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 WROTNIAK, and nominal defendant READING INTERNATIONAL, INC., A NEVADA CORPORATION Respondents.	Supreme Court Case No. 75053 Consolidated with 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 XXXII
JA7809– JA8058

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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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- Each of McEachern, Codding, Wrotniak and Kane testified that they had not seen Gould's December 27, 2017 email—supposedly sent on their behalf—prior to their depositions (or, for Wrotniak, preparing for his deposition) this year. (Ex. 7 to JJC 6/13/18 Opp., McEachern 2/28/18 Dep. Tr. at 544:3-8); (Ex. 5 to JJC 6/13/18 Opp., Codding 2/28 Dep. Tr. at 231:9-232:5); (Ex. 10 to JJC 6/13/18 Opp., Wrotniak 3/6/18 Dep. Tr. at 91:17-93:2); (Ex. 11 to JJC 6/13/18 Opp., Kane 4/20/18 Dep. Tr. at 683:14-19).
- On or about December 28, 2017, GT attorneys Bonner and Ferrario spoke telephonically with Wrotniak (together with Codding) about ratification, which was the first time Wrotniak heard or learned that ratifying prior conduct would be on the agenda for the December 29, 2017 board meeting. (Ex. 10 to JJC 6/13/18 Opp., Wrotniak Dep. Tr. at 41:2–42:25);
- On December 29, 2017, Gould, Codding, McEachern, Wrotniak and Kane "ratified" certain prior conduct of Adams, Kane and McEachern in June 2015 of voting to terminate Plaintiff as President and CEO of RDI and of Adams and Kane in September 2015 as members of the RDI Board of Directors Compensation Committee in authorizing the use of RDI class A nonvoting stock to pay for the exercise of the so-called 100,000 share option.

3. The Historical and Ongoing Use by the "Independent" Directors Of Company Counsel.

With respect to matter after matter raised in this case, the "independent" directors repeatedly have failed to engage independent counsel and instead have relied on advice from Company Counsel. Other examples are discussed below. Perhaps the best example was the reliance by compensation committee members Kane and Adams on Company counsel with respect to the issue of ownership of the so-called 100,000 share option.

As Plaintiff previously demonstrated and the Court found, Adams and Kane testified that they relied on the substance of the advice of counsel, including Tompkins and GT, in answering (or ignoring) questions Kane raised regarding the ownership of the

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option. As explained by Kane, both in emails produced in this case by defendants and in his deposition testimony, one issue the compensation committee members needed resolved to authorize (or not) the exercise of the 100,000 share option was whether it was the property of the James J. Cotter, Sr. Trust (the "Trust"), as RDI's Proxy Statement in 2014 and years prior had stated and as Plaintiff contended, or whether it was the property of the Estate, as EC contended. In an April 17, 2015 email (produced by defendants and provided to the Court by Plaintiff previously), Kane summarized the issue(s) as whether there was "any legal reason why Ellen [Cotter], as executor, could not exercise" the share option. (E-mail from Edward Kane to Craig Tompkins, Ellen Cotter, Margaret Cotter, Tim Storey, and Guy Adams, Apr. 17, 2015, 22:44, Exhibit 16 at 186 (emphasis added), to James Cotter Jr's Reply in support of Motion to Reconsider Order.) In another email (produced by defendants and also previously filed with the Court), Kane identified a particular legal issue as whether, by operation of the Trust documents of James J. Cotter, Sr. (under California law), the 100,000 share option had poured over into his Trust upon his death. (E-mail from Edward Kane to Tim Storey, Apr. 18, 2015, 12:26, Exhibit 19 at 194, to James Cotter Jr's Reply in support of Motion to Reconsider Order.)

Kane and Adams "resolved" those questions by obtaining legal advice and, based solely on that advice, authorized EC as an executor of the Estate to exercise the 100,000 share option. As the Court will recall, Adams testified as follows:

> Q. Did you ask her - - well, what did you do to ascertain [the 100,000 share option] was her asset?
>
> A. I informed myself through legal counsel.
>
> MR. TAYBACK: Don't - - don't disclose the communications with Legal counsel. You can simply say you conferred with legal counsel.
>
> THE WITNESS: I conferred with legal counsel.
>
> BY MR. KRUM:
>
> Q. Who?
>
> A. Craig Tompkins, Greenberg Traurig and Bill Ellis.

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****

Q. Okay. But you relied on this particular Greenberg Traurig memo in connection with making the decision to vote as a member of the compensation committee to allow Ellen and Margaret Cotter, as executors, to exercise the supposed option to acquire 100,000 shares of class B voting stock, is that right?

****

A. Yes, in addition to Craig Tompkins and Bill Ellis.

Q. Now, to your knowledge... Did any of those lawyers possess any expertise in trust and estate matters?

****

A. I have no knowledge about that.

(Ex. 2 to JJC 6/13/18 Opp., Adams 4/28/16 Dep. Tr. at 215:24-216:9 and 220:9-221:2.)

As the Court will recall, Kane testified as follows:

Q. What were the other issues?

A. There was the issue of exercising the options that were granted to Jim Cotter, Sr.

Q. What was the issue there or what were the issues, as best you can recall?

A. Mr. Cotter, Jr., was saying those options belong to the trust, that they had been transferred to the living trust, and that they could not exercise that option on behalf of the estate.

* * *

Q. Well, as to you personally, Mr. Kane, what did you do to reach a conclusion with respect to the question of whether Ellen and Margaret Cotter as executors of the estate of Jim Cotter, Sr., had the right to exercise the 100,000 share option?

A. I asked for a legal opinion.

(Ex. 6 to JJC 6/13/18 Opp., Kane 5/2/16 Dep. Tr. at 94:19-95:20, 100:23-102:21 & 104:13-23.)

In view of such testimony, the Court found that Adams and Kane had testified that their sole basis for authorizing the exercise of the 100,000 share option was the substance or content of the advice of counsel:

THE COURT: Mr. Ferrario, I'm not going to talk to you about a hypothetical case. I am talking about the facts in this case where I have two witnesses who

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testified that their sole basis was they relied upon representation or the opinion of counsel in making a determination. That's this case. That's the one I'm deciding. (Transcript of District Court Proceedings, October 27, 2016, Ex. B at 13:10-15, on file as Exhibit 4 to Appendix to Plaintiff's Motion to Reconsider.) (Emphasis supplied.)

Whether by design or oversight, Adams and Kane apparently did not ascertain whether the lawyers on whose advice they relied were qualified to provide the advice sought. Adams (quoted supra) testified that he had "no knowledge" if "any of those lawyers possess any expertise in trust and estate matters."

Kane and Adams had reason to doubt the independence of the attorneys on whom they relied. Kane testified that he (Kane) understood that Tompkins was on the side of EC in her disputes with Plaintiff, as well as that he (Kane) was of the view that "Tompkins always acted in his own self-interest." (Ex. 12 to JJC 6/13/18 Opp., at 427:3-9, 428:2-9 and 432:13-25.) In the former regard, Kane at deposition explained that words he used in an email stating "according to [EC], Craig is also on the 'team[,]'" meant that Tompkins "was [with] Ellen and Margaret versus Jim." (Ex. 6 to JJC 6/13/18 Opp., at 176:18-177:1.)

As to GT, the third member of the compensation committee, Timothy Storey, told Kane and Adams that he found GT's advice with respect to Ellen's proposed exercise of the 100,000 share option to be inadequate, and that it "did not satisfy [him] that there was a clear legal answer to the issue." (*See* Ex. 1 to the Appendix of Exhibits to James J. Cotter, Jr.'s Motion To Compel Production filed on August 12, 2016, at 53:5-7.) Nevertheless, Kane and Adams did not seek the advice of counsel independent of the Company, but instead relied on Company Counsel.

III. ARGUMENT

A. The Motion Must Be Denied Because Defendants Did Not Request an Evidentiary Hearing.

1. Defendants Also are Guilty of Laches and Undue and Prejudicial Delay.

Although the Motion purports to be brought pursuant to NRCP 12(b), it does not accept the allegations of the pending second amended complaint as true and argue that

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defendants nevertheless are entitled to judgment as a matter of law. Instead, it disputes those allegations and seeks relief based on matters outside of the pending second amended complaint. As the Court has observed previously with respect to the prior iteration of the Motion, it is for summary judgment. As the moving party seeking summary judgment on behalf of the remaining defendants, RDI bears the burden of proof.

"[W]hen the [complaint] is sufficient to excuse pre-suit demand, defendants are, of course, still free to show on summary judgment by uncontradicted facts that the allegations made are untrue." *Kahn v. Tremont*, 1992 WL 205637, at *2, n. 2 (Del. Ch. Aug. 21, 1992). "On such a motion the parties would be entitled to develop an evidentiary record in affidavit or other appropriate form." *Siegman v. Tri-Star Pictures, Inc.*, 1989 WL 48746, at *12, n. 16 (Del Ch. May 5, 1989), *affirmed in part and reversed in part on other grounds sub nom. In re Tri-Star pictures, Inc. Litig.*, 634 A.2d 319 (Del. 1993).

In Nevada, "an evidentiary hearing [is the procedural means] to determine... whether the demand requirement... *deprives* the shareholder of his or her standing to sue." *Shoen v. SAC Holding Corp.*, 122 Nev. 621, 644, 137 P.3d 1171, 1186 (2006) (emphasis supplied). As explained below, futility is determined in cases such as this based on the two-pronged test first articulated by the Delaware Supreme Court in *Aronson v. Lewis*. *See Shoen*, 122 Nev. at 641, 137 P.3d at 1184 (" . . . we adopt the test described in *Aronson* . . . ").

In September 2016, the individual defendants filed multiple motions for partial summary judgment, but brought no summary judgment motion arguing that demand was not futile.

The Motion for Leave claimed that defendants "requested that an evidentiary hearing to determine the issue of standing, but...[t]his Court declined to conduct the requested evidentiary hearing." Renewed Demand Futility MSJ at 10:19-22 and p.6, fn. 4. Defendants cited nothing to support this claim, which was false. In fact, defendants requested an evidentiary hearing regarding only the adequacy of Plaintiff as a derivative plaintiff, not an evidentiary hearing regarding the futility of demand. *See* Motion for

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Evidentiary Hearing Regarding James Cotter, Jr.'s Adequacy as a Derivative Plaintiff, filed on 10/12/2017. The Motion does not repeat the false claim that defendants previously sought (and the Court denied) an evidentiary hearing with respect to demand futility, tacitly acknowledging that defendants did not do so.

The record is undisputed. Defendants failed to seek an evidentiary hearing with respect to the issue of demand futility. Additionally, instead of raising that issue in a timely manner by way of motion for summary judgment, defendants belatedly brought the Original Demand Futility MSJ and, now, the Motion. Both motions are predicated on facts (not evidence) beyond the pleadings (and contrary to the pleadings, according to defendants). For such reasons, the Motion should be denied.

Having no excuse for not seeking an evidentiary hearing and no response to the argument that they were required to do so but did not, defendants instead misstate the law. In particular, the Motion (at 9:25-27) asserts that "if a plaintiff survives a motion to dismiss based on a failure to adequately *plead* demand futility, the plaintiff must, prior to trial on the merits, prove the demand was, in fact, futile." In support of that misstatement of the law, the Motion cites *Shoen v. SAC Holding Corp.*, 122 Nev. at 645, 137 P.3d at 1187. The Motion then acknowledges that the actual statement it misquotes states "[i]f the district court should find the pleadings provide sufficient particularized facts to show demand futility, it must later conduct an evidentiary hearing to determine, as a matter of law, whether the demand requirement nevertheless deprives a shareholder of his or her standing to sue." (*Id.*) Indisputably, neither RDI nor any of defendants ever did so. For that reason alone, the Motion should be denied.

2. Defendants' Standing/Subject Matter Jurisdiction Argument is a "Red Herring."

In the last section of the Motion, defendants make a convoluted argument about standing, subject matter jurisdiction, and the timing of challenges about one or both. (Motion at 12:6–28.) They do so in an apparent effort to excuse either or both (i) their failure to timely file a summary judgment motion regarding demand futility and (ii) their failure to request an evidentiary hearing regarding demand futility. (*Id.* at 13:1-6.)

Although they cite mostly inapposite authority for unremarkable propositions of law or regarding standing,[4] they cite no authority whatsoever for the notion that these legal propositions somehow overrule, supersede, or moot other rules and deadlines, such as the date by which summary judgment motions must be filed and/or the requirement that defendants seeking to deprive a derivative plaintiff of standing based on matter outside the pending complaint must do so by way of an evidentiary hearing. Simply put, the argument is a "red herring."

B. The Motion Must Be Denied, as a Matter of Law.

1. Defendants Bear the Burden of Proof.

Even assuming the Court could decide demand futility on a motion for summary judgment, where a court has determined that demand is excused and the defendants subsequently seek summary judgment with respect to demand futility, the moving defendants bear the burden of establishing "by uncontradicted facts that the allegations [that excused demand] are untrue." *Kahn*, 1992 WL 205637, at *2 n.2; *see also Avacus Partners, L.P. v. Brian*, 1990 WL 161909 (Del. Ch. Oct. 24, 1990) (if "a defendant files affidavits definitively rebutting the allegations of the complaint, the defendant would be entitled to summary judgment dismissing the complaint").

Here, defendants have proffered no evidence whatsoever, much less evidence sufficient to satisfy the burden of proof faced by a moving party seeking summary judgment, and much less evidence sufficient to "deprive" a plaintiff of standing to pursue a derivative action.

2. The Motion is Based on a Legally Mistaken Assumption.

The Motion is based on the premise that the Court's ruling that Plaintiff failed to raise disputed issues of fact regarding the disinterestedness of five directors with respect to the matters that were the subject of their motions for partial summary judgment obviates defendants' burden of proof in this (summary judgment) Motion and requires granting it. For example, the Motion (at 11:9-13) asserts that because "this Court found

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Plaintiff's evidence insufficient to support his allegations regarding the bases for the claimed interest and lack of independence with respect to the challenged decisions[,]...[i]t necessarily follows that such evidence could not suffice to show the claimed interest and lack of independence that purport (sic) to preclude impartial review of his claims." On its face, this purported syllogism is a *non sequitur.*

Similar statements were made in the original demand MSJ and in the Motion for Leave, in response to which Plaintiff correctly pointed out that those statements erroneously assumed that demand futility is assessed based on whether directors are personally interested in the challenged matters. As a matter of law, demand futility is assessed based on the directors' views of the derivative action, not the underlying matters which are the subject of the derivative action. *Rales v. Blasband,* 634 A.2d 927, 932 (Del. 1993) (Demand is futile where "the directors are incapable of making an impartial decision regarding such litigation"); *Drage v. Procter & Gamble,* 694 N.E.2d 479, 482-83 (Ohio Ct. App. 1997) ("Futility means that the directors' minds are closed to argument and that they cannot properly exercise their business judgment in determining whether the suit should be filed") (quoted in *Carlson v. Rabkin,* 789 N.E. 1122, 1128 (Ohio Ct. App. 2003)).

The Motion does not dispute the foregoing. Instead, it simply replaces the previously unstated erroneous premise with the *non sequitur* and exercise in question begging quoted above. The Motion proffers no evidence, and discusses no evidence, much less evidence in view of the applicable demand futility legal standard, which is whether "the directors are incapable of making an impartial decision regarding such litigation." Thus, that the Court determined that there were no disputed issues of material fact with respect to the disinterestedness of the five directors with respect to the particular matters raised in their motions for partial summary judgment does not, as the Motion posits show, much less , necessarily prove, that those directors' minds are open to argument such that they could properly exercise disinterested, independent business judgment in determining whether this derivative action should continue. Whether it is

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based on an erroneous premise, based on a *non sequitur* and/or is an exercise in question begging, the premise on which the Motion is based is erroneous, and the Motion must be denied.

3. The Evidence Raises a Reasonable Doubt, at a Minimum, About Whether the Five Could Impartially Consider a Demand.

As observed above, the question of demand futility is a question of whether directors responding to a demand have open minds about the derivative lawsuit. Where the directors have prejudged the question of whether the derivative lawsuit should proceed or be dismissed, demand is futile. As the evidence above shows, each of the five dismissed directors the Motion claims are disinterested and/or independent for the purposes of demand futility each previously determined that this derivative action should be dismissed. The evidence that they have done so shows demand futility or, at a minimum, raises disputed issues of material fact that require of Renewed Demand Futility MSJ.

C. Shoen Adopted the Two-Pronged Test Regarding Demand Futility.

In *Shoen v. SAC Holding Corp.*, 122 Nev. 621, 137 P.3d 1171 (2006), the Nevada Supreme Court adopted the two-pronged demand futility analysis articulated by the Delaware Supreme Court in *Aronson v. Lewis*, 473 A.2d 805 (Del. 1984). Quoting *Aronson*, the Nevada Supreme Court in *Shoen* described the two-pronged demand futility analysis as follows:

> "[I]n determining demand futility[,] the [the trial court] ... must decide whether, under the particularized facts alleged, a reasonable doubt is created that: (1) the directors are disinterested and independent [or] (2) the challenged transaction was otherwise the product of a valid exercise of business judgment."

Shoen, 122 Nev. at 637, 137 P.3d at 1182 (quoting *Aronson*, 473 A.2d at 812).

The Court in *Shoen* cited additional Delaware Supreme Court decisions explaining that the *Aronson* two-pronged test provides two *alternative* means by which a plaintiff may demonstrate demand futility. *Shoen*, 122 Nev. at 638 n. 43, 137 P.3d at 1182 n. 43 (citing, *e.g.*, *Pogostin v. Rice*, 480 A.2d 619, 624–25 (Del. 1984) (where the plaintiff has

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alleged with particularity facts that "support a reasonable doubt as to *either aspect* of the *Aronson* analysis, the futility of demand is established and the court's inquiry ends") (emphasis in original) and *Levine v. Smith*, 591 A.2d 194, 2016 (Del. 1991) ("The point is that in a claim of demand futility, there are two alternative hurdles, either of which a derivative shareholder complainant [may satisfy] to successfully withstand a Rule 23.1 motion")).

1. The First Prong: Independence and Disinterestedness

Independence, as used in the context of an element of the business judgment rule, requires that a director is able to engage, and in fact engages, in decision-making "based on the corporate merit of the subject before the board rather than extraneous considerations or influences." *Gilbert v. El Paso, Co.*, 575 A.2d 1131, 1147 (Del. 1999). "Directors must not only be independent, [they also] must act independently." *Telxon Corp. v. Meyerson*, 802 A.2d 257, 264 (Del. 2003). Reflecting that director independence is not a "check the box" type of analysis, the Nevada Supreme Court in *Shoen* stated as follows:

> "[D]irectors' independence can be implicated by particularly alleging that the director's execution of their duties is unduly influenced, manifesting 'a direction of corporate conduct in such a way as to comport with the wishes or interests of the [person] doing the controlling."

Shoen, 122 Nev. at 639, 137 P.3d at 1183 (quoting *Aronson*, 473 A.2d at 816).

As described above, discovery regarding how the five dismissed directors came to vote to "ratify" prior conduct the Court found to be actionable shows that what each of them did was to do what GT lawyers directed by Ellen Cotter and Craig Tompkins told him or her to do in order to pursue "ratification" as a "litigation strategy" directed at dismissal of this derivative action. Thus, the evidence regarding "ratification" demonstrates a lack of independence on the part of the same five directors the Motion posits are independent for demand futility purposes.

Critically, the fact that directors whose "independence" is the sole stated basis for the Motion relied on the advice of counsel who represent RDI and directly or indirectly

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(through Tompkins) answer to defendant Ellen Cotter, independently evidences that those directors lack independence, as a matter of law.

Courts repeatedly have found that the use of company counsel, whether by special committees or other directors supposedly acting independently, raises questions about the independence of the advisors and, thereby, the committee and the individual directors. *Gesoff v. IIC Industries Inc.*, 902 A.2d 1130, 1147 (Del. Ch. 2006), *subsequent proceedings*, 2006 WL 2521441 (Del. Ch. Aug. 22, 2006) ("[A] special committee's decision to use the legal and financial advisors already advising the parent 'alone rais[ed] questions regarding the quality and independence of the counsel and advice received' ") (citing *In re Tele-Communications, Inc. Shareholders Litig.*, 2005 WL 3642727 (Del. Ch. Dec. 21, 2005); *see generally* William T. Allen, *Independent Directors in MBO Transactions: Are They Fact or Fantasy?*, 45 BUS. LAW. 2055 (1990). Thus, courts reject determinations made by directors based on advice of counsel where such advice may be tainted by a conflict of interest. *In re Oracle Securities Litig.*, 820 9F. Supp. 1176, 1189 (N. D. Cal. 1993) (a board committee reliance on the inherently biased advice of in-house counsel made the committee's determination "worthless.")

In *In re Par Pharm., Inc. Derivative Litig.*, 750 F. Supp. 641 (S.D.N.Y. 1990), the nominal defendant company moved to dismiss after a special litigation committee conducted an investigation and recommended dismissal, and the supposedly independent members of the company's board of directors accepted that recommendation and voted to dismiss. The court denied the motion to dismiss, in part "because the Committee failed to retain independent counsel," "but instead relied upon the firm [that represented the Company] and its board in th[at] litigation." *Id.* at 644, 647. The court described that counsel as having a "conflict of interest . . . ." *Id.* at 647. With respect to the jurisprudence, the Court observed that "[b]oth New York and Delaware law contemplate that a special litigation committee be represented by independent counsel." *Id.* (citing *Spiegel v. Buntrock*, 571 A.2d 767, 772 (Del. 1990); *Kaplan v. Wyatt*, 484

A.2d 501, 511 (Del. Ch. 1984), *aff'd*, 499 A.2d 1184 (Del. 1985); *Byers v. Baxter*, 69 A.D. 2d 343, 348, 419 N.Y.S. 2d 497, 500 (App. Div. 1979)).

Here, the "independent" directors failed to engage independent counsel, but instead relied entirely on "advice" from Company Counsel, who face actual, pervasive and debilitating conflicts.

The evidence regarding "ratification" highlights the historical lack of independence on the part of these supposedly independent directors, each of whom historically has relied on Company Counsel, meaning Craig Tompkins (who reports to Ellen Cotter) and lawyers from GT, RDI's outside counsel who report to Tompkins and to Ellen Cotter, for "advice" with respect to decisions they have made as "independent" directors. At a minimum, this historical (and ongoing) reliance on Company counsel raises disputed issues of material fact regarding the independence of these directors. Examples include the following:

Kane and McEachern relied on "advice" from GT in making their decisions as "independent" directors to proceed with the meeting to vote to terminate Plaintiff as President and CEO of RDI. In responding to a May 19, 2015 email from RDI director Timothy Storey, which stated that "we need to take time to carefully consider the legal position and our clear duties as directors [,]" Kane responded by saying "Tim, I respect your concerns. However, we have heard from Nevada counsel via their memos..." and concluded that the meeting at which termination was first raised would proceed without delay or pre-meeting. (Ex. 1 hereto, Dep. Ex. 304, May 2015 email chain.)

As described above, Kane (and Adams) did not seek a judicial determination or even seek advice from independent counsel regarding the issue of whether the Trust or the Estate owned the 100,000 share option. Instead they relied on advice from Company Counsel, including Tompkins and GT, which apparently persuaded Kane to authorize the exercise of that option by the Estate, which was controlled by Ellen and Margaret Cotter, without actually analyzing, much less ascertaining, whether the Estate owned the option. (*See* Ex. 6 to JJC 6/13/18 Opp., Kane 5/2/16 dep. tr. at 99:25-104:23.)

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Gould and McEachern, as members of the "CEO search committee," failed to seek the advice of independent counsel and instead relied on "advice" from Tompkins and GT lawyer Ferrario regarding their fiduciary duties, which is when they aborted the CEO search and selected Ellen Cotter to be CEO notwithstanding the fact that she possessed none of the qualifications the CEO search specification identified as most important. (**Ex. 2** hereto, Minutes of the CEO Search Committee Meeting, December 29, 2015, Dep. Ex. 389)

Likewise, "independent" directors relied on GT lawyers in connection with their decisions to hire and highly compensate Margaret Cotter as the senior executive at RDI responsible for development of its valuable New York real estate, notwithstanding the fact that Margaret Cotter had no prior real estate development experience. For example, at the March 17 and 20, 2017 continued meeting of the Compensation Committee, of which Kane, Codding, and McEachern were the members, GT Attorney Bonner attended and provided legal advice. (**Ex. 3** hereto, Minutes of a Meeting of the Compensation and Stock Options Committee, March 14 and 20, 2017.)

2. The Second Prong: Valid Exercises of Business Judgment

With respect to the second prong of the *Aronson* test for demand futility, the *Shoen* court stated as follows:

> When undertaking analysis under the second prong of the Aronson test to determine if the complaint's particularized facts raise a reasonable doubt as to the challenged transaction constituting a valid exercise of business judgment, "the alleged wrong is substantively reviewed against the factual background alleged in the complaint."

Shoen, 122 Nev. at 638, 137 P.3d at 1182 (quoting *Aronson*, 473 A.2d at 814).

The Motion ignores this second, alternative prong of the *Aronson* test for showing demand futility. (The Motion in a backhanded way does acknowledge the second prong when it says "this Court would have to find that one of the Dismissed Directors *was either unentitled to the protections of the business judgment rule*... or that he or she lacked

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independence...) (Motion at 11:14-12:2.) (Emphasis supplied.) The Motion does so because application of the second prong requires denial of the Motion.

The threshold the Plaintiff must meet is "reasonable doubt." The Delaware Supreme Court in *Grimes v. Donald* explained that "[r]easonable doubt can be said to mean that there is a reason to doubt." 673 A.2d 1207, 1217 (Del 1996). "This concept [of reasonable doubt] is sufficiently flexible and workable to provide the stockholder with 'the keys to the courthouse' in an appropriate case where the claim is not based on mere suspicions are stated solely in conclusory terms.'" *Id.; see also Beam v. Stewart*, 845 A.2d 1040, 1050 (Del. 2004) (quoting *Grimes* and holding same)

The issue here is whether the evidence Plaintiff has proffered (regarding breaches of fiduciary duty, in response to the various motions for partial summary judgment and to Gould's motion for summary judgment) is sufficient to raise disputed issues of material fact with respect to whether any or all of the dismissed five breached their fiduciary duties in connection with the various matters that were the subjects of the foregoing motions, as well as matters that were not the subject of any motion for partial summary judgment (such as the attempt to extort Plaintiff into resolving trust and estate disputes with Ellen and Margaret Cotter on terms satisfactory to them). In denying all of those motions (except for one which was granted on a different and here irrelevant basis), the Court necessarily found that the complained-of conduct is actionable. Additionally, the Court stated that the conduct of the dismissed directors themselves could be a subject of proof at trial, as follows:

> THE COURT: So can I cut to the chase. The defendants are not correct by indicating that they believe that the conduct of the disinterested directors will not be the subject of evidence before the jury for breach of fiduciary duty claims as to the remaining defendants. If you thought that, that was not what I said.

(January 4, 2018 Hearing Tr. at 12:10-15.)

Thus, the second prong of the two-pronged demand futility analysis requires the Court to review the challenged conduct to determine whether or not that conduct may constitute a breach of any of the directors' fiduciary duties. Here, the Court did do so

and denied motions for partial summary judgment. Under the second prong of the two-pronged demand futility analysis applicable here, the Court for the same reasons must deny the Motion.

D. Plaintiff Is Entitled to Rule 56(f) Relief.

Where a plaintiff properly identifies additional facts necessary to oppose a summary judgment motion and seeks additional time to obtain that discovery, summary judgment is improper. *Aviation Ventures, Inc. v. Joan Morris, Inc.* 121 Nev. 113, 117-18, 110 P.3d 59, 62 (2005). Where it is "unclear whether genuine issues of material fact exists," a Rule 56(f) continuance allows for "proper development of the record." *Aviation Ventures,* 121 Nev. at 115, 110 P.3d at 60. Here, due to the delay of Responding Parties in providing court-ordered discovery, Plaintiff through no fault of his own is not yet in a position to present all "facts essential to justify the party's opposition." For the reasons set forth above and in the accompanying declaration of Mark G. Krum, Plaintiff is entitled to NRCP 56(f) relief.

Plaintiff is entitled to relief under NRCP 56(f). The remaining defendants and the Responding Parties have not complied with the Court's May 2, 2018 order, delayed compliance or both, as a result of which Plaintiff has not had an opportunity to obtain the discovery the Court ordered Plaintiff was entitled to obtain. Plaintiff reasonably expects that additional discovery will evidence the contemporaneous involvement of defendant Ellen Cotter and/or Margaret Cotter, along with RDI counsel Tompkins, in the "ratification" "process," together with extensive disclosure to Ellen Cotter and to Tompkins of matter supposedly privileged and confidential vis-à-vis at least the remaining defendants. Plaintiff also reasonably anticipates this discovery will reveal not only with whom each of the supposedly independent directors communicated to him about "ratification" and the other particular matters that were the subject of the Court's May 2, 2018 order, but also will evidence what they did and did not do in determining to approve "ratification." All such evidence will go to the question of the independence of the directors whose independence is a basis for this Motion and for the Ratification MSJ.

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Moreover, Plaintiff is still reviewing and analyzing privilege logs and documents produced on May 30 and 31, 2018, documents produced on June 9, 11, and 12, 2018 and anticipates that a further supplemental privilege log will be produced. The Court previously ruled that Plaintiff is entitled to time to review such material to determine what further discovery if any Plaintiff needs.

IV. CONCLUSION

For all the foregoing reasons, as well as the reasons stated in Plaintiff's prior briefs and evidence referenced herein, Plaintiff respectfully submits that the Renewed Demand Futility MSJ should be denied.

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By: */s/ Akke Levin*

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CERTIFICATE OF SERVICE

Pursuant to Nev. R. Civ. P. 5(b)(2)(D) and E.D.C.R. 8.05, I certify that I am an employee of MORRIS LAW GROUP and that on the date below, I cause the following document(s) **PLAINTIFF JAMES J. COTTER JR.'S OPPOSITION TO READING INTERNATIONAL, INC.'S MOTION (FOR SUMMARY JUDGMENT) BASED ON DEMAND FUTILITY** to be served via the Court's Odyssey E-Filing System: to be served on all interested parties, as registered with the Court's E-Filing and E-Service System. The date and time of the electronic proof of service is in place of the date and place of deposit in the mail.

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DATED this 13th day of June, 2018.

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DISTRICT COURT
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JAMES J. COTTER, JR., derivatively on behalf of Reading International, Inc., Plaintiff, v. MARGARET COTTER, ELLEN COTTER, GUY ADAMS, EDWARD KANE, DOUGLAS McEACHERN, WILLIAM GOULD, JUDY CODDING, MICHAEL WROTNIAK, Defendants. And READING INTERNATIONAL, INC., a Nevada corporation, Nominal Defendant.	Case No. A-15-719860-B Dept. No. XI Coordinated with: Case No. P-14-0824-42-E Dept. No. XI Jointly Administered **DECLARATION OF MARK G. KRUM PURSUANT TO NRCP 56(f) AND IN OPPOSITION TO SUMMARY JUDGMENT MOTIONS** **Hearing Date: June 19, 2018** **Hearing Time: 8:30 a.m.**

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I, Mark G. Krum, declare:

1. I am an attorney with Yurko, Salvesen & Remz, P.C., counsel for plaintiff James J. Cotter, Jr. ("Plaintiff"). I make this declaration based upon personal knowledge, except where stated upon information and belief, and as to that information, I believe it to be true. If called upon to testify as the contents of this declaration, I am legally competent to testify to its contents in a court of law.

2. The Motion for Summary Judgment filed on June 1, 2018 by defendants Ellen Cotter, Margaret Cotter and Guy Adams (the "Ratification MSJ") is predicated on the assumption that, because the Court found no disputed issues of material fact with respect to the disinterestedness of certain directors for the purposes of the matters raised in partial summary judgment motions argued on December 11, 2017, those directors therefore are disinterested and independent for all purposes, including for the purposes of the "ratification" on which the Ratification MSJ is based.

3. The Motion for summary judgment regarding demand futility filed on June 4, 2018 by counsel of record for nominal defendant Reading International, Inc. ("RDI") is predicated on the same assumption.

4. Because disinterestedness and independence are questions of fact, Plaintiff is entitled to discovery, including regarding the "ratification" "process," as the Court found on January 8, 2018 and ruled on May 2, 2018, when the Court ordered RDI and former defendants (the "Responding Parties") to provide additional documents and information with respect to "ratification" and matters related thereto, described below.

5. Likewise, Plaintiff is entitled to discovery regarding whether the "ratifying" directors acted in good faith and on an informed basis, which also are questions of fact. That discovery likewise concerns the "ratification" "process."

6. On or about January 12, 2018, Plaintiff issued subpoenas to the Responding Parties and document requests and interrogatories to the remaining defendants. By the end of February 2018, all but Gould purported to have produced or listed on a privilege log all responsive documents. Additionally, the remaining defendants provided

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interrogatory responses.

7. As the Court knows from prior motion practice, Counsel for Plaintiff learned for the first time at depositions of SIC members Doug McEachern, Judy Codding and William Gould of a meeting of the "Special Independent Committee" of the RDI board of directors (the "SIC") in December 2017 at which "ratification" had been discussed and "formally" approved.. As the Court also knows from prior motion practice, counsel for Plaintiff specifically requested that counsel for the Responding Parties produce minutes of that December 2017 SIC meeting.

8. Finally, on or about April 12, 2018, minutes of what turned out to be a December 21, 2017 SIC meeting were produced for the first time. However, they were produced in a wholly redacted form.

9. As a result of the foregoing, among other efforts on the part of the remaining defendants and Responding Parties to frustrate Plaintiff's ability to obtain discovery regarding the "ratification" "process," Plaintiff filed a motion for "omnibus relief." That motion was heard on April 30, 2018, at which time the Court ordered an evidentiary hearing, which occurred on May 2. At the end of the May 2 hearing, the Court granted Plaintiff's motion for omnibus relief in part, ordering that the Responding Parties produce and/or log all documents responsive to three categories of information, as follows:

> THE COURT: ... So three categories, [i] the 12/21 special committee meeting, whether its scheduling, content, scope, minutes, whatever, related to that meeting; [ii] P-1 [the 12/27/18 email], whether its subject matter, preparation, drafting, circulation, how we're going to get it on the agenda for the 12/29 meeting; and the third item is [iii] any discussion of ratification, not limited by time.

(5/2/18 hearing tr. at 79:6-13.) (Emphasis supplied.)

10. The Court on May 2, 2018 also granted the remaining defendants motion to file what is the now filed Ratification MSJ, but instructed them not to file it until after they had complied with the Court's May 2, 2018 order and also had afforded counsel for Plaintiff sufficient time to review and analyze the documents and privilege logs ordered

produced, and to then determine whether Plaintiff needed further discovery. In this regard, the Court stated as follows:

> THE COURT: Yeah. So I want Mr. Krum, instead of me facing a 56(f) issue at the time you file that motion, he's ready to file his opposition, I want him to have the opportunity to get these documents with the privilege logs, look at them, and then have a period of time he can decide
>
> whether he needs to take additional depositions and, if you fight about it, for me to rule on it. So I'm going to grant your request even though I am hesitant to do so under the circumstances, but I don't want to be in a position where you guys slow play them and then I'm sitting back here again that he didn't get the stuff

(5/2/18 hearing tr. at 81:6-16.)

11. On June 1 and 4, 2018, respectively, the remaining defendants filed the renewed Ratification MSJ and RDI file the renewed Demand Futility MSJ. As described below, what the Court sought to avoid has happened. The remaining defendants and the Responding Parties have slow played Plaintiff, whose counsel has not an opportunity to do what he is entitled to do and what the Court ordered he be afforded the opportunity to do.

12. On May 30 and 31, 2018, Greenberg Traurig ("GT'), for RDI and/or for the Responding Parties, made supplemental productions of thousands of pages of documents and produced two (facially deficient) voluminous, supplemental privilege logs. Dozens upon dozens of documents relating to one or more of the foregoing three categories have been withheld based on claims of attorney-client privilege, the work product doctrine, or both, as reflected by entries on those privilege logs. As demonstrated in a separate motion, Plaintiff seeks the production of those documents, asserting that those documents are not privileged and are not properly claimed to be subject to work product protection and, even if they were subject to proper claims of privilege and/or work product protection, both were waived.

13. However, even if the documents listed on the May 30 and 31, 208 privilege logs are properly withheld based on claims of attorney-client privilege, work product or both, they must be properly logged so counsel for Plaintiff is able to use the entries on the

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privilege logs for the various purposes for which they are required, including to examine witnesses (who claim not to recall) to learn what communications were had between and among the counsel for RDI, the remaining defendants and/or the Responding Parties with respect to the three subject matters of the Court's May 2, 2018 order. Because the May 30 and 31, 2018 privilege logs suffer from several facial deficiencies, including the failure to identify each sender and recipient by name, and the failure to describe the subject matter of the documents logged in terms that are not so general as to be meaningless, counsel for Plaintiff is unable to use those to logs even identify the subjects matter of dozens upon dozens of logged communication, much less examine witnesses to confirm the subject matters and/or the participants.

14. On June 6, 2018, I met and conferred telephonically with counsel for RDI and the remaining defendants and the Responding Parties (except for Gould) regarding the May 30 and 31 document productions and privilege logs. On June 8, counsel for RDI advised that the responding parties would be making supplemental productions of documents and would provide a revised privilege log.

15. On Saturday, June 9, 2018, GT made a further supplemental production of documents, producing over 2000 pages of documents. Counsel for Plaintiff has not completed the review of those documents, but it appears that they are largely if not entirely draft SEC filings and email communications regarding those drafts.

16. About the close of business on June 11, 2018, GT made another supplemental production of documents, the total volume of which is in excess of 3000 pages. The documents were password protected and counsel for Plaintiff was not provided with password until June 12. Faced with deadlines for oppositions to the recently renewed summary judgement motions, counsel for Plaintiff did not review those documents yesterday or today.

17. Last night, at approximately 8 p.m. Pacific on Tuesday, June 12, 2018, GT made another supplemental production of documents, the total volume of which appears to be over 1000 pages. Counsel for Plaintiff has not yet reviewed these documents.

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18. Also on June 12, 2018, GT attorney Kara Hendricks advised that a supplemental and/or superseding privilege log would be produced today, June 13, 2018. It has not been produced at the time of completion of this declaration..

19. Counsel for Plaintiff will need time to complete the review of documents produced on June 9, 2018, and to commence and complete the review of documents produced on June 11 and 12, 2018. Counsel for Plaintiff likewise will be time to review a supplemental privilege log, if and when it is produced. If the course of discovery is any indication, such a log is unlikely to cure all of the deficiencies from which the May 30 and 31, 2018 logs suffered. Even if it did so, Plaintiff has not had the opportunity to use the that log for any purpose, or the May 30 and 31, 2018 logs to further depose any of Ellen Cotter, Craig Tompkins, Margaret Cotter, William Gould, Judy Codding, Michael Wrotniak and/or Ed Kane, each of whom was (according to documents produced on May 30 and 31, 2018 and/or entries in the May 30 and 31, 2018 privilege logs) party to communications that concerned one or more of the three subjects of the Court's May 2, 2018 order.

20. Simply put, the remaining defendants and the Responding Parties have not complied with the Court's May 2, 2018 order, delayed compliance or both, as a result of which Plaintiff has not had an opportunity to obtain the discovery the Court ordered Plaintiff was entitled to obtain. As indicated by Plaintiff's description of certain of the documents produced on May 30 and 31, 2008, as well as by Plaintiff's description of certain entries on the May 30 and 31, 2018 privilege logs, Plaintiff reasonably expects that additional discovery (without regard to whether the Court orders the production of additional documents) will evidence the contemporaneous involvement of defendants Ellen Cotter and/or Margaret Cotter, along with RDI counsel Tompkins, in the "ratification" "process," together with extensive disclosure to Ellen Cotter and to Tompkins of matter supposedly privileged and confidential vis-à-vis at least the remaining defendants. Plaintiff also reasonably anticipates this discovery will reveal not only with whom each of the supposedly independent directors communicated about

"ratification" and the other particular matters that were the subject of the Court's May 2, 2018 order, but also will evidence what they did and did not do in determining to approve "ratification." All such evidence will go to the question of the independence of the directors whose independence is a basis for the Ratification MSJ and the summary judgment motion based on demand futility, and/or to the question of whether those directors acted in good faith and on an informed basis in approving "ratification."

Executed this 13th day of June, 2018.

Mark G. Krum, Esq.

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CERTIFICATE OF SERVICE

Pursuant to Nev. R. Civ. P. 5(b)(2)(D) and E.D.C.R. 8.05, I certify that I am an employee of MORRIS LAW GROUP and that on the date below, I cause the following document(s) to be served via the Court's Odyssey E-Filing System: **Declaration of Mark G. Krum Pursuant to NRCP 56(f) and in Opposition to Summary Judgment Motions** to be served on all interested parties, as registered with the Court's E-Filing and E-Service System. The date and time of the electronic proof of service is in place of the date and place of deposit in the mail.

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Attorneys for Defendant William Gould

DATED this 13th day of June, 2018.

By: /s/ JUDY ESTRADA

Exhibit 1
(filed under seal)

Exhibit 2

READING INTERNATIONAL

Minutes of the
Board of Directors
of
Reading International, Inc.
CEO Search Committee

December 29, 2015

On December 29, 2015, a duly noticed telephonic meeting of the CEO Search Committee (the "Committee") was held, commencing at approximately 2:30 p.m. Attending the meeting were Members William Gould (Chair), Margaret Cotter and Doug McEachern. Present at the invitation of the Committee were Craig Tompkins, Recording Secretary, and Mark Ferrario, outside counsel.

Chair Gould stated that, all of the candidates having been interviewed, the purpose of this meeting was to determine the individual, if any, to be recommended by the Committee to the Board for the position of President and Chief Executive Officer, to serve at the pleasure of the Board.

Before considering the recommendation of a candidate, the Committee discussed whether it was appropriate for Margaret Cotter to vote on the matter. In its considerations, the Committee discussed the facts that Margaret Cotter was the sister of Ellen Cotter, was part of a "group" with Ellen Cotter for SEC reporting purposes, was the President of Liberty Theaters and would thereby be reporting to Ellen Cotter (should Ellen Cotter be appointed as President and Chief Executive Officer) and held a variety of other fiduciary duties and obligations as a Co-Executor of the James J. Cotter, Sr. Estate and as a Co-Trustee of the James J. Cotter, Sr. Trust. The Committee concluded that, given her position as Co-Executor of the James J. Sr. Estate and as Co-Trustee of the Cotter Trust, as a practical matter, Margaret Cotter's support of any candidate was critical: this was one of the reasons that she had been selected to participate on the Committee in the first place and she had been elected to the Committee by the Board with full knowledge of these facts and relationships. The Committee concluded that, ultimately, whether or not Margaret Cotter should vote on the matter would be left for Margaret Cotter to determine.

The Committee next took up the recommendation to the Board of candidate for President and Chief Executive Officer of the Company to serve at the pleasure of the Board. The Committee noted that the candidates presented by Korn Ferry had varying backgrounds, skill sets and compensation requirements, but were all of the highest caliber, and that any of them would likely be competent to run a company such as Reading.

The Committee discussed, among other things, but not necessarily in the order set forth below (as the discussion took up a number of topics on more than one occasion during the discussion), and without attempting to assign any particular order of importance or significance, the following:

- The benefits of selecting a President/CEO who has the confidence of the existing senior management team;

EXH 389
DATE 6-29-16
WIT Gould
PATRICIA HUBBARD

- The benefits of selecting a President/CEO who knows the Company, its assets, personnel and operations and who could "hit the ground running:"
- The fact that it would be beneficial to the Company and to the interests of stockholders generally to have a period of management stability, so that management could focus on the implementation of the Company's mixed entertainment/real estate development business plan;
- The fact that the compensation demands of certain of the President/CEO candidates seemed to reflect the erroneous belief on their part that the Company was in extremis and needed to be turned around or redirected, when, in fact, the Company is doing well from an operating point of view and the Board is comfortable with the Company's mixed entertainment/real estate business plan;
- The fact that the bulk of the Company's cash flow is derived from its entertainment activities, and that the maintenance and growth of that cash flow is of primary importance for the Company to execute on its business plan;
- The fact that, as a practical matter, the nominee will need to be acceptable to Ellen Cotter and Margaret Cotter as representatives of the controlling stockholder of the Company;
- The benefits and detriments of having a Chairman/CEO and of having a Chairman/CEO who is also a controlling stockholder of the Company;
- The performance of Ellen Cotter in uniting the current senior management team behind her leadership under the unusual and stressful circumstances of recent months;
- The scope and extent of Ellen Cotter's knowledge of the Company, its assets, personnel and operations, including its overseas and real estate assets, personnel and operations;
- Ellen Cotter's experience and performance as a senior executive of the Company, and her performance since June 12, 2015 as the Company's interim President and Chief Executive Officer;
- Ellen Cotter's experience and involvement in the Company's public reporting activities and working in a public company environment;
- The fact that Ellen Cotter had demonstrated her competency and experience in dealing with real estate matters in her handling of the Cannon Park and Sundance matters and her activities in connection with the development/refurbishment of a variety the Company's cinemas.
- The practical difficulties of having an executive management structure where two of the executives reporting up to a new outside chief executive officer would be members of the Board and controlling stockholders of the Company;

- Ellen Cotter's plan for transitioning out of her current position as chief of operations of the Company's domestic cinemas in order to be able to appropriately handle the duties of President and Chief Executive Officer;

- The scope and extent of the other demands upon Ellen Cotter's time, given her other duties and responsibilities with respect to the administration of her father's estate and the other assets included within that Estate (including, by way of example, the Estate's interest in Cecelia Packing, Sutton Hill Associates, Shadow View Land & Farming, and the 86th Street Cinema) and the various conflicts of interest arising due to her, at times, potentially conflicting duties in her capacity as an officer and director of the Company and as a Co-Executor of the James J. Cotter, Sr. Estate and a Co-Trustee of the James J. Cotter, Sr. Trust;

- The scope and extent of her personal financial interest in the Company, and the scope and extent of her control over the Company given her position as Co-Executor of the James J. Cotter, Sr. Estate, and as a Co-Trustee of the James J. Cotter, Sr. Trust, and the likely impact of such interests and obligations on her performance as President and Chief Executive Officer;

- The qualifications, experience and compensation demands of the other candidates;

- The fact that her appointment would likely be opposed by James J. Cotter, Jr., and would likely be made an issue in the pending derivative litigation being prosecuted by James J. Cotter, Jr.; and

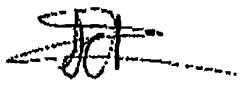
- The need, for the stability of the Company, to bring the CEO search to a conclusion.

After discussion in which all members participated and during which a variety of questions were asked and advice provided by counsel regarding the fiduciary obligations of the Committee Members and the Committee, on motion duly made and seconded, the Committee resolved to recommend to the Board Ellen Cotter as President and Chief Executive Officer (no longer serving as "Interim President and Chief Executive Officer"), to serve at the pleasure of the Board. Messrs. Gould and McEachern each voted Yes. Margaret Cotter, for a variety of reasons, as outlined above, elected to Abstain, but stated her concurrence with and support of the Committee's recommendation.

Although it was the consensus of the Committee that, if she is appointed by the Board as the President and Chief Executive Officer, Ellen Cotter's compensation should be revisited in light of her increased duties and responsibilities, the Committee determined that the negotiation of her employment terms had not been delegated to it, and that this would be a matter more properly addressed by the Company's Compensation and Stock Options Committee and Board.

Mr. Tompkins was directed to prepare minutes for the Committee and to prepare a draft report of the Committee's actions and determinations for review and approval by the Committee and submission to the Board.

There being no further action, the meeting was adjourned at approximately 3:15 P.M.



S. Craig Tompkins, Recording Secretary

Exhibit 3
(filed under seal)

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Attorneys for Defendants Margaret Cotter, Ellen Cotter, and Guy Adams

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiff,

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

ELLEN COTTER, MARGARET COTTER, AND GUY ADAMS' REPLY IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT

Judge: Hon. Elizabeth Gonzalez
Date of Hearing: June 19, 2018
Time of Hearing: 8:30 a.m.

TABLE OF CONTENTS

INTRODUCTION

Plaintiff does not and cannot dispute the material facts that mandate granting summary judgment in favor of the remaining defendants: (1) the Court determined there is no disputed issue of fact regarding the independence of Edward Kane, Doug McEachern, Judy Codding, Michael Wrotniak, or William Gould; (2) Nevada law permits ratification of prior decisions; (3) an independent (per the Court's order) majority of RDI's Board of Directors voted to ratify certain prior Board decisions at issue in this matter; and (4) the minutes of the December 29 Board of Directors meeting regarding ratification are accurate. Instead of addressing this small handful of material, relevant facts, and instead of offering any testimony (written or oral) of his own regarding the December 29 Board meeting he attended, Plaintiff raises a variety of fanciful legal and factual arguments in an effort to keep his case alive. None have any merit.

First, Plaintiff suggests that Nevada law does not actually permit the Board to have voted in favor of ratifying the decisions at issue. This argument is contradicted by the plain language of NRS 78.140, and the Delaware authority Plaintiff relies on actually undermines his baseless position. Plaintiff cannot have it both ways. Either the matters of which he complains were "transactions," making the independence of Directors Guy Adams, Ellen Cotter and Margaret Cotter an issue in the case (and subject to ratification under NRS 78140), or they were not, in which case Plaintiff himself has no legal claims and the "independence" of these three remaining directors is of no relevance.

Next, Plaintiff contends that the members of the Board who voted in favor of ratification were neither independent nor acting in good faith. Plaintiff simply misstates the facts and the applicable law. Indeed, Plaintiff completely ignores the Court's prior ruling and judgment regarding the independence of a majority of the Board, the fact that the accuracy of the minutes of the December 29 Board meeting is not in dispute, and the sworn testimony of various directors about their preparations for a ratification vote. Plaintiff instead cites a series of cases in which courts evaluated the decisions of Special Litigation Committees to dismiss derivative actions (and where there had been no judicial determination of independence). Not only are those cases inapplicable here—the ratification vote was held at a meeting of the *full* Board of

directors, not RDI's Special Independent Committee, and was not a recommendation to dismiss the derivative action—but the standards in those cases, even if they were applied here (which they cannot be), actually support granting summary judgment. (In his Opposition, Plaintiff represents to the Court that the Special Independent Committee, rather than RDI's full Board, made the ultimate determination regarding ratification. In doing so, Plaintiff mischaracterizes—and, in one case, *completely changes*, using brackets—the deposition testimony of members of that committee.)

Finally, Plaintiff offers rank speculation about the motives of his fellow directors, but provides no evidence supporting his allegations. Evidence, rather than assumption and accusation, is required to defeat summary judgment. Plaintiff of course would like to relitigate the Court's determination that a majority of the Board is independent, but the proper venue for that is in front of the Nevada Supreme Court, where an appeal is pending, not through his Opposition or his ill-conceived request for an evidentiary hearing on issues already decided.

ARGUMENT[1]

I. THE BOARD'S DECISION REGARDING PLAINTIFF'S TERMINATION AND THE 100,000 SHARE EXERCISE WERE PROPERLY THE SUBJECT OF A RATIFICATION VOTE UNDER NEVADA LAW

Initially, Plaintiff's Opposition presents the self-defeating argument that the matters ratified by the Board on December 29, 2017 were not transactions between RDI and one of more of its directors under NRS 78.140. (*See* Opp. at 17-21.) This is contrary to the entire premise of the derivative suit Plaintiff has pursued for the last three years. If the decisions ratified at that meeting were not matters which required independence on the part of the directors, then Plaintiff's challenge to directorial independence is irrelevant; if those decisions did require independence, then—as a matter of law—they can be ratified by the independent directors.

Plaintiff, himself a director and stockholder of RDI, has sued various other RDI directors because he contends they were personally interested in the outcome of various transactions the

[1] Plaintiff raises an argument that the Motion is untimely. Such an argument was mooted by the Court granting Defendants leave to file the instant motion, which was a logical

Board or its committees voted on *involving him or other directors*, including Plaintiff's termination (which terminated a contract between Plaintiff and RDI) and the approval of the use of Class A Non-Voting Common Stock to exercise a the 100,000 share option (a contract) to purchase Class B Voting Stock (a purchase of voting stock from RDI which Plaintiff alleges inured to the benefit of Ellen and Margaret Cotter). The directors—both current and former defendants—whom Plaintiff alleges were personally interested in the outcome of these transactions were "present at the meeting of the board of directors or a committee thereof which authorize[d] or approve[d] the contract or transaction." NRS 78.140. Accordingly, these decisions are clearly subject to ratification under Nevada law.[2]

Plaintiff also argues that the 100,000 share option exercise was not actually ratified, and that only the use of Class A stock as consideration was the subject of ratification by independent directors. (*See* Opp. at 15-17.) According to Plaintiff, an issue remains as to whether the Cotter Estate or the Cotter Trust owned these options. (*See id.*) None of Plaintiff's contentions have merit. First, the ownership issue was resolved long ago by the Court in the context of the Estate case; even if it had not been, the ownership question would be fundamentally irrelevant—Ellen and Margaret Cotter control the options under any scenario, as they were both the Co-Executors of the Cotter Estate and the Co-Trustees of the Cotter Estate. Thus, Plaintiff's attempted distinction is irrelevant.

Moreover, Plaintiff's assertion is demonstrably false; the RDI Board did not conduct a partial ratification involving the share option exercise. As the undisputed minutes of the December 29, 2017 meeting show, the Board "ratifie[d] the decision of the Compensation Committee of the Company, as outlined in the minutes of the September 21, 2015 meeting, to

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result of allowing Plaintiff to take extensive discovery of RDI and its directors regarding the Board's December 29, 2017 ratification vote.

[2] The Delaware law that Plaintiff invokes in an attempt to support his argument actually undermines his position. (*See* Opp. at 19 (citing DGCL § 144 and quoting from *Cinerama Inc. v. Technicolor, Inc.*, 663 A.2d 1156, 1169 (Del. 1995)).) Indeed, in the words of the *Cinerama* court, "[t]he key to upholding an interested transaction is the approval of some neutral decision-making body. Under 8 Del. C. § 144, a transaction will be sheltered from shareholder challenge

permit the Estate of James J. Cotter, Sr. to use Class A non-voting stock as the means of payment for the exercise of an option to purchase 100,000 shares of Class B voting stock of the Company." (Helpern Decl., Ex. B.) There was no discussion about the Board only ratifying *part* of the at-issue decision made by the Compensation Committee in September 2015. In any event, even if Plaintiff's factual claim was accurate, summary judgment is still appropriate. The only alleged damages arising from this option exercise relate to the purportedly improper use of Class A stock as consideration. (*See* Pl.'s Supp'l Opp'n to Mot. for Summ. J. Nos. 2 & 6, filed 12/1/17, at 10 ("[T]he consideration provided for the exercise, RDI Class A non-voting shares, was not consideration of value or at least sufficient value to the Company to warrant approval of the exercise, and that the Company incurred losses and/or damages as a result.").) Absent any injury to the Company, there can be no derivative claim for breach of fiduciary duty. Accordingly, if an independent group of the Board ratified only this aspect of the option exercise—which is what Plaintiff contends—then Plaintiff's breach of fiduciary duty claim still fails as a matter of law.

Pursuant to NRS 78.140, these transactions have now been ratified by directors whom the Court has ruled are disinterested, meaning that the transactions are "valid" and that the business judgment rule applies. *See Shoen v. SAC Holding Corp.,* 122 Nev. 621, 636, 137 P.3d 1171, 1181 (2006). Of course, if Plaintiff now wishes to withdraw his allegation that allegedly interested directors were involved in the initial transactions at issue in this case, that would obviate the need for the pending motion for summary judgment regarding ratification (and also resolve this case entirely).

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if approved by either a committee of independent directors, the shareholders, or the courts." 663 A.2d at 1170.

II. THE COURT HAS ALREADY RULED THAT THERE IS NO DISPUTED MATERIAL FACT REGARDING THE INDEPENDENCE OF THE DIRECTORS WHO VOTED TO RATIFY AT A MEETING OF THE FULL BOARD OF DIRECTORS

A. The Ratification Vote Was Not Delegated to a Special Litigation Committee

Throughout his brief, Plaintiff relies almost exclusively on cases in which a board fully delegated responsibility for derivative litigation to a Special Litigation Committee ("SLC") prior to any determination as to independence of the directors involved, and the courts are evaluating the recommendations of that SLC to dismiss the pending suit. *See, e.g.*, *Matter of DISH Network Deriv. Litig.*, 401 P.3d 1081, 1092 (Nev. 2017), *reh'g denied* (Dec. 8, 2017) (holding that "the district court did not abuse its discretion in determining that the SLC conducted a good-faith, thorough investigation."). Those SLC cases are inapposite here, including for the reasons described in the Remaining Director Defendants' Joinder to RDI's Combined Opposition to Plaintiff's Motion to Compel and Motion for Relief.

In reality, the vote to ratify the RDI Board's decisions regarding Plaintiff's termination and the 100,000 share option was held at the December 29, 2017 meeting of RDI's full Board of Directors. No decision or vote relevant to Defendants' motion for summary judgment was made by the Special Independent Committee of RDI's Board (which Plaintiff refers to as the "SLC" in his Opposition, *see* Opp. at 3, intentionally misnaming the committee for rhetorical effect). **Every single director, including Plaintiff himself, participated in the December 29 meeting.** At this meeting of the full Board, five directors—all of whose independence has been extensively litigated and ruled on by this Court—voted in favor of ratification. Simply put, Plaintiff's characterization of the ratification decision as having been made by a purported "Special Litigation Committee" are inaccurate.

B. Plaintiff Mischaracterizes the Testimony of All Three Members of the Special Independent Committee to Support His Position

So insistent is Plaintiff on pointing the Court away from the full Board's ratification vote that his Opposition misleadingly modifies Defendants' deposition testimony in an effort to amplify the role of the Special Independent Committee and the supposed importance of its December 21, 2017 meeting. Plaintiff contends the Special Independent Committee, not the full

Board, made the ratification decision; this is false. For example, Plaintiff claims that Mr. McEachern testified: "*[I]t was delegated to the [SIC] to handle this type of matters. We were approving [ratification]*." (Opp. at 5 (emphasis in original).) **Mr. McEachern never said that.** He actually testified that "[i]t was delegated to the **compensation committee** to handle this type of matter. We were approving **this**." Contrary to Plaintiff's creative edits, Mr. McEachern was plainly referring to the Compensation Committee's September 21, 2015 decision—more than two years prior to the ratification vote—to allow the Cotter Estate to use Class A RDI stock to pay for a Class B stock-option exercise, which he thought was a *pro forma* decision that should be respected and therefore ratified by the Board. (Opp. Ex. 7 (2/28/18 McEachern Dep.) at 503:1-509:18) (emphasis added).) Plaintiff altered the testimony to say something different entirely.

Similarly, Plaintiff claims Mr. Gould testified that the Special Independent Committee "formally [took] action" to advance ratification. (Opp. at 7.) This claim grossly distorts the testimony: Mr. Gould did not testify that the Special Independent Committee approved ratification. In reality, the "action" mentioned by Mr. Gould was limited to "request[ing] that the company include the subject on the agenda for its next meeting"—no votes were taken and no recommendations on the final outcome of the issue were made on December 21. (*Id.*, Ex. 10 (4/5/18 Gould Dep.) at 529:10-18.)

Plaintiff also distorts the testimony of Ms. Codding, the third member of the Special Independent Committee. The Opposition states, "Codding testified that the SIC approved 'ratification,' explaining that she did not distinguish between the process or fact of 'ratification' and the merits of the two 'ratification' decisions (that defendants claim were made at the December 29, 2017 Board meeting)." (Opp. at 7.) Once again, that is not what Ms. Codding said; nowhere did Ms. Codding state that the SIC "approved" ratification. (*Id.*, Ex. 4 (2/28/18 Codding Dep.) at 205:24-207:4). Rather, the Ms. Codding simply stated that she was "not sure whether there was a distinction in [her] mind" between "the merits of either ratification decision as distinct from the fact of or reasons for ratification." (*Id.*) That Ms. Codding did not distinguish between the "reasons" for ratification as opposed to the "merits" of ratification is not

notable—in plain English, there is no distinction between the two—and does not remotely suggest that the Special Independent Committee as opposed to the full Board approved ratification. Plaintiff's intentional mischaracterization of the deposition testimony of all three members of the Special Independent Committee is egregious, and only serves to emphasize the utter lack of evidence he can muster to establish a genuine disputed issue of material fact.

C. The Directors Who Voted in Favor of Ratification at the December 29 Meeting Constitute a Majority of the Board and Are Independent as a Matter of Law

There is no dispute that, on December 11, 2017, the Court determined that Plaintiff failed to raise a genuine issue of triable fact as to the disinterestedness and/or independence of Directors Wrotniak, Codding, McEachern, Kane, and Gould, and entered summary judgment in their favor. (*See* Helpern Decl. Ex. A (12/29/17 Notice of Entry of Order).) These are the same five directors, constituting a majority of the Board, who voted in favor of ratification at the December 29, 2017 Board meeting. Plaintiff does not and cannot offer any reason why the Court's prior determination of these directors' independence, which was made after years of discovery, briefing, and hearings, should be disregarded when it comes to ratification.

Plaintiff directs the Court to the *DISH Network* case, ostensibly to invalidate the Court's prior independence determinations. But *DISH Network* and its burden-shifting "formula for evaluating the independence of an SLC" relate only to a Special Litigation Committee's recommendation to dismiss a derivative suit. 401 P.3d at 1090. As already discussed, the ratification decisions at issue here were the result of a vote of RDI's full Board of Directors. Moreover, even under the standard set forth in *DISH Network*, summary judgment would be appropriate. In the context of a Special Litigation Committee's recommendation to dismiss a derivative suit, the *DISH Network* court held that, "as a matter of first impression, courts should defer to the business judgment of an SLC that is empowered to determine whether pursuing a derivative suit is in the best interest of a company where the SLC is independent and conducts a good-faith, thorough investigation." Here, the Court has *already determined* that every Board member who voted in favor of ratification is independent. That decision is now the controlling law of this case, this Court has certified it as "final" pursuant to NRCP 54(b), and the question of

directorial independence is no longer at issue in these proceedings—it is now before the Nevada Supreme Court and cannot be undone simply because Plaintiff is unhappy with it. These same Board members conducted good faith and thorough investigations, as established by deposition testimony and meeting minutes that are entirely unrebutted by Plaintiff (and discussed in more detail below). Accordingly, no evidentiary hearing is necessary or supportable; summary judgment in favor of the remaining defendants is appropriate.

III. THE BOARD PROPERLY EXERCISED SOUND BUSINESS JUDGMENT IN REACHING ITS DECISIONS REGARDING RATIFICATION

A. The Directors Who Voted on Ratification Informed Themselves of Relevant Facts, as Reflected by the Undisputed Evidence

Every director who voted in favor of ratification took steps to inform themselves of relevant facts and issues, including by reviewing the board book that was circulated prior to the December 29 meeting. (*See* Helpern Decl. Ex. B (December 29 Minutes discussing preparation by Board members for that meeting).) This evidence is undisputed.

Recognizing this, Plaintiff's Opposition instead takes jabs at the ratification process though unsupported, speculative argument and by selectively quoting—and, as already discussed, wholly misquoting—the deposition testimony of his fellow directors. These jabs are themselves puzzling. For example, Plaintiff criticizes certain directors for not reading transcripts of depositions in this case prior to voting on ratification (*see, e.g.*, Opp. at 12 (discussing Codding); Opp. at 14 (discussing Wrotniak), but he then incongruently criticizes other directors for supposedly having this ongoing litigation in mind when considering ratification (*see* Opp. at 10 (discussing Gould); Opp. at 11 (discussing McEachern)). It appears that, in Plaintiff's eyes, nothing his fellow directors considered in connection with ratification was ever going to be proper, yet Plaintiff himself has refused to offer his own written or oral testimony about what matters he considered when objecting to ratification, despite being provided ample opportunity at the December 29, 2017 full Board meeting.

And, of course, Plaintiff himself is completely silent on what occurred at the December 29 Board meeting or what he did to inform himself of the issues up for consideration, even though he was in attendance, cast a vote, and was given full opportunity to ask questions and

address the Board. Plaintiff has not supplied a declaration, nor was he willing to be deposed. In fact, in order to avoid a deposition at all costs, Plaintiff (through his counsel) stipulated that he would not offer any written or oral testimony regarding the ratification process or meeting, stating: "**Based on the deposition testimony and documents provided by defendants, we do not intend to offer testimony by Mr. Cotter about what happened regarding the ratifications at the December 29 telephonic board meeting, including the content of discussions, the accuracy of minutes and the reasons he voted against the ratifications.**" (*See* Helpern Decl. Ex. G (correspondence between counsel regarding Plaintiff's deposition) (emphasis added).) Plaintiff's silence confirms he does not and cannot dispute the accuracy of the detailed minutes describing the December 29, 2017 meeting or the diligent, good faith efforts undertaken by his fellow directors to inform themselves of the issues. Given that Plaintiff *could have* testified about the December 29, 2017 meeting but *chose not to*, his unsupported allegations about purported shortcomings in the ratification process have no weight.

Defendants, on the other hand, have testified under oath about the steps they took to inform themselves regarding the relevant facts and properly exercise their business judgment. For example, Ms. Codding and Mr. Wrotniak—who were not members of the Board when the now-ratified decisions were originally made—spent time familiarizing themselves with the issues. Mr. Wrotniak testified that he voted to ratify after "receiving the board book, after reading it and after considering it very carefully." (*See* Exh. 1 attached hereto (3/6/18 Wrotniak Dep. Tr.) at 53:6-14). He "thought a lot" about "[t]he contents of the board package" in advance of the December 29 meeting. (*Id*. at 44:23-45:3). In voting to ratify Plaintiff's termination as CEO, Mr. Wrotniak "relied on the minutes of the meetings leading up to his termination and my firsthand experience with him at the board level," including "[h]is temperament, his unwillingness to make decisions, his what I interpreted as his lack of leadership skills . . . [and] the aggressive way that he deals with people on the board. I also interpreted as his lack of vision . . . He's often rude." (*Id*. at 56:17-58:4). Similarly, Ms. Codding testified that she spent "several hours" reviewing the Board package prior to the ratification vote. (*See* Exh. B attached hereto (2/28/28 Codding Dep. Tr.) at 200:20-201:6). In Ms. Codding's words: "I considered the

two years that I've spent on the board with interacting with Jim Cotter, Jr. I considered the documents that I've read. I've considered the conversations that I've had with Jim Cotter, Jr., and myself. I've considered conversations that I've had with other directors, and came to my own conclusion about what would be in the best interests of all shareholders of Reading." (*Id*. at 210:23-211:16). None of this testimony is in dispute. Nor is there any dispute about the extensive discussion about relevant matters that took place at the December 29, 2017 Board meeting, as embodied in the meeting minutes. All evidence shows that the Board engaged in an adequate process prior to voting on ratification, and Plaintiff has not provided any basis why their business judgment should be questioned or second-guessed.

B. The Board's Consultation With Greenberg Traurig Does Not Somehow Invalidate the Ratification Vote

In his Opposition, Plaintiff makes much of the fact that directors received advice from Company counsel regarding ratification, suggesting that this alone voids the ratification vote and defeats summary judgment. Plaintiff is incorrect, again relying on and misconstruing various inapposite authorities. As he does throughout the Opposition, Plaintiff cites a series of cases that relate specifically to the process engaged in by a *special committee* of a board of directors *whose independence is in question*. Neither of those circumstances exist here. The ratification vote was undertaken by RDI's full Board of Directors, and the Court has already determined that every director who voted in favor of ratification is independent. Therefore, the cases cited by Plaintiff are irrelevant.

For example, in *Gesoff v. IIC Indus., Inc.*, 902 A.2d 1130 (Del. Ch. 2006) (*see* Opp. at 24), the Delaware Court of Chancery assessed the independence of a special committee formed to consider a parent-subsidiary merger and did so under an entire fairness standard, noting the troubling fact that the special committee used the same financial advisor as the parent company and "the financial advisor with the dual role was motivated by an incentive fee structure to close the deal on behalf of the full board, thus further splitting its loyalties." *Id*. at 1147. Here, the business judgment rule applies, not the entire fairness standard, and Plaintiff has not alleged (nor could he) that Company counsel obtained some kind of incentive fee in

connection with the ratification decision. Plaintiff also relies on *In re Oracle Sec. Litig*., 829 F. Supp. 1176, 1187 (N.D. Cal. 1993) (*see* Opp. at 24), which considered whether to approve the termination of a derivative suit by a special settlement committee of the board of directors, not (as here) a vote by a full board of directors to ratify prior decisions. Moreover, the *Oracle* court applied the *Zapata* standard used by Delaware courts (*id*.); this standard has been explicitly rejected by the Nevada Supreme Court. *DISH Network*, 401 P.3d at 1087-88. Similarly, Plaintiff's reliance on *In re Par Pharm., Inc. Deriv. Litig*., 750 F. Supp. 641 (S.D.N.Y. 1990) (*see* Opp. at 24), is misplaced. There, the court evaluated the determination of a Special Litigation Committee to dismiss a derivative action. The work of the Special Litigation Committee was found to be lacking, "most starkly reflected in the Committee's position that" the derivative action would conflict with the company's other litigation positions, which did not reflect a proper evaluation of the merits of the pending derivative claim. *Id*. That analysis is irrelevant here.

That members of the Board sought advice from Company counsel and may have considered the potential impact of ratification on this derivative litigation does not show bad faith on their part—*it shows the opposite*. It would be unfathomable for a member of *any* board of directors, acting in good faith, to decline to seek advice from counsel regarding a vote to ratify a decision that has been the subject of extensive litigation. Nevada law expressly permits corporate directors to seek out and rely on advice from counsel in connection with their decision-making. Moreover, every member of RDI's Board is familiar with this derivative lawsuit and Plaintiff's propensity to add new allegations to his complaint any time the Board makes a decision he dislikes. Further, every member of RDI's Board—besides Plaintiff—believes this lawsuit is without merit, views Plaintiff as a vexatious litigant, and considers this litigation to be an unnecessary drain on substantial Company resources. In their view, the Company and its stockholders would benefit from this action being resolved against Plaintiff. Accordingly, it is neither improper nor surprising that, if given the choice, they would want this lawsuit over with. RDI's Board is not somehow required to support a lawsuit attempting to reverse decisions that independent directors believe were appropriately made in the best interests of the Company and

its stockholders; to the contrary, they have a fiduciary duty to minimize the significant ongoing damage being caused by such a suit.

IV. PLAINTIFF HAS NOT MET HIS BURDEN OF SHOWING WHY RULE 56(f) RELIEF IS APPROPRIATE

"[A] motion for a continuance under NRCP 56(f) is appropriate ***only when the movant expresses how further discovery will lead to the creation of a genuine issue of material fact***." *Francis v. Wynn Las Vegas, LLC*, 127 Nev. 657, 669 (2011) (quoting *Aviation Ventures, Inc. v. Joan Morris, Inc.*, 121 Nev. 113, 118 (2005)) (emphasis added). Thus, in *J.E. Dunn Northwest, Inc. v. Corus Constr. Venture, LLC*, the Nevada Supreme Court found that the district court did not err in refusing to allow plaintiff to conduct additional discovery because the issues on which the plaintiff sought discovery would not create a genuine issue of material fact with respect to a "threshold inquiry" in the case. 127 Nev. 72, 84 n.7 (2011); *see also PNC Bank, N.A. v. Saticoy Bay, LLC Series 4208 Rolling Stone Dr. Tr.*, 398 P.3d 290 (Nev. 2017) ("Although appellant asked to conduct discovery to determine whether the sale was commercially reasonable, this general request failed to specify what evidence appellant believed additional discovery would yield so as to create a genuine issue of material fact.").

Here, Plaintiff seeks Rule 56(f) relief and yet another trial continuance to review certain documents and re-take the depositions of RDI directors and RDI's in-house counsel. But nowhere does Plaintiff explain what evidence he expects to find that could possibly create a genuine issue of material fact that would justify denying Defendants' Motion for Summary Judgment. The Court already determined that there is no disputed issue of fact regarding the independence of Edward Kane, Doug McEachern, Judy Codding, Michael Wrotniak, or William Gould. Further, there is no dispute about the other relevant facts regarding ratification, which are: (1) Nevada law permits ratification of prior decisions; (2) an independent majority (per the Court's order) of RDI's Board of Directors voted to ratify certain prior Board decisions at issue in this matter; and (3) Plaintiff does not, and cannot, dispute the accuracy of the minutes of the Board of Directors meeting regarding ratification. Plaintiff apparently wants discovery of privileged documents and communications, but there is no reason he should be privy to that—he

is entitled to know of the fact that RDI's directors received advice of counsel, but not the substance of that advice.

Plaintiff's mere speculation that he will discover favorable evidence is not sufficient to grant his request for a continuance and additional discovery. For example, in *Halebian v. Berv*, the Plaintiff in a derivative action requested additional discovery under Federal Rule of Civil Procedure 56(d)—which is analogous to NRCP 56(f))—by "articulating a number of arguments that are constructed from facts already in his possession and that are intended to assail defendants' independence" and asserting that he "expects discovery to uncover other examples of defendants putting the interests of Citigroup before those of the investors." 869 F. Supp. 2d 420, 440-41 (S.D.N.Y. 2012), *aff'd*, 548 F. App'x 641 (2d Cir. 2013). The court determined that in the absence of facts other than the plaintiff's conclusory allegations about the defendants' independence, "plaintiff's confidence that discovery will reveal any evidence favorable to him at all is merely speculation." *Id.* at 441. The plaintiff's "apparent inability to identify the facts that he [sought] with any particularity reveal[ed] that his motion for discovery [was] a *de facto* application for a fishing expedition." *Id.* at 440. The plaintiff did identify with specificity three questions on which he sought discovery (relating to defendants' compensation as trustees). *Id.* at 442. However, the court found that "none of the possible answers to these questions would raise a dispute of material fact bearing on the only possibly relevant legal issue: whether the defendants are independent under the law of Massachusetts," and therefore discovery on those issues would "serve no purpose other than to delay these proceedings[.]" *Id.*

So too here. Because the Court has already found that there is no disputed issue of fact regarding the independence of the directors who participated in the ratification vote, nothing that could possibly turn up in discovery would raise a dispute of material fact bearing on the only possibly relevant legal issue. The fact that Plaintiff would like to relitigate the matter of these directors' independence ad nauseam does not amount to a disputed issue of fact. His conclusory allegations that discovery will reveal a lack of independence is mere speculation, showing that he seeks nothing more than a chance to keep this case alive without ever proceeding to trial.

CONCLUSION

For the reasons set forth above, Defendants respectfully request that the Court grant their Motion for Summary Judgment.

Dated: June 15, 2018

COHENJOHNSONPARKEREDWARDS

By: /s/ H. Stan Johnson

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Attorneys for Defendants Margaret Cotter, Ellen Cotter, and Guy Adams

CERTIFICATE OF SERVICE

I hereby certify that, on June 15, 2018, I caused a true and correct copy of the foregoing **ELLEN COTTER, MARGARET COTTER, AND GUY ADAMS' REPLY IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT** to be served on all interested parties, as registered with the Court's E-Filing and E-Service System.

/s/ *Sarah Gondek*
An employee of Cohen|Johnson|Parker|Edwards

Exhibit A

Exhibit A

DISTRICT COURT
CLARK COUNTY, NEVADA

----------X

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

PLAINTIFF,

Case No: A-15-719860-B

DEPT. NO. XI

-against-

Consolidated with

Case No: P-14-082942-E

DEPT. NO. XI

MARGARET COTTER, ELLEN COTTER, GUY ADAMS, EDWARD KANE, DOUGLAS McEACHERN, TIMOTHY STOREY, WILLIAM GOULD, and DOES 1 through 100, inclusive,

DEFENDANTS.

----------X

DATE: March 6, 2018

TIME: 9:17 A.M.

VIDEOTAPED DEPOSITION of the Non-Party Witness, MICHAEL WROTNIAK, taken by the Plaintiff, pursuant to a Notice and to the Federal Rules of Civil Procedure, held at the offices of Lowey, Dannenberg, Bemporad & Selinger, PC, 44 South Broadway, White Plains, New York 10601, before Suzanne Pastor, RPR, a Notary Public of the State of New York.

JOB NO.: 455310

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ALSO PRESENT:

CONNOR EICHENBERG, Videographer

* * *

you received the board package, Exhibit 525?

A. I don't recall.

Q. How long did that call last?

A. Specifically, I don't recall.

Q. Well, can you give it a range? Was it five to ten minutes, three to five hours, something else?

A. Less than an hour.

Q. Where were you when you took that call?

A. In Florida.

Q. When were you in Florida?

A. I go there frequently.

Q. When were you there in the time frame of this telephone call?

A. I flew on the 26th from New York to Florida.

Q. So the 26th was a Tuesday, obviously the day after Christmas for a lot of people. And the 29th, the day of the telephonic board meeting, was a Friday. So it was sometime in that time frame that you had this call with Mr. Ferrario and Mr. Bonner and Ms. Codding?

A. Yes. Must have been.

Q. Other than reviewing the board package, Exhibit 525, what, if anything, did you do to prepare for the telephonic board meeting of December 29, 2017?

A. I thought a lot.

Q. About what?

A. The contents of the board package.

Q. How much time did you spend reviewing Exhibit 525?

A. I don't recall.

Q. When did you review it?

A. We had a compensation committee meeting prior to the board meeting, the day before. And I had to prepare for that. And much of what was contained in here was in that, and I was ready for that meeting.

Q. So what had happened is the compensation committee approved certain matters on the 28th, and those same matters were submitted to the full board on the 29th, right?

A. Yes.

Q. So setting aside the compensation committee matters, meaning the subjects that you prepared for and discussed at the compensation committee meeting on the 28th and again at the telephonic board meeting on the 29th, how much time did you spend looking at Exhibit 525, meaning with respect to the ratification matters?

A. I don't recall.

Q. Let's go to page production in the lower

earlier.

Q. Otherwise it's all news to you?

A. Yes, correct.

Q. It's a matter of how much time we spend on it. We've just covered it. That's why I asked that.

So directing your attention back to December of 2017, when did you decide to -- well, on December 29 at the telephonic board meeting you voted to ratify the termination of Jim Cotter, Jr. as president and CEO, correct?

A. Yes.

Q. When did you decide to do that?

A. Between receiving the board book, after reading it and after considering it very carefully.

Q. And by the board book you're referring to Exhibit 525?

A. Is that the name of this exhibit?

Q. Yes.

A. How you keep those numbers straight is beyond me, but okay.

Q. Well, actually, Mr. Wrotniak, ordinarily we have a stamped copy for you but we just marked it at a deposition last week, so we don't. But Mr. Searcy and I both know that is what it is. And that's why I call it that.

So when you say boardroom discussion, as you mentioned, nothing more, you're referring to your prior testimony, is that correct?

A. Yes.

Q. Did you ever hear or learn or were you ever told, including by Bill Gould in particular, that either he or then RDI director Tim Storey first learned that the possible termination of Jim Cotter, Jr. was going to be taken up on May 21, 2015, only a couple days or days beforehand?

A. No.

Q. When you voted on December 29 to ratify the decision concerning the termination of Jim Cotter, Jr. as president and CEO of RDI, why did you do so?

A. I was asked to take a vote, and it was my decision.

Q. Why did you vote yes, is the question I'm asking? When you voted on December 29 affirmatively to ratify the decision on the termination of Jim Cotter, Jr. as president and CEO of RDI, why did you do so?

A. I relied on the minutes of the meetings leading up to his termination and my firsthand experience with him at the board level.

Q. When you say your firsthand experience with him at the board level, you mean with him as the

former president and CEO acting as another director?

A. As -- I -- yes, as a director of RDI.

Q. You never had an opportunity or occasion to interact with Jim Cotter, Jr. as president and CEO of RDI, right?

A. Yes.

Q. Yes, correct?

A. Correct.

Q. And when you refer to your firsthand experience with him as a director, what about that experience factored into your affirmative vote to ratify his termination as president and CEO of RDI?

A. His temperament, his unwillingness to take decisions, his what I interpreted as his lack of leadership skill.

Q. When you say what you interpreted as lack of leadership skill, is that referring to his unwillingness to take decisions, or something else or both?

A. I'm there referring to the aggressive way that he deals with people on the board. I also interpreted as his lack of vision.

Q. When you say "aggressive way," what does that mean? Is he forward, direct, rude, or something else?

A. He's often rude.

Q. When you say "rude," what do you characterize as rude?

A. Significantly less than polite.

Q. Ed Kane has been rude at board meetings, correct?

A. I think you could interpret that as being rude.

Q. Particularly directed at Jim Cotter, Jr., right?

A. Yes.

Q. Doug McEachern has been rude with Mr. Cotter, Jr. also, correct?

A. I don't recall.

Q. What about Guy Adams, has he ever been rude in your presence?

MR. SEARCY: Objection; vague.

A. I don't recall.

Q. Margaret Cotter, she's been rude at board meetings, right?

MR. SEARCY: Objection; vague.

A. I'd say no.

Q. Have you ever heard Margaret Cotter be rude to Jim Cotter, Jr.?

A. No. I don't recall.

Exhibit B

Exhibit B

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, ELLEN COTTER, GUY ADAMS, EDWARD KANE, DOUGLAS McEACHERN, TIMOTHY STOREY, WILLIAM GOULD, and DOES 1 through 100, inclusive,	)	Case No. P-14-082942-E
	)	Case No. A-16-735305-B
Defendants.	)	Volume II
and	)	
READING INTERNATIONAL, INC., a Nevada corporation,	)	
Nominal Defendant.	)	

(Caption continued on next page.)

VIDEOTAPED DEPOSITION OF JUDY CODDING

Wednesday, February 28, 2018

Los Angeles, California

REPORTED BY:

GRACE CHUNG, CSR No. 6426, RMR, CRR, CLR

FILE NO.: 453340-B

T2 PARTNERS MANAGEMENT, LP., a Delaware limited partnership, doing business as KASE CAPITAL MANAGEMENT, et al.,

Plaintiff,

vs.

MARGARET COTTER, ELLEN COTTER, GUY ADAMS, EDWARD KANE, DOUGLAS McEACHERN, WILLIAM GOULD, JUDY CODDING, MICHAEL WROTNIAK, CRAIG TOMPKINS, and DOES 1 through 100,

Defendants.

and

READING INTERNATIONAL, INC., a Nevada corporation,

Nominal Defendant.

Videotaped Deposition of JUDY CODDING, taken on behalf of Plaintiff, at 1901 Avenue of the Stars, Suite 600, Los Angeles, California, beginning at 2:22 a.m. and ending at 4:38 p.m., on Wednesday, February 28, 2018, before GRACE CHUNG, CSR No. 6246, RMR, CRR, CLR.

Q. -- 2017?

A. Right.

Q. So you reviewed that board package in advance of the December 29 board meeting; right?

A. I did.

Q. To your right, next to the bottle of water, there's a small stack of documents, on the top of which is a document that's been marked previously as Exhibit 525. Take a look at that and let me know if you recognize it.

(Pause in proceedings.)

A. Yes.

Q. "This" -- "this" being Exhibit 525 is the board package you read in advance of the December 29, 2017, board meeting?

A. Yes.

Q. When did you read it?

A. The day or two before the September [sic] 29th meeting.

Q. Well, I direct your attention, Ms. Codding, to the first page of Exhibit 525.

Do you see that it appears to be a December 27th, 5:30 p.m. email from Laura Batista to you and others?

A. Yes.

Q. Does that refresh your recollection that you received the board package by email on December 27th, about 5:30 p.m.?

A. Yes.

Q. How much time did you spend reviewing it?

A. Several hours.

Q. Did you -- prior to the December 29, 2017, board meeting, did you have any discussions with anybody about the board package or any of the contents of the board package?

A. Not between September 27th and September 29th.

MR. TAYBACK: You mean December?

A. I mean December. Sorry.

BY MR. KRUM:

Q. Was there anything in Exhibit 525 that you viewed as providing you information that would enable you to make a decision about anything which information you did not know or possess previously?

MR. TAYBACK: Objection. Vague, "make a decision about anything."

You may answer. You can answer. I -- I just -- I can make an objection, but unless I instruct you not to answer, you should still answer the question.

individually?

A. Yes.

Q. And you understand that they represent -- represented you in connection with this derivative lawsuit; right?

A. Yes.

Q. And you understand Mr. Tayback and any of his colleagues or anyone else at Quinn Emanuel to represent you in any context or for any purpose other than this derivative lawsuit?

A. I think that's what they represent us for.

MR. KRUM: So you weren't here this morning, Chris. I asked the minutes for this meeting be produced. And I don't know what Marshall and Mark have done, but that request stands.

Q. What did you do, Ms. Codding, if anything, other than review Exhibit 525 to prepare yourself for the December 29, 2017, board meeting?

A. For that specific meeting?

Q. Right.

A. Nothing.

Q. Now, directing your attention to the ratification decision you've identified earlier concerning the termination of Jim Cotter, Jr., as

president and CEO, you have that in mind?

A. Yes.

Q. You voted to ratify that decision; correct?

A. I did.

Q. And on what basis did you do so, meaning what information did you consider?

A. I considered the two years that I've spent on the board with interacting with Jim Cotter, Jr. I considered the documents that I've read. I've considered the conversations that I've had with Jim Cotter, Jr., and myself. I've considered conversations that I've had with other directors, and came to my own conclusion about what would be in the best interests of all shareholders of Reading.

Q. As of the date you voted?

A. Yes.

Q. Did you come to the conclusion as to what was the appropriate decision as of the time it was made in 2015?

A. The only thing that I had to go on, since I was not a part of those decisions, was certainly reading the minutes. I spoke with the independent board members about it over a period of time as to

why Jim Cotter, Jr., was removed. Understood the thinking and rationale for that decision.

Q. So you've now twice referred to communications with other board members. With which board members did you have such communications?

MR. TAYBACK: Object to the premise of the question about how many times she's referenced it.

You can answer the question, who you spoke to.

A. I spoke to Bill Gould, Doug McEachern, Ed Kane, Guy Adams, Mike Wrotniak, although he wasn't there either, but we spoke about what our understandings have been. I spoke with Jim Cotter, Jr., Margaret Cotter, and Ellen Cotter.

Q. Were any of those conversations in December of 2017?

A. They've gone on for a long period of time, so I -- I can't tell you whether they were or not.

Q. Well, prior to December of 2017, and excluding your prior deposition in this case, on what occasion, if any, in 2017, did you have to consider the subject of termination of Jim Cotter, Jr.?

A. I didn't have to consider it until

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DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiff,

v.

MARGARET COTTER, et al,

Defendants.

In the Matter of the Estate of

JAMES J. COTTER,

Deceased.

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

Coordinated with:

Case No. P 14-082942-E
Dept. XI

Case No. A-16-735305-B
Dept. XI

RDI'S COMBINED OPPOSITION TO COTTER, JR.'S MOTION TO COMPEL AND MOTION FOR RELIEF BASED ON NONCOMPLIANCE WITH COURT'S MAY 2, 2018 RULINGS

Hearing Date: June 19, 2018
Hearing Time: 8:30 am

JAMES J. COTTER, JR.,

Plaintiff,

v.

READING INTERNATIONAL, INC., a Nevada corporation; DOES 1-100, and ROE ENTITIES, 1-100, inclusive,

Defendants.

Nominal Defendant Reading International, Inc., a Nevada corporation, by and through its undersigned counsel of record, hereby submits its Combined Opposition to Cotter, Jr.'s Motion to Compel and Motion for Relief based on alleged noncompliance, "Opposition"). This Opposition is based upon the files and records in this matter, the attached memorandum of authorities, and any argument allowed at the time of hearing.

DATED this 18th day of June, 2018.

GREENBERG TRAURIG, LLP

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MEMORANDUM OF POINTS AND AUTHORITIES

This Court needs to put an end to Cotter, Jr. relentless attempts to injure RDI and its public stockholders. This Court has already been more than generous in indulging Cotter, Jr.'s sham discovery disputes. but Cotter, Jr. will always want more, no matter how many times RDI dips into its pockets to pay for more depositions of the same witnesses, pointless data collection, and hours of document review to find communications that are not only privileged, but do nothing more than confirm what RDI has already freely admitted with respect to the board actions that occurred on December 29, 2017. Indeed, he is demanding *more* even as while he complains that he has already been provided too many documents to review before trial. Indeed, his current sequential filing of motions for relief demonstrates that he will never be satisfied with RDI's responses to his discovery requests, ***because discovery is not what he wants.*** Instead, all Cotter, Jr. wants is to delay the trial. His quest for phantom discovery is nothing more than an excuse for him to put off the inevitable revelation that, as a matter of law, he cannot prove his case.

Significantly, his latest request to delay comes more than three years after he filed this action, and is based on demands for still more pointless discovery --at even more huge expense to RDI. In that three-year interim, RDI exhausted its insurance and has been forced to pay millions of dollars from the company coffers to defend against a suit brought by an individual who purports to act on the company's behalf, yet is ultimately seeking only to have a job restored to him. Indeed, Cotter, Jr. has abandoned all pretense that he seeks any monetary recovery for RDI, because it is now known that ***he will not present any expert witness to testify as to damages.***[1] Accordingly, it cannot be disputed that this case is, as RDI has always contended,

[1] Without a damages' expert, Cotter, Jr. will be unable to present evidence that RDI suffered any harm from *any* of the challenged transactions, regardless of their approved by the Independent Directors. Indeed, even as to transactions involving fixed sums, such as the option exercise issue, or compensation paid to directors, he cannot show any harm to RDI. Specifically, RDI received Class A Non-Voting Stock equal in value to the based on the trading price of the stock that day. As RDI received value for value, no damage finding could be sustained on this basis. As to the challenges to director payments and salaries, all transactions involving compensation to directors are not only presumed fair under NRS 78.140(5), but were approved by a majority of Directors that this Court has determined were independent, with knowledge of the claimed interest of the remaining defendants. Additionally, without expert testimony, Cotter, Jr. cannot hope to overcome evidence that compensation paid was in the low range for industry. Accordingly, under NRS 78.140(2)(a), Cotter, Jr. has no hope that damages could be awarded to RDI

nothing more than an effort by Cotter, Jr. to get his old job back, and failing that (as is inevitable), to require RDI to spend as much money as possible and to maximize the distraction to the RDI directors and management team.

Given this stark reality, Cotter, Jr.'s contentions regarding his need for more discovery related to the December 29, 2017 ratification is absurd. Cotter, Jr. appears to believe that any recent ratification of the board actions taken in 2015 must necessarily focus on the motivations of those directors who approved the 2015 actions. But that is not what a ratification is. Instead, a ratification is the present determination by the current board , in the exercise of their business judgment and utilizing a power provided to them by the Nevada Legislature, that the prior *decisions* were *or* are in the best interests of the company, whether or not directors who are alleged to lack independence participated in those prior decisions.

Here, as discussed below, each of the five RDI directors who voted to ratify the two prior decisions have testified as to their reasons for approving of those prior decisions. They have also testified that they received information and advice on the topic from counsel; that they reviewed the board materials provided to them; and that some of them had conversations with each other outside the December 29, 2017 meeting. Remarkably, Cotter, Jr. himself has recounted all the evidence he has in his possession, including the testimony of the directors and others; the board materials provided; emails and calendar invitations confirming meetings and discussions, and even more. And, as will be discussed in greater detail below, RDI has even taken the extraordinary step, under the terms of an agreement that he will not contend that granting such access constitutes a waiver as to other privileged documents, of permitting Cotter, Jr. to have access to privileged communications among relating to this issue.

And still, Cotter, Jr. insists he needs more. He needs more time to review the documents he has been provided – even though, if he reviewed said documents under the same timeline he forced upon RDI, such review would have been finished *days ago*. He needs more to time conduct still more pointless depositions so he can use a privilege log to supposedly jog the

based on these challenged transactions.

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memory of witnesses about privileged conversations. He just needs *time* before this case comes to a conclusion. He wants to postpone as long as possible an adverse determination in his case, so as to not have to deal with such a judgment in his ongoing arbitration (scheduled to be heard in October) or his ongoing endevours (now before the California Court of Appeals) to force a change of control of RDI.

But no amount of *time* is going to solve Cotter, Jr.'s real problem. Indeed, no amount of time, and no amount of discovery will going to turn his personal resentment and desire for vengeance stemming from his dismissal by RDI into a viable derivative claim that could yield any benefit to RDI. He is not presenting any proof of damages, and ratification of his termination effectively precludes equitable relief (his termination having now been determined to have been in the best interests of RDI by an undeniably independent Board of Directors). But giving him yet more time, and allowing him yet more discovery, will certainly add to the harm he has already caused, because RDI has to pay for all of this. And so, RDI requests this Court to please to put a stop to Cotter, Jr.'s assault on the company his father built.

REVIEW OF RELEVANT ISSUES AND EVENTS IN THE THIS LITIGATION

The Reality of the Merits of Cotter, Jr.'s Case.

It is critical that this Court understand precisely what Cotter, Jr.'s case is and always has been about, because in so doing, the Court will realize how pointless Cotter, Jr.'s complaints regarding discovery related to ratification are. This Court ruled that the Directors Codding, Gould, Kane, McEachern, and Wrotniak (the "Independent Directors") were not "interested" in the decisions that Cotter, Jr. challenged, and accordingly, the business judgment rule applies as to the decisions. That decision is final for purposes of the coming trial, as Cotter, Jr. requested and received Rule 54(b) certification, and appealed that decision. Accordingly, due to Cotter, Jr.'s actions, this Court cannot revisit that ruling with respect to the remaining issues.

This Court's decision to grant judgment to the five directors must, as a matter of law, moot Cotter, Jr.'s challenges as to all decisions in which those directors participated. The decision means that, except as to two specific decisions by directors, all decisions challenged by Cotter, Jr. were approved by an independent majority of RDI directors. Therefore, under Nevada

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law, those decisions must be deemed "valid director transactions" that cannot be subject to challenge on the basis of purported participation by interested directors. NRS 78.140(2)(a).

And so now there are but two remaining challenged transactions in this case – the two that had not, (prior to ratification) been approved by a majority of undisputedly independent directors: 1) the Compensation Committee's decision to permit the Estate to pay the exercise price for options to acquire stock with other stock, instead of cash (the "Stock Transfer"),[2] which was approved by Independent Director Kane, and by Purported Interested Director Adams; and 2) the termination of Cotter, Jr. as CEO (the "Termination"), which had been opposed by two Independent votes against[3] and approved by the vote of two Independent Directors, plus, three purportedly interested Directors.

As a matter of law, Cotter, Jr. cannot prevail on his claims that any of the Remaining Defendants breached their fiduciary duties, or that the Cotter sisters aided and abetted a breach of fiduciary duty, because (a) a majority of the Board have been dismissed and (b) even if this were not the case, he cannot show any damage to the corporation, which is a necessary element of these torts in Nevada. Indeed, he never had any chance of showing that approval of the Stock Transfer was a breach of fiduciary duty, because there is no dispute that the value of the stock conveyed to RDI to pay the exercise price was based on the fair market value of such shares. And Cotter, Jr. has no means to present evidence of any harm to RDI from his termination without presenting expert testimony. Accordingly, there is not even the theoretical possibility of any monetary recovery to RDI in what Cotter, Jr. continues to pretend is a derivative action. The only real issue for Cotter Jr. is the impact of this litigation on his pending Employment Arbitration and attempts to force a sale of control of RDI.

The Ratification Issue

[2] Insofar as RDI is aware, Cotter Jr., did not, at the time of the option exercise, contest anything about the stock options other than the use of Class A stock (as specifically permitted by the Stock Option Plan) with the approval of the Compensation Committee to pay the exercise price. It is only recently, during the course of discovery, that Cotter, Jr. began to suggest that there was an issue regarding the ownership of the options. However, at the time the option was exercised, this Court has already indicated that assets held by the estate had not poured over to the,Trust, by asserting that Estate held the right to to vote the stock. the Estate continued to hold stthis Court

[3] Director Storey's independence has not been judicially determinate, although he was voluntarily dismissed from the litigation).

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It is with the knowledge of the hopelessness of his case that Cotter, Jr. has seized upon his phantom theories regarding the December 29, 2017 ratification of the two remaining board decisions. Although he has yet to clearly articulate the relevance of the discovery that he seeks, it appears Cotter, Jr. believes if a ratification of a challenged board decision is cited in briefings seeking summary judgment of claims that challenge the ratified transaction, then somehow that ratification can have no effect. There is, of course, no support for such a belief. Nevada law expressly makes both approval and *ratification* of purported interested transactions by shareholders, or by independent directors, a circumstance which negates the possibility of voiding the transaction. Accordingly, no equitable relief can be granted here. NRS 78.140(2)(a). Given that *ratification*, which by its very nature involves a secondary approval of a previous decision, is an express statutory basis for shielding board decisions from challenge, use of ratification to resolve any doubts about the whether the challenged decision was and is in the company best interests is entirely proper.

Following the December 29, 2017 ratification, this Court allowed Cotter, Jr. to engage in limited discovery related to that event. In addition to duplicate requests made during the actual discovery period, Cotter, Jr. asked for documents related to the ratification action as well anything related to legal advice provided on the issue (which requests ultimately underlie Cotter, Jr.'s two current motions). Cotter, Jr. also took the depositions of the five Independent Directors. During their depositions, each of them testified as to their reasons for voting as they did in support of ratification. Two of them, Kane and McEachern, had, of course, previously voted in favor of the decision (an action that, pursuant to this Court's decision, must be presumed to have been in good faith). They had no reason to change their vote. Director Gould had previously voted against the termination, a decision that had never been based on faith in Cotter, Jr.'s abilities). When asked why he now voted to ratify the decision he had previously opposed, he said it was in the best interest of the company to do so. He further explained that while he had, in 2015, been against the termination, that was because 1) the termination vote was raised shortly before the expiration of the time that had been allowed for Cotter, Jr. to show improvement, and 2) because he feared that Cotter, Jr. would react badly. Those concerns were now moot in 2017.

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But in 2017, the effect of the ratification on the litigation was a factor in favor, as well as his concern that Cotter, Jr was using the litigation to present his personal interest, and the litigation was costing the company a lot of money and causing members of management to be distracted from their business. **Exhibit A, Deposition of Gould, 543:17-546:5.** Directors Codding and Wrotniak's reasons for voting in favor of ratification included their experience with working with Cotter, Jr. as a Director of RDI.

Nothing in this testimony, or in any of the other evidence he gathered through the costly discovery he forced upon RDI, suggests that any Director viewed the ratification question as involving anything other than whether the specific issues addressed – i.e., permitting a stock option to be exercised through the payment of stock rather than funds, or the approving the termination of Cotter, Jr. as CEO and president of RDI, were in the best interest of RDI. Specifically, through this discovery, as well as through the evidentiary hearing held on May 2, 2017, in addition to obtaining testimony about the participants' reasons for voting, Cotter, Jr. obtained information that the issue of ratification was presented to Director Gould by the RDI's counsel; that RDI's counsel spoke with the Special Independent Committee("SIC") and other board members on the issue; that RDI counsel drafted the email that Director Gould sent to Ellen Cotter. None of this negates that the Independent Directors' decision was based on their view of the best interests of RDI.

Cotter, Jr. insistence that he needed still more discovery this spring was essentially based upon testimony from Mr. Gould regarding events that occurred at a December 21, 2017 meeting of the Special Independent Committee. The Minutes of that meeting were provided in redacted form, and accordingly, Cotter, Jr.'s counsel leaped to conclusions about had occurred during it.[4] Cotter, Jr was unsatisfied by the privilege log and documents produced by the parties, and demanded more documents and depositions of more than half a dozen persons, and insisted that he would not have time sufficient to prepare for trial. This Court partially granted his request,

[4] This Court has reviewed those the unredacted minutes in camera and determined that the redactions of the same were properly taken on the basis of attorney client privilege. However, based on the review, the Court is aware that Cotter, Jr.'s speculation as to what occurred at that meeting is inaccurate.

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ordering the production of all documents that reference any ratification of the termination of Cotter, Jr. at any time (and thus, all references after the ratification had occurred were also included), as well as documents related to the December 21, 2017 SIC meeting and the December 29, 2017 board meeting, including even documents relating to the scheduling of such meetings. The Court noted that privilege would likely be asserted for many documents, and thus required an additional privilege log.

RDI's Compliance with the Court's Order

Hoping to put an end to Cotter, Jr. incessant demands, RDI asked for Cotter, Jr.'s input to determine appropriate search terms and collection sources for the additional documents that ordered produced. After numerous excuses for not being able to immediately confer, when Plaintiffs' counsel was finally willing to participate in discussions, he insisted on a very broad scope, thus ensuring that both the harvesting of the documents, and the subsequent review of them would be as onerous and burdensome as possible and therefore, likely to take considerable time.

And indeed, so it proved once the search terms were finally agreed upon on May 8, (which required additional guidance from the Court). At that point, RDI had to send venders and IT personnel to collect data from the multiple physical sites, including from the Independent Directors, Ellen Cotter and RDI employees, and from certain counsel. Such data then needed to be searched using Cotter, Jr.'s broad search terms, and then uploaded into the Relativity program so that RDI's counsel could determine responsiveness and privilege. The data collection and compilation was complete on May 18, and the review process immediately began.

It is here that Cotter, Jr.'s malicious and self-interested desire to delay things, shown by his insistence on such broad search terms, had the greatest impact. The number of ***documents*** (**not pages**) that the overbroad search terms and time periods from all the demanded sources was **17,967**. RDI was therefore forced to foot the bill as two attorneys, and three paralegals spent a combined total of ***226.9 hours*** reviewing the documents for both responsiveness and for

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privilege.[5] Preparation of the resulting privilege log alone took an additional 10 hours. RDI produced the documents and privilege log on May 30 and 31.

Cotter, Jr.'s Current Motions seeking to Delay the Trial.

Of course, since Cotter, Jr.'s true goal was delay, not document production, once he received those documents, he had to protest again by filing the subject Motion to Compel, which was filed eight days after he had received the production. Given that Cotter, Jr.'s complaint is that he has not been able to conduct sufficient discovery, it is remarkable that Motion actually lists in detail ***the vast quantity of information in Cotter, Jr.'s possession that he deems relevant to his bizarre theory that RDI is somehow precluded from preventing ratification of past decisions that the Board of Directors believe to have been and/or to be in the company's best interests.*** In that Motion, over the course of 6 pages, Cotter, Jr. cites SEC filings; deposition testimony from six different witnesses; documents produced previously; interrogatory responses, and the hearing testimony of Michael Bonner, all of which he points to show, not surprisingly, that RDI, the members of its Board of Directors, its inside counsel, and its outside counsel, had communications regarding ratification. Yet, claiming to be unhappy with the abundance of evidence proving this undisputed point, Cotter, Jr. also includes in his brief inaccurate assumptions and inferences regarding the entries on the privilege logs. For example, he makes inaccurate assumptions regarding what occurred at the December 21, 2017 meeting of the SIC (as this Court is aware, having reviewed in camera the unredacted minutes of that meeting). He similarly makes assumptions about privilege log entries referencing communications among RDI's outside counsel, Craig Tompkins, and/or Ellen Cotter.[6]

Based on the above, Cotter, Jr. now contended that he is entitled to receive privileged documents, apparently contending that communications among Ellen Cotter (i.e., RDI's CEO) and RDI's inside and outside counsel are somehow not privileged. This is apparently based on

[5] Based on these numbers, RDI's team reviewed approximately 79 documents per hour.

[6] Indeed, Cotter, Jr. makes assumptions that communications made in late 2016 and early 2017, long before this Court's dismiss of the Independent Directors made ratification by them a relevant option, as somehow significant. However, pursuant to RDI's subsequent disclosures, Cotter, Jr. is now aware that while such communications were technically responsive under the broad scope of discovery granted, that discussion did not relate to any ratification by board members.

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some concept (not recognized in Nevada) that the delegation of board authority to a committee some renders company counsel unable to engaged in privileged communications with such committee members, even if such communications would be privileged if made in the presence of the entire board. Furthermore, Cotter, Jr. makes this claims despite the fact that the ratification in question was voted on by the all of the Independent Committee members, and not just those who are members of the Special Independent Committee.

Cotter, Jr., argues that in some other jurisdictions attorney/client privilege and attorney work product privilege rules may differ from those of Nevada where a special committee is appointed to "assess the conduct of other members of the board" And then argues that the SIC is such a committee. Of course, since the SIC was not given any such charge, Cotter, Jr,'s reliance is on the privilege jurisprudence has no application here at all. Thus, Cotter, Jr.'s requested relief is absurd on its face. However, to quell any *conceivable* basis to put off the inevitable conclusion of this case by the failure of his claims, whether by dismissal, summary judgment, or jury verdict, RDI offered to produce many of the documents for which privileged had been claimed, if Cotter, Jr. agreed not to argue that such production constituted a waiver of privilege.[7] Upon such agreement, a rolling production began right away.

Since June 8, RDI has produced a total of 501 documents, totaling 6291 pages, i.*e.,* far fewer than the more than 17,000 documents, (100,000 plus pages) that RDI had to review in less than two weeks. If Cotter, Jr. were as diligent as RDI had been in conducting its review of the same documents, his review should take fewer than 7 hours.[8] Indeed, many of the documents

[7] RDI redacted portions of the released documents, and continued to withhold others, such as those involving only counsel, to prevent disclosure of communications and work product beyond the scope of the discovery ordered produced here. Cotter, Jr. has received all documents that RDI deemed possible to provide without irreparably impairing its privilege. Should the Court wish to review any of the retained documents, or the redacted material. RDI is willing to produce them for in camera review.

[8] This assumes 79 documents per hour, which would take approximately 6.3 hours. However, of the 501 documents, only 67 had more than 30 pages. And, if Cotter, Jr. skips, as he logically should, those involving the SEC filings created after the December 29, 2017 ratification and those with duplicates of the Board Materials for the December 29, 2017 board meetings that included not only those needed for the ratification, but also, those related to the other issues decided by the board, then he will need to review only 441 documents, with a total of 1,728 pages, which should take only about 5.5 hours.

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produced are nothing more than outlook calendar invitations for phone conferences, or emails that reference scheduling.

Unsatisfied with the privileged material that RDI graciously provided Cotter, Jr., he also contends that he is entitled to even more. It was in response to that discovery that Cotter, Jr.'s *second* motion was filed - just one business day after he received the first rolling production of what he had demanded In this Motion, he complains that he has received to ***too many*** documents to review prior to responding to the dispositive motions filed on June 1, 2018.[9] And of course, he says he needs to conduct more discovery, including more depositions, for reasons such as the privilege logs entries might jog a witness' memory about their privileged discussions with RDI's counsel. And, therefore, as ever, Cotter, Jr. insists that the trial must be delayed.

In other words, Cotter, Jr. wants this Court to order RDI to spend still more money to pursue an action for which there is no conceivable benefit to RDI. This Court must put a stop to this meaningless process that is nothing more than a means for Cotter, Jr. to continue his assault on RDI.

LEGAL ARGUMENT

Once again, Cotter, Jr. will say anything to further his efforts to delay the trial in this matter. For example, he even contends that RDI and the Remaining Defendants violated this Court's order by filing their respective dispositive motions on June 1, 2018, even though this Court expressly ordered on May 28 that any dispositive motions had to be filed by that date.[10] However, his Motion to Compel filed June 8, 2017 has essentially been mooted by RDI's proffer of privileged material pursuant to Cotter, Jr.'s agreement, and so Cotter, Jr. needed to come up with other reasons why the trial needed to be put off. But his Motion for Relief filed on June 11, 2018 merely illustrates the unreasonableness of Cotter, Jr. Obviously, he is not entitled to any relief based on the fact that RDI gave him what he asked for.

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[9] His desire to say he could not review prior to responding to the dispositive motions may explain Cotter, Jr. enthusiastic agreement to moving the date that such Motions would be heard from June 26 to June 19.

[10] He also continues to falsely insist that his discovery requests related with respect to ratification have some bearing on RDI's demand futility motion. However, the ratification of prior board actions that occurred on December 29, 2017 has absolutely no relationship to RDI's Motion to Dismiss, and that Motion to Dismiss is not in any way dependent upon that ratification.

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Cotter, Jr.'s claims that he is entitled to still more discovery must fail. His arguments that RDI has no privilege as to the requested matters is mostly mooted given the production under the terms of his agreement that no waiver would be claimed. But at to the remaining documents for which privilege is claimed, his arguments regarding Special Litigation Committees are simply inapplicable to the facts here. Furthermore, he has failed to show that he has not been able to obtain discovery relevant to his theory regarding the ratification process. To the contrary, as shown above, he has acknowledged that he has an abundance of evidence to show what had been made obvious by the Defendants' Motion for Summary Judgment based on ratification*, i.e.,* that the ratification was relevant to the viability of his remaining claims.

Cotter, Jr. can make all the arguments he wants about the purported "interest" of the Independent Directors as to the ratification decision. The simple truth is that it does not matter whose *idea* ratification was. Instead, what matters is if the Directors who decided to ratify the prior decisions, decided it in accordance with their corporate obligations. None of the evidence, or indeed, not even the speculation, proffered by Cotter, Jr. offers any indication whatsoever that the Independent Directors had any interest in mind, save that of RDI. That fact is not changed simply because RDI's litigation counsel does its job in advising members of the Board of Directors.

I. THERE IS NO BASIS FOR INVADING RDI'S PRIVILEGE.

The entirety of Cotter, Jr's argument that he is entitled to invade RDI's privilege is based on a footnote in an unpublished SEC prosecution case, which noted that a special litigation committee with a "mandate to ascertain whether members of the Board that may have engaged in wrongdoing" did not share a common interest privilege with a company's board of directors. *SEC v. Roberts*, 254 F.R.D. 371, 378 n.4 (N.D. Cal. 2008). The SIC is not, of course, a committee that has any such mandate. Nor did (or should have) the December 29, 2017 ratification vote address whether the motivations of the Remaining Director Defendants in approving the two challenged decisions were pure. Instead, the Independent Directors addressed whether the two challenged decisions were in the Company's best interests

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Cotter, Jr.'s reliance on *Ryan v. Gifford*, 2007 Del. Ch. Lexis 168, (2007) is also inapposite. Not only did that case involve a special litigation committee charged with assessing the conduct of board members, which authority the SIC has not been granted, but also because in *Ryan*, the privileged material was deemed responsive based on the requesting parties purported need for the documents - a doctrine that is expressly contrary to Nevada's privilege law. *See Wardleigh v. Second Judicial District Court,* 111 Nev. 345, 891 P.2d 1180 (1995).

In further support of his waiver argument, Cotter, Jr. relies on cases, that involve the release of reports by special litigation committees to boards of directors, which reports the board members in question relied upon. See, e.g., *Joy v. Norht*, 692, F. 2d 880 (2d Cir. 1982); *In re PSE7G Shareholder Litig.,* 726 A.2d 994 (N.J. Super Ct. C. Div. 1998). Here, the SIC made no such report, and the five Independent Directors did not rely on any such report. Thus, these cases have no bearing on the issue here.

Indeed, Cotter, Jr.'s arguments are based on a false premise regarding what actually occurred at the December 21, 2017 meeting, apparently begetting some theory that the SIC voted on the issue of ratification, reported the same to the Board of Directors, and in reliance on this imaginary report, the Board voted in favor of ratification. But as this Court is aware, the assumptions as to what happened at the December 21, 2017 SIC meeting are not even true. As for the remaining aspect of this theory, the minutes of December 29, 2017 Board of Directors meeting belie them.

Cotter, Jr. has not cited a single case that holds that a decision made by Independent Directors to ratify a decision made by prior board members somehow waives all the company's privilege as to that issue. Nor has he cited any Nevada authority for the proposition that attorney client communications with a board committee are treated differently in Nevada than communications with the board itself. . Accordingly, there is no basis for any further invasion of RDI's attorney client privilege or for a delay in the trial.

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CONCLUSION

Cotter, Jr. does not want more discovery. He merely wants to cost RDI even more money. He wants to delay a substantive resolution of this case until after his Employment Arbitration and until after the California Court of Appeals hears arguments on his attempt to force a change of control of RDI. And, he wants to prolong the agony of this litigation, by delaying any prospect of its conclusion. Certainly, he does not want a trial – his inability to present evidence of damages precludes any finding of a breach of fiduciary duty. All he has left in his arsenal is to pretend that he has been denied discovery, so he can keep asking for more and more, none of which could be completed prior to trial. And so that is what he has done. But as shown above, Cotter, Jr. already has had ample opportunity to discover relevant information relating to the Independent Directors' consideration and vote in favor of ratifying the prior board actions. He has all the non-privileged information, and indeed, even a vast quantity of privileged information, even remotely related to the ratification. He is entitled to nothing more, and accordingly, he has no basis for seeking any delay of the resolution of the dispositive motions, or, in the event a trial is necessary, in delaying that trial.

Accordingly, both the Motion to Compel and the Motion for Relief, should be denied.

DATED this 18th day of June, 2018.

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CERTIFICATE OF SERVICE

Pursuant to Nev. R. Civ. P. 5(b)(2)(D) and E.D.C.R. 8.05, I certify that on this day, I caused a true and correct copy of the forgoing **RDI'S COMBINED OPPOSITION TO COTTER, JR.'S MOTION TO COMPEL AND MOTION BASED ON NONCOMPLIANCE WITH COURT'S MAY 2, 2018 RULINGS** to be filed and served via the Court's Odyssey eFileNV Electronic Service system on all registered and active parties. The date and time of the electronic proof of service is in place of the date and place of deposit in the mail.

DATED this 18th day of June 2018.

/s/ Andrea Lee Rosehill
An employee of GREENBERG TRAURIG, LLP

GREENBERG TRAURIG, LLP
3773 Howard Hughes Parkway, Suite 400 North
Las Vegas, Nevada 89169
Telephone: (702) 792-3773
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EXHIBIT A

DISTRICT COURT
CLARK COUNTY, NEVADA

JAMES J. COTTER, JR., individually and derivatively on behalf of Reading International, Inc., Plaintiff, vs. MARGARET COTTER, et al., Defendants, _____and _____ READING INTERNATIONAL, INC., a Nevada Corporation, Nominal Defendant.	Case No. A-15-719860-B Coordinated With: Case No. P-14-082942-E Volume 3 Pages 496 to 578

VIDEOTAPED DEPOSITION OF

WILLIAM GOULD

Thursday, April 5, 2018

9:32 A.M. TO 11:34 A.M.

Century City, California

Job No. 461424

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to anybody else on those things, or the people you mentioned.

But I think on the day of the board meeting, during the early parts of the board meeting, there were conversations going on about this, but they were very fleeting.

They were not -- we were sitting in a room and Jim, Jr., was either on the phone or there, so the conversations were obviously not totally candid.

Q. When you say they obviously were not totally candid, that's because Jim was there?

A. Well, because it was an adversarial lawsuit, and so we weren't like we were all on the same team.

Q. Well, what difference did that make to this particular subject, ratification?

A. Because -- because the ratification might be a litigation strategy.

Q. Did you have any discussions with Judy Codding about the termination of Jim Cotter, including any and all of the matters referenced in the May 21 and 29, and June 12, 2015 board minutes, in this time frame from mid December up to December 29 board meeting?

A. No. Judy -- Judy made it clear that she

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had done a pretty good diligence review of what had happened, and seemed to be pretty much up to speed on what had occurred. So she and I never had a conversation about the details of what went on during that period back in 2015.

Q. When she said -- when you said she made it clear, was this comments that she made at the December 29 board meeting?

A. No, comments at the Special Committee meeting.

Q. What did she say that she had done?

A. She didn't say what she had done, but it was clear from her -- the extent of her comments at that meeting that she was very well aware of what had happened, how it happened, read the minutes, and felt very comfortable that she knew what the facts were.

Q. What did she say that -- from which you draw the conclusion that you just described?

A. She said I looked into this and I feel I'm comfortable that I understand what happened at that time. Words to that effect.

It's not a direct quote, obviously.

Q. Prior to the December 29, 2017 board meeting, had you had any conversations with Michael

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Wrotniak about the termination of Jim Cotter, Jr.?

A. I don't believe I had, no.

Q. Did you have any communications with Ellen Cotter about ratification, being either the concept or notion generally, or ratifications that were the subject of the December 29 board meeting, other than what -- the conversation you've already described this morning, at any time prior to the board meeting on December 29?

A. No.

Q. Did you have any conversations with Margaret Cotter about ratification, either generally, conceptually or particularly as raised on the 29th of December, prior to the December 29th board meeting?

A. No.

Q. Why did you vote to ratify item 1 on Exhibit 527?

A. Because I thought it was in the best interest of the company to do so.

Q. As of December 29, 2017?

A. Yes.

Q. Why?

A. Well, going back to -- you know, I feel sort of like I could be called John Cary, because I

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voted against it before I voted for it.

But you remember that, back in 2015, I was one of two directors who voted against the termination of Jim Cotter, Jr.

And things had changed, in my mind, from that date to the date, December -- whenever it was -- December 29, '17, where my decision was now made on a whole different set of assumptions and factors that weighed into the equation.

Q. Was one of those factors the decision by the Los Angeles Superior Court in validating the 2014 trust documentation?

A. No.

Q. Was one of those factors the effect that the ratification might have on the pending derivative lawsuit?

A. No -- well, let me take that back. I'm sure it had some bearing in my mind, but that was not one of the key factors.

Q. What were the key factors?

A. The key factors, in my mind, were at the time, back in 2015, you recall that Jim, Jr., was terminated when -- at a time when we were -- I thought, in my opinion, we gave him a period of time to have his performance monitored, and then there

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would be an evaluation by the board.
The actual termination occurred maybe a month before that.
I viewed that as a mistake, first of all, because I thought we had kind of had a schedule, I didn't see any reason to change that schedule.
And, secondly, at the time, I was worried that if we did that, it would cause a very strong emotional reaction in Jim, Jr., feeling he had been -- he would feel he had been wronged by this process, and that would lead to extensive, expensive litigation, which turned out to be the case.
So looking at it a few years later, that's already happened, the litigation has occurred. So I can take that factor out of my equation, because what I was fearful of at that point back in '15, has then since ensued.
The other thing that bothered me was, in Jim, Jr.'s handling of this litigation -- I'm not meant to be, you know, getting into litigation strategies or things like that.
I felt that, in my mind, he was actually putting his own interests -- personal interests above those of the company, and needlessly causing the company to spend a lot of money on the legal

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fees, and really distracting a number of members of management from what they should be doing in operating the company.
I think that this was a litigation strategy he employed that disappointed me.
Q. Did you just describe your view of this derivative lawsuit?
A. Did I just describe it?
Q. Yeah.
A. In some respects, yes.
Q. So I'll let you -- I'll ask the question, then: What's your view of this derivative lawsuit?
MR. HELPERN: Object to form.
A. Well, you know, I think it's a -- it's been a bad thing for the company, expensive, time-consuming.
I'm not so sure -- and I'm a lawyer, I'm not trying to lay -- trying to play lawyer here -- but I'm not so sure that Jim's termination is actually a derivative claim.
And I'd be interested to see what the Nevada Supreme Court says about it, if it already hasn't spoken to that, because I can't imagine a person getting fired, claiming there's a derivative going. Seems like it's a personal claim to me.

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And I think the company was very willing to try to find a way to settle it out without having a lot of costs and expense.
So that's my view of the derivative litigation.
BY MR. KRUM:
Q. Well, you understand there are other matters raised in the case?
A. Yes.
Q. Do those factor in, in terms of your view of the case?
A. I think they could factor in. I can see how it's a legitimate question that can be raised.
But, to me, I always looked at the termination as being the key thing that started the litigation, and that's what I've been focusing on.
Q. So if you were to vote for the derivative case to go forward or be terminated, what would your vote be?
MS. HENDRICKS: Object to form. Calls for speculation, beyond the scope of this deposition.
MS. BANNETT: I was --
MR. KRUM: Well, it's not --
MS. BANNETT: I was going to ask how that relates to the ratification.

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MR. KRUM: It relates to demand futility.
MS. BANNETT: But what does that have to do with the rati -- I understand that --
(SIMULTANEOUS SPEAKING)
MS. BANNETT: -- of these particular decisions.
MR. KRUM: It doesn't. Well, maybe it does. I don't know. But it doesn't matter. I'm entitled to ask about matters relating to demand futility as well.
MR. HELPERN: Demand futility with relation to what demand?
MR. KRUM: Demand futility rising from -- well, I didn't frame it. Greenberg Traurig filed the motion. Recall that was one of two motions that were denied with respect to which discovery was allowed, the other one being a ratification motion.
BY MR. KRUM:
Q. Okay. So let me ask the court reporter to read the question back, Mr. Gould.
(REPORTER READ FROM THE RECORD)
A. My vote would be to terminate, to terminate the derivative action.
Q. Are the reasons any different than what you just said? And if so, would you say them?

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A. Well, if I'm a defendant in the case and you're asking me, would I like that suit against me to be terminated or go forward, what can I say? I mean, there's no other answer.

Q. Directing your attention, Mr. Gould, back to the subject of the exercise of the 100,000 share option, did you ever have any communications with Judy Codding and/or Michael Wrotniak about the subject of the -- of what entity or person owned or held the 100,000 share option?

A. No, I didn't have that conversation.

Q. Did you ever have any communications about that with Doug McEachern?

A. I don't believe I did, no.

Q. Did you ever have any communications with Judy Codding and/or Michael Wrotniak about the events of May 29, 2015 that we discussed earlier today, by which I'm referencing what Jim Cotter was told when the first session of that meeting adjourned about what would happen or might happen when it reconvened at -- telephonically at 6:00?

A. I didn't have any conversations about that aspect of it with any one of those persons.

Q. Did you ever have any conversations with either Judy Codding or Michael Wrotniak or both,

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about whether any or all of, Ed Kane, Guy Adams and Doug McEachern, had decided and agreed prior to the May 21, 2015 meeting, to vote to terminate Jim Cotter, Jr., as president and CEO?

A. I might have early on, explaining my position about why I opposed the termination of Jim Cotter, Jr.

Q. Early on, meaning --

A. Like, maybe when they first came on the board.

MR. KRUM: Mr. Gould, I show you what has been marked as Exhibit 530. It's a document that bears the production number WG0000506.

THE WITNESS: Yes.

(DEPOSITION EXHIBIT 530 MARKED FOR IDENTIFICATION)

BY MR. KRUM:

Q. Do you recognize this document?

A. Yes.

Q. What is it?

A. It's an e-mail from Doug McEachern to me, asking me if we're going to have a -- a telephonic meeting of the Special Committee.

Q. Was there one on or about December 1?

A. There wasn't one on that date, I don't

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believe. I believe what happened there is that I was trying to set up a call with some advisors, and we just ended up not pulling it together for that particular day.

But I think there was a call later, but there were no advisors on the line. It was not -- it ended up being a non-event.

Q. Did that call have anything to do with ratification?

A. You know something, I don't think it did.

It might have, but I don't remember that. I remember some other topic we were considering.

(DEPOSITION EXHIBIT 531 MARKED FOR IDENTIFICATION)

MR. KRUM: Mr. Gould, I show you what has been marked as Exhibit 531.

Among other things at the top it says: "Gould's Privileged Log dated March 29, 2018."

A. (Perusing document)

BY MR. KRUM:

Q. Have you seen this document previously?

A. No.

Q. And without having the documents that are listed on it in front of you to reference, can you figure out what any of them are here?

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A. Very difficult. These look like my conversations -- conversations I may have had with Mark Ferrario or Mike Bonner concerning the Special Committee, but it's difficult to tell what it is.

Q. Okay. Then I'm going to ask you to focus on the last two, which I understand to indicate an e-mail from you to McEachern -- I understand each of them to indicate an e-mail from you to McEachern on December 27th. And the description is: "Forwarding attorney-client e-mail regarding a director conference call."

Can you recall -- can you tell what that is?

A. Not with total certainty, but I think it refers to the -- what I would call the notice, or the request for special meeting. I think that's what it refers to.

Q. Exhibit 527?

A. Yeah ...

Q. I'll show it to you. Here. (Indicating)

A. Yes, Exhibit 527.

MR. KRUM: Let's take a break.

THE WITNESS: Okay.

THE VIDEO OPERATOR: And we're off the record at 10:38 A.M.

A. Correct.
Q. I direct your attention to the middle of the Ed Kane e-mail at the top. There's a sentence that reads as follows: "Bill suggested we ask Ellen to seek judicial approval for the exercise."
Do you see that?
A. I do.
Q. Does that refresh your recollection?
A. A little bit, yes.
Q. And how so? What do you now recall?
A. Well, again, as I said, I do remember quite clearly when I did talk to Ed, he first was just calling me because I have had experience with this area as a lawyer. And I told him that I would -- I didn't see a problem with it, but that to be safe here, given the litigation -- or the controversies -- that he should have counsel -- independent counsel give him an opinion on it.
Q. Well --
A. But I also -- I might have mentioned if it was possible -- practical to get approval, that it would be obviously the best way to go, and that would eliminate any question.
Q. Did you ever have any communications with any or all of -- well, strike that.

Did you ever have any communications with Judy Codding and/or Michael Wrotniak about either the notion of obtaining a legal opinion, as you just described, or the notion of obtaining a court order as you just described, with respect to the exercise of the 100,000 share option?
A. I don't believe I ever had a conversation with either one of them about that.
Q. Did you ever have a conversation of that nature with Doug McEachern?
A. I might have, yes.
Q. Okay.
As you sit here today, what's your best recollection? Did you?
A. I don't have any -- my best recollection is I somehow believe that I did, but I don't recall anything, when it was, or what was said.
I do remember specifically the conversation with Ed Kane.
Q. Okay.
MR. KRUM: I don't have any further questions at this time.
Mr. Gould, thank you for your time.
THE WITNESS: Thank you.
MR. KRUM: So we can go off the record?

Kara?
MS. HENDRICKS: Okay with me.
THE VIDEO OPERATOR: This concludes the deposition of William Gould, volume 3, on April 5th, 2018.
Off the video record at 11:34 A.M.
(Off video record)
THE REPORTER: Did you have a stipulation from before?
MS. HENDRICKS: 'Bye, everybody.
THE REPORTER: Do you have a stipulation that you would like to use from a prior deposition for this witness?
MR. KRUM: Yes, the same as we've been doing.

(DEPOSITION OF WILLIAM GOULD,
SIGNATURE NOT WAIVED,
CONCLUDED AT 11:34 A.M.)

REPORTER'S CERTIFICATION

I, Lori Byrd, Registered Professional Reporter, Certified Realtime Reporter, Certified LiveNote Reporter, Realtime Systems Administrator, Kansas Certified Court Reporter 1681, Oklahoma Certified Shorthand Reporter 1981, and Certified Shorthand Reporter 13023 in and for the State of California, do hereby certify:

That the foregoing witness was by me duly sworn; that the deposition was then taken before me at the time and place herein set forth; that the testimony and proceedings were reported stenographically by me and later transcribed into typewriting under my direction; that the foregoing is a true record of the testimony and proceedings taken at that time.

IN WITNESS WHEREOF, I have subscribed my name on this date: April 19th, 2018

Lori Byrd

Lori Byrd, CSR 13023

EXHIBIT B

DISTRICT COURT

CLARK COUNTY, NEVADA

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

VOLUME V
(Pages 664-695)

VIDEOTAPED DEPOSITION OF EDWARD KANE, defendant herein, noticed by Lewis, Roca, Rothgerber, Christie, LLP, taken at Litigation Services, 655 West Broadway, Suite 880, San Diego, California, on Friday, April 20, 2018, at 9:26 a.m., before Marc Volz, CSR 2863, RPR, CRR, crc

Job No.: 465069

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May I say something to you? I don't have to say this but I will. I'm not trying to be evasive, but I have had probably eight or nine, maybe ten meetings -- compensation committee, board meetings, audit committee meetings -- since December 29, 2017. I cannot recall -- and those have all been in the interim. So you ask me about what did I remember in December 29, 2017, after all those meetings and being 80 years of age, I can't be specific. I can't recall with specificity any of that because it all blends together after a while. I'm telling you that so you'll understand where from I come.

Q. Very well. I need to ask the questions nonetheless.

A. Go ahead. Go ahead.

Q. I'm not harassing you, sir. I'm just trying to cover the material I need to cover.

A. I understand.

Q. Do you recall anything anybody said at the December 29, 2019 board meeting regarding the termination of Mr. Cotter as president and CEO?

A. I do not.

Q. Do you recall anything anybody said with respect to item 3b on the second page of Exhibit 525, which I'll refer to as shorthand, and that is, ratification of the use of Class A voting stock to pay

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for the exercise in the so-called 100,000 share options?

A. I do not.

Q. Do you recall if you said anything about that subject?

A. I don't recall if I did or didn't.

Q. Did anyone ask you any questions about either of those subjects? Meaning the subjects of 3a and b on the second page of Exhibit 525 at the December 29, 2017 board meeting?

A. I don't recall any questions asked of me.

Q. You voted in favor of ratifying both of those matters, correct?

A. Yes, sir.

Q. And in doing so you were voting in favor of the decisions you'd made previously, right?

A. Yes, sir.

Q. And I don't mean to be glib with the following question so don't take it that way. No, seriously.

A. Okay.

Q. Did you give much thought to those matters, or is it fair to say, Mr. Kane, that basically you thought you were correct when you decided and did what you did and so you voted in favor of ratifying?

A. You're absolutely correct. I had voted to terminate Mr. Cotter at the time he was terminated. And

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then I was deemed by Mr. Cotter through you to somehow have a conflict of interest. So I had no problem, which I never had. I had no problem reaffirming my vote to terminate Mr. Cotter at that time. And as chairman of the comp committee who approved, voted to approve the exercise of the Class B voting stock, I had approved it then, and I saw no reason why I wouldn't approve it again.

Q. Directing your attention, Mr. Kane, back to the December 29, 2017 board meeting. Do you recall whether there was any discussion of the subject of whether or not Mr. Adams was independent for any particular purpose or purposes?

A. I don't recall such discussion if there was one.

Q. Again, directing your attention to the December 29, 2017 board meeting. Do you recall any discussions of or relating to Highpoint Associates?

A. I don't recall if there was.

Q. Have you ever heard of Highpoint Associates?

A. Yes, sir.

Q. When and how did you first hear of Highpoint Associates?

A. I can't remember exactly when. It was sometime after I believe -- I believe it was sometime after

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Mr. Cotter, Jr. was terminated as president -- or CEO. I don't recall the context of it, and I was quite surprised to see it. But I was privy to some documentation indicating that Mr. Cotter, Jr. had hired Highpoint to help him become a CEO and had signed a contract with him that was not presented to the other directors or any director, as it should have been. That's the most I can say about it.

Q. Did what you understand about Highpoint Associates make any difference to your decision to vote to ratify the termination of Mr. Cotter?

A. No.

Q. How did you come to have the understanding you just described of the purpose or purposes for which Highpoint Associates had been hired, which had to do with Mr. Cotter being a CEO or becoming a better CEO or something to that effect?

MR. FERRARIO: Ed, if it came from -- Mark Ferrario. If it came from your attorneys, let me know. I don't know how else you may have learned.

THE WITNESS: I don't recall how I was made aware of it.

MR. FERRARIO: Okay.

MR. KRUM:

Q. Have you reviewed any documents concerning

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Highpoint Associates?

A. I was given yesterday, I think, some pages of Highpoint. I scanned them. I didn't pay much attention to it.

Q. Prior to yesterday have you ever seen any documents relating to or concerning Highpoint Associates?

A. I may have. But when it was given to me yesterday it didn't refresh my recollection of having seen it previously. I'd only heard about it.

Q. From whom had you heard about it?

A. It was so long ago I don't remember.

Q. Did Mr. McEachern tell you about Highpoint Associates?

A. I don't remember how I knew.

Q. Did Mr. McEachern ever give you any documents about Highpoint Associates?

A. I have no recollection of discussing it with him or him giving it to me.

Q. Do you possess any documents concerning Highpoint Associates?

A. No, sir.

MR. FERRARIO: Other than --

THE WITNESS: Well, other than what I was given by --

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MR. SEARCY: Mr. Searcy.

THE WITNESS: Mr. Searcy. Sorry. I'm sorry. I missed it. Other than what Mr. Searcy gave me I don't recall. I may have but I just don't recall it.

MR. KRUM:

Q. If you were afforded the opportunity today to vote on whether this derivative lawsuit should proceed or be terminated how would you vote?

A. Terminate it tomorrow, please, sir.

Q. And why?

A. And why? We had -- that, as you well know, sir, that derivative suit was joined by an independent investor in Reading, T-2. They put a lot of money into it. They were present at one or more of my depositions. And they came to the conclusion that the company was well run. And they were laudatory as to how it is run and they pulled out. They didn't receive anything for pulling out. Their expenses were their expenses.

If someone with that sophistication and their own money in it said the company is well run, without Mr. Cotter, Jr., then I cannot foresee why there even is a derivative action. Never made much sense to me. And I'm not criticizing you, sir. You're his counsel. But to me it's a total waste of time and money of all parties.

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And if the directors of a company who are operating, as I was and what I thought, in the best interest of the company and thought it was in the best interest of the company that Mr. Cotter step down from his role, how else can I think, other than there shouldn't have been a derivative suit and it's a waste of his money and our money.

Q. Directing your attention, Mr. Kane, to your last response insofar as it concerned the intervening plaintiffs. What is the basis or what are the bases for your understanding of the conclusions you described them as reaching?

A. I saw some -- at the time I believe I saw some correspondence from them to that effect. And there was also some discussion with regard to the peer group. They made some recommendations for a change in the peer group which we used to determine compensation. It was well thought out. And we had already adopted some of their recommendations of the peer group. And in there they again I believe -- it's a long time ago when I saw the correspondence -- that they were pleased with the way the company was being run and going forward. And they were making recommendations as to the peer group for compensation.

Q. When you refer to correspondence are you

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actually -- do you actually have in mind a press release issued by RDI that included a quote ascribed to one of the intervening plaintiff representatives?

A. I wasn't but now that you mentioned it I did -- I must have. And I have some vague recollection of some of that press release.

Q. Mr. Kane, excluding your prior depositions in this case, have you ever met or communicated with any representative of any of the intervening plaintiffs?

A. By intervening plaintiffs you mean T-2?

Q. Right. T-2 or the folks you referenced earlier as having settled.

A. No. I never personally discussed it with any of them.

Q. What or who was the source of the information you've described about interactions with T-2 and the intervening plaintiffs?

A. I can't recall. I do know that I saw -- maybe it was directed to me, I don't know -- their recommendations for companies that we should use as part of our peer group for compensation purposes. So I probably saw that as chair of the compensation committee. But otherwise, I don't know whether they sent things to the board as a whole or things were given to me. I just don't recall.

Q. Okay. This calls for a yes or no response, Mr. Kane. Was counsel, meaning an attorney who represents you and/or an attorney who represents RDI, the source of some or all of the information you received regarding T-2 and the intervening plaintiffs?

A. Sir, I can't recall so I can't say yes or no.

Q. Very well.

MR. KRUM: Let's take a break.

THE VIDEOGRAPHER: Off the record. The time is 10:21 a.m.

(Recess.)

MR. KRUM: Back on the record. So in light of what we've covered and how we've covered it and the circumstances that bear upon that I don't have anything further at this time. Mr. Kane, thank you for your time. Have a nice day, sir.

THE WITNESS: Thank you. You too.

MR. SEARCY: Thank you.

MR. KRUM: Bye, guys.

(The proceedings concluded at 10:41 a.m.)

***

STATE OF CALIFORNIA) ss

I, Marc Volz, CSR 2863, RPR, CRR, CRC, do hereby declare:

That, prior to being examined, the witness named in the foregoing deposition was by me duly sworn pursuant to Section 2093(b) and 2094 of the Code of Civil Procedure;

That said deposition was taken down by me in shorthand at the time and place therein named and thereafter reduced to text under my direction.

I further declare that I have no interest in the event of the action.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

WITNESS my hand this 23rd day of April, 2018.

_____

MARC VOLZ, CSR NO. 2863, RPR, CRR, CRC

ERRATA SHEET

I declare under penalty of perjury that I have read the foregoing _____ pages of my testimony, taken on _____ (date) at _____(city), _____(state),

and that the same is a true record of the testimony given by me at the time and place herein above set forth, with the following exceptions:

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ERRATA SHEET

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Date: _____ _____

Signature of Witness

_____

Name Typed or Printed

EXHIBIT C

DISTRICT COURT

CLARK COUNTY, NEVADA

JAMES J. COTTER, JR., individually and 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 Coordinated with: Case No. P-14-082942-E Case No. A-16-735305-B Volume 4

(Caption continued on next page.)

VIDEOTAPED DEPOSITION OF DOUGLAS McEACHERN

Wednesday, February 28, 2018

Los Angeles, California

REPORTED BY:

GRACE CHUNG, CSR No. 6426, RMR, CRR, CLR

JOB NO.: 453340-A

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Q. And do you see that the meeting actually occurred on Friday, December 29?

A. Yes.

Q. Okay. And I'm not asking you what the document says. I'm not asking you for the purposes of this question to look at the document. What were the subjects raised and addressed at that December 29, 2017, board meeting?

A. I think there were four items that were addressed, and there is an agenda, I think, in the second page here. One was an approval of a minimum level of bonuses for executives for 2017. One was an approval of a payment to individual members of a special committee that had been set up, I think in August -- July or August of 2017. One was a reconfirmation -- I may have the wrong word -- of an action the board took to terminate Jim Cotter, Jr., as CEO of the company in June of 2015.

And the other was to re -- I'm not sure if approved originally, but to approve or reapprove a transaction that the compensation committee approved in 2015 or 2016, for the exercise of an option by either the Cotter Estate or the Cotter Trust -- I couldn't tell you which one it was -- to purchase 100,000 shares of voting stock in the

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company in exchange for a set number of nonvoting shares. I think those were the four items.

Q. When did you first learn or hear that either/or both of the third and fourth items were to be part of the December 29, 2017, board meeting?

A. I don't want to be cute. I don't remember what third and fourth were on my list.

Q. Okay. So I will -- I will ask it differently. It will require two questions but we have the time. When did you first hear or learn that approval of the compensation committee decision that you referenced in your answer a moment ago was to be taken up at the December 29th, 2017, board meeting?

A. Sometime in early to mid-December.

Q. What did you learn at that time?

A. That the compensation committee had -- I was aware of this -- had approved the use of stock, nonvoting stock, to exercise an option in the company's voting stock.

Q. What else, if anything, did you learn about that in early to mid-December?

A. That it was an issue that had been raised by Jim Cotter, Jr., in his lawsuit against the company, that it was somehow inappropriate, which I

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still, to this day, don't understand what the issue is.

Q. What is it -- what's your understanding of what the board voted to ratify or approve at the telephonic December 29, 2017, board meeting with respect to the compensation committee's prior decision?

A. Can -- can I just go back and give some history of what -- what I think happened here?

Q. Sure.

A. So at some point -- and I think this was in -- it was either in the fall of 2015, more likely the fall of 2016 -- had to be '15 because Tim Storey was around -- there was a desire on the part of Ellen Cotter and Margaret Cotter, trustees of the Cotter Estate or the Cotter Trust, whichever one had the option to purchase voting shares in the company, they were going to use Class A nonvoting shares to exercise the option and pay whatever the option price was.

I don't know why, but at that time, Tim Storey wanted a legal opinion that that was okay to do, as I recall. I don't know why, Mr. Krum, in retrospect that that was needed. This estate or the trust, whichever it was, held the option. They held

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the stock. They could easily have sold the stock in the marketplace to get the cash to exercise the option.

Our plan permitted the submission of stock that was held by an individual or the trust to submit that stock to buy the voting share exercise and option. And I don't know why -- why it became an issue. That was the transaction that we were ratifying in December of 2017.

Q. You voted in favor of ratifying that; correct?

A. Yes, I did.

Q. And as of the December 29, 2017, meeting, did you have any understanding of what issue or issues Mr. Storey had raised previously beyond what you just said?

A. No, I don't.

Q. What was the basis or what were the bases of your decision to vote in favor of ratifying the decision of the compensation committee from September of 2015?

A. What was my basis for doing it?

Q. Yeah. On December 29, 2017, you voted in favor of ratifying or approving --

A. Sure.

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Q. -- to the prior compensation committee decision or decisions. On what basis or bases did you do so?

A. Number one, I didn't think there was an issue here at all for the board to deal with. It was delegated to the compensation committee to handle this type of matters. We were approving this. And I believe we had -- I think we had a call to talk about a couple of issues that were still existing in this -- in this derivative case by Jim Cotter, Jr., and we were trying to address them in a fashion to resolve them.

Q. When you say you were trying to address them in a fashion to resolve them, what does that mean? Does that mean you were trying to moot the issues?

A. I don't know what "moot" means. I'm sorry. I'm not an attorney.

Q. Okay. Well, when you say you were trying to address them in a fashion to resolve them, resolve them how?

A. To say that the -- the corporation ratified these, and that -- that there was no -- no issue or concern that we approved them. If anybody in the past thought that there was an issue, our

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action there was to cure any issue anybody might think existed.

Q. What did you do, meaning what documents did you review, with whom did you have conversations, or anything else, to inform yourself to make the decision you made to vote in favor of ratifying or affirming the prior compensation committee decision?

A. I reviewed whatever documents were handed out, Mr. Krum, in this -- this package. But I had been there at the time that this transaction took place. I was aware of what went on. At the time, I couldn't understand why this was an issue. I still couldn't understand why it was an issue. And it seemed to me to be pretty perfunctory to approve.

Q. Directing your attention, Mr. McEachern, to Exhibit 525, that's the board package for the December 29 meeting; correct?

A. I believe so, yes.

Q. Now, this is not intended to require you to look at every page, but if you think you need to do so, you are welcome to do so.

A. Uh-huh.

Q. My question is: Was there anything in

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particular in Exhibit 525, the December 27 board package, that you considered or valued in making the decision you made to vote in favor of ratifying the September 2015 compensation committee decision?

A. Uh-huh. And did you say the December 27th board meeting or the December 29th?

Q. I called the package -- the package December 27 because it has a December 27 transmission date. But -- so I'm not confusing you, I am referring to the December 29 board meeting and your vote there.

So with that clarification, let me ask: Is there anything in Exhibit 525 that made any difference to your vote on December 29 to vote in favor of ratifying or approving the 2015 decision by the compensation committee that's the subject of -- one subject of this package?

A. No.

MR. SEARCY: Objection. Vague.

A. And no.

BY MR. KRUM:

Q. Okay. Directing your attention back to your prior testimony to the effect that you first heard or learned in early to mid-December that the ratification or approval of the prior compensation

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committee decision might or would be taken on the December 29 board meeting, was that -- did you learn that by speaking to somebody, by receiving an email, or otherwise?

A. I just couldn't tell you, Mr. Krum.

Q. Okay. What was the next communication you had with anybody, after that initial one, with respect to the possible ratification or approval of the September 2015 compensation committee decision regarding the 100,000 share option, at any time prior to the December 29 board meeting?

A. I could have been involved in discussions that predated this. I just can't remember. I'm generally aware that it was raised as an issue. As I said, I still don't understand why. I know that we had a call with Mike Bonner, maybe Mark Ferrario, and maybe somebody from Greenberg, I'm not certain, to discuss this --

MR. SEARCY: Let me just caution you. When you start to get into attorney-client privileged discussions, I want you to be able to answer the question, but I don't want you to get into the specifics of any particular discussions you may have had with Mr. Ferrario or Mr. Bonner.

THE WITNESS: Okay.

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damaged as a result of our termination of him as the CEO. I don't believe the company was damaged.

Q. Are there any other reasons why you would vote to dismiss the lawsuit absent somebody presenting other information than which you are presently unaware?

MR. SEARCY: Objection. Vague.

A. I -- I guess I don't understand the question. I'm sorry.

BY MR. KRUM:

Q. Well, I asked --

A. I thought I answered.

Q. I asked why you -- you answered the way you did.

A. Uh-huh.

Q. And then you described your understanding of what Jim Cotter seeks to do by way of this lawsuit.

A. Uh-huh.

Q. And so I'll just ask a follow-on -- a simple follow-on question. Anything else?

A. To why I would vote to dismiss the case?

Q. Right.

A. Because I think it's -- it's cost an awful lot of money, and I don't think anything has been

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proven.

Q. When did you develop the view that you just described?

A. About the money?

Q. About the lawsuit.

A. I couldn't -- I couldn't tell you when I reached a conclusion. It's -- everything evolves over a period of time, you find out more information.

Q. What was your view at the time you first learned of the derivative lawsuit?

A. I don't know that it was called a derivative lawsuit originally. But Jim Cotter, Jr., threatened me with litigation should I vote to terminate him in the May -- late April, May 2015 time frame. There was much -- many -- that was raised a number of times.

And I think you showed up sometime in May -- I have to get the minutes out -- and said that if we voted to terminate Jim, you would file a lawsuit. So I don't know that it was called a derivative suit at that time. But a lawsuit was filed, I believe, the day after we terminated Mr. Cotter.

Q. Any time, since then, have you held a view

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different than the one you hold today?

A. Which view was that?

Q. The view that you would vote to dismiss the lawsuit if you were afforded an opportunity to do so.

A. I was a defendant in the lawsuit. Did I think that the lawsuit had merit from the outset? No.

Q. Directing your attention back to Exhibit 525, you see it on the first page, Mr. McEachern, it indicates that it was transmitted at 5:30 p.m., on Wednesday December 27th?

A. I see that.

Q. Is that when you received this board package?

A. Sometime after that. It could have been an hour or two hours later, sometime that evening.

Q. Did you review the board package?

A. I believe I did, yes.

Q. Did you review the entirety of the board package prior to the December 29, 2017, telephonic board meeting?

A. I scanned things. I may not have read in-depth the 1999 stock option plan of Reading International as distributed, and I'm trying to see

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what this MSA is all about. Oh, the High Point Associates document, I read the minutes that were there. I scanned it enough to be familiar with it, yes.

Q. How much time did you spend looking at Exhibit 525?

A. Probably a couple of hours.

Q. Directing your attention, Mr. McEachern, to the subject of the December 29 board meeting with respect to the ratification of certain actions regarding the termination of Jim Cotter. Do you have that mind?

A. Jim Cotter, Jr.?

Q. Jim Cotter, Jr.; right.

Other than what you just described in terms of scanning Exhibit 525, did you review any documents for taking any other steps with respect to your decision to vote in favor of ratifying the termination of Jim Cotter, Jr., as president and CEO as such actions are outlined in the board minutes of May 21, May 29, and June 12, 2015?

A. I was present and lived with this decision until we made the decision to fire Jim Cotter, Jr. And I'm not sure I can tell you documents, Mr. Krum, but I've lived with Jim on the board of

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directors and his behavior and actions since we terminated him.

And all of that has reinforced my conclusion. But I -- if I had discussions -- I'm sure I've had discussions with Ellen or Margaret or Ed Kane or Bill Gould or Mike Wrotniak. I've had discussions with board members about this decision, but I don't keep a record and can't tell you when they took place.

Q. What discussions have you had with Judy Codding regarding the decision in 2015 to terminate Jim Cotter, Jr., as president and CEO?

A. I think we discussed it at the special committee meetings. I don't recall having had a separate one-on-one meeting with Judy to discuss it.

Q. How many times have you discussed the termination of Jim Cotter, Jr., in 2015 with Judy Codding at the special committee meetings?

A. More than once. I told you that there were 12 to 15 or 17 meetings between July or August of 2017 and December 31st, 2017. I couldn't tell you how many times it came up.

Q. What did you tell her -- what did you say to her? What did she say to you with respect to

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your discussions with her regarding the 2015 termination of Jim Cotter, Jr.?

A. I do not recall.

Q. Do you recall even generally?

A. I'm sorry, no. I'm sure I had some sort of discussions where we -- what were we doing, how do we conclude. I just couldn't tell you specifically anything that took place.

Q. Did you have discussions with her regarding why you voted, in 2015, to terminate Mr. Cotter, Jr.?

A. I was part of the committee that interviewed Judy Codding when she was being considered as a board member of Reading. That was either in the fall of 2015 or '16. I'm sorry; I just don't remember. I think we talked about this before. And I think that topic was discussed for the first time there. But I can't tell you what -- what the discussion was. I'm sure she asked questions about the litigation that was going on and how we reached the conclusion. But other than the general impression, I just don't remember.

Q. All right. Confining the time frame, Mr. McEachern, to 2017 --

A. Uh-huh. Yes.

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Q. -- do you recall any discussions you had with Judy Codding about the 2015 termination of Jim Cotter, Jr.?

A. Not specifically, no.

Q. Do you recall anything generally?

A. Other than what I've already mentioned to you? No.

Q. In 2017, at any time, including any of these -- strike that.

At any time in 20 -- strike that, wrong person.

What communications or conversations or emails or otherwise, I guess, have you had with Michael Wrotniak regarding the 2015 termination of Jim Cotter, Jr.?

A. I was on the committee that interviewed -- in 2017 or at any time?

Q. At any time.

A. I was on the committee that interviewed Michael Wrotniak to be a board member, and I believe this topic, similar with Judy Codding, came up and we discussed Jim Cotter, Jr.,'s termination.

Have we talked about it since? Probably. Can I remember those discussions and tell you what took place? No. I just had general impressions

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Q. Did you have discussions with Mr. Wrotniak, at any point in December of 2017, about the termination -- the decision to terminate Jim Cotter, Jr., in 2015?

A. Outside of this board meeting?

Q. Yes.

A. Not that I recall.

Q. With respect to the discussions, if any, of the 2000 -- excuse me, at the December 29, 2017, board meeting, regarding the termination of Jim Cotter, Jr., in 2015, who said what?

A. Could you read back the question? I'm sorry.

MR. KRUM: Please.

(Reporter read back the requested text.)

A. I would refer you to the minutes to see what's there. I couldn't have a specific recollection of who said what.

BY MR. KRUM:

Q. Did you say anything?

A. I would have to see the minutes.

Q. Without having your memory prompted, you don't recall sitting --

A. No, I don't.

I would point out that whatever I said,

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A. Not that I -- no.
Q. And do you recall anybody else discussing them, the minutes or the contents of these minutes, in your presence either in anticipation of the December 29, 2017, board meeting or at it?
MR. SEARCY: Objection. Vague.
A. I don't recall discussion at the meeting, but I would have to check the minutes. And I don't recall having had a discussion with anyone beforehand, although Ed Kane and I may have had an offhand discussion about them.
BY MR. KRUM:
Q. And do you recall that you did or you just recall that there may have been?
A. It might have been.
Q. Did you travel together? Is there breakfast or lunch about that time frame?
A. We lunched on Monday at Rockies.
Q. Yeah.
A. And we see each other socially. We don't date, but we see each other.
Q. In particular, have you ever discussed these minutes of the May 21 and 29, 2015, board meeting and June 12, 2015, board meeting with Judy Codding or Michael Wrotniak?

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A. Not that I have any recollection of.
Q. Mr. McEachern, were you ever party or privy to any communications to which Judy Codding or Michael Wrotniak also were party or privy regarding the time frame over which -- strike that.
Were you ever a party to any communications to which either --
(Reporter clarification.)
BY MR. KRUM:
Q. Were you ever a party to any communications to which either or both Judy Codding and Michael Wrotniak were a party in which the subject of the request to authorize the exercise of the 100,000 share option was raised, excluding the December 29, 2017, board meeting?
A. Not that I recollect.
Q. Okay. Let's go off the record for a minute.
THE VIDEOGRAPHER: We are off the record at 12:45 p.m.
(Recess taken from 12:45 p.m. to 12:51 p.m.)
MR. KRUM: Okay. So I don't have any further questions of Mr. McEachern at this time. If you guys could follow through on that document

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or the documents about which I inquired, perhaps produce those so we can use them with Ms. Codding, that would make progress. Reserve my rights, whatever they are, and we do, too. Let's adjourn and move on.
MR. SEARCY: We will look into your requests and reserve our rights, too.
MR. FERRARIO: I don't think I actually can quote it off the top of my head about that.
MR. KRUM: I understand.
MR. FERRARIO: On the other one, I'm pretty sure what happened: Rather than call a special board meeting to approve those minutes, just going to let it happen in the ordinary course, but, obviously, if there's any changes, you'll get those, but I suspect there won't be.
MR. KRUM: All right.
MR. FERRARIO: That's why those were drafts.
MR. KRUM: Let's go off the record.
(Discussion held off the record.)
(Proceedings adjourned at 12:52 p.m.)

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STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

I, GRACE CHUNG, RMR, CRR, CSR No. 6246, a Certified Shorthand Reporter in and for the County of Los Angeles, the State of California, do hereby certify:
That, prior to being examined, the witness named in the foregoing deposition was by me duly sworn to testify the truth, the whole truth, and nothing but the truth;
That said deposition was taken down by me in shorthand at the time and place therein named, and thereafter reduced to typewriting by computer-aided transcription under my direction;
That the dismantling, unsealing, or unbinding of the original transcript will render the reporter's certificate null and void.
I further certify that I am not interested in the event of the action.
In witness whereof, I have hereunto subscribed my name.
Dated: March 14, 2018

GRACE CHUNG, CSR NO. 6246
RMR, CRR, CLR

EXHIBIT D

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

DEPT. NO. XI

-against-

Consolidated with

MARGARET COTTER, ELLEN COTTER, GUY ADAMS, EDWARD KANE, DOUGLAS McEACHERN, TIMOTHY STOREY, WILLIAM GOULD, and DOES 1 through 100, inclusive,

Case No: P-14-082942-E

DEPT. NO. XI

DEFENDANTS.

DATE: March 6, 2018

TIME: 9:17 A.M.

VIDEOTAPED DEPOSITION of the Non-Party Witness, MICHAEL WROTNIAK, taken by the Plaintiff, pursuant to a Notice and to the Federal Rules of Civil Procedure, held at the offices of Lowey, Dannenberg, Bemporad & Selinger, PC, 44 South Broadway, White Plains, New York 10601, before Suzanne Pastor, RPR, a Notary Public of the State of New York.

JOB NO.: 455310

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A. My compliments.
Q. There were only three. That is the outer limit for me.
As you sit here today, does it make any difference to your assessment of that ratification vote that you've seen Exhibits 82 and 85?
A. These two exhibits.
Q. Right.
A. No.
Q. Why not?
MR. SEARCY: Objection; vague.
A. I don't know.
Q. What is your understanding, if any, as to how the subject of the termination of Jim Cotter, Jr. as president and CEO of RDI came to be raised at a meeting on May 21, 2015?
A. I'm sorry, repeat that.
Q. Sure. What is your understanding, if any, as to how the subject of the termination or the possible termination of Jim Cotter, Jr. as president and CEO of RDI came to be raised at the meeting of May 21, 2015?
A. The board's dissatisfaction with Jim Cotter, Jr.
Q. What's the basis for that answer? How do

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you know that?
A. The most important job of a board is to hire and fire, if necessary, a CEO. And Jim's employment agreement gave the board the specific right for both of those items.
Q. The question was, how do you know that the subject of the termination of Jim Cotter, Jr. as president and CEO of RDI was raised on May 21, 2015 because of, to use your words, the board's dissatisfaction with Jim Cotter, Jr.?
A. Specific to that date I don't know.
Q. And when you referred to the board's dissatisfaction with Jim Cotter, Jr., how and when did you learn what you're characterizing as the board's dissatisfaction with Jim Cotter, Jr.?
A. I don't recall specifically.
Q. When you used the phrase "the board's dissatisfaction with Jim Cotter, Jr.," are you referring to something other than what you've already described to me this morning? And if so, what?
A. Boardroom discussion, as I mentioned. Nothing more.
Q. Okay, I'm trying to exhaust your testimony, Mr. Wrotniak, but I'm not asking you to repeat anything.

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So when you say boardroom discussion, as you mentioned, nothing more, you're referring to your prior testimony, is that correct?
A. Yes.
Q. Did you ever hear or learn or were you ever told, including by Bill Gould in particular, that either he or then RDI director Tim Storey first learned that the possible termination of Jim Cotter, Jr. was going to be taken up on May 21, 2015, only a couple days or days beforehand?
A. No.
Q. When you voted on December 29 to ratify the decision concerning the termination of Jim Cotter, Jr. as president and CEO of RDI, why did you do so?
A. I was asked to take a vote, and it was my decision.
Q. Why did you vote yes, is the question I'm asking? When you voted on December 29 affirmatively to ratify the decision on the termination of Jim Cotter, Jr. as president and CEO of RDI, why did you do so?
A. I relied on the minutes of the meetings leading up to his termination and my firsthand experience with him at the board level.
Q. When you say your firsthand experience with him at the board level, you mean with him as the

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former president and CEO acting as another director?
A. As -- I -- yes, as a director of RDI.
Q. You never had an opportunity or occasion to interact with Jim Cotter, Jr. as president and CEO of RDI, right?
A. Yes.
Q. Yes, correct?
A. Correct.
Q. And when you refer to your firsthand experience with him as a director, what about that experience factored into your affirmative vote to ratify his termination as president and CEO of RDI?
A. His temperament, his unwillingness to take decisions, his what I interpreted as his lack of leadership skill.
Q. When you say what you interpreted as lack of leadership skill, is that referring to his unwillingness to take decisions, or something else or both?
A. I'm there referring to the aggressive way that he deals with people on the board. I also interpreted as his lack of vision.
Q. When you say "aggressive way," what does that mean? Is he forward, direct, rude, or something else?

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A. He's often rude.
Q. When you say "rude," what do you characterize as rude?
A. Significantly less than polite.
Q. Ed Kane has been rude at board meetings, correct?
A. I think you could interpret that as being rude.
Q. Particularly directed at Jim Cotter, Jr., right?
A. Yes.
Q. Doug McEachern has been rude with Mr. Cotter, Jr. also, correct?
A. I don't recall.
Q. What about Guy Adams, has he ever been rude in your presence?
MR. SEARCY: Objection; vague.
A. I don't recall.
Q. Margaret Cotter, she's been rude at board meetings, right?
MR. SEARCY: Objection; vague.
A. I'd say no.
Q. Have you ever heard Margaret Cotter be rude to Jim Cotter, Jr.?
A. No. I don't recall.

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Q. Have you ever heard that? Meaning have you ever heard or been told that she has?
A. I don't recall.
Q. I'm asking for your independent recollection, if any. What is your recollection, if any, as to what the vote among non-Cotter directors was with respect to the termination of Jim Cotter, Jr.?
A. The original termination.
Q. Yes.
A. Tim Storey and Bill Gould voted no. Guy, Doug, Margaret and Ellen voted yes, and Ed Kane as well.
Q. So it was 3 to 2 as among the non-Cotter directors, correct?
A. Yes.
Q. What have you done, if anything, to determine whether Mr. Adams was at the time of the original termination vote in 2015 conflicted in any respect?
MR. SEARCY: Objection; vague.
A. I've considered that when he voted yes, he was not considered -- he was considered independent.
Q. By whom?
A. Well, I guess by everyone.
Q. Why do you guess that?
A. Because there was no objection as to his

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vote at that point.
Q. Well, is it also possible that everyone simply abdicated their decision-making responsibilities and didn't pursue the matter and allowed him to vote?
MR. SEARCY: Objection; argumentative, lacks foundation, calls for speculation.
A. I don't know.
Q. You understand Mr. Adams remains a defendant in this derivative action?
A. I do.
Q. Do you understand why?
A. No.
Q. Did you think about that in connection with your vote to vote yes to ratify the prior decision to terminate Jim Cotter as president and CEO of RDI?
A. No.
Q. Was there discussion at the January 29, 2017 board meeting about --
MR. SEARCY: December.
MR. KRUM: Thank you.
A. I was a little nervous there because I thought --
Q. You may have missed one, right? For some lawyers that may be a technique. For others it's just a hiccup. I'm in the hiccup category. So let me try that

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again.
Was there a discussion at the December 29, 2017 board meeting about whether Mr. Adams was independent?
A. I don't recall.
Q. What is your understanding, if any, as to what the term "independent" means as used in the context of the subject of whether Guy Adams is independent?
A. Can you repeat that, please?
MR. KRUM: Can you read it for me.
(Whereupon, the referred to question was read back by the Reporter.)
A. The issue related to Guy is his -- the amount of income that he earns from the Cotter-related assets.
Q. How does that relate to the subject of his independence, as you understand it?
MR. SEARCY: He's not asking you, as I understand -- let me make sure that I clarify here, otherwise I'd object that it calls for a legal conclusion.
He's asking you for your personal understanding.
Q. That's correct.
MR. SEARCY: He's not asking for a legal

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A. I don't recall.
Q. Directing your attention, Mr. Wrotniak, to your vote on December 29, 2017 to ratify the compensation committee decision authorizing the use of non-voting stock as consideration to pay for the exercise of the 100,000 share option, on what basis did you vote in favor of that?
A. I relied on the board book materials that were provided to us.
Q. At the December 29, 2017 meeting, who said what, if anything, about the subject of whether the estate actually owned the 100,000-share option?
A. I don't recall anyone.
Q. You took no steps prior to voting in favor of ratification with respect to the 100,000-share option on December 29, 2017 to determine whether the estate in fact owned that option, correct?
MR. SEARCY: Objection; vague, lacks foundation.
A. I relied on the board materials that were provided.
Q. Do you recall if any of those board materials actually addressed the subject of whether the estate owned the 100,000-share option?
A. I did not see anything in Jim's e-mail,

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nor in Dev's e-mail that would suggest that there was an issue.
Q. What steps, if any, did you take to inform yourself with respect to the ratification vote regarding the 100,000-share option, if any, other than reviewing Exhibit 525, the board package?
A. I don't recall any.
Q. I direct your attention, Mr. Wrotniak, to the page in Exhibit 525 that has the production number 7213 at the lower right-hand corner. You'll see that purports to be the first page of four pages of minutes from a September 21, 2015 compensation and stock option committee meeting. Do you have that?
A. Yes.
Q. In particular I direct your attention to the second full paragraph on that page. You'll see that five lines from the top it begins with the word "held by the estate to acquire 100,000 shares of the company's Class B common stock." So if you work down the left-hand margin of the paragraph that begins with Chairman Kane --
A. Held, yes.
Q. Do you recall -- well, first of all, did you review these minutes in preparation for the December 29, 2017 meeting?

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A. Yes.
Q. When you did, did you notice it used the word "held"?
A. I do not recall.
Q. Does that mean anything to you that it says "held"?
MR. SEARCY: Objection; vague. Lacks foundation.
A. I don't know.
MR. SEARCY: Mark, I think that last night Noah, or someone from our office, sent out one of the properly redacted versions of these. I don't know if you're getting into any of the stuff that's been redacted. I certainly reserve my rights on that.
MR. KRUM: Okay.
MR. SEARCY: I don't want to slow down your examination, but I also don't want to get into anything privileged.
MR. KRUM: Well, you're not waiving anything is what you're telling me. And I acknowledge that.
MR. SEARCY: Appreciate it.
Q. Do you own securities of public companies other than RDI?
A. Yes.
Q. Are they in your name or -- well, strike

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that. Do the proxy materials come directly to you or do they come through the brokerage company through which you hold the securities?
A. Both.
Q. Do you understand the distinction between being a legal and beneficial owner of securities?
A. As opposed to?
Q. Well, the difference between being a legal and beneficial owner.
A. I wouldn't want to have that conversation with you.
Q. Have you ever looked at -- do you know what a NOBO list is?
A. No.
Q. Have you ever looked at any RDI books and records that purport to identify the holders or owners of RDI stock?
A. Have I looked at any books or records. I don't recall. Doug McEachern suggested that we look at the list of the major shareholders. I've looked at that.
Q. For what purpose?
A. General background.
Q. By "major shareholders," you're talking about Class A, Class B or both?

MR. KRUM: I believe that was, yes.
MR. SEARCY: I'll follow up with him on that.
MR. KRUM: I don't think there's any reason to take Mr. Wrotniak's time about that.
MR. SEARCY: He's not even part of that committee, so.
MR. KRUM: I don't have any further questions. All rights are reserved.
Thank you, sir, for your time and off we go to the next one I guess.
MR. SEARCY: Thank you. No questions from me.
THE VIDEOGRAPHER: This concludes today's deposition of Michael Wrotniak. We are now off the record at 12:25 p.m.
(Whereupon, at 12:25 P.M., the Examination of this witness was concluded.)

° ° ° °

D E C L A R A T I O N

I hereby certify that having been first duly sworn to testify to the truth, I gave the above testimony.

I FURTHER CERTIFY that the foregoing transcript is a true and correct transcript of the testimony given by me at the time and place specified hereinbefore.

_____
MICHAEL WROTNIAK

Subscribed and sworn to before me
this _____ day of _____ 20___.

_____
NOTARY PUBLIC

E X H I B I T S

(None)

I N D E X

INFORMATION AND/OR DOCUMENTS REQUESTED
(None)

QUESTIONS MARKED FOR RULINGS
(None)

C E R T I F I C A T E

STATE OF NEW YORK)
: SS.:
COUNTY OF WESTCHESTER)

I, SUZANNE PASTOR, a Notary Public for and within the State of New York, do hereby certify:
That the witness whose examination is hereinbefore set forth was duly sworn and that such examination is a true record of the testimony given by that witness.
I further certify that I am not related to any of the parties to this action by blood or by marriage and that I am in no way interested in the outcome of this matter.
IN WITNESS WHEREOF, I have hereunto set my hand this 16th day of March 2018.

Suzanne Pastor
_____
SUZANNE PASTOR

EXHIBIT E

DISTRICT COURT

CLARK COUNTY, NEVADA

JAMES J. COTTER, JR., individually and 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 Coordinated with: Case No. P-14-082942-E Case No. A-16-735305-B Volume II

(Caption continued on next page.)

VIDEOTAPED DEPOSITION OF JUDY CODDING

Wednesday, February 28, 2018

Los Angeles, California

REPORTED BY:

GRACE CHUNG, CSR No. 6426, RMR, CRR, CLR

FILE NO.: 453340-B

individually?

A. Yes.

Q. And you understand that they represent -- represented you in connection with this derivative lawsuit; right?

A. Yes.

Q. And you understand Mr. Tayback and any of his colleagues or anyone else at Quinn Emanuel to represent you in any context or for any purpose other than this derivative lawsuit?

A. I think that's what they represent us for.

MR. KRUM: So you weren't here this morning, Chris. I asked the minutes for this meeting be produced. And I don't know what Marshall and Mark have done, but that request stands.

Q. What did you do, Ms. Codding, if anything, other than review Exhibit 525 to prepare yourself for the December 29, 2017, board meeting?

A. For that specific meeting?

Q. Right.

A. Nothing.

Q. Now, directing your attention to the ratification decision you've identified earlier concerning the termination of Jim Cotter, Jr., as

president and CEO, you have that in mind?

A. Yes.

Q. You voted to ratify that decision; correct?

A. I did.

Q. And on what basis did you do so, meaning what information did you consider?

A. I considered the two years that I've spent on the board with interacting with Jim Cotter, Jr. I considered the documents that I've read. I've considered the conversations that I've had with Jim Cotter, Jr., and myself. I've considered conversations that I've had with other directors, and came to my own conclusion about what would be in the best interests of all shareholders of Reading.

Q. As of the date you voted?

A. Yes.

Q. Did you come to the conclusion as to what was the appropriate decision as of the time it was made in 2015?

A. The only thing that I had to go on, since I was not a part of those decisions, was certainly reading the minutes. I spoke with the independent board members about it over a period of time as to

why Jim Cotter, Jr., was removed. Understood the thinking and rationale for that decision.

Q. So you've now twice referred to communications with other board members. With which board members did you have such communications?

MR. TAYBACK: Object to the premise of the question about how many times she's referenced it.

You can answer the question, who you spoke to.

A. I spoke to Bill Gould, Doug McEachern, Ed Kane, Guy Adams, Mike Wrotniak, although he wasn't there either, but we spoke about what our understandings have been. I spoke with Jim Cotter, Jr., Margaret Cotter, and Ellen Cotter.

Q. Were any of those conversations in December of 2017?

A. They've gone on for a long period of time, so I -- I can't tell you whether they were or not.

Q. Well, prior to December of 2017, and excluding your prior deposition in this case, on what occasion, if any, in 2017, did you have to consider the subject of termination of Jim Cotter, Jr.?

A. I didn't have to consider it until

indicates that you said you had extensive knowledge about the board's reason for the termination of Mr. Cotter, Jr.

Do you see that?

A. Yes, I had knowledge. I thought -- think it's extensive. My opinion is, because I tried to find out from, as I've told you, from the other board members why they took the positions that they took, and then I've read the minutes of the meetings.

But I've also stated I wasn't present during this period of time.

Q. And other than what you've described or referenced in your prior testimony, both in your prior deposition and today, do you have any source of information or knowledge regarding the termination of Mr. Cotter or the reasons for it?

A. I think -- I -- I think I understood the lack of experience, the inadequate knowledge and background before the deposition. I also had seen issues of temperament, but since the deposition, I have found Jim to -- to be angrier and to be more upset, to be less prepared for meetings, to be not understanding and not listening like you would expect a director to -- to vote against almost

every measure that came up, and, to me, much more focused on process than on content, to not have an understanding of the strategy, and seeing behavior on his part that has been upsetting.

Q. When you say in that last answer, Ms. Codding, "since the deposition," you're referring to your deposition a year ago?

A. Yes.

Q. When you referred to Mr. Cotter being more focused on process than content, are you referring to complaints he makes about board packages not being delivered far in advance for him --

A. Oh, that --

Q. -- to review it?

A. That is just one example. And that I found that he has not read a lot of the material, and, therefore, he asks questions that are answered in the materials over and over again.

Q. You also referred to strategy.

What are you referencing by "strategy"?

A. The business strategy, because we're constantly looking at where we are in relation to the business strategy and where we are in meeting the targets division by division. Every head of the division gives us a major report on what has

happened.

Q. And by "division," are you referring to cinema on the one hand and non-cinema on the other?

A. I'm referring to a breakdown between the U.S. cinema operations, the real estate operations, and the U.S. Australia and New Zealand, and within those each of the properties.

Q. Without repeating anything you've said at the prior deposition or for that matter today, what discussions did you have with Doug McEachern about the termination of Jim Cotter, Jr., as president and CEO or the reasons for it?

A. I think I've told you I spoke to all of the directors.

Q. Okay. So if I ask you that same question with respect to each of them, your answer would be you've already told me?

A. Yes.

MR. KRUM: Okay. I'm not trying to repeat anything, nor am I trying to --

MR. TAYBACK: Sure.

MR. KRUM: -- anything.

MR. TAYBACK: Okay. I get it.

BY MR. KRUM:

Q. What did Michael Wrotniak say, if

discussions did you have with respect to the subject of the termination of Jim Cotter, Jr., and the reasons for it?

A. I think we just mainly talked about the understanding that -- that we had gotten as to why the directors thought it was in the best interests of Reading that Jim not be the CEO, and it had to do with what we've already talked about.

Q. So there's nothing that you have to add to that?

A. No.

Q. Directing your attention to the second ratification decision, I'm going to ask for your independent recollection --

A. Okay.

Q. -- before we start slogging through --

A. All right.

Q. -- the documents.

What's your recollection of what it is you voted to ratify on December 29, 2017, in terms of the 100,000 share option?

A. It was that both Margaret and Ellen could take their A shares and get the B shares.

Q. So what you ratified was the use of Class A nonvoting stock to pay for the exercise of an

option to acquire 100,000 shares of Class B voting stock?

A. In general.

Q. What did you do, other than review the board package, which is Exhibit 525, to inform yourself to make the decision to vote in favor of that ratification?

A. I asked our attorney whether this was legal in his opinion.

Q. And --

A. And we had --

MR. TAYBACK: And I'm just going to interpose an admonition that -- not to disclose the advice that was given, but you can certainly say that you sought legal with counsel.

A. And sought legal counsel --

(Speakers talking simultaneously.)

A. And had a -- and had a discussion about it.

MR. TAYBACK: Very good.

BY MR. KRUM:

Q. The attorney in question is who?

A. I think it was multiple attorneys. I think it was definitely with Mike Bonner because he's present at all of our special committee

meetings, but I think Mark might have been part of that discussion. But I'm not sure.

Q. "Mark" meaning Mark Ferrario?

A. Yes.

Q. What was your understanding of who was seeking to exercise the 100,000 share option?

A. I would have to look at it specifically because Ellen was exercising one set and Margaret was doing another, so I'd have to look specifically at it. But the intent, I felt, was both the same. It was...

Q. Well, all of my questions, Ms. Codding, are confined to the exercise of the 100,000 share option --

A. Do you mind if I look at it?

Q. You can look, sure. I'm not asking about any exercise --

A. Oh, wait. I --

Q. -- options held --

A. -- this thing --

Q. -- individually by Margaret or Ellen.

(Miscellaneous comments.)

BY MR. KRUM:

Q. Okay. So the question was: What was your understanding of whose exercise of the 100,000

share option it was that the compensation of the stock option --

A. It was for the estate.

Q. For the estate?

A. Uh-huh.

Q. And did your ratification decision ratify anything other than the use of Class A nonvoting stock as consideration for the exercise of the 100,000 share option?

MR. TAYBACK: Objection. Calls for a legal conclusion.

You can answer.

A. Well, it went back to the 2015 meeting to permit the estate to use Class A. That's what I understood that we voted on, the resolution. Since I was not -- maybe it's something I'm volunteering, but since I was not present, I was interested in why Jim objected to it, not understanding it. And he didn't really want to discuss it, so I don't really thoroughly understand his objection.

BY MR. KRUM:

Q. And when you -- when you say he didn't want to discuss it, are you referring to the December 29, 2017, meeting?

A. Yes.

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

I, GRACE CHUNG, RMR, CRR, CSR No. 6246, a Certified Shorthand Reporter in and for the County of Los Angeles, the State of California, do hereby certify:

That, prior to being examined, the witness named in the foregoing deposition was by me duly sworn to testify the truth, the whole truth, and nothing but the truth;

That said deposition was taken down by me in shorthand at the time and place therein named, and thereafter reduced to typewriting by computer-aided transcription under my direction;

That the dismantling, unsealing, or unbinding of the original transcript will render the reporter's certificate null and void.

I further certify that I am not interested in the event of the action.

In witness whereof, I have hereunto subscribed my name.

Dated. March 14, 2018

GRACE CHUNG, CSR NO. 6246
RMR, CRR, CLR

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6/18/2018 10:07 AM
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EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiff,

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

JOINDER OF DEFENDANTS ELLEN COTTER, MARGARET COTTER, AND GUY ADAMS TO RDI'S COMBINED OPPOSITION TO COTTER, JR.'S MOTION TO COMPEL AND MOTION BASED ON NONCOMPLIANCE WITH COURT'S MAY 2, 2018 RULINGS

Judge: Hon. Elizabeth Gonzalez
Date of Hearing: June 19, 2018
Time of Hearing: 8:30 a.m.

DECLARATION OF MARSHALL M. SEARCY III

I, Marshall M. Searcy, III, state and declare as follows:

1. I am a member of the bar of the State of California, and am a partner with Quinn Emanuel Urquhart & Sullivan, LLP, attorneys for Defendants Margaret Cotter, Ellen Cotter, and Guy Adams (collectively, the "Remaining Director Defendants"). I make this declaration based upon personal, firsthand knowledge, except where stated to be on information and belief, and as to that information, I believe it to be true. If called upon to testify as to the contents of this declaration, I am legally competent to testify to its contents in a court of law. This declaration is made in good faith and not for the purpose of delay.

2. Attached hereto as **Exhibit 1** is a true and correct copy of the transcript of May 2, 2018 evidentiary hearing before the Court in this matter.

3. Attached hereto as **Exhibit 2** is a true and correct copy of the Court's May 2, 2018 Minute Order.

4. Attached hereto as **Exhibit 3** is a true and correct copy of excerpts from the deposition transcript of William Gould, dated April 5, 2018.

5. Attached hereto as **Exhibit 4** is a true and correct copy of excerpts from the deposition transcript of Douglas McEachern, dated February 28, 2018.

6. Attached hereto as **Exhibit 5** is a true and correct copy of the Amended and Restated Bylaws of RDI, last revised on December 28, 2011.

7. Attached hereto as **Exhibit 6** is a true and correct copy of is a true and correct copy of a produced in this litigation by RDI, bearing the Bates No. RDI0063804, which represents the Minutes of the RDI Board of Directors Meeting, dated December 29, 2017.

8. Attached hereto as **Exhibit 7** is a true and correct copy of Plaintiff's supplemental privilege log, served in this action on August 8, 2016.

9. Attached hereto as **Exhibit 8** is a true and correct copy of RDI's Amended Privilege Log (Responses to JJC Jr.'s RFPs dated January 12, 2018), dated June 15, 2018.

I declare under penalty of perjury under the laws of the State of Nevada that the foregoing is true and correct.

Executed on June 17, 2018, in Los Angeles, California.

Marshall M. Searcy, III

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INTRODUCTION

Plaintiff's Motion to Compel, coupled with his related Motion for Relief, is nothing more than a bald attempt to conjure, through innuendo, factual distortion, and inapposite case law, an irrelevant, immaterial issue that has no bearing on the pending dispositive motions so that Plaintiff can avoid the incontrovertible legal impact of the RDI's Board's December 29, 2017 ratification decisions on his claims and delay trial—yet again. The Remaining Director Defendants join RDI and William Gould in urging that the Court reject Plaintiff's gambit, which has no basis under the relevant facts or governing law, for the following reasons:

- This Court has already reviewed—and rejected—many of the same privilege challenges that underlie Plaintiff's motion. For instance, prior to the parties' May 2, 2018 evidentiary hearing, the Court reviewed the Minutes of the Special Independent Committee Meeting of December 21, 2017, and determined both at the hearing and in a minute order that the privilege redactions at issue were proper; during the course of testimony at that hearing, the Court also repeatedly sustained privilege objections in the same areas now sought. Plaintiff cannot, and does not even attempt to, satisfy Nevada's requirements for reconsideration.

- Plaintiff's legal argument that any attorney-client privilege or work product protection has been waived relies entirely upon a false scenario in which an adversarial special litigation committee exonerated the Remaining Director Defendants and voted in favor of ratification on December 21, 2017. But this is not what happened, as the actual evidence establishes. Not only was RDI's three-person Special Independent Committee ***not*** in an adversarial position with respect to the Remaining Director Defendants (as its Chairman, Mr. Gould, confirmed), but as its counsel (Mike Bonner) testified, the meetings of the Special Independent Committee in which ratification was discussed had no real consequences: no votes were held and no recommendations were made, and the committee's involvement in the ratification issue ended on December 21, 2017. Instead, a five-person majority of the Board, already determined to be independent by this Court, acting separate and apart from any committee, invoked a provision under RDI's Bylaws to call a full Board meeting, and subsequently ratified two previous decisions (one by the Board as it existed at the time of

Plaintiff's termination and the other by the Compensation and Stock Options Committee as it existed at the time that it was requested to approve the use of Class A Non- Voting Common Stock to exercise options to acquire Class B Voting Common Stock). All current directors were present at the December 29, 2017 ratification meeting, including Plaintiff, who was provided an opportunity to vote for or against ratification, as well as to ask questions and to advocate why these actions should or should not be ratified. Thus, the cases cited by Plaintiff—where a privilege waiver occurred when an adversarial special litigation committee, composed of a subset of directors and cordoned off from the full board, chose to itself extinguish a litigation in secret and then render a report—are irrelevant and involve an entirely different factual situation.

- Plaintiff is left with a number of untenable challenges to documents withheld by RDI under the attorney-client privilege and work product doctrine. Under settled Nevada law, the fact that RDI Board has invoked of the business judgment rule as a defense, or that its exercise of its business judgment also has strategic legal implications, does not waive the privilege. Plaintiff's alternative theory that confidential communications concerning a potential legal and business strategy between a corporate counsel (Greenberg Traurig) and the company's general counsel (Craig Tompkins), its President and CEO (Ellen Cotter), and a Director (Margaret Cotter who, collectively with Ellen Cotter, controls the majority of voting stock in RDI) somehow waived the privilege is equally absurd; these individuals are well within the classic sphere of corporate privilege. Even if they were not, Plaintiff has not—and cannot—show any work product waiver. In Nevada, opinion work product cannot be waived, selective disclosure does not waive work product protection, and the client alone cannot waive the protection. Thus, under no theory is Plaintiff entitled to the additional documents he seeks.

- Under any scenario, Plaintiff is not entitled to any further discovery. There was nothing "concealed" about the December 21, 2017 Special Independent Committee meeting—which itself is immaterial. The minutes were produced to Plaintiff during the normal course of ratification discovery, and each of its participants testified about the meeting at deposition. The fact that the meeting occurred is not a new discovery; Plaintiff has known about it since late February 2018. Nor does Plaintiff need additional time to challenge entries on RDI's privilege

log. Pursuant to agreement of the parties, RDI provided Plaintiff with the bulk of the documents described in those entries. Plaintiff's predictable complaint that he has not had enough time to review these documents is belied by the actual timing of their production and the fact that they are mostly duplicative draft SEC filings and associated emails. The remaining documents, which Plaintiff has not even tried to review, are assorted scheduling and other administrative emails.

- Plaintiff's request for even more days of deposition with individuals he has already questioned—often multiple times—is beating a dead horse. The Court has already provided Plaintiff with ample opportunity to depose the relevant actors regarding ratification. There is nothing more to be gleaned; although Plaintiff obviously wants to revisit the issue of directorial independence, he cannot—it is the settled law of the case, certified as "final" by this Court, now on appeal. There is *no genuine dispute* about any of the material, relevant facts regarding ratification, which are: (1) the Court determined there is no disputed issue of fact regarding the independence of Edward Kane, Doug McEachern, Judy Codding, Michael Wrotniak, or William Gould; (2) Nevada law permits ratification of prior decisions; (3) an independent majority (per the Court's order) of RDI's Board of Directors voted to ratify certain prior Board decisions at issue in this matter; and (4) Plaintiff does not, and cannot, dispute the accuracy of the minutes of the Board meeting regarding ratification. The miniscule nuances of when RDI's Board members discussed ratification are *immaterial* to the Remaining Director Defendants' Motion for Summary Judgment, which is ripe for resolution.

- Finally, Plaintiff's request for sanctions that would bar a ratification defense is completely unsupportable. There has been no violation of any discovery rule. Nor is there any evidence supporting a "willful" violation of one (as required for sanctions), let alone a willful violation by a party actually asserting the ratification defense. And even if there was some merit to any of Plaintiff's arguments (which there is not), such an extreme penalty would be entirely disproportionate given, at worst, good faith differences of opinion about nuanced privilege calls.

Plaintiff's twin motions are a meritless detour. Neither resolution of the Remaining Director Defendants' Motion for Summary Judgment nor trial should be delayed so that Plaintiff can continue his farce of taking unnecessary discovery and pointless depositions.

ARGUMENT

I. THE COURT HAS ALREADY REJECTED PLAINTIFF'S PRIVILEGE CHALLENGE TO MANY OF THE DOCUMENTS AT ISSUE

Plaintiff's motions entirely ignore that the Court has previously considered the issue of privilege with respect to many of the documents he now seeks, and has already decisively rejected his privilege challenges. Under Nevada law, motions for reconsideration are appropriate only where "substantially different evidence is subsequently introduced or the decision is clearly erroneous." *Masonry & Tile Contractors Ass'n of S. Nev. v. Jolley, Urga & Wirth, Ltd.*, 113 Nev. 737, 741, 941 P.2d 486, 489 (1997). Moreover, "[p]oints or contentions not raised in the original hearing cannot be maintained or considered on rehearing." *Achrem v. Expressway Plaza Ltd. P'ship*, 112 Nev. 737, 742, 917 P.2d 447, 450 (1996). In his motion, Plaintiff does not even attempt to grapple with these requirements, let alone provide evidence sufficient to satisfy them. This alone is sufficient to warrant the denial of the bulk of his attempted "do-over."

RDI submitted numerous documents for the Court's *in camera* inspection prior to the parties' May 2, 2018 evidentiary hearing. These documents ***included*** the unredacted Minutes of the December 21, 2017 Meeting of the Special Independent Committee of the Board of Directors that Plaintiff now seeks, along with other previously-withheld documents that "mention, concern, or in any way relate to the December 21, 2017 meeting . . . , including its scheduling, scope, minutes, or anything else." (Mot. to Compel at 19.) In fact, at the May 2, 2018 hearing, the Court recognized that the full December 21, 2017 minutes were now within its possession and further noted, "I have now read the minutes." (Searcy Decl. Ex. 1 (5/2/18 Hr'g Tr.) at 26:7-21; *see also* Searcy Decl. Ex. 2 (5/2/18 Minute Order) at 2 ("The Court has reviewed in camera the redacted version of the meeting minutes, MARKED as Court's Exhibit 1, and the unredacted version, MARKED as Court's Exhibit 2.").)

Time and time again, when Plaintiff attempted to get into the substance of the December 21, 2017 meeting during the evidentiary hearing, the Court sustained RDI's attorney-client privilege objections; it prohibited questioning in the same areas that Plaintiff now seeks, and repeatedly admonished Plaintiff's counsel for ignoring its rulings and attempting to obtain

privileged testimony through back-door means. (*See, e.g.*, Searcy Decl. Ex. 1 (5/2/18 Hr'g Tr.) at 36:13-21 (privilege objection sustained where Plaintiff asked, "[D]id one or more of the committee members say in words or substance that they agreed with or approved pursuing the subject of ratification with the full board of directors?"); at 48:23-49:7 (privilege objection sustained where Plaintiff asked whether "[e]ach of Gould, Codding, and McEachern at the December 21 special committee meeting agreed that ratification would be formally pursued with the full RDI board"); at 49:22-51:1 (privilege objection sustained where Plaintiff asked whether a December 27, 2017 email from Gould's assistant "is unrelated to the conversations concerning ratification at the December 21, 2017, special independent committee meeting"); at 59:17-60:2 (privilege objection sustained where Plaintiff asked whether Mr. Bonner had "any discussions with any or all the members of the special independent committee about the subject matter of Greenberg Traurig jointly representing the company and the special independent committee").)[1]

After the conclusion of the May 2, 2018 evidentiary hearing, the Court issued a Minute Order that addressed the December 21, 2017 minutes, in which it formally "SUSTAIN[ED] the privilege assertions and d[id] not order that further information be produced." (Searcy Decl. Ex. 2 (5/2/18 Minute Order) at 2; *see also id.*, Ex. 1 (5/2/18 Hr'g Tr.) at 73:8-20 (same).) Despite Nevada's strict reconsideration requirements, Plaintiff has not provided new, substantially different evidence or argument showing that the Court's previous rulings were "clearly erroneous." To the extent that Plaintiff's motions again seek these same documents, they should be denied.

II. PLAINTIFF MISREPRESENTS THE RELEVANT FACTS AND RELIES ON INAPPOSITE CASE LAW THAT ADDRESSES UNRELATED SITUATIONS

Plaintiff tries to justify his privilege challenges by citing to a smattering of cases from foreign jurisdictions that address drastically different situations from the one at hand; these

[1] Mr. Bonner of Greenberg Traurig also testified under oath at the May 2, 2018 hearing that he did not provide any documents to the members of the Special Independent Committee "in anticipation of or as a result of" the meeting (*see* 5/2/18 Hr'g Tr. at 49:22-18), which further obviates Plaintiff's renewed demand for documents that "mention, concern, or in any way relate to the December 21, 2017 meeting . . . , including its scheduling, scope, minutes, or anything else." (Mot. to Compel at 19.)

rulings reflect easily distinguishable privilege determinations and hold no persuasive value here. (*See* Mot. to Compel at 22-26.) In attempting to analogize these unrelated decisions issued by non-Nevada courts, it is clear that Plaintiff has fundamentally misstated the role of RDI's Special Independent Committee and misrepresented the actual facts leading up to the determination by five independent RDI Board members at a full Board meeting on December 29, 2017 to ratify two 2015-era decisions. (*See id.* at 11-19.)

For instance, in *SEC v. Roberts*, the court noted, in *dicta*, that the board would not have possessed "a common interest with the Special Committee since it was the Special Committee's mandate to ascertain whether members of the Board . . . may have engaged in in wrongdoing." 254 F.R.D. 371, 378 n.4 (N.D. Cal. 2008).[2] Similarly, the special committee in *Ryan v. Gifford* had "a relationship more akin to one adversarial in nature" with several directors; because of this, the court, holding in the alternative through *dicta*, determined that any attorney-client privilege over the special committee's investigation and final report to the full board would have been waived by the "presentation of the report," especially because "the individual director defendants specifically rely on the findings of the report for exculpation as individual defendants." Civ. A. No. 2213-CC, 2007 WL 4259557, at *3 (Del. Ch. Nov. 30, 2007).[3] And both in *Klein ex rel. Klein v. FPL Grp., Inc.*, No. 02-20170-CIV, 2003 WL 22768424, at *11 (S.D. Fla. 2003), and

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[2] The *Roberts* court's actual holding was that "a waiver has been effectuated with respect to the factual information actually provided to the government or the Board" following a company's internal investigation of a stock option backdating scandal, and therefore any potentially exculpatory information also had to be provided to an individual defendant eventually charged with backdating-related securities violations. *Id.* at 377-78.

[3] The *Ryan* court's actual holding was that "the privilege does not apply here because plaintiff's showing of good cause vitiates it." *Id.* There, unlike this case, Plaintiff was unable to get any of the information he needed because of it was unavailable from other sources, including "the unavailability of witnesses due to invocation of the Fifth Amendment privilege not to testify." *Id.*; *see also Ryan v. Gifford*, Civ. A. No. 2213-CC, 2008 WL 43699, at *4 (Del. Ch. Jan. 2, 2008) (emphasizing that the "good cause" determination was the driver of the court's privilege decision). Here, as explained *infra* Section V(B), numerous board members have provided deposition testimony about the ratification process in general and the December 21, 2017 Special Independent Committee meeting specifically, and will appear at trial (if necessary) to provide further testimony. Plaintiff, recognizing that he cannot show similar "good cause" to override the privilege, has not even attempted this argument.

Joy v. North, 692 F.2d 880, 893 (2d Cir. 1982), as Plaintiff admits, the "special committee conduct[ed] an investigation and issued a report that recommended that dismissal of derivative actions be sought" (Mot. to Compel at 25), which then opened up "not only its report but all underlying data" to discovery. *Joy*, 692 F.2d at 893.

These situations are vastly different from what occurred in this case. Here, RDI has a Special Independent Committee, which is constituted with three members: William Gould, Douglas McEachern, and Judy Codding. (*See* Searcy Decl. Ex. 1 (5/2/18 Hr'g Tr.) at 20:9-11 (Bonner, M.).) But, as Mr. Gould (its Chairman) explained, the Special Independent Committee is not like the special litigation committees in the cases cited by Plaintiff; RDI's committee does not "have different objectives" from the rest of the Board, and it has never been involved in "a situation where the committee felt that there could possibly be any conflict." (Searcy Decl. Ex. 3 (4/5/18 Gould Dep.) at 516:11-519:2.) Indeed, RDI's Special Independent Committee was not focused on investigating or exonerating certain directors, nor did it engage with any of the current or former director-defendants in an adversarial manner. Rather, as its counsel, Mike Bonner of Greenberg Traurig, confirmed, the Special Independent Committee meetings, of which "there were several of them, were basically updates." (Searcy Decl. Ex. 1 (5/2/18 Hr'g Tr.) at 40:20-41:25 (Bonner, M.).) The Special Independent Committee meetings "were merely update status calls" where the committee "was getting updates on the status of some potential settlements of either this action or related actions" and discussing "significant concerns about the timing of the trial." (*Id.*) Thus, unlike in the cases relied on by Plaintiff, the current or former Defendants never became adversarial third parties to RDI's Special Independent Committee such that the "common interest" between the committee and RDI itself could have been placed in jeopardy. There is thus no basis for Plaintiff's "waiver" analogy to the cases he collects.

Moreover, the Special Independent Committee played virtually no role in the ratification decision at issue. Plaintiff has inaccurately asserted that the committee "approved 'ratification' of the two decisions [the termination of Plaintiff and permission to the Cotter Estate to use Class A stock to pay for a Class B stock-option exercise] which thus became the subject of 'ratification' votes at the December 29, 2017 Board meeting." (Mot. to Compel at 14.) This is

not true. In fact, the Special Independent Committee held no votes on any ultimate issue of liability, generated no reports (draft or final), and made no recommendations that any directors be exonerated. As Mr. Bonner testified under oath before the Court at the May 2, 2018 hearing (when explaining his delay in preparing minutes for the insignificant Special Independent Committees meetings as opposed to the critical Minutes of the RDI Board of Directors Meeting on December 29, 2017): "***[T]here was no formal action taken*** in any of these [Special Independent Committee meetings], so ***they didn't have any particular consequence***. . . . The special independent committee meetings were merely update status calls, if you will." (Searcy Decl. Ex. 1 (5/2/18 Hr'g Tr.) at 40:20-41:25 (Bonner, M.) (emphasis added); *see also id.* at 34:3-6 (Bonner, M.) (confirming that the scheduling emails calling for a full RDI Board meeting to vote on possible ratification in late December 2017 were not "prepared as a result of what happened at the special independent committee's meeting in December").) Thus, unlike the cases cited by Plaintiff, this also was not a situation where a special litigation committee, composed of a subset of directors and cordoned off from the full board, exercised its powers in secret to itself extinguish a litigation and thereafter rendered a report to the full board, causing a waiver of its report and any underlying data utilized.

In reality, the December 29, 2017 ratifications were ***openly driven by the five independent directors sitting on the full Board***—Edward Kane, Douglas McEachern, William Gould, Judy Codding, and Michael Wrotniak—***not the three-person Special Independent Committee***. It was these five directors, "who together constitute a majority of the Board of Directors," that formally asked Ellen Cotter in her capacity as CEO and President of RDI to call a full Board meeting to discuss the possibility of ratification. (Mot. to Compel, Ex. 6 (12/27/17 Wizelman Email).) These directors specifically invoked "Reading International, Inc. Bylaws, Art. 2, Section 7" in making this request. (*Id.*) That provision explicitly requires "the written request of a majority of the directors" to call a special meeting; any request by a three-person committee (such as the Special Independent Committee) is insufficient. (Searcy Decl. Ex. 5 (Bylaws), Art. II, § 7.) The agenda for the December 29, 2017 full Board meeting, circulated by Ms. Cotter's assistant on December 27, 2017, also reflects that ratification was to be discussed

"[p]ursuant to a request by a majority of the Directors (Judy Codding, William Gould, Edward Kane, Douglas McEachern, and Michael Wrotniak)" (Mot. to Compel, Ex. 7 (12/29/17 Agenda)), as does an email sent by Ms. Cotter on December 28, 2017 (*see id.*, (12/28/17 Batista Email on Behalf of Ellen Cotter)). And, of course, the minutes from the December 29, 2017 RDI Board meeting, where ratification was discussed and approved, show that the request came "by a majority of the directors"—not the Special Independent Committee. (*See* Searcy Decl. Ex. 6 (12/29/17 Minutes).) As Mr. Bonner confirmed, it was the December 29, 2017 full Board meeting where "[t]here's a formal action of the board taken, so there's a legal consequence to what that board did." (Searcy Decl. Ex. 1 (5/2/18 Hr'g Tr.) at 41:19-25 (Bonner, M.).)

In an effort to avoid these distinguishing facts, Plaintiff blatantly distorts the deposition testimony of Mr. McEachern by inserting liberal parentheses; he claims that Mr. McEachern testified: "*[I]t was delegated to the [SIC] to handle this type of matters. We were approving [ratification]*." (Mot. to Compel at 14 (emphasis in original).) But Mr. McEachern actually testified that "[i]t was delegated to the compensation committee to handle this type of matter"—referring to the Compensation Committee's September 21, 2015 decision to allow the Cotter Estate to use Class A RDI stock to pay for a Class B stock-option exercise, which he thought was a *pro forma* decision that should be respected. (Searcy Decl. Ex. 4 (2/28/18 McEachern Dep.) at 503:1-509:18.) Mr. McEachern was talking about a decision by an entirely different committee (the Compensation and Stock Options Committee), not the Special Independent Committee. To the extent he then discussed ratification generally in his answer, Mr. McEachern was responding to a question about his vote "[o]n December 29, 2017" (*id.* at 506:23-507:3), and to the extent he made any allusion to the Special Independent Committee, he merely mentioned that "a call to talk about a couple of issues in this derivative case by Jim Cotter, Jr." was held and "we were trying to address them in a fashion to resolve them." (*Id.* at 507:1-12.) Mr. McEachern never mentioned any votes or final determinations by the Special Independent Committee.

Similarly, while Plaintiff claims that Mr. Gould testified that the Special Independent Committee "formally [took] action" to advance ratification (Mot. to Compel at 14), the "action"

mentioned by Mr. Gould was limited to "request[ing] that the company include the subject on the agenda for its next meeting." (*Id.*, Ex. 10 (4/5/18 Gould Dep.) at 529:10-18.) As explained above, Mr. Gould is confused that the Special Independent Committee made this request (contemporaneous documentary evidence establishes it was the five independent directors), but even as it stands, his testimony indicates the committee did nothing further than request an agenda item—no votes were taken and no recommendations on the final outcome of the issue were made. And, in contrast to *Ryan* or the other cases relied on by Plaintiff, the Remaining Director Defendants are not relying on any report or determination by the Special Independent Committee to exonerate them and avoid trial.

Ultimately, the actual facts substantiate that, as a matter of law, there could not have been a waiver of privilege relating to the Special Independent Committee because it never made any recommendation or findings regarding ratification/exoneration to the RDI Board. The process was separately driven by a majority of the overall Board outside of the parameters of the Special Independent Committee. Plaintiff is well aware of this: he was copied on the relevant agenda setting the December 29, 2017 meeting in which the potential ratifications were voted on and approved, and he fully participated in that meeting, during which he was explicitly provided every opportunity to advocate for his position (and against any ratification) and, like the other RDI Board members (other than the Remaining Director Defendants, who abstained), he was able to cast a vote on those measures. (*See* Searcy Decl. Ex. 6 (12/29/17 Minutes).) Thus, all of Plaintiff's cases involving the uses of adversarial special litigation committees are inapposite, and do not support his claims of privilege waiver.

III. THERE WAS NO WAIVER OF THE ATTORNEY-CLIENT PRIVILEGE

Plaintiff's related arguments, which suggest that RDI or its directors have somehow waived the attorney-client privilege with respect to any challenged documents for reasons other than the use of the Special Independent Committee, similarly fail.

First, contrary to Plaintiff's claims, which are unsupported by any citation to case law (Mot. to Compel. at 9-10, 28), it is black-letter law in Nevada that the invocation of the business judgment rule by RDI's Directors during and following the ratification of the two 2015-era RDI

Board decisions is not somehow inconsistent with, or a waiver of, the attorney-client privilege. *See Wynn Resorts, Ltd. v. Eighth Judicial Dist. Ct. in and for the Cnty. of Clark*, 399 P.3d 334, 341-42 (Nev. 2017) ("Wynn Resorts did not waive the attorney-client privilege as to the Brownstein Hyatt documents by asserting the business judgment rule."); *see also id.* at 345 ("a party is not required to waive the attorney-client privilege as the price for receiving the protection of the business judgment rule").

Second, Plaintiff's related attempt to create a false dichotomy between a "litigation strategy" and a "business judgment" is not supported by any authority, nor does it make logical sense. (*See* Mot. to Compel. at 9-10, 28.) It is settled under Nevada law that a corporate board may take certain actions to evaluate a potential derivative lawsuit and dismiss it if it believes the charges are unmerited or its pursuit is not in the best interests of the company. *See Matter of DISH Network Deriv. Litig.*, 401 P.3d 1081, 1087-88 (Nev. 2017) (holding that "courts should defer to the business judgment of an SLC that is empowered to determine whether pursuing a derivative suit is in the best interest of a company where the SLC is independent and conducts a good-faith, thorough investigation"). Any decision by a board or portion thereof to weigh whether to pursue or dismiss a lawsuit, or take steps and position itself so that it may have this authority, inherently involves the combination of a "litigation strategy" and a "business judgment." Separating the two concepts is a practical impossibility. Here, a majority of independent directors of RDI came to believe, based on their judgment and first-hand knowledge from their interactions with Plaintiff on the Board of Directors of RDI, that the few challenged transactions in this case for which the business judgment rule would not automatically apply under this Court's rulings were actually appropriate and justified, and it was not in the Company's best interest to continue to waste stockholders' money pursuing Plaintiff's baseless charges motivated by personal animus. Accordingly, they ratified previous decisions by RDI's directors to achieve, in their minds, the best result for RDI. Under the dual holdings of *Wynn* and *DISH Network*, the fact that the Board's informed judgment also involved legal strategy is of no moment, and has no impact on the attorney-client privilege.

Third, Plaintiff's contention that communications between and among the Special Independent Committee, Greenberg Traurig, and Craig Tompkins somehow led to a privilege waiver is absurd. (*See* Mot. to Compel at 12-18, 24.) As Plaintiff concedes, Mr. Tompkins is RDI's General Counsel. (*Id.* at 13 n.1.) Mr. Tompkins is not now—and has never been—a named defendant in any complaint filed by Plaintiff in this action. There is no separation between Mr. Tompkins' interests as General Counsel of RDI, the interests of RDI, or the interests of RDI's Special Independent Committee. Thus, the fact that Mr. Tompkins was communicating with Greenberg Traurig, the corporate counsel that represents RDI and its Special Independent Committee, regarding legal matters such as a potential ratification cannot effect a waiver. Recognizing this, the Court sustained privilege objections when Plaintiff previously attempted to inquire as to Mr. Tompkins' involvement in the ratification process. (*See, e.g.*, Searcy Decl. Ex. 1 (5/2/18 Hr'g Tr.) at 34:22-35:2, 59:9-15.)

Similarly, the fact that RDI's outside counsel, Greenberg Traurig, may have discussed in confidence certain ratification-related issues with the company's CEO and President, Ellen Cotter (who is tasked under RDI's Bylaws with calling full Board meetings), and also with—to a lesser extent—another officer and fellow director on RDI's Board, Margaret Cotter (who, collectively with Ellen Cotter, controls the majority of RDI's voting stock), in no way constitutes the waiver of the attorney-client privilege. Plaintiff has not even articulated how the legal advice provided by corporate counsel to corporate directors (who actually own and control the company) could possibly waive the corporation's privilege. *See Wynn*, 399 P.3d at 344 (providing broad attorney-client protection where advice was given during the exercise of directors' business judgment). Moreover, the Company's position has consistently been that Plaintiff's suit is meritless and should not be pursued. (*See, e.g.*, RDI's Combined Opp'n to Pl.'s Mot. to Compel and for Relief; *see also* RDI's Reply in Supp. of Its Mot. for Summ. J. Based on Demand Futility.) The Court is well aware of this, and has continually respected RDI's privilege in this matter; this instance should be no different. Given the unity of interests between RDI and Ellen and Margaret Cotter, who share a "common interest" in responding to Plaintiff's false accusations and wasteful litigation, there is no basis to order the production of further documents

withheld on the basis of attorney-client privilege. *See In re Lululemon Athletica Inc. 220 Litig.*, Consol. C.A. No. 9039-VCP, 2015 WL 1957196, at *8-9 (Del. Ch. Apr. 30, 2015) (disclosure to a corporate "representative" does not waive attorney-client privilege, especially where they share "a common legal interest" with the company in creating a "common legal strategy" to respond to "questions of potential wrongdoing").[4]

IV. THERE WAS NO WAIVER OF THE WORK PRODUCT DOCTRINE

Plaintiff has not come close to showing that the work product doctrine has been overcome. (*See* Mot. to Compel at 10, 28.) His argument fails for four separate reasons.

First, while Plaintiff claims that he has a "substantial need for the documents" to "show what actually happened in the 'ratification' process, which goes directly to the issue of independence" (*id.* at 10), Plaintiff cannot satisfy the twin requirements of Nevada's "substantial need" exception. Although Plaintiff may wish to challenge the independence of Directors Kane, McEachern, Gould, Codding, and Wrotniak yet again, Plaintiff had his opportunity after years of discovery and—as the Court recognized in its oral ruling at the December 11, 2017 hearing and through its December 28, 2017 Order—he was unable to show a genuine issue of material fact relating to their disinterestedness or independence. (*See* 12/29/17 Notice of Entry of Order.) As set forth in the Remaining Director Defendants' Reply in Support of Their Motion for Summary Judgment addressing ratification, the Court's holding is now the controlling law of the case; it has been certified as "final" under NRCP 54(b), and is on appeal before the Nevada Supreme Court. Because Plaintiff cannot relitigate this issue, he does not have a "substantial need" for work product documents.

Even assuming *arguendo* Plaintiff could show a "substantial need," Nevada law requires that he do more to overcome the protections afforded by the work product doctrine. Plaintiff

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[4] It is also noteworthy that RDI's Special Independent Committee is a subcommittee of the Board. It acts, within its delegated authority, "as the Board." In this context, there could not be a conflict of interest between Board and itself. Nevada statute specifically authorizes the use of committees, *see* NRS 78.125, and Nevada law does not draw any distinction, to the extent of any delegation, between any authorized committee and the board itself. It would chill the use of committees if such usage threw open the door to discovery of any legal advice received by a committee.

must also show that he "is unable without undue hardship to obtain the substantial equivalent of the materials by other means." NRCP 26(b)(3). Plaintiff does not even attempt to satisfy this additional prong. In fact, he cannot. Here Plaintiff was afforded the opportunity by the Court to depose—if he wished—all relevant actors regarding the December 29, 2017 ratification. Thus, he had ample "other means" outside of any work product documents to find out "what actually happened in the 'ratification' process." Accordingly, he cannot meet either prong of the test required under Nevada law to obtain non-opinion work product.

Second, Plaintiff entirely ignores the fact that under Nevada's work-product doctrine, opinion work product—the "mental impressions, conclusions, opinions, and legal theories of counsel"—receives absolute protection and is "not discoverable *under any circumstances*." *Wardleigh v. Second Judicial Dist. Ct. in and for Cnty. of Washoe*, 111 Nev. 345, 359, 891 P.2d 1180, 1189 (1995) (emphasis added); NRCP 26(b)(3). Thus, regardless of whether Plaintiff could even show a "substantial need," he would never be entitled to any opinion work product within the challenged documents.

Third, Plaintiff's attempted dichotomy between a "litigation strategy" and directorial exercise of "business judgment" is false in the work product doctrine context for the same reasons previously described in the attorney-client privilege context. (*See supra* Section III.) Moreover, the Nevada Supreme Court has rejected the "primary purpose" test for work product as a matter of law, meaning that a document can be generated for reasons in addition to potential use in a litigation (such as when directors are exercising their business judgment) and still retain work product protection. *See Wynn*, 399 P.3d at 347-48. And, of course, given that Plaintiff repeatedly argues, and concedes, that ratification was a "litigation strategy" (Mot. to Compel. at 8, 15, 28), the withheld or redacted documents on which attorneys provided their insight necessarily included protected work product. *See Assured Guar. Mun. Corp. v. UBS Real Estate Sec. Inc.*, Nos. 12 Civ. 1579, *et al.*, 2013 WL 1195545, at *8 (S.D.N.Y. Mar. 25, 2013) (documents "directed to litigation strategy" or "litigation defenses" are work product "because they would not have been produced in the form irrespective of the threat of litigation").

Fourth, Plaintiff's assertion—unsupported by any case law—that "documents prepared or reviewed by Craig Tompkins or Ellen Cotter cannot be claimed" as protected by the work product doctrine in this context is a non-starter. (*See* Mot. to Compel at 28.) As an initial matter, under Nevada law, "unlike the attorney-client privilege, selective disclosure of work product to some, but not others, is permitted, and disclosure to third parties does not automatically waive the privilege." *Cotter v. Eighth Judicial Dist. Ct. in and for Cnty. of Clark*, 134 Nev. Adv. Op. 32, 416 P.3d 228, 232 (2018) (citation omitted). Thus, even if it could have been potentially problematic, any disclosure of work product to Mr. Tompkins or Ms. Cotter is not outcome-determinative.

However, there could have been no work product waiver here. As discussed above (*supra* Section III), Mr. Tompkins is RDI's General Counsel and there is no separation between his interests and that of the Company; Ms. Cotter is the Company's CEO and a director (indeed, Chair of the Board), meaning that she can be copied on materials generated by the corporation's counsel without breaking the privilege. As also discussed above (*supra* Section II), Ms. Cotter was not in an adversarial position vis-à-vis the Special Independent Committee at the time of the challenged communications, and thus the work product protection was not waived in any way. *See Wynn*, 399 P.3d at 349 (noting that waiver of the work product protection "is, however, usually found when the material is disclosed to an adversary"). Finally, because the work product protection belongs to both the attorney and the client, *see id.* at 347, it "cannot be waived by the client alone." *AP Links, LLC v. Russ*, 299 F.R.D. 7, 14 (E.D.N.Y. 2014). Thus, even if communications to Mr. Tompkins and/or Ms. Cotter could possibly affect the protected status of their contents (which they do not), the fact that Greenberg Traurig (and Quinn Emanuel) have not waived any applicable work product protections moots Plaintiff's waiver argument.

V. NO FURTHER DISCOVERY IS WARRANTED

A. Plaintiff Has Been Provided Most of the Documents at Issue, and Has Been Afforded Ample Time to Review Them

In addition to these fatal legal impediments to Plaintiff's baseless motions, it is also clear that, as a practical matter, RDI's privilege logs are proper and document discovery cannot serve

as a valid basis for any trial continuance or sanction. Pursuant to this Court's May 2, 2018 ruling and subsequent teleconference on May 29, 2018, Defendants have produced all responsive and non-privileged communications relating to: (i) the December 21, 2017 Special Independent Committee Meeting; (ii) the December 27, 2017 email from William Gould to Ellen Cotter regarding ratification; and (iii) ratification generally (not limited by time). In addition, to obviate any potential complaints by Plaintiff, Defendants further provided Plaintiff with scores of documents listed on the RDI privilege log that relate to these three categories; such documents were designated as "Attorney's Eyes Only" and provided to Plaintiff under the strict agreement that such disclosure would not constitute a waiver of privilege.

As a result of this extensive production by Defendants, Plaintiff's manufactured grievances concerning RDI's privilege log have been obviated—a fact that Plaintiff has not revealed to the Court. Instead, in his Motion for Relief, Plaintiff cites to numerous entries on RDI's May 30 and 31, 2018 privilege logs as a purported basis for additional time to challenge what he calls "improper" entries. (*See* Mot. for Relief at 14-20.) For example, Plaintiff contends that "almost twenty (20) entries [on the May 31 privilege log] dated 12/28/2017 have a description of 'Re: Call'" and "provide absolutely no information regarding the subject matter(s) of the call(s)." (Mot. for Relief at 18.) Notwithstanding the fact that these particular entries all included outside counsel Mark Ferrario and/or Mike Bonner of Greenberg Traurig, and clearly described the nature of the privilege (*e.g.*, "Communication with Counsel," etc.), Defendants produced ***all these emails*** to Plaintiff. (*See* RDI 76390, 76391, 76403, 76466, 76469, 76511, 76522, 76544, 76552, 76563, 76565, 76621, 76629, 76633, 76915, 77009, and 77154.) Accordingly, Plaintiff's complaints regarding these emails are now entirely moot.

In addition to the foregoing documents, the following additional examples cited in Plaintiff's Motion for Relief have all been produced to Plaintiff as of June 11, 2018:

- January 7 and 9, 2017 emails regarding "alternative litigation resolution approaches" between Craig Tompkins, Greenberg Traurig lawyers Michael Bonner and Mark Ferrario, and Ellen Cotter (RDI 71285, 71288, 64885, 71279 and 71282 produced in redacted form). (*See* Mot. for Relief at 15-16.)

- December 22, 2017 email regarding "call re: letter for special committee meeting re ratification" from Mark Ferrario's assistant to Craig Tompkins (RDI 64872). (*See id*. at 16.)

- December 27, 2017 email regarding "Board agenda" from Laura Batista to Craig Tompkins (RDI 65942, 65942) and later from Craig Tompkins to Michael Bonner, Mark Ferrario and Tami Cowden (RDI 70072). (*See id.* at 16.)

- December 27, 2017 email regarding "Special Board Meeting" from William Gould to Ellen Cotter (RDI 67080, 73495, 67080, 73495). (*See id.* at 16.)

- December 27, 2017 email regarding "DRAFT BOD Agenda & Special Board Meeting" from Laura Batista to Michael Bonner (RDI 65939). (*See id.* at 16.)

- December 27, 2017 emails regarding "Ratification" between Craig Tompkins, Ellen Cotter and Greenberg Traurig lawyers Michael Bonner, Mark Ferrario and Tami Cowden (RDI 68619, 70083, 70094). (*See id*. at 16.)

- December 28, 2017 email regarding "Final Version" from Laura Batista to Michael Bonner (RDI 65937, 73079). (*See id.* at 17.)

- December 20, 2017 emails "to which no outside counsel is a party[,]" but were sent at the direction of outside counsel (CN 2174, 2496, 2558, 2559). (*See id.* at 25.)

Rather than simply admit he actually has the documents of which he complains, Plaintiff bemoans the fact that he was provided 500 documents, and grumbles that he has not had time to review them. But Plaintiff has been afforded more than ample time: the documents produced by RDI are largely duplicates, mostly of SEC filings, press releases, and communications containing draft meeting agendas and corresponding exhibits. For example, there are nine duplicates of the December 29, 2017 RDI Board materials that amount to over 140 pages each.[5] In addition, there are numerous duplicate copies of the RDI Compensation and Stock Options Committee Minutes from January 31 and February 9, 2018 and December 27, 2017 that are 100, 80 and 32 pages each, respectively.[6] Additionally, as Plaintiff himself admits, a large portion of the documents

[5] (*See* RDI 72770, 72782. 73097, 75825, 76442, 76887, 77200, 77316, 67532, 73397, 75816, 75821, 76481, 77001, 73393, 76477, 77003 and CN 2532, 3218.)

[6] (*See* RDI 63255, 63256, 71574, 71575, 71577, 72769, 72781, 76441, 76886, 77199, 77315 and CN 2532.)

produced by RDI contain draft SEC filings and press releases regarding ratification and associated emails, totaling over 2,700 pages.[7] Indeed, this set of draft SEC filings and press releases amounts to approximately half of RDI's entire production. The remainder, which Plaintiff claims he has not even tried to review, are simply scheduling emails and other such innocuous communications.[8] If draft SEC filings, press releases, and communications containing Board materials are removed, the total remaining page count is less than 1,750 pages. Plaintiff's request for more time to review these generic documents and extraneous communications is a blatant stall tactic.

Plaintiff also tries to challenge what he calls "insufficiently described" entries in RDI's May 30 and 31, 2018 privilege logs. (*See* Mot. for Relief at 20-21.) But RDI's May 30 and 31, 2018 privilege logs identify each entry's sender and recipient(s) (including cc), the email subject, the ***basis of privilege***, and more. Indeed, this is essentially the same procedure Plaintiff adopted in his own privilege log in this case, served on August 8, 2016. (*Compare* Searcy Decl. Ex. 7.) While that supplemental privilege log contained a "Description" column, the descriptions were basically several variations of "Email regarding litigation." (*See e.g.*, "Email to counsel re: litigation," "Email for purposes of legal advice in connection with litigation," "Communication to counsel re: potential litigation.") In any event, many of Plaintiff's complaints have been mooted by RDI's production,[9] and the remainder of Plaintiff's issues have also been resolved by RDI's June 15, 2018 second amended privilege log, which further detailed the basis for privilege of the remaining documents and communications withheld. (*See* Searcy Decl. Ex. 8.) In addition to the information provided in previous logs (*e.g.*, sent from/to/cc, email subject, basis for privilege, etc.), RDI further identified the general subject of the privileged communication.

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[7] (*See* RDI 67993, 69457, 73981, 67998, 69640, 74087, 68569, 69627, 74079, 63431, 63179, 68584, 63161, 70286, 70305, 74649, 63465, 67464, 63467, 73388, 68536, 67885, 67462, 75272, 68559, 67888, 69494, 74010, 67877, 65456, 67875, 69586, 63117, 69570, 69106, 69100, 63451, 69282, 63478, 63480, 69102 and 69448.)

[8] (*See e.g.*, RDI 76390, 76391, 76403, 76466, 76469, 76511, 76522, 76544, 76552, 76563, 76565, 76621, 76629, 76633, 76915, 77009, and 77154.)

[9] (*See e.g.*, RDI 67080, 73495 and CN 2174, 2496, 2558, 2559.)

(*See id.*) For example, the revised privilege log now details whether the privileged communication concerns the Special Committee, ratification, or another subject matter. (*See id.*) The June 15, 2018 privilege log unquestionably complies with NRCP 26(b)(5) and moots Plaintiff's complaints that such information was lacking.

Enough is enough. After months of discovery and evidentiary hearings, Plaintiff has had sufficient opportunity to expand the scope of discovery far beyond the scope of the December 29, 2017 meeting actually at issue. Plaintiff should not be allowed to pass through every single privilege entry arising from that expanded scope simply so he can delay his day of reckoning. *See MGM Grand, Inc. v. Eighth Judicial Dist. Ct. of & for Cnty. of Clark*, 107 Nev. 65, 70, 807 P.2d 201, 203 (1991) (affirming this Court's discretion in limiting discovery).

B. No Additional Depositions Are Necessary or Appropriate

Under any scenario, Plaintiff is not entitled to additional depositions in this action. As described above, no documents have been improperly withheld such that any further depositions or the vacatur of the July 9, 2018 trial date are possibly warranted. Contrary to Plaintiff's imagined conspiracy (*see, e.g.*, Mot. for Relief at 22-24), there was also nothing "concealed" about the December 21, 2017 Special Independent Committee meeting. The redacted minutes to that meeting were produced to Plaintiff during the normal course of ratification discovery, and Plaintiff has admittedly had them within his possession for over two months. (*See* Searcy Decl. Ex. 1 (5/2/18 Hr'g Tr.) at 32:19-33:8.) Moreover, as Plaintiff admits, he deposed all of the members of the Special Independent Committee—Mr. Gould, Mr. McEachern, and Ms. Codding—about that the December 21, 2017 meeting, and each provided testimony concerning it. (*See* Mot. to Compel at 14-15; Mot. for Relief at 21-22.) In fact, Plaintiff deposed both Mr. McEachern and Ms. Codding on February 28, 2018, meaning that he has been aware of the "concealed" December 21, 2017 meeting ***for at least four months***. And, as established above (*supra* Section II), the December 21, 2017 Special Independent Committee meeting was a complete nonevent; "no formal action" was taken and it "didn't have any particular consequence." This immaterial, irrelevant meeting cannot logically serve as the basis to reopen any depositions.

The Court has afforded Plaintiff ample opportunity over the past several months to depose any relevant person about ratification. To the extent that Plaintiff failed to take advantage of this and chose not to depose Margaret Cotter (despite being aware of her in-person discussion with Greenberg Traurig regarding ratification) or Craig Tompkins (despite his repeated appearance on the various ratification-related privilege logs produced by RDI), but now has second thoughts (*see* Mot. for Relief at 26-28), that was his tactical decision. While Plaintiff apparently, with 20/20 hindsight, believes those decisions to have been erroneous, this does not justify extending the trial date and continuing with depositions.

Of course, Plaintiff did depose William Gould, Judy Codding, Douglas McEachern, Edward Kane, and Ellen Cotter about ratification. (*See id.*) Plaintiff's additional hindsight desire to have asked them better questions or used other methods to attempt to refresh those deponents' recollections in the vain hope that he could obtain more favorable answers (*see id.*) also does not support his request for delay. *See Exmark Mfg. Co. Inc. v. Briggs & Stratton Power Prods. Grp., LLC*, No. 8:10CV187, 2015 WL 1004359, at *3 (D. Neb. Mar. 5, 2015) (denying motion to reopen deposition because "counsel could have better used his time to address pertinent questions" and deponent "should not bear the burden of [the questioner's] tactics and choices during the deposition"). At some point, Plaintiff's spate of harassing depositions needs to come to an end: Ellen Cotter (RDI's CEO) has already been deposed for five days in this case, Mr. McEachern for four days, and Margaret Cotter and William Gould for three days each. *See Francis v. Wynn Las Vegas, LLC*, 127 Nev. 657, 669, 262 P.3d 705, 714 (2011) ("[I]f the movant has previously failed diligently to pursue discovery, it is not an abuse of discretion for the court to deny the motion.") (citation omitted).

Finally, and perhaps most importantly, Plaintiff has failed to identify a single material fact that could be obtained or altered as a result of any additional testimony during any new or reopened deposition. *See id.*, 127 Nev. at 669, 262 P.3d at 714 ("[A] motion for a continuance under NRCP 56(f) is appropriate only when the movant expresses how further discovery will lead to the creation of a genuine issue of material fact.") (citation omitted). The issue that Plaintiff seeks to relitigate—directorial independence—has already been decisively adjudicated,

with the Court's ruling certified as "final" under NRCP 54(b). (*See* 1/4/18 Notice of Entry of Order Granting Plaintiff's Motion for Rule 54(b) Certification.)

Even if Plaintiff's inaccurate privilege theories were correct, and all challenged documents produced, there is nothing left to discover regarding the RDI Board's ratification votes on December 29, 2017. The relevant, material facts regarding ratification are undisputed and indisputable: (1) the Court determined there is no disputed issue of fact regarding the independence of Edward Kane, Doug McEachern, Judy Codding, Michael Wrotniak, or William Gould; (2) Nevada law permits ratification of prior decisions; (3) an independent majority (per the Court's order) of RDI's Board of Directors voted to ratify certain prior Board decisions at issue in this matter; and (4) Plaintiff does not, and cannot, dispute the accuracy of the minutes of the Board meeting regarding ratification. The miniscule nuances of when RDI's Board members discussed ratification are *immaterial* to the Remaining Director Defendants' pending Motion for Summary Judgment, and thus Plaintiff's claims of prejudice are without foundation. (*See* Mot. for Relief at 29-30.) Plaintiff's unsupportable attempt to further avoid trial via an unwarranted fishing expedition should be rejected outright.

VI. PLAINTIFF'S REQUESTED SANCTION, WHICH WOULD PRECLUDE A RATIFICATION DEFENSE, IS LEGALLY AND FACTUALLY BASELESS

Plaintiff, in his Motion to Compel, also demands—without explanation or support—a sanction whereupon "defendants are precluded, whether by motion for summary judgment, at trial or otherwise, from asserting a defense based on the purported ratifications." (Mot. to Compel at 10.) This audacious request, which seeks to derail the adjudication of this case on its actual merits, has no justification.

As an initial matter, there is no basis for any sanctions here because, as established above, no documents were improperly withheld, and Plaintiff has not been improperly prejudiced in any way by their withholding or redaction. In addition, counsel for RDI (Greenberg Traurig) was responsible for the collection and production of the documents now challenged, and it made the privilege calls with which Plaintiff now disagrees. But it is the Remaining Director Defendants, represented by separate counsel (Quinn Emanuel), who have asserted the ratification defense in a

motion for summary judgment now pending before the Court. It makes no sense to punish the Remaining Director Defendants and potentially remove one of their defenses where the at-issue document production and privilege calls were made by the Company, not them. Nor does it make sense to punish RDI's stockholders (who would have to continue to foot the bill for an unnecessary trial) if an otherwise valid and outcome-determinative decision by the Company's Board was obviated by an extreme litigation sanction.

Moreover, Nevada law provides that, under Nevada Rule of Civil Procedure 37, "a district court may impose sanctions only when there has been ***willful*** noncompliance with [a] discovery order or ***willful*** failure to produce documents as required under NRCP 16.1." *Clark Cnty. Sch. Dist. v. Richardson Constr., Inc.*, 123 Nev. 382, 391, 168 P.3d 87, 93 (2007) (emphasis added); *see also Young v. Johnny Ribeiro Bldg., Inc.*, 106 Nev. 88, 92, 787 P.2d 777, 779 (1990) (same). Here, Plaintiff has not even attempted to argue that the contested privilege calls were the result of any "willful" noncompliance with any court order by RDI or the Remaining Director Defendants, let alone provide actual evidence establishing such willfulness. And, of course, Nevada law requires a two-stage process before any sanctions are allowed: First, the Court would have to determine that the documents in question were improperly withheld in a willful manner, and then there would have to be a hearing as to whether Plaintiff's proposed discovery sanction is proportionate to the purported offense. *See Bahena v. Goodyear Tire & Rubber Co.*, 126 Nev. 243, 256, 235 P.3d 592, 600-01 (2010). Here, Plaintiff seeks to obtain sanctions without going through the required proof or procedural hoops.

Finally, even if there was merit to any of Plaintiff's arguments (which there is not), barring a defense represents an extreme penalty that would be entirely disproportionate in this situation, which involves, at worst, good faith differences of opinion about nuanced privilege calls. *See Emerson v. Eighth Judicial Dist. Ct. in and for Cnty. of Clark*, 127 Nev. 672, 684, 263 P.3d 224, 230 (2011) ("Despite the district court's broad discretion to impose sanctions, a district court may only impose sanctions that are reasonably proportionate to the litigant's misconduct.") (citation and internal quotation marks omitted). Plaintiff's far-reaching sanctions request is entirely unfounded and should be rejected.

CONCLUSION

For the reasons set forth above, and as set forth in RDI's Combined Opposition to Cotter, Jr.'s Motion to Compel and Motion Based on Noncompliance with the Court's May 2, 2018 Rulings and William Gould's Joinder thereto, the Remaining Director Defendants respectfully request that the Court deny Plaintiff's Motion to Compel and his Motion for Relief.

Dated: June 18, 2018

COHENJOHNSONPARKEREDWARDS

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CERTIFICATE OF SERVICE

I hereby certify that, on June 18, 2018, I caused a true and correct copy of the foregoing **JOINDER OF DEFENDANTS ELLEN COTTER, MARGARET COTTER, AND GUY ADAMS TO RDI'S COMBINED OPPOSITION TO COTTER, JR.'S MOTION TO COMPEL AND MOTION BASED ON NONCOMPLIANCE WITH COURT'S MAY 2, 2018 RULINGS** to be served on all interested parties, as registered with the Court's E-Filing and E-Service System.

/s/ *Sarah Gondek*
An employee of Cohen|Johnson|Parker|Edwards

EXHIBIT 1

Electronically Filed
5/7/2018 9:19 AM
Steven D. Grierson
CLERK OF THE COURT

TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

JAMES COTTER, JR.	
Plaintiff	CASE NO. A-15-719860-B A-16-735305-B P-14-082942-E
vs.	
	DEPT. NO. XI
MARGARET COTTER, et al.	
Defendants	**Transcript of Proceedings**

BEFORE THE HONORABLE ELIZABETH GONZALEZ, DISTRICT COURT JUDGE

EVIDENTIARY HEARING

WEDNESDAY, MAY 2, 2018

COURT RECORDER:	TRANSCRIPTION BY:
JILL HAWKINS District Court	FLORENCE HOYT Las Vegas, Nevada 89146

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

APPEARANCES:

FOR THE PLAINTIFF:	MARK G. KRUM, ESQ. STEVE L. MORRIS, ESQ. AKKE LEVIN, ESQ.
FOR THE DEFENDANTS:	SHOSHANA E. BANNETT, ESQ. MARSHALL SEARCY, ESQ. KEVIN M. JOHNSON, ESQ. MARK E. FERRARIO, ESQ. KARA B. HENDRICKS, ESQ.

LAS VEGAS, NEVADA, WEDNESDAY, MAY 2, 2018, 2:15 P.M.

(Court was called to order)

THE COURT: Are we ready? So are we going to call a witness first, or are we going to do something else first?

MR. FERRARIO: Well, we have Mr. Gould standing by via video link. And I would think that --

THE COURT: Do you have the exhibits?

MR. FERRARIO: We do. And Ms. Bannett will be handling that, Your Honor. I know you don't like opening statements on things like this, so if you want to get --

THE COURT: It's not that I don't like them. I don't need them.

MR. FERRARIO: Okay. Well, you don't need them.

THE COURT: And I heard a rumor that Mr. Tayback got stuck in an airport somewhere. But you're here, Mr. Searcy.

MR. SEARCY: He's stuck in Burbank, but I came in the night before. He wanted to be here in case there were scheduling issues, but I've got it covered, Your Honor.

THE COURT: You've got it covered?

MR. SEARCY: I've got it covered.

THE COURT: I'm so glad to hear that.

MR. FERRARIO: And, Your Honor --

THE COURT: I can't do video and a call in both. I can only do one or the other.

MR. SEARCY: I tried to tell him that.

MR. FERRARIO: This will come up, and I'll let Ms. Bannett speak to this further, but following your questioning and some of the surprise you expressed on --

THE COURT: About which subject?

MR. FERRARIO: Monday about --

THE COURT: Deleting in boxes?

MR. FERRARIO: -- deleting an in box and not being able to retrieve it. Renewed efforts were undertaken, perhaps more pointed questions asked, and Mr. Gould was able to retrieve some material. And --

THE COURT: Amazing.

MR. FERRARIO: -- Ms. Bannett will get to -- look, it happens. And you will see Mr. Gould is of that generation that's older than you and I, and -- at any rate, what we -- we've been going through it, and I feel comfortable in telling the Court based on what I've seen now, and I don't think anything will surprise us, all the material that we recovered was produced by either the company or it's on a company privilege log or by one of the other parties. I don't think there's anything new that was retrieved. But we were able to retrieve it, okay. I wasn't, but Ms. Bannett was. And I'll let her speak to that, Your Honor.

THE COURT: Okay. Ms. Levin.

MS. LEVIN: Yeah. We just want to raise our objection on this. We received an email from Ms. Bannett at

11:18, late morning, about further production. The documents that we received were ones already produced. But, more importantly, we were told that they were going to provide us with a supplemental privilege log but not today, not until after the hearing. And our problem is that we won't be able to test Mr. Gould's testimony as against those privilege log entries that we haven't seen. So we are taking the position that this -- we don't believe we can make a determination today as to what he will testify to, because we haven't had an opportunity to see those privilege log entries. And we would say that, you know, we would reserve the right to depose him further on those entries.

THE COURT: Well, that's something you've asked for in your motion, and I haven't made a determination on what relief I'm going to give you in your motion yet other than scheduling this evidentiary hearing.

MR. FERRARIO: Your Honor, we are in no way, shape, or form trying to impede, you know, a full examination of Mr. Gould. This happened. We responded as quickly as we could. He stayed up till 3:00 in the morning get all this together. I think -- we haven't gone through all of the privileged documents and all the privilege logs, but I suspect that most everything will have been on the company privilege log. There may be one or two additional documents. I can tell the Court from my brief review of these materials -- and I think Ms.

Levin indicated that most of them have already been -- I think all of them have been produced -- a lot of them are like calendar entry things that you get that says, we're going to have a meeting or a call at some point in time, those kind of things. Now, that probably won't appear on a privilege log, but there's some other stuff.

But the bottom line is what we suspected. There will be no prejudice. But, again, if the Court determines that Mr. Gould needs to be redeposed, then, you know, we understand that. The other thing I would point out is they haven't challenged any of the privilege logs to this point, so I don't know that that's really much of an issue. And Your Honor looked at the meeting minutes this morning and determined that was a proper --

THE COURT: Two pages of documents. I sustained the redactions.

MR. FERRARIO: Exactly. So with that, I'll let Ms. Bannett go, and we'll call Mr. Gould.

THE COURT: Ms. Levin, did you have anything else you wanted to add before I go to the witness?

MS. LEVIN: I just wanted to raise one point, is that the -- it still doesn't resolve the issue that some of these emails that Mr. Gould disclosed on his first supplemental privilege log were not logged by GT on its RDI log. So we still haven't resolved that issue.

And so we want to preserve all rights, because it seems that the story also with respect to what was able to be retrieved keeps changing, and we just want to make sure that we get all the documents --

THE COURT: You got that.

MS. LEVIN: Okay.

THE COURT: If you couldn't find documents on Monday because they were so unavailable and then I expressed disbelief and they amazingly appear, that is suspicious.

MR. KRUM: One other thing, Your Honor, just to be -- to correct the record. We did challenge the adequacy of the privilege logs, both the original and the supplemental log provided by Mr. Gould.

THE COURT: Okay. Ms. Hendricks.

MS. HENDRICKS: I wanted to address the issue that Ms. Levin raised regarding GT's log and the log that Mr. Gould produced last week. We did cross-reference it. There's really two reasons that there are some discrepancies, one being for RDI's privilege log if things were nonresponsive to the requests propounded on RDI, those emails are not on our privilege log. And some of those -- the communication that Mr. Gould identified was not on there because it wasn't relevant to the [inaudible] RDI's privilege.

The second issue is everything appeared to be on email chains, except maybe one or two documents that had

already been produced. So the email chain where the communication started between the parties is on RDI's privilege log. When Mr. Krum asked us to de-dupe the privilege log about 150 entries were removed. And I believe some of that got caught up when that happened. But the email chain itself has been identified previously.

THE COURT: Okay. Are we ready to go to the witness?

MS. BANNETT: It depends however Your Honor wants to do it. I would like at some point to explain what we did to get the documents --

THE COURT: Miraculously the documents are no longer lost between Monday and Wednesday?

MS. BANNETT: Yes. And Mr. Gould will address to the extent that he can. But obviously I also had a role. So I don't know if you want me to talk about my role to start.

THE COURT: Why would I want to ask you that now when I have a witness who's waiting for us to ask questions?

MS. BANNETT: Then, Your Honor --

THE COURT: Let me go back to my question. Do you have exhibits? Where are they?

MR. FERRARIO: Yes. We've given them to Dulce.

THE COURT: I'm looking for the ones that Mr. Gould has.

MS. BANNETT: I believe he has them -- I believe he

has them all.

THE COURT: What did you send him?

MR. FERRARIO: What you have in your hand --

THE COURT: Who sent him the documents?

Ms. Hendricks, what did you send him?

MS. HENDRICKS: [Inaudible].

MR. FERRARIO: What do you mean? Don't trust me?

THE COURT: No.

MS. HENDRICKS: Sent him the notes. You've got -- the two sets you have in front of you are what were sent to Mr. Gould. So we forwarded it to the Court, and then forwarded it to --

THE COURT: So I have two sets of documents, one called Plaintiff's Proposed Exhibits for Evidentiary Hearing, which appear to have -- are they sequential Bates numbers, Mr. Krum?

MR. KRUM: No.

THE COURT: No, they're not sequential. So those would be P-1 through P-5. And then I have those that are Defendants' Proposed Exhibits for Evidentiary Hearing, and these are A through D, and they appear to be sequentially numbered.

MS. HENDRICKS: Correct, Your Honor. The only thing I would bring to your attention is they were not marked with exhibit numbers before they were sent to Mr. Gould, so --

THE COURT: And that's why I said Bates numbers.

MS. HENDRICKS: We do have somebody with Mr. Gould that is going to help him find the right documents and get the exhibits in front of him, so they'll --

MR. FERRARIO: And, Your Honor, you will see I've got, for example, Mr. Bonner's declaration which is already part of the record. But having been in front of you on other hearings like this, you I think want us to reintroduce it here. So that's what we're --

THE COURT: I want you to introduce it here, because it's not introduced when it's filed with a brief.

MR. FERRARIO: Thank you.

THE COURT: Okay. Did you want to ask Mr. Gould some questions?

MS. BANNETT: I do.

THE COURT: How do I get Mr. Gould on the camera, Jill?

MR. KRUM: There he is.

THE COURT: Mr. Gould, how are you?

MR. GOULD: I'm fine, thank you.

THE COURT: Can you hear me okay?

MR. GOULD: Yes, I can.

THE COURT: The lawyers have microphones in front of them, but sometimes you won't be able to hear them. I'm going to ask them to stand near a microphone and keep their voice

up. Our cameras do automatically go to folks when they speak, so if someone makes an objection, please remember I need you to pause for a minute before you answer so I can rule on their objection. Okay? Is that okay, sir? Sir, can you hear me?

MR. GOULD: Oh. You were talking to me? I --

THE COURT: Yes.

MR. GOULD: Oh. Yes, that's fine.

THE COURT: Okay. Can you raise your right hand so I can swear you in, please. Sir, are you agreeing to be sworn by my clerk over the video line?

MR. GOULD: Yes.

THE COURT: Okay.

WILLIAM GOULD, A DEFENDANT HEREIN, SWORN

THE CLERK: Thank you. Please state and spell your name for the record.

THE WITNESS: My name is William Gould, G-O-U-L-D.

THE COURT: You may proceed, Counsel. Please remember to keep your voice up.

MS. BANNETT: Thank you for the reminder, Your Honor.

DIRECT EXAMINATION

BY MS. BANNETT:

Q Mr. Gould, good afternoon.

A Good afternoon to you.

Q Did you receive a subpoena duces tecum from the

plaintiff in January of this year?

A Yes, I did.

Q And what did you do to collect documents when you received the subpoena?

A I asked my secretary to collect all the documents that were responsive to the subpoena.

Q And were you able to collect at that time all of the documents that you sent or received relating to ratification?

MR. KRUM: Objection. Foundation.

THE COURT: Overruled. You can answer.

THE WITNESS: Okay. Well, I was concerned about one thing, and that is about a few months ago I was trying to mess around with my computer and delete a few things, and I must have pressed a button that completely eliminated my in box. And I tried to get it back. I couldn't do it. And then I asked my secretary, who's more well versed in these kinds of things than I am, to help me, and she couldn't do it.

So I called in the IT Department. They came in, they fiddled with my computer for about 20 minutes, and finally they said, no, you can't get those back, we cannot get you those emails back.

So I think there may have been some -- probably were some Reading emails on that in box.

BY MS. BANNETT:

Q Mr. Gould, how did you accidently delete your in

box?

A I don't know. I have no idea what happened. It's a mystery to me.

Q After the hearing do you remember that I called you and told you that the Judge was very surprised that these emails couldn't be recovered?

A Yes, I do.

Q And what did you do after that phone call?

A Well, after that phone call it disturbed me, because apparently a lot of people in the courtroom were skeptical of the story. So I went back to the IT Department and I asked them, there has to be some way that this -- these things can be produced -- excuse me, somehow brought back. And they said, no, we told you before, nothing has changed, can't do it. Then after discussion they finally came back and said that they actually could get these emails back.

Q And did they tell you what it was technically that they were going to?

A No. On the technical side I couldn't understand that part of it, but I did have them get in touch with you to go over why this was able to be done.

MS. BANNETT: No further questions at this time.

THE COURT: Mr. Krum, cross-examination?

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CROSS-EXAMINATION

BY MR. KRUM:

Q Good afternoon, Mr. Gould.

A Good afternoon, you.

Q When did you lose your emails, meaning when did you delete your in box?

A You know, I don't -- I don't actually remember the exact time, but I think it was -- must have been, oh, maybe two or three months ago.

Q Is there some means by which you could determine the exact time?

A I don't know. I'll ask if there's a way -- probably there would be. I don't know.

Q Was it also in the same time range, two or three months ago, that your IT Department first told you that the emails could not be retrieved?

A Yes, it was.

Q Is there any reason a person from your IT Department could not testify in this proceeding?

A No. They're standing by, ready to testify if you would like to hear them.

Q Do you have any documents that reflect your request to them and their efforts to retrieve your emails?

A No. This was all done orally. I mean, we had this conversation and, you know, I grilled them, and they said they

just couldn't do it. And I'm not -- I don't know enough about technology and modern developments, but I take them at their word.

Q Do you recall that the subpoena directed to you was served on or about January 12, 2018?

A Yes.

Q Were your emails -- was your in box deleted before or after that?

A After that, I would think. My recollection, after that.

Q When did you first communicate with your secretary about retrieving documents responsive to that subpoena?

A Shortly after I discovered that my email for that particular day had gone away I call to tell her that, because I knew that there might be some Reading emails on there and that she should know that.

Q So your testimony, Mr. Gould, is that you had asked her to retrieve documents responsive to the subpoena you received on or about January 12 prior to when you deleted your in box?

A I'm not sure about the sequence of timing, but I'm -- I really don't know. I'm not sure about that.

Q Do you know when she began looking for documents responsive to that subpoena?

A When you say she you mean my secretary?

Q Well, that's who did it; right?

A Right. I just wanted to make sure that's what you were referring to.

Q Yes.

A Would you repeat that question.

Q Of course. When did your secretary begin looking for documents responsive to the subpoena you received on or about January 12th?

A I believe it was shortly after I received the subpoena.

Q So your best understanding is that she began the search for documents responsive to that subpoena before you deleted your in box?

A Not sure.

Q Do you have any understanding, Mr. Gould, as to why it was nobody searched your sent email box prior to the hearing in this case?

A Yes, I do.

Q What happened?

A What happened was the question posed to the IT people was, can you recover those emails. And they focused on that particular thing and they said, no, we can't recover them. Later it turned out that they could recover both my in box and my outgoing emails, and at that point what had happened was just a misunderstanding on the scope of what they

were looking at.

Q Is it your testimony that the misunderstanding was on the part of your secretary?

A Not necessarily. I would blame it more -- the misunderstanding on both my secretary and I and the IT Department. You know, we weren't asking them -- you know, they knew we wanted these memos -- or these emails back, and, in fairness, we just asked them, is there any way to retrieve these emails. What happened here is it turns out there's another way to retrieve them other than going back and trying to get the actual deleted emails.

Q When did you first tell your lawyers at Bird Marella about the deleted in box?

A It was not too long after the deletion occurred.

Q So you would put that in the two to three months ago time frame?

A Yes. Or maybe -- yeah, that's about right.

Q At any point in time after you deleted your in box, Mr. Gould, did you have any discussions about engaging an outside IT person to do what your law firm IT Department had initially told you could not be done, which is to recover those deleted emails?

A No. We hadn't considered that.

MR. KRUM: I have no further questions, Your Honor.

THE COURT: Thank you.

Anyone else have any questions for Mr. Gould?

Hold on, sir. They're consulting.

MS. BANNETT: I don't believe so.

THE COURT: All right. Thank you, sir. We appreciate your time. Have a nice afternoon. We're going to close the video link.

THE WITNESS: Thank you, Your Honor.

THE COURT: Who's your next witness?

MR. FERRARIO: Mike Bonner.

THE COURT: Mr. Bonner, come on up.

MICHAEL J. BONNER, ESQ., DEFENDANTS' WITNESS, SWORN

THE CLERK: Thank you. Please be seated. Please state and spell your name for the record.

THE WITNESS: My name is Michael J. Bonner. Last name is Bonner.

MR. FERRARIO: Can I dispense with background?

THE COURT: Mr. Bonner, you're an attorney; right? Been an attorney for 30 years or so?

THE WITNESS: Yes, Your Honor.

THE COURT: Okay. Keep going.

MR. FERRARIO: I was going to ask him what he got in -- what grades he got in law school, but I won't do that.

THE COURT: Thank you, Mr. Ferrario.

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DIRECT EXAMINATION

BY MR. FERRARIO:

Q Mr. Bonner, you currently work at Greenberg Traurig; correct?

A Yes.

Q And is a company called Reading International a client?

A Yes. It's a client of our firm.

Q Okay. And are you the principal contact for that client?

A Yes.

Q Okay. And in your capacity as a lawyer for that client do you get involved with something called the special independent committee of the board of directors of Reading International, Inc.?

A Yes.

Q Okay. Can you tell the Court a little bit about that committee, how it came into existence and what its purpose is.

A Yes. Board of directors of Reading formed the special independent committee in August of 2017. It was formed to consist of independent directors only to allow an independent committee separate from the Cotter directors to overview, oversee, and take a supervisory position, if you will, with respect to the various litigation involving the

Cotter's, including the derivative litigation, the James Cotter, Jr., employment litigation, the Trust, the Cotter Family Trust litigation in California, and related similar matters.

THE COURT: And the probate case here in Nevada.

THE WITNESS: Yes, Your Honor.

MR. FERRARIO: That's true.

BY MR. FERRARIO:

Q And who are the members of that committee?

A Member of the committee are William Gould, who's the chairman; Judy Codding; and Douglas McEachern.

MR. FERRARIO: Your Honor, I'd like to show the witness Exhibit B. May I approach?

THE COURT: Yes.

Sir, this is not our usual organized set of binders. Mr. Ferrario's hopefully going to get you to the right document. I think it's your declaration.

MR. FERRARIO: We're going to pass the dec. We're going to go back to [inaudible].

THE COURT: All right. So we're going to do minutes. The redacted version?

MR. FERRARIO: We're going to go to the charter.

THE COURT: The charter.

BY MR. FERRARIO:

Q Do you recognize what I've put in front of you as

Exhibit B?

A Yes.

Q And what is that?

A It's a copy of the charter of the special independent committee of the board of directors of Reading International, Inc.

MR. KRUM: I apologize for interrupting. We don't have that set.

MS. HENDRICKS: Here you go.

THE COURT: You do now.

Thank you, Ms. Hendricks.

MR. KRUM: Thank you, Ms. Hendricks.

THE COURT: And at the time they offer it if you have an objection, let me know. I'm going to let him try and lay some foundation first.

BY MR. FERRARIO:

Q All right. And this charter sets forth the purpose and duties of the committee; correct?

A Yes.

Q Okay. And were you involved in preparing this charter?

A Yes.

MR. FERRARIO: Your Honor, I would offer Exhibit B into evidence.

THE COURT: Any objection to B, the charter?

MR. KRUM: No objection, Your Honor. We still have an issue, though. Excuse me.

(Pause in the proceedings)

THE COURT: So the charter will be admitted, but we're in the process of making sure that Mr. Krum has a copy of A through D.

Hold on, sir.

MS. HENDRICKS: They were all sent via email. I apologize, Your Honor.

THE COURT: Even my copy?

Are you okay now, Mr. Krum?

MR. KRUM: We are.

THE COURT: Okay.

MR. KRUM: Thank you.

THE COURT: B has been admitted.

(Defendants' Exhibit B admitted)

BY MR. FERRARIO:

Q Okay. Mr. Bonner, now, you've explained to the Court the purposes of the committee. How are meetings called, and how does the committee generally operate?

A The meeting -- I'm sorry. The committee thus far since its formation in August has basically started out in a somewhat planning mode for the first several meetings. As the months have gone by the committee has scheduled meetings for updates relative principally to the status of the derivative

case as it proceeded toward trial, and also some events that were occurring with respect to the Trust case. And so typically the chairman of the committee, Mr. Gould, will call a meeting of the committee. They're almost always held by telephone, and they're typically done in that fashion.

Q And are you the person that is charged with preparing minutes regarding committee meetings?

A Yes.

Q Okay. And what is your typical practice in regard to preparing minutes?

A I participate in the meeting, I'm in the room or on the telephone, as the case may be, I have a legal tablet, and I write down summaries to myself in my own handwriting and I -- you know, they're done contemporaneously. And at some point I will transfer those typically by dictation. I dictate often -- when I get to actually turn them into a document I typically dictate those through our firm's dictation system and oftentimes through our document center, which is located in another state, and they're returned to me.

Q There's been an issue raised in -- that brings us here today regarding kind of the timeliness of the preparation of minutes. Is it your practice to prepare minutes, you know, a day after the meeting, a week after the meeting? Or what is your practice I guess would be a better way to ask the question.

A All of the above. I mean, if I have the time, I would prefer to do it sooner. But it's not uncommon due tot press of business I may do them weeks later at times. It would also depend on if the meeting -- if there's any important action taken in the meeting where the existence of the minutes may have some import.

Q Okay. And once you prepare the minutes what do you typically do with them?

A In the case of the special independent committee my practice was to prepare them and then send them to Chair Gould for his review. And then ultimately we sent them on to the other members for their review.

Q If you'll look at the packet in front of you and turn to Exhibit A, which is the declaration. Go the other way. There you go. Take a look at that for a minute? You recognize that document?

A Yes.

Q Okay. And does that declaration set forth what occurred with regard to the preparation of minutes for the meetings that are reflected on page 2 of the declaration?

A Yes.

Q And as you said in the declaration, you essentially prepared minutes for all of these meetings, starting with the meeting in November, on November 28, 2017, sometime in late January 2018?

A Yes.

Q Okay. And as you said in your declaration, the only reason that it took so long -- if you want to say it that way -- to prepare these minutes was because you were busy doing other things?

A Yes.

Q I know you can't tell the Court -- or can't tell the parties here what companies were involved in a transaction, but were you involved in a rather time-pressing transaction through the month of January?

A Yes. We were retained just before Christmas on a significant transaction in which I was lead merger counsel. It had a very short fuse, and so I was very busy in that particular transaction from just before Christmas into January and beyond. As a postscript, that deal was cancelled, so much of the work was for naught, but it took up a lot of time.

In addition, I'm co-managing shareholder of the Las Vegas office. We have significant duties with respect to year-end collections, and that took up much of the time toward the end of the year, amongst other demands on my time.

MR. FERRARIO: Nothing further, Your Honor.

THE COURT: Cross-examination.

CROSS-EXAMINATION

BY MR. KRUM:

Q Good afternoon, Mr. Bonner.

A Good afternoon.

Q You attended an RDI board meeting on December 29, 2017; correct?

A Yes. By telephone, as I recall.

Q You prepared minutes for that meeting; correct?

A Yes.

MR. FERRARIO: Your Honor, I'm going to object. This is beyond the scope of this hearing.

THE COURT: Overruled.

MR. FERRARIO: We're talking now about the board meeting, not the special committee.

THE COURT: I know. The one I was told about, as opposed to the one I wasn't told about. Remember we had this discussion on Monday?

MR. FERRARIO: Well, you know why you weren't told.

THE COURT: No, I still don't know why I wasn't told.

MR. FERRARIO: Yes, you do.

THE COURT: But okay.

MR. FERRARIO: You read the minutes.

THE COURT: I have now read the minutes.

Mr. Krum, you may continue.

MR. KRUM: Thank you, Your Honor.

BY MR. KRUM:

Q You prepared those minutes for the December 29 board

meeting within days of the meeting; correct?

A I participated in them. I would have to double check and see if I was the sole preparer. But I did participate in it.

Q Who else participated?

A I don't know. I'd need to check.

Q Those minutes were prepared on an expedited basis; right?

A Yes.

Q For use in litigation; correct?

A No. They were prepared because an action was taken by the board.

Q Well, they weren't approved -- in fact, they weren't submitted to the board for approval until much later; correct?

A They were -- the minutes themselves were approved at a subsequent meeting of the board.

Q So the only use to which those minutes were put within a week or so of the meeting was to be an exhibit in a motion filed in this case; correct?

A I don't know if that was the only use. They were prepared in the normal course of business of maintaining records of the company.

Q Is it your testimony, Mr. Bonner, that minutes of RDI board meetings are ordinarily prepared within days of the meetings?

A That's not my testimony. What I said is they were -- minutes were maintained in the normal course of the business of the company.

Q Directing your attention to the December 29 board meeting, there were matters characterized as ratification that were raised; correct?

A Yes.

Q And in your own terms, if you would, succinctly, if you can, just describe what those matters were so that I can use some of your words to refer to them.

A There was a matter put on the agenda of the board of directors. The issue was with respect to the fact that due to, as I understand it, recent rulings of this Court, certain members of the board were dismissed. And these are my words, not legal words, so you can correct me if I misstate this; but, as a result, the conclusion was that there were a number of directors who would be deemed independent for certain purposes. As a result, a matter was put on the agenda to determine whether it was appropriate to ratify certain actions of the board pursuant to Nevada statute.

Q The actions in question were two different sets of actions that were taken in 2015; right?

A I don't remember the exact dates, but, yes, they were prior actions taken by the board.

MR. KRUM: Your Honor, may I approach?

THE COURT: You may.

Somebody's cell phone is too close to the microphones.

MR. FERRARIO: What document are you looking at?

MS. LEVIN: P-1.

MR. FERRARIO: Okay.

MR. KRUM: Plaintiff's Exhibit 1, Counsel.

THE COURT: Dulce, do you have their stack? I'll hand it to Mr. Bonner.

Mr. Bonner, here's their stack of exhibits. Counsel says this is P-1.

BY MR. KRUM:

Q Mr. Bonner, do you recognize that document?

A What you handed me, or what the Judge handed me? I just want to get to the right page.

Should I be referring, Your Honor, to the one handed me, or the one Mr. Krum handed me?

THE COURT: If they're the same, it doesn't matter. If they're not, then I need to know that.

THE WITNESS: It looks like they have the same numbering at the bottom --

THE COURT: Okay.

THE WITNESS: -- this 918, the last three digits.

THE COURT: You can look at whichever is easier for you.

THE WITNESS: Okay. Great.

BY MR. KRUM:

Q Mr. Bonner, do you recognize that document?

A Yes.

Q What is it?

A It's -- well, it's an email addressed to Ellen Cotter from Marsha Weitsman, who I believe is William Gould's secretary. And it is a letter addressed to Ms. Cotter, and it's I guess typed signatures by Judy Codding, William Gould, Edward Kane, Douglas McEachern, Michael Wrotniak.

Q Did you prepare this document?

A I question whether any of this privileged or work product.

THE COURT: So I'm assuming not, since we're talking about it now and it's in your hand in my evidentiary hearing. So I'm assuming nobody's expressed a privilege related to it.

THE WITNESS: I don't know if I prepared it. I definitely saw it and may have had input in it.

BY MR. KRUM:

Q Well, directing your attention in particular, Mr. Bonner, to a paragraph numbered 1 and 2, did you prepare those or were you a participant in the preparation of those two paragraphs?

A I don't recall if I prepared them. I definitely saw them. I may have participated in the preparation. I just

don't recall.

MR. FERRARIO: Your Honor, can I renew an objection. This is beyond the scope of this hearing. The scope of this hearing I thought was going to be whether Mr. Gould produced documents and whether Mr. -- it had to do with the timeliness of Mr. Bonner's minutes. If you want to get into a full evidentiary hearing regarding --

THE COURT: Oh, no. No.

MR. FERRARIO: -- what happened on December 29th, I'm more than comfortable doing that. But I think we should have notice of that.

THE COURT: I don't know that we have -- y'all told me we're going to do two hours, so I don't think you can do all of that in two hours. But as there is a difference in the handling of the minutes from the meeting I was told about and the minutes of the meeting I didn't know about it, I think it's relevant for that purpose. I have no idea what P-1 is, because I'm not looking at it because it's not admitted. So I can't give you any more information than that, Mr. Ferrario. If there's something more specific you want to tell me, let me know.

MR. FERRARIO: This has nothing to do with minutes. This is going into the substance of the December 27th meeting. And you know what --

THE COURT: December 27th, or December 29th?

MR. FERRARIO: December 29th. I'm sorry.

THE COURT: Okay. The meeting I knew about.

MR. FERRARIO: The meeting you knew about. Why would you want to know about the other meeting? Do you want me to -- you want to know about every meeting they have?

THE COURT: Only if it's --

MR. FERRARIO: Do you want to know about the ones that happened in January when Mr. Bonner and I got undressed for two hours by -- because the trial got continued and I had to explain that to a group of people?

THE COURT: I wasn't real happy with it, either, remember?

MR. FERRARIO: Yeah. I could tell you it wasn't fun. That's why you've got two meetings in January.

THE COURT: Okay.

MR. FERRARIO: Having said that --

THE COURT: Let me ask Mr. Krum a question.

MR. FERRARIO: -- I have no -- okay. Go ahead.

THE COURT: Mr. Krum, why are we talking about this now?

MR. KRUM: For the same reason, Your Honor, they included information relating to this in their supplemental opposition filed this morning. What happened and what I want to walk through with Mr. Bonner because he was a participant in all of it is that at the December 21 special independent

committee meeting the three members of that committee --

THE COURT: The December 27th one?

MR. KRUM: No. The December 21 one that -- a meeting which you and I did not know until I learned on April 12 when they produced the document for the first time. The three committee members authorized the preparation of Plaintiff's Exhibit 1. So it all ties together. This is working backwards to the meeting --

THE COURT: So you're going to establish this relates to the first meeting?

MR. KRUM: Yes. That's exactly right.

THE COURT: Well, then, could you do that.

MR. KRUM: Of course.

THE COURT: Thanks.

BY MR. KRUM:

Q Who else participated in the preparation of Plaintiff's Exhibit 1?

A The best of my recollection, Mr. Gould and probably general counsel, Mr. Tompkins.

Q Craig Tompkins?

A Yes, sir.

Q And how did it come to pass that Plaintiff's Exhibit 1 was prepared to begin with?

MR. FERRARIO: Can I renew my objection? I don't see any relevance to this hearing on this.

THE COURT: Sir, is this --

Wait.

Was this prepared as a result of what happened at the special investigation committee -- special independent committee's meeting in December?

THE WITNESS: No.

THE COURT: Thank you.

Mr. Krum, it doesn't sound like it's related to that meeting.

MR. KRUM: Well, according to all the committee members it is. We'll argue that.

THE COURT: I guess.

MR. KRUM: Including the testimony in their supplement today.

All right. Well, I move to admit this. He's authenticated it.

THE COURT: Any objection to P-1? P-1's okay.

(Plaintiff's Exhibit 1 admitted)

THE COURT: What else have you got, Mr. Krum, with Mr. Bonner?

BY MR. KRUM:

Q Why was Mr. Tompkins involved in the preparation of the document purportedly sent on behalf of the five directors named at the bottom of Plaintiff's P-1?

MR. FERRARIO: Object. Attorney-client privilege,

Your Honor.

THE COURT: Sustained.

BY MR. KRUM:

Q You attended the telephonic meeting of the special independent committee on December 21, 2017; right?

A Yes.

Q How did that meeting come to be scheduled?

A It was scheduled by Chairman Gould to receive an update on certain developments.

Q How?

A How physically? Mechanically?

Q Did he send an email?

A I don't recall. Typically either he or his office would send out a dial-in. Sometimes I believe our office would send out a dial-in.

Q How were the dates and times picked, including in particular for the December 21 meeting?

A The December 21 meeting was a further updated briefing for certain events that the committee was monitoring. If you like, I can sort of summarize what those were, but --

Q Well, was the subject of ratification discussed at that meeting?

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

THE COURT: Overruled. It's a yes or no.

THE WITNESS: Yes.

BY MR. KRUM:

Q You took notes on your legal pad for the purpose of preparing minutes of that meeting?

A Yes.

Q Do those notes contain references to the discussion of ratification?

A No.

Q Why not?

A Because there was a attorney-client privilege strategy discussion. I did not maintain minutes of that session.

Q At some point, whether at the end of the December 21 special independent committee meeting or at another point in the meeting did one or more of the committee members say in words or substance that they agreed with or approved pursuing the subject of ratification with the full board of directors?

MR. FERRARIO: Objection, Your Honor. Attorney-client privilege.

THE COURT: Sustained.

BY MR. KRUM:

Q How did it come to pass, Mr. Bonner, that the subject of ratification was raised with the full board of directors pursuant to Plaintiff's Exhibit 1?

MR. FERRARIO: Same objection, Your Honor.

THE COURT: How did it come to be raised at the full board meeting, Mr. Krum?

MR. KRUM: Yes.

THE COURT: Overruled.

THE WITNESS: The letter you had me refer to is a request by those directors that it be placed on the agenda.

BY MR. KRUM:

Q When did --

MR. FERRARIO: For the record, Your Honor, that's?

THE COURT: P-1.

MR. FERRARIO: P-1.

THE COURT: I saw him hold it up. But, for the record, it's P-1. Good catch, Mr. Ferrario.

MR. FERRARIO: It's taking me a long time, but I'm getting there.

BY MR. KRUM:

Q When did Mr. Gould determine to make that request?

A I don't -- I don't know the exact time. Sometime between December 21 and December 27.

Q When did Ms. Codding determine to make that request?

A I don't know.

Q Did she indicate at the December 21 meeting that she was agreeable to making a request of the nature made in Plaintiffs' Exhibit 1?

MR. FERRARIO: Objection. Attorney-client privilege.

THE COURT: Sustained.

Mr. Krum, please be careful of the mike.

BY MR. KRUM:

Q When did Mr. McEachern determine to make the request that's reflected in Plaintiffs' Exhibit 1?

MR. FERRARIO: Same objection, Your Honor.

MR. KRUM: This is the same question about it raised pursuant to Plaintiffs' Exhibit 1 at the December 29th board meeting.

MR. FERRARIO: Outside of the December 21st meeting? You changed your question there.

THE COURT: Mr. Krum, can you rephrase your question, please.

BY MR. KRUM:

Q When did Mr. McEachern agree to raise at the December 29 board meeting or special meeting to be called for the purpose of the matters set out in Plaintiffs' Exhibit 1?

MR. FERRARIO: Objection. Attorney-client, Your Honor.

THE COURT: Sustained.

BY MR. KRUM:

Q What communications did you have with Judy Codding, if any, between December 21 and December 29 with respect to

the subject --

MR. FERRARIO: The number of communications, not substance; right?

MR. KRUM: Yeah.

MR. FERRARIO: Oh. You're laying a foundation.

MR. KRUM: Foundation.

MR. FERRARIO: Okay.

THE COURT: How many?

THE WITNESS: I apologize. Could you repeat the question.

BY MR. KRUM:

Q How many communications did you have with Judy Codding following the December 21 special independent committee meeting and prior to the December 29 board meeting, if any?

A I don't recall. And the answer could be none. I just don't recall.

Q Same question with respect to Mr. Gould.

A I would say I had at least one communication with Mr. Gould during that period of time.

Q Do you recall what that was, meaning what the subject matter was?

THE COURT: And this is do you recall, yes or no.

THE WITNESS: Generally, yes.

//

BY MR. KRUM:

Q Without disclosing the substance of the communication, what was the subject matter or what were the subject matters?

A The scheduling of the request that this be placed on the agenda.

Q You're referring to the request embodied in Plaintiffs' Exhibit 1?

A Yes.

Q Are you aware of any communications between or among any of the five directors listed at the bottom of Plaintiffs' Exhibit 1 regarding the subject of ratification, other than at the December 21 special independent committee meeting and the December 29 board meeting?

A I have no recollection at the moment. I don't know if I ever would have had any knowledge of that.

Q If you look at the exhibit binder that Mr. Ferrario used -- no, I'm sorry. He didn't bring your attention to that.

THE COURT: So, sir, while he's looking let me ask the elephant-in-the-room question for me. Why was one set of minutes prepared so quickly, and the other set of minutes was delayed by the press of business?

THE WITNESS: Great question. I'm happy to answer it, actually. The action of the board on December 29 was

actually a decision of the board that had -- it was a decision of the board that had some consequence. The committee meeting, the special independent committee meetings, there were several of them, were basically updates. There's a series of updates of special committee where the special committee was getting updates on status of some potential settlements of this either this action or related actions. There were significant concerns about the timing of the trial, directors were trying to make plans. So there were several update special independent committee meetings. The independent committee is charged with overseeing the company's role, you know, with respect to the derivative litigation. So these were basically updates. They were typically 20, 30, 40 minutes long. And there was no formal action taken in any of these, so they didn't have any particular consequence. I just simply had a big stack of materials. I knew I'd get to them, and that's absolutely the only reason they didn't get prepared sooner.

THE COURT: But the board meeting, because, in your words, had consequences to it, that was put on the front burner to make sure that they were typed and distributed?

THE WITNESS: There's a formal action of the board taken, and so there's a legal consequence to what that board did. The special independent committee meetings were merely update status calls, if you will.

THE COURT: Okay. Thank you.

Mr. Krum.

BY MR. KRUM:

Q What was the consequence of the actions taken at the December 29 board meeting?

A A ratification of the acts that were considered at that time.

Q And the minutes were needed to do what?

A Memorialize the action taken.

Q Why?

A Good corporate practice.

Q So they were prepared on a expedited basis for the purpose of putting them in the minute book?

A They were prepared on an expedited basis to memorialize the action taken by the board of directors, as opposed to a status conference call that had no legal consequence.

Q The action needed to be memorialized on an expedited basis why?

A Because there was a particular import to that action.

Q When did RDI start preparing minutes on an expedited basis because the minutes memorialized an action?

A You mischaracterize what I said, and you mischaracterize the policy of Reading. There is no such

policy. The intent is to prepare the minutes when you can. import, whether it's a loan closing, a transactional approval, something that has some legal consequence, you typically prepare those resolutions quite quickly.

Q What was the particular legal import in this instance?

A The ratification of the matters that were considered at the December 29 meeting.

Q And is it your testimony, Mr. Bonner, that the existence of minutes had some legal import?

A Well, no. I think as you probably know, the board's vote constitutes the action of the board. The minutes are merely a memorialization of that. But where there's something that had some significance you typically prepare the resolutions quite quickly.

Q To what use have those minutes been put since they were drafted?

MR. FERRARIO: We used them in the motion.

THE COURT: Yeah. We all know that. But Mr. Bonner has to now say that.

MR. FERRARIO: He's the minute guy. I'm the litigator.

THE COURT: He may not -- he may not know that, because he's a transactional guy.

MR. FERRARIO: You're right.

THE COURT: He does business stuff.

MR. FERRARIO: Okay.

THE COURT: He may not know that. All the rest of us know.

MR. FERRARIO: We all know what happened.

THE COURT: That was why you required them so quickly, Mr. Ferrario.

MR. FERRARIO: Who cares?

THE COURT: So you could come and wave it and say, hey, Judge, I win now.

MR. FERRARIO: That's exactly what I did. Thank you. Okay. This is fascinating, but --

BY MR. KRUM:

Q Do you have the question in mind, Mr. Bonner, or do you want me to repeat it?

THE COURT: You guys are killing me.

THE WITNESS: If you don't mind, would you repeat the question?

BY MR. KRUM:

Q To what use were the minutes of the December 29 board meeting put?

A Number one, they memorialized the ratification of the board of directors of two events. Number two, I understand they were in fact the subject of a motion filed in this case.

Q Thank you, Mr. Bonner. Directing your attention, Mr. Bonner, back to the December 21 meeting of the special independent committee, which, if any, of those three committee members had been told beforehand that the subject of ratification would be discussed at that meeting?

MR. FERRARIO: Objection. Attorney-client, Your Honor.

THE COURT: We're only identifying individuals with whom he had a communication, not the nature of the communication?

MR. FERRARIO: Before the meeting.

MR. KRUM: Only the subject matter.

THE COURT: Before the meeting.

MR. FERRARIO: Okay. All right.

THE COURT: So, sir, you could answer it or just give me names if you remember.

THE WITNESS: There's a -- I don't know if I'm permitted to ask Mr. Ferrario a question. There's an issue relative to the way the question --

THE COURT: If you think there is a privilege related to it, you are absolutely entitled to -- under the Harvey Whittemore decision to ask Mr. Ferrario questions about the extent and claim of the privilege. And I will take a break for you to do so. And you will not be subject to interrogation about that subject.

Did I summarize it correctly?

MR. FERRARIO: That's pretty good.

THE COURT: Okay. You know, I can take direction from the Nevada Supreme Court.

MR. FERRARIO: I'm glad you started laughing.

THE WITNESS: So may I ask Mr. --

THE COURT: Do you need to talk to Mr. Ferrario?

THE WITNESS: For one minute.

THE COURT: We're going to take a short break --

THE WITNESS: One minute.

THE COURT: -- for you to consult with Mr. Ferrario on a privilege issue.

(Court recessed at 3:10 p.m., until 3:13 p.m.)

THE COURT: Mr. Bonner, have you had an opportunity to discuss with Mr. Ferrario whether you need to assert any privileges?

THE WITNESS: Yes, Your Honor.

THE COURT: Okay.

BY MR. KRUM:

Q So the question --

MR. KRUM: Can I ask that it be read back?

THE COURT: Nope.

MR. KRUM: That's right.

BY MR. KRUM:

Q Can you answer the question, Mr. Bonner, without

disclosing privilege?

MR. FERRARIO: On topic, Mark -- on the topic of ratification, yes, he can. Just that.

THE WITNESS: And I'm sorry. Could you now ask the question again or have it read back?

THE COURT: I think we were on the names of the people who may have been talked to about ratification before the meeting.

MR. KRUM: Thank you.

MR. FERRARIO: December 21st meeting, yes.

MR. KRUM: Right.

THE COURT: The 12/21 meeting.

BY MR. KRUM:

Q So with --

THE COURT: Did I do good?

BY MR. KRUM:

Q Did you or anyone else at Greenberg Traurig, including Mr. Ferrario, have communications with any of the special independent committee members prior to the December 21, 2017, meeting about the subject of ratification?

THE COURT: And this is a yes or a no.

THE WITNESS: Yes as to me. I can't speak as to other GT lawyers.

BY MR. KRUM:

Q With whom did you have such communications?

THE COURT: And that's just identification of the individuals.

THE WITNESS: The best of my recollection, we may have had a conversation -- I may have had a conversation with Mr. Gould. That's all I recall.

BY MR. KRUM:

Q One conversation, or multiple conversations with Mr. Gould?

A Don't recall.

Q Over what period of time did you have those conversations?

A Days, one or two days.

Q Okay. And what time frame? Was it December, was it November, was it earlier?

A Oh. No. It would have been just prior to the December 21 meeting.

Q Not speaking to the substance, did either of those communications speak to a topic of a formal request such as Plaintiffs' Exhibit 1?

MR. FERRARIO: Objection. Attorney-client.

THE COURT: Sustained.

BY MR. KRUM:

Q Each of Gould, Codding, and McEachern at the December 21 special independent committee meeting agreed that ratification would be formally pursued with the full RDI

board; correct?

MR. FERRARIO: Same objection, Your Honor.

THE COURT: Sustained.

MR. KRUM: I'm not asking if they gave him a direction. I'm asking merely if they took a position.

THE COURT: I understand what you're asking, Mr. Krum. I've sustained the objection on the privilege issue.

BY MR. KRUM:

Q Did you have any discussions prior to the December 29 board meeting about the subject of ratification with Mr. Wrotniak?

A I've no recollection of any.

Q With Mr. Ferrario?

A I do not know.

Q Do you recall having a telephone call with Mr. Ferrario and Mr. Wrotniak and Ms. Codding in December shortly before the December 29 board meeting at which the subject of ratification was discussed?

THE COURT: And that's a yes or no.

THE WITNESS: I don't have any particular -- no.

BY MR. KRUM:

Q Were any documents provided to the committee members either in anticipation of or as a result of the December 21, 2017, special independent committee meeting?

THE COURT: Did you give them any documents? Is

that the question?

MR. FERRARIO: And you're talking about the special independent committee?

THE COURT: The 12/21 meeting.

MR. KRUM: Right.

MR. FERRARIO: Prior to that meeting, or --

THE COURT: He said prior to or as a result of. Do you want him to break it up?

MR. FERRARIO: Yeah.

THE COURT: Or is the answer just no?

MR. FERRARIO: I think the answer's no, but go ahead.

THE WITNESS: No.

BY MR. KRUM:

Q Are you excluding Plaintiffs' Exhibit 1?

A Yes.

THE COURT: And that's the December 27th email.

THE WITNESS: No, I'm not excluding it.

BY MR. KRUM:

Q So is it your testimony, Mr. Bonner, that Plaintiffs' Exhibit 1 is unrelated to the conversations concerning ratification at the December 21, 2017, special independent committee meeting?

MR. FERRARIO: Objection. Attorney-client, Your Honor. He's trying to back door into this.

THE COURT: Sustained.

BY MR. KRUM:

Q Were any documents, other than your handwritten notes about what you've already testified, used at or created in connection with -- strike that.

Did you have discussions with McEachern, Doug McEachern in the fall of 2017 about the subject of ratification?

A Not that I recall.

Q Direct your attention, Mr. Bonner, to Plaintiffs' Exhibit 3.

MS. HENDRICKS: Mark, our exhibits aren't marked. Can you tell us what you're referring to?

MR. FERRARIO: Do you have a Bates number?

THE COURT: Sir, I'm going to hand you mine, because mine is tabbed and I'm not writing on it.

MR. FERRARIO: Oh. The redacted minutes?

MR. KRUM: Yes.

MR. FERRARIO: Thank you.

THE COURT: I've given him my copy to speed up the process, guys.

MS. HENDRICKS: Thank you.

BY MR. KRUM:

Q Mr. Bonner, do you recognize the page of redacted minutes -- page and a half, I guess, on the second and third

pages of Plaintiffs' Exhibit 3?

A Yes.

Q You prepared those; correct?

A Yes.

Q These are the very minutes about which you testified in response to some questions from Mr. Ferrario; correct?

A Yes.

MR. KRUM: Move to admit.

THE COURT: Any objection to P-3?

MR. FERRARIO: No objection.

THE COURT: Admitted.

(Plaintiffs' Exhibit 3 admitted)

BY MR. KRUM:

Q Okay. And you provided these minutes to Mr. Gould on or about January 30, 2018; is that correct?

A Yes.

Q How?

A Email.

Q Was anyone copied on that email?

A I have to look at the email. May I?

Q Of course.

A Is there a copy? I think it's --

THE COURT: And if you find it, sir, if you'd tell us the Bates numbers on the bottom.

THE WITNESS: What I'm looking at doesn't have a

Bates number. It's --

THE COURT: Is it under a tab?

MS. HENDRICKS: If I can help, it would be Defendant's Exhibit 1.

THE COURT: So --

MS. HENDRICKS: Or Exhibit A. Excuse me.

THE COURT: Defendant's A. It's attached to the declaration?

MS. HENDRICKS: Correct.

THE COURT: Okay. Sir, after you've refreshed your recollection, let us know.

THE WITNESS: This does not appear that there's a cc. I don't have any recollection that I would have sent it to anybody else.

BY MR. KRUM:

Q And you heard back from Mr. Gould within a week or so with -- in response to your sending him Plaintiffs' Exhibit 3?

A Yes.

Q And you sent it on to Ms. Codding and Mr. McEachern?

A Yes.

Q You did that on or about February 10; is that right?

A Yes.

Q How did you transmit it to them? Was that by email, as well?

A Do you need me to indicate how I'm refreshing my recollection?

Q Please.

A I'm looking at the email that's attached to my declaration. It says at the bottom "Opposition Exhibit Page 077." And I see it's an email from me to William Gould, Douglas McEachern, and Judy Codding. And it doesn't indicate any cc.

Q Directing your attention back, Mr. Bonner, to your prior testimony about people with whom you shared either Plaintiffs' Exhibit 1 or a draft of it, Tompkins was one of those people; correct?

A Yes.

Q Did you send him a draft, the final version, or both?

A I don't recall if I reviewed a draft, if I prepared a draft. I just don't know. So I don't know if I prepared it, somebody else prepared it. I just don't recall.

Q Did you also share Plaintiffs' Exhibit 1 or a draft of it with Ellen Cotter?

A I don't recall. She was the ultimate recipient, I guess, but --

Q Mr. Bonner, I'd ask you to take a look at Plaintiffs' Exhibit 2, please.

MR. KRUM: Counsel, that's your February 22

privilege log.

THE COURT: It should be on the tab that says P-2.

MR. KRUM: I'd move to admit this.

THE COURT: Any objection to P-2, the privilege log?

MR. FERRARIO: Your Honor, it's authentic and obviously it's our privilege log. I don't know what relevance it has to this --

THE COURT: That's a different issue. We'll find out in a minute.

So it's admitted.

(Plaintiffs' Exhibit 2 admitted)

THE COURT: What page do you want to send him to, or what entry?

BY MR. KRUM:

Q Mr. Bonner, I direct your attention to page 32, using the numbers at the bottom of the document where -- so I'd be page 32 of 37. Let me know when you have that.

Do you have it, sir?

A Yes.

Q Okay. If you would, please, I direct your attention to the fourth entry. Moving top to bottom on the left-hand side, it ends with the number 60780. Do you have that?

A Yes.

Q This lists a document from you to Mr. Tompkins with a copy to Ellen Cotter and others, including Mr. Gould and Mr.

Ferrario. You see that?

A I do.

Q You see that the date is December 26?

A I do.

Q See that the re line, apparently, on the email said, "Draft for your review"?

A I do see that, yes.

Q See the description of it -- for the privilege log purposes is "Communication regarding notice and agenda for upcoming board meeting? See that?

A I do.

Q You recall you were involved in the preparation of the notice and agenda for the board meeting; right? The December 29 board meeting.

A I was involved in the -- in that meeting. I don't recall if I prepared the notice, but --

Q To what use, if any, was Plaintiffs' Exhibit 1 put in the preparation of any of the board materials, including in particular the agenda?

MR. FERRARIO: Could you flip that around and just ask, was it put to any use, so I can see if there's any --

MR. KRUM: Of course.

MR. FERRARIO: -- attorney-client.

BY MR. KRUM:

Q Was Plaintiffs' Exhibit 1, the December 27 Gould

email, put to any use in preparation of the board package, including in particular the agenda?

THE COURT: And that's a yes or no. Was it put to a use?

THE WITNESS: Presumably, yes.

BY MR. KRUM:

Q I direct your attention, Mr. Bonner, to page 1 of this document. Page 1 of 37.

THE COURT: You're back on the privilege log?

MR. KRUM: Yes, back on the privilege log.

THE COURT: That's P-2.

MR. KRUM: Thank you.

BY MR. KRUM:

Q Do you have that?

A 1 of 37?

Q That's correct.

A Yes.

Q I direct your attention, Mr. Bonner, to the next-to-last entry on the left-hand side. It ends in 59792, I think. Do you have that?

A Yes.

Q Do you see that's an email from you to Mr. Gould with copies to others?

A I see that, yes.

Q You see the description is "Fwd: For Bill Gould to

sign"? That apparently is the re line; is that right?

A I assume it is just by looking at the top column.

Q Okay. And do you see on the right-hand side the description for privilege log purposes is "Communication regarding draft letter re special board meeting"?

A I see that, yes.

Q Okay. So did you on or -- on December 27th send Mr. Gould an email concerning a draft letter for a special board meeting?

A Based on this description, yes.

Q Does that comport with your independent recollection?

A I don't know if I remember this specific email, but generally I do. Generally the whole --

Q That's what I'm asking. So I direct your attention on the same page, Mr. Bonner, two entries left of the entry ending in 68, I believe the numbers are. Do you have that?

A I do.

Q Do you see that has the -- apparently the re line is "For Bill Gould to sign." Do you see that?

A I do.

Q And the description is the same as the last one at which we looked, "Communication regarding draft letter re special board meeting"; right?

A I see that, yes.

Q You see this is an email from you to Craig Tompkins and others?

A I see that, yes, indicated in the box.

Q So did you -- did you have email communications with Mr. Tompkins on or about the 27th of December with respect to the matters reflected in the re line of the privilege description?

A Based on this document I guess I did, yes.

Q Did you disclose to Mr. Gould that you had had communications with Mr. Tompkins about a draft letter regarding a special board meeting?

MR. FERRARIO: Objection. Attorney-client, Your Honor.

MR. KRUM: Yes or no, Your Honor.

THE COURT: Sustained.

BY MR. KRUM:

Q Did you have any communications -- strike that.

Did you ever have any discussions with any or all of the members of the special independent committee about the subject matter of Greenberg Traurig jointly representing the company and the special independent committee?

MR. FERRARIO: Objection, Your Honor. That's beyond the scope of this hearing, calls the attorney-client --

THE COURT: Sustained.

MR. KRUM: Your Honor, it actually goes to exactly

what's transpired here.

THE COURT: No.

BY MR. KRUM:

Q Was there a point in time, Mr. Bonner, when you learned or were told that documents in your possession needed to be reviewed for purposes of possible production in this litigation?

A Yes.

Q When was that?

A Sometime in -- sometime, as I recall, in January, February.

Q What did you do, if anything, after you were told that to comply with whatever you were told?

A I think we had people in the department look for some documents.

Q And when you say the department to what are you referring?

A I'm sorry. The legal -- corporate -- our corporate group in the firm.

THE COURT: The not litigators part?

THE WITNESS: Yes, Your Honor.

THE COURT: Those of you who aren't actually litigating all the time?

THE WITNESS: Yes.

THE COURT: Okay.

BY MR. KRUM:

Q What did you do, if anything, to make your electronically stored information, meaning emails and draft documents, available to be searched for the purposes of possible production in this case?

A My recollection is that the IT people were given access electronically so they could conduct whatever search they --

Q Did you give them directions as to what it was for which they should search?

A I think they were given a broad search, you know, scope. I didn't establish the scope. Others did.

Q What's the basis for the testimony you just gave?

A Just recollection.

Q How did you learn that if you didn't establish the scope?

MR. FERRARIO: What do you mean? He didn't establish the scope.

THE COURT: How does he remember who set the ESI search terms and the scope of custodians; right? How does he know that? He says he recalls generally. He just ran into somebody in the hallway, somebody told him, he got an email. Those are all kinds of options for the answer. Or, I don't remember, which is also an option.

THE WITNESS: My recollection is either I was asked

for permission or it was indicated to me that there was going to be a scope, some kind of search electronically. And I can't remember if I had to consent or not. But if I was asked for consent, I did. I may have just been told it was going to happen.

BY MR. KRUM:

Q Do you know, Mr. Bonner, whether that search -- strike that.

THE COURT: There's now a Greenberg Traurig Privacy Act.

MR. KRUM: I'm not going there. I am not going there.

THE COURT: We're not going to talk about data privacy?

MR. KRUM: Oh, no.

THE COURT: Oh, no. Okay. Come on.

MR. KRUM: I didn't then, either, you'll recall.

BY MR. KRUM:

Q Were your handwritten notes from special independent committee board meeting minutes made available to the people conducting the search?

A They were not -- they were not electronically stored, so no.

Q What about drafts of documents, such as drafts -- strike that.

Were the drafts -- was the draft you prepared of the December 21, 2017, special independent committee meeting minutes made available to the people who were searching for documents for production in this case?

A Again, as I recall, they had carte blanche electronic access to anything in the system. So they would have had access to anything I have.

Q And the same would be true for the file version of those minutes that you sent to Ms. Codding and Mr. McEachern in early February; correct?

A I suppose so. Again, I don't know what the various time frames of the searches were. But if the searches were done at a time those documents existed, then they would have picked them up.

Q Do you have any understanding as to when the searches were conducted?

A I don't.

Q Do you have any understanding as to what the time frame of your documents was that -- which documents were searched?

A I really don't. I just recall generally it happening.

Q Did you have any discussions with anybody who conducted the search and review of your hard-copy documents or your electronically stored information?

A Again, I recall the inquiry, I recall being asked to be sure that if there's anything -- you know, that these searches were coming, and we gave permission to access whatever they needed to.

MR. KRUM: Your Honor, if I may have a moment.

THE COURT: You may.

(Pause in the proceedings)

MR. KRUM: I have nothing further, Your Honor.

THE COURT: Thank you.

Mr. Ferrario, did you have any more?

MR. FERRARIO: Just one.

THE COURT: You know now dangerous that is.

MR. FERRARIO: This is off the wall.

REDIRECT EXAMINATION

BY MR. FERRARIO:

Q During the break it was brought to my attention that a tax issue reared its head toward the end of 2017. Do you recall that?

A Yes.

Q Now, I think we're all aware that President Trump passed the tax bill; right?

MR. KRUM: Objection. Beyond the scope.

THE COURT: Overruled.

BY MR. FERRARIO:

Q Right?

A Yes.

Q And Mr. Krum asked you a number of questions regarding why these meetings were prepared, you know, regarding the 29th meeting, you know, within a week or so. Do you remember the tax issue coming up?

A Yes.

Q And is that what prompted the immediate -- primarily what prompted the immediate preparation of these meeting minutes?

A That was the biggest driver of the urgency.

Q Was it the biggest driver of the meeting itself?

A I believe it was the principal purpose for which the meeting was called.

Q And there were certain actions that need to be taken in order for the company to avail itself of certain tax benefits; correct?

A Absolutely. Yes.

MR. FERRARIO: Thank you. Nothing further.

THE COURT: Anything else, Mr. Krum?

MR. KRUM: Yes, Your Honor.

RECROSS-EXAMINATION

BY MR. KRUM:

Q The December 29 board meeting previously had been scheduled for the purpose of the compensation, or, as Mr. Ferrario says, tax issues being taken up; correct?

A Yes.

Q And what happened is the matters we referred to as ratification were added to the agenda a day or two before the meeting; correct?

A They were added to the agenda. Whether it was a day or two, that sounds about right.

MR. KRUM: Okay. Thank you, Your Honor.

THE COURT: Anything else?

MR. KRUM: Nope.

THE COURT: Thank you, Mr. Bonner. Have a nice day. Leave before they change their mind.

THE WITNESS: Thank you, Your Honor.

THE COURT: Have a nice day. Travel safely.

Mr. Ferrario, next witness.

MR. FERRARIO: That's it.

THE COURT: Mr. Krum, do you have any additional witnesses that you'd like to call at this time?

MR. KRUM: Well, Your Honor, the answer is it depends how you want to handle this. The testimony offered today is, as I think I suggested previously, in at least one respect inconsistent with deposition testimony we've taken before.

THE COURT: Happens all the time. Witnesses testify differently about recollections all the time. And that goes to their credibility.

MR. KRUM: Well, to answer your question, though, I don't think it's necessary to take the time of everyone here to ask Mr. McEachern and Ms. Codding to come testify, but we'll need an opportunity to bring to your attention their deposition testimony, as well as that of Mr. Gould, that's inconsistent with what we heard today.

THE COURT: I anticipate we will have that opportunity before long.

All right. So that concludes the evidence that I am hearing at this evidentiary hearing. I have had -- before we close the hearing, Exhibit B was admitted, and Exhibit P-1, P-3, and P-2 were admitted.

MR. FERRARIO: I would ask for A, as well, Your Honor. It's Mr. Bonner's declaration.

THE COURT: Any objection to the declaration being admitted, since he was subject to cross-examination?

MR. KRUM: No objection, Your Honor.

THE COURT: A will be admitted, as well.

(Defendants' Exhibit A admitted)

THE COURT: Any additional exhibits anyone wants to offer before I let you argue?

All right. Since all of the motions except one were yours, Mr. Krum, I'm going to let you have the first bite at any additional argument, remembering it's only Wednesday and I remember what you said on Monday.

MR. KRUM: Well, Your Honor, let me ask about the process.

THE COURT: I've already written down what I'm going to do. You may be able to change my mind, but I've written down what I'm going to do.

Mr. Ferrario is unlikely to be able to change my mind on what I'm going to do.

MR. KRUM: Well, two things, Your Honor. First of all --

MR. FERRARIO: That must mean I'm winning.

THE COURT: Not necessarily.

MR. KRUM: First of all, Your Honor, the point Ms. Levin made at the outset is meaningful here. It is not only the motion directed at Mr. Gould that may be impacted by the supplemental log that Mr. Gould's going to provide, there's also the motion directed I would say at McEachern and Codding, but it's also I guess RDI, because Greenberg Traurig prepared the privilege log, withheld the document, and belatedly produced it and so forth. And I say that, Your Honor, not to speak in an open-ended hypothetical way --

THE COURT: And that's part of Mr. Cotter's, your client's, motion for omnibus relief, which is also being argued at the same time. So I've got you arguing two motions right now, the motion to compel that we've heard testimony about, and your motion for omnibus relief, which is what

resulted in the scheduling of this hearing.

I'm also going to then talk to Mr. Ferrario about a motion that he wants to file. But you've got two issues that are interrelated that we're talking about here that you've asked me for some relief related to. I am prepared to give you some relief related to it in addition to what I've already done today, but I am waiting for you and Mr. Ferrario to finish arguing before I tell you what I'm going to do.

MR. KRUM: Right. The point I'm attempting to make and I didn't conclude, Your Honor, is, as we pointed out in our reply, I think it was, in support of the motion directed at Mr. Gould, his privilege log listed 11 documents that had not been listed on the February 22 privilege log produced by Greenberg Traurig, nine of which were email communications to or from Greenberg Traurig lawyers.

Now, today for the first time there was -- Ms. Hendricks addressed that point, and she made comments that were difficult to follow about de-duplication and email chains and so forth.

THE COURT: I followed it perfectly.

MR. KRUM: Well, the point -- my point, Your Honor, is we can't respond to that. They've offered nothing in writing, they've made no reference to privilege log.

THE COURT: You're going to have an opportunity to.

MR. KRUM: Okay.

THE COURT: But you've got to let me get to my part about the ruling.

MR. KRUM: Yes. Okay.

THE COURT: Is there anything else you want to tell me?

MR. KRUM: Well, that's the procedural stuff.

THE COURT: Okay.

MR. KRUM: And so you'd like me to speak to the motions directed at Gould in the omnibus motion?

THE COURT: If you have anything else you'd like to add.

MR. KRUM: I do.

THE COURT: Okay.

MR. KRUM: Very briefly on the Gould motion. The production today, on the 2nd of May, of documents and the promise today, on the 2nd of May, of a second supplemental privilege log obviously is woefully untimely. According to Mr. Gould, it was two or three months ago, and he was unclear about that, and it could have been more, because, after all, it was January when our subpoena to him was served that the issue of lost emails arose. He said it was after the subpoena. So probably February.

As you saw from the email exchanges, there was no indication by his counsel of any issue of the nature that they disclosed for the first time at his April 5 deposition. I

would have expected and I'm flabbergasted we didn't receive what was given today and more, including a declaration or something from the IT people in March, if not February.

So the relief we request on that is all appropriately sought.

And now to speak to the other motion. As I said already, the uncertainty occasioned by the debacle with the Gould documents, it also adds uncertainty as to the omnibus motion. The testimony today as I understood it said, we didn't put anything in the minutes -- which haven't been put on a privilege log, so we don't know, Your Honor, what the wholly redacted December 11, 2017, minutes reference in terms of subjects, including whether they reference the subject of ratification. Presumably there's a line to the effect that the minutes are complete, there was a privileged discussion on the subject of ratification. And if there is no such line and ratification is not mentioned in the minutes, we do not have the issue we thought we had, which is improper withholding of minutes that are responsive, we have that and the issue of what amounts to manipulating the contrived evidence for the purpose of use in litigation.

We all do minutes. We all see minutes. Because the subject is privileged doesn't mean the subject isn't identified as one that was discussed. And while Mr. Bonner couldn't speak to that because his comments were privileged,

the testimony of each of Gould, Codding, and McEachern was that the subject of ratification was discussed and they agreed that the matter would be -- the proposed ratifications would be pursued and taken up with the full board. That is in -- the Codding and McEachern testimony to that effect is in the supplemental brief they filed this morning. The Gould testimony was in our motion. And there are emails about this. Well, do the emails mention ratification? Presumably not, because they just say, let's have a meeting. Although was the meeting about ratification? If you listen to Mr. Bonner, either no or he can't speak to it. If you listen to the three committee members, it was.

One of the issues, if not the issue, raised in the motion -- in their motion seeking leave to renew their so-called ratification motion for summary judgment is whether there was a good-faith process, whether the directors made an informed decision.

THE COURT: Whether they're entitled to protection under the business judgment rule, those kind of things.

MR. KRUM: Right. And so what we eventually learned on April 5th because of Mr. Gould's testimony, but not from McEachern or Codding, is that those three decided on December 11th. But we had no way to ask them the questions about on what basis did they do so because we didn't know about December 11th, that they decided, until Mr. Gould's

testimony.

THE COURT: You mean December 21st?

MR. KRUM: No. I mean December 11th, when the special independent committee meeting met.

THE COURT: I thought it met on December 21st.

MR. KRUM: I misspoke. You're right. I apologize.

THE COURT: Okay.

MR. KRUM: So on December 21st they all made that decision. But McEachern was -- anyway, I [unintelligible].

So the point, Your Honor, is we have a document that they claim wasn't responsive. I don't know whether it is or not, because we don't have it listed on a privilege log. And we're asking that you order them to do so and that they properly log it and identify the subject matters. It either says ratification and should have been logged, because you already determined it's properly withheld as privileged, so I've got to abide by that, talk about the log, or it omits information.

THE COURT: I ruled that after doing an in-camera review of it.

MR. KRUM: Right. What we asked, though, Your Honor, that you did not address in your minute order is that they log it. And now, if it doesn't say anything about ratification, then I guess you would deny that request. If it has the sentence it ought to have, which is there was a

privileged conversation about the subject of ratification, then it should be logged.

THE COURT: It could have a privileged conversation about something else, too.

MR. KRUM: I understand that, Your Honor. The question is whether the document as prepared is responsive. I don't know.

THE COURT: I understand. Is there anything else you want to tell me?

MR. KRUM: So -- I'm sorry, Your Honor. I lost my train of thought.

THE COURT: Sorry.

MR. KRUM: I'll let Mr. Ferrario speak, and perhaps --

THE COURT: Mr. Ferrario.

MR. FERRARIO: Well, having listened to you before, you've already made up your mind before I start rambling.

THE COURT: Well, I haven't made up my mind, but --

MR. FERRARIO: Why don't you tell me what you're inclined to do.

THE COURT: -- I have outlined the relief that I intend to grant to Mr. Krum, which may result in other things eventually happening. But I have outlined based on Mr. Bonner's testimony and the testimony of Mr. Gould what it appears now that we have found some information what we need

to do.

MR. FERRARIO: Why don't you tell me what you need to do, and then maybe I'll respond accordingly.

THE COURT: Not me. You guys.

MR. FERRARIO: Well, tell me what we need to do, and then -- because I have -- I have a lot to say here, but I might be able to refrain from saying it.

THE COURT: All right. I am inclined to order Codding, McEachern, Gould, Kane, Wrotniak, and RDI to produce all documents which mention the scheduling or the holding or the minutes related to the December 21st special independent committee or relate to the subject matter contained in P-1 or any draft of P-1 or the preparation of P-1 or discuss the subject of ratification, understanding that there may be assertions of privilege that occur.

In addition, I will consider whether additional depositions need to be taken after the production of that information once I've seen the volume of the information.

MR. FERRARIO: Your Honor, we're comfortable doing that. We're not here to hide anything, okay. And you saw Mr. Gould come and testify, and it's unfortunate he couldn't be here today, but he's sick.

THE COURT: It's okay. He was by video.

MR. FERRARIO: And we'll be happy to do that. We're not hiding anything.

THE COURT: Now that his in box has been located and the --

MR. FERRARIO: It hasn't been located.

THE COURT: Okay. Now that the historical backups of his in box material have been located --

MR. FERRARIO: Mr. Gould learned something new. It's called The Cloud, okay. So we didn't drag you through that, because that would have been like a 45-minute exposition.

THE COURT: Yeah. I don't need to know.

MR. FERRARIO: Yeah. We're happy to do that, and we're happy to do it on a relatively short time frame.

One thing I did want to talk about today is scheduling.

THE COURT: I'm not there yet. Let me hear from Mr. Krum so I can --

MR. FERRARIO: I'm comfortable with that relief, and I'll just save --

THE COURT: Once I say the order then we can talk about scheduling.

MR. FERRARIO: -- save my breath on the merits of the motion.

THE COURT: You then have a -- you have a motion you need to argue.

Mr. Krum.

MR. KRUM: Your Honor, that's all appropriate, and I concur with your assessment that we need to see what the result is to see what, if anything else, we need to do.

THE COURT: Okay. So the motion for omnibus relief is granted in part. The individuals I outlined will produce the information that I outlined. If there is an issue related to the logging of any of that information on a privilege log, given the definition of the scope of the relevant information I have ordered produced, I would appreciate you addressing those among yourselves if there's an issue, and then I will be happy to rule on it if you need me to.

With respect to Cotter's motion to compel production of documents and for privilege, that has been covered under the ruling that I've made today. Part of the alternative relief was that I require additional information to be provided.

And with respect to the motion for leave to file summary judgment motion --

MR. FERRARIO: Yes, Your Honor.

THE COURT: -- I want you to wait to file such a motion until Mr. Krum has had an opportunity to review the information that I've just ordered.

How long is it going to take you to produce that information?

MR. FERRARIO: I was just going to speak to Mr.

Krum. I think the original date range we used was, what, the -- was after Your Honor's order, and I don't remember what that date was, forward. Then we moved it back.

THE COURT: Remember how I tried to set you for trial last week and you didn't like it?

MR. FERRARIO: No. I want to get to that.

So we'll start -- we'll back it up -- you want back to September 1st of 2017?

MR. KRUM: Well, you're asking about when is the beginning date for the search for responsive documents?

MR. FERRARIO: Yeah. That'll give us -- that gives us --

MR. KRUM: My answer is that would be the day I picked based on the information I have.

MR. FERRARIO: That's fine.

MR. KRUM: But if you know better, then back it up further.

MR. FERRARIO: I will check. But we'll start with September --

MS. HENDRICKS: Your Honor, could you read the scope one more time? Because I thought we were talking just about the December special independent committee minutes. If it's broader than that --

MR. FERRARIO: No. It's ratification.

THE COURT: No, you were not -- you were not talking

about just the December special committee --

MS. HENDRICKS: This --

MR. FERRARIO: No, it's not. It's prior to --

MS. HENDRICKS: -- and the ratification, as well.

MR. FERRARIO: Right.

THE COURT: And the P-1 and the preparation of P-1 and the drafts of P-1 and all that stuff. So three categories, the 12/21 special committee meeting, whether it's scheduling, content, scope, minutes, whatever, related to that meeting; P-1, whether it's subject matter, preparation, drafting, circulation, how we're going to get it on the agenda for the 12/29 meeting; and then the third issue is any discussion of ratification, not limited by time.

MR. FERRARIO: We'll work -- we're going to work the date out.

THE COURT: So -- well, but I need to know. How long do you think? Best guess.

MR. FERRARIO: We'll do it within a week.

THE COURT: No, you can't do it in a week.

MR. FERRARIO: Why not?

THE COURT: Because it's going to take you longer.

MR. FERRARIO: It's not going to take --

THE COURT: You're going to need to give a privilege log when you do it, because I anticipate some of the information is going to be a claim of privilege.

MR. FERRARIO: Your Honor, right now we're going to proceed on the assumption we're going to start in September. I need to talk to my folks.

MS. HENDRICKS: We already have pulled all the data.

MR. FERRARIO: I know. So we've got to just verify.

MS. HENDRICKS: So I would say even if we did it, if you'd give us till May 11th, which is a couple extra days, but by a week from Friday we should be able to get it in.

MR. FERRARIO: If we start from that date, we're fine. I will talk to Mr. Krum more. I'm going to talk to my team. I can't sit here and tell you that at some point in 2015 or 2016 in one of the many discussions we may have had where we talked about Nevada statute that that topic didn't come up. I can't tell you that. Do I -- as I stand in front of Your Honor do I believe there's any written document that mentions that? I don't believe there is, okay.

THE COURT: You will notice that my order does not have a time limitation.

MR. FERRARIO: If you want us to go back to 2015, then we'll have to work on search terms, and we can pump those through the system. But I suspect it's going to come up with nothing. And it might take a little longer.

THE COURT: That may be. So you've asked for permission, you've asked for permission --

MR. SEARCY: I did ask.

THE COURT: -- to file a new motion for summary judgment --

MR. KRUM: We have.

THE COURT: -- on the, I win, Judge, thing.

MR. FERRARIO: The, I win, Judge, thing, yeah.

THE COURT: Yeah. So I want Mr. Krum, instead of me facing a 56(f) issue at the time you file that motion, he's ready to file his opposition, I want him to have the opportunity to get these documents with the privilege logs, look at them, and then have a period of time he can decide whether he needs to take additional depositions and, if you fight about it, for me to rule on it.

So I'm going to grant your request even though I am hesitant to do so under the circumstances, but I don't want to be in a position where you guys slow play them and then I'm sitting back here again that he didn't get the stuff.

MR. FERRARIO: We're not going to do that, Your Honor.

MR. KRUM: Well, Your Honor --

THE COURT: It's called sandbagging.

MR. FERRARIO: You don't do that.

MR. KRUM: My suggestion -- and this is not for any purpose other than what you just articulated -- is that, rather than granting the motion today, it be continued for whatever time they predict, two weeks, four weeks --

THE COURT: No. I granted it today.

MR. KRUM: -- and in chambers, because --

THE COURT: No. I granted it --

MR. KRUM: -- I don't want to be back fighting about whether they've prematurely filed the motion when we haven't finished this process.

MR. FERRARIO: Mark, I'm going to get you the documents, and the Judge has already indicated you're going to have a chance to depose people if you want. We're going to make them available. We want this heard. We're not going to screw around, we're not going to have a 56(f) problem.

And can we now pick a trial date?

MR. KRUM: I was told that in January, by the way.

MR. SEARCY: Before we pick the trial date --

THE COURT: I've been trying to keep you guys under control for four years.

MR. SEARCY: Your Honor, I have one logistical question about the summary judgment motion. We attached our motion with the motion for leave to file.

THE COURT: You don't want to file that motion. You want to file a new motion that includes the issues that we talked about today.

MR. SEARCY: Thank you, Your Honor. That's --

MR. KRUM: And, Your Honor --

Thank you, Mr. Searcy.

-- they included in their proposed summary judgment motion two arguments that were not ratification arguments, and we objected to that in the last section of our opposition.

THE COURT: They can include whatever they want, and I'm going to rule on it. Because otherwise the Supreme Court will send it back and say, gosh, Judge Gonzalez, they had plenty of time since you vacated the trial because Mr. Cotter said he was sick. And so, instead of getting missive, I'd rather just do it.

All right. But I'm not giving everybody new time.

What?

MR. FERRARIO: Trial date.

THE COURT: Yes. I don't have a courtroom. I don't even know what my assignment is going to be.

MR. FERRARIO: I gotta say, you know, I've been now on the seventeenth floor with you, now we're on the sixteenth floor, we've been on 10, we've been on 14.

THE COURT: We've been on 3.

MR. FERRARIO: We've been on 3, that's true.

THE COURT: So I don't know when I'll have a courtroom. I am hopeful that Judge Bell is going to move quickly. I told her today I was ready to move overnight if she was ready to become chief judge tomorrow, and she said, don't count on it. So I am hopeful we will have a courtroom by the time of your trial, because you want to go when?

MR. FERRARIO: We had originally suggested June 4th. That's a lot of work we're going to have to do before then.

THE COURT: I don't think you're going to make it.

MR. FERRARIO: Okay. My understanding is you're starting that receiver trial --

THE COURT: Yes.

MR. FERRARIO: -- the end of July; right?

THE COURT: Yes.

MR. FERRARIO: If we could get in before that, then we can -- I know we can make that.

THE COURT: How long is it going to take you to try this case, understanding I might have a regular assignment back and have to hear motion practice every day?

MR. FERRARIO: Yeah. I just don't see it being more than three weeks. I mean, we're going to have a jury probably in two days, I would imagine.

MR. KRUM: I think three weeks is --

THE COURT: Three to four weeks?

MR. KRUM: I think three weeks is probably doable, but --

THE COURT: And you told me that you couldn't start until when because of travel and witnesses?

MR. KRUM: The week following Fourth of July weekend.

THE COURT: When did I set NCIC to start?

THE CLERK: [Inaudible].

THE COURT: Okay.

MR. FERRARIO: That's close. So we could start -- what week is that, Mark?

MS. HENDRICKS: That is July 9th.

MR. FERRARIO: July 9th? Okay.

That doesn't work for you?

MR. SEARCY: I'm not here on July [inaudible].

MR. FERRARIO: Let us talk about that, Your Honor, when we get out of here, okay.

THE COURT: So if you go after the NCIC people --

MR. FERRARIO: That'll be late August; right?

THE COURT: It's going to take them four weeks.

MR. FERRARIO: I talked to those guys the other day. I'm not going to speak for them, but --

THE COURT: They're trying a malpractice case on the CD, which means I have to try the underlying CD case related to Chateau Versailles and the default judgments that were --

MR. FERRARIO: That's what that case is about?

THE COURT: That's part of what that case is about.

MR. FERRARIO: Forget about it.

THE COURT: And so that's going to make my life a bit miserable.

MR. FERRARIO: Okay. That's all I need now.

THE COURT: If I have to do that.

MR. FERRARIO: I'll talk to Mr. Whitmire.

MR. KRUM: I'm sorry, Your Honor. They're anticipated to go all of August; is that correct?

MR. FERRARIO: That's what --

THE COURT: I'm thinking four weeks.

MR. FERRARIO: See, that's why we've got to this done.

MR. KRUM: Well, what's -- I'm sorry. I don't recall what the discussion was, if anything, about what follows them.

THE COURT: I have no idea.

MR. FERRARIO: She's -- that's --

THE COURT: I'm going to be a regular judge. I don't even know what kind of regular judge. I just asked not to be sent back to Family Court, because I did my part and did guardianship for eight months. And I'm not doing it again.

MR. KRUM: Okay. Thank you, Your Honor.

MR. FERRARIO: Thank you, Your Honor.

THE COURT: Other than that, I have no idea what Judge Bell will assign me.

I'm going to set you for a status check on whether the documents got exchanged three weeks from Friday. All I want, Mr. Krum, is a status report saying, we got them and everything is perfect, or, gosh, Judge, we have problems, it would be nice if you would schedule a conference call to talk

about how we're going to handle them.

MR. KRUM: This is in chambers? You just need a status report?

THE CLERK: May 25.

THE COURT: Okay.

MR. KRUM: Got it. Thank you, Your Honor.

MR. FERRARIO: Thank you, Your Honor.

THE COURT: Have a lovely afternoon. You were pretty close to your estimate of two hours. I'm impressed.

THE PROCEEDINGS CONCLUDED AT 4:05 P.M.

* * * * *

INDEX

NAME	DIRECT	CROSS	REDIRECT	RECROSS
DEFENDANTS' WITNESSES				
William Gould	11	14		
Michael J. Bonner	19	25	64	65

* * *

EXHIBITS

DESCRIPTION	ADMITTED
PLAINTIFF'S EXHIBIT NO.	
1	34
2	55
3	52

* * *

DEFENDANTS' EXHIBIT NO.	
A	67
B	22

* * *

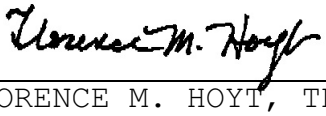
CERTIFICATION

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

AFFIRMATION

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

FLORENCE HOYT
Las Vegas, Nevada 89146



FLORENCE M. HOYT, TRANSCRIBER

5/3/18

DATE

EXHIBIT 2

REGISTER OF ACTIONS
CASE NO. A-15-719860-B

James Cotter, Jr., Plaintiff(s) vs. Margaret Cotter, Defendant(s)

§
§
§
§
§
§
§
§

Case Type: **NRS Chapters 78-89**
Date Filed: **06/12/2015**
Location: **Department 11**
Cross-Reference Case Number: **A719860**
Supreme Court No.: **75053**

RELATED CASE INFORMATION

Related Cases
P-14-082942-E (Coordinated - Certain Matters)
A-16-735305-B (Coordinated - Certain Matters)

PARTY INFORMATION

		Lead Attorneys
Defendant	**Adams, Guy**	**Harold Stanley Johnson**
Defendant	**Codding, Judy**	**Harold Stanley Johnson**
Defendant	**Cotter, Ellen**	**Harold Stanley Johnson**
Defendant	**Cotter, Margaret**	**Harold Stanley Johnson**
Defendant	**Gould, William**	**Donald A. Lattin**
Defendant	**Kane, Edward**	**Harold Stanley Johnson**
Defendant	**McEachern, Douglas**	**Harold Stanley Johnson**
Defendant	**Wrotniak, Michael**	**Harold Stanley Johnson**

Other	**Diamond A Investors LP**	**James E. Murphy**
Other	**Diamond A Partners LP**	**James E. Murphy**
Plaintiff	**Cotter, James J, Jr.**	**Mark G. Krum**

EVENTS & ORDERS OF THE COURT

05/02/2018 **Minute Order** (9:40 AM) (Judicial Officer Gonzalez, Elizabeth)
Minute Order: In Camera Review of December 21, 2017 Meeting Minutes

Minutes
05/02/2018 9:40 AM
- The Court has reviewed in camera the redacted version of the meeting minutes, MARKED as Court's Exhibit 1, and the unredacted version, MARKED as Court's Exhibit 2, and SUSTAINS the privilege assertions and does not order that further information be produced at this time. Court's Exhibits 1 and 2 are SEALED as they include privileged and commercially sensitive information. CLERK'S NOTE: A copy of this minute order was distributed to the parties via electronic mail. / dr 5-2-18

Return to Register of Actions

EXHIBIT 3

DISTRICT COURT
CLARK COUNTY, NEVADA

JAMES J. COTTER, JR., individually and derivatively on behalf of Reading International, Inc., Plaintiff, vs. MARGARET COTTER, et al., Defendants, _____and _____ READING INTERNATIONAL, INC., a Nevada Corporation, Nominal Defendant.	Case No. A-15-719860-B Coordinated With: Case No. P-14-082942-E Volume 3 Pages 496 to 578

VIDEOTAPED DEPOSITION OF

WILLIAM GOULD

Thursday, April 5, 2018

9:32 A.M. TO 11:34 A.M.

Century City, California

Job No. 461424

DISTRICT COURT
CLARK COUNTY, NEVADA

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

Videotaped Deposition of

WILLIAM GOULD,

taken at the offices of Sheppard, Mullin, Richter & Hampton, LLP, 16th Floor Conference Room, 1901 Avenue of the Stars, Suite 1600, Century City, California, on Thursday, April 5, 2018 at 9:32 A.M., before Lori Byrd, Registered Professional Reporter, Certified Realtime Reporter, Certified LiveNote Reporter, Realtime Systems Administrator, Kansas Certified Court Reporter 1681, Oklahoma Certified Shorthand Reporter 1981, and Certified Shorthand Reporter in and for the State of California 13023.

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Cory Tyler
Legal Videographer
Litigation Services
Phone 800-330-1112

INDEX OF EXAMINATIONS

WITNESS: WILLIAM GOULD

VOLUME 3

INSTRUCTION BY COUNSEL NOT TO ANSWER

None

RECORD MARKED PER REQUEST OF COUNSEL

None

STIPULATIONS

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Page 575

INDEX OF WILLIAM GOULD DEPOSITION EXHIBITS
MARKED IN THIS DEPOSITION, VOLUME 3

ORIGINAL EXHIBITS ATTACHED

TO ORIGINAL TRANSCRIPTS

EXHIBIT COPIES ATTACHED

TO ELECTRONIC TRANSCRIPT IN PDF FORMAT

PREVIOUSLY MARKED DEPOSITION EXHIBITS
REFERRED TO IN THIS DEPOSITION

	DESCRIPTION	MARKED
Exhibit 284	E-mail series headed From: elkane@san.rr.com, To: Guy Adams and others, Date: 04/19/2015, Subject: JJC Options (EK00001673, 1 page total)	572
Exhibit 526	(DESIGNATED CONFIDENTIAL) Reading International, Inc. Minutes of the Board of Directors Meeting, December 29, 2017 (RDI0063804 - 63809)	567
Exhibit 527	DESIGNATED CONFIDENTIAL E-mail headed From: Marcia E. Wizelman, To: Craig Tompkins and others, Date: 12/27/2017, Subject: Special Board Meeting (RDI0063918)	529
Exhibit 528	Cover letter 02/22/2018, From: Kara Hendricks, To: All Counsel of Record, Attachment: Reading International's Privilege Log (Responses to JJC Jr.'s RFPs dated 01/12/2018) (Letter 1 page, Attachment 37 pages - 38 pages total)	553

PREVIOUSLY MARKED EXHIBITS ATTACHED

TO ORIGINAL TRANSCRIPTS

EXHIBIT COPIES ATTACHED

TO ELECTRONIC TRANSCRIPT IN PDF FORMAT

Thursday, April 5, 2018

9:32 A.M.

LOS ANGELES, CALIFORNIA

THE VIDEO OPERATOR: And good morning. This is the beginning of media one in the deposition of William Gould, in the matter of Cotter, Jr., versus Cotter, et al., held at 1901 Avenue of the Stars, Suite 1600, Century City, California, on April 5th, 2018, at 9:32 A.M.

The court reporter is Lori Byrd. And I am Cory Tyler, the videographer, an employee of Litigation Services.

This deposition is being videotaped at all times unless specified to go off the video record.

Would all present identify themselves, beginning with the witness.

THE WITNESS: My name is William Gould, and I am the witness.

MS. BANNETT: Shoshana Bannett, representing the witness.

MR. HELPERN: Noah Helpern, with Quinn Emanuel, for defendants Ellen Cotter, Margaret Cotter and Guy Adams.

MR. KRUM: Mark Krum, on behalf of the

plaintiff.

MS. HENDRICKS: And appearing telephonically, Kara Hendricks, on behalf of Reading International, Inc.

THE VIDEO OPERATOR: And will the court reporter please swear in the witness.

WILLIAM GOULD

called as a witness in this case,

having been first duly sworn

upon his oath,

testified as follows:

CONTINUING EXAMINATION

BY MR. KRUM:

Q. Good morning, Mr. Gould.

A. Good morning.

Q. What did you do, if anything, to prepare for your deposition today?

A. Basically I did three things. I went and met with my lawyer for about 30, 40 minutes yesterday.

I pulled together some -- I made sure that the response to your discovery request was accurate and up-to-date.

And I reviewed the minutes of the