't go to the right security podium, when they  
15 don't go to the right area to serve, you can't now graft some  
16 kind of new rule on this to say that in fact this is their  
17 opportunity to now have service upon the lawyers or for you to  
18 deem service of the security guard as being good service on  
19 the individuals and compel them to be here today on less than  
20 one day's notice.

21 THE COURT: Okay. It sounds like, Mr. Peek, that  
22 Security Assistant Manager Christopher Mosher --

23 MR. PEEK: Mosher. Spoke to them.

24 THE COURT: -- whose statement you've provided as  
25 part of this most recent filing, because aware of the

1 subpoenas and the individuals for whom the subpoenas existed.

2 MR. PEEK: He did.

3 THE COURT: Whether he drew conclusions about those  
4 are anything is not clear from his declaration. But then he  
5 referred -- and this is a security assistant manager. He  
6 referred the process server to legal. So it would appear that  
7 maybe your communications weren't as effective as you would  
8 have hoped.

9 MR. PEEK: Well, certainly, Your Honor, they were  
10 not as effective as I would have liked them to be.

11 THE COURT: Because he's the assistant manager of  
12 security, and one would hope that the on-duty assistant  
13 manager would have been advised of whatever you told the guy  
14 at the podium in front of the corporate offices. So --

15 MR. PEEK: I'm not going to get into, Your Honor --

16 THE COURT: I understand. I'm not trying to get  
17 into it.

18 MR. PEEK: -- what I did, because I don't want to  
19 get into the attorney-client communications and how I went  
20 about doing it. I'm just telling you as an officer of the  
21 court I made the effort -- I listened to what the Court told  
22 me, I made the effort that if they came to the right podium  
23 how that person was supposed to react. Now, whether or not  
24 Mr. Mosher got that information --

25 THE COURT: It's a different issue.

1 MR. PEEK: Because, Your Honor, remember that this  
2 was at -- we left here at 11:30?  
3 THE COURT: Yeah.  
4 MR. PEEK: The process server went over there at  
5 1:00 o'clock.  
6 THE COURT: 12:30.  
7 MR. PEEK: 12:30. I made the effort immediately  
8 after this hearing.  
9 THE COURT: Mr. Peek, I understand your argument. I  
10 understand your position.  
11 MR. PEEK: And now you're trying to graft some new  
12 rule, Your Honor, onto this that doesn't exist --  
13 THE COURT: Mr. Peek, it's --  
14 MR. PEEK: 14.090. Yes, Your Honor.  
15 THE COURT: I'm not trying to engraft a new rule. I  
16 was trying to draw an analogy for educational purposes given  
17 the position of your client and the employees of your client  
18 and the importance of this hearing. But I certainly  
19 understand what you're telling me.  
20 MR. PEEK: And, Your Honor, I understand certainly  
21 the Court's position, but that doesn't change the fact that  
22 service has to be effected individually when it comes to a  
23 subpoena. There is nothing in the law that allows for  
24 substitute service to take place.  
25 THE COURT: Okay. Thank you.



1 MR. RANDALL JONES: Your Honor, may I --

2 THE COURT: No, Mr. Jones, you don't get two bites  
3 at the apple.

4 So --

5 MR. RANDALL JONES: Well, Your Honor, I represent a  
6 different --

7 THE COURT: -- Mr. Bice.

8 MR. RANDALL JONES: -- party, Your Honor.

9 THE COURT: Mr. Peek represents the same party you  
10 do.

11 MR. PEEK: May I consult with my colleague, Your  
12 Honor, before I finish?

13 THE COURT: You may.

14 (Pause in the proceedings)

15 MR. PEEK: Your Honor, the other thing that Mr.  
16 Jones reminded me of, as well, is that the Court certainly in  
17 ruling on Friday ruled that Mr. Raphaelson, though he was not  
18 in town at the time and though the security -- excuse me, the  
19 process server was allowed entry beyond the residential gate,  
20 the outside gate into the Turnberry properties and went to the  
21 desk inside of the one tower, that Mr. Raphaelson was not in  
22 his residence at that time. Mr. Raphaelson is still here, but  
23 I wanted to at least have the record clear, though, that there  
24 were no effort on the part of Mr. Raphaelson nor those at  
25 Turnberry to deny him. And I have, as well, what I'd like to

1 mark as I guess Exhibit 352, travel records. And I'm going to  
2 give them to Mr. Pisanelli first, Your Honor, before I have  
3 them marked. And these are redacted for all other entries  
4 other than those related to this proceeding.

5 THE COURT: You can submit your proposed exhibit.

6 MR. PEEK: And I would offer it, Your Honor, as  
7 well, even though, as I say, Mr. Raphaelson is still here as  
8 per the Court's order. But I want at least the record to  
9 reflect that Mr. Raphaelson was not in residence at the time  
10 that that process server went to the Turnberry Towers to have  
11 him served.

12 THE COURT: Since it's not admitted, I'm not looking  
13 at it yet. Does anybody have an objection?

14 MR. PEEK: I know. But I'm offering it, Your Honor.

15 THE COURT: I understand.

16 Does anyone have an objection?

17 MR. BICE: Oh. Are you asking us if we have an  
18 objection?

19 THE COURT: Yes, I'm asking if you have an  
20 objection.

21 MR. BICE: My apologies, Your Honor. No. If Mr.  
22 Raphaelson is representing to the Court that he was not in  
23 town that day, not that it legally matters, and I'll address  
24 that, but if that's his representation --

25 THE COURT: Okay. It'll be admitted.

1 MR. PEEK: Thank you, Your Honor.

2 And just the last issue again. And I mentioned  
3 this, but I was reminded that I want to emphasize it, is that  
4 to serve somebody on a Friday at 12:30 to compel them to come  
5 to a court on Monday morning is also not good service.

6 THE COURT: It happens all the time, Mr. Peek.  
7 Anything else? Mr. Morris.

8 MR. MORRIS: Thank you. In this debate I would just  
9 like to say one thing with respect to this motion that is now  
10 being considered. I informed the Court and it remained true  
11 after we were here that with respect to Sheldon Adelson he was  
12 not in the country. He wasn't here.

13 THE COURT: And I believed you. And I still believe  
14 you.

15 MR. MORRIS: Okay. And so for him I would like to  
16 say that with respect to the debate that's occurring here  
17 whether substituted as is being described and advocated by the  
18 plaintiff would not apply to him, because there was no one  
19 standing between him while he was in Las Vegas and this  
20 process server on Friday that prevented him from being served.

21 THE COURT: Thank you.

22 All right. Mr. Bice and Mr. Pisanelli, is there  
23 anything you want to say about the service issues before I  
24 decide if I'm going to break for lunch?

25 MR. BICE: Sure. I apologize, Your Honor. I didn't

1 even know what time it was.

2 THE COURT: It's all right.

3 MR. BICE: Yes, Your Honor, on the service issue. I  
4 don't think -- and I don't think Mr. Peek is suggesting this,  
5 but I do think it's a little -- it's a bit of a stretch for  
6 him to suggest that our process server would be allowed to  
7 hang out at the property, especially in the parking area where  
8 an executive like Mr. Goldstein parks. I'm quite sure that  
9 Mr. Goldstein parks in an area that's very secure, and I'm  
10 quite sure that Mr. Goldstein exits the building probably the  
11 different elevators, and no process server is going to be  
12 allowed to loiter on the property in order to obtain service.

13 Your Honor, I'm not criticizing the fact that these  
14 gentlemen are busy executives. I agree with that, they are  
15 busy executives. I'm not criticizing the fact that Mr.  
16 Adelson for one, and I think others, as well, because I  
17 remember at some of the depositions I think Mr. Leven had  
18 security, including armed security, with him. I'm not  
19 criticizing that at all. I recognize that they are people of  
20 considerable wealth and that they sometimes feel that their  
21 safety is at issue. But that is all the more reason in the  
22 cases that we cite to you that actually do recognize  
23 circumstances for alternate forms of service, not -- you  
24 haven't heard any caselaw from them addressing that point --  
25 is because of the security apparatus with which they have

1 surrounded themselves it makes service on them impossible.

2           And I think it's also a bit of an exaggeration to be  
3 representing to the Court that, well, serving people on a  
4 Friday isn't very good notice. They've known about these  
5 subpoenas for a good period of time, Your Honor. They've  
6 known about this hearing date for a good period of time.  
7 Their position seems to be that if we just aren't around  
8 enough, we can thereby claim that when we are around, since I  
9 didn't hear Mr. Morris claim that Mr. Adelson isn't in town  
10 today or that Mr. Goldstein isn't in town today. You'll  
11 notice no one's representing that to the Court. Seems that  
12 they are in town and that they just don't want to be here.  
13 And I understand why they don't want to be here. But that's  
14 the reason that they should be here.

15           And we actually tried to cooperate with them, and we  
16 listed Mr. Adelson, as you'll recall from our designations, as  
17 a backup in the event that we couldn't get Mr. Goldstein or  
18 Mr. Leven. And then, you know, we tried our best. We tried  
19 to obtain service. Mr. Morris says, well, there was no armed  
20 guard standing between them and Mr. Adelson, because Mr.  
21 Adelson was out of town. That's not the way that the statute  
22 works. If you live in a gated community that is guarded and  
23 you bar them from getting access to the house, doesn't matter  
24 whether or not people are presently at home. If that's the  
25 mechanism with which you operate, service on the guard is

1 adequate. Now, they said, well, the guard allowed him in and  
2 escorted him right up to the second gate at Mr. Adelson's  
3 house, so he still can't get in. There is a guard gate  
4 between Mr. Adelson and the process server, which is exactly  
5 what the statute says, if you have a guard gate between the  
6 process server and your home, service on the guard is  
7 adequate. So we've tried to cooperate with them, we've asked  
8 them to accept service for these witnesses. They were asked  
9 quite a while ago. They've known about this. And their  
10 position is, no, we're not going to do that, you go out and  
11 serve them and, of course, we've got it set up so that you can  
12 never serve them. And we believe that the Court under the  
13 rules can deem them served just as we talked about on Friday.

14 THE COURT: Okay. I am declining to deem them  
15 served. However, you have made good-faith efforts at the  
16 service, and therefore they are unavailable, and to the extent  
17 you wish to use other recorded testimony without prior  
18 designation of that, you may.

19 MR. BICE: Thank you, Your Honor.

20 THE COURT: All right. Now, since it's lunchtime,  
21 we're going to break for an hour and 15 minutes. Apparently  
22 there are some technical issues that need to be resolved.

23 Mr. Peek, tell me about your hearing tomorrow  
24 morning.

25 MR. PEEK: Your Honor, the matter settled.

1 THE COURT: So can you be here tomorrow if we don't  
2 finish?

3 MR. PEEK: I anticipated that. Other than to take  
4 the time out to go down and see Judge Allf to tell her it  
5 settled. Other than that, Your Honor, I'm available.

6 THE COURT: All right.

7 MR. RANDALL JONES: Your Honor, just so the Court's  
8 aware, Mr. Ray, who is on our witness list, is here. So --  
9 he's from out of town. Hopefully we'll get him done. I just  
10 want to advise the Court of that. We hope he can get done  
11 today and that the Court could accommodate that in some form  
12 or fashion.

13 The only other point I have is that -- well, I'll  
14 save that for later.

15 THE COURT: Okay. I am on this break going to  
16 encourage the parties to work together if there are any  
17 witness scheduling issues. I know we have a gentleman in  
18 Macau that has some issues, we have witnesses from out of  
19 town, so if we can call people out of order without otherwise  
20 interfering with the evidentiary presentation, I think that  
21 would be the right thing to do.

22 See you guys at 1:20.

23 (Court recessed at 12:02 p.m., until 1:41 p.m.)

24 THE COURT: So are we ready to present evidence?

25 MR. BICE: We are, Your Honor.

1 THE COURT: Lovely. First witness.

2 MR. BICE: Thank you, Your Honor. We're going to  
3 call Ira Raphaelson, Your Honor. But I would tell the Court  
4 we are reserving the right to recall Mr. Raphaelson, depending  
5 upon -- at a later point in time, depending on what the Court  
6 does relative to the Fleming declaration and/or Mr. Fleming  
7 attempting to testify in the proceeding.

8 THE COURT: What?

9 MR. BICE: In other words, they are seeking to offer  
10 up these declarations from Mr. Fleming, and if that happens  
11 after Mr. Raphaelson is off the stand, we would be recalling  
12 him based upon -- if any of the Fleming materials are  
13 admitted.

14 MR. RANDALL JONES: Your Honor, I can't stop them  
15 from wanting to do whatever they want to do, but I certainly  
16 would object to any such action and don't think there's any  
17 basis for it. And if Mr. Bice wants to make an argument at  
18 some point in the future, I certainly cannot prohibit him  
19 from making that argument, but I want to certainly voice my  
20 objection to any such request at this time as inappropriate.

21 THE COURT: Usually, Mr. Bice, I don't let people  
22 reserve the right to recall somebody for a stated purpose  
23 unless it's rebuttal.

24 MR. BICE: Well, that's what I'm trying to reserve.

25 THE COURT: Okay. So if you're --



1 MR. BICE: I was just giving them fair notice that  
2 that's what I intended to do because before the hearing  
3 started we had worked out the order of the witnesses to  
4 accommodate all of their schedules and Mr. Raphaelson would  
5 be the first one to go.

6 THE COURT: Okay.

7 MR. BICE: I could make him the last one to go.

8 THE COURT: No, I know you're trying to accommodate  
9 his schedule.

10 MR. BICE: Correct.

11 THE COURT: I appreciate that. But what I'm trying  
12 to say is you need to ask all the questions you would  
13 typically ask on direct.

14 MR. BICE: I'm --

15 THE COURT: And if there's an issue on rebuttal,  
16 that's a different issue.

17 MR. BICE: I'm absolutely going to do that.

18 THE COURT: Okay. Anything else before we start  
19 with our first witness?

20 MR. RANDALL JONES: No, Your Honor, not from Sands  
21 China.

22 MR. PEEK: No, Your Honor. And I'm taking this seat  
23 because I'm going to be protecting this witness as to Las  
24 Vegas Sands, so.

25 THE COURT: Okay.

1 MR. PEEK: And Mr. Raphaelson would like to take his  
2 water with him. May he --  
3 THE COURT: He may.  
4 MR. PEEK: May he do that? Thank you, Your Honor.  
5 THE COURT: And if he has glasses, if he would bring  
6 those, too, that would be handy.  
7 Good afternoon, sir. If you'll come forward,  
8 please. I apologize for the delay that has occurred today.  
9 Despite my best efforts, we didn't start.  
10 IRA RAPHAELSON, PLAINTIFF'S WITNESS, SWORN  
11 THE CLERK: Thank you. Please be seated. And  
12 please state and spell your name for the record.  
13 THE WITNESS: My name is Ira Raphaelson,  
14 R-A-P-H-A-E-L-S-O-N.  
15 MR. BICE: Thank you for being here, Mr. Raphaelson.  
16 Can you --  
17 THE COURT: And, sir, there's water there and M&Ms  
18 for you if you need them, and if you need a break, you let us  
19 know.  
20 THE WITNESS: Thank you, Your Honor.  
21 THE COURT: Mr. Bice, you're up.  
22 MR. BICE: Thank you again. And thank you for being  
23 here, Mr. Raphaelson.  
24 //  
25 //

DIRECT EXAMINATION

BY MR. BICE:

Q Can you tell the Court where you currently work.

A I currently work at Las Vegas Sands Corporation at 3355 Las Vegas Boulevard, Las Vegas.

Q And can you tell the Court what you -- what your job is at Las Vegas Sands Corporation?

A I'm the executive vice president and global general counsel and I was recently named secretary.

Q All right. And do you have any role with respect to the entity known as Sands China Limited?

A Yes.

Q And what would be your role?

A I help advise the Las Vegas Sands board members who are members of the SCL Board, and I provide advice to different departments at SCL on request.

Q Would one of those departments at SCL that you provide advice to be the legal department?

A I'm sorry, I didn't hear you.

Q I apologize. Would one of those departments that you would provide advice to at SCL, would that be the legal department?

A Yes, sir.

Q Okay. And is that legal department headed up by Mr. Fleming, David Fleming?

1           A     It is.

2           Q     So does Mr. Fleming report to you?

3           A     Mr. Fleming does report to me.

4           Q     And this is probably going to sound like a very

5 broad question, but if you can just give me an approximation,

6 how many people report to you in your capacity as the global

7 general counsel?

8           A     In my capacity as global general counsel, between

9 fifty and sixty. As EVP there is a larger number.

10          Q     And are all -- well, we know that Mr. Fleming is

11 not, but is everyone else located in Las Vegas?

12               MR. RANDALL JONES: Objection, vague and ambiguous;

13 every.

14               MR. BICE: I'll rephrase, Your Honor.

15               THE COURT: Would you please? Thank you.

16 BY MR. BICE:

17          Q     Of that number, fifty or sixty, can you just give me

18 an approximation of how many of those people are in Las Vegas?

19          A     Twenty-two, twenty-four, something like that.

20          Q     Gotcha. Okay. And then there are people in

21 Bethlehem, Pennsylvania? I'm not asking about a number, but

22 there are people that report there?

23          A     There are people in Bethlehem, Pennsylvania.

24          Q     Do any of them report to you?

25          A     Indirectly, but yes.

1 Q Fair enough. And then Singapore, Macau, etcetera?  
2 A Singapore, yes. Macau; David. And then indirectly  
3 two others.  
4 Q Two others in Macau?  
5 A Yes, sir.  
6 Q Thank you, sir. Now, Mr. Raphaelson, you are aware  
7 or are you aware of the Court's sanction order against Las  
8 Vegas Sands and Sands China concerning the Macau Data Privacy  
9 Act?  
10 MR. RANDALL JONES: Your Honor, just for the record  
11 I want to object to relevance on that order to these  
12 proceedings, specifically with respect to sanctions on the  
13 MPDPA redactions.  
14 THE COURT: Overruled.  
15 MR. BICE: If we could, could we go to Exhibit No.  
16 98?  
17 THE COURT: And sir, if you have a question or  
18 something, just ask Mr. Bice. He'll either answer it or I'll  
19 answer it.  
20 THE WITNESS: I was looking to you to answer the  
21 question, Your Honor.  
22 THE COURT: What question do you need?  
23 THE WITNESS: No. He asked the question. I'm going  
24 to answer --  
25 THE COURT: Are you familiar?

1 THE WITNESS: I have read the Court's order.  
2 THE COURT: Okay.  
3 MR. BICE: Your Honor, may I --  
4 MR. PEEK: He didn't get a chance to answer, though.  
5 THE COURT: I know. You were arguing and objecting.  
6 MR. BICE: May I approach, Your Honor?  
7 THE COURT: You can. Or you can just tell the  
8 witness the number and the marshal can get him the right  
9 binder.  
10 MR. BICE: I think it's 98.  
11 THE COURT: Thank you.  
12 MR. BICE: That's my recollection.  
13 MR. PEEK: This is the September order, Mr. Bice?  
14 MR. BICE: Okay.  
15 MR. PEEK: This is the September order?  
16 MR. BICE: I believe so. - Let me just verify it, Mr.  
17 Peek. The people that really know the answer are nodding  
18 their heads, so.  
19 MR. PEEK: Okay.  
20 BY MR. BICE:  
21 Q I think it's 98. I might have said 94. If I did, I  
22 was wrong.  
23 THE COURT: You said 98.  
24 THE WITNESS: You said 98. I'm looking at 98.  
25 THE COURT: I'm not looking at it. Even though it's

1 part of my record, you haven't admitted it.  
2 MR. BICE: Understood.  
3 THE COURT: So I'm relying on my recollection at  
4 this point.  
5 MR. BICE: Fair enough, Your Honor.  
6 THE COURT: Is there any objection to 98 being  
7 admitted?  
8 MR. RANDALL JONES: No, Your Honor.  
9 THE COURT: See why I asked if there were any  
10 stipulations earlier?  
11 MR. BICE: Thank you.  
12 (Plaintiff's Exhibit 98 admitted)  
13 BY MR. BICE:  
14 Q All right. Mr. Raphaelson, looking at admitted  
15 Exhibit No. 98, do you recall seeing this order?  
16 A I haven't read every word of what you have as  
17 Exhibit 98, but I have no basis to question its authenticity  
18 and I have seen the Court's order of that date in this matter.  
19 Q Fair enough. Would you go to page 8 of 9 of this  
20 order? If you'd go to the bottom under the word order,  
21 there's a small paragraph A. Do you see that, sir?  
22 A Yes.  
23 Q Who made the decision after the date of this order,  
24 Mr. Raphaelson, to proceed with redactions?  
25 MR. PEEK: Objection, Your Honor. This would go to

1 attorney-client communications, as well as work product.  
2 THE COURT: Sustained.  
3 BY MR. BICE:  
4 Q Were you involved in that decision making, Mr.  
5 Raphaelson?  
6 MR. PEEK: Same objection, Your Honor.  
7 THE COURT: It's a yes or no.  
8 THE WITNESS: As posed, Your Honor, that's a  
9 difficult question for me to answer yes or no.  
10 THE COURT: Okay. So try again with a different  
11 question. If you could rephrase, Mr. Bice. I'm trying to  
12 make sure that everybody has an opportunity to make any  
13 objection they feel is appropriate on an attorney-client  
14 privilege basis.  
15 MR. BICE: Okay.  
16 BY MR. BICE:  
17 Q I'll ask it this way and I think this one is a yes  
18 or no. Do you know who was involved in the decision making to  
19 make the redactions?  
20 A I know who made the decision.  
21 Q Okay.  
22 A I know the names of some people who were consulted.  
23 Q Okay. Who were the people that were consulted?  
24 MR. PEEK: Objection, Your Honor, that's attorney-  
25 client communications; work product.



1 THE COURT: Mr. Bice?

2 MR. BICE: Your Honor, it's the identity of  
3 witnesses. The identify of people who were involved in an act  
4 is not privileged.

5 THE COURT: To the extent that the people who were  
6 consulted were attorneys, the mere consultation is not  
7 protected. However, the content of any consultation is.

8 Mr. Jones, did you want to say something else?

9 MR. RANDALL JONES: I guess, again, this is a Las  
10 Vegas Sands witness but my client has an interest in these  
11 proceedings, obviously.

12 THE COURT: Absolutely.

13 MR. RANDALL JONES: So I would -- in order to -- if  
14 you will, Judge, protect the privilege to the fullest extent  
15 possible, I'm obviously --

16 THE COURT: That is our goal.

17 MR. RANDALL JONES: -- very sensitive to this issue.  
18 So I would have to still object that even the names of the  
19 attorneys involved in consulting, or at least in having  
20 discussed the issue would be work product, if not attorney-  
21 client privilege information.

22 THE COURT: How are the names of the attorneys  
23 involved work product?

24 MR. RANDALL JONES: Well, because it depends on what  
25 their role was in that process. I think Mr. Raphaelson just

1 testified he knows who made the decision, but then he talked  
2 about other people who may have been aware of that decision.  
3 And that, the extent --

4 THE COURT: No, he said consulted.

5 MR. PEEK: Consulted.

6 MR. BICE: Consulted.

7 THE COURT: Aware is a very different group.

8 MR. RANDALL JONES: Well, and consulted has certain  
9 connotations to it. So, Judge, again, I'm just being  
10 extremely sensitive to this issue and I do not want to  
11 inadvertently waive the privilege, and so that's why I'm being  
12 hypersensitive to -- I'm reluctant, as you can imagine, to  
13 have an attorney on the witness stand in a case I'm involved  
14 in, and so I'm just trying to be very careful and very  
15 sensitive to this issue. So at least for the record I want to  
16 express my concern in that this may invade the attorney-client  
17 or work product privileges, and so therefore I am imposing my  
18 objection and I'll leave it to the Court at that point.

19 THE COURT: Okay. Mr. Jones' objections are  
20 overruled. You may recall, Mr. Jones, from reading  
21 transcripts that prior to the issuance of the order that is  
22 98, many attorneys, including Mr. Peek, were subject to  
23 examination. We tread a careful path to try and make sure  
24 that there was no waiver of privilege, but the identification  
25 of those who were involved but not the extent of their

1 involvement is appropriate.

2           So if we could go back, sir, I think the question to  
3 you was, who were the people who were consulted? And if you  
4 remember and if you know, you can answer.

5           THE WITNESS: Your Honor, I was consulted. Mr.  
6 Rubenstein, my deputy was involved in discussions. He is an  
7 attorney. Mr. Peek, to the best of my recollection. I  
8 believe one or both of Mark and Randall Jones. I believe  
9 Steve Morris may have been consulted on one or more occasion.  
10 I believe that Michael Lackey of Mayer Brown and others of his  
11 firm.

12           THE COURT: Can I stop you for a second? Are we  
13 talking about the redactions that were related to the  
14 production that occurred in the winter of 2013, as opposed to  
15 the redactions related to attorney-client privilege of Mr.  
16 Jacobs' hard drive?

17           THE WITNESS: Yes, Your Honor. That's how I took --

18           THE COURT: Okay. I just wanted to make sure  
19 because there were --

20           THE WITNESS: I'm sorry, Your Honor.

21           THE COURT: -- different groups of redactions that  
22 occurred historically in this case and I'm focused on the ones  
23 that were in the winter of 2013 at this point.

24           THE WITNESS: I understood that to be --

25           THE COURT: Okay.

1 THE WITNESS: -- the focus of the hearing and Mr.  
2 Bice's question.

3 THE COURT: Thank you. I just didn't want us to get  
4 too far afield.

5 THE WITNESS: Thank you for making sure that I'm  
6 clear. So I mentioned Mr. Lackey and Mayer Brown. There may  
7 have been one or more of his partners and associates who were  
8 consulted by the decision maker. Wyn Hughes, an attorney in  
9 Macau, who serves as the deputy to Mr. Fleming, was consulted.  
10 There were one or more lawyers and law firms in Hong Kong and  
11 Macau that I believe were consulted, but I don't know the  
12 names of the particular lawyers. Those would be the lawyers  
13 who -- that's the best I can do for the Court in answering --

14 THE COURT: Thank you, sir.

15 THE WITNESS: -- the question of who was consulted  
16 in connection -- again, for purposes of precision, for  
17 providing advice to the decision maker regarding the  
18 production I believe in January of 2013 in response to  
19 direction by this Court received in December of 2012.

20 THE COURT: I believe that's the time frame.

21 THE WITNESS: Thank you, Your Honor.

22 BY MR. BICE:

23 Q Were there any non-lawyers consulted, Mr.  
24 Raphaelson?

25 MR. PEEK: Your Honor, again, this goes back to work

1 product and communication, attorney-client communication.

2 THE COURT: The identification of the individuals  
3 who were consulted is not protected, but their work may have  
4 been. So if there were any non-lawyers that you can add to  
5 the list you gave me, sir, I'll write them down.

6 THE WITNESS: Actually, in hearing Mr. Bice's  
7 follow-up question, Your Honor, if I could amplify on the  
8 earlier list and then answer the follow-up question?

9 THE COURT: Sure.

10 THE WITNESS: Is that agreeable to the Court?

11 THE WITNESS: Yes, because I can write notes that  
12 way.

13 THE WITNESS: Okay. There may have been lawyers  
14 within the government; that is, I know that persons within the  
15 Macanese government were consulted, but I don't know whether  
16 they were attorneys or not. So in responding fully to Mr.  
17 Bice's earlier question of what attorneys were consulted, I'd  
18 have to list the possibility of people within the Macau  
19 government whose names I don't know.

20 THE COURT: How about we call those folks Macanese  
21 officials? And that way if they're not an attorney you still  
22 covered them.

23 THE WITNESS: That's fine, Your Honor, because that  
24 would be the second -- part of the follow-up answer is  
25 Macanese officials were consulted by the person who made the

1 decision, and at least so far as I know there was at least one  
2 and maybe more than one forensic firm that was consulted as to  
3 the methodologies for making the material -- identifying the  
4 material and making it available to Macanese lawyers who were  
5 then doing whatever it is that the decision maker had directed  
6 them to do.

7 THE WITNESS: Okay. Thank you.

8 MR. RANDALL JONES: And, Your Honor, again, just for  
9 the record, since Mr. Raphaelson hasn't answered the pending  
10 question when he clarified his last answer, just out of an  
11 abundance of caution for the record I would object to the  
12 extent that the last question asked by Mr. Bice invades the  
13 attorney-client or work product privileges. And I understand  
14 your ruling, but --

15 THE COURT: Overruled.

16 MR. RANDALL JONES: Fine.

17 THE COURT: Mr. Bice.

18 BY MR. BICE:

19 Q Were there any non-lawyers consulted?

20 A I tried to capture that with the rest of my answer,  
21 Mr. Bice, so.

22 Q Okay, let me rephrase. Were there any company  
23 executives, either in LVSC or Sands China that were consulted  
24 who are not lawyers?

25 A Not to my knowledge.

1 MR. RANDALL JONES: Objection, Your Honor.

2 THE COURT: Overruled.

3 And sir, if you'll pause to give them a chance to  
4 preserve any privilege they think is appropriate, I don't want  
5 to catch them off guard. So if you'd just --

6 THE WITNESS: Your Honor, that's great advice and  
7 every lawyer witness should follow it. Thank you.

8 BY MR. BICE:

9 Q It is your belief that there were -- there may have  
10 been Macau government officials that were consulted; may or  
11 may not have been lawyers. Is that fair?

12 A That is correct.

13 Q Okay. Do you know who?

14 A I do not know anyone's name, no.

15 Q Do you know who the forensic firm was? Is that FTI?

16 A Yes, sir.

17 Q Do you recall who at FTI, the individual was that  
18 was consulted?

19 A You know, I didn't have the dealings, so no.

20 Q So you didn't know?

21 A I may have known at the time, but I don't recall  
22 now.

23 Q Fair enough. Was anyone at Venetian Macau limited -  
24 - Strike that, let me rephrase. Was there anyone at any  
25 subsidiaries of Sands China Limited consulted?

1           A     I have identified --  
2           MR. RANDALL JONES:  Objection, asked and answered.  
3           THE COURT:  Overruled.  
4           THE WITNESS:  Your Honor, I have identified every  
5 category that I can think of at this point.  
6           MR. BICE:  Okay.  
7           THE COURT:  So at this point you think you have  
8 identified everyone involved that was consulted?  
9           THE WITNESS:  By category.  Yes, Your Honor.  
10          MR. PEEK:  That he knows, Your Honor.  
11          THE COURT:  I know.  
12          MR. PEEK:  Okay.  
13          THE COURT:  That's all we can ask him is what he  
14 knows.  
15          I don't want you to guess or speculate, sir.  
16          THE WITNESS:  I appreciate that, Your Honor.  
17 BY MR. BICE:  
18          Q     Mr. Raphaelson, do you know whether or not one of  
19 the Macanese firms consulted was Mr. Leonel Alves' law firm?  
20          A     As I sit here now, I don't.  
21          Q     When was the decision to make the redactions made in  
22 terms of the date?  
23          MR. RANDALL JONES:  Objection, Your Honor, lack of  
24 foundation.  
25          THE COURT:  Sir, we don't want you to guess or



1 speculate, so if you don't know, that's okay. If you do know,  
2 we'd love to hear it.

3 THE WITNESS: Your Honor, it would have been  
4 sometime after the Court's direction to do certain searches in  
5 Macau by a certain date, and time for those searches to be  
6 accomplished and production made. So I don't know the date.  
7 The end of December of 2012, I believe that I was on vacation  
8 but in contact by phone. The decision was not made in the  
9 United States.

10 BY MR. BICE:

11 Q Is it your understanding, Mr. Raphaelson, that the  
12 decision was made after the Court had ordered the production  
13 by December -- or by January the 4th of 2013?

14 A I believe that's what I just said, Mr. Bice. Yes.

15 Q Okay, just want to make sure. Do you know what  
16 information was relied upon by the decision maker?

17 A I certainly know that the decision maker had  
18 information from lawyers in conversations that I participated  
19 in. I know that the decision maker had told me certain things  
20 about other information.

21 MR. PEEK: Mr. Raphaelson, just a reminder, I know  
22 you know that, but just be very careful here.

23 MR. BICE: Your Honor, I will just make my point on  
24 this and I'm going to walk through each question. I know it's  
25 going to draw an objection, but obviously our position here is

1 that Sands China has introduced already two and today has  
2 proffered a third from what they represented is the decision  
3 maker and who claims that he did it based upon certain  
4 understandings or information.

5 THE COURT: And you're referring to Mr. Fleming as  
6 an individual?

7 MR. BICE: I am referring to Mr. David Fleming --

8 THE COURT: Okay.

9 MR. BICE: -- as an individual. That -- the fact of  
10 having done that and then claiming that he did so in good  
11 faith constitutes an advice of counsel good faith defense for  
12 the litigant that waives any claim of privilege. And the  
13 litigant has waived its claim of privilege with respect to  
14 this matter.

15 THE COURT: So I'm going to let this gentleman step  
16 off the stand for a little bit while you all argue whether  
17 there's been a waiver due to advice of counsel for one of the  
18 factors that I need to weigh in considering an appropriate  
19 sanction, if any.

20 So if you want to go back to the audience, I know  
21 the chairs there aren't any more comfortable, but that way  
22 you're not under --

23 THE WITNESS: Thank you, Your Honor.

24 MR. BICE: Could I ask, considering the --

25 THE WITNESS: I'm sorry. Your Honor, do you want me

1 to step out while the argument occurs?

2 THE COURT: Oh, no, just find a chair.

3 MR. PEEK: He's allowed to stay, Your Honor. He's a  
4 representative of --

5 THE COURT: I was just trying to get you out of the  
6 middle of this discussion and let you be --

7 THE WITNESS: Thank you, Your Honor.

8 THE COURT: Or if you want to check your phone or  
9 something, you can in the back row, or if you want to listen,  
10 you can. The chairs are not very comfortable back there and I  
11 again apologize that I can't get my courtroom put back  
12 together.

13 All right. Now, Mr. Bice, let's have a more  
14 thorough discussion about the waiver issue.

15 MR. BICE: Yes. This wit-- I say this witness --  
16 this defendant, being Sands China, has put a number of  
17 affidavits before this Court. One of the principal affidavits  
18 is the affidavit from Mr. Fleming of -- I apologize, Your  
19 Honor, I lost my note. That's because I have it in my book.  
20 Mr. Fleming had offered an affidavit. It is our Exhibit No.  
21 96, Your Honor. And this is a declaration that he offered to  
22 this Court on August of 2012. In this declaration Mr. Fleming  
23 makes a number of representations to the Court about the fact  
24 that he is not admitted to the Bar in Macau, "but I have the  
25 following understanding of the Macau Personal Data Privacy

1 Act." So he goes on to recite an understanding he has. Of  
2 course he doesn't disclose from where this understanding grew  
3 or how he acquired it. It is obvious that he acquired it from  
4 somewhere.

5 THE COURT: Mr. Bice, remember your audience is me,  
6 not them.

7 MR. BICE: Yes. I apologize, Your Honor. He then  
8 further goes on to state in Paragraph Number 4 that he has an  
9 -- "I further understand that the PDPA was administered and  
10 enforced," et cetera. He then goes on in Paragraph Number 5,  
11 "I further understand," again relating an understanding that  
12 he is not disclosing where he acquired this understanding.  
13 Paragraph Number 6, "I further understand," he goes on to make  
14 another series of representations about the PDPA. Paragraph  
15 Number 7, "I further understand, generally speaking," then he  
16 goes on to recite again the understanding without disclosing  
17 the basis for the understanding.

18 He then goes on in Paragraph Number 8 to make a  
19 representation about the PDPA, again saying "I understand,"  
20 again without disclosing where the understanding stems from.  
21 Paragraph Number 9, he then goes on to convey facts. Again,  
22 second sentence of this paragraph, Your Honor, "Although I  
23 understand the specifics are confidential." Where did he  
24 acquire any of these understandings? Paragraph Number 10,  
25 again the same. He says, "Although I did not attend the

1 meeting, I understand." So here he is again, Your Honor,  
2 relying upon communications with other parties and  
3 interjecting them into this case. And then again -- so he  
4 goes on, Paragraph Number 13, "I am informed and believe."  
5 Well, how does he get this information and belief, Your Honor?

6           The point is, Your Honor -- and then we cited the  
7 case to you in our brief that deals with someone who does what  
8 Mr. Fleming is trying to do, and that is interject his  
9 understanding which is based upon information that he has  
10 acquired. When someone comes in to the Court, Your Honor, and  
11 says, I have an understanding of this and based upon that  
12 understanding this is what I did, we are entitled to know the  
13 facts underlying the understanding and what it is that  
14 prompted the witness, the purported decision maker now as he's  
15 being characterized, to do X. What did he rely upon in doing  
16 that? He's now representing or trying to represent that he  
17 did this all in good faith and that their violation of your  
18 order wasn't wilful because of this quote, unquote,  
19 "understanding" that he now professes to have.

20           And when a witness -- a lawyer comes into court and  
21 affirmatively offers at his client's direction, which is what  
22 has happened here, Sands China has affirmatively interjected  
23 Mr. Fleming's quote, unquote "understanding" in order to make  
24 representations to the Court in an attempt to mitigate the  
25 consequences of their decision making, the law says that

1 constitutes a waiver of the claim of privilege on the subject  
2 matter of which the witness has proffered testimony to the  
3 Court. That was a decision that Sands China made, made  
4 repeatedly. It was again made this last Friday when they  
5 stood up and told you this is what Mr. Fleming did or this  
6 is what Mr. Fleming says, he's the decision maker.

7           And that's why, Your Honor, we cited to you case law  
8 making this very point in the Henry v. Quicken Loans decision.  
9 The court said specifically by offering an affidavit of a  
10 lawyer and the lawyer claiming that he had an understanding of  
11 this legal matter, and he offered this declaration to assert  
12 that he took certain factors that he considered in determining  
13 things, that by doing so the company had waived the privilege  
14 because they placed factual material over which they were  
15 asserting the attorney-client privilege directly into issue by  
16 offering up the affidavit of the lawyer.

17           And that's what Sands China consciously chose to do  
18 here. What they're saying is Mr. Fleming can submit these  
19 lengthy affidavits all about -- with vague, generic terms of  
20 my understanding, my understanding, my understanding is X, Y  
21 and Z, and hence you're supposed to infer from that we had a  
22 good faith belief as to the propriety or the necessity of what  
23 we were doing, and so therefore you must just blindly accept  
24 it. You are not entitled to know, Your Honor. And Mr. Jacobs  
25 is not entitled to impeach me by the information that I relied

1 upon that would contradict any assertion that you had such a  
2 good faith belief. And that's what they are trying to hide  
3 behind, the privilege. They are using the privilege as both a  
4 sword and a shield, and the law says that you are not  
5 permitted to do that. And by doing it, they have waived the  
6 privilege.

7 THE COURT: Anything else before I hear from that  
8 side?

9 MR. BICE: Not right on this issue, Your Honor. Oh,  
10 sorry.

11 MR. PEEK: Take your work product with you.

12 MR. BICE: Yes.

13 THE COURT: Take your secret notes.

14 MR. BICE: I know. They're the most important.  
15 Thanks.

16 MR. RANDALL JONES: Your Honor, since we were hit  
17 with a brief on this subject this morning --

18 THE COURT: Please approach and file it in open  
19 court. And can I have a copy?

20 MR. RANDALL JONES: You may, Your Honor. Obviously  
21 we had short notice to respond to this, but I have some -- I  
22 think a somewhat unique experience in this particular issue,  
23 having been involved in the other side of this issue in a case  
24 called Club Vista. But be that as it may, there's a couple of  
25 things that seem to me to be pretty obvious from the outset.

1 First of all, Mr. Bice continues to talk about Mr.  
2 Fleming and his affidavit and his alleged waivers of the  
3 privilege, I guess somehow or other implicating Mr.  
4 Raphaelson, who works for a different company, who has not  
5 talked about his understanding. He has clearly just stated --

6

7 THE COURT: Well, but it's the waiver by the client,  
8 is the issue, right?

9 MR. RANDALL JONES: I understand.

10 THE COURT: Okay.

11 MR. RANDALL JONES: But he's asking a Las Vegas  
12 Sands witness if Sands China Limited has waived the privilege.

13 THE COURT: No, that's not what happened. He was  
14 going to ask some questions. You were going to object on  
15 attorney-client privilege, so it seemed like an appropriate  
16 time to resolve the issue that was raised in the briefs.

17 MR. RANDALL JONES: Fair enough.

18 THE COURT: So I don't think anybody was trying to  
19 ask Mr. Raphaelson if he believed a waiver had occurred.  
20 That's my decision.

21 MR. RANDALL JONES: Well, I think that Mr. Bice --

22 THE COURT: Or Carson City.

23 MR. RANDALL JONES: -- assumes a waiver has occurred.  
24 That's what his argument has been.

25 THE COURT: Absolutely that's his argument.



1           MR. RANDALL JONES: But be that as it may, the other  
2 point here is that the affidavit that he is referring to, at  
3 least at this point, are affidavits that occurred even before  
4 your decision in September of 2012. So that's a secondary  
5 issue. But secondly, even in the cases that they cite, the  
6 United States v. Grant for instance, nowhere in Grant is there  
7 a blanket statement that any offer of proof regarding a  
8 certain subject matter would waive the privilege, particularly  
9 when the matter that is disclosed is factual in nature rather  
10 than legal advice or work product. And that is the point of  
11 citing also to section -- NRS Chapter 49.095 and NRCP  
12 26(b) (3).

13           The issue here, Your Honor, and that's where we've  
14 been trying to be very careful about factual information and  
15 that was in fact a subject of the Club Vista litigation, is an  
16 attorney being the only source, the only source of factual  
17 information that the client had. In this case we're not  
18 objecting to any statement of fact. In fact, you've heard Mr.  
19 Raphaelson, who has already testified about facts that he is  
20 aware of.

21           The substance of the information, we believe any  
22 further inquiry would be going to a separate issue, which is  
23 his -- and I would say with respect to understanding and all  
24 this whole big argument Mr. Bice just made about the affidavit  
25 that Mr. Fleming provided in, for example, Exhibit 96,

1 certainly the statement of the understanding is expressed in  
2 the affidavit. Where he got that understanding could be,  
3 depending on when we get to Mr. Fleming, the subject of  
4 attorney-client privilege or work product privilege or not,  
5 depending on where he got that understanding. For example, he  
6 may have got that understanding from his conversations with  
7 the MPDPA -- or excuse me, the OPDP officials. So we don't  
8 know the answer to that question yet. But if he did not get  
9 that answer from the OPDP officials, then it may be a matter  
10 of work product or attorney-client privilege. So --

11 THE COURT: But then he can't proffer it for me to  
12 rely upon and present an affidavit essentially acting as an  
13 expert in explaining to me the implications of the MDPA and  
14 how it affected you and your client.

15 MR. RANDALL JONES: And, Your Honor, again, my  
16 position with respect to that point is that's a question for  
17 Mr. Fleming, who, just so the Court is aware, and I've  
18 informed Mr. Bice of this matter, in light of your comments  
19 last week when we talked about -- when I spoke to you about  
20 Mr. Fleming and your question, your direct question to me the  
21 day before about who made the decision, and I was authorized  
22 to give you a very specific statement as I understood it of  
23 the person who made that decision. So that's a different  
24 matter that now we are talking about, and so I made Mr.  
25 Fleming available to the Court and of course that would mean

1 to Mr. Bice to examine on this issue.

2           So I would again suggest to this Court that any  
3 inquiry into Mr. Fleming's understanding, because they're his  
4 affidavits, and I do not see how in the world they implicate  
5 on the subject that Mr. Bice has just been addressing this  
6 Court on, a waiver by Sands China or Las Vegas Sands of any  
7 other information before Mr. Fleming takes the stand. You  
8 just don't have enough information yet, Your Honor, to make  
9 that call. In my opinion, I don't believe you do. Obviously  
10 you will decide if you do or not, but I would think that  
11 especially when we're in this area of such highly sensitive  
12 material it would be more appropriate to wait and see what you  
13 decide to do when we offer Mr. Fleming's affidavit, whether  
14 you're going to accept it or not, or you would want him to  
15 address the Court directly via video conference because he is  
16 available in Macau and he's standing by, along with Mr. Toh.

17           THE COURT: Okay. Thank you.

18           MR. RANDALL JONES: So with that -- in that regard,  
19 again, I believe the case law we have cited, which the Court  
20 obviously --

21           THE COURT: I've now read while you're speaking.

22           MR. RANDALL JONES: And I appreciate that you're a  
23 speed reader, Your Honor, but I would also suggest that on an  
24 issue of this import we would all do well to make sure that  
25 the correct decision is made. This Court has not had --

1 Again, we got this brief this morning from them.

2 THE COURT: Mr. Jones, I'm not criticizing you.

3 MR. RANDALL JONES: I'm not suggesting you are.

4 THE COURT: The only reason I'm raising the issue is  
5 I've had other cases where we've had a stay issued in the  
6 middle of an evidentiary proceeding, had a writ run and are  
7 now waiting -- two years?

8 MR. PISANELLI: Something close to that, yes.

9 THE COURT: And the witness has now become  
10 unavailable because he's in federal custody. So, I mean, it's  
11 not like I haven't dealt with this issue. I want you to have  
12 the opportunity to make the appropriate record and everybody  
13 has the opportunity to say what it is they can say. And then  
14 if we have to do something else, we do it.

15 MR. RANDALL JONES: I understand that.

16 THE COURT: I'm not trying to rush you or push you.  
17 I want to make sure the record is good.

18 MR. RANDALL JONES: And I'm not saying you are,  
19 Judge. I'm just saying that, again, when we get hit with a  
20 brief this morning and it's never been set for hearing, this  
21 issue certainly could have been raised before, and I would  
22 suggest that -- and I don't want to delay or prolong anything.  
23 I would like Mr. Raphaelson to finish his testimony and be  
24 able to be dismissed today so we can move this process  
25 forward.

1 I'm just suggesting to this Court that if the Court  
2 wants to make this decision based upon the proffer by the  
3 plaintiff, the time to make that decision, a more informed  
4 decision especially on such a weighty issue, is to wait to see  
5 what Mr. Fleming has because Mr. Fleming will now be available  
6 for this Court to hear. But the bigger point is irrespective  
7 of that issue, it is our position as counsel for Sands China  
8 that how he got his understanding is privileged information.  
9 And it certainly doesn't --

10 THE COURT: And you're talking about Mr. Raphaelson?

11 MR. RANDALL JONES: I'm sorry?

12 THE COURT: You're talking about our current  
13 witness?

14 MR. RANDALL JONES: No, I'm talking about Mr.  
15 Fleming.

16 THE COURT: Okay.

17 MR. RANDALL JONES: But with respect to Mr.  
18 Raphaelson, Mr. Raphaelson has not submitted an affidavit to  
19 this Court talking about his understanding. He has so far, as  
20 I can tell, only testified about purely factual matters, and I  
21 believe he's trying to be very precise in that regard. So  
22 somehow Mr. Bice thinks by conflating an affidavit from Mr.  
23 Fleming that happened a couple years ago he can somehow work a  
24 waiver of a privilege with Mr. Raphaelson, where Mr.  
25 Raphaelson has done nothing to indicate he has waived the

1 privilege of work product or attorney-client.

2           So conflating the two, I don't -- and I would ask  
3 the Court, if the Court thinks there is a connection between  
4 Mr. Raphaelson's testimony about the understanding of Mr.  
5 Fleming somehow --

6           THE COURT: That would --

7           MR. RANDALL JONES: -- for a company he works --  
8 that he doesn't even work for, then I would like to address  
9 that issue because I don't quite understand how one thing is  
10 connected to the other.

11           THE COURT: Okay, thank you. Any more from you, Mr.  
12 Peek?

13           MR. PEEK: And Your Honor, I just -- yeah, I just  
14 want to make sure that it's clear here that this issue is not  
15 an issue with respect to Las Vegas Sands and a waiver in any  
16 respect by Las Vegas Sands of any attorney-client  
17 communication, and that there is not a suggestion here with  
18 the way this is going and what Mr. Bice is asking this Court  
19 to do, that there is a waiver of a privilege of Las Vegas  
20 Sands as part of this request.

21           THE COURT: Thank you.

22           Mr. Morris, this doesn't involve you directly, does  
23 it?

24           MR. MORRIS: No, it does not, Your Honor.

25           THE COURT: Okay.

1 MR. PEEK: And so I just need to have that  
2 clarification.

3 THE COURT: I understand. I'm just trying to make  
4 sure I've gone down the line. Anything else, Mr. Peek, before  
5 I go back to Mr. Bice?

6 MR. PEEK: Well, I don't know whether to argue or  
7 not because if this is a waiver sought --

8 THE COURT: It is my understanding that Mr. Bice is  
9 seeking a wholesale waiver of any issues related to the  
10 decision making related to the redaction of the documents that  
11 occurred at about January 2013 or the end of December 2012.

12 Is that right, Mr. Bice?

13 MR. BICE: To be legally precise, it is a subject  
14 matter waiver. That is what it is.

15 MR. PEEK: By whom?

16 MR. BICE: By the -- I don't want to --

17 THE COURT: Are you including Las Vegas Sands in  
18 your subject matter waiver?

19 MR. BICE: It is a subject matter -- it is a subject  
20 matter waiver by the entity that did the redactions. Sands  
21 China has committed the waiver.

22 THE COURT: Okay.

23 MR. BICE: Whether or not Las Vegas Sands has  
24 separate privileges that are separate and apart would be a  
25 different issue. But whatever Mr. Fleming relied upon to

1 acquire, one, his understandings, and two, is providing his  
2 rationalization that he was entitled to do this, is a waiver  
3 under the law. And I will address that when Mr. Peek is done,  
4 Your Honor.

5 THE COURT: Okay. Anything else, Mr. Peek, given  
6 that statement?

7 MR. PEEK: In that respect it seems to me then that  
8 all I would do would be joining in what Mr. Jones said --

9 THE COURT: Sounds like a lovely idea.

10 MR. PEEK: -- because it doesn't sound like there  
11 has been a request of a subject matter waiver of Las Vegas  
12 Sands of anything.

13 THE COURT: You do not currently have a bulls-eye on  
14 your back.

15 MR. PEEK: Okay.

16 MR. RANDALL JONES: Judge, I'm sorry, I don't want  
17 to interrupt or repeat myself, but I did not understand that  
18 that's what Mr. Peek was seeking here was a whole--

19 THE COURT: Not Mr. Peek, Mr. Bice.

20 MR. RANDALL JONES: I'm sorry. Mr. Bice was seeking  
21 a wholesale wavier of all privilege related to the subject  
22 matter.

23 THE COURT: He called it a subject matter waiver.

24 MR. RANDALL JONES: And so using his terminology, I  
25 did not understand what I understood at most that he was



1 arguing that there was a waiver with respect to how Mr.  
2 Fleming got his understanding of the particular subject of the  
3 paragraphs in the affidavit. And so I would certainly even  
4 object more strenuously of any waiver beyond the paragraphs  
5 that he refers to, especially when he's talking about events  
6 that occurred before your September 2012 ruling in which you  
7 said -- made reference for the first time, as I understood it,  
8 to the MPDPA in any order of this Court about what my  
9 client --

10 THE COURT: You missed two years of this case.

11 MR. RANDALL JONES: I did, Your Honor. I did, but  
12 I've tried to educate myself. But my point is that order  
13 certainly did not exist, which as I understood is the basis  
14 for your subsequent statements about the redaction process,  
15 as you pointed out to me last week, derived from that  
16 September 2012 order.

17 THE COURT: It did.

18 MR. RANDALL JONES: The affidavits at issue here  
19 today are all prior to that date. So I don't see how in the  
20 world there could be a prospective wholesale or subject matter  
21 waiver about an event that had yet to occur. So in that  
22 regard, Your Honor, my objection is to not just the particular  
23 paragraphs at issue in those affidavits, in particular Exhibit  
24 96, but more to the larger issue as well of this so-called  
25 subject matter waiver on I guess any discussion -- I'm not

1 sure how broad Mr. Bice wants to make this, I guess as broad  
2 as humanly possible, about conversations involving the  
3 redaction of documents.

4 MR. BICE: Your Honor -- Oh, I apologize.

5 THE COURT: Whenever you're ready, Mr. Bice.

6 MR. BICE: Your Honor, I think the most expeditious  
7 way to go about this is, as I had indicated to you before, I  
8 wanted to ask the questions of Mr. Raphaelson. You told me to  
9 ask him the questions, to preserve my right to call him in  
10 rebuttal when we address this issue with Mr. Fleming.

11 Obviously we're a little -- we take exception to this  
12 claim that we should have somehow brought this to the Court's  
13 attention prior to today. As you'll recall, Your Honor, I  
14 think we asked over two years ago to please identify the  
15 people that were involved in making this decision. And as the  
16 Court I'm sure can vividly remember what we were told in  
17 response. And then on Friday for the first time in two years,  
18 despite having knowledge about everything that had transpired,  
19 they walk into this courtroom and now tell you and us for the  
20 first time, oh, by the way, it's the same guy who has  
21 previously submitted declarations to you as to his so-called  
22 understanding that forms the basis upon which these redactions  
23 and his -- although you have not seen it yet, his newest  
24 declaration confirms all of that.

25 So what I would propose to the Court is I will bring

1 Mr. Raphaelson back up; we will proceed. I will ask the  
2 questions. They will note their objections. And I would ask  
3 the Court to actually reserve those rulings until such time as  
4 we have Mr. Fleming. But I will say this. I object now to  
5 the, well, suddenly Mr. Fleming is available today, which  
6 we're now being told, when the witness list was due long ago  
7 so that we could prepare for these people. Now all of a  
8 sudden how convenient for Sands China he's available and he  
9 wants to appear by video. They should have given us fair  
10 notice of that. They should have had him available a long  
11 time ago. They should have been up front with us when we  
12 asked them to tell us who was the decision maker involved in  
13 this and they didn't, and they waited until Friday to disclose  
14 it.

15 So it's a little bit, I think, of a stretch for  
16 Sands China to come in and complain to the Court that we just  
17 raised this issue today, when it was concealed from us for at  
18 least two years until Friday.

19 THE COURT: Okay. There does not appear at this  
20 point to me to be a subject matter waiver. While the  
21 privilege cannot be used as a sword and a shield, based upon  
22 the information I currently have before me it does not appear  
23 that a subject matter waiver or preservation of the subject  
24 matter privilege would create a situation where it is being  
25 used both for you and against you.

1 Now, with respect to Mr. Fleming, I'm not there, and  
2 I'm not going to commit as to what my position is going to be.

3 MR. BICE: Okay.

4 THE COURT: Let's keep going.

5 Sir, if you could come on back up.

6 And Mr. Bice, if you need to go through and do the  
7 questions that you know are going to be objected to, please  
8 feel free to do that.

9 MR. BICE: Okay.

10 THE COURT: We'll preserve for the record and then  
11 we'll keep going. How many days are we going to take at this  
12 rate?

13 MR. RANDALL JONES: I'm sorry, say that again, Your  
14 Honor.

15 THE COURT: How many days? Mr. Peek and I lived  
16 through an 11 or 12 day one once, so.

17 MR. RANDALL JONES: How many days to do this?

18 THE COURT: This hearing. I've got a half page of  
19 notes and it's 2:30.

20 You can sit down, sir. You're still under oath.

21 THE WITNESS: I understand.

22 MR. RANDALL JONES: Your Honor, all I can say is  
23 this is his witness and I told you before I could finish in a  
24 half a day or less. So I can't control the other party's  
25 witness.

1 THE COURT: I'm not blaming you. I'm asking the  
2 group.

3 MR. RANDALL JONES: You just gave -- well, I thought  
4 it was a look at me, so I wanted to explain myself. So I can't  
5 control his cross of my witnesses or his direct of his own.

6 MR. BICE: Well --

7 THE COURT: Okay. No, let me ask the question  
8 differently. To the gathered throng --

9 MR. BICE: Yes.

10 THE COURT: How many days do you realistically  
11 estimate that we will be here on this particular portion of  
12 these proceedings?

13 MR. RANDALL JONES: Your Honor, I will answer it  
14 this way. With respect to witness testimony, I still believe  
15 absent these kind of interruptions where we have to talk about  
16 an important issue without the witness testifying, absent  
17 those kind of interruptions, which we all know are somewhat  
18 inevitable, especially in complex cases, I think that the  
19 witnesses' testimony, as I understand it, will take a half a  
20 day. And I spoke to Mr. Bice before the lunch break and we  
21 went over who the witnesses were. They've got some video  
22 testimony that Mr. Bice has indicated he's cut down  
23 substantially. So based on what I think are going to be the  
24 actual -- the actual time of witness testimony, I still think  
25 it's a half a day. Now, obviously we probably can't get a

1 half a day potentially done today because of where we are, but  
2 otherwise it would be a half a day. That's my belief.

3 THE COURT: Mr. Bice, do you have the same  
4 assessment?

5 MR. BICE: We will be here tomorrow, obviously.

6 THE COURT: My question is really do I need to try  
7 and get someone else to cover the settlement conference I was  
8 going to try and do on Wednesday?

9 MR. PEEK: Yes, Your Honor.

10 THE COURT: Thank you, Mr. Peek.

11 MR. PEEK: I mean, I --

12 THE COURT: No, I just --

13 MR. PEEK: I'm just trying to be realistic.

14 THE COURT: All I'm trying to do is I'm trying to  
15 plan.

16 MR. BICE: Fair enough.

17 MR. PEEK: Yeah.

18 MR. BICE: Fair enough. I'm not going to --

19 MR. PEEK: I think it's fair to do that. We want  
20 this done this week, Your Honor.

21 THE COURT: Me, too.

22 MR. BICE: Okay.

23 THE COURT: But I didn't think we'd go into  
24 Wednesday.

25 MR. PEEK: I didn't, either, but I'm being realistic.

1 THE COURT: All right. Now, Mr. Bice, if you would  
2 like to go to your next question.

3 MR. BICE: Thank you, Your Honor.

4 DIRECT EXAMINATION (Continued)

5 BY MR. BICE:

6 Q Mr. Raphaelson, this one is yes or no. Do you know  
7 what information that Mr. Fleming relied upon in making his  
8 decision?

9 A I do not.

10 Q Do you know what documents he considered in making  
11 his decision?

12 A I do not.

13 Q Did you provide him any documents as part of that  
14 decision-making process?

15 MR. PEEK: Your Honor, I'm going to again object. I  
16 think that's getting real close to the attorney-client  
17 communication, as well as work product.

18 THE COURT: Overruled. And it was just generic  
19 documents --

20 MR. BICE: Right.

21 THE COURT: -- not specific documents.

22 MR. PEEK: I think his question, Do you know what  
23 documents?

24 MR. BICE: No, I apologize.

25 THE COURT: No. He said did you provide any

1 documents?  
2 MR. PEEK: Did you provide? Okay.  
3 MR. BICE: Correct.  
4 THE COURT: So you can answer yes or no.  
5 THE WITNESS: I honestly don't recall.  
6 BY MR. BICE:  
7 Q Would you communicate with him via e-mail as part of  
8 this deliberative process?  
9 A As part of his deliberative process?  
10 Q Yes, sir.  
11 A I don't believe so.  
12 Q Do you know whether anyone else provided him any  
13 emails as part of his process?  
14 THE COURT: Remember, I don't want you to guess or  
15 speculate.  
16 THE WITNESS: Your Honor, a copy of your order would  
17 have been transmitted to Mr. Fleming. And when I say order, I  
18 mean the order contained within the transcript in December  
19 where you said produce this material. And I know you've  
20 instructed me not to assume, but logic dictates to me that  
21 that was transmitted to him. I just don't know if I did it or  
22 somebody else did.  
23 THE COURT: Okay.  
24 THE WITNESS: And I'm trying to be completely honest  
25 with the Court.



1 THE COURT: I appreciate that.

2 BY MR. BICE:

3 Q Are there any other documents that you assume were  
4 transmitted to him as part of that process?

5 A I can't think of any, Mr. Bice.

6 Q Okay. Just -- I want to bounce back and bounce one  
7 more name off of you, Mr. Raphaelson. Did the O'Melveny &  
8 Myers firm provide any input on this issue, to your knowledge?

9 A On this issue, meaning the production?

10 Q No. The MPDPA redactions.

11 A In December, in January -- in December 2012, January  
12 2013, any input to Mr. Fleming? Is that the question?

13 Q Correct.

14 A No, sir.

15 Q Did it provide any input to you?

16 A No, sir.

17 Q Had it provided input on the MPDPA prior to that  
18 date?

19 A To Mr. Fleming?

20 Q Yes.

21 A No, sir.

22 Q How do you know that?

23 MR. PEEK: Your Honor, that would get into an  
24 attorney-client communication.

25 THE WITNESS: Your Honor, that would be by virtue of

1 communications with other counsel to --

2 THE COURT: Okay. That one is sustained on  
3 attorney-client.

4 MR. BICE: Okay. And I'm going to do this just to  
5 preserve my record, Your Honor.

6 THE COURT: Absolutely.

7 BY MR. BICE:

8 Q Mr. Raphaelson, did you provide any of the input  
9 that O'Melveny and Myers provided to you, did you provide any  
10 of that to Mr. Fleming?

11 MR. PEEK: Objection, Your Honor. Assumes facts not  
12 in evidence. That he was provided? And also it gets into the  
13 attorney-client communication and work product.

14 THE COURT: The objection is sustained.

15 BY MR. BICE:

16 Q Have you seen anything in writing concerning the  
17 decision to redact documents after the Court's order from  
18 anyone inside the company?

19 A Mr. Bice, excuse me. It would really help me if I  
20 could see your face when you're talking to me.

21 Q Got it.

22 A I got off a plane at eleven o'clock last night with  
23 a head cold and these (gesturing toward his ears) aren't  
24 working as well as I'd like them to.

25 Q My question, Mr. Raphaelson, was -- and it probably

1 wasn't very articulate, so let me see if I can narrow it down  
2 a little bit. Amongst the decision makers -- I apologize,  
3 amongst those who were providing input, did you see anything  
4 in writing from them to Mr. Fleming?

5 MR. PEEK: Objection, lacks foundation on if there  
6 was something in writing.

7 THE COURT: Overruled. And that's just a yes or no,  
8 sir.

9 THE WITNESS: From the lawyers, I don't recall.  
10 From OPDP, I believe I've seen a letter that was made  
11 available to the Court subsequent, but I may be mixing up the  
12 time frame, Your Honor, as to whether it was in the pre-  
13 September time frame or the post-December time frame, so  
14 forgive me.

15 THE COURT: Okay.

16 BY MR. BICE:

17 Q Did you -- You're describing at least one letter  
18 from the Office of Data Protection. Did you receive those  
19 letters yourself or were they forwarded to you by someone?

20 A I had the opportunity to review at least one letter  
21 that I know was produced to the Court. Again, Your Honor, I  
22 can't recall whether that letter was produced as part of the  
23 September -- the summer, the September proceeding or  
24 subsequent to the December 2012 proceeding. I just -- I can't  
25 do it.

1 BY MR. BICE:

2 Q Okay. We'll come back to that in just a moment.

3 Let me ask this. Was there anyone on behalf of Las Vegas  
4 Sands Corporation that met with the Office of Data Protection?

5 A In what time frame?

6 Q Has there been anyone that met with -- from Las  
7 Vegas Sands Corp. that met with them prior to the date of the  
8 Court's order of September -- I got to remember, is it 18?  
9 September 18 of 2012?

10 MR. RANDALL JONES: Your Honor, I'm going to just at  
11 least interpose an objection to relevance, assuming that Las  
12 Vegas Sands did meet, he didn't tie it back to the Jacobs  
13 matter. If they met on some other basis for some other  
14 reason, that's irrelevant to these proceedings.

15 THE COURT: The objection is sustained. If you can  
16 rephrase your question, Mr. Bice.

17 MR. BICE: Sure.

18 BY MR. BICE:

19 Q Relative to the Jacobs matter, Mr. Raphaelson,  
20 anybody from Las Vegas Sands Corporation meet with anyone at  
21 the Office of Data Protection?

22 MR. PEEK: What time period again?

23 MR. BICE: Prior to the date of the Court's order.

24 MR. PEEK: What -- the September --

25 MR. BICE: September 18th, 2012.

1 THE WITNESS: I'm sorry, December 18?

2 THE COURT: September.

3 MR. BICE: September. I apologize.

4 MR. PEEK: You know what, I'm going to object as to  
5 relevancy.

6 THE COURT: Overruled.

7 THE WITNESS: I can't answer that question, Your  
8 Honor, because I'm not familiar with a September 18, 2012,  
9 order.

10 MR. BICE: Or 14.

11 MR. PEEK: September 14, 2012.

12 MR. BICE: My apologies; 14.

13 THE WITNESS: Again, I'm trying to be respectfully  
14 precise in my response.

15 THE COURT: You're doing exactly the right job.  
16 You're going to keep Mr. Bice on his toes. And you're  
17 referring for date to Exhibit 98.

18 MR. BICE: 96.

19 THE WITNESS: Prior to September 14, 2012, attorneys  
20 representing Las Vegas Sands met with officials of the OPDP,  
21 yes.

22 BY MR. BICE:

23 Q On how many occasions?

24 A I don't know.

25 Q Who were the attorneys?

1           A     I don't know all their names, either. I believe  
2 there were lawyers from Kirkland & Ellis. I believe there  
3 were lawyers from Munger Tolles. And I believe there were  
4 lawyers from O'Melveny acting on behalf of the audit committee  
5 of Las Vegas Sands Corporation, rather than at the direction  
6 of the corporation itself. But the full answer, because the  
7 audit committee, Your Honor, had the representative capacity  
8 of the corporation would be to include O'Melveny.

9           THE COURT: Thank you.

10          THE WITNESS: Thank you.

11          MR. RANDALL JONES: I was waiting for his next  
12 question because I think this line of questioning is  
13 completely out of line for the subject matter of this hearing,  
14 which is alleged -- potential sanctions against Las Vegas  
15 Sands -- excuse me, Sands China Limited as related to your  
16 September 2012 order and subsequent events. Now he's getting  
17 into what Las Vegas Sands may have done in a time period  
18 before that. Your Honor, I object to this.

19          THE COURT: Can I tell you something, Mr. Jones? In  
20 my mind the issue related to the willfulness or the competing  
21 concerns that Las Vegas Sands and Sands China Limited had may  
22 include meetings that happened even before my hearing related  
23 to this September of '12. If it is information that affects  
24 the decision-making process that Sands China Limited went  
25 through in making the determination to redact, it's something

1 -- if you want me to, I'm going to consider. So I think it's  
2 fair game for Mr. Bice to ask the question.

3 MR. RANDALL JONES: Well, you said something that  
4 was of concern to me. When you said that you said the  
5 information you want to consider as to Las Vegas Sands and  
6 Sands China's willfulness.

7 THE COURT: I'm sorry. I meant Sands China.

8 MR. RANDALL JONES: And that's -- and so you hit on  
9 my concern, is that I understand your point as to Sands China  
10 and we're going to -- we have witnesses related to that issue.  
11 But this is a witness solely related to --

12 THE COURT: So let Mr. Peek object, since he's Las  
13 Vegas --

14 MR. PEEK: I already -- I had objected and you  
15 overruled it. I did object on relevancy, Your Honor.

16 MR. RANDALL JONES: And we also -- we do want to, as  
17 you said, noted, we want to get forward, along with these  
18 proceedings and we're going down a line of inquiry that has  
19 nothing to do with these proceedings, I don't believe.

20 THE COURT: Then let me see if I can get a  
21 stipulation out of you. Are you on behalf of Sands China  
22 telling me that Sands China did not rely upon anything that  
23 the Office of Data Privacy for the Macanese government told  
24 you prior to the September 14th, 2012, order being entered?

25 MR. RANDALL JONES: Your Honor, I would certainly -

1 - as you can appreciate as a practicing lawyer before you took  
2 the bench would never stipulate to some broad question like  
3 that from the Court, so of course not.

4 THE COURT: Well, I'm just asking because if you say  
5 yes, I'm stipulating to it, then we don't ask any more  
6 questions. If you say no, then I've got a bunch of issues.

7 MR. RANDALL JONES: Well, you've got to understand,  
8 Your Honor, my refusal to stipulate to that proposition has  
9 nothing to do with my objection about relevance. I believe  
10 the two things are distinguishable. I still think this is  
11 improper and goes to an issue that is not related to what I  
12 understood was the issue before this Court today, so that's my  
13 objection.

14 THE COURT: What do you think the issue is then, Mr.  
15 Jones? Just so I'm clear. Because I told them they have to  
16 show me prejudice.

17 MR. PEEK: One moment, Your Honor.

18 THE COURT: And then you get to show me all the  
19 reasons as to why it wasn't willful or it's excused. And so  
20 there should be --

21 MR. PEEK: Your Honor, may we have like a two-  
22 minute --

23 MR. BICE: Also, Your Honor --

24 THE COURT: Yes, you can have a five minute.

25 MR. PEEK: Yeah.



1 THE COURT: Sir, I have a policy that if a witness  
2 speaks to counsel during a break that it's fair game to  
3 inquire. So I'm putting you on notice of that ahead of time  
4 so I don't get in a situation.

5 THE WITNESS: It will be my pleasure simply to speak  
6 to the Court during the break. Thank you, Your Honor.

7 (Court recessed at 2:44 p.m. until 2:49 p.m.)

8 MR. RANDALL JONES: Judge, if I might ask Mr. Bice --

9 THE COURT: Do I have everybody back in the room  
10 and is Jill back on the record?

11 COURT RECORDER: Yes.

12 THE COURT: Then, yes, you can ask me now.

13 MR. RANDALL JONES: I was going to ask Mr. Bice,  
14 assuming we don't have any more objection or interruption  
15 issues, just for scheduling with Macau, how long Mr. Bice  
16 thinks he's got left of examination of Mr. Raphaelson so we  
17 can send an email to Macau because they're standing by.  
18 That's all.

19 THE COURT: On direct?

20 MR. RANDALL JONES: Yeah.

21 THE COURT: Just on his direct examination?

22 MR. RANDALL JONES: Yes, just on his direct, if he  
23 can estimate how much so we can send an email.

24 THE COURT: Best guess?

25 MR. BICE: Thirty minutes, if that.

1 MR. RANDALL JONES: Thirty minutes?  
2 THE COURT: He says about a half hour.  
3 MR. RANDALL JONES: All right. So --  
4 MR. PEEK: That's just questions without  
5 interruption?  
6 MR. BICE: Right.  
7 MR. RANDALL JONES: Right.  
8 MR. PEEK: Can I just talk to Mr. Jones for a  
9 minute?  
10 THE COURT: That's why we took a break.  
11 (Colloquy between the Court and the witness)  
12 MR. RANDALL JONES: I think we're ready to proceed,  
13 Your Honor.  
14 (Colloquy between the attorneys)  
15 THE COURT: Mr. Bice, would you like to continue?  
16 MR. BICE: I would, Your Honor. Thank you.  
17 THE COURT: Oh, and there was an objection on  
18 relevance. The objection is overruled. There.  
19 DIRECT EXAMINATION (Continued)  
20 BY MR. BICE:  
21 Q All right. Mr. Raphaelson, now going -- you talked  
22 about the three law firms -- you talked about the three law  
23 firms that had met with the Office of Data Protection prior  
24 to the date of the Court's order, which is Exhibit 96 on  
25 behalf of Las Vegas Sands Corporation.

1           A     Thank you.

2           Q     After that date, was there anyone who met with the  
3 Office of Data Protection on behalf of Las Vegas Sands  
4 Corporation?

5           A     By anyone, you mean any lawyer?

6           Q     I mean anyone on behalf of the company, lawyer or  
7 non-lawyer?

8           A     So far as I know, only lawyers on behalf of Las  
9 Vegas Sands with OPDP; so far as I know. And I would add  
10 Mayer Brown to that list after the September 2012 time frame,  
11 Your Honor.

12          Q     Okay. But nobody -- I should rephrase. Did the  
13 same three firms, being Kirkland, M.T.O. -- I refer to them  
14 as M.T.O., and O'Melveny, did they also meet after the  
15 September '12 time frame with the Office on behalf of Las  
16 Vegas Sands Corp.?

17          A     Munger Tolles was out either the end of September  
18 or beginning of October 2012. Conducting no additional work  
19 for LVS, other than transitional to Kirkland for some issues  
20 and to Mayer Brown for other issues.

21          Q     Fair enough.

22          A     Whether O'Melveny attended another meeting with  
23 OPDP or not, I don't recall at this time. But again, if they  
24 did it would have been in their capacity for the LVSC Board  
25 of Directors audit committee and not anything that I had,

1 frankly, transparency into, let alone directive ability.  
2 Q Okay.  
3 A And that's the best answer I can give you.  
4 Q All right. I just want to be clear on what you  
5 just said. So for O'Melveny, they would not be reporting to  
6 you as the global general counsel, or would they?  
7  
8 A They did not report to me at all.  
9 Q Understood. They reported to the audit committee?  
10 A That is correct.  
11 Q Okay. And M.T.O. and Kirkland & Ellis, however,  
12 would have reported to you?  
13 A Kirkland & Ellis, yes. M.T.O. on some issues and  
14 on other issues they would report to Mr. Fleming.  
15 Q All right. Prior to the date of the Court's order,  
16 being Exhibit No. 96 --  
17 A 98?  
18 Q Yes, 98. I apologize. You are correct, 98. Did  
19 anyone meet with the Office of Data Protection on behalf of  
20 Sands China?  
21 A So as far as I know, yes.  
22 Q Do you know who?  
23 MR. PEEK: And, Your Honor, I'm assuming this is  
24 just related to the Jacobs matter.  
25 THE COURT: Right, Mr. Bice? That's how we've been

1 trying to frame it.

2 MR. PEEK: Not just generally.

3 THE COURT: Correct?

4 MR. BICE: Yes.

5 BY MR. BICE:

6 Q On behalf -- relating to this matter.

7 A Mr. Fleming. There's a Portuguese lawyer who works  
8 for Mr. Fleming in house by the name of Graca, whose last  
9 name I do not recall. G-R-A-C-A is I believe how she spells  
10 her first name, Your Honor. I believe she went with him to  
11 OPDP on one or more occasions, whether -- I can't fix the  
12 date precisely as being before September 14th, 2012, or after  
13 September 14th, 2012, but in that time frame. And there's  
14 another Portuguese lawyer by the name of Carlos -- I believe  
15 it's Lobos, L-O-B-O-S, who reports to Mr. Fleming as an in-  
16 house lawyer, who is also a regulatory lawyer who may have  
17 accompanied Mr. Fleming on one or more occasions to OPDP.

18 MR. PEEK: And was your question, Mr. Bice, only  
19 related to the lawyers from -- the in house lawyers at Sands  
20 China or other lawyers representing Sands China outside?

21 BY MR. BICE:

22 Q I'm going to follow up because it's -- I want to  
23 know whether there was any representatives, whether they were  
24 lawyers, non-lawyers, in house lawyers or outside counsel  
25 that met with the Office of Data Protection on behalf of

1 Sands China that relates to this litigation.  
2 A I don't know.  
3 Q Other than the three in house lawyers that you've  
4 already identified?  
5 A Correct.  
6 Q Okay.  
7 A And I should add M.T.O. I think was on both sides;  
8 that is, both LVS and Sands China in its visit.  
9 Q In it's visit. Okay. Do you know whether or not --  
10 A Mayer -- you know what --  
11 Q Go ahead. I'm sorry.  
12 A You're asking before September 12th?  
13 Q Yes.  
14 A Okay.  
15 Q Or September 14 of 2012.  
16 A I'm sorry. I meant September of 2012.  
17 Q Yes, sir.  
18 A Yes. My answer stands. I'm sorry, Your Honor.  
19 Q Okay. How about after that date?  
20 A After that date I believe that Mr. Lackey and one  
21 of Messrs. Mark -- I believe it was Mark or Randall Jones may  
22 have met on behalf of Sands China with OPDP.  
23 Q Okay. Did -- Has Rob Rubenstein ever met with  
24 anyone at the Office, to your knowledge?  
25 A I'm sorry?

1 Q Has Rob -- and if I'm mispronouncing his name,  
2 Rubenstein --

3 A Rubenstein is right and Rob is right, so yes.

4 Q Mr. Robert Rubenstein, has he met with the Office  
5 of Data Protection, as far as you know?

6 A If that's a declarative sentence, I'm not in a  
7 position to argue with it. If it's a question, I don't know  
8 the answer to that.

9 Q All right. It was a question, so.

10 A Okay.

11 Q Okay. In your role as global general counsel, Mr.  
12 Raphaelson, do you receive emails from Mr. Fleming? I'm not  
13 asking about the substance, just yes or no?

14 A Do I receive emails from Mr. Fleming?

15 Q Yes.

16 A Yes.

17 Q Okay. Do you receive emails from other personnel  
18 in Macau?

19 A Yes.

20 Q And is that true even today? Not necessarily as  
21 in this exact day, but as a general matter is that true?

22 A I have not received an email from Mr. Fleming  
23 today.

24 Q Okay.

25 A I have received email from another lawyer in the

1 Macau legal department not related to this matter --  
2 Q Understood.  
3 A -- today.  
4 Q Understood.  
5 THE COURT: So communications still occur?  
6 THE WITNESS: Yes, Your Honor.  
7 BY MR. BICE:  
8 Q And they send -- People in Macau send you emails as  
9 part of your duties that contains personal information about  
10 other people?  
11 A Again?  
12 Q Fair enough. People in Macau send you emails in  
13 your role as global counsel, right?  
14 A Yes.  
15 Q On things that you need to know about? Or they  
16 want you to know about. Better way to phrase it, right?  
17 A Yeah.  
18 Q You might sometimes argue whether you need to know  
19 or not.  
20 A Thank you for that important distinction. With  
21 that important distinction in mind, yes, Your Honor, I  
22 receive information from Macau that people in Macau want me  
23 to know.  
24 Q Okay. Sometimes that can be about legal issues  
25 that are going on in Macau with vendors or things like that,



1 correct?

2 MR. PEEK: Objection, Your Honor. That's getting  
3 to the communications.

4 MR. BICE: I'll rephrase.

5 THE COURT: Overruled. This is a general type of  
6 what do you get.

7 BY MR. BICE:

8 Q Yes. What do you get?

9 A If I've gotten a vendor related communication, it  
10 does not stick out in my mind. I'm not going to deny that  
11 I received one, Mr. Bice, but as I sit here now vendor  
12 communications just don't jump out. In the context of a  
13 we have been sued by a vendor or we have sued a vendor in  
14 connection with the performance of a third party vendor  
15 contract, that information I do receive.

16 Q Okay. And sometimes --

17 A Not all the information.

18 Q Of course.

19 A But whatever information somebody wants me to have,  
20 I get.

21 Q And that can include information about people that  
22 they're having legal issues with in Macau, right?

23 MR. RANDALL JONES: Well, Your Honor, again, I  
24 think that does implicate the type of communication it is.  
25 And I understand that there's a fact here, but it is the type

1 of information he's receiving. And I also think that we're  
2 now getting into issues that have to do with the whole  
3 jurisdictional discovery matters that I don't think are  
4 implicated by this hearing and I think are inappropriate.  
5 So I don't know if Mr. Bice is doing that intentionally or  
6 just trying -- or just asking questions that happen to be  
7 straying into this area, but I think it's inappropriate and  
8 I don't think it's necessary for what the Court is -- at  
9 least as I understand what the purpose of this hearing is.

10 THE COURT: Here's the problem that I see, Mr.  
11 Jones. Part of the argument you're going to make is that  
12 this information was protected and could not be produced by  
13 your client in the U.S. because of the law. Mr. Bice has  
14 told me numerous times in arguments that your client and Las  
15 Vegas Sands continue to transmit this kind of information  
16 freely between themselves in and out of Macau electronically  
17 and therefore your argument doesn't hold water.

18 MR. RANDALL JONES: And I do -- I understand that.

19 THE COURT: And that's been -- he's been consistent  
20 with that theme.

21 MR. RANDALL JONES: I understand that. I do.

22 THE COURT: And that's what you're trying to do  
23 right now, right?

24 MR. RANDALL JONES: And I --

25 MR. BICE: One of the things.

1 THE COURT: Good.

2 MR. PEEK: And, Your Honor -- I'm sorry.

3 MR. RANDALL JONES: I don't have a problem with  
4 what he's trying to do. I think he's got the information  
5 that emails go back and forth. And there's no need to  
6 inquire into what the type of information is that goes back  
7 and forth because by the nature of that inquiry, what type of  
8 information -- his point is there's email communication.  
9 That makes his point. Why does he need to know the type of  
10 information?

11 THE COURT: The email communication is not in and  
12 of itself enough to convince me that your argument doesn't  
13 hold water.

14 MR. RANDALL JONES: Well, I certainly agree with  
15 that, Your Honor.

16 THE COURT: Okay. So, Mr. Bice, since he knows  
17 that, is trying to show me that there is other information  
18 besides simply an email that is coming out of Macau to Las  
19 Vegas Sands or someplace else.

20 MR. PEEK: The best evidence --

21 MR. RANDALL JONES: And I don't have a problem with  
22 a general inquiry. I'm objecting --

23 THE COURT: That's what I thought he was doing.

24 MR. RANDALL JONES: But I'm objecting to that  
25 particular question because I believe it's straying now into

1 impermissible areas of the type of communication that he has  
2 with people that I represent and I think that's inappropriate.

3 THE COURT: Okay. Can you rephrase your question?

4 MR. PEEK: And the best evidence would be that  
5 information itself, Your Honor.

6 THE COURT: It might be if we had it.

7 MR. RANDALL JONES: Well --

8 MR. PEEK: But that's his burden.

9 THE COURT: No. His burden is prejudice. That's  
10 all his burden is. His burden today is prejudice. Every  
11 other burden in this case is yours. Okay.

12 BY MR. BICE:

13 Q Mr. Raphaelson, do you get emails with employee  
14 names on them from employees in Macau?

15 A I mean, I get the from line all the time, yes.

16 Q Sure. And you sometimes get the from line and it  
17 will include -- in the narrative it will include the name of  
18 other employees, right?

19 A Sometimes it does. Sometimes the name is deleted.

20 Q Sometimes it's deleted?

21 A Yes.

22 Q Redacted?

23 A Redacted in the sense of a black mark across it,  
24 no. But in the sense of the typing will be spoke to XXX or  
25 dash dash, yes.

1 Q Okay. And when did that practice start?

2 A I arrived at Las Vegas Sands after David Fleming,  
3 so it's a practice that has been there at least as long as I  
4 have. So I can't tell you when something started before me,  
5 Mr. Bice. I can tell you that I get -- I can tell the Court  
6 that I get public information, for instance. If there's a  
7 lawsuit in Macau it goes into a quarterly letter that Mr.  
8 Fleming prepares to our external auditors. I get a copy  
9 of that letter to include in my quarterly letter to LVS's  
10 external counsel regarding litigation. And so the names of  
11 people who are in public litigation with us are included.  
12 I think that's a full response to your question.

13 Q Well, tell me what your understanding is as to the  
14 -- what are the types of names that get X'd out?

15 A I'm loathe, Your Honor, to go into my understanding  
16 of the law.

17 THE COURT: He just objected. Are you guys going  
18 to help?

19 MR. BICE: I'll rephrase.

20 MR. PEEK: I understand, Your Honor. He objected  
21 because we don't want to have an advice of counsel here.

22 MR. BICE: I'll rephrase.

23 THE COURT: Thank you.

24 //

25 BY MR. BICE:

1 Q Do employee names get X'd out?

2 A From time to time, yes.

3 Q Okay. But you don't know why some are X'd out and  
4 some are not?

5 THE COURT: That's not what he said. He says he  
6 doesn't want to tell you.

7 BY MR. BICE:

8 Q Do you know why some are X'd out and why some are  
9 not? Yes or no, please.

10 MR. PEEK: Repeat that question again.

11 MR. BICE: Sure.

12 BY MR. BICE:

13 Q Sure. Do you know why some are X'd out and some  
14 are not? Yes or no, please.

15 MR. PEEK: Okay.

16 THE WITNESS: I think I do.

17 BY MR. BICE:

18 Q And if I ask you to tell me why, you will object?

19 MR. PEEK: I will object, yes.

20 MR. BICE: Mr. Peek will object.

21 MR. PEEK: And I would instruct him not to answer.

22 But he would probably also object, too.

23 THE WITNESS: I'm hoping I don't have to object  
24 again.

25 MR. BICE: All right.

1 BY MR. BICE:

2 Q But you do receive emails where the -- I'm sorry,  
3 the employees names are not X'd out?

4 MR. PEEK: Objection, asked -- okay. Asked and  
5 answered, Your Honor.

6 THE COURT: Overruled.

7 MR. PEEK: But go ahead.

8 THE WITNESS: Yes.

9 BY MR. BICE:

10 Q Okay. Do you ever receive emails where customer  
11 names are not X'd out?

12 A Mr. Bice --

13 THE COURT: Mr. Bice, you've got to face us.

14 MR. BICE: Oh, I apologize.

15 THE WITNESS: I'm sorry. I do apologize.

16 MR. BICE: I apologize. I keep doing that.

17 BY MR. BICE:

18 Q Do you ever receive email that include customer  
19 names where you can see the name?

20 MR. RANDALL JONES: And just to be clear, Todd,  
21 you're talking about customer names from customers on Sands  
22 China?

23 MR. BICE: Yes.

24 MR. RANDALL JONES: Thank you.

25 THE WITNESS: I have seen some such email.

1 BY MR. BICE:  
2 Q Do you receive those with some regularity?  
3 MR. RANDALL JONES: Object to the form of the  
4 question, Your Honor; vague and ambiguous.  
5 THE COURT: Sustained. Can you rephrase?  
6 BY MR. BICE:  
7 Q How frequently would you receive emails that have  
8 a customer name in them?  
9 MR. PEEK: Same objection.  
10 MR. RANDALL JONES: Same objection, Your Honor.  
11 THE COURT: Overruled.  
12 THE WITNESS: If it's occurred a dozen times in now  
13 three and a quarter years, it would be a lot, Your Honor.  
14 THE COURT: So once every four or five months. Not  
15 very often.  
16 BY MR. BICE:  
17 Q Has it occurred in the last year?  
18 A Has it occurred in the last year?  
19 Q Has it occurred in the last year?  
20 A Yes.  
21 Q Would it be a near daily occurrence for you to  
22 receive emails that have employee names in Macau in them?  
23 A I certainly get an email from a member of the Macau  
24 legal department on almost a daily basis.  
25 Q Mr. Raphaelson, these will -- I just need to lay



1 a foundation. These are questions I know the answer to, but  
2 I need to lay the foundation. Mr. Adelson is both the chair  
3 of Sands China and of LVSC, correct?

4 A Yes, he is.

5 Q Okay. And Mr. Adelson as the chairman, does he  
6 have the authority to give direction to David Fleming?

7 A As the chairman of --

8 Q Sands China?

9 A -- Sands China Limited.

10 MR. PEEK: Objection, Your Honor. One, that would  
11 be an attorney-client and work product. Second, lack of  
12 foundation because how would he know? He's getting into  
13 corporate governance, I guess, now at Sands China Limited,  
14 over which he doesn't have any kind of authority. So he's  
15 asking his --

16 THE COURT: Don't make speaking objections.

17 MR. PEEK: Yes.

18 THE COURT: Don't do it. Thank you. Overruled.

19 THE WITNESS: The Board -- I'm sorry, Your Honor.

20 THE COURT: You can answer if you can.

21 THE WITNESS: I can answer, Your Honor. The Board  
22 of Directors of Sands China Limited has directive capacity  
23 over certain of the senior management. Mr. Fleming is an  
24 alternate director to the Board of Directors of Sands China  
25 Limited. In that capacity Mr. Adelson as Chairman of the

1 Board could certainly provide direction and advice to Mr.  
2 Fleming as a member of the board.

3 THE COURT: Okay. Thank you.

4 BY MR. BICE:

5 Q So if Mr. Adelson, as an example, wanted Mr.  
6 Fleming to testify in this proceeding, he can direct that,  
7 can he not?

8 MR. RANDALL JONES: This is with respect to Sands  
9 China?

10 MR. BICE: Yes.

11 MR. RANDALL JONES: Object to the form of the  
12 question. Calls for spec--

13 THE COURT: The question is not appropriate, Mr.  
14 Bice. He's either going to show up or he's not and I'm going  
15 to draw conclusions if he doesn't show up.

16 MR. BICE: But I'm entitled, I believe, Your Honor,  
17 under the rules to establish control over him and that he can  
18 be here if the company wants him here. I don't want to hear  
19 some story about how, well, there's this unique provision and  
20 he's not -- he can't be directed, etcetera.

21 MR. PEEK: Your Honor, I'm a little troubled by the  
22 Court's comment that you would draw any kind of an adverse  
23 inference at all if Mr. Adelson doesn't show up and testify.

24 THE COURT: Not Mr. Adelson. Mr. Fleming.

25 MR. PEEK: Oh, okay. I'm sorry.

1 THE COURT: I'm not worried about Mr. Adelson.  
2 I'm told he's out of town and I believe people.

3 MR. PEEK: Appreciate it. All right. Just wanted  
4 to --

5 THE COURT: Except for that guy who was supposedly  
6 in China but he was at a seminar and his picture was in the  
7 paper. Who was that, Mr. Morris? Never mind.

8 MR. RANDALL JONES: Your Honor, I also would object  
9 to any argument about anybody that has -- His argument about  
10 control of a foreign company that is in terms of establishing  
11 whether or not there are alternative means with respect to  
12 Mr. Fleming for them to try to take his testimony, which they  
13 had the opportunity to employ for eight months, which they  
14 didn't ever try to do.

15 THE COURT: But you didn't disclose him.

16 MR. RANDALL JONES: Your Honor, in terms of non-  
17 disclosure, they certainly knew about Mr. Fleming. That was  
18 not --

19 THE COURT: Okay, wait.

20 MR. BICE: We asked --

21 THE COURT: Wait, guys.

22 MR. BICE: I apologize.

23 THE COURT: It's not -- I overruled --

24 MR. PEEK: I know. Let's move --

25 THE COURT: I sustained the objection. The witness

1 doesn't have to answer this question. If Mr. Fleming doesn't  
2 show up and testify, then I'm probably going to ask you some  
3 serious questions, Mr. Jones.

4 MR. RANDALL JONES: Understood, Your Honor.

5 THE COURT: And that's the kind of message I'm  
6 trying to deliver. I don't care who's in charge of him.  
7 Sands China is a party and has the ability to have their  
8 employees here if they want them here. Okay.

9 MR. BICE: All right. I'll move on, Your Honor.

10 BY MR. BICE:

11 Q Mr. Raphaelson, how long have you been an attorney?

12 A I've been an attorney since October of 1977.

13 Q As I recall from your resume, you were also a  
14 prosecutor?

15 A I was.

16 Q And so you have tried cases before, correct?

17 A I have tried a great number of cases, yes.

18 Q And one of the things, Mr. Raphaelson, that can  
19 happen in cases, even in your own experience, is that if they  
20 get delayed evidence can be lost, right?

21 A If they don't get delayed evidence can be lost,  
22 yes.

23 Q That's true. But if they get delayed, evidence can  
24 be lost, right, that might not otherwise be lost. Fair?

25 A God promises none of us a full measure of days,

1 Mr. Bice.

2 Q Okay. Was my statement a fair one?

3 A I couldn't tell you whether it was fair or unfair.  
4 I've given you my characterization in response.

5 Q Okay. So do you deny that if cases get delayed  
6 that evidence can be lost?

7 MR. RANDALL JONES: Objection.

8 MR. PEEK: Are you trying to make an expert out of  
9 Mr. Raphaelson?

10 MR. BICE: No. I'm --

11 MR. PEEK: Your Honor, that's an objection.

12 THE COURT: The objection is sustained.

13 MR. PEEK: Thank you.

14 THE COURT: The witness already answered it. I  
15 recognize the issues about prejudice with delay, but you've  
16 got to show something more than just delay.

17 MR. BICE: Understood.

18 BY MR. BICE:

19 Q One of the things that can happen from delay is  
20 memories fade; isn't that true, Mr. Raphaelson?

21 MR. PEEK: Is he now a human factors expert?

22 THE COURT: Overruled. No, he's a lawyer. He  
23 knows. We all know. Everybody sitting in this room who went  
24 to law school knows witnesses lose their memory. It's not as  
25 crisp. Sometimes, amazingly, their memories become very

1 clear during criminal trials in the second trial that they  
2 didn't have those memories before, and we all wonder how that  
3 happens. So --

4 THE WITNESS: Your Honor, the older I get the more  
5 frequently I find I don't remember what I had for breakfast  
6 yesterday. But I have a crystal clear recollection of the  
7 last conversation I had with my father. So, yes, Mr. Bice,  
8 there are things that people forget, some organically, some  
9 psychologically. And there are things some people don't  
10 forget.

11 BY MR. BICE:

12 Q And another thing that can happen if cases get  
13 delayed is that witnesses can become unavailable; right?

14 A As I said earlier, God promises none of us a full  
15 measure of days. I can get hit by a bus walking across the  
16 street later.

17 Q Has that happened in this -- in the last year in  
18 this case, sir?

19 A I have not been hit by a bus walking across the  
20 street, no.

21 Q Understood. You know who Jeff Schwartz was, don't  
22 you?

23 A I do know who Jeff Schwartz was.

24 Q And who was Mr. Schwartz?

25 A Mr. Schwartz was a member of our board of directors

1 and a member of the audit committee and a valued member of  
2 our community.

3 Q And he was also a member of the Sands China Limited  
4 board of directors, wasn't he?

5 A He was also a member of the Sands China Limited  
6 board. He was also president and CEO of his own company.

7 Q And Mr. Schwartz was intimately involved in the  
8 facts and circumstances surrounding Mr. Jacobs's termination,  
9 was he not?

10 MR. RANDALL JONES: Object to the form of the  
11 question. Assumes facts not in evidence.

12 THE COURT: Overruled. But, sir, I don't want you  
13 to guess or speculate.

14 MR. PEEK: And, Your Honor, I'm going to object.  
15 This gets to the merits of the case, as well.

16 THE COURT: Overruled. This goes to the prejudice  
17 issue.

18 THE WITNESS: As I appreciate the question, "facts  
19 and circumstances" is quite broad. And so if you look at  
20 quite broad definition of the facts and circumstances, Mr.  
21 Bice, yes, Mr. Schwartz had an involvement. I'm not able to  
22 characterize that involvement, Your Honor, as intimate,  
23 sustained, casual, causal, or anything of the sort.

24 //

25 BY MR. BICE:

1 Q Well, we'll play some video by the witnesses that  
2 can describe his involvement. So that wasn't my -- and I  
3 apologize --

4 A I wasn't here at the time. I don't know.

5 Q Understood.

6 MR. RANDALL JONES: And, Your Honor, object to the  
7 editorial comments of Counsel.

8 THE COURT: Okay. Could we all not make editorial  
9 comments, everybody in the room. That includes Mr. Peek.

10 Okay.

11 BY MR. BICE:

12 Q Tell the Court when Mr. Schwartz passed away,  
13 please.

14 A Oh, my God. That would be one of those things like  
15 my breakfast. In the fall.

16 Q Of just last year; correct?

17 A Yeah.

18 Q While this --

19 A In the late fall.

20 Q While this redaction issue was being litigated,  
21 correct, he passed away?

22 A Yes, although there was no causal link.

23 Q I wasn't -- I apologize. I wasn't suggesting that  
24 there was one.

25 How long had you known, if you knew -- I'll strike



1 that.

2 Did you know that Mr. Schwartz was ill?

3 A Your Honor, I've lost both my parents and both my  
4 in-laws to cancer. Do I know when someone has cancer as a  
5 lay person? To the extent one can know that from those  
6 experiences, yes, Mr. Bice, I knew he had cancer. Did he  
7 disclose it to me or other members of the board who told me,  
8 no, Your Honor, I did not have knowledge from him. I had  
9 strong suspicion rooted in harsh experience that he had  
10 cancer.

11 Q Do you know whether anyone else at the board level  
12 knew of the degree of Mr. Schwartz's illness?

13 A I tried to answer that question, Mr. Bice, just  
14 now, which is the board did not -- whatever board members  
15 knew about Mr. Schwartz's illness, comma, if anything --

16 Q They didn't confide it in you.

17 A -- they didn't confide in me.

18 Q Fair enough. Do you know --

19 A And to complete the answer, at least one other  
20 board member speculated with me based on similar life  
21 experience to my own.

22 Q Okay. And this one I'm going to ask you just yes  
23 or no for right now. Do you know whether or not any steps  
24 were taken to preserve evidence related to Mr. Schwartz once  
25 it was realized that he might not be with us?

1 MR. RANDALL JONES: Object to the form of the  
2 question. Vague and ambiguous. And assumes facts not in  
3 evidence, as well.

4 THE COURT: Mr. Bice, are you basically asking if  
5 somebody was able to video record his testimony or statement  
6 or something previously?

7 MR. BICE: I'm trying to find out if anything was  
8 preserved, Your Honor. That would include documents. And  
9 I've asked purely the question of yes or no.

10 THE COURT: I understand.

11 Sir, if you know.

12 MR. RANDALL JONES: Same objection.

13 THE WITNESS: I don't know, Your Honor.

14 THE COURT: The objection's overruled.

15 BY MR. BICE:

16 Q Do you know whether or not any form of consent --  
17 well, strike that. Let me rephrase.

18 Do you know where he resided, where he lived?

19 A Where Mr. Schwartz --

20 Q Yes, sir.

21 A -- resided?

22 Q Yes, sir.

23 A To the best of my knowledge, it was on the West  
24 Coast.

25 Q He had some business interests in China?

1           A     I believe his business interests were Singapore,  
2 Singapore based, and he had some interest in the mainland.

3           Q     Do you know whether or not any form -- and again  
4 this is just yes or no -- any form of consents under any sort  
5 of foreign privacy laws were obtained from him prior to --

6           MR. PEEK: Speak to him so he can hear you.

7 BY MR. BICE:

8           Q     Oh. I apologize.

9                 -- prior to his passing?

10          A     I don't know.

11          Q     Okay. And again I just want you to answer yes or  
12 no on this, and then we may want to talk through Her Honor  
13 about this. Are you aware of any other witness that has  
14 knowledge about this case that is presently ill?

15          MR. RANDALL JONES: Again I'll just object --

16 BY MR. BICE:

17          Q     Yes or no.

18          MR. RANDALL JONES: -- to the form of the question.  
19 Vague and ambiguous.

20          THE COURT: And you're just asking a general  
21 statement, no specifics about anybody?

22          MR. BICE: I don't want to find out -- you know,  
23 Your Honor, I don't want to editorialize, either. But I  
24 don't want to find out -- we found out about Mr. Schwartz in  
25 the newspaper. I don't want to find out about another

1 witness that has knowledge about this case from the  
2 newspaper.

3 THE COURT: Well, my concern is related to HIPPA  
4 issues, Mr. Bice.

5 MR. BICE: That's why I asked for no --

6 THE COURT: And so I'm, you know, a little  
7 concerned about that question.

8 But to the extent you have knowledge of someone on  
9 the board who has a terminal illness, that's a yes or no.

10 THE WITNESS: Terminal illness, no, Your Honor,  
11 other than --

12 THE COURT: All of us.

13 THE WITNESS: -- we're all getting older.

14 MR. BICE: Understood.

15 THE COURT: And we have a limited number of days  
16 that we're granted.

17 MR. BICE: Indulgence, Your Honor.

18 THE COURT: Sure.

19 Is the gentleman from Macau next?

20 MR. PEEK: Mr. Fleming or Mr. Toh, Your Honor, are  
21 both available in Macau.

22 THE COURT: Hold on. Let me send an email to see  
23 if the IT guys can get up here to do whatever it is they've  
24 got to do.

25 MR. MARK JONES: And, Your Honor --

1 THE COURT: Yes, Mr. Jones.

2 MR. MARK JONES: -- we wanted just five minutes'  
3 notice to have that set up on the Macau end.

4 THE COURT: Oh, absolutely. I'm going to take a  
5 break before.

6 MR. BICE: Your Honor, just a couple more, which is  
7 why I have to ask people to remind me what's in my own series  
8 of questions.

9 BY MR. BICE:

10 Q Mr. Raphaelson, speaking of witnesses that are no  
11 longer affiliated with the company I need to understand. Is  
12 George Koo affiliated with either Sands China or Las Vegas  
13 Sands at this point in time?

14 A I didn't think we were talking about affiliation  
15 when we were speaking about Mr. Schwartz.

16 But Mr. Koo is no longer on the LVSC board of  
17 directors, and that was publicly announced.

18 Q Okay. Do you have -- does the company have any  
19 form of cooperation agreement with Mr. Koo for his role as a  
20 former board member?

21 A Not that I know of, Your Honor.

22 Q Okay. What about Mr. Leven? Is he on the board  
23 still?

24 A Mr. Leven is on both the board of LVSC and Sands  
25 China Limited.

1 Q He's no longer the chief operating officer;  
2 correct?

3 A He is no longer an executive officer of LVSC, and  
4 he dropped the title of secretary to the LVSC board, and he  
5 has dropped most of the subsidiary directorships. But I  
6 believe at this point in time, Your Honor, he is a director  
7 of the two public companies. He may still --

8 Q Do you know where he --

9 A I'm sorry.

10 Q No. I apologize. I cut you off.

11 A He may still be listed as the MD, the managing  
12 director of Marina Bay Sands, PTY Limited, which is licensed  
13 entity in Singapore. But if that's true, it's simply because  
14 it hasn't transitioned to his successor at this point yet.  
15 But I wanted the answer to be complete, Your Honor.

16 THE COURT: Thank you, sir. --

17 BY MR. BICE:

18 Q Does the company have any form of cooperation  
19 agreement with Mr. Leven concerning this case?

20 A To my knowledge we did not develop a specialized  
21 cooperation agreement with Mr. Leven for this or any other  
22 case.

23 Q Okay. Is Mr. Leven -- is Mr. Leven residing in the  
24 United States?

25 A Mr. Leven resides in the United States.

1 Q Where at?

2 A I don't know. He has a residence in Atlanta, and  
3 he has a residence in Florida. Which of those he has elected  
4 as his legal residence, Your Honor, I couldn't tell you,  
5 although in the wintertime I would suspect he's in the  
6 warmth.

7 Q Understood. Does the company, i.e., either Las  
8 Vegas Sands or Sands China, have the ability to compel Mr.  
9 Leven to appear in this court proceeding?

10 MR. PEEK: Your Honor --

11 MR. RANDALL JONES: Object to the form of the  
12 question.

13 MR. PEEK: Yeah. And, Your Honor, what does this  
14 have to do with prejudice here?

15 THE COURT: It has to do with the prejudice, I  
16 think, Mr. Peek.

17 So you can answer, sir.

18 MR. RANDALL JONES: Well, I --

19 THE COURT: If you can compel him to appear.  
20 That's a legal question, so --

21 THE WITNESS: The answer is yes. Like any  
22 litigant, we could serve him with process. We don't possess  
23 guns or badges, and there is no contract compulsion. There  
24 is a general duty of cooperation by virtue of his fiduciary  
25 obligation to both boards. So if you're asking me as a

1 matter of corporate governance, Mr. Bice, I believe, Your  
2 Honor, my answer would be yes, we could compel him by virtue  
3 of his fiduciary obligations --

4 BY MR. BICE:

5 Q To the company.

6 A -- to appear as a witness in a matter, yes.

7 MR. BICE: Okay. Thank you.

8 Nothing further, Your Honor. I'll pass the  
9 witness.

10 THE COURT: Cross-examination.

11 THE WITNESS: Are we done with this --

12 THE COURT: Who knows? Probably so.

13 (Pause in the proceedings)

14 THE WITNESS: Mr. Jones.

15 CROSS-EXAMINATION

16 BY MR. RANDALL JONES:

17 Q Mr. Raphaelson, just a couple of questions.

18 First of all, you had said at the very -- towards  
19 the beginning of your testimony that Mr. Fleming reports to  
20 you, and then you were asked some other questions about other  
21 people reporting to you in your capacity as global general  
22 counsel. Do you recall that line of inquiry?

23 A I do.

24 Q Would you define for the Court what you mean when  
25 you answered Mr. Bice's question that Mr. Fleming or others



1 report to you. What does that mean?

2 A They provide me with some substantive information,  
3 and I have some administrative responsibilities regarding  
4 them as employees.

5 Q Do you have as global general counsel or as general  
6 counsel for the Las Vegas Sands any authority to control Mr.  
7 Fleming?

8 MR. BICE: Objection.

9 THE WITNESS: "Control" is a very broad word, Mr.  
10 Jones. I can't order him to do anything.

11 THE COURT: The objection is sustained. "Control"  
12 is ambiguous. So I think that's what your answer said.

13 THE WITNESS: I'm sorry, Your Honor.

14 THE COURT: It's okay.

15 MR. RANDALL JONES: Did he answer adequately, Your  
16 Honor?

17 THE COURT: He answered it's ambiguous, "control"  
18 is a broad term.

19 BY MR. RANDALL JONES:

20 Q So, to say it differently, Mr. Raphaelson, do you  
21 have any authority as general counsel -- either general  
22 counsel for the Las Vegas Sands or as global general counsel  
23 do you have any authority to direct Mr. Fleming to do  
24 anything or not do anything for Sands China Limited?

25 MR. BICE: Objection. I apologize, Your Honor.

1 I'm a little slow on the Mac today, so I rise. But I object  
2 that this is leading. He can ask the witness what his  
3 authority, and that should be the question, as opposed to --

4 THE COURT: Overruled.

5 MR. BICE: -- directing the witness what the answer  
6 should be.

7 THE COURT: Overruled. You could answer, sir.

8 THE WITNESS: You're imputing a title to me that I  
9 don't have, Mr. Jones. I am the executive vice president and  
10 global general counsel of the company. That's my contract,  
11 that's what the board of directors denominated me as, that's  
12 what has been publicly disclosed as my title. I don't have a  
13 separate title of general counsel. I've also been honored by  
14 designation as secretary at the end of last year, when Mr.  
15 Leven stepped down. Those are my positions. In none of  
16 those positions do I have the ability to order Mr. Fleming to  
17 do or not do anything.

18 BY MR. RANDALL JONES:

19 Q You've answered my question. Thank you.

20 The only other area of inquiry I wanted to ask you  
21 about, Mr. Bice started to get into it, but only asked you a  
22 question or two, which was the fact that you had been a  
23 prosecutor in a past life. I would simply just -- since he  
24 did not inquire into your background and experience, could  
25 you please explain to the Court your prior employment history

1 as an attorney since you've left law school.

2 A I graduated law school in June of 1977, took the  
3 bar in the summertime. Bar results are posted in October of  
4 1977. I was admitted to the State of Illinois to be an  
5 Illinois practitioner, that's the bar I took, and a member of  
6 the Federal District Court in the Northern District of  
7 Illinois, which is essentially suburbs around Chicago, the  
8 upper third of the state. Not quite geographically the  
9 third, but roughly.

10 I joined the Cook County State's Attorney's Office  
11 in February of 1978. I held a variety of responsibilities in  
12 that office. I left that office in December of 1980,  
13 actually December 15 of 1980, to join the United States  
14 Attorney's Office for the Northern District of Illinois.  
15 That's in Chicago. I held a variety of responsibilities in  
16 the U.S. Attorney's Office. Beginning in 1985 I was the  
17 deputy chief of the Special Prosecutions Division, which was  
18 essentially public integrity and high-volume white collar  
19 crime -- that is high-dollar-value white collar crime. I  
20 became chief of that division in 1987. I became chief  
21 assistant of the office in 1989, and in the summer of 1989 I  
22 was named acting U.S. Attorney first by the Attorney General  
23 and then by the judges of the United States District Court,  
24 because the Attorney General can only act by statute for four  
25 months to fill the statutory position. Then it falls to the

1 District Court. When the presidential appointee was  
2 confirmed I returned to being chief assistant.

3 In January of 1991 I left Chicago for Washington,  
4 D.C., to serve as acting special counsel to the Deputy  
5 Attorney General of the Justice Department for thrift crimes.  
6 That was in the aftermath of the thrift crisis Congress  
7 insisted on the centralization of reporting to Congress on  
8 thrift crime-related prosecutions. A position was created  
9 for five years, a presidential appointment within the Justice  
10 Department. I was nominated, I was confirmed by unanimous  
11 consent in May of 1991. I served in that position until the  
12 change of administration in December of 1993.

13 In addition, in June of 1991 there was a change  
14 from Richard Thornburgh as Attorney General, who had brought  
15 me to Washington, to William Barr. Mr. Barr asked me to  
16 additionally serve as his counsel, which is an ethics  
17 advisory position. We left government together. We became  
18 law partners in his former law firm, where I remained until  
19 -- from January 1993 until July of 1996.

20 In July of 1996 I joined the law firm of O'Melveny  
21 & Myers. I applied for and was admitted to practice in  
22 Washington, D.C. I practiced in Washington with O'Melveny  
23 until February of 2006, when I became the general counsel of  
24 Scientific Games Corporation, a NASDAQ-listed public company.  
25 I was vice president, general counsel, and secretary. Served

1 in those positions until November of 2011, when I became  
2 executive vice president and global general counsel of Las  
3 Vegas Sands.

4 Q Mr. Raphaelson --

5 A And there's --

6 Q Go ahead. Sure.

7 A -- one other -- actually three other bars. I  
8 became a member of the Federal Trial Bar of the Northern  
9 District of Illinois, which was established in 1983 by the  
10 District Court in order to set minimum practice requirements  
11 for trial lawyers before it.

12 I became a member of the New York Bar on  
13 application, a wave-in essentially, in 2006 as part of my  
14 responsibilities at Sci Games. And when I joined Las Vegas  
15 Sands I applied for in-house admission. So I'm not admitted  
16 to practice before Your Honor or the other judges here, but I  
17 am a Nevada lawyer for purposes of being in house.

18 THE COURT: You don't get in trouble for giving  
19 advice to your client here, because you follow the rules.

20 THE WITNESS: I do my best, Your Honor.

21 MR. PEEK: He has a bar card to go through the  
22 security line, Your Honor.

23 THE COURT: Really?

24 THE WITNESS: I do, Your Honor.

25 THE COURT: Can I see it?

1 THE WITNESS: Yes, Your Honor.  
2 THE COURT: It looks just like my bar card. And  
3 you have a number.  
4 THE WITNESS: Yes, ma'am.  
5 THE COURT: Okay.  
6 THE WITNESS: And I pay dues, yes, Your Honor.  
7 MR. PEEK: We like the dues part, Your Honor.  
8 THE COURT: Okay.  
9 BY MR. RANDALL JONES:  
10 Q I just have one other question, Mr. Raphaelson.  
11 Are you rated by Martindale Hubbell?  
12 A I am rated by Martindale Hubbell. I've had an AB  
13 rating for 18 years now.  
14 MR. RANDALL JONES: Your Honor, I'd pass the  
15 witness.  
16 THE COURT: Okay. So, sir, you came into Las Vegas  
17 Sands in November 2011, and Fleming was already in place in  
18 Macau when you got here?  
19 THE WITNESS: Yes, Your Honor.  
20 THE COURT: So a number of the things I've been  
21 concerned about in this case happened before you arrived.  
22 THE WITNESS: Yes, Your Honor.  
23 THE COURT: Okay. Anything else, Mr. Bice?  
24 MR. BICE: No, Your Honor.  
25 THE COURT: Thank you, sir.

1           Do you anticipate you will need him again? Because  
2 I want to be able to tell him, given his current not feeling  
3 well --

4           MR. BICE: I apologize again, Your Honor. We  
5 certainly don't need him today, but I don't think we're  
6 ending today, so I do not want to waive my right to call him  
7 in a rebuttal, depending upon what the Court addresses with  
8 Mr. Fleming. But we can address that later. I certainly  
9 don't want to keep him tied up today.

10          THE COURT: Do you have out-of-town plans for the  
11 week?

12          THE WITNESS: No, Your Honor.

13          THE COURT: All right.

14          THE WITNESS: Absent my date with destiny or a bus,  
15 I am available to the Court at the Court's direction and not  
16 leaving town until a week from Friday. So this week and next  
17 week until a week from Friday.

18          THE COURT: Sir, I hope that you will get some  
19 rest. It has been a pleasure having a witness who is as  
20 cordial as you to deal with, and I hope you feel better.

21          THE WITNESS: Thank you, Your Honor.

22          THE COURT: So Mr. Jones or Mr. Peek will let you  
23 know if we need you to come back. You're always welcome to  
24 visit with us.

25          MR. PEEK: Thank you, Your Honor.

1 THE COURT: Are we taking our break to see if we  
2 can get the Macau guys on the video conference?

3 MR. RANDALL JONES: Yes, Your Honor. And I would  
4 just add that I need to talk to Mr. Ray, Jason Ray, who is  
5 here from Portland -- that was our other witness -- to make  
6 sure that -- about his availability. And so we're trying to  
7 juggle these things, Your Honor. And again, I can control my  
8 part of the testimony, but not the other. But I'll check  
9 onto that.

10 THE COURT: You can't even control your part.  
11 You've got Peek with you.

12 (Court recessed at 3:39 p.m., until 3:51 p.m.)

13 MR. RANDALL JONES: Your Honor, may I explain  
14 briefly to Mr. Fleming what we're doing?

15 THE COURT: Sure.

16 MR. RANDALL JONES: Your Honor, I understand we're  
17 on the record.

18 THE COURT: I don't know. Let's wait and see if  
19 Jill motions us.

20 Are we ready?

21 We're ready.

22 MR. RANDALL JONES: Your Honor, with your  
23 permission, if I could --

24 Mr. Fleming, this is Randall Jones. I hope you can  
25 see me. And if you could just bear with us for a moment, the



1 Court has some other issues it wants to take up related to  
2 your testimony. So if you would bear with us, we'll address  
3 those issues, and, depending on what the Court rules, you may  
4 or may not testify.

5 I hope I got that right, Your Honor.

6 THE COURT: I don't know what you're asking me to  
7 do yet, so I don't know the answer.

8 MR. RANDALL JONES: Your Honor, we had I believe  
9 previously marked for identification Exhibit I think it's  
10 351, which is a declaration from Mr. Fleming that I was able  
11 to secure from him yesterday. I'd also like to offer I  
12 believe it would be Exhibit 353, which is his oath, his  
13 signed oath, which I'll give a copy to Mr. Bice, as well.

14 THE COURT: We don't need that as an exhibit, but,  
15 if you'd like, Dulce just needs that for her file for any  
16 witnesses who are not in the state of Nevada who appear by  
17 video conference.

18 MR. RANDALL JONES: And I -- Your Honor, at the  
19 Court's pleasure I will provide that to your clerk.

20 THE COURT: It's a Court's exhibit, then.

21 THE CLERK: Court's 1.

22 THE COURT: All right. Mr. Jones, you wanted to  
23 talk about Proposed Exhibit 351, it sounded like.

24 MR. RANDALL JONES: I did, Your Honor. And, Your  
25 Honor, we've had a discussion about this last week, and I

1 don't want to belabor the point. As a result of that  
2 discussion I endeavored to get a declaration from Mr. Fleming  
3 over the weekend. I was able to do that. That declaration  
4 has been submitted to the Court as a Proposed Exhibit 351.  
5 We would ask the Court to accept that affidavit. And to the  
6 extent the Court decides or declines to accept that  
7 affidavit, we have -- and this was maybe my misunderstanding  
8 of the Court, but at least I got the impression that the  
9 Court indicated or suggested that if we wanted to offer the  
10 Court a declaration we may want to consider having the  
11 witness available live, even though the Court certainly  
12 didn't make any rulings or otherwise suggest what it might  
13 do. So, out of an abundance of caution, we tried to endeavor  
14 to procure the presence of Mr. Fleming via video  
15 conferencing, which, as you can see, we have done.

16           The only other thing I would add is that Mr. Ben  
17 Toh was a witness who was going to address related issues,  
18 although his testimony would be a portion of what we would  
19 anticipate getting through Mr. Fleming. So Mr. Toh would be  
20 a redundant witness if the Court allowed us to present the  
21 testimony -- if the Court wanted the testimony from Mr.  
22 Fleming and did not accept the declaration. So that's why --  
23 I want to make the Court aware of that.

24           THE COURT: Just so I can frame the issue  
25 appropriately, our discussion last week related to the

1 objection to the affidavit or declaration of Mr. Fleming and  
2 my general position in an evidentiary hearing that if there  
3 is an objection I typically do not admit the affidavit or  
4 declaration because it is not subject to cross-examination.

5 So is there an objection to the offer of 351?

6 MR. BICE: There is, Your Honor.

7 THE COURT: Okay. So, Mr. Jones, your question to  
8 me is, then, since the witness is available, I prefer having  
9 the witness testify, since the witness is subject to cross-  
10 examination. Now apparently Mr. Bice has another objection.

11 MR. BICE: I do. First of all, the affidavit  
12 doesn't comply with the statute. It doesn't say where it was  
13 signed, it's not --

14 THE COURT: I wasn't admitting it.

15 MR. BICE: I understand. But here's my -- here is  
16 my point on this, Your Honor.

17 THE COURT: And you need to speak up so Mr. Fleming  
18 can hear you.

19 MR. BICE: Here's my point on this, Your Honor, is,  
20 again, why are we finding out about this now? They told us  
21 that Mr. Toh was their witness and he would be the live  
22 witness from Macau, so we prepared for Mr. Toh. And we have  
23 our documents that we shipped there to cross-examine Mr. Toh  
24 with. And now today we show up, and obviously they've known  
25 that Mr. Fleming was available, they could have given us some

1 advance notice other than today, when we showed up in court,  
2 that, well, if the Court won't take the declaration, lo and  
3 behold, he's available to testify via video. Why is that  
4 permitted, Your Honor? Witness -- we got criticism from them  
5 that we tried to serve their witnesses. We maintain that  
6 they weren't cooperating, and to serve them with a subpoena  
7 even days in advance was unfair, not sufficient advance  
8 notice, and then they show up today with, well, we now have a  
9 new witness who until Friday we wouldn't tell you who the  
10 decision maker was, then we told you he wasn't going to be a  
11 witness but now he's going to be a witness unless the Court  
12 will allow us to introduce an affidavit that's not admissible  
13 regardless. And that's prejudicial to us. We should have  
14 been given some advance notice of this.

15           What this is rather, I would submit to Her Honor,  
16 is they've realized the impropriety of and the obvious  
17 inference that's drawn when he doesn't show up, so now all of  
18 a sudden he's available without any advance notice to  
19 anybody.

20           THE COURT: So let me ask you a couple questions.

21           MR. BICE: Yep.

22           THE COURT: The information that you shipped for  
23 Mr. Toh to use in his examination, is that different than  
24 what you would use with Mr. Fleming?

25           MR. BICE: Some of it, yes, but -- no. But we sent

1 all of our stuff there, so I'm not saying that there's --

2 THE COURT: Okay. So the exhibits are there.

3 MR. BICE: Well, they'd better be. I believe that  
4 they are.

5 Are they there? I should ask my colleagues over  
6 here, since we gave them to them.

7 MR. RANDALL JONES: Yes. Well --

8 MR. BICE: Okay.

9 THE COURT: Gentlemen, did you receive the exhibit  
10 books?

11 MR. BICE: Mr. Fleming, did you receive or did Mr.  
12 Toh receive the exhibit books?

13 MR. PEEK: Your Honor, just so you know, that  
14 appears to be Mr. Hughes. Yeah. That's Wyn.

15 MR. BICE: Apologize, gentlemen. We currently  
16 cannot hear you, so you'll have to bear us with us one  
17 moment.

18 THE COURT: So did you receive the exhibit books by  
19 digital copy?

20 MR. FLEMING: Yes.

21 THE COURT: Thank you.

22 Mr. Bice, your objection --

23 MR. FLEMING: It appears, Judge, that I have  
24 received or we have received a list of some files, but I have  
25 not looked at them.

1 THE COURT: Okay. Are they accessible to you if  
2 you need to refer to a specific one?  
3 MR. FLEMING: Yes.  
4 THE COURT: Okay. Thank you.  
5 Mr. Bice, your objection is overruled. I certainly  
6 understand this is not our normal procedure, but little in  
7 this case has gone typically.  
8 Mr. Jones, if you would like to examine Mr.  
9 Fleming, he needs to first be sworn by the clerk.  
10 MR. FLEMING: I can't see you.  
11 THE COURT: You need to hear her, not see her.  
12 DAVID ERIK ANDREW FLEMING, DEFENDANTS' WITNESS, SWORN  
13 THE COURT: Thank you. Now you may proceed.  
14 THE CLERK: Can you please state and spell your  
15 name for the record.  
16 THE WITNESS: David Erik Andrew Fleming.  
17 MR. BICE: Your Honor, can we have a disclosure as  
18 to everybody that is in that room?  
19 THE COURT: No.  
20 Okay. We can keep going.  
21 MR. BICE: Then can I ask that the witness --  
22 anybody else who's going to be a witness be excluded from  
23 that room?  
24 THE COURT: Yes, you may do that.  
25 MR. BICE: Thank you. Your Honor --

1 THE COURT: Is there anybody else in the room who  
2 you intend to call as a witness?

3 THE WITNESS: Yes. Mr. Wyn Hughes. He is not a  
4 witness, but he is present in this room. He's [inaudible]  
5 the conduct of this matter in Macau.

6 THE COURT: Thank you. But Mr. Toh is not there?

7 THE WITNESS: He is not there.

8 THE COURT: Okay. If Mr. Toh should try to come  
9 in, could you ask him to leave until we finish with your  
10 testimony, please, sir?

11 THE WITNESS: I'm sorry?

12 THE COURT: If Mr. Toh should arrive, could you ask  
13 him to wait outside until we finish you.

14 THE WITNESS: Of course. Of course.

15 THE COURT: Thank you.

16 Now you may proceed, Mr. Jones.

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

18 DIRECT EXAMINATION

19 BY MR. RANDALL JONES:

20 Q Good morning, Mr. Fleming.

21 A 'Morning.

22 Q Mr. Fleming, I wanted to know if you could tell us  
23 if you have prepared a declaration related to the Jacobs-Las  
24 Vegas Sands case recently.

25 A Yes, I did. I prepared one yesterday and signed it

1 yesterday.

2 Q Right. Do you have a copy or the original of that  
3 declaration available to you?

4 A I do. I have it in front of me.

5 Q Mr. Fleming, if I could, I would just like to ask  
6 you if you could look at the first paragraph of that  
7 declaration.

8 A Yeah.

9 Q And that declaration, so you're aware, has not been  
10 admitted into evidence in this case by the Court, so I would  
11 ask you to read the first paragraph of that declaration. And  
12 I want to ask you then if all of the statements contained  
13 therein are true and correct to the best of your knowledge.

14 A Very well. "I am the general counsel and company  
15 secretary of Sands China Limited, SCL, and general counsel  
16 for the Venetian Macau Limited, VML. I am admitted as a  
17 barrister and solicitor of the Supreme Court of South  
18 Australia, 1979, and solicitor of the supreme and high courts  
19 in England and Hong Kong 1992. I have personal knowledge of  
20 the matters stated herein, except for those matters stated  
21 upon information and belief, and I am competent to testify  
22 thereto."

23 MR. BICE: Your Honor, we have an objection. I  
24 don't believe it's an appropriate examination of a witness to  
25 ask him to read a document that the Court has ruled is not



1 admissible.

2 THE COURT: Since it is a document that the witness  
3 prepared, I think it is a time-saving procedure for us today.

4 BY MR. RANDALL JONES:

5 Q Mr. Fleming, are all the statements contained in  
6 paragraph 1 of the declaration that you just read true?

7 A They are.

8 Q Would you please read for me the Paragraph Number 2  
9 of your declaration.

10 A Paragraph 2, "In my capacity as general counsel I  
11 received the Court's September 14, 2012, order (the order)."

12 Q Is that a true statement, sir?

13 A That is correct.

14 Q Would you please read Paragraph Number 3.

15 A Paragraph Number 3, "In light of the Court's order  
16 I met with representatives of the Macau Government's Office  
17 for Personal Data Protection, the Macau OPDP, to discuss the  
18 same."

19 Q Is that a true statement, sir?

20 A It is.

21 Q Would you please read Paragraph Number 4.

22 A "On December 18, 2012, the Court directed SCL to  
23 produce certain documents, including documents in Macau, in  
24 the possession and control of SCL and VML, (the production  
25 directive)."

1 Q Is that a true statement, sir?

2 A It is.

3 Q Would you please read Paragraph Number 5.

4 MR. BICE: Your Honor, I'm going to object to  
5 Paragraph Number 5 in part because when I specifically asked  
6 about this decision maker Mr. Raphaelson they objected on the  
7 grounds of privilege, and now they're trying to offer it  
8 through this witness.

9 THE COURT: Objection's overruled.

10 BY MR. RANDALL JONES:

11 Q Mr. Fleming, would you please read Paragraph  
12 Number 5, sir.

13 A Paragraph Number 5, "For this reason and in  
14 response to the Macau OPDP's directive SCL and VML retained  
15 the Macanese lawyers to redact personal data related  
16 information from the subject documents in order to comply  
17 with Macau law so the documents could be produced in  
18 compliance with this Court's production directive. The  
19 decision to redact the documents produced in January of 2013  
20 was mine, while the actual redactions were carried by Macau  
21 lawyers that I hired per my communications with the Macau  
22 OPDP."

23 Q Is that a true statement, sir?

24 A That is.

25 Q Could you please read Paragraph Number 6.

1           A     Paragraph Number 6, "The decision to redact the  
2 documents produced after January of 2013 was also mine, while  
3 again the actual redactions were carried out by Macau lawyers  
4 that I hired per my communications with the Macau OPDP."

5           Q     Is that a true statement, sir?

6           A     It is.

7           Q     Would you please read Paragraph Number 7.

8           A     Paragraph Number 7, "Based upon my communication  
9 with the Macau OPDP and given that I was dealing with Macau  
10 documents located in Macau for a Macau company, I had no  
11 choice but to redact personal information from the documents  
12 we were producing pursuant to the production directive. I  
13 had no choice, because the risk of civil and criminal  
14 consequences for noncompliance with the requirements of the  
15 Macau Personal Data Privacy Act, (the Act), in producing  
16 documents subject to the Act would not only be irresponsible  
17 for a public company, but also contrary to my fiduciary  
18 obligations to protect the company and its shareholders."

19          Q     Is that a true statement, Mr. Fleming?

20          A     It is.

21          Q     Would you please read Paragraph Number 8.

22          A     Paragraph Number 8, "I did my best to comply in  
23 good faith with both the laws of Macau, the jurisdiction  
24 where VML is licensed, and both VML and SCL do business, and  
25 this Court's order and production directive."

1 Q Is that a true statement, sir?

2 A It is.

3 Q And could you please read the Paragraph Number 9.

4 A Paragraph Number 9, "The documents referenced as

5 Exhibits 334, 335 and 336 and 349 in the exhibits provided to

6 the Court SCL in preparation for the February 9, 2015,

7 hearing are true and correct copies of correspondence I wrote

8 to or received from the Macau OPDP."

9 Q Is that a true statement, sir?

10 A It is.

11 Q Now, with respect to those exhibits that you

12 reference in that paragraph and that you just read to us did

13 you receive the exhibit list from my office so you can

14 confirm what those exhibits were when you were averring that

15 those were true and correct copies of correspondence that you

16 either sent or received to the OPDP?

17 A I believe that is the case, yes.

18 Q And then the last sentence of that declaration,

19 could you please read that, sir.

20 A Yes, of course. "All the statements contained

21 herein are true and correct, and I attest to the same under

22 penalty of perjury."

23 Q And is that a true statement, sir?

24 A It is indeed.

25 Q Mr. Fleming, I just have a couple of followup

1 questions. With respect to this declaration you'll see on  
2 the left-hand margin it has my firm's name and address. You  
3 see that on your declaration, do you not?

4 A I do.

5 Q And did you make sure that all of the statements  
6 contained in the declaration, Exhibit 351, that you just read  
7 into the record were correct even though you may not have  
8 actually typed the document yourself?

9 A I was satisfied that they were correct.

10 Q And with respect to the reference to certain  
11 documents in your declaration you also mention the company  
12 Venetian Macau Limited, as well as Sands China Limited.  
13 Could you please explain to Judge Gonzalez the relationship  
14 -- the legal, as you understand it, relationship between  
15 those two companies.

16 A The relationship, Judge, is that SCL, being a  
17 company listed on the Hong Kong Stock Exchange, owns  
18 100 percent of the shares in VML, which is a Macau-registered  
19 -- incorporated and registered company.

20 Q And with respect to the documents that are just to  
21 this hearing and the Jacobs case that came from Macau, what  
22 we've referred to as the Macau redacted documents, who has  
23 essentially the original possession and control of those  
24 documents? In other words, to your knowledge who has the  
25 right to control those documents, the initial control? In

1 other words, whose documents are they?

2 A VML has the ownership and custody of the documents.

3 Q And, Mr. Fleming, could you please tell Judge  
4 Gonzalez when it was you became general counsel of Sands  
5 China Limited.

6 A Yes. It was on the -- I believe it was the 11th of  
7 January 2011.

8 Q Would you please tell Judge Gonzalez when you  
9 became general counsel for Sands China Limited -- or --

10 A On that date.

11 Q -- I'm sorry. Let me put it another way. I can't  
12 remember which one I asked about. Is that the same date for  
13 both Venetian Macau Limited and Sands China Limited?

14 A I became general counsel for both entities on  
15 exactly the same date.

16 MR. RANDALL JONES: Thank you, Your Honor. I'll  
17 pass the witness.

18 THE COURT: Sir, I have a few questions before I  
19 let Mr. Bice ask you.

20 THE WITNESS: Your Honor, if you don't mind, we're  
21 having a problem. We seem to be having somebody else call  
22 in. Hold on. We've lost also the video of the Court. So I  
23 can't see you.

24 THE COURT: Okay. Can you hear me okay?

25 THE WITNESS: I can hear you okay.

1 THE COURT: All right. I'm soft spoken, so if you  
2 can't hear me, it will not offend me if you tell me to speak  
3 up.

4 THE WITNESS: I'll call you.

5 THE COURT: You indicated earlier that you had no  
6 choice but to redact the personal information because of  
7 risks of civil and criminal penalties under the Macau Data  
8 Privacy Act.

9 THE WITNESS: Correct.

10 THE COURT: Can you tell me a little bit more about  
11 that.

12 THE WITNESS: Sure. The situation is very simple.  
13 I was aware that given the fact that we believed there was an  
14 evidentiary hearing pending that we would have to produce  
15 documents at some [inaudible]. My concern was that I was  
16 also aware that the legislation of Macau was being  
17 interpreted very strictly in the sense that at that time no  
18 personal data was to leave Macau without the consent of the  
19 data subject or the approval of the regulator, which is OPDP.

20 As a consequence, I actually took advice from Macau  
21 lawyers and I approached OPDP to see how we could overcome  
22 what I perceived to be a potential problem in delivering  
23 documents which had personal data. I made it clear to OPDP  
24 that it was my intention wherever possible meet the  
25 requirements of the Las Vegas courts, but at the same time

1 obviously I could not breach Macau law.

2           OPDP took the view that under no circumstances  
3 could data of a personal nature be transmitted to Las Vegas  
4 in accordance with any requirement imposed upon SCL without  
5 the [inaudible] of the data subject or its approval.

6           I spoke to the OPDP on more than one occasion,  
7 particularly in the period of November in 2012 and at the end  
8 of November the deputy director, I believe -- it may have  
9 been the director -- advised us monthly that we were not to  
10 transmit data out of Macau unless we had the data subject's  
11 consent.

12           I therefore was in a difficult position, Your  
13 Honor. I wanted to [inaudible] assist the Las Vegas Court  
14 wherever I could. But, on the other hand, I could not expose  
15 the company nor its officers or indeed the interests --  
16 prejudice the interests of the shareholders of SCL. So  
17 therefore I chose not to allow unredacted documents to be  
18 sent out of Macau.

19           THE COURT: Sir, were you aware that prior to your  
20 becoming general counsel for VML and SCL representatives of  
21 general counsel for Las Vegas Sands removed data from Macau  
22 and brought it here to Las Vegas?

23           THE WITNESS: I became aware of that after I joined  
24 the company.

25           THE COURT: Okay. And did anyone provide you with



1 a copy of my order related to the evidentiary hearing that I  
2 conducted in September of 2012?

3 THE WITNESS: Sorry. In September of?

4 THE COURT: 2012.

5 THE WITNESS: 24 September which year?

6 THE COURT: September 2012.

7 THE WITNESS: Oh. Okay, Your Honor. Yes. That  
8 was -- I think that was the order where you said that -- let  
9 me get this right. I think that was the order where you made  
10 a clear statement that we couldn't rely on -- that is VML and  
11 SCL could not rely upon Macau law.

12 THE COURT: Okay. So at the time you met with the  
13 officials in Macau related to the production of the  
14 information that was subject to my orders you were aware  
15 there had already been findings based upon your company's  
16 prior conduct that precluded their use of the Macau Data  
17 Privacy Act as a shield from producing any information?

18 THE WITNESS: Your Honor, I didn't hear you  
19 absolutely clearly, but let me just answer as best I can.  
20 The bottom line is at the time that I made my decision I was  
21 aware that certain information had passed before I became  
22 general counsel to the United States. I also was aware that  
23 you had made an order the 24th of September, as I've just  
24 mentioned. I took that into consideration. It gave me great  
25 concern. I did not want to act in a manner which was

1 inconsistent with your decision, but, on the other hand, I  
2 had to bear in mind the interests of the company, and I could  
3 not place the company in a position where it was prejudiced  
4 as a consequence of a breach of Macau law. And that I would  
5 not do.

6 THE COURT: Did you ever have any discussions with  
7 the Macanese officials about the prior removal of data from  
8 Macau by members of general counsel's office for Las Vegas  
9 Sands?

10 THE WITNESS: Are you talking about the information  
11 that was [inaudible] I became general counsel?

12 THE COURT: Yes.

13 THE WITNESS: Yes, I did.

14 THE COURT: And what did they tell you?

15 THE WITNESS: They were furious.

16 THE COURT: Why?

17 THE WITNESS: Because they were not aware that that  
18 information had been transmitted, and I believe -- I may be  
19 wrong, but I believe those discussions were in I think mid  
20 2012. And as a result of public disclosure in the  
21 [inaudible], and I believe at that time that not only was the  
22 OPDP furious about the fact that information had passed  
23 without the consent of OPDP or the data subjects, but I  
24 believe also at that time the [inaudible] secretary for  
25 finance made a public statement stating that under no

1 circumstances should there be any breach of Macau law in  
2 respect to data privacy issues.

3 THE COURT: You indicated earlier that you had a  
4 concern related to your fiduciary responsibilities to the  
5 company, its officers, and its shareholders. Can you tell me  
6 about those concerns.

7 THE WITNESS: Yes. Very simple.

8 MR. RANDALL JONES: Your Honor, just for the  
9 record, I think that's invading the privilege. But --

10 THE COURT: You started it.

11 You can answer, Mr. Fleming.

12 THE WITNESS: I'm sorry, Your Honor. I missed  
13 that.

14 THE COURT: Mr. Jones and I were having a  
15 discussion about whether that was privileged or not. So you  
16 can go ahead and answer.

17 THE WITNESS: I still couldn't get you. Sorry. I  
18 didn't hear.

19 THE COURT: Can you tell me what your concerns were  
20 about breaching your fiduciary obligations.

21 THE WITNESS: Very simple, Your Honor. There are  
22 -- for breaches of the legislation the company can be fined,  
23 and I believe the maximum was I think 80,000 Macau dollars  
24 per event, up to a maximum. But more important -- not only  
25 that, but more importantly, the officers and directors of the

1 VML can be subject to criminal court action and possibly  
2 exposed to imprisonment for up to two years.

3 THE COURT: When you spoke to the ODP [sic]  
4 officials in early 2012 had they previously been made aware  
5 of the data removal?

6 THE WITNESS: Not to my knowledge.

7 THE COURT: Thank you.

8 Mr. Bice, did you want to ask some questions?

9 MR. BICE: I do, Your Honor. I'm having a little  
10 trouble hearing. Is there better audio?

11 THE COURT: Nope.

12 MR. BICE: Nope. Okay. Well, we'll go along as  
13 best we can.

14 CROSS-EXAMINATION

15 BY MR. BICE:

16 Q Mr. Fleming, can you hear me, sir?

17 A Can you speak up a little bit more clearly? Is  
18 this Mr. Bice?

19 Q Mr. Fleming, my name is Todd Bice. Can you hear  
20 me, sir?

21 A Yes, Todd, I can.

22 Q All right. Thank you.

23 Mr. Fleming, when did you learn that you were going  
24 to be a witness in this case?

25 A Oh, a couple of nights ago.

1 Q Okay. So that would have been on Friday?  
2 A Yeah. The end of last week.  
3 Q Okay. And how were you so informed?  
4 A I was spoken by my [inaudible]. Wyn Hughes I  
5 understand had been in discussions with our lawyers 10 times.  
6 Q Okay. Did you review any documents to prepare for  
7 your testimony?  
8 A No.  
9 Q Did you talk to anyone to prepare for your  
10 testimony?  
11 A No, other than Kemp Jones yesterday.  
12 Q And, I'm sorry, did you say Kemp Jones yesterday?  
13 A Yep.  
14 Q Okay. For how long?  
15 A Oh, I don't know. About an hour and a half.  
16 Q All right. Did you -- you were asked some  
17 questions about a document, an affidavit that you signed  
18 yesterday. Do you recall that?  
19 A This is the affidavit that I have addressed this  
20 morning?  
21 Q Yes, sir.  
22 A Yeah.  
23 Q All right. Did you make any changes to that draft  
24 once it was sent to you, or did you just sign it?  
25 A No, no. I looked at [inaudible]. I made sure that

1 I was familiar with its content. I made sure that I was  
2 satisfied with its content. I would not have signed  
3 anything, Mr. Bice, unless I [inaudible].

4 Q Okay. My question -- I apologize. I should have  
5 made it a little clearer. Did you make any changes to it  
6 before you signed it?

7 A Minor textual changes, but not any material --  
8 nothing that was material.

9 Q Did anybody else review it from your office?

10 A I beg your pardon?

11 Q Did somebody else in your office review it before  
12 you signed it?

13 A Other than Mr. Wyn Hughes, who presented it to me  
14 for signature after I discussed it with Kemp Jones, I don't  
15 believe anybody else would have seen it.

16 Q You say -- you testified just a little moment ago  
17 that you did your best to comply in good faith with the laws  
18 of Macau and this Court's order and production directive; is  
19 that correct?

20 A Yes, I did.

21 Q Okay.

22 A Absolutely.

23 Q Okay. Sir, when you found out about the Court's  
24 order back in September of 2012 were you -- did you  
25 understand that it precluded you -- or precluded the company

1 from redacting documents?

2 A You're going to have to speak slower and a bit more  
3 clearly.

4 Q I apologize, sir. You told the Court that you  
5 received a copy of the Court's order from September of 2012.  
6 Do you recall that?

7 A I do.

8 Q And would have you seen it sometime in September of  
9 2012?

10 A I would have done, yes.

11 Q Okay. And when you saw it did you understand that  
12 it precluded you -- or, I'm sorry, it precluded the company  
13 from redacting any documents pursuant to the MPDPA?

14 MR. RANDALL JONES: Mr. Fleming --

15 THE WITNESS: Yes, of course I did. I told Her  
16 Honor exactly that a few minutes ago.

17 BY MR. BICE:

18 Q All right. So you were -- you did not  
19 misunderstand as to which documents it applied; correct?

20 A Of course not.

21 Q You knew that it applied to all of the documents  
22 that were then located in Macau; correct?

23 A Correct.

24 Q Okay. And you also knew that it did not authorize  
25 redactions, the Court's order; correct?

1           A     Sorry.  What was that?

2           Q     You also knew that the Court's order did not

3 authorize redactions; correct?

4           MR. RANDALL JONES:  Objection, Your Honor.  Before

5 Mr. Fleming answers I would like to try to make sure, because

6 we've got a video, that he gives me a moment so that I can

7 interpose an objection, especially with the delay.

8           THE COURT:  Absolutely.

9           MR. RANDALL JONES:  Thank you.  And with --

10          THE COURT:  Do you have an objection?

11          MR. RANDALL JONES:  My objection, Your Honor, is

12 twofold, is, one, we are now completely getting into mental

13 impressions, which I believe is privileged, and there's been

14 no blanket waiver ruled on by this Court about an attorney's

15 impressions yet that I've heard.  And I understand that's a

16 subject matter that we're going to talk about, but I've not

17 heard of any blanket ruling to that effect.  And, secondly, I

18 certainly would object to the form of that question as to

19 time.  Because time is an issue in this case as to if you did

20 allow or instruct him not -- instruct him to answer over my

21 objection, what -- the timing of any understanding he would

22 have on that subject.  So I would object and instruct him not

23 to answer that question on the basis that it calls for

24 attorney work product or his impressions and therefore --

25          THE COURT:  Overruled.



1 MR. RANDALL JONES: All right. With respect to my  
2 second objection as to time, he said, did you understand it  
3 did not allow for redactions. So that's my objection. It's  
4 ambiguous as to time.

5 THE COURT: Overruled.

6 BY MR. BICE:

7 Q Do you remember my question, Mr. Fleming?

8 A You'll have to repeat it to me, because I'm trying  
9 to [inaudible].

10 Q I understand. Now we've lost your volume here for  
11 just a moment. Can you hear me, sir?

12 A I can hear you, Todd. I can hear you.

13 Q And now we can hear you. Okay. My question to you  
14 before was when you got the Court's order, all right, when  
15 you first saw the Court's order you understood that it  
16 precluded you from making -- or the company from making  
17 redactions; right?

18 MR. RANDALL JONES: Objection, Your Honor.

19 THE WITNESS: No, I didn't -- I did not understand  
20 that.

21 THE COURT: Overruled.

22 THE WITNESS: I understood the Judge's order to say  
23 that it couldn't rely on Macau law.

24 //

25 BY MR. BICE:

1 Q Understood. And you were not confused about that,  
2 were you?

3 A It was pretty clear to me, Mr. Bice.

4 Q Okay. You broke up. Can you repeat what you just  
5 said.

6 A I said it was pretty clear to me.

7 Q Okay. Now, earlier today Mr. Ira Raphaelson had  
8 testified, and he identified some people that had consulted  
9 with you concerning your decision to redact the documents,  
10 okay.

11 A I don't know. I wasn't -- I'm not privy to the  
12 testimony of Mr. Raphaelson.

13 Q I understand, sir. My apologies. I'm just trying  
14 to set -- I'm going to ask you some followup questions on  
15 that.

16 And he had indicated that he gave you input on  
17 that --

18 MR. RANDALL JONES: I want to --

19 BY MR. BICE:

20 Q -- decision. Is that correct?

21 MR. RANDALL JONES: -- object to the form of the  
22 question. Misstates his testimony.

23 THE COURT: Overruled.

24 //

25 BY MR. BICE:

1 Q Did Mr. Raphaelson give you input on that decision  
2 to redact?

3 A Okay. Let me make this very clear, very pellucidly  
4 clear. I as general counsel of SCL and VML acted totally  
5 independently of Mr. Raphaelson. I [inaudible], I will  
6 discuss various issues with Mr. Raphaelson from time to time,  
7 and there's -- my recollection is that I did have  
8 conversations during the relevant period with Mr. Raphaelson,  
9 and I did take on board comments that he made at that time.  
10 I can't recall the -- I cannot recall the day the day time of  
11 those discussions. Suffice to say at the end of the day I  
12 made the decisions relation redaction, not Mr. Raphaelson.  
13 Is that clear, Mr. Bice?

14 Q Well, I think so. But let me get a clarification  
15 from you. The comments -- you said you didn't remember the  
16 comments that Mr. Raphaelson had made, but you took those  
17 comments into consideration in making your good-faith  
18 determination; is that not true?

19 A Absolutely right.

20 Q Okay. And you also -- he had indicated -- did you  
21 also get input on that decision from Mr. Robert Rubenstein?

22 A I might well have got. I can't recall discussions  
23 with [inaudible], but I do have and have had over the last  
24 four years numerous conversations with Mr. Rubenstein.

25 Q All right. And if you did get comments from Mr.

1 Rubenstein on this issue, you would have also taken that into  
2 consideration in making your good-faith determination; is  
3 that also correct?

4 A I don't believe I could have made a good-faith  
5 decision unless I took all relevant issues into  
6 consideration.

7 Q All right. And you would agree that the  
8 discussions that you had with these other people are what you  
9 based your good-faith determination on; correct?

10 MR. RANDALL JONES: Objection, Your Honor. Object  
11 to the form of the question.

12 THE COURT: Mr. Bice, you're going to have to be  
13 specific because of the purpose you're going to ultimately  
14 use this for.

15 MR. BICE: Understood, Your Honor.

16 BY MR. BICE:

17 Q Mr. Fleming, did you also get input in making this  
18 decision from Mr. Stephen Peek?

19 A I can't recall.

20 Q You broke up, sir. Did you say you cannot recall?

21 A I don't think so, but I can't recall.

22 Q All right. Did you also get input on making this  
23 decision from either Randall Jones or Mark Jones?

24 A I would have spoken [inaudible] to either Randall  
25 or Mike.

1           Q     All right. And in your communications with them  
2 you would have -- that would have influenced your good-faith  
3 determination; is that also correct?

4           MR. RANDALL JONES: Again objection, Your Honor.

5           THE WITNESS: Oh, absolutely. I mean. I took all  
6 factors into consideration.

7           THE COURT: Overruled.

8           THE WITNESS: But you've got to bear in mind, Mr.  
9 Bice, I have no desire, no desire at all to offend the  
10 decisions of Her Honor. That was not my intent. I was  
11 trying to find a way [inaudible] accommodate Her Honor's  
12 decision and [inaudible] the laws of Macau. Not an easy  
13 choice given the circumstances.

14 BY MR. BICE:

15          Q     All right. Mr. Fleming, did you also get input on  
16 making this decision from Steven Morris?

17          A     I don't think so, but I don't speak to Steve  
18 Morris. Very rarely do I speak to him. So, to be honest, I  
19 don't think so.

20          Q     All right. Fair enough. Did you get input on  
21 making this decision from Mr. Mike Lackey?

22          A     Mike Lackey was around at that time, and I probably  
23 would have spoken to Mike, yes.

24          Q     All right. And would have your communications with  
25 Mike Lackey also have formed -- influence your good-faith

1 determination?

2 A I would have taken them into consideration had I  
3 received any comment from him.

4 Q All right. How about -- and I apologize. The name  
5 of your colleague there, Wyn Hugh [sic]?

6 A Wyn Hughes, yes.

7 Q Could you -- could I burden you to spell that for  
8 the Court.

9 A Wyn, W-Y-N. And Hughes, H-U-G-H-E-S.

10 Q Okay. And would Wyn Hughes's -- did you have any  
11 communications with Wyn Hughes concerning your decision?

12 A Oh, I would have got [inaudible] and ideas and  
13 concern of Wyn Hughes, yes. Of course I would have done.

14 Q All right. And would have those -- did those  
15 communications that you had influence your good-faith  
16 determination?

17 A Not so much influence. I would have taken on board  
18 the views expressed by Wyn, and I would have then made my  
19 decision.

20 Q All right. But those are factors or those  
21 communications are things that you would have considered in  
22 making your good-faith determination; correct?

23 A Absolutely.

24 Q All right. Did you -- did you have any  
25 communications with anyone from Leonel Alves's office

1 concerning the Macau Data Privacy Act?

2 A I would have spoken to the external lawyer. He was  
3 Ricardo -- I'm sorry, I can't remember his name at the time  
4 -- on the various legal concerns that I might have had, yes.

5 Q Was that Ricardo Silva?

6 A Ricardo Silva. Sorry. Yeah.

7 Q And would have your communications with Ricardo  
8 Silva, you know, played a role in your good-faith  
9 determination?

10 A I am not a Macau lawyer. I do not read Portuguese.  
11 I do not read Chinese. Of course I would have taken them  
12 into consideration. I had to.

13 Q So tell me what all -- are there any documents that  
14 you relied upon in making your good-faith determination?

15 A Nothing specifically.

16 Q How about generally?

17 A No. I mean, the most -- at the end of the day the  
18 most defining, if I can say defining, document would have  
19 been the decision in writing from OPDP.

20 Q Did you get any email input from any of these  
21 lawyers that we just went over?

22 A Oh, I may have done. I haven't looked at any  
23 documents -- and this goes back to 2012. I cannot remember.

24 Q All right. Can you tell me, are you a member of  
25 the board of directors, Mr. Fleming?

1           A     I'm alternative director to Michael Leven --  
2           Q     And what does that mean?  
3           A     -- on the SCL board.  
4           Q     What does that mean, to be an alternative director?  
5     You only vote if Mr. Leven's not available?  
6           A     Correct.  
7           Q     All right. Can you tell me the types of decisions  
8     that are vested with the Sands China Board just generally  
9     speaking?  
10          A     Generally speaking the decisions of the -- all  
11     decisions relating to the operation and functionality of the  
12     Sands China Limited and its subsidiary companies are made by  
13     the Sands China board [inaudible].  
14          Q     All right. Is there any sort of materiality limit,  
15     that if something is sufficiently important the board has to  
16     make a decision on it?  
17          A     No, not specifically.  
18          Q     Can you tell me the types of decisions that don't  
19     require board authorization or approval?  
20          A     Yeah. Basically administrative decisions which can  
21     be made by management or by a committee of the board.  
22          Q     All right. But if they present a significant issue  
23     for the company, do they require board approval?  
24                 MR. RANDALL JONES: Object to the form of the  
25     question. It's overly broad and vague.



1 THE COURT: Overruled. You can answer.

2 THE WITNESS: I didn't even hear the question, Your  
3 Honor.

4 BY MR. BICE:

5 Q Oh. My apologies. If they present a significant  
6 issue for the company, do they require board approval, a  
7 decision?

8 A No, not in all cases. Not in all cases. But the  
9 vast majority of decisions, day-to-day matters are made at  
10 the [inaudible] CEO of the company.

11 Q Okay. And who is the CEO?

12 A Tracy. Edward Tracy.

13 Q Right. And so you had testified earlier that you  
14 made this decision to redact; correct?

15 A I did.

16 Q Okay. And you did not present that decision to the  
17 board for approval?

18 A Not as an official item. But I did address the  
19 issue with members and kept them informed. It is my practice  
20 to keep members informed on various issues prior to each  
21 board meeting.

22 Q All right. But you did not consider this issue to  
23 be of sufficient import that it required a vote of the board?

24 MR. RANDALL JONES: Well, Your Honor --

25 THE WITNESS: No, it did not require the vote of

1 the board.

2 MR. RANDALL JONES: Your Honor, I'm going to have  
3 to object. That calls for clearly attorney-client  
4 impressions and advice. And so that --

5 THE COURT: On whether he informed the board of his  
6 decision?

7 MR. RANDALL JONES: Of whether he felt it was of  
8 such importance as to -- how he presented it to the board.  
9 That's his mental impressions. And I don't know how you get  
10 around that.

11 THE COURT: Overruled.

12 MR. RANDALL JONES: Well, Your Honor, maybe if I  
13 could get the question back so I could hear it again, but --

14 THE COURT: Sure.

15 MR. RANDALL JONES: And, Mr. Fleming, I'd ask don't  
16 answer the question, if you would, please, just so I can hear  
17 it and I can at least make my objection before you respond.

18 THE WITNESS: Thank you.

19 MR. BICE: I won't be able to phrase it. I know  
20 you can't --

21 THE COURT: And we don't do readbacks.

22 MR. BICE: -- readbacks, so --

23 THE COURT: Yeah. So you've got to either try  
24 again or move on.

25 MR. BICE: I'm going to try again, okay.

1 MR. PISANELLI: He already answered it.

2 MR. BICE: He did answer it.

3 MR. RANDALL JONES: Well, I didn't hear the answer,  
4 and I was interposing an objection, Your Honor. And I'd ask  
5 the Court's indulgence in allowing the objections under the  
6 circumstances.

7 THE COURT: It's okay. I'm going to try over.

8 BY MR. BICE:

9 Q Mr. Fleming, you did not consider the decision  
10 about redaction to be of sufficient importance that it  
11 required the board's consideration --

12 MR. RANDALL JONES: Objection, Your Honor.

13 BY MR. BICE:

14 Q -- is that true?

15 MR. RANDALL JONES: I'm sorry. I thought you were  
16 finished.

17 Mr. Fleming, would you please -- when Mr. Bice asks  
18 a question would you please give me a moment to make my  
19 objection and allow the Judge to give us a ruling so that we  
20 can proceed.

21 Again, Todd, I'm sorry. I didn't mean to -- I  
22 thought you were finished.

23 MR. BICE: It's all right.

24 THE COURT: He was done.

25 MR. BICE: I'm done.

1 THE COURT: He was done. I'm waiting for the  
2 objection now.

3 MR. RANDALL JONES: Objection, Your Honor. I  
4 believe that clearly invades his mental impressions about  
5 this particular decision and communicating it to the board.

6 THE COURT: The objection is overruled. In this  
7 context the witness is acting as the business person who is  
8 making the decisions as to compliance by the company with the  
9 Court's order and Macanese law.

10 MR. RANDALL JONES: Your Honor, before -- I would  
11 like to -- then I would specifically like a question  
12 interposed to this witness, because I don't know how the  
13 Court could infer that from the question, what my client's  
14 state of mind was. So I would like a foundational question  
15 --

16 THE COURT: He told me he is the one who made the  
17 decision, nobody else made the decision, he gathered  
18 information, he synthesized it, he made a determination as to  
19 what the factors were, he weighed input from various people,  
20 he met with the OPDP, and then he made a decision and his  
21 decision was based upon his analysis and to make sure he did  
22 what he needed to do in his mind to protect the company.

23 MR. RANDALL JONES: And, Your Honor, there's not  
24 one thing that you just recited that ever indicated that he  
25 told you it was a business decision, as opposed to a legal

1 decision. And I would ask that that question be asked of Mr.  
2 Fleming before Mr. Fleming answers the question that Mr. Bice  
3 just asked.

4 THE COURT: Mr. Jones, whether it is a business  
5 decision or a legal decision that he made, from my  
6 perspective, and I'm the one who counts, it is a business  
7 decision, because it is a decision as to how the company is  
8 going to conduct its business.

9 MR. RANDALL JONES: Respectfully, Your Honor, it's  
10 also a decision that we may have to run in front of the  
11 Supreme Court. And I believe as a foundational matter, as a  
12 matter of law it is important to know whether that was a  
13 legal decision or it may be important to know whether that  
14 was a legal decision or a business decision that Mr. Fleming  
15 made. And there has been no evidence that I have heard that  
16 he has indicated one way or the other if it was a business  
17 decision or if he even has the authority to make a business  
18 decision for the company, as opposed to a legal decision. So  
19 I believe there is no foundation for this Court's supposition  
20 that he made a business decision as you indicated. And I  
21 would --

22 THE COURT: You told me he was the decision maker.  
23 That's what you told me.

24 MR. RANDALL JONES: I didn't tell you what -- it  
25 was a business decision. I said he made the decision. He's

1 a lawyer, Your Honor. When I make a decision with respect to  
2 my client I don't make a business decision, I make a legal  
3 decision.

4 THE COURT: You are outside counsel, Mr. Jones.

5 MR. RANDALL JONES: And he's inside counsel, and  
6 his job is to make legal decisions for his company. He does  
7 not -- and, Your Honor, at a minimum I'd like to take him on  
8 voir dire to clear up this issue, because there is no  
9 evidence that I have heard in the record whatsoever that he  
10 has the capacity or ever did make a, quote, unquote,  
11 "business decision" for the company. And if that's the line  
12 of questioning the Court wants to go on, then I respectfully  
13 have to ask him -- instruct him not to answer.

14 THE COURT: Well, you can ask him the questions if  
15 you want to lay a foundation.

16 MR. RANDALL JONES: I would like to do that, Your  
17 Honor.

18 THE COURT: Sure.

19 Mr. Bice, we're going to let Mr. Jones ask a couple  
20 questions.

21 MR. RANDALL JONES: Thank you, Your Honor. And I  
22 could ask them from here, rather than make Mr. Bice --

23 MR. BICE: I assume that they're going to be very  
24 limited, Your Honor.

25 THE COURT: They're on voir dire.

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

2 VOIR DIRE EXAMINATION

3 BY MR. RANDALL JONES

4 Q Mr. Fleming, do you hear me?

5 A Okay.

6 Q Thank you. This is Randall Jones speaking again.

7 A Yep.

8 Q In your capacity of making the decisions that  
9 you've talked about today with Judge Gonzalez was your  
10 decision a decision as a lawyer for the company, or as a  
11 business person for the company?

12 A Oh. As a lawyer.

13 Q Do you have the authority to make business  
14 decisions for the company?

15 A No, I do not.

16 Q Do you ever give the company business advice?  
17 Since you've been employed with the company have you ever  
18 given or been asked even to give business advice to the  
19 company?

20 A No. It's been very clear from the outset my job as  
21 general counsel is to make decisions -- well, I have to make  
22 decisions in relation to legal issues.

23 Q When you made the decision that you've already told  
24 Judge Gonzalez about to redact the private data from the VML  
25 documents was that -- in your mind was that a legal decision

1 you were making, or a business decision that you were making?

2 A Oh, it's a legal decision.

3 Q Would there be any way --

4 MR. RANDALL JONES: Well, that's -- I think that's  
5 laid the foundation.

6 THE COURT: Thank you.

7 Sir, let me ask a question before I let Mr. Bice  
8 continue. Who was the individual who made the business  
9 decision for VML and SCL to have the redactions made to the  
10 documents?

11 MR. RANDALL JONES: Objection, Your Honor. Assumes  
12 facts not in evidence.

13 THE COURT: Overruled. Sir, you can answer.

14 MR. RANDALL JONES: Your Honor, are you asking him  
15 to tell you what a client of his told him to do?

16 THE COURT: No. I want to know who the person was  
17 who made the decision if he's not the one. Either he made  
18 the decision from a business standpoint, or someone else did.

19 MR. RANDALL JONES: Your Honor, I disagree. That  
20 assumes --

21 THE COURT: Lawyers give advice to clients.  
22 Clients make decisions.

23 MR. RANDALL JONES: Lawyers give advice to clients,  
24 and then the clients act on the advice. That's a different  
25 issue, Your Honor. I would have to instruct him not to



1 answer a question as to who --

2 THE COURT: Okay.

3 MR. RANDALL JONES: -- what --

4 THE COURT: That's fine. I won't --

5 Sir, you've been instructed not to answer my  
6 question about who the business person was who made the  
7 decision. I assume you're going to follow that advice.  
8 We're going to move on, and if Mr. Jones thinks he has issues  
9 he needs to address with our Supreme Court, he knows how to  
10 file a petition for extraordinary relief.

11 Mr. Bice.

12 MR. RANDALL JONES: Your Honor, again, just for the  
13 record, assumes facts not in evidence that a business  
14 decision was made.

15 CROSS-EXAMINATION (Resumed)

16 BY MR. BICE:

17 Q Mr. Fleming, did the board authorize you to make  
18 the decision that you made?

19 A No.

20 Q So you did it on your own?

21 A I made that decision.

22 Q I apologize. My question might not have been clear  
23 enough. So you never sought board authorization to have them  
24 vest you with the decision making on the issue; correct?

25 A Correct.

1 Q And so no one on the board voted on it; correct?

2 A Correct.

3 Q And you said that you informed the board of it;  
4 correct?

5 A I would have informed individual board members, but  
6 not as a -- I did not go to the board and address the issues  
7 with them at a board meeting.

8 Q Okay. But this is an item that you said that you  
9 felt impacted the fiduciary -- the board's fiduciary duties  
10 to the shareholders; correct?

11 MR. RANDALL JONES: Objection, Your Honor.  
12 Misstates his testimony.

13 THE WITNESS: No, that is not what I said, Mr.  
14 Bice.

15 BY MR. BICE:

16 Q Okay. I'll rephrase it, then. Did this decision  
17 whether or not to redact, did it impact the board's fiduciary  
18 duties to the shareholders?

19 MR. RANDALL JONES: Objection, Your Honor. It  
20 calls for the --

21 THE COURT: The objection is sustained. The  
22 witness previously said he had fiduciary duties to the board  
23 members and the shareholders.

24 //

25 BY MR. BICE:

1 Q Okay. Does the board also have a fiduciary duty to  
2 the shareholders?

3 MR. RANDALL JONES: Objection, Your Honor. That  
4 calls for his legal analysis.

5 THE COURT: Calls for a legal opinion.

6 MR. RANDALL JONES: It certainly does.

7 THE COURT: The objection is sustained.

8 MR. BICE: Of a lawyer. All right. I'll rephrase.

9 BY MR. BICE:

10 Q Do you believe that the board members --

11 THE COURT: Can we go to the next step.

12 MR. BICE: Let's go to an exhibit, then. See if we  
13 can make some progress.

14 MR. RANDALL JONES: And, Mr. Fleming, if you would,  
15 please give me a moment to interpose an objection before you  
16 answer the question, if you would.

17 THE WITNESS: I apologize.

18 MR. RANDALL JONES: Thank you.

19 BY MR. BICE:

20 Q Mr. Fleming, can you still hear me, sir?

21 A Yes. There's a lot of background noise.

22 Q At the time that you made the redactions -- or  
23 strike that. Let me phrase it this way.

24 After -- or before the Court's ruling how many  
25 times had you met with representatives of the Office of OPDP

1 before the Court's --

2 A I can't recall [inaudible].

3 Q Did you meet with them ever prior to that ruling?

4 A Prior to the September order?

5 Q Yes, sir.

6 A Oh, of course I did. Many times.

7 Q Regarding the -- regarding this litigation?

8 A Yes.

9 Q Okay. And so you say many times.

10 A Of course.

11 Q Was it more than a dozen?

12 A Probably around there, a dozen.

13 Q Who else met with them on behalf of Sands China  
14 prior to the Court's order in September of 2012?

15 A In terms of people who work for me it would have  
16 been a Macau lawyer that I often took with me probably -- I  
17 don't know, probably on two or three occasions, and that was  
18 it. And myself.

19 Q Well, who was that Macau lawyer that works for you?

20 A Well, that's a [inaudible] you're putting me in.  
21 Technically I suppose I'm breaching the [inaudible] by giving  
22 you the name of the individual without getting that  
23 individual's consent.

24 MR. RANDALL JONES: Well, Mr. Fleming I certainly  
25 would not want you to violate the MPDPA.

1 Your Honor, I would object to the question.

2 THE COURT: So why don't you ask if it's Mr. Lobos  
3 or Ms. Graca?

4 MR. RANDALL JONES: Well, that conveys the same  
5 information, Your Honor.

6 THE COURT: That's the testimony I had this  
7 morning.

8 MR. RANDALL JONES: He didn't tell you what he did  
9 in a particular incident or event.

10 MR. BICE: Let me ask it this way.

11 BY MR. BICE:

12 Q Did you meet with anyone -- strike that.

13 Did anyone else meet with the OPDP on behalf of  
14 Sands China other than yourself and this unidentified lawyer,  
15 Macau lawyer?

16 A At a meeting in -- I think it was the beginning,  
17 the 5th or the 6th of November. Mike Lackey was there, and I  
18 think it was Mark Jones.

19 Q And can you explain to me, Mr. Fleming, why you  
20 believe that you can tell us the names of Mr. Lackey and Mr.  
21 Jones, but not the name of the other person that attended?

22 A They're not in the jurisdiction of Macau.

23 Q I'm sorry?

24 A They're in the jurisdiction -- not in Macau's  
25 jurisdiction.

1 Q But wasn't Mr. Lackey and Mr. Jones in the Macau  
2 jurisdiction when they were meeting with them?

3 A Yes. But I draw the distinction [inaudible] and  
4 they are in the U.S.

5 Q Okay. When you met with them after the Court's  
6 order, with the Office of OPDP or the OPDP, my apologies, did  
7 they tell you that you could challenge their decision in the  
8 Macau courts?

9 A Yes, they may [inaudible] -- if I recall correctly,  
10 in the document they sent at either the end of November -- I  
11 think it was the end of November that there was a right of  
12 appeal. But normally a government regulator would make it  
13 clear that you do have certain rights of appeal in any  
14 document of that nature. And I did have a conversation with  
15 them regarding that after receiving the letter, yeah.

16 Q So after they told you that they wouldn't approve  
17 the transfers you had drafted at that point in time, they  
18 told you that if you disagreed with them that you could take  
19 that to the Macau courts, did they not?

20 A Yes.

21 Q And you -- did you take it to the Macau courts?

22 A No.

23 Q And that was another decision that you made?

24 A Yes.

25 Q Did you take that decision to the board to not take

1 it to the Macau courts and ask them for permission to  
2 transfer all of the data?

3 A I did not take it to the board.

4 Q Okay. Did you take it to anyone?

5 A I would have discussed it with my CEO.

6 Q And that was Mr. Tracy?

7 A Yep.

8 Q Anyone else you discussed it with deciding not to  
9 go to the Macau courts and get authorization?

10 MR. RANDALL JONES: Your Honor, objection.

11 Attorney-client privilege -- object --

12 THE WITNESS: I probably would have discussed it  
13 with my colleagues.

14 THE COURT: Sustained. Sustained.

15 BY MR. BICE:

16 Q And when is it that they told you that you could go  
17 to court to contest their nonapproval?

18 A Sorry. I didn't hear you.

19 Q Yes. When is it that they -- when is it that they  
20 told you that you could go to court to contest their  
21 nonapproval?

22 A They didn't [inaudible]. It was I believe what was  
23 included in the letter that they -- of November or beginning  
24 of December.

25 Q Okay. So it was actually in writing they told you

1 if you disagreed that there was a remedy for you to contest  
2 their decision; correct?

3 A Yes. I think that's customary.

4 Q All right. How did you learn about the Nevada  
5 Court's order in September of 2012?

6 A I don't recall.

7 Q Would have you received it via email, you think?

8 A I probably -- I had a copy of it, so I certainly  
9 would have received an email from somebody.

10 Q Okay. Now, I think earlier you testified to the  
11 Court that you either had to get consents from people or you  
12 had to get the permission from the OPDP to transfer data out;  
13 right?

14 A Correct.

15 Q And how many people did you seek consents from?

16 A How could I seek consent? I didn't even know who  
17 to seek consent from until the documents had been looked at.  
18 There are thousands of documents, Mr. Bice.

19 Q Okay. So did you know who the custodians were that  
20 were being searched?

21 A The custodians?

22 THE COURT: Mr. Hughes you can't talk to the  
23 witness while he's answering.

24 MR. HUGHES: I apologize, Your Honor.

25 THE COURT: Thank you.



1 THE WITNESS: My apologies. It was very difficult  
2 for me to hear, Your Honor.

3 THE COURT: Mr. Bice was asking you if you knew who  
4 the custodians were that were being searched for the  
5 responses.

6 THE WITNESS: You mean who owned the files, who  
7 owned the storage devices?

8 BY MR. BICE:

9 Q Well, no. Whose documents? Such as Steve Weaver  
10 would be an example, i.e., the executives whose electronic  
11 information was being searched. You knew their names, didn't  
12 you?

13 A I didn't [inaudible] to the actual custodians. I  
14 knew that there was a vast amount of data that was collected  
15 and stored under secure conditions.

16 Q So you didn't seek any consents from anyone; is  
17 that correct?

18 A Correct.

19 MR. RANDALL JONES: Just -- Your Honor, just a  
20 clarification when you say "he," Mr. -- you're talking about  
21 Mr. Fleming personally?

22 BY MR. BICE:

23 Q I'll rephrase. Did Sands China seek consents from  
24 anyone, Mr. Fleming?

25 A No.

1 MR. RANDALL JONES: Object to the extent that --  
2 the lack of foundation.

3 THE COURT: Overruled.

4 BY MR. BICE:

5 Q And whose decision, Mr. Fleming, was it not to seek  
6 consents?

7 MR. RANDALL JONES: Object to the question. Lack  
8 of foundation and misstates the evidence.

9 THE COURT: Overruled.

10 Mr. Bice, how much longer do you have?

11 MR. BICE: A while.

12 THE COURT: It's 5:03. What is your plan,  
13 gentlemen?

14 MR. PEEK: I didn't hear what his answer was. He  
15 said a while?

16 THE COURT: He said a while.

17 MR. PEEK: What is a while?

18 MR. BICE: An hour.

19 THE COURT: So we'll have to continue this  
20 tomorrow. We need an answer to the pending question, which  
21 was who made the decision not to seek the consents from the  
22 data sources.

23 MR. BICE: Correct.

24 //

25 BY MR. BICE:

1 Q Who made the decision not to seek consents, Mr.  
2 Fleming?

3 MR. RANDALL JONES: Object to the form of the  
4 question. Misstates the testimony and the evidence.

5 THE COURT: Overruled.

6 BY MR. BICE:

7 Q Mr. Fleming, can you hear us still?

8 A There's a lot of background noise.

9 Q My apologies, sir. My question was who made the  
10 decision not to seek the consents.

11 A I would have made that decision.

12 Q Did you consult with anybody else in making that  
13 decision?

14 A I would have discussed it with my colleagues, as I  
15 said before.

16 Q What colleagues would those have been?

17 A Well, that would have been the [inaudible] for me.

18 Q The people that work for you?

19 A Yeah.

20 Q Did you have any -- did you get any input on that  
21 issue from the lawyers in the United States?

22 A No. No.

23 THE COURT: Mr. Bice, before we break for the  
24 evening I have one question for the witness.

25 Sir, you indicated that you hired a group of

1 Macanese lawyers to do the review and the redactions. Did  
2 you determine the scope of the information to be redacted  
3 prior to giving them the assignment?

4 THE WITNESS: Your Honor, I take it that you're  
5 asking the question. You are?

6 THE COURT: I did.

7 THE WITNESS: Okay. I -- here's the situation. We  
8 had -- we knew that we had to [inaudible] to the documents to  
9 determine whether or not there was personal data. I could  
10 not -- as an a non-Macau lawyer I was not allowed to look at  
11 the documents. [inaudible] engage Macau lawyers. The  
12 instructions were clear that they were to look at all the  
13 documents and decide what was personal data and on the basis  
14 of their understanding of Macau law, because they were Macau  
15 lawyers.

16 THE COURT: So you left the decision of what the  
17 scope of the personal information to be redacted to the Macau  
18 lawyers that you assigned to review the documents?

19 THE WITNESS: Sorry, Your Honor. That did not come  
20 through clearly.

21 THE COURT: Did you give them any guidance as to  
22 what should be considered personal information?

23 THE WITNESS: No. I told them bluntly, meet the  
24 requirements of Macau law.

25 THE COURT: Okay.

1 MR. BICE: I have one question, Your Honor, I'd  
2 like to get asked before we break.

3 THE COURT: Sure.

4 BY MR. BICE:

5 Q Sir, was one of the attorneys that you consulted  
6 with on the redactions Leonel Alves?

7 A No.

8 MR. RANDALL JONES: Your Honor, before we break, I  
9 was informed yesterday that Mr. Fleming has a long-standing  
10 trip planned, and so we were anticipating this would be done  
11 today. So I don't know exactly what Mr. -- I believe he  
12 leaves -- well, tomorrow their time, but I don't know the  
13 exact details. So if we could make inquiry of Mr. Fleming  
14 about his availability, because, as you know, it's Tuesday in  
15 Macau now, and I understood he was leaving on Wednesday. So  
16 I don't know what the exact details are.

17 THE COURT: I would have loved to be done with him  
18 today.

19 MR. RANDALL JONES: Well, I think we all would  
20 have, Your Honor. But I understand what you've just told us  
21 --

22 MR. PEEK: Why don't we just ask him, Your Honor,  
23 and let's see.

24 MR. RANDALL JONES: I'm just asking the question --

25 THE COURT: Mr. Fleming, when do you leave for

1 vacation?

2 THE WITNESS: I leave on Thursday, and I will not  
3 be back for a month.

4 THE COURT: So tomorrow what time our time is  
5 convenient to you?

6 THE WITNESS: No, it is not, Your Honor, because  
7 I'm leaving Macau today in about two hours, and I have  
8 commitments in Hong Kong in the afternoon, all day Wednesday,  
9 and then I fly out on Thursday.

10 THE COURT: I'm going to take a quick break while  
11 the people from Sands China figure out what they're going to  
12 do, because I'm leaving.

13 MR. PEEK: Your Honor, may we clear the courtroom  
14 to have a discussion with Mr. Fleming so they could --

15 THE COURT: No.

16 MR. BICE: No.

17 MR. PEEK: David --

18 MR. RANDALL JONES: Let's do this. We're going  
19 to --

20 MR. PEEK: David, we're going to call you  
21 separately.

22 MR. BICE: I have an objection to you speaking to  
23 him, and the Judge --

24 MR. PEEK: You can do whatever you want, Todd.

25 MR. RANDALL JONES: Absolutely.

1 MR. PEEK: You can raise it with the Court if you'd  
2 like.

3 MR. RANDALL JONES: I certainly have a right to  
4 talk to my client about his scheduling.

5 MR. PISANELLI: She just said no, he's on the  
6 stand.

7 MR. BICE: He's on the stand.

8 (Pause in the proceedings)

9 MR. RANDALL JONES: Your indulgence, David. We're  
10 waiting for the Judge to come back so we can get permission  
11 to have a conversation with you on the telephone.

12 THE COURT: I don't give personal advice.

13 MR. RANDALL JONES: Your Honor, the issue was that  
14 we intend to have a conversation on the telephone with Mr.  
15 Fleming about his schedule, and Mr. Bice objected to us doing  
16 that. I believe I have an absolute right to talk to my  
17 client about his schedule outside the presence of Mr. Bice.  
18 That's all I wanted to do, and he was -- I didn't want there  
19 to be any confusion about that.

20 THE COURT: Here's what I will tell you, and it is  
21 the same in every single case. Anything you talk to the  
22 witness about is subject to inquiry by Mr. Bice.

23 MR. RANDALL JONES: Well, I understand your  
24 position, Your Honor, but I still believe I have the right to  
25 speak with him:

1           THE COURT: You absolutely can speak to him. The  
2 problem is it's all subject to inquiry by Mr. Bice. So if  
3 you want to talk to him, that's fine. I don't have a problem  
4 with you talking to him, I just don't want anybody to leave  
5 thinking that the conversation you have will be privileged.

6           MR. RANDALL JONES: I understand your position,  
7 Your Honor. Thank you.

8           MR. BICE: Your Honor, I also would just like the  
9 record to reflect any documents or emails or texts that he  
10 receives tonight we are entitled to have prior to resumption  
11 of his testimony, and I would also ask that Mr. Fleming be  
12 admonished that he cannot speak and -- or get documents from  
13 people in Macau regarding his testimony.

14          MR. PEEK: Your Honor, that --

15          THE COURT: Usually on the evening break don't have  
16 the same rule that I do on a break during court and a lunch  
17 break. But I am concerned, and I want to know the answer to  
18 the scheduling issue before I leave here.

19          MR. RANDALL JONES: And I've --

20          MR. PEEK: And that's why we want to talk to him  
21 about it, Your Honor.

22          THE COURT: You can go call him.

23          MR. PEEK: Thank you.

24          THE COURT: But just know --

25          MR. PEEK: We know. We heard Your Honor.



1 Thank you.

2 (Pause in the proceedings)

3 MR. RANDALL JONES: Your Honor, Mr. Fleming is  
4 back.

5 Mr. Fleming, can you hear me? Mr. Fleming, can you  
6 hear me? Mr. Fleming, can you hear me?

7 MR. FLEMING: I can.

8 MR. RANDALL JONES: All right. Your Honor, in  
9 speaking to Mr. Fleming he's explained to me that he has  
10 several appointments tomorrow in Hong Kong with respect to  
11 some financial arrangements about buying some property that  
12 he is -- timing is a critical issue. So in trying to make  
13 sure he can accommodate the Court he's going to try to move  
14 -- he's going to move the meeting, and he will make himself  
15 available. If this will work for the Court, he can make  
16 himself available at 6:30, and he has to be in Hong Kong, and  
17 we're going to try to verify we can set this up through Mayer  
18 Brown's office in Hong Kong at 6:30 a.m. tomorrow morning,  
19 that was 2:30 tomorrow afternoon in Las Vegas. But we could  
20 finish up all the other testimony before that, and should be  
21 able to proceed.

22 And, Mr. Bice, if --

23 THE COURT: 6:30 in the morning you're going to  
24 finish everything before 6:30 tomorrow morning?

25 MR. RANDALL JONES: For him. No. No.

1 MR. MARK JONES: 2:30 here.

2 MR. RANDALL JONES: It would be 2:30 our time  
3 tomorrow that he --

4 THE COURT: 2:30 in the afternoon.

5 MR. RANDALL JONES: In the afternoon, yes, Your  
6 Honor.

7 MR. PEEK: Yeah.

8 THE COURT: That's perfect. 'Bye.

9 MR. RANDALL JONES: All right.

10 THE COURT: So are you guys coming in at 9:00?

11 MR. RANDALL JONES: We will be here at 9:00  
12 o'clock.

13 THE COURT: 'Bye.

14 MR. RANDALL JONES: Mr. Fleming, thank you very  
15 much. We will see you tomorrow at 6:30. We will deal with  
16 Wyn to make all the arrangements to make sure that we have  
17 the video system hopefully all set up by 6:30 a.m. Hong Kong  
18 time.

19 MR. FLEMING: Yes. Could I just make one comment,  
20 Your Honor? Your Honor, I'm actually moving an engagement I  
21 have at 7:00, just after 7:00 o'clock tomorrow morning. To  
22 adjust this I will probably have to see these people no later  
23 than 8:30 in Hong Kong tomorrow. So, please, can we dispose  
24 of this issue so that I can at least confirm I will meet  
25 these people at 8:30?

1 MR. RANDALL JONES: Mr. Fleming, Mr. Bice has  
2 indicated he has another hour of testimony. So presumably  
3 that will not be a problem.

4 MR. FLEMING: Okay.

5 MR. RANDALL JONES: Thank you, Mr. Fleming.

6 MR. FLEMING: All right.

7 MR. RANDALL JONES: I think I can say this even  
8 though the Judge has left technically. I believe you are  
9 excused for the day, Mr. Fleming. Thank you.

10 MR. FLEMING: Thank you.

11 (Court recessed at 5:27 p.m., until the following day,  
12 Tuesday, February 10, 2015, at 9:00 a.m.)

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EXHIBITS

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\* \* \*

CERTIFICATION

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

AFFIRMATION

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

FLORENCE HOYT  
Las Vegas, Nevada 89146

*Florence M. Hoyt*  
FLORENCE HOYT, TRANSCRIBER

2/10/2015  
DATE