

would -e me hed kick me out

He would kick you out

He would kick ire out immediately

What was The reason

actually dont know because from my

unders and Inc he was he was like that to everybody or

especial_y T2

MR WRIGHT didnt hedr the last pdrt of that

THE COURT Sir can you state your answer again

THE WITNESS He mostly kicked out probbily new

people but felt like he just didnt like me

BY MR SAUDAHER

Did you ever have an issue wltu him on

argurnert anything youve gotten into

No sir

But if you were in room he would kick you out

J7 of

Right away

Did you ever see him do procedures tnouoh

z0 only was there for like couple minutes and

ul then wds kicked out because we were unoerstaf fed

Right But mean at times where knees doing

z3 procedure can you see overhear see whats going on in those

24 rooms

zS No if was kicked out was ir the

sterluzdtuor rooc

Did you ever see hm actuaily dc col000anopies
put scopes into people things ike that

Ive only see Ive mnly seen couple and
they were un and ou basod Thy

Okay Eu you cid see couple

Yes

Lets talk so when anu kick you out is
that wten you wclld go cver to the uroceoure room mean
10 the cleaning room and tfer lou would dc your work there

11 Yes si

12 Lets talk dbmut thOt for minute When youre
13 in the proceure The cleaning roor is where Im at right
14 now When youre in the eino room what kinds of things
15 did you do in there

16 Well wher -he procedure was done the gastro
17 technician wou unhook the dirty scope either the endoscope
18 or the upper scope cnd he\ wcu bino it in and would
19 clean it Id put it is The rsuket ano lo use this brush
20 thing to put it to The Three ports to where would scrub
21 to where the feces wou come out Ano after that we
22 would hook it up into tfe Medivator to where we pressed the
23 button and it would steriuize the equipment

24 Now the Meoivator itself did that circulate
25 things you know solution througn the scope itself

Yes sir

So you **erent** just dropping **it** into solution
material **it** actually circulated through the scope to clean
the mace of the scope out

Well there was there was process Wed
st wec have to lean out the the fecal matter sxd
ften we0 put in **th** next clean bucket dnd then we would
stima **it** in the Medivator

Okay So **tiree** three stops cirty area

iO wYeie

11 Uh huh

the feca material gets eaned out Is than
13 llike buckEt or sink or what is **it**

14 if was **it** was bucket It was like blue

15 bucket lke cant really explain **it** Its ike this big

16 that That **tall**

17 Okay Anc for the record you were you were

18 rioThoninc with your hanos **it** ooked like anut tan ano

19 half fean or so in diameter

20 Im bad with math

21 Youre saying was **it** about about like that

22 Yeah

23 And then you said **it** looked like **it** was about

24 foot or so high

25 Yes sir

And you would put the scopes inside that the
would be the dirty bucket you said

Yes sir

Now besides the scopes would you process
anything else in that dirty bucket with the scopes

Well we would scrub the the bite blocks

Bite blocks

The thing that for the upper endoscopy so
that the scope would go in and the patient wouldn't bite the
10 scope we would put bite block And for don't know
11 for while we would be cleaning that in the the tub

12 MR STAUDAHER Court's indulgence

13 THE COURT Uh huh

14 BY MR STAUDAHER

15 Scopes bite blocks all go the same dirty
16 solution right

17 Yes

18 And then they get cleaned and then they go
19 where

20 In the Meovator to where where the machine
21 is hooked up to the scope and the solution just goes through
22 the whole thing and it it does this whole cycle where it
23 cleans everything in there

24 Okay And how how often or how long would
25 that process take

For the Medvator believe Ilce 16

nonutes **Sr**

So the prooess of is this after you get it
auQlly flocked up into the Yedlvtor it does its poessing
for

Yes sir

Is this sometfling you have to do anything to
when nean do you have to open up the macfine and do
anytning wlt durine the time or does it run on its OWN

it it runs on its OWN As long as everythingo
wOs hookEd up to it it was running properly it would oo
ii it oIS clrcu ate though the scope and it would asical
fill up it would fill up with solution and it would
ooes Its process

15 Was there ever any time when that didnt work
the nuchne tce Medivator for example

17 There was couple times it didnt work
What was conq On Was it broken or was it
it just didnt work properly It probably like

/0 wher you turned it on water and solution wou come out
ftc hotom or just didnt work properly period

Lu What woulo you do in those instances

z3 Well we would take two twobuckets fist the
24 same tYing and hasfially put more solution ano we would do
/5 the whole process clearing the fecal matter withthe so ution

clean waner

For 20 minutes

Yes sir

MR STAUDAHER May approach Your Honor

THE COURT You may

BY MR STAUDAHER

I'm going to show you what has been **til**

this is the only thing I'm in specifically but

marked as 71 and want you to tell me if you recognize

10 that

11 **Is** bire block Ours was we it didn't

12 actually look like this looked little bit different. It

13 it was green

14 Besides from the colors is **til** scan tasC

15 thing though

16 Yes sir

17 So that's the kind of device that you had

18 Yes sir

19 MR STAUDAHER Move for admission of States

20 Proposed 71 and guess 71 the packaging Your Honor

21 THE COURT Any objection

22 MS WECKERLY No Your Honor

23 MR SANTACROCE No

24 THE COURT All right Those will be admitted

25 States Exhibit 71 and 71 admitted

BY MR SAUDAHER

Im going to turn off the light so doesnt
have the shininess there But you can draw on that screen
with your finger if you need to but can you describe for
us where you put this exactly what portion it you put in
and where the scope actually goes Does it go in this hole or
does it go over here where does that go

goes right here

Yeah

10 Yeah right there

11 Okay So the the scope would go through that
12 hole

Uh huh But the the lure end would go to The
14 patient's mouth

15 So the long end is actually inside the mouth

16 Uh huh

17 right one if turn it over

18 Yeah so the

19 right end is

20 the scope would go through this

21 hand right here

22 Right there

Yes sir

24 And then the this portion would rest on the

25 lips of the patient on the outside

Yes sir

And what are these little wings with the little
hooks on them for

It looks like different hocks but hose are
just to keep it in place so the patients not like trying to
take out with his tongue

Inside this package do you see this roll of
material here

Yes sir

10 And what is that if you know

11 That's the thing to help this like like

12 kind of tie headband just to make sure not headband

13 but it keeps the mouth the thing in your mouth

14 So it it goes around the neck and holds it in

15 place

16 Yes sir

17 When you process these when you throw those in

18 with the with the scopes and you clean them did this

19 part go there as well This sort of band

20 Yes sir

21 The whole thing went in there

22 The whole thing went in there

23 In typical day how many of those would you

24 use

25 We were only supposed to be using four

throughout the day in in our onto ncr bTh If we were
sterilizing we would grab more bit Id 5a ike In whole
day because we were we were only alloeo riany

So you were you reurocasscd trese though

Yes sir

Over and over acdn

Yes 5r

At what point would ccTha know it awdy

At the coo of the dcy

10 How many nines would you rtink tct tins would

11 get processed single one wou ocr processec " day

12 Quite few It depends if depeocing if

13 we were on time or if how many patients we had

14 Could it be tore four ci ve tines cay

15 Probably probdbly rounc There

16 Okay So for ore of these inc cc into that

17 same soup so to sneak wto the ucopes And these are scopes

18 that were used for the upper and the lower endoscopies

19 Yes sir

20 The oloooscopies as wel

ii Yes sir

22 After these cid anybody ever tel yru that

23 these were single use only items

in We were told we were to throw them away

is eveotualy later

TABLE OF CONTENTS

	<u>Page</u>
MEMORANDUM OF POINTS AND AUTHORITIES	1
INTRODUCTION	1
FACTUAL BACKGROUND	2
A. The Court Granted Summary Judgment in Favor of Five Director Defendants on All Claims	2
B. A Majority of Independent, Disinterested RDI Directors Subsequently Ratified the Board's Decision to Terminate Plaintiff and the Compensation Committee's Decision to Permit the Exercise of a Share Purchase Option	3
1. The Ratification of Actions Taken by Board Members Relating to the Termination of Plaintiff as President and CEO of RDI	5
2. The Ratification of the Compensation Committee's Decision to Approve the Exercise of a Share Purchase Option Held by the Cotter, Sr. Estate	6
ARGUMENT	7
I. THE BUSINESS JUDGMENT RULE APPLIES TO ALL DECISIONS COMPLAINED OF BY PLAINTIFF	7
II. JUDGMENT ON ALL BREACH OF FIDUCIARY DUTY CLAIMS IN FAVOR OF THE REMAINING DIRECTOR DEFENDANTS IS WARRANTED UNDER THE BUSINESS JUDGMENT RULE	9
III. ABSENT ANY COGNIZABLE BREACH, JUDGMENT ON PLAINTIFF'S AIDING AND ABETTING BREACH OF FIDUCIARY DUTY CLAIMS IN FAVOR OF ELLEN AND MARGARET COTTER IS APPROPRIATE	11
CONCLUSION	12

Do you remember if there are anything to do with
chance in the appearance at the near Yew did you know
when it was time to tango the solution

Well we would change it after like two or three
times

So it would be area and how many scopes would
go in the solution at time

Two

So two scoops two scoops two areas and
10 you would use two or three times and then you would change
11 the solution

12 Yes Unless unless there one scope that we
brought was super dirty mean and The whole octet was
14 just disgusting then would change it

15 But is it fair to say that after you have two
16 scoops I'm sorry two scopes and you I'm with
17 rican had would be anywhere from four to six on the ropes
18 would go through before it would get harmonic correct

19 Four

20 Two at Three and you said two to three times
21 before you would change it

22 guess that sounds right

23 Okay Would be pretty dirty fore you
24 change it

MS WECKERLY Objection Leading

KARP REPORTING INC

T-IB COURT **its title** leadiro well overruled

MR SThTTDAHER car o0x rephrase **it**

BY MR S7A1UAHER

Hcw wfldt would he the cleanliness of the
solution URn you describe **tat** for us after **it** got to lid
point dno **were cik** ro **SW** eight scopes

Weli ft **it** you mean **if it** was
dirty

Wel tha what **In** asking you Why would you
10 change **it**

11 IBS COURT **link res** asking how **dirty** would **it**
12 be

13 MR URATTLAHER Bx0ctly
14 T15 TNESS We mean **ito** be pretty **dirty**
15 mean There would he Thea matter **all** around **it** jast
16 **floating**

17 BY MR SURUEAJER

18 Ofty Ano **-hots** watat these tnings would go in
19 also rioLt

20 Yes **sil**

21 Now **liter** those not into that **dirty** one and
22 **lets** **cts** take the Medivator out of **it** right now

23 Okay What tappens to -hem ir situation where the
24 Medivarors rot working

25 Can you repeat **that**

Where would **it** go **next** You got them in the
dirty one and you've done your brushes and can **Da1**

Okny

correct Now what do **tu** ton
wi-h **tie** scopes and these **bite** blocks

We would put them in **th** next one when
clew water and wo would ot **it** soak

And **thats** where **it** would soak Th how **ng**

Like 20 minutes and then ve **W0** cry rham

10 How would you

11 The scopes we **woud** hang to hano to dry to

12 where here wns **shelf** we wou_d hang tren he **10set** to

13 where -hey were ust hangng The bite bloKu we **u5** put

14 them near our sink in the eanng aren **CSE** we n0o ou

15 cleaning area for the sinks and behind trere **rere** was also

16 sinks **were** we put the bite blocks

17 Okay So **theres** no solution natween **jt5** ust

15 the **dirty** one and then **ae** then out after **teyve** teen

19 brushec and everything and you put them in **tre** cnn one to

zQ **let** them soak

21 Yes **sir**

z2 And then you take those and you nng them up

23 Yes **sir**

24 And the bite blocks you put those take them

25 out of that so **ution** the clean **solution** and you put them

presented by Patton Vision. (*See, e.g.,* Pl.'s Opp'n to Ind. Defs.' Suppl. Mot. for Summ. J. Nos. 1 & 2 at 5-6.)

In conformity with the case management schedule set forth by the Court, the Director Defendants moved for summary judgment on each of these issues, as well as generally as to all claims with respect to their independence and disinterestedness. At the hearing on the Director Defendants motions held on December 11, 2017, the Court determined that Plaintiff failed to raise a genuine issue of triable fact as to the disinterestedness and/or independence of Directors Wrotniak, Coddington, McEachern, Kane, and Gould. In light of Nevada's strong business judgment rule and consistent with well-established law, the Court granted summary judgment in favor of these directors on all breach of fiduciary duty claims asserted by Plaintiff. Shortly thereafter, Plaintiff moved for reconsideration of the Court's ruling, which the Director Defendants opposed. At a hearing held on December 28, 2017, the Court denied Plaintiff's motion for reconsideration and indicated that it would enter a written order later that day granting summary judgment in favor of Directors Wrotniak, Coddington, McEachern, Kane, and Gould on all claims—which it subsequently did. (*See* HD Ex. A (12/29/17 Notice of Entry of Order).)

B. A Majority of Independent, Disinterested RDI Directors Subsequently Ratified the Board's Decision to Terminate Plaintiff and the Compensation Committee's Decision to Permit the Exercise of a Share Purchase Option

Given the contours of the Court's summary judgment ruling, a majority of disinterested, independent RDI directors approved three of the transactions identified as "breaches" by Plaintiff, thereby triggering the application of Nevada's business judgment rule as to those decisions—the search for a permanent CEO of RDI, which culminated in the hiring of Ellen Cotter; the hiring of Margaret Cotter as Executive Vice President, Real Estate Development-New York; and the Board's decision not to further pursue the Patton Vision indication of interest after devoting two board meetings to the issue, hearing a management presentation on the Company's valuation, and discerning the intent of the controlling stockholders not to sell at that time.¹ *See*

¹ Discounting the votes of Guy Adams and Margaret Cotter, the selection of Ellen Cotter was approved by a vote of 5-1 (*see* Pl.'s Proposed Tr. Ex. 35); discounting the vote of Mr.

drained out of it overnight

don't recall

As far as your involvement with the cleaning
though did you have some specific training before you came
and did this

Then could he see to allow
experienced technician CC person and he or she
would reach me how CC LOOF they would put me in to
the procedure room where they would watch

10 Okay how how much training mean how
11 many days weeks whatever training did you get before you
12 were

13 Probably like obviously like to two days
14 of training and then the rest of the time think for like
15 couple days they'd be there over me making sure was
16 doing something correct everything correct mean
17 Did you have C1 training before you had come to
18 the endoscopy center
19 just from my medical assistant training that's
20 it

Obey While you were there were there other
22 people that were like yourself that were coming and getting
23 day or two of of sort or rect hands training and
24 then just oversight for couple of days thereafter
25 There was couple sir

Was there turnover of people that came through
there our time

don't know if you mean like there's people
no

People come people go that know of thing

Not too many

Who worked with you during that time period

Like the the names

I'm talking about other CI cases that you worked
with directly

don't remember any of the names

Because is been so long

It's been so long and

Fair enough So when you're back there doing
this work mean you're are you alone or are there two or

Three of you in room

I- would just be it would just be one person

one or two person But most of the time we would need

unaffected so would be there in the sanitation room he

other person would be in the procedure room or it would be

switched To be in the procedure room person would be in the

sanitation room

Now even though you're mean you're there

working know you're short staffed and you're kind of doing

both jobs at some times to help out did you ever see other

technicians now they did the this Ye cleaning so to
soak

Once in awhile Id ft nesc what they were
dome

Was there ever concern about people that
werent doing kind of the level that you were doing At least
being conscientious and cleaning out the scopes well that
kind of thing

Yeah Some some of the newbies caught them
10 and basically told them was like hey oo it this way
11 make sure you do it right And

12 What would you catch them cone

13 Like often the Vedv0tor was broken instead of
14 hooking up the the port to where you could stick the the
15 syringe they would just stick the syringe directly into the
16 port instead of hooking the device

17 What would that do

18 Its just

19 Or not do

20 it just wouldnt give enough pressure and
21 push out all the fecal matter

22 So it wouldnt adequately clean the scope

23 Yes sir

24 Is this something you had to tell them and
25 counsel them on

1 him in his CEO duties—a fact that he did not disclose to the Board prior to his termination. (*Id.*
2 at 4-5.)

3 Director McEachern then made a motion, seconded by Ms. Coddington, as follows:

4 BE IT HEREBY RESOLVED that the Board ratifies the actions taken by the
5 Company's board members relating to the termination of James J. Cotter, Jr. as
6 President and CEO as such actions are outlined in the minutes of the Board
meetings held on May 21, 2015, May 29, 2015, and June 12, 2015.

7 (*Id.* at 5.) After debate and further discussion, including an opportunity by Plaintiff to make
8 comments, the proposed resolution was adopted by Directors Coddington, Gould, Kane,
9 McEachern, and Wrotniak, with Plaintiff casting the sole vote in opposition. (*Id.*) Plaintiff
10 characterized the ratification as simply being a litigation device (*id.*), despite the fact that the five
11 ratifying directors were no longer parties to his derivative litigation and have no personal stake in
12 whether the litigation goes forward.

13 2. The Ratification of the Compensation Committee's Decision to Approve
14 the Exercise of a Share Purchase Option Held by the Cotter, Sr. Estate

15 Director Gould then introduced the second issue for consideration: ratification of the
16 September 21, 2015 decision by RDI's Compensation Committee to permit the Estate of James J.
17 Cotter, Sr. to use Class A non-voting stock as the means of payment (as opposed to cash) for the
18 exercise of an option to purchase 100,000 shares of Class B voting stock in RDI. (*Id.*) Counsel
19 for the Company summarized the information regarding the matter considered by the
20 Compensation Committee in 2015, including the fact that acceptance of stock was within the
21 discretion of the Compensation Committee as Administrators of the 1999 Stock Option Plan
22 under which the stock option was granted. (*Id.*) The disinterested, independent Board members
23 then generally expressed their awareness of the information as well as their review of the
24 relevant Board materials and Compensation Committee minutes, and opened the floor up for
25 debate, including comment by Plaintiff. (*Id.*)

26 A motion was made and seconded, as follows:

27 BE IT HEREBY RESOLVED that the Board ratifies the decision of the Compensation
28 Committee of the Company, as outlined in the minutes of its September 21, 2015
meeting, to permit the Estate of James J. Cotter, Sr. to use Class A non-voting

rooms to to do the procedures

Yes sir

Was there ever any time that you recall that
any skip or steps were skipped in the process meaning that
scopes were taken before they were completely done

Not that recall of

Beside that one instance with the scope not
getting cleaned well enough that you've mentioned do you
recall any other steps that were skipped by anybody that was
there while you were working

11 Not that recall sir

12 As far as the time timing of the procedures
13 were the upper endoscopy procedures the same faster or slower
14 than the colonoscopy procedures

15 No The upper is its shorter because its
16 the scope is not going you know all the way down Unlike
17 the colonoscopy means its going all the way to the end of
18 your colon

19 Did you ever as far as the doctors themselves
20 are concerned with the difference the speed of the
21 doctors doing those procedures

22 Yes sir

23 Noticeable difference between some doctors and
24 others

25 Yes sir

On the top of the list as far as heine Ye
fastest ones in the youp who who ranked up there

Dr Desai was well known for speedness his
colonoscopes

What was the time nge that he would do
procedures

man tea he like

Lets talk about an upper endoscopy him and
average for him

10 An upper endoscopy can take like five minutes
11 It doesn't take too long

12 For him would that be about the same or less or
13 more

14 probably be the same for anything

15 Okay What about colonoscopy

16 Colonoscopy on average -he new doctor would
17 take like 40 minutes because he was new at it But then the

18 more experienced would usually take 15 minutes Well

19 experienced like Or Desai would be really less than 10
20 minutes average like five minutes in and out

21 For colonoscopy

22 Yes sir

23 Did he ever brag about that

24 No never heard any bragging

25 And you're there and although you had limited

exposure in the room with him you present when he's
working with either techs or in the room right next to you

Yes sir

Did you ever get overheard him yelling and
screaming in the room? In the clinical The time

Not that recall sir

What about the issue of patient complaints were
there ever any complaints from patients had you any idea of
about procedures about anything

10 All heard some patients heard that
11 patients were complaining that patients were being put before
they seen the doctor

13 Put

14 Like they were put to sleep by the
15 anesthesiologist

16 Before the doctor was there

17 Uh huh

MR SANTACROCE I'm going to object to hearsay

MS WECKERLY As well

20 THE COURT Did you this for the patients or
21 did you hear this talking

22 TUESDAY This is what was he saying from the
23 other techs

24 BY MR STAUDAHER

25 Okay Was there ever any meeting that was about

1 Significantly, nothing in the text of NRS 78.140 places any deadline or time limitation
2 upon ratification. In fact, the Nevada Supreme Court in *In re Amerco Deriv. Litig.*, 127 Nev.
3 196, 252 P.3d 681 (2011), acknowledged that a ratification that occurred years after the
4 challenged conduct could have a potentially case-dispositive effect. *See* 127 Nev. at 217, 252
5 P.3d at 697, n. 6 (noting that a ratification that had apparently occurred in 2007, after the *Shoen*
6 remand, could have had a dispositive effect, but refusing to reach the issue because it was raised
7 for the first time on appeal); *see also id.*, 127 Nev. at 233, 252 P.3d at 707 n.4 (Pickering, J.,
8 concurring in part and dissenting in part) (noting that “this issue is potentially dispositive in this
9 case”). Nor should a deadline be unilaterally imposed here, especially given that Plaintiff is
10 seeking injunctive relief to reverse his June 12, 2015 termination and to be forcibly reinstated as
11 RDI’s CEO and President; as such, it makes logical sense that the present RDI Board can still
12 reevaluate the actions leading up to and involving his termination, and either reverse or ratify the
13 earlier decisions.

14 Here, because the RDI Board properly ratified the earlier termination and option approval
15 actions in conformity with NRS 78.140, “valid interested director” transactions are present and
16 the business judgment rule applies—as it does to those transactions that the Court has already
17 found to be the product of actions by a majority of disinterested, independent directors.

18 **II. JUDGMENT ON ALL BREACH OF FIDUCIARY DUTY CLAIMS IN FAVOR**
19 **OF THE REMAINING DIRECTOR DEFENDANTS IS WARRANTED UNDER**
20 **THE BUSINESS JUDGMENT RULE**

21 In this litigation, Plaintiff has never contested that if the business judgment rule were to
22 apply, his fiduciary duty claims would fail as a matter of law; instead, his entire argument has
23 been that the business judgment rule does not apply. The business judgment rule is a
24 “presumption that in making a business decision the directors of a corporation acted on an
25 informed basis, in good faith and in the honest belief that the action taken was in the best
26 interests of the company.” *Shoen*, 122 Nev. at 632, 137 P.3d at 1178-79 (citation omitted); *see*

27 independent; rather, they continue to believe that Mr. Adams was not on both sides of any
28 disputed transaction and satisfies the legal definition of a disinterested, independent director.
Similarly, the Remaining Director Defendants do not concede the relevance of any
independence/disinterestedness determination under Nevada law to any of the claims at issue.

MR STAUDAHER And page 10 and cor counsel

BY MR STAUDAHER

First of **all** This is The cceier page **Its** got
your name on **it** and the oate **Anil** if 2008

Yes sTh

And youve seen cpv **ifs** tefo corret

Yes **sif**

Okay

Its 10 to ierrernoe

10 No understanc Youre free to read os much
11 before or after that you need **to**

12 Yes **sir**

13 But jusr keep drawiro ymr Ottenion to
14 which is **lets** see make sure hove The ilcht storts on
15 down here ann **ts** see This here There **ts** tolking about
16 the doctors and the proceoures And eel eve **it** was actudlly
17 **10** 11 and 12 for counsel Here ant flere tetton port qoino
18 over here bottom of 11 noino on to the -op or **lc** Go ahead
19 and read **ttat** as much of as you neon **Ok0y** Does that
20 refresh your memory **little bit**

21 Yes **sir**

22 Okay So **III** ask you the question Oqain Din
23 you ever witness propofol being eused from patient to
24 patient

25 Yes **sir**

And tell us what that was about or was this
when say propofol Im talking about was it you know it
could be in syringe or it could be in vial right

Yes sir

Did you see the syringe being reassembled from
patient patient

No sir

Did you see the vial being reused for patient
to patient

10 Yes sir

11 And in fact did you ever mean what was
12 the situation You saw it being reused until when

13 Until it was completely gone because guess
14 each anesthesiologist they have couple bottles with them

15 Were you aware of whether or not those vials
16 were were supposed to be single use or multiple use vials

17 guess so

18 SMJTACROCE I am going to object that beyond
19 his purview Your Honor

20 NA SUATTLAHER Well he knows Im asking

21 THE COURT If he knows if you dont know dont
22 guess

23 THE WITNESS guess dont recall sir

24 BY MR STAUDAHER

25 The vials were being used as single use vials

though or as multiple use excuse me snole ce vic15

though correct Is that rigtt

Yes sir

And youve cot to answer es an an cr wtever

SO we car oct down

I-iF COURT For the record

I-iF VLThTFSS Yes ma0m

BY MR SURUDAHBR

Now couple of thinos 00 b0ck to the

10 prooedLre room to get scope

11 Yes sir

12 And you bring that in ftc proceouro room to

13 have proceoure to ieip doctor and ansst 000r

14 Yes sir

15 Ever notice any proolems wirY those scopes when

16 you brouht them back ft to the procedures roanis cS fOr as

17 cleanliness is connerneo

Couple times when youre hookino up tho scope

19 you hare to turn on the mactire and when you tann on machine

20 you woulo see the end of the scope you bascuHr uee tie fork

21 because was hanging And then sometimes woulo be uany

22 and then if you look theres like feces out the end

23 So this is the scope that supposed had gone

24 through the cleaning process and you had gone in to retrieve

25 to ing in

1 with those of legally disinterested, independent directors. Moreover, the fact that Mr. Adams is
2 only one of eight directors and he voted either along with a majority of disinterested directors or
3 had his decisions ratified by a majority of such directors means that any purported "breach" by
4 him did not cause any damages to RDI. Plaintiff's failure to show causal damages with respect
5 to Mr. Adams, another required element, provides yet another reason why Plaintiff's aiding and
6 abetting claim against Ellen and Margaret Cotter is unsustainable.³

7 Accordingly, judgment as a matter of law also should be awarded to Ellen and Margaret
8 Cotter on Plaintiff's aiding and abetting breach of fiduciary duty claim—leaving no viable
9 claims for trial.

10 **CONCLUSION**

11 For the reasons set forth above, the Remaining Director Defendants respectfully request
12 that the Court grant their Motion for Judgment as a Matter of Law.

13 Dated: January 3, 2018

14 **COHENJOHNSONPARKERREDWARDS**

15
16 By: /s/ H. Stan Johnson 
17 H. STAN JOHNSON, ESQ.
18 Nevada Bar No. 00265
19 sjohnson@cohenjohnson.com
20 255 East Warm Springs Road, Suite 100
21 Las Vegas, Nevada 89119
22 Telephone: (702) 823-3500
23 Facsimile: (702) 823-3400

24 **QUINN EMANUEL URQUHART &
25 SULLIVAN, LLP**
26 CHRISTOPHER TAYBACK, ESQ.
27 California Bar No. 145532, *pro hac vice*
28 christayback@quinnemanuel.com
MARSHALL M. SEARCY, ESQ.

3 Even separate from the fact that a majority of disinterested, independent directors approved or ratified the at-issue transactions, Plaintiff cannot show cognizable damages to RDI as a result of the conduct he has identified—as the Director Defendants have previously emphasized. (*See, e.g.*, Ind. Defs.' Mot. for Summ J. (No. 1) at 22-23; Ind. Defs.' Opp'n to Pl.'s Mot. for Summ. J. at 19-20; Ind. Defs.' Reply in Supp. of Mot. for Summ. J. (No. 1) at 17-19.)

paienu

No sir

But **thats** becaLse you had see corect

Yes **5ir**

as there any issue in your pesour rbser\ator
in the c_ieic with regard to just general ea nesft

Yeft the ace wcs **dirty**

Are we talkino about here spe **OC**

Like the **floors** on the **halls** 1/moKec ke

10 theie was noogers but thought teat woulo be **ftc** ciecninq

11 people that came at night were supposed **cecm tct**

12 So you come in in the **momma** cno The **focis** ano

13 tYlngs on the wall woulo **still** be **theie**

14 Yes **sir**

15 WhoA about the bathrooms

16 really wouldmt go in the b0tftoorns uniess

17 **d5** usinc the bathrooms

18 **Well** when you used the bamrooTs **ee** ney

clean or not can

z0 Yes they were clean **sir**

ft Now you were although you **diont** oft much

z2 exposure to **Dr Desai** you knew about the speec 0nd **ho** fas

23 he did proceures and things like **that richt**

z4 Yes **sir**

25 Did you ever see him at eny time inse scope

into somebody or something to do that

Yes Sir

Can you describe that process what you saw

could guess they would stick two

fingers the pieces are attached it and then they would

basically spruce out the needle and then inject the

insert the syringe

Did he think about

Yes 5H would just be quick and fast

10 Say that one more time please

11 Yes sir- would just be quick and fast

12 Did you ever feel that mean would you ever

13 let him do an endoscopy on you

14 MS STANISH Objection

15 MR SANTAROE Co man objection

16 THE COURT vThat was your question

17 MR SURTDAHER Would he let him do an endoscopy on

18 him

19 THE COURT Check That's sustained

20 BY MR STAUDAHNER

Did you think he was gentle with patients in

22 general

23 if he's going to cast could be like so

24 MR STAUDAHNER Courts indulgence please

25 THE COURT Uh huh

MR SAT PAPER May approach Your Honor
HY MR STHUIAI-FR

Pages 26 27 want you to read read that
those pages and want to ask you question related to
it because went to make sure have the right person to talk
about it

MRORR from where like they write or
Mi quANISE Excuse me Objection Are we
refresL ion ierry or what

JO MR SCAUDAHER Its question that want to ask
because heres doctor mentioned there and want to make
sure have the right doctor

THE COURT Okay Well have him read it to himself
14 ann then ask the question and then if you need to read it

MR STAUDAHER Well goes and it goes to

THE COURT Okay Well P11 see counsel up here
17 then

Of record bench conference

19 BY MR SAUDAHER

20 When you were interviewed by the police did you
21 ever talk about sort of some rough treatment of patients at
22 some point

23 Yes sir

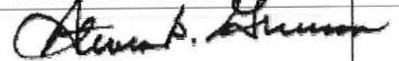
24 Was that something that gave you concern

25 Yes sir

MORRIS LAW GROUP

411 E. BONNEVILLE AVE., STE. 360 • LAS VEGAS, NEVADA 89101
702/474-9400 • FAX 702/474-9422

Electronically Filed
12/29/2017 1:23 PM
Steven D. Grierson
CLERK OF THE COURT



1 **NEO**

2 **MORRIS LAW GROUP**

3 Steve Morris, Bar No. 1543

4 Akke Levin, Bar No. 9102

5 411 E. Bonneville Ave., Ste. 360

6 Las Vegas, Nevada 89101

7 Telephone: (702) 474-9400

8 Facsimile: (702) 474-9422

9 Email: sm@morrislawgroup.com

10 Email: al@morrislawgroup.com

11 Mark G. Krum, Bar No. 10913

12 Yurko, Salvesen & Remz, P.C.

13 1 Washington Mall, 11th Floor

14 Boston, MA 02108

15 Telephone: (617) 723-6900

16 Facsimile: (617) 723-6905

17 Email: mkrum@bizlit.com

18 Attorneys for Plaintiff

19 James J. Cotter, Jr.

20 **DISTRICT COURT**
21 **CLARK COUNTY, NEVADA**

22 JAMES J. COTTER, JR.,
23 derivatively on behalf of Reading
24 International, Inc.,

25 Plaintiff,

26 v.

27 MARGARET COTTER, ELLEN
28 COTTER, GUY ADAMS,
EDWARD KANE, DOUGLAS
McEACHERN, WILLIAM
GOULD, JUDY CODDING,
MICHAEL WROTONIAK,

Defendants.

and

READING INTERNATIONAL,
INC., a Nevada corporation,

Nominal Defendant.

) Case No. A-15-719860-B

) Dept. No. XI

) Coordinated with:

) Case No. P-14-0824-42-E

) Dept. No. XI

) Jointly Administered

) **NOTICE OF ENTRY OF ORDER**

he pump **te** stonach **full** of **air** anyways so

So when the scope came out so dio every fine
eise

Yeah Just feces and **just** water beccuse we
wed ne spraying **wder** and **air**

Did you euer net cny of that on **well** it
wusn 3ou is the room correct

When woulo do the procedure but **Im** not on
that sioe **Im** on this **sde**

10 So where would **all** this stuff no **then**

Just on the **table** on the chux because an woulo
pu **ean** chux to **atch** **all** the **feces**

Would the other physicians **well** when did
you **nmie** **ttdt** other doctors when you did procedures them
would evacuate **toat** **air** **full** before **tfey** took the **sopes**

16

Yes

Did that fappen to your knowledge the tines
thct you **Wi** observe **Dr** Desai removing scopes from people

z0 Not that **recall**

MR STAUDAHER Pass the witness Your Honor

z2 **THE COURT** **All right** **Cross**

23 **CROSS EXAMINATION**

24 **BY MS** 5TARI5H

25 **Hi**

Hello maurri

My names Margaret Stanish represent

Desai got to ask you were you in the miLitary

Yes maam

knev that Yes sir and yes maam rioht

hdt did you do in the mi itary

was fie specialist

For what servlce

The Unitec States Any

10 And understooc you to say That you had some

11 training as medical asslstant

12 Yes maam

13 Tell us about that

14 went to Brandon College guess that Everest

15 College In Hayward California and it lasted like eight

16 months

17 And what oio you do afoe Ohdt traning

18 After tha trairing just bdsicallY did my

19 internshp at geneial doctc who ust you know took care

20 of sick patients After that was applying everywhere and

21 Dr Desals group the ore tuat hired me

22 And so you relocated from Californmi to Las

23 Vegas

24 Yes maam

25 And did you do that in order to take this job or

were you here anyways

No My mom got teaching job and my wife

went to arrive to Vegas

All right So you move to Vegas and then you

still looking for job in the medical field

Yes ma'am

And how did it go that you came to learn

about endoscopy and creating an opening

and applied and someone hired me and was

excited

11 Okay And who was it that actually hired you

Kate I can't remember if it's Kate or Katie

Katie Maley

Oh I'm so bad with names

15 All right Let's talk about your chain of

16 command take you back to your military days and apply it to

17 the endo inc Who was directly above you as your

18 supervisor

The person who talked to would be the head

20 nurse me Jeffrey Krueger

21 ci Okay And did you have any other supervisors

22 above I'm or was it primarily Jeff Krueger who supervised your

23 believe Katie was over him because if

24 like something was really wrong you would talk to him and then

25 he would talk to her

EXHIBIT A

002212

praThice dld you work **ir**
 When **first** started
 Yes
 They **first** st0rted me in tlo snittion roar ro
 then woreo wiy up to toe procedure room
 All right and when you say tney is tho
 any no in part ular youre talkinc abou startino off
 the clear ia room
 They woulo assion me with the cress tte mcs
 10 the most experienced teconiolan
 11 And when you say they assioned ne woo **is**
 12 that assoneo you was it Jeff Krueger
 13 odnt remember ust remember taco sh **lo**
 14 up and they were just someone telling me ad to sno
 15 with tfis person
 16 Ok0y Ano was that Im just trying
 17 Di Desdl who s0id talkEd to you and mel you tiat you ee
 18 ooing mo work the procedure room or was it sonerody else
 19 one of the nLrses
 20 Im was somebody ese it wasnt Dr Desai
 was one of the nursing staff And you were
 z2 starteo off in the clearing room
 23 Yes maam
 24 All right And when you were the oleanino
 25 room vere you supposed to stay in the oleanino room and

clean

Yes maam

Was there reason for that

Well they want guess hey wanted us to be
familiar with the seepes

Okay How long did you stay in the cleaning
mom

Really like one or two days just cleaning

Well as far as overall were you assigned to
10 the cleaning room Like that was your job for several weeks
11 stayed there pretty much lot

12 And is it the case that you preferred to work in
13 the cleaning room

14 it didn't matter to me you can put me anywhere

15 Okay But did you work lot the cleaning
16 room

17 Yes maam

Did you work more in the cleaning room than in
19 the procedure room

20 More more the sanitation room

21 Okay And is it the case That you had child
22 and you didn't mind working in the cleaning room with feces

23 Yes maam it didn't bother me

24 Okay Didn't bother some of the new people

25 mean yeah guess it bothers people when you

first start off near cant say it ddt didnt
get grosseo out the first week mean the sme but
cean its eci tatter

Right and the like you to wolk us throuct
the cleanino the normal clearing procedures You
first wart you to clarify sorretning for me

Okay

These vhdts the name of the machine th0ts
used to ciecir terns

10 Medivator

11 And how many Mecivators were there located in

12 the Shadow Ldne fa iiti

13 Two

14 Is it possible thrt there was thhr one

15 dont recall Ive got had memory mcam

16 All right And dd you also work the Bumnyan

17 facility

18 Yes maam

19 And how many Mehivators were there if you

20 what you recdl

21 believe two tnink they all had two

22 They all had two And were the Medivators

23 was one Medivator used for upper endoscopy items and the other

24 Medivator used for lower coloroscopies

25 They all they all had they all had ports

1 and the Additional Compensation to Margaret Cotter and Guy
2 Adams, and supplement thereto;

- 3 • Defendant Gould's Motion for Summary Judgment;
- 4 • Individual Defendants' Renewed Motion *in Limine* to Exclude
5 Expert Testimony of Myron Steele Based on Supplemental
6 Authority;
- 7 • Individual Defendants' Motion *in Limine* to Exclude Evidence
8 That Is More Prejudicial Than Probative;
- 9 • Defendant Gould's Motion *in Limine* to Exclude Irrelevant
10 Speculative Evidence;
- 11 • RDI's Motion to Redact Opposition to Plaintiff James J. Cotter,
12 Jr.'s Motion *in Limine* No. 1 re: Advice of Counsel and File
13 Exhibit "E" Under Seal;
- 14 • Plaintiff's Motion *in Limine* No. 1 re: Advice of Counsel;
- 15 • Plaintiff's Motion *in Limine* No. 2 re: the Submission of Merits-
16 Related Evidence by Nominal Defendant Reading
17 International, Inc.;
- 18 • Plaintiff's Motion *in Limine* No. 3 re: After-Acquired Evidence;
- 19 • Plaintiff's Motion to Seal Exhibit 2 to Plaintiff James J. Cotter's
20 Opposition to Motion *in Limine* to Exclude Evidence That Is
21 More Prejudicial Than Probative;
- 22 • Plaintiff's Motion to Seal Exhibits 3-6, 8-9, 11-2 and to Redact
23 Portions of Plaintiff's Supplemental Opposition to Motion for
24 Summary Judgment Nos. 2 and 3 and Gould Summary
25 Judgment Motion;
- 26
- 27
- 28

solution put it in lean water and then you would still
stick it in the Medivator to get its proper fluids to come
out

Okay it goes in to the first bin what's
described in the dirty dir correct

Uhhuh

And then it goes to second bin

Yes macim

And what's in that bin

10 just clean water

11 Okay Just water just to rinse it

12 Its just to its just to make sure that

13 nothing else is left on it

14 Okay And your standard procedure if you

15 see any one of these biFs getting too dirty do you change out

16 the type solutions or water

17 Yes madrn

18 Would you wash item in fecal

19 soup

20 Excuse me

21 Would you wash an item in fecal soup

22 No macxn

23 What's fecal SOLp do you know Have you ever

24 heard of that term

25 guess you're guess you're saying tub

full of fecal matter

Is that what you would do with OGt Oux
standard procedure to to wash items in feco soup

Well if you're ecnino or OC cc fecal
matter would come out of out we even jsr h0iiqe it

Okay Anowoolo yoc er tt
well were talking about endoscope oosc 5c bt
doesn't have the fecal matter in it ioft

Yes ma'am

10 But colonoscopy scone wollo

11 Yes ma'am

And after you're done cledrin the dirty
13 bucket you put it in in clean water is
14 correc

15 Yes ma'am

16 And then it goes the Meovct iohr

17 Yes ma'am

18 Now as understand this Meovtor can you
describe it for is what it looks like

20 Is like its like ho box like that

21 It has like nuts in the front and then has lock on the

22 in the middle of it and then if you unlock it it opens up

23 like like chess box and in it there's those ports and

24 there's like drain and you just hook it up

25 Okay Because we don't have videotape for

this Yow 010 this box Just give us rcgh dimensions
ofit

Not cood ith dimensions Its like this big

Is rnOt like two and half feet maybe or what

doyoutfK

MR SAAhER Three and half

BY MS SThNJSH

Thiee ano 01f feet

Yeah beleve so Im sorry Im really bad

10 Fnw how oeeep is it

11 It is pretty deep Its probably like

12 this big

13 Is that two and half feet

14 MR SThJLAJ-iER No inches

15 TBB COURT mO and half maybe two feet

16 BY MS STANIJH

17 shou1d qino to brno measuring tape

18 one day to court because we dont need to coess But it was

19 how many tois MeoivOtor had tubes in it corrent

maam

And wfar would shoot ano those tubes would be
hooked up to the various ports in the lets say the

23 endoscope

24 Yes maam

25 How many ports are there in an endoscope

KARP REOORT NC INC

002219

1 premature, with the issues raised in the motion to be addressed at trial
2 based upon the relevant foundation laid.

3 IT IS FURTHER ORDERED THAT Plaintiff's Motion *in Limine*
4 No. 1 re: Advice of Counsel is DENIED.

5 IT IS FURTHER ORDERED THAT Plaintiff's Motion *in Limine*
6 No. 2 re: the Submission of Merits-Related Evidence by Nominal
7 Defendant Reading International, Inc. is DENIED.

8 IT IS FURTHER ORDERED THAT Plaintiff's Motion *in Limine*
9 No. 3 re: After-Acquired Evidence is DENIED. However, to the extent that
10 Plaintiff's retention and use of Highpoint Associates and Derek Alderton is
11 admitted at trial, it will be admitted with an instruction limiting the
12 evidence solely to the issue of Plaintiff's suitability as President and CEO of
13 RDI.

14 IT IS FURTHER ORDERED THAT RDI's Motion to Redact
15 Opposition to Plaintiff James J. Cotter, Jr.'s Motion *in Limine* No. 1 re:
16 Advice of Counsel and File Exhibit "E" Under Seal is GRANTED.

17 IT IS FURTHER ORDERED THAT Plaintiff's Motions to Seal
18 and/or Redact are GRANTED.

19
20 DATED this 28th day of December, 2017.

21 
22 DISTRICT COURT JUDGE
23
24
25
26
27
28

And **fter** you **nd** how many the Vedivator
how mary scopes coulo **cesn** any one **ime**
Two maain
And **OL** be normally cleaning two at
time
tan **mm**
Ano **after** CU were done cleaning them you would
take tiem cno ncno **eeT** up **tr** dry
1e mcm
10 And aher now would you know **if** the item was
11 clean
12 Well her beAnre when you when **its**
13 already olity and **youe** caning the solution and youre
14 puttino orLsh tnrouon **Qll** tee fecal matter **will** come out
15 and you hook up **th** vise ann you spray the two two syringes
16 of water **ito** **thee** wou be no more 5eoal matter **Plus**
17 when you pit **it** ir he Veovctor **its** supposed to ust clean
18 **it total**
19 And **if** roticed comething w0s **still** dirty
20 what woud you do
ii Put bank to reclean **it**
Th0t was your standand proceoure
23 Of course
24 Were those Medivators **re1aively** new when you
25 starteo working

I mean
 If you know
 from the the ye been there theyve aiwdys
 been there
 OThy WS toe scme ones the nole time
 you were working theic
 Yes maam
 All rieht WOs There dnybody in your chain of
 command who would pericoica come into tfis cleaning room to
 10 see how thines wer goiro
 11 Once in eThlc tiev would just come through
 12 because because The mc rq were again cornected together
 13 so becasse therRs ore r ceture rtmom there one procedure
 14 room here so they oulc just come in between
 15 And is toe deanna mom in between the two
 16 procedure rooris
 17 Yes maam That woo be thOts only for
 i8 the Shadow Lane
 19 OTh3i foi Shadow Lane Mo how was Burnham
 z0 constructed
 21 Burnhain was nstrocted 7oud have to walk out
 z2 and then theres prcmdure rooms iight along the line or alono
 23 the wall
 24 All right So just adjacent to the cleaning
 zS room were two separate procedure roms

Yeah So you would have to walk out the doors
and go through my door -o get to the cleaning room

All right I-I had you ever seen anybody use an
unsanitary scope one that has not been sanitized

I've seen it tooked an but I've never seen
anyone where the doctor would use it

And why is why was that

Because as soon as they booked it up they it
would say anybody would say it's dirty and they would
have to take it back because the doctor would not use it
because they do the procedure through that scope If
the camera was dirty then obviously the thing was dirty

And just to elaborate on that bit if you would
educate us the scopes get attached to computer correct

Yes ma'am

16 And and the scopes have little camera at
the end of it is that what understand

18 Yes ma'am

JO And so when you plug it in on the screen of the
zfl computer is going to be whatever the camera is seeing

ci Correct ma'am

z2 And so you could see on the computer screen that

23 oh there's somebody missed spot we need to reclean

c4 this

25 Yes ma'am

FILED UNDER SEAL

Well we would have **odoina** ly we would have
or not they were neing sanitized we would go to the
bcx supply room and **nrb** more

So you you cou use more than **for** in one
or needed **to**

Yes maaxn we needed to be yes mdam

And did Jeft **Krrger** ever oive you instructions
or so te blocks on **sdtizng** them

Like teaching ne how to **like** clean toem or **if** to
thc hem **nwcy**

Either one

cant recal when but know that we had
ft rreet-nc dud they said that we had to start throwlno them awdy

14 **Ofty** Ann did that ireetinc occur after the CDC

15 canm tc **nisit** or before

16 believe that was **after**

17 **Ok0y** Anc when you were **tell** us what what

18 ynu uncerstcod toe policy to be on these **bte** blocks before

this COO **sit**

z0 We would **just** once they were used nlean

ft tYem **just** chy tnem up and then **it** as long as toey were

ft snnlitlzeo wed reuse them

23 Okay Ano the **this** government Exhibit 71

24 thnt is evidence you you said **it** was different only

25 because of the **color** You ban **different** color one

Yeah There's trieres macv type of bite
bloks but they all they all dc he sane rnction

And its pretty muct piece of pl0stic
correc

Yes maam

Not rot any movino parts inless you call
the strap moving part correct

Correct maam

When wien this colic out of the Medvator and
10 you saw it was it clear

11 Yes maarn

12 Did you ever see where it was not clean

13 No masm

14 Why is that

15 Because we woulc scrub them because theyre

16 not goino In theyre not used fcl colonoscopy theyre

17 used for upper and when they would 00 in the sterilization we

15 would clean it of all tie saliva or mucus hat came out of he

19 person

20 Okay Anc ht ny 4he time it got out of he

21 Medivaor it was sanitzeo In your opirion

22 Yes maam

Did you ever put some item put any item into

24 the procedure room that was not properly sanitized

25 No maam

Did you ever see your supervisor Jeff Kruege
correct his mistakes

Not that I recall ma'am

Only. Would he would he circulate
arec

Yes ma'am

Were you often in the procedure room

Sometimes ma'am

And were you in the procedure room at Burrham

10 Yes ma'am

11 Were you also in the procedure room at Shchov

12 arec

13 Yes ma'am

14 And when the procedure begins is the room OC

15 When the procedure room begins No ma'am

16 When the mean I'm sorry when the OC

17 begins the procedure are the lights turned off so that you or they

18 can view the monitor

19 Yes ma'am

20 And when you are working as a CNA in the

21 procedure room where is your attention

22 At the IV screen

23 You're not why aren't you watching what the

24 CNA is doing

25 Because our job is to make sure if the doctor

CERTIFICATE OF SERVICE

Pursuant to Nev. R. Civ. P. 5(b)(2)(D) and E.D.C.R. 8.05, I certify that I am an employee of MORRIS LAW GROUP and that on the date below, I cause the following document(s) to be served via the Court's Odyssey E-Filing System: **NOTICE OF ENTRY OF ORDER**, to be served on all interested parties, as registered with the Court's E-Filing and E-Service System. The date and time of the electronic proof of service is in place of the date and place of deposit in the mail.

Stan Johnson
Cohen-Johnson, LLC
255 East Warm Springs Road, Ste. 110
Las Vegas, Nevada 89119

Donald A. Lattin
Carolyn K. Renner
Maupin, Cox & LeGoy
4785 Caughlin Parkway
Reno, Nevada 89519

Christopher Tayback
Marshall Searcy
Quinn Emanuel Urquhart & Sullivan LLP
865 South Figueroa Street, 10th Floor
Los Angeles, CA

Ekwan E. Rhow
Shoshana E. Bannett
Bird, Marella, Boxer, Wolpert,
Nessim, Drooks, Lincenberg &
Rhow, P.C.

Attorneys for /Defendants Edward Kane,
Douglas McEachern, Judy Coddling, and
Michael Wrotniak

1875 Century Park East, 23rd Fl.
Los Angeles, CA 90067-2561

Mark Ferrario
Kara Hendricks
Tami Cowden
Greenberg Traurig, LLP
3773 Howard Hughes Parkway
Suite 400 North
Las Vegas, NV 89169

Attorneys for Defendant William
Gould

Attorneys for Nominal Defendant
Reading International, Inc.

DATED this 4th day of January, 2018.

By: 

on April 1st of 2008 correct

Yes maam

after you interviewed by them at any date after
that

No maam because after that got called to
in the military sent to basic training

Im sorry

After that basically went to basic training

Oh After you left here you went to the
10 military at aua or somewhere reserves

11 No when active maam

12 You went active duty Are you now active or

13 No maam Im out of the military

14 Let me flip through your statement real quick

15 Okay Did you meet with the District Attorneys prior to your
16 testimony

17 You mean the only thing was talked to them
18 over the phone

19 Okay Did you have chance to review your
20 your statement before testifying today

21 Yes maam but have hard time remembering
22 things

23 All right Why that Anything in do you
24 have any particular issue or are you like me you just can't
25 remember things

Well tha and lve been ye been hit too
many heao tmes
Are you boxer
No its just oot to osputes and
those hnos
Arl right all runt 2o oFt cc any further
Wh0t can say
Thlls all rloh Die VC ere see anybody get
disciplined for doing somet7iFo wronu at rte nc
10 ust hearo
11 Okay
12 Th0ts all
13 dont want yur to tllk ab ll tflngs that you
14 just heard about
15 Yes maaxn
16 Th0t would be heas0y Slc you evur do anythino
17 to knowirg jeopatdize p0tlent
18 No maarn
19 MS STANISH URve notning furthe
20 1-IF COURT Mr Santacroe any ciocs
21 MR SANTACROCE Yes Your hcnor eed
22 olarificator Can we approach
23 ThE COURT Sure
24 Of record bench conference
25 THE COURT Mr Santacroe are you reaoy to begin

your cross examination

MR SANTACROCE am Your Honor Trank you

THE COURT All rioht Cc aheac

CROSS EXAMINATION

BY MR SANACROCE

Good afternoon Mr Cavett

How are you doirg sir

Good ThanKs want to ak weve been

over tfese cleaning oceasures number of times and quite

10 frankly Ive got weak storiacn and just nec Junch arid

11 dont redl want to ge ntc it whole bunch more but we

12 need to tank little bit anct it Okay

13 Yes sir

14 The trainino that you had for for doing this

15 job cleanlno these scopes anc thinos can you tell me what

16 training you had

17 ust whatever was snowed ard taught by

18 senior tecnnican

19 And that was like one or two days you followed

20 that person around and

21 Yes sir

22 learnec thnk way

23 Yes sir

24 Were you aware that these scopes had written

25 instructions from the manufacturer about how to clean them


1 This matter came before the Court on December 28, 2017 for
2 hearing on plaintiff James J. Cotter, Jr.'s Motion to Stay and Motion for
3 Reconsideration or Clarification of Ruling on Motions for [Partial] Summary
4 judgment Nos. 1, 2, and 3 and Gould's Summary Judgment Motion ("Motion
5 for Reconsideration"). Mark G. Krum and Akke Levin appeared for plaintiff
6 James J. Cotter, Jr. ("Plaintiff"); Marshall M. Searcy III appeared for
7 defendants Margaret Cotter, Ellen Cotter, Douglas McEachern, Guy Adams,
8 Edward Kane, Judy Coddington, and Michael Wrotniak; Mark E. Ferrario
9 appeared for nominal defendant Reading International, Inc.; and Shoshana
10 Barnett appeared for defendant William Gould ("Gould").

11 The Court, having considered the papers filed in support of and
12 in opposition to the Motion for Reconsideration and Motion to Stay, having
13 heard oral argument of the parties, having considered (sealed) Court Exhibit
14 1, and for good cause appearing:

15 IT IS HEREBY ORDERED that Plaintiff's Motion for
16 Reconsideration is DENIED. Although the Court reviewed Court Exhibit 1,
17 the Court finds it was not provided with new factual information or new
18 legal analysis that would cause the Court to change its decision on Motions
19 for Partial Summary Judgment Nos. 1, 2, and Gould's Motion for Summary
20 Judgment.

21 IT IS FURTHER ORDERED that Plaintiff's Motion to Stay is
22 DENIED.

23 DATED this 4 day of Jan, 2018.

24
25 
26 THE HONORABLE ELIZABETH
27 GONZALEZ,
28 DISTRICT COURT JUDGE

where it would push it or and then to where you know you
feel was olor am YOU put it in the Meoivator sir

Ok tto detenatioo as to whether it was
oleax or not was rraoa by The CI teohs oorreet There was no
standaro of whOt moe tri olean ant hao oidnit make it
olean was Oft ar Interpretatior oorreet

Ye 5r

Ano hc ai.y CI teots were employed there at -he
Shadow Lane to you rr

10 Exouse me have no idea sir dont

11 remember

12 Wa tnre Tore thOn five

13 melieve so sir

14 Okay Sn cam one of those had subjective
15 viewpoint as to wha was oiear and what wasnt mean oorreet

16 Yes sil

17 And when \U oetermined when it was olean you
18 would haro them up in aroTher room

19 No was t5e sane roam There was ioset
20 where you wmlD moo then up and they woulo just hang amb drip
21 dry after it was mean mom the Medivator and if you already
22 did the sorubbing and tie brushng

23 And the solutor you used toink you testifieo
24 that you used .t like or four sets of soopes oorreet or
eight soopes before you ohanged toe solmion

That was after when the Mecivotr wa broken

Oh that was only wen the MedvJo wcs brcken

Yes sir

But when he Meciv0tcr asn orrken vcu would

PU tYe scopes in this so ution clean tYer OS cs You

des ibeo ano put them in tne Vedivato cccrccr

Yes sir

Okay how you said the wYo yr edue tock

how mary minutes

10 For colonoscopy

11 Not the procedure the ueanno proceoure Im

12 sorry

13 Oh Im sorry

14 The cleaning procedure how ono that take

15 For the Nedlvator like 16 rrrinotes

Total from start to firish

17 Oh no It prohably take ice i i utes to

18 srrub it and keep spraying the two waters anc make sure

19 everytbing was clean before you put it ii the Meov0tci

z0 Okay Ano you bad two rooms goiro cn the

ii same time Shadow Lane correct

Yes sir

23 And you had numerous patients throuoncut the

24 day correct

z5 Yes sir

three pages

Did you confer with an attorney before you
signed it at

No

Your CPA

No

You that signed you us 5qrJ It

Yeah

Did you read it

No As said not most par- it ut how much

percentage will be charge from what collect

Did you at least skip hoh

can't remember Its like

You don't remember

seven eight years ago what old do back

then

Okay Fair enough fair enough appreciate

that And how long ago was that

2096

2096 So you don't really remember it

its just too long ago

Yeah just can't remember

Fair enough hat hat is describe for us

your relationship or before move to that topic You

worked with Dr Chen doing independent contract work as an

anesthesio ooist caect

Ccrc

Ano in tYct cpdCty you woud go to various
hospitals c5 we as ambu atory sorgial centers

OCh lememoer goino to surgerl centers
through Eugene en WS hospitals

flk 3m ou didnt go to well when when
exatly oio cu ck vi Dr Chen

10 Yes .hOt years approximately

11 wciJced wich him for year and hdlf to two

12 so it must be zO6 dnd z007

13 tight And you dont reca whether or not

14 as far c5 you ecl1 on performeo servces in

15 hospitals

16 Ic the best of my recollection yes was

17 doing my ci uroc2dures ct tre srrgery center but Eugene

18 Chen has no no involvejnent that

19 And which sorry which surgery center

20 would you dc your OdO proceAnres

21 was Teray SLrgery was one oc them

Im sorry whOt wcs it

23 lenaya Surgery Center

24 lenaya

25 Yes

Okay

They have change the name now whatever is the
name right now but **its** next to the Mourtai View Hospital

Arid can ask you to clarify something

Yes ma'am

I'm probably going to go **little** off track
here but curious What kind of ambulatory surgical
center was that at Tenaia

What kind means

10 Yeah what Kind of surgeries were performed
there

do not know **dont** care write kind of
surgery they were doing Well know know they are
doing saw **like** dental work **there** guess some
15 arthroscopic surgery knees joints and at **that**

Okay

But do not know

18 You and you **didn't** have any you weren't
assisting those **surgeries** you were there **just** to use
space for UCR pain management correct

Right was in separate room doing my pain
procedures

20 Okay get **it** Just trying to understand And
24 aside from getting work anesthesia work from Dr Chen did
understand you to say that you would get work independent of

him

Yes

And how did that come about

Like if you are surgeon you need to look into
for an anesthesiologist somebody tells you my name you call
me can you provide are you available to provide anesthetic
and if I'm available I'll go and provide anesthesia

So it's because of word of mouth

Correct

10 Okay And where when you would do that kind

11 of anesthesia service was that also at hospitals

12 If I remember correctly cannot say 100

13 percent but can say yeah 99 percent

14 What about the percent what would

15 do not because I'm like

16 keeping for myself so that if I'm forgetting something

17 don't want you to come back oh you said 90 percent do it

18 Oh okay Fair enough It's just a margin

19 For the safety

20 of error so to speak

21 That is correct

22 Oh okay Fair enough I'm not prosecutor

23 you know

24 Whatever

25 All right Fair enough understand Have

you ever worked in an ambulatory surgical setting at any time during your career

For anesthesia or pain. I already said I did already. Let me recall. In Pittsburgh, CO, know

And was that surgical center were you actually assisting or serving as the anesthesiologist for the Gist larynx surgery

Yeah

Can you tell us what type of surgical center you would do those kind of procedures at

Could you repeat your question please

You went when you were in Pittsburgh

Uh huh

you performed anesthesia services at ambulatory surgical centers correct

That is correct

What type of surgeries were involved in that

Most of them were minor surgery as Endoscopy was one of them at one hospital. It could be eye, case, some nose cases, throat issues like tonsillectomies and stuff like that plastic surgeries

And did the ambulatory surgical centers where you worked did they specialize in certain procedures

There was one surgery center well you can call as it endoscopy center they're in Pittsburgh that was that's

where they were **strlitl** oonc endoscopies **only**

All rioYt Is there difference between the
staffing at **hosp** versus ambulatory surgical unit
based on your exnerenoe **Pittsnurgh** " you know

Not **like** nothing appdrently **different**
did not notice **like** sune nuce difference in staffing

Is **oe** so cures that are cone at hospitals do
people **rely** on **toscltli** sunfr to service **technicans**

Actua **let T2** just clarify **it** because **it** was
10 not the lind of **scрге** centers you see here **It** was huge
11 hospital okay niooer Than UNC and **all that** So **it** was
12 almost yeah nct **mcs** **nne** story huge hospital **like**
13 for example what **Im** tailing about The surgery center **it** was
14 at the grounc in the ciocnd ground oor and our main
15 hospital our main Theaters we had **like** think 30 35
16 operatino rooms and thcy were at the **third floor**
17 So to go to The surgery center wiether **it** was
18 surgery center or enoosc **RE** center **it** was in the same
19 building but at the **nc floor** So we were just going back
20 and **forth** so was ciffeient kind of center So **all** the
21 **stdffing** and **ev eythino** was **like** from the same department **it**
22 was anesthesia departmer.t **It** was same technicians so **if**
23 that

24 **All right** So **it** was **all** in house in the
25 hospital

In house but **still** called surgery center

Correct

Yes

And the hospital would do different type of
surgeries

Yes

They weren't specialized

Yes

Okay Doctors **if** was going to have

10 colonoscopy my doctor would have to sign up **OR** this hospital
11 to conduct the colonoscopy in the outpatient surgical area of
that hospital

13 Yeah for the endoscopy center Yes

14 **If** needed nose **ob** they would have to
15 **have** for space to have my nose job done at that outpatient
16 surgical center

17 That much details do not know but **don't**
18 think **there** was for endoscopy know there was
19 department

20 All right

Gastroenterology department they were doing
22 endoscopy **there**

23 Uh huh

24 But for nose and everything **else** was done in
25 routine operating rooms

All right Now youve mentioned Dr is it
Vish Sharm

Yes

Whats his first name

Vishvindei

Vishwind Can you spell that

would coulh be wrong

Vishvirder shvinder

Yoi Iust caLI him Vish

10 Yes

11 And how is It that you came to know Dr Vish

12 Sharma

13 By doing endoscopes providing anesthesia for

14 his enboscopy cases

15 And how did that come abou

16 Again it was throuoh usinc Chen

17 Okay throuoh through Dr Cnen

18 Yeah

19 And you and Dr Vish Sharma was connected with

20 the Eneoscopy Center of Southern Nevada the clinics thdt Dr

21 Desai owned in part

22 He was cornecteo with the yeah he belongs to

23 well he he used to be part of that group

24 Uh huh

25 But

Okay

bar ques ion aoain olease

Yeah that ti-at was basical **it** i-ic vas

part of the croup

Of the group yes

that Dr Desi w0s part of crrer

YeWh

And you also die aresthesis senlces Er

Farms of tcat groun

10 Dr Saris yes very occasionally

11 Occasionally And do you recall dm1 cLhe

12 doctors that you did services fo out of that orcup

13 Dr Wise just very few times Carri Who

14 else Year there as one mere there was ore mo

15 know there was another Dr Desa in that groap

16 Another Dr Desai

Yedh

18 Okay

19 So worked provided few cases rrovided

20 anesthesia For few you know for few cases war

II thare was so nmny of them but most of the like US few

22 cases here and tnere

23 But always in hospital never at the suxgical

24 centers themselves is that what youre saying

25 To the best of my recollection yes

Ninety nine percent you think

Yes

Yor keep That **peen** just in case

ust for The **afety** yes

Fair enough Fail enough Now want to move

to the while youre Yere You **lets** talk about how your

business **relatoshl** witi O5ai developed And is **it**

fair to say you tao business ationsl p with him

Not **really**

10 Yci were **recotiatno** one

11 We were in the process believe yeah of the

12 **negotiatlons**

13 Was **Dr** Visi Sharna involved in that process

14 Not at **all**

15 Is **DI** 1/ish StarnLa was he friend of

16 **yours**

17 No

18 **ust** profesiorOr relationship you had with

19 **him**

20 Yes and social dcuaintance **too**

21 So oh oKay So

22 That developed actually later initially **it** was

23 **professional**

24 And then **it** became more **social**

zS Yes and **it still is**

Okay In fact Dr Vish Sharma was the one who
invited you to Dr Desai's party

That is correct

And you're you continue to be friends with
Dr Vish Sharma

You ran into friend but he's not my
friend

What is he

Just acquaintance

IC An acquaintance Do you socialize with him

II all aside from going to parties

No

The facility that Dr Desai was building was
originally was large facility correct

I don't know the definition of large

It was supposed to house not only your pain
management operation but also gastrology section correct

Yes

And Doctor didn't you have any idea as to what
20 was it being built at the time you were negotiating

21 Yes it was still under construction

22 Okay Aside from Dr Desai did you have any

23 conversations with Dr Vish Sharma about coming to the

24 business

Not at all We never never had any

conversation with Vish Sharma at any point about the surgery center or anything

Okay When you were so this business you were going to be the medical director correct

Supposed to be yes

And what does medical director do in your experience

As said earlier she asked me the same question would guess you know keeping an eye on

10 day to day business but do not know what is the

11 Well let me let me put it to you this way

12 Youve been doctor for how many years

13 Since 99 guess

14 And youve worked for it sounds like youve

15 worked for some very large medical facilities

16 That is correct

17 And those medical facilities had medical

18 directors

19 Just chief of Anesthesia

20 Okay There was some kind of supervision of the

21 medical operation by other by another doctor

22 Not that recall

23 Okay What does director do medical

24 director any deal

25 do not know

What did Dr Chen do in connection with his
business with you

Dr Chen was not doing whole lot it was his
wife who was practically running his office

Did he have other doctors working with him

Yes think there was one for sure if he had
prior to one do not know

Is it fair statement statement to that
when you came to Las Vegas you were out here trying out to
10 know other doctors so you could get them to refer business
11 to you

12 Get to know yeah sure

13 And is it your experience that doctors
14 oftentimes work in groups partnerships

15 Depends There are solo doctors like am

16 Correct

17 There are groups as well so

18 And when you have group of doctors is the
19 usually doctor that's responsible for managing the business
20 itself

Im sure there is out of that group There
22 could be one doctor who might looking into that part of it

23 Its business correct

24 Yes

25 And so its

pieces was something I don't remember but
the papers

All right

But I don't know what those exactly those
people were

Well let's let me go back to the time you
were interviewed by the Metropolitan Police That was May

2009 Does that sound about right

2009

10 Yes Do you know what date it was

11 No I don't remember the year really

You you had you had an interview with
in this fellow right here Do you recognize him and I'm pointing
14 to Detective Whitely Do you remember that fellow

15 remember now his name when you are saying but

16 just no I don't remember it was him back then

17 He has nice haircut and nice suit now

18 riot

19 No I don't remember actually honestly

20 DAly Fair enough You do remember speaking

21 with personnel from the Metropolitan Police Department

22 correct

23 Yeah

24 DAly And when you spoke with them you had two

25 attorneys present with you correct

That is correct

The

Two or one it could be two dont know

When did you hire those attorneys

No hired one remember that because had
to pay for it But the other one was think if there was
another one the other one would be from the insurance

Okay

MS STANISH May approach Your Honor

10 THE COURT You may

11 MS STANISH Oh Im sorry Im just showing him

12 copy of the interview

13 BY MS STANISH

14 just want you to read the date oh Im

15 sorry Lets see if we got the date

16 It was 2009

17 May 27th

18 Okay

19 And just read this to yourself so you know who

20 was present at that meeting please

21 Okay

22 Okay When did that meeting occur

23 2009

24 And there were two attorneys there representing

25 you correct

Yes

And at that meeting was this document this
State Exhibit 02 was that document shown to you
think so

All right And were other did you at your
interview however you didn't tell the detectives that you
unknowingly signed that document did you Or do you
remember

Dont remember

10 MS STANISH Courts indulgence please

11 THE COURT Thats fine

12 MS STANISH Your Honor may have this document

13 circled as whatever youre marking defense exhibits c5 Des

14

15 THE COURT That will be

16 MS STANISH May approach the witness Your

17 Honor

18 THE COURT You may

19 BY MS STANISH

20 Im handing

21 MS NECKERLY Your Honor may just look over

22 THE COURT Sure

23 MS WECKERLY Ms Stanishs shoulder Just

24 want to see which

25 THE COURT When whatever she said

MS STANISH Sure You knc was just going to
give it to him but wil show \ou pu tab on this page
here whico is Bates stairped 7z2 All rioht Lets flip
right to that document

BY MS STANISH

Do you recoonze lcr signature on that
document

Yes do

And whats the nate tYdt you sgred it

10 INAUDIBLE

11 Im sorry Speak up please

12 Oh 7/10/C7

13 And whats the title Ri that docjrnt

14 Desert Shadow Erdosccoy Carter

15 And can you reac litRie bit further at the
16 capitalized language

17 4275 Burnf am Avenue Suite

Right here

19 Request for prixi aces yeah

20 All right Oh Im rlng let Im just
Ri going to let you keep tfis

22 Okdy

23 III ask you questions from it if you need to

24 refer to it going to come back to that document in

25 moment but want to discuss other documents that are in

there Thru to the first document that begins Bates
stamp 108 what is that document The Bates stamps are on
the bottom right

THE COUPE They're on the bottom

175 111585 I'm not have no idea what you are
talking about

BY MS CVANISF

These are this is lawyer talk call these
Bates stamps

10 Okay

11 So when say Bates stamp that's what I'm

12 Okay this number

13 I'm looking at So asked you to refer to

14 the first one and that's Bates stamp 7238

15 okay

16 What is that document

17 My CV

18 Ate your CV describes in some detail your

19 experience as an anesthesiologist correct

20 That is correct

21 Arc see that you were an attending I'm

22 looking on the first page you were an attending

23 anesthesiologist You were the co director for the Center of

24 Pain Med correct

25 That is correct

And it also looks like you were attending
anesthesiologist from June 9C to four pril of 2000 you
were ftc director of the Richmond Pain Management Center
correct

Yes guess Yeah correct

So you have been director the post
correct

On papers yes

Oh on paper only

TO Yes

11 Now let me run you just through some of this

12 Im no coin to go through each and every one of these

13 documents but the turn to 7144

14 Okay Im there

15 And this is where you signed document

16 correct Thats your signature

17 That is correct

18 Also on July 0th of 2007 correct

19 Correct

20 And thats disclosure statement Its

21 entitled Provider Initials Credential Disclosure Statement

22 Yes

23 And the the purpose of this document for

24 you to apply to participate in the ambulatory surgical center

25 Yes As said earlier dd go upstairs

there was his office maraoer and she gave me the okay the
ther his these must be the one

All right

for the privileges

All right So you filled out this is
your handwriting on here where youre summarizing your medical
school your internship your residency et cetera

This is not my handwriting

Ok0y Did you whose handwriting is that
10 you know

11 have no idea

12 Okay Did you give them copy of your your
13 CV your resume

14 That is thctcs quite like that goes
15 everywhere

16 And did you do so for the purpose that the
17 surgical center could vet you Do you know what mean by
18 that

19 No

20 Call up your references and find out how you
21 performed your services at various past locations

22 Okay Im still

23 Pardon me

24 Im not clear actually what youre saying but

25 You had to apply to work for the ambulatory

surgical center correc

Yeah

And in doing that they had checked your

background correct

Okay

No

Well don't know Mayb te\ must be

You don't know

They must be doing it or not know Everybody

10 checks the background cruess Th- hcspla know they

11 do

12 Okay Well ets flip thrcLc ths so you

13 don't have to guess Lets cts ius cc trouh it

14 Okay

15 Did you jump up to pace 7zC4

16 7264 Okay

17 And that documents enThtjec Peer Referenced

18 Verification correct

19 Yep yes

20 And anc oo you reccgnze The ne ci Dr

21 Stepher it Oebhardt

22 Gebhardt yes

23 And thats somebody that you worked for here in

24 Las Vegas

25 did not work for He was providHg anesthesia

for my pan proceourac

All ILoht Arid this is person whose name you
gave to rhe oastro center as referenoe

Quite ikely yes yes

Ano so somebody filled out this form after
talkno -o Cr CebhaAnt correot

That crret

Ncc vart to oo b0ok to oan let me
approdr you there All right Let me oet this haok from
10 you kmw Im noino to show you this Supervising Physician
11 Agreemen Do you see hat right at the top the name of the
12 documert crrect

13 That is correct

14 And ust oescribe this for the record In hold
15 font the tori it says Supervising Physican Agreement
16 conecAI

17 That is correct

18 Ano the we Look here at in the second
19 paragrafb starts off Artist Sharma M.D in con unction
20 with tte Dpck Desci M.D ano Vishvinder thats cow we spell
21 his name Sharma at the Castro Center of Nevaoa agree to
22 co supervise dnd consul- with CPNA5 employed at the Castro
23 Center of Nevada Correct

24 Yeah

25 Okay Now this document that was in your

Im going to refer to this as credentialed file is that
fair statement That's Defense Exhibit

MS STANISH What is again ease

THE COURT

EY MS STANISH

So Defense Exhibit this is this

document that you earlier identified for us as the request for
privileges of the physician correct

Correct

10 And its there's table that says requested

11 granted and procedures correct

12 Correct

13 And you requested anesthesiology privileges

14 conscious sedation correct

15 Correct

16 Requested anesthesiology Deep sedation correct

17 Yes

18 Requested anesthesiology and supervisory

19 correct

20 Correct

21 And then this is your signature here July

22 10th 07

23 Yes

24 And then is that Dr Desais signature do you

25 know

nave no idea

Okcy **Its** dated Augmst 20th **07** correct

Yes

And then cono to this the next pge which
is Bcites stamped 7253 it appears again the signature of
the CEO thQt you are recommened for appointment on August
20th **07** correct

Correct

And then -heres another signature

10 unfortunately this copy is not clear but also dated
11 theres sionture of somebody whos designated as member
12 conect

13 THE COURT We cant see it where you hdve it

14 MS SIANISH Oh Im sorry

15 THE uThTESS Yes

16 BY MS STANISH

17 And **its** cated the same date as the CEOs

18 signature And on August 20th the appointment is circled dnd

19 also recommended for appontment

20 Yes

21 correc- Sc there was bit of po-ess

22 mean you were the center checked into your credentials

23 and on the same date you were beinci recombendec for

24 appointment correct

25 Yes

Yeah And you were recommended to be a supervisor
in anesthesiology correct

Correct

Did you read this before signed it

3

CA

310

In this document the document is signed by you on August 17, 1987 correct

That is correct

And you're saying that you were between 1985 and 1987
patients and somebody brought you this document

That's correct

Correct

yes

And when you say you were in between patients
if you remember were you in your office sitting at
desk

Yes

Someone handed you this page this paper which
consists of one two three four five paragraphs two of
which are very short three of which are very short You didn't
read it - you just signed

That is correct

And did you see the signature of Dr Desai on it
when you signed it

It was all if remember correctly it was

all blank when signed the page

Oh So you remember it being blank but you
don't remember redoing it

I'm saying if remember correctly

Cxv At you say are you remembering
incorrectly? Yes no sure

That possible it was seven eight seven
years ago

At right Is it fair statement oh by the
10 way let's talk money You were going to be paid how much
11 money to serve as medical director
12 was never decided
13 What was your discussion on it
14 Nothing It was no there was never
15 concrete discussion he just threw one time you know
16 somewhere five to 10,000 but do not was like not
17 serious discussion or not like to the point it was just
18 like casual ii

19 You talked about how he was going Dr Desais
20 business was going to purchase you one of those arms right

21 Yes yes

22 And that machine costs \$150,000 correct

23 Almost yes

24 So he was going to help set up pain management
25 system center in this location that you were going to be

medical director of correct

That is correct

And that included gastrology part

First of all medical director **its** not like
the first it was that you are the medical was not
designated was **no** designated because **WS** never
money was never decided there was no formal agreement So
you just cannot call me the medical director But yes it
was in process we were negotiating we were discussing

Okay You were going to be supervisor

You can say that

12 You were Going to be the supervisor would you
13 say that

14 Only if everything goes through them that's
15 when it you can can call myself that I'm the
16 supervisor But if it falls through then there is nothing

And how much were you going what was the
discussion about money You were going to be paid anywhere
19 from how much to how much each month

20 As said there was the numbers
21 were never discussed in **its** not like we set down and
22 discussed the numbers be just threw number

23 And was there discussion about supervising
24 CPNAs

25 No Every time we discussed everything

him with him it was all about pain business
pair business can bring to the surgery certain and that
that was it

Okay

Or about The like what do you need you know
what

Did you know that Dr Desai was going to put
have gastroenterology center at this location

did not know that when signed the paper but
10 when the construction was taking place was asked by his
11 office manager forgot her name and there was one also
12 there was one nurse also Katie or something like that

13 Uh huh

14 and was asked them to come and look at the
15 room and it was must be like not that hard so would
16 guess his cost me like about April of 2008 when it was almost
17 ready and they just wanted to see that you know the pain
18 room is ready and what needed the lighting and that thought So
19 did go to that office and that's when they told me that
20 endoscopy will be done on that other side

21 And when about did that occur

22 As said must be close to April It was it
23 was almost like they were giving it like the final touch to
24 it

25 So before you signed that document you went to

the facility

After it was signed in P7 about talking
about 08

Oh okay missed that lost to be married
didn't understand that So you were having these discussions
in April of 07 and you were visiting

Not April of 07 April of

Okay

That's when I'm talking went to the facility that
10 facility

11 Okay Because we know from OR credential
12 files - that in July of 07 you are applying for clearance at
13 the surgical center

14 07 okay don't remember the notes you

15 Well let's put this one back up there
16 refresh your memory This is your request for privileges
17 including cc supervising OY gosh his request for
privileges was dated by you July 10th 07 correct

19 That is correct

20 All right And then you're saying an alien
21 this agreement that you claim you didn't read that was signed
22 about a month later on August 16th 07 by you

23 Yes

24 And on the same date it was signed by Dr Vish
as Sharma correct

Oxy

Two ddys later ny Dr Desai

Okcy Yes

Sc Lst to understand the ime rame When did
you no to tre fcilitv review it to inspect It

wcs 08

IIP loht

As siO umessing it must be April it
could be Mcy hut oulno close to that time

10 Ano this facility never opened because of the

11 hepatis outbreak is that correc

Tbct correct

13 Fveyhino fell apait

14 Tflt orrect

15 you feel like you had target on your back

16 Torqe on my oack

Ycjur here we if you dont understand
18 thct let me repoi0se The super you said earlier you
19 are here in ths couitoom toocy oeduse of this document
20 correct

21 Yes

22 And were there other plainiff attorneys who
23 felt like you had some involvement in the clinic

24 Yes was suec by like think 18 patients or
25 so dont know how many attorneys were involved

Right

but **all** those cases were dropped because
was not involved in any of the cases

Were there any settlements

No not at **all**

Were there were there settlement you were
you were represented by court two attorneys right

That was on when went to his office

Right And one was your personal attorney that
you said you had to pay for correct

Yes because insurance said that they will not
cover the criminal aspect of **it** which don't understand so
yes had to pay out of my pocket

14 And then the other was an insurance company
1c attorney hired by the insurance company

Yes or yes

And were you aware that there were number of
confidential settlements with insurance company attorneys

No Until today do not know anything about

20 And **its** your understanding the lawsuits against
11 you were dismissed is that correct

12 No It was way back later though

23 Okay Your the lawsuits against you have
been dismissed is that what I'm just asking you

25 question

MORRIS LAW GROUP

411 E. BONNEVILLE AVE., STE. 360 • LAS VEGAS, NEVADA 89101
702/474-9400 • FAX 702/474-9422

MCOM
MORRIS LAW GROUP
Steve Morris, Bar No. 1543
Akke Levin, Bar No. 9102
411 E. Bonneville Ave., Ste. 360
Las Vegas, Nevada 89101
Telephone: (702) 474-9400
Facsimile: (702) 474-9422
Email: sm@morrislawgroup.com
Email: al@morrislawgroup.com

Mark G. Krum, Bar No. 10913
Yurko, Salvesen & Remz, P.C.
1 Washington Mall, 11th Floor
Boston, MA 02108
Telephone: (617) 723-6900
Facsimile: (617) 723-6905
Email: mkrum@bizlit.com

Attorneys for Plaintiff
James J. Cotter, Jr.

DISTRICT COURT
CLARK COUNTY, NEVADA

JAMES J. COTTER, JR.,	) Case No. A-15-719860-B
derivatively on behalf of Reading	) Dept. No. XI
International, Inc.,)
	) Coordinated with:
Plaintiff,)
v.	) Case No. P-14-0824-42-E
	) Dept. No. XI
MARGARET COTTER, ELLEN)
COTTER, GUY ADAMS,	) Jointly Administered
EDWARD KANE, DOUGLAS)
McEACHERN, WILLIAM	) PLAINTIFF JAMES J. COTTER
GOULD, JUDY CODDING,	) JR.'S MOTION FOR OMNIBUS
MICHAEL WROTNIAK,	) RELIEF
	) AND
Defendants.	) APPLICATION FOR ORDER
And	) SHORTENING TIME AND
READING INTERNATIONAL,	) ORDER SHORTENING TIME
INC., a Nevada corporation,)
Nominal Defendant.)

were you named defendant or merely witness Re you
now

was defendant

Okay And so you remember he none of he
person who sued you

No

And do you remember if you saw me with other
defendants

No All remember there was this attorney who
10 was representing me in that particular hospital the only
11 thing remember

12 When was your first run with this
13 hepatitis issue was it where you met with the Metropolitan
14 Police in May of 09 or did you have some contact with any
15 law enforcement person before that

No that was my first encounter

17 Okay Did you have any contact with anyone from
18 the Southern Nevada Health District

19 No

20 CDC

21 No one never cared because was not
22 forgot that paper that signed and was just thanking God
23 that I'm glad is it broke out before could be part
24 of that surgery center

25 Were you concerned at the time you were

interviewing with the detective that you could be the subject
of criminal case

No And even too Im no-

Okay And I thought

us steel two lines

was necessary you thought it was
necessary to And it at times with you correct

No That was that is something that is
something that an recommendation

10 OAny

11 ny my insurance

12 All And

13 None of the attorneys did anything in that
14 meeting

15 Okay All right

16 And you can read the statement of attorneys
17 they were just sitting Jane bodyguard

18 We all need bodyguards One more topic And if
19 want to talk to you a little bit about propofol

20 Yes madam

And want to take sure understand your
22 testimony on point understand that before propofol was
23 common there was another anesthesia that came in that was used
24 to multi dose patients correct

25 That is correct

Meaning that could use this large vial of anesthesia to go in with clean syringe come out with clean syringe insert in the patient and then use that same vial on another patient correct

We talked about that Penothol you're talking about

Yeah want to make sure understood from testimony at this point

That is correct

10 And then with propofol you're familiar that
11 propofol comes in 20 and 50 cc vials

Yes

km And is it appropriate in your mind to
14 use aseptic technique to use to use larger vial or even
15 smaller vial for that matter on more than one patient so long
16 as you're using aseptic technique

17 That personally do not have any
problem with that

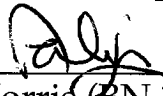
19 And in your your explanation was that aseptic
20 technique would involve putting in clean syringe and clear
21 needle each time you entered the vial

22 That is correct Actually for knowledge
23 of everybody we do have its not usually we do not use
24 needles to go back and forth There are connectors like
25 its connector

This Motion is based upon the pleadings and papers on file, the declaration of Mark G. Krum, the exhibits attached hereto, the following memorandum of points and authorities, and any oral argument.

DATED this 23rd day of April, 2018

Morris Law Group

By: 
Steve Morris (BN 1543)
Akke Levin (BN 9102)
Morris Law Group
411 E. Bonneville Ave., Ste. 360
Las Vegas, NV 89101

Mark G. Krum (BN 10913)
Yurko, Salvesen & Remz, P.C.
One Washington Mall, 11th Floor
Boston, MA 02108
Tel: 617.723.6900
Fax: 617.723.6905
E-mail: mkrum@bizlit.com

Attorneys for Plaintiff
James J. Cotter, Jr.

on cad syringe you would just pit syrrge to tuis cnike
and draw toe mediaoation

That is oorreet

that way

And you oan use that on an butt

And **thats** my question Do ioi kno if tin

viuls of propof oi hao oame with spikes ou krow

dont know if it oamo **ih** spixe Cd \03 an

use **tie** oonneotor **Im** talking about you oan use **tiat** on

10 that **if** you want **to**

11 So you oould some people ooulc use same

12 people would use spike on propofol so **dat** it coui0 be used

13 withour neede oJreet

14 **If** somebooy wants **to**

15 And understano your aseprio teohnlque

16 somethino that you learneo on the job as wel aS at oDoal

17 Yes

18 And when you **testify** here about what the

19 standard **is its** based on your experienoe ard your raining

20 ooneod

That is oorreet

22 And most of your experienoe 000urreo in

23 Pennsylvania Pittsburgh oorreet

That is oorreet

25 And the your experienoe **wtn** CRNA5 was

primarily in the state Pittsburgh correct

That is correct

Announce the practices between Pennsylvania and Nevada do they all have different as far as CRNAs if you know

cc never worked with any CPNA in Nevada

Ok And other time do standards change

guess if there be yeah that's sure

10 they do

11 MS SPANISH have nothing further thank you

12 THE COURT will call Ladies and gentlemen were

13 going to take quick recess until about ten minutes about

14 1125 During the brief recess you're of course reminded

15 that you're not to discuss the case or anything relating to

16 the case with each other or with anyone else You're not to

17 read watch listen to any reports of or commentaries on the

18 case any person or subject Tattel relating to the case by any

19 medium of information Do not do any independent research by

20 way of the Internet any other media and please do not form

21 or express an opinion or the trial If you would all please

22 place your notepads in your chairs and follow the bailiff

23 through the rear door

24 THE WITNESS Can ask question please

25 THE COURT In court And Doctor on the break

you're admonished that you're not to discuss your testimony
with any other witnesses in the case

Jury recessed at 1113 a.m.

THE COURT 111555 My question is that have my 12 or 15
procedures scheduled starting

THE COURT Here's the deal We're going to finish
your testimony before the mob break

THE WITNESS Okay

THE COURT Don't know Mr. Santacroce do you

10 have crossf

11 MR. SANTACROCE Yes

THE COURT Am then there's going to be some
indirect and possibly couple of juror questions So Mr.
14 Santacroce what do you figure if you're my guess would
be you are not going to be there by 12:00

THE WITNESS Well as long as I'm done by 12:12 I'm
15 I'm good

THE COURT Well we'll go straight through until we
16 finish with you can't limit the questioning on the
20 lawyers unless there's objections and things like that Mr.
21 Santacroce how long do you anticipate

// MR. SANTACROCE Twenty minutes to half an hour

THE WITNESS Okay Thank you

24 Court recessed at 1114 a.m. until 1123 a.m.

25 Outside the presence of the jury

1 unidentified claims of privilege. Counsel for Plaintiff respectfully submits
2 that it is unlikely that minutes of a meeting of a board committee do not
3 even identify the subject(s) discussed and/or whether any decision was
4 reached or formal action authorized by the committee with respect to the
5 unidentified subject(s). That is particularly so in view of the fact that, on
6 April 5, 2018, Gould testified at his deposition that the committee formally
7 took action regarding ratification at the December 21, 2017 meeting.

8 5. Additionally, each of Gould, Coddington, McEachern and RDI
9 failed to list the December 21, 2017 meeting minutes as withheld based on
10 claims of privilege on any privilege log. After those minutes were belatedly
11 produced on April 12, 2017, Plaintiff's counsel asked that the obviously
12 improperly redacted document be properly identified on the privilege log,
13 but that has not occurred.

14 6. Finally, counsel of record for RDI and counsel for the referenced
15 directors have failed to explain their failure to timely produce or log the
16 December 21, 2017 minutes, to explain why they were not produced or
17 logged after they were specifically requested, or to explain why the
18 substance and subject matter of the belatedly produced redacted version of
19 those minutes is redacted completely. GT lawyers (Bonner and Ferrario)
20 attended the December 21, 2017 committee meeting and it is highly unlikely
21 that the lawyers representing the remaining defendants and Coddington and
22 McEachern did not know of the meeting, independent of Coddington's
23 testimony that two of those lawyers (Messrs. Tayback and Searcy) also
24 advised the Litigation Committee. (See Ex. 8, Coddington 2/28/18 dep. tr. at
25 207:6-208:24.)

26 7. Additionally, there was deposition testimony that the Litigation
27 Committee considered ratification prior to December 2017, but no
28 documents pre-dating December 2017 were produced or listed on a

undersoandino is you entered into Ms Rvera ycu entared
into an agreement in connection with your civil awsuts
correc- for settlement And then as part of that agrocmen
there was ccnfidentiality provision wheren ycu oreed tiat
you woulo oct disclose he terms of the sett omerit is that
corredll

MS WEISS oont thnk hes cono rcrll on the
same wdy you dre bun honor So think rgrh ll noeos tr
take break to translate what youre saying becauo be edt
10 say anything about the amounts want to make sure warc
11 clear speak Spanish too That was translated inoirectly

12 THE COURT Okay Well he is certir cc
13 translator didnt say the precise amount

14 MS WEISS Rioht

15 THE COURT Okay

16 MS WEISS Car you just let her know that sha has to
17 say the precise amount of the settlement or the recctd

18 THE COURT All right And maam mascally ycl
19 cannot enter into private agreement that iuhbts the ghts
20 of imina cefendants and their attorneys to cross 2xarnire
21 you if youre witness in crminal case Do you undorstdno
22 that

23 MS RIVERA Yes

24 THE COURT Okay So basically if ore of the
25 lawyers or the Court asks you question and deem that its

acceptable you must answer the question ever if it calls for
the amounts that you received part of the settlement with
the various defendants in our civil case or cases Do you
understand

Okay Ms Weiss there anything else you'd like
me to advise your lien

MS WEISS If you report to Your Honor I'd like
to just kind of brief her

If she tells you that you have to say the amount
10 that's court order Even if you attest the confidentiality
11 agreement she's instructing you by court order to do that

12 THE COURT So you understand Basic as
13 witness this case you must answer any question that the
14 Court deems relevant Okay Thank you

15 MR STAUDAHER Or Honor can just clarify one
16 thing just want to make sure she's aware of But the
17 order of the court is for the net amount for what she got

18 THE COURT Right exactly It's the net amount
19 You don't net they're not coming to ask you I'm sure they
20 won't ask like how much your lawyer made and all that kind of
21 stuff how much other plaintiffs may have gotten That's not
22 relevant to your testimony All right Thank you Okay

23 And then ma'am were probably going to get to you
24 after lunch so don't really know what time that's going to
25 be because don't know how much longer it's going to be with

the doctor mean **its** safe for her to edve for at least
an hour you know hour and probably an hour and half is
safe for her to leave for

And Mr Staudahe Ms Weckerly **dort** know which
which **wress** you're going to have **first**

MR STAUDAHER Well were not done with this
tLs

THE COURT No this guy know Doctor know
Im saying after the lunch break when we **hes** going to be
10 fin sneo before lunch Then **were** going to go to lunch for an
11 hour and then Im assuming these people are going to be our
next **wresses** So which one do you **whos** going to be
firs or do you know

14 MS WECKERLY would probably leave **it** up to them
15 at this point

16 THE COURT Okay

17 MS WECKERLY Whatever easier for them

18 THE COURT So **bascally** your clients safe to leave
19 for at least an hour and half

20 **right ers** move on to Ms Killebrews clients
21 and Ms Killebrew

22 MS KILLEBREW Thank you Your Honor

23 THE COURT who do you have with you

24 MS KILLEBREW Nia Killebrew for plaintiffs

25 Gwendolyn Ant Lovey **Martin** For clarification of the Court

1 and we ultimately came to an agreement on February 14, 2018 as to what
2 documents the Dismissed Directors were to produce. Ms. Coddington and Mr.
3 McEachern produced documents on February 19, 2019. Their production did
4 not include the December 21, 2017 meeting minutes, nor were those minutes
5 logged in any privilege log.

6 15. On January 25, 2018 written objections and responses to the
7 document requests contained in the subpoena *duces tecum* were served on
8 behalf of Mr. Gould. Mr. Gould did not produce documents until March 30,
9 2018, at which time he produced a single email, and a privilege log
10 containing only six entries. His production did not include the December 21,
11 2017 meeting minutes, nor was the document referenced in his privilege log.

12 16. In the course of deposing Ms. Coddington, I learned for the first
13 time that a meeting of a so-called Special Independent Committee (*i.e.*, the
14 "Litigation Committee"), comprised of Ms. Coddington, Mr. McEachern, and
15 Mr. Gould, had taken place in December 2017 ("a couple days" prior to the
16 December 29 Board meeting, according to Ms. Coddington's deposition
17 testimony). Mr. McEachern's February 28, 2018 deposition testimony was so
18 equivocal that it was not clear whether there had been a (telephonic)
19 meeting of the referenced committee or of the full RDI board. (*See* Ex. 7,
20 McEachern 2/28/18 dep.tr. at 510:6-511:17.) Ms. Coddington's testimony later
21 the same day was clear enough that a committee meeting had occurred that
22 I then requested of Messrs. Ferrario and Tayback that the meeting minutes
23 be produced. (Ex. 8, Coddington 2/28 dep. tr. at 210:12-15). I reiterated the
24 specific request for those meeting minutes at the end of the deposition of
25 Michael Wrotniak on March 6, 2018. Mr. Searcy was present in person and
26 Ms. Hendricks telephonically; Mr. Searcy responded that he believed Mr.
27 Ferrario was handling the request and that he (Searcy) would follow up
28 with Mr. Ferrario on it. (*See* Ex. 9, Wrotniak dep. tr. at 93:16-94:2.) In view of

witness **I**m sorry you **I**nt an accused right in criminal
case to have **their** lawyers conduct thorough examination
subject **to** you know innuendo of relevancy and other things
by the Thurt Do you understand **that**

MS MARTIN Yes

145 COURT And for that reason since you **ai** inn
to be considered as witness you are ordered to answer on
questions you know which the Court deems relevant And you
cannot use the you know the fact that you signed the
10 agreement to not answer question Do **ou** understand **th**at

11 MS MARTIN Yes

12 THE COURT Okay So you're ordered as I've said
13 deem **relevant** that you have to answer the question Okay
14 And **basically** as you heard me **tell** the other witness that
15 includes the net amount of the settlement that you received
16 And since **its** also part of your household you know
17 benefits that went to your household the amount that **ot**
18 husband received as an individual **plaintiff** Okay

19 And again **that's** amounts that you folks **actual**
20 **got** What your lawyer made and costs and other things Jane
An **that** are not relevant so you **don't** have to get in to that
22 And **if** you're aware of what other **plaintiffs** may have received
23 as part of settlement or what global settlement amount
24 was you only **likewise** **don't** have to answer those things
25 Do you understand

MS MARTIN Yes

THE COURT Okay Am Mr Martin yove hndrd me
inform your wife

MR MARTIN Yes

THE COURT tbot see arnr utilize the
confidential terms of your err emcn agreement to refuse to
answer queston thOt bo " rt oecms relevOnt regarding any
amount you have As tbet In ansunino you live tooether and
tbet benefits both of you an nerLoe of -he same househld

10 Do you understand that

11 MR MARTIN Yes cc

12 THE COURT Okay vs Ki leure is thct acceptable

13 MS KILLEBREW Eec Just in sum your Honor the

14 Court is therefore orderiro both Mr and Mrs Martin

15 disclose the net setlemert unnonts aanroed to bote of them

16 througY Mrs Mantins tesimtmry here today

17 THE COURT Well essent Ms MartIn is the

18 witness so Im directly orderino rer bur Ym saying that

19 neither one of teem you Know nasidlly maan you cant

20 use the fact that you husbnc enteieo irto this aureement and

ul thats confioential to rot answer the ouestion

22 And then Mr Martin obviously if you wean anllid as

23 witness you would have to answer those same questions

24 regarding the amount of the settlenant anreemert tCat that

25 you were given

And Mrs Martin obviously you're aware of those terms because you're in the same household and him disclosing that to you is not in my view violation of that agreement

MS WEISS Your Honor just for clarification the same thing happened with her and her husband

THE COURT Okay

DC WEISS so I'm assuming that the same

THE COURT Is he is he was he also

C- **plaint**

10 MS WEISS He was for loss of consortium

11 1ST COURT Okay

DC WEISS He is not here He is not he was not subpoenaed to be witness

14 1ST COURT Okay

15 MS WEISS Eu I'm just assuming that the same

16 THE COURT Same same exact thing and we need the interpreter did he leave

18 MR STAUDAHER He did He's going to go back at

19 100 Were going to start with Her

20 THE COURT Okay Well let's ma'am you and just

21 MS WEISS can make representation

23 THE COURT you can just translate that basically

24 it's the same exact thing as member of the same household

25 any amounts that went to her husband benefit her and therefore

1 and/or that the minutes be properly identified on a privilege log. Neither
2 has happened.

3 No explanation has been proffered for the failure to timely
4 produce or log the December 21, 2017 Litigation Committee meeting
5 minutes. Committee members have identified GT as counsel who advised
6 the Committee (although Ms. Coddling also identified Quinn attorneys
7 Tayback and Searcy), and the redacted minutes of the December 21, 2017
8 Litigation Committee meeting show that it was attended by GT attorneys
9 Michael Bonner and Mark Ferrario. Counsel for Plaintiff understands that
10 GT lawyers prepared the December 21, 2017 Litigation Committee meeting
11 minutes. Additionally, the record is clear from the testimony of the
12 committee members and the privilege log produced by GT (whether for RDI
13 or the Litigation Committee), that GT lawyers conceived the "ratification"
14 scheme and participated in every step in furtherance of it. It likewise
15 appears that counsel for Ms. Coddling and Mr. McEachern was aware of the
16 meeting and of the minutes. Mr. Gould, as chair of the Litigation Committee
17 according to his April 5, 2018 deposition testimony, played a unique role in
18 interfacing with GT attorneys and, as an attorney himself, surely understood
19 the importance of producing and/or logging the minutes of the December
20 21, 2017 Litigation Committee meeting. These facts and others suggest that it
21 is highly unlikely that the failure to timely produce and/or log the
22 December 21, 2017 Litigation Committee meeting minutes was
23 unintentional. The absence of any explanation of why those minutes were
24 not timely logged and/or produced likewise weighs against the possibility
25 that it was an oversight.

26 Additionally, there was deposition testimony that the Litigation
27 Committee considered ratification prior to December 2017, but no
28 documents pre-dating December 2017 were produced or listed on a

CROSS EXAMINATION

BY MR SANIACROCE

Thank you Good morning Doctor How are

Im doing well How are you

Good Thank represent Ronlo Ldkemcn ree

Mr akenans CPNA Do you know Mr Lakemn

No

Never worked with him have you

No

10 You became doctor in 1999 is that correct

11 That is correct

12 And you came to LS Vegas in 2006 is that correct

13 correct

14 That is correct

15 Im going to be asking you some questions about

16 your testimony this morning Im going to ask those questions

17 based on what recollect your testimony to be so if

18 state that testimony please correct me Okay You

19 testified to what the standard of care was in using

20 propofol Do you recall that

21 Yes

22 Can you just tell me again what your standard of

23 care is for administering propofol to patient

24 Very simple Keep the whole technique clean

25 That's the basic rule of administering any medication

Okay Are you understand that propofol comes in two sizes correct

Yes understand correct

Twenty cc 100 ft CC

know that

So on 100 100 ft of propofol you were going to induce that for patient to what you would do

Well first of all have never used 50 because usually it is not available in the operating rooms Whenever we see what have seen in my experience in the operating rooms it is always 20 cc

Well let's talk about the 20 cc val then Tell me what you would do to sedate that patient must take the via take the 100 off put in clean needle clean syringe for propofol inject intravenously

Let's say you added 10 cc on the patient

Yes

and the patient began to wake up during the procedure and you need to inject more propofol to the patient tell me what you would do in that case

would take the remaining 10 cc first of all that is all hypothetical cause when pulling out the propofol it's all 20 cc all pulled out

Okcy

Ok0y Ac ets say what iou said that you
okay dye 10 cc and row cc still there ii the syringe so
Iriect to the IIs the same patient so tnats
tllt csontely fne as far as Im concerned

oelieve that you testified earlier that it ans
se tc same syringe to reenter the propofol hmttle
wjh ra her can needle and then reinduce it into the
pa en- is that corredll

10 Well okay here is the needle we have
11 three or four things here We have needle we have syringe
12 we h0ve patient and we have med cation As long as these four
13 en es single unit do not see anythino wrong
14 even if is the needle so called dirty needle but it
15 helonos cc that particular patient you can go hack in that
16 vla propofol or any medcato and still you you an
17 use II me only uroblem is that when you use that on some
18 cthe patient

19 Correct So Its your standard of care that you
z0 couJd reLse that needle that syringe on that one patient
zi eultip tlmes isnt tfat correct

22 Th0t is that is correct

23 And thats fairly thats widely accepted by
24 you ano oters right

25 That is that is accepteo by me yes

1 2017 meeting minutes, nor was the document referenced in his privilege log.
2 (Krum Declaration, ¶15).

3 In the course of deposing Ms. Coddington, Plaintiff's counsel
4 learned for the first time that a meeting of a so-called Special Independent
5 Committee (i.e., the "Litigation Committee"), comprised of Ms. Coddington, Mr.
6 McEachern and Mr. Gould, had taken place (on or about December 27, 2017,
7 according to Coddington), and requested then and thereafter that the minutes
8 from that meeting be produced. (Krum Declaration, ¶16)

9 It was not until April 12, 2018 that Greenberg Traurig ("GT"),
10 counsel for RDI, produced heavily redacted minutes from the December 21,
11 2017 meeting, even though those minutes were responsive to multiple of the
12 January 12, 2018 document requests propounded on RDI, Ms. Coddington, and
13 Mr. McEachern. (Ex. 5)

14 Defendants never raised a question about whether the December
15 21, 2017 Litigation Committee meeting minutes should have been produced
16 or listed on a privilege log. Nor, after having been admonished by the Court
17 to provide a Rule 16.1 supplement with such documents, did defendants do
18 so. In this regard, at the January 8, 2017 hearing at which the Court denied
19 the summary judgment motion based on the purported December 29, 2017
20 ratifications, the Court stated as follows:

21 THE COURT: Well, if you intended to use it, one would have
22 thought you would have already done a 16.1 supplement, Mr.
23 Ferrario.

24 MR. FERRARIO: Your Honor, with all due respect, this
25 happened very quickly over the holidays. And, you know, we're
26 now here dealing with --

27
28

Well do not know do not know tyIs but
me somebody has to explain how can transmit the infection on
forget about any any laws of violation who said what Give
me explanation how can you transmit the infection from like in
one patient when you are using the same needle lets say
hypothetically same needle same syringe same vial same
patient how are you going to transmit the infection some
other way It is like a plastic surgeon when the surgeon is
operating and the surgeon uses the same knife making multiple
incisions so it is like telling a surgeon or like me for
pain specialist that whenever you use a needle every time
you poke a patient with a needle you have to use different
needles Why Give me one somebody has to explain It to me
and convince me and will stop doing it

Im looking for the same explanation in this
trial You said that the standard of care is what your
teachers taught you is that correct

Teachers taught or yes that is correct and
sometimes its from your observation too looking at your
teachers and other of your colleagues

Now you were trained where

In Pittsburgh

They trained you in anesthesia in Pittsburgh

That is correct

believe you testified that you were went to

medical school in India tdt ccrect

That is correct

So you were trained in Pittsburgh In what
year

From 2005 to term 95 to dd my
anesthesia 98 to 90 did my fellowship

When did propofol be introduced into the

That do not know must be well
started using in 95 when started anesthetic residency

10 And even in internship think saw it in intensive care

11 unit So back then it was still relatively new because the

12 genetic propofol was not available back Then So it must be

13 within those five years must

14 So it was already introduced when you began

15 practicing anesthesia correct

16 That is correct

17 And prior to that time sodium pentothal was

18 used correct

19 That is correct

20 And you have experience in using sodium

21 pentothal

22 Yes

23 And sodium pentothal came in big bottles

24 correct

25 That is correct

Ano wasnt expected to use socium pentothal
or one pot **ert** was **it**

No

You would use **wiats** in that Lottie on multiple
iCr **crrrect**

Ansolutely

Now aie 700 **fuidiar** with **traning** and
pcices tOe United States **Military** as far as **it** relates
tc the use of **anesthesia**

10 No **sir**

11 So **if** someore was trained in the United States
12 **ilitary** **tey** **flaV** have been **traned** differently then you **ee**
13 **ff0ineo** **crrect**

14 Quite **likely**

15 And you youve heard of the American
16 **expaess** **rn** **hindsight** is 20/20 **Wete** throwing kinds of
17 **AmeiiOr** **stuff** at you

18 Thats **fine**

19 **target** or your back **axid** **hndsight** is 20/20
20 **it** **mers** **tnat** you **an** look **nack** everybooy has perfect
21 **vision** when you look back **isrt** **that** correct

22 **ui** **huh**

23 But you have to look at the **situaton** as **it** was
24 at the **tme** **Wouldnt** you agree with **that**

25 That is correct

1 McEachern and Gould. (Ex. 3, Nos. 5,6, 8-12, 14-19.) The same is true for
2 particularized requests for documents propounded to RDI, including in
3 particular request numbers 1-10, 13, 16 and 17. (*See* Ex. 1.) Notwithstanding
4 the foregoing, and notwithstanding their obligations under Rule 16.1, none
5 of Coddington, McEachern, Gould or RDI produced the December 21, 2017
6 Litigation Committee meeting minutes or logged it as privileged prior to
7 April 12, 2018. Counsel for Plaintiff therefore had no knowledge of the
8 December 21, 2017 meeting prior to the depositions of the committee
9 members.

10 The deposition testimony of two of the three committee
11 members regarding the December 21, 2017 meeting and to the minutes of it
12 was less than clear, whether by design or oversight. McEachern at his
13 deposition the claimed uncertainty as to whether the telephonic meeting
14 with Mr. Bonner and/or Mr. Ferrario "was an entire board meeting or ... a
15 meeting of the special committee of myself, Bill Gould and Judy Coddington. I
16 suspect it was the three of us." (*See* Ex. 7, McEachern 2/28/18 dep.tr. at
17 510:6-511:17.) McEachern also claimed to be uncertain about the status of
18 minutes from that meeting, testifying that he believed there were drafts, but
19 was "not sure if the committee's approved them or not. I know they have
20 not been presented to the board." (*Id.*, McEachern 2/28/18 dep.tr. at 545:1-
21 11.) Coddington testified that the Litigation Committee meeting occurred "[j]ust
22 a couple of days" before the December 29, 2017 board meeting and that there
23 are meeting minutes "that have not been approved... with our attorney,"
24 whom she identified as Messrs. Bonner and Ferrario of GT and Messrs.
25 Tayback and Searcy of the Quinn firm. (*See* Ex. 8, Coddington 2/28/18 dep. tr.
26 at 207:6-208:24.)

27 Litigation Committee chair Gould was decidedly more definitive
28 about what the Litigation Committee did and concluded on December 21,

No

When was he last time you used propofol

guess about Four years ago

Four years ago

Yes

And what was the circumstance for you using it in

that office

Cant remember Must be providing anesthesia

somewhere

10 Someplace somewhere

11 Right

12 Okay

13 Because stopped doing it practicing

14 anesthesia about four years ago so that's

15 And and you testified that most of your

16 practice had to do with hospital settings

17 That is correct

18 And hospital settings you testified they use 20

19 bottles

20 That is correct

21 of propofol or not So your experience

22 with 50s basically non-existent believe was your

23 testimony

24 That is correct

25 MR. SANTACROCE have no further questions Thank

you

THE COURT All right mark you Reomect

REDIRECT EXAMINATION

BY MS WECKERLV

Doctor tha tURt argo packt of pdpers
wheie 1vou were applying for priv1lcoe ok Ms Stcnish
discussecc with you Kha cid tft to whole
pdcket

think as said ecriler was fo The
10 privileges

11 The urivileoes for that sorcery pan center that
12 was goino to be cuilt

13 No Actualv what 5Th svoed me was it also
14 had some other sorger centers too

15 And why why woulo you or exp_ain to those
16 of us who arent doctors what that mcci apply ci
17 piivileges

18 Well its ike pefcrmin wtdtever you kind
19 of ork you cc wtether cu are prvcicirc estresTh or
20 performing pain procedures fcr exmcla if mu cdse to dc dt
ii any partlular fdcility surgery centei or ic tal you have to
22 have tfe priviThges to cc SO

23 And so lou were applying for privi eges where
24 in this nstance

25 In this instance guess then at whatever it

KARR REPORTNG INC

Wd5 whatever papers were **pli** **ii** front of me look here are
the papers **br** tbc privileges and signed the papers or the
privileges

Ok And aid you did you ever perform any
pro eares **ii** Onv **ii** the endoscopy enters owned by **Dr**
Dcsi

Ncc

Ana **th** the discussions you had were **this**
wee or **tis** yet to be completely **built** surgery center where
10 you were cairo to do pain management

11 That **correct**

12 Ana the deal was you were **cong** to be the
13 director and **Dr Desi** is was going to get you arm and
14 in xct0rce **ii** would pay you certain salary per month

15 Nat arm per **se** but **yes** to bring the
16 business pain business to the surgery center You know -o
17 comoensde re **far** guess cy ass loss **of** you know
18 money by bricalna the patient to the pair to the surgery
19 center So **thats** how Ye war trying to compensate ire

20 And then Ye war going to be able to collect
21 **fcicilili** **ee** from **oil** tYase pot eats you brought **right** under
22 the **deal**

23 **Yarh**

24 **But** mean as understand **it** none of this
25 **really** ever cat completely discussed or the deal was never

1 made or, if neither, order that it be properly logged and sufficiently
2 described on a privilege log, as Nev. R. Civ. P. 26(b)(5) requires.

3 **C. Plaintiff Is Entitled To SPECIFIC Formal Assurances That No**
4 **Other Responsive Documents That Should Have Been**
5 **Produced And/Or Logged Have Been Withheld.**

6 Additionally, there was deposition testimony that the Litigation
7 Committee considered ratification prior to December 2017, but no
8 documents pre-dating December 2017 were produced or listed on a
9 privilege log. McEachern testified that the subject of ratification was first
10 raised "sometime" in the late Fall of 2017, but that the subject was tabled.
11 (*See* Ex. 7, McEachern 2/28/18 dep.tr. at 548:21-549:13.) Gould testified that
12 the first communication he recalled regarding ratification was telephonically
13 in mid or late November 2017 with GT attorneys Bonner and Ferrario;
14 Gould clarified that that communication was in his capacity as the
15 chairperson of the Litigation Committee. (*See* Ex. 6, Gould 4/5/18 dep. tr. at
16 14:19-15:13.)

17 The forgoing testimony suggests that additional documents
18 relating to ratification and predating December 2017 should exist. However,
19 none have been produced, whether by RDI, Gould, Coddington and/or
20 McEachern, and neither Gould's (otherwise incomplete) privilege log nor
21 RDI's privilege log lists a single document pre-dating December 2017.
22 (*Coddington and McEachern provided no privilege logs.*)

23 Counsel for RDI has represented that there are no other
24 Litigation Committee meeting minutes referencing or concerning
25 ratification. Counsel for the remaining individual defendants and the
26 dismissed directors other than Gould has stated that no documents
27 concerning ratification and predating December 2017 have been located.

28 Plaintiff finds it incredible that there is not even one document to
produce or log, in view of the deposition testimony of McEachern and

Not single one no

Okay Leouuse you CoO no connection to

right

Exuotly

Otoer thar **ths**

Absolutely yes **fcrtuotev**

\ich is States OL rck at this

oorreo **Iy** Ms Stanish was Oskino **orU** toe forrra thut

came to you in and you inoic0ted tn0 was your recollection

10 that was blank when you reoeved **it** -o tee best of your

11 reoolleotion

12 Th0t is oorreet

13 And **it** looks Like you soned **it** on tOe 16th

14 Yes

15 Of August of 20C7 **correo**

16 Correot

17 And at least rneOr **C-** S00rn0 signed the

18 same day out at least **Dr** Desul **it** cupecr sicmed two oays

19 afte you oorreet

20 Yes

21 So that wou be consisten ut leust witY your

22 recollection

23 Yes

24 Lastly just want to ta about aseptic

25 techniaue Now **Mr** Sartacroce asked you questions about 50

liter bottles of propofol and other forms of medication

Aseptic technique as understood applies to all

equipment is that true

flat correct

There's nothing unique in how you treat

patients

No not really

versus any other kind of medication

Only nitro is about propofol is the duration you

10 car. Keep it open in the air

11

12 And flat is like about five hours. But other

13 than that as far as aseptic technique is concerned that applies

14 on every medication

15 And is aseptic technique sort of common

16 sense handling medication

17 That is correct

18 And you mentioned that if you pull a bunch of

19 syringes you discussed this on cross examination that

20 there is no possibility for contamination you had big

21 bottle and you took out 10 syringes all at once correct

22 Yes provided you know your hands are clean

23 If you have gloves then your gloves has to be everything

24 has to be clean

/5 Okay Okay Assuming all of that

And they are sitting like year hstnce
so you accidentally dont ever touch your hmos re
dirt3i and you re planning to take one tta ccs redoi teen
used it should be like kind of separate ror cdcn orL

Ok0y But assuming you grew up SV out
of via cc medication and all all weo sepccc i-S
there would be no danger of contamination corrc
dont see it

You dont see how that iou happen So didnt
10 wouldnt make that wouldnt be form of ctmin or in
11 your nino

12 No

13 No matter what directives are Qce L\ the
14 056 or by ny other groups correct

15 No Honest speaking when \Ou no to medical

16 school when you have whOr tre qentAnmn sdid

17 you never know about these directives The are ■■ on

papers mostly teaches you in the residence or where you are

19 studen- and these are all ro discuss in the

20 court

21 But you teach aseptic technique 00 reot or

22 when you thought

23 Yes

24 And what does that mean

25 It means you have to keep it clean casually

(3) Conduct an *in camera* inspection of an unredacted version of the December 21, 2017 Special Independent Committee meeting minutes to determine whether it should be (i) produced in unredacted form, (ii) produced in a partially redacted form different than the wholly redacted form in which it was produced or, (iii) if neither, properly logged on the privilege log(s) of those who possess it;

(4) Order Gould, Coddington and McEachern to appear for further deposition, should Plaintiff choose to depose them further after these matters are resolved, and order that the travel and lodging costs incurred by counsel for Plaintiff to further depose any one or all of Gould, Coddington and McEachern with respect to these matters be awarded against the respondents to this motion: and

(5) Provide Plaintiff such additional relief as the Court determines warranted under the circumstances.

MORRIS LAW GROUP

By: 

Steve Morris, Bar No. 1543
Akke Levin, Bar No. 9102
411 E. Bonneville Ave., Ste. 360
Las Vegas, Nevada 89101

Mark G. Krum, Bar No. 10913
YURKO, SALVESEN & REMZ, P.C.
1 Washington Mall, 11th Floor
Boston, MA 02108

Attorneys for Plaintiff
James J. Cotter, Jr.

With The same syringe yes

Okay And so you could never use that on
subsequent patient

That is true

Do you remember how you described that practice
for the grand jury when you testified in this case

What are you talking about

That type of reentering Voids are then using
viol on subsequent patient do you remember how you

EQ described that for the grand jury

11 Was it in this today

Yeah

13 Okay Okay

If you don't 111 show von

15 Yes Yeah remember so

Did you say that's beyond my imagination doing
1/ something like that

THE COURT Why don't you refresh

SANTACROCE I'm going to object

20 THE COURT Yeah she yeah

21 THE WITNESS There is some confusion somewhere

22 THE COURT she needs to refresh his recollection

23 BY MS WECKERL

24 Sure These are four pages 97 98 like

25 that So just why don't you read and this is on page 98

1SF COUPI Just read quietly to yourself

BY MS WFCKECJJ

amst read this to yourself to see what you were
disussiam

dont need to read that know enough about
ftc cesn1on

CUJ\A

like wiat your question

Okay My question is if you take needle and
iO s\noe do access vial of medication and inject patient
11 theieafter you decide that patent needs additional
12 oecc1on you remove the neede you put new needle on
ft yr Lack to tcat same vial of medication with the satin
14 s\rHJe and you injert the patient again that patient
15 pco eoire enes new patent comes in and you go Dark to that
16 same \ia of medication and then you inject patient nuite
17 tam whi that uractice

18 No out wly would go to the same vial though
19 Why if you did what would how would you
20 des he tflat

21 No thats ttats unsafe practice
22 fts an unsafe practice Thank you

23 1SF COURT Recross Ms Stanish

24 MS SPANISH No Your Honor

25 ISIE COURT Mr Santacroce

MR SANTACROCE Just one question

RE CROSS EXAMINATION

BY MR SANTACROCE

Doctor how many 50 bottles of popof did you have
you thrown away after using it on one patient

As said earlier have you ever used it

So that would be none

Yes

How many bottles of sodium pentothal have
10 you thrown away after using it on one patient

11 You don't throw them unless they are
condemned accidentally or whatever

So the answer would be none

14 Yes

15 Nothing further

16 THE COURT All right Anything else Ms Weckerly

17 MS WECKERLY No

18 THE COURT We have juror question here

19 Doctor you mentioned that there are two Doctors

20 Desais correct

21 THE COURT That is correct

22 THE COURT Okay And you did work for different

23 Dr Desai Do you recall that Dr Desai first name

24 THE WITNESS do not

25 THE COURT Okay What kind of doctor is the other

KERR REPORT NO INC

MORRIS LAW GROUP
411 E. BONNEVILLE AVE., STE. 360 • LAS VEGAS, NEVADA 89101
702/474-9400 • FAX 702/474-9422

REQT

MORRIS LAW GROUP
Steve Morris, Bar No. 1543
Akke Levin, Bar No. 9102
411 E. Bonneville Ave., Ste. 360
Las Vegas, Nevada 89101
Telephone: (702) 474-9400
Facsimile: (702) 474-9422
Email: sm@morrislawgroup.com
Email: al@morrislawgroup.com

Mark G. Krum, Bar No. 10913
Yurko, Salvesen & Remz, P.C.
1 Washington Mall, 11th Floor
Boston, MA 02108
Telephone: (617) 723-6900
Facsimile: (617) 723-6905
Email: mkrum@bizlit.com

Attorneys for Plaintiff
James J. Cotter, Jr.

DISTRICT COURT
CLARK COUNTY, NEVADA

JAMES J. COTTER, JR.,
derivatively on behalf of Reading
International, Inc.,

Plaintiff,

v.

MARGARET COTTER, ELLEN
COTTER, GUY ADAMS,
EDWARD KANE, DOUGLAS
McEACHERN, WILLIAM
GOULD, JUDY CODDING,
MICHAEL WROTONIAK,

Defendants.

And

READING INTERNATIONAL,
INC., a Nevada corporation,
Nominal Defendant.

) Case No. A-15-719860-B
) Dept. No. XI

) Coordinated with:

) Case No. P-14-0824-42-E
) Dept. No. XI

) Jointly Administered

) PLAINTIFF JAMES COTTER,
) JR.'S REQUEST FOR
) PRODUCTION OF
) DOCUMENTS TO NOMINAL
) DEFENDANT READING
) INTERNATIONAL, INC.

else You're not to read watch or listen any reports of
or commentaries on this case any person or subject matter
relating to the case by any Turn of information Don't do
any independent research by way of text Internet or any other
medium And please do not form or express opinion on the
case

If you would all please please proceed in your
chairs and follow the bailiff through the back door

Court recessed 1100 nt p.m

10 Outside the presence of the jury

11 THE COURT Are the jurors back

12 THE MARSHAL Yes Judge

13 THE COURT Everybody ready And not let's bring
14 them in

15 Jury reconvened at 1:22 p.m

16 THE COURT All right Court is now back in session
17 Record should reflect the presence of the State the
18 defendants and their counsel the officers of the Court and
19 the ladies and gentlemen of the jury And the State may call
20 its next witness

21 MS WECKERLY Soniu Orellano Rivero

22 THE COURT Do we have the court interpreter here

23 Kenny also look for the court interpreter please Okay

24 thanks Do we have another witness available

25 MS WECKERLY Let me see if Ms

THE COURT That we don't need The interpreter or
MS WECKERLY There's the other witness Isn't
here yet said 130

TSE COURT Yeah ts 137 Apparently the
interpreter is on UP's way rs or her way But will ie
you the Instructions now that normally give prior to the
time witness using the with the UPde of the interpreter
testifies don't know ay of you are Spanish speakers
but if you are its Important that you rely upon the
10 translation as given by these certified court interpreter
11 So for those of you who may speak Spanish if you
12 hear something the translator says that maybe differs from
13 what your understanding is or word is used and you have
14 question regarding the translation write down the question so
15 we can clarify the issue with the court interpreter while hes
16 here with the witness
17 What you're prohibited from doing is going back in
18 the jury room and providing your own translation or changing
19 the translation that's been given by the certified court
20 interpreter because everyone must rely upon the same
21 translation and that the official translation That's given
22 by the court interpreter at the time of trial So don't
23 think in our questioning we asked whether any of you were
24 Spanish speakers but if you are its important that you do
25 that

From time to time juror will be something and
their translation may differ As you know there are
regional differences within individual languages You know
South America may have certain idioms that are different from
someone Mexico or someone in Cuba is something that
So from time to time that does occur for accents that's not
a problem just make sure you write down what the speaker
can clarify have clarification when the court reporter
is here Yes

10 MS WECKERLY We we actually Mr Staudahe and
11 miscommunicated There is witness we can call if you want
to do that

13 THE COURT Okay Mr right 511 set up those
14 couple of stairs please and then face this way right here who
15 will administer the oath to you

16 JOSHUA LEE AVETT STATES WITNESS SwORN

17 THE CLERK Thank you please be seated Ann if you
18 could please state and spell your first and last name for the
19 record

20 THE WITNESS Joshua Lee Cavett

21 as in Victor

22 THE COURT Thank you Mr Staudahe go ahead

23 MR STAUDAHER Thank you Your Honor

24 An DIRECT EXAMINATION

25 BY MR STAUDAHER

document is to be produced in its entirety, without abbreviation or expurgation.

9. In producing documents, all documents that are physically attached to each other when located for production shall be left so attached. Documents that are segregated or separated from other documents, whether by inclusion of binders, files, subfiles or by use of dividers, tabs, or any other method, shall be left so segregated or separated. Documents shall be retained in the order in which they were maintained and in the file where found. If no documents exist that are responsive to a particular request, you shall so state in writing.

10. Electronic records and computerized information as well as documents stored electronically, including, but not limited to, electronic mail and draft documents, must be produced in electronic form in an intelligible format as well as in hard copy form, together with a description of the system from which it was derived sufficient to permit rendering the materials intelligible.

DEFINITIONS

The following Definitions shall apply herein and to each Request:

1. "All," as used herein means "any and all" and "Any" means "any and all."

2. "And/Or," as used herein, means either disjunctively or conjunctively as necessary to bring within the scope of the Request, all responses that might otherwise be construed to be outside of its scope.

3. "Communication," as used herein, or its plural or any synonym thereof, means any exchange, transmission or receipt (whether as listener, addressee, person called or otherwise) of information, whether such exchange, transmission or receipt be oral, written, electronic or otherwise and includes, without limitation, any meeting, conversation, telephone call,

Yes sir

So was it year and three months prior to that

Yeah it was like one year and three months

So early 2008 if the clinic Cosei right time
it as the time before That that you worked is not rare

Yes sir

Okay So tell what you did when CC
duThes here when you were working there

was gastroenterologist or resident
10 basically assisted the doctor with the colonoscopies upper
11 and lower Basically got ready the patient and took them in
12 the room set the 4x4s where you put the scope and the
13 specimen bottles and you know hooked up the scope to the
14 machine and assisted the doctor whatever he needed

15 Aside from your work in the room directing
16 assisting the doctor did you ever work at other places in
17 the mine itself

18 Yes sir also did the sterilization room and
19 also assisted in cleaning the beds

20 So the cleaning the assist were there
21 process the scopes and equipment things like that

22 Yes sir

23 So those three areas primarily

24 Yes sir

25 Did you ever work in the recovery area or the

pre op are0

Pre op yoL mex when were cetting the patent
ready

YeJi hee rnev st come ir there Ond theyre
in the waitino roes ann ttey first have net ready to go
back to the proceour

mean woL cOil the patent in and give him
his woulo qive tre La tne tle qowe but that was

it But tne recovery roan when the pat ent we would

10 after -he procedures oone w0 would roll them out to where the

11 curtain was at and we woLld nook them up to the monitor

12 Where Cii you actually work aecause we

13 undersand tlere were nusaY of differen clinics around

14 workeo at Bomnham the Sparish t-Jill and

15 the Shadow Lane

16 So three oiffeient clinics

17 Yes sir

18 Whs there prtacula time Uuring did you

19 shift between them or w0s tn.re time you worked at one and

20 then tme you worked at an tYe that kind of thing

In was kire of like that but one clinic was

22 understaffed they would sometimes tell some at us to go over

23 there wherever was needeed

24 Did you ever work directly with Dr Desai

25 No sir because every time come the room he

And WdS that an open and free flowing
disussion

No

Okay Tell me why not

There was like said before there WS in
proess There will be recoernendations cornliq down free
Des0i am of ftc things That we coild do -o imlove the pn
of the practice

And you wound give suggestions and inpu

10 Correct

11 Otter doctors would do the same

12 Yes

13 And then guess there wou be some oecslir

14 makine process regardinc those suggestions

15 Rioht

16 You mentioned about the reuse equipment tha

17 you coulo reuse snares correct

18 No

19 What did you say

z0 said it has been suggested by the

21 rianufacturers that perhaps you could reuse tncse snares wite

z2 appropriate cleansing procedures But was urcomfortable

23 with it

24 Okay So manjicturers of the scare suggesteo

z5 you coulo do that

15. As used herein, the term "Storey" refers to dismissed defendant Timothy Storey.

16. As used herein, the term "Gould" refer to dismissed defendant William Gould.

17. As used herein, the term "Coddling" refer to dismissed defendant Judy Coddling.

18. As used herein, the term "RDI" refers to nominal defendant Reading International, Inc.

19. As used herein, the term "Relate to," including but not limited to its various forms such as "relating to," shall mean, consist of, refer to, reflect, or be in any way logically or factually connected with the matter discussed.

20. "Ratification" shall refer to the vote of the RDI Board of Directors at special telephonic meeting held on December 29, 2017, to ratify (i) actions taken by board members relating to the termination of JJC Jr. as President and CEO of RDI as such actions are outlined in the minutes of the Board Meetings held on May 21, 2015; May 29, 2015; and June 12, 2015; and (ii) the decision of the Compensation Committee of RDI, as outlined in the minutes of September 21, 2015 meeting of the Compensation Committee to permit the Estate of JJC Sr. to use Class A non-voting stock as a means to pay for the exercise of an option to purchase 100,000 shares of Class B voting stock of RDI.

21. Whenever appropriate, the singular form of a word should be interpreted in the plural and vice versa. All words and phrases shall be construed as masculine, feminine, or neuter gender, according to the context. "And" as well as "or" shall be construed either disjunctively or conjunctively as necessary to bring within the scope of this request any information which might otherwise be construed to be outside the scope.

and there was fecal matter dripping from them and they were reused Have you ever witnessed anything like that

No sir

If that was the case if in fact scopes are dirty or not properly cleaned and reused could that be possible transmission for disease

Sure

If bite blocks were used and not properly cleaned could that be possible transmission for disease

10 is likely but possible

11 Possible Because there is some drood -o the

12 bite blocks correct

13 Correct

14 When you saw patients they had tap lines

15 correct

16 Correct

17 And that hep cck would be started

18 different procedure room isn't that also correct

19 Yes

20 And that would be started by nurse

21 Yes

22 And are you familiar with the term flushing

23 Yes

Tell me what that is

25 Once you start the IV you introduce through the

IV an amount of saline to make sure flat everything flow
through into the vein

And if you backflush right here's possibility
of withdrawing blood correct

Yes

And that could be possibility or mechanism
for transmission isn't that CLCC disease

Yes

You mentioned these various partnerships
10 meetings want to be clear who attended those Can you
11 tell me who attended those meetings

12 Partner

13 Just partners

14 Just partners

15 Never saw Mr Lakemc in partnership meeting
16 did you

17 No

18 Were you ever present at meeting with Mr
19 Lakemc and Dr Desai or Dr Cdr oi or Crrera

20 No

21 I have no further questions Thank you sir

22 Your welcome

23 THE COURT May see counsel at the bench

24 Of record bench conference

25 THE COURT Doctor unfortunately were not going to

finish your testimony today. Were required to end at
certain time. Can you be back tomorrow morning at 900 a.m.

THE INESS cannot have full office and
hospital schedule

THE COURT Okay. Iren, you're going to need
coordination with the DA's when you can come back because
the witnesses were not through with you yet.

Ladies and gentlemen, we're going to go ahead and
take our evening recess right now. We'll reconvene tomorrow
morning at 900 a.m. During the evening recess, you're
reminded that you're not to discuss the case or anything
relating to the case, will elect either or will anyone else.
You're not to read, watch, or listen to any reports of or
commentaries on this case or any person or subject matter
relating to the case by any medium of information. Don't do
any independent research by way of the Internet or any other
medium. And please do not form or express an opinion on the
trial. Please leave your notepads in your chairs and follow
the bailiff through the rear door.

Jury recesses at 427 p.m.

THE COURT Basically, for the record, at 430 We
took the evening recess because Ms. Stanish indicated that she
needed time to confer with her client.

Doctor, you indicated you can't come back tomorrow
morning at nine. Is there any time tomorrow that you can come

1 exercised by Ellen Cotter and Margaret Cotter as executors of the Estate of
2 JJC, Sr. on or about September 17, 2015.

3 3. All documents relating to payment to exercise the option
4 to purchase 100,000 shares of Class B voting shares of RDI, which was
5 exercised by Ellen Cotter and Margaret Cotter as executors of the Estate of
6 JJC, Sr. by their actions taken on or about September 17, 2015.

7 4. All documents relating to any advice requested or given by
8 counsel at the December 29, 2017 meeting of the Board of Directors of RDI
9 (hereafter, the "Meeting") concerning the prior decisions that were ratified at
10 the Meeting.

11 5. All documents relating to any advice requested or given by
12 counsel prior to the Meeting concerning the prior decisions that were
13 ratified at the Meeting.

14 6. All documents relating to the decision to call the Meeting
15 to ratify the prior decisions.

16 7. All documents relating to any advice requested or given by
17 counsel concerning the decision to call the Meeting to ratify the prior
18 decisions.

19 8. All documents relating to any advice requested or given by
20 counsel concerning the notice of Meeting to the extent it concerned
21 Ratification.

22 9. All documents relating to the Meeting to the extent
23 concerning Ratification.

24 10. All documents relating to any advice requested of or given
25 by counsel concerning the Meeting to the extent it concerned Ratification.

26 11. All draft notices of the Meeting.

27 12. All draft minutes of the Meeting.

28 13. All documents prepared in connection with the Meeting.

MS WECKERLY Sure

-iE GOBIET Is that fine with you Ms Stanish

MI SRLNISH Yes Your Honor

TRL COUsT Mr Santdoroce are you fine with that

Mr SATIAROCE have nothing came to say to him

71 CODES Well you might have some recrcss or

someor iEe ttdt Mr Stdud0her then you can ust let him

knan wean Inc with him condxg back Wednesday afternoon

Mr SDEUDAHER You want me to to that right now

10 Your Hon or

11 1-iF COURT Sure And then you can kind of

12 coooirae toe tice mitt him

13 fo tomorrow our start time is 930 tomcrow

14 Ant mu urdest0ndino is the State you have physician and

15 hes cing to be the first witness

16 MI WECKEREY Thats correct Your Honor

17 THu COURT Okay So nothing else to do today

18 Wei see everrone back and then just for tlie record then

19 obviously trdt gives amp time since hes not coming back

20 until Wecnesay afternoon for Dr Desai confer with his

21 counsel pran to cross examinaton of that wtness

22 Juror number 16 has indicated that she has

23 physiciars appointment eight a.m not this Thursday but

24 next TYursday and would Lke 000 start time Im fine

25 with fEat because think these nine to five days are probably

gettino itt difficult for the urors So 000 start
time might be good thing occasionally

MR WRIGHT Is that this cominc Thorsmiy

THE COURT No not thls Thursday but the following
Thursday So fine with doing 000 start time Okay
then Everyones exused

Ccunt recessed for the evenig mi LRI p.m

10

11

13

14

15

16

17

18

19

20

21

22

23

zA

/5

CERTIFICATION

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

AFFIRMATION

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

KARR REPORTING INC
Aurora Colorado

KIMBERLY LAWSON

EXHIBIT 2

INDEX

WITNESSES FOR THE STATE

SAMISI-1 SHABN7A

Direct Examination	By Ms Weckerly	
Cross Examination	By Mr Stanish	28
Cross Examination	By Mr Santaroc	91
Redirect Examination	By Ms Wekeniy	100
Recross Examination	By Mr Samtanoce	109

JOSHUA LEE CAVETT

Direct Examination	By Mr Stoudaher	113
Cross Examination	By Mr Stanish	148
Cross Examination	By Mr Santaroce	170
Redirect Examination	By Mr Staudaher	178

SONIA ORELLANA RIVEPJA

Direct Examination	By Ms Weckerly	185
Cross Examination	By Mr Wright	198
Cross Examination	By Mr Santaroce	208

GWENDOLYN MARTIN

Direct Examination	By Mr Weckerly	211
Cross Examination	By Mr Wright	232
Cross Examination	By Mr Santaroce	217

EXHIBITS

STATE	EXHIBITS	ADMIniw	PAGE
102			18
71	Bard	71	
50	tYrough	58	z28

LAS VEGAS NEVMA TUESDAY MAY 14 2013 930 A.M

In the pretence of the jury

755 CCUAT At right Court is now in session
everyone can be seated The record should reflect the
presence of the State through the deputy district attorneys
the presence of the defendants and their counsels the
officers of the court and the ladies and gentlemen of the
jury

10 Lade mo gentlemen you recall yesterday when we
11 took our evening recess we were in the middle of Dr
12 Herreros test may Dr Herrero was unable to return this
13 morning so the State come to move forward with their next
14 witness and Dr Herrero will appear believe tomorrow to
15 resume his test may would just remind all of you that the
16 order in which the testimony is given is of no importance
17 that you still in court must keep an open mind until youve
18 heard all the testimony presented by both sides So on
19 call your next witness

20 MS WECKERLY Dr Siarma

21 The COURT Sir just right up here next to me
22 please up these couple of stairs And then just please
23 remain standing facing that lady right there who will
24 administer the oath to you

25 SATISH SHAPNA STATES WITNESS SWORN

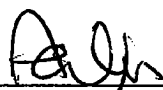
KARP REPORTING INC

002065

MORRIS LAW GROUP

411 E. BONNEVILLE AVE., STE. 360 • LAS VEGAS, NEVADA 89101
702/474-9400 • FAX 702/474-9422

Or

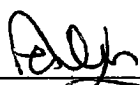
By:  (Signature)

Attorney Name: Akke Levin Date: 1/12/2018

Attorney Bar Number: 9102

Submitted by:

MORRIS LAW GROUP

By: 
Steve Morris, Bar No. 1543
Akke Levin, Bar No. 9102
411 E. Bonneville Ave., Ste. 360
Las Vegas, Nevada 89101

Mark G. Krum, Bar No. 10913
YURKO, SALVESEN & REMZ, P.C.
1 Washington Mall, 11th Floor
Boston, MA 02108

Attorneys for Plaintiff

James J. Cotter, Jr.

And was **fret** was the internship focused on particular area of medicine

Internal medicine

Internal medicine

Yes **majli**

And **thRI1** **Im** sorry Where did you work after that or where did you go after that

was in he came **hosotal** but then did my anesthesia residency there

10 Okay In Pennsylvania

11 That is correct

12 Obviously come point you moved to Las Vegas

13 That was **ii** **LD0E**

14 And when **CU** came to Las Vegas you were

15 practicing physician

16 Yes **maam**

17 And what type of practice did you have when you

18 **first** got there

19 started **bot** anesthesia as well as pain

20 started my pain practice

21 And when **70L** say **pain practice** what does that

22 mean

23 **Its** my solo practice my personal practice

24 **startee** So basically you see pain patients and treat them

25 Is it like managing patients that have chronic

pQin

Usually chronic but sometimes it could be acute too

And then when you first go here in 2006 you didn't see it as well correct

That is correct

When you were working in a rest home would you be called to do the anesthesia for surgeries or for other procedures

10 No actually don't remember exactly don't

11 what point but joined not really joined either was

12 working working in association with doctor Dr

13 Chen Chen Was it Eugene Chen

14 Eugene Chen Yes I'm sorry it was seven

15 eight 3/4

16 So you were working with that doctor What was

17 you doing with that doctor

I was like was working kind of

19 autonomous there but since was new nobody knew me so

20 nobody will call me to provide anesthesia So his office used

21 to get the calls and he will his office will tell me he

22 to go to provide anesthesia

23 Okay So when you first started no one knew who

24 you were

25 Exactly

And so if someone needed anesthesia they would
call Dr. Then and Dr. Cien might send you out to those
locations

That is correct for most for most part

When you were going out to those locations to
your knowledge did you ever provide anesthesia for patients
of Dr. Dipak Desai

Not for Dr. Desai may for his group but not
for Dr. Dipak Desai personally

10 Okay And for his group that would be like Dr.
11 Carroll and Dr. Carrera

12 Yes More more often for Dr. 171st Sharma

13 Okay And he has the same last name as you

14 That is correct

15 Are you related

16 Not at all

17 Okay So Dr. Vishvinder Sharma would sometimes
18 have you do anesthesia for his patients

19 You can call him he will have to but he will
20 they usually they used to call Eugene Chen's office and
21 Eugene Chen will tell me okay you have this many cases at
22 this hospital

23 Okay Was all that work and think you just
24 answered that at hospital

25 Indeed yes

6. In the event that any document called for by this Request for Production has been destroyed or discarded, that document is to be identified by stating; (a) any address or any addressee; (b) any indicated or blind copies; (c) the document's date, subject matter, number of pages, and attachments or appendices; (d) all persons to whom the document was distributed, shown or explained; (e) its date of destruction or discard, manner of destruction or discard, and reason for destruction or discard; (f) the persons who authorized and carried out such destruction or discard; and (g) whether any copies of the document presently exist and, if so, the name of the custodian of each copy.

7. Any copy of a document that varies in any way whatsoever from the original or from any other copy of the document, whether by reason of handwritten or other notation or any omission, shall constitute a separate document and must be produced, whether or not the original of such a document is within your possession, custody or control. A request for any document shall be deemed to include a request for all drafts thereof, and all revisions and modifications thereto, including any red-lined versions or document comparisons, in addition to the document itself. Each document is to be produced in its entirety, without abbreviation or expurgation.

8. In producing documents, all documents that are physically attached to each other when located for production shall be left so attached. Documents that are segregated or separated from other documents, whether by inclusion of binders, files, subfiles or by use of dividers, tabs, or any other method, shall be left so segregated or separated. Documents shall be retained in the order in which they were maintained and in the file where found. If no documents exist that are responsive to a particular request, you shall so state in writing.

9. Electronic records and computerized information as well as documents stored electronically, including, but not limited to, electronic mail and draft documents, must be produced in electronic form in an intelligible format as well as in hard copy form, together with a description of the system from which it was derived sufficient to permit rendering the materials intelligible.

Okay So you were one of many guests

Yes indeed

And what year was **that** do you think

would guess **it** must be 2006

At that gathering or did you take to him

all

Actually he was standing at his rear entrance

and was invited by Dr Vish Sharri to this party and did

not know **him** He was standing there and he shook hand and

10 said welcome **Im Dr Desai** And then was like okay nice

11 to meet you **Dr Desai** That's how that was the **first**

12 encounter

13 Why were you **ike** okay and you know did you

14 know who he was

15 No heard **his** name

16 Okay

17 but did you not know But for me **it** was

18 surprising because was coming to somebody's house and **didn't**

19 know who **that** person was So **it** was **little** you know

20 **little** awkward

Yeah exact

22 Okay At some point after you meet **him** do you

23 start having discussions with him about possible business

24 arrangement between the two of you

25 No **it** was absolutely party of **his**

Okay Bu. lize dfter that party

Repeat your quest on please

Sure Do you ever have dd you ever staxt
having discussons with Dr Des0i about busiress arr0ngemer
or you doing pct of your practice in partnersrip ith hm

No never in partnership with him flitldly
WS went to his office dnd like was absc utely nc
didnt know nyhody So obviously went to his rff Gnc
asked for nis help if Ye could introduce me to some ctcrs

10 so that help my you know starting my pain practice

11 Ok0y Arict so was that before the uarty

12 after

13 That was after the party

14 Ok0y After the party youre tryino to bulb up
15 your practice because youre new

16 Yes was meeting different doctors did he was
17 one of them

18 Ok0y Dio you ever talk about like suigev
19 center tft Ye wcs building Spring Valley Hospitcl

z0 Ih0t came quite late in the picture actualu

z1 It but It 3d come yes at some point oont remember
22 when it wYen it we started talking about it

23 Okay Well did any dio you have any
24 substantve oiscussions between you goino to his office and
25 trying to build up your practice and then these discussions

about the surgery center

Well it was he was building the surgery center kind of opposite to the Spring Valley Hospital and he offered me the directorship of that surgery center

Okay Car mark you question

Please

What is what would that mean if you were the director

Honestly speaking neither back then knew nor even now know what are the responsibilities because I've never been director of any surgery center or any department or facility for that matter But would assume you know some little supervising things or like keeping an eye on

Okay the functioning of that particular surgery center guess

So he would discuss with you being the director of this surgery center that was going to be built

It was never discussed in details

Sure

as far as what would be my function It was very preliminary discussion

And what would you bring to the table you know in the deal

What and that was part of the discussion

14. As used herein, the term "McEachern" refers to dismissed defendant Doug McEachern.

15. As used herein, the term "Storey" refers to dismissed defendant Timothy Storey.

16. As used herein, the term "Gould" refer to dismissed defendant William Gould.

17. As used herein, the term "Coddling" refer to dismissed defendant Judy Coddling.

18. As used herein, the term "RDI" refers to nominal defendant Reading International, Inc.

19. As used herein, the term "Relate to," including but not limited to its various forms such as "relating to," shall mean, consist of, refer to, reflect, or be in any way logically or factually connected with the matter discussed.

20. "Ratification" shall refer to the vote of the RDI Board of Directors at special telephonic meeting held on December 29, 2017, to ratify (i) actions taken by board members relating to the termination of JJC Jr. as President and CEO of RDI as such actions are outlined in the minutes of the Board Meetings held on May 21, 2015; May 29, 2015; and June 12, 2015; and (ii) the decision of the Compensation Committee of RDI, as outlined in the minutes of September 21, 2015 meeting of the Compensation Committee to permit the Estate of JJC Sr. to use Class A non-voting stock as a means to pay for the exercise of an option to purchase 100,000 shares of Class B voting stock of RDI.

21. Whenever appropriate, the singular form of a word should be interpreted in the plural and vice versa. All words and phrases shall be construed as masculine, feminine, or neuter gender, according to the context. "And" as well as "or" shall be construed either disjunctively or conjunctively as necessary to bring within the scope of this request any information which might otherwise be construed to be outside the scope.

22. "Person" means or refers to any individual, corporation, partnership, association, organization and any other entity of any type and nature.

23. "Identify," when used in reference to a Person, means to:
a) state his or her full name;

Was there any were there any money
discussions about cbeu what you what your compensation
would be

Never precisely It was just like you know
will come **se** **fc** being the director of the surgery
center but we never like there was like the number thrown
back are **forty** you know **cont** remember those numbers **it**
was 400 or 10900 **cont** remember **actually** But and
that was because when explained to him you know asked him

10 you **wl** ask this question know is that when we do the
11 pain procedures in the office versus at the surgery center
12 the reimbursement is better when we do it in the office
13 because the insurance companies Medicare whatever they do
14 not have to pay the **facility** charges whether the surgery
15 center or the hospital

16 Okc.y

17 So if Jo procedures in the office then
18 obviously there **ffs** financial loss and this obviously
19 expressed that to Dr Desdi that you know

20 That's no good for you

21 I'm going to lose money if you **it**

22 Right

23 And so then he offered **little** kind of
24 partnership in the surgery center Again details never
25 discussed the details and **like** you know some salary as

director of the surgery center

Some **Im** sorry

Some kind **of** you know financial **ike** you
know some payment some fee d5

To be the **director**

To be the director of that surgery centeri yeah

Because **if** you **if** **if** **Im** understanding **it**
if you were going to see your or **if** your patients were
going to be seen at his surgery center that would be less
10 money for you than **if** they were seen in your **office**

11 Seen but we are talking **ii** terms of performing
12 the procedures **yes**

13 Correct

14 Correct

15 Yes Okay But these

16 THE COURT Can everybody hear **okdy** Okay Sor-y

17 BY MS WECKERJY

18 And **oh** okay **if** understando you though
19 these discussions were **all** sort of in the abstract and not
20 nor written down or **not** you know they **oidnt** ever come to
21 **pass**

22 That is correct

23 Were there ever any discussions that you had
24 with him about supervising CENAs

25 Never

Have you ever done that

Many times

In ids Veoas

In Pittsburgh

And where did you where did you supervise in
Pittsburgh

At the lot of hospitals had very
huge group of anesthesiologists about 25 anesthesiologists and 70
CPNAs and we were covering four or five hospitals and all
10 major hospital including teaching hospitals in Pittsburgh

11 And how many did you how many would
12 were you the supervisor of all 70 of the CPNAs

13 No

14 No

15 They were 25 of us

16 Okay

17 Four or five were also like me like

18 anesthesiologist as well as pain specialist So we were

19 supervising depend on wherever you were assigned to

20 whichever hospital that was where we were supervising either

21 CPNAs or the anesthesia residents

22 When you were when you were supervising were

23 you in the same building as the CRNAs Were you did you

24 observe them doing their procedures

25 You mean anesthesia

8. All documents relating to any advice requested or given by counsel at the Meeting concerning the prior decisions that were ratified at the Meeting.
9. All documents relating to any advice requested or given by counsel prior to the Meeting concerning the prior decisions that were ratified at the Meeting.
10. All documents relating to the decision to call the Meeting to ratify the prior decisions.
11. All documents relating to any advice requested or given by counsel concerning the decision to call the Meeting to ratify the prior decisions.
12. All documents relating to any advice requested or given by counsel concerning the notice of Meeting to the extent it concerned Ratification.
13. All documents relating to the Meeting to the extent concerning Ratification.
14. All documents relating to any advice requested of or given by counsel concerning the Meeting to the extent it concerned Ratification.
15. All communications between you any other director of RDI concerning the Meeting or the matters that were the subject of the Meeting to the extent they concerned Ratification.
16. All communications between you and anyone concerning the Meeting or the matters that were the subject of the Meeting to the extent concerning Ratification.
17. All documents relating to the "request for a special meeting at the behest of the five named Directors (Coddington, Gould, Kane, McEachern and Wrotniak) pursuant to a letter dated December 27, 2017" (referenced on page 3 of "draft minutes of the Meeting" attached as Exhibit B to EC, Adams and MC's Motion for Judgment as a Matter of Law), including any

Yeh recmoer this Thats wfy Irr sitting
here

So this is dcument you recognize correct

Verx **1 i** yet

Okay

Thats hy suffering

MS WECKERLY **St** coves to aornit 102

dE **COT** My objectlmi

SANTMROCE No

10 MS SANISH No your Honor

11 THIS COURT **Mi richt**

12 **Jttes** Exhitit 102 aomitted

13 BY MS WECKERD

14 Whet what does **it** say at the **top**

15 Supen7ising Physicin Agreement

16 **Ok**y Ano there signature at tne bottom

17 **there**

18 That is correct

19 Is thOt your **sicntje**

20 Inoeed they are

21 Dio you sige **thtt**

22 Yes **dio**

23 Did you read **this** agreement

24 did **not**

25 Okc-y And **fair** to say you signeo something

wirhou recaing **it**

Absolutely Thats the honest **truth**

Okay **Im** goino to put **it** on the overhead just
for so you can probably see **it** on your screen tcere **if is**
ci

THE COURT Can you see that there Doctor

THE TNESS Yes rraom

BY MS WECHERJY

Ok0y Aria Doctor this **ths** ogree can you
get the

ii MR STAUDAHER **Im** eeing **it** rioht now **!!!** put **it**
back **or**

ii THE COURT Can everybody see **ti** at now

BY MS WECKERLY

15 Okay Now Doctor **this** aereement seems to be
about the supervision of CRNAs Would you agree with me

Yes yes

Okay **It** says th0t in the secono parograph
Satish Shari0 wnioh is you correct Along with Oipak Oesai
zC and \Jishvinder Sharma aaree to co supervise Ono consult with
uI CRNAs employed at the Gastroerterology Center Nevada is
// that correct

2u Yes

24 Okay But **if** understand you correctly that
25 that **isnt** what you were ever discussing

No We always discussed whenever we met we always discussed like bringing the pain patients to the surgery center and also the requirement. He will ask me what do you need to do your pain procedures

Sure

so obvious we talked about you know all the things that we need supplies to special table and an x-ray machine what we call arm. And so that's what we were discussing

10 Okay And I thought to just move the document
11 up just a little bit. Sir though you don't dispute that
12 this is your signature that I'm pointing to

13 Not at all

14 Okay Can I ask you why you signed something
15 without reading it

16 Well first of all it was still remember
17 it was kind of middle of the day was between my patients
18 you know it was back then my office was at Fort
19 Apache and one of the girls from Dr. Desai's office she came
20 over with this paper and just assumed it must be you know
21 pain and the medical director and all that. But since it was
22 we were very early in the discussions nothing was
23 discussed details forget about the final numbers

24 Right

25 so was just like you know sign the paper

MORRIS LAW GROUP

411 E. BONNEVILLE AVE., STE. 360 • LAS VEGAS, NEVADA 89101
702/474-9400 • FAX 702/474-9422

CC03

MORRIS LAW GROUP
Steve Morris, Bar No. 1543
Akke Levin, Bar No. 9102
411 E. Bonneville Ave., Ste. 360
Las Vegas, Nevada 89101
Telephone: (702) 474-9400
Facsimile: (702) 474-9422
Email: sm@morrislawgroup.com
Email: al@morrislawgroup.com

Mark G. Krum, Bar No. 10913
Yurko, Salvesen & Remz, P.C.
1 Washington Mall, 11th Floor
Boston, MA 02108
Telephone: (617) 723-6900
Facsimile: (617) 723-6905
Email: mkrum@bizlit.com

Attorneys for Plaintiff
James J. Cotter, Jr.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

JAMES J. COTTER, JR.,	) Case No. A-15-719860-B
derivatively on behalf of Reading	) Dept. No. XI
International, Inc.,)
	) Coordinated with:
Plaintiff,)
v.	) Case No. P-14-0824-42-E
	) Dept. No. XI
MARGARET COTTER, ELLEN)
COTTER, GUY ADAMS,	) Jointly Administered
EDWARD KANE, DOUGLAS)
McEACHERN, WILLIAM	) SUBPOENA DUCES TECUM
GOULD, JUDY CODDING,)
MICHAEL WROTONIAK,)
)
Defendants.)
And)
READING INTERNATIONAL,)
INC., a Nevada corporation,)
Nominal Defendant.)

how would you describe propofol in terms of what
kind of sedation it induces

Its use for sedation and general anesthesia
both

Okay And its use is widely used
is that fair

That

When you're working in an
anesthesiology or pain doctor well but
10 in particular as an anesthesiologist is it your practice to
11 get patient history before administering drug like
12 propofol

13 That is correct

14 Why would you need to do that

15 Because you want to know the medical condition
16 because in certain conditions it may not be the right
17 recommendation to use

18 Is it potentially dangerous for patient to
19 administer drug without getting that history

20 THE COURT Yes, your doctor

BY MS. WECKERLY

22 For the doctor to administer

23 It is dangerous it could be dangerous in either
24 way whether or not you take history when sometimes you take
25 history you do everything is still dangerous

Okay But do you take the do you take the
histories to mean at least to the extent you can avoid the
type of problem

To minimize the possibility yeah sure You
can take some extra precautions You we can decide which
particular agent should we use Like for example if
somebody has bad hearing then there are other agents which are
preferred over propofol So that history basically makes you
think okay what would be the best agent for this particular
patient and some extra monitoring and all that

Okay When you've administered propofol
assume you've done it with like needle and syringe

Yeah

Have you ever reused syringe while

administering propofol

It's the same patient or different patient

Same patient first

It is possible yes yeah yeah sure patient
yeah sure

Yes and you have one patient and one vial
of propofol you can administer it go back into the propofol
and administer it

Put it in the same patient yeah no problem

Okay What if it's different patient Could

you ever use the syringe

No

on different patient

No

Wbt if you remove the neeole

Doesnt matter V0j once you use

particular medication it doesnt rater if **its** propofol or
what but you used it an partlcilar paffent then you just
dont want to use **it** **Its** like considered cort0minated

And is that soie secret bit of knowledge you

10 have or is frat pretty we known

11 You just **thats** us like standard kind of

12 practice dont know

13 Is that the standard of care

14 Yes

15 And whats the standard of care mean to you

16 What the way you are you bascally

17 observe and bec0use remember **WS** **first** obviously

18 did my training in anesThesia pain and **all tnat** and then

19 was in teachng instffute for alrrost eight years before

20 coming here So **thats** the way we are trainIno the iesidens

21 and fellows and **all that** So stcindard of care **its** like

22 **dont** know how to oefine but the whatever you learn from

23 your your teachers and then you practice and what youve

24 learned from your other colleagues like how to do certain

25 thing

EXHIBIT "A"
NEVADA RULES OF CIVIL PROCEDURE

Rule 45

(c) *Protection of persons subject to subpoena.*

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2) (A) A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

(B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3) (A) On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it

- (i) fails to allow reasonable time for compliance;
- (ii) requires a person who is not a party or an officer of a party to travel to a place more than 100 miles from the place where that person resides, is employed or regularly transacts business in person, except that such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held, or
- (iii) requires disclosure of privileged or other protected matter and no exception or waiver applies, or

- (iv) subjects a person to undue burden.

(B) If a subpoena

- (i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or
 - (ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party,
- the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

(d) *Duties in responding to subpoena.*

(1) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(2) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

Having h0vIno said chat hao gnd jury one
like dont know two Three ve ago

Yes

bu in tllt Cc50 gave the exmle of
pentotha we used to use bellre prcuofol

Sure

And useo tc Sic borte rot vial and
we you know used use t-t multiple times where the
without any problems Tllt wGs tne stanoard cdre mall then

10 And wds tTh because you would predrc.w all of

11 the this tne druo out in syllnges before you

12 administered it on pallent

13 ThOt is correct We will take fill up

14 like for examole if h0ve five cases in my room in that

15 day fill fill up five syrinoes from that bottle and take five

16 syringes to my room

17 Right

18 or like two tmee initially nd then come

19 back and take two more or fill up two more and take it back to

20 the room

21 Rllht Becdus d5 long as youre not going back

22 in to the the vial with

23 Dirty yes

24 with the neeole and syringe youve used on

25 patient it there shou dnt be contamination llght

That is correct

Ok0y So if you have bic vial of the
cehication you could draw 10 syringes out of it as long as
yrure not come to the patient in between is that fair

Th0t is correct

Okcy Sw you go to the patient and then no
uck tc The vial and then use that vial on scbsequent
paiew tneres risk of contamination

Sure

10 Is doing something like that anything youve
11 ever observec your years of practice

Doing wha Im sorry

Have you ever observed anyone administer
14 piwpopofol no back into The vial to give the fitst patient an
15 additional dose of propofol and then use that vial on the next
16 patien

17 No have never seen that

19 If you saw somethng like that would would
19 that cause you conern

zQ Indeed it would

Big concern or

Obviously thats if Im supervision will
23 say dont ise dont care what somebody else does but
24 not in front of my eyes

25 Thank you

MS ECIKERJY **II** pass the wioress

THE COURT **All rioht Ms Stanish**

CROSS EXANINATION

BY MS STANISH

Good mo **nino Dr Searma**

Good mornino **rra0m**

My names Mdrqaret Stanish ropresent **Dr**

Desai

Hi

10 **Im** goino to jump around **bt** beacause want to

11 **hit** oertain areas of your testimony **If** you **dont** understand

12 my **gneston** just say **dont** understand your **gnestion**

13 **Sure**

14 As understand **it** you oame here the year

15 2006 to establisri **praotoe** is that oorreet

16 That is oorreet

17 And as unoerstand your **tesimory** you ended up

18 doing **W0** different **thugs** One was you openeo **oor** own solo

i9 **praotioe** and the other one was work ng for **Or Chen**

20 For the mos **part yes** Sometrnes **will** get

ii some **irdvdua** oall from people knew or soretmes they may

22 not know me but for the most **part yes**

Al Thank you **Id** like you to eduodte us **bit**

24 more about how you got started here in Las Vegas Let me

25 **first** start with your solo **praotioe**

KARR REPORTNG INC

DEFINITIONS

The following Definitions shall apply herein and to each Request:

1. "All," as used herein means "any and all" and "Any" means "any and all."
2. "And/Or," as used herein, means either disjunctively or conjunctively as necessary to bring within the scope of the Request, all responses that might otherwise be construed to be outside of its scope.
3. "Communication," as used herein, or its plural or any synonym thereof, means any exchange, transmission or receipt (whether as listener, addressee, person called or otherwise) of information, whether such exchange, transmission or receipt be oral, written, electronic or otherwise and includes, without limitation, any meeting, conversation, telephone call, letter, email, telegram and the exchange, transmission, or receipt of any Document of any kind whatsoever.
4. "Concerning" "Concerns" or "Concern," as used herein, all mean concerning, related to, referring to, relying on, describing, memorializing, evidencing, reflecting, touching upon, or constituting in any way. When used to refer to a Document and/or Writing it includes, but is not limited to, all Documents and/or Writings now or previously attached or appended to any Documents and/or Writings called for by a Request.
5. As used herein, the term "documents" means all writings of any kind, including the originals and all nonidentical copies, whether different from the original by reasons of any abstracts, agreements, appointment records, audio recordings (whether transcribed or not), balance sheets, bills, bills of lading, blueprints, books, books of account, bulletins, bylaws, cablegrams, cassettes, catalogues, certificates, charts, charters, checks, circulars, computer printouts, computer programs, computer tapes, contracts, correspondence, data compilations from which information can be obtained or translated through proper devices, data processing cards, data sheets, delivery records, desk calendars, diagrams, diaries, discs, drafts, electronic mail, electric or electronic records or representations, entries, estimates, expense reports, field notes, files, financial analyses, financial statements, forms, graphs, handbooks, income

And ano how did you how long was tha
office located there

About twv yeurs almst

All right Let mc tun tou throuch few
questions Okay Im asunitg wen ycu came rere you had to
first cc to the medical boaru of excirlinars and get certified
to practice medicine state of Nevdda is that currec

That is orect

Did you hdve tr 11 out pdperwork to oo that

10 Im sure yea

11 Okay

12 dcnt temernoer wher die .t hut

13 Okay La yo re0o the paperwork

14 Not really

15 You ust rusteo the hccTd of examiners dnd

16 signed it

17 You cnnu- read every papers honestly speThing

18 Okay

19 ouuohT my house exam rib lot dollar this

20 amny papers could read it Thee was no way In the wuld

21 Were not oont want -o talk about your

22 mortgace right now Id like to talk about your medical

23 practice All right

24 Yes

25 All right Lets talk about your medical

pruritic

Yes

Did you have attorney assist you in
establishing your medical practice

No

did you do it on your own

Ye

10 did on your own Did you talk to other
doctors about establishing your medical practice

No

11 All right So lets go back to the you get

12 verification from the medical board of examiners

Yeah

14 and you went to the business licensing
somewhere in the county to get business license

16 Yes

17 And you filled out paperwork and signed

18 part of for that purpose

19 Yes guess

Did you have to what did you get
incorporated like professional corporation

Yes

23 So you had to deal with the Nevada Secretary of

24 State for that purpose

25 Yes My CPA did all

Okay So you ~~dii~~ have someone helping you ~~ir~~
was your CPA

Yes

Okay So your CPA helped you form ~~te~~ business
entity some kind of corporation

That is correct

All right Did your PA help ~~ycL~~ do any other
part of the business establishment

do not remember

10 All right

11 what did he help with but whatever this
12 license for ~~ths~~ particular corporation establishing
in corporation that he ~~dio~~ that remember

14 Okay So he helped you get the Sec-etary of
15 State paperwork and the business licensing from the county

16 Yes

17 And got to believe you have to have medical
18 malpractice insurance correct

19 Yes

20 And did you make arrangements to have medical
II malpractice insurance

22 Yes

23 And how did you go about doing that

24 do not remember No ~~dio~~ start when did

25 do ~~tte~~ paperwork cant remember

- b) state his or her present or last-known address;
- c) state his or her present or last-known position and business affiliation;
and
- d) describe his or her relationship, if any, to You.

24. "Identify," when used in reference to a corporation, partnership, or entity, means:

- a) state its full name;
- b) state its present or last-known address;
- c) state the names and addresses of its directors, members, officers, directors, executives and/or shareholders, as appropriate;
- d) set forth the state of its incorporation or formation, as appropriate;
- e) describe its relationship, if any, to You; and
- f) provide specific references to any and all contracts You had or have with the entity.

25. "Identify," when used in reference to a Document and/or Writing, means to:

- a) state the date of preparation, author, title (if any), subject matter, number of pages, and type of Document and/or Writing (e.g., contract, letter, reports, etc.) or some other means of distinguishing the Document and/or Writing;
- b) Identify each and every Person who prepared or participated in the preparation of the Document and/or Writing;
- c) Identify each and every Person who received an original or copy of the Document and/or Writing;
- d) state the present location of the Document and/or Writing;
- e) Identify each and every Person having custody or control of the Document and/or Writing;
- f) state whether any copy of the Document and/or Writing is not identical to the original by reason of shorthand, translation or other written notes, initials, or any other modifications;
- g) state, if the Document and/or Writing has been destroyed, the circumstances surrounding the reason for the destruction; and
- h) Identify, if the Document and/or Writing has been destroyed, each and every Person who destroyed, or participated in, or ordered or suggested the destruction of it.

26. Unless otherwise indicated, each request calls for any and all documents created or dated on or after January 1, 2014, including all communications by, between, among, to or

Well there was theres still here he
is still here theres ene 9r annu He has his
offices there and jus sunleasee free fin think just
don remember one half oay week tflnk remember
correcily or it could be two hys week So it was his
office would ust pa him
see You silescd fern hm rented space
within hs office

No subleased crcr fri
10 Okay Die ioi Ve to sier ccatract for that
11 dont rememeer Drobabl7 eyhe not
12 Maybe not
13 Because iritiall It was cou be in just
14 good faith or could be if slnned tfa Is possible
15 Maybe did but dont remembe
16 Okay Your Insrnre company probably wdnted to
17 know wiere you were operatinc cut foil
18 Yeah
19 Die you relocate 703 office after couple of
20 years
21 Yes die
22 And where dld you relocate to
23 To think it was 5990 South Rainbow
/4 And was that describe that office space for
25 us

Thdt as complete office rented that space
and ream bar doing paperwork for that

Lots of paperwork

las

For like what

BQsially whatever the standard lese papers
know

And you had to damin do some courty paperok to
show tte ccjrtv where you were relccatinc

10 Usually office girls do that was not

11 acDively involved again just

12 how many employees did you have at that

13 loca

14 would gress rour at that point

15 So you grew over the two years

16 Correct

17 Good tlow were you doing pain management at

18 ftis lccat_c

19 was doing like when you say pcn managemear

20 rredns yes t Fort Apache ccction also was doing pain

21 iranagement sc yeah It was basically the rame was

22 was pan clinic

23 Okay And when you were out when you had

24 these cJUncs whether it was cn Fort Apache or in the larger

facility assume it was larger facility you

Yes

did you have to have office of file
equipment

Yes bought that arm late

You ought what didn't understand

An ray machine its calico arm
arm like this rm

Its like and yes its like arm That is
correct absolutely

10 And so you purchased arm which is fairly
11 expensive piece of equipment correct

12 That is correct

13 Did you have to purchase other medical
14 equipment

15 Yeah Table and the other two expensive one and
16 the like needles and stuff yes

17 Did you have any involvement purchasing those
18 large pieces of equipment

19 Yes was involved

20 It wasn't just one of your office persons
21 girls women whatever

22 No Actually it was was in all these
23 purchasing it is the price that matters So was discussing
24 the price factor Once that is discussed then do not know

25 Im sure at some point you know signed the papers

drafts of the letter and responses thereto, as well as emails transmitting such documents and communications relating to the letter.

18. All documents relating to the agenda for the Meeting, including any communications relating to the agenda to the extent concerning Ratification.

19. All communications with any RDI director relating to the Meeting, including any emails from EC and or MC to any RDI director transmitting, referencing, and/or discussing any written board materials in advance of the Meeting to the extent concerning Ratification.

20. All documents referring to, discussing, analyzing or relating to the disinterestedness or independence of Adams as a Director of RDI.

patients at Rainbow location and then subleased in Henderson also

Okay So **ddrt** realize **thOt** Thank you for clarifying **it** You had both the Rdlnhew **lity** well as the Henderson **facility**

Correct

You would go oack cOd between the two

Yes Two half cays vs **nnc**

Henderson

10 Rh huh

11 and then most of the time was at the

12 Roimbow **office**

13 Did you **WOR** with another orctor dt **eithe** of those locations

15 Not way Toe other **looion** **it** Henderson

16 **hes** cardiologist so was sublesine **fort** him so he was there in tee **office** **bu** was not woikro wth him

18 **All right** So you tented **sce** Henderson from **crdio1ogist**

20 That is correct

21 THE COURT Dio you use his own **srafr** there ot did you bring in **staff** to Henderson

23 THE WITNESS My had my owe **stft**

24 THE COURT Okay

25 BY MS 5TARI5H

Did you have to bring in your own equipment
medical equipment

No Equipment is required to see the patients
in Henderson was simply seeing the patient If was
studies the procedure then they have to come to the Rainbow
office

So Henderson was just having
location or the assume the purpose of expanding your
business in to Henderson to take it convenient for patients to
visit with you in Henderson correct

That is correct

So it is just consultation office

That is correct

And then They would come to the other side of
town for the procedure itself

That is correct For most part again because

That's the other part

Because certain procedures can be done

like very minor procedures what we call trigger point

injections or like for example knee joint injection they

can be done without the ray help So Those once in

blue room will do those procedures in there but that's not

the major part of the practice

All right And how many staff did you employ at

the Henderson location

did not employ those hose the staff was
going with re if like from Rainbow for example it
Wednesday afternoon so Wednesday morning we were working
the Rainbow office and then the Jensen office will start at
100 So about 1230 well the staff would arrive and
would arrive

And assume you also had arrange for the
various insurance providers who would cover your patients you
know Blue Cross you know whatever the health care plans
10 are you accepted insurance from your patients for your
11 services

12 Sure

13 And did that involve you getting making
14 applications to various insurance companies for that purpose

15 Sure

16 Aside from pain management did you do any other
17 kind of anesthesia service in the in connection with your
18 solo practice or was that done connection with Dr Eugene
19 Chen

20 As said earlier it was initially it was with
21 Eugene Chen and then at times might be providing
22 anesthesia without involvement of Eugene Chen

23 All right Let me break that down because
24 want to make sure understand what your experience is When
25 you worked with Dr Chen he was an anesthesiologist correct

1 **THE STATE OF NEVADA TO: DOUGLAS McEACHERN**

2 c/o Christopher Tayback, Esq. and Marshall M. Searcy, Esq.
3 QUINN EMANUEL URQUHART & SULLIVAN, LLP
4 865 South Figueroa Street, 10th Floor
5 Los Angeles, CA 90017

6 **YOU ARE ORDERED**, pursuant to NRCP 45, to produce and permit
7 inspection and copying of the books, documents, or tangible things set forth
8 in **Exhibit B** hereto that are in your possession, custody, or control. The
9 requested documents shall be produced on or before January 31, 2018 to
10 MORRIS LAW GROUP, 411 E. Bonneville Ave., Ste. 360, Las Vegas, Nevada
11 89101. All documents shall be produced as they are kept in the usual course
12 of business or shall be organized and labeled to correspond with the
13 categories listed. NRCP 45(d)(1).

14 **CONTEMPT:** Failure by any person without adequate excuse to obey
15 a subpoena served upon that person may be deemed a contempt of the
16 court, NRCP 45(e), punishable by a fine not exceeding \$500 and
17 imprisonment not exceeding 25 days, NRS 22.100. Additionally, a witness
18 disobeying a subpoena shall forfeit to the aggrieved party \$100 and all
19 damages sustained as a result of the failure to attend, and a warrant may
20 issue for the witness' arrest. NRS 50.195, 50.205, and 22.100(3).

21 Please see **Exhibit A** for information regarding your rights and
22 responsibilities relating to this Subpoena.

23 (This Subpoena must be signed by the Clerk of the Court or an attorney.)

24 Steven D. Grierson, CLERK OF THE COURT

25
26 By: _____ (Signature)
27 Deputy Clerk Date:

28 Or

IN THE SUPREME COURT OF THE STATE OF NEVADA

Electronically Filed
Sep 02 2014 09:02 a.m.
Tracie K. Lindeman
Clerk of Supreme Court

DIPAK KANTILAL DESAI,)
)
Appellant,)
)
vs.)
)
THE STATE OF NEVADA,)
)
Respondent.)
_____)

CASE NO. 64591

APPELLANT'S APPENDIX VOLUME 9

FRANNY A. FORSMAN, ESQ.
Nevada BarNo. 000014
P.O. Box 43401
Las Vegas, Nevada 89116
(702) 501-8728

RICHARD A. WRIGHT, ESQ.
Nevada BarNo. 000886
WRIGHT, STANISH & MNICKLER
300 S. Fourth Street, Suite 701
Las Vegas, Nevada 89101

Attorneys for Appellant

STEVEN S. OWENS
Chief Deputy District Attorney
Nevada BarNo. 004352
200 Lewis Avenue
Las Vegas, Nevada 89155
(702) 671-2750
Attorney for Respondent

INDEX TO APPENDIX VOLUMES 1 through 41

<u>DOCUMENT</u>	<u>VOL.</u>	<u>PAGE(S)</u>
Indictment	1	000001-000042
Amended Indictment	1	000043-000084
Court Minutes 7/21/10	1	000085
Court Minutes 2/08/11	1	000086
Finding of Competency	1	000087-000090
Reorder's Transcript - Hearing: Video Deposition Tuesday, March 20, 2012	1	000091-000129
Indictment (C-12-283381 - Consolidated Case)	1	000130-000133
Second Amended Indictment	1	000134-000176
Third Amended Indictment	1	000177-000212
Defendant Desai's Motion and Notice of Motion for Competency Evaluation	1	000213-000229
Reorder's Transcript - Hearing Re: Defendant Desai's Motion for Competency Evaluation Status Check Experts/Trial Readiness (All) Tuesday, January 8, 2013	1	000230-000248
Fourth Amended Indictment	2	000249-000284
Notice of Motion and Motion to Use Reported Testimony	2	000285-000413
Reporter's Transcript Re: Status Check Experts (All) Thursday, March 7, 2013	2	000414-000440

<u>DOCUMENT</u>	<u>VOL.</u>	<u>PAGE(S)</u>
Defendant Desai's Opposition to State's Motion to Admit Foreign Documents Relating to Rodolfo Meana	2	000441-000445
Order	2	000446-000449
Court Minutes 3/21/13	2	000450
Defendant Desai's Opposition to State's Motion to Use Reported Testimony	2	000451-000454
Court Minutes 3/26/13	2	000455
Independent Medical Evaluation, 4/14/13 Filed Under Seal - Separately	2	000456
Reporter's Transcript - Calendar Call (All) State's Motion to Admit Evidence of Other Crimes Tuesday, April 16, 2013	2	000457-000497
Fifth Amended Indictment	3	000498-000533
Reporter's Transcript - Jury Trial Day 7 Friday, May 3, 2013	3	000534-000622
Reporter's Transcript - Jury Trial Day 8 Monday, May 6, 2013	3 & 4	000623-000773
Reporter's Transcript - Jury Trial Day 9 Tuesday, May 7, 2013	4 & 5	000774-001016
Reporter's Transcript - Jury Trial Day 10 Wednesday, May 8, 2013	5	001017-001237
Reporter's Transcript - Jury Trial Day 11 Thursday, May 9, 2013	6 & 7	001238-001517

<u>DOCUMENT</u>	<u>VOL.</u>	<u>PAGE(S)</u>
Reporter's Transcript - Jury Trial Day 12 Friday, May 10, 2013	7 & 8	001518-001784
Reporter's Transcript - Jury Trial Day 13 Monday, May 13, 2013	8 & 9	001785-002061
Reporter's Transcript - Jury Trial Day 14 Tuesday, May 14, 2013	9 & 10	002062-00
Reporter's Transcript - Jury Trial Day 15 Wednesday, May 15, 2013	10 & 11	002303-002494
Reporter's Transcript - Jury Trial Day 16 Thursday, May 16, 2013	11 & 12	002495-002713
Reporter's Transcript - Jury Trial Day 17 Friday, May 17, 2013	12 & 13	002714-002984
Reporter's Transcript - Jury Trial Day 18 Monday, May 20, 2013	13 & 14	002985-003247
Reporter's Transcript - Jury Trial Day 19 Tuesday, May 21, 2013	14 & 15	003248-3565
Reporter's Transcript - Jury Trial Day 20 Wednesday, May 22, 2013	15 & 16	003566-003823
Reporter's Transcript - Jury Trial Day 21 Thursday, May 23, 2013	16 & 17	003824-004014
Reporter's Transcript - Jury Trial Day 22 Friday, May 24, 2013	17	004015-004185
Reporter's Transcript - Jury Trial Day 23 Tuesday, May 28, 2013	18	004186-004384

<u>DOCUMENT</u>	<u>VOL.</u>	<u>PAGE(S)</u>
Reporter's Transcript - Jury Trial Day 24 Perocelli Hearing Wednesday, May 29, 2013	19	004385-004510
Reporter's Transcript - Jury Trial Day 24 Afternoon Session Wednesday, May 29, 2013	20	004511-004735
Reporter's Transcript - Jury Trial Day 25 Thursday, May 30, 2013	21	004736-004958
Reporter's Transcript - Jury Trial Day 26 Friday, May 31, 2013	22	004959-005126
Reporter's Transcript - Jury Trial Day 27 Friday, June 3, 2013	22 & 23	005127-005336
State's Exhibit 18 - Meana Death Certificate Admitted 6/3/13	23	005337-005345
Reporter's Transcript - Jury Trial Day 28 Tuesday, June 4, 2013	23 & 24	005346-005611
Reporter's Transcript - Jury Trial Day 29 Wednesday, June 5, 2013	24 & 25	005612-005885
Reporter's Transcript - Jury Trial Day 30 Thursday, June 6, 2013	25 & 26	005886-006148
Reporter's Transcript - Jury Trial Day 31 Friday, June 7, 2013	27 & 28	006149-006430
Reporter's Transcript - Jury Trial Day 32 Monday, June 10, 2013	28	006431-006641
Reporter's Transcript - Jury Trial Day 33 Tuesday, June 11, 2013	29 & 30	006642-006910

<u>DOCUMENT</u>	<u>VOL.</u>	<u>PAGE(S)</u>
Reporter's Transcript - Jury Trial Day 34 Wednesday, June 12, 2013	30 & 31	006911-007143
Reporter's Transcript - Jury Trial Day 35 Thursday, June 13, 2013	31	007144-007382
Reporter's Transcript - Jury Trial Day 36 Friday, June 14, 2013	32	007383-007619
Reporter's Transcript - Jury Trial Day 37 Monday, June 17, 2013	33	007620-007827
State's Exhibit 228 - Table 20-1 - Modes of Transmission and Sources of Infection Considered Admitted 7/17/13	33	007828
Reporter's Transcript - Jury Trial Day 38 Tuesday, June 18, 2013	34	007829-008038
Reporter's Transcript - Jury Trial Day 39 Wednesday, June 19, 2013	35	008039-008113
Reporter's Transcript - Jury Trial Day 40 Thursday, June 20, 2013	35 & 36	008114-008361
Reporter's Transcript - Jury Trial Day 41 Friday, June 21, 2013	36 & 37	008362-008537
Reporter's Transcript - Jury Trial Day 42 Monday, June 24, 2013	37 & 38	008538-008797
Reporter's Transcript - Jury Trial Day 43 Tuesday, June 25, 2013	38	008798-009017
Reporter's Transcript - Jury Trial Day 44 Wednesday, June 26, 2013	39	009018-009220

<u>DOCUMENT</u>	<u>VOL.</u>	<u>PAGE(S)</u>
Reporter's Transcript - Jury Trial Day 45 Wednesday, June 27, 2013	39 & 40	009221-009473
Defendant's Proposed Instruction No. 2	41	009474-009475
Defendant's Proposed Instruction No. 3	41	009476
Defendant's Proposed Instruction No. 4	41	009477
Defendant's Proposed Instruction No. 5	41	009478
Instructions to the Jury	41	009479-009551
Verdict	41	009552-009559
Reporter's Transcript - Sentencing Hearing Thursday, October 24, 2013	41	009560-009583
Judgment of Conviction	41	009584-009589
Amended Judgment of Conviction	41	009590-009595
Notice of Appeal	41	009596-009600

And then **od** some when **dd** your nusbaxid **oir**
you

It would have been sometime **after** oame out of
the **dressiq** room honestly **dont** remember even how
exouse me he qot from from the front **off** oe to where
was but assume **either** wert and got Yin or they brought
hm ou- baok beoause we wa Ked out the book way we walked ou
the backooor

And but before walking out **yo** visited **lth**
10 the disoharge nurse

11 Yes

12 And you desor bed to her how you **felt like** you
13 had **layngitls** and she oave you instruotions **or after** **oxe**

14 Yes Well **aotualy** **didnt** say anything to
15 her about the **aryngitis** beoause thought **it** was **ust** beoause
16 honestly **didnt** know why had **soratoY** **voioe** just
17 though- maybe snored **really loud** **dont** know you know
18 But **It** went on for weeks **it** **oidnt** just **erd** you know the
19 next **day** went on for weeks

20 And when went book to the doomor to her
21 said Yin **laryngitis** **salo** **didnt** have sore throOt bun
22 had **laryngitls** And she said **well** sometimes when you go
23 througY these prooedures your immune systems are are are
24 weak so you tend to get **oolo** **didnt** have **oold** **it** was
25 just my **voloe** just **didnt** Yave one So wasnt

DEFINITIONS

The following Definitions shall apply herein and to each Request:

1. "All," as used herein means "any and all" and "Any" means "any and all."
2. "And/Or," as used herein, means either disjunctively or conjunctively as necessary to bring within the scope of the Request, all responses that might otherwise be construed to be outside of its scope.
3. "Communication," as used herein, or its plural or any synonym thereof, means any exchange, transmission or receipt (whether as listener, addressee, person called or otherwise) of information, whether such exchange, transmission or receipt be oral, written, electronic or otherwise and includes, without limitation, any meeting, conversation, telephone call, letter, email, telegram and the exchange, transmission, or receipt of any Document of any kind whatsoever.
4. "Concerning" "Concerns" or "Concern," as used herein, all mean concerning, related to, referring to, relying on, describing, memorializing, evidencing, reflecting, touching upon, or constituting in any way. When used to refer to a Document and/or Writing it includes, but is not limited to, all Documents and/or Writings now or previously attached or appended to any Documents and/or Writings called for by a Request.
5. As used herein, the term "documents" means all writings of any kind, including the originals and all nonidentical copies, whether different from the original by reasons of any abstracts, agreements, appointment records, audio recordings (whether transcribed or not), balance sheets, bills, bills of lading, blueprints, books, books of account, bulletins, bylaws, cablegrams, cassettes, catalogues, certificates, charts, charters, checks, circulars, computer printouts, computer programs, computer tapes, contracts, correspondence, data compilations from which information can be obtained or translated through proper devices, data processing cards, data sheets, delivery records, desk calendars, diagrams, diaries, discs, drafts, electronic mail, electric or electronic records or representations, entries, estimates, expense reports, field notes, files, financial analyses, financial statements, forms, graphs, handbooks, income

what The joke was now

He didnt think it was funr7 Jn laugh

No he diunt laugh AThual ne never even
turned aroono and looked at me Sc thoucro was kind of
ood because you know Im aying here or The ned cFO the
nurse was over here and he was standing ere wTh Th Thk
me and saio something and he he dior cchino he
didnt turn towards me dont even never ee savl his
face

10 And then once you were out you Dont have much
11 recollection of what happened thereafter

No

13 All right At some point in tie 010
14 retain an Ottorney to represent you in civil lit oation

did bu wasnt until Ofter been in
16 touch with tre CDC

17 And so that would h0ve beer anoerstand
your testimcry maam few cays before Precicents Day when
the CDC contacted you you thereafter re aned an attorney

z0 Yes

11 And can you tell us anproximately how many days
z2 after gettino the notificator from the CDC how long
z3 thereafter was it before you fired an attorney

z4 Maybe week week and half

25 Did you change attorneys a4 any time

Yeb

Ano when oio that OCCUR

thick An was maybe foux months after we hired

Ahab tiat we crt ro Eli vare Yorrison's off ce

Sc SAn 1are Morison represented you four

months afte CC if ic ion

eAnh

CO who w0s rour first attorney

AlAn Omac think was his name

10 DAly Ano oid you eventually reach settlements

11 in the litgaton

12 ie

13 Ano ou tell us who the deferidnt well

14 let me ask you tDs Did you receive settlement

15 Ye

16 Ano would you descAnbe for us the settlement

17 the mories tHat you e-eived

18 We eceived iOU 000 from tle medicOI and

19 1m sorri Weer you say rnedcOI do you mean

20 the clinc

21 Im sorry Teat was from the the doctors

22 Okoy

23 And 2.6 million from the pharmoceutical

24 Do you know what pharmaceutical that WAS

25 know one was Teva

Is that the manufacturer of the propofol

Yes

Anybody else

dont recall the other the other ones

Were there other ones

think there was one other one with that but

dont recall

Was there priarracist

dont think so

Are you ourrently waiting on any other

settlement

Yes one more from our I-THIO

Im sorry

14 From our HMO

15 You have Blue Cross and Blue Shield or wha

who is who were your insurance oompanies

actually have UnitedHealthcare and Blue Cross

Blue Shie

And so when you say HMO youre ta king aut

20 UnitedFealthcare

21 Yes

// MS STANISH Courts indulgence

20 THE COURT Okay

24 MS STANISH Nothnc further flank you Your

25 Honor

- b) state his or her present or last-known address;
- c) state his or her present or last-known position and business affiliation;
and
- d) describe his or her relationship, if any, to You.

24. "Identify," when used in reference to a corporation, partnership, or entity, means:

- a) state its full name;
- b) state its present or last-known address;
- c) state the names and addresses of its directors, members, officers, directors, executives and/or shareholders, as appropriate;
- d) set forth the state of its incorporation or formation, as appropriate;
- e) describe its relationship, if any, to You; and
- f) provide specific references to any and all contracts You had or have with the entity.

25. "Identify," when used in reference to a Document and/or Writing, means to:

- a) state the date of preparation, author, title (if any), subject matter, number of pages, and type of Document and/or Writing (e.g., contract, letter, reports, etc.) or some other means of distinguishing the Document and/or Writing;
- b) Identify each and every Person who prepared or participated in the preparation of the Document and/or Writing;
- c) Identify each and every Person who received an original or copy of the Document and/or Writing;
- d) state the present location of the Document and/or Writing;
- e) Identify each and every Person having custody or control of the Document and/or Writing;
- f) state whether any copy of the Document and/or Writing is not identical to the original by reason of shorthand, translation or other written notes, initials, or any other modifications;
- g) state, if the Document and/or Writing has been destroyed, the circumstances surrounding the reason for the destruction; and
- h) Identify, if the Document and/or Writing has been destroyed, each and every Person who destroyed, or participated in, or ordered or suggested the destruction of it.

26. Unless otherwise indicated, each request calls for any and all documents created or dated on or after January 1, 2014, including all communications by, between, among, to or

ust through my settlements things that
disusseo

Okay because when you you gave cO interview
to Deteeve Whitely oorreet is that yes

Yes

Okdy Ana that interview you described it as
shot ike thing Do ou remember that

No

Okdy That snot ike thino Iri assuming wcs
10 the hep ook you were referring to

11 Yes

1/ is tha oorreet

LI think so

And believe you testifieo thOt you didnt
aucJly watch tine nurse put the hep lock cor ect

16 Right

17 And that was female nurse thOt dd that

18 Yes

And believe you testifiec that thLI and
z0 coriec me if wrong this is my recollection that it

z1 diant rail off so they must have put tape on it correctf

z2 Correct

23 So you dicnt actually see them put tape on

/4 right

25 No

So **its** fair to say that you **didnt** watch any of
 that procedure where the hep lock went in and they taped **it**
 Oust felt **it**
 just felt **it** correct
 Right
 The times that you mentioned when you got there
 and when you **left** how how **ii** you do-ermine those times
 looked at my **watch** was very concerned
 about my husband being to work on **time** So when they took me
 10 in happened to look my watch and then when we **left**
 11 said youve got **its its** 10 after 12 youre already
 12 late for work And he **stdl** tad to hake me home So was
 13 was really **pyino** attention to the time fraxre so he wouldnt
 14 get in trouble
 15 Okay Do you rememOer in the interview with
 16 Detective Whitely believe you **tesified** that you were in
 17 the recovery room for between 15 and 20 minutes correct Do
 18 you remember **that**
 19 No
 20 Do you member that you told Detective Whitely
 21 that after you were in the recovery room for amOut 15 or 20
 22 minutes you **left** and **it** was anout 1200
 23 No dont remember that
 24 SANTADROCE have no further questions Thank
 25 you

IdE COURT Any redirect

REDIRECT EXAMINATION

BY MR STAUDAHER

ust so Im c1er ycu went were taken back

REu minutes te 12

About seen te rerall 20 mintes to 12

Twenty minutes to 12 okay And so 20 minutes

ano then ten minu-es miter 12 is when you were walkino

cu of there

Yes

ii

Thirty minutes total

Yes

MR STAUDAHER Nothino further Your Eono

TEE COURT Any recross

RE

MR SANTAfiROCE Yes

RECROSS EXAMINATION

BY MR SANIACROCE

When you cot into toe procedure room were you

hooked up to rn/chine

z0

nave no idec

/1

So you dont reca

z2

was jus my cxms were out like this

ii

Thats thats all remember

24

But you could have been you just dont

RE

remember

KARL REPORT NO INC

209

001993

drafts of the letter and responses thereto, as well as emails transmitting such documents and communications relating to the letter.

18. All documents relating to the agenda for the Meeting, including any communications relating to the agenda to the extent concerning Ratification.

19. All communications with any RDI director relating to the Meeting, including any emails from EC and or MC to any RDI director transmitting, referencing, and/or discussing any written board materials in advance of the Meeting to the extent concerning Ratification.

20. All documents referring to, discussing, analyzing or relating to the disinterestedness or independence of Adams as a Director of RDI.

take break until about 315 During the break you're
reminded that you're not to discuss the case or anything
relating to the case with each other or with anyone else
You're not to read watch or listen to reports of
commentaries on this case any person or subject matter
relating to the case Don't do any independent research
please don't form or express an opinion on the trial
Notepads in your chairs and show the bailiff the door
rear door

10 Jury recessed at 302 p.m

11 THE COURT Who's next

12 MS STANISLAO R. RERRERO Dr. Herrero

13 MR. STAUDAHER And this is actually the best witness

14 in this case

15 Court recessed at 302 p.m until 313 p.m

16 Inside the presence of the jury

17 THE COURT Court now back is session The State

18 may call its next witness

19 MR. STAUDAHER Staudaher calls Dr. Rerrero to the

20 stand Your honor

21 CARMELO HERRERO STATES WITNESS SWORN

22 THE CLERK Please be seated Sir would you please

23 state and spell your name

24 THE WITNESS Carmelo last name

25 Herrero

THE COURT Thank you Mr. Staudaher

MR. SAUDAHER Thank you, Your Honor

DIRECT EXAMINATION

BY MR. STAUDAHER

Or Herrero, what do you do for Ivino?

I'm a gastroenterologist.

How long have you done that work?

I've been practicing for years.

Can you tell us a little bit about your

10 background and training that led you up to that

11 did my medical school in Puerto Rico, Ponce

12 School of Medicine. Did my residency in internal medicine at

13 Hahnemann University in Philadelphia. Subsequently did

14 gastroenterology fellowship at the same university in

15 Philadelphia.

16 Where did you go after that?

17 Moved to Las Vegas in 1998.

18 1998.

19 98.

20 Is this the place you practiced since that time?

21 That is correct.

22 So stayed in town the whole period between then

23 and now.

24 Correct.

25 Did you ever work? Well, tell us the places.

you've worked **ton**

From 1998 to 2007 was part of the
Gastroenterology Center of Nevada

Now since or during that window of time did
you work in the same location all the time or did you vary in
the different clinics and centers

Multiple locations

Yes, did you work

Worked at clinic in Henderson Horizon Ridge
10 Worked out of clinic at Burnham Avenue Worked out of
11 clinics with University Medical Center At some point also
12 worked out of clinic for the Veterans Administration And
13 then numerous hospitals the city

14 Did you ever work at Shadow Lane

15 Yes, did

16 So you worked at many of the associated clinics
17 of the endoscopy centers

18 Correct

19 Do you know an individual by the name of Dipak
20 Desai

21 I do

22 Do you see him in court today

23 Yes, do

24 Would you point to him and describe something
25 that he's wearing for the record please

In The Matter Of:
James Cotter -v- Margaret Cotter, et al.

Volume 3, William Gould
April 5, 2018
ROUGH DRAFT

Lori Byrd, Court Reporter
RPR, CRR, CLR, CA-CSR 13023, KS-CCR 1681, OK-CSR 1981
Realtime Systems Administrator
E-mail Lori@ByrdReporting.com
Cell 202-422-8810

Original File 040518-(LitService)-Gould-Vol.3-ROUGH-DRAFT.txt

Min-U-Script® with Word Index

Was he or were you ever party to various
meetings and so forth partnership meetings where Dr Dear
was present

Please ask the question again

Were you party to did you attend membership or
sort of meetings where all the different partners got together
and discuss the practice what's going to happen things like
that

Yes did

10 Was there ever votes on how things would happen
11 or was there sort of direction as to how he wanted things to
12 be done

13 More of direction It was not necessarily
14 process or vote It was more of an information session of
15 the things that were transpiring in the practice and the
16 things they were going to do

17 Did you have any say in the practice

18 Day to day operations no would express
19 opinions on particular issues every once and then like
20 everybody else in the practice

21 So what was his role mean know you say
22 that he's the head of the practice he makes the decisions
23 but what kinds of decisions is he making

24 For the most part everything that has to do
25 with operations which offices get opened which clinics get

opened when to hire new physicians what expand to new
hospitals how to negotiate contracts for the practice
Anything that had to do with the business aspects of the
practice he was in charge

What about the CRNA's

So

So he was in charge then

He was in charge of hiring the RNAs and yes

You said hiring is that the only thing he did

10 was just hire them and then they were on their own

11 Well there's process that have become aware

12 of since then which provides

13 Let's wait for just a second

14 Yes

15 don't want to talk about things I've become

16 aware of since then I'm talking about the state of affairs

17 when you were back working up to LOG when you stopped

18 working

19 Right

20 So what was your knowledge of interaction

21 with the CRNA's at that point

22 He will be basically dictating how the work will

23 take place throughout the day

24 Anything else

25 Specifically not that can think of mean

just gone!

Now were you aware that there was billing for
the CRINAs?

Do you participate in getting reimbursed for
CRNA or

No

So you didn't get any part of that

There was never direct payment from that. My
undersigned, how the process worked was that reimbursements
from the CRNAs fees, anesthesia fees and professional fees were
going forward and that will get distributed among all the
partners depending on the interest the partners had.

Did you ever become aware at any point that
there was specific pool of money set aside for the CPNA
billing and that that was divided up?

Afterward, After left the practice

And you can just so were clear you didn't
participate or get any payments from that fund. You didn't
get disbursements from the CPNA pool of money.

There was no direct payment coming from the CPNA
money. Like said it was distribution based on the
reimbursements for the endoscopy centers.

So are you then practice as really partner
or an independent contractor? mean how would you describe

Page 29

1 A. I don't think I gave her much of an
2 explanation.
3 Q. Did she ask any questions?
4 A. I can't --
5 MS. BANNETT: Objection to the extent that
6 it would call for attorney-client privilege.
7 MR. KRUM: Let me be clear. And I trust
8 that Mr. Gould understands this.
9 MS. BANNETT: Yeah.
10 MR. KRUM: I'm not asking, in any question,
11 for you to disclose the substance of any legal
12 advice, the words any lawyer said, questions that
13 anybody asked to a lawyer seeking advice or anything
14 that you would understand to be privileged.
15 And if you have any questions about that,
16 Mr. Gould, you can ask me to clarify, or you can
17 have a sidebar with Ms. Bennett.
18 Does that work?
19 MS. BANNETT: Yes.
20 THE WITNESS: That's fine.
21 BY MR. KRUM:
22 Q. Okay. So I don't see the answer. It said
23 "I can't".
24 My question was did she ask any questions?
25 A. I started to say, I just can't remember if

Page 30

1 she asked questions during that meeting. I believe
2 she did but I can't remember what they are, what
3 they were.
4 Q. How long before you transmitted to her
5 whatever document you sent, or had sent, was this
6 call? As best you can recall?
7 A. I'm going to give it a range of maybe four
8 or five days to a week and a half.
9 Q. Now, the next question is intended to make
10 this easier for you and me to not be asking about
11 your personal life.
12 Did you travel over the year-end holidays?
13 A. No.
14 Q. Well, that doesn't help, then.
15 Two prior witnesses did and said they were
16 in different places and it helped them place things
17 in time, is why I asked.
18 A. Uh-huh. Uh-huh.
19 Q. So what was the next communication, or
20 action, you had or did with respect to ratification?
21 A. The next action was a meeting of the
22 Special Committee to request that the Board consider
23 the ratification.
24 And we sent that out, after it had been
25 approved, that notice was then sent to Ellen Cotter

Page 31

1 and the company.
2 Q. When was this -- and by the "special
3 Committee" you're referring to you, Mr. Coster and
4 McEachern. Is that it?
5 A. Yes.
6 Q. And was Mr. Bonner there?
7 A. He's on the phone for the Special
8 Committee.
9 Q. The entire meeting?
10 A. Unless we have to meet with him, we have a
11 session in camera, but that's it.
12 Q. When did this Special Committee meeting
13 occur?
14 A. I would have to think it would be the week
15 immediately right around Christmas. Right around
16 that time.
17 Q. Christmas was on Monday. The notice, I
18 think, you're calling it was set on Wednesday, the
19 27th. And the meeting was on Friday, the 29th.
20 Does that chronology sound right?
21 A. That sounds right to me, yes.
22 Q. Okay. With that in mind, can you identify
23 the date of the Special Committee meeting as the
24 week of Christmas? Or the week before?
25 A. I can't identify it with accuracy but it

Page 32

1 was certainly in that range, either the week before
2 or the week of Christmas.
3 MR. KRUM: So I don't know what lawyers
4 should be handling this. I previously asked that
5 the minutes of the Special Committee be produced.
6 So I'll ask it again, and we don't need to
7 talk about whether it's Greenberg Traurig, or
8 whoever else.
9 I just ask that the lawyers at this
10 deposition do what the lawyers didn't, which is
11 follow through and tell me they're going to be
12 produced or they're not.
13 MS. HENDRICKS: Mark, I don't think
14 anybody's made that request to , at least that
15 I've been told. I'll look into it.
16 MR. KRUM: Well, in my view, the documents
17 responsive to our written request requests and it
18 was raised Kara, at a deposition that you did not
19 attend. I think Mark was at that deposition for
20 RDI.
21 All right. So, by the way --
22 MS. BANNETT: I haven't been present at any
23 other depositions --
24 MR. KRUM: That's why I didn't ask you and
25 you're not in the litigation.

1-15 CORT Just woer you were There not later

ThE INESS Anan from the very becinning there
was probab fve or six by the end of the praotioe probably
12

IrE COII-C Ok0 on Mr audaher

Mr SThUEAEER May pproaoh Your honor

I-F CONET rwy

BY MR SNEUDAHER

Snowino yeu wuats been admitted by stipulation
10 as Stares Exhibit 98 aid aso 97 Im cong to ask you about
11 97 first 1-dave you ever seen any kind of organizational chart
12 like tfat mefore in the practice

13 Nc

14 Look ct tTh if you would and tell me if that
15 compors wtr what you Think the organizaton was who
16 repo ted to whom in the prOctice

17 Seers crrate

18 Okay Juno cong to leave this one up here
19 Im going to gve you ew minutes to just flip through that
20 if you woud umd tell rio if OU reognize or fave ever seen
21 that document The tThheo port ons are The things put on
22 there

23 Yes hdve seen this documert

24 What is

25 Its an acreement regardinc the practice for the

endoscopy certums

That was Exhibit You're part of this
agreement correct

Correct

Before get into that in more detail dXit to
shci you 97 ou said his kind of rimtcfes up although you
hivan seen this actual chart you didnt see anythrg tha
wds different other than what you believed it to be COREC
mean the way things were in the practice

Correct

ii Now Im Going to shift up We see that theres
ii large number of people down here sort of clerical stdff
billinc department and the like Do you see that

Yes

As we move back up at the very top is riumaging
16 partner and thats Dipak Desai and everythno flow belmw him
Is tha fair

Yes

19 Now as managino partner what was it your
20 unoe sandino thct he managing partner oid related to this
ii organization that ycu were part of

z2 My understanding was he WAS again in charge of
23 the operations of the practice He would be in charge of
z4 contact negotiations He would be in charge of overseeing
25 distribution of funds He would be in dfrarge of manaoing the

finances of the practice Lie would be in charge of the hiring
of staff and for that matter the firing of staff He would
be the one signing the checks coming out of the practice

Was that part of the practice that he
would deal with specific? In

not limit in the way of

And what role did he take in the
himself to the level of maybe supplies ordering or at least
being aware of what supplies needed be ordered or how they
would be utilized at the various clinics scheduling things
like that

My understanding is no yes

Is that your experience when you were dealing
with him in the clinics that that was the case

Yes

Was there although on the organizational
chart he's listed as everything flowing into him it does not
appear as though there's a regular or second in command on
that chart is that fair

That's fair

And notice that down here There's box called
CRNA Do you see that

Yes

It has various lines going to this Tonya Rushing
you told us about as well as staff physicians like yourself

EXHIBIT 7

was less than that we were called to receive our distribution
checks The process prior to that or the process of how that
sum became to fruition we were not aware of that process Or
at least wasn't aware of that process

What about if for some reason you didn't see eye
to eye with Dr Desai and you had to leave you wanted to
quit Now would that work

Now would that work if you wanted to quit the
practice

10 Lets just say you wanted to quit the practice

11 I'm done I don't like what's going on whatever

12 I would basically ask for meeting to sit down

13 with him and discuss that need

14 Now notice where it goes down to article six

15 here do you see that

16 Yes

17 It says covenant not to compete etc Do you see

18 that

19 Yes

20 What did that mean

21 If we were to leave the practice we were

22 restricted as of where our practice immediately after

23 leaving the operations We would be restricted believe

24 there is a one mile radius that we were not allowed to practice

25 within a particular set time

Okay So right in just long to point to it
and direct you it says that you wouldn't essentially complete
for three years

Right

And if you come down here within 25 miles
of the location

That is correct

That's Shadow Lane correct

Uh-huh

10 So 25 mile radius of Shadow Lane is there any
11 port or of Las Vegas that that would not include

would have to be in the outskirts pretty
13 far perhaps Henderson Boulevard City places like that

14 Okay So at least not Las Vegas proper

15 correct

16 Correct

17 And for period of three years

18 Correct

19 Was there any issue with that and you and

20 feel no like you couldn't leave if you needed to

21 No kind of redlined from the very beginning

22 that if wanted to leave I'd basically have to leave town

That's what was getting at Did you feel that

24 you could practice here anywhere based on that non-compete

25 clause if you got sideways with Desai

had seeked advice regarding that possibility
when read the contract. The advice that received was that
you can always challenge it if that in court because that's
considered not necessarily legal in certain states. So you
want to spend the money to take it to court, you're welcome to
do that. You might be able to win it.

But you felt that at least if you abided by this
that you couldn't practice anywhere in town.

Right.

10 MR. SANTACROCE: Your Honor, I'm come to object to
11 the whole relevance of this covenant not to compete. Move no
12 strike that part of that testimony.

13 THE COURT: It's overruled on the relevance ground.
14 but you were getting little leading there. Mr. Staudaher
15 BY MR. STAUDAHER:

16 I'm showing you this page which is page eight.
17 And know there's number of different sections to this but
18 its page eight in this. Its signature page. Do you see
19 that?

20 Yes.

21 Do you see your signature anywhere on that page?

22 Yes, do.

23 And you can draw, we don't necessarily need

24 this for the whole time but you can draw with your

25 fingernail. Just clear it down here if you need to clear it.

<p style="text-align: right;">Page 507</p> <p>1 Q. -- to the prior compensation committee 2 decision or decisions. On what basis or bases did 3 you do so? 4 A. Number one, I didn't think there was an 5 issue here at all for the board to deal with. It 6 was delegated to the compensation committee to 7 handle this type of matters. We were approving 8 this. And I believe we had -- I think we had a 9 call to talk about a couple of issues that were 10 still existing in this -- in this derivative case 11 by Jim Cotter, Jr., and we were trying to address 12 them in a fashion to resolve them. 13 Q. When you say you were trying to address 14 them in a fashion to resolve them, what does that 15 mean? Does that mean you were trying to moot the 16 issues? 17 A. I don't know what "moot" means. I'm 18 sorry. I'm not an attorney. 19 Q. Okay. Well, when you say you were trying 20 to address them in a fashion to resolve them, 21 resolve them how? 22 A. To say that the -- the corporation 23 ratified these, and that -- that there was no -- no 24 issue or concern that we approved them. If anybody 25 in the past thought that there was an issue, our</p>	<p style="text-align: right;">Page 509</p> <p>1 particular in Exhibit 525, the December 27 board 2 package, that you considered or valued in making 3 the decision you made to vote in favor of ratifying 4 the September 2015 compensation committee decision? 5 A. Uh-huh. And did you say the December 27th 6 board meeting or the December 29th? 7 Q. I called the package -- the package 8 December 27 because it has a December 27 9 transmission date. But -- so I'm not confusing 10 you, I am referring to the December 29 board 11 meeting and your vote there. 12 So with that clarification, let me ask: Is 13 there anything in Exhibit 525 that made any 14 difference to your vote on December 29 to vote in 15 favor of ratifying or approving the 2015 decision by 16 the compensation committee that's the subject of -- 17 one subject of this package? 18 A. No. 19 MR. SEARCY: Objection. Vague. 20 A. And no. 21 BY MR. KRUM: 22 Q. Okay. Directing your attention back to 23 your prior testimony to the effect that you first 24 heard or learned in early to mid-December that the 25 ratification or approval of the prior compensation</p>
<p style="text-align: right;">Page 508</p> <p>1 action there was to cure any issue anybody might 2 think existed. 3 Q. What did you do, meaning what documents 4 did you review, with whom did you have 5 conversations, or anything else, to inform yourself 6 to make the decision you made to vote in favor of 7 ratifying or affirming the prior compensation 8 committee decision? 9 A. I reviewed whatever documents were handed 10 out, Mr. Krum, in this -- this package. But I had 11 been there at the time that this transaction took 12 place. I was aware of what went on. At the time, 13 I couldn't understand why this was an issue. I 14 still couldn't understand why it was an issue. And 15 it seemed to me to be pretty perfunctory to 16 approve. 17 Q. Directing your attention, Mr. McEachern, 18 to Exhibit 525, that's the board package for the 19 December 29 meeting; correct? 20 A. I believe so, yes. 21 Q. Now, this is not intended to require you 22 to look at every page, but if you think you need to 23 do so, you are welcome to do so. 24 A. Uh-huh. 25 Q. My question is: Was there anything in</p>	<p style="text-align: right;">Page 510</p> <p>1 committee decision might or would be taken on the 2 December 29 board meeting, was that -- did you 3 learn that by speaking to somebody, by receiving an 4 email, or otherwise? 5 A. I just couldn't tell you, Mr. Krum. 6 Q. Okay. What was the next communication you 7 had with anybody, after that initial one, with 8 respect to the possible ratification or approval of 9 the September 2015 compensation committee decision 10 regarding the 100,000 share option, at any time 11 prior to the December 29 board meeting? 12 A. I could have been involved in discussions 13 that predated this. I just can't remember. I'm 14 generally aware that it was raised as an issue. As 15 I said, I still don't understand why. I know that 16 we had a call with Mike Bonner, maybe Mark 17 Ferrario, and maybe somebody from Greenberg, 18 I'm not certain, to discuss this -- 19 MR. SEARCY: Let me just caution you. 20 When you start to get into attorney-client 21 privileged discussions, I want you to be able to 22 answer the question, but I don't want you to get 23 into the specifics of any particular discussions 24 you may have had with Mr. Ferrario or Mr. Bonner. 25 THE WITNESS: Okay.</p>

Correct

What does that mean

At the point of distribution it will be the number the equivalent number of the total amount that will get distributed

So you have and various other people have 17 eight and Dr Desai looks like he has 36 and three sevenths

Correct

Do you see That Now were you aware that if
10 other you mentioned That when you started there were around
11 five think

Correct five or six

13 By the time you got to the end it was how many
14 believe there was 11 to 12

15 When new people come in new doctors what would
16 happen to the value of your shares

17 We would be asked to surrender some of the
18 shares that we have in order to distribute to the new members

19 What about Dr Desai did he surrender any
20 shares

21 Not that remember

22 So he kept his shares intact and the rest of you
23 had to essentially dilute your surrender to them

24 Correct

25 And saw that there were various partners who

wrote checks in cere and just didnt and theres ore here
listed ftr you Do ycu see tfat

Yes

The dnoun can you read tfat

\$45000

Wflct was chs for

ThOt was actuftiy toe pumcfase ft ftc RYc\$

be ar of tYe endoscoft center

For those shares

10 Correct

11 MR SANTAROCE Objection Misstates the testimon\

12 thinx It was 11 sha-es or 11 percent

13 MR STAUDAHER said 11 shares

14 ThE TNESS It says 11 shares on the contrdft

15 BY MR STAUDAHER

Well go back to just so were clear Rfht

here coes it say number of ftares 11

18 Yes

19 Ok0y Is that your undersrandinc of what yoa

/0 wha you rad

z1 Correct

z2 Tdnt 45000 WS thOt to purchase those 11

z3 shares

That is correct

25 So what did that entitle you to as far as like

do you get does it translate into percentage

about 100% pre-arsely Du or love it
equals to 11 percent

Now there were off-orient cod endoscopy
centers correct

Correct

Did that mean that you got percent if that's
what translated to for The difference in the
endoscopy centers the gastroenterology centers or was it just
one or two or three of those

11 No That was just only for The Endoscopy Center
12 Two which was the one located at Burnham Avenue

13 Okay

14 So there were revenues generated from that
15 facility

16 What about revenues that came from Seadow Lane
17 or from one of the gastroenterology centers

18 was not entirely tied to That

19 So just that one little slice is that right

20 Correct

LIE COURT In order to get revenues added you have to
22 work certain number of hours or certain amount

23 THE WITNESS No I've workload was distributed

24 pretty equally in terms of hospital assignments and number of
25 patients that we will see at the clinics Periodically on

<p style="text-align: right;">Page 547</p> <p>1 that one could get and see what our charter is.</p> <p>2 BY MR. KRUM:</p> <p>3 Q. Has the committee directed counsel,</p> <p>4 Greenberg Traurig, or anybody else, to take action?</p> <p>5 And by "committee," I'm referring to the same</p> <p>6 special committee about which you are testifying.</p> <p>7 MR. FERRARIO: I'm going to object.</p> <p>8 Overbroad.</p> <p>9 A. I remember sometime in the fall of 2017,</p> <p>10 Mike Bonner was -- and when I say "Mike Bonner,"</p> <p>11 I'm not sure if it was Mike Bonner and Bill Gould,</p> <p>12 who is the chairman of the committee.</p> <p>13 MR. FERRARIO: Don't -- don't divulge</p> <p>14 attorney-client communications. Okay. So that's</p> <p>15 what I'm trying to get. If somebody directs a</p> <p>16 lawyer to do something, that to me implicates</p> <p>17 attorney-client communication, because it could be</p> <p>18 reflective of advice or a scope of litigation,</p> <p>19 something like that. I don't want to impede this</p> <p>20 because it's been going very smooth, but that's my</p> <p>21 admonition. I don't really understand the</p> <p>22 question, but go ahead without divulging any</p> <p>23 attorney-client communication.</p> <p>24 THE WITNESS: Can I ask a question? So if</p> <p>25 we asked Mike Bonner to participate with Bill Gould</p>	<p style="text-align: right;">Page 549</p> <p>1 A. Ratification of what? The actions by the</p> <p>2 compensation committee or the ratification of the</p> <p>3 termination of Jim Cotter, Jr.?</p> <p>4 Q. Either or both.</p> <p>5 A. I think it's in late fall sometime of</p> <p>6 2017. But there was nothing that could be done, I</p> <p>7 don't think, until such time as -- as I recall, the</p> <p>8 judge in the derivative case took some action with</p> <p>9 respect to dismissing directors from the lawsuit.</p> <p>10 Q. So the subject was raised in the late fall</p> <p>11 of 2017 and, in effect, it was tabled for the time</p> <p>12 being?</p> <p>13 A. I believe that's correct.</p> <p>14 Q. What did you say, if anything, about that</p> <p>15 subject in the late fall of 2017?</p> <p>16 A. I do not recall.</p> <p>17 Q. What about did Bill Gould say?</p> <p>18 A. I do not recall.</p> <p>19 Q. What did Judy Coddington say?</p> <p>20 A. I do not recall.</p> <p>21 Q. Did it concern the ratification of the</p> <p>22 termination decision or the decision to authorize</p> <p>23 the exercise of the 100,000 share option by way of</p> <p>24 Class A voting stock or both?</p> <p>25 A. I believe the main focus was on the</p>
<p style="text-align: right;">Page 548</p> <p>1 in doing something, that's attorney-client</p> <p>2 privilege?</p> <p>3 MR. FERRARIO: If you're asking -- if you</p> <p>4 are asking him, Bill Gould, to the grocery store</p> <p>5 and pick up sodas for a meeting, I don't care. If</p> <p>6 you are asking him to do something that would</p> <p>7 encompass the giving of legal advice that is going</p> <p>8 be reflective of what -- you know, what was being</p> <p>9 discussed between the lawyer and the client, I</p> <p>10 would instruct you not to answer that.</p> <p>11 A. Then I won't answer that question.</p> <p>12 BY MR. KRUM:</p> <p>13 Q. All right. Well, let me weigh in on this.</p> <p>14 What I'm attempting to ascertain is the scope of</p> <p>15 the actions with respect to the special committee.</p> <p>16 So let me just ask you about a couple of subjects.</p> <p>17 Has the special committee taken any steps</p> <p>18 to communicate any positions in any action, whether</p> <p>19 the derivative action or the California trust action?</p> <p>20 A. No, not to my recollection.</p> <p>21 Q. Directing your attention, Mr. McEachern,</p> <p>22 specifically with respect to the subject of</p> <p>23 ratification, as best as you can recall, sir, when</p> <p>24 and how did that subject first arise before the</p> <p>25 special committee?</p>	<p style="text-align: right;">Page 550</p> <p>1 termination of Jim Cotter, Jr.</p> <p>2 Q. What was said, if anything, at that time</p> <p>3 about the subject of Guy Adams' disinterest in this</p> <p>4 independence or both?</p> <p>5 A. With respect to what?</p> <p>6 Q. The vote to terminate Jim Cotter, Jr., in</p> <p>7 2015.</p> <p>8 MR. SEARCY: Let's have the question read</p> <p>9 back.</p> <p>10 THE WITNESS: I'm sorry?</p> <p>11 MR. SEARCY: I was asking if we could have</p> <p>12 the question read back.</p> <p>13 (Reporter read back the requested text.)</p> <p>14 MR. SEARCY: And you're asking about --</p> <p>15 involved 2017?</p> <p>16 MR. KRUM: Right.</p> <p>17 MR. FERRARIO: It's to non-lawyers.</p> <p>18 A. I don't recall, but the judge dismissed</p> <p>19 five directors from the case, and the case still</p> <p>20 has Ellen Cotter, Margaret Cotter, and Guy Adams as</p> <p>21 defendants. And I believe the discussion was as</p> <p>22 long as he was a defendant in the case, he couldn't</p> <p>23 vote on this type of matter. I don't recall a</p> <p>24 discussion about his independence at that -- in</p> <p>25 connection with that.</p>

How far down would

How far down do he 00 asked you about
scheduling and things like that and you said that he did
think that he was pretty much involved with
all aspects of the own to schedule

MR STAUDAHER May 10a Your Honor
THE COURT You may

BY MR STAUDAHER

Im just come to show you three DeOrosa
10 these relate to you Take a look at those and see if you
11 remember not receiving them but any communication about such
12 items that are depicted there

13 Yeah do Lays some view recollection of
14 seeing some of these documents

15 Okay Again just for the record were looking
16 at 99 100 101 also admitted by stipulation Can you tell us
17 what these refer to

18 Those are memos from Dock and Thirt baxen
19 Tonya Rushing and some of the loc1 of the managers regarding
20 preferences on the schedule what times preferred to see
21 patients or co patients and which facility at

22 Just showing you first This actually
23 appears its from Dr Desdi managing partner correct

24 Correct

25 Does it discuss in the very first paragraph

something about you

Yes

And what's the issue there? What's the
wants going on

Basically, have expressed that wanted to do
my own patents and the days that wanted to them

So he at least was involved in that level with
scheduling and working with physicians to
schedules

10 Correct

Is it similar for the next one which also
appears to be and this is with aspects to be from
12 also from Dr Desai here
13

14 Yes

And in this one looks like the very first
15 part is where it talks about you primarily that correct
16

17 Correct

18 And what's that about? So the thing

This is the score has all me requesting to
20 see patients at that facility

21 And the last one looks as though it is

22 about you again. It says per Dr Desai. Do you see that

23 Correct

24 And it's specifically talking about scheduling

uS What's this about

This is baslciiy an assioumont of the times
that w/_ ne doino cases or endosopios

It doesn just tOik about tine does it It
talks dbout unbors

The numb rs ad huh

Sc whon you wil stOrt through certain period
and hu no rcccowes you wil do

Cornoct

And then cown here theres h0nowritten

10 refererce And it looks ike theres been communication with

11 you about this Do you recall thOt

12 Yes

13 WhOt was hdtambut

14 Bosio1ly one of the local office managers

15 statino tht have requested For the Shadow Lane office to

16 know wha ny chance in schedule were

17 Does it appear d5 tecugh you were communicated

18 with

19 Correct

20 Do you ecol tot dt all or sorething similar

21 to tha

Vaguely

23 Does it sound famlliar

/4 It sounds familiar

/5 Now coup of things During procedures when

<p>Page 195</p> <p>1 T2 PARTNERS MANAGEMENT, LP.,) a Delaware limited) 2 partnership, doing business as) KASE CAPITAL MANAGEMENT,) 3 et al.,) Plaintiff,) 4 vs.) 5 MARGARET COTTER, ELLEN COTTER,) GUY ADAMS, EDWARD KANE,) 6 DOUGLAS McEACHERN, WILLIAM) GOULD, JUDY CODDING, MICHAEL) 7 WROTONIAK, CRAIG TOMPKINS,) and DOES 1 through 100,) 8 Defendants.) 9 and) 10 READING INTERNATIONAL, INC.,) a Nevada corporation,) 11 Nominal Defendant.) 12 13 14 15 16 Videotaped Deposition of JUDY CODDING, 17 taken on behalf of Plaintiff, at 1901 Avenue of the 18 Stars, Suite 600, Los Angeles, California, beginning 19 at 2:22 a.m. and ending at 4:38 p.m., on Wednesday, 20 February 28, 2018, before GRACE CHUNG, CSR No. 6246, 21 RMR, CRR, CLR. 22 23 24 25</p>	<p>Page 197</p> <p>I N D E X</p> <p>1 WITNESS EXAMINATION PAGE</p> <p>2 JUDY CODDING</p> <p>3 BY MR. KRUM 199</p> <p>4 BY MR. TAYBACK 273</p> <p>5 BY MR. KRUM 277</p> <p>6</p> <p>7</p> <p>8</p> <p>9 (The following previously marked exhibits were</p> <p>10 referenced: Deposition Exhibits 525, 527, 176.)</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p>Page 196</p> <p>1 A P P E A R A N C E S</p> <p>2</p> <p>3 For the Plaintiff:</p> <p>4 YURKO, SALVESEN, & REMZ</p> <p>5 BY: MARK G. KRUM, ESQ.</p> <p>6 One Washington Mall</p> <p>7 11th Floor</p> <p>8 Boston, Massachusetts 02108</p> <p>9 (617)-723-6900</p> <p>10</p> <p>11 For the Plaintiff Reading International:</p> <p>12 GREENBERG TRAUIG</p> <p>13 BY: MARK FERRARIO, ESQ.</p> <p>14 1840 Century Park East</p> <p>15 Suite 1900</p> <p>16 Los Angeles, California 90067</p> <p>17 (310) 586-7700</p> <p>18 ferrariom@gtlaw.com</p> <p>19</p> <p>20 For the Defendants Margaret Cotter, Ellen Cotter</p> <p>21 Guy Adams, Edward Kane:</p> <p>22 QUINN EMANUEL</p> <p>23 BY: CHRISTOPHER TAYBACK, ESQ.</p> <p>24 865 South Figueroa Street</p> <p>25 10th Floor</p> <p>Los Angeles, California 90017</p> <p>(213) 443-3000</p> <p>christayback@quinnemanuel.com</p> <p>Also Present: CORY TYLER, Videographer</p>	<p>Page 198</p> <p>1 Los Angeles, California</p> <p>2 Wednesday February 28, 2018</p> <p>3 2:22 p.m.</p> <p>4 THE VIDEOGRAPHER: And this is the</p> <p>5 beginning of Media 2 and the beginning of</p> <p>6 deposition of Judy Coddling, Volume II, in the</p> <p>7 matter of Cotter, Jr., versus Cotter, et al., held</p> <p>8 at 1901 Avenue of the Stars, Suite 1600, Century</p> <p>9 City, California, on February 28th, 2018, at 2:22</p> <p>10 p.m.</p> <p>11 The court reporter is Grace Chung, and I am</p> <p>12 Cory Tyler, the videographer, an employee of</p> <p>13 Litigation Services. This deposition is being</p> <p>14 videotaped at all times unless specified to go off</p> <p>15 the video record.</p> <p>16 Would all present please identify</p> <p>17 themselves, beginning with the witness.</p> <p>18 THE WITNESS: Judy Coddling.</p> <p>19 MR. TAYBACK: Christopher Tayback for the</p> <p>20 witness and director defendants.</p> <p>21 MR. FERRARIO: Mark Ferrario for Reading</p> <p>22 or RDI.</p> <p>23 MR. KRUM: Mark Krum for plaintiff.</p> <p>24 THE VIDEOGRAPHER: And will the court</p> <p>25 reporter please swear in the witness.</p>

other had just you be there generally in order when you walked
in the room

To an extent yes That is subject to
interpretation my opinion

well when you interpretator of it at the
time directly

We CsiO asking them to initiate the
anesthesia The usual process of how they dose the
medications or how often they use the vials and syringes you

10 would expect these people to be trained for that procedure

11 So you're not necessarily overlooking to every single step

12 that they take responsibility my main responsibility

13 during procedure the patient's life in front of me

14 need to be attentive and paying attention to what's happening

15 during the procedure with that patient

16 Did you ever start procedures on patients before
17 anesthetized or not

18 No

19 Did you ever direct the anesthetist to not give
20 additional medication if the patient started to wake up before
21 you were done

22 No

23 Do you think that would be appropriate to do

24 No

25 As far as your direct involvement with the CPNA

and you **now** who **Im** talking about the person who does the
anesthetic correct

Yes

Did you ever direct their activities in any way
when you were in the room other than to say go ahead and put
them to sleep

No

Did you feel comfortable performing around the
screen so to speak and doing that particular work

10 No

Have you ever been trained in anesthesia or
anesthetic practice in any way

I Were trained on conscious sedation but not
14 specifically with the type of anesthesia that CRNA5 00

And this is not conscious sedation what these
16 people are going through They're actually unconscious at
17 same point

18 **Its** deep sedation is the actual term that
19 use

20 Now related to that did you ever at any point
order anybody to minimize the use of supplies or re use
22 supplies anything like that

23 No

24 **Im** talking when I say supplies **Im** talking
25 about anything from the drug propofol to an alcohol pad four

by four Jelly axiyrhng like that

No

Were you aware dd you have any knowledge of
any oroers out tnere in the practice to econorrize supplies

Yes There will be times That We talk about
how to make the practice more efficient more effective IT
is busness so nart of tue buscross is ooking tt how we
scend the money for the practice

So are these the pdrtner meetings

10 Yes

11 Who ran the partner meetinosf

12 Dr Desai

13 Would it be sugoested agreed to voted on as to
14 how this was supposed to take place

15 There is no process Like sam there is no
16 voting The recoiuriendations would be presenteo by Dr Desai
17 and of course if somebooy had problem with it or if there
18 was any objections that person will voice it

19 How did the dynamc go Were you ever present
zO when anybody stood up to Yim and said no were not doing
21 that Im not going to be party to any of that

22 MR SANTAcEOCE Irr going to object as to leading

23 THE COURT Overruleo

24 MR STAUDAHER it doesnt suggest the answer

25 THE COURT said overruled Mr Staudaher

EXHIBIT 9

Anybody else say Anything

It will be others agreeing to that opinion yes

Did he say okay cts table this and not
introduce any do it until we have better consensus or
something along those lines

Yech Dor recall the exact verbatim on the
conversation but if there is objections to particular
procedure he will recede and will be subject to further
discussion

10 What about propofol

11 What about it

12 Was there any discussion about economizing
13 propofol use

14 There have been discussions regards to the
15 way that the propofol was supplied Some of the manufacturer
16 companies basically allowing for larger vials so you can
17 actually use it on multiple patents And so discussions in
18 terms of how would be that accomplished safe without
19 jeopardizing the patient care

20 So this is an actual discussion that's going on
21 with Dr. Jesai and the other doctors

22 Yes it have can't remember the exact
/3 meeting but remember that when the first review from the
/4 health district came through we talked about the fact that
25 they have recommended we needed to stop purchasing those large

vials and go to single nose vials because of the risk of cross contamination. And the arguing came upon that because there is risk that there is very legitimate safe way to use these large vials on multiple patients.

So less went to go back before me. The district gets involved and ask you about that. So was the discussion before the health district came in about the larger vials in multiple patient setting.

Yes.

10 Describe for me what the discussion was at that
11 time about that. And you mentioned also on how that would be
12 implemented. So tell me about that as well.

13 Right. You could again the discussion was in
14 the sense that it will save money when you acquire large vial as opposed to multiple single vials. It also save
15 resources. And the conversation was in the sense of
16 that be accomplished safely and we all know from medical
17 school that that can be done. Basically you have force
18 vial as long as you withdraw from that vial with new set
20 needles and syringes that vial will never be contaminated or
21 cross contaminated. But always has to be used with new
22 syringe and needle. So long as that was the policy and the
23 procedures allowed we were comfortable with that.

24 So who's coming up with this in the meeting?
AS Where did this come from?

cant recall the details of that particular
meeting on who actually came with **it**

Were there any written policies to your
knowledge to that regard

There was written policies yes

And the written policies said what exactly
do not recall

Is **it** essentially what you talked about that if
you have larger vial you're going to use **it** in multiple
10 patient setting that you can only enter **it** with clean
11 unused syringe and needle

12 Correct

13 To withdraw the medication

14 Yes

15 Was there any discussion about you know **its**
16 okay to just change the needle **out** if you take **it** out and
17 here's the scenario Clean needle syringe going into the
18 propofol bottle putting that needle syringe into patient
19 through the hep lock administering medication through that
20 hep lock administering medication then taking that syringe
21 which has been in contact with the patient and either
22 directly going back into the bottle or removing the needle
23 putting on new needle on the same syringe and going back
24 into the bottle

25 No that would be asking for trouble

<p style="text-align: right;">Page 90</p> <p>1 begins with the words "Mr. Wrotniak also expressed his 2 views." Do you have that paragraph? 3 A. Yes. 4 Q. Let me know when you've finished reading 5 it. 6 A. (The witness reviews the document.) 7 Yes. 8 Q. Does that fairly summarize comments you 9 made? 10 A. Yes. 11 Q. When you said in words or substance that 12 the board has attempted to work with Mr. Cotter but had 13 no alternative to take the action it did, termination, 14 what were you referencing when you said "work" with him? 15 A. They offered him a position as president 16 working under a CEO. 17 Q. When you say they had no -- in words or 18 substance, had no alternative but to vote to terminate 19 him, what exactly were you saying or referencing? 20 A. That if they concluded based on his 21 performance that he was not fulfilling his 22 responsibilities, that he needed to be terminated. 23 Q. I direct your attention to page 6, the 24 last page of Exhibit 526. Do you have that? 25 A. Yes.</p> <p style="text-align: center;">90</p>	<p style="text-align: right;">Page 92</p> <p>1 A. Oh, I did see it yesterday. 2 Q. Do you recall whether you saw it prior to 3 yesterday? 4 A. I don't recall. 5 Q. Do you see that you're not identified as 6 either a -- well, you're not identified on the from, to 7 or cc section. 8 A. Correct. 9 Q. Does that refresh your recollection that 10 the first time you saw Exhibit 527 was yesterday? 11 MR. SEARCY: Objection; lacks foundation. 12 A. I don't recall when I saw it. 13 Q. Did you ever see a draft of Exhibit 527? 14 A. I don't recall. 15 Q. Did you ever have any discussions with 16 anybody about Exhibit 527, excluding any you had with 17 Mr. Searcy yesterday? 18 A. Yes. 19 Q. When and with whom? 20 A. In my conversation with Mike Bonner and 21 Mark Ferrario. 22 Q. This is the telephone call you and 23 Ms. Coddling had with Bonner and Ferrario? 24 A. Correct. 25 Q. Have you had any other communications</p> <p style="text-align: center;">92</p>
<p style="text-align: right;">Page 91</p> <p>1 Q. The first full paragraph on that page 2 reads as follows: "Upon motion duly made by Director 3 McEachern and seconded by Dr. Wrotniak, the following 4 resolution was adopted." Do you see that paragraph? 5 A. I do. 6 Q. Is that correct, that you seconded the 7 ratification motion with respect to the 100,000-share 8 option? 9 A. Yes. 10 Q. How did that come to pass? 11 A. I don't understand the question. 12 Q. Had you had any discussions about 13 seconding that motion -- 14 A. No. 15 Q. -- prior to doing so? 16 A. No. 17 Q. Mr. Wrotniak, I show you what previously 18 has been marked as Exhibit 527. It bears production 19 number RDI 0063918. 20 Have you seen Exhibit 527 previously? 21 A. Yes. 22 Q. When? 23 A. I don't recall when the first time I saw 24 it was. 25 Q. You saw it yesterday, correct?</p> <p style="text-align: center;">91</p>	<p style="text-align: right;">Page 93</p> <p>1 regarding Exhibit 527? 2 A. No. 3 Q. In your call with Bonner and Ferrario, 4 did you have 527 or a draft of that in your hand or in 5 front of you at the time of the call? 6 A. No. 7 Q. Had you seen it at that time? 8 A. No. 9 MR. KRUM: Let's go off the record. 10 THE VIDEOGRAPHER: We are now off the record 11 at 12:16 p.m. 12 (Whereupon, a short recess was taken.) 13 THE VIDEOGRAPHER: This is tape 3, part 2 of 14 the deposition of Michael Wrotniak. We are now on the 15 record at 12:25 p.m. 16 MR. KRUM: Marshall, there was a particular 17 document that was mentioned at the last two depositions 18 that you were going to check on. Were you able to do 19 that? 20 MR. SEARCY: Oh, that was something that 21 Ferrario was going to look into. I'll follow up with 22 him. 23 MR. KRUM: Okay. 24 MR. SEARCY: That had to do with special 25 committee meeting minutes, is that right?</p> <p style="text-align: center;">93</p>

Correct

If you were going to do it in the way you described

I'm sorry take that back That will be in colonoscopy when takes longer an endoscopy it would probably be less than that maybe one or two at the most

Fair enough Are we talking about procedure time that were talking about

It depends on the procedure but endoscopy can be anywhere from two to five minutes And colonoscopy can last anywhere from 10 minutes to half hour

Okay On average though how long do the colonoscopies last

About 10 minutes

So the half hour was not an outlier then as far as time

Yes

Do you recall interviewing with the police at some point

Yes

Do you recall when asked you about where this came from about economizing propofol and do you recall talking to them and telling them who you thought told you about this

Yes

Who was it

Whowasthe

Person **ho** told you **abet** this economizing of
popofol

At the time **it** could have been from **Clifford**
Cancl coilo have been from one of the nurse manaoers in the
facili **cant** recall exact_y who woulo nave **nitiated**
that conversaton

MR SThUDAHER May approach Your Honor

THE COURT You may

10 MR URATTDHER And Page 29 for counsel

11 BY MR STAUDAHER

12 Yoc **an** reao as riuchi before and **after** for
13 contec as you can Go ahead and read **this** section and tel1
14 we **if** that refreshes your memory

15 Are you talking aboit the one that is in
16 asterisk or the whole page

17 **ust** read as much of **that** as you need to to
18 **refresf yor** memory **Im** going to ask you aboft 32 so you
19 might as well **just** look at that as **well**

Page 32 OKay

21 Does **that** refresh your memory on who was the one
z2 who directed you about the use of propofol

23 Yes

Who was **it**

25 Dr Desai

You did mention anybody. So you mentioned

Dr. Desai correct

Correct

And also with reodro crestos that were
asked. Then you about how make the decisions or did you say
one all of the decisions are correct. Then the policies

Dr. Desai

One last thing re Otec to. That was Dr. Desai
you remember in that discussion crying. Dr. Desai was. The
10 one who decided he was going to buy the use vials of
11 propofol

Correct

13 Basically told you that that's the way it was
14 going to be

15 Right

16 Now asked you before the scenario
17 of how you know re use of the propofol you had one
18 syringe. Let's just say and you were quick back into the
19 bottle with that same patient would you ever see legitimate
20 or ever possible way of using that but then on new
21 patient

22 No would discourage that

23 And why

24 Because of the risk of cross contamination

25 Did anybody ever discuss that any of these

From: Mark G. Krum
To: hendricksk@gtlaw.com; ferrariom@gtlaw.com; marshallsearcy@quinnemanuel.com
Cc: christayback@quinnemanuel.com; nhelpen@quinnemanuel.com; sm@morrislawgroup.com; al@morrislawgroup.com; Sanford F. Remz; Noemi A. Kawamoto; sheffieldm@gtlaw.com
Subject: RE: RDI
Date: Tuesday, April 17, 2018 2:04:50 PM

Kara,

The advice that the December 21 minutes are the only responsive minutes is surprising, in view of the testimony of two of three committee members that the subject of ratification was first raised prior to December 2017. Given that the December minutes are completely redacted, they are of no use in determining when the subject first was raised and/or whether it was raised previously.

As to those minutes being "appropriately redacted," that remains an open question. Given that literally nothing of substance was disclosed in the redacted version of the December 21 minutes first produced on April 12, the document should have been included in your February privilege logs and now must be logged. Please do so forthwith. Nothing in the foregoing indicates that we agree with the remarkable suggestion that the entirety of those minutes are properly redacted.

I asked all committee members and none of them were able to correctly describe the chronology. My ability to examine them about the chronology and the substance was impaired because the December 21 minutes were neither logged nor produced, which was the result of RDI's counsel and all directors' counsel withholding but not logging the December 21 minutes. Your suggestion that those circumstances do not provide a basis and need for further deposition with the benefit of the improperly withheld information, improperly redacted minutes or both is tantamount to saying that defendants can conceal evidence with impunity. We respectfully disagree.

Mark

Mark G. Krum, Esq.
YURKO, SALVESEN & REMZ, P.C.
One Washington Mall, 11th Floor
Boston, Massachusetts 02108
T: (617) 723 6900
F: (617) 723 6905
<http://www.bizlit.com>

YURKO, SALVESEN & REMZ, P.C.

From: hendricksk@gtlaw.com [mailto:hendricksk@gtlaw.com]

Sent: Tuesday, April 17, 2018 12:37 PM

To: Mark G. Krum <mkrum@bizlit.com>; ferrariom@gtlaw.com;
marshallsearcy@quinnemanuel.com

002030

If you follow standard procedures all the patients are treated the same way there's no risk of cross contamination hence everything will be safe

Okcy Are there breaches

Are there breaches

Breaches in what respects those standard procedures allowed

Im not sure that universal precautions are followed

Have you ever heard of universal safety

10 precau tions

11 Yes

12 Is that what we were talking about

13 Yes

14 So if you follow those There should be no

15 problem

16 Right

17 Do the universal safety precautions ever

18 contemplate the scenario gave you before of reuse of say

19 bottle of propofol on one patient after that bottle going

20 and being used on another patient

21 Not that Im aware of

22 Would that alarm you if someone had done that

23 on patient that you were dealing with

24 Yes

25 Now with regard to the universal safety

preauion ooino b0ck to what asked you bout are there
sometimes nreakdowns ir how patents are hdndled or how things
are taken care

Not fLat Im Qware of

Trees never t3r when heres Areakdown on
that

Not Im ware of

Okcy What anct tne re use of other items
besides poparo Vu mentioned snares V00 sald you
wouldnt do thOt

11 Rioft

12 atcu biopsy forceps were those okay to be
13 reused

14 No

15 WhOt bow bite b_ocks

16 Yec

17 Okar 7ell me about that

18 Tnernr safe way to use these blocks in
19 multiple pctients In fact the manufacurer expects the bite
20 locks be used ir mulliple patients As lone c5 you follow
21 very strct poces for cleanno tYem between patients
22 which is tee sare crocess tkat the scopes go through it will
23 be safe and without iisk of cross contamination

24 Ok0y Are you sayino that you think its okay
25 to take scope thats been in somebodys bottom put it in

the same put the bite block in soTh of rYe same leaning

process am trat scope

ThQt is correct

Okcy Anc you thnk that The nite Liclis
themselves are libeled or the mnufactuiers are cRay with that
happeninc

Yes

Any discussion on how much those thlics actually
cost

No

you know

do not know

And you think theyre reusable

Yes

Any other things like that that you think sie
reusable besides the bite blocks You sad snares dnd biopsy
fci eps no correct

Correct

Anything else beslies -he scopes obviously

Yru process those

Thats it

What about you kncw theres when you do
the procedures there is laroe 60 syringe that gets used

Correct

Have you ever known plas c type syringe be

under no obligation to log the same.

Kara

From: Mark G. Krum [<mailto:mkrum@bizlit.com>]

Sent: Thursday, April 12, 2018 3:48 PM

To: Hendricks, Kara (Shld-LV-LT) <hendricksk@gtlaw.com>; Ferrario, Mark E. (Shld-LV-LT) <ferrariom@gtlaw.com>; marshallsearcy@quinnemanuel.com

Cc: christayback@quinnemanuel.com; nhelpen@quinnemenuel.com; sm@morrislawgroup.com; al@morrislawgroup.com; Sanford F. Remz <sremz@bizlit.com>; Noemi A. Kawamoto <nkawamoto@bizlit.com>

Subject: RE: RDI

Kara,

It may have been one week since you started working on this, but it has been 3 months since we propounded the document requests to which this document is responsive, 2 months since it should have been produced and approximately 6 weeks since I first identified it particularly. Had defendants undertaken to delay the production of the document(s) until after the depositions of the three committee members had been taken, so that we were unable to be fully prepared to take those depositions and unable to examine them about that meeting or those meetings, defendants would have done exactly what was done here.

If we have an "Attorneys' Eyes Only" provision in our stipulated protective order, you are entitled to invoke it. Even if we do not, I will commit to not sharing the document or the substance of it with Mr. Cotter. Whether and how that works with Greenberg Traurig {"GT"} and its corporate client is another issue.

I have made no "new accusations regarding Mr. Gould's communications with Greenberg Traurig." What I did was to reference his deposition testimony, which includes the following:

- At 14:19 – 15:13 of the rough of his transcript, he testified that the first communication he had (in his capacity as the chairperson of the special committee) regarding ratification was telephonically in mid or late November 2017 with Bonner and Ferrario of GT;
- At 16:20 – 17:11, he testified that the next communication he had regarding ratification was telephonically in early December with committee members Coddington and McEachern, with Bonner of GT on the call;
- At 26:22 – 27:3, he testified that the next communications he had regarding ratification after the early December call were follow-up calls with Bonner and Ferrario of GT.

Not one document with respect to the foregoing communications has been produced, and not one such document is listed on a privilege log. Kindly produce and/or log of all such documents and/or explain why no documents have been produced or logged. Please have this completed by close of business Monday, sufficiently in advance of when our next status report is due that we can proceed accordingly.

Thank you.

002034

No

Why **net**

Again that's the most important **pot** of the
procedure the actual withdrawal time in which **you're** looking
for any abnormalities through the colon So **there's**
absolutely no reason to just **put it out** Besides the fact
that he's taking **it out** as you said you can **really** harm the
patient

So that would protect the patient at **risk**

10 Sure

11 When you do the procedures you said that you
really look the withdrawal time is the most **important**

Correct

14 Do you ever use anything like **air** to blow up the
15 colon **little bit** so you can see **better**

Yes

17 And we talked about **irrigation** Do you also
irrigate

19 Yes

20 A- the end of the procedure or as **you're**
21 withdrawing what do you do about **all that air** and that fluid
22 **that's inside** the colon

23 Once you get to the rectum you **try** to withdraw
24 as much **air** as you can to allow for the patient to become more
/5 comfortable

So **if** you just yank the scope out for want of better word and **left all that in there** what would be the **result**

The patient **will** be uncomfortable when they wake up

And about how much **fluid** would you introduce into the colon during procedure **like that** or withdrawal

varies It can be none to probably **liter** or more

10 So **it** could be **fair** amount of **fluid**

11 **Substantial**

12 The **air** **self** would that just cause the
13 patient to have **discomfort**

14 **Correct**

15 How long would that typically **last** if you
16 **didn't** take any of **it** out and just took the scope out **didn't**
17 suck out **all** the **air** suck out **all** the **fluid** and the **like**

18 **varies** but once the anesthesia wears and
19 **they're** able to pass the gas on **their own** that discomfort
20 should subside

21 Would that be at **least** period of time then

22 Anywhere from two to five minutes perhaps

23 So you **think** that that would happen before they
24 **left** the **facility**

25 **Correct**

Did you ever feel at any time during the course
ni you worked primarily where again at Burnham

My main office was in Horizon Ridge and the
eiles dd at the Burnham facility

Did you ever do endoscopies at the Shadow Lane
facility yr

cave

Was there any difference in your experience
the Shadow Lane facility versus the Burnham facility as far as
10 patient numbers the way things were done the atmosphere
11 tilt kind of thing

12 dont have good way to compare it amrkeo
Ri cur of the Shadow Lane facility when first came into town Ri

2000 percaus it was smaller facility it was ust
15 one endoscopy room At the time the Burnham facility wasnt
16 avcble

17 But the times that you did work at Shadow Lane
was there any difference

In terms of

20 Just well the speed of the procedures the
21 number of procedures and so forth compared to when you worked
22 at Burnham

23 Everybody had their own speeds so will take my
24 time on my procedure and move on Other individuals might be
25 faster than me

of the special committee meeting that occurred on or about December 27, 2017. The testimony was to the effect that that meeting concerned what we have called the ratifications. For example, see the Wrotniak transcript at 93:16-94:2, when Marshall agreed to follow through on this with Mark. This document is responsive to multiple document requests propounded to each of your clients. Would one of you kindly, promptly follow through on this please? Thank you.

Mark

Dictated to a smartphone.

Get Outlook for Android

If you are not an intended recipient of confidential and privileged information in this email, please delete it, notify us immediately at postmaster@gtlaw.com, and do not use or disseminate such information.

are happenno at Shadow Lane

Yes

Since hes there what kints of things camp up
at the partners meetings regaring that

The volume of tie p0tient load It
considered excessive by most of tte staff and there c5 ot
of runblno complaints by the staff about toe cOC bC
poedures and toe pace of the day

So Desai oot ocr fronted with ttat

10 Yes

11 And what was his response

12 do not recall

13 Were you surprised ot his response

14 Do not recall

15 MR STAUDAHER Nothing further Your Hone

16 THE COURT All right Cross

17 MS STHNISH Your Hono may we approach

18 THE COURT Sure

19 Of record bench conference

zO THE COURT All right Mr Santacroe why dont you

21 beon your cress examination

22 CROSS EXAMINATION

23 BY MR SANTACROCE

24 Good afternoon Dr Herrero

25 Good afternoon

Im Frederick Santactoce represent Ron
 Lakeman Do you know Mr LQkeman
 I do
 How do you know hm
 He was one of the nurse anesthetists working for
 the eneoscopy centers at time
 Have you performed prnedures with his
 Probably have
 At which center
 10 Probably at tee Burnham faci ity
 11 Do you reca Cave an independert recollection
 12 of working with tim
 13 Vaguely Ron was mostly a- the Shadow Lane
 14 faciliy so dont recal working with hm with any
 15 fregnency
 16 But you had opportunity to observe his
 17 procedures and practices
 18 Sure
 19 Did his procedures and practces comport with
 20 reasonab meWcally safe practces
 z1 Of course
 z2 Yes
 23 Yes
 z4 You came to L0s Vegas in 1998 correct
 25 Correct

And you became part of gastroenterology
Did you obtain partnership at that time 19%

No

So you went to work for salary

Correct

And then when did you first meet your partner
interest

Three years after being part of the project

Is that the check we saw for 45,000

10 Is your question on

11 I'm sorry Was that the check we saw for 000

12 that you had written did that purchase those fees

13 No sir that's for something different

14 What was that Sir

15 That's for the shares at the Endoscopy Center

16 Two

17 Okay Did you obtain interest tell me

18 what's Endoscopy Center Two

19 There was two endoscopy facilities one on

20 Shadow Lane one on Burnham Avenue And the Endoscopy Center

21 Two was the one on Burnham

22 Did you ever have any interest in the Shadow

23 Lane center

24 Yes did

25 When was that

representing that your clients searched for documents pre-dating December 11, 2017 regarding what came to be referred to as ratification, then you are telling me that you previously did what my email of this morning asked be done. Of course, let me know if that is not correct. Thanks.

Mark

Get Outlook for Android

From: Marshall Searcy <marshallsearcy@quinnemanuel.com>
Sent: Friday, April 13, 2018 1:34:08 PM
To: Mark G. Krum; Noah Helpern
Cc: sm@morrislawgroup.com; al@morrislawgroup.com; Sanford F. Remz; Noemi A. Kawamoto; Cotter Team; 'ferrariom@gtlaw.com'; hendricksk@gtlaw.com; Shoshana E. Barnett
Subject: RE: RDI

Mark,

I am attaching our old e-mail correspondence from February, wherein we agreed to Plaintiff's position on "relevant time frame." Accordingly, we have already searched for the documents you seem to be referencing below, but please let me know if you think I am overlooking something.

From: Mark G. Krum [<mailto:mkrum@bizlit.com>]
Sent: Friday, April 13, 2018 6:31 AM
To: Noah Helpern <noahhelpern@quinnemanuel.com>
Cc: Marshall Searcy <marshallsearcy@quinnemanuel.com>; sm@morrislawgroup.com; al@morrislawgroup.com; Sanford F. Remz <sremz@bizlit.com>; Noemi A. Kawamoto <nkawamoto@bizlit.com>; Mark G. Krum <mkrum@bizlit.com>
Subject: FW: RDI

Second transmission of the email below...

From: Mark G. Krum
Sent: Friday, April 13, 2018 9:29 AM
To: marshallsearcy@quinnemanuel.com; 'nhelpern@quinnemanuel.com' <nhelpern@quinnemanuel.com>
Cc: sm@morrislawgroup.com; al@morrislawgroup.com; Sanford F. Remz <sremz@bizlit.com>; Noemi A. Kawamoto <nkawamoto@bizlit.com>; Mark G. Krum <mkrum@bizlit.com>
Subject: RDI

Marshall and Noah,

I do not recall if you stood on the position that the "relevant time period" for the search for what I will for shorthand call ratification related documents commenced on December 11, 2017, the date of the MSJ hearings. What I now know from the testimony is that there were communications relating to ratification prior to that. I therefore ask that you agree (or confirm, as the case may be)

002042

Right

And what was your responsibility as
partnership physician

Patient care on daily basis taking care of
patients in the offices of the endocrine centers and in the
hospitals

And you see under partnership physicians the
chief operating officer all Thanya Rushing correct

Yes

10 And guess she is under both staff physicians
11 and partnership physicians correct

12 Yes

13 Did you have any interaction with Ms Rushing

14 Yes

15 What can you tell me the nature of that

16 She will be the person that we will go to

17 whenever we address issues concerns or suggestions about the

18 operations of our individual practices

19 Can you give me some specific examples what

20 would that be

21 Whenever- we needed new staff medical assistance

22 to train patients we needed blood pressure cuff etc

23 facility we needed new pans or pdds or whatever we needed for

24 the facilities to work

25 Would she be the one that would do the hiring of

extra staff if needed

At the offices yes I'm sure that she
was in charge of the endoscopy centers

And she would be cYrc- moth number to
and Shadow Lane correct

Right

And in Herderscr

Yes

Who would hire the cana or you know

10 dont know for sure

11 You were never involved in the hiring of any

12 CPNAs

13 was not

14 Were you involved in any The hiring

15 practices

16 Never

17 You talked about being in of the ship

18 What does that mean being captain of the ship

19 For billing purposes particularly thorough

20 federal government and Medicare in order to bill for

21 procedure there was to be physician responsible for that

22 patient There has to be diagnostic code associated to the

23 actual procedure Hence that physician is in the documents

24 in charge of everything that happens in the operating room

25 Again for billing purposes

So you would be essentially responsible for all
the billing. It went on that procedure room for that
procedure.

No.

Okay. Where mistaken.

The billing actually takes place after the
procedure is completed. All we do is provide codes. It goes
through the system. Then the billers take care of the billing.

Ann, you would provide code for your services.

10 Correct.

11 And for the anesthesia services.

12 No.

13 What would do that?

14 I do not know.

15 Would the billings appear on both of the same

16 bill sheet?

17 No. When we actually finished the procedure

18 the procedure actually generates what is called the PT code.

19 Only related to the CT that did colonoscopy or an

20 endoscopy. Doesn't have anything to do with anesthesia.

21 And is that computer generated?

22 Right.

23 You take care about the anesthesia fund, CPA fund

24 is that correct?

25 I didn't talk about it. He mentioned it.

<nkawamoto@bizlit.com>

Subject: RE: RDI

Kara,

It may have been one week since you started working on this, but it has been 3 months since we propounded the document requests to which this document is responsive, 2 months since it should have been produced and approximately 6 weeks since I first identified it particularly. Had defendants undertaken to delay the production of the document(s) until after the depositions of the three committee members had been taken, so that we were unable to be fully prepared to take those depositions and unable to examine them about that meeting or those meetings, defendants would have done exactly what was done here.

If we have an "Attorneys' Eyes Only" provision in our stipulated protective order, you are entitled to invoke it. Even if we do not, I will commit to not sharing the document or the substance of it with Mr. Cotter. Whether and how that works with Greenberg Traurig {"GT"} and its corporate client is another issue.

I have made no "new accusations regarding Mr. Gould's communications with Greenberg Traurig." What I did was to reference his deposition testimony, which includes the following:

- At 14:19 – 15:13 of the rough of his transcript, he testified that the first communication he had (in his capacity as the chairperson of the special committee) regarding ratification was telephonically in mid or late November 2017 with Bonner and Ferrario of GT;
- At 16:20 – 17:11, he testified that the next communication he had regarding ratification was telephonically in early December with committee members Coddington and McEachern, with Bonner of GT on the call;
- At 26:22 – 27:3, he testified that the next communications he had regarding ratification after the early December call were follow-up calls with Bonner and Ferrario of GT.

Not one document with respect to the foregoing communications has been produced, and not one such document is listed on a privilege log. Kindly produce and/or log of all such documents and/or explain why no documents have been produced or logged. Please have this completed by close of business Monday, sufficiently in advance of when our next status report is due that we can proceed accordingly.

Thank you.

Mark

From: hendricksk@gtlaw.com [<mailto:hendricksk@gtlaw.com>]

Sent: Thursday, April 12, 2018 4:38 PM

To: Mark G. Krum <mkrum@bizlit.com>; ferrariom@gtlaw.com; marshallsearcy@quinnemanuel.com

Cc: christayback@quinnemanuel.com; nhelpen@quinnemanuel.com; sm@morrislawgroup.com; al@morrislawgroup.com; Sanford F. Remz <sremz@bizlit.com>; Noemi A. Kawamoto <nkawamoto@bizlit.com>

002046

two months or three months period

Or any **trust** fund the anesthesia fund **all**
the money collected for the anesthesia would be part of that
global sort **from** correct

Correct

Are there LIOs made up of three facets

Object

frNA fund

Facility fee and professional fee

And what is professional fee

11 That's my part of the procedure That's me

12 performing the procedure

13 So **all** of you doctors would pool that money and

14 divide **it**

15 Correct

16 So the money **all** those monies from those

17 different entities who the physician were what the

anesthesia was charged and facility fees all put into big

19 pot and distributed pro rata based on your shares correct

20 Correct

21 And can you give me an idea of what you made in

22 **lets** say 2007 out of that

23 Do not recall

24 **could** it be over million dollars

25 No

Over 50010

No

How much

Probably less than hundred

Ok 5r _t your testimony that you received

only \$100 00 for 200 re work you performed at the
endoscopy center

do 00 the exact number but it was
probably somewhere around that number

10 Are you aware of when the other doctors
11 received

12 We do encourage that type of conversation
13 That wasn't asked you said are you
14 aware

15 I'm not aware

16 Okay would surprise you to know that for
17 example Clifford Crli possibly trade near almost two million
18 dollars

19 That won't surprise me

20 Would surprise you That possibly Eladio
21 Carrera made over million dollars

22 That won't surprise me

23 want to go back to the responsibility that you

24 have as physician in the procedure room You're basically

25 in charge of that procedure room correct

Correct

Theres doctor tteres CENA theres tech
ano theres nurse correct

Correct

Yoi hdve an opportunity to watch of these
peopla work

Sure

If there was some gross necThgence you would
call ftem on **it**

Absolutely

11 For example if the tech gave you dirty scope
12 youd ca him on **it**

11 Absolutely

14 If the CPNA employed unsafe practices you iould
15 cal him on **it**

16 Absolutely

17 If the nurse dio something that was against whd
18 yru icow to be medically safe you would call them on **It**

19 Yes

20 And the buck stops with you griess ooesnt
/1 **it**

22 Sort of yes

23 Now on tfese particular incident dates on July
24 25th 2007 and September 21st 2007 you werent involved in
25 any of the procedures at the clinic correct

disseminate such information.

So you perform cc oncscopies and endoscopies
wfeie **cuptls**

Hospitals and surgical center

THE COURT Do you have any physician **ptners** now or
lc ust you

THE TNESS no One

THE COURT So youre group or theres one
cth

MR SANTAROCCE Courts indulgence
DY MR SANTACROCE

You **testified** as to the procedures wten you
IL le me ask you what the procechure was when you actually wen
in procechure room Was the patient there wating for you

Yes

Did you see the patient prior to entering the
16 pcreaure rcom

Yes

Old you do history and physica on the
pdiencc

20 quick assessTent prior to **it** yea

Tell me what quick assessment **is**

z2 Ask them few questions and confirm the reason
zu why **theyre** there **for**

24 And what questions would you ask

/5 Whats the reason wny **theyre** there what kind

of symptoms were addressing to they have any questions about
the procedure itself

Would you fill out form for that

Yes

And that would be per the patients file

Correct

Would you sign that form

Yes

And then what happen after that

10 ask the anesthesiologist to boom induction

11 and start my procedure

So in your experience and practice which
13 includes working with Mr Lkenn correct you would also
14 instruct the anesthetist to CNA to induce the patient
15 correct

16 Correct

17 The anesthetist wouldnt be there prior to you
coming into the room would they

19 No

20 You mentioned that being partner in the
21 business it was business correct

22 Right

23 And as any good business you would have
24 discussions about cost saving measures correct

25 Yes