

<i>Clients</i>	<i>Case</i>	<i>Description of Testimony</i>
Labaton Sucharow Lim, Ruger & Kim Lite DePalma Greenberg	In re STEC, Inc. Securities Litigation U.S. District Court for the Central District of California Southern Division Case No. SACV 09-01304-JVS (MLGx)	Prepared an expert report on market efficiency in connection with a securities class action. Testified at deposition. Electronically Filed Aug 30 2019 11:31 a.m. Elizabeth A. Brown Clerk of Supreme Court
Berman DeValerio Labaton Sucharow	In re The Bear Stearns Companies, Inc. Securities, Derivative, and ERISA Litigation U.S. District Court for the Southern District of New York Master File No. 08 M.D.L. No. 1963 (RWS)	Prepared an expert report on the efficiency of the markets for the Company's common stock and call and put options written on its common stock in connection with a securities class action. Testified at deposition.
Keesal, Young & Logan	R.L. Wagner Trust, et al. v. Wells Fargo Bank, NA, et al. FINRA Arbitration Case No. 10-03743	Testified at arbitration about the operation of the auction rate securities market and the factors that caused it to seize up in 2008, and also testified as to damages.
Martin J. Auerbach, Esq. Cohen & Gresser	Keryx Biopharmaceuticals v. Jefferies & Company FINRA Arbitration Case No. 09-06138	Testified at arbitration about the operation of the auction rate securities market and the factors that caused it to seize up in 2008, and also testified as to damages.
Otterbourg, Steindler, Houston & Rosen Paul Hastings SNR Denton	In re Lehman Brothers Inc., Debtor U.S. Bankruptcy Court for the Southern District of New York Case No. 08-01420 (JMP) SIPA	Prepared an expert report describing the nature and use of repurchase agreements and explaining the differences between a repurchase agreement and a secured loan. Testified at deposition.
Kirkland & Ellis Cohen & Grigsby	In re: 1H 1, Inc., et al., Debtors George L. Miller, Chapter 7 Trustee v. Sun Capital Partners, Inc., et al. U.S. Bankruptcy Court for the District of Delaware Case No. 09-10982 (PJW)	Prepared an expert solvency report concerning an aluminum extrusion company. Testified at deposition and at trial.
Keesal, Young & Logan	Brigette Roberts v. ThinkEquity Partners LLC, et al. FINRA Arbitration Case No. 10-00992	Testified at arbitration about the operation of the auction rate securities market and the factors that caused it to seize up in 2008, and also testified as to damages.
Internal Revenue Service	Humboldt Shelby Holding Corporation and Subsidiaries v. Commissioner of Internal Revenue United States Tax Court Houston, TX Docket No. 25936-07	Prepared an expert report concerning the reasonableness of profit expectation for a strategy involving a spread call option strategy. Testified at trial.
Brualdi Law Firm	Hex Partners, et al. v. Mason N. Carter, et al. Superior Court of New Jersey, Civil Division Essex County Civil Action No.: L-246-10	Prepared an expert report comparing two change- of-control offers for Merrimac Industries, Inc. and a rebuttal expert report responding to the defendants' expert report. Testified at deposition.

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Luboj & Thau	Hennion and Walsh v. Jason Chambeau and Morgan Stanley Smith Barney FINRA Arbitration Case No. 11-02850	Prepared an expert report concerning the damages allegedly resulting from the improper solicitation of former clients by a broker in violation of his employment agreement. Testified at arbitration.
Jenner & Block	Chesapeake Energy Corporation v. Bank of New York Mellon Trust U.S. District Court for the Southern District of New York Civil Action Number 1:13-cv-01582-PAE	Prepared an expert report concerning the prevalence in the fixed income market of bond indentures with provisions allowing an early par call or provisions keying redemption to the notice date, rather than the redemption date. Testified at deposition and at trial.
Ballard Spahr Haynes and Boone Richardson, Plowden & Robinson	First Command Financial Services, et al. v. James S. Agostini, et al. FINRA-DR Arbitration Arbitration No. 12-01697 (Consolidated)	Prepared an expert report concerning the damages resulting from the alleged raid of the entire Columbia, SC office of First Command Financial Services. Testified at arbitration.
Greenberg Traurig	EXX v. Stabosz, et al. v. EXX District Court, Clark County, Nevada Case No. A-11-652516-B	Prepared an expert report concerning the fair value per share of the common stock of EXX, Inc. in connection with a shareholder appraisal rights matter. Testified at deposition and at trial in state court.
Kirkland & Ellis	UBS Securities LLC and UBS AG, London branch v. Highland Capital Management, et al. Supreme Court of the State of New York, County of New York Index No. 650097/2009 (I.A.S., Part 60, Friedman, J.)	Prepared an expert report regarding (a) whether the LCDX Index can be used as a proxy for the market value of a portfolio of collateralized loan obligations or a portfolio of credit default swaps and (b) concerning the fair market value of a private issue of secured pay-in-kind callable notes as of three dates. Testified at deposition.
Bracewell & Giuliani	In re: TMT Procurement Corp., et al. U.S. Bankruptcy Court for the Southern District of Texas, Houston Division Case No. 13-33763	Prepared an expert report concerning the fair market value of a block of common stock of an oil field services firm, which block was potentially subject to the imposition of a constructive trust. Testified at deposition and at trial in bankruptcy court.
Goodwin Procter	Solar Morph Pte. Ltd. and Oppenheimer Investments Jersey Ltd. v. Applied Materials JAMS Arbitration No. 1100071838	Prepared an expert report providing background on project financing, describing the role of the investment banker in the process, and analyzing the reasonableness of the plaintiffs' efforts to raise financing for the purchase of the defendant's equipment. Testified at arbitration.
Kramer Levin Naftalis & Frankel Residential Capital Official Committee of Unsecured Creditors	In re: Residential Capital, LLC, et al., Debtors Residential Capital, LLC, et al. v. UMB Bank Official Committee of Unsecured Creditors v. UMB Bank U.S. Bankruptcy Court for the Southern District of New York Case No. 12-12020 (MG)	Prepared an expert report and a rebuttal expert report describing OID (original issue discount) bonds, explaining the discount as interest, calculating the amount of OID, describing incentives firms can give bondholders to exchange their bonds for new bonds when OID is created, and analyzing a debt-for-debt exchange offer Residential Capital conducted in 2008. Testified at deposition and at trial in bankruptcy court.

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Internal Revenue Service	Sugarloaf Fund, LLC v. Commissioner of Internal Revenue United States Tax Court Chicago, IL Docket No. 671-10	Prepared an expert report concerning the market for distressed consumer receivables in Brazil and valuing three portfolios of distressed Brazilian consumer electronics receivables. Testified at trial in tax court.
Olshan Frome Wolosky	Iroquois Master Fund, Ltd. v. Quantum Fuel Systems Technologies Worldwide, Inc. U.S. District Court for the Southern District of New York Case No. 13 Civ. 3860	Prepared an expert report concerning the fair market value of an exchange right embedded in a corporate common stock warrant issued in a public offering and the impact of the warrant issue on the effective common stock price in a previously issued common stock warrant. Testified at deposition and at trial.
Kellogg, Huber, Hansen, Todd, Evans & Figel Korein Tillery	CMFG Life Insurance Company, et al. v. RBS Securities U.S. District Court for the Western District of Wisconsin Case No. 12-cv-00037 WMC	Prepared an expert report concerning the amount due to CMFG Life Insurance Company, CUMIS Insurance Society, and MEMBERS Life Insurance Company on their equitable rescission claim as a result of their purchase of residential mortgage-backed securities from RBS Securities. Testified at deposition.
Faegre Baker Daniels Sherman & Howard	The Pioneer Centres Holding Company Employee Stock Ownership Plan and Trust, et al. v. Alerus Financial and Berenbaum Weinshienk U.S. District Court for the District of Colorado Civil Action No. 1:12-cv-02547-RM-BNB	Prepared an expert report analyzing and comparing a proposed ESOP stock purchase and redemption transaction and a consummated asset purchase transaction, analyzing an independent transaction trustee's negotiating position with respect to the seller's representations and warranties, and assessing the plaintiffs' damages claims. Testified at deposition.
Quinn Emanuel Urquhart & Sullivan	In re Lehman Brothers Holdings, et al., v. JPMorgan Chase Bank U.S. Bankruptcy Court for the Southern District of New York Index No. 10-ap-03266	Prepared an expert report and a rebuttal expert report concerning the incremental value Lehman Brothers could have been realized from the sale of its investment management division if the bankruptcy of Lehman Brothers could have been delayed at least five business days. Testified at deposition.
Ashurst Markit Group Limited	European Commission Statement of Objections of 1 July 2013 Case COMP/39.745 – CDS Information Market	Prepared an expert report and a supplemental expert report explaining why the CDS market was not ready for exchange trading by 2009, CDS dealers were unlikely to have had sufficient incentives to become the initial market makers, and a CDS CLOB exchange was unlikely to achieve lower trading costs and wider new investor demand.
Internal Revenue Service	AD Investment 2000 Fund LLC AD Global 2000 Fund LLC v. Commissioner of Internal Revenue United States Tax Court New York, NY Docket Nos. 9177-08 and 9178-08	Prepared an expert report concerning the reasonableness of profit expectation for a strategy involving a spread call option strategy. Testified at trial in tax court.

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Luboj & Thau	Charles Schwab v. Morgan Stanley Smith Barney FINRA-DR Arbitration Arbitration No. 12-02325	Prepared an expert report concerning the damages resulting from the alleged raid of two California offices of Charles Schwab. Testified at arbitration.
Satterlee Stephens Burke & Burke	Oppenheimer & Co. Inc. v. Deutsche Bank Securities Inc. FINRA Arbitration FINRA Case No. 10-04093	Prepared an expert report and testified at arbitration concerning auction rate credit-linked notes, their intended market, the fair market of the AR CLNs at issuance, and Deutsche Bank's unjust enrichment.
Wollmuth Maher & Deutsch	Lehman Brothers Special Financing, Inc. v. Bank of America, et al. U.S. Bankruptcy Court for the Southern District of New York Case No. 10-03547 (SCC)	Prepared an expert report concerning the economic commonality of certain payment preference provisions across 48 CDO transactions in which Lehman Brothers Special Financing was involved as a credit default swap counterparty. Testified at deposition.
Robbins Geller Rudman & Dowd	Carpenters Pension Trust Fund of St. Louis, et al. v. Barclays plc, et al. U.S. District Court for the Southern District of New York Civil Action No. 1:12-cv-05329-SAS	Prepared an expert report on the efficiency of the market for the American depositary shares (ADS) on the Company's common stock in connection with a securities class action. Testified at deposition and at trial.
Fox Rothschild	In re: 1H 1, Inc., et al., Debtors George L. Miller, Chapter 7 Trustee v. Kirkland & Ellis U.S. Bankruptcy Court for the District of Delaware Case No. 12-50713 (PJW)	Prepared an expert solvency report concerning an aluminum extrusion company. Testified at deposition.
Labaton Sucharow Robbins Geller Rudman & Dowd	In re Goldman Sachs Group, Inc. Securities Litigation U.S. District Court for the Southern District of New York Case No. 1:10-cv-03461-PAC	Prepared an expert report on the efficiency of the market for the Company's common stock in connection with a securities class action. Testified at deposition.
Internal Revenue Service	Endeavor Partners Fund, LLC, Delta Currency Trading, LLC, Tax Matters Partner, et al. v. Commissioner of Internal Revenue United States Tax Court New York, NY Docket Nos. 8698-12, 8710-12, 8721-12, 8846-12, 9975-12, 11290-12, and 12591-12	Prepared an expert rebuttal report responding to an expert report prepared by the taxpayer's expert, which provided an economic rationale underlying the taxpayer's business strategy. Testified at trial in tax court.
Boies, Schiller & Flexner Korein Tillery	Bruce S. Sherman v. Bear Stearns Companies Inc., et al. U.S. District Court for the Southern District of New York Index No. 09 Civ. 8161 (RWS)	Prepared an expert report in connection with a 10b-5 securities fraud matter concerning the efficiency of the market for the common stock of the Bear Stearns Companies, Inc., furnishing a loss causation analysis, and calculating the amount of damages sustained by Bruce Sherman due to the alleged fraud. Testified at deposition.

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Arnold & Porter	AmTrust North America, Inc. v. SquareTrade, Inc. JAMS Arbitration No. 1100079447	Prepared an expert report concerning the improper sampling of consumer electronics claims submitted under the defendant's extended service plans and the incorrect calculation of damages by the plaintiff's experts. Testified at arbitration.
Humphrey, Farrington & McClain Klamann Law Firm White Graham Buckley & Carr	Dennis Demetre and Lori Lewis v. HMS Holdings Corp. Supreme Court of the State of New York, County of New York Index No. 652381/2012	Prepared an expert report identifying the expected synergies from a corporate merger; explaining due diligence, role of investment bankers, post-merger integration, and purpose of earn-outs in change-of-control transactions; analyzing the earn-out provision of a stock purchase agreement; and calculating the amount of damages sustained by the plaintiffs due to non-payment of the earn-out. Testified at deposition.
Schuyler, Roche & Crisham	UBS Financial Services Inc. v. David Kinnear, et al. FINRA Arbitration FINRA Case No. 12-00554	Prepared an expert report concerning the damages allegedly resulting from the improper solicitation of former clients by a broker in violation of his employment agreement. Testified at arbitration.
Securities and Exchange Commission	U.S. Securities and Exchange Commission v. Stifel, Nicolaus & Co., Inc. and David W. Noack U.S. District Court for the Eastern District of Wisconsin Case No. 2:11-cv-755	Prepared an expert report concerning collateralized debt obligations (CDOs) and analyzed three leveraged synthetic CDO transactions five Wisconsin school districts entered into in 2006, assessed the various risks, and opined on the accuracy of certain statements made to the school districts about those investment risks. Testified at deposition.
Kellogg, Huber, Hansen, Todd, Evans & Figel Korein Tillery	National Credit Union Administration Board v. Credit Suisse Securities (USA), et al. U.S. District Court for the Southern District of New York Case No. 13-cv-6736 (DLC)	Prepared an expert report and a rebuttal expert report that provide relevant background information concerning residential mortgage-backed securities (RMBS) and the market for RMBS and calculates the amounts of NCUA's claims for damages as a result of their purchase of RMBS from Credit Suisse. Testified at deposition.
Kellogg, Huber, Hansen, Todd, Evans & Figel Korein Tillery	National Credit Union Administration Board v. Goldman Sachs, et al. U.S. District Court for the Southern District of New York Case No. 13-cv-6721 (DLC)	Prepared an expert report and a rebuttal expert report that provide relevant background information concerning residential mortgage-backed securities (RMBS) and the market for RMBS and calculates the amounts of NCUA's claims for damages as a result of their purchase of RMBS from Goldman Sachs. Testified at deposition.
Kellogg, Huber, Hansen, Todd, Evans & Figel Korein Tillery	National Credit Union Administration Board v. Goldman Sachs, et al. U.S. District Court for the Central District of California – Western Division Case No. 11-cv-6521 GW (JEMx)	Prepared an expert report and a rebuttal expert report that provide relevant background information concerning residential mortgage-backed securities (RMBS) and the market for RMBS and calculates the amounts of NCUA's claims for damages as a result of their purchase of RMBS from Goldman Sachs. Testified at deposition.

<i>Clients</i>	<i>Case</i>	<i>Description of Testimony</i>
Kellogg, Huber, Hansen, Todd, Evans & Figel Korein Tillery	National Credit Union Administration Board v. UBS Securities U.S. District Court for the Southern District of New York Case No. 13-cv-6731 (DLC)	Prepared an expert report and a rebuttal expert report that provide relevant background information concerning residential mortgage-backed securities (RMBS) and the market for RMBS and calculates the amounts of NCUA's claims for damages as a result of their purchase of RMBS from UBS. Testified at deposition.
Goodmans	Ontario Superior Court of Justice (Commercial List) In the Matter of the Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36, as Amended And in the Matter of a Proposed Plan of Compromise or Arrangement with Respect to U.S. Steel Canada Inc. Court File No. CV-14-10695- 00CL	Prepared an expert report concerning the distinguishing characteristics of debt and equity and evaluating from a financial point of view whether the principal terms of the U.S. Steel Canada Term Loan and Revolving Credit Loan were more equity-like than debt-like as of the date of issuance. Testified at trial in Toronto.
Labaton Sucharow	In re Amgen Inc., Securities Litigation U.S. District Court for the Central District of California Western Division Case No. CV 07-2536 PSG (PLAx)	Prepared expert report concerning loss causation and damages and prepared rebuttal and reply reports responding to defendants' expert reports concerning loss causation and damages issues. Testified at deposition.
Orrick, Herrington & Sutcliffe	Hemlock Semiconductor Corporation v. Deutsche Solar GmbH U.S. District Court for the Eastern District of Michigan Northern Division Case No. 1:13-CV-11037 Hon. Thomas R. Ludington	Prepared an expert report explaining the economic characteristics of take-or-pay agreements, describing the benefits Deutsche Solar received under four supply agreements, identifying the harm to Hemlock resulting from the contract breaches, and quantifying the nominal value of Deutsche Solar's unfilled purchased obligations. Testified at deposition.
Lowenstein Sandler	In re Petrobras Securities Litigation Case No. 14-cv-9662 (JSR) Discovery Global Citizens Master Fund, Ltd., et al. v. Petroleo Brasileiro S.A., et al. U.S. District Court for the Southern District of New York Case No. 15-cv-9126 (JSR)	Prepared an expert report concerning the efficiency of the market for the common ADS and preferred ADS of Petrobras and also concerning loss causation and damages to purchasers of the common ADS, preferred ADS, and an issue of Petrobras Global Finance notes in a 10b-5 and Section 11 securities fraud matter. Also prepared a reply report. Testified at deposition.

PUBLICATIONS

Books

1. John D. Finnerty, An Illustrated Guide to Bond Refunding Analysis. The Financial Analysts Research Foundation, Charlottesville, VA, 1984.
2. John D. Finnerty, Corporate Financial Analysis: A Comprehensive Guide to Real-World Approaches for Financial Managers. McGraw-Hill Book Company, New York, 1986.
 - a) Main Selection: Macmillan's The Executive Program
 - b) Alternate Selection: Prentice-Hall's Books for Accountants
3. John D. Finnerty, Andrew J. Kalotay, and Francis X. Farrell, Jr., The Financial Manager's Guide to Evaluating Bond Refunding Opportunities. Ballinger Publishing Company, Cambridge, MA, 1988.
4. Douglas R. Emery and John D. Finnerty, Principles of Finance with Corporate Applications. West, St. Paul, MN, 1991.
5. John D. Finnerty and Martin S. Fridson, eds., The Yearbook of Fixed Income Investing 1995. Irwin Professional Publishing, Chicago, 1996.
6. John D. Finnerty, Project Financing: Asset-Based Financial Engineering. John Wiley & Sons, New York, 1996.
7. Douglas R. Emery and John D. Finnerty, Corporate Financial Management. Prentice Hall, Upper Saddle River, NJ, 1997.
8. Douglas R. Emery, John D. Finnerty, and John D. Stowe, Principles of Financial Management. Prentice Hall, Upper Saddle River, NJ, 1998.
9. John D. Finnerty and Douglas R. Emery, Debt Management. Harvard Business School Press, Boston, 2001.
10. Douglas R. Emery, John D. Finnerty, and John D. Stowe, Corporate Financial Management, 2nd ed. Prentice Hall, Upper Saddle River, NJ, 2004.
11. Douglas R. Emery, John D. Finnerty, and John D. Stowe, Corporate Financial Management, 3rd ed. Prentice Hall, Upper Saddle River, NJ, 2007.
12. Douglas R. Emery, John D. Finnerty, and John D. Stowe, Corporate Financial Management, Int. ed. Prentice Hall, Upper Saddle River, NJ, 2007.
13. John D. Finnerty, Project Financing: Asset-Based Financial Engineering, 2nd ed. John Wiley & Sons, New York, 2007.
14. Douglas R. Emery, John D. Finnerty, and John D. Stowe, Corporate Financial Management, 4th ed. Wohl Publishing, Morristown, NJ, 2011.

15. John D. Finnerty, Project Financing: Asset-Based Financial Engineering, 3rd ed. John Wiley & Sons, New York, 2013.

Monographs

1. John D. Finnerty, "The PricewaterhouseCoopers Credit Derivatives Primer," PricewaterhouseCoopers LLP, New York, 1998.
2. John D. Finnerty, "Structuring Derivative Instruments to Adjust Risk Exposure: The Arithmetic of Financial Instruments," PricewaterhouseCoopers LLP, New York, 1999.
3. John D. Finnerty, "A Comparison of Alternative Models for Valuing Employee Stock Options," Financial Executives Research Foundation, Florham Park, NJ, January 2003.

Papers Published in Refereed Journals

1. John D. Finnerty, "How Often Will the Firemen Get Their Sleep?," Management Science (July 1977), pp. 1169-1173.
2. John D. Finnerty, "Real Money Balances and the Firm's Production Function," Journal of Money, Credit and Banking (November 1980), pp. 666-671.
3. John D. Finnerty, "The Behavior of Electric Utility Common Stock Prices Near the Ex-Dividend Date," Financial Management (Winter 1981), pp. 59-69.
4. John D. Finnerty, "The Stock Market's Reaction to the Switch from Flow-Through to Normalization," Financial Management (Winter 1982), pp. 36-47.
5. John D. Finnerty, "Evaluating the Economics of Refunding High-Coupon Sinking-Fund Debt," Financial Management (Spring 1983), pp. 5-10.
6. John D. Finnerty, "Bank Discount, Coupon Equivalent, and Compound Yields: Comment," Financial Management (Summer 1983), pp. 40-44.
7. John D. Finnerty, "Preferred Stock Refunding Analysis: Synthesis and Extension," Financial Management (Autumn 1984), pp. 22-28.
8. John D. Finnerty, "Stock-for-Debt Swaps and Shareholder Returns," Financial Management (Autumn 1985), pp. 5-17.
9. John D. Finnerty, "Zero Coupon Bond Arbitrage: An Illustration of the Regulatory Dialectic at Work," Financial Management (Winter 1985), pp. 13-17.
10. John D. Finnerty, "Refunding Discounted Debt: A Clarifying Analysis," Journal of Financial and Quantitative Analysis (March 1986), pp. 95-106.
11. John D. Finnerty, "A Visit with Alice in Moneyland," Journal of Corporate Finance (Spring 1987), pp. 46-47.

12. John D. Finnerty, "An Analytical Framework for Evaluating Securities Innovations," Journal of Corporate Finance (Winter 1987), pp. 3-18.
13. John D. Finnerty, "Capital Budgeting and CAPM: Choosing the Market Risk Premium," Journal of Corporate Finance (Winter 1988), pp. 11-14.
14. John D. Finnerty, "Financial Engineering in Corporate Finance: An Overview," Financial Management (Winter 1988), pp. 14-33. (Lead Article) Reprinted in Clifford W. Smith, Jr., and Charles W. Smithson, eds., The Handbook of Financial Engineering. Harper & Row, New York, 1990, ch. 3, and in Robert W. Kolb, ed., The Financial Derivatives Reader. Kolb, Miami, 1992, ch. 2.
15. John D. Finnerty, "New Issue Dividend Reinvestment Plans and the Cost of Equity Capital," Journal of Business Research (March 1989), pp. 127-139.
16. John D. Finnerty, "Measuring the Duration of a Floating-Rate Bond," Journal of Portfolio Management (Summer 1989), pp. 67-72. Reprinted in Sanjay K. Nawalkha and Donald R. Chambers, eds., Interest Rate Risk Measurement and Management. Institutional Investor Books, New York, 1999, ch. 32.
17. John D. Finnerty and Victor M. Borun, "An Analysis of Unbundled Stock Units," Global Finance Journal (Fall 1989), pp. 47-69.
18. John D. Finnerty and Michael Rose, "Arbitrage-Free Spread: A Consistent Measure of Relative Value," Journal of Portfolio Management (Spring 1991), pp. 65-77.
19. John D. Finnerty, "The Time Warner Rights Offerings: A Case Study in Financial Engineering," Journal of Financial Engineering (June 1992), pp. 38-61.
20. John D. Finnerty, "The Advance Refunding of Nonredeemable High-Coupon Corporate Debt Through In-Substance Defeasance," Journal of Financial Engineering (September 1992), pp. 150-173.
21. Douglas R. Emery and John D. Finnerty, "A Review of Recent Research Concerning Corporate Debt Provisions," Financial Markets, Institutions & Instruments (December 1992), pp. 23-39.
22. John D. Finnerty and Dean Leistikow, "College Tuition Prepayment Programs: Description, Investment Portfolio Composition, and Contract Pricing," Journal of the Midwest Finance Association (1992), pp. 165-174.
23. John D. Finnerty, "Comment: The Need to Enhance the Effectiveness of Discussants and Some Suggested Guidelines for Session Organizers and Discussants," Financial Practice and Education (Spring/Summer 1993), pp. 15-18.
24. John D. Finnerty and Dean Leistikow, "The Behavior of Equity and Debt Risk Premiums," Journal of Portfolio Management (Summer 1993), pp. 73-84.
25. John D. Finnerty, "Interpreting SIGNs," Financial Management (Summer 1993), pp. 34-47.

26. John D. Finnerty, "Indexed Sinking Fund Debentures: Valuation and Analysis," Financial Management (Summer 1993), pp. 76-93.
27. John D. Finnerty and Robert J. Kunze, "Arranging Financing for Biotechnology Ventures," Financier (May 1994), pp. 20-34.
28. John D. Finnerty, "Valuing Corporate Equity When Value Additivity May Not Hold: The Case of the Newhouse Estate Valuation," Financial Practice and Education (Spring/Summer 1994), pp. 107-115.
29. John D. Finnerty and Dean Leistikow, "The Behavior of Equity and Debt Risk Premiums": Reply to Comment, Journal of Portfolio Management (Summer 1994), pp. 101-102.
30. John D. Finnerty, "Range Floaters: Pricing a Bet on the Future Course of Short-Term Interest Rates," Financier (November 1994), pp. 20-27. Reprinted in John D. Finnerty and Martin S. Fridson, eds., The Yearbook of Fixed Income Investing 1995. Irwin Professional Publishing, Chicago, 1996, ch. 8.
31. John D. Finnerty, "Some Suggested Guidelines for Reviewers," Financial Practice and Education (Fall/Winter 1994), pp. 22-24.
32. John D. Finnerty, Iftexhar Hasan, and Yusif Simaan, "Designing an Efficient Investment Strategy for Hedging the Future Cost of a College Education," Journal of Investing (Spring 1996), pp. 47-58.
33. John D. Finnerty, "Credit Derivatives, Infrastructure Finance, and Emerging Market Risk," Financier (February 1996), pp. 64-75.
34. John D. Finnerty, "Adjusting the Binomial Model for Default Risk," Journal of Portfolio Management (Winter 1999), pp. 93-103.
35. John D. Finnerty, "The PricewaterhouseCoopers Credit Derivatives Primer: Total Return Swaps," Financier (vol. 7, 2000), pp. 66-77.
36. John D. Finnerty, "Premium Debt Swaps, Tax-Timing Arbitrage, and Debt Service Parity," Journal of Applied Finance (vol. 11, 2001), pp. 17-22.
37. John D. Finnerty and Mark S. Brown, "An Overview of Derivatives Litigation, 1994 to 2000," Fordham Journal of Corporate & Financial Law (vol. 7, 2001), pp. 131-158.
38. John D. Finnerty and Dwight Grant, "Alternative Approaches to Testing Hedge Effectiveness under SFAS No. 133," Accounting Horizons (June 2002), pp. 95-108.
39. John D. Finnerty and Douglas R. Emery, "Corporate Securities Innovation: An Update," Journal of Applied Finance (Spring/Summer 2002), pp. 21-47.
40. John D. Finnerty, "Adjusting the Comparable-Company Method for Tax Differences when Valuing Privately Held "S" Corporations and LLCs," Journal of Applied Finance (Fall/Winter 2002), pp. 15-30.

41. John D. Finnerty and Murray Grenville, "An Introduction to Credit Swaps," Financier (vol. 9, 2002), pp. 51-63.
42. John D. Finnerty and Murray Grenville, "An Introduction to Credit Spread Options," Financier (vol. 9, 2002), pp. 64-75.
43. John D. Finnerty and Dwight Grant, "Testing Hedge Effectiveness under SFAS 133," The CPA Journal (April 2003), pp. 40-47.
44. John D. Finnerty and George M. Pushner, "An Improved Two-Trader Model for Measuring Damages in Securities Fraud Class Actions," Stanford Journal of Law, Business & Finance (Spring 2003), pp. 213-263.
45. John D. Finnerty and Douglas R. Emery, "The Value of Corporate Control and the Comparable Company Method of Valuation," Financial Management (Spring 2004), pp. 91-99.
46. John D. Finnerty, "Exact Formulas for Pricing Bonds and Options When Interest Rate Diffusions Contain Jumps," Journal of Financial Research (Fall 2005), pp. 319-341.
47. John D. Finnerty, "Extending the Black-Scholes-Merton Model to Value Employee Stock Options," Journal of Applied Finance (Fall/Winter 2005), pp. 25-54.
48. John D. Finnerty, Michael J. McAllister, and Maureen M. Chakraborty, "Calculating Damages in Broker Raiding Cases," Stanford Journal of Law, Business & Finance (Spring 2006), pp. 261-297.
49. John D. Finnerty, "Using Contingent-Claims Analysis to Value Opportunities Lost Due to Moral Hazard Risk," Journal of Risk (Spring 2006), pp. 55-83.
50. John D. Finnerty and Gautam Goswami, "Determinants of the Settlement Amount in Securities Fraud Class Action Litigation," Hastings Business Law Journal (Summer 2006), pp. 453-486.
51. John D. Finnerty and Mary Kuan, "When the Insurance Regulators Sneeze, the Hybrid Market Can Catch a Cold," Journal of Insurance Regulation (Summer 2007), pp. 87-120.
52. John D. Finnerty, "A Closer Look at Correction for False Discovery Bias When Making Multiple Comparisons," Journal of Forensic Economics (December 2009), pp. 55-62.
53. John D. Finnerty, Jeffrey Turner, Jack Chen, and Rachael Park, "Regulatory Uncertainty and Financial Contagion: Evidence from the Hybrid Capital Securities Market," Financial Review (February 2011), pp. 1-42. (Lead Article)
54. John D. Finnerty and Kishlaya Pathak, "A Review of Recent Derivatives Litigation," Fordham Journal of Corporate & Financial Law (vol. 16, 2011), pp. 73-123.
55. John D. Finnerty, Jie Jiao, and An Yan, "Convertible Securities in Merger Transactions," Journal of Banking and Finance (January 2012), pp. 275-289.

56. John D. Finnerty, "An Average-Strike Put Option Model of the Marketability Discount," Journal of Derivatives (Summer 2012), pp. 53-69.
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Exhibit E

Exhibit E

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DISTRICT COURT
CLARK COUNTY, NEVADA

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

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

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

Page 30 1 for an expert conclusion. 2 MS. LINDSAY: Join. 3 THE WITNESS: It's not uncommon for 4 interim C.E.O.'s to be considered for the permanent 5 C.E.O. role. 6 BY MR. KRUM: 7 Q. Did you have any discussions with any of 8 Margaret Cotter, Bill Gould and/or Doug McEachern 9 about Ellen Cotter as a candidate or possible 10 candidate for the C.E.O. position? 11 A. Not to -- not to my recollection. 12 Q. Up to this point in time just prior to 13 the candidate interviews that occurred on a Friday 14 when Ellen Cotter called you and told you she was 15 recusing herself because she was formally a 16 candidate, with whom had you interacted or 17 interfaced at RDI in connection with the C.E.O. 18 search? 19 A. We communicated with the entire search 20 committee, but I would say most of the communication 21 was with Ellen. 22 Q. Did you also communicate with Craig 23 Tomkins? 24 A. I can't recall. 25 MS. LINDSAY: Objection. Vague.	Page 31 1 THE WITNESS: Very minimally, if so. 2 BY MR. KRUM: 3 Q. Directing your attention to the next 4 sentence that begins, "This includes converting 5 their resumes to our format" and so forth, did Korn 6 Ferry actually do that with respect to any internal 7 candidate at RDI for the RDI C.E.O. position? 8 MS. LINDSAY: Objection. Vague. 9 THE WITNESS: Not to my recollection. 10 BY MR. KRUM: 11 Q. Did you ever -- strike that. 12 Did you or, to your knowledge, anybody 13 else at Korn Ferry ever communicate with Wayne Smith 14 regarding his candidacy? 15 A. Yeah. I had a call with Wayne toward 16 the back end of the process. And that's typical. 17 Internal candidates are sort of evaluated last, 18 they're known commodities. And so I had a 45-minute 19 phone call with -- with Wayne relative to his 20 candidacy. 21 Q. When did that occur relative in time to 22 the candidate interviews that occurred on the Friday 23 about which you testified already? 24 A. I think probably in the weeks just 25 preceding, is my gut.
Page 32 1 Q. And then what else, if anything, 2 happened with respect to Mr. -- with respect to 3 Wayne Smith's candidacy? 4 MS. LINDSAY: Objection. Vague. 5 THE WITNESS: I don't -- I don't believe 6 he was formally interviewed by the board. 7 BY MR. KRUM: 8 Q. What did -- what did Korn Ferry do, if 9 anything, beyond the conversation you had with him; 10 that is, in connection with his candidacy? 11 A. That was essentially it. We had a very 12 candid conversation. And then Wayne recognized 13 that, you know, 90 percent of the time when a board 14 hires a search firm, it's the external candidate 15 that wins the day. 16 Q. Did you ever speak to any other internal 17 candidate or possible candidate? 18 MR. VERA: Objection. Vague. 19 MS. LINDSAY: Join. 20 THE WITNESS: I can't recall. 21 BY MR. KRUM: 22 Q. More particularly, did you speak to the 23 other person that Ellen had mentioned as a candidate 24 or possible candidate during the June 20 -- 25 A. I can't recall who that was, so --	Page 33 1 Q. If I told you it was Andrzej 2 Matyczynski, would that prompt your memory? 3 A. That would. 4 Q. Did you speak with him? 5 MR. VERA: I'm going to object. It's 6 not clear whether you're talking about the entire 7 Korn Ferry team or just this individual. 8 BY MR. KRUM: 9 Q. Okay. 10 A. I can't -- think I had a conversation 11 with Andrzej. 12 Q. Do you recall the sum and substance of 13 that conversation? 14 A. No. 15 Q. Was there any discussion with Ellen 16 Cotter on -- at the June 20 meeting about what role, 17 if any, her sister Margaret Cotter would have in the 18 C.E.O. search process? 19 MS. LINDSAY: Objection. Vague. 20 THE WITNESS: She was a member of the 21 search committee along with Doug and Bill and Ellen. 22 BY MR. KRUM: 23 Q. Did you have any discussions with Ellen 24 Cotter regarding the candidates that were 25 interviewed on the Friday?

Exhibit F

Exhibit F



Published on Reading International Investor Center (<http://investor.readingrdi.com>) on 07-18-2016

Board of Directors of Reading International Rejected Non-Binding Indication of Interest

Release Date:

7/18/16 6:00 am EDT

Terms:

Corporate ⁽¹⁾

Dateline City:

LOS ANGELES

LOS ANGELES--(BUSINESS WIRE ⁽²⁾)--Reading International, Inc. (NASDAQ: RDI) ("Reading" or the "Company") confirmed today that in June 2016, it rejected an unsolicited, non-binding indication of interest from a third party to acquire all of Reading's outstanding stock at \$17 per share. The non-binding indication of interest, and its rejection, were disclosed last week by Board member James J. Cotter, Jr., in a public filing he made in the derivative litigation in the District Court for Clark County, Nevada.

To clarify the record, our Board of Directors, after receiving input from management and its outside advisors, carefully evaluated the indication of interest. Following this review, the 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. Reading's Board strongly believed that the proposed transaction was not in the best interest of our Company or our stockholders.

The statements made by Mr. Cotter, Jr. in his litigation filing were not authorized by the Company, do not constitute Company communications, and the Company takes no responsibility for their accuracy. Typically, it is not our practice to disclose unsolicited expressions of interest and Reading undertakes no obligation to further update this disclosure.

About Reading International, Inc.

Reading International (<http://www.readingrdi.com> ⁽³⁾) is in the business of owning and operating cinemas and developing, owning, and operating real estate assets. Our business consists primarily of:

- the development, ownership, and operation of multiplex cinemas in the United States, Australia, and New Zealand; and
- the development, ownership, and operation of retail and commercial real estate in Australia, New Zealand, and the United States, including entertainment-themed centers in Australia and New Zealand and live theater assets in Manhattan and Chicago in the United States.

Reading manages its worldwide business under various brands:

- in the United States, under the
 - Reading Cinema brand (<http://www.readingcinemasus.com> ⁽⁴⁾);
 - Angelika Film Center brand (<http://www.angelikafilmcenter.com> ⁽⁵⁾);
 - Consolidated Theatres brand (<http://www.consolidatedtheatres.com> ⁽⁶⁾);
 - City Cinemas brand (<http://www.citycinemas.com> ⁽⁷⁾);
 - Beekman Theatre brand (<http://www.beekmantheatre.com> ⁽⁸⁾);
 - The Paris Theatre brand (<http://www.theparistheatre.com> ⁽⁹⁾);
 - Liberty Theatres brand (<http://libertytheatresusa.com> ⁽¹⁰⁾); and
 - Village East Cinema brand (<http://villageeastcinema.com> ⁽¹¹⁾).
- in Australia, under the
 - Reading Cinema brand (<http://www.readingcinemas.com.au> ⁽¹²⁾);
 - Newmarket brand (<http://readingnewmarket.com.au> ⁽¹³⁾); and
 - Red Yard brand (<http://www.redyard.com.au> ⁽¹⁴⁾).
- in New Zealand, under the
 - Reading Cinema brand (<http://www.readingcinemas.co.nz> ⁽¹⁵⁾);
 - Rialto brand (<http://www.rialto.co.nz> ⁽¹⁶⁾);
 - Reading Properties brand (<http://readingproperties.co.nz> ⁽¹⁷⁾);
 - Courtenay Central brand (<http://www.readingcourtenay.co.nz> ⁽¹⁸⁾); and
 - Steer n' Beer restaurant brand (<http://steembeer.co.nz> ⁽¹⁹⁾).

Cautionary Statement

This press release contains forward-looking statements within the meaning of Section 27A of the Securities Act of 1933 and Section 21E of the Securities Exchange Act of 1934 (the "Exchange Act").

For a detailed discussion of these and other risk factors, please refer to Reading International's Annual Report on Form 10-K for the year ended December 31, 2015 and other filings Reading International makes from time to time with the Securities and Exchange Commission (the "SEC"), which are available on the SEC's Web site (<http://www.sec.gov> ⁽²⁰⁾).

RDI005829A1481

Investors are cautioned not to place undue reliance on our forward-looking statements, which speak only as of the date such statements are made. Reading International does not undertake any obligation to publicly update any forward-looking statements to reflect events, circumstances or new information after the date of this press release, or to reflect the occurrence of unanticipated events.

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English

Contact:

Reading International, Inc.
Dev Ghose
Executive Vice President & Chief Financial Officer
(213) 235-2240
or
Andrzej Matyczynski
Executive Vice President - Global Operations
(213) 235 2240
or
Joele Frank, Wilkinson Brimmer Kat cher
Kelly Sullivan or Matthew Gross
(212) 355-4449

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[18] <http://cts.businesswire.com/ct/CT?id=smartlink&url=http%3A%2F%2Fwww.readingcourtenay.co.nz&esheet=51382674&newsitemid=20160718005324&lan=en-US&anchor=http%3A%2F%2Fwww.readingcourtenay.co.nz&index=16&md5=90b1b962d2e00f056491bd06717e05da>
[19] <http://cts.businesswire.com/ct/CT?id=smartlink&url=http%3A%2F%2Fsteembeer.co.nz&esheet=51382674&newsitemid=20160718005324&lan=en-US&anchor=http%3A%2F%2Fsteembeer.co.nz&index=17&md5=4f7725a692214c7140f0fb1cc698eb8c>
[20] <http://cts.businesswire.com/ct/CT?id=smartlink&url=http%3A%2F%2Fwww.sec.gov&esheet=51382674&newsitemid=20160718005324&lan=en-US&anchor=http%3A%2F%2Fwww.sec.gov&index=18&md5=2506816d6a7d301c3fdc7a5c8f315e93>

RDI005829A1482

Exhibit G

Exhibit G

1 UNITED STATES DISTRICT COURT
2 NORTHERN DISTRICT OF CALIFORNIA
3

4 625 3rd STREET ASSOCIATES, LP, a No. C-09-00564-WHA
California limited partnership,
5

Plaintiff,

6 vs.

7 ALLIANT CREDIT UNION, An Illinois
corporation, STANLEY ABRAMS, an
8 individual, and DOES 1 through 15,
inclusive,
9

Defendants.
10 _____/

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12
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14 Deposition of
15 ALBERT S. NAGY
16 June 24, 2010
17
18

19 Reported by
Carolyn M. Mann
20 CSR 10066
21

22 SHARI MOSS & ASSOCIATES
Certified Shorthand Reporters
23 1838 El Camino Real, #108
Burlingame, California 94010
24 (415) 402-0004
(650) 692-8900
25 FAX: (650) 692-8909

Page 1

1 MR. WIENER: I don't think so.

2 (Recess taken.)

3 MR. WIENER: Back on the record.

4 Q. Before I forget, we're closing in on -- we got
5 about 15 minutes to go, but we're closing in on three
6 hours. I didn't know how long we were going to be here,
7 so I made three separate checks, each for an hour. So
8 I'll hand those to you now, although . . .

9 A. That's fine.

10 MR. GLAESSNER: No worries.

11 MR. WIENER: Q. Except they forgot to, they
12 forgot to sign one of them. I'm going to give you two
13 of them for two hours. I owe you an hour. I'll get
14 that signed, hopefully.

15 A. You're not an official signator?

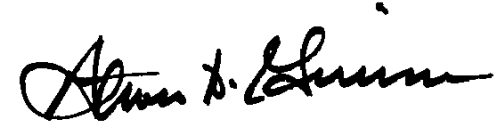
16 Q. Not on this account. That's from co-counsel.
17 Before we leave, I'll track him down the hall, have him
18 sign it. Okay.

19 Do you consider yourself qualified to analyze
20 credit union financial statements?

21 A. No.

22 Q. I'd like you to turn to page 8 of 29 of your
23 report, item 10, first paragraph. Actually, never mind.

24 Turning to page 10 of 29, item 13, where it
25 starts, "An internet search produced," is this the



CLERK OF THE COURT

COHEN|JOHNSON|PARKER|EDWARDS

H. STAN JOHNSON, ESQ.

Nevada Bar No. 00265

sjohnson@cohenjohnson.com

255 East Warm Springs Road, Suite 100

Las Vegas, Nevada 89119

Telephone: (702) 823-3500

Facsimile: (702) 823-3400

QUINN EMANUEL URQUHART & SULLIVAN, LLP

CHRISTOPHER TAYBACK, ESQ.

California Bar No. 145532, *pro hac vice*

christayback@quinnemanuel.com

MARSHALL M. SEARCY, ESQ.

California Bar No. 169269, *pro hac vice*

marshallsearcy@quinnemanuel.com

865 South Figueroa Street, 10th Floor

Los Angeles, CA 90017

Telephone: (213) 443-3000

Attorneys for Defendants Margaret Cotter,
Ellen Cotter, Douglas McEachern, Guy Adams, and Edward Kane

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiffs,

v.

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

Case No.: P-14-082942-E

Dept. No.: XI

Related and Coordinated Cases

BUSINESS COURT

**INDIVIDUAL DEFENDANTS' MOTION
FOR SUMMARY JUDGMENT (NO. 1)
RE: PLAINTIFF'S TERMINATION AND
REINSTATEMENT CLAIMS**

Judge: Hon. Elizabeth Gonzalez

Date of Hearing: 10 / 25 / 16

Time of Hearing: 8 : 30 AM

1 **TO ALL PARTIES, COUNSEL, AND THE COURT:**

2 Pursuant to Nevada Rule of Civil Procedure 56, Defendants Margaret Cotter, Ellen
3 Cotter, Guy Adams, Edward Kane, Douglas McEachern, Judy Coddington, and Michael Wrotniak
4 (collectively, the “Individual Defendants”),¹ by and through their counsel of record,
5 Cohen|Johnson|Parker|Edwards and Quinn Emanuel Urquhart & Sullivan, LLP, hereby submit
6 this Motion for Summary Judgment (No. 1) as to the First, Second, Third, and Fourth Causes of
7 Action in Plaintiff’s Second Amended Complaint, to the extent that they assert claims based on
8 Plaintiff’s June 12, 2015 termination as CEO and President of Reading International, Inc. (“RDI”
9 or “the Company”), and to the extent that Plaintiff seeks damages and/or an order (1) declaring
10 that his termination was “legally ineffectual and is of no force and effect,” and (2) entering an
11 injunction that reinstates him as the Company’s CEO and President.

12 This Motion is based upon the following Memorandum of Points and Authorities, the
13 accompanying Declaration of Noah S. Helpert (“HD”) and exhibits thereto, the pleadings and
14 papers on file, and any oral argument at the time of a hearing on this motion.

15 Dated: September 23, 2016

16 **COHEN|JOHNSON|PARKER|EDWARDS**

17
18 By: /s/ H. Stan Johnson
19 H. STAN JOHNSON, ESQ.
20 Nevada Bar No. 00265
21 sjohnson@cohenjohnson.com
22 255 East Warm Springs Road, Suite 100
23 Las Vegas, Nevada 89119

24 **QUINN EMANUEL URQUHART &
25 SULLIVAN, LLP**
26 CHRISTOPHER TAYBACK, ESQ.
27 California Bar No. 145532, *pro hac vice*
28 christayback@quinnemanuel.com
MARSHALL M. SEARCY, ESQ.
California Bar No. 169269, *pro hac vice*
marshallsearcy@quinnemanuel.com

26 ¹ Individual Defendants Coddington and Wrotniak were not members of the RDI Board at the
27 time of Plaintiff’s termination; they joined months after the fact and cannot be liable for any
28 claims involving that decision. They join this motion out of an abundance of caution given
Plaintiff’s failure to accurately parse the causes of action in his Second Amended Complaint.

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865 South Figueroa Street, 10th Floor
Los Angeles, CA 90017

*Attorneys for Defendants Margaret Cotter, Ellen
Cotter, Douglas McEachern, Guy Adams, and
Edward Kane*

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NOTICE OF MOTION

TO: LEWIS ROCA ROTHGERBER CHRISTIE LLP, Attorneys for Plaintiff.

PLEASE TAKE NOTICE that the above Motion will be heard the ²⁵ day of Oct.,
^{XI}
2016 at 8 : 3 0 AM in Department ~~XXVII~~ of the above designated Court or as soon
thereafter as counsel can be heard.

Dated: September 23, 2016

COHEN|JOHNSON|PARKER|EDWARDS

By: /s/ H. Stan Johnson
H. STAN JOHNSON, ESQ.
Nevada Bar No. 00265
sjohnson@cohenjohnson.com
255 East Warm Springs Road, Suite 100
Las Vegas, Nevada 89119

**QUINN EMANUEL URQUHART &
SULLIVAN, LLP**
CHRISTOPHER TAYBACK, ESQ.
California Bar No. 145532, *pro hac vice*
christayback@quinnemanuel.com
MARSHALL M. SEARCY, ESQ.
California Bar No. 169269, *pro hac vice*
marshallsearcy@quinnemanuel.com
865 South Figueroa Street, 10th Floor
Los Angeles, CA 90017

*Attorneys for Defendants Margaret Cotter, Ellen
Cotter, Douglas McEachern, Guy Adams, and
Edward Kane*

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 To the extent that Plaintiff asserts claims challenging his termination as CEO and
4 President of Reading International, Inc. (“RDI” or “the Company”) and seeks reinstatement in
5 those positions, he is attempting to accomplish derivatively what he cannot individually. RDI’s
6 Bylaws provide that its officers “hold office at the pleasure of the Board of Directors,” and “may
7 be removed at any time, with or without cause” should a majority of the Board vote accordingly.
8 Plaintiff’s Employment Contract contemplates that Plaintiff could be fired with or without cause,
9 and strictly limits his relief following a termination to monetary compensation. Unhappy with
10 the RDI Board of Directors’ (“the Board”) conclusion that his brief and divisive tenure should
11 come to an end, Plaintiff now claims that the Board’s decision to remove him—after months of
12 internal debate and numerous attempts to address and rectify his deficiencies—was somehow a
13 violation of its fiduciary duties that injured RDI. It was not, and summary judgment is warranted
14 because Plaintiff has not met (and cannot meet) *any* of the elements required to reach trial on his
15 termination and reinstatement claims.

16 First, the Board’s termination of Plaintiff cannot support a breach of fiduciary claim as a
17 matter of law. Courts regularly reject attempts by former officers to utilize fiduciary duty law
18 when challenging the propriety of their removals, especially where (as here) a bylaw authorized
19 their firing without cause. These courts have restricted their jurisdiction for good reason; actions
20 such as Plaintiff’s threaten to transform every officer termination into a derivative attack on a
21 board’s exercise of its duties, thereby requiring Nevada courts to become arbiters months (or
22 years) after the fact of the unique judgments a board must make regarding officer performance.
23 Plaintiff’s attempted expansion of fiduciary duty law to cover purely managerial decisions by a
24 board is bad policy and contrary to well-reasoned precedent.

25 Second, even on the merits, the Board’s decision to terminate Plaintiff and the process it
26 utilized leading up to that outcome were entirely appropriate and unquestionably protected by the
27 “business judgment” rule. As the evidence shows, the Board was faced with a young,
28 inexperienced CEO who could not work well with certain key executives (and attempted to

1 undermine central figures within the Company rather than address pending issues); acted in a
2 manner that was violent and abusive to fellow employees and Board members; and demonstrated
3 a lack of understanding with respect to metrics of RDI's businesses. The Board's vote to
4 terminate Plaintiff, even in the face of repeated legal threats by Plaintiff to "ruin them
5 financially" if they were to remove him, was (applying the standard articulated by the Supreme
6 Court of Nevada in *Shoen v. SAC Holding Corp.*, 122 Nev. 621, 632, 639-40 (2006)) at a
7 minimum taken for the benefit of the Company and therefore immune from Plaintiff's fiduciary
8 challenge. Similarly, while the Board was in no way required to provide Plaintiff with notice or
9 undertake a particular process, it repeatedly made Plaintiff aware of his deficiencies, attempted
10 to correct them, gave him a platform to defend himself, and debated his removal informally and
11 formally over several months. This was exactly how a board was supposed to act under both
12 Nevada law and RDI's Bylaws. Plaintiff's fiduciary challenge fails.

13 Third, Plaintiff's fiduciary duty claims also fail on the merits because there is no
14 evidence RDI suffered any injury from Plaintiff's termination, or that the purported breaches
15 identified by Plaintiff proximately caused damages. To sustain a breach of fiduciary claim,
16 Plaintiff must produce evidence of "economic harm suffered." He cannot. The Company's
17 share price has traded at or above the value it held as of Plaintiff's firing for the majority of the
18 ensuing period, and uncontroverted evidence reveals that insiders within RDI as well as its major
19 investors, unaffiliated with the parties, are unanimous in their conclusion that Plaintiff's
20 termination made no difference to the Company's performance or business plan. Absent any
21 harm or causation, Plaintiff's fiduciary duty claims are unsupportable.

22 Fourth, now that the evidence is in, it is plain that Plaintiff, to the extent that he is
23 complaining of his termination and seeks reinstatement, lacks standing to serve as a derivative
24 plaintiff. Clear economic antagonisms exist between Plaintiff and other stockholders. The
25 remedy sought by Plaintiff is also entirely personal; RDI's stockholders do not share Plaintiff's
26 interest in regaining his positions. Other litigation is pending regarding Plaintiff's firing and
27 ultimate control of the Company, and Plaintiff's conduct—both before and after the filing of this
28 suit—indicates that he is simply using his purported derivative claims as leverage to obtain a

1 favorable global settlement. The evidence further shows that Plaintiff's action is driven by
2 vindictiveness, both as to certain Board members and to his sisters. And outside shareholders
3 unrelated to the Cotters have stated that they would not "reinstate" Plaintiff and that he is not
4 "the best adequate representative." In their totality, these factors fatally undermine Plaintiff's
5 attempted assertion of derivative claims regarding his termination and reinstatement.

6 Fifth, in addition to these flaws, the relief demanded by Plaintiff—reinstatement—is
7 untenable and unsupportable. Equity jurisdiction does not lie where an officer was removable
8 without cause (like Plaintiff). Nor is specific performance available where, as here, the contract
9 damages provided to Plaintiff are plainly an adequate remedy. Further, there are strong policy
10 reasons against compelling the Board to reinstate Plaintiff against its wishes, including the
11 difficulty of supervision and the fact that Plaintiff's reinstatement would perpetuate a divided
12 company. Plaintiff had no vested right to remain President and CEO and, even if reinstated,
13 could simply be terminated again immediately by the Board—another factor cutting against
14 reinstatement since equity does not require the taking of futile actions. More time has elapsed
15 since Plaintiff's termination than he served as CEO, and the Company has moved on, which also
16 counsels against reinstatement. Finally, in light of the "irreparable animosity" between Plaintiff
17 and other directors, reinstatement would do nothing more than harm RDI's business.

18 **II. FACTUAL BACKGROUND**

19 **A. Plaintiff Joins RDI at His Father's Behest**

20 RDI is an internationally diversified company, incorporated in Nevada, principally
21 focused on the development, ownership, and operation of cinema exhibition and real property
22 assets in the United States, Australia, and New Zealand. (HD ¶ 22.)² James J. Cotter, Sr.
23 became the CEO and Chairman of RDI's Board in December 2000. (*Id.* ¶¶ 22-23.) Plaintiff, the
24 son of James J. Cotter, Sr., claims to be both a holder of non-voting shares of RDI stock and a
25 co-trustee of a trust which owns a large number of the Company's voting and non-voting shares.

26
27 ² The documentary and testimonial evidence supporting this Motion is attached to the
28 Declaration of Noah S. Helpert. The citations to the "HD" refer to the paragraphs of that
Declaration that authenticate and correspond to the relevant supporting evidence.

1 (Second Am. Compl. (“SAC”) ¶ 17.) Plaintiff was added to the Board in March 2002 at his
2 father’s behest, despite the fact that he had never previously served on the board of a public
3 company. (HD ¶ 11(c).) He was appointed Vice Chairman of the Company in September 2007,
4 and then President in June 2013. (*Id.* ¶ 11(b).) The position of President of RDI, while provided
5 for in the Bylaws, was reactivated specifically for Plaintiff, as there had been no President for
6 some time and he did not succeed anyone in that position. (*Id.* ¶ 11(e).)

7 Following his appointment as President, Plaintiff and RDI executed an agreement dated
8 June 3, 2013 (the “Employment Agreement”), which governed Plaintiff’s service “in the capacity
9 of President.” (*Id.* ¶¶ 21(a)-(b).) The Employment Agreement provided that Plaintiff would not
10 receive any damages in the event of a “for cause” termination. (*Id.* ¶ 21(c).) In the event that
11 Plaintiff was terminated without cause, he was entitled to receive 12 months of compensation
12 and benefits following notice of his termination; however, the Employment Agreement provided
13 no relief other than monetary damages, and contained no provision allowing for Plaintiff’s
14 reinstatement or any other form of specific performance by RDI. (*Id.*)

15 **B. Plaintiff Becomes CEO of RDI Following His Father’s Death**

16 James J. Cotter, Sr. was compelled to resign from his positions with RDI on August 7,
17 2014 for health-related reasons, and subsequently passed away on September 13, 2014. (*Id.*
18 ¶¶ 24, 28.) Faced with an emergency vacancy on no notice, the Board unanimously appointed
19 Plaintiff as CEO at a meeting held on August 7, 2014. (*Id.* ¶ 28.) Plaintiff was elected as CEO
20 pursuant to the Company’s Amended and Restated Bylaws, which provide: “Any person may
21 hold one or more offices and each officer shall hold office until his successor has been duly
22 elected and qualified or until his death or until he shall resign or is removed in the manner as
23 hereinafter provided for such term as may be prescribed by the Board of Directors from time to
24 time.” (*Id.* ¶ 20(a).) The Amended and Restated Bylaws of RDI further provide: “The officers
25 of the Corporation shall hold office at the pleasure of the Board of Directors. Any officer elected
26 or appointed by the Board of Directors . . . may be removed at any time, with or without cause,
27 by the Board of Directors by a vote of not less than a majority of the entire Board at any meeting
28

1 thereof” (*Id.* ¶ 20(b).) As Plaintiff has agreed, RDI’s Board always had the prerogative to
2 hire and fire the Company’s officers, subject to whatever contracts might exist. (*Id.* ¶ 13(c).)

3 Besides Plaintiff, the seven remaining members of the Board at the time of Plaintiff’s
4 appointment as CEO were: (1) Margaret Cotter, Plaintiff’s sister, who had served as a director
5 since 2002 and Vice-Chairman of the Board since 2014, runs RDI’s live theater division,
6 manages certain live theater real estate, and has been responsible for re-development work on
7 RDI’s Manhattan theater properties; (2) Ellen Cotter, Plaintiff’s sister, who had served as a
8 director since March 2013 and Chairman of the Board since 2014, been an RDI employee since
9 1998, and ran the day-to-day operations of the Company’s domestic cinema operations;
10 (3) Edward Kane, who had served as a director since October 2004 (and before that from 1985-
11 1998) and served as Chair of the Tax Oversight and the Compensation and Stock Option
12 Committees; (4) Guy Adams, who had served as a director since January 2014 and is a registered
13 investment advisor and experienced independent director on public company boards; (5) Douglas
14 McEachern, who had served as a director since May 2012 and was an audit partner at Deloitte &
15 Touche from 1985-2009; (6) Timothy Storey, who had served as a director since December
16 2011; and (7) William Gould, who had served as a director since October 2004. (*Id.* ¶¶ 22, 28.)

17 **C. Significant Problems With Plaintiff’s Managerial Skills Become Obvious**

18 While it was hoped that he would develop on the job, Plaintiff—at the time of his
19 election as CEO—lacked experience in virtually all of the business areas relevant to RDI’s
20 operations, including, but not limited to, non-agricultural commercial real estate operation and
21 development, live theater, cinema, international business, and management. (*Id.* ¶¶ 8(a), (k), (p),
22 (v); 3(b); 4(h)-(i); 11(d).) The non-Cotter members of the Board soon grew concerned that
23 Plaintiff needed help both in running the company and building bridges with Ellen and Margaret
24 Cotter; accordingly, the Board began discussing getting Plaintiff a management coach. (*Id.*
25 ¶¶ 4(j); 33(a).) Plaintiff’s management style was perceived by the Board as “closed door” and
26 unengaged with RDI’s employees, and some Board members saw Plaintiff as “very reluctant and
27 very slow to make decisions,” and understood that his “office is a place where documents go to
28 get lost.” (*Id.* ¶¶ 4(f)-(g); 8(d), (o); 12(f).) Members of the RDI Board soon questioned the

1 value that Plaintiff added as the Company's CEO based on obvious defects. (*Id.* ¶¶ 3(d), (f)-
2 (g); 8(r), (u).)

3 **1. Plaintiff Could Not Work With, and Instead Undermined, Key**
4 **Executives**

5 Members of the Board were concerned with Plaintiff's inability to communicate, create
6 trust, and work cooperatively with fellow executives of the Company. (*Id.* ¶¶ 8(t), (w); 33(b).)
7 For instance, Plaintiff decided to conduct an examination of RDI's cinema operations in the fall
8 of 2014, but went around Ellen Cotter to do so—which engendered criticism from the Board
9 both for Plaintiff's duplicity and for spending his time on a pursuit better left to an independent
10 consultant. (*Id.* ¶ 8(b).) Contrary to the advice of various Board members, Plaintiff continued
11 his review of RDI's individual cinemas, and even traveled to various cinemas in Hawaii without
12 identifying himself or visiting management in a surreptitious effort to take pictures of the
13 theaters there and ultimately embarrass Ellen Cotter over the perceived need for renovations.
14 (*Id.* ¶¶ 5(c); 8(c), (n); 12(d).) Similarly, several members of the Board were alarmed by
15 Plaintiff's unilateral effort to hire a food and beverage manager without involving Ellen Cotter,
16 despite the fact that such operations fell within her purview. (*Id.* ¶¶ 8(y); 36(c).)

17 As with Ellen Cotter, members of the Board believed that Plaintiff needlessly
18 exacerbated discord with Margaret Cotter when, after months of failing to resolve her
19 employment status with the Company, he circulated a short employment contract for her with a
20 cover email outlining approximately 20 reasons why she should not be given an employment
21 contract with RDI. (*Id.* ¶¶ 8(q); 10(a).) In addition, following threats by the producers of
22 STOMP to vacate RDI's Orpheum Theater, various directors became alarmed when Plaintiff,
23 rather than working productively with Margaret Cotter to address the issue, attempted to use the
24 ensuing dispute to embarrass her before the Board. (*Id.* ¶¶ 5(d); 10(b).) Ultimately, the STOMP
25 dispute resulted in an arbitration in which it was determined that Margaret Cotter had done
26 everything required, the STOMP producers had an agenda to leave because they thought the
27 show could make more money elsewhere, and RDI was awarded more than \$2.2 million in
28 attorney's fees. (*Id.* ¶¶ 5(d); 15(g).)