

IN THE SUPREME COURT OF THE STATE OF NEVADA

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

Appellant,

v.

DOUGLAS MCEACHERN, EDWARD
KANE, JUDY CODDING, WILLIAM
GOULD, MICHAEL WROTONIAK, and
nominal defendant READING
INTERNATIONAL, INC., A NEVADA
CORPORATION

Respondents.

Electronically Filed
Aug 30 2019 11:23 a.m.
Supreme Court Case No. 75053
Consolidated with Supreme Court
Case Nos. 76981, 77648 & 77733

District Court Case
No. A-15-719860-B

Coordinated with:
Case No. P-14-0824-42-E

Appeal (77648 & 76981)

Eighth Judicial District Court, Dept. XI
The Honorable Elizabeth G. Gonzalez

JOINT APPENDIX TO OPENING BRIEFS
FOR CASE NOS. 77648 & 76981
Volume VI
JA1251– JA1500

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CERTIFICATE OF SERVICE

I certify that I am an employee of MORRIS LAW GROUP; I am familiar with the firm's practice of collection and processing documents for mailing; that, in accordance therewith, I caused the following document to be e-served via the Supreme Court's electronic service process. I hereby certify that on the 28th day of August, 2019, a true and correct copy of the foregoing **JOINT APPENDIX TO OPENING BRIEFS FOR CASE NOS. 77648 & 76981**, was served by the following method(s):

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By: /s/ Gabriela Mercado

EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA

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

vs.

Case No.

MARGARET COTTER, ELLEN COTTER, A-15-719860-B
GUY ADAMS, EDWARD KANE, DOUGLAS
McEACHERN, TIMOTHY STOREY,
WILLIAM GOULD, JUDY CODDING,
MICHAEL WROTONIAK, and DOES 1
through 100, inclusive,
Defendants.

and

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

(CAPTION CONTINUED ON NEXT PAGE.)

VIDEOTAPED DEPOSITION OF JAMES COTTER, JR.
Los Angeles, California
Wednesday, July 6, 2016
Volume III

Reported by:
JANICE SCHUTZMAN, CSR No. 9509
Job No. 2343561
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1 BY MR. TAYBACK:

2 Q. I just want to make sure that I've got a
3 complete list here because I'll ask you some
4 follow-up questions about these.

5 You said that you had a lot of experience 09:57AM
6 with Reading.

7 By that, can you elaborate for me on what
8 you believe is the relevant experience that you had
9 that would make it such that the stockholders would
10 benefit by your reinstatement as CEO now. 09:57AM

11 A. I was involved with the company since 2002.
12 I was involved as a director. I became more
13 involved in the operations of the company since
14 about 2005. I was familiar with all of the assets
15 and the businesses of Reading with all of the 09:58AM
16 executives since 2007.

17 And again, I believe that I had done a very
18 good job at the company since my appointment as
19 president and since my appointment as CEO.

20 Q. Okay. And I'll get to the good job part of 09:58AM
21 it. I just wanted to focus first on the experience
22 that you thought -- the relevant experience, and
23 you've identified that for me.

24 Would you agree with me that Ellen Cotter
25 also has a lot of experience with Reading? 09:58AM

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1 BY MR. TAYBACK:

2 Q. When's the very first time that you can
3 remember ever discussing with anybody any concern
4 that you had about the independence of any director
5 on the Reading board? 11:21AM

6 MR. KRUM: Same objections.

7 THE WITNESS: Well, when Guy Adams -- after
8 my father died, Guy Adams wanted to reward my father
9 with a bonus, after he had died, a significant,
10 significant bonus, and comparing my dad to Jack 11:21AM
11 Welch and that, given that GE had rewarded Jack
12 Welch such a substantial retirement package when he
13 left GE, that my dad should be similarly rewarded.

14 And at that point, I remember having a
15 discussion with both Bill Gould and Ed Kane saying, 11:22AM
16 what is generating this? They had both felt it was
17 bizarre behavior, and at that point, we had -- I
18 believe we had discussed whether he was independent.

19 Again, didn't have any idea as to the level
20 of his reliance on Reading and entities that my 11:22AM
21 sisters controlled. So that's one example.

22 BY MR. TAYBACK:

23 Q. So -- but is that the first time that you
24 recall discussing with anybody the indep- -- your
25 concern about the independence of any board member? 11:22AM

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1 THE WITNESS: I didn't sug- --

2 THE REPORTER: I'm sorry. Objection?

3 MR. KRUM: Foundation.

4 THE WITNESS: I never suggested that the
5 bonus that was awarded or that Guy wanted to be 11:31AM
6 awarded to my father would have -- any of it would
7 have circled back to Guy.

8 My only point was there didn't appear to be
9 a legitimate business reason for his recommendation,
10 and without that, the question was, well, what's 11:31AM
11 driving this? And it wasn't just a question shared
12 by me. It was a question shared by Bill Gould and
13 Ed Kane.

14 BY MR. TAYBACK:

15 Q. At the -- as of May 21st, approximately 11:31AM
16 then, by that point in time, you knew that Mr. Adams
17 did not favor retaining you as CEO; correct?

18 A. I knew that he wanted to become interim CEO
19 and by virtue of that, yes, he wanted to, he did not
20 favor me remaining as CEO. 11:31AM

21 Q. The fact that they were even talking about
22 an interim CEO meant that you weren't going to be
23 CEO; correct?

24 A. Correct.

25 Q. The step before finding an interim CEO is 11:32AM

1 to have terminated you as CEO; correct?

2 A. Yes.

3 Q. So by the time that you started to have
4 conversations around May 21st regarding Mr. Adams'
5 independence, you already knew that he, as a board 11:32AM
6 member, did not favor retaining you as CEO; correct?

7 MR. KRUM: Objection, misstates the
8 testimony.

9 THE WITNESS: No, not true.

10 I don't know when I learned about it. I 11:32AM
11 never even knew that my position as CEO was in
12 jeopardy until literally days before that board
13 meeting.

14 BY MR. TAYBACK:

15 Q. When you say that board meeting, you 11:32AM
16 mean --

17 A. May 21st.

18 And I had only learned through a
19 conversation with a director that -- who was
20 speculating, that Guy was looking to become interim 11:33AM
21 CEO. And, you know, once I saw the agenda item
22 where the first item on the agenda was the status of
23 the president and CEO, I knew that something was
24 going down.

25 Q. Isn't it true that, in fact, it was the 11:33AM

1 fact that Mr. -- that you knew that Mr. Adams did
2 not -- Mr. Adams had decided that he wanted to
3 terminate you as CEO, that that's what prompted you
4 to raise issues about the level of Mr. Adams'
5 compensation from Cotter-controlled entities and his 11:33AM
6 independence?

7 MR. KRUM: Objection, vague.

8 THE WITNESS: I don't think that -- again,
9 it's similar to why he would have awarded my dad a
10 massive posthumous bonus. I didn't have a reason 11:34AM
11 for it, but my speculation was he's doing this
12 because he's not independent.

13 Now, when I learned that he was looking to
14 terminate me and that he had been working with my
15 sisters in terms of orchestrating my termination, I 11:34AM
16 thought, like I did with the bonus, there's no valid
17 business reason for terminating me as CEO.

18 I did -- I was performing very well. I had
19 done nothing wrong. There was no business reason
20 for him to terminate me. 11:34AM

21 So I thought, hey, there must be another
22 reason driving this. And that did lead me to
23 question -- further question his independence and
24 his reliance on my sisters and on Reading for his
25 livelihood. 11:35AM

1 BY MR. TAYBACK:

2 Q. So it is correct that you began to question
3 Mr. Adams' independence because you knew that he was
4 in favor of your termination as CEO?

5 MR. KRUM: Objection, misstates the 11:35AM
6 testimony.

7 THE WITNESS: Even had I not been
8 terminated as CEO, having a director on board with
9 that kind of reliance on the controlling stockholder
10 is something I would have wanted to address in time. 11:35AM

11 BY MR. TAYBACK:

12 Q. So certainly, then, in September of 2014
13 when you started to have questions about Mr. Adams'
14 independence based upon his recommendation of a
15 bonus, you must have undertaken some steps then to 11:35AM
16 get to the bottom of why Mr. Adams might lack
17 independence?

18 A. Well, there was a lot going on in
19 September of 2014 with my father's death, with
20 taking on the role of CEO, with the art- -- this 11:36AM
21 artificial crisis that my sister Ellen and Margaret
22 generated in the company, with their efforts to
23 create an executive committee, their absolute
24 refusal to report to me as CEO. There were a number
25 of issues that I was dealing with. 11:36AM

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1 And while that would have been a good issue
2 to address, you have to do it over time. And there
3 was only so much that I could focus on.

4 Q. So between September of 2014 and roughly
5 May 21st of 2015, you didn't do anything to 11:36AM
6 investigate your professed view that Mr. Adams
7 lacked independence as a board member; correct?

8 MR. KRUM: Objection --

9 THE WITNESS: Between --

10 MR. KRUM: -- misstates the testimony, 11:36AM
11 assumes facts not in evidence, conflates the
12 chronology.

13 THE WITNESS: Between September 14th and?

14 BY MR. TAYBACK:

15 Q. Between September of 2014 -- 11:36AM

16 A. Right.

17 Q. -- and May -- roughly May 21st of 2015, you
18 did not do anything to investigate your professed
19 belief that Mr. Adams lacked independence as a board
20 member; correct? 11:37AM

21 MR. KRUM: Same objections.

22 THE WITNESS: Again, I don't know when I
23 undertook to investigate Guy Adams's reliance on
24 Reading and entities my sisters purportedly
25 controlled. 11:37AM

1 BY MR. TAYBACK:

2 Q. But it was not significantly before
3 May 21st, 2015?

4 A. That I had investigated it?

5 Q. Yes. 11:37AM

6 A. That seems correct.

7 Q. You knew Mr. Adams was compensated for the
8 work that he did with respect to the captive
9 insurance companies utilized by Cecelia; correct?

10 A. I did. 11:38AM

11 Q. You'd known that for a long time because
12 you were involved with Cecelia; correct?

13 A. I knew that he was compensated, yes.

14 Q. And you knew exactly how much he was
15 compensated; correct? 11:38AM

16 A. I did.

17 Q. In fact, was part of your job at Cecelia to
18 work with Mr. Adams with respect to the captive
19 insurance companies that he had helped set up?

20 A. I don't know if I was working with 11:38AM
21 Mr. Adams. I certainly got him information when he
22 requested it.

23 Q. And did -- at any point in time, did you
24 feel, while you worked with Mr. Adams with respect
25 to those captive insurance companies, that he 11:38AM

Page 648

1 MR. KRUM: Asked and answered.

2 BY MR. TAYBACK:

3 Q. You don't have an opinion as to whether or
4 not the actions they actually took exceeded Nevada
5 law?

04:25PM

6 A. I don't have an opinion, no.

7 Q. The -- with respect to the appointment of
8 Mr. Wrotniak, you agree, as you certified
9 previously, that there are, in fact, no
10 qualifications required to be a director or to sit
11 on even a certain committee; correct?

04:26PM

12 MR. KRUM: Objection, asked and answered or
13 incomplete hypothetical.

14 THE WITNESS: I mean, none that I'm aware
15 of.

04:26PM

16 MR. KRUM: Well --

17 BY MR. TAYBACK:

18 Q. So --

19 MR. KRUM: -- excuse me.

20 Misstates the testimony, too.

04:26PM

21 BY MR. TAYBACK:

22 Q. So when you say Mr. Wrotniak was
23 unqualified, that's your opinion. It's not like
24 there were qualifications that are required for
25 appointment to a particular committee?

04:26PM

Page 808

EXHIBIT 39

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DISTRICT COURT
CLARK COUNTY, NEVADA

JAMES J. COTTER, JR.,	)	
individually and	)	
derivatively on behalf of)	)	
Reading International,	)	
Inc.,	)	
	)	Case No. A-15-719860-B
Plaintiff,	)	
	)	Coordinated with:
vs.	)	
	)	Case No. P-14-082942-E
MARGARET COTTER, et al.,	)	
	)	
Defendants.	)	
and	)	
READING INTERNATIONAL,	)	
INC., a Nevada	)	
corporation,	)	
	)	
Nominal Defendant)	)	

VIDEOTAPED DEPOSITION OF MARGARET COTTER
TAKEN ON MAY 13, 2016
VOLUME II

REPORTED BY:
PATRICIA L. HUBBARD, CSR #3400

1 A. The meeting that I told him about Simon
2 Roberts?

3 **Q. Yes.**

4 A. I think they were at the meeting about
5 other possible candidates for the board.

6 **Q. So, having gone through that sequence,**
7 **does that refresh your recollection at all about the**
8 **time frame in which you had this communication with**
9 **Mr. Roberts and meeting with other directors in**
10 **which you discussed your communication with**
11 **Mr. Roberts?**

12 A. I don't recall when I first had a
13 conversation with Mr. Roberts.

14 The meeting with the other directors I
15 believe was sometime in 2015 in the fall.

16 **Q. Was there any other person with whom you**
17 **spoke or communicated about becoming an RDI director**
18 **at any point in time in 2015?**

19 A. Michael Wrotniak.

20 **Q. Who is he?**

21 A. He is somebody that I went to college
22 with, and he is married to a friend of mine.

23 **Q. What's her name?**

24 A. Patricia Wrotniak.

25 **Q. How long have you known Michael**

1 Wrotniak?

2 A. I met him in college, so --

3 Q. We have your education. You don't have
4 to do the calculations.

5 A. Thank you.

6 Q. And how long have you known his wife
7 Patricia?

8 A. I've known her longer than Michael
9 Wrotniak.

10 Q. Dating back to when, whether my date or
11 place in life?

12 A. Freshman year in college.

13 Q. So you've known her since freshman in
14 college and Michael Wrotniak since later in college?

15 A. That's correct.

16 Q. I assume because she started dating him,
17 correct?

18 A. That's correct.

19 Q. Sometimes lawyers can fuse together a
20 couple points of data.

21 When did you first communicate with
22 either Patricia or Michael Wrotniak about Michael
23 Wrotniak joining the RDI board of directors?

24 A. Sometime in the fall of 2015.

25 Q. Describe your relationship with Patricia

1 **Wrotniak, please.**

2 A. She is a college friend. I speak to
3 her -- I don't know -- once every three or four
4 weeks. I see her maybe four times a year. It
5 varies. She had kids very early on after college,
6 so I really didn't see her that much.

7 And now that I have kids and work, I
8 don't see her that often.

9 **Q. Does she still -- well, as of today is**
10 **she one of your best friends?**

11 MR. SEARCY: Objection. Vague.

12 THE WITNESS: I would consider her a
13 close friend.

14 BY MR. KRUM:

15 **Q. And describe your relationship with**
16 **Michael Wrotniak.**

17 A. I don't talk to him or see him as I --
18 as I had done with Patricia. I would maybe see him
19 once a year if I went to her house for dinner, but I
20 wouldn't consider I have, you know, an ongoing
21 relationship with him.

22 **Q. How often do you communicate with him?**

23 A. Now?

24 **Q. How often did you communicate with him**
25 **in 2014?**

1 A. Oh, he would email me if he wanted show
2 tickets.

3 **Q. How often did you communicate with him**
4 **in 2015?**

5 A. I don't know.

6 MR. KRUM: I'll ask the court reporter
7 to mark as Exhibit 160 --

8 THE REPORTER: Yes.

9 MR. KRUM: -- two pages, the first of
10 which is dated April 9, 2015, and appears to be an
11 email from Margaret Cotter to Kelley Anderson with
12 the subject "Michael Wrotniak." Production numbers
13 are MC2812 and 13.

14 (Whereupon the document referred
15 to was marked Plaintiffs'
16 Exhibit 160 by the Certified
17 Shorthand Reporter and is attached
18 hereto.)

19 MR. FERRARIO: This has a red mark on
20 it.

21 MR. KRUM: A what?

22 MR. FERRARIO: 158. There you go.

23 MR. KRUM: Oh, I passed you a prior
24 exhibit --

25 MR. FERRARIO: That's all right.

EXHIBIT 40

EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA

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

vs.

Case No.

MARGARET COTTER, ELLEN COTTER, A-15-719860-B
GUY ADAMS, EDWARD KANE, DOUGLAS
McEACHERN, TIMOTHY STOREY,
WILLIAM GOULD, JUDY CODDING,
MICHAEL WROTONIAK, and DOES 1
through 100, inclusive,
Defendants.

and

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

(CAPTION CONTINUED ON NEXT PAGE.)

VIDEOTAPED DEPOSITION OF JONATHAN GLASER
Los Angeles, California
Wednesday, June 1, 2016

Reported by:
JANICE SCHUTZMAN, CSR No. 9509
Job No. 2312217
Pages 1 - 293

Page 1

1 search -- CEO search was concluded and they
2 announced Ellen was becoming the permanent CEO, one,
3 I was not in the least bit surprised and, two, I
4 told Andrzej in the conversation I had with him that
5 I was not necessarily troubled by that either. 04:18PM

6 Q. Did you say to Andrzej, the CFO, why you
7 were not troubled by that?

8 A. I don't recall, no.

9 Q. Why weren't you troubled by that?

10 A. I recognize, one, the difficulty of finding 04:18PM
11 anybody else, particularly with the circus going on;
12 and, two, I think she knows the company pretty well,
13 has been there a long time, probably learned the
14 business from her dad.

15 So I'm not convinced that there's some 04:18PM
16 knight in shining armor out there to come in and be,
17 you know, a great -- you know, a much better CEO of
18 this company. I'm okay with Ellen.

19 Q. Did you -- I believe you indicated that you
20 spoke to someone on behalf of Pico -- 04:19PM

21 A. Yes.

22 Q. -- Pico Holdings?

23 A. Yeah.

24 Q. Do you recall -- you don't remember who the
25 name was? 04:19PM

EXHIBIT 41

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DISTRICT COURT
CLARK COUNTY, NEVADA

JAMES J. COTTER, JR.,	)	
individually and	)	
derivatively on behalf of	)	
Reading International,	)	
Inc.,	)	
Plaintiff,	)	Case No. A-15-719860-B
vs.	)	Coordinated with:
MARGARET COTTER, et al.,	)	Case No. P-14-082942-E
Defendants.	)	
and	)	
READING INTERNATIONAL,	)	
INC., a Nevada	)	
corporation,	)	
Nominal Defendant	)	

VIDEOTAPED DEPOSITION OF WILLIAM GOULD
TAKEN ON JUNE 8, 2016
VOLUME 1

JOB NUMBER 315485
REPORTED BY:
PATRICIA L. HUBBARD, CSR #3400

1 school.

2 A. Including high school.

3 Q. No. Following high school.

4 A. Oh, following. I went to Loyola
5 Marymount University, was an English major, and then
6 after that went to U.C.L.A. Law School, graduated in
7 1963.

8 Q. And in whatever form suits you, if you
9 would, please, describe your professional
10 experience, job position and title.

11 A. I'm a partner at the Law Firm of Troy
12 and Gould. Basically I'm a corporate lawyer. I
13 don't do litigation. I do business transactions,
14 security offerings, capital raising, and then
15 disputes among partners.

16 So those would be my main areas of
17 expertise.

18 Q. Has that been the case since you began
19 practice?

20 A. It has. But the level of it changed
21 from being more into the weeds than now being more
22 in corporate governance type things.

23 Q. And describe for us, if you would,
24 please, your corporate governance practice.

25 A. I advise boards of directors on proper

1 procedures to be followed and how the directors can
2 fulfill their responsibilities in following through
3 and taking actions.

4 Q. And by "responsibilities," are you
5 referring to their fiduciary duties?

6 A. Yes.

7 Q. And I do not intend make this a law
8 exam, Mr. Gould. I'm not going to ask a dozen of
9 these questions, but I'll ask a couple of
10 foundational questions.

11 So if you would, please, with that as
12 context, what in general terms would you describe
13 the fiduciary obligations of directors of public
14 companies to be?

15 MR. SWANIS: Objection. Form.

16 MR. HELPERN: Join.

17 MR. RHOW: You can answer.

18 THE WITNESS: Well, I think it -- a
19 fiduciary is very similar to a trust beneficiary
20 type of relationship. And the directors have to use
21 their best efforts and due care in making decisions
22 on behalf of the corporation for the benefit of the
23 corporation and the shareholders. That's the
24 essence of it.

25 ///

1 three members of the C.E.O. search committee?

2 A. No.

3 Q. Okay. So let me backfill a little bit.

4 So the first step in the C.E.O. search
5 process was formation of the committee; is that
6 right?

7 A. Yes.

8 Q. And how did that come to pass?

9 A. Early on when -- there were two
10 committees that were being formed. One committee
11 was a committee -- was an executive committee, one
12 committee was a search committee.

13 This happened, oh, I would say, in June
14 of 2015, around that time, June or July.

15 Ellen asked me if I would like to be a
16 member of the executive committee.

17 And I said "No, I don't have time for
18 it." I knew that would be an extensive job. But I
19 did tell her at that time that I would be willing to
20 serve on the search committee.

21 So, when the board approved it, she
22 basically included my name as one of the four
23 persons who would be on that committee.

24 Q. Did Ellen select the four members of the
25 committee?

1 A. Yes.

2 Q. Did anybody respond?

3 A. There was responses, and I think, you
4 know -- I think the general feeling was that as long
5 as -- my feeling was -- I should just say it that
6 way -- my feeling was I didn't feel as strongly
7 about it as he did, because any major decisions of
8 the executive committee would have to be reported to
9 the board.

10 And I felt that a lot of corporations do
11 have executive committees, and it didn't bother me
12 as it bothered Tim.

13 Q. When you say, Mr. Gould, any major
14 decisions would have to be reported to the board,
15 are you saying that the executive committee would
16 make the decision but that the board would learn to
17 it?

18 MR. SWANIS: Object to form.

19 MR. HELPERN: Join.

20 MR. RHOW: I think it's vague, but you
21 can answer.

22 THE WITNESS: Well, I think that, you
23 know, the problem -- I think both reported, and I
24 think -- I think the executive committee using its
25 judgment would not make important decisions without

1 having them vetted out by the board. It's like the
2 chief executive of the company would not make major
3 decisions without clearing it with the board.

4 And so I -- I wasn't concerned until I
5 saw the executive committee -- unless I saw that the
6 executive committee was doing things outside their
7 scope of what I thought their authority should be.

8 BY MR. KRUM:

9 Q. You understand that the executive
10 committee set the date for the 2015 annual
11 shareholders meeting, right?

12 MR. HELPERN: Objection to form.

13 MR. SWANIS: Join.

14 THE WITNESS: I wasn't aware of that. I
15 mean I may have been aware of it at the time but
16 I've forgotten it.

17 BY MR. KRUM:

18 Q. Do you recall that the executive
19 committee set the date for the -- the record date
20 with respect to the 2015 annual shareholders
21 meeting?

22 MR. RHOW: Foundation.

23 MR. SWANIS: Object to form.

24 MR. RHOW: Foundation.

25 MR. HELPERN: Join.

1 MR. RHOW: You can answer.

2 THE WITNESS: I can't recall that.

3 BY MR. KRUM:

4 Q. Given the circumstances that existed in
5 2015, what was your thought at the time about
6 whether the executive committee should set the
7 record date and the annual shareholder meeting date
8 or that the full board should do some?

9 MR. SWANIS: Objection. Form,
10 foundation.

11 MR. HELPERN: Join.

12 THE WITNESS: I had no thought about it.

13 BY MR. KRUM:

14 Q. What discussion was there at the board
15 meeting you've been describing at which the
16 executive committee was repopulated about who would
17 or should be a member of that executive committee?

18 A. Well, I think Tim Storey expressed his
19 concerns about having the committee in general.

20 I think Jim Cotter, Jr., expressed
21 concerns about having the composition of the
22 executive committee. He was concerned about --
23 particularly about Guy Adams.

24 Q. What did he say about Guy Adams?

25 A. He said that Guy Adams, he felt, was not

1 an independent director.

2 Q. Do you recall what, if anything, he said
3 as to why he thought Mr. Adams did not qualify as an
4 independent director?

5 A. He -- he said that a large percentage of
6 Guy Adams's income was dependent upon the Cotter
7 family and the corporation.

8 Q. Had you ever heard or been told that
9 previously?

10 A. I'm not so sure I had known -- I think
11 Jim Cotter, Jr. Had mentioned this at meetings, but
12 I had no direct knowledge of that. I had no idea
13 about Guy Adams's net worth or what his income was.

14 I did know he had worked for Jim Cotter,
15 Sr., done some work for him. But I had always
16 assumed Guy had a number of other business
17 activities that he really earned his living by.

18 Q. Okay. Did you ever learn otherwise?

19 MR. SWANIS: Objection to form.

20 THE WITNESS: Yes.

21 BY MR. KRUM:

22 Q. When?

23 A. About three weeks ago or a month ago.

24 Q. What did you learn about three weeks or
25 a month ago?

1 A. I learned that in Guy Adams's deposition
2 he admitted that a great percentage of his net worth
3 had come from the corporate -- not his net worth,
4 but his earnings had been derived from the
5 corporation and from the Cotter family.

6 Q. And by "the corporation" you're
7 referring to RDI?

8 A. RDI.

9 Q. What, if anything, did you do as a
10 consequence of learning that information?

11 A. I was asked whether Guy Adams was -- if
12 I considered him independent for the purposes of his
13 service on the comp committee.

14 Q. Who asked you that?

15 A. Craig Tompkins and Ellen Cotter.

16 Q. What was your response?

17 MR. SWANIS: I just want to object to
18 this line of questioning, object on attorney-client
19 privilege.

20 I didn't know if you were heading into
21 the -- the person that asked him that.

22 MR. KRUM: Well, no. I haven't asked
23 about what Mr. Tompkins said --

24 MR. SWANIS: Let me finish.

25 MR. KRUM: I'm sorry. Go ahead.

1 MR. SWANIS: To the extent that
2 communications with Mr. Tompkins for the purposes of
3 soliciting or providing information is providing
4 legal advice to the company, those communications
5 are privileged.

6 To the extent the purpose was not for
7 the purpose of providing -- or communications were
8 not for the purpose of providing advice, then you
9 may answer the question.

10 THE WITNESS: Thank you. This was not
11 really legal advice. He asked -- They asked my
12 opinion, how I felt about it.

13 BY MR. KRUM:

14 Q. What did you tell him?

15 A. I told him that I did not believe he was
16 independent for the purpose of serving on the
17 audit -- on the nomination -- on the compensation
18 committee.

19 Q. Did you explain why you thought that?

20 A. Yes, I did.

21 Q. What did you tell him?

22 A. I said that even though he did not
23 violate the test -- the concrete test laid out by
24 the Exchange, that there is an overriding test on
25 particular types of transactions where a person

1 might be not independent for that type of
2 transaction.

3 And clearly if Mr. Adams's income was
4 substantially derived from Reading and the Cotter
5 family, if his whole livelihood depended on them, he
6 could not be independent in passing on the
7 compensation of the Cotter family members.

8 **Q. What other types of transactions were**
9 **you referencing in your last answer, if any, beyond**
10 **passing on compensation of Cotter family members?**

11 A. That -- that's what I was referencing,
12 just that particular matter.

13 **Q. What types of transactions are subject**
14 **to the overriding test you just described?**

15 MR. HELPERN: Objection. Form.

16 MR. SWANIS: Join. Foundation.

17 THE WITNESS: Well, if a question -- a
18 party, for example, was totally independent, has a
19 separate business relationship or transaction
20 proposed with the company, even though that person
21 might otherwise be independent for all other
22 purposes, that transaction brings into question that
23 person's independence with respect to that
24 transaction. That's what I was referring to.
25 ///

1 BY MR. KRUM:

2 Q. Mr. Gould, what other discussions, if
3 any, have you had with anyone regarding the subject
4 of Mr. Adams's independence or lack of independence?

5 A. The only people I talked to about that
6 were Ellen and Craig Tompkins. I don't recall
7 discussing it with anybody else.

8 Q. Mr. Adams has resigned from the RDI
9 board of directors compensation committee, correct?

10 A. Yes.

11 Q. But he was on the RDI board of directors
12 compensation committee when it approved the
13 compensation packages -- the new compensation
14 packages for Ellen Cotter and Margaret Cotter
15 earlier in calendar year 2016, correct?

16 MR. HELPERN: Objection to form.

17 MR. SWANIS: Join.

18 BY MR. KRUM:

19 Q. Mr. Adams also was a vocal proponent in
20 support of terminating Jim Cotter, Jr., correct?

21 MR. SWANIS: Objection to form.

22 THE WITNESS: Yes.

23 MR. HELPERN: Join.

24 MR. RHOW: I'm --

25 ///

1 words "given the situation"?

2 A. None of the candidates met the perfect
3 profile that we all wish we would come up with, you
4 know, somebody like from central casting.

5 Ellen did not have certain of the
6 qualities we were looking for in the sense of the
7 real estate experience and this and that. But none
8 of the candidates had what we were looking for.

9 So, as we interviewed these
10 candidates -- and by the way, all of them were very,
11 very qualified good candidates. They really were.
12 I was very impressed with the quality of the people
13 that Korn Ferry had put forward.

14 And this became apparent to me, anyway,
15 that Ellen was the type of person who would continue
16 the continuity, that people liked her, that she had
17 had a good reputation, we had been working with her
18 for all these years. And given all those
19 circumstances, she stood head and shoulders above a
20 person who would be asked to come into this horrible
21 vicious situation.

22 It made it almost an impossible task for
23 somebody to enter this corporate management
24 structure and be able to thrive.

25 Q. So is it fair to say your view was that

1 foundation.

2 MR. HELPERN: Join.

3 THE WITNESS: Yes.

4 BY MR. KRUM:

5 Q. When did you first hear that?

6 A. Around the same time frame, early --
7 early 2015.

8 Q. You understood that there were disputes
9 between Ellen and Margaret Cotter on one hand and
10 Jim Cotter, Jr., on the other hand regarding certain
11 trust matters, correct?

12 A. Yes.

13 Q. And was your understanding of the nature
14 of those disputes?

15 A. Well, I didn't get much into those
16 disputes, but my general understanding is that it
17 all basically concerned an amendment to a trust
18 where the -- Margaret had been the sole trustee, and
19 now when Jim, Sr., was very sick, he amended that
20 trust to make Jim, Jr., a co-trustee.

21 That was the essence of what I knew
22 about it.

23 Q. And the trust to which you just
24 referred, was that the trust that was going to hold
25 the RDI class B voting stock?

1 A. Yes.

2 Q. And so the issue was about whether
3 Margaret alone or Margaret as co-trustee with
4 Jim, Jr., would control over 50 percent of the RDI
5 class B voting stock, right?

6 A. Right.

7 Q. And the point of that is the person or
8 persons who controlled that voting stock were in a
9 position to select and elect members of the RDI
10 board, right?

11 MR. SWANIS: Objection. Form.

12 THE WITNESS: Yes.

13 BY MR. KRUM:

14 Q. Did any other member of the RDI board of
15 directors ever express in your presence or in an
16 email that you saw a view on the issue of whether
17 Margaret or Margaret and Jim should be trustees of
18 the voting trust?

19 MR. SWANIS: Objection. Form.

20 MR. HELPERN: Join.

21 THE WITNESS: Well, Jim, Jr., showed me
22 some videos of his father contemporaneously with the
23 signing of the -- of the amendment, and the
24 discussion came up generally, but it was never part
25 of the board proceedings. I don't recall it.

1 finished.

2 A. I'm ready.

3 Q. Do you recognize Exhibit 274?

4 A. I do.

5 Q. What is it?

6 A. It's an email from Jim, Jr., to me
7 giving me some information about Linda Pham's
8 history with the company.

9 Q. Do you have any recollection as you sit
10 here today, Mr. Gould, why --

11 Well, did you know at the time why he
12 sent this email to you?

13 A. Well, I was then acting as lead director
14 and was communicating with the other directors on
15 the general subject. And I had established a pretty
16 good line of communication with Jim, Jr.

17 Q. Okay. What was the status of the Linda
18 Pham investigation as of February 20, 2015?

19 A. I'm not certain.

20 Q. Meaning you don't recall?

21 A. I don't recall.

22 Q. Okay. We're done with that exhibit.

23 When was the first time you heard anyone
24 speak of or refer to replacing Jim Cotter, Jr., as
25 C.E.O., including with an interim C.E.O.?

1 A. That would have been in late April,
2 early May 2015.

3 **Q. What happened then?**

4 A. There was a notice sent out to the board
5 indicating there would be a meeting to discuss,
6 among other things, the status of the -- something
7 like this, the status of the C.E.O. or something
8 like that.

9 And I called for an independent board
10 meeting to find out what this was all about and what
11 the issues were.

12 And that's when I first heard it.

13 **Q. How did you first hear?**

14 A. At some meeting we had -- there were
15 several meetings, so excuse me if I'm not specific
16 about which one on which date.

17 But at this meeting I heard the three
18 other directors, Tim -- not Tim Storey, but Guy,
19 Doug and Ed Kane say they felt that -- that Jim's
20 performance was such that he should be replaced.

21 **Q. Was that at the first supposed board**
22 **meeting pursuant to the -- where the agenda item was**
23 **status of president and C.E.O.?**

24 MR. SWANIS: Objection to form.

25 THE WITNESS: No. It was before that.

1 BY MR. KRUM:

2 Q. What is Exhibit 11?

3 A. Exhibit 11 is a -- basically is an email
4 from me to the independent directors, basically
5 setting the agenda for this telephonic meeting we
6 were going to have.

7 Q. Did you send Exhibit 11 on or about
8 March 6 or 7, 2015?

9 A. Yes.

10 Q. Directing your attention to the next to
11 last page of Exhibit 11, it bears production number
12 249 in the lower right-hand corner.

13 Do you have that?

14 A. I do.

15 Q. You see that item number four concerns
16 Tim Storey acting as ombudsman --

17 A. Yes.

18 Q. -- and so forth?

19 A. Yes.

20 Q. Is that the arrangement to which you
21 were referring a moment ago?

22 A. Yes, it is.

23 Q. Does that refresh your recollection --

24 A. Yes, it does.

25 Q. Let me finish.

1 Does that refresh your recollection
2 that -- that it was in March of 2015 that the five
3 non-Cotter directors agreed to Tim Storey being a
4 committee of one or the ombudsman to work with the
5 Cotters?

6 A. Yes.

7 MR. SWANIS: Objection to form.

8 MR. HELPERN: Join.

9 BY MR. KRUM:

10 Q. Now, did the -- did the conference call
11 of March 12 occur that's referenced both in the
12 cover email Exhibit 11 and the --

13 A. Yes, it did.

14 Q. And who said what during that call
15 regarding Tim Storey serving as a committee of one
16 or ombudsman to work with the Cotters?

17 A. Well, I think all the directors felt
18 that that was a reasonable approach to try. And it
19 was felt by -- by everybody that hopefully Tim could
20 accomplish three things. First of all, he would
21 mediate -- help mediate the disputes among the three
22 family members; secondly, he would monitor the
23 progress of how Jim, Jr., was coming along and how
24 the other siblings were doing, as well; and finally
25 he would report back to the board as to how he

1 viewed the progress of -- of these relationships.

2 And everybody seemed to agree with that.

3 Q. When you say "everybody seemed to
4 agree," you mean that no one said anything in words
5 or substance that communicated -- well, strike that.

6 Why do you say everyone seemed to agree?

7 A. Well, the only issue I can remember was
8 the fact that we were worried about Tim's time. He
9 lived in Auckland, and he had to fly over here and
10 spend time. And we knew it would be time consuming
11 and expensive.

12 And he indicated he would be willing to
13 do it.

14 Q. What did -- when you say he would help
15 mediate the disputes among the three family members,
16 to what are you referring?

17 A. I'm referring to the fact that on one
18 hand Jim was saying that Ellen wasn't giving him
19 the -- her business plan, and she -- Margaret was
20 being -- refusing to do -- excuse me -- to provide
21 anything.

22 And they were saying that Jim was making
23 unreasonable demands on them and he was asking them
24 for things that he shouldn't be asking them for.

25 So, Tim, who is a very successful and

1 foundation.

2 MR. HELPERN: Join.

3 THE WITNESS: Yes. We did not wait
4 until the end of June.

5 BY MR. KRUM:

6 Q. Both you and Mr. Storey expressed to
7 Messrs. Kane, Adams and McEachern that the process
8 should be completed, correct?

9 A. Yes.

10 Q. Did any of them provide any response
11 other than to communicate that they were unwilling
12 to allow that to happen?

13 MR. HELPERN: Objection to form.

14 MR. SWANIS: Join.

15 THE WITNESS: They clearly made the
16 statements that you had said, that they -- they felt
17 that they were convinced that Jim's performance was
18 such that it had to be cut off at an earlier point;
19 that the time had come to make a decision, and we
20 should not wait the extra month or so to get Tim
21 Storey's final report.

22 Q. Did any of the -- any of Messrs. Kane,
23 Adams or McEachern ever provide any responses to any
24 interim reports provided by Mr. Storey?

25 MR. HELPERN: Objection. Lacks

1 that I think was when we received the notice of the
2 board meeting where on the agenda was an item that
3 looked suspicious. And that agenda item was
4 something like "consideration of C.E.O. status."

5 Q. When you say -- when you say it looked
6 suspicious, why do you say that?

7 A. Because there hadn't -- to me there
8 hadn't been any discussion of that at that point.

9 Q. Did that turn out to be -- did that turn
10 out to mean a motion to terminate Jim Cotter, Jr.,
11 as the president and C.E.O.?

12 MR. HELPERN: Objection. Form and
13 foundation.

14 MR. SWANIS: Join.

15 MR. RHOW: You can answer.

16 THE WITNESS: I forgot the question.

17 MR. KRUM: Okay. Sure. Would you read
18 the question back, please.

19 (Whereupon the question was read
20 as follows:

21 "Question: Did that turn out to
22 be -- did that turn out to mean a
23 motion to terminate Jim Cotter,
24 Jr., as the president and
25 C.E.O.?"

1 THE WITNESS: It eventually turned out
2 to be that, yes.

3 BY MR. KRUM:

4 Q. And when you say "eventually," is that
5 because the vote did not occur at that first
6 meeting?

7 A. That's correct.

8 MR. KRUM: I'll ask the court reporter
9 to mark as Exhibit 277 what purports to be a
10 May 19th, 6:38 P.M. email from Ellen Cotter to the
11 other members of the RDI board of directors, carbon
12 copy to William Ellis. It bears production number
13 GA5340.

14 (Whereupon the document referred
15 to was marked Plaintiffs'
16 Exhibit 277 by the Certified
17 Shorthand Reporter and is attached
18 hereto.)

19 THE WITNESS: Yes. I'm prepared.

20 BY MR. KRUM:

21 Q. Do you recognize Exhibit 277?

22 A. Yes.

23 Q. What is it?

24 A. This is an agenda for the meeting of the
25 board of directors that was scheduled for the 21st

1 That's fine. I had the time to do it.

2 So she -- she came out to my office with
3 Craig Tompkins and said that there was -- I think
4 she mentioned the two directors -- she said there
5 was a meeting coming up in like 48 hours, and she
6 said that these were two people that had been vetted
7 out by the three other -- other than Tim Storey and
8 myself, by Guy and -- and Doug, and that there were
9 two very qualified people that she felt should be on
10 the board.

11 She went through and explained it to me.

12 I -- I was surprised on the shortness of
13 notice, because the meeting was coming up. And I
14 was also surprised I had not heard about this until
15 that time. I expressed that comment to Ellen.

16 **Q. What was her response, if any?**

17 A. Well, they wanted to -- I guess the
18 thought was that this committee, this so-called
19 nominating committee had been doing the work, and
20 they didn't want to get everybody -- to, you know,
21 get things too firm until they had decided it was
22 worth going forward with these two people.

23 **Q. What information, if any, did Ellen**
24 **Cotter provide you about these two people?**

25 A. She provided me with resumes of both

1 BY MR. KRUM:

2 Q. I don't know whether I should be
3 insulted by those objections.

4 A. I just have -- corporate governance, I
5 don't know about that. Because they were -- they
6 were involved in their own companies and -- they
7 might have had some corporate governance experience.
8 I think both of them probably did. Not public
9 corporate governance, though.

10 Q. So that we can obviate these objections
11 when you use the term "corporate governance,"
12 Mr. Gould, what do you mean?

13 A. Well, I mean the general best practices
14 that boards of directors should follow in operating
15 companies and overseeing them.

16 Q. Did you ever express to Ellen Cotter the
17 notion that the time afforded you and/or other
18 directors who were not members of the special
19 nominating committee to consider the persons
20 proposed was inadequate?

21 A. Not exactly in those terms. But I did
22 express my unhappiness that I was brought this
23 information on such short notice.

24 Q. Did she indicate that there was some
25 rush?

1 A. Yes. Because the -- I thought the proxy
2 statement apparently was in the process of being
3 prepared and had to go out.

4 **Q. And by that time had you heard or**
5 **learned that Tim Storey was not going to continue to**
6 **be a director?**

7 MR. SWANIS: Objection to form,
8 foundation.

9 THE WITNESS: Sometime around that time
10 I was informed that he was not going to be staying
11 for reelection.

12 BY MR. KRUM:

13 **Q. Who told you what in that regard?**

14 A. Well, I heard just -- I heard from Ellen
15 who told me that they had decided that -- that the
16 nominating committee had decided that he was not
17 going to be -- that they did not want to nominate
18 him; that the directors, the non- -- except for
19 myself, who, by the way, I have tremendous
20 confidence in Tim Storey, but the other directors
21 had lost confidence in him, and that Ellen and
22 Margaret I still think felt his -- he was focusing
23 too much on process and procedure rather than
24 substance.

25 **Q. What did she tell you, if anything,**

1 what due diligence, if any, RDI had done regarding
2 either or both of them?

3 And by RDI, I mean generally or
4 specifically the so-called nominating committee.

5 A. Well, she -- first of all, she had
6 known -- she had known Judy Coddling for quite a
7 while. So she went through her statements about
8 that. I don't remember specifically what she said.

9 But on Michael, again, she had
10 Margaret's strong push on him. And I'm not sure if
11 she went into any questions about diligence, any
12 issues about diligence.

13 Q. Did you subsequently learn anything
14 about what diligence, if any, had been done with
15 respect to either or both of Ms. Coddling and
16 Mr. Wrotniak?

17 A. Well, one -- the one bit of diligence
18 that -- that was somehow missed, and that was the
19 fact that it came to our attention after the first
20 session where the board reviewed -- the two new
21 directors as a whole were taking up the subject of a
22 board meeting, it came to our attention that Andy
23 Shapiro had uncovered by Googling that Judy Coddling
24 had been involved in a matter involving -- I think
25 it was in L.A. and something involving the

1 educational thing.

2 And there was a -- there were certain
3 criminal things that were mentioned in this -- in
4 this article.

5 And I was kind of surprised that we
6 hadn't -- we hadn't come up with that. I mean it
7 was embarrassing to have some third party just
8 Google and come up with something at least we should
9 have known about when we first considered; not that
10 it made any difference, because subsequently we did
11 take that into account. We grilled her on it for a
12 great period of time, and she satisfied us.

13 But I wish I had known it the first
14 go-around.

15 **Q. When you say, Mr. Gould, that "we**
16 **grilled her on it," who did what?**

17 A. Well, the directors asked her questions
18 about it. She was on the call, it was a conference
19 call that was on a Saturday morning. I think it was
20 on a weekend. Maybe it wasn't.

21 And she answered questions about what
22 happened in this matter and how could she explain
23 this -- this episode that occurred. And she did
24 explain it.

25 **Q. Were all of the directors on that call?**

1 A. I believe they were.

2 Q. What was said, if anything, about her --
3 the status of her employment during that phone call?

4 MR. SWANIS: Objection. Form.

5 THE WITNESS: Her employment?

6 BY MR. KRUM:

7 Q. Right. So, for example, was she asked
8 if she expected to continue to be employed by the
9 person -- excuse me -- by the entity by which she
10 then was employed?

11 A. I don't recall that discussion.

12 Q. Did anybody ask in words or substance
13 "Are you going to get fired on account of these
14 matters that were reported in the press that were
15 brought to our attention" --

16 A. Yes.

17 Q. -- "by Andy Shapiro?"

18 A. Well, yes. And she basically satisfied
19 our concerns. I mean what she basically told us was
20 this was more of a political thing and there was no
21 substance to it.

22 And this seemed to be confirmed by the
23 way certain governmental entities do business.

24 Q. You reviewed the proxy for the 2015
25 annual shareholders meeting, right?

1 A. Yes.

2 Q. And you saw that it described her
3 employment?

4 A. I didn't read that that carefully about
5 other people. I don't read the whole proxy as to
6 every single aspect of it. I read the parts that
7 pertain to me and then the most important parts of
8 it that I want to make sure are correct. But I
9 didn't dwell on her employment.

10 Q. Did you ever hear or learn that her
11 employment had terminated?

12 A. I don't recall.

13 Q. So as we sit here today, to the best of
14 your knowledge, Ms. Cotter -- Ms. Cotter -- well,
15 it's close.

16 A. It's close.

17 MR. RHOW: You got it both on Ms. and
18 Cotter.

19 BY MR. KRUM:

20 Q. Try again. As you sit here today,
21 Mr. Gould, is it your understanding that
22 Ms. Coddington, Judy Coddington, continues to be employed
23 by the same entity by which she was employed when
24 she was added to the RDI board of directors?

25 A. I don't have any understanding on that.

1 Q. Did you ever hear or learn that her
2 employment with the entity by which she was employed
3 when she was added to the RDI board of directors
4 terminated following issuance of the proxy and prior
5 to the 2015 annual shareholders meeting?

6 A. The timing I can't tell you, but I do
7 know I did hear that there was a -- some kind of a
8 termination of that employment, yes. I can't tell
9 you when I heard it.

10 Q. Who -- who are the persons primarily
11 responsible for preparing the proxy for the 2015
12 annual shareholders meeting?

13 A. Well, for this meeting I think we had a
14 cast of thousands because there was so much involved
15 with the disputing facts that the different sides
16 had.

17 Basically it would be prepared first by
18 the -- usually be prepared by Craig Tompkins who
19 would take the proxy, put it together, submit it to
20 outside counsel.

21 Now, there were several different
22 outside counsel that had to be -- had to review this
23 proxy. The various factions had their attorneys who
24 also looked at it.

25 So that's the way -- by the time the

1 board got it, it was almost a semi-completed
2 document. And most of us on the board -- I mean I'm
3 just speaking for myself. I don't read every single
4 part of the proxy statement. You read the parts
5 that, you know, pertain to you and the most
6 important parts of it, but a lot of the stuff you
7 just skip over.

8 Q. With respect to the proxy statement for
9 the 2015 annual shareholders meeting, did you direct
10 any particular questions to anybody about any aspect
11 of it?

12 A. Yes. I think there were some mistakes
13 made in the column of stock ownership and when
14 the -- I think it's in this -- on the proxy
15 statement rather than in the -- in the 10-K, but
16 there were some -- some minor errors. And I think I
17 did comment on those.

18 Q. Did you review the portion of the proxy
19 statement for the 2015 annual shareholders meeting
20 that -- well, strike that.

21 What -- when you say mistakes in the
22 column of stock ownership, are you talking about --
23 well, what were those mistakes, if you recall?

24 A. Well, they were -- one was -- there were
25 a couple of them. They had -- the footnote was in

1 **Q. How did that call come to pass, if you**
2 **know?**

3 A. Yes. The call came because there had
4 been this discovery of this letter or this email
5 Andy Shapiro had sent out to the board members about
6 this problem that Judy Coddling had had with the City
7 of Los Angeles with this -- this education issue.

8 And all of us were blind sided. I was
9 blind sided to get that information and was a little
10 bit disappointed that we hadn't done our own Google
11 search.

12 **Q. Was an email or an outlook calendar**
13 **invitation or something of that nature sent around**
14 **to schedule this call with Ms. Coddling on a**
15 **Saturday?**

16 A. I believe that the call was -- was set
17 up informally. I don't think -- I'm not sure there
18 was an Outlook calendar set up on it.

19 **Q. When you say "informally," was that mean**
20 **telephonically?**

21 A. Telephonically, yes.

22 **Q. If I told you that Jim Cotter, Jr., was**
23 **not on the call, would that refresh your**
24 **recollection as to whether he was?**

25 MR. SWANIS: Object to form.

EXHIBIT 42

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DISTRICT COURT
CLARK COUNTY, NEVADA

JAMES J. COTTER, JR.,	)	
individually and	)	
derivatively on behalf of)	)	
Reading International,	)	
Inc.,	)	
Plaintiff,	)	Case No. A-15-719860-B
vs.	)	Coordinated with:
MARGARET COTTER, et al.,	)	Case No. P-14-082942-E
Defendants.	)	
and	)	
READING INTERNATIONAL,	)	
INC., a Nevada	)	
corporation,	)	
Nominal Defendant)	)	

VIDEOTAPED DEPOSITION OF WILLIAM GOULD
TAKEN ON JUNE 29, 2016
VOLUME 2

Job No.: 319129
REPORTED BY:
PATRICIA L. HUBBARD, CSR #3400

1 Q. Can you read the handwriting to the
2 right of that?

3 A. "8-K will be filed tomorrow."

4 Q. Okay. Do you recall to what 8-K that
5 referred?

6 A. I don't.

7 Q. Okay. So this is in October of 2014.

8 Do you recall any -- any events that
9 warranted or required the filing of an 8-K by the
10 company in October of 2014?

11 A. When did the litigation -- it depended
12 on when the litigation got filed. Was that -- had
13 that been filed by that time?

14 Q. My understanding, Mr. Gould, is that the
15 litigation was filed in January of 2015.

16 A. I see.

17 MR. RHOW: Don't speculate.

18 THE WITNESS: I just don't remember when
19 it was.

20 BY MR. KRUM:

21 Q. Okay. Well, I can always find documents
22 to prompt your memory.

23 A. Okay.

24 Q. Now, as a practical matter, would you
25 have seen the 8-K before it was filed?

1 A. As a practical matter, I would have.

2 Q. What was the practice you employed in
3 terms of reviewing 8-K's filed by the company?

4 A. Usually the company's counsel would
5 submit to the directors before they would file a
6 version of the 8-K for the directors to review.

7 Q. Your practice was to review them?

8 A. Yes.

9 Q. And was it also your practice to
10 communicate to counsel for the company any comments
11 or corrections you had?

12 A. Yes.

13 Q. Was there a practice at the company with
14 respect to counsel for the company or whomever else
15 distributed the 8-K's undertaking to contact each of
16 the directors and obtain feedback, or was it left to
17 the director to choose whether to respond?

18 How did that process play out typically?

19 A. It would be -- it would change a little
20 bit depending on nature of the 8-K. But usually the
21 8-K draft would come out; say if you have any
22 comments or suggestions, notify Craig Tompkins or
23 whoever was responsible for the preparation of the
24 8-K.

25 Q. And was there a practice that

1 Mr. Tompkins or whomever it was would wait a certain
2 period of time before filing the 8-K so as to make
3 sure directors had an opportunity to review and
4 respond?

5 A. We would try, but we had -- the 8-K had
6 a firm deadline. It had to be filed in four days.
7 And so all the directors knew that that was the time
8 frame.

9 And sometimes these 8-K's would come out
10 at inconvenient times for some directors. They
11 couldn't get back to him in time.

12 Q. Directing your attention to the item two
13 items above the "filings 13D's," you see it begins
14 "William 'Bill' Ellis"?

15 A. Yes.

16 Q. And then there is some handwriting to
17 the right of that.

18 Can you read that?

19 A. Yes, I can.

20 Q. Was does it --

21 A. It says,

22 "Approve employment agreement.

23 Corporate secretary approve" -- or

24 "corporate secretary," and then it

25 says "approve 60,000 stock

1 internal candidates through Korn Ferry's unique
2 proprietary assessment process.

3 Do you see that?

4 A. I do.

5 Q. Do you recall that Korn Ferry's
6 proprietary assessment process was one of the stated
7 reasons for engaging Korn Ferry?

8 A. No.

9 Q. Okay. To your knowledge, was any
10 candidate put through a Korn Ferry proprietary
11 assessment process?

12 A. To my knowledge, no.

13 Q. In fact, the C.E.O. search committee
14 told Korn Ferry not to pursue that process with any
15 candidates because the committee had already settled
16 on Ellen Cotter, correct?

17 A. Yes.

18 Q. I direct your attention, Mr. Gould,
19 further down on the second paragraph on the first
20 page of Exhibit 375.

21 Toward the end of the line the sentence
22 says -- reads as follows:

23 "But I think that it would be a big
24 mistake for Reading to just anoint
25 one of the internal candidates as

1 MR. TAYBACK: That's good.

2 THE WITNESS: I'm prepared.

3 BY MR. KRUM:

4 Q. Mr. Gould, do you recognize Exhibit 377?

5 A. I recognize the interview preparation
6 portion of it.

7 Q. Are you talking about the attachments to
8 the emails --

9 A. Yes.

10 Q. -- the second and third pages?

11 A. Yes.

12 Q. What did you do -- what did you -- well,
13 strike that.

14 So you received and reviewed the Reading
15 International interview preparation two -- page
16 document?

17 A. Yes.

18 Q. What did you do with it, if anything,
19 beyond read it?

20 A. Well, I thought about the questions and
21 made some notes at the time and got prepared for
22 this call that Korn Ferry said they were going to
23 have with each of us.

24 MR. TAYBACK: Mark, could I just ask,
25 can we take a short break, just two minutes?

1 MR. KRUM: Sure.

2 VIDEOTAPE OPERATOR: We are off the
3 record.

4 The time is 11:33.

5 (Brief recess.)

6 VIDEOTAPE OPERATOR: We are on the
7 record.

8 The time is 11:39.

9 BY MR. KRUM:

10 Q. Mr. Gould, directing your attention to
11 the -- was it a call or a meeting that followed your
12 receipt of the Korn Ferry interview preparation
13 document.

14 A. It was a call.

15 Q. Okay. Who participated in that call?

16 A. Just myself and Bob Mayes and one other
17 person from Korn Ferry.

18 Q. How long did your call last?

19 A. My recollection is it was over an hour,
20 maybe an hour and 15 minutes, around that period of
21 time.

22 Q. As best you can recall, what did they
23 say and what did you say?

24 A. Well, we talked generally about each of
25 these subjects. And, you know, I think at that time

1 BY MR. KRUM:

2 Q. Do you recognize Exhibit 378?

3 A. I do.

4 Q. Did you receive it on or about the date
5 it bears, September 3, 2015?

6 A. Yes.

7 Q. What happened next in the -- with
8 respect to the RDI C.E.O. search?

9 A. My recollection is that there was a
10 subsequent version of this following this one, but
11 I'm not certain. Because I know I had a
12 conversation with at least Craig Tompkins where he
13 pointed out to me -- and I think he was right --
14 that there was too much emphasis on solely the real
15 estate side of it.

16 Q. Did you have any conversations with
17 anyone at Korn Ferry with respect to the position
18 specification document on or after September 3,
19 2015?

20 A. I can't re- -- I can't remember specific
21 conversation about that.

22 Q. So, for example, when you -- when you
23 referred in your prior response to a conversation
24 you had with Craig Tompkins, how did that conclude?

25 A. I don't recall.

1 MR. RHOW: I will ask.

2 BY MR. KRUM:

3 Q. So, Mr. Gould, continuing on on
4 page 23 -- production number 234 in the lower right
5 of Exhibit 386, what does that handwriting say?

6 A. Well, again there are three points. One
7 was -- the first point looks like "public company
8 experience."

9 The second point I'm having a hard time
10 making out, something about exposure. And the third
11 one was "international," I was wondering about his
12 international experience.

13 Q. Take a look at the page of Exhibit 386
14 that bears production number 239 on the lower right.
15 There's some handwriting in the left-hand margin.

16 What does that say?

17 A. He was sometimes in California. And
18 then something about relationship, and then "move
19 New York City."

20 I -- I was making these notes quickly,
21 and I don't -- I can't really recall what they
22 related to.

23 Q. Okay. Do you recall what your -- as a
24 general matter what your impressions were of
25 Mr. Brooks, if any, beyond the four points you

1 listed on the page bearing production number WG230?

2 A. Yes. I was -- I was impressed with
3 Mr. Brooks. I thought he had a very pleasant
4 personality, he seemed like he had good people
5 skills. He was short of experience on being --
6 being with a public company. He was primarily a
7 real estate person totally. But overall I thought
8 he -- he conducted himself very well during the
9 interview.

10 Q. At the conclusion of the interview did
11 you view Mr. Brooks as a -- as someone who might --
12 you might approve or suggest offering the C.E.O.
13 position?

14 A. I thought he was in the hunt at that
15 point. That was how I would say.

16 I hadn't reached any conclusions but I
17 felt that I was really grateful to Korn Ferry for at
18 least presenting one good candidate.

19 Q. He was the first one you interviewed?

20 A. The first one we interviewed.

21 Q. Okay. Let's go to the page bearing
22 production 245 in the lower right. This is the
23 first page of the candidate report for Mr. Cruse,
24 C-r-u-s-e, still on Exhibit 386.

25 Do you have that?

1 A. Yes.

2 Q. Can you read your handwriting on the --
3 on the face page of the report regarding Mr. Cruse?

4 A. Yes. I was impressed with him as you --
5 as -- I will read what I said. My notes on him
6 were,

7 "Very impressive, but he might take
8 another position."

9 He was talking about something else he
10 was interested in. I said, "very" something -- I
11 can't read what I said. But then I note -- then it
12 says,

13 "I like him, this guy is good, he
14 likes deals and is very
15 impressive."

16 So, he made a very good impression on
17 me.

18 Q. Okay. Let's go to the next page.

19 What does your handwriting next to the
20 blacked out compensation box say?

21 A. It says,

22 "Discretionary, tied to standards."

23 I was -- I was I guess there -- my note
24 there says,

25 "Discretionary or tied to

1 standards."

2 So I guess I was -- I don't remember
3 what I was actually thinking then. I was wondering
4 about his compensation package, what it would be.

5 Q. I direct your attention to the portion
6 of the report on -- regarding Mr. Cruse that bears
7 production number WG255 in the lower right-hand
8 corner, still part of Exhibit 386.

9 Do you see the portion of the text
10 that's underlined?

11 Do you have 255?

12 A. I do.

13 Q. You see the portion of the text that's
14 underlined concerning Mr. Cruse being willing to
15 function as an interim C.E.O. so RDI had an
16 opportunity to try him out and vice versa?

17 A. Yes, I do.

18 Q. Do you recall that?

19 A. Yes.

20 Q. And what were your thoughts about that?

21 A. Interesting -- interesting way to go.
22 It might be something we should think about.

23 Q. And so what were your thoughts about
24 Mr. Cruse at the conclusion of his interview?

25 A. Very favorable. But I did find that he

1 had -- again, there were some limitations in his
2 background.

3 As you go through here there were some
4 issues with him, as well. He was presently base --
5 basically he was operating his own private equity
6 firm. He really hadn't had the kind of experience
7 in anything other than the real estate area,
8 although he had done hotels and deals of that sort.

9 But I -- I did feel as much as I liked
10 him, I wanted to see more people.

11 Q. On the page bearing production number
12 WG254, there is some handwriting in the upper right.

13 What does that say?

14 A. Oh, he was talking about his work in the
15 hospitality business. And I was trying to -- I made
16 a note that says hospitality tied to theaters.
17 Because theaters is a -- in a sense kind of a --
18 it's related to the hospitality business.

19 Q. Okay. Let's look at the candidate
20 report on Mr. Chin which begins at WG257 as part of
21 Exhibit 286.

22 Do you have that?

23 A. I do.

24 Q. You see on the next page that bears
25 production number WG258 there's some handwriting?

1 A. Yes.

2 Q. At the bottom what does the handwriting
3 say?

4 A. Yeah. At the bottom it says -- this is
5 a restructuring guy. His emphasis was really more
6 on companies that are in trouble. He was -- he was
7 a very -- you know, he was a good candidate, but his
8 skills were directed more toward coming in and being
9 a -- a business doctor.

10 Q. Okay. And in the left-hand margin, what
11 does that handwritten note say?

12 A. "Too high." That relates to
13 compensation. I -- whatever was in that column
14 looked to me that it was way out of anything that
15 RDI would be offering any permanent C.E.O.

16 Q. Did you have that thought about the
17 compensation for any candidates other than Mr. Chin?

18 A. I don't recall right now whether I did
19 or not.

20 Q. Okay. Let's go to the candidate report
21 for Mr. Sheridan, it begins on WG267 of Exhibit 386.

22 The next page 268 has some handwriting
23 in the upper right-hand margin.

24 What does that say?

25 A. "Where are you from?"

1 **Q. Do you have any idea what that meant?**

2 A. Yes. I was trying to find out what part
3 of the country he was from, because he went to the
4 University of Michigan Law School and -- and the
5 University of Michigan undergraduate, and I was
6 wondering whether he was from Michigan.

7 **Q. You don't have many notes with respect**
8 **to Mr. Sheridan.**

9 **Do you recall what impression you had**
10 **after you interviewed him?**

11 A. Well, I remember my impression changed.
12 At first I was a little dubious that a lawyer could
13 be coming in and be the right kind of person for the
14 job.

15 But after talking to him I was -- I saw
16 that he had a great deal of good experience and
17 seemed to have been performing very well in the
18 areas that he had been trained in.

19 **Q. So at the conclusion of his interview**
20 **did you think he was in the hunt?**

21 A. Yes.

22 **Q. And was that true for each of the four**
23 **candidates except for Mr. Chin?**

24 A. I believe there were -- I think that
25 there were two or three of them that I liked better

1 than others. And if I had prioritize them, I would
2 put Mr. Sheridan and I think maybe Mr. Brooks are
3 two of the ones that I thought were the better of
4 the two.

5 **Q. Okay. Did you meet Mr. Clayton? That**
6 **is the fifth candidate --**

7 A. Not at this -- not at that session. I
8 think we had a separate meeting later on with
9 Mr. Clayton. I'm not certain.

10 **Q. What were your impressions of**
11 **Mr. Clayton?**

12 A. As I sit here right now I can't recall
13 any particulars of that -- of that meeting, of that
14 interview.

15 **Q. Did you also meet a candidate by the**
16 **name of Martin Caverly?**

17 A. Yes.

18 **Q. When did you meet him?**

19 A. I don't remember when, but I do remember
20 meeting him. I believe he came in later at a
21 subsequent session.

22 **Q. Now, he came in in December, correct?**

23 A. I believe that's right. I think he
24 could not make the original schedule in -- in
25 November.

1 **Q. Did Ellen Cotter participate in the**
2 **interviews on Friday the 13th of any or all of**
3 **Brooks, Cruse, Chin and Sheridan?**

4 A. No.

5 **Q. Why not, if you know?**

6 A. Yes. At the beginning as we were about
7 to begin our interviewing session we all arrived at
8 the company, Ellen came into the room and said that
9 she had decided that she was going to throw her hat
10 into the ring for this job; and she felt that given
11 that, it would be unethical and improper for her to
12 be involved in the search committee.

13 **Q. What was the discussion that ensued, if**
14 **any?**

15 A. I believe that all of us -- my rec- --
16 my -- my response and I know Doug's was that we
17 agree we don't think she should be involved in the
18 search committee if she, herself, is going to be a
19 candidate.

20 **Q. What else, if anything else, was**
21 **discussed about the search committee or the search**
22 **in view of Ellen's announcement that she was going**
23 **to be a candidate?**

24 A. I can't recall anything at that time
25 other than that.

1 **Q. Do you recall anything at any subsequent**
2 **point in time prior to the decision to select Ellen?**

3 MR. TAYBACK: Object to the form of the
4 question.

5 MR. FERRARIO: I'll object to the extent
6 it calls for attorney-client communications.

7 MR. RHOW: Do you have --

8 THE WITNESS: I can't really recall
9 anything else about that, about Ellen, her role in
10 the search committee or anything else.

11 BY MR. KRUM:

12 **Q. Did you or anyone else ask her when she**
13 **had decided to be a candidate?**

14 A. No.

15 **Q. Did you or anyone else ask her when she**
16 **first considered being a candidate?**

17 A. No.

18 **Q. Did you or anyone else ask her why she**
19 **had not disclosed prior to the day of candidate**
20 **interviews that she was a candidate?**

21 A. Well, I believe in making her statement
22 to the search committee members other than herself,
23 she indicated that she had just decided that she was
24 going to do it.

25 **Q. So your -- your memory is that when she**

1 announced before the first candidate interview at or
2 about 8:30 in the morning on November 13, 2015, that
3 she had been decided -- she had decided to be a
4 candidate that she also indicated that she had just
5 decided or words to that effect?

6 A. Words to that effect.

7 Q. And as best you can recall, what did she
8 say in that respect?

9 A. Just the -- all I can remember is the
10 notion that she said she had decided that she wanted
11 to give it a try, and so she didn't think it would
12 be proper for her to be on -- working with us on the
13 search committee anymore.

14 Q. Okay. But the question I was asking was
15 about what's your best recollection as to what she
16 had said about when she had decided?

17 A. I can't recall actually what she said
18 about that.

19 Q. And --

20 A. My impression was that she had just
21 decided it. That's my impression.

22 Q. What's the basis for that impression?

23 A. Well, I don't know that. I can't give
24 you any basis for it.

25 Q. Okay. Was there any discussion at that

1 remember having thought about that.

2 BY MR. KRUM:

3 Q. Did you or, to your knowledge,
4 Mr. McEachern seek the advice of counsel with
5 respect to the conduct of the C.E.O. search at any
6 point in time?

7 A. No.

8 Q. What happened next after the four
9 candidate interviews of Friday, November 13, 2015?

10 A. After that -- after that there was a --
11 another candidate that was proposed by Korn Ferry.
12 And I believe we had a subsequent session with
13 Mr. Caverly. As I recall, he came in at a different
14 time.

15 And then we had to interview Ellen.

16 So there was a subsequent -- one or two
17 subsequent interview sessions sometime in December.
18 One of them was done by Skype and one with the --
19 the new candidate, which Korn Ferry had recommended
20 was in New York, was running a privately-owned
21 hotel, had been running it. And we interviewed that
22 gentleman on Skype.

23 Q. Do you recall his name?

24 A. No.

25 Q. Did it begin with a D?

1 A. Could have.

2 Q. Okay. I'm sorry. I don't have the name
3 at hand.

4 And what were your impressions of that
5 candidate?

6 A. I thought the candidate was a --was
7 good. I think it would have been better to have the
8 interview in person where you get a better -- can
9 see better the movements and look into their eyes
10 and get a better feel for it.

11 It wasn't -- I don't think the interview
12 on Skype was as good as a personal interview. He
13 had the camera turned a little funny and it
14 wasn't -- wasn't as good.

15 Q. When -- when relative to the other two
16 candidate interviews that occurred after
17 November 13, 2015, was Ellen interviewed?

18 A. Ellen was interviewed I believe after
19 the Skype interview in -- with the fellow in
20 New York, and then we had Ellen come in -- it could
21 have been the same day as the -- as the Reading
22 Christmas party.

23 And we interviewed Ellen -- I think she
24 was the last candidate we interviewed.

25 Q. Who -- who is the "we"? You --

1 If I recall, he wasn't too aggressive
2 during that interview session.

3 **Q. With respect to the interview of Ellen**
4 **Cotter that occurred in December, perhaps on the day**
5 **of the Reading holiday party, how long did that**
6 **last?**

7 A. My guess is it -- I'm mean I'm just
8 trying to put it -- the exact time, I guess, is
9 about 45 minutes.

10 **Q. Okay. Who led that interview?**

11 A. I did.

12 **Q. What did you cover? What were the**
13 **topics you covered?**

14 A. Doug -- when I say I led it, I think it
15 was really Doug and myself. He we covered all kinds
16 of things; I mean what prior involvement, what she
17 saw, what her future thinking was about the future
18 of the company, how she saw her shortcomings.

19 We went through the whole gamut of -- of
20 the same kinds of questions that we asked the
21 others. The only difference with Ellen was that we
22 had had 20 years of prior experience dealing with
23 her. We knew a lot about her.

24 **Q. So what did that -- what did that mean?**
25 **That there was less in the interview learning about**

1 Q. And how long did those discussions last?

2 A. I would say they lasted 30 minutes.

3 Q. Who said what?

4 A. Well, I was actually the one that said
5 after listening to Ellen, thinking about it, and
6 looking at the prior candidates, even though they
7 were all good, that she had probably made the most
8 sense for where we were at this time. Because she
9 had a great reputation, the people liked her at the
10 company.

11 We all enjoyed our own -- we all thought
12 highly of her, every one of us. She is intelligent.
13 She had the kind of a personality that could help
14 get through some of these difficulties dealing with
15 other people.

16 And she had theatrical experience. She
17 was willing to bring in real estate help.

18 And that this was a very tough time to
19 bring in somebody from the outside given the fact
20 that no one knew who would actually control this
21 company a year down the line.

22 And for all those reasons, you know, it
23 became apparent to me, my -- I just said, "This
24 makes the most sense for the company."

25 And Doug said, "You know, I agree with

1 you."

2 **Q. That was my next question, Mr. Gould.**

3 The reasons you just described, are
4 those your reasons and is that what you articulated?
5 Was that what you and Mr. McEachern together
6 articulated or --

7 A. Most of them were my -- were my
8 statements, but Doug did add a few of his own. And
9 I probably incorporated some of his statements in
10 there.

11 Now, before we got into too much detail,
12 the question was raised about Margaret leaving
13 because she was -- she is Ellen's sister. And, you
14 know, both Doug and I said, "I don't think we need
15 to do that."

16 I forget whether Margaret did excuse
17 herself or not. I don't remember whether she did.
18 But from my standpoint it was just clear in my mind
19 that this was the best solution.

20 **Q. What did Margaret say, if anything,**
21 **during that discussion among the three of you?**

22 A. Margaret didn't really say too much.
23 She was -- she -- I think Doug and I did most of the
24 talking.

25 **Q. Did Margaret exhibit any response to**

1 meetings.

2 Q. And in point of fact the executive
3 committee held meetings and conducted business,
4 correct?

5 A. It did.

6 Q. At any point in time in or after June of
7 2015, to your knowledge did the company ever
8 disclose in an 8-K or otherwise the changes to the
9 composition and/or the function of the executive
10 committee of the RDI board of directors?

11 A. I don't recall. I can't remember it.

12 Q. Did you ever have any discussions with
13 anybody regarding the subject of whether the company
14 could or should make a disclosure of any type
15 regarding the changes to the composition and/or the
16 function of the executive committee of the RDI board
17 of directors?

18 A. I don't remember that discussion. I
19 know at each of our meetings we had more lawyers
20 than directors. And I think we left that subject up
21 to the lawyers to do -- to decide whether there
22 should be a filing made on it.

23 Q. Well, when you say that, that you think
24 you left that subject up to the lawyers, do you
25 actually recall a discussion in which the conclusion

1 was to leave that subject, meaning whether the
2 company could or should make a disclosure regarding
3 the new members or the new function of both of the
4 executive committee, to the lawyers?

5 A. No.

6 Q. That's just your surmise looking
7 backwards as what might have happened?

8 A. That's usually what would happen with
9 these meetings on questions of disclosure and things
10 like that, yes.

11 Q. And by the lawyers, to whom are you
12 referring?

13 A. The lawyers for the company.

14 Q. Ellis --

15 A. Bill Ellis, Craig Tompkins and then
16 outside counsel, as well. We usually had outside
17 counsel. Or Mike Bonner would be at almost every
18 meeting. He was a very good securities lawyer.

19 Q. I'm not asking you who said what. I'm
20 just asking whether it happened.

21 Did you ever have any discussions with
22 Mike Bonner about the executive committee?

23 A. No.

24 Q. Did you ever have any discussions with
25 him about S.E.C. filings? Made by the company, of

1 previous. I don't mean to do so.

2 Either during the conversation -- well,
3 during the conversation following Ellen Cotter's
4 interview, who said what, if anything, about Korn
5 Ferry?

6 A. We did discuss this earlier, but my
7 recollection was at the time that -- that somebody
8 said, "Well, we -- if she's our preferred candidate,
9 then, you know, we can probably tell Korn Ferry
10 until we decide -- or the board decides this thing,
11 let's not have them incur any more expense doing
12 what they were doing with respect to the other
13 candidates. Let's see if we can keep this down --
14 the expense down."

15 Q. What are the annual revenues of RDI?

16 MR. TAYBACK: Objection. Vague as to
17 time.

18 BY MR. KRUM:

19 Q. In 2015 or any other time that you can
20 identify?

21 A. Well, several -- several hundred
22 million.

23 Q. And what was the expense that would have
24 been saved by having Korn Ferry stand down?

25 A. It was, you know, maybe 50 -- \$50,000.

1 It doesn't seem like much, but I don't
2 throw money in the street unless I have to.
3 Especially when it's other people's money.

4 Q. Do you recall that -- that the Korn
5 Ferry materials provided to the board of directors
6 indicated that Korn Ferry would make its proprietary
7 assessment of finalists including the internal
8 candidates?

9 A. I do remember something like that, yes.

10 Q. Did you have any discussions with
11 McEachern and/or Margaret Cotter about whether to
12 follow through with the process that had been
13 described to the full board previously by having
14 these assessments done or by having the board
15 determine whether to do so?

16 A. Well, at that point the internal
17 candidates had dropped out. And so there would be
18 no need to do assessments of them.

19 And I don't -- and I don't -- I think
20 all of us felt that we didn't need an independent
21 assessment of Ellen because we knew her so well.

22 Q. By the way, how do you know that Wayne
23 Smith dropped out?

24 A. I was told at some point that -- I
25 forget by whom, that following Ellen's announcement,

1 A. I'm not certain.

2 Q. Was this letter -- when you say this
3 letter was public, was this distributed as part of a
4 press release?

5 A. It clearly went out to the employees and
6 others at the company, but I'm not -- I don't know
7 whether it went out as a press release or not.

8 Q. Did you see drafts of this letter?

9 A. I don't recall.

10 Q. When you say you're not certain who
11 drafted it, do you have an understanding or
12 expectation based on some other experience?

13 A. Well, should I surmise?

14 MR. RHOW: No.

15 BY MR. KRUM:

16 Q. If you have a --

17 A. I have no understanding.

18 Q. Okay. If you have a basis, I am
19 entitled to hearing it. But if you're simply
20 surmising as you sit here today, I don't need to
21 hear that.

22 A. Okay. I don't have a basis as to who
23 prepared it.

24 Q. When did the board meeting occur with
25 respect to the selection of the permanent C.E.O.?

1 A. I believe it was in the first week of
2 January. First -- first ten days.

3 **Q. Did someone make a presentation on**
4 **behalf of the C.E.O. search committee?**

5 A. Yes. I did.

6 **Q. Was it a -- did you have notes or did**
7 **you have a written presentation that you used?**

8 A. I basically went through what we had
9 done and presented to the board what had happened
10 and the reasons why we selected Ellen as the
11 preferred candidate to recommend.

12 And then I don't believe I had prepared
13 notes. I just did it off the cuff.

14 **Q. Was there any discussion?**

15 A. Yes.

16 **Q. Excluding any comments that Jim Cotter,**
17 **Jr., made or any responses to those comments, was**
18 **there any discussion?**

19 A. Yes, there was.

20 **Q. Ed Kane said he agreed, right?**

21 A. My -- my recollection is that's right.

22 **Q. Did he explain why?**

23 A. I don't remember that he did.

24 **Q. Okay. What else was said by anyone as**
25 **best you can recall in terms of the discussion about**

1 and Korn Ferry personnel?

2 A. Yes.

3 Q. Did that occur -- okay.

4 Do you see in the last paragraph of that
5 page that continues over onto the second page, it
6 indicates that on December 17th the committee
7 elected you to serve as the committee's chairman?

8 A. Yes.

9 Q. What did you do as chairman of this
10 C.E.O. search committee?

11 A. I ran the -- well, the meetings, and --
12 and I also issued the letter, made the report to the
13 board and then issued the -- the letter to the
14 employees.

15 Q. And the meetings to which you're
16 referring were on December 17th and the telephonic
17 meeting on December 29th?

18 A. Let me see here. It would be the
19 meeting, yes, on December 17th and the telephonic
20 meeting on the 29th and the letter that went out.

21 Q. Is this correct that the committee --
22 the C.E.O. search committee had a meeting on
23 December 17th at 4:00 P.M.?

24 MR. RHOW: Bottom of page two.

25 THE WITNESS: Yes. My recollection --

1 my recollection is that it is correct.

2 BY MR. KRUM:

3 Q. Was that in person?

4 A. Yes. I believe -- I believe we -- that
5 was the day of the -- that might have been the day
6 of the Christmas party.

7 Q. Directing your attention to what's
8 labeled as page three of seven, and that is of the
9 C.E.O. search committee report, it's actually the
10 fourth page of Exhibit 313, do you see that it says
11 the committee discussed among other things, and so
12 forth, and then it lists six lengthy bullet points?

13 A. Yes.

14 Q. Take such time as you need to review
15 those.

16 My question is does that fairly and
17 accurately describe what the committee discussed on
18 the 17th of December?

19 A. Generally, yes.

20 Q. And when you say "generally," is that a
21 qualification that you --

22 A. No. It's just that I can't remember
23 every specific aspect of it, but in general that's
24 my recollection of what was discussed.

25 Q. Directing your attention to the third

1 bullet point that begins with the words "The
2 benefits and detriments of the selection of Ellen
3 Cotter as the committee's recommended candidate," do
4 you recall anything other than what's discussed
5 there -- strike that.

6 Do you recall anything other than what's
7 listed there being discussed by the committee with
8 respect to Ellen as a candidate?

9 A. I believe that one other factor there
10 was that having Ellen selected would create problems
11 with one of the major shareholders, Jim, Jr.

12 Q. Okay.

13 A. Which was brought up.

14 Q. Anything else?

15 A. No.

16 Q. Directing your attention to the fourth
17 bullet point that refers to Korn Ferry's
18 recommendation about moving forward with the
19 assessment process for Ellen Cotter, Dan Sheridan
20 and Marty Caverly --

21 A. Yes.

22 Q. -- what do you recall, if anything,
23 being discussed about that other than the preclusion
24 to not do so?

25 A. Well, that because -- just generally

1 Exhibit 391 does not reference any
2 actions or observations of the special nominating
3 committee with respect to Mr. Storey not being
4 renominated, correct?

5 A. Correct.

6 Q. Nor does it make any mention of the fact
7 that Ellen and Margaret Cotter who purported to
8 control and vote approximately 70 percent of the
9 voting stock had taken the position that they would
10 not vote to reelect him?

11 A. On that point I don't know whether they
12 had taken that position. I had heard something to
13 that effect, but I don't know whether they had taken
14 that position.

15 Q. So, did it occur to you when you read
16 Exhibit 391 and the second paragraph on the third
17 page of the document that simply saying that
18 Mr. Storey had retired was omitting information that
19 some shareholder might consider to be material to
20 the circumstances of his departure from the RDI
21 board of directors?

22 A. No. I -- first of all, I wasn't very
23 much involved in that process at all. I didn't know
24 very much about it and was surprised to hear about
25 it. I think I heard it from Tim Storey primarily.

1 But my knowledge of some of these things
2 about what happened occurred after the actual
3 resignation.

4 Q. Okay. Did you ever speak to anybody
5 about issuing a further 8-K updating the disclosure
6 regarding the circumstances of the departure of Tim
7 Storey from the RDI board of directors?

8 A. No.

9 Q. Do you recall that at one of the
10 meetings in May or June of 2015, Mr. McEachern
11 invited Jim Cotter to resign rather than be
12 terminated?

13 A. Yes.

14 Q. And do you understand that that's how it
15 came to pass that Mr. Storey retired, is he was
16 given the choice of not being renominated and
17 whatever consequences, if any, flowed from that or,
18 quote, retiring?

19 A. I come to -- I've come to learn that.
20 And I don't know how much of that I knew at the
21 time, because I was kept out of that process.

22 Q. Directing your attention, Mr. Gould, to
23 the three paragraphs on the third page of
24 Exhibit 391 starting with the word Dr. Coddington, do
25 you see those?

1 Cotter-related entities?

2 A. No.

3 Q. To the best of your recollection, you
4 didn't receive a phone call from him following the
5 May or June meeting in which he refused to speak to
6 the subject at which he explained anything about his
7 relationship or compensation with Cotter-related
8 companies?

9 A. I can't recall that conversation.

10 Q. At the time you read drafts of
11 Exhibit 392 had you received any information,
12 whether from Guy Adams or any other source, bearing
13 upon the subject of whether he in any respect was
14 financially independent or financially dependent on
15 Cotter family entities?

16 A. There were discussions raised by Jim
17 Cotter, Jr., which raised questions about
18 Mr. Adams's financial dependence. But there was no
19 hard evidence provided to anybody as to what whether
20 that would be.

21 And it had not been our practice to ask
22 people how much of their livelihood -- each
23 director, for example, I had never been asked by the
24 board or anybody else had.

25 So my answer was if he disclosed this --

1 and I mentioned this at the board meeting, every
2 director prepares a D and O questionnaire. And they
3 disclose all these things in there.

4 So all the directors don't have to know
5 the personal finances of Jim, Jr., and myself, but
6 the person collecting those D and O questionnaires
7 does, and that person is a lawyer, and that person
8 will then make a judgment as to whether or not
9 Mr. Adams is independent or not.

10 **Q. Is it your understanding, Mr. Gould,**
11 **that certain of the information sought by questions**
12 **in the D and O questionnaires concerns financial**
13 **matters and financial dependence as measured by**
14 **Exchange -- Securities Exchange listing rules?**

15 **A. Yes.**

16 **Q. Do you have an understanding as to**
17 **whether that measure of independence is the same or**
18 **different than the measure of independence for the**
19 **purpose of related party transactions?**

20 **MR. TAYBACK:** Objection. Calls for a
21 legal opinion. You're a lawyer, but still
22 objection.

23 **THE WITNESS:** Yeah. I think that's kind
24 of a complicated question because I'm not sure that
25 the -- that it calls for exactly all the information

1 to the portion that concerns Mr. Wrotniak, and you
2 see that that will carry over to page 17, did you
3 have any communications with anybody about whether
4 that information should be supplemented to include
5 information concerning his historical personal
6 relationship -- his wife's historical close personal
7 relationship with Margaret Cotter?

8 A. No.

9 Q. Did you think about that?

10 A. No.

11 Q. That is how he came to be a candidate to
12 be added to the RDI board of directors, right?

13 A. Yes.

14 MR. FERRARIO: Objection. Lacks
15 foundation.

16 MR. TAYBACK: Objection.

17 BY MR. KRUM:

18 Q. Well, when you had a meeting at your
19 office on Friday, I think it was, Ellen Cotter told
20 you -- Ellen Cotter told you how it was both Judy
21 Coddington and Michael Wrotniak had come to be
22 candidates, right?

23 A. She did.

24 Q. And she was forthright and she told you
25 about the historical personal relationship between

1 Judy Coddington and Mary Cotter?

2 A. She did.

3 Q. And she told you about the relationship
4 between Michael Wrotniak's wife and Margaret, right?

5 A. She did.

6 Q. Now, directing your attention,
7 Mr. Gould, back to Judy Coddington's description on
8 page 15.

9 A. Yes.

10 Q. Do you see that in the third sentence it
11 says,

12 "She is currently, and has since of
13 2010 been, the managing director of
14 The System of Courses, a division
15 of Pearson, P.L.C., a leading
16 education company providing
17 education products and services to
18 institutions, governments and
19 direct to individual learners"?

20 A. Yes.

21 Q. At that -- at the time you reviewed
22 drafts of this document did you have any
23 understanding as to whether she knew or expected
24 that position to terminate?

25 A. No.

1 question.

2 Q. Do you recall whether Mr. Shapiro in his
3 email raised the issue of whether Ms. Coddington's
4 employment was going to be terminated?

5 A. I don't remember.

6 MR. TAYBACK: Mark, when it's a
7 convenient point for you, can we just take two
8 minutes?

9 MR. KRUM: Sure. We'll be there in just
10 a couple minutes.

11 BY MR. KRUM:

12 Q. Mr. Gould, I direct your attention to
13 page 21 of Exhibit 392. And in particular to the
14 first line in the chart entitled "Amount and nature
15 of beneficial ownership." You see it says Ellen M.
16 Cotter footnotes two and eight?

17 A. Yes.

18 Q. And then under the class B stock column
19 it says number of shares 1,173,888 and percentage
20 69.8?

21 A. Yes.

22 Q. And of course footnotes two and eight on
23 the next page, page 22, include some explanation of
24 those numbers, right?

25 A. Correct.

1 Q. Did you review this information?

2 A. No.

3 Q. You understood at the time there were
4 disputes with respect to who controlled certain RDI
5 stock, such as whether it was part of the James
6 Cotter, Sr. Trust, whether it was part of the
7 Estate, whether it had flowed into the voting trust,
8 whether it had poured over into the voting trust and
9 issues of that sort, right?

10 A. Oh, yes.

11 Q. And so why is it that you took no steps
12 to ascertain whether this information including as
13 set out in footnotes two and eight on page 22 of
14 Exhibit 392 was correct?

15 A. If I spent time going through this proxy
16 statement verifying all the facts in it, I would
17 spend my lifetime doing it.

18 These are not the things that directors
19 look at. I look at my own facts, how they pertain
20 to me, but I don't know anything -- I pay virtually
21 no attention to what's happening in the litigation
22 among the family members.

23 So I don't even know where to start. I
24 don't know how many shares they own. I just know
25 that the three of them control the shares of the

1 stock of the company. But I don't know who owns
2 what shares.

3 Q. Well, let me ask you a different
4 question.

5 Did you ever hear or learn or were you
6 ever told that there was a dispute about -- or a
7 question, even, about whether any or all of the
8 Cotters could vote the class B voting stock held in
9 the name of the Jim -- James Cotter, Sr. Living
10 Trust?

11 A. Yes, I was told that.

12 Q. And you see at footnote eight on page 22
13 of Exhibit 392, about six lines from the bottom
14 there is a discussion of the 696,080 shares of
15 class B voting stock?

16 A. Yes.

17 Q. Did it occur to you that if the
18 information about who had the right to vote that
19 stock contained in the proxy statement was
20 erroneous, that owners of class B voting stock who
21 were not members of the Cotter family would be
22 making decisions about whether to vote, how to vote,
23 whether to act and so forth based on erroneous
24 information?

25 MR. RHOW: Form of the question,

1 foundation.

2 THE WITNESS: No. You know, I never
3 really even thought about that question. I'm
4 assuming -- I had assumed at the time that these --
5 the facts and legal conclusions were being attended
6 to by the people who were most directly involved in
7 them. And I had no involvement in them.

8 BY MR. KRUM:

9 Q. When you say, Mr. Gould, you had no
10 involvement, you had no discussions with those
11 people about these issues?

12 A. That's correct.

13 Q. And who were those people?

14 A. Those people would be Craig Tompkins and
15 Bill Ellis at the company. They would be the
16 individuals, Jim Cotter, Jr., Margaret and Ellen,
17 and the outside counsel, Mike Bonner and others who
18 helped prepare the -- the proxy statement.

19 Q. Okay. Well, there were disputes between
20 Ellen and Margaret on the one hand --

21 A. Jim.

22 Q. -- and Jim, Jr. on the other hand on
23 those issues, right?

24 A. Correct.

25 MR. FERRARIO: That's what it says.

1 A. Yes.

2 Q. And that it includes in the first
3 paragraph under the words "Change of control of
4 registrant" a description of, among other shares,
5 shares that are reflected in the company's stock
6 register as held in the name of James J. Cotter,
7 Sr.?

8 A. Yes.

9 Q. And was your view of this the same as
10 the view that you articulated with respect to
11 information of this nature as included in the proxy,
12 meaning that it was someone else's responsibility?

13 A. Yes.

14 MR. KRUM: Ekwan, you don't have the
15 documents that were marked yesterday, do you?

16 MR. RHOW: I don't.

17 MR. KRUM: Okay. Here's what I'm going
18 do, and if it's okay, Ekwan, instead of looking at
19 the document --

20 MR. RHOW: That's fine.

21 MR. KRUM: -- I'm just going to show him
22 one that has my --

23 MR. FERRARIO: Are you looking at
24 yesterday's --

25 MR. KRUM: Yes. 347 is the document

1 **recollection?**

2 A. Well, the proposal of the new two
3 candidates to me and I think to Jim, Jr., was done
4 without a great deal of public knowledge. I did not
5 know the process was even going on until that
6 meeting in my office, I believe it was on a Friday,
7 with Craig and Ellen where they informed me of what
8 had been happening.

9 **Q. And that was the Friday two days before**
10 **you received this email from Jim, right?**

11 A. I believe so, yes.

12 **Q. I direct your attention, Mr. Gould, to**
13 **the top of the second page of Exhibit 398.**

14 Do you see that Mr. Cotter suggests that
15 the board discuss the qualifications of board
16 candidates?

17 A. Yes, I do.

18 **Q. Did you agree with that observation?**

19 A. Well, there is some truth in the
20 observation that ordinarily boards decide on
21 candidates to some extent based on their
22 qualifications and experience.

23 But in this case there are a number of
24 other factors that also were in play given the fact
25 that, you know, we had a conflict among the -- the

1 directors and that unless we made some decisions
2 going forward, the company would continue to be
3 involved in this ongoing dispute as to almost
4 everything.

5 Q. Okay. And how did that consideration
6 impact the -- whether or not the board should have
7 discussions about qualifications of candidates to be
8 added to the board?

9 A. Well, that's -- that's one of the
10 factors mentioned. And the other factor is that the
11 board become constituted in a way that will help,
12 you know, project the company into the future and
13 have the confidence of the C.E.O. of the company.

14 And that was another factor that was
15 important to the directors -- or I should say it was
16 important to me.

17 I mean at this point this company had
18 been involved in dispute after dispute after
19 dispute. Many of Jim's points -- Jim, Jr.'s points
20 as a general principle were valid, but there was
21 also the factor of trying to get this company back
22 on track. And I think that's what I was concerned
23 about in approving the two new directors.

24 Q. Did you have any discussions with the
25 so-called special nominating committee about whether

EXHIBIT 43

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DISTRICT COURT
CLARK COUNTY, NEVADA

JAMES J. COTTER, JR.,	)	
individually and	)	
derivatively on behalf of	)	
Reading International,	)	
Inc.,	)	
Plaintiff,	)	Case No. A-15-719860-B
vs.	)	Coordinated with:
MARGARET COTTER, et al.,	)	Case No. P-14-082942-E
Defendants.	)	
and	)	
READING INTERNATIONAL,	)	
INC., a Nevada	)	
corporation,	)	
Nominal Defendant	)	

DEPOSITION OF: EDWARD KANE
TAKEN ON: MAY 2, 2016

REPORTED BY:
PATRICIA L. HUBBARD, CSR #3400

1 and it became in- -- difficult.

2 And so the regulators came down and they
3 suggested that I leave, and I did.

4 **Q. When did you first meet Jim Cotter, Sr.?**

5 A. He was in the master's of tax program
6 with me in 1963. So I met him in the fall of 1963.

7 **Q. When did you and he become friends?**

8 A. Very shortly thereafter. We found that
9 we had similar backgrounds even though we don't --
10 didn't have similar religions.

11 But we were both middle class, lower
12 middle class. We lived in that neighborhood. We
13 didn't have any money when we went to college or law
14 school.

15 And we just -- just became fast friends.

16 He was the first person I invited to my
17 house for dinner.

18 I was married. I had gotten married in
19 the summer of '63. And we started socializing with
20 he and his, I guess, fiance, Mary Ellen Cotter, went
21 to the World's Fair with them, because Mary was
22 working for American Airlines, could get us free
23 tickets.

24 And then I got the position with Donovan
25 Leisure. And he joined the -- the IRS as a trial

1 MR. SEARCY: Objection. Vague.

2 THE WITNESS: Trying to think. I can't
3 think of any.

4 BY MR. KRUM:

5 Q. Answer this as you see fit, Mr. Kane.

6 Describe your historical relationship
7 with Ellen and Margaret Cotter.

8 MR. SEARCY: Objection. Vague,
9 overbroad.

10 THE WITNESS: I knew them as children,
11 just as I know Jim, Jr. I don't think my
12 relationship was any different with the three of
13 them.

14 It was just a relationship I've had with
15 someone I've known all my -- all their lives.

16 BY MR. KRUM:

17 Q. Do your family and the family of Jim
18 Cotter, Sr., socialize?

19 MR. SEARCY: Objection. Vague.

20 BY MR. KRUM:

21 Q. Socialize meaning see each other
22 socially.

23 A. No. No. Just because of the distance.

24 Q. Between San Diego and Los Angeles?

25 A. Right. Right. Right.

1 A. Probably two, two and a half years ago.

2 Q. What was your compensation in that role?

3 A. I think I was paid \$6500 month.

4 Q. And just to be clear, so that ended
5 in -- somewhere between the beginning and the middle
6 of 2014?

7 A. Something like that.

8 Q. Since that time have you had any income
9 other than as a Reading director?

10 MR. SEARCY: Objection. Vague.

11 BY MR. KRUM:

12 Q. Excluding passive investment income.

13 A. Well, I have self-funded -- my wife and
14 I have self-funded retirement plans. That's
15 passive, I suppose you could say.

16 Q. Okay. So, since the work ended with the
17 Community Medical Group --

18 A. Uh-huh.

19 Q. -- your sole source of income has been
20 your self-funded retirement plans and your work as a
21 Reading director, correct?

22 A. That's correct.

23 Q. How many retirement plans do you have,
24 sir?

25 A. My wife has one and I have two.

1 **Q. What are the principal balances of your**
2 **two self-funded retirement plans?**

3 A. Mine?

4 **Q. Yes.**

5 A. In excess of \$2 million.

6 **Q. What sort of financial obligations do**
7 **you have of a material magnitude, whether it be**
8 **rent, mortgage, cars, that kind of thing?**

9 A. I have home equity loans, less than
10 \$200,000.

11 I have two other home equity loans, but
12 they're joint with my children. One with one child,
13 one with the other, \$100,000. But the money is
14 sitting there in a savings account -- in the bank
15 account where -- who gave me that. That's in case
16 there's -- we're in Europe or something or something
17 fatal happens they'll have access to money right
18 away.

19 So, it's joint accounts, but it's my
20 Social Security number.

21 (Whereupon Mr. Ferrario re-entered
22 the deposition proceedings at this
23 time.)

24 BY MR. KRUM:

25 **Q. Is that it -- excuse me.**

1 Is that it in terms of your material
2 financial obligations?

3 A. That's it.

4 Q. Okay. Mr. Kane, I'm going to show you
5 what previously has been marked as Plaintiff's
6 Exhibit 94.

7 (Whereupon the document previously
8 marked as Plaintiffs' Exhibit 94
9 was referenced and is attached
10 hereto.)

11 MR. FERRARIO: I think you pick the most
12 inconvenient depo sites I've ever been to. From the
13 room we had to shoehorn everybody into, now to a
14 location without parking.

15 MR. KRUM: Yeah. I didn't know about
16 the parking. But I called another person who would
17 have had us in a high-rise downtown, but he just
18 retired. So, good for him.

19 MR. FERRARIO: And actually, Esquire has
20 a pretty nice facility downtown so --

21 BY MR. KRUM:

22 Q. All right. Mr. Kane, take such time as
23 you need to review this document.

24 The first question I'm going to have
25 about this and any other document I show you is do

1 real estate people or New York people with political
2 know-how and/or simply directors with real estate
3 experience in New York City, Australia and New
4 Zealand?

5 MR. SEARCY: Objection. Misstates the
6 document.

7 THE WITNESS: I think it would be
8 helpful to this board to have people with extensive
9 real estate experience. But I don't -- I don't
10 think now that it is a requirement that they be
11 knowledgeable in New York real estate, because I
12 think we have people onboard that are.

13 BY MR. KRUM:

14 Q. Does, to your knowledge, Judy Coddling
15 have any real estate expertise?

16 A. No.

17 Q. Does Michael Wrotniak have any real
18 estate expertise?

19 A. Pardon?

20 Q. Does Michael Wrotniak have any real
21 estate expertise?

22 A. I don't know.

23 Q. Did you speak with either of them before
24 they were added to the RDI board of directors?

25 A. Yes.

1 Q. Both of them?

2 A. Yes.

3 Q. Did you ask either -- did you ask
4 Wrotniak if he had any --

5 A. No.

6 Q. -- real estate expertise?

7 A. No.

8 Q. When you spoke with Mr. Wrotniak, was
9 that in person or by telephone?

10 A. I think initially it was by telephone.

11 Q. Was anyone else on the call?

12 A. Not to my knowledge.

13 Q. How long did it last?

14 A. I don't remember.

15 Q. Was it -- can you give me a time range?
16 Ten minutes? An hour?

17 A. I can't.

18 Q. Two hours?

19 A. I can't -- I don't remember. I remember
20 speaking with him. I don't know how long it went.

21 Q. Do you recall what he said or what you
22 said in words or substance?

23 A. No.

24 Q. Now, when you spoke with Ms. Coddling
25 before she was added to the RDI board, was that in

1 I think Bill Gould added a lot of value
2 and expertise.

3 I'm trying to think of the other
4 directors.

5 Of course Margaret and Ellen added value
6 because of 16 to 20 years in live theaters and
7 cinema.

8 So, these were a valuable people. But
9 the question that I was addressing was whether he --
10 he was searching for the value that they added or
11 felt he added himself, which he did.

12 BY MR. KRUM:

13 Q. Well, let's -- I want to be clear on
14 this, Mr. Kane.

15 A. Yeah.

16 Q. So your -- the value you could add is
17 what you just described with respect to tax matters,
18 right?

19 A. Right.

20 Q. And did you or did you not add that
21 value during the time you were on the board and Jim
22 Cotter, Sr., was alive?

23 A. Absolutely.

24 Q. And the value there Mr. Gould could add
25 had to do with corporate governance and legal

EXHIBIT 44

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DISTRICT COURT
CLARK COUNTY, NEVADA

JAMES J. COTTER, JR.,	)	
individually and	)	
derivatively on behalf of)	)	
Reading International,	)	
Inc.,	)	
	)	Case No. A-15-719860-B
Plaintiff,	)	
	)	Coordinated with:
vs.	)	
	)	Case No. P-14-082942-E
MARGARET COTTER, et al.,	)	
	)	
Defendants.	)	
and	)	
READING INTERNATIONAL,	)	
INC., a Nevada	)	
corporation,	)	
	)	
Nominal Defendant)	)	

VIDEOTAPED DEPOSITION OF ROBERT MAYES
TAKEN ON THURSDAY, AUGUST 18, 2016

REPORTED BY:
PATRICIA L. HUBBARD, CSR #3400
Job No.: 331292

1 with him via Skype, but --

2 Q. Do you recall any other communications
3 that you or, to your knowledge, anybody else at Korn
4 Ferry had with anybody at RDI again between the
5 meeting following the interviews on that Friday to
6 which you testified and your call where Mr. Tomkins
7 told you to stand down?

8 A. Yeah. The only --

9 MS. LINDSAY: Objection. Lacks
10 foundation.

11 BY MR. KRUM:

12 Q. You can go ahead.

13 A. The only communication would have --
14 would have come from me.

15 Q. Okay. Part of the Korn Ferry engagement
16 with RDI for the C.E.O. search was to perform some
17 sort of proprietary Korn Ferry assessment of the
18 final candidates, right?

19 MS. LINDSAY: Objection. Lacks
20 foundation.

21 THE WITNESS: Yes.

22 BY MR. KRUM:

23 Q. Okay. What exactly is that proprietary
24 assessment?

25 A. It is a -- what we call a -- a success

1 plan. It's developed on the other side of the shop
2 within leadership -- within our leadership and
3 consulting business.

4 In that case we had a Ph.D. named Jim
5 Aggen, who led the success profile. And basically
6 it's a deeper dive on -- on sort of the ingredients
7 not only for the experience of the candidate but for
8 the make-up of the candidate.

9 And so to develop that success profile,
10 Jim and I, primarily Jim had longer -- had long
11 conversations with each of the search committee
12 members.

13 And the intention of that success
14 profile is to mainly go deeper with the short list
15 of candidates.

16 So, that -- that never took place. The
17 second half of that engagement, if you will, never
18 took place.

19 **Q. So that's the proprietary Korn Ferry**
20 **assessment was not done with respect to any**
21 **candidates?**

22 **A. No.**

23 **Q. Not with respect to Ellen Cotter?**

24 **A. No.**

25 **Q. Not with respect to the person who**

1 received 20 minutes of conversation during the
2 debriefing following the interviews?

3 A. No.

4 Q. No one?

5 A. No.

6 (Off-the-record discussion.)

7 BY MR. KRUM:

8 Q. Who's Robert Wagner -- Robert Wagner?

9 A. Yeah. Rob's a partner at Korn Ferry.

10 And Rob had a relationship -- has a relationship
11 with Craig Tomkins that dates back to college.

12 And so our initial relationship with RDI
13 was via that history.

14 Q. That's the answer to the next question.

15 Thank you.

16 You worked on a prior engagement for
17 RDI, right?

18 A. Yeah. Worked with Jim on the head of
19 real estate search.

20 Q. Did you ever communicate to Jim or to
21 Bill Ellis or to anybody else at RDI that you
22 thought one or more of the candidates that Korn
23 Ferry had presented for the head of real estate were
24 good fits for the position?

25 MS. LINDSAY: Objection. Vague.

1 sentence that begins "The" and then the third line
2 says "integrated search/assessment methodology."

3 Do you see that?

4 A. Yep.

5 Q. Is that a reference to the Korn Ferry
6 proprietary assessment about which you testified
7 earlier today?

8 A. Yes.

9 Q. Okay. That's all for that.

10 Okay, Mr. Mayes. I'll show you what
11 previously has been marked as Exhibit 378.

12 A. Okay.

13 (Whereupon the document previously
14 marked as Plaintiffs' Exhibit 378
15 was referenced and is attached
16 hereto.)

17 BY MR. KRUM:

18 Q. Do you recognize Exhibit 378?

19 A. Yep.

20 Q. What is it?

21 A. Typical sort of search kick-off email
22 and position spec.

23 Q. Okay. What's a position spec?

24 A. It's an approved document that we
25 utilized to effectively source candidates.

1 Q. And when you say "source candidates"?

2 A. Generate interest among the candidate
3 pool.

4 Q. Okay. Does that mean identify the
5 possible candidates and generate interest?

6 A. Sure.

7 Q. And how is the position spec or position
8 specification document created?

9 What's the -- what was the process done
10 in this case to create the draft position
11 specification that's part of 378?

12 A. Individual conversations with each of
13 the search committee members.

14 Q. Did you have those conversations?

15 A. I did.

16 Q. With each of Ellen Cotter, Margaret
17 Cotter, Bill Gould and Doug McEachern?

18 A. Correct.

19 Q. And do you recall one conversation from
20 another as you sit here today?

21 A. No.

22 Q. Is the -- is the confidential position
23 specification that's part of Exhibit 378 beginning
24 with the document that has 003 in the lower
25 right-hand corner of the document that was created

1 foundation.

2 THE WITNESS: Oh, sorry. Correct.

3 BY MR. KRUM:

4 Q. I direct your attention back to your
5 September 18 email. The second paragraph, the third
6 sentence reads, quote,

7 "The good news is that the search
8 committee is very much aligned on
9 the mandate and profile of the
10 appropriate chief executive
11 officer, with Craig having a
12 slightly different perspective that
13 we took into account," close quote.

14 Do you see that?

15 A. Yep.

16 Q. To what does that refer?

17 A. As we discussed -- or as we mentioned a
18 moment ago, Craig sort of de-emphasized the need for
19 real estate experience and emphasized the need for
20 consumer-oriented operating business experience.

21 Q. And the other -- and the four members of
22 the committee emphasized the need for what?

23 A. Real estate experience.

24 Q. So at some point in time did Korn Ferry
25 provide to the -- each of the members of the C.E.O.

1 THE WITNESS: No.

2 BY MR. KRUM:

3 Q. How many C.E.O. searches have you
4 performed approximately?

5 A. A dozen.

6 Q. Okay. How many C.E.O. searches are you
7 familiar with such that you would know the
8 composition of the search committee, if any, above
9 and beyond the dozen or so?

10 A. 50.

11 MS. LINDSAY: Objection. Vague.

12 BY MR. KRUM:

13 Q. And in how many of those searches, to
14 your knowledge, was the interim C.E.O. even a member
15 of the C.E.O. search committee?

16 A. I don't have a -- I don't have a broad
17 enough -- I can't recall.

18 Q. Okay. Directing your attention to the
19 proprietary assessment about which you've testified
20 that was part of the Korn Ferry engagement of RDI,
21 do you have that in mind?

22 A. I'm sorry?

23 Q. I direct your attention to the --

24 A. Oh, sure.

25 Q. -- the proprietary assessment that was

1 BY MS. LINDSAY:

2 Q. What are those reasons?

3 MR. KRUM: Same objections.

4 THE WITNESS: Any number of reasons. In
5 some cases a -- a company will have a preference for
6 an internal candidate, but they want to go to search
7 to sort of evaluate the candidate vis-a-vis the
8 external talent pool.

9 In other cases, on the opposite end of
10 the spectrum, you know, a client will decide that
11 the right external candidates are just too expensive
12 and would create too much disruption internally --
13 and/or would create too much disruption internally,
14 so they promote from within.

15 BY MS. LINDSAY:

16 Q. Are there advantages that a company
17 would think that an internal candidate would have?

18 MR. KRUM: Same objections.

19 THE WITNESS: The built-in advantage is
20 less disruption. That's a uniform cause.

21 Beyond that there's no common --
22 commonality.

23 BY MS. LINDSAY:

24 Q. What do you mean by "less disruption"?

25 A. Change makes team members nervous.

1 Q. In what way?

2 A. The same -- you know, the same way I
3 would be, you know, disrupted if I had a new boss or
4 if you had a new boss or if any one of us had a new
5 boss.

6 Q. In your experience, when boards are
7 evaluating candidates or the search committee,
8 whoever is evaluating candidates, is the candidate
9 background and experience only one factor in the
10 evaluation?

11 A. It's a large factor, at least for
12 getting the person the initial interview. It's the
13 primary factor.

14 Q. Do they also consider other factors,
15 like fit?

16 A. Absolutely.

17 Q. What are some other factors that they
18 might consider?

19 A. Cultural fit, motivation, drivers,
20 personal traits, style. There's many.

21 Q. And in your experience, can a strength
22 in one of those factors make up for a weakness in
23 another area?

24 A. Yes.

25 Q. In your experience, do companies

1 sometimes hire employees who don't ultimately
2 exactly fit the position specification as it was
3 written?

4 MR. KRUM: Same objections, vague,
5 incomplete hypothetical.

6 THE WITNESS: Yeah. I mean there's
7 no -- there's -- I've never met a perfect candidate.

8 BY MS. LINDSAY:

9 Q. So, that happens often?

10 MR. KRUM: Same objections, plus
11 mischaracterizes the testimony.

12 THE WITNESS: Typically, you know, the
13 successful candidate will -- will fit 80 percent of
14 the spec, 80 percent or greater. It's rare for a
15 candidate to be hired without, you know, sort of
16 that threshold.

17 BY MS. LINDSAY:

18 Q. In your experience, do some companies
19 want to fill a position more quickly than others?

20 A. Definitely.

21 Q. And why might that be a concern?

22 MR. KRUM: Same objection.

23 THE WITNESS: Why does -- I'm sorry. I
24 don't follow.

25 ///

1 **assessment process.**

2 **When was that?**

3 A. Probably about the time that he had --
4 he called me. So that would have been December when
5 they indicated that the board was inclined to name
6 Ellen permanent C.E.O.

7 I encouraged him to run -- encouraged
8 him to run her through the assessment process; not
9 so much as an evaluation but as an onboarding tool.

10 **Q. And what is marked as Exhibit 422, is**
11 **that is as a result of Ellen's assessment process?**

12 A. No. No. They chose not to.

13 **Q. And do you know why that was?**

14 A. I believe Craig told me that "We" --
15 "We, the board, already know her pretty well, so
16 there's no need."

17 And I think they, you know, frankly,
18 wanted to avoid the expense.

19 **Q. And what -- so what was this, then?**

20 A. So that -- that's a candidate report.
21 That's independent of an assessment.

22 An assessment is a far deeper -- deeper
23 dive on candidates. Sorry. No -- there were no
24 assessments ultimately done relative to this search.

25 This is -- the first half is the success

1 profile, the second half are the assessments. A
2 success profile was developed, but no assessments
3 ever took place.

4 Q. And have you had other searches where an
5 internal candidate came forward and the deep
6 assessment like you spoke about earlier did not take
7 place and the internal candidate was chosen?

8 A. Not that -- not that I can recall. But
9 this assessment technology is two years old. So,
10 limited sample size.

11 Q. Did you -- you had met with Ellen a
12 number of times, correct?

13 A. Yeah.

14 Q. Did you ever have any reason to believe
15 that she wasn't a qualified candidate for the
16 position?

17 MR. KRUM: Objection. Vague and
18 ambiguous, foundation, assumes facts.

19 THE WITNESS: I thought relative to the
20 spec that -- that she lacked real estate expertise.

21 BY MS. HENDRICKS:

22 Q. To your knowledge, does she have the
23 operating experience and the other internal
24 experience with the company?

25 A. Very much so.

1 But were any of the other candidates
2 taken through that comprehensive assessment?

3 A. No.

4 Q. Okay. Now, you said that -- that in
5 your opinion, Ellen Cotter didn't have the real
6 estate experience.

7 How much time did you spend with her or
8 talking about her real estate experience?

9 A. We talked about the real estate needs of
10 the company for a few hours.

11 Q. What about her background? Did you talk
12 in detail about her real estate --

13 A. No. No.

14 Q. Okay. Now, let me ask you a few
15 questions about Bill Gould.

16 On how many occasions did you have
17 conversations with Mr. Gould?

18 A. I suspect we had two or three
19 conversations with the search committee which he was
20 on the phone for, and then I had one -- or Jim Aggen
21 and I had one conversation with him relative to the
22 development of the success profile.

23 Q. Okay. So you only had one conversation
24 with him separate from the committee; is that
25 correct?

1 A. Correct.

2 Q. Is that right?

3 A. I think so.

4 Q. Okay. Now, during the conversations
5 with the search committee, did he ever express any
6 personal opinions or give you any feedback about
7 what he was looking for in a C.E.O.?

8 A. Yeah.

9 Q. What -- what did he say?

10 A. Like I can't remember the specifics,
11 what I can tell you is that all four members of the
12 committee were consistent at the outset. This
13 company really needs real estate expertise, we have
14 this land in Manhattan, we need to figure out what
15 to do with it to optimize value. They were very
16 consistent.

17 Q. So they were consistent also that they
18 were trying to look for the right person for the
19 job, correct?

20 A. Right.

21 Q. Okay. So, it was always clear that they
22 were -- the whole committee, including Bill Gould,
23 was trying to find the right person to be the C.E.O.
24 of the company, correct?

25 MR. KRUM: Objection. Foundation.

1 THE WITNESS: I assume that they were
2 investing the time, that that was their goal.

3 BY MR. VERA:

4 Q. You had no reason to think that everyone
5 on that committee, including Bill Gould, was doing
6 everything they could to try to find the right
7 person, correct?

8 MR. KRUM: Same objection. Misstates
9 testimony.

10 THE WITNESS: Correct. I -- again,
11 firms pay our fees and invest the time. I assume
12 that their interest is to find the right C.E.O.

13 BY MR. VERA:

14 Q. But you -- you heard nothing from Bill
15 Gould to give you any reason to think that he wasn't
16 doing his best as a fiduciary to find the right
17 person for the job?

18 A. Correct.

19 MR. KRUM: Same objection.

20 BY MR. VERA:

21 Q. Thank you.

22 Now, in your separate conversation that
23 you had with Bill Gould, did he give you -- did he
24 say anything else about what he was looking for in a
25 C.E.O.?

1 A. I can't recall.

2 Q. You don't remember anything else that he
3 said?

4 A. I think that the common themes were real
5 estate experience, someone who was a patient leader
6 who could sort of move things along slowly. Family
7 company so things had happened slowly there through
8 the years. Patient leader, and someone who, you
9 know, theoretically had the temperament to deal with
10 activist investors.

11 Those were the -- the things that came
12 out of my conversations with Doug and Bill. And
13 they were more sophisticated conversations than I
14 had with Ellen and Margaret.

15 Q. Now, did you know Bill Gould prior to
16 this search?

17 A. No.

18 Q. And the time that you met with him
19 separate from the committee, was it on the phone or
20 in person?

21 A. Phone.

22 Q. Who else was at that meeting or on that
23 call?

24 A. Jim Aggen.

25 Q. And how long did that conversation last?

1 A. Those typically are 45-minute to
2 60-minute conversations.

3 Q. Other than what you've told us so far,
4 did Mr. Gould make any other representations or --
5 or say anything else to you about what he would like
6 in terms of a new C.E.O.?

7 A. Bill was on the phone for the candidate
8 debrief call after the interviews, so he certainly
9 had opinions, but I can't recall.

10 Q. But it was your impression that he took
11 the process very seriously, correct?

12 A. Yes.

13 Q. And he was trying, again, to do
14 everything he could to find the right person for the
15 job?

16 MR. KRUM: Same objection.

17 THE WITNESS: Yeah. I mean he -- he
18 attended all the search committee calls, he was --
19 he wasn't absent.

20 BY MR. VERA:

21 Q. Right. But did he do or say anything
22 that made you think that he was doing anything other
23 than trying to find the right person for the job?

24 A. No.

25 Q. Okay.

1 MR. VERA: Thank you. I have no further
2 questions.

3 MR. KRUM: I have nothing further.
4 Thank you, Mr. Mayes.

5 THE WITNESS: Thank you.

6 MS. LINDSAY: Thank you.

7 VIDEOTAPE OPERATOR: This concludes the
8 deposition of Mr. Robert Mayes on August 18, 2016,
9 which consists of two media files.

10 The original media files will be
11 retained by Litigation Services.

12 We are off the record at 11:17.

13

14 (Whereupon at 11:17 A.M. the
15 deposition proceedings were
16 concluded.)

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EXHIBIT 45

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DISTRICT COURT

CLARK COUNTY, NEVADA

JAMES J. COTTER, JR.,)
individually and)
derivatively on behalf of)
Reading International,)
Inc.,)
) Case No. A-15-719860-B
) Coordinated with:
) Case No. P-14-082942-E
vs.)
MARGARET COTTER, et al.,)
)
) Defendants.
and)

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

VIDEOTAPED DEPOSITION OF DOUGLAS MCEACHERN

TAKEN ON MAY 6, 2016

REPORTED BY:

PATRICIA L. HUBBARD, CSR #3400

1 Q. Okay. Well, let me ask a question.

2 Let's try it again.

3 What was your understanding, if any, as
4 to the point of hiring a director of real estate for
5 RDI?

6 A. Jim wanted to hire a director of real
7 estate who had been through some development
8 activities in the past and had responsibilities for,
9 take this building, building this building.

10 Q. When you say Jim wanted to hire him,
11 were you suggesting that somebody disagreed other
12 than Margaret?

13 A. This was his initiative. It wasn't a
14 bad idea.

15 Q. Okay. To your knowledge, did anybody
16 other than Margaret ever disagree with the notion of
17 hiring a director of real estate for RDI?

18 MR. SEARCY: Objection. Assumes facts,
19 lacks foundation.

20 THE WITNESS: I don't know. And I can't
21 tell you that Margaret didn't want to hire somebody.

22 I remember being in discussions where
23 Margaret was there and where she would be reporting.

24 BY MR. KRUM:

25 Q. So, setting aside the subject of

EXHIBIT 46

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DISTRICT COURT
CLARK COUNTY, NEVADA

JAMES J. COTTER, JR.,	)	
individually and	)	
derivatively on behalf of	)	
Reading International,	)	
Inc.,	)	
Plaintiff,	)	Case No. A-15-719860-B
vs.	)	Coordinated with:
MARGARET COTTER, et al.,	)	Case No. P-14-082942-E
Defendants.	)	
and	)	
READING INTERNATIONAL,	)	
INC., a Nevada	)	
corporation,	)	
Nominal Defendant	)	

VIDEOTAPED DEPOSITION OF DOUGLAS MCEACHERN
TAKEN ON JULY 7, 2016
VOLUME II

JOB NUMBER 321640
REPORTED BY:
PATRICIA L. HUBBARD, CSR #3400

1 corporate lives.

2 BY MR. KRUM:

3 Q. What -- what did you do and, to your
4 knowledge, what did anybody else who was on the
5 special nominating committee do with respect to Judy
6 Coddling?

7 MR. SEARCY: Objection. Vague.

8 THE WITNESS: In addition to going
9 through Ms. Coddling's resume, we personally met with
10 her. And I'm trying to remember who all was in the
11 meeting. The minutes are there and they will tell
12 you who was there. It could have been Ed Kane,
13 although I don't think he was a member of the
14 committee. But we typically carpooled up to
15 Los Angeles with each other, so I think it's
16 reasonable to think he was there, Guy Adams and
17 maybe Bill Gould as a lead director.

18 And we went with Judy and talked about
19 what she had done in the past, what her business
20 experiences had been and were quite -- I, I can't
21 speak for everybody else, but I was quite favorably
22 impressed about her business background and felt
23 comfortable recommending her to the board of
24 directors.

25 Q. What is your understanding, if any, as

1 to how the resume -- the Judy Coddling resume you
2 reviewed came to be prepared?

3 A. I do not know.

4 Q. How did you receive it?

5 A. I think by email.

6 Q. From whom?

7 A. I don't know. You'd have to go back and
8 look at email to find out.

9 (Whereupon Mr. Swanis entered the
10 deposition proceedings at this
11 time.)

12 BY MR. KRUM:

13 Q. Okay. What was it about her business
14 experience that created a favorable impression for
15 you?

16 A. Not -- it's been close to -- we're
17 moving on to a year when I last saw Judy Coddling's
18 resume, but she had been in the education field on a
19 number of corporations, business experience.

20 I'd have to go through and pick out the
21 resume and tell you the points of contact that I
22 found impressive. And then her own personal
23 demeanor and how she carried herself and the way she
24 communicated, I thought she'd be very effective as
25 board member.

1 answer the question and then we'll go off the
2 record.

3 THE WITNESS: She described a
4 relationship she had and discussed having been
5 involved with Jim and his wife. As they were
6 proposing and he reached out to her, she was
7 associated with some pre-school or some prep school
8 or some private school on the west side, and Jim had
9 asked her -- Jim and his wife Gina had asked Judy to
10 help support their child's candidacy.

11 BY MR. KRUM:

12 Q. What did Judy say about her relationship
13 with Mary Cotter?

14 A. I don't know that she said anything
15 about a relationship with Mary Cotter.

16 Q. Okay. And you made some reference to a
17 relationship between Judy Coddington and Mary Cotter in
18 earlier testimony.

19 Do you have that in mind?

20 A. I do.

21 Q. And what is it you heard or learned in
22 that respect?

23 A. But I would like to -- my earlier
24 testimony I believe was I didn't know when I was
25 aware of that relationship, it could have been as

1 being considered as a board member or it could have
2 been three, four, five months later, is that she and
3 Mary Cotter had a relationship that went back 20,
4 25, 30 years, a longstanding relationship.

5 I don't know how it was created. I
6 don't know how often they saw each other. I was
7 just aware of that relationship.

8 Q. How did you come to learn about that
9 relationship?

10 A. I don't recall.

11 Q. What did Ellen Cotter tell you and
12 presumably other members of the special nominating
13 committee about the relationship between Judy
14 Coddington on one hand and any Cotter family member on
15 the other hand?

16 A. At -- we were nominating Judy Coddington to
17 fill a board position created when Tim Storey
18 resigned. That was a month, two weeks, three weeks,
19 some period of time before the annual meeting.

20 And sometime after Judy Coddington was
21 appointed to the board, a number of us received an
22 email from Andy Shapiro -- Andrew Shapiro, about
23 some background information on Judy Coddington about a
24 connection that she had with -- I don't remember the
25 name of the company. It was some software reading

1 comprehension and learning company publisher that
2 had a relationship with Apple that had a
3 relationship and was doing work for the L.A.U.S.D.,
4 Los Angeles Unified School District.

5 And pretty negative coverage had
6 appeared in a series of articles. I remember some
7 in the "L.A. Times."

8 And I think when that information
9 surfaced, there was a whole lot more discussion that
10 took place about Judy Coddling and her relationship
11 with Ellen Cotter and the family.

12 Q. What's your recollection, if any, as to
13 how Mr. Shapiro had learned that Judy Coddling -- or
14 learned about Judy Coddling -- strike that.

15 Had she already been added to the board
16 and the company announced that at the time
17 Mr. Shapiro communicated what you just described?

18 A. It had happened before Andy Shapiro sent
19 that information to us.

20 Q. What had happened before?

21 A. That she had been added to the board.

22 Q. Okay. What was the -- what steps, if
23 any, did the special nominating committee take, if
24 any, beyond interviewing candidates that Ellen
25 Cotter referred to the committee and as well as

1 A. So we didn't do a background check on
2 him.

3 Q. Who was responsible for the background
4 checks?

5 A. I believe they were done under the
6 auspices of Craig Tompkins or they could have
7 been -- I think it was Craig Tompkins.

8 Q. Was he a member of the special
9 nominating committee?

10 A. He attended as a -- he took the
11 medicine, attended the meetings.

12 Q. Did he do anything beyond that?

13 A. To the best of my knowledge, no.

14 Q. So it's your understanding that the
15 company had run a background check on Ms. Coddling
16 before she was added to the board?

17 A. Yes, it is.

18 Q. And it's your understanding that the
19 background check had not produced the information
20 that had been communicated to the board members by
21 Mr. Shapiro?

22 A. That is correct.

23 Q. Did you ever see the background check --

24 A. Yes.

25 Q. There was a document that Mr. Tompkins

1 produced that was described as a background check
2 for Judy Coddling?

3 MR. SEARCY: Objection. Lacks
4 foundation.

5 THE WITNESS: I -- I do believe I saw a
6 background check that had been done on Judy Coddling.
7 I asked to see it because, quite frankly, this was a
8 bit of an embarrassing that this information would
9 surface and we would not have been aware of it
10 beforehand.

11 When we learned of it, we changed our
12 background procedures to be more robust than they
13 had been in the past.

14 BY MR. KRUM:

15 Q. The information that Mr. Shapiro
16 transmitted to members of the RDI board of directors
17 regarding Judy Coddling was all publicly available
18 information, right?

19 A. I recall -- I think so, yes.

20 Q. So, did you ask Mr. Tompkins or anybody
21 else what sort of background check was done that
22 didn't discover publicly available information?

23 A. We had --

24 MR. SEARCY: Objection.

25 Go ahead.

1 arrangements for us to get together again with Judy
2 personally to discuss the situation.

3 BY MR. KRUM:

4 Q. Over what period of time did these
5 conversations with Ms. Cotter, who was in Florida,
6 occur relative to receipt of the information from
7 Mr. Shapiro?

8 Was it the same day? The same week?

9 A. A couple of nanoseconds.

10 Q. Okay. And how long thereafter did you
11 and others spoke with Ms. Coddling?

12 A. More than a couple of nanoseconds. It
13 could have been within the next week. I just don't
14 remember.

15 There are minutes of that meeting with
16 Ms. Coddling that will set forth the date.

17 Q. And what happened during that -- was it
18 a meeting in person?

19 A. Yes, it was.

20 Q. And who was present?

21 A. Bill Gould was there, I was there. I

22 don't remember if Ellen Cotter was there or not. I
23 think --

24 Well, get the minutes out. They'll tell
25 you who was there.

1 I -- it's conceivable Guy Adams and Ed
2 Kane were there also.

3 **Q. How long did the meeting last?**

4 A. No more than three hours.

5 **Q. And in substance who said what during**
6 **that meeting?**

7 A. The majority of what was communicated
8 was by Judy Coddling. And I believe we had
9 instructed -- at some point we instructed Craig
10 Tompkins to go do some research of all this stuff
11 and try to find what was going on.

12 He found some additional information
13 about Judy Coddling that had not been communicated by
14 Mr. Shapiro.

15 And Judy explained the situation between
16 Pearson -- thank you for the name of that --
17 Pearson, which was a subcontractor to Apple Computer
18 supplying and designing a curriculum for the L.A.
19 Unified School District that was principally to be
20 delivered via iPads that Apple was selling through
21 some vendor to the L.A. Unified School District.

22 **Q. Where did this meeting occur?**

23 A. At the Reading office.

24 **Q. Was it on a weekend or a workday?**

25 A. The minutes will -- I believe it was on

1 that same meeting where we met with Judy Coddling.

2 Q. Okay. Do you recall anything else that
3 anybody else said in words or substance from that
4 meeting?

5 A. At some point either at that meeting or
6 before we concluded we would go forward with Judy as
7 a nominee for the board of directors. I and others
8 were impressed with Judy's explanation and the
9 research that Craig had done into the entire matter.
10 We were positive and felt very good about
11 renominating her.

12 Q. Did anyone at Reading, whether Craig
13 Tompkins or anyone else, communicate with any third
14 parties about Judy Coddling?

15 MR. SEARCY: Objection. Vague.

16 MR. SWANIS: Join. Calls for
17 speculation.

18 THE WITNESS: I don't know.

19 BY MR. KRUM:

20 Q. Okay.

21 MR. KRUM: I'll ask the court reporter
22 to mark --

23 MR. SEARCY: Before we start on the
24 exhibits Mr. McEachern asked actually for a break a
25 while back. I wanted to --

1 Q. When you say you believe so,
2 Mr. McEachern, do you recall interviewing him?

3 A. We -- we would have had minutes that
4 discussed the interview of Mr. Wrotniak.

5 Q. Okay. But do you have any recollection
6 of doing so as you sit here today?

7 A. I don't have any specific recollection.

8 Q. Who interviewed him?

9 A. I believe it was the same group of
10 three, Guy Adams, Ed Kane and myself.

11 Q. Was that -- did that interview occur in
12 person?

13 A. I believe it took place by phone.

14 Q. How long did it last?

15 A. I don't recall.

16 Q. Who said what in words or substance?

17 A. I don't remember.

18 Q. Mr. Wrotniak was recommended by Ellen
19 Cotter; is that right?

20 A. I believe he was recommended by Margaret
21 Cotter and Ellen Cotter jointly.

22 Q. Okay. And what did they say when they
23 recommended him?

24 A. I don't recall.

25 Q. Did you ever hear or learn or were you

1 ever told that his wife is a close personal friend
2 of Margaret Cotter?

3 MR. SEARCY: Objection. Lacks
4 foundation, vague.

5 (Whereupon Mr. Swanis re-entered
6 the deposition proceedings at this
7 time.)

8 THE WITNESS: I have been told that or
9 heard that.

10 BY MR. KRUM:

11 Q. When is the first time you heard or
12 learned or were told that?

13 A. Mr. Krum, I just don't remember.

14 Q. Do you recall from whom you heard or
15 were told that?

16 A. I think from Jim Cotter, Jr.

17 Q. Was that after the committee had
18 recommended nominating Mr. Wrotniak to stand for
19 election at the 2015 annual shareholders meeting?

20 MR. SEARCY: Objection. Lacks
21 foundation.

22 MR. SWANIS: Join.

23 THE WITNESS: I think so.

24 BY MR. KRUM:

25 Q. Okay. When you interviewed him, who

1 said what, if anything, regarding how he knew or was
2 known to Ellen and/or Margaret Cotter?

3 A. I do not recall.

4 Q. What was done, if anything, to your
5 knowledge, by you or any other member of the special
6 nominating committee with respect to Mr. Wrotniak
7 other than interviewing him prior to recommending to
8 the full board of directors that he be nominated to
9 stand for election at the 2015 annual shareholders
10 meeting?

11 MR. SEARCY: Objection. Vague.

12 MR. SWANIS: Join.

13 THE WITNESS: We were doing a background
14 check on Michael Wrotniak similar to what had been
15 done on Judy Coddling and was the customary normal
16 practice for Reading.

17 Craig Tompkins was instructed, "Listen,
18 if we got all this information that showed up about
19 Judy Coddling that was easily located through some
20 Google search, well, darn it, go and do a similar
21 search on Michael Wrotniak and see if there's
22 anything out there that wouldn't have turned up in
23 something akin to the background check that we had
24 done on Michael Wrotniak."

25 And he did do that. I believe it is

1 documented in our minutes of that meeting.

2 BY MR. KRUM:

3 Q. Okay. What else, if anything, was done
4 prior to Mr. Wrotniak being selected to stand for
5 election to the RDI board of directors at the 2015
6 annual shareholders meeting?

7 MR. SWANIS: Objection. Form,
8 foundation.

9 MR. SEARCY: Join.

10 THE WITNESS: I don't recall.

11 BY MR. KRUM:

12 Q. Okay. Let me show you, Mr. McEachern,
13 what previously has been marked as Exhibit 52.

14 This may be a document to which you were
15 just referring?

16 (Whereupon the document previously
17 marked as Plaintiffs' Exhibit 52
18 was referenced and is attached
19 hereto.)

20 BY MR. KRUM:

21 Q. Let me know when you've reviewed it.

22 A. Okay.

23 Q. Do you recognize Exhibit 52?

24 A. I have a general recollection, yes.

25 Q. What is it?

1 sometime in 1985 forward and knew these people when
2 Deloitte were the -- the auditors and met Ellen
3 Cotter while she was down in Australia when I was
4 there doing company business.

5 BY MR. KRUM:

6 Q. So, back to the question. Did Korn
7 Ferry interview Ellen Cotter as a candidate for the
8 C.E.O. position?

9 A. I think I said --

10 MR. SWANIS: Objection.

11 THE WITNESS: -- I don't know.

12 BY MR. KRUM:

13 Q. Okay. Did they put Ellen Cotter through
14 their proprietary assessment process?

15 MR. SWANIS: Same objections.

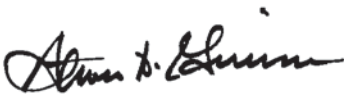
16 THE WITNESS: I don't think so.

17 BY MR. KRUM:

18 Q. They didn't do that with anybody, to
19 your knowledge, right?

20 A. To my knowledge, no.

21 Q. What discussions did you have with
22 Margaret Cotter and Bill Gould, if any, about
23 whether and how to proceed any further with the
24 other final -- with the finalist -- the persons you
25 identified as finalists after the Ellen Cotter


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EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiffs,

v.

MARGARET COTTER, *et al.*,
Defendants.

AND

READING INTERNATIONAL, INC., a Nevada
corporation,

Nominal Defendant.

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

Case No.: P-14-082942-E
Dept. No.: XI

Related and Coordinated Cases

BUSINESS COURT

**DEFENDANTS' MOTION *IN LIMINE* TO
EXCLUDE EXPERT TESTIMONY OF
MYRON STEELE, TIAGO DUARTE-
SILVA, RICHARD SPITZ, ALBERT
NAGY, AND JOHN FINNERTY**

Judge: Hon. Elizabeth Gonzalez
Date of Hearing: 10 / 25 / 16
Time of Hearing: 8 : 30 AM

NOTICE OF MOTION

TO: TO: ALL PARTIES, COUNSEL, AND THE COURT:

PLEASE TAKE NOTICE that the above Motion will be heard the 25 day
of October, 2016 at 8:30 AM in Department ~~XXVII~~^{XI} of the above
designated Court or as soon thereafter as counsel can be heard.

Dated: September 23, 2016

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1 **MOTION *IN LIMINE* TO EXCLUDE PROPOSED EXPERT TESTIMONY OF MYRON**
2 **STEELE, TIAGO DUARTE-SILVA, RICHARD SPITZ, ALBERT NAGY, AND JOHN**
3 **FINNERTY**

4 **TO: ALL PARTIES, COUNSEL, AND THE COURT:**

5 COMES NOW, Defendants Margaret Cotter, Ellen Cotter, Guy Adams, Edward Kane,
6 Douglas McEachern, Judy Coddling, and Michael Wrotniak (collectively, "Moving Defendants"),
7 by and through their counsel of record, Cohen|Johnson|Parker|Edwards and Quinn Emanuel
8 Urquhart & Sullivan, LLP, hereby submit this Motion *In Limine* to Exclude the Proposed Expert
9 Testimony of Myron Steele, Tiago Duarte-Silva, Richard Spitz, John Finnerty, and Albert Nagy.

10 This Motion is based upon the following Memorandum of Points and Authorities, the
11 pleadings and papers on file, and any oral argument at the time of a hearing on this motion.

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1 Dated: September 23, 2016

2 **COHEN|JOHNSON|PARKER|EDWARDS**

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff has disclosed three supposed expert witnesses—plus two additional “rebuttal” experts—to bolster his allegations against Defendants in this action. None of these experts’ testimony is admissible under Nevada law. These experts apply unsound methodologies, are unfamiliar with the factual record, and offer testimony far outside their purported areas of expertise. Perhaps most importantly, not one of these experts’ proposed testimony will assist the trier of fact in any way. In fact, just the opposite; the only possible impact of their proposed testimony is to cause severe prejudice and confusion.

Myron T. Steele, a former Chief Justice of the Delaware Supreme Court, has been designated to testify about how a Delaware court might apply Delaware law if the allegations in Plaintiff’s complaint were found to be true. In other words, Justice Steele does not even attempt to assist the trier of fact. Instead, he opines as to the application of Delaware law *if* the trier of fact were to reach certain conclusions. Allowing this testimony would of course be both confusing and prejudicial. First, it is the Court, not an expert witness, who should instruct the trier of fact on applicable law. Second, this is a case about a Nevada company being heard in a Nevada court; Delaware law, while perhaps instructive on certain particular issues, does not apply here. Third, Justice Steele’s opinion is based on assumptions—in particular, that the trier of fact finds against Defendants on virtually every factual issue—that are unfair to present to the trier of fact. It would be the very definition of prejudicial for the factfinder to hear from someone with the imprimatur of “expert” and “Chief Justice” about the consequences (in Delaware) to Defendants if they committed all the wrongdoing they are (falsely) accused of. As another court recently ruled in excluding Justice Steele’s proposed expert testimony, his opinions “provide a patina of substance to [the] claims when they actually say nothing about them.”

Tiago Duarte-Silva, a finance Ph.D., purports to testify about losses suffered by Reading since Plaintiff’s termination. However, his opinion is inadmissible for numerous reasons. Dr. Duarte-Silva has not reviewed a *single deposition* from this action, has reviewed *only one document produced in discovery*, and simply has no idea what the facts of this case are. Because

1 he has not made even a cursory effort to familiarize himself with the evidence in this case,
2 Dr. Duarte-Silva cannot offer any useful opinion that would assist the trier of fact. Unsurprisingly,
3 given his lack of knowledge about the evidence, Dr. Duarte-Silva's proposed testimony does not
4 even suggest a causal link between the losses supposedly suffered by Reading and any action of
5 any Defendant. So while Dr. Duarte-Silva wants to tell the trier of fact about the nine-figure losses
6 he thinks Reading has suffered since Plaintiff was fired, he has no idea—and does not even purport
7 to know, as his opinion is completely silent on this question—if a single dollar of those purported
8 losses is tied to Defendants' alleged conduct. Proximate causation of damages to the company is
9 an essential element of any derivative claim for breach of fiduciary duty; Dr. Duarte-Silva should
10 not be permitted to present the trier of fact with a "damages" figure that has nothing to do with any
11 of the misconduct alleged in the complaint. Even setting aside the failure to provide a causation
12 analysis, Dr. Duarte-Silva's supposed methodology is unsound. He deviates dramatically from the
13 well-known and widely-accepted approach to conducting stock price event studies, and does not
14 cite to any authority—academic or otherwise—supporting his novel approach. This is in direct
15 contrast to Defendants' expert, Dr. Richard Roll, who conducted a proper event study. The trier
16 of fact should not be presented with a "battle of the experts" when only one side's expert has
17 conducted a legitimate analysis.

18 Plaintiff's third expert is **Richard Spitz**, an attorney who seven years ago was an executive
19 search consultant. Whether or not Mr. Spitz actually has expertise relevant to the CEO search
20 process, he does not apply it in connection with his proposed testimony. Mr. Spitz claims he has
21 been retained to evaluate whether Reading's CEO search was a "success" or a "failure," but never
22 sets forth the standard that he (or anyone else) uses to make such an evaluation or the methodology
23 he applies. Mr. Spitz calls the search a "failure" but does not define that term, explain how he
24 reached his conclusion, or assess the performance of the chosen CEO. Instead, the bulk of Mr.
25 Spitz's report is spent calling into question Defendants' credibility, characterizing their conduct as
26 "vexing," and claiming that "one has to wonder" why Defendants acted the way they did. This is
27 not even close to the specialized or scientific knowledge an expert is supposed to share with the
28

1 trier of fact. Mr. Spitz's subjective reactions to the evidence in this action are completely irrelevant
2 and are an improper effort to supplant the key role of the trier of fact in this case.

3 In addition, Plaintiff has disclosed two "rebuttal" experts whose testimony should be
4 excluded. **Albert Nagy** was designated by Plaintiff to provide "rebuttal" testimony about
5 Margaret Cotter's employment and the real estate business generally, topics that none of
6 Defendants' experts have opined on. Mr. Nagy's proposed testimony is not a rebuttal at all.
7 Instead, Plaintiff appears to think he can avoid Mr. Nagy's exclusion by calling him a "rebuttal"
8 expert when in fact he should have been disclosed weeks ago. Moreover, Mr. Nagy, a real estate
9 development consultant, is not qualified to give expert opinion testimony regarding the various
10 broad topics for which he has been designated, including such complex topics as "how real estate
11 development fits into Reading International, Inc.'s business." **John Finnerty**, also a purported
12 rebuttal expert, intends to offer testimony about undefined "other statistical analyses and
13 conclusions." To the extent such analyses and conclusions are not rebuttal testimony, they should
14 not be allowed.

15 Defendants respectfully request that the proposed testimony of each of Plaintiff's disclosed
16 experts be excluded in its entirety. In the alternative, Defendants respectfully request that the
17 Court impose specific limits on the scope and subject matter of such proposed testimony in
18 accordance with the points and authorities below.

19 **II. LEGAL STANDARD**

20 In Nevada, expert testimony is governed by Nevada Revised Statute ("N.R.S.") 50.275,
21 which provides: "If scientific, technical or other specialized knowledge will assist the trier of fact
22 to understand the evidence or to determine a fact in issue, a witness qualified as an expert by
23 special knowledge, skill, experience, training or education may testify to matters within the scope
24 of such knowledge." Admission of expert testimony lies within the sound discretion of the trial
25 court. *Brown v. Nevada*, 110 Nev. 846, 852 (1994). The goal of expert testimony is "to provide
26 the trier of fact a resource for ascertaining truth in relevant areas outside the ken of ordinarily
27 laity." *Townsend v. Nevada*, 103 Nev. 113, 117 (1987). Moreover, expert testimony must also
28

1 withstand the challenge to all relevant evidence—whether its probative value exceeds prejudicial
2 effect. *See id.* at 117–18; *see also* N.R.S. 48.035(1).

3 Expert testimony should not be a “waste of time.” *Brown*, 110 Nev. at 852 (affirming
4 exclusion of expert attorney witnesses because it did not assist the trier of fact who had first hand
5 observations of counsel accused of ineffective assistance of counsel). Expert testimony is
6 improper if it invades the fact-finding province of the jury. *See, e.g., Townsend*, 103 Nev. at 118
7 (stating that expert testimony that identified the defendant as the perpetrator was improper “as it
8 transcended the test of jury enlightenment and entered the realm of fact-finding that was well
9 within the capacity of a lay jury”). The key, therefore, for admitting expert testimony is
10 determining whether it will assist the trier of fact and whether it is outside of the realm of what an
11 ordinary person may understand.

12 In Nevada, experts must be appropriately qualified in a certain area to offer opinions in that
13 area. *See e.g., Lord v. Nevada*, 107 Nev. 28, 33 (1991) (finding that it was error to permit a law
14 enforcement officer to testify on a medical issue because he was not qualified as a medical expert).
15 Thus, a party must establish a proper foundation for expert testimony within a particular field. *See*
16 *Porter v. Nevada*, 94 Nev. 142, 147 (1978) (affirming exclusion of expert testimony that did not
17 have a viable foundation in terms of whether the type of expert testimony was within a recognized
18 field of expertise). “[B]efore a witness may testify as to his or her expert opinion, the district court
19 must first determine that the witness is indeed a qualified expert.” *Mulder v. Nevada*, 116 Nev. 1,
20 13–14 (2000) (affirming finding of district court that fingerprint expert was not qualified because
21 he had little or questionable expertise in the areas and rather, his expertise lay mostly in
22 handwriting analysis). An expert’s testimony will assist the trier of fact only when it is relevant
23 and the product of reliable methodology. *Hallmark v. Eldridge*, 124 Nev. 492, 500 (2008).

24 Expert opinions should rest on facts and not assumptions. *See Wrenn v. Nevada*, 89 Nev.
25 71, 73 (1973). “[E]xpert opinion may not be the result of guesswork or conjecture.” *Id.* (finding
26 that expert testimony was properly precluded because the engineering calculations rested upon
27 several assumptions that were not established as the actual facts of the case); *see also Jeep Corp.*
28 *v. Murray*, 101 Nev. 640, 643 (1985) (finding that the trial court did not abuse its discretion in

1 admitting expert testimony because the expert's opinions were not based on mere speculation or
2 conjecture); *Choat v. McDorman*, 96 Nev. 332, 335 (1970) (“Just because a witness may be
3 qualified as an expert does not automatically qualify him to give an opinion necessarily based on
4 facts beyond his knowledge even though the opinion may be within the range of his expertise.”).
5 Where the opinion of an expert is based on erroneous assumptions of fact or law, the evidence is
6 incompetent and insufficient to support a verdict and should be excluded. *United States v. 319.88*
7 *Acres of Land, More or Less, Situated in Clark Cty., Nev.*, 498 F. Supp. 763, 766 (D. Nev. 1980).

8 **III. ARGUMENT**

9 **A. The Legal Opinion of Justice Steele Regarding the Application of Delaware 10 Law to a Hypothetical Set of Facts Should Be Excluded In Its Entirety**

11 **1. Justice Steele’s Delaware Legal Opinion Does Not Assist the Trier of Fact**

12 There is nothing in Justice Steele’s report that would remotely assist the trier of fact.¹ His
13 legal opinion about what a Delaware court would do *if* a Delaware trier of fact made certain factual
14 determinations is of no moment here. The trier of fact in this case does not need to know—and,
15 in fact, would be deeply prejudiced by hearing—how Justice Steele believes Delaware law applies
16 to various hypothetical scenarios. As another court wrote in a May 2016 order excluding Justice
17 Steele’s proposed expert testimony: “although these broad, generalized opinions are undoubtedly
18 correct, their capacity to confuse the factfinder is apparent. They could provide a patina of
19 substance to [the] claims when they actually say nothing about them.” *VBenx Corp. v. Finnegan*,
20 2016 WL 3961822, at *2 (Mass. Super. May 27, 2016).

21 Justice Steele does not purport to provide testimony about whether the Director
22 Defendants’ conduct was in accordance with the custom and practice for directors of public
23 companies, or even whether the Director Defendants’ conduct satisfied their fiduciary duties under
24 Nevada law. Instead, Justice Steele’s report offers four conclusions about Delaware law, each of
25 which is based on the unproven premise that a finder of fact has already determined that Plaintiff’s
26 allegations against Defendants are true:

27
28 ¹ A copy of Justice Steele’s report is attached hereto as Exhibit A.

1 Based on the facts as I understand them, it is my opinion that a court applying Delaware
2 law²¹⁹ would conclude the following:

- 3 (i) Regarding the process used to terminate JJC,
- 4 a. if a finder of fact finds that a majority of the directors who were entitled to
5 vote and voted to remove JJC were not disinterested and independent, then
6 entire fairness would apply, and
- 7 b. if entire fairness applies, the Defendants, either as controlling stockholders or
8 as directors who acquiesced to the wishes of the controlling stockholders,
9 breached their duty of loyalty to the Company, given the procedural
10 deficiencies in the process used to terminate JJC;
- 11 (ii) If a finder of fact finds that the EC Committee was repopulated and reactivated in
12 order to minimize the involvement of JJC and the other directors who voted not to
13 terminate JJC, then those actions likely constituted a breach of EC's and MC's
14 duty of loyalty, as interested directors and as controlling stockholders, and of the
15 other Defendants, who acquiesced to the controlling stockholders personal wishes;
- 16 (iii) If a finder of fact finds that the appointment of EC and MC to their respective
17 current positions and the revised compensation and bonuses that they and Adams
18 were given was not approved by an independent and disinterested majority, then
19 entire fairness would apply and the Defendants, as controlling stockholders or
20 those who acquiesced to the wishes of controlling stockholders, would be liable
21 for a breach of loyalty if the finder of fact finds that the process used to grant the
22 compensation and bonuses was not entirely fair; and
- 23 (iv) If a finder of fact finds that the Board's rejection of the Offer was not the product
24 of an independent and disinterested majority, and was born out of the desire to
25 keep EC and MC, the controlling stockholders, in office, then the rejection out of
26 hand intentionally breached the duty of loyalty.

27 See Ex. A (Steele Rep.) at 33–34 (emphasis added). As is apparent from the face of Justice
28 Steele's report and these supposed conclusions, his opinion does not assist the trier of fact, nor is

1 it meant to. There is no benefit or value to informing the trier of fact what a Delaware court
2 might do if the trier of fact were to reach certain conclusions, the bases of which Justice Steele
3 has not evaluated and are very much in dispute. Justice Steele's proposed testimony is an
4 exercise in circular reasoning; he states that Defendants' conduct *would be* wrongful under
5 Delaware law *if* the trier of fact determines that Defendants did something wrong. This makes
6 no sense from a witness whose supposed role is to assist the trier of fact.
7

8 It is well-settled that the judge instructs the jury in the law. *United States v. Brodie*, 858
9 F.2d 492, 496 (9th Cir. 1988) (overruled on other grounds). Because the jury is instructed to apply
10 the law as set forth by the judge, the testimony by an expert upon the law by definition cannot be
11 of assistance to the jury. *Hangarter v. Provident Life & Accident Ins. Co.*, 373 F.3d 998, 1016
12 (9th Cir. 2004) (“[I]nstructing the jury as to the applicable law is the distinct and exclusive
13 province of the court.”); *United States v. Curtis*, 782 F.2d 593, 599 (6th Cir. 1986) (“[Experts] do
14 not testify about the law because the judge's special legal knowledge is presumed to be sufficient,
15 and it is the judge's duty to inform the jury about the law that is relevant to their deliberations.”).
16 An expert who renders opinions on the state of the law or merely expresses legal conclusions is
17 usurping the court's function to instruct the jury on the law applicable to the case. The Nevada
18 Supreme Court has stated that “opinion on the applicable law does not assist the [trier of fact],
19 duty bound to apply the law as stated by the court, in understanding the evidence or determining a
20 fact in issue.” *United States Fire Ins. Co. v. McClelland*, 105 Nev. 504, 509 (1989) (citing *Ashton*
21 *v. Ashton*, 733 P.2d 147, 153 (Utah 1987); *see also Las Vegas Sun, Inc. v. Franklin*, 74 Nev. 282,
22 294 (1958) (holding that the admission of testimony that was clearly utilized to establish the state
23 of the law was prejudicial error). In *Ashton*, court explained: “testimonial opinion on the state of
24 the law is to be excluded [because] [t]he function of an expert is to relate an opinion of *fact* to the
25 jury.” *Ashton*, 733 P.2d at 153.

26 The only conceivable impact of allowing Justice Steele to present his legal opinions to a
27 trier of fact would be extreme prejudice and confusion. Any trier of fact would be improperly
28 swayed by hearing a former Delaware Chief Justice tell them that *if* Defendants committed the

1 various acts of wrongdoing they are accused of, a Delaware court would treat them harshly.
2 Further, and as discussed below, Justice Steele appears to think it is within his purview to make
3 his own findings of fact in this case. Justice Steele's opinion is effectively a closing argument on
4 behalf of Plaintiff, with the only caveat being that Justice Steele applies Delaware instead of
5 Nevada law. Nothing about such testimony assists the trier of fact; it must be excluded.

6 2. Justice Steele's Legal Opinion Purports to Apply Delaware Law Even
7 Though There Is Nevada Law Directly On Point

8 Not only are Justice Steele's purported legal opinions inherently prejudicial, they are
9 inaccurate and confusing to the trier of fact based on their reliance on Delaware law. Justice
10 Steele's assumption that Delaware as opposed to Nevada law applies in this case is simply wrong.
11 Though Nevada courts will look to Delaware corporate law for guidance when Nevada law is silent
12 on a particular issue, that is not the case here. Nevada has extensive statutory and case law
13 regarding the issues in this case, including the business judgment rule, director conflicts, and
14 fiduciary duty. Yet for some reason Justice Steele asks the Court and the trier of fact to set that
15 aside in favor of Delaware law.

16 For example, in the section of his report titled "Certain of the Directors May Not Be
17 Independent," Justice Steele cites numerous Delaware cases regarding purported director conflicts
18 of interest. *See* Ex. A (Steele Rep.) at 24. However, Justice Steele does not and cannot explain
19 why he looks to Delaware law in this context and intentionally ignores the extensive and on-point
20 Nevada authority. The term "interested director" is defined under Nevada law. *See* N.R.S. 78.140.
21 Both the Nevada Supreme Court and the Ninth Circuit, applying Nevada law, have issued detailed
22 decisions regarding Nevada law in this area, but Justice Steele does not see fit to incorporate those
23 into his opinion. *See Shoen v. SAC Holding Corp.*, 122 Nev. 621, 639–40, 137 P.3d 1171, 1183
24 (2006) ("[T]o show interestedness, a shareholder must allege that a majority of the board members
25 would be materially affected, either to their benefit or detriment, by a decision of the board, in a
26 manner not shared by the corporation and the stockholders. Allegations of mere threats of liability
27 through approval of the wrongdoing or other participation, however, do not show sufficient
28 interestedness to excuse the demand requirement."); *Louisiana Mun. Police Employees' Ret. Sys.*

1 v. *Wynn*, No. 14-15695, 2016 WL 3878228, at *6 (9th Cir. July 18, 2016) (“This test requires the
2 shareholders to plead facts that would support the inference that because of the nature of a
3 relationship or additional circumstances other than the interested director's stock ownership or
4 voting power, the non-interested director would be more willing to risk his or her reputation than
5 risk the relationship with the interested director.”) (internal citations and formatting omitted).
6 Similarly, Justice Steele’s report omits any mention, let alone analysis, of NRS § 78.138, which
7 articulates the scope of the business judgment rule under Nevada law and describes the various
8 factors directors should consider in their decision-making. It is unclear from his report whether
9 Justice Steele is even aware of this statute.

10 Justice Steele attempts to justify his unwavering reliance on Delaware law in a single
11 footnote. *See* Ex. A (Steele Rep.) at 2, n.1. He says, “I expect that a Nevada court would look to
12 Delaware law in interpreting these issues.” *Id.* Justice Steele is wholly unqualified to make that
13 determination. Justice Steele has no idea what a Nevada court would do, nor does he have any
14 basis for concluding that there is no relevant Nevada law, since he is not a Nevada law expert. In
15 addition, though Justice Steele makes the generic and conclusory statement that Delaware law
16 should apply to “these issues,” he never actually states what “these issues” are or articulates what
17 specific issues he thinks Delaware law applies to (though, based on his report, it appears he thinks
18 Delaware law may apply to every issue in the case). Justice Steele’s speculation is not a sufficient
19 basis to ignore Nevada law and instead substitute an expert’s interpretation of Delaware law in its
20 place. That Justice Steele has completely omitted any analysis of Nevada law, any comparison of
21 Nevada and Delaware law, or any reasoning as to why this Court (or the trier of fact) should
22 consider Delaware as opposed to Nevada law provides an additional basis for excluding his
23 opinion. *See United States v. Filler*, 210 F.3d 386 (9th Cir. 2000) (affirming trial court’s exclusion
24 of expert testimony regarding how “other law enforcement agencies do things differently” as
25 irrelevant and speculative).

1 3. Justice Steele’s Cursory Review of the Facts Is Inadequate and Reveals an
2 Improper Methodology

3 Justice Steele’s report repeatedly makes clear that his opinion applies Delaware law to a
4 hypothetical scenario in which a finder of fact has already found that Defendants engaged in the
5 improper conduct alleged in the Second Amended Complaint. Despite this, Justice Steele devotes
6 numerous pages of his report to reciting a version of the facts that largely mimics Plaintiff’s
7 allegations. Throughout this recitation, Justice Steele purports to state “facts” when, in reality,
8 those allegations are unsupported by the record. Justice Steele admits reviewing *less than 20* of
9 the hundreds of deposition exhibits marked in this case, which perhaps explains these inaccuracies.
10 *See Ex. A (Steele Rep.)* at “Exhibit C” (List of Information Considered). Justice Steele’s lack of
11 effort to understand the facts should prevent him from being qualified as an expert in this action,
12 as it demonstrates an improper methodology and an inability to assist the trier of fact. *See In re*
13 *Stratosphere Corp. Sec. Litig.*, 66 F. Supp. 2d 1182, 1188 (D. Nev. 1999) (“[An] expert opinion
14 must be supported by an adequate basis in relevant facts or data.”).

15 Among the inaccuracies and outright misstatements in Justice Steele’s report are:

- 16 • Justice Steele claims that executive search firm Korn Ferry did not interview any
17 internal candidates for the Company’s CEO position. *See Ex. A (Steele Rep.)* at
18 15. But the sole Korn Ferry witness deposed in this action testified that an internal
19 candidate *was interviewed*. *See Ex. E (Mayes Dep.)* at 31:3-33:14. Justice Steele,
20 however, did not read this deposition transcript. *See Ex. A (Steele Rep.)* at “Exhibit
21 C” (List of Information Considered).
- 22 • Justice Steele claims that the relationship between Director Kane and Ellen and
23 Margaret Cotter “includes visiting one another” and, on that basis, Kane is not an
24 independent director.² *See Ex. A (Steele Rep.)* at 18. As support for this broad
25 proposition, he cites to deposition testimony about *a single dinner* they had together
26 and uses that to come up with a theory about multiple visits. *Id.* at 18, n. 136 (citing
27 M. Cotter deposition testimony about a single dinner in San Diego).

28

² Justice Steele, purportedly a Delaware law expert, also seems to ignore the myriad Delaware cases holding that a social relationship is insufficient to rebut the presumption of director independence. *See, e.g., Beam ex rel. Martha Stewart Living Omnimedia, Inc. v. Stewart*, 845 A.2d 1040, 1050 (Del. 2004); *see also Khanna v. McMinn*, No. Civ. A. 20545-NC, 2006 WL 1388744, at *19 (Del. Ch. May 9, 2006)

- Justice Steele claims that the relationship between Director Kane and Ellen and Margaret Cotter includes “speaking frequently on the phone,” and, on that basis, Kane is not an independent director. *See id.* at 18. As support for this assertion, Justice Steele references deposition testimony about *calls relating to the Company* between Kane and Ellen Cotter (and does not reference any calls between Kane and Margaret Cotter). *Id.* at 18, n. 137 (citing the following Kane deposition testimony: “And Ellen is a bit like her father. She does like to work at night. So she’ll call me and I’ll see the number and I’ll call back.”).
- Justice Steele, when discussing the third-party expression of interest letter received by the Company in May 2016, refers to “the Board’s decision not to respond to the offer.” *Id.* at 32. There was no such decision; the Board *did respond to the letter*. *See Ex. F* (“[T]he Board of Directors determined that our stockholders would be better served by pursuing our independent, stand-alone strategic business plan and communicated this to the third party.”).

It is unclear the extent to which Justice Steele relies on his own interpretation of the facts to render his opinion, or whether his opinion is based entirely on the hypothetical scenario in which a finder of fact accepts all of Plaintiff’s allegations as true. However, to the extent Justice Steele purports to rely on the “facts” as stated in his report, his opinion must be excluded because its factual premise is simply false. An expert who has not familiarized himself with the factual record, let alone an expert who is wrong about the facts, cannot offer an expert opinion that would assist the factfinder. *United States v. 319.88 Acres of Land, More or Less, Situated in Clark Cty., Nev.*, 498 F. Supp. 763, 766 (D. Nev. 1980) (“Where the opinion of an expert is based on erroneous assumptions of fact or law, the evidence is incompetent and insufficient to support a verdict.”); *McGlinchy v. Shell Chemical Co.*, 845 F.2d 802, 807 (9th Cir. 1988) (upholding exclusion of conclusions in expert report with only “scant basis” in the record).

B. The Opinion of Tiago Duarte-Silva Regarding Supposed Losses the Company Has Suffered Since Plaintiff’s Termination Should Be Excluded In Its Entirety

1. Dr. Duarte-Silva’s Analysis Fails to Offer Any Causal Connection Between Defendants’ Conduct and the Supposed Losses

At first glance, the proposed testimony of Dr. Duarte-Silva appears to level significant allegations against Defendants regarding the damage caused by their alleged breaches of fiduciary

1 duty.³ His report states that, [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 [REDACTED] Ex. B (Duarte-Silva Rep.), ¶ 39. Dr. Duarte-Silva also states
5 that, [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED] *Id.*, ¶ 27. Plaintiff intends to have Dr.
10 Duarte-Silva present these figures to the trier of fact in support of his claimed damages. And yet,
11 these are not “damages” at all; Dr. Duarte-Silva’s fails to remotely connect these supposed losses
12 to Defendants’ alleged conduct.

13 There is not a single sentence in Dr. Duarte-Silva’s report that ties these supposed losses
14 to Plaintiff’s termination, Ellen Cotter’s performance as CEO, or any one of the various fiduciary
15 breaches alleged in the Second Amended Complaint. In other words, Dr. Duarte-Silva does not
16 and cannot testify that a single dollar of supposed loss is attributable to Defendants’ alleged
17 conduct. As revealed by Exhibit 2 to his report, Dr. Duarte-Silva has not reviewed a single
18 deposition transcript from this case and has only looked at a single document produced in
19 discovery (the unsolicited “offer” letter from May 2016). In other words, he has not made any
20 attempt to connect the supposed “losses” outlined in his report to anything Defendants have done
21 or not done.

22 Dr. Duarte-Silva does not know how, if it all, the direction or implementation of Reading’s
23 corporate strategy changed after Plaintiff was terminated. He does not know if Plaintiff would
24 have done anything differently than Ellen Cotter had he remained CEO. He does not know how,
25 if at all, the Company has changed its approach to cinema exhibition or real estate since Plaintiff
26 was fired. He does not know the extent to which EBITDA during Ellen Cotter’s CEO tenure has
27

28 ³ A copy of Dr. Duarte-Silva’s report is attached hereto as Exhibit B.

1 been impacted by decisions made by Plaintiff when he was CEO, or how EBITDA when Plaintiff
2 was CEO was impacted by his father's decision-making.⁴ He does not know how firm-specific or
3 industry-specific factors unrelated to the allegations affected Reading's performance. Tellingly,
4 Dr. Duarte-Silva never even refers to the supposed losses described in his report as "damages,"
5 presumably because he is aware that "damages" need to be tied to a defendant's conduct, which
6 his numbers are not. Plaintiff should not be permitted to offer Dr. Duarte-Silva as a "damages"
7 expert—or any other kind of expert—where he does not even opine as to damages, since there is
8 no fact, evidence, or opinion linking the supposed losses Dr. Duarte-Silva opines about to any of
9 the conduct described in the complaint.

10 A trier of fact would be confused and prejudiced were Dr. Duarte-Silva to testify at trial
11 about his calculations. Allowing Dr. Duarte-Silva, a supposed expert, to testify that [REDACTED]
12 [REDACTED] clearly suggests to the factfinder that
13 such purported losses are actually attributable to Plaintiff's termination, when in reality not even
14 Dr. Duarte-Silva suggests that is the case. Under Nevada law, a derivative breach of fiduciary
15 duty claim requires a plaintiff to show damages to the company proximately caused by the alleged
16 breach of fiduciary duty. *See Brown v. Kinross Gold U.S.A., Inc.*, 531 F. Supp. 2d 1234, 1245 (D.
17 Nev. 2008); *Giles v. Gen. Motors Acceptance Corp.*, 494 F.3d 865, 880–81 (9th Cir. 2007)
18 (applying Nevada law); *see also Clark v. Lubritz*, 113 Nev. 1089 (1997). Plaintiff apparently
19 intends to use Dr. Duarte-Silva's testimony to skip over his obligation to show proximate causation
20 and instead present the trier of fact with a "damages" figure that has no causal tie whatsoever to
21 any of the breaches alleged by Plaintiff. The trier of fact would likely assume that some, if not all,
22 of [REDACTED] Dr. Duarte-Silva describes are attributable to Defendants' conduct, even
23

24 ⁴ Dr. Duarte-Silva's unorthodox approach shows a fundamental lack of understanding of
25 basic business reality, as he assumes that the Company's performance during Plaintiff's brief
26 tenure was in no way the product of good decisions made by his father over the more than twenty
27 years that he ran the Company, and that the performance of the Company following his
28 termination was in no way the product of poor decisions made by Plaintiff during his tenure as
CEO. A business decision made today can have impact months and even years down the line, a
basic fact ignored by Dr. Duarte-Silva's novel strategy of loss assessment.

1 though that is not actually part of Dr. Duarte-Silva's proposed testimony. Such testimony is far
2 more prejudicial than probative—indeed, it is not probative at all—and on that basis should be
3 excluded in its entirety. *Southern Pac. Transp. Co. v. Fitzgerald*, 94 Nev. 241, 243 (1978) (citing
4 N.R.S. 48.035(1)) (A trial court has broad discretion to determine the admissibility of evidence
5 and may exclude expert testimony where “its probative value is substantially outweighed by the
6 danger of unfair prejudice, . . . confusion of the issues or . . . misleading the jury.”).

7 2. Dr. Duarte-Silva Does Not Use Any Standard or Commonly-Accepted
8 Methodology In Evaluating Reading's Stock Performance from June 15,
2015, to August 19, 2016

9 Dr. Duarte-Silva claims that because Reading's stock price has not kept pace with the
10 industry market from June 2015 through his arbitrary measurement date of August 19, 2016, the
11 Company [REDACTED]
12 [REDACTED]. See Ex. B (Duarte-Silva Rep.), ¶ 39. However, his conclusory and surface-
13 level analysis fails to apply any recognized or well-accepted methodology used by experts who
14 study the impact of various events on a company's stock. Nor does Dr. Duarte-Silva's analysis
15 show what portion (if any) of the underperformance he calculates is attributable to the alleged
16 wrongdoing as opposed to other factors impacting the industry and market. An expert's testimony
17 will assist the trier of fact only when it is relevant and the product of reliable methodology.
18 *Hallmark*, 124 Nev. at 500. In determining whether an expert's opinion is based upon reliable
19 methodology, a district court should consider whether the opinion is “(1) within a recognized field
20 of expertise; (2) testable and has been tested; (3) published and subjected to peer review; (4)
21 generally accepted in the scientific community (not always determinative); and (5) based more on
22 particularized facts rather than assumption, conjecture, or generalization.” *Id.* at 500–01 (internal
23 citations omitted). Dr. Duarte-Silva's analysis does not meet this standard and his proposed
24 testimony should be excluded on this basis.

25 (a) Dr. Duarte-Silva Did Not Perform an Event Study, a Standard
26 Technique Used By Experts in the Field

27 It is well-recognized within this field that in order to relate the change in a company's
28 stock price to the release of new information, an expert must disentangle the effects of the new

1 information from other information that is likely to affect stock prices marketwide. *See In re*
2 *Omnicom Group, Inc. Sec. Litig.*, 541 F. Supp. 2d 546, 554 (2008) (granting defendant's motion
3 for summary judgment after plaintiff's expert failed to isolate the effect of certain identified
4 disclosures on company's stock price from that of other market forces). Event studies are a
5 commonly used statistical method of evaluating the price impact of new information after
6 controlling for market, industry, and other factors. The price movements of a company's stock
7 that are not explained by market, industry, or other factors modeled in the event study (*i.e.*, the
8 "excess return") may be attributable to the disclosure of the specified information being tested.⁵
9 The standard event study method was developed decades ago by Defendants' expert, Professor
10 Richard Roll, and applied by him in this case.⁶

11 Here, Dr. Duarte-Silva did not perform an event study. For example, he does not define
12 an event or a news announcement to be studied, nor does he define an "event window" or the
13 period around the announcement to be examined, which are both hallmarks of event studies.⁷
14 Because Dr. Duarte-Silva did not perform an event study, he cannot opine whether the release of
15 any particular piece of information related to Defendants' alleged wrongdoings was associated
16 with a negative impact on Reading's stock price. The supposed methodology employed by
17 Dr. Duarte-Silva is rudimentary, unscientific, and not generally used by experts in the field, and
18 should therefore be excluded. *See Hallmark*, 124 Nev. at 500; *Donaldson v. Cent. Illinois Pub.*

21 ⁵ Bodie, Zvi, Alex Kane, and Alan Marcus, *Investments*, Seventh Edition, Boston, MA:
22 Irwin McGraw-Hill, 2008, p. 366; MacKinlay, Craig, "Event Studies in Economics and
Finance," *Journal of Economic Literature* Vol. XXXV (1997): 18.

23 ⁶ Dr. Richard Roll his co-authors, including Nobel Prize winner Dr. Eugene Fama, were
24 among the first economists to apply this now widely-used methodology. Eugene F. Fama et al.,
25 *The Adjustment of Stock Prices to New Information*, 10 Int'l Econ. Rev. 1 (1969). Their seminal
26 work has been tested, published by the International Economic Review, and has been widely
accepted in the scientific community. A. Craig MacKinlay, *Event Studies in Economics and*
27 *Finance*, 35 J. Econ. Lit. 13, 14 (1997) ("... Eugene Fama et al. (1969) introduced the
methodology that is essentially the same as that which is in use today.").

28 ⁷ MacKinlay, Craig, "Event Studies in Economics and Finance," *Journal of Economic*
Literature Vol. XXXV (1997): 18, pp. 14-15.

1 *Serv. Co.*, 313 Ill. App. 3d 1061, 1072 (2000) (affirming trial court’s exclusion of expert
2 testimony that was not commonly accepted in that particular scientific community).

3 In contrast, Defendants’ expert Dr. Richard Roll conducted an event study of Reading’s
4 stock pursuant to scientific and academic best practices to measure the stock price change, after
5 controlling for market and industry factors, associated with the announcement of Plaintiffs’
6 termination. Following accepted financial economics methodology, Dr. Roll identified the event
7 to be examined (*i.e.*, the announcement of Plaintiffs’ termination). Dr. Roll’s calibrated
8 Reading’s returns and benchmark returns during a period prior to the disclosure of Plaintiff’s
9 termination. Professor Roll then calculated the excess returns on the dates surrounding
10 Plaintiff’s announced termination (*i.e.*, the “event window”). Dr. Roll then performed a
11 standard statistical analysis that is part of the event study methodology to assess whether the
12 excess returns were statistically different from zero. They were not, demonstrating that
13 Reading’s stock price returns were statistically indistinguishable from its normal day-to-day
14 movements over the first three trading days (June 12, June, 15, and June 16 2015) following the
15 announcement of Plaintiff’s termination.⁸ These results support Dr. Roll’s conclusion that public
16 disclosure of Plaintiff’s termination did not have an adverse effect on Reading’s stock price.

17 (b) Dr. Duarte-Silva’s Methodology For Analyzing the Long-Run
18 Performance of Reading’s Stock Is Far Out of Line With Other
Experts in This Field

19 While Dr. Duarte-Silva failed to perform an event study, he purports to measure the so-
20 called “expected returns” of Reading stock since Plaintiff’s termination in June 2015 through
21 Duarte-Silva’s “Measurement Date” of August 19, 2016 in order to demonstrate losses to the
22 Company. And while he contends that his approach is a “commonly accepted statistical approach
23 to calculating a stock’s expected returns,” *he does not cite to a single study or piece of academic*
24 *literature* that supports his approach. *See* Duarte-Silva Rep., ¶ 35. Indeed, the standard approach
25 in this field to measure whether a company’s stock “performed in line with the market and its peer
26

27 ⁸ While Reading did not announce Plaintiff’s termination until June, 15, 2015, Plaintiff
28 filed a lawsuit on June 12, 2015 that disclosed this information.

1 companies” over an extended period of time is to calculate the “alpha” of the company’s stock.
2 “Alpha” provides a measure of whether an investment in question earned a return greater than or
3 less than its expected return, given market and/or industry performance, as well as the investment’s
4 risk characteristics.⁹ Calculating a stock’s “alpha” allows an expert to determine whether a stock
5 generated returns that are greater or less than its expected returns over a particular period of time.
6 Here, Dr. Duarte-Silva has not performed such an analysis. Instead, he calculated a so-called series
7 of “expected” daily returns over a period spanning approximately a year and two months in an
8 unorthodox manner. Dr. Duarte-Silva’s nonstandard approach is inappropriate for analyzing
9 whether Reading’s “alpha” or whether the Company “performed in line with the market and its
10 peer companies” in a manner consistent with standard industry practice.¹⁰ Further, Dr. Duarte-
11 Silva’s analysis does not show what portion of the supposed underperformance, which changes
12 every day, is attributable to the alleged wrongdoing.¹¹

13 In contrast to Dr. Duarte-Silva’s unorthodox approach, Defendants’ expert Dr. Richard
14 Roll calculated the alpha for Reading’s stock over the period June 15, 2015 to June 30, 2016, using
15 regression analysis, Reading’s stock price returns, a set of risk factors, and industry-specific
16 benchmarks consistent with standard financial practice.¹² After conducting his analysis of
17
18
19
20

21 ⁹ See, e.g., Damodaran, Aswath, *Investment Valuation*, Second Edition, New York, NY:
22 John Wiley & Sons, Inc., 2002, p. 183.

23 ¹⁰ In particular, Dr. Silva’s calculation involves using a separate regression model to
24 estimate an “expected” daily return for each day from June 15, 2015 to his Measurement Date of
August 19, 2016.

25 ¹¹ Reading’s underperformance is calculated by taking the difference between columns V
26 and R on Exhibit 8 to the Duarte-Silva Report. Dr. Duarte-Silva provides no analysis that
explains the causes of these changes and whether they were due to any allegedly wrongful
actions taken by the Defendants.

27 ¹² June 30, 2016 was the most recent date for which information used by Dr. Roll to
28 calculate Reading’s alpha was available.

1 Reading's alpha, Dr. Roll concluded that his results do not support a conclusion that RDI's stock
2 price underperformed expectations on a risk-adjusted basis following Plaintiff's termination.¹³

3 (c) Dr. Duarte-Silva's Results Are Not Statistically Significant

4 Notwithstanding that Dr. Duarte-Silva uses a non-standard and unreliable method to
5 measure Reading's stock performance, he also fails to provide a statistical confidence interval for
6 his supposed "expected return." A "confidence interval" accounts for the uncertainty associated
7 with any statistical estimate, such as Dr. Duarte-Silva's "expected return," that is derived from a
8 regression analysis.¹⁴ The "confidence interval" would provide a range within which the true value
9 being estimated could conceivably fall. If, for the sake of argument, one were to accept Dr. Duarte-
10 Silva's non-standard methodology, his analysis actually indicates that the Reading's performance
11 during the measurement period was *within* the confidence interval range for Reading's cumulative
12 expected returns. Based on the standard errors demonstrated in Exhibit 8 to the Duarte-Silva
13 Report, [REDACTED]

14 [REDACTED]
15 [REDACTED] In other words, Dr. Duarte-Silva's report fails to show underperformance (or a loss to
16 Reading) that is statistically significantly different from zero.

17 That Dr. Duarte-Silva fails to even attempt to demonstrate the statistical significance of his
18 supposed findings is notable given his position, taken in previously-published papers, that any
19 study of stock performance must take into consideration statistical significance. According to Dr.
20 Duarte-Silva: "If the excess return analyzed exceeds a threshold based on typical return
21 fluctuations, it is considered statistically significant. When this is the case, the economic expert is
22 likely to opine that the excess return is due to potentially identifiable news rather than to [market]
23 noise. If the excess return does not exceed that threshold, the expert *cannot determine* that the

24
25 ¹³ Dr. Roll also evaluated RDI's alpha from June 15, 2015 to the three-, six-, and nine-
26 month periods following James Cotter, Jr.'s termination (*i.e.*, September 14, 2015, December 14,
2015, and March 14, 2016, respectively) and found similar results.

27 ¹⁴ See, *e.g.*, Gujarati, *Essentials of Econometrics*, Second Ed., Irwin McGraw-Hill
28 (1999), pp. 157, 165.

1 price changed for a reason other than [market] noise.”¹⁵ In another paper, Dr. Duarte-Silva wrote,
2 “The literature on event studies has long established the properties of excess returns and tests of
3 their statistical significance.”¹⁶ Despite this, the Duarte-Silva Report is silent on the supposed
4 statistical significance of his own findings. That Dr. Duarte-Silva’s analysis does not even meet
5 *his own standards* of how such analysis should be conducted constitutes further basis for excusing
6 his proposed testimony.

7 3. Dr. Duarte-Silva Has No Basis to Offer An Opinion Regarding the “Offer”

8 Dr. Duarte-Silva devotes the final section of his report to the unsolicited third-party “offer”
9 received by the Company in May 2016. *See* Ex. B (Duarte-Silva Rep.), ¶¶ 40-45. Dr. Duarte-
10 Silva opines that, by not accepting the “offer” at face value or entering in to negotiations, [REDACTED]
11 [REDACTED]
12 [REDACTED] *Id.*, ¶ 43. Dr. Duarte-Silva is not qualified to offer any
13 opinion about the supposed impact of the “offer” and applies no scientific or academic
14 methodology whatsoever to his purported analysis. Any proposed testimony on this topic should
15 be excluded.

16 *First*, Dr. Duarte-Silva is not an expert in corporate acquisitions, negotiations, mergers, or
17 unsolicited offers. He is not an expert in the valuation of public companies, and is not in a position
18 to say whether the “offer,” even if it had been binding and fully funded, was an adequate or
19 inadequate price for the Company. As a finance Ph.D. working in economic analysis, Dr. Duarte-
20 Silva has presented no basis on which the Court can or should determine that he is in any position
21 to assist the trier of fact in assessing the evidence regarding the unsolicited third-party indication
22 of interest and the Board’s response thereto.

23
24
25 ¹⁵ Duarte-Silva and Dolgoff, “Measure price impact with investors’ forward-looking
26 information,” August 2014, *available at* <http://www.crai.com/sites/default/files/publications/FM-Insights-Event-Studies-and-Forward-Looking-Information-August-2014.pdf>

27 ¹⁶ Duarte-Silva and Tripolski-Kimel, Testing Excess Returns on Event Days: Log
28 Returns vs. Dollar Returns (February 28, 2014), *available at* <http://ssrn.com/abstract=2416990>

1 Dr. Duarte-Silva's lack of experience or expertise in this area is evidenced by his proposed
2 testimony, which fails to demonstrate that he has anything to say on this topic beyond what an
3 ordinary factfinder could discern. For example, Dr. Duarte-Silva opines that "negotiation can
4 increase offer price." *Id.*, ¶ 44. This truism is not the result of any specialized knowledge and
5 expertise. Dr. Duarte-Silva goes on to opine that "in corporate acquisition settings, after a first bid
6 announcement, the target is in play and it is possible that other bidders will compete to acquire the
7 target firm and such multiple bid auction usually leads to higher control premiums than when the
8 initial bid is successful." *Id.*, ¶ 45. This opinion appears to be based on a false premise that the
9 Board was somehow obligated to put the Company on the auction block as soon as any buyer
10 showed potential interest. Dr. Duarte-Silva offers no authority for such assertion because none
11 exists. *See* N.R.S. § 78.138(4)(d) (directors, in connection with corporate decision-making, may
12 consider "[t]he long-term as well as short-term interests of the corporation and its stockholders,
13 including the possibility that these interests may be best served by the continued independence of
14 the corporation); *see also* *Ivanhoe Partners v. Newmont Min. Corp.*, 535 A.2d 1334, 1338 (Del.
15 1987) ("Newmont was not for sale. Thus, there was no duty of its directors to maximize the
16 company's value at a sale for the stockholders' benefit.") (internal quotations omitted); *Revlon,*
17 *Inc. v. MacAndrews & Forbes Holdings Inc.*, 506 A.2d 173, 182 (1986) (only after the board
18 authorized management to negotiate a merger or buy out did its duty change from preservation of
19 the corporate entity to maximization of the company's value at a sale for the stockholders' benefit).
20 Simply put, when it comes to corporate acquisition offers, Dr. Duarte-Silva is no expert.

21 *Second*, Dr. Duarte-Silva's analysis with respect to Board's response to the third-party
22 "offer" is not grounded in any standard or widely-accepted methodology, nor does it even purport
23 to be. Dr. Duarte-Silva opines that the "offer premium was not low relative to similar recent
24 transactions," but provides no citation or reference to any authority supporting his apparent
25 position that the quality of third-party buyout offer, and a corporate board's response, should be
26 measured according to initial "offer premium." *Id.*, ¶ 42. Dr. Duarte-Silva seems to approach his
27 potential buyout analysis from the perspective that any deal with a "not low" offer premium must
28 be a good one, regardless of the board's determination of the company's strategy or earnings

1 potential. Neither the law nor any academic literature is in accord with this approach, and Dr.
2 Duarte-Silva cites no sources. *C.f.*, N.R.S. § 78.138(4)(d).

3 Dr. Duarte-Silva then claims that because the Board did not pursue a deal with the offerors,
4 [REDACTED]

5 [REDACTED] *See* Ex. B (Duarte-Silva Rep.), ¶ 43. Again,
6 Dr. Duarte-Silva sets forth this opinion without providing any legal or academic basis, let alone
7 one that is widely-used or accepted in *any* field of expertise. His methodology makes no sense.
8 The rudimentary approach Dr. Duarte-Silva has taken is, in essence, that any time a company turns
9 down an offer above the then-current stock price, they are improperly foregoing a one-time
10 opportunity to increase value. Under such a scheme, every company would constantly be on the
11 auction block and the role of corporate directors would shift from being long-term protectors of
12 the stockholders' best interests to short-term auctioneers. Of course, Nevada law expressly permits
13 and encourages corporate directors to do better than simply trying to generate short-terms gains.
14 *See, e.g.*, N.R.S. §§ 78.120, 78.138. On the other hand, if Dr. Duarte-Silva's baseless analysis
15 were accepted, a Board would be liable for damages to stockholders any time it failed to pursue a
16 deal even 1% above the trading price of their company. This proposition is absurd, and Dr. Duarte-
17 Silva should not be given the opportunity to present it to the trier of fact.

18 **C. The Opinion of Richard Spitz Regarding the CEO Search Should Be**
19 **Excluded In Its Entirety Because Mr. Spitz Fails to Apply Any Methodology**
20 **and Instead Simply Offers His Own Subjective Fact Interpretation**

21 1. Mr. Spitz, A Supposed Executive Search Expert, Actually Seeks to Offer
22 Testimony About His Personal Reaction to Various Facts and Does Not
23 Apply Any Legitimate or Recognized Methodology

24 Plaintiff offers Richard Spitz as a supposed expert on conducting executive searches.¹⁷ In
25 Mr. Spitz's own words: "I have been asked to evaluate the executive search undertaken during
26 2015 to find the Chief Executive Officer of Reading International, Inc." Ex. C (Spitz Rep.), ¶ 7.
27 Mr. Spitz is an attorney who formerly worked at the executive search firm Korn Ferry, the firm
28 that conducted Reading's CEO search, though he left that company in 2009. *Id.*, ¶ 4. Mr. Spitz

¹⁷ A copy of Mr. Spitz's report is attached hereto as Exhibit C.

1 summarizes his opinion as follows: “I have considered the search process and concluded that the
2 execution of the search through its conclusion (i.e., the hiring of Ellen Cotter as Chief Executive
3 Officer) was not conducted properly by the RDI Board of Directors (the “Board”) or its CEO
4 search committee (the “Search Committee”), and therefore the search failed.” *Id.*, ¶ 8. Mr. Spitz's
5 proposed testimony should be excluded.

6 As a preliminary matter, this case is not about whether the CEO search was “conducted
7 properly” or whether it “failed.” The trier of fact must determine whether members of Reading’s
8 Board of Directors breached their fiduciary duties by selecting Ellen Cotter as the Company’s
9 CEO. As Plaintiff is well aware, a Board member’s fulfillment of his fiduciary duties is not judged
10 by whether something was a “success” or “failure.” *Even if* the CEO search was a failure according
11 to whatever unidentified standards Mr. Spitz applies, that does not demonstrate or even suggest a
12 breach of fiduciary duty by any Defendant or any injury to the Company resulting from such
13 “failure.” This proposed testimony is wholly irrelevant and on that basis should be excluded. *See,*
14 *e.g., Schwartz v. Estate of Greenspun*, 110 Nev. 1042, 1046–47 (1994) (affirming exclusion of
15 irrelevant expert testimony); *Brown v. State*, 110 Nev. 846, 852 (1994) (upholding exclusion of
16 expert testimony when it would be of no use to the trier of fact).

17 Beyond being irrelevant, the proposed testimony of Mr. Spitz does not even approach the
18 standards required for a legitimate and admissible expert opinion. Mr. Spitz fails to describe any
19 methodology he used to determine whether or not the Company’s CEO search was a success or
20 failure. He does not describe any standard bases by which an executive search can or should be
21 judged. Indeed, Mr. Spitz’s proposed testimony does not convey anything that is outside or beyond
22 the understanding of an ordinary person and is not actually an “expert” opinion at all. *See*
23 *Townsend v. Nevada*, 103 Nev. 113, 117 (1987) (“The goal, of [expert testimony], is to provide
24 the trier of fact a resource for ascertaining truth in relevant areas outside the ken of ordinary
25 laity.”). The process of looking for and hiring an executive is not so mysterious to the layperson
26 that Plaintiff needs Mr. Spitz share his opinions with the factfinder. The trier of fact is well
27 equipped to make a determination about the process by which Reading’s Board identified Ellen
28 Cotter as a CEO candidate and her qualifications for that position.

1 Beyond purporting to offer an opinion about the CEO search's success or failure, Mr. Spitz
2 seems primarily interested in sharing with the factfinder his subjective observations about various
3 facts and evidence, essentially taking on the factfinder role himself. Mr. Spitz's supposed
4 “opinion” includes, for example, a comparison of Ellen Cotter’s background to the potential CEO
5 qualifications identified by Korn Ferry; stating that Reading’s directors have been dishonest; and
6 determining the long-term business strategy that Reading should be following. *See id.*, ¶¶ 9-12,
7 35, 37, 39. Throughout his report, Mr. Spitz, under the guise of offering an “expert opinion,”
8 attempts to substitute his own subjective determinations about witness credibility and weight of
9 evidence for those of the trier of fact.

10 For example, several Defendants have testified at deposition that one of the motivations
11 for terminating the Korn Ferry CEO search was to save money. In response, Mr. Spitz opines that
12 “[i]t is difficult to imagine that relatively minor costs and expenses were driving the Search
13 Committee decision to halt Korn Ferry’s activities.” *Id.*, ¶ 32. The role of an expert is to assist
14 the trier of fact, not to opine about whether or not he believes certain testimony to be credible or
15 that something is “difficult to imagine.” Mr. Spitz repeats this approach throughout his report,
16 casting aspersions at Defendants by referring to their conduct as “vexing,” stating that “one has to
17 wonder” about why certain actions were taken, and otherwise attempting to substitute his own
18 subjective reaction to evidence for that of the tier of fact. *Id.*, ¶¶, 46. Mr. Spitz proposes to testify
19 that:

- 20 • “It seems clear that there was no disagreement between the entire Search
21 Committee and Ellen Cotter on her lack of relevant real estate experience.” *Id.*, ¶
22 36.
- 23 • “[O]nly one of the above considerations explains a specific reason why the Search
24 Committee decided not to present any of the external candidates to be interviewed
25 by the entire Board . . . So it appears at least in part this consideration is not to be
26 true [sic].” *Id.*, ¶ 37.
- 27 • “The Search Committee’s stated consideration on this matter of compensation is
28 suspect and not convincing.” *Id.*, ¶ 39.
- “These considerations are vexing in that Ellen Cotter and the Search Committee
did not manage the search process as if there was an urgency or need for stability.”
Id., ¶ 40.

- “Equally as vexing about these considerations is that urgency and stability were not among the specific the [sic] reasons given during deposition by the Search Committee members Gould and McEachern in support of their voting to nominate Ellen Cotter and deciding not to follow the search process approved by the Board.” *Id.*, ¶40.
- “If unlocking the intrinsic value of the Company’s real estate holdings was not the company’s objective for conducting the search process, one has to wonder why did the Board (or the Search Committee) authorize and undertake the following [activities].” *Id.*, ¶ 46.

This does not remotely resemble a legitimate expert opinion; these are just Mr. Spitz’s personal musings on the facts and on witness credibility and do not reflect any reasonable methodology, let alone a methodology or approach to executive searches that is widely accepted. Mr. Spitz’s supposed “expertise” in the process for conducting executive searches does not give him license to opine on witness credibility, general business issues, the qualifications the Company needed or desired in a CEO, or basic facts about which the trier of fact will hear testimony. *See Lickey v. State*, 108 Nev. 191, 196 (1992) (stating that “[a]n expert may not comment on the veracity of a witness”); *Townsend v. State*, 103 Nev. 113, 118–19 (1987) (noting that expert opinion that invaded the jury’s province, such as testimony concerning the victim’s credibility and weighing of the evidence, was improper); *Dawson v. State*, 84 Nev. 260, 439 P.2d 462 (1968) (excluding certain expert testimony, and noting that “[a]n expert witness may state his conclusions on matters within his expert knowledge provided the conclusion is one laymen would not be capable of drawing for themselves.”).

Even Mr. Spitz’s ultimate conclusion fails to assist the trier of fact in any way. Mr. Spitz opines, “Basically, Ellen Cotter was in a position to ensure that the search for external candidates would not succeed” and “[t]he conduct of Ellen Cotter with respect to her service on the Search Committee undermines the confidence one should have that the search process was properly directed and completed.” *Id.*, ¶ 44. In other words, this purported executive search expert’s conclusion is that Ms. Cotter was “*in a position*” to manipulate the search process, which “undermines the confidence” Mr. Spitz has in the CEO search process. The trier of fact does not need to hear from Mr. Spitz to determine that Ms. Cotter *could have possibly* manipulated the CEO

1 search; that is exactly what Plaintiff alleges in this case, and it is up to Plaintiff to prove it. Mr.
2 Spitz's suspicions about what may or may not have happened are meaningless, and only serve to
3 confuse and prejudice the trier of fact. Moreover, the trier of fact is not tasked with determining
4 whether an outside observer should have "confidence" in how the CEO search was conducted.
5 They must determine whether there was a breach of fiduciary duty. Because Mr. Spitz does not
6 identify or use any legitimate or recognized methodology to evaluate the CEO search process, and
7 because he attempts to substitute his own opinions for the trier of fact, his supposed expert opinion
8 does not assist the trier of fact in any way and should be excluded in its entirety.

9 2. Mr. Spitz's Proposed Testimony Regarding Margaret Cotter's New York
10 Real Estate Position Is Well Outside His Supposed Area of Expertise

11 Mr. Spitz presents himself as an expert in conducting executive searches. Yet his proposed
12 testimony veers well outside the realm of anything relating to such searches. In particular, Mr.
13 Spitz purports to testify about Margaret Cotter's hiring, in March 2016, as Executive Vice
14 President—Real Estate Management and Development—NYC. *Id.*, ¶ 42. Given that this position
15 was filled without the assistance of an executive search firm, and has nothing to do with whether
16 or not Reading's CEO search was a "success" or "failure," there is no reason Mr. Spitz should be
17 allowed to offer his opinion about Margaret Cotter's hiring. He is simply not qualified to do so.
18 *See White v. Ford Motor Co.*, 312 F.3d 998, 1008–09 (9th Cir. 2002) ("A layman, which is what
19 an expert witness is when testifying outside his area of expertise, ought not to be anointed with
20 ersatz authority as a court-approved expert witness for what is essentially a lay opinion.").

21 Beyond being outside his area of expertise, Mr. Spitz's proposed testimony about Margaret
22 Cotter's hiring is confusing, prejudicial, and has zero probative value. Mr. Spitz, for example,
23 states that "Margaret Cotter has little real estate investment or development experience, none of
24 which satisfies the minimum requirements of the Position Specification." *Id.*, ¶ 42. This is a *non*
25 *sequitur*; the Position Specification Mr. Spitz refers to is for the CEO position. Mr. Spitz does not
26 explain, nor can he, why he is judging and evaluating the hiring of an EVP against the
27 specifications developed for a CEO search. This bizarre analysis is nonsensical, yet Mr. Spitz
28 seems intent on using it again and again: "I am aware that the Company's later public filings

1 disclose additional real estate activities undertaken by Margaret Cotter. These materials, however,
2 do not alter my conclusion because none of them approach the level of experience or
3 accomplishment required by the Position Specification.” *Id.*, ¶ 42. In other words, Mr. Spitz’s
4 “conclusion” seems to be that Margaret Cotter, when she was hired as an EVP, did not meet certain
5 of the qualifications that the Company was looking for in a CEO. Mr. Spitz, supposedly an expert
6 in executive searches, should know better; this appears to be a blatant attempt to mislead the trier
7 of fact. Not only that, but the trier of fact is well-equipped to evaluate Margaret Cotter’s
8 qualifications for the job. They do not need the “help” of Mr. Spitz’s misleading conclusions
9 disguised as expert opinion.

10 3. Mr. Spitz Is Unqualified to Offer Any Purported Expert Opinion
11 Regarding Reading’s Stock Price or “Strategic Imperative”

12 Mr. Spitz also exceeds the scope of his supposed expertise and proposed area of testimony
13 when he opines, repeatedly and at length, about Reading’s business strategy generally, including
14 the company’s “strategic imperative” to pursue additional real estate opportunities. For example,
15 Mr. Spitz states that, “As a result of the maturing of the cinema business and the missed
16 opportunity by the Company to capture the increase in market values of its real estate holdings,
17 the stock price of the Company was depressed.” *Id.*, ¶ 11. Based on his own unqualified
18 determination that Reading’s stock price was depressed, an online article about Reading from
19 2013, and a statement by James Cotter, Sr. that Reading’s real estate activities were, per dollar
20 invested, more profitable than cinema activities, Mr. Spitz determines that building its real estate
21 activities is Reading’s primary “strategic imperative.” Mr. Spitz then goes on to premise his entire
22 opinion on his own determination of Reading’s “strategic imperative.” *Id.*, ¶ 23.

23 Mr. Spitz, an attorney and former executive search consultant, should not be permitted to
24 opine before the trier of fact about what he concludes is or was Reading’s “strategic imperative.”
25 In doing so, he is substituting his own judgment for that of the Board of Directors, who are far
26 more informed than Mr. Spitz about Reading’s strategy, plans, and goals. Mr. Spitz’s “strategic
27 imperative” conclusion in fact directly contradicts the two pronged business strategy laid out in
28 the Company’s various SEC filings, including those signed by Plaintiff himself. *See, e.g.*, RDI

1 March 17, 2015 10-K (describing the Company’s “two business segments” and stating that they
2 “complement one another, as the comparatively consistent cash flows generated by our cinema
3 operations allow us to be opportunistic in acquiring and holding real estate assets, and can be used
4 not only to grow and develop our cinema business but also to help fund the front-end cash demands
5 of our real estate development business”).¹⁸ Mr. Spitz provides no basis or qualifications as to
6 why he, and he alone, is vested with the ability to determine Reading’s strategic imperative, a
7 conclusion he appears to base primarily on a single article from the Internet. Mr. Spitz, a lawyer
8 and former executive search professional, does not apply or explain any methodology for his
9 conclusion that the single most important “strategic imperative” for Reading was to build its real
10 estate business. Accordingly, Mr. Spitz should not be permitted to testify to the trier of fact about
11 what he believes Reading’s key “strategic imperative” is or was.

12 To the extent other parts of Mr. Spitz’s opinion and proposed testimony rely on his
13 determination of a “strategic imperative,” such testimony should be excluded as well. For
14 example, Mr. Spitz opines, “Even if the Search Committee’s reference to Ellen Cotter’s real estate
15 development experience was accurate, this consideration is deficient. Together with all the other
16 considerations, this consideration does not begin to address the needs of the Company’s strategic
17 imperative.” *Id.*, ¶ 35. This is typical of the proposed testimony outlined in Mr. Spitz’s report.
18 He, without any basis or qualifications, has defined what he personally considers to be Reading’s
19 “strategic imperative.” He then appears to judge the Company’s selection of CEO against his
20 opinion of the “strategic imperative.” *Id.* This is far outside Mr. Spitz’s supposed expert scope,
21 *i.e.*, whether the CEO search was a success for failure (whatever that means). Mr. Spitz seems to
22 believe he is well-suited to opine generally about what is or is not best for Reading. He is not
23 remotely qualified to do so, and all opinion and testimony relating to or relying on his “strategic
24 imperative” determination should be excluded.

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27 ¹⁸ Available at
28 <https://www.sec.gov/Archives/edgar/data/716634/000156276215000083/rdi-20141231x10k.htm>

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1 This later disclosure deadline does not apply to any party's witness whose purpose is to contradict
2 a portion of another party's case in chief that should have been expected and anticipated by the
3 disclosing party, or to present any opinions outside of the scope of another party's disclosure."
4 Here, none of Defendants' experts have offered proposed testimony about the topics Mr. Nagy
5 intends to cover. Instead, it appears that Plaintiff decided, after the deadline for disclosure, that he
6 wanted to add a new expert, and decided this was his best chance of doing so. Nevada courts has
7 long held that rebuttal evidence "tends to contradict *new* matters raised by the adverse party."
8 *Andrews v. Harley Davidson, Inc.*, 106 Nev. 533, 539, 769 P.2d 1092, 1096 (1990) (emphasis in
9 original). In addition,

10 [u]nder Rule 26(a)(2)(C)'s disclosure mechanism, a party may designate additional
11 experts thirty days after initial expert disclosures, with one caveat: the additional
12 experts' testimony is limited to rebutting or contradicting the expert testimony
13 initially designated by the opposing party. The supplemental or "rebuttal" experts
14 cannot put forth their own theories; they must restrict their testimony to attacking
15 the theories offered by the adversary's experts. In this respect, a party can control
16 the scope of the testimony of its Adversary's rebuttal experts by limiting its own
17 experts' testimony to a given subject matter. A party who forgoes designating
18 experts on the initial disclosure date will thus find itself in a purely reactive mode,
19 greatly restricted in its ability to offer expert testimony.

20 *International Business Machines Corporation v. Fasco Industries, Inc.*, No. C-93-20326 RPA,
21 1995 U.S. Dist. LEXIS 22533 at *7-8 (N.D. Cal. March 15, 1995).²⁰ When a party attempts to
22 introduce "rebuttal" evidence that does not meet the definition of rebuttal evidence, then the trial
23 court should exclude it. *Andrews*, 106 Nev. at 529. (holding that "the court correctly excluded" a
24 "rebuttal" witness whose testimony did not address any new matters).

25 2. Mr. Nagy Is Not Qualified

26 In addition, Mr. Nagy is not qualified to offer testimony regarding the topics for which he
27 is designated. The "specific qualifications and competencies of Margaret Cotter" are readily
28 ascertainable to the trier of fact and do not require any specialized expertise to discern. Mr. Nagy

29 ²⁰ NRCP 16.1 tracks the Federal Rules of Civil Procedure for disclosure of expert
witnesses and testimony, including rebuttal experts and opinions; therefore, federal precedent
provides persuasive authority on the issue.

1 does not appear to have any significant experience working in or studying executive compensation,
2 yet he purports to testify about the “compensation of Margaret Cotter in her role as a senior
3 Reading International, Inc. executive.” *See* Ex. D. Mr. Nagy also lacks the experience or expertise
4 to testify about “how real estate development fits into Reading International, Inc.’s business.” *See*
5 *id.* Nothing in his *CV* demonstrates that Mr. Nagy is in a position to provide an expert opinion
6 about the strategy and direction of an international cinema exhibition and real estate company
7 traded on the NASDAQ exchange and a market capitalization of hundreds of millions of dollars.
8 Indeed, Mr. Nagy has previously testified under oath that he is *unqualified* to analyze financial
9 statements, let alone the vast operations of a company such as Reading. *See* Exhibit G (Nagy Dep.
10 Tr.) at 123. That Mr. Nagy is cloaked as a “rebuttal” expert does not allow him to avoid the
11 scrutiny that an expert would normally be given.

12 **E. The Proposed Testimony of John Finnerty Should Be Excluded to the Extent**
13 **Dr. Finnerty Does Not Intend to Provide Purely Rebuttal Testimony**

14 Plaintiff has disclosed Dr. John Finnerty as a rebuttal expert to “analyze and respond to the
15 conclusions and the analyses proffered in the expert report of Dr. Richard W. Roll, Ph.D., dated
16 August 25, 2016, including, but not limited to, Dr. Roll’s event study **and other statistical**
17 **analyses and conclusions.**” *See* Ex. D (emphasis added). To the extent Dr. Finnerty’s “other
18 statistical analyses and conclusions” are not a direct rebuttal to Dr. Roll, such testimony should be
19 excluded. Plaintiff should not be allowed to utilize Dr. Finnerty to set forward new damages
20 theories on “rebuttal” as part of these unspecified “conclusions.”

21 **IV. CONCLUSION**

22 WHEREFORE, based on the foregoing, the Moving Defendants respectfully request the
23 Court grant this Motion and enter an order excluding the proposed testimony of Myron Steele,
24 Tiago Duarte-Silva, Albert Nagy, and John Finnerty.

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1 DATED THIS 23RD DAY OF SEPTEMBER, 2016.

2
3 **COHEN|JOHNSON|PARKER|EDWARDS**

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15 *Douglas McEachern, Guy Adams,*
16 *Edward Kane, Judy Coddington, and*
17 *Michael Wrotniak*

Exhibit A

REDACTED

Exhibit A

Exhibit B

REDACTED

Exhibit B

Exhibit C

REDACTED

Exhibit C

Exhibit D

Exhibit D

MOT

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DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiff,

vs.

MARGARET COTTER, ELLEN COTTER,
GUY ADAMS, EDWARD KANE, DOUGLAS
McEACHERN, TIMOTHY STOREY,
WILLIAM GOULD, and DOES 1 through 100,
inclusive,

Defendants.

and

READING INTERNATIONAL, INC., a
Nevada corporation,

Nominal Defendant.

CASE NO.: A-15-719860-B
DEPT. NO. XI

Coordinated with:

Case No. P-14-082942-E
Dept. No. XI

Jointly Administered

Business Court

**PLAINTIFF JAMES J. COTTER, JR.'S
REBUTTAL EXPERT
DISCLOSURE STATEMENT**

Plaintiff James J. Cotter, Jr., ("Plaintiff") through his attorneys Lewis Roca Rothgerber Christie LLP, and pursuant to N.R.C.P. 16.1(a)(2), hereby submit this list of rebuttal expert witnesses as follows in the above-captioned matter, and reserves the right to call any witness identified and elected by any other party in this action. Plaintiff also reserves the right to amend and/or supplement this disclosure as discovery proceeds and/or as further information is obtained. Plaintiff further reserves the right to make supplemental designations.

1. Myron T. Steele, Esq.
c/o Lewis Roca Rothgerber Christie LLP
3993 Howard Hughes Parkway, Suite 600
Las Vegas, NV 89169

Justice Steele (Ret.) is the former Chief Justice of the Delaware Supreme Court. He will offer expert testimony, including as summarized in his rebuttal report on or before September 28, 2016, in response to the reports and testimony of Alfred E. Osborne, Jr., Ph.D. and Michael Klausner, including insofar as they address matters relating to the fiduciary duties of the individual defendants. A copy of Chief Justice Steele's curriculum vitae, a list of cases he has testified in the last four years, fee amount, and documents considered in providing his report, were provided previously and are incorporated herein by reference. He has agreed to testify at the trial of this matter and will be sufficiently familiar with the pending action to submit to deposition regarding the testimony he is expected to give at trial.

2. Tiago Duarte-Silva, Charles River Associate
c/o Lewis Roca Rothgerber Christie LLP
3993 Howard Hughes Parkway, Suite 600
Las Vegas, NV 89169

Dr. Tiago Duarte-Silva is a principal at Charles River Associates. He will offer expert testimony, including as summarized in his rebuttal report to be provided on or before September 28, 2016 in response to the report and testimony of Richard W. Roll, Ph.D., including regarding Reading's earnings and stock performance and the response of Reading's board of directors to an acquisition offer made in late May 2016. A copy of Dr. Duarte-Silva's curriculum vitae, a list of cases he has testified in the last four years, fee amount, and documents considered in providing his report, were provided previously and are incorporated herein by reference. He has agreed to testify at the trial of this matter and will be sufficiently familiar with the pending action to submit to deposition regarding the testimony he is expected to give at trial.

3. Richard Spitz
c/o Lewis Roca Rothgerber Christie LLP
3993 Howard Hughes Parkway, Suite 600
Las Vegas, NV 89169

Richard Spitz is an attorney and business executive with extensive experience in recruiting senior executives. He will offer expert testimony, including as provided in any rebuttal report to be provided on or before September 28, 2016 regarding the opinions, if any, of Alfred E. Osborne, Jr., Ph.D. regarding the subject of the CEO search which was a subject of Mr. Spitz' original report. A copy of Mr. Spitz's curriculum vitae, a list of cases he has testified in the last four years, fee amount, and documents considered in providing his report, were provided previously and are incorporated herein by reference. He has agreed to testify at the trial of this matter and will be sufficiently familiar with the pending action to submit to deposition regarding the testimony he is expected to give at trial.

4. Albert S. Nagy
Realty Capital Solutions
32152 Calle Los Elegantes
San Juan Capistrano, CA 92675

Albert S. Nagy is a real estate professional and consultant and real estate subject matter expert with, among other qualifications, 45± years of experience in real estate investment and development, real estate executive compensation, development management and various other aspects of real estate development. Mr. Nagy's curriculum vitae is attached as **Exhibit A**. He has agreed to testify at the trial of this matter and will be sufficiently familiar with the pending action to submit to deposition regarding the testimony he is expected to give at trial.

Mr. Nagy will offer expert testimony, including as summarized in his rebuttal report to be provided on or before September 28, 2016 regarding certain opinions pertaining to Margaret Cotter and real estate development management expressed by Alfred E. Osborne, Jr., Ph.D. in his expert report dated August 25, 2016, and testimony including regarding the qualifications and competences typically found in individuals who hold positions as senior real estate executives who manage development projects, the specific qualifications and competences of Margaret Cotter, the compensation of Margaret Cotter in her role as a senior Reading International, Inc. executive with

responsibility for the firm's real estate development activities and how real estate development fits into Reading International, Inc.'s business.

5. John D. Finnerty
AlixPartners
909 Third Avenue
New York, NY 10022

Dr. John D. Finnerty Dr. Finnerty is a Managing Director in the Financial Advisory Services Group at AlixPartners, LLP. He specializes in securities class actions, business valuation, securities valuation, derivatives valuation, solvency analysis, calculation of damages, and litigation support for matters involving valuation disputes, securities fraud, solvency, fairness, breach of contract, breach of fiduciary duty, broker raiding, commercial disputes, and employment disputes involving the valuation of employee stock options. Dr. Finnerty is also a Professor of Finance at Fordham University's Gabelli School of Business where he was the founding Director of the Master of Science in Quantitative Finance Program. He will offer expert testimony, including as summarized in his rebuttal report on or before September 28, 2016, and will analyze and respond to the conclusions and the analyses proffered in the expert report of Richard W. Roll, Ph.D., dated August 25, 2016, including, but not limited to, Dr. Roll's event study and other statistical analyses and conclusions. A copy of Dr. Finnerty's curriculum vitae is attached as **Exhibit B**. He has agreed to testify at the trial of this matter and will be sufficiently familiar with the pending action to submit to deposition regarding the testimony he is expected to give at trial.

Dated this 19th day of September, 2016.

Lewis Roca Rothgerber Christie LLP

By: /s/ Mark G. Krum
Mark G. Krum (SBN 10913)
3993 Howard Hughes Pkwy, Suite 600
Las Vegas, NV 89169-5958
Attorneys for Plaintiff
James J. Cotter, Jr.

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Lewis Roca
ROTHGERBER CHRISTIE

EXHIBIT A

Albert S. Nagy
Litigation Consultant and Testifying Expert Witness

Albert S. Nagy is a veteran business executive with experience in property management, real estate development and investment management, homebuilding, mortgage banking, real estate asset management. He has over forty years of experience in corporate operations and finance, having served fifteen years as a Chief Executive Officer or Chief Operating Officer. Mr. Nagy is the Founder and Managing Director of The Nagy Group, a business consultancy, and is a principal in Ferrell Nagy & Associates ("FNA") and Realty Capital Solutions ("RCS"). In addition, he and his RCS colleagues often team with Charles River Associates' ("CRA") economists and specialists to provide expanded resources to larger and more complicated engagements or when real estate subject matter knowledge is required.

In addition to his decades of real estate experience, he has served on the boards of both public and private companies, and he has been a member of various compensation committees. He has served as a court appointed receiver and expert witness in numerous disputes, many involving property ownership, development, property management and operations and leasing.

San Juan Capistrano, CA Since December 1991, Mr. Nagy has worked as an independent real estate consultant, loan workout specialist and as a consulting and testifying expert witness through FNA, RCS, CRA and The Nagy Group. Selected examples of engagements and the content of executive positions follow:

- Expert Witness and/or litigation consultant for real estate operations, homebuilding, leases, finance and partnership issues.
- Testifying expert witness and litigation consultant for a sibling in a family dispute involving the fees and profits being paid to a brother from more than forty real estate development projects owned and sponsored by the family construction company,.
- Key advisor to The Olson Company, a southern California development company, in the area of equity and debt structure at both the corporate and project level. Manager of \$250 million equity investor relationship and the company's project debt relationship with a national money center bank. Member of the Olson Board of Directors.
- Served as Chairman of the Compensation Committee, of SM&A.
- Serves on the Board and the Compensation Committee of Mark IV Capital, a family owned real estate investment and development company
- Served on the International (German) Board of ThyssenKrupp elevator, the largest elevator company in North America.
- Tenant representation in restructuring leases, consolidation, expansion and relocation.
- Representing three restaurant chains in their corporate planning and location selection. In addition, he was responsible for the restaurant chains' leasing and lease management.
- Turn-around operation of a premier full service 499 unit RV Resort.
- Court appointed receiverships for the RTC and financial institutions for over \$100,000,000 of foreclosures, many being development projects.
- Corporate restructuring and strategic and financial planning for companies, in the fields of real estate, homebuilding, asset management, hospitality, and food service.
- Served as the due diligence director for the acquisition of twenty-five resort hotels.
- Assisted as the real estate subject matter expert on an inter-disciplinary international, consulting team to provide market research, strategy and tactical advice to Dar Al-Arkan (<http://www.alarkan.com/Default.aspx?lang=en>), the largest residential developer and master planned community developer in the Kingdom of Saudi Arabia.

Birtcher Investments, From September 1983 to November 1991, Mr. Nagy founded and managed Birtcher Investments in Orange County, California. In this capacity he raised \$240 million in public partnerships that acquired and operated leased income property, created a consulting company that handled over \$750 million of work-out situations, created a pension advisory company and built a national property management company that leased, managed and operated over 16 million square feet in 13 states.

- Raised \$240 Million in public and private limited partnerships and was the managing fiduciary of these investment entities. This included being responsible for all leasing and any lease disputes in the portfolio.
- Built and led a national property management company overseeing 16,000,000 square feet of leased income property and 2,600 leased residential units.
- Built a national property acquisition staff and supervised acquisition of 40 properties in 13 states, including industrial, office and shopping centers.
- Created a consulting company that handled over \$750,000,000 of work-out situations for financial institutions, including real estate developments, hotels and vacant land.
- Established a pension advisory company in joint venture with Smith Barney that included a commercial multi-property fund and individual investments in multi-family residential housing.

Heitman Financial Services, Ltd. From April 1973 to September 1983 Mr. Nagy was an officer and Director of Heitman rising to the level of Senior Vice President. Heitman was a national real estate finance organization involved in commercial mortgage banking for large commercial projects and acts as a fiduciary and investment advisor to pension funds.

- Arranged debt and equity placements involving 200 properties and developments located throughout the U.S. totaling \$1.5 Billion.

Ralph C. Sutro Company Mr. Nagy began his professional career as an Assistant Vice President at Sutro in October of 1971. Ralph C. Sutro was a residential and commercial mortgage banking company. Mr. Nagy worked as a Loan Officer in both divisions.

Education

- Denison University, Cum Laude, BA in Political Science, 1968
- Denison University, Departmental Fellow, 1966-1968
- Claremont Graduate University, National Defense Act Fellow, MA in International Relations, 1971
- UCLA, Economics and Real Estate, 1972
- Northwestern University School of Mortgage Banking, 1972
- Instruction in Real Estate Finance, West Los Angeles College, 1973
- Instructor in Real Estate Finance and Appraisal, Pierce College
- Guest Lecturer in Real Estate Finance at UCLA

Corporate Board Affiliations (current and past)

- Mark IV Capital, family firm with various investments including extensive real estate investments and development projects.
- PFMG Solar, distributed energy generation for public agencies and schools.
- SM&A, proposal services company in RFP structured competitions, primarily defense oriented.
- The Olson Company, homebuilder and developer operating throughout California
- Thyssen Krupp Elevator, Germany, global elevator and People Mover Company. Over 16 acquisitions in the US including Dover Elevator. Mr. Nagy served on their international Board of Directors.

Professional Designations

- Certified Real Estate Instructor in the State of California
- Certified Review Appraiser
- California Real Estate Salesperson

Professional Affiliations

- L3
- World Presidents' Organization
- National Association of Review Appraisers

Community Involvement

- Board of Trustees, Center for Early Education, Los Angeles, California, 1982-84
- Board of Trustees, St. Margaret's School, San Juan Capistrano, California, 1984-1990, President, 1990
- State of California, Council for Private Postsecondary and Vocational Education, 1996-1997.

Mr. Nagy can be reached:

949-525-6135 cell

anagy@realcapsolutions.com

www.realcapsolutions.com

EXHIBIT B

JOHN D. FINNERTY, Ph.D.

Managing Director, AlixPartners, LLP

Professor of Finance, Gabelli School of Business, Fordham University

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Dr. Finnerty is a Managing Director in the Financial Advisory Services Group at AlixPartners, LLP. He specializes in securities class actions, business valuation, securities valuation, derivatives valuation, solvency analysis, calculation of damages, and litigation support for matters involving valuation disputes, securities fraud, solvency, fairness, breach of contract, breach of fiduciary duty, broker raiding, commercial disputes, and employment disputes involving the valuation of employee stock options. He has testified as an expert in valuation, broker raiding, and securities and other financial matters in federal and state court and in arbitration and mediation proceedings. He has also testified as an expert in bankruptcy court concerning the fairness of proposed plans of reorganization.

Dr. Finnerty is also a Professor of Finance at Fordham University's Gabelli School of Business where he was the founding Director of the Master of Science in Quantitative Finance Program. He has taught for more than 28 years, including corporate finance, investment banking, fixed income securities, fixed income portfolio management, and bankruptcy restructuring. His teaching and research interests include hedge fund and private equity fund management, structure, and performance.

Dr. Finnerty has published 15 books, including *Corporate Financial Management*, 4th ed., *Project Financing: Asset-Based Financial Engineering*, 3rd ed., *Principles of Financial Management*, and *Debt Management*, and more than 100 articles and professional papers in corporate finance, business and securities valuation, and other areas of finance. His writings and teaching have focused on the analysis and valuation of securities, especially fixed income instruments and complex derivative products, and mortgage-backed and other asset-backed securities. Dr. Finnerty is a former editor of *Financial Management*, one of the leading academic finance journals, and a former editor of *FMA Online*. He is an associate editor of the *Journal of*

Applied Finance and a member of the editorial advisory boards of the *Journal of Portfolio Management* and the *International Journal of Portfolio Analysis & Management*.

Dr. Finnerty worked for more than 20 years as an investment banker. He worked on more than 50 public and private financings, and served as financial advisor in connection with several mergers and several project financings.

Dr. Finnerty is a Trustee and a former Chair of the Trustees and a former President and Director of the Eastern Finance Association, a former Director of the Financial Management Association, and a former President and Director of the Fixed Income Analysts Society. He served as a member of FASB's Option Valuation Group in connection with the revision of FAS 123. He was inducted into the *Fixed Income Analysts Society Hall of Fame* in 2011.

EDUCATION

1977	Ph.D. in Operations Research, Naval Postgraduate School
1973	B.A. and M.A. in Economics, Cambridge University; Marshall Scholar
1971	A.B. in Mathematics, Williams College; magna cum laude with highest honors in Mathematics; Rice Prize in Mathematics; Phi Beta Kappa

BUSINESS EXPERIENCE

2013 – Present	AlixPartners, LLP, New York, NY Managing Director, Financial Advisory Services Group
2003 – 2013	Finnerty Economic Consulting, LLC, New York, NY Managing Principal
2001 - 2003	Analysis Group, Inc., New York, NY Managing Principal
1997 - 2001	PricewaterhouseCoopers, LLP, New York, NY Partner, Financial Advisory Services Group Dispute Analysis & Investigations securities litigation practice
1995 - 1997	Houlihan Lokey Howard & Zukin, New York, NY Director
1989 - 1995	McFarland Dewey & Co., New York, NY General Partner

1986 - 1989	College Savings Bank, Princeton, NJ Executive Vice President, Chief Financial Officer, Treasurer, Secretary, and Director
1982 - 1986	Lazard Frères & Company, New York, NY Vice President, Corporate Finance Department
1977 - 1982	Morgan Stanley & Co. Inc., New York, NY Associate, Corporate Finance Department

ACADEMIC EXPERIENCE

1987 - Present	Fordham University Gabelli School of Business, New York, NY Professor of Finance and founding Director of the Master of Science in Quantitative Finance Program. Received tenure in September 1991. Gladys and Henry Crown Award for Faculty Excellence, 1997.
1976 - 1977	Naval Postgraduate School, Monterey, CA Adjunct Professor, Department of Administrative Sciences
1973 - 1976	United States Naval Reserve Instructor, Naval Postgraduate School. Promoted to Lieutenant, USNR.

PROFESSIONAL ASSOCIATIONS

Chair of the Trustees, Eastern Finance Association (2009-2010), Trustee (2008-Present), President (2007-2008), and Director (2005-2008)

President, Fixed Income Analysts Society (2006-2007), and Director (2001-2009)

Director, Financial Management Association (1991-1999, 2005-2007, 2011-2013)

Editor, *Financial Management* (1993-1999)

Editor, *FMA Online* (2001-2010)

Associate Editor, *Journal of Derivatives Accounting* (2003-2005)

Associate Editor, *Journal of Applied Finance* (2000-2007, 2012-Present)

Associate Editor, *Journal of Financial Engineering* (1992-1999)

Member, Editorial Advisory Boards, *The Financier* (1995-2003), *Journal of Portfolio Management* (1995-Present), and *International Journal of Portfolio Analysis & Management* (2011-Present)

Globe Business Publishing Ltd., London, U.K., Globe Law and Business Reader Panel

OTHER ACTIVITIES

Leadership Giving Co-Chair, Williams College Class of 1971

Co-chairman, New Jersey Special Gifts Program, Williams College Third Century Campaign

Member, Special Gifts Committee, New York City Area for Williams College Third Century Campaign

Vice Chairman, Williams College Class of 1971 25th Reunion Gift Committee

Treasurer and Trustee, Spring Lake Bath and Tennis Club, and Co-Chair, Finance Committee

AWARDS

Marshall Scholar, 1971

Gladys and Henry Crown Award for Faculty Excellence, Fordham Business School, 1997

Best Investments Paper, Southern Finance Association, 2001

Best Corporate Finance Paper, Southern Finance Association, 2006

Bene Merenti Medal, Fordham University, 2007

Fixed Income Analysts Society Hall of Fame, 2011

Achievements in Excellence Team Award, AlixPartners, LLP, 2014

EXPERT TESTIMONY IN LAST FOUR YEARS

<i>Clients</i>	<i>Case</i>	<i>Description of Testimony</i>
Brune & Richard	MBIA Insurance v. Patriarch Partners VIII and LD Investments U.S. District Court for the Southern District of New York Case No. 09 Civ. 3255 (RWS)	Responded to an expert damages report in a breach of contract matter, which calculated damages based on the value of a class of subordinated notes. Testified at deposition and at trial.
Robbins Geller Rudman & Dowd	Eric Silverman v. Motorola, Inc., et al. U.S. District Court for the Northern District of Illinois Case No. 1:07-cv-04507	Prepared an expert report on loss causation and a rebuttal report in connection with a securities class action. Testified at deposition.
Stradley Ronon Stevens & Young	Warren Klein, et al., v. Oppenheimer & Co. Inc. U.S. District Court for the Eastern District of Pennsylvania Civil Action No. 2:10-CV-06743	Prepared an expert rebuttal report describing auction rate securities (ARS), the market for ARS, the events surrounding the collapse of the market for ARS in February 2008, and addressing the plaintiffs' alleged damages. Testified at deposition.
Abbey Spanier Rodd & Abrams	In Re IMAX Corporation Securities Litigation U.S. District Court for the Southern District of New York Case No. 06 Civ. 6128 (NRB)	Prepared an expert report on loss causation in connection with a securities class action. Testified at deposition.
Figari & Davenport	Hillwood Investment Properties, et al. v. Radical Mavericks Management, et al. District Court, 192 nd Judicial District, Dallas County, Texas Cause No. 10-05639	Assessed the solvency of a professional sports franchise. Testified at deposition.
Securities and Exchange Commission	Securities and Exchange Commission v. William Betta, Jr., et al. U.S. District Court for the Southern District of Florida Case No. 09-80803-Civ-MARRA/JOHNSON	Prepared an expert report describing the features and risk-return characteristics of various complex collateralized mortgage obligation classes and assessed their suitability for a set of investors. Testified at trial.
Robbins Geller Rudman & Dowd	In Re Par Pharmaceutical Securities Litigation U.S. District Court for the District of New Jersey Master File No. 2:06-cv-03226-PGS-ES	Prepared an expert report on market efficiency in connection with a securities class action. Testified at deposition.
Internal Revenue Service	The Markell Company, Inc. v. Commissioner of Internal Revenue United States Tax Court Houston, TX Docket No. 20551-08	Prepared an expert report and a rebuttal expert report concerning the reasonableness of profit expectation for a strategy involving a spread call option strategy. Testified at trial.