IN THE SUPREME COURT OF THE STATE OF NEVADA

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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 VI
JA1251– JA1500

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By: /s/ Gabriela Mercado

EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA

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

vs. Case No.

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

and

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

(CAPTION CONTINUED ON NEXT PAGE.)

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

Reported by:
JANICE SCHUTZMAN, CSR No. 9509
Job No. 2343561
Pages 568 - 838

BY MR. TAYBACK:

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

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

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

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

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

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

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

BY MR. TAYBACK:

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

MR. KRUM: Same objections.

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

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

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

BY MR. TAYBACK:

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

THE WITNESS: I didn't sug- --

THE REPORTER: I'm sorry. Objection?

MR. KRUM: Foundation.

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

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

BY MR. TAYBACK:

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

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

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

A. Correct.

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

to have terminated you as CEO; correct?

A. Yes.

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

MR. KRUM: Objection, misstates the testimony.

THE WITNESS: No, not true.

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

BY MR. TAYBACK:

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

A. May 21st.

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

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

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

MR. KRUM: Objection, vague.

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

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

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

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

BY MR. TAYBACK:

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

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

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

BY MR. TAYBACK:

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

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

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

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

MR. KRUM: Objection --

THE WITNESS: Between --

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

THE WITNESS: Between September 14th and?

BY MR. TAYBACK:

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

A. Right.

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

MR. KRUM: Same objections.

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

BY MR. TAYBACK:

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

A. That I had investigated it?

Q. Yes. 11:37AM

A. That seems correct.

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

A. I did. 11:38AM

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

A. I knew that he was compensated, yes.

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

A. I did.

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

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

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

MR. KRUM: Asked and answered.

BY MR. TAYBACK:

Q. You don't have an opinion as to whether or not the actions they actually took exceeded Nevada law? 04:25PM

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

Q. The -- with respect to the appointment of Mr. Wrotniak, you agree, as you certified previously, that there are, in fact, no qualifications required to be a director or to sit on even a certain committee; correct? 04:26PM

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

THE WITNESS: I mean, none that I'm aware of. 04:26PM

MR. KRUM: Well --

BY MR. TAYBACK:

Q. So --

MR. KRUM: -- excuse me.

Misstates the testimony, too. 04:26PM

BY MR. TAYBACK:

Q. So when you say Mr. Wrotniak was unqualified, that's your opinion. It's not like there were qualifications that are required for appointment to a particular committee? 04:26PM

EXHIBIT 39

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 MARGARET COTTER

TAKEN ON MAY 13, 2016

VOLUME II

REPORTED BY:

PATRICIA L. HUBBARD, CSR #3400

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

Q. Yes.

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

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

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

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

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

A. Michael Wrotniak.

Q. Who is he?

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

Q. What's her name?

A. Patricia Wrotniak.

Q. How long have you known Michael

Wrotniak?

A. I met him in college, so --

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

A. Thank you.

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

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

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

A. Freshman year in college.

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

A. That's correct.

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

A. That's correct.

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

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

A. Sometime in the fall of 2015.

Q. Describe your relationship with Patricia

Wrotniak, please.

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

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

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

MR. SEARCY: Objection. Vague.

THE WITNESS: I would consider her a close friend.

BY MR. KRUM:

Q. And describe your relationship with Michael Wrotniak.

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

Q. How often do you communicate with him?

A. Now?

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

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

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

A. I don't know.

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

THE REPORTER: Yes.

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

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

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

MR. KRUM: A what?

MR. FERRARIO: 158. There you go.

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

MR. FERRARIO: That's all right.

EXHIBIT 40

EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA

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

vs. Case No.

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

and

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

(CAPTION CONTINUED ON NEXT PAGE.)

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

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

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

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

A. I don't recall, no.

Q. Why weren't you troubled by that?

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

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

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

A. Yes.

Q. -- Pico Holdings?

A. Yeah.

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

EXHIBIT 41

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 ON JUNE 8, 2016

VOLUME 1

JOB NUMBER 315485

REPORTED BY:

PATRICIA L. HUBBARD, CSR #3400

school.

A. Including high school.

Q. No. Following high school.

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

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

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

So those would be my main areas of expertise.

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

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

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

A. I advise boards of directors on proper

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

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

A. Yes.

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

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

MR. SWANIS: Objection. Form.

MR. HELPERN: Join.

MR. RHOW: You can answer.

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

///

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

A. No.

Q. Okay. So let me backfill a little bit. So the first step in the C.E.O. search process was formation of the committee; is that right?

A. Yes.

Q. And how did that come to pass?

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

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

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

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

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

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

A. Yes.

Q. Did anybody respond?

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

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

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

MR. SWANIS: Object to form.

MR. HELPERN: Join.

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

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

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

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

BY MR. KRUM:

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

MR. HELPERN: Objection to form.

MR. SWANIS: Join.

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

BY MR. KRUM:

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

MR. RHOW: Foundation.

MR. SWANIS: Object to form.

MR. RHOW: Foundation.

MR. HELPERN: Join.

MR. RHOW: You can answer.

THE WITNESS: I can't recall that.

BY MR. KRUM:

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

MR. SWANIS: Objection. Form, foundation.

MR. HELPERN: Join.

THE WITNESS: I had no thought about it.

BY MR. KRUM:

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

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

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

Q. What did he say about Guy Adams?

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

an independent director.

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

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

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

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

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

Q. Okay. Did you ever learn otherwise?

MR. SWANIS: Objection to form.

THE WITNESS: Yes.

BY MR. KRUM:

Q. When?

A. About three weeks ago or a month ago.

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

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

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

A. RDI.

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

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

Q. Who asked you that?

A. Craig Tompkins and Ellen Cotter.

Q. What was your response?

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

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

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

MR. SWANIS: Let me finish.

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

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

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

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

BY MR. KRUM:

Q. What did you tell him?

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

Q. Did you explain why you thought that?

A. Yes, I did.

Q. What did you tell him?

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

might be not independent for that type of transaction.

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

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

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

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

MR. HELPERN: Objection. Form.

MR. SWANIS: Join. Foundation.

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

///

BY MR. KRUM:

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

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

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

A. Yes.

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

MR. HELPERN: Objection to form.

MR. SWANIS: Join.

BY MR. KRUM:

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

MR. SWANIS: Objection to form.

THE WITNESS: Yes.

MR. HELPERN: Join.

MR. RHOW: I'm --

///

words "given the situation"?

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

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

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

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

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

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

foundation.

MR. HELPERN: Join.

THE WITNESS: Yes.

BY MR. KRUM:

Q. When did you first hear that?

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

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

A. Yes.

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

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

That was the essence of what I knew about it.

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

A. Yes.

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

A. Right.

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

MR. SWANIS: Objection. Form.

THE WITNESS: Yes.

BY MR. KRUM:

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

MR. SWANIS: Objection. Form.

MR. HELPERN: Join.

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

finished.

A. I'm ready.

Q. Do you recognize Exhibit 274?

A. I do.

Q. What is it?

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

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

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

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

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

A. I'm not certain.

Q. Meaning you don't recall?

A. I don't recall.

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

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

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

Q. What happened then?

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

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

And that's when I first heard it.

Q. How did you first hear?

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

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

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

MR. SWANIS: Objection to form.

THE WITNESS: No. It was before that.

BY MR. KRUM:

Q. What is Exhibit 11?

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

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

A. Yes.

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

Do you have that?

A. I do.

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

A. Yes.

Q. -- and so forth?

A. Yes.

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

A. Yes, it is.

Q. Does that refresh your recollection --

A. Yes, it does.

Q. Let me finish.

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

A. Yes.

MR. SWANIS: Objection to form.

MR. HELPERN: Join.

BY MR. KRUM:

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

A. Yes, it did.

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

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

viewed the progress of -- of these relationships.

And everybody seemed to agree with that.

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

Why do you say everyone seemed to agree?

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

And he indicated he would be willing to do it.

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

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

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

So, Tim, who is a very successful and

foundation.

MR. HELPERN: Join.

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

BY MR. KRUM:

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

A. Yes.

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

MR. HELPERN: Objection to form.

MR. SWANIS: Join.

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

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

MR. HELPERN: Objection. Lacks

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

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

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

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

MR. HELPERN: Objection. Form and foundation.

MR. SWANIS: Join.

MR. RHOW: You can answer.

THE WITNESS: I forgot the question.

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

(Whereupon the question was read as follows:

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

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

BY MR. KRUM:

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

A. That's correct.

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

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

THE WITNESS: Yes. I'm prepared.

BY MR. KRUM:

Q. Do you recognize Exhibit 277?

A. Yes.

Q. What is it?

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

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

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

She went through and explained it to me.

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

Q. What was her response, if any?

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

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

A. She provided me with resumes of both

BY MR. KRUM:

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

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

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

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

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

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

Q. Did she indicate that there was some rush?

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

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

MR. SWANIS: Objection to form, foundation.

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

BY MR. KRUM:

Q. Who told you what in that regard?

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

Q. What did she tell you, if anything,

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

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

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

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

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

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

educational thing.

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

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

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

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

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

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

Q. Were all of the directors on that call?

A. I believe they were.

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

MR. SWANIS: Objection. Form.

THE WITNESS: Her employment?

BY MR. KRUM:

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

A. I don't recall that discussion.

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

A. Yes.

Q. -- "by Andy Shapiro?"

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

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

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

A. Yes.

Q. And you saw that it described her employment?

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

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

A. I don't recall.

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

A. It's close.

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

BY MR. KRUM:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Q. Was an email or an outlook calendar invitation or something of that nature sent around to schedule this call with Ms. Codding on a Saturday?

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

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

A. Telephonically, yes.

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

MR. SWANIS: Object to form.

EXHIBIT 42

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 ON JUNE 29, 2016

VOLUME 2

Job No.: 319129

REPORTED BY:

PATRICIA L. HUBBARD, CSR #3400

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

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

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

A. I don't.

Q. Okay. So this is in October of 2014. Do you recall any -- any events that warranted or required the filing of an 8-K by the company in October of 2014?

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

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

A. I see.

MR. RHOW: Don't speculate.

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

BY MR. KRUM:

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

A. Okay.

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

A. As a practical matter, I would have.

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

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

Q. Your practice was to review them?

A. Yes.

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

A. Yes.

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

How did that process play out typically?

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

Q. And was there a practice that

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

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

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

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

A. Yes.

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

Can you read that?

A. Yes, I can.

Q. Was does it --

A. It says,

"Approve employment agreement. Corporate secretary approve" -- or "corporate secretary," and then it says "approve 60,000 stock

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

Do you see that?

A. I do.

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

A. No.

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

A. To my knowledge, no.

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

A. Yes.

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

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

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

MR. TAYBACK: That's good.

THE WITNESS: I'm prepared.

BY MR. KRUM:

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

A. I recognize the interview preparation portion of it.

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

A. Yes.

Q. -- the second and third pages?

A. Yes.

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

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

A. Yes.

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

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

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

MR. KRUM: Sure.

VIDEOTAPE OPERATOR: We are off the record.

The time is 11:33.

(Brief recess.)

VIDEOTAPE OPERATOR: We are on the record.

The time is 11:39.

BY MR. KRUM:

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

A. It was a call.

Q. Okay. Who participated in that call?

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

Q. How long did your call last?

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

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

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

BY MR. KRUM:

Q. Do you recognize Exhibit 378?

A. I do.

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

A. Yes.

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

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

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

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

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

A. I don't recall.

MR. RHOW: I will ask.

BY MR. KRUM:

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

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

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

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

What does that say?

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

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

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

listed on the page bearing production number WG230?

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

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

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

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

Q. He was the first one you interviewed?

A. The first one we interviewed.

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

Do you have that?

A. Yes.

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

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

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

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

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

So, he made a very good impression on me.

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

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

A. It says,

"Discretionary, tied to standards."

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

"Discretionary or tied to

standards."

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

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

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

Do you have 255?

A. I do.

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

A. Yes, I do.

Q. Do you recall that?

A. Yes.

Q. And what were your thoughts about that?

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

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

A. Very favorable. But I did find that he

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

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

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

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

What does that say?

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

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

Do you have that?

A. I do.

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

A. Yes.

Q. At the bottom what does the handwriting say?

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

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

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

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

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

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

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

What does that say?

A. "Where are you from?"

Q. Do you have any idea what that meant?

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

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

Do you recall what impression you had after you interviewed him?

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

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

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

A. Yes.

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

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

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

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

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

Q. What were your impressions of Mr. Clayton?

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

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

A. Yes.

Q. When did you meet him?

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

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

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

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

A. No.

Q. Why not, if you know?

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

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

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

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

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

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

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

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

MR. RHOW: Do you have --

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

BY MR. KRUM:

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

A. No.

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

A. No.

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

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

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

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

A. Words to that effect.

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

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

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

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

Q. And --

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

Q. What's the basis for that impression?

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

Q. Okay. Was there any discussion at that

remember having thought about that.
BY MR. KRUM:
Q. Did you or, to your knowledge, Mr. McEachern seek the advice of counsel with respect to the conduct of the C.E.O. search at any point in time?
A. No.
Q. What happened next after the four candidate interviews of Friday, November 13, 2015?
A. After that -- after that there was a -- another candidate that was proposed by Korn Ferry. And I believe we had a subsequent session with Mr. Caverly. As I recall, he came in at a different time.

And then we had to interview Ellen.

So there was a subsequent -- one or two subsequent interview sessions sometime in December. One of them was done by Skype and one with the -- the new candidate, which Korn Ferry had recommended was in New York, was running a privately-owned hotel, had been running it. And we interviewed that gentleman on Skype.
Q. Do you recall his name?
A. No.
Q. Did it begin with a D?

A. Could have.

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

And what were your impressions of that candidate?

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

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

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

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

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

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

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

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

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

Q. Okay. Who led that interview?

A. I did.

Q. What did you cover? What were the topics you covered?

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

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

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

Q. And how long did those discussions last?

A. I would say they lasted 30 minutes.

Q. Who said what?

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

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

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

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

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

And Doug said, "You know, I agree with

you."

Q. That was my next question, Mr. Gould. The reasons you just described, are those your reasons and is that what you articulated? Was that what you and Mr. McEachern together articulated or --

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

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

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

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

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

Q. Did Margaret exhibit any response to

meetings.

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

A. It did.

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

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

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

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

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

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

A. No.

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

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

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

A. The lawyers for the company.

Q. Ellis --

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

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

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

A. No.

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

previous. I don't mean to do so.

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

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

Q. What are the annual revenues of RDI?

MR. TAYBACK: Objection. Vague as to time.

BY MR. KRUM:

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

A. Well, several -- several hundred million.

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

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

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

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

A. I do remember something like that, yes.

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

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

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

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

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

A. I'm not certain.

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

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

Q. Did you see drafts of this letter?

A. I don't recall.

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

A. Well, should I surmise?

MR. RHOW: No.

BY MR. KRUM:

Q. If you have a --

A. If have no understanding.

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

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

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

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

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

A. Yes. I did.

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

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

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

Q. Was there any discussion?

A. Yes.

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

A. Yes, there was.

Q. Ed Kane said he agreed, right?

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

Q. Did he explain why?

A. I don't remember that he did.

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

and Korn Ferry personnel?

A. Yes.

Q. Did that occur -- okay.

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

A. Yes.

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

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

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

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

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

MR. RHOW: Bottom of page two.

THE WITNESS: Yes. My recollection --

my recollection is that it is correct.
BY MR. KRUM:
Q. Was that in person?
A. Yes. I believe -- I believe we -- that was the day of the -- that might have been the day of the Christmas party.
Q. Directing your attention to what's labeled as page three of seven, and that is of the C.E.O. search committee report, it's actually the fourth page of Exhibit 313, do you see that it says the committee discussed among other things, and so forth, and then it lists six lengthy bullet points?
A. Yes.
Q. Take such time as you need to review those.
My question is does that fairly and accurately describe what the committee discussed on the 17th of December?
A. Generally, yes.
Q. And when you say "generally," is that a qualification that you --
A. No. It's just that I can't remember every specific aspect of it, but in general that's my recollection of what was discussed.
Q. Directing your attention to the third

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

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

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

Q. Okay.

A. Which was brought up.

Q. Anything else?

A. No.

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

A. Yes.

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

A. Well, that because -- just generally

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

A. Correct.

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

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

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

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

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

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

A. No.

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

A. Yes.

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

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

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

Cotter-related entities?

A. No.

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

A. I can't recall that conversation.

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

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

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

So my answer was if he disclosed this --

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

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

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

A. Yes.

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

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

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

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

A. No.

Q. Did you think about that?

A. No.

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

A. Yes.

MR. FERRARIO: Objection. Lacks foundation.

MR. TAYBACK: Objection.

BY MR. KRUM:

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

A. She did.

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

Judy Codding and Mary Cotter?

A. She did.

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

A. She did.

Q. Now, directing your attention, Mr. Gould, back to Judy Codding's description on page 15.

A. Yes.

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

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

A. Yes.

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

A. No.

question.

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

A. I don't remember.

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

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

BY MR. KRUM:

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

A. Yes.

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

A. Yes.

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

A. Correct.

Q. Did you review this information?

A. No.

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

A. Oh, yes.

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

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

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

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

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

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

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

A. Yes, I was told that.

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

A. Yes.

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

MR. RHOW: Form of the question,

foundation.

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

BY MR. KRUM:

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

A. That's correct.

Q. And who were those people?

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

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

A. Jim.

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

A. Correct.

MR. FERRARIO: That's what it says.

A. Yes.

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

A. Yes.

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

A. Yes.

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

MR. RHOW: I don't.

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

MR. RHOW: That's fine.

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

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

MR. KRUM: Yes. 347 is the document

recollection?

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

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

A. I believe so, yes.

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

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

A. Yes, I do.

Q. Did you agree with that observation?

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

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

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

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

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

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

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

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

EXHIBIT 43

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

DEPOSITION OF: EDWARD KANE

TAKEN ON: MAY 2, 2016

REPORTED BY:

PATRICIA L. HUBBARD, CSR #3400

and it became in- -- difficult.

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

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

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

Q. When did you and he become friends?

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

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

And we just -- just became fast friends.

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

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

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

MR. SEARCY: Objection. Vague.

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

BY MR. KRUM:

Q. Answer this as you see fit, Mr. Kane. Describe your historical relationship with Ellen and Margaret Cotter.

MR. SEARCY: Objection. Vague, overbroad.

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

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

BY MR. KRUM:

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

MR. SEARCY: Objection. Vague.

BY MR. KRUM:

Q. Socialize meaning see each other socially.

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

Q. Between San Diego and Los Angeles?

A. Right. Right. Right.

A. Probably two, two and a half years ago.
Q. What was your compensation in that role?
A. I think I was paid $6500 month.
Q. And just to be clear, so that ended in -- somewhere between the beginning and the middle of 2014?
A. Something like that.
Q. Since that time have you had any income other than as a Reading director?
MR. SEARCY: Objection. Vague.
BY MR. KRUM:
Q. Excluding passive investment income.
A. Well, I have self-funded -- my wife and I have self-funded retirement plans. That's passive, I suppose you could say.
Q. Okay. So, since the work ended with the Community Medical Group --
A. Uh-huh.
Q. -- your sole source of income has been your self-funded retirement plans and your work as a Reading director, correct?
A. That's correct.
Q. How many retirement plans do you have, sir?
A. My wife has one and I have two.

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

A. Mine?

Q. Yes.

A. In excess of $2 million.

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

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

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

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

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

BY MR. KRUM:

Q. Is that it -- excuse me.

Is that it in terms of your material financial obligations?

A. That's it.

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

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

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

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

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

BY MR. KRUM:

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

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

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

MR. SEARCY: Objection. Misstates the document.

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

BY MR. KRUM:

Q. Does, to your knowledge, Judy Codding have any real estate expertise?

A. No.

Q. Does Michael Wrotniak have any real estate expertise?

A. Pardon?

Q. Does Michael Wrotniak have any real estate expertise?

A. I don't know.

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

A. Yes.

Q. Both of them?

A. Yes.

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

A. No.

Q. -- real estate expertise?

A. No.

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

A. I think initially it was by telephone.

Q. Was anyone else on the call?

A. Not to my knowledge.

Q. How long did it last?

A. I don't remember.

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

A. I can't.

Q. Two hours?

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

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

A. No.

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

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

I'm trying to think of the other directors.

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

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

BY MR. KRUM:

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

A. Yeah.

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

A. Right.

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

A. Absolutely.

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

EXHIBIT 44

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 ROBERT MAYES

TAKEN ON THURSDAY, AUGUST 18, 2016

REPORTED BY:

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

with him via Skype, but --

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

A. Yeah. The only --

MS. LINDSAY: Objection. Lacks foundation.

BY MR. KRUM:

Q. You can go ahead.

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

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

MS. LINDSAY: Objection. Lacks foundation.

THE WITNESS: Yes.

BY MR. KRUM:

Q. Okay. What exactly is that proprietary assessment?

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

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

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

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

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

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

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

A. No.

Q. Not with respect to Ellen Cotter?

A. No.

Q. Not with respect to the person who

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

A. No.

Q. No one?

A. No.

(Off-the-record discussion.)

BY MR. KRUM:

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

A. Yeah. Rob's a partner at Korn Ferry. And Rob had a relationship -- has a relationship with Craig Tomkins that dates back to college.

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

Q. That's the answer to the next question. Thank you.

You worked on a prior engagement for RDI, right?

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

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

MS. LINDSAY: Objection. Vague.

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

Do you see that?

A. Yep.

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

A. Yes.

Q. Okay. That's all for that.

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

A. Okay.

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

BY MR. KRUM:

Q. Do you recognize Exhibit 378?

A. Yep.

Q. What is it?

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

Q. Okay. What's a position spec?

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

Q. And when you say "source candidates"?

A. Generate interest among the candidate pool.

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

A. Sure.

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

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

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

Q. Did you have those conversations?

A. I did.

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

A. Correct.

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

A. No.

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

foundation.

THE WITNESS: Oh, sorry. Correct.

BY MR. KRUM:

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

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

Do you see that?

A. Yep.

Q. To what does that refer?

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

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

A. Real estate experience.

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

THE WITNESS: No.

BY MR. KRUM:

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

A. A dozen.

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

A. 50.

MS. LINDSAY: Objection. Vague.

BY MR. KRUM:

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

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

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

A. I'm sorry?

Q. I direct your attention to the --

A. Oh, sure.

Q. -- the proprietary assessment that was

BY MS. LINDSAY:

Q. What are those reasons?

MR. KRUM: Same objections.

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

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

BY MS. LINDSAY:

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

MR. KRUM: Same objections.

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

Beyond that there's no common -- commonality.

BY MS. LINDSAY:

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

A. Change makes team members nervous.

Q. In what way?

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

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

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

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

A. Absolutely.

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

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

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

A. Yes.

Q. In your experience, do companies

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

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

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

BY MS. LINDSAY:

Q. So, that happens often?

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

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

BY MS. LINDSAY:

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

A. Definitely.

Q. And why might that be a concern?

MR. KRUM: Same objection.

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

///

assessment process.

When was that?

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

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

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

A. No. No. They chose not to.

Q. And do you know why that was?

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

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

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

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

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

This is -- the first half is the success

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

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

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

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

A. Yeah.

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

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

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

BY MS. HENDRICKS:

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

A. Very much so.

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

A. No.

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

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

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

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

A. No. No.

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

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

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

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

A. Correct.

Q. Is that right?

A. I think so.

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

A. Yeah.

Q. What -- what did he say?

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

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

A. Right.

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

MR. KRUM: Objection. Foundation.

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

BY MR. VERA:

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

MR. KRUM: Same objection. Misstates testimony.

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

BY MR. VERA:

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

A. Correct.

MR. KRUM: Same objection.

BY MR. VERA:

Q. Thank you.

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

A. I can't recall.

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

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

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

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

A. No.

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

A. Phone.

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

A. Jim Aggen.

Q. And how long did that conversation last?

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

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

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

Q. But it was your impression that he took the process very seriously, correct?

A. Yes.

Q. And he was trying, again, to do everything he could to find the right person for the job?

MR. KRUM: Same objection.

THE WITNESS: Yeah. I mean he -- he attended all the search committee calls, he was -- he wasn't absent.

BY MR. VERA:

Q. Right. But did he do or say anything that made you think that he was doing anything other than trying to find the right person for the job?

A. No.

Q. Okay.

MR. VERA: Thank you. I have no further questions.

MR. KRUM: I have nothing further.

Thank you, Mr. Mayes.

THE WITNESS: Thank you.

MS. LINDSAY: Thank you.

VIDEOTAPE OPERATOR: This concludes the deposition of Mr. Robert Mayes on August 18, 2016, which consists of two media files.

The original media files will be retained by Litigation Services.

We are off the record at 11:17.

(Whereupon at 11:17 A.M. the deposition proceedings were concluded.)

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EXHIBIT 45

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 DOUGLAS McEACHERN

TAKEN ON MAY 6, 2016

REPORTED BY:

PATRICIA L. HUBBARD, CSR #3400

Q. Okay. Well, let me ask a question. Let's try it again.

What was your understanding, if any, as to the point of hiring a director of real estate for RDI?

A. Jim wanted to hire a director of real estate who had been through some development activities in the past and had responsibilities for, take this building, building this building.

Q. When you say Jim wanted to hire him, were you suggesting that somebody disagreed other than Margaret?

A. This was his initiative. It wasn't a bad idea.

Q. Okay. To your knowledge, did anybody other than Margaret ever disagree with the notion of hiring a director of real estate for RDI?

MR. SEARCY: Objection. Assumes facts, lacks foundation.

THE WITNESS: I don't know. And I can't tell you that Margaret didn't want to hire somebody.

I remember being in discussions where Margaret was there and where she would be reporting.

BY MR. KRUM:

Q. So, setting aside the subject of

EXHIBIT 46

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 DOUGLAS McEACHERN

TAKEN ON JULY 7, 2016

VOLUME II

JOB NUMBER 321640

REPORTED BY:

PATRICIA L. HUBBARD, CSR #3400

corporate lives.

BY MR. KRUM:

Q. What -- what did you do and, to your knowledge, what did anybody else who was on the special nominating committee do with respect to Judy Codding?

MR. SEARCY: Objection. Vague.

THE WITNESS: In addition to going through Ms. Codding's resume, we personally met with her. And I'm trying to remember who all was in the meeting. The minutes are there and they will tell you who was there. It could have been Ed Kane, although I don't think he was a member of the committee. But we typically carpooled up to Los Angeles with each other, so I think it's reasonable to think he was there, Guy Adams and maybe Bill Gould as a lead director.

And we went with Judy and talked about what she had done in the past, what her business experiences had been and were quite -- I, I can't speak for everybody else, but I was quite favorably impressed about her business background and felt comfortable recommending her to the board of directors.

Q. What is your understanding, if any, as

to how the resume -- the Judy Codding resume you reviewed came to be prepared?

A. I do not know.

Q. How did you receive it?

A. I think by email.

Q. From whom?

A. I don't know. You'd have to go back and look at email to find out.

(Whereupon Mr. Swanis entered the deposition proceedings at this time.)

BY MR. KRUM:

Q. Okay. What was it about her business experience that created a favorable impression for you?

A. Not -- it's been close to -- we're moving on to a year when I last saw Judy Codding's resume, but she had been in the education field on a number of corporations, business experience.

I'd have to go through and pick out the resume and tell you the points of contact that I found impressive. And then her own personal demeanor and how she carried herself and the way she communicated, I thought she'd be very effective as board member.

answer the question and then we'll go off the record.

THE WITNESS: She described a relationship she had and discussed having been involved with Jim and his wife. As they were proposing and he reached out to her, she was associated with some pre-school or some prep school or some private school on the west side, and Jim had asked her -- Jim and his wife Gina had asked Judy to help support their child's candidacy.

BY MR. KRUM:

Q. What did Judy say about her relationship with Mary Cotter?

A. I don't know that she said anything about a relationship with Mary Cotter.

Q. Okay. And you made some reference to a relationship between Judy Codding and Mary Cotter in earlier testimony.

Do you have that in mind?

A. I do.

Q. And what is it you heard or learned in that respect?

A. But I would like to -- my earlier testimony I believe was I didn't know when I was aware of that relationship, it could have been as

being considered as a board member or it could have been three, four, five months later, is that she and Mary Cotter had a relationship that went back 20, 25, 30 years, a longstanding relationship.

I don't know how it was created. I don't know how often they saw each other. I was just aware of that relationship.

Q. How did you come to learn about that relationship?

A. I don't recall.

Q. What did Ellen Cotter tell you and presumably other members of the special nominating committee about the relationship between Judy Codding on one hand and any Cotter family member on the other hand?

A. At -- we were nominating Judy Codding to fill a board position created when Tim Storey resigned. That was a month, two weeks, three weeks, some period of time before the annual meeting.

And sometime after Judy Codding was appointed to the board, a number of us received an email from Andy Shapiro -- Andrew Shapiro, about some background information on Judy Codding about a connection that she had with -- I don't remember the name of the company. It was some software reading

comprehension and learning company publisher that had a relationship with Apple that had a relationship and was doing work for the L.A.U.S.D., Los Angeles Unified School District.

And pretty negative coverage had appeared in a series of articles. I remember some in the "L.A. Times."

And I think when that information surfaced, there was a whole lot more discussion that took place about Judy Codding and her relationship with Ellen Cotter and the family.

Q. What's your recollection, if any, as to how Mr. Shapiro had learned that Judy Codding -- or learned about Judy Codding -- strike that.

Had she already been added to the board and the company announced that at the time Mr. Shapiro communicated what you just described?

A. It had happened before Andy Shapiro sent that information to us.

Q. What had happened before?

A. That she had been added to the board.

Q. Okay. What was the -- what steps, if any, did the special nominating committee take, if any, beyond interviewing candidates that Ellen Cotter referred to the committee and as well as

A. So we didn't do a background check on him.

Q. Who was responsible for the background checks?

A. I believe they were done understand the auspices of Craig Tompkins or they could have been -- I think it was Craig Tompkins.

Q. Was he a member of the special nominating committee?

A. He attended as a -- he took the medicine, attended the meetings.

Q. Did he do anything beyond that?

A. To the best of my knowledge, no.

Q. So it's your understanding that the company had run a background check on Ms. Codding before she was added to the board?

A. Yes, it is.

Q. And it's your understanding that the background check had not produced the information that had been communicated to the board members by Mr. Shapiro?

A. That is correct.

Q. Did you ever see the background check --

A. Yes.

Q. There was a document that Mr. Tompkins

produced that was described as a background check for Judy Codding?

MR. SEARCY: Objection. Lacks foundation.

THE WITNESS: I -- I do believe I saw a background check that had been done on Judy Codding. I asked to see it because, quite frankly, this was a bit of an embarrassing that this information would surface and we would not have been aware of it beforehand.

When we learned of it, we changed our background procedures to be more robust than they had been in the past.

BY MR. KRUM:

Q. The information that Mr. Shapiro transmitted to members of the RDI board of directors regarding Judy Codding was all publicly available information, right?

A. I recall -- I think so, yes.

Q. So, did you ask Mr. Tompkins or anybody else what sort of background check was done that didn't discover publicly available information?

A. We had --

MR. SEARCY: Objection.

Go ahead.

arrangements for us to get together again with Judy personally to discuss the situation.

BY MR. KRUM:

Q. Over what period of time did these conversations with Ms. Cotter, who was in Florida, occur relative to receipt of the information from Mr. Shapiro?

Was it the same day? The same week?

A. A couple of nanoseconds.

Q. Okay. And how long thereafter did you and others spoke with Ms. Codding?

A. More than a couple of nanoseconds. It could have been within the next week. I just don't remember.

There are minutes of that meeting with Ms. Codding that will set forth the date.

Q. And what happened during that -- was it a meeting in person?

A. Yes, it was.

Q. And who was present?

A. Bill Gould was there, I was there. I don't remember if Ellen Cotter was there or not. I think --

Well, get the minutes out. They'll tell you who was there.

I -- it's conceivable Guy Adams and Ed Kane were there also.

Q. How long did the meeting last?

A. No more than three hours.

Q. And in substance who said what during that meeting?

A. The majority of what was communicated was by Judy Codding. And I believe we had instructed -- at some point we instructed Craig Tompkins to go do some research of all this stuff and try to find what was going on.

He found some additional information about Judy Codding that had not been communicated by Mr. Shapiro.

And Judy explained the situation between Pearson -- thank you for the name of that -- Pearson, which was a subcontractor to Apple Computer supplying and designing a curriculum for the L.A. Unified School District that was principally to be delivered via iPads that Apple was selling through some vendor to the L.A. Unified School District.

Q. Where did this meeting occur?

A. At the Reading office.

Q. Was it on a weekend or a workday?

A. The minutes will -- I believe it was on

that same meeting where we met with Judy Codding.

Q. Okay. Do you recall anything else that anybody else said in words or substance from that meeting?

A. At some point either at that meeting or before we concluded we would go forward with Judy as a nominee for the board of directors. I and others were impressed with Judy's explanation and the research that Craig had done into the entire matter. We were positive and felt very good about renominating her.

Q. Did anyone at Reading, whether Craig Tompkins or anyone else, communicate with any third parties about Judy Codding?

MR. SEARCY: Objection. Vague.

MR. SWANIS: Join. Calls for speculation.

THE WITNESS: I don't know.

BY MR. KRUM:

Q. Okay.

MR. KRUM: I'll ask the court reporter to mark --

MR. SEARCY: Before we start on the exhibits Mr. McEachern asked actually for a break a while back. I wanted to --

Q. When you say you believe so, Mr. McEachern, do you recall interviewing him?

A. We -- we would have had minutes that discussed the interview of Mr. Wrotniak.

Q. Okay. But do you have any recollection of doing so as you sit here today?

A. I don't have any specific recollection.

Q. Who interviewed him?

A. I believe it was the same group of three, Guy Adams, Ed Kane and myself.

Q. Was that -- did that interview occur in person?

A. I believe it took place by phone.

Q. How long did it last?

A. I don't recall.

Q. Who said what in words or substance?

A. I don't remember.

Q. Mr. Wrotniak was recommended by Ellen Cotter; is that right?

A. I believe he was recommended by Margaret Cotter and Ellen Cotter jointly.

Q. Okay. And what did they say when they recommended him?

A. I don't recall.

Q. Did you ever hear or learn or were you

ever told that his wife is a close personal friend of Margaret Cotter?

MR. SEARCY: Objection. Lacks foundation, vague.

(Whereupon Mr. Swanis re-entered the deposition proceedings at this time.)

THE WITNESS: I have been told that or heard that.

BY MR. KRUM:

Q. When is the first time you heard or learned or were told that?

A. Mr. Krum, I just don't remember.

Q. Do you recall from whom you heard or were told that?

A. I think from Jim Cotter, Jr.

Q. Was that after the committee had recommended nominating Mr. Wrotniak to stand for election at the 2015 annual shareholders meeting?

MR. SEARCY: Objection. Lacks foundation.

MR. SWANIS: Join.

THE WITNESS: I think so.

BY MR. KRUM:

Q. Okay. When you interviewed him, who

said what, if anything, regarding how he knew or was known to Ellen and/or Margaret Cotter?

A. I do not recall.

Q. What was done, if anything, to your knowledge, by you or any other member of the special nominating committee with respect to Mr. Wrotniak other than interviewing him prior to recommending to the full board of directors that he be nominated to stand for election at the 2015 annual shareholders meeting?

MR. SEARCY: Objection. Vague.

MR. SWANIS: Join.

THE WITNESS: We were doing a background check on Michael Wrotniak similar to what had been done on Judy Codding and was the customary normal practice for Reading.

Craig Tompkins was instructed, "Listen, if we got all this information that showed up about Judy Codding that was easily located through some Google search, well, darn it, go and do a similar search on Michael Wrotniak and see if there's anything out there that wouldn't have turned up in something akin to the background check that we had done on Michael Wrotniak."

And he did do that. I believe it is

documented in our minutes of that meeting.

BY MR. KRUM:

Q. Okay. What else, if anything, was done prior to Mr. Wrotniak being selected to stand for election to the RDI board of directors at the 2015 annual shareholders meeting?

MR. SWANIS: Objection. Form, foundation.

MR. SEARCY: Join.

THE WITNESS: I don't recall.

BY MR. KRUM:

Q. Okay. Let me show you, Mr. McEachern, what previously has been marked as Exhibit 52.

This may be a document to which you were just referring?

(Whereupon the document previously marked as Plaintiffs' Exhibit 52 was referenced and is attached hereto.)

BY MR. KRUM:

Q. Let me know when you've reviewed it.

A. Okay.

Q. Do you recognize Exhibit 52?

A. I have a general recollection, yes.

Q. What is it?

sometime in 1985 forward and knew these people when Deloitte were the -- the auditors and met Ellen Cotter while she was down in Australia when I was there doing company business.

BY MR. KRUM:

Q. So, back to the question. Did Korn Ferry interview Ellen Cotter as a candidate for the C.E.O. position?

A. I think I said --

MR. SWANIS: Objection.

THE WITNESS: -- I don't know.

BY MR. KRUM:

Q. Okay. Did they put Ellen Cotter through their proprietary assessment process?

MR. SWANIS: Same objections.

THE WITNESS: I don't think so.

BY MR. KRUM:

Q. They didn't do that with anybody, to your knowledge, right?

A. To my knowledge, no.

Q. What discussions did you have with Margaret Cotter and Bill Gould, if any, about whether and how to proceed any further with the other final -- with the finalist -- the persons you identified as finalists after the Ellen Cotter

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EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiffs,

v.

MARGARET COTTER, *et al.*,

Defendants.

AND

READING INTERNATIONAL, INC., a Nevada corporation,

Nominal Defendant.

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

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

Related and Coordinated Cases

BUSINESS COURT

DEFENDANTS' MOTION *IN LIMINE* TO EXCLUDE EXPERT TESTIMONY OF MYRON STEELE, TIAGO DUARTE-SILVA, RICHARD SPITZ, ALBERT NAGY, AND JOHN FINNERTY

Judge: Hon. Elizabeth Gonzalez
Date of Hearing: 10/25/16
Time of Hearing: 8:30 AM

NOTICE OF MOTION

TO: **TO: ALL PARTIES, COUNSEL, AND THE COURT:**

PLEASE TAKE NOTICE that the above Motion will be heard the 25 day of October, 2016 at 8:30 AM in Department ~~XXVII~~ XI of the above designated Court or as soon thereafter as counsel can be heard.

Dated: September 23, 2016

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MOTION *IN LIMINE* TO EXCLUDE PROPOSED EXPERT TESTIMONY OF MYRON STEELE, TIAGO DUARTE-SILVA, RICHARD SPITZ, ALBERT NAGY, AND JOHN FINNERTY

TO: ALL PARTIES, COUNSEL, AND THE COURT:

COMES NOW, Defendants Margaret Cotter, Ellen Cotter, Guy Adams, Edward Kane, Douglas McEachern, Judy Codding, and Michael Wrotniak (collectively, "Moving Defendants"), by and through their counsel of record, Cohen|Johnson|Parker|Edwards and Quinn Emanuel Urquhart & Sullivan, LLP, hereby submit this Motion *In Limine* to Exclude the Proposed Expert Testimony of Myron Steele, Tiago Duarte-Silva, Richard Spitz, John Finnerty, and Albert Nagy.

This Motion is based upon the following Memorandum of Points and Authorities, the pleadings and papers on file, and any oral argument at the time of a hearing on this motion.

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Dated: September 23, 2016

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff has disclosed three supposed expert witnesses—plus two additional "rebuttal" experts—to bolster his allegations against Defendants in this action. None of these experts' testimony is admissible under Nevada law. These experts apply unsound methodologies, are unfamiliar with the factual record, and offer testimony far outside their purported areas of expertise. Perhaps most importantly, not one of these experts' proposed testimony will assist the trier of fact in any way. In fact, just the opposite; the only possible impact of their proposed testimony is to cause severe prejudice and confusion.

Myron T. Steele, a former Chief Justice of the Delaware Supreme Court, has been designated to testify about how a Delaware court might apply Delaware law if the allegations in Plaintiff's complaint were found to be true. In other words, Justice Steele does not even attempt to assist the trier of fact. Instead, he opines as to the application of Delaware law *if* the trier of fact were to reach certain conclusions. Allowing this testimony would of course be both confusing and prejudicial. First, it is the Court, not an expert witness, who should instruct the trier of fact on applicable law. Second, this is a case about a Nevada company being heard in a Nevada court; Delaware law, while perhaps instructive on certain particular issues, does not apply here. Third, Justice Steele's opinion is based on assumptions—in particular, that the trier of fact finds against Defendants on virtually every factual issue—that are unfair to present to the trier of fact. It would be the very definition of prejudicial for the factfinder to hear from someone with the imprimatur of "expert" and "Chief Justice" about the consequences (in Delaware) to Defendants if they committed all the wrongdoing they are (falsely) accused of. As another court recently ruled in excluding Justice Steele's proposed expert testimony, his opinions "provide a patina of substance to [the] claims when they actually say nothing about them."

Tiago Duarte-Silva, a finance Ph.D., purports to testify about losses suffered by Reading since Plaintiff's termination. However, his opinion is inadmissible for numerous reasons. Dr. Duarte-Silva has not reviewed a *single deposition* from this action, has reviewed *only one document produced in discovery*, and simply has no idea what the facts of this case are. Because

he has not made even a cursory effort to familiarize himself with the evidence in this case, Dr. Duarte-Silva cannot offer any useful opinion that would assist the trier of fact. Unsurprisingly, given his lack of knowledge about the evidence, Dr. Duarte-Silva's proposed testimony does not even suggest a causal link between the losses supposedly suffered by Reading and any action of any Defendant. So while Dr. Duarte-Silva wants to tell the trier of fact about the nine-figure losses he thinks Reading has suffered since Plaintiff was fired, he has no idea—and does not even purport to know, as his opinion is completely silent on this question—if a single dollar of those purported losses is tied to Defendants' alleged conduct. Proximate causation of damages to the company is an essential element of any derivative claim for breach of fiduciary duty; Dr. Duarte-Silva should not be permitted to present the trier of fact with a "damages" figure that has nothing to do with any of the misconduct alleged in the complaint. Even setting aside the failure to provide a causation analysis, Dr. Duarte-Silva's supposed methodology is unsound. He deviates dramatically from the well-known and widely-accepted approach to conducting stock price event studies, and does not cite to any authority—academic or otherwise—supporting his novel approach. This is in direct contrast to Defendants' expert, Dr. Richard Roll, who conducted a proper event study. The trier of fact should not be presented with a "battle of the experts" when only one side's expert has conducted a legitimate analysis.

Plaintiff's third expert is **Richard Spitz**, an attorney who seven years ago was an executive search consultant. Whether or not Mr. Spitz actually has expertise relevant to the CEO search process, he does not apply it in connection with his proposed testimony. Mr. Spitz claims he has been retained to evaluate whether Reading's CEO search was a "success" or a "failure," but never sets forth the standard that he (or anyone else) uses to make such an evaluation or the methodology he applies. Mr. Spitz calls the search a "failure" but does not define that term, explain how he reached his conclusion, or assess the performance of the chosen CEO. Instead, the bulk of Mr. Spitz's report is spent calling into question Defendants' credibility, characterizing their conduct as "vexing," and claiming that "one has to wonder" why Defendants acted the way they did. This is not even close to the specialized or scientific knowledge an expert is supposed to share with the

trier of fact. Mr. Spitz's subjective reactions to the evidence in this action are completely irrelevant and are an improper effort to supplant the key role of the trier of fact in this case.

In addition, Plaintiff has disclosed two "rebuttal" experts whose testimony should be excluded. **Albert Nagy** was designated by Plaintiff to provide "rebuttal" testimony about Margaret Cotter's employment and the real estate business generally, topics that none of Defendants' experts have opined on. Mr. Nagy's proposed testimony is not a rebuttal at all. Instead, Plaintiff appears to think he can avoid Mr. Nagy's exclusion by calling him a "rebuttal" expert when in fact he should have been disclosed weeks ago. Moreover, Mr. Nagy, a real estate development consultant, is not qualified to give expert opinion testimony regarding the various broad topics for which he has been designated, including such complex topics as "how real estate development fits into Reading International, Inc.'s business." **John Finnerty**, also a purported rebuttal expert, intends to offer testimony about undefined "other statistical analyses and conclusions." To the extent such analyses and conclusions are not rebuttal testimony, they should not be allowed.

Defendants respectfully request that the proposed testimony of each of Plaintiff's disclosed experts be excluded in its entirety. In the alternative, Defendants respectfully request that the Court impose specific limits on the scope and subject matter of such proposed testimony in accordance with the points and authorities below.

II. LEGAL STANDARD

In Nevada, expert testimony is governed by Nevada Revised Statute ("N.R.S.") 50.275, which provides: "If scientific, technical or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by special knowledge, skill, experience, training or education may testify to matters within the scope of such knowledge." Admission of expert testimony lies within the sound discretion of the trial court. *Brown v. Nevada,* 110 Nev. 846, 852 (1994). The goal of expert testimony is "to provide the trier of fact a resource for ascertaining truth in relevant areas outside the ken of ordinarily laity." *Townsend v. Nevada,* 103 Nev. 113, 117 (1987). Moreover, expert testimony must also

withstand the challenge to all relevant evidence—whether its probative value exceeds prejudicial effect. *See id.* at 117–18; *see also* N.R.S. 48.035(1).

Expert testimony should not be a "waste of time." *Brown,* 110 Nev. at 852 (affirming exclusion of expert attorney witnesses because it did not assist the trier of fact who had first hand observations of counsel accused of ineffective assistance of counsel). Expert testimony is improper if it invades the fact-finding province of the jury. *See, e.g., Townsend,* 103 Nev. at 118 (stating that expert testimony that identified the defendant as the perpetrator was improper "as it transcended the test of jury enlightenment and entered the realm of fact-finding that was well within the capacity of a lay jury"). The key, therefore, for admitting expert testimony is determining whether it will assist the trier of fact and whether it is outside of the realm of what an ordinary person may understand.

In Nevada, experts must be appropriately qualified in a certain area to offer opinions in that area. *See e.g., Lord v. Nevada,* 107 Nev. 28, 33 (1991) (finding that it was error to permit a law enforcement officer to testify on a medical issue because he was not qualified as a medical expert). Thus, a party must establish a proper foundation for expert testimony within a particular field. *See Porter v. Nevada,* 94 Nev. 142, 147 (1978) (affirming exclusion of expert testimony that did not have a viable foundation in terms of whether the type of expert testimony was within a recognized field of expertise). "[B]efore a witness may testify as to his or her expert opinion, the district court must first determine that the witness is indeed a qualified expert." *Mulder v. Nevada,* 116 Nev. 1, 13–14 (2000) (affirming finding of district court that fingerprint expert was not qualified because he had little or questionable expertise in the areas and rather, his expertise lay mostly in handwriting analysis). An expert's testimony will assist the trier of fact only when it is relevant and the product of reliable methodology. *Hallmark v. Eldridge*, 124 Nev. 492, 500 (2008).

Expert opinions should rest on facts and not assumptions. *See Wrenn v. Nevada,* 89 Nev. 71, 73 (1973). "[E]xpert opinion may not be the result of guesswork or conjecture." *Id.* (finding that expert testimony was properly precluded because the engineering calculations rested upon several assumptions that were not established as the actual facts of the case); *see also Jeep Corp. v. Murray,* 101 Nev. 640, 643 (1985) (finding that the trial court did not abuse its discretion in

admitting expert testimony because the expert's opinions were not based on mere speculation or conjecture); *Choat v. McDorman,* 96 Nev. 332, 335 (1970) ("Just because a witness may be qualified as an expert does not automatically qualify him to give an opinion necessarily based on facts beyond his knowledge even though the opinion may be within the range of his expertise."). Where the opinion of an expert is based on erroneous assumptions of fact or law, the evidence is incompetent and insufficient to support a verdict and should be excluded. *United States v. 319.88 Acres of Land, More or Less, Situated in Clark Cty., Nev.*, 498 F. Supp. 763, 766 (D. Nev. 1980).

III. ARGUMENT

A. The Legal Opinion of Justice Steele Regarding the Application of Delaware Law to a Hypothetical Set of Facts Should Be Excluded In Its Entirety

1. Justice Steele's Delaware Legal Opinion Does Not Assist the Trier of Fact

There is nothing in Justice Steele's report that would remotely assist the trier of fact.[1] His legal opinion about what a Delaware court would do *if* a Delaware trier of fact made certain factual determinations is of no moment here. The trier of fact in this case does not need to know—and, in fact, would be deeply prejudiced by hearing—how Justice Steele believes Delaware law applies to various hypothetical scenarios. As another court wrote in a May 2016 order excluding Justice Steele's proposed expert testimony: "although these broad, generalized opinions are undoubtedly correct, their capacity to confuse the factfinder is apparent. They could provide a patina of substance to [the] claims when they actually say nothing about them." *VBenx Corp. v. Finnegan*, 2016 WL 3961822, at *2 (Mass. Super. May 27, 2016).

Justice Steele does not purport to provide testimony about whether the Director Defendants' conduct was in accordance with the custom and practice for directors of public companies, or even whether the Director Defendants' conduct satisfied their fiduciary duties under Nevada law. Instead, Justice Steele's report offers four conclusions about Delaware law, each of which is based on the unproven premise that a finder of fact has already determined that Plaintiff's allegations against Defendants are true:

---

[1] A copy of Justice Steele's report is attached hereto as Exhibit A.

Based on the facts as I understand them, it is my opinion that a court applying Delaware law[219] would conclude the following:

(i) Regarding the process used to terminate JJC,

a. if a finder of fact finds that a majority of the directors who were entitled to vote and voted to remove JJC were not disinterested and independent, then entire fairness would apply, and

b. if entire fairness applies, the Defendants, either as controlling stockholders or as directors who acquiesced to the wishes of the controlling stockholders, breached their duty of loyalty to the Company, given the procedural deficiencies in the process used to terminate JJC;

(ii) If a finder of fact finds that the EC Committee was repopulated and reactivated in order to minimize the involvement of JJC and the other directors who voted not to terminate JJC, then those actions likely constituted a breach of EC's and MC's duty of loyalty, as interested directors and as controlling stockholders, and of the other Defendants, who acquiesced to the controlling stockholders personal wishes;

(iii) If a finder of fact finds that the appointment of EC and MC to their respective current positions and the revised compensation and bonuses that they and Adams were given was not approved by an independent and disinterested majority, then entire fairness would apply and the Defendants, as controlling stockholders or those who acquiesced to the wishes of controlling stockholders, would be liable for a breach of loyalty if the finder of fact finds that the process used to grant the compensation and bonuses was not entirely fair; and

(iv) If a finder of fact finds that the Board's rejection of the Offer was not the product of an independent and disinterested majority, and was born out of the desire to keep EC and MC, the controlling stockholders, in office, then the rejection out of hand intentionally breached the duty of loyalty.

See Ex. A (Steele Rep.) at 33–34 (emphasis added). As is apparent from the face of Justice Steele's report and these supposed conclusions, his opinion does not assist the trier of fact, nor is

it meant to. There is no benefit or value to informing the trier of fact what a Delaware court might do if the trier of fact were to reach certain conclusions, the bases of which Justice Steele has not evaluated and are very much in dispute. Justice Steele's proposed testimony is an exercise in circular reasoning; he states that Defendants' conduct *would be* wrongful under Delaware law *if* the trier of fact determines that Defendants did something wrong. This makes no sense from a witness whose supposed role is to assist the trier of fact.

It is well-settled that the judge instructs the jury in the law. *United States v. Brodie*, 858 F.2d 492, 496 (9th Cir. 1988) (overruled on other grounds). Because the jury is instructed to apply the law as set forth by the judge, the testimony by an expert upon the law by definition cannot be of assistance to the jury. *Hangarter v. Provident Life & Accident Ins. Co.*, 373 F.3d 998, 1016 (9th Cir. 2004) ("[I]nstructing the jury as to the applicable law is the distinct and exclusive province of the court."); *United States v. Curtis*, 782 F.2d 593, 599 (6th Cir. 1986) ("[Experts] do not testify about the law because the judge's special legal knowledge is presumed to be sufficient, and it is the judge's duty to inform the jury about the law that is relevant to their deliberations."). An expert who renders opinions on the state of the law or merely expresses legal conclusions is usurping the court's function to instruct the jury on the law applicable to the case. The Nevada Supreme Court has stated that "opinion on the applicable law does not assist the [trier of fact], duty bound to apply the law as stated by the court, in understanding the evidence or determining a fact in issue." *United States Fire Ins. Co. v. McClelland*, 105 Nev. 504, 509 (1989) (citing *Ashton v. Ashton*, 733 P.2d 147, 153 (Utah 1987); *see also Las Vegas Sun, Inc. v. Franklin*, 74 Nev. 282, 294 (1958) (holding that the admission of testimony that was clearly utilized to establish the state of the law was prejudicial error). In *Ashton*, court explained: "testimonial opinion on the state of the law is to be excluded [because] [t]he function of an expert is to relate an opinion of *fact* to the jury." *Ashton*, 733 P.2d at 153.

The only conceivable impact of allowing Justice Steele to present his legal opinions to a trier of fact would be extreme prejudice and confusion. Any trier of fact would be improperly swayed by hearing a former Delaware Chief Justice tell them that *if* Defendants committed the

various acts of wrongdoing they are accused of, a Delaware court would treat them harshly. Further, and as discussed below, Justice Steele appears to think it is within his purview to make his own findings of fact in this case. Justice Steele's opinion is effectively a closing argument on behalf of Plaintiff, with the only caveat being that Justice Steele applies Delaware instead of Nevada law. Nothing about such testimony assists the trier of fact; it must be excluded.

2. Justice Steele's Legal Opinion Purports to Apply Delaware Law Even Though There Is Nevada Law Directly On Point

Not only are Justice Steele's purported legal opinions inherently prejudicial, they are inaccurate and confusing to the trier of fact based on their reliance on Delaware law. Justice Steele's assumption that Delaware as opposed to Nevada law applies in this case is simply wrong. Though Nevada courts will look to Delaware corporate law for guidance when Nevada law is silent on a particular issue, that is not the case here. Nevada has extensive statutory and case law regarding the issues in this case, including the business judgment rule, director conflicts, and fiduciary duty. Yet for some reason Justice Steele asks the Court and the trier of fact to set that aside in favor of Delaware law.

For example, in the section of his report titled "Certain of the Directors May Not Be Independent," Justice Steele cites numerous Delaware cases regarding purported director conflicts of interest. *See* Ex. A (Steele Rep.) at 24. However, Justice Steele does not and cannot explain why he looks to Delaware law in this context and intentionally ignores the extensive and on-point Nevada authority. The term "interested director" is defined under Nevada law. *See* N.R.S. 78.140. Both the Nevada Supreme Court and the Ninth Circuit, applying Nevada law, have issued detailed decisions regarding Nevada law in this area, but Justice Steele does not see fit to incorporate those into his opinion. *See Shoen v. SAC Holding Corp.,* 122 Nev. 621, 639–40, 137 P.3d 1171, 1183 (2006) ("[T]o show interestedness, a shareholder must allege that a majority of the board members would be materially affected, either to their benefit or detriment, by a decision of the board, in a manner not shared by the corporation and the stockholders. Allegations of mere threats of liability through approval of the wrongdoing or other participation, however, do not show sufficient interestedness to excuse the demand requirement."); *Louisiana Mun. Police Employees' Ret. Sys.*

v. Wynn, No. 14-15695, 2016 WL 3878228, at *6 (9th Cir. July 18, 2016) ("This test requires the shareholders to plead facts that would support the inference that because of the nature of a relationship or additional circumstances other than the interested director's stock ownership or voting power, the non-interested director would be more willing to risk his or her reputation than risk the relationship with the interested director.") (internal citations and formatting omitted). Similarly, Justice Steele's report omits any mention, let alone analysis, of NRS § 78.138, which articulates the scope of the business judgment rule under Nevada law and describes the various factors directors should consider in their decision-making. It is unclear from his report whether Justice Steele is even aware of this statute.

Justice Steele attempts to justify his unwavering reliance on Delaware law in a single footnote. *See* Ex. A (Steele Rep.) at 2, n.1. He says, "I expect that a Nevada court would look to Delaware law in interpreting these issues." *Id*. Justice Steele is wholly unqualified to make that determination. Justice Steele has no idea what a Nevada court would do, nor does he have any basis for concluding that there is no relevant Nevada law, since he is not a Nevada law expert. In addition, though Justice Steele makes the generic and conclusory statement that Delaware law should apply to "these issues," he never actually states what "these issues" are or articulates what specific issues he thinks Delaware law applies to (though, based on his report, it appears he thinks Delaware law may apply to every issue in the case). Justice Steele's speculation is not a sufficient basis to ignore Nevada law and instead substitute an expert's interpretation of Delaware law in its place. That Justice Steele has completely omitted any analysis of Nevada law, any comparison of Nevada and Delaware law, or any reasoning as to why this Court (or the trier of fact) should consider Delaware as opposed to Nevada law provides an additional basis for excluding his opinion. *See United States v. Filler*, 210 F.3d 386 (9th Cir. 2000) (affirming trial court's exclusion of expert testimony regarding how "other law enforcement agencies do things differently" as irrelevant and speculative).

3. Justice Steele's Cursory Review of the Facts Is Inadequate and Reveals an Improper Methodology

Justice Steele's report repeatedly makes clear that his opinion applies Delaware law to a hypothetical scenario in which a finder of fact has already found that Defendants engaged in the improper conduct alleged in the Second Amended Complaint. Despite this, Justice Steele devotes numerous pages of his report to reciting a version of the facts that largely mimics Plaintiff's allegations. Throughout this recitation, Justice Steele purports to state "facts" when, in reality, those allegations are unsupported by the record. Justice Steele admits reviewing *less than 20* of the hundreds of deposition exhibits marked in this case, which perhaps explains these inaccuracies. *See* Ex. A (Steele Rep.) at "Exhibit C" (List of Information Considered). Justice Steele's lack of effort to understand the facts should prevent him from being qualified as an expert in this action, as it demonstrates an improper methodology and an inability to assist the trier of fact. *See In re Stratosphere Corp. Sec. Litig.*, 66 F. Supp. 2d 1182, 1188 (D. Nev. 1999) ("[An] expert opinion must be supported by an adequate basis in relevant facts or data.").

Among the inaccuracies and outright misstatements in Justice Steele's report are:

- Justice Steele claims that executive search firm Korn Ferry did not interview any internal candidates for the Company's CEO position. *See* Ex. A (Steele Rep.) at 15. But the sole Korn Ferry witness deposed in this action testified that an internal candidate *was interviewed*. *See* Ex. E (Mayes Dep.) at 31:3-33:14. Justice Steele, however, did not read this deposition transcript. *See* Ex. A (Steele Rep.) at "Exhibit C" (List of Information Considered).
- Justice Steele claims that the relationship between Director Kane and Ellen and Margaret Cotter "includes visiting one another" and, on that basis, Kane is not an independent director.[2] *See* Ex. A (Steele Rep.) at 18. As support for this broad proposition, he cites to deposition testimony about *a single dinner* they had together and uses that to come up with a theory about multiple visits. *Id.* at 18, n. 136 (citing M. Cotter deposition testimony about a single dinner in San Diego).

[2] Justice Steele, purportedly a Delaware law expert, also seems to ignore the myriad Delaware cases holding that a social relationship is insufficient to rebut the presumption of director independence. *See, e.g., Beam ex rel. Martha Stewart Living Omnimedia, Inc. v. Stewart*, 845 A.2d 1040, 1050 (Del. 2004); *see also Khanna v. McMinn*, No. Civ. A. 20545-NC, 2006 WL 1388744, at *19 (Del. Ch. May 9, 2006)

- Justice Steele claims that the relationship between Director Kane and Ellen and Margaret Cotter includes "speaking frequently on the phone," and, on that basis, Kane is not an independent director. *See id.* at 18. As support for this assertion, Justice Steele references deposition testimony about *calls relating to the Company* between Kane and Ellen Cotter (and does not reference any calls between Kane and Margaret Cotter). *Id.* at 18, n. 137 (citing the following Kane deposition testimony: "And Ellen is a bit like her father. She does like to work at night. So she'll call me and I'll see the number and I'll call back.").
- Justice Steele, when discussing the third-party expression of interest letter received by the Company in May 2016, refers to "the Board's decision not to respond to the offer." *Id.* at 32. There was no such decision; the Board *did respond to the letter*. *See* Ex. F ("[T]he Board of Directors determined that our stockholders would be better served by pursuing our independent, stand-alone strategic business plan and communicated this to the third party.").

It is unclear the extent to which Justice Steele relies on his own interpretation of the facts to render his opinion, or whether his opinion is based entirely on the hypothetical scenario in which a finder of fact accepts all of Plaintiff's allegations as true. However, to the extent Justice Steele purports to rely on the "facts" as stated in his report, his opinion must be excluded because its factual premise is simply false. An expert who has not familiarized himself with the factual record, let alone an expert who is wrong about the facts, cannot offer an expert opinion that would assist the factfinder. *United States v. 319.88 Acres of Land, More or Less, Situated in Clark Cty., Nev.*, 498 F. Supp. 763, 766 (D. Nev. 1980) ("Where the opinion of an expert is based on erroneous assumptions of fact or law, the evidence is incompetent and insufficient to support a verdict."); *McGlinchy v. Shell Chemical Co.*, 845 F.2d 802, 807 (9th Cir. 1988) (upholding exclusion of conclusions in expert report with only "scant basis" in the record).

B. The Opinion of Tiago Duarte-Silva Regarding Supposed Losses the Company Has Suffered Since Plaintiff's Termination Should Be Excluded In Its Entirety

1. Dr. Duarte-Silva's Analysis Fails to Offer Any Causal Connection Between Defendants' Conduct and the Supposed Losses

At first glance, the proposed testimony of Dr. Duarte-Silva appears to level significant allegations against Defendants regarding the damage caused by their alleged breaches of fiduciary

duty.[3] His report states that, [redacted] Ex. B (Duarte-Silva Rep.), ¶ 39. Dr. Duarte-Silva also states that, [redacted] *Id.*, ¶ 27. Plaintiff intends to have Dr. Duarte-Silva present these figures to the trier of fact in support of his claimed damages. And yet, these are not "damages" at all; Dr. Duarte-Silva's fails to remotely connect these supposed losses to Defendants' alleged conduct.

There is not a single sentence in Dr. Duarte-Silva's report that ties these supposed losses to Plaintiff's termination, Ellen Cotter's performance as CEO, or any one of the various fiduciary breaches alleged in the Second Amended Complaint. In other words, Dr. Duarte-Silva does not and cannot testify that a single dollar of supposed loss is attributable to Defendants' alleged conduct. As revealed by Exhibit 2 to his report, Dr. Duarte-Silva has not reviewed a single deposition transcript from this case and has only looked at a single document produced in discovery (the unsolicited "offer" letter from May 2016). In other words, he has not made any attempt to connect the supposed "losses" outlined in his report to anything Defendants have done or not done.

Dr. Duarte-Silva does not know how, if it all, the direction or implementation of Reading's corporate strategy changed after Plaintiff was terminated. He does not know if Plaintiff would have done anything differently than Ellen Cotter had he remained CEO. He does not know how, if at all, the Company has changed its approach to cinema exhibition or real estate since Plaintiff was fired. He does not know the extent to which EBITDA during Ellen Cotter's CEO tenure has

[3] A copy of Dr. Duarte-Silva's report is attached hereto as Exhibit B.

been impacted by decisions made by Plaintiff when he was CEO, or how EBITDA when Plaintiff was CEO was impacted by his father's decision-making.[4] He does not know how firm-specific or industry-specific factors unrelated to the allegations affected Reading's performance. Tellingly, Dr. Duarte-Silva never even refers to the supposed losses described in his report as "damages," presumably because he is aware that "damages" need to be tied to a defendant's conduct, which his numbers are not. Plaintiff should not be permitted to offer Dr. Duarte-Silva as a "damages" expert—or any other kind of expert—where he does not even opine as to damages, since there is no fact, evidence, or opinion linking the supposed losses Dr. Duarte-Silva opines about to any of the conduct described in the complaint.

A trier of fact would be confused and prejudiced were Dr. Duarte-Silva to testify at trial about his calculations. Allowing Dr. Duarte-Silva, a supposed expert, to testify that [redacted] clearly suggests to the factfinder that such purported losses are actually attributable to Plaintiff's termination, when in reality *not even Dr. Duarte-Silva suggests that is the case*. Under Nevada law, a derivative breach of fiduciary duty claim requires a plaintiff to show damages to the company proximately caused by the alleged breach of fiduciary duty. *See Brown v. Kinross Gold U.S.A., Inc.*, 531 F. Supp. 2d 1234, 1245 (D. Nev. 2008); *Giles v. Gen. Motors Acceptance Corp.*, 494 F.3d 865, 880–81 (9th Cir. 2007) (applying Nevada law); *see also Clark v. Lubritz*, 113 Nev. 1089 (1997). Plaintiff apparently intends to use Dr. Duarte-Silva's testimony to skip over his obligation to show proximate causation and instead present the trier of fact with a "damages" figure that has no causal tie whatsoever to any of the breaches alleged by Plaintiff. The trier of fact would likely assume that some, if not all, of [redacted] Dr. Duarte-Silva describes are attributable to Defendants' conduct, even

[4] Dr. Duarte-Silva's unorthodox approach shows a fundamental lack of understanding of basic business reality, as he assumes that the Company's performance during Plaintiff's brief tenure was in no way the product of good decisions made by his father over the more than twenty years that he ran the Company, and that the performance of the Company following his termination was in no way the product of poor decisions made by Plaintiff during his tenure as CEO. A business decision made today can have impact months and even years down the line, a basic fact ignored by Dr. Duarte-Silva's novel strategy of loss assessment.

though that is not actually part of Dr. Duarte-Silva's proposed testimony. Such testimony is far more prejudicial than probative—indeed, it is not probative at all—and on that basis should be excluded in its entirety. *Southern Pac. Transp. Co. v. Fitzgerald*, 94 Nev. 241, 243 (1978) (citing N.R.S. 48.035(1)) (A trial court has broad discretion to determine the admissibility of evidence and may exclude expert testimony where "its probative value is substantially outweighed by the danger of unfair prejudice, . . . confusion of the issues or . . . misleading the jury.").

2. Dr. Duarte-Silva Does Not Use Any Standard or Commonly-Accepted Methodology In Evaluating Reading's Stock Performance from June 15, 2015, to August 19, 2016

Dr. Duarte-Silva claims that because Reading's stock price has not kept pace with the industry market from June 2015 through his arbitrary measurement date of August 19, 2016, the Company [redacted]. *See* Ex. B (Duarte-Silva Rep.), ¶ 39. However, his conclusory and surface-level analysis fails to apply any recognized or well-accepted methodology used by experts who study the impact of various events on a company's stock. Nor does Dr. Duarte-Silva's analysis show what portion (if any) of the underperformance he calculates is attributable to the alleged wrongdoing as opposed to other factors impacting the industry and market. An expert's testimony will assist the trier of fact only when it is relevant and the product of reliable methodology. *Hallmark*, 124 Nev. at 500. In determining whether an expert's opinion is based upon reliable methodology, a district court should consider whether the opinion is "(1) within a recognized field of expertise; (2) testable and has been tested; (3) published and subjected to peer review; (4) generally accepted in the scientific community (not always determinative); and (5) based more on particularized facts rather than assumption, conjecture, or generalization." *Id*. at 500–01 (internal citations omitted). Dr. Duarte-Silva's analysis does not meet this standard and his proposed testimony should be excluded on this basis.

(a) Dr. Duarte-Silva Did Not Perform an Event Study, a Standard Technique Used By Experts in the Field

It is well-recognized within this field that in order to relate the change in a company's stock price to the release of new information, an expert must disentangle the effects of the new

information from other information that is likely to affect stock prices marketwide. *See In re Omnicom Group, Inc. Sec. Litig.*, 541 F. Supp. 2d 546, 554 (2008) (granting defendant's motion for summary judgment after plaintiff's expert failed to isolate the effect of certain identified disclosures on company's stock price from that of other market forces). Event studies are a commonly used statistical method of evaluating the price impact of new information after controlling for market, industry, and other factors. The price movements of a company's stock that are not explained by market, industry, or other factors modeled in the event study (*i.e.*, the "excess return") may be attributable to the disclosure of the specified information being tested.[5] The standard event study method was developed decades ago by Defendants' expert, Professor Richard Roll, and applied by him in this case.[6]

Here, Dr. Duarte-Silva did not perform an event study. For example, he does not define an event or a news announcement to be studied, nor does he define an "event window" or the period around the announcement to be examined, which are both hallmarks of event studies.[7] Because Dr. Duarte-Silva did not perform an event study, he cannot opine whether the release of any particular piece of information related to Defendants' alleged wrongdoings was associated with a negative impact on Reading's stock price. The supposed methodology employed by Dr. Duarte-Silva is rudimentary, unscientific, and not generally used by experts in the field, and should therefore be excluded. *See Hallmark*, 124 Nev. at 500; *Donaldson v. Cent. Illinois Pub.*

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[5] Bodie, Zvi, Alex Kane, and Alan Marcus, *Investments*, Seventh Edition, Boston, MA: Irwin McGraw-Hill, 2008, p. 366; MacKinlay, Craig, "Event Studies in Economics and Finance," *Journal of Economic Literature* Vol. XXXV (1997): 18.

[6] Dr. Richard Roll his co-authors, including Nobel Prize winner Dr. Eugene Fama, were among the first economists to apply this now widely-used methodology. Eugene F. Fama et al., *The Adjustment of Stock Prices to New Information*, 10 Int'l Econ. Rev. 1 (1969). Their seminal work has been tested, published by the International Economic Review, and has been widely accepted in the scientific community. A. Craig MacKinlay, *Event Studies in Economics and Finance*, 35 J. Econ. Lit. 13, 14 (1997) (". . . Eugene Fama et al. (1969) introduced the methodology that is essentially the same as that which is in use today.").

[7] MacKinlay, Craig, "Event Studies in Economics and Finance," *Journal of Economic Literature* Vol. XXXV (1997): 18, pp. 14-15.

Serv. Co., 313 Ill. App. 3d 1061, 1072 (2000) (affirming trial court's exclusion of expert testimony that was not commonly accepted in that particular scientific community).

In contrast, Defendants' expert Dr. Richard Roll conducted an event study of Reading's stock pursuant to scientific and academic best practices to measure the stock price change, after controlling for market and industry factors, associated with the announcement of Plaintiffs' termination. Following accepted financial economics methodology, Dr. Roll identified the event to be examined (*i.e.,* the announcement of Plaintiffs' termination). Dr. Roll's calibrated Reading's returns and benchmark returns during a period prior to the disclosure of Plaintiff's termination. Professor Roll then calculated the excess returns on the dates surrounding Plaintiff's announced termination (*i.e.*, the "event window"). Dr. Roll then performed a standard statistical analysis that is part of the event study methodology to assess whether the excess returns were statistically different from zero. They were not, demonstrating that Reading's stock price returns were statistically indistinguishable from its normal day-to-day movements over the first three trading days (June 12, June, 15, and June 16 2015) following the announcement of Plaintiff's termination.[8] These results support Dr. Roll's conclusion that public disclosure of Plaintiff's termination did not have an adverse effect on Reading's stock price.

(b) Dr. Duarte-Silva's Methodology For Analyzing the Long-Run Performance of Reading's Stock Is Far Out of Line With Other Experts in This Field

While Dr. Duarte-Silva failed to perform an event study, he purports to measure the so-called "expected returns" of Reading stock since Plaintiff's termination in June 2015 through Duarte-Silva's "Measurement Date" of August 19, 2016 in order to demonstrate losses to the Company. And while he contends that his approach is a "commonly accepted statistical approach to calculating a stock's expected returns," *he does not cite to a single study or piece of academic literature* that supports his approach. *See* Duarte-Silva Rep., ¶ 35. Indeed, the standard approach in this field to measure whether a company's stock "performed in line with the market and its peer

[8] While Reading did not announce Plaintiff's termination until June, 15, 2015, Plaintiff filed a lawsuit on June 12, 2015 that disclosed this information.

companies" over an extended period of time is to calculate the "alpha" of the company's stock. "Alpha" provides a measure of whether an investment in question earned a return greater than or less than its expected return, given market and/or industry performance, as well as the investment's risk characteristics.[9] Calculating a stock's "alpha" allows an expert to determine whether a stock generated returns that are greater or less than its expected returns over a particular period of time. Here, Dr. Duarte-Silva has not performed such an analysis. Instead, he calculated a so-called series of "expected" daily returns over a period spanning approximately a year and two months in an unorthodox manner. Dr. Duarte-Silva's nonstandard approach is inappropriate for analyzing whether Reading's "alpha" or whether the Company "performed in line with the market and its peer companies" in a manner consistent with standard industry practice. [10] Further, Dr. Duarte-Silva's analysis does not show what portion of the supposed underperformance, which changes every day, is attributable to the alleged wrongdoing.[11]

In contrast to Dr. Duarte-Silva's unorthodox approach, Defendants' expert Dr. Richard Roll calculated the alpha for Reading's stock over the period June 15, 2015 to June 30, 2016, using regression analysis, Reading's stock price returns, a set of risk factors, and industry-specific benchmarks consistent with standard financial practice.[12] After conducting his analysis of

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[9] *See, e.g.*, Damodaran, Aswath, *Investment Valuation*, Second Edition, New York, NY: John Wiley & Sons, Inc., 2002, p. 183.

[10] In particular, Dr. Silva's calculation involves using a separate regression model to estimate an "expected" daily return for each day from June 15, 2015 to his Measurement Date of August 19, 2016.

[11] Reading's underperformance is calculated by taking the difference between columns V and R on Exhibit 8 to the Duarte-Silva Report. Dr. Duarte-Silva provides no analysis that explains the causes of these changes and whether they were due to any allegedly wrongful actions taken by the Defendants.

[12] June 30, 2016 was the most recent date for which information used by Dr. Roll to calculate Reading's alpha was available.

Reading's alpha, Dr. Roll concluded that his results do not support a conclusion that RDI's stock price underperformed expectations on a risk-adjusted basis following Plaintiff's termination.[13]

(c) Dr. Duarte-Silva's Results Are Not Statistically Significant

Notwithstanding that Dr. Duarte-Silva uses a non-standard and unreliable method to measure Reading's stock performance, he also fails to provide a statistical confidence interval for his supposed "expected return." A "confidence interval" accounts for the uncertainty associated with any statistical estimate, such as Dr. Duarte-Silva's "expected return," that is derived from a regression analysis.[14] The "confidence interval" would provide a range within which the true value being estimated could conceivably fall. If, for the sake of argument, one were to accept Dr. Duarte-Silva's non-standard methodology, his analysis actually indicates that the Reading's performance during the measurement period was *within* the confidence interval range for Reading's cumulative expected returns. Based on the standard errors demonstrated in Exhibit 8 to the Duarte-Silva Report, [redacted] In other words, Dr. Duarte-Silva's report fails to show underperformance (or a loss to Reading) that is statistically significantly different from zero.

That Dr. Duarte-Silva fails to even attempt to demonstrate the statistical significance of his supposed findings is notable given his position, taken in previously-published papers, that any study of stock performance must take into consideration statistical significance. According to Dr. Duarte-Silva: "If the excess return analyzed exceeds a threshold based on typical return fluctuations, it is considered statistically significant. When this is the case, the economic expert is likely to opine that the excess return is due to potentially identifiable news rather than to [market] noise. If the excess return does not exceed that threshold, the expert *cannot determine* that the

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[13] Dr. Roll also evaluated RDI's alpha from June 15, 2015 to the three-, six-, and nine-month periods following James Cotter, Jr.'s termination (*i.e.,* September 14, 2015, December 14, 2015, and March 14, 2016, respectively) and found similar results.

[14] *See, e.g.*, Gujarati, Essentials of Econometrics, Second Ed., Irwin McGraw-Hill (1999), pp. 157, 165.

price changed for a reason other than [market] noise."[15] In another paper, Dr. Duarte-Silva wrote, "The literature on event studies has long established the properties of excess returns and tests of their statistical significance."[16] Despite this, the Duarte-Silva Report is silent on the supposed statistical significance of his own findings. That Dr. Duarte-Silva's analysis does not even meet *his own standards* of how such analysis should be conducted constitutes further basis for excusing his proposed testimony.

3. Dr. Duarte-Silva Has No Basis to Offer An Opinion Regarding the "Offer"

Dr. Duarte-Silva devotes the final section of his report to the unsolicited third-party "offer" received by the Company in May 2016. *See* Ex. B (Duarte-Silva Rep.), ¶¶ 40-45. Dr. Duarte-Silva opines that, by not accepting the "offer" at face value or entering in to negotiations, [redacted] *Id.*, ¶ 43. Dr. Duarte-Silva is not qualified to offer any opinion about the supposed impact of the "offer" and applies no scientific or academic methodology whatsoever to his purported analysis. Any proposed testimony on this topic should be excluded.

First, Dr. Duarte-Silva is not an expert in corporate acquisitions, negotiations, mergers, or unsolicited offers. He is not an expert in the valuation of public companies, and is not in a positon to say whether the "offer," even if it had been binding and fully funded, was an adequate or inadequate price for the Company. As a finance Ph.D. working in economic analysis, Dr. Duarte-Silva has presented no basis on which the Court can or should determine that he is in any position to assist the trier of fact in assessing the evidence regarding the unsolicited third-party indication of interest and the Board's response thereto.

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[15] Duarte-Silva and Dolgoff, "Measure price impact with investors' forward-looking information," August 2014, *available at* http://www.crai.com/sites/default/files/publications/FM-Insights-Event-Studies-and-Forward-Looking-Information-August-2014.pdf

[16] Duarte-Silva and Tripolski-Kimel, Testing Excess Returns on Event Days: Log Returns vs. Dollar Returns (February 28, 2014), *available at* http://ssrn.com/abstract=2416990

Dr. Duarte-Silva's lack of experience or expertise in this area is evidenced by his proposed testimony, which fails to demonstrate that he has anything to say on this topic beyond what an ordinary factfinder could discern. For example, Dr. Duarte-Silva opines that "negotiation can increase offer price." *Id.*, ¶ 44. This truism is not the result of any specialized knowledge and expertise. Dr. Duarte-Silva goes on to opine that "in corporate acquisition settings, after a first bid announcement, the target is in play and it is possible that other bidders will compete to acquire the target firm and such multiple bid auction usually leads to higher control premiums than when the initial bid is successful." *Id.*, ¶ 45. This opinion appears to be based on a false premise that the Board was somehow obligated to put the Company on the auction block as soon as any buyer showed potential interest. Dr. Duarte-Silva offers no authority for such assertion because none exists. *See* N.R.S. § 78.138(4)(d) (directors, in connection with corporate decision-making, may consider "[t]he long-term as well as short-term interests of the corporation and its stockholders, including the possibility that these interests may be best served by the continued independence of the corporation); *see also Ivanhoe Partners v. Newmont Min. Corp.*, 535 A.2d 1334, 1338 (Del. 1987) ("Newmont was not for sale. Thus, there was no duty of its directors to maximize the company's value at a sale for the stockholders' benefit.") (internal quotations omitted); *Revlon, Inc. v. MacAndrews & Forbes Holdings Inc.*, 506 A.2d 173, 182 (1986) (only after the board authorized management to negotiate a merger or buy out did its duty change from preservation of the corporate entity to maximization of the company's value at a sale for the stockholders' benefit). Simply put, when it comes to corporate acquisition offers, Dr. Duarte-Silva is no expert.

Second, Dr. Duarte-Silva's analysis with respect to Board's response to the third-party "offer" is not grounded in any standard or widely-accepted methodology, nor does it even purport to be. Dr. Duarte-Silva opines that the "offer premium was not low relative to similar recent transactions," but provides no citation or reference to any authority supporting his apparent position that the quality of third-party buyout offer, and a corporate board's response, should be measured according to initial "offer premium." *Id.*, ¶ 42. Dr. Duarte-Silva seems to approach his potential buyout analysis from the perspective that any deal with a "not low" offer premium must be a good one, regardless of the board's determination of the company's strategy or earnings

potential. Neither the law nor any academic literature is in accord with this approach, and Dr. Duarte-Silva cites no sources. *C.f.,* N.R.S. § 78.138(4)(d).

Dr. Duarte-Silva then claims that because the Board did not pursue a deal with the offerors, [redacted] *See* Ex. B (Duarte-Silva Rep.), ¶ 43. Again, Dr. Duarte-Silva sets forth this opinion without providing any legal or academic basis, let alone one that is widely-used or accepted in *any* field of expertise. His methodology makes no sense. The rudimentary approach Dr. Duarte-Silva has taken is, in essence, that any time a company turns down an offer above the then-current stock price, they are improperly foregoing a one-time opportunity to increase value. Under such a scheme, every company would constantly be on the auction block and the role of corporate directors would shift from being long-term protectors of the stockholders' best interests to short-term auctioneers. Of course, Nevada law expressly permits and encourages corporate directors to do better than simply trying to generate short-terms gains. *See, e.g.,* N.R.S. §§ 78.120, 78.138. On the other hand, if Dr. Duarte-Silva's baseless analysis were accepted, a Board would be liable for damages to stockholders any time it failed to pursue a deal even 1% above the trading price of their company. This proposition is absurd, and Dr. Duarte-Silva should not be given the opportunity to present it to the trier of fact.

C. The Opinion of Richard Spitz Regarding the CEO Search Should Be Excluded In Its Entirety Because Mr. Spitz Fails to Apply Any Methodology and Instead Simply Offers His Own Subjective Fact Interpretation

1. Mr. Spitz, A Supposed Executive Search Expert, Actually Seeks to Offer Testimony About His Personal Reaction to Various Facts and Does Not Apply Any Legitimate or Recognized Methodology

Plaintiff offers Richard Spitz as a supposed expert on conducting executive searches.[17] In Mr. Spitz's own words: "I have been asked to evaluate the executive search undertaken during 2015 to find the Chief Executive Officer of Reading International, Inc." Ex. C (Spitz Rep.), ¶ 7. Mr. Spitz is an attorney who formerly worked at the executive search firm Korn Ferry, the firm that conducted Reading's CEO search, though he left that company in 2009. *Id.*, ¶ 4. Mr. Spitz

[17] A copy of Mr. Spitz's report is attached hereto as Exhibit C.

summarizes his opinion as follows: "I have considered the search process and concluded that the execution of the search through its conclusion (i.e., the hiring of Ellen Cotter as Chief Executive Officer) was not conducted properly by the RDI Board of Directors (the "Board") or its CEO search committee (the "Search Committee"), and therefore the search failed." *Id.*, ¶ 8. Mr. Spitz's proposed testimony should be excluded.

As a preliminary matter, this case is not about whether the CEO search was "conducted properly" or whether it "failed." The trier of fact must determine whether members of Reading's Board of Directors breached their fiduciary duties by selecting Ellen Cotter as the Company's CEO. As Plaintiff is well aware, a Board member's fulfillment of his fiduciary duties is not judged by whether something was a "success" or "failure." *Even if* the CEO search was a failure according to whatever unidentified standards Mr. Spitz applies, that does not demonstrate or even suggest a breach of fiduciary duty by any Defendant or any injury to the Company resulting from such "failure." This proposed testimony is wholly irrelevant and on that basis should be excluded. *See, e.g., Schwartz v. Estate of Greenspun*, 110 Nev. 1042, 1046–47 (1994) (affirming exclusion of irrelevant expert testimony); *Brown v. State*, 110 Nev. 846, 852 (1994) (upholding exclusion of expert testimony when it would be of no use to the trier of fact).

Beyond being irrelevant, the proposed testimony of Mr. Spitz does not even approach the standards required for a legitimate and admissible expert opinion. Mr. Spitz fails to describe any methodology he used to determine whether or not the Company's CEO search was a success or failure. He does not describe any standard bases by which an executive search can or should be judged. Indeed, Mr. Spitz's proposed testimony does not convey anything that is outside or beyond the understanding of an ordinary person and is not actually an "expert" opinion at all. *See Townsend v. Nevada*, 103 Nev. 113, 117 (1987) ("The goal, of [expert testimony], is to provide the trier of fact a resource for ascertaining truth in relevant areas outside the ken of ordinarily laity."). The process of looking for and hiring an executive is not so mysterious to the layperson that Plaintiff needs Mr. Spitz share his opinions with the factfinder. The trier of fact is well equipped to make a determination about the process by which Reading's Board identified Ellen Cotter as a CEO candidate and her qualifications for that position.

Beyond purporting to offer an opinion about the CEO search's success or failure, Mr. Spitz seems primarily interested in sharing with the factfinder his subjective observations about various facts and evidence, essentially taking on the factfinder role himself. Mr. Spitz's supposed "opinion" includes, for example, a comparison of Ellen Cotter's background to the potential CEO qualifications identified by Korn Ferry; stating that Reading's directors have been dishonest; and determining the long-term business strategy that Reading should be following. *See id*, ¶¶ 9-12, 35, 37, 39. Throughout his report, Mr. Spitz, under the guise of offering an "expert opinion," attempts to substitute his own subjective determinations about witness credibility and weight of evidence for those of the trier of fact.

For example, several Defendants have testified at deposition that one of the motivations for terminating the Korn Ferry CEO search was to save money. In response, Mr. Spitz opines that "[i]t is difficult to imagine that relatively minor costs and expenses were driving the Search Committee decision to halt Korn Ferry's activities." *Id*., ¶ 32. The role of an expert is to assist the trier of fact, not to opine about whether or not he believes certain testimony to be credible or that something is "difficult to imagine." Mr. Spitz repeats this approach throughout his report, casting aspersions at Defendants by referring to their conduct as "vexing," stating that "one has to wonder" about why certain actions were taken, and otherwise attempting to substitute his own subjective reaction to evidence for that of the tier of fact. *Id*., ¶¶, 46. Mr. Spitz proposes to testify that:

- "It seems clear that there was no disagreement between the entire Search Committee and Ellen Cotter on her lack of relevant real estate experience." *Id*., ¶ 36.
- "[O]nly one of the above considerations explains a specific reason why the Search Committee decided not to present any of the external candidates to be interviewed by the entire Board . . . So it appears at least in part this consideration is not to be true [sic]." *Id*., ¶ 37.
- "The Search Committee's stated consideration on this matter of compensation is suspect and not convincing." *Id*., ¶ 39.
- "These considerations are vexing in that Ellen Cotter and the Search Committee did not manage the search process as if there was an urgency or need for stability." *Id*., ¶ 40.

- "Equally as vexing about these considerations is that urgency and stability were not among the specific the [sic] reasons given during deposition by the Search Committee members Gould and McEachern in support of their voting to nominate Ellen Cotter and deciding not to follow the search process approved by the Board." *Id.*, ¶40.
- "If unlocking the intrinsic value of the Company's real estate holdings was not the company's objective for conducting the search process, one has to wonder why did the Board (or the Search Committee) authorize and undertake the following [activities]." *Id.*, ¶ 46.

This does not remotely resemble a legitimate expert opinion; these are just Mr. Spitz's personal musings on the facts and on witness credibility and do not reflect any reasonable methodology, let alone a methodology or approach to executive searches that is widely accepted. Mr. Spitz's supposed "expertise" in the process for conducting executive searches does not give him license to opine on witness credibility, general business issues, the qualifications the Company needed or desired in a CEO, or basic facts about which the trier of fact will hear testimony. *See Lickey v. State*, 108 Nev. 191, 196 (1992) (stating that "[a]n expert may not comment on the veracity of a witness"); *Townsend v. State*, 103 Nev. 113, 118–19 (1987) (noting that expert opinion that invaded the jury's province, such as testimony concerning the victim's credibility and weighing of the evidence, was improper); *Dawson v. State,* 84 Nev. 260, 439 P.2d 462 (1968) (excluding certain expert testimony, and noting that "[a]n expert witness may state his conclusions on matters within his expert knowledge provided the conclusion is one laymen would not be capable of drawing for themselves.").

Even Mr. Spitz's ultimate conclusion fails to assist the trier of fact in any way. Mr. Spitz opines, "Basically, Ellen Cotter was in a position to ensure that the search for external candidates would not succeed" and "[t]he conduct of Ellen Cotter with respect to her service on the Search Committee undermines the confidence one should have that the search process was properly directed and completed." *Id.*, ¶ 44. In other words, this purported executive search expert's conclusion is that Ms. Cotter was "*in a position*" to manipulate the search process, which "undermines the confidence" Mr. Spitz has in the CEO search process. The trier of fact does not need to hear from Mr. Spitz to determine that Ms. Cotter *could have possibly* manipulated the CEO

search; that is exactly what Plaintiff alleges in this case, and it is up to Plaintiff to prove it. Mr. Spitz's suspicions about what may or may not have happened are meaningless, and only serve to confuse and prejudice the trier of fact. Moreover, the trier of fact is not tasked with determining whether an outside observer should have "confidence" in how the CEO search was conducted. They must determine whether there was a breach of fiduciary duty. Because Mr. Spitz does not identify or use any legitimate or recognized methodology to evaluate the CEO search process, and because he attempts to substitute his own opinions for the trier of fact, his supposed expert opinion does not assist the trier of fact in any way and should be excluded in its entirety.

2. Mr. Spitz's Proposed Testimony Regarding Margaret Cotter's New York Real Estate Position Is Well Outside His Supposed Area of Expertise

Mr. Spitz presents himself as an expert in conducting executive searches. Yet his proposed testimony veers well outside the realm of anything relating to such searches. In particular, Mr. Spitz purports to testify about Margaret Cotter's hiring, in March 2016, as Executive Vice President—Real Estate Management and Development—NYC. *Id.*, ¶ 42. Given that this position was filled without the assistance of an executive search firm, and has nothing to do with whether or not Reading's CEO search was a "success" or "failure," there is no reason Mr. Spitz should be allowed to offer his opinion about Margaret Cotter's hiring. He is simply not qualified to do so. *See White v. Ford Motor Co.*, 312 F.3d 998, 1008–09 (9th Cir. 2002) ("A layman, which is what an expert witness is when testifying outside his area of expertise, ought not to be anointed with ersatz authority as a court-approved expert witness for what is essentially a lay opinion.").

Beyond being outside his area of expertise, Mr. Spitz's proposed testimony about Margaret Cotter's hiring is confusing, prejudicial, and has zero probative value. Mr. Spitz, for example, states that "Margaret Cotter has little real estate investment or development experience, none of which satisfies the minimum requirements of the Position Specification." *Id.*, ¶ 42. This is a *non sequitur*; the Position Specification Mr. Spitz refers to is for the CEO position. Mr. Spitz does not explain, nor can he, why he is judging and evaluating the hiring of an EVP against the specifications developed for a CEO search. This bizarre analysis is nonsensical, yet Mr. Spitz seems intent on using it again and again: "I am aware that the Company's later public filings

disclose additional real estate activities undertaken by Margaret Cotter. These materials, however, do not alter my conclusion because none of them approach the level of experience or accomplishment required by the Position Specification." *Id.*, ¶ 42. In other words, Mr. Spitz's "conclusion" seems to be that Margaret Cotter, when she was hired as an EVP, did not meet certain of the qualifications that the Company was looking for in a CEO. Mr. Spitz, supposedly an expert in executive searches, should know better; this appears to be a blatant attempt to mislead the trier of fact. Not only that, but the trier of fact is well-equipped to evaluate Margaret Cotter's qualifications for the job. They do not need the "help" of Mr. Spitz's misleading conclusions disguised as expert opinion.

3. Mr. Spitz Is Unqualified to Offer Any Purported Expert Opinion Regarding Reading's Stock Price or "Strategic Imperative"

Mr. Spitz also exceeds the scope of his supposed expertise and proposed area of testimony when he opines, repeatedly and at length, about Reading's business strategy generally, including the company's "strategic imperative" to pursue additional real estate opportunities. For example, Mr. Spitz states that, "As a result of the maturing of the cinema business and the missed opportunity by the Company to capture the increase in market values of its real estate holdings, the stock price of the Company was depressed." *Id.*, ¶ 11. Based on his own unqualified determination that Reading's stock price was depressed, an online article about Reading from 2013, and a statement by James Cotter, Sr. that Reading's real estate activities were, per dollar invested, more profitable than cinema activities, Mr. Spitz determines that building its real estate activities is Reading's primary "strategic imperative." Mr. Spitz then goes on to premise his entire opinion on his own determination of Reading's "strategic imperative." *Id.*, ¶ 23.

Mr. Spitz, an attorney and former executive search consultant, should not be permitted to opine before the trier of fact about what he concludes is or was Reading's "strategic imperative." In doing so, he is substituting his own judgment for that of the Board of Directors, who are far more informed that Mr. Spitz about Reading's strategy, plans, and goals. Mr. Spitz's "strategic imperative" conclusion in fact directly contradicts the two pronged business strategy laid out in the Company's various SEC filings, including those signed by Plaintiff himself. *See, e.g.,* RDI

March 17, 2015 10-K (describing the Company's "two business segments" and stating that they "complement one another, as the comparatively consistent cash flows generated by our cinema operations allow us to be opportunistic in acquiring and holding real estate assets, and can be used not only to grow and develop our cinema business but also to help fund the front-end cash demands of our real estate development business").[18] Mr. Spitz provides no basis or qualifications as to why he, and he alone, is vested with the ability to determine Reading's strategic imperative, a conclusion he appears to base primarily on a single article from the Internet. Mr. Spitz, a lawyer and former executive search professional, does not apply or explain any methodology for his conclusion that the single most important "strategic imperative" for Reading was to build its real estate business. Accordingly, Mr. Spitz should not be permitted to testify to the trier of fact about what he believes Reading's key "strategic imperative" is or was.

To the extent other parts of Mr. Spitz's opinion and proposed testimony rely on his determination of a "strategic imperative," such testimony should be excluded as well. For example, Mr. Spitz opines, "Even if the Search Committee's reference to Ellen Cotter's real estate development experience was accurate, this consideration is deficient. Together with all the other considerations, this consideration does not begin to address the needs of the Company's strategic imperative." *Id.*, ¶ 35. This is typical of the proposed testimony outlined in Mr. Spitz's report. He, without any basis or qualifications, has defined what he personally considers to be Reading's "strategic imperative." He then appears to judge the Company's selection of CEO against his opinion of the "strategic imperative." *Id.* This is far outside Mr. Spitz's supposed expert scope, *i.e.*, whether the CEO search was a success for failure (whatever that means). Mr. Spitz seems to believe he is well-suited to opine generally about what is or is not best for Reading. He is not remotely qualified to do so, and all opinion and testimony relating to or relying on his "strategic imperative" determination should be excluded.

[18] *Available at* https://www.sec.gov/Archives/edgar/data/716634/000156276215000083/rdi-20141231x10k.htm

D. The Wide-Ranging Opinions of "Rebuttal" Expert Albert Nagy Should Be Excluded Because They Are Not Rebuttal Opinions At All, and Because Mr. Nagy Is Not Qualified to Offer Them

1. Mr. Nagy Is Not a "Rebuttal" Expert

On Monday, September 19—more then three weeks after initial expert disclosures—Plaintiff disclosed that he intends to offer Albert Nagy as a "rebuttal" expert. *See* Ex. D (Plaintiff's Rebuttal Expert Disclosure Statement). According to the September 19 disclosure, Mr. Nagy will offer testimony "regarding the qualifications and competencies typically found in individuals who hold positions as senior real estate executives who manage development projects, the specific qualifications and competencies of Margaret Cotter, the compensation of Margaret Cotter in her role as a senior Reading International, Inc. executive with responsibility for the firm's real estate development activities and how real estate development fits into Reading International, Inc.'s business." *Id*. This is not "rebuttal" testimony at all. Rather, Mr. Nagy purports to testify about subject matters not addressed by any of Defendants' experts. The supposed basis for designating Mr. Nagy as a "rebuttal" expert is to address "certain opinions pertaining to Margaret Cotter and real estate development management expressed by Alfred E. Osborne, Jr., Ph.D. in his expert report dated August 25, 2015." *Id*. This is an obvious pretext. Dr. Osborne has not expressed and does not intend to express opinions about Margaret Cotter's qualifications or real estate development management.[19]

The Nevada Rules of Civil Procedure explicitly prohibit parties from using "rebuttal" disclosures to designate a new expert who should have previously been disclosed. Rule 16.1(a)(2)(C)(ii), which governs rebuttal disclosures, states: "If the evidence is intended solely to contradict or rebut evidence on the same subject matter identified by another party under paragraph (2)(B), the disclosures shall be made within 30 days after the disclosure made by the other party.

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[19] Indeed, the *only expert* whose proposed testimony covers these topics is Richard Spitz, one of Plaintiff's own previously-disclosed experts. It is Mr. Spitz's initial report that purports to address Margaret Cotter's qualifications for her position, how real estate development fits into Reading's business, and the qualifications and competencies of senior real estate executives.

This later disclosure deadline does not apply to any party's witness whose purpose is to contradict a portion of another party's case in chief that should have been expected and anticipated by the disclosing party, or to present any opinions outside of the scope of another party's disclosure." Here, none of Defendants' experts have offered proposed testimony about the topics Mr. Nagy intends to cover. Instead, it appears that Plaintiff decided, after the deadline for disclosure, that he wanted to add a new expert, and decided this was his best chance of doing so. Nevada courts has long held that rebuttal evidence "tends to contradict *new* matters raised by the adverse party." *Andrews v. Harley Davidson, Inc.*, 106 Nev. 533, 539, 769 P.2d 1092, 1096 (1990) (emphasis in original). In addition,

> [u]nder Rule 26(a)(2)(C)'s disclosure mechanism, a party may designate additional experts thirty days after initial expert disclosures, with one caveat: the additional experts' testimony is limited to rebutting or contradicting the expert testimony initially designated by the opposing party. The supplemental or "rebuttal" experts cannot put forth their own theories; they must restrict their testimony to attacking the theories offered by the adversary's experts. In this respect, a party can control the scope of the testimony of its Adversary's rebuttal experts by limiting its own experts' testimony to a given subject matter. A party who forgoes designating experts on the initial disclosure date will thus find itself in a purely reactive mode, greatly restricted in its ability to offer expert testimony.

International Business Machines Corporation v. Fasco Industries, Inc., No. C-93-20326 RPA, 1995 U.S. Dist. LEXIS 22533 at *7-8 (N.D. Cal. March 15, 1995).[20] When a party attempts to introduce "rebuttal" evidence that does not meet the definition of rebuttal evidence, then the trial court should exclude it. *Andrews*, 106 Nev. at 529. (holding that "the court correctly excluded" a "rebuttal" witness whose testimony did not address any new matters).

2. Mr. Nagy Is Not Qualified

In addition, Mr. Nagy is not qualified to offer testimony regarding the topics for which he is designated. The "specific qualifications and competencies of Margaret Cotter" are readily ascertainable to the trier of fact and do not require any specialized expertise to discern. Mr. Nagy

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[20] NRCP 16.1 tracks the Federal Rules of Civil Procedure for disclosure of expert witnesses and testimony, including rebuttal experts and opinions; therefore, federal precedent provides persuasive authority on the issue.

does not appear to have any significant experience working in or studying executive compensation, yet he purports to testify about the "compensation of Margaret Cotter in her role as a senior Reading International, Inc. executive." *See* Ex. D. Mr. Nagy also lacks the experience or expertise to testify about "how real estate development fits into Reading International, Inc.'s business." *See id.* Nothing in his *CV* demonstrates that Mr. Nagy is in a position to provide an expert opinion about the strategy and direction of an international cinema exhibition and real estate company traded on the NASDAQ exchange and a market capitalization of hundreds of millions of dollars. Indeed, Mr. Nagy has previously testified under oath that he is *unqualified* to analyze financial statements, let alone the vast operations of a company such as Reading. *See* Exhibit G (Nagy Dep. Tr.) at 123. That Mr. Nagy is cloaked as a "rebuttal" expert does not allow him to avoid the scrutiny that an expert would normally be given.

E. The Proposed Testimony of John Finnerty Should Be Excluded to the Extent Dr. Finnerty Does Not Intend to Provide Purely Rebuttal Testimony

Plaintiff has disclosed Dr. John Finnerty as a rebuttal expert to "analyze and respond to the conclusions and the analyses proffered in the expert report of Dr. Richard W. Roll, Ph.D., dated August 25, 2016, including, but not limited to, Dr. Roll's event study **and other statistical analyses and conclusions**." *See* Ex. D (emphasis added). To the extent Dr. Finnerty's "other statistical analyses and conclusions" are not a direct rebuttal to Dr. Roll, such testimony should be excluded. Plaintiff should not be allowed to utilize Dr. Finnerty to set forward new damages theories on "rebuttal" as part of these unspecified "conclusions."

IV. CONCLUSION

WHEREFORE, based on the foregoing, the Moving Defendants respectfully request the Court grant this Motion and enter an order excluding the proposed testimony of Myron Steele, Tiago Duarte-Silva, Albert Nagy, and John Finnerty.

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DATED THIS 23RD DAY OF SEPTEMBER, 2016.

COHEN|JOHNSON|PARKER|EDWARDS

By: /s/ H. Stan Johnson
H. Stan Johnson, Esq.
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Edward Kane, Judy Codding, and
Michael Wrotniak

Exhibit A

REDACTED

Exhibit A

Exhibit B

REDACTED

Exhibit B

Exhibit C

REDACTED

Exhibit C

Exhibit D

Exhibit D

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DISTRICT COURT

CLARK COUNTY, NEVADA

JAMES J. COTTER, JR., derivatively on behalf of Reading International, Inc., Plaintiff, vs. MARGARET COTTER, ELLEN COTTER, GUY ADAMS, EDWARD KANE, DOUGLAS McEACHERN, TIMOTHY STOREY, WILLIAM GOULD, and DOES 1 through 100, inclusive, Defendants. and READING INTERNATIONAL, INC., a Nevada corporation, Nominal Defendant.	CASE NO.: A-15-719860-B DEPT. NO. XI Coordinated with: Case No. P-14-082942-E Dept. No. XI Jointly Administered **Business Court** **PLAINTIFF JAMES J. COTTER, JR.'S REBUTTAL EXPERT DISCLOSURE STATEMENT**

Plaintiff James J. Cotter, Jr., ("Plaintiff") through his attorneys Lewis Roca Rothgerber Christie LLP, and pursuant to N.R.C.P. 16.1(a)(2), hereby submit this list of rebuttal expert witnesses as follows in the above-captioned matter, and reserves the right to call any witness identified and elected by any other party in this action. Plaintiff also reserves the right to amend and/or supplement this disclosure as discovery proceeds and/or as further information is obtained. Plaintiff further reserves the right to make supplemental designations.

Lewis Roca ROTHGERBER CHRISTIE 3993 Howard Hughes Pkwy, Suite 600 Las Vegas, NV 89169-5996

1. Myron T. Steele, Esq.
c/o Lewis Roca Rothgerber Christie LLP
3993 Howard Hughes Parkway, Suite 600
Las Vegas, NV 89169

Justice Steele (Ret.) is the former Chief Justice of the Delaware Supreme Court. He will offer expert testimony, including as summarized in his rebuttal report on or before September 28, 2016, in response to the reports and testimony of Alfred E. Osborne, Jr., Ph.D. and Michael Klausner, including insofar as they address matters relating to the fiduciary duties of the individual defendants. A copy of Chief Justice Steele's curriculum vitae, a list of cases he has testified in the last four years, fee amount, and documents considered in providing his report, were provided previously and are incorporated herein by reference. He has agreed to testify at the trial of this matter and will be sufficiently familiar with the pending action to submit to deposition regarding the testimony he is expected to give at trial.

2. Tiago Duarte-Silva, Charles River Associate
c/o Lewis Roca Rothgerber Christie LLP
3993 Howard Hughes Parkway, Suite 600
Las Vegas, NV 89169

Dr. Tiago Duarte-Silva is a principal at Charles River Associates. He will offer expert testimony, including as summarized in his rebuttal report to be provided on or before September 28, 2016 in response to the report and testimony of Richard W. Roll, Ph.D., including regarding Reading's earnings and stock performance and the response of Reading's board of directors to an acquisition offer made in late May 2016. A copy of Dr. Duarte-Silva's curriculum vitae, a list of cases he has testified in the last four years, fee amount, and documents considered in providing his report, were provided previously and are incorporated herein by reference. He has agreed to testify at the trial of this matter and will be sufficiently familiar with the pending action to submit to deposition regarding the testimony he is expected to give at trial.

3. Richard Spitz
c/o Lewis Roca Rothgerber Christie LLP
3993 Howard Hughes Parkway, Suite 600
Las Vegas, NV 89169

Lewis Roca ROTHGERBER CHRISTIE 3993 Howard Hughes Pkwy, Suite 600 Las Vegas, NV 89169-5996

Richard Spitz is an attorney and business executive with extensive experience in recruiting senior executives. He will offer expert testimony, including as provided in any rebuttal report to be provided on or before September 28, 2016 regarding the opinions, if any, of Alfred E. Osborne, Jr., Ph.D. regarding the subject of the CEO search which was a subject of Mr. Spitz' original report. A copy of Mr. Spitz's curriculum vitae, a list of cases he has testified in the last four years, fee amount, and documents considered in providing his report, were provided previously and are incorporated herein by reference. He has agreed to testify at the trial of this matter and will be sufficiently familiar with the pending action to submit to deposition regarding the testimony he is expected to give at trial.

4. Albert S. Nagy
Realty Capital Solutions
32152 Calle Los Elegantes
San Juan Capistrano, CA 92675

Albert S. Nagy is a real estate professional and consultant and real estate subject matter expert with, among other qualifications, 45± years of experience in real estate investment and development, real estate executive compensation, development management and various other aspects of real estate development. Mr. Nagy's curriculum vitae is attached as **Exhibit A**. He has agreed to testify at the trial of this matter and will be sufficiently familiar with the pending action to submit to deposition regarding the testimony he is expected to give at trial.

Mr. Nagy will offer expert testimony, including as summarized in his rebuttal report to be provided on or before September 28, 2016 regarding certain opinions pertaining to Margaret Cotter and real estate development management expressed by Alfred E. Osborne, Jr., Ph.D. in his expert report dated August 25, 2016, and testimony including regarding the qualifications and competences typically found in individuals who hold positions as senior real estate executives who manage development projects, the specific qualifications and competences of Margaret Cotter, the compensation of Margaret Cotter in her role as a senior Reading International, Inc. executive with

Lewis Roca ROTHGERBER CHRISTIE
3993 Howard Hughes Pkwy, Suite 600
Las Vegas, NV 89169-5996

responsibility for the firm's real estate development activities and how real estate development fits into Reading International, Inc.'s business.

5. John D. Finnerty
AlixPartners
909 Third Avenue
New York, NY 10022

Dr. John D. Finnerty Dr. Finnerty is a Managing Director in the Financial Advisory Services Group at AlixPartners, LLP. He specializes in securities class actions, business valuation, securities valuation, derivatives valuation, solvency analysis, calculation of damages, and litigation support for matters involving valuation disputes, securities fraud, solvency, fairness, breach of contract, breach of fiduciary duty, broker raiding, commercial disputes, and employment disputes involving the valuation of employee stock options. Dr. Finnerty is also a Professor of Finance at Fordham University's Gabelli School of Business where he was the founding Director of the Master of Science in Quantitative Finance Program. He will offer expert testimony, including as summarized in his rebuttal report on or before September 28, 2016, and will analyze and respond to the conclusions and the analyses proffered in the expert report of Richard W. Roll, Ph.D., dated August 25, 2016, including, but not limited to, Dr. Roll's event study and other statistical analyses and conclusions. A copy of Dr. Finnerty's curriculum vitae is attached as **Exhibit B**. He has agreed to testify at the trial of this matter and will be sufficiently familiar with the pending action to submit to deposition regarding the testimony he is expected to give at trial.

Dated this 19th day of September, 2016.

Lewis Roca Rothgerber Christie LLP

By: */s/ Mark G. Krum*
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Attorneys for Plaintiff
James J. Cotter, Jr.

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CERTIFICATE OF SERVICE

I hereby certify that on this 19th day of September, 2016, I caused a true and correct copy of the foregoing to be electronically served to all parties of record via this Court's electronic filing system to all parties listed on the E-Service Master List.

/s/Judy Estrada
An employee of Lewis Roca Rothgerber Christie LLP

Lewis Roca ROTHGERBER CHRISTIE
3993 Howard Hughes Pkwy, Suite 600
Las Vegas, NV 89169-5996

EXHIBIT A

Albert S. Nagy
Litigation Consultant and Testifying Expert Witness

Albert S. Nagy is a veteran business executive with experience in property management, real estate development and investment management, homebuilding, mortgage banking, real estate asset management. He has over forty years of experience in corporate operations and finance, having served fifteen years as a Chief Executive Officer or Chief Operating Officer. Mr. Nagy is the Founder and Managing Director of The Nagy Group, a business consultancy, and is a principal in Ferrell Nagy & Associates ("FNA") and Realty Capital Solutions ("RCS"). In addition, he and his RCS colleagues often team with Charles River Associates' ("CRA") economists and specialists to provide expanded resources to larger and more complicated engagements or when real estate subject matter knowledge is required.

In addition to his decades of real estate experience, he has served on the boards of both public and private companies, and he has been a member of various compensation committees. He has served as a court appointed receiver and expert witness in numerous disputes, many involving property ownership, development, property management and operations and leasing.

San Juan Capistrano, CA Since December 1991, Mr. Nagy has worked as an independent real estate consultant, loan workout specialist and as a consulting and testifying expert witness through FNA, RCS, CRA and The Nagy Group. Selected examples of engagements and the content of executive positions follow:

- Expert Witness and/or litigation consultant for real estate operations, homebuilding, leases, finance and partnership issues.
- Testifying expert witness and litigation consultant for a sibling in a family dispute involving the fees and profits being paid to a brother from more than forty real estate development projects owned and sponsored by the family construction company,.
- Key advisor to The Olson Company, a southern California development company, in the area of equity and debt structure at both the corporate and project level. Manager of $250 million equity investor relationship and the company's project debt relationship with a national money center bank. Member of the Olson Board of Directors.
- Served as Chairman of the Compensation Committee, of SM&A.
- Serves on the Board and the Compensation Committee of Mark IV Capital, a family owned real estate investment and development company
- Served on the International (German) Board of ThyssenKrupp elevator, the largest elevator company in North America.
- Tenant representation in restructuring leases, consolidation, expansion and relocation.
- Representing three restaurant chains in their corporate planning and location selection. In addition, he was responsible for the restaurant chains' leasing and lease management.
- Turn-around operation of a premier full service 499 unit RV Resort.
- Court appointed receiverships for the RTC and financial institutions for over $100,000,000 of foreclosures, many being development projects.
- Corporate restructuring and strategic and financial planning for companies, in the fields of real estate, homebuilding, asset management, hospitality, and food service.
- Served as the due diligence director for the acquisition of twenty-five resort hotels.
- Assisted as the real estate subject matter expert on an inter-disciplinary international, consulting team to provide market research, strategy and tactical advice to Dar Al-Arkan (http://www.alarkan.com/Default.aspx?lang=en), the largest residential developer and master planned community developer in the Kingdom of Saudi Arabia.

Birtcher Investments, From September 1983 to November 1991, Mr. Nagy founded and managed Birtcher Investments in Orange County, California. In this capacity he raised $240 million in public partnerships that acquired and operated leased income property, created a consulting company that handled over $750 million of work-out situations, created a pension advisory company and built a national property management company that leased, managed and operated over 16 million square feet in 13 states.

- Raised $240 Million in public and private limited partnerships and was the managing fiduciary of these investment entities. This included being responsible for all leasing and any lease disputes in the portfolio.
- Built and led a national property management company overseeing 16,000,000 square feet of leased income property and 2,600 leased residential units.
- Built a national property acquisition staff and supervised acquisition of 40 properties in 13 states, including industrial, office and shopping centers.
- Created a consulting company that handled over $750,000,000 of work-out situations for financial institutions, including real estate developments, hotels and vacant land.
- Established a pension advisory company in joint venture with Smith Barney that included a commercial multi-property fund and individual investments in multi-family residential housing.

Heitman Financial Services, Ltd. From April 1973to September 1983 Mr. Nagy was and officer and Director of Heitman rising to the level of Senior Vice President. Heitman was a national real estate finance organization involved in commercial mortgage banking for large commercial projects and acts as a fiduciary and investment advisor to pension funds.

- Arranged debt and equity placements involving 200 properties and developments located throughout the U.S. totaling $1.5 Billion.

Ralph C. Sutro Company Mr. Nagy began his professional career as an Assistant Vice President at Sutro in October of 1971. Ralph C. Sutro was a residential and commercial mortgage banking company. Mr. Nagy worked a Loan Officer in both divisions.

Education

- Denison University, Cum Laude, BA in Political Science, 1968
- Denison University, Departmental Fellow, 1966-1968
- Claremont Graduate University, National Defense Act Fellow, MA in International Relations, 1971
- UCLA, Economics and Real Estate, 1972
- Northwestern University School of Mortgage Banking, 1972
- Instruction in Real Estate Finance, West Los Angeles College, 1973
- Instructor in Real Estate Finance and Appraisal, Pierce College
- Guest Lecturer in Real Estate Finance at UCLA

Corporate Board Affiliations (current and past)

- Mark IV Capital, family firm with various investments including extensive real estate investments and development prjoects.
- PFMG Solar, distributed energy generation for public agencies and schools.
- SM&A, proposal services company in RFP structured competitions, primarily defense oriented.
- The Olson Company, homebuilder and developer operating throughout California
- Thyssen Krupp Elevator, Germany, global elevator and People Mover Company. Over 16 acquisitions in the US including Dover Elevator. Mr. Nagy served on their international Board of Directors.

Professional Designations

- Certified Real Estate Instructor in the State of California
- Certified Review Appraiser
- California Real Estate Salesperson

Professional Affiliations

- L3
- World Presidents' Organization
- National Association of Review Appraisers

Community Involvement

- Board of Trustees, Center for Early Education, Los Angeles, California, 1982-84
- Board of Trustees, St. Margaret's School, San Juan Capistrano, California, 1984-1990, President, 1990
- State of California, Council for Private Postsecondary and Vocational Education, 1996-1997.

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EXHIBIT B

JOHN D. FINNERTY, Ph.D.

Managing Director, AlixPartners, LLP

Professor of Finance, Gabelli School of Business, Fordham University

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New York, NY 10022
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Dr. Finnerty is a Managing Director in the Financial Advisory Services Group at AlixPartners, LLP. He specializes in securities class actions, business valuation, securities valuation, derivatives valuation, solvency analysis, calculation of damages, and litigation support for matters involving valuation disputes, securities fraud, solvency, fairness, breach of contract, breach of fiduciary duty, broker raiding, commercial disputes, and employment disputes involving the valuation of employee stock options. He has testified as an expert in valuation, broker raiding, and securities and other financial matters in federal and state court and in arbitration and mediation proceedings. He has also testified as an expert in bankruptcy court concerning the fairness of proposed plans of reorganization.

Dr. Finnerty is also a Professor of Finance at Fordham University's Gabelli School of Business where he was the founding Director of the Master of Science in Quantitative Finance Program. He has taught for more than 28 years, including corporate finance, investment banking, fixed income securities, fixed income portfolio management, and bankruptcy restructuring. His teaching and research interests include hedge fund and private equity fund management, structure, and performance.

Dr. Finnerty has published 15 books, including *Corporate Financial Management*, 4th ed., *Project Financing: Asset-Based Financial Engineering*, 3rd ed., P*rinciples of Financial Management*, and *Debt Management*, and more than 100 articles and professional papers in corporate finance, business and securities valuation, and other areas of finance. His writings and teaching have focused on the analysis and valuation of securities, especially fixed income instruments and complex derivative products, and mortgage-backed and other asset-backed securities. Dr. Finnerty is a former editor of *Financial Management*, one of the leading academic finance journals, and a former editor of *FMA Online*. He is an associate editor of the *Journal of*

Applied Finance and a member of the editorial advisory boards of the *Journal of Portfolio Management* and the *International Journal of Portfolio Analysis & Management*.

Dr. Finnerty worked for more than 20 years as an investment banker. He worked on more than 50 public and private financings, and served as financial advisor in connection with several mergers and several project financings.

Dr. Finnerty is a Trustee and a former Chair of the Trustees and a former President and Director of the Eastern Finance Association, a former Director of the Financial Management Association, and a former President and Director of the Fixed Income Analysts Society. He served as a member of FASB's Option Valuation Group in connection with the revision of FAS 123. He was inducted into the *Fixed Income Analysts Society Hall of Fame* in 2011.

EDUCATION

1977	Ph.D. in Operations Research, Naval Postgraduate School
1973	B.A. and M.A. in Economics, Cambridge University; Marshall Scholar
1971	A.B. in Mathematics, Williams College; magna cum laude with highest honors in Mathematics; Rice Prize in Mathematics; Phi Beta Kappa

BUSINESS EXPERIENCE

2013 – Present	**AlixPartners, LLP, New York, NY** Managing Director, Financial Advisory Services Group
2003 – 2013	**Finnerty Economic Consulting, LLC, New York, NY** Managing Principal
2001 - 2003	**Analysis Group, Inc., New York, NY** Managing Principal
1997 - 2001	**PricewaterhouseCoopers, LLP, New York, NY** Partner, Financial Advisory Services Group Dispute Analysis & Investigations securities litigation practice
1995 - 1997	**Houlihan Lokey Howard & Zukin, New York, NY** Director
1989 - 1995	**McFarland Dewey & Co., New York, NY** General Partner

1986 - 1989	**College Savings Bank, Princeton, NJ** Executive Vice President, Chief Financial Officer, Treasurer, Secretary, and Director
1982 - 1986	**Lazard Frères & Company, New York, NY** Vice President, Corporate Finance Department
1977 - 1982	**Morgan Stanley & Co. Inc., New York, NY** Associate, Corporate Finance Department

ACADEMIC EXPERIENCE

1987 - Present	**Fordham University Gabelli School of Business, New York, NY** Professor of Finance and founding Director of the Master of Science in Quantitative Finance Program. Received tenure in September 1991. Gladys and Henry Crown Award for Faculty Excellence, 1997.
1976 - 1977	**Naval Postgraduate School, Monterey, CA** Adjunct Professor, Department of Administrative Sciences
1973 - 1976	**United States Naval Reserve** Instructor, Naval Postgraduate School. Promoted to Lieutenant, USNR.

PROFESSIONAL ASSOCIATIONS

Chair of the Trustees, Eastern Finance Association (2009-2010), Trustee (2008-Present), President (2007-2008), and Director (2005-2008)

President, Fixed Income Analysts Society (2006-2007), and Director (2001-2009)

Director, Financial Management Association (1991-1999, 2005-2007, 2011-2013)

Editor, *Financial Management* (1993-1999)

Editor, *FMA Online* (2001-2010)

Associate Editor, *Journal of Derivatives Accounting* (2003-2005)

Associate Editor, *Journal of Applied Finance* (2000-2007, 2012-Present)

Associate Editor, *Journal of Financial Engineering* (1992-1999)

Member, Editorial Advisory Boards, *The Financier* (1995-2003), *Journal of Portfolio Management* (1995-Present), and *International Journal of Portfolio Analysis & Management* (2011-Present)

Globe Business Publishing Ltd., London, U.K., Globe Law and Business Reader Panel

OTHER ACTIVITIES

Leadership Giving Co-Chair, Williams College Class of 1971

Co-chairman, New Jersey Special Gifts Program, Williams College Third Century Campaign

Member, Special Gifts Committee, New York City Area for Williams College Third Century Campaign

Vice Chairman, Williams College Class of 1971 25th Reunion Gift Committee

Treasurer and Trustee, Spring Lake Bath and Tennis Club, and Co-Chair, Finance Committee

AWARDS

Marshall Scholar, 1971

Gladys and Henry Crown Award for Faculty Excellence, Fordham Business School, 1997

Best Investments Paper, Southern Finance Association, 2001

Best Corporate Finance Paper, Southern Finance Association, 2006

Bene Merenti Medal, Fordham University, 2007

Fixed Income Analysts Society Hall of Fame, 2011

Achievements in Excellence Team Award, AlixPartners, LLP, 2014

EXPERT TESTIMONY IN LAST FOUR YEARS

Clients	*Case*	*Description of Testimony*
Brune & Richard	MBIA Insurance v. Patriarch Partners VIII and LD Investments U.S. District Court for the Southern District of New York Case No. 09 Civ. 3255 (RWS)	Responded to an expert damages report in a breach of contract matter, which calculated damages based on the value of a class of subordinated notes. Testified at deposition and at trial.
Robbins Geller Rudman & Dowd	Eric Silverman v. Motorola, Inc., et al. U.S. District Court for the Northern District of Illinois Case No. 1:07-cv-04507	Prepared an expert report on loss causation and a rebuttal report in connection with a securities class action. Testified at deposition.
Stradley Ronon Stevens & Young	Warren Klein, et al., v. Oppenheimer & Co. Inc. U.S. District Court for the Eastern District of Pennsylvania Civil Action No. 2:10-CV-06743	Prepared an expert rebuttal report describing auction rate securities (ARS), the market for ARS, the events surrounding the collapse of the market for ARS in February 2008, and addressing the plaintiffs' alleged damages. Testified at deposition.
Abbey Spanier Rodd & Abrams	In Re IMAX Corporation Securities Litigation U.S. District Court for the Southern District of New York Case No. 06 Civ. 6128 (NRB)	Prepared an expert report on loss causation in connection with a securities class action. Testified at deposition.
Figari & Davenport	Hillwood Investment Properties, et al. v. Radical Mavericks Management, et al. District Court, 192nd Judicial District, Dallas County, Texas Cause No. 10-05639	Assessed the solvency of a professional sports franchise. Testified at deposition.
Securities and Exchange Commission	Securities and Exchange Commission v. William Betta, Jr., et al. U.S. District Court for the Southern District of Florida Case No. 09-80803-Civ-MARRA/JOHNSON	Prepared an expert report describing the features and risk-return characteristics of various complex collateralized mortgage obligation classes and assessed their suitability for a set of investors. Testified at trial.
Robbins Geller Rudman & Dowd	In Re Par Pharmaceutical Securities Litigation U.S. District Court for the District of New Jersey Master File No. 2:06-cv-03226-PGS-ES	Prepared an expert report on market efficiency in connection with a securities class action. Testified at deposition.
Internal Revenue Service	The Markell Company, Inc. v. Commissioner of Internal Revenue United States Tax Court Houston, TX Docket No. 20551-08	Prepared an expert report and a rebuttal expert report concerning the reasonableness of profit expectation for a strategy involving a spread call option strategy. Testified at trial.