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 XVII
JA4059 – JA4308

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JOINT APPENDIX TO OPENING BRIEFS
FOR CASE NOS. 77648 & 76981

CHRONOLOGICAL INDEX

Date	Description	Vol. #	Page Nos.
2015-06-12	Complaint	I	JA1-JA31
2015-06-18	Amended AOS - Douglas McEachern	I	JA32-JA33
2015-06-18	Amended AOS - Edward Kane	I	JA34-JA35
2015-06-18	Amended AOS - Ellen Cotter	I	JA36-JA37
2015-06-18	Amended AOS - Guy Adams	I	JA38-JA39
2015-06-18	Amended AOS - Margaret Cotter	I	JA40-JA41
2015-06-18	Amended AOS - RDI	I	JA42-JA43
2015-06-18	Amended AOS – Timothy Storey	I	JA44-JA45
2015-06-18	Amended AOS – William Gould	I	JA46-JA47
2015-08-10	Motion to Dismiss Complaint	I	JA48-JA104
2015-08-20	Reading International, Inc. ("RDI")'s Joinder to Margaret Cotter, Ellen Cotter, Douglas McEachern, Guy Adams, & Edward Kane ("Individual Defendants") Motion to Dismiss Complaint	I	JA105-JA108
2015-08-28	T2 Plaintiffs' Verified Shareholder Derivative Complaint	I	JA109-JA126
2015-08-31	RDI's Motion to Compel Arbitration	I	JA127-JA148
2015-09-03	Individual Defendants' Motion to Dismiss Complaint	I	JA149-JA237
2015-10-06	Transcript of 9-10-15 Hearing on Defendants' Motion to Dismiss & Plaintiff Cotter Jr. ("Cotter Jr.")'s Motion for Preliminary Injunction	I, II	JA238-JA256
2015-10-12	Order Denying RDI's Motion to Compel Arbitration	II	JA257-JA259
2015-10-19	Order Re Motion to Dismiss Complaint	II	JA260-JA262
2015-10-22	First Amended Verified Complaint	II	JA263-JA312
2015-11-10	Scheduling Order and Order Setting Civil Jury Trial, Pre-Trial Conference and Calendar Call	II	JA313-JA316

JOINT APPENDIX TO OPENING BRIEFS
FOR CASE NOS. 77648 & 76981

CHRONOLOGICAL INDEX

Date	Description	Vol. #	Page Nos.
2016-02-12	T2 Plaintiffs' First Amended Complaint	II	JA317-JA355
2016-02-23	Transcript of 2-18-16 Hearing on Motion to Compel & Motion to File Document Under Seal	II	JA356-JA374
2016-03-14	Individual Defendants' Answer to Cotter's First Amended Complaint	II	JA375-JA396
2016-03-29	RDI's Answer to Cotter, Jr.'s First Amended Complaint	II	JA397-JA418
2016-03-29	RDI's Answer to T2 Plaintiffs' First Amended Complaint	II	JA419-JA438
2016-04-05	Codding and Wrotniak's Answer to T2 Plaintiffs' First Amended Complaint	II	JA439-JA462
2016-06-21	Stipulation and Order to Amend Deadlines in Scheduling Order	II	JA463-JA468
2016-06-23	Transcript of 6-21-16 Hearing on Defendants' Motion to Compel & Motion to Disqualify T2 Plaintiffs	II	JA469-JA493
2016-08-11	Transcript of 8-9-16 Hearing on Cotter Jr.'s Motion for Partial Summary Judgment, Motion to Compel & Motion to Amend	II, III	JA494-JA518
2016-09-02	Cotter Jr.'s Second Amended Verified Complaint	III	JA519-JA575
2016-09-23	Defendant William Gould ("Gould")'s MSJ	III, IV, V, VI	JA576-JA1400
2016-09-23	MIL to Exclude Expert Testimony of Steele, Duarte-Silva, Spitz, Nagy, & Finnerty	VI	JA1401-JA1485
2016-09-23	Individual Defendants' Motion for Partial Summary Judgment (No. 1) Re: Plaintiff's Termination and Reinstatement Claims ("Partial MSJ No. 1)	VI, VII, VIII, IX	JA1486-JA2216 **(FILED UNDER SEAL JA2136A-D)**

JOINT APPENDIX TO OPENING BRIEFS
FOR CASE NOS. 77648 & 76981

CHRONOLOGICAL INDEX

Date	Description	Vol. #	Page Nos.
2016-09-23	Individual Defendants' Motion for Partial Summary Judgment (No. 2) Re: The Issue of Director Independence ("Partial MSJ No. 2")	IX, X	JA2217-JA2489 **(FILED UNDER SEAL JA2489A-HH)**
2016-09-23	Individual Defendants' Motion for Partial Summary Judgment (No. 3) On Plaintiff's Claims Related to the Purported Unsolicited Offer ("Partial MSJ No. 3")	X, XI	JA2490-JA2583
2016-09-23	Individual Defendants' Motion for Partial Summary Judgment (No. 4) On Plaintiff's Claims Related to the Executive Committee ("Partial MSJ No. 4")	XI	JA2584-JA2689
2016-09-23	Individual Defendants' Motion for Partial Summary Judgment (No. 5) On Plaintiff's Claims Related to the Appointment of Ellen Cotter as CEO ("Partial MSJ No. 5")	XI, XII	JA2690-JA2860
2016-09-23	Individual Defendants' Motion for Partial Summary Judgment (No. 6) Re Plaintiff's Claims Re Estate's Option Exercise, Appointment of Margaret Cotter, Compensation Packages of Ellen Cotter and Margaret Cotter, and related claims Additional Compensation to Margaret Cotter and Guy Adams ("Partial MSJ No. 6")	XII, XIII, XIV	JA2861-JA3336
2016-09-23	Cotter Jr.'s Motion for Partial Summary Judgment ("MPSJ")	XIV, XV	JA3337-JA3697
2016-10-03	Order Granting Cotter Jr.'s Motion to Compel Production of Documents & Communications Re the Advice of Counsel Defense	XV	JA3698-JA3700

JOINT APPENDIX TO OPENING BRIEFS
FOR CASE NOS. 77648 & 76981

CHRONOLOGICAL INDEX

Date	Description	Vol. #	Page Nos.
2016-10-03	Order Re Cotter Jr.'s Motion to Permit Certain Discovery re Recent "Offer"	XV	JA3701-JA3703
2016-10-03	RDI's Joinder to MIL to Exclude Expert Testimony	XV	JA3704-JA3706
2016-10-03	RDI's Joinder to Individual Defendants' Partial-MSJ No. 1	XV	JA3707-JA3717
2016-10-03	RDI's Joinder to Individual Defendants' Partial MSJ No. 2	XV	JA3718-JA3739
2016-10-03	RDI's Joinder to Individual Defendants' Partial MSJ No. 3	XV	JA3740-JA3746
2016-10-03	RDI's Joinder to Individual Defendants' Partial MSJ No. 4	XV	JA3747-JA3799
2016-10-03	RDI's Joinder to Individual Defendants' Partial MSJ No. 5	XV	JA3800-JA3805
2016-10-03	RDI's Joinder to Individual Defendants' Partial MSJ No. 6	XV, XVI	JA3806-JA3814
2016-10-13	Individual Defendants' Opposition to Cotter Jr.'s MPSJ	XVI	JA3815-JA3920
2016-10-13	RDI's Joinder to Individual Defendants' Opposition to Cotter Jr.'s MPSJ	XVI	JA3921-JA4014
2016-10-13	Cotter Jr.'s Opposition to Gould's MSJ	XVI	JA4015-JA4051
2016-10-13	Cotter Jr.'s Opposition to Partial MSJ No. 1	XVI, XVII	JA4052-JA4083
2016-10-13	Cotter, Jr.'s Opposition to Partial MSJ No. 2	XVII	JA4084-JA4111
2016-10-13	Cotter, Jr.'s Opposition to Partial MSJ No. 6	XVII	JA4112-JA4142
2016-10-17	Cotter Jr.'s Appendix of Exhibits ISO Opposition to Individual Defendants' Partial MSJ No. 1	XVII, XVIII	JA4143-JA4311 **(FILED UNDER SEAL JA4151A-C)**

JOINT APPENDIX TO OPENING BRIEFS
FOR CASE NOS. 77648 & 76981

CHRONOLOGICAL INDEX

Date	Description	Vol. #	Page Nos.
2016-10-17	Cotter Jr.'s Appendix of Exhibits ISO Opposition to Individual Defendants' Partial MSJ No. 2	XVIII	JA4312-JA4457
2016-10-17	Cotter Jr.'s Appendix of Exhibits ISO Opposition to Gould's MSJ	XVIII	JA4458-JA4517
2016-10-21	Individual Defendants' Reply ISO of Partial MSJ No. 1	XVIII	JA4518-JA4549
2016-10-21	Individual Defendants' Reply ISO Partial MSJ No. 2	XVIII, XIX	JA4550-JA4567
2016-10-21	RDI's Reply ISO Individual Defendants' Partial MSJ No. 1	XIX	JA4568-JA4577
2016-10-21	RDI's Reply ISO Individual Defendants' Partial MSJ No. 2	XIX	JA4578-JA4588
2019-10-21	RDI's Consolidated Reply ISO Individual Defendants' Partial MSJ Nos. 3, 4, 5 & 6	XIX	JA4589-JA4603
2016-10-21	RDI's Reply ISO Gould's MSJ	XIX	JA4604-JA4609
2016-10-21	Gould's Reply ISO MSJ	XIX	JA4610-JA4635
2016-10-21	Declaration of Bannett ISO Gould's Reply ISO MSJ	XIX	JA4636-JA4677
2016-10-21	Individual Defendants' Reply ISO Partial MSJ Nos. 3, 4, 5, and 6	XIX	JA4678–JA4724
2016-10-26	Individual Defendants' Objections to Declaration of Cotter, Jr. Submitted in Opposition to Partial MSJs	XIX	JA4725-JA4735
2016-11-01	Transcript of 10-27-16 Hearing on Motions	XIX, XX	JA4736-JA4890
2016-12-20	RDI's Answer to Cotter Jr.'s Second Amended Complaint	XX	JA4891-JA4916
2016-12-21	Order Re Individual Defendants' Partial MSJ Nos. 1–6 and MIL to Exclude Expert Testimony	XX	JA4917-JA4920
2016-12-22	Notice of Entry of Order Re Partial MSJ Nos. 1-6 and MIL to Exclude Expert Testimony	XX	JA4921-JA4927

JOINT APPENDIX TO OPENING BRIEFS
FOR CASE NOS. 77648 & 76981

CHRONOLOGICAL INDEX

Date	Description	Vol. #	Page Nos.
2017-10-04	First Amended Order Setting Civil Jury Trial, Pre-Trial Conference, and Calendar Call	XX	JA4928-JA4931
2017-10-11	Individual Defendants' Motion for Evidentiary Hearing Re Cotter Jr.'s Adequacy as Derivative Plaintiff	XX	JA4932-JA4974
2017-10-17	Gould's Joinder to Motion for Evidentiary Hearing re Cotter Jr.'s Adequacy as Derivative Plaintiff	XX	JA4975-JA4977
2017-10-18	RDI's Joinder to Motion for Evidentiary Hearing re Cotter Jr.'s Adequacy as Derivative Plaintiff	XX	JA4978-JA4980
2017-11-09	Individual Defendants' Supplement to Partial MSJ Nos. 1, 2, 3, 5, and 6	XX	JA4981-JA5024
2017-11-21	RDI's Joinder to Individual Defendants' Supplement to Partial MSJ Nos. 1, 2, 3, 5 & 6	XX	JA5025-JA5027
2017-11-27	Transcript of 11-20-17 Hearing on Motion for Evidentiary Hearing re Cotter Jr.'s Adequacy & Motion to Seal	XX	JA5028-JA5047
2017-11-28	Individual Defendants' Answer to Cotter Jr.'s Second Amended Complaint	XX, XXI	JA5048-JA5077
2017-12-01	Gould's Request For Hearing on Previously-Filed MSJ	XXI	JA5078-JA5093
2017-12-01	Cotter Jr.'s Supplemental Opposition to Partial MSJ Nos. 1 & 2 & Gould MSJ	XXI	JA5094-JA5107
2017-12-01	Declaration of Levin ISO Cotter Jr.'s Supplemental Opposition to Partial MSJ Nos. 1 & 2 & Gould MSJ	XXI	JA5108-JA5118

JOINT APPENDIX TO OPENING BRIEFS
FOR CASE NOS. 77648 & 76981

CHRONOLOGICAL INDEX

Date	Description	Vol. #	Page Nos.
2017-12-01	Cotter Jr.'s Supplemental Opposition to Partial MSJ Nos. 2 & 5 & Gould MSJ	XXI	JA5119-JA5134
2017-12-01	Declaration of Levin ISO Cotter Jr.'s Supplemental Opposition to Partial MSJ Nos. 2 & 5 & Gould MSJ	XXI	JA5135-JA5252
2017-12-01	Cotter Jr.'s Supplemental Opposition to Partial MSJ Nos. 2 & 6 & Gould MSJ	XXI	JA5253-JA5264
2017-12-01	Declaration of Levin ISO Cotter Jr.'s Supplemental Opposition to Partial MSJ Nos. 2 & 6 & Gould MSJ	XXI	JA5265-JA5299
2017-12-01	Cotter Jr.'s Supplemental Opposition to Partial MSJ Nos. 2 & 3 & Gould MSJ	XXI, XXII	JA5300-JA5320
2017-12-01	Declaration of Levin ISO Cotter Jr.'s Supplemental Opposition to So-Called MSJ Nos. 2 & 3 & Gould MSJ	XXII	JA5321-JA5509
2017-12-04	Individual Defendants' Reply ISO Renewed Partial MSJ Nos. 1 & 2	XXII	JA5510-JA5537
2017-12-04	Gould's Supplemental Reply ISO of MSJ	XXII	JA5538-JA5554
2017-12-05	Declaration of Bannett ISO Gould's Supplemental Reply ISO MSJ	XXII, XXIII	JA5555-JA5685
2017-12-08	Joint Pre-Trial Memorandum	XXIII	JA5686-JA5717
2017-12-11	Transcript of 12-11-2017 Hearing on [Partial] MSJs, MILs, and Pre-Trial Conference	XXIII	JA5718-JA5792
2017-12-19	Cotter Jr.'s Motion for Reconsideration of Ruling on Partial MSJ Nos. 1, 2 & 3 and Gould's MSJ on OST ("Motion for Reconsideration")	XXIII, XXIV	JA5793-JA5909

JOINT APPENDIX TO OPENING BRIEFS
FOR CASE NOS. 77648 & 76981

CHRONOLOGICAL INDEX

Date	Description	Vol. #	Page Nos.
2017-12-26	Individual Defendants' Opposition to Cotter Jr.'s Motion For Reconsideration	XXIV	JA5910-JA5981
2017-12-27	Gould's Opposition to Cotter Jr.'s Motion for Reconsideration	XXIV	JA5982-JA5986
2017-12-27	Declaration of Bannett ISO Gould's Opposition to Cotter Jr.'s Motion for Reconsideration	XXIV, XXV	JA5987-JA6064
2017-12-28	Order Re Individual Defendants' Partial MSJs, Gould's MSJ, and MILs	XXV	JA6065-JA6071
2017-12-28	Cotter Jr.'s Motion to Stay on OST	XXV	JA6072-JA6080
2017-12-29	Notice of Entry of Order Re Individual Defendants' Partial MSJs, Gould's MSJ, and MIL	XXV	JA6081-JA6091
2017-12-29	Cotter Jr.'s Motion for Rule 54(b) Certification and Stay on OST	XXV	JA6092-JA6106
2017-12-29	Transcript of 12-28-17 Hearing on Motion for Reconsideration and Motion for Stay	XXV	JA6107-JA6131
2018-01-02	Individual Defendants' Opposition to Cotter Jr.'s Motion for Rule 54(b) Certification and Stay	XXV	JA6132-JA6139
2018-01-03	RDI's Joinder to Individual Defendants' Opposition to Cotter Jr.'s Motion for Rule 54(b) Certification and Stay	XXV	JA6140-JA6152
2018-01-03	RDI's Errata to Joinder to Individual Defendants' Opposition to Motion for Rule 54(b) Certification and Stay	XXV	JA6153-JA6161
2018-01-03	RDI's Motion to Dismiss for Failure to Show Demand Futility	XXV	JA6162-JA6170
2018-01-03	Cotter Jr.'s Reply ISO Motion for Rule 54(b) Certification and Stay	XXV	JA6171-JS6178

JOINT APPENDIX TO OPENING BRIEFS
FOR CASE NOS. 77648 & 76981

CHRONOLOGICAL INDEX

Date	Description	Vol. #	Page Nos.
2018-01-04	Order Granting Cotter Jr.'s Motion for Rule 54(b) Certification	XXV	JA6179-JA6181
2018-01-04	Notice of Entry of Order Granting Cotter Jr.'s Motion for Rule 54(b) Certification	XXV	JA6182-JA6188
2018-01-04	Order Denying Cotter Jr.'s Motion for Reconsideration and Stay	XXV	JA6189-JA6191
2018-01-04	Adams and Cotter sisters' Motion for Judgment as a Matter of Law	XXV	JA6192-JA6224 (FILED UNDER SEAL JA6224A-F)
2018-01-05	Cotter Jr.'s Opposition to RDI's Motion to Dismiss for Failure to Show Demand Futility	XXV	JA6225-JA6228
2018-01-05	Cotter Jr.'s Opposition to Defendants' Motion for Judgment as a Matter of Law	XXV	JA6229-JA6238
2018-01-05	Declaration of Krum ISO Cotter Jr.'s Opposition to Motion for Judgment as a Matter of Law	XXV	JA6239-JA6244
2018-01-05	Transcript of 1-4-18 Hearing on Cotter Jr.'s Motion for Rule 54(b) Certification	XXV	JA6245-JA6263
2018-01-08	Transcript of Hearing on Demand Futility Motion and Motion for Judgment	XXV	JA6264-JA6280
2018-01-10	Transcript of Proceedings of 01-8-18 Jury Trial–Day 1	XXV	JA6281-JA6294
2018-02-01	Cotter Jr.'s Notice of Appeal	XXV	JA6295-JA6297
2018-04-18	Cotter Jr.'s Motion to Compel (Gould)	XXV, XXVI	JA6298-JA6431

JOINT APPENDIX TO OPENING BRIEFS
FOR CASE NOS. 77648 & 76981

CHRONOLOGICAL INDEX

Date	Description	Vol. #	Page Nos.
2018-04-23	Cotter Jr.'s Motion for Omnibus Relief on OST	XXVI, XXVII	JA6432-JA6561 (FILED UNDER SEAL JA6350A; JA6513A-C)
2018-04-24	Gould's Opposition to Cotter Jr.'s Motion to Compel	XXVII	JA6562-JA6568
2018-04-24	Gould's Declaration ISO Opposition to Motion to Compel	XXVII	JA6569-JA6571
2018-04-24	Bannett's Declaration ISO Gould's Opposition to Motion to Compel	XXVII	JA6572-JA6581
2018-04-27	Cotter Jr.'s Reply ISO Motion to Compel (Gould)	XXVII	JA6582-JA6599
2018-04-27	RDI's Opposition to Cotter's Motion for Omnibus Relief	XXVII	JA6600-JA6698
2018-05-03	Transcript of 4-30-18 Hearing on Motions to Compel & Seal	XXVII	JA6699-JA6723
2018-05-04	Second Amended Order Setting Jury Trial, Pre-trial Conference, and Calendar Call	XXVII	JA6724-JA6726
2018-05-07	Transcript of 5-2-18 Hearing on Evidentiary Hearing	XXVII, XXVIII	JA6727-JA6815
2018-05-11	Cotter Jr.'s Opposition to RDI's Motion for Leave to File Motion	XXVIII	JA6816-JA6937
2018-05-15	Adams and Cotter sisters' Motion to Compel Production of Docs re Expert Fee Payments on OST	XXVIII, XXIX	JA6938-JA7078
2018-05-18	Cotter Jr.'s Opposition to Motion to Compel Production of Docs re Expert Fee Payments	XXIX	JA7079-JA7087
2018-05-18	Adams and Cotter sisters' Pre-Trial Memo	XXIX	JA7088-JA7135
2018-05-18	Cotter Jr.'s Pre-Trial Memo	XXIX	JA7136-JA7157

JOINT APPENDIX TO OPENING BRIEFS
FOR CASE NOS. 77648 & 76981

CHRONOLOGICAL INDEX

Date	Description	Vol. #	Page Nos.
2018-05-24	Transcript of 05-21-18 Hearing on Adams and Cotter sisters' Motion to Compel	XXIX	JA7158-JA7172
2018-06-01	Adams and Cotter sisters' Motion for Summary Judgment ("Ratification MSJ")	XXIX	JA7173-JA7221
2018-06-08	Cotter Jr.'s Motion to Compel on OST	XXIX, XXX, XXXI	JA7222-JA7568
2018-06-12	Cotter Jr.'s Motion for Relief Based on Noncompliance with Court's May 2, 2018 Rulings on OST ("Motion for Relief")	XXXI	JA7569-JA7607
2018-06-13	Cotter Jr.'s Opposition to Ratification MSJ	XXXI	JA7608-JA7797
2018-06-13	Cotter Jr.'s Opposition to RDI's Demand Futility Motion	XXXI, XXXII	JA7798-JA7840
2018-06-15	Adams and Cotter sisters' Reply ISO of Ratification MSJ	XXXII	JA7841-JA7874
2018-06-18	RDI's Combined Opposition to Cotter Jr.'s Motion to Compel & Motion for Relief	XXXII	JA7875-JA7927
2018-06-18	Adams and Cotter sisters' Joinder to RDI's Combined Opposition to Cotter Jr.'s Motion to Compel & Motion for Relief	XXXII, XXXIII	JA7928-JA8295
2018-06-18	Gould's Joinder to RDI's Combined Opposition to Cotter Jr.'s Motion to Compel & Motion for Relief	XXXIII	JA8296-JA8301
2018-06-18	Cotter Jr.'s Reply ISO Motion for Relief Re: 05-02-18 Rulings	XXXIII, XXXIV	JA8302-JA8342
2018-06-20	Transcript of 06-19-18 Omnibus Hearing on discovery motions and Ratification MSJ	XXXIV	JA8343-JA8394

JOINT APPENDIX TO OPENING BRIEFS
FOR CASE NOS. 77648 & 76981

CHRONOLOGICAL INDEX

Date	Description	Vol. #	Page Nos.
2018-07-12	Order Granting In Part Cotter Jr.'s Motion to Compel (Gould) & Motion for Relief	XXXIV	JA8395-JA8397
2018-07-12	Order Granting in Part Cotter Jr.'s Motion for Omnibus Relief & Motion to Compel	XXXIV	JA8398-JA8400
2018-08-14	Findings of Fact and Conclusions of Law and Judgment	XXXIV	JA8401-JA8411
2018-08-16	Notice of Entry of Findings of Fact and Conclusions of Law and Judgment	XXXIV	JA8412-JA8425
2018-08-24	Memorandum of Costs submitted by RDI for itself & the director defendants	XXXIV	JA8426-JA8446
2018-08-24	RDI's Appendix of Exhibits to Memorandum of Costs	XXXIV, XXXV, XXXVI	JA8447-JA8906
2018-09-05	Notice of Entry of SAO Re Process for Filing Motion for Attorney's Fees	XXXVI	JA8907-JA8914
2018-09-05	Cotter Jr.'s Motion to Retax Costs	XXXVI	JA8915-JA9018
2018-09-07	RDI's Motion for Attorneys' Fees	XXXVI, XXXVII	JA9019-JA9101
2018-09-12	RDI's Motion for Judgment in Its Favor	XXXVII	JA9102-JA9107
2018-09-13	Cotter Jr.'s Notice of Appeal	XXXVII	JA9108-JA9110
2018-09-14	RDI's Opposition to Cotter Jr.'s Motion to Retax Costs	XXXVII	JA9111-JA9219
2018-09-14	RDI's Appendix ISO Opposition to Motion to Retax ("Appendix") Part 1	XXXVII, XXXVIII, XXXIX	JA9220-JA9592
2018-09-14	RDI's Appendix, Part 2	XXXIX, XL, XLI	JA9593-JA10063
2018-09-14	RDI's Appendix, Part 3	XLI, XLII, XLIII	JA10064-JA10801

JOINT APPENDIX TO OPENING BRIEFS
FOR CASE NOS. 77648 & 76981

CHRONOLOGICAL INDEX

Date	Description	Vol. #	Page Nos.
2018-09-14	RDI's Appendix, Part 4	XLIII, XLIV	JA10802-JA10898
2018-09-14	RDI's Appendix Part 5	XLIV, XLV	JA10899-JA11270
2018-09-14	RDI's Appendix, Part 6	XLV, XLVI	JA11271-JA11475
2018-09-14	RDI's Appendix, Part 7	XLVI, XLVII, XLVIII, XLIX, L	JA11476-JA12496
2018-09-14	RDI's Appendix, Part 8	L, LI, LII	JA12497-JA12893
2018-09-14	Suggestion of Death of Gould Upon the Record	LII,	JA12894-JA12896
2018-09-24	Cotter Jr.'s Reply to RDI's Opp'n to Motion to Retax Costs	LII	JA12897-JA12921
2018-09-24	Cotter Jr.'s Appendix of Exhibits ISO Reply to RDI's Opposition to Motion to Retax Costs	LII, LIII	JA12922-JA13112
2018-10-01	Cotter Jr.'s Opposition to RDI's Motion for Judgment in its Favor	LIII	JA13113-JA13125
2018-10-02	Transcript of 10-01-18 Hearing on Cotter Jr.'s Motion to Retax Costs	LIII	JA13126-JA13150
2018-11-02	Cotter Jr.'s Letter to Court Objecting to Proposed Order	LIII	JA13151-JA13156
2018-11-02	Cotter Jr.'s Errata to Letter to Court Objecting to Proposed Order	LIII	JA13157-JA13162
2018-11-06	Order Granting in Part Motion to Retax Costs & Entering Judgment for Costs ("Cost Judgment")	LIII	JA13163-JA13167
2018-11-06	Notice of Entry of Order of Cost Judgment	LIII	JA13168-JA13174
2018-11-16	Order Denying RDI's Motion for Attorneys' Fees	LIII	JA13175-JA13178

JOINT APPENDIX TO OPENING BRIEFS
FOR CASE NOS. 77648 & 76981

CHRONOLOGICAL INDEX

Date	Description	Vol. #	Page Nos.
2018-11-06	Order Denying RDI's Motion for Judgment in Its Favor	LIII	JA13179-JA13182
2018-11-20	Notice of Entry of Order Denying RDI's Motion for Attorneys' Fees	LIII	JA13183-JA13190
2018-11-20	Notice of Entry of Order Denying RDI's Motion for Judgment in Its Favor	LIII	JA13191-JA13198
2018-11-26	Cotter Jr.'s Motion for Reconsideration & Amendment of Cost Judgment, for Limited Stay of Execution on OST	LIII	JA13199-JA13207
2018-11-30	RDI's Opposition to Cotter Jr.'s Motion for Reconsideration and Response to Motion for Limited Stay of Execution on OST	LIII	JA13208-JA13212
2018-11-30	Adams and Cotter sisters' Joinder to RDI's Opposition to Cotter Jr.'s Motion for Reconsideration and Response to Motion for Limited Stay of Execution	LIII	JA13213-JA13215
2018-12-06	Order Re Cotter Jr.'s Motion for Reconsideration & Amendment of Judgment for Costs and for Limited Stay	LIII	JA13216-JA13219
2018-12-06	Cotter Jr.'s Notice of Appeal from Cost Judgment	LIII	JA13220-JA13222
2018-12-07	Notice of Entry of Order Re Cotter Jr.'s Motion for Reconsideration & Amendment of Cost Judgment and for Limited Stay	LIII	JA13223-JA13229
2018-12-14	Cotter Jr.'s Notice of Posting Cost Bond on Appeal	LIII	JA13230-JA13232

JOINT APPENDIX TO OPENING BRIEFS
FOR CASE NOS. 77648 & 76981

ALPHABETICAL INDEX

Date	Description	Vol. #	Page Nos.
2018-06-18	Adams and Cotter sisters' Joinder to RDI's Combined Opposition to Cotter Jr.'s Motion to Compel & Motion for Relief	XXXII, XXXIII	JA7928-JA8295
2018-11-30	Adams and Cotter sisters' Joinder to RDI's Opposition to Cotter Jr.'s Motion for Reconsideration and Response to Motion for Limited Stay of Execution	LIII	JA13213-JA13215
2018-01-04	Adams and Cotter sisters' Motion for Judgment as a Matter of Law	XXV	JA6192-JA6224 **(FILED UNDER SEAL JA6224A-F)**
2018-06-01	Adams and Cotter sisters' Motion for Summary Judgment ("Ratification MSJ")	XXIX	JA7173-JA7221
2018-05-15	Adams and Cotter sisters' Motion to Compel Production of Docs re Expert Fee Payments on OST	XXVIII, XXIX	JA6938-JA7078
2018-05-18	Adams and Cotter sisters' Pre-Trial Memo	XXIX	JA7088-JA7135
2018-06-15	Adams and Cotter sisters' Reply ISO of Ratification MSJ	XXXII	JA7841-JA7874
2015-06-18	Amended AOS - Douglas McEachern	I	JA32-JA33
2015-06-18	Amended AOS - Edward Kane	I	JA34-JA35
2015-06-18	Amended AOS - Ellen Cotter	I	JA36-JA37
2015-06-18	Amended AOS - Guy Adams	I	JA38-JA39
2015-06-18	Amended AOS - Margaret Cotter	I	JA40-JA41
2015-06-18	Amended AOS - RDI	I	JA42-JA43
2015-06-18	Amended AOS – Timothy Storey	I	JA44-JA45
2015-06-18	Amended AOS – William Gould	I	JA46-JA47

JOINT APPENDIX TO OPENING BRIEFS
FOR CASE NOS. 77648 & 76981

ALPHABETICAL INDEX

Date	Description	Vol. #	Page Nos.
2018-04-24	Bannett's Declaration ISO Gould's Opposition to Motion to Compel	XXVII	JA6572-JA6581
2016-04-05	Codding and Wrotniak's Answer to T2 Plaintiffs' First Amended Complaint	II	JA439-JA462
2015-06-12	Complaint	I	JA1-JA31
2016-10-17	Cotter Jr.'s Appendix of Exhibits ISO Opposition to Gould's MSJ	XVIII	JA4458-JA4517
2016-10-17	Cotter Jr.'s Appendix of Exhibits ISO Opposition to Individual Defendants' Partial MSJ No. 1	XVII, XVIII	JA4143-JA4311 (FILED UNDER SEAL JA4151A-C)
2016-10-17	Cotter Jr.'s Appendix of Exhibits ISO Opposition to Individual Defendants' Partial MSJ No. 2	XVIII	JA4312-JA4457
2018-09-24	Cotter Jr.'s Appendix of Exhibits ISO Reply to RDI's Opposition to Motion to Retax Costs	LII, LIII	JA12922-JA13112
2018-11-02	Cotter Jr.'s Errata to Letter to Court Objecting to Proposed Order	LIII	JA13157-JA13162
2018-11-02	Cotter Jr.'s Letter to Court Objecting to Proposed Order	LIII	JA13151-JA13156
2018-04-23	Cotter Jr.'s Motion for Omnibus Relief on OST	XXVI, XXVII	JA6432-JA6561 (FILED UNDER SEAL JA6350A; JA6513A-C)
2016-09-23	Cotter Jr.'s Motion for Partial Summary Judgment ("MPSJ")	XIV, XV	JA3337-JA3697

JOINT APPENDIX TO OPENING BRIEFS
FOR CASE NOS. 77648 & 76981

ALPHABETICAL INDEX

Date	Description	Vol. #	Page Nos.
2018-11-26	Cotter Jr.'s Motion for Reconsideration & Amendment of Cost Judgment, for Limited Stay of Execution on OST	LIII	JA13199-JA13207
2017-12-19	Cotter Jr.'s Motion for Reconsideration of Ruling on Partial MSJ Nos. 1, 2 & 3 and Gould's MSJ on OST ("Motion for Reconsideration")	XXIII, XXIV	JA5793-JA5909
2018-06-12	Cotter Jr.'s Motion for Relief Based on Noncompliance with Court's May 2, 2018 Rulings on OST ("Motion for Relief")	XXXI	JA7569-JA7607
2017-12-29	Cotter Jr.'s Motion for Rule 54(b) Certification and Stay on OST	XXV	JA6092-JA6106
2018-04-18	Cotter Jr.'s Motion to Compel (Gould)	XXV, XXVI	JA6298-JA6431
2018-06-08	Cotter Jr.'s Motion to Compel on OST	XXIX, XXX, XXXI	JA7222-JA7568
2018-09-05	Cotter Jr.'s Motion to Retax Costs	XXXVI	JA8915-JA9018
2017-12-28	Cotter Jr.'s Motion to Stay on OST	XXV	JA6072-JA6080
2018-02-01	Cotter Jr.'s Notice of Appeal	XXV	JA6295-JA6297
2018-09-13	Cotter Jr.'s Notice of Appeal	XXXVII	JA9108-JA9110
2018-12-06	Cotter Jr.'s Notice of Appeal from Cost Judgment	LIII	JA13220-JA13222
2018-12-14	Cotter Jr.'s Notice of Posting Cost Bond on Appeal	LIII	JA13230-JA13232
2018-01-05	Cotter Jr.'s Opposition to Defendants' Motion for Judgment as a Matter of Law	XXV	JA6229-JA6238

JOINT APPENDIX TO OPENING BRIEFS
FOR CASE NOS. 77648 & 76981

ALPHABETICAL INDEX

Date	Description	Vol. #	Page Nos.
2016-10-13	Cotter Jr.'s Opposition to Gould's MSJ	XVI	JA4015-JA4051
2018-05-18	Cotter Jr.'s Opposition to Motion to Compel Production of Docs re Expert Fee Payments	XXIX	JA7079-JA7087
2016-10-13	Cotter Jr.'s Opposition to Partial MSJ No. 1	XVI, XVII	JA4052-JA4083
2018-06-13	Cotter Jr.'s Opposition to Ratification MSJ	XXXI	JA7608-JA7797
2018-06-13	Cotter Jr.'s Opposition to RDI's Demand Futility Motion	XXXI, XXXII	JA7798-JA7840
2018-10-01	Cotter Jr.'s Opposition to RDI's Motion for Judgment in its Favor	LIII	JA13113-JA13125
2018-05-11	Cotter Jr.'s Opposition to RDI's Motion for Leave to File Motion	XXVIII	JA6816-JA6937
2018-01-05	Cotter Jr.'s Opposition to RDI's Motion to Dismiss for Failure to Show Demand Futility	XXV	JA6225-JA6228
2018-05-18	Cotter Jr.'s Pre-Trial Memo	XXIX	JA7136-JA7157
2018-06-18	Cotter Jr.'s Reply ISO Motion for Relief Re: 05-02-18 Rulings	XXXIII, XXXIV	JA8302-JA8342
2018-01-03	Cotter Jr.'s Reply ISO Motion for Rule 54(b) Certification and Stay	XXV	JA6171-JS6178
2018-04-27	Cotter Jr.'s Reply ISO Motion to Compel (Gould)	XXVII	JA6582-JA6599
2018-09-24	Cotter Jr.'s Reply to RDI's Opp'n to Motion to Retax Costs	LII	JA12897-JA12921
2016-09-02	Cotter Jr.'s Second Amended Verified Complaint	III	JA519-JA575
2017-12-01	Cotter Jr.'s Supplemental Opposition to Partial MSJ Nos. 1 & 2 & Gould MSJ	XXI	JA5094-JA5107

JOINT APPENDIX TO OPENING BRIEFS
FOR CASE NOS. 77648 & 76981

ALPHABETICAL INDEX

Date	Description	Vol. #	Page Nos.
2017-12-01	Cotter Jr.'s Supplemental Opposition to Partial MSJ Nos. 2 & 3 & Gould MSJ	XXI, XXII	JA5300-JA5320
2017-12-01	Cotter Jr.'s Supplemental Opposition to Partial MSJ Nos. 2 & 5 & Gould MSJ	XXI	JA5119-JA5134
2017-12-01	Cotter Jr.'s Supplemental Opposition to Partial MSJ Nos. 2 & 6 & Gould MSJ	XXI	JA5253-JA5264
2016-10-13	Cotter, Jr.'s Opposition to Partial MSJ No. 2	XVII	JA4084-JA4111
2016-10-13	Cotter, Jr.'s Opposition to Partial MSJ No. 6	XVII	JA4112-JA4142
2017-12-27	Declaration of Bannett ISO Gould's Opposition to Cotter Jr.'s Motion for Reconsideration	XXIV, XXV	JA5987-JA6064
2016-10-21	Declaration of Bannett ISO Gould's Reply ISO MSJ	XIX	JA4636-JA4677
2017-12-05	Declaration of Bannett ISO Gould's Supplemental Reply ISO MSJ	XXII, XXIII	JA5555-JA5685
2018-01-05	Declaration of Krum ISO Cotter Jr.'s Opposition to Motion for Judgment as a Matter of Law	XXV	JA6239-JA6244
2017-12-01	Declaration of Levin ISO Cotter Jr.'s Supplemental Opposition to Partial MSJ Nos. 1 & 2 & Gould MSJ	XXI	JA5108-JA5118
2017-12-01	Declaration of Levin ISO Cotter Jr.'s Supplemental Opposition to Partial MSJ Nos. 2 & 5 & Gould MSJ	XXI	JA5135-JA5252
2017-12-01	Declaration of Levin ISO Cotter Jr.'s Supplemental Opposition to Partial MSJ Nos. 2 & 6 & Gould MSJ	XXI	JA5265-JA5299

JOINT APPENDIX TO OPENING BRIEFS
FOR CASE NOS. 77648 & 76981

ALPHABETICAL INDEX

Date	Description	Vol. #	Page Nos.
2017-12-01	Declaration of Levin ISO Cotter Jr.'s Supplemental Opposition to So-Called MSJ Nos. 2 & 3 & Gould MSJ	XXII	JA5321-JA5509
2016-09-23	Defendant William Gould ("Gould")'s MSJ	III, IV, V, VI	JA576-JA1400
2018-08-14	Findings of Fact and Conclusions of Law and Judgment	XXXIV	JA8401-JA8411
2017-10-04	First Amended Order Setting Civil Jury Trial, Pre-Trial Conference, and Calendar Call	XX	JA4928-JA4931
2015-10-22	First Amended Verified Complaint	II	JA263-JA312
2018-04-24	Gould's Declaration ISO Opposition to Motion to Compel	XXVII	JA6569-JA6571
2017-10-17	Gould's Joinder to Motion for Evidentiary Hearing re Cotter Jr.'s Adequacy as Derivative Plaintiff	XX	JA4975-JA4977
2018-06-18	Gould's Joinder to RDI's Combined Opposition to Cotter Jr.'s Motion to Compel & Motion for Relief	XXXIII	JA8296-JA8301
2017-12-27	Gould's Opposition to Cotter Jr.'s Motion for Reconsideration	XXIV	JA5982-JA5986
2018-04-24	Gould's Opposition to Cotter Jr.'s Motion to Compel	XXVII	JA6562-JA6568
2016-10-21	Gould's Reply ISO MSJ	XIX	JA4610-JA4635
2017-12-01	Gould's Request For Hearing on Previously-Filed MSJ	XXI	JA5078-JA5093
2017-12-04	Gould's Supplemental Reply ISO of MSJ	XXII	JA5538-JA5554
2017-11-28	Individual Defendants' Answer to Cotter Jr.'s Second Amended Complaint	XX, XXI	JA5048-JA5077

JOINT APPENDIX TO OPENING BRIEFS
FOR CASE NOS. 77648 & 76981

ALPHABETICAL INDEX

Date	Description	Vol. #	Page Nos.
2016-03-14	Individual Defendants' Answer to Cotter's First Amended Complaint	II	JA375-JA396
2017-10-11	Individual Defendants' Motion for Evidentiary Hearing Re Cotter Jr.'s Adequacy as Derivative Plaintiff	XX	JA4932-JA4974
2016-09-23	Individual Defendants' Motion for Partial Summary Judgment (No. 1) Re: Plaintiff's Termination and Reinstatement Claims ("Partial MSJ No. 1)	VI, VII, VIII, IX	JA1486-JA2216 **(FILED UNDER SEAL JA2136A-D)**
2016-09-23	Individual Defendants' Motion for Partial Summary Judgment (No. 2) Re: The Issue of Director Independence ("Partial MSJ No. 2")	IX, X	JA2217-JA2489 **(FILED UNDER SEAL JA2489A-HH)**
2016-09-23	Individual Defendants' Motion for Partial Summary Judgment (No. 3) On Plaintiff's Claims Related to the Purported Unsolicited Offer ("Partial MSJ No. 3")	X, XI	JA2490-JA2583
2016-09-23	Individual Defendants' Motion for Partial Summary Judgment (No. 4) On Plaintiff's Claims Related to the Executive Committee ("Partial MSJ No. 4")	XI	JA2584-JA2689
2016-09-23	Individual Defendants' Motion for Partial Summary Judgment (No. 5) On Plaintiff's Claims Related to the Appointment of Ellen Cotter as CEO ("Partial MSJ No. 5")	XI, XII	JA2690-JA2860

JOINT APPENDIX TO OPENING BRIEFS
FOR CASE NOS. 77648 & 76981

ALPHABETICAL INDEX

Date	Description	Vol. #	Page Nos.
2016-09-23	Individual Defendants' Motion for Partial Summary Judgment (No. 6) Re Plaintiff's Claims Re Estate's Option Exercise, Appointment of Margaret Cotter, Compensation Packages of Ellen Cotter and Margaret Cotter, and related claims Additional Compensation to Margaret Cotter and Guy Adams ("Partial MSJ No. 6")	XII, XIII, XIV	JA2861-JA3336
2015-09-03	Individual Defendants' Motion to Dismiss Complaint	I	JA149-JA237
2016-10-26	Individual Defendants' Objections to Declaration of Cotter, Jr. Submitted in Opposition to Partial MSJs	XIX	JA4725-JA4735
2017-12-26	Individual Defendants' Opposition to Cotter Jr.'s Motion For Reconsideration	XXIV	JA5910-JA5981
2018-01-02	Individual Defendants' Opposition to Cotter Jr.'s Motion for Rule 54(b) Certification and Stay	XXV	JA6132-JA6139
2016-10-13	Individual Defendants' Opposition to Cotter Jr.'s MPSJ	XVI	JA3815-JA3920
2016-10-21	Individual Defendants' Reply ISO of Partial MSJ No. 1	XVIII	JA4518-JA4549
2016-10-21	Individual Defendants' Reply ISO Partial MSJ No. 2	XVIII, XIX	JA4550-JA4567
2016-10-21	Individual Defendants' Reply ISO Partial MSJ Nos. 3, 4, 5, and 6	XIX	JA4678–JA4724
2017-12-04	Individual Defendants' Reply ISO Renewed Partial MSJ Nos. 1 & 2	XXII	JA5510-JA5537
2017-11-09	Individual Defendants' Supplement to Partial MSJ Nos. 1, 2, 3, 5, and 6	XX	JA4981-JA5024

JOINT APPENDIX TO OPENING BRIEFS
FOR CASE NOS. 77648 & 76981

ALPHABETICAL INDEX

Date	Description	Vol. #	Page Nos.
2017-12-08	Joint Pre-Trial Memorandum	XXIII	JA5686-JA5717
2018-08-24	Memorandum of Costs submitted by RDI for itself & the director defendants	XXXIV	JA8426-JA8446
2016-09-23	MIL to Exclude Expert Testimony of Steele, Duarte-Silva, Spitz, Nagy, & Finnerty	VI	JA1401-JA1485
2015-08-10	Motion to Dismiss Complaint	I	JA48-JA104
2018-08-16	Notice of Entry of Findings of Fact and Conclusions of Law and Judgment	XXXIV	JA8412-JA8425
2018-11-20	Notice of Entry of Order Denying RDI's Motion for Attorneys' Fees	LIII	JA13183-JA13190
2018-11-20	Notice of Entry of Order Denying RDI's Motion for Judgment in Its Favor	LIII	JA13191-JA13198
2018-01-04	Notice of Entry of Order Granting Cotter Jr.'s Motion for Rule 54(b) Certification	XXV	JA6182-JA6188
2018-11-06	Notice of Entry of Order of Cost Judgment	LIII	JA13168-JA13174
2018-12-07	Notice of Entry of Order Re Cotter Jr.'s Motion for Reconsideration & Amendment of Cost Judgment and for Limited Stay	LIII	JA13223-JA13229
2017-12-29	Notice of Entry of Order Re Individual Defendants' Partial MSJs, Gould's MSJ, and MIL	XXV	JA6081-JA6091
2016-12-22	Notice of Entry of Order Re Partial MSJ Nos. 1-6 and MIL to Exclude Expert Testimony	XX	JA4921-JA4927
2018-09-05	Notice of Entry of SAO Re Process for Filing Motion for Attorney's Fees	XXXVI	JA8907-JA8914

JOINT APPENDIX TO OPENING BRIEFS
FOR CASE NOS. 77648 & 76981

ALPHABETICAL INDEX

Date	Description	Vol. #	Page Nos.
2018-01-04	Order Denying Cotter Jr.'s Motion for Reconsideration and Stay	XXV	JA6189-JA6191
2018-11-16	Order Denying RDI's Motion for Attorneys' Fees	LIII	JA13175-JA13178
2018-11-06	Order Denying RDI's Motion for Judgment in Its Favor	LIII	JA13179-JA13182
2015-10-12	Order Denying RDI's Motion to Compel Arbitration	II	JA257-JA259
2018-01-04	Order Granting Cotter Jr.'s Motion for Rule 54(b) Certification	XXV	JA6179-JA6181
2016-10-03	Order Granting Cotter Jr.'s Motion to Compel Production of Documents & Communications Re the Advice of Counsel Defense	XV	JA3698-JA3700
2018-07-12	Order Granting in Part Cotter Jr.'s Motion for Omnibus Relief & Motion to Compel	XXXIV	JA8398-JA8400
2018-07-12	Order Granting In Part Cotter Jr.'s Motion to Compel (Gould) & Motion for Relief	XXXIV	JA8395-JA8397
2018-11-06	Order Granting in Part Motion to Retax Costs & Entering Judgment for Costs ("Cost Judgment")	LIII	JA13163-JA13167
2018-12-06	Order Re Cotter Jr.'s Motion for Reconsideration & Amendment of Judgment for Costs and for Limited Stay	LIII	JA13216-JA13219
2016-10-03	Order Re Cotter Jr.'s Motion to Permit Certain Discovery re Recent "Offer"	XV	JA3701-JA3703
2016-12-21	Order Re Individual Defendants' Partial MSJ Nos. 1–6 and MIL to Exclude Expert Testimony	XX	JA4917-JA4920

JOINT APPENDIX TO OPENING BRIEFS
FOR CASE NOS. 77648 & 76981

ALPHABETICAL INDEX

Date	Description	Vol. #	Page Nos.
2017-12-28	Order Re Individual Defendants' Partial MSJs, Gould's MSJ, and MILs	XXV	JA6065-JA6071
2015-10-19	Order Re Motion to Dismiss Complaint	II	JA260-JA262
2016-12-20	RDI's Answer to Cotter Jr.'s Second Amended Complaint	XX	JA4891-JA4916
2016-03-29	RDI's Answer to Cotter, Jr.'s First Amended Complaint	II	JA397-JA418
2016-03-29	RDI's Answer to T2 Plaintiffs' First Amended Complaint	II	JA419-JA438
2018-08-24	RDI's Appendix of Exhibits to Memorandum of Costs	XXXIV, XXXV, XXXVI	JA8447-JA8906
2018-09-14	RDI's Appendix ISO Opposition to Motion to Retax ("Appendix") Part 1	XXXVII, XXXVIII, XXXIX	JA9220-JA9592
2018-09-14	RDI's Appendix, Part 2	XXXIX, XL, XLI	JA9593-JA10063
2018-09-14	RDI's Appendix, Part 3	XLI, XLII, XLIII	JA10064-JA10801
2018-09-14	RDI's Appendix, Part 4	XLIII, XLIV	JA10802-JA10898
2018-09-14	RDI's Appendix Part 5	XLIV, XLV	JA10899-JA11270
2018-09-14	RDI's Appendix, Part 6	XLV, XLVI	JA11271-JA11475
2018-09-14	RDI's Appendix, Part 7	XLVI, XLVII, XLVIII, XLIX, L	JA11476-JA12496
2018-09-14	RDI's Appendix, Part 8	L, LI, LII	JA12497-JA12893

JOINT APPENDIX TO OPENING BRIEFS
FOR CASE NOS. 77648 & 76981

ALPHABETICAL INDEX

Date	Description	Vol. #	Page Nos.
2018-06-18	RDI's Combined Opposition to Cotter Jr.'s Motion to Compel & Motion for Relief	XXXII	JA7875-JA7927
2019-10-21	RDI's Consolidated Reply ISO Individual Defendants' Partial MSJ Nos. 3, 4, 5 & 6	XIX	JA4589-JA4603
2018-01-03	RDI's Errata to Joinder to Individual Defendants' Opposition to Motion for Rule 54(b) Certification and Stay	XXV	JA6153-JA6161
2016-10-13	RDI's Joinder to Individual Defendants' Opposition to Cotter Jr.'s MPSJ	XVI	JA3921-JA4014
2018-01-03	RDI's Joinder to Individual Defendants' Opposition to Cotter Jr.'s Motion for Rule 54(b) Certification and Stay	XXV	JA6140-JA6152
2016-10-03	RDI's Joinder to Individual Defendants' Partial-MSJ No. 1	XV	JA3707-JA3717
2016-10-03	RDI's Joinder to Individual Defendants' Partial MSJ No. 2	XV	JA3718-JA3739
2016-10-03	RDI's Joinder to Individual Defendants' Partial MSJ No. 3	XV	JA3740-JA3746
2016-10-03	RDI's Joinder to Individual Defendants' Partial MSJ No. 4	XV	JA3747-JA3799
2016-10-03	RDI's Joinder to Individual Defendants' Partial MSJ No. 5	XV	JA3800-JA3805
2016-10-03	RDI's Joinder to Individual Defendants' Partial MSJ No. 6	XV, XVI	JA3806-JA3814
2017-11-21	RDI's Joinder to Individual Defendants' Supplement to Partial MSJ Nos. 1, 2, 3, 5 & 6	XX	JA5025-JA5027
2016-10-03	RDI's Joinder to MIL to Exclude Expert Testimony	XV	JA3704-JA3706

JOINT APPENDIX TO OPENING BRIEFS
FOR CASE NOS. 77648 & 76981

ALPHABETICAL INDEX

Date	Description	Vol. #	Page Nos.
2017-10-18	RDI's Joinder to Motion for Evidentiary Hearing re Cotter Jr.'s Adequacy as Derivative Plaintiff	XX	JA4978-JA4980
2018-09-07	RDI's Motion for Attorneys' Fees	XXXVI, XXXVII	JA9019-JA9101
2018-09-12	RDI's Motion for Judgment in Its Favor	XXXVII	JA9102-JA9107
2015-08-31	RDI's Motion to Compel Arbitration	I	JA127-JA148
2018-01-03	RDI's Motion to Dismiss for Failure to Show Demand Futility	XXV	JA6162-JA6170
2018-11-30	RDI's Opposition to Cotter Jr.'s Motion for Reconsideration and Response to Motion for Limited Stay of Execution on OST	LIII	JA13208-JA13212
2018-09-14	RDI's Opposition to Cotter Jr.'s Motion to Retax Costs	XXXVII	JA9111-JA9219
2018-04-27	RDI's Opposition to Cotter's Motion for Omnibus Relief	XXVII	JA6600-JA6698
2016-10-21	RDI's Reply ISO Gould's MSJ	XIX	JA4604-JA4609
2016-10-21	RDI's Reply ISO Individual Defendants' Partial MSJ No. 1	XIX	JA4568-JA4577
2016-10-21	RDI's Reply ISO Individual Defendants' Partial MSJ No. 2	XIX	JA4578-JA4588
2015-08-20	Reading International, Inc. ("RDI")'s Joinder to Margaret Cotter, Ellen Cotter, Douglas McEachern, Guy Adams, & Edward Kane ("Individual Defendants") Motion to Dismiss Complaint	I	JA105-JA108
2015-11-10	Scheduling Order and Order Setting Civil Jury Trial, Pre-Trial Conference and Calendar Call	II	JA313-JA316

JOINT APPENDIX TO OPENING BRIEFS
FOR CASE NOS. 77648 & 76981

ALPHABETICAL INDEX

Date	Description	Vol. #	Page Nos.
2018-05-04	Second Amended Order Setting Jury Trial, Pre-trial Conference, and Calendar Call	XXVII	JA6724-JA6726
2016-06-21	Stipulation and Order to Amend Deadlines in Scheduling Order	II	JA463-JA468
2018-09-14	Suggestion of Death of Gould Upon the Record	LII,	JA12894-JA12896
2016-02-12	T2 Plaintiffs' First Amended Complaint	II	JA317-JA355
2015-08-28	T2 Plaintiffs' Verified Shareholder Derivative Complaint	I	JA109-JA126
2015-10-06	Transcript of 9-10-15 Hearing on Defendants' Motion to Dismiss & Plaintiff Cotter Jr. ("Cotter Jr.")'s Motion for Preliminary Injunction	I, II	JA238-JA256
2016-02-23	Transcript of 2-18-16 Hearing on Motion to Compel & Motion to File Document Under Seal	II	JA356-JA374
2016-06-23	Transcript of 6-21-16 Hearing on Defendants' Motion to Compel & Motion to Disqualify T2 Plaintiffs	II	JA469-JA493
2016-08-11	Transcript of 8-9-16 Hearing on Cotter Jr.'s Motion for Partial Summary Judgment, Motion to Compel & Motion to Amend	II, III	JA494-JA518
2016-11-01	Transcript of 10-27-16 Hearing on Motions	XIX, XX	JA4736-JA4890
2017-11-27	Transcript of 11-20-17 Hearing on Motion for Evidentiary Hearing re Cotter Jr.'s Adequacy & Motion to Seal	XX	JA5028-JA5047
2017-12-11	Transcript of 12-11-2017 Hearing on [Partial] MSJs, MILs, and Pre-Trial Conference	XXIII	JA5718-JA5792

JOINT APPENDIX TO OPENING BRIEFS
FOR CASE NOS. 77648 & 76981

ALPHABETICAL INDEX

Date	Description	Vol. #	Page Nos.
2017-12-29	Transcript of 12-28-17 Hearing on Motion for Reconsideration and Motion for Stay	XXV	JA6107-JA6131
2018-01-05	Transcript of 1-4-18 Hearing on Cotter Jr.'s Motion for Rule 54(b) Certification	XXV	JA6245-JA6263
2018-01-08	Transcript of Hearing on Demand Futility Motion and Motion for Judgment	XXV	JA6264-JA6280
2018-01-10	Transcript of Proceedings of 01-8-18 Jury Trial–Day 1	XXV	JA6281-JA6294
2018-05-03	Transcript of 4-30-18 Hearing on Motions to Compel & Seal	XXVII	JA6699-JA6723
2018-05-07	Transcript of 5-2-18 Hearing on Evidentiary Hearing	XXVII, XXVIII	JA6727-JA6815
2018-05-24	Transcript of 05-21-18 Hearing on Adams and Cotter sisters' Motion to Compel	XXIX	JA7158-JA7172
2018-06-20	Transcript of 06-19-18 Omnibus Hearing on discovery motions and Ratification MSJ	XXXIV	JA8343-JA8394
2018-10-02	Transcript of 10-01-18 Hearing on Cotter Jr.'s Motion to Retax Costs	LIII	JA13126-JA13150

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By: /s/ Gabriela Mercado

- At a reconvened supposed special meeting of the RDI Board of Directors May 29, 2015, EC told the RDI board that she and MC had reached a resolution of their disputes with Plaintiff. No vote regarding termination of Plaintiff was then had.
- Plaintiff, EC and MC thereafter failed to resolve their disputes.
- EC called another supposed special board meeting for June 12, 2015. At the meeting, three of five outside directors, namely, Adams, Kane and McEachern, voted to terminate Plaintiff as President and CEO. Storey and Gould voted against termination.
- Defendant Adams in May and June 2015 (and for some time previously, as well as since then) relied on companies controlled by EC and MC for a majority of his recurring income.
- Defendant Kane had a five-decade, close personal and *quasi-familial* relationship with James J. Cotter, Sr. ("JJC, Sr."); Kane believed he knew what JJC, Sr.'s wishes were regarding a fundamental dispute between Plaintiff, on one hand, and EC and MC on the other hand, regarding whether MC alone or MC together with Plaintiff was to be trustee(s) of a voting trust which would hold approximately seventy percent of the voting stock of RDI; Kane's view was that JJC, Sr.'s wishes were that MC alone be the trustee.

Thus, defendants lacked disinterestedness and independence, either generally or with respect to the particular challenged actions (here, the decisions to threaten Plaintiff with termination and to terminate him). Plaintiff has rebutted the presumption that the business judgment rule applies, and the burden shifts to the individual director defendants to demonstrate the entire fairness of both their process and the result (measured objectively) reached.

Here, defendant Adams lacked independence because he was dependent on EC and MC for a majority of his income, including at the time he took the challenged actions. Additionally, he lacked disinterestedness with respect to the challenged action(s) because, he and his financial benefactors, EC and MC, personally stood to gain while other RDI shareholders would not.

Defendant Kane generally lacked independence because of (1) his five-decade relationship with JJC, Sr.; (2) his view that he knew what Sr.'s wishes were regarding a critical item in dispute between Plaintiff and EC and MC, who would be the trustee(s) of the voting trust; (3) his view that it was the wishes of JJC, Sr. that MC alone be the trustee of that voting trust; and (4) his

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insistence that Plaintiff accede the demands of EC and MC or be terminated. Likewise, Kane lacked disinterestedness with respect to the subject decisions, including for the same reasons.

The individual defendants cannot satisfy the entire fairness test with respect to the "process" by which they threatened and effected Plaintiff's termination. Nor can they demonstrate the objective fairness of threatening him with termination unless he resolved disputes with MC and EC on terms satisfactory to the two of them and terminating him when he failed to do so.

Where, as here, director defendants cannot satisfy their burden of demonstrating the entire fairness of the challenged conduct, the challenged conduct may be avoided by the corporation or by its shareholders. That is exactly the relief Plaintiff seeks hereby, which RDI and he are entitled to receive, namely, an order that declares the decision to terminate Plaintiff as President and CEO of RDI as void or voidable and, to the point, of no force or effect.

II. PROCEDURAL HISTORY OF AND THE CLAIMS MADE IN THIS CASE

Plaintiff's SAC states four claims, for breach of the fiduciary duty of care, breach of the fiduciary duty of loyalty, breach of the fiduciary duty of candor and disclosure, and aiding and abetting breach of fiduciary duty.

The SAC alleges a wrongful course of conduct by the director defendants to seize control of RDI in order to further their personal financial and other interests, in derogation of their fiduciary duties. (SAC, ¶ 1.) The SAC alleges an ongoing course of conduct, including (1) threatening Plaintiff with termination if he did not settle trust and estate disputes on terms satisfactory to EC and MC and terminating him when he failed to do so (SAC, ¶¶ 4, 72-94); (2) activating and repopulating an executive committee and forcibly "retiring" Tim Storey, to secure their control of RDI and eliminate the participation of Plaintiff and Storey as directors (SAC, ¶¶ 8, 99,127-134); (3) misusing RDI's corporate machinery, including through Kane and Adams as members of the RDI Board of Directors Compensation Committee authorizing the exercise of a supposed option to acquire 100,000 shares of RDI Class B voting stock (SAC, ¶¶ 10, 102-108); (4) stacking the RDI Board of Directors with persons whose sole "qualification" to be an RDI director was personal friendship with a Cotter family member (SAC, ¶¶ 11, 121-134); (5) manipulating RDI's SEC disclosures and annual shareholders meetings to disguise and effectuate their

Lewis Roca ROTHGERBER CHRISTIE
3993 Howard Hughes Pkwy, Suite 600
Las Vegas, NV 89169-5996

entrenchment scheme (SAC, ¶¶ 12, 13, 101-135 and 136); (6) manipulating and aborting a CEO search process to ensure that EC was selected (SAC, ¶¶ 14, 13-147); (7) looting the Company, including by employing MC in a highly compensated senior executive position for which she had no prior experience or professional qualifications (SAC, ¶¶ 15, 148-153) and, most recently, by rejecting third-parties' Offer to purchase all the outstanding stock of RDI at a price well in excess of the price at which it traded in the market, without taking any action to determine what was in the best interests of RDI and its shareholders other than EC and MC (SAC, ¶¶ 16, 154-162).

Plaintiff's claims all arise from an ongoing course of conduct, aptly described as entrenchment, not from a series of unrelated, one-off, coincidental actions as they are framed in the Interested Director Defendants' MSJs.

III. RESPONSE TO FACTUAL ASSERTIONS

The Director Defendants portray Plaintiff's appointment as CEO as some accident occasioned by JJC, Sr.'s death. In reality, JJC, Sr. intended Plaintiff to succeed him. In a memo to the compensation committee dated January 16, 2009, JJC, Sr. expressly suggested JJC succeed him. (Appendix Ex. [1] (JCOTTER0145336).)

The Director Defendants devote a section of their brief to discussing an invented argument they call "Significant Problems with Plaintiff's Managerial Skills Become Obvious." (Defs.' Mot. for Summ. J. No. 1 at p. 5:17.) This theme, and the flimsy evidence taken out of context to support it, contradicts what at least some directors actually felt at the time, that is, before they had a motive to retroactively color their statements and give testimony that serve their present litigation goals. For example, Director Kane proclaimed in a June 8, 2015 email to JJC that "there is no one more qualified to be the CEO of this company than you." (Appendix Ex. [2] (JCOTTER009286).) A day earlier, Kane said "I want you to be CEO and run the company for the next 30 years or more." (*Id.*) And, these statements came in the midst of the meetings that led to Plaintiff's ouster. So, contrary to the spin Defendants give the evidence, no uniform body of evidence shows that Plaintiff's managerial style caused concern for the directors. This remains a sharply disputed point incapable of resolution through a summary process.

Lewis Roca
ROTHGERBER CHRISTIE
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Las Vegas, NV 89169-5996

Director Defendants mischaracterize Director Storey's feeling regarding Plaintiff's work as CEO. They claim "Storey concluded that Plaintiff 'needs to make progress in the business and with Ellen and Margaret [Cotter] quickly, or the board will need to look to alternatives to protect the interests of the company." (Defs.' Mot. Summ. J. at p. 8:27–9:1.)

First, this ambiguous statement does not explicitly reflect any desire by Director Storey to terminate Plaintiff. Director Storey subsequently expressed his approval of Plaintiff's work. Specifically, Storey's notes from May 21, 2015, say that "none of the steps [Plaintiff] proposes to take or has in fact taken are unusual or untoward." (Appendix Ex. [5] (TS0000061).) Storey then added "[o]ther than from Margaret or Ellen, . . . I haven't heard of any material negativity from any other executive as to the CEOs requirements." (*Id.*) Storey recognized the particular governance challenges Plaintiff faced in his sisters. (*Id.*) Despite all this, Storey concluded that "progress has been made in a number of respects," and cautioned that "the resolution need not necessarily be removal of the CEO . . . it could be the removal of the other executives—or all of them." (*Id.* at -62–63; *see also* Appendix Ex. [3] (WG Dep. Ex. 61) (discussing progress).)

Once again, the evidence shows a factual dispute concerning the mindset of RDI directors as to Plaintiff's termination.

The Defendants portray the May 21, 2015 meeting as a natural progression of events—"a months-long effort to address and alleviate ongoing conflicts." (Defs' Mot. Summ. J. No. 1 at 6–8.) In reality, on Tuesday May 19, 2015, EC distributed an agenda for a RDI board of directors meeting on Thursday, May 21, 2015. (Appendix Ex. [6] (EC Dep. Ex. 339).) The first agenda item was "Status of President and CEO." (*Id.*) This subject had not been previously addressed at an RDI Board of Directors meeting. Indeed, a draft agenda a few days earlier made no mention of the subject. (Appendix Ex. [7] (EC Dep. Ex. 338.) Storey wrote in a May 20, 2015 email to Director Gould that "I am only assuming the matter before us is a resolution to immediately remove the CEO—that isn't clear from the agenda, or any direct comment made to me by any party." (Appendix Ex. [8] (TS0000073).) The Defendants have attempted to obscure the official record of the May 21, 2015 board meeting, producing the fictional minutes in redacted form, which excise the advice of counsel. (Appendix Ex. [9] (GA000003864).)

Lewis Roca
ROTHGERBER CHRISTIE
3993 Howard Hughes Pkwy, Suite 600
Las Vegas, NV 89169-5996

The evidence does not support Defendants' argument that JJC was fired after a deliberate, regular, and lawful process. (*See* Defs.' Mot. Summ. J. 9:27-10:2.) Rather, Plaintiff was threatened with termination if he failed to resolve disputes with his sisters on their terms, and then terminated when Kane, Adams, and McEachern voted to terminate him.

On June 8, 2015, JJC advised EC and MC that he could not accept their lawyers' settlement document. MC responded that she "would notify the board that you are unwilling to take our offer despite your acceptance to most of it last week." (JJC Dec. at ¶ 18; Appendix Ex. [12] (MC Dep. Ex. 327); Appendix Ex. [13] (MC 5/13/16 Dep. Tr. at 368:13-369:22); *see also* Appendix Ex. [13] (MC 5/12/16 Dep. Tr. 271:22-279:7); Appendix Ex. [14] (Dep. Ex. 156);.)

On June 10, 2015, EC transmitted an email to all RDI board members stating, among other things, that "we would like to reconvene the Meeting that was adjourned on Friday, May 29th, at approximately 6:15 p.m. (Los Angeles time.)" (JJC Dec. at ¶ 19).

When the tentative agreement did not come to fruition, Kane resumed his advocacy toward Plaintiff, including on June 11, 2015, stating: "I do believe that if you give up what you consider 'control' for now to work cooperatively with your sisters," Kane admonished, "you will find that you will have a lot more commonality than you think." (Appendix Ex. [15] (Kane Dep. Ex. 306 at p. EK 00001613).) "Otherwise," Kane threatened, "you will be sorry for the rest of your life, they and your mother will be hurt and your children will lose a golden opportunity." (*Id.*) Tellingly, Kane also wrote that JJC, Sr. gave MC the right to vote the B stock to force them to work together, and that trying to change that would be a "nonstarter." (Appendix Ex. 15 Kane Dep. Ex. 306).) Kane testified repeatedly that Plaintiff's failure to accede to his sisters' settlement demands cost him his job. (Appendix Ex. [16] (Kane 5/2/16 Dep. Tr.194–195 (testifying that he told JJC to "take [the settlement offer]. . . . You're going to get terminated if you don't.").

On Friday, June 12, 2015, a supposed RDI board of directors special meeting was convened. Adams and Kane (and McEachern) voted to terminate JJC (as did MC and EC). Storey and Gould voted against terminating JJC as President and CEO. (JJC Dec. at ¶ 20; Appendix Ex. [16] (Kane 5/2/16 Dep. Tr. 191:25-192:12, 193:3-194-10); Appendix Ex. [4] (Storey 2/12/16 Dep. Tr. 139:22-140-11); *see also* Appendix Ex. [17] (TS 8/3/16 Dep. Tr. 75:4-76:16 and 81:22-

Lewis Roca ROTHGERBER CHRISTIE
3993 Howard Hughes Pkwy, Suite 600
Las Vegas, NV 89169-5996

82:6).) In January 2016, EC was made permanent President and CEO of RDI. (JJC Dec. at ¶ 21).

Adams, MacEachern, and Kane predetermined their vote before any actual deliberations—and they did so over the protests of other directors, who felt railroaded into a foregone outcome. Prior to May 19, 2015, each of Adams and Kane (and McEachern) communicated to EC and/or among themselves their respective agreement to vote as RDI directors to terminate JJC as President and CEO of RDI. (Appendix Ex. [30] (EC 6/16/16 Dep. Tr. 175:17-176:8); Appendix Ex. [4] (Storey 2/12/16 Dep. Tr. at 96:5-91:4, 98:21-100:8, 100:14-101:11); Appendix Ex. 9 (Adams 4/28/16 Dep. Tr. at 98:7-17; 98:18-99:22); Appendix Ex. [21] (Adams 4/29/16 Dep. Tr. 378:15-370:5); *see also* Appendix Ex. [18] (TS 8/31/16 Dep. Tr. 66:22-67:20) and Appendix Ex. [19] (Dep. Ex 131).) During their planning prior to the May 21 meeting, Kane on May 18, 2016 sent an email to Adams in which Kane agreed to second the motion for JCJ's termination, if necessary:

> See if you can get someone else to second the motion [to terminate Plaintiff]. If the vote is 5-3 I might want to abstain and make it 4-3. If it's needed I will vote. It's personal and goes back 51 years. If no one else will second it I will.

(Appendix Ex. [28] (Dep. Ex. 81 at GA00005500).)

Gould and Storey objected that the non-Cotter directors had not employed a proper process regarding terminating JJC and requested that the non-Cotter directors meet before the May 21 meeting. Gould warned they could "face possible claims for breach of fiduciary duty if the Board takes action without following a process." (Appendix Ex. [23] (Gould Dep. Ex. 318).) Storey used the term "kangaroo court," and noted, "[A]s directors we can't just do what a shareholder [, meaning EC and MC,] asks." [2] (Appendix Ex. [24] (Kane Dep. Ex. 116).) Kane responded they did not need to meet, stating "the die is cast." (Appendix Ex. [25] (EK Dep. Ex. 117 at TS000069).)

The supposed special board meeting on May 29 commenced, and Adams made a motion to terminate Plaintiff as President and CEO. In response, Plaintiff questioned Adams' independence and/or disinterestedness. (JJC Dec. at ¶ 15). The meeting eventually was adjourned until 6:00 PM.

[2] Gould and Storey also were of the view that the ombudsman process was to continue into June 2016, at which time Storey would report further and the five would determine next steps. (Appendix Ex. [17] (TS 8/3/16 Dep. Tr. 33:12-36:16 and 37:15-38:20).)

Lewis Roca ROTHGERBER CHRISTIE
3993 Howard Hughes Pkwy, Suite 600
Las Vegas, NV 89169-5996

Plaintiff was told that he needed to resolve his disputes with his sisters or suffer termination. (*Id.)*

Defendants have wrongfully insisted that Plaintiff resign as Company director. For example, on June 15, 2016 EC declared that Plaintiff's unlawful termination "obligates you to resign immediately from the board of Directors," which requirement, EC argued, was an obligation of Plaintiff's employment contract. (Appendix Ex. [26] (Jun 15, 2016 Letter).) RDI's SEC Form 8-K dated June 12, 2015 repeated this false claim. (Appendix Ex. [27] (Ellis Dep. Ex. 347).) Gould, who drafted Plaintiff's employment contract, testified that this was not required: "I drafted the contract . . . . And it did say in there he would resign. But what we intended that to mean was his position as president." (Appendix Ex. [20] (Gould 6/8/16 Dep. Tr. 244:16–246:6.) Gould communicated the wrongfulness of EC's position to the Board, to RDI's in-house attorney, and to EC—but EC sent the letter in question and caused the erroneous SEC filing. (*Id.*)

IV. ARGUMENT

A. Director Defendants' Fiduciary Duties.

The power of directors to act on behalf of a corporation is governed by their fiduciary relationship to the corporation and to its shareholders. *Shoen v. SAC Holding Corp.*, 137 P.3d 1171, 1178 (Nev. 2006) (citations omitted). Generally, those duties are described as the duty of care and the duty of loyalty. (*Id.*) The duty of good faith may be viewed as implicit in the duties of care and loyalty, or as part of a "triumvirate" of fiduciary duties. *See In re BioClinica, Inc. Shareholder Litig.*, No. CV 8272-VCG, 2013 WL 5631233, at *5 (Del. Ch. Oct. 16, 2013); *Brookstone Partners Acquisition XVI, LLC v. Tanus*, No. CIV.A. 7533-VCN, 2012 WL 5868902, at *2 (Del. Ch. Nov. 20, 2012).

1. The Duty of Care

The duty of care typically is described as requiring directors to act on an informed basis. *Schoen*, 137 P.3d at 1178. Whether directors acted on an informed basis "turns on whether the directors have informed themselves "prior to making a business decision, of all material information reasonably available to them." *Smith v. Van Gorkom*, 488 A. 2d 858, 872 (Del. 1985) (*quoting Aronson v. Lewis*, 473 A. 2d 805, 812 (Del. 1984). Due care thus is a function of the decision-making process, not the decision. *See, e.g., Citron v. Fairchild Camera & Instrument*

Lewis Roca ROTHGERBER CHRISTIE
3993 Howard Hughes Pkwy, Suite 600
Las Vegas, NV 89169-5996

Corp., 569 A. 2d 53, 66 (Del. 1989). This necessarily raises "[t]he question [of] whether the process employed [in making the challenged decision] was either rational or employed in a good faith effort to advance the corporate interests." *In re Greater Se. Cmty. Hosp. Corp. I*, 353 B.R. 324, 339 (Bankr. D.D.C. 2006).

2. The Duty of Loyalty

The director's duty of loyalty requires that directors "maintain, in good faith, the corporation's and its shareholders' best interests over anyone else's interests." *Schoen*, 137 P.3d at 1178 (citations omitted). The duty of loyalty was described in *Guth v. Loft* as follows:

> "Corporate officers and directors are not permitted to use their position of trust and confidence to further their private interests. While technically not trustees, they stand in a fiduciary relation to the corporation and [to] its shareholders. A public policy, existing through the years, and derived from a profound knowledge of human characteristics and motives, has established a rule that demands of a corporate . . . director, peremptorily and inexorably, the most scrupulous observance of his duty [of loyalty], not only affirmatively to protect the interests of the corporation committed to his charge, but also to refrain from doing anything that would work injury to the corporation [or its shareholders] . . . The rule that requires an undivided and unselfish loyalty to the corporation demands that there shall be no conflict between duty and self-interests."

Guth v. Loft, 5 A.2d 503, 510 (Del. 1939).

The terms "loyalty" and "good faith," are "words pregnant with obligation" and "[d]irectors should not take a seat at the board table prepared to offer only conditional loyalty, tolerable good faith, reasonable disinterest or formalistic candor." *In re Tyson Foods, Inc., Consol. Shareholder Litig.*, 2007 WL 2351071, at *4 (Del. Ch. Aug. 15, 2007).

3. The Duty of Disclosure

"Whenever directors communicate publicly or directly with shareholders about the corporation's affairs . . . directors have a fiduciary duty to shareholders to exercise due care, good faith and loyalty." *Malone v. Brincat*, 722 A.2d 5, 10 (Del. 1998). "Shareholders are entitled to rely upon the truthfulness of all information disseminated to them by the directors [of the corporation]." *Id.* at 10-11. When directors communicate with stockholders, they must do so with "complete candor." *In re Tyson Foods, Inc.*, No. CIV.A. 1106-CC, 2007 WL 2351071, at *3 (Del. Ch. Aug. 15, 2007).

Lewis Roca ROTHGERBER CHRISTIE
3993 Howard Hughes Pkwy, Suite 600
Las Vegas, NV 89169-5996

4. Directors' Fiduciary Duties Are Owed to All Shareholders, Not Just the Controlling Shareholder(s)

Directors owe all stockholders, not just the stockholders who appointed them, "an uncompromising duty of loyalty." *In re Trados Inc. S'Holder Litig.*, 73 A.3d 17, 36 (Del. Ch. 2013). Under some circumstances, it is a breach of loyalty for directors not to act to protect the minority stockholders from a controlling stockholder. *Louisiana Mun. Police Emp. Ret. Sys. v. Fertitta*, 2009 WL 2263406, at *8 (Del. Ch. July 28, 2009) (finding that the failure to act in the face of a controlling stockholder's threat to the corporation and its minority stockholders supported a reasonable inference that the board of directors breached its duty of loyalty).

B. The Business Judgment Rule Is a Rebuttable Presumption, Rebutted Here

The business judgment rule is a rebuttable presumption that "in making a business decision the directors of a corporation acted on an informed basis, in good faith, and in the honest belief that the action was taken in the best interests of the company." *See, e.g.*, *In Re Walt Disney Co. Derivative Litig.*, 906 A.2d 27, 52 (Del. 2006) (*quoting Aronson v. Lewis*, 473 A.2d 805, 812 (Del. 1984)). In Nevada, the business judgment rule is codified in NRS § 78.138.3, which provides that "[d]irectors and officers, in deciding upon matters of business, are presumed to act in good faith, on an informed basis and with a view to the interests of the corporation."

The business judgment rule typically is articulated as consisting of four elements: (i) a business decision, (ii) disinterestedness and independence, (iii) due care, and (iv) good faith. *Roselink Investors, L.L.C. v. Shenkman*, 386 F. Supp. 2d 209, 2016 (S.D.N.Y. 2004) (citations omitted). The presumptions of the business judgment rule are rebutted where any of the four elements is absent. *Id.* at 216-17. Here, at least each of the last three elements is absent.

With respect to disinterestedness and independence, because two (Gould and Storey) of the five non-Cotter directors voted against termination, Plaintiff need only show that one of the three directors who voted to terminate Plaintiff had an interest in the challenged conduct or lacked independence from others (here EC and MC) who had an interest in the challenged conduct.

There is no dispute that, as to at least any matters of disagreement between EC and MC and JJC, MC and EC lack disinterestedness and lack independence. The Interested Director Defendants admit that in their summary judgment motions, including as follows:

Lewis Roca
ROTHGERBER CHRISTIE
3993 Howard Hughes Pkwy, Suite 600
Las Vegas, NV 89169-5996

> The Individual Defendants, for the purposes of this motion [regarding "director independence"], do not contest the independence of Ellen and Margaret Cotter as RDI directors with respect to the transactions and, or corporate conduct at issue---which are addressed in the Individual Defendants' other, contemporaneously-filed summary judgment motions.

("Individual Defendants' Motion for Partial Summary Judgment (No. 2) Re: the Issue of Director Independence" at p. 14, fn. 2.)

1. Individual Defendants' Lack of Disinterestedness

With respect to disinterestedness, because the business judgment rule presumes that directors have no conflict of interest, the business judgment rule does not apply where "directors have an interest other than as directors of the corporation." *Lewis v. S.L. & E., Inc.*, 629 F.2d 764, 769 (2d Cir. 1980). This is because "[d]irectorial interest exists whenever divided loyalties are present . . ." *Rales v. Blasband*, 634 A. 2d 927, 933 (Del. 1993) (internal citations and quotations omitted). Thus, a director must be disinterested in the challenged conduct in particular and, as a general matter, otherwise independent. *Beam*, 845 A.2d at 1049.

As the Interested Director Defendants acknowledge, EC and MC lack disinterestedness with respect to the challenged actions, starting with the threat to terminate Plaintiff unless he resolved the California Trust Action and other matters on terms satisfactory to EC and MC, and continuing thereafter with the termination of him on account of his failure to do so.

The same is true, for largely the same reasons, for defendant Kane, who is called "Uncle Ed" by EC and MC and who, by his contemporaneous conduct demonstrated that he acted as "Uncle Ed" throughout to effectuate what he thought were JJC, Sr.'s wishes, and not as a disinterested RDI director exercising disinterested business judgment.

Likewise, Adams admittedly picked sides in a family dispute. He also demonstrated his lack of disinterestedness by, among other things, vigorously pursuing the EC and MC agenda, starting with the termination of Plaintiff, to further his own interest (including to be interim CEO) and to protect the interests of EC and MC, on whom he is financially dependent.[3]

For such reasons, among others, EC, MC, Kane, and Adams each lack disinterestedness

[3] Plaintiff does not concede that McEachern was disinterested and/or independent. Because Plaintiff can prevail on this Motion without showing McEachern to have lacked disinterestedness or independence, he chooses not to address McEachern.

Lewis Roca ROTHGERBER CHRISTIE
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Las Vegas, NV 89169-5996

with respect to the challenged action of threatening Plaintiff and terminating Plaintiff. For that reason alone, each is not entitled to the presumptions of the business judgment rule in connection with their actions to threaten Plaintiff and to terminate him as President and CEO of RDI.

2. Individual Defendants' Lack of Independence

Independence, as used in the context of an element of the business judgment rule, requires a director to engage in decision-making "based on the corporate merits of the subject before the board rather than extraneous considerations or influences." *Gilbert v. El Paso, Co.*, 575 A.2d 1131, 1147 (Del. 1990); *Rales*, 634 A.2d at 936. "Directors must not only be independent, [they also] must act independently." *Telxon Corp. v. Meyerson*, 802 A.2d 257, 264 (Del. 2003). Assessing directorial independence "focus[es] on impartiality and objectiveness." *In Re Oracle Corp. Derivative Litig.*, 824 A.2d 917, 920, 938 (Del. Ch. 2003) (*quoting Parfi Holding AB v. Mirror Image Internet, Inc.*, 794 A.2d 1211, 1232 (Del. Ch. 2001), *rev'd in part on other grounds,* 817 A.2d 149 (Del. 2002); s*ee Cede & Co. v. Technicolor, Inc.*, 634 A.2d 345, 362 (Del. 1993) ("We have generally defined a director as being independent only when the director's decision is based entirely on the corporate merits of the transaction and is not influenced by personal or extraneous considerations") *modified in part on other grounds,* 636 A.2d 956 (Del. 1994).

"Independence is a fact-specific determination made in the context of a particular case. The Court must make that determination by answering the inquiries: independent from whom and independent for what purpose?" *Beam*, 845 A.2d at 1049-50.

> Independence is lacking in situations in which a corporate fiduciary derives a benefit *from the transaction* that is not generally shared with the other shareholders. In situations in which the benefit is derived by another, the issue is whether the [corporate fiduciary]'s decision resulted from that director being *controlled* by another." *Orman v. Cullman*, 794 A.2d 5, 25 n.50 (Del. Ch. 2002) (explaining the distinction between interest and independence). Control may exist where a corporate fiduciary has close personal or financial ties to or is beholden to another.

Id. A close personal friendship in which the director and the person with whom he or she has the questioned relationship are "as thick as blood relations" would likely be sufficient to demonstrate that a director is not independent. *In re MFW S'Holders Litig.*, 67 A.3d 496, 509 n.37 (Del. Ch. 2013).

Similarly, a director who is financially beholden to another person, such as a controlling

Lewis Roca ROTHGERBER CHRISTIE
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Las Vegas, NV 89169-5996

stockholder, is not independent of that person. *In re Emerging Commc'n, Inc. S'Holders Litig.*, 2004 WL 1305745, at *33 (Del. Ch. May 3, 2004). The Court of Chancery has found that directors who derive a substantial portion of their income from a controlling stockholder are not independent of that stockholder. *Id.* at *34. "In such circumstances, a director cannot be expected to exercise his or her independent business judgment without being influenced by the . . . personal consequences resulting from the decision." *Beam v. Stewart*, 845 A.2d 1040, 1049 (Del. 2004) (*quoting Rales v. Blasband*, 634 A.2d 927, 936 (Del. 1993)).

Here, the conduct of EC, MC, Kane, and Adams to extort Plaintiff into resolving trust and estate disputes on terms dictated by EC and MC are squarely and unequivocally efforts to obtain personal benefits for EC and MC not shared with other RDI shareholders. Kane's personal relationship with JJC, Sr., Kane's view that JJC, Sr. intended MC control the Voting Trust, and Kane's actions to make that happen, among other things, demonstrate his lack of independence. As shown by his own sworn testimony in his Los Angeles Superior Court divorce proceeding and in this case, Adams as a general matter is not independent of EC and MC, because he is financially dependent upon income he receives from companies that EC and MC control. For such reasons, among others, each of Kane and Adams (and MC and EC) lacked independence and therefore are not entitled to the presumptions of the business judgment rule.

3. Individual Defendants' Lack of Good Faith

The element of good faith requires the director to act with a "loyal state of mind." *Hampshire Group, Ltd., v. Kuttner*, 2010 WL 2739995, at *12 (Del. Ch. July 12, 2010). The concept of good faith is particularly relevant in cases in which there is a "controlling shareholder with a supine or passive board." *In Re Walt Disney Co. Derivative Litig.*, 907 A.2d 693, 761 n.487 (Del. Ch. 2005), *aff'd*, 906 A.2d 27 (Del. 2006). In such cases, "[g]ood faith may serve to fill [the] gap [between a fiduciary duties of care and loyalty] and insure that the persons entrusted *by shareholders* to govern [the] corporations do so with an honesty of purpose and with an understanding of whose interests they are there to protect." *Id.*

Here, in threatening plaintiff with termination and terminating him when he failed to succumb to the threats, Adams and Kane demonstrated unwavering loyalty—to MC and EC—not

Lewis Roca ROTHGERBER CHRISTIE
3993 Howard Hughes Pkwy, Suite 600
Las Vegas, NV 89169-5996

to RDI by its other shareholders. Adams and Kane contemporaneously evidenced this, including by their own emails to one another and, as to Kane, to Plaintiff. (Appendix Ex. [28] (Dep. Ex. 81 at GA00005500); Appendix Ex. [29] (Adams Dep. Ex. 85 at GA00005544–45; *see also* Appendix Ex. [17] (TS 8/3/16 Dep. Tr. 65:12-66:20).) They diligently pursued and protected the interests of EC and MC, not the interests of RDI and its other shareholders.

4. Individual Defendants Failed To Exercise Due Care

Even had EC, MC, Kane, Adams, and McEachern acted in good faith and in a manner that each reasonably could have believed to be in the best interests of RDI in taking the actions complained of herein, which was not the case, they failed to engage in a process to decide and act on an informed basis in view of the nature and importance of the decisions made. Indeed, the lack of process was contemporaneously memorialized by each of directors Storey and Gould. Storey referred to a "kangaroo court," and Gould predicted that they all would be sued for breaching their fiduciary duties. (Appendix Ex. [23] (Gould Dep. Ex. 318); Appendix Ex. [24] (Kane Dep. Ex. 116).) Adams and Kane acknowledged that their conduct entailed picking sides in the family dispute to threaten Plaintiff with termination and thereafter to carry out the termination threat after Plaintiff declined succumb to the coercion. (Appendix Ex. [29] (Adams Dep. Ex. 85 at GA00005544–45; *see also* Appendix Ex. [17] (TS 8/3/16 Dep. Tr. 65:12-66:20).) The result was that his termination was a *fait accompli* determined by EC, MC, Kane, Adams, and McEachern prior to the first (May 21, 2015) supposed special RDI Board of Directors meeting at which the subject was raised. (Appendix Ex. [24] (Kane Dep. Ex. 116); Appendix Ex. 8 (TS0000073); Appendix Ex. [30] (EC 6/16/16 Dep. Tr. 175:17-176:8); Appendix Ex. [4] (Storey 2/12/16 Dep. Tr. at 96:5-91:4, 98:21-100:8, 100:14-101:11); Appendix Ex. [31] (Adams 4/28/16 Dep. Tr. at 98:7-17; 98:18-99:22); Appendix Ex. [21] (Adams 4/29/16 Dep. Tr. 378:15-370:5); *see also* Appendix Ex. [18] (TS 8/31/16 Dep. Tr. 66:22-67:20) and Appendix Ex. [19] (Dep. Ex 131).) This conduct and the lack of process alone constitutes a breach of the duty of care.

C. Defendants Must and Cannot Satisfy the Entire Fairness Standard

"If the shareholder succeeds in rebutting the presumption of the business judgment rule, the burden shifts to the defendant directors to prove the 'entire fairness' of the transaction."

Lewis Roca ROTHGERBER CHRISTIE
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McMullin v. Brand, 765 A.2d 910, 917 (Del. 2000). *Horwitz v. SW. Forest Indus., Inc.*, 604 F.Supp. 1130, 1134 (D. Nev. 1985), which defendants cite for the platitude that the business judgment rule applies to claims of breach of fiduciary duty against a director, is not to the contrary and does not address circumstance of where, as here, the plaintiff has rebutted the presumption of the business judgment rule.[4] In *Shoen v. SAC Holding Corp.*, 122 Nev. 621, 137 P.3d 1171 (2006), the Nevada Supreme Court adopted the entire fairness doctrine, citing *Oberly v. Kirby*, 592 A.2d 445, 469 (Del. 1991). *Id.* at 640 n. 61, 137 P.3d at 1185 n. 61 Under that doctrine, when a transaction is effected or approved by directors with an interest therein, "[t]he interested directors bear the burden of proving the entire fairness of the transaction in all its aspects, including both the fairness of the price and the fairness of the directors' dealings." *Oberly*, 592 A.2d at 469; *accord Reis v. Hazelett Strip-Casting Corp.*, 28 A.3d 442, 459 (Del. Ch. 2011) ("Once entire fairness applies, the defendants must establish to the court's satisfaction that the transaction was the product of both fair dealing and fair price.") (quotation omitted).

Under the entire fairness test, "[d]irector defendants therefore are required to establish to the *court's* satisfaction that the transaction was the product of both fair dealing and fair price." *Cinerama, Inc.* v. *Technicolor,* 663 A.2d 1156, 1163 (Del. 1995) (*quoting Cede & Co. v. Technicolor,* 634 A.2d 345, 361 (Del. 1993). Thus, a test of entire fairness is a two-part inquiry into the fair-dealing, meaning the process leading to the challenged action and, separately, the end result. *In re Tele-Commc'ns Inc. Shareholders Litig.,* 2005 Del. Ch. LEXIS 206, at *235, 2005 WL 3642727, at *9 (Del. Ch. Sept. 29, 2005).

The Motion makes no mention of this standard. In addition the Motion does not discuss the "omnipresent specter" that the Defendants were acting primarily in their own interests or for entrenchment purposes. *Unocal Corp. v. Mesa Petroleum Co.*, 493 A.2d 946, 954 (Del. 1985); *see also eBay Domestic Holdings, Inc. v. Newmark*, 16 A.3d 1, 36 (Del. Ch. 2010).

[4] Citing NRS §§ 78.139 and 78.140, the Interested Director Defendants in a footnote (Motion at 20, fn. 5) posit that "an 'entire fairness' review can be triggered only" under the particular circumstances addressed by those two statutory provisions. NRS § 78.139 concerns the duties of directors in circumstances where there is a change or potential change of control of the corporation and NRS 78.140 is Nevada's version of the standard statutory modification of the common law principal that all interested director transactions are void. By their terms, on their face, those two statutory provisions do not speak to circumstances other than those described above. Understandably, no authority is cited for the obviously unsupported and erroneous conclusion proffered in that footnote.

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The entire fairness requirement entails "exacting scrutiny" to determine whether the challenged actions were entirely fair. *Paramount Commc'ns, Inc. v. QVC Network Inc.,* 637 A.2d 34, 42 n.9 (Del. 1994). Under the entire fairness standard, the challenged action itself must be objectively fair, independent of the beliefs of the director defendants. *Geoff v. II Cindus.Inc.,* 902 A.2d 1130, 1145 (Del. Ch. 2006); *see also Venhill Ltd. P'ship ex rel. Stallkamp*, No. CIV.A. 1866-VCS, 2008 WL 2270488, at *22 (Del. Ch. June 3, 2008). "The fairness test therefore is "an inquiry designed to assess whether a self-dealing transaction should be respected or set aside in equity." *Venhill*, 2008 WL 2270488 at *22.[5]

Here, Defendants cannot carry their burden of proving the entire fairness of their actions in threatening to terminate and terminating Plaintiff as President and CEO of RDI. They cannot carry their burden of demonstrating the entire fairness of the "process" leading to the termination threats and the termination. They cannot carry their burden of showing that the threatened termination and the termination were objectively fair, independent of the personal beliefs of any or all of Kane, Adams, McEachern, EC and MC.[6]

---

[5] First, invocation of Nevada's exculpatory statute, NRS 78.138.7, misapprehends the function of the statute, which is to limit monetary liability and recovery, not to serve as a means by which the legal sufficiency of a fiduciary duty claim is assessed. *Emerald Partners v. Berlin*, 787 A.2d 85, 92 (Del. 2001) ("a Section 102(b)(7) provision does not operate to defeat the validity of a plaintiff's claim on the merits," but "it can operate to defeat the plaintiff's ability to recover monetary damages.")

Second, even if the exculpatory statute were properly invoked, which it is not, it has no application where, as here, duty of loyalty (and disclosure) claims also are made. *McMillan v. Intercargo Corp*., 768 A.2d 492, 501 n. 41 (Del. Ch. 2000) (the exculpatory statute does not apply to breaches duty of loyalty because "conduct not in good faith, intentional misconduct, and knowing violations of law" are "quintessential examples of disloyal, i.e., faithless, conduct"). Here, the complained of or challenged conduct also and obviously entails breaches of the duty of loyalty (and disclosure). *Orman v. Cullman*, 794 A.2d 5, 41 (Del. Ch. 2002) (plaintiff pleaded a breach of the duty of loyalty claim where it "pled facts which made it reasonable to question the independence and disinterest of a majority of the Board that decided what information to include in the Proxy Statement"); *O'Reilly v. Transworld Healthcare, Inc*., 745 A.2d 902, 914-15, 920, n.34 (Del. Ch. 2014) ("right complaint alleges or pleads facts sufficient to support the inference that the disclosure violation was made in bad faith, knowingly or intentionally, the alleged violation implicates the duty of loyalty" and is relevant to the availability of the exculpatory provisions of section 102(b)(7)): *In re Wheelabrator Techs., Inc. Sh. Litig.*, 1992 Del. Ch. LEXIS at *41 n.18, 1992 WL 212595, at *12 n.18 (Del. Ch. Sept. 1, 1992) (§102(b)(7) did not require dismissal where the plaintiffs pleaded that "the breach of the duty of disclosure wasn't intentional violation of the duty of loyalty").

[6] The Interested Director Defendants apparently intend to defend their decision to terminate JJC under NRS 78.138.2(b) by asserting reliance on counsel. (See Motion at 19:17 ("utilized the services of outside counsel") and Motion at p. 20, fn 4) ("the fact that the RDI Board utilized both the Company's outside counsel and its own counsel, separately retained, when evaluating Plaintiff's performance and its duties is further evidence of the exercise of protected business judgment.") However, the Interested Director Defendants have failed to produce any documents concerning advice from counsel and, at their depositions, invariably refused to disclose such information on the grounds that it is privileged. As the Court previously ruled (and admonished counsel for the Interested Director Defendants), they cannot have it both ways. Plaintiff respectfully submits that the Court cannot consider the claimed

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First, as to the process, the evidence shows that EC, MC, Kane, Adams, and McEachern had communicated and agreed, prior to the May 19, 2015 agenda EC distributed that listed "status of President and CEO" as the first item, to vote to terminate Plaintiff as President and CEO of RDI. It is undisputed that there had been no prior discussion at RDI board meeting of the possible termination of Plaintiff as President and CEO. There also is no dispute that, at the time, both Directors Storey and Gould objected to the lack of process. Storey used the term "kangaroo court." Gould observed that all of the directors could be sued for breaching their fiduciary duties. In short, the "process" leading to the threat to terminate Plaintiff if he did not resolve trust and estate disputes with MC and EC and to terminate him all was set in private communications among EC, MC, Kane, Adams and McEachern prior to the supposed May 21 board meeting.

What followed at the two-part supposed May 29, 2015 board meeting was that Plaintiff was told that the meeting would be adjourned until 6:00 p.m. that evening and that he had until then to resolve the disputes he had with his sisters and that, if he failed to do so, the vote would proceed and he would be terminated. No honest or colorable argument can be made that what amounted to attempted extortion constitutes a process that meets the entire fairness standard.

Of course, the termination vote did not occur on May 29, 2015 because a tentative resolution had been struck by Plaintiff with his sisters. When that resolution did not come to fruition, EC convened another supposed special board meeting on June 12, 2015 and the threatened termination vote was held. Kane, Adams and McEachern (and EC and MC) each voted to terminate Plaintiff as President and CEO and the "process" concluded. Thus, the "process" consisted of secret machinations and agreements, attempted extortion and execution on the extortion threat. No conceivable interest of RDI or its shareholders persuasively or honestly can be argued in an unavailing effort to prove that the "process" was entirely fair.

Likewise, the end result, whether the threatened termination of Plaintiff if he did not resolve disputes with his sisters on terms satisfactory to the two of them, the termination of him after he failed to do so, or both, is not a result the individual defendants can demonstrate was objectively fair. There is nothing objectively fair about attempted extortion. Nor is there anything

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reliance on counsel in connection with the Motion or any other Motion brought by the Interested Director Defendants.

objectively fair about executing on an extortion threat when it fails to bring about the conduct sought. The individual defendants cannot satisfy their burden of showing that the end result, the termination of Plaintiff after he failed to resolve disputes with this sisters on terms satisfactory to the two of them, was objectively fair.

D. The Interested Director Defendants' Efforts to Avoid Having Their Actions As Fiduciaries Evaluated As Such Is Mistaken, and Damning

The Defendants devote the first two sections of their "ARGUMENT" (Motion at 14:6-17:9) to arguments that effectively assert that the actions of the directors of RDI in threatening to terminate JJC and then terminating him when he did not acquiesce to their threats are actions that ought not be analyzed as the actions of directors as fiduciaries. In support, they cite inapposite cases concerning, for example, termination of an employee (an operating manager). (*See* Motion at 14: 13-14, citing *Ingle v. Gilmore Motor Sales, Inc.*, 73 N.Y.2d 183, 190 (1989) and holding that "the law of employment relations" should be the exclusive applicable legal construct where the plaintiff also is the terminated person (*See* Motion at 14:15-18 (citation omitted).) This is a different version of the same argument the Court rejected previously in denying the motion by RDI to stay this case and compel arbitration. Indeed, the interested director defendants invocation of RDI's bylaws—rather than JJC's employment agreement (Motion at 15:14-21)—tacitly acknowledges that the conduct at issue here is that of defendants as directors, not RDI as the employer. In this regard (only), their citation to *Klassen v. Allegro Dev. Corp.*, C.A. Case No. 8262-VCL, 2013 WL 5967028, at *15 (Del. Ch. Nov.7, 2013) for the proposition that "[o]ften it is said that a board's most important task is to hire, monitor, and fire the CEO[,]" unintentionally points up what is at issue here, namely, whether the Director defendant breached fiduciary duties in threatening to terminate and terminating the CEO of RDI.[7]

In short, these arguments are damning because they show that the Interested Director Defendants are desperate to avoid analysis of their actionable conduct as fiduciaries.

E. The Interested Director Defendants' "Economic Harm" Argument Is

[7] The interested director defendants cite *Klassen* for the proposition that "Directors need not give a CEO advance notice of a plan to remove him at a regular board meeting." (Motion at 21;6.) Here, however, the supposed board meeting was a special meeting first convened on May 21, 2016, following a May 19, 2016 E-mail from EC that attached an agenda that included a purposefully vague and misleading agenda item entitled" status of president and CEO."

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Erroneous, as a Matter of Law

The Individual Director Defendants assert that, to avoid summary judgment, Plaintiff must produce "cognizable evidence" showing "that the breach [of fiduciary duty] proximately caused the damages" claimed incurred by the Company. For that proposition, they cite *Brown v. Kinross Gold U.S.A., Inc.*, 531 F. Supp. 2d 1234, 1245 (D. Nev. 2008). (Motion at 14:18-24.) The Individual Director Defendants also assert that, to sustain a fiduciary duty claim, there must be "cognizable evidence" of "economic harm suffered" by the Company resulting from the alleged breaches of fiduciary duty, citing a federal district court case from Colorado and an Arizona state court case. (Motion at 22:13-21.)

The Individual Director Defendants' "economic harm" argument is mistaken as a matter of law and is in reality a disguised exercise at question-begging. The Individual Director Defendants argue that their complained of conduct is governed by the business judgment rule. However, Plaintiff has introduced evidence sufficient to rebut the presumptions of the rule and require the Individual Director Defendants to satisfy the entire fairness test, as to which they bear the burden. Part of that burden is to show that the challenged result was entirely fair. The Individual Director Defendants' "economic harm" argument, therefore, begs the question of what is the standard by which the Individual Director Defendants' conduct is to be assessed.

The Delaware Supreme Court in *Cede & Co. v. Technicolor, Inc.*, 634 A.2d 345 (Del. 1993), *modified* 636 A.2d 956 (Del. 1994), concluded that a requirement that a plaintiff show proof of loss "may" be "good law" in a tort action seeking to recover damages for negligence, but that such a requirement does not apply to a breach of fiduciary duty claim where the issue is the appropriate standard of review of the director defendants' challenged conduct. *Id.* at 370. The Delaware Supreme Court explained that that is the proper rule of law because "[t]he purpose of a trial court's application of an entire fairness standard of review to a challenged business transaction is simply to shift to the defendant directors the burden of demonstrating to the court the entire fairness of the transaction ." *Id.* at 369.

In a subsequent decision in the same case, the court emphasized that "[t]o inject a requirement of proof of injury into the [business judgment] rule's formulation for burden shifting

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Las Vegas, NV 89169-5996

purposes is to lose sight of the underlying purpose of the rule." *Cinerama, Inc. v. Technicolor, Inc.*, 663 A.2d 1156, 1166 (Del. 1995). Explaining further, the Delaware Supreme Court stated that "[t]to require proof of injury as a component of the proof necessary to rebut the business judgment presumption would convert the burden shifting process from a threshold determination of the appropriate standard of review to a dispositive adjudication on the merits." *Id.*

Separately and, contrary to the "economic harm" argument proffered by the Individual Director Defendants in most—if not all—of their MSJ's, the Delaware Supreme Court has made clear that the courts may "fashion any form of equitable and monetary relief as may be appropriate." *Technicolor*, 663 A.2d at 1166 (quoting *Technicolor*, 634 A.2d at 371).

Here, the Individual Director Defendants' repeated erroneous reliance on an imaginary "economic harm" requirement ignores the nature of this action, which is for breach of fiduciary duty—an action in equity in which equitable relief may be sought and obtained.

Here, the prayer for relief in Plaintiff's SAC includes several requests for equitable relief, relating both to the termination of Plaintiff and to subsequent actions of the Individual Director Defendants to entrench themselves in control of the Company. Such relief may be sought and secured by way of a breach of fiduciary duty claim.

"A general common law presumption is that a director's or officer's conflict of interest can result in the voiding of a transaction." Keith Paul Bishop & Jeffrey P. Zucker, Bishop and Zucker on Ne*vada Corporations and Limited Liability Companies*, § 8.16, 8-44 (2013). The Nevada Supreme Court in *Kendall v. Henry Mountain Mines, Inc.,* stated that directorial conflicts are such that the challenged action of the directors "may be avoided by the corporation or its stockholders." 78 Nev. 408, 410-11, 374 P.2d 889, 890 (1962) (*quoting Marsters v. Umpqua Valley Oil, Co.*, 90 P. 151, 153 (Or. 1907).

Here, as demonstrated above, the decisions of Kane and Adams to terminate Plaintiff as President and CEO of RDI, after he failed to acquiesce to their threats to terminate him if he did not resolve trust and estate litigation with EC and MC on terms satisfactory to the two of them, was a decision with respect to which each of Kane and Adams lacked both disinterestedness and independence, and with respect to which each failed to act independently. Instead, each simply

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picked sides in a family dispute and power struggle as it suited their own quasi-familial, financial and/or other personal interests, as well as the personal interests of EC and MC. The decision to remove Plaintiff as President and CEO of RDI raises exactly the sort of conflicts and conflicted decision-making and consequence that "may be avoided by the corporation or its stockholders."

That is particularly so given the nature of the decision and the nature of subsequent actions taken to the same end. The subsequent actions include the effective dismantling of RDI's Board of Directors, including by the creation of the EC Committee populated by EC and MC and the two individuals most personally and financially beholden to them, Kane and Adams, and the usurpation of the authority of RDI's Board of Directors. That is even more true given the misleading public disclosure, both by commission and omission, caused by EC and those other defendants who act at her behest and direction. All of these actions constitute ongoing breaches of fiduciary duty, and each and all of them were undertaken to usurp management and control of the Company, in derogation of the interests of all RDI shareholders other than EC and MC. Those type of actions constitute or give rise to irreparable injury. *See Vanderminden v. Vanderminden,* 226 A.D.2d 1037, 1041 (1996) (the "alleged harm, an opportunity for defendants to shift the balance of power and assume management and control of the company, and may properly be viewed as irreparable injury" (*citing Matter of Brenner v. Hart Sys.,* 114 A.D.2d 363, 366, 493 N.Y.S.2d 881, 884 (1985))).

Additionally, although not required to do so, given the nature of the claims made and the relief sought, plaintiff has produced evidence of damages. For example, Plaintiff has claimed, and defendant's own documents duplicative or redundant compensation including, for example, monies paid to third-party consultants (e.g., Edifice) and/or monies paid to MC arising from the fact that MC has no prior real estate development experience, which requires the third-party consultants be paid to do what is part of her jobPlaintiff has claimed and publicly available information shows diminution in the price at which RDI stock traded in the days following disclosure of the termination of Plaintiff, as well as on the day of and following disclosure of the selection of EC as permanent President and CEO.

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Plaintiff has claimed and evidence shows corporate waste and monetary damages to RDI, including from the inflated salary paid to MC and including from what amounted to a gift of $200,000 to MC (supposedly for services she had provided over a number of preceding years, for which neither her father is the former CEO or the board saw fit to compensate her at the time) and a gift of $50,000 Adams (for serving as a director over the course of the preceding year, during which there was nothing memorializing his supposed special services as such, much less the notion that he should receive special compensation for those services which only were identified after the fact).

F. The Interested Director Defendants' Argument that Plaintiff Is an Inadequate Derivative Plaintiff Is Mistaken and Has Been Rejected by the Court Previously

The (understandably) next to last arguments made in the Motion attempt to revive the subjects of demand futility and adequacy of the derivative plaintiff, which the Interested Director Defendants twice argued and lost on motions to dismiss. (Motion at 23:18- and 28:16.) Nothing has changed, except that the intervening plaintiffs have given up and gone home, which is of no moment. These arguments remain unavailing as a matter of law. Plaintiff respectfully refers the Court to his prior briefing of these issues, and incorporates same herein.

First, in response to the individual defendants' MSJs, Plaintiff has introduced substantial evidence of self-dealing entrenchment conduct by the Interested Director Defendants—who still comprise a majority of the Board of Directors. For example, the evidence shows that and how EC, MC, Kane, and Adams misused their positions as directors to enable EC and MC to exercise an option supposedly held by the estate to acquire 100,000 shares of RDI Class B voting stock. The evidence also shows that and how EC, MC, Kane, Adams, and McEachern acted to force Storey to resign and to replace him and fill a new director slot with unqualified individuals effectively selected by and loyal to EC and MC. Of course, this is in addition to evidence regarding Plaintiffs' termination, which was merely the beginning of an ongoing course of entrenchment motivated conduct.

Second, the Motion's demand argument is unavailing as a matter of law, for several reasons. First, a majority of the current Board of Directors are the same directors with respect to

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whom the Court previously found demand excused. That the composition of the RDI Board has changed therefore is a "red herring." Under both these so-called *Aronson* and *Rales* tests, the entire board need not suffer from disqualifying interest or lack of independence to excuse demand, because where "there is not a majority of independent directors . . . demand would be futile." *Beam*, 845 A.2d at 1046, n. 8; *see, e.g.*, *Beneville v. York*, 769 A.2d 80,82 (Del. Ch. 2000) (demand is excused where the board is evenly divided). Second, demand futility is assessed based on "the circumstances at the commencement of a derivative suit." *Aronson v. Lewis*, 473 A.2d 805, 810 (Del. 1984). That is because, in assessing whether demand is excused, "[i]t is th[e] board [at the time the derivative complaint is filed], and no other, that has the right and responsibility to consider a demand by a shareholder to initiate a lawsuit to redress his grievances." *In re infoUSA, Inc. Shareholders Litig.*, 953 A.2d at 985-986. The simple reason for this rule of law is that "that is the board on which demand would be made." *In re VeriSign, Inc. Derivative Litig.*, 531 F. Supp 2d. 1173, 1189 (N.D. cal. 2007); *see also Kaufman v. Beal*, 1983 WL 2029, at *9 (Del. Ch. Feb. 25, 1983) (stating it "offends notions of fairness to require a plaintiff in a stockholder's derivative suit to make a new demand every time the Board of Directors of the corporation has changed").[8]

In sum, the renewed demand futility made in the Motion is unavailing.

The Interested Director Defendants also revive their factually and legally deficient arguments that plaintiff is not an adequate derivative representative. (Motion at 23:18- 28:26.) The Court previously rejected these arguments based on the same claimed facts (except for the intervening plaintiffs dropping out) and same asserted law.

The interested director defendants once again assert that "economic antagonisms" exist, that the remedy sought is personal and that other litigation is pending. The supposed "economic

[8] The two cases cited in the Motion are not to the contrary. Each reflect nothing other than that a poorly pleaded complaint will require substantially additional work on the part of the court, including to determine what claims are direct and what claims are derivative. Thus, in *MCG Capital Corp. v. Maginn,* No. CIV.A. 4521-CC, 2010 WL 1782271 (Del. Ch. May 5, 2010) an unpublished opinion, the court found that the complaint contained both direct and derivative claims, that it failed to specify which was which and that the parties disagreed, concluding "that after undergoing this exercise I appreciate more fully MacDuff's sentiment: 'confusion now hath made his masterpiece.'" *Id.* at *4. Similarly, *Khanna v. McMinn,* No. CIV.A. 20545-NC, 2006 WL 1388744 (Del. Ch. May 9, 2006) was an action in which the plaintiffs made claims relating to six separate transactions (other than disclosure claims) allegedly resulting from breaches of fiduciary duty. Those six separate transactions did not all arise out of the same set of facts and circumstances or even make the same claims against the same directors in each instance. As such, the case is readily distinguishable.

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antagonisms" once again incorrectly assume that Plaintiff is not a significant shareholder and that the value of his RDI stock, and the stock held by the trust of which his children are three of five beneficiaries, pales in comparison to the value of the compensation to which he would be entitled pursuant to his executive employment agreement. There is no dispute the facts are exactly to the contrary. That one remedy sought also relates to Plaintiff's position as CEO is a function of the fact that the termination of Plaintiff as CEO was the beginning of the ongoing course of entrenchment activities that are the subject of this lawsuit. That equitable relief is available because of the lack of disinterest and lack of independence on the part of Adams and Kane in threatening to terminate Plaintiff and then terminating him does not change the fact that such relief is available and here, appropriate. The claim that Plaintiff is using this derivative action to obtain a favorable settlement another action is nothing more than interested director defendants imputing to Plaintiff exactly the conduct in which they engaged, when they threatened Plaintiff with termination if he did not settle trust and estate disputes with EC and MC on in terms satisfactory to the two of them. They proffered no evidence the Plaintiff has reciprocated, because there is none. Likewise, the Interested Director Defendants simply word processed their factually erroneous arguments that Plaintiff invoked the name "Corleone" to refer in this action to defendant Kane when, as evidence shows, it was Kane himself who used that name.

Literally the only portion of this argument that is new, or different, is the claim that Plaintiff has no shareholder support. Of course, the Court knows that claim is inaccurate, as reflected by the objections to the T2 Plaintiffs' request for court approval of their settlement, filed by the largest holders of both RDI class A and class B stock.

In sum, the revived demand and adequacy of plaintive arguments remain unveiling, as a matter of law.

G. The Interested Director Defendants Rely on Inapposite Authority Concerning Employment Matters and Cases

Finally, the Interested Director Defendants assert that "Plaintiff's reinstatement demand is unsupportable and untenable." (Motion at 20:27– 30:21.) In support of that conclusion, they cite in case after case in which the plaintiff sought relief personally as a terminated employee. This

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simply is a different version of the Company's unsuccessful motion to compel arbitration which explicitly (as compared to here, implicitly) was predicated on the notion that because Plaintiff is a former executive, he has no rights as an RDI shareholder. That conclusion is erroneous as a matter of law, as the Court previously determined.

Perhaps recognizing that Plaintiff, the court, or both will recognize their slightly disguised arguments as a rehash of what the Company previously argued unsuccessfully, the Interested Director Defendants also make a "long period of time" since termination argument and an "irreparable animosity between the parties" argument. The first of those arguments ignores the fact that, rather than hiring a CEO pursuant to a CEO search process, the defendants instead aborted that process and hired one of their own, EC. The second argument assumes, incorrectly, that RDI is a private company and that the interests of public shareholders do not matter, both of which are erroneous and show the cases cited to be inapposite.

V. CONCLUSION

For the forgoing reasons, Plaintiff respectfully submits that Individual Defendants' Motion for Summary Judgment (No. 1) should be denied.

DATED this 13th day of October, 2016.

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CERTIFICATE OF SERVICE

I hereby certify that on this _13th___ day of October, 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/ Luz Horvath
An employee of Lewis Roca Rothgerber Christie LLP

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DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiff,

v.

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

Defendants.

and

READING INTERNATIONAL, INC., a Nevada corporation;

Nominal Defendant.

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

Plaintiffs,

vs.

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

CASE NO. A-15-719860-B
DEPT. NO. XI
Coordinated with:
CASE NO. P-14-082942-E
DEPT. NO. XI
CASE NO. A-16-735305-B
DEPT. NO. XI
Jointly administered

PLAINTIFF JAMES J. COTTER, JR.'S OPPOSITION TO INDIVIDUAL DEFENDANTS' MOTION FOR PARTIAL SUMMARY JUDGMENT (NO. 2) RE: THE ISSUE OF DIRECTOR INDEPENDENCE

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TOMPKINS, and DOES 1 through 100, inclusive,

Defendants.

and

READING INTERNATIONAL, INC., a Nevada corporation,

Nominal Defendant.

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TABLE OF CONTENTS

Page

I. INTRODUCTION 1

II. FACTUAL CLARIFICATION 1

III. ARGUMENT 10

A. Summary Judgment Standard 10

B. RDI Improperly Seeks Summary Judgment of Contested Factual Issues 11

C. Legal Analysis Applicable Here 12

1. Director Defendants' Fiduciary Duties. 12

a. The Duty of Care 12

b. The Duty Of Loyalty 13

c. The Duty of Good faith 13

d. The Duty of Disclosure 14

e. Directors' Fiduciary Duties Are Owed to All Shareholders, Not Just the Controlling Shareholder(s) 14

2. The Business Judgment Rule Is a Rebuttable Presumption, Rebutted Here 14

a. Individual Defendants' Lack of Disinterestedness 16

b. Individual Defendants' Lack of Independence 16

3. Defendants Must and Cannot Satisfy the Entire Fairness Standard 18

IV. CONCLUSION 20

Lewis Roca ROTHGERBER CHRISTIE

3993 Howard Hughes Pkwy, Suite 600
Las Vegas, NV 89169-5996

TABLE OF AUTHORITIES

Page

Cases

Aronson v. Lewis,
473 A. 2d 805 (Del. 1984) 14, 17

Aviation Ventures, Inc. v. Joan Morris, Inc.,
121 Nev. 113, 110 P.3d 59 (2005) 11

Beam ex rel. Martha Stewart Living Omnimedia, Inc. v. Stewart,
845 A.2d 1040 (Del. 2004) ..... *passim*

Cede & Co. v. Technicolor, Inc.,
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636 A.2d 956 (Del. 1994) 19, 21

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127 Nev. 265 P.3d 698 (2011) 11

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663 A.2d 1156 (Del. 1995) 21

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569 A. 2d 53 (Del. 1989) 15

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119 Nev. 1, 62 P.3d 720 (2003) 17

Delaware law. *Teamsters Union 25 Health Serv. & Ins. Plan v. Baiera*,
199 A.3d 44 (Del. Ch. 2015) 10

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631 F. Supp. 860 (S.D.N.Y. 1986) 13

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16 A.3d 1 (Del. Ch. 2010) 21

Emerald Partners v. Berlin,
787 A.2d 85 (Del. 2001) 21

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741 F.2d 707 (5th Cir. 1984) 13

Geoff v. II Cindus.Inc.,
902 A.2d 1130 (Del. Ch. 2006) 21

Gilbert v. El Paso, Co.,
575 A.2d 1131 (Del. 1990) 19

Guth v. Loft,
5 A.2d 503 (Del. 1939) 15

Lewis Roca ROTHGERBER CHRISTIE
3993 Howard Hughes Pkwy, Suite 600
Las Vegas, NV 89169-5996

Hampshire Group, Ltd., v. Kuttner,
2010 WL 2739995 (Del. Ch. July 12, 2010) 16

Horwitz v. SW. Forest Indus., Inc.,
604 F.Supp. 1130 (D. Nev. 1985) 20

In re BioClinica, Inc. Shareholder Litig.,
No. CV 8272-VCG, 2013 WL 5631233 (Del. Ch. Oct. 16, 2013) 14

In re Emerging Commc'n, Inc. S'Holders Litig.,
2004 WL 1305745 (Del. Ch. May 3, 2004) 19

In re Facebook, Inc., IPO Sec. & Derivative Litig.,
922 F. Supp. 2d 445 (S.D.N.Y. 2013) 12

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542 F. Supp. 2d 980 (N.D. Cal. 2008) 12

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753 A.2d 462 (Del. Ch. 2000) 13

In re Greater Se. Cmty. Hosp. Corp. I,
353 B.R. 324 (Bankr. D.D.C. 2006) 15

In re MFW S'holders Litig.,
67 A.3d 496 (Del. Ch. 2013) 12, 19

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824 A.2d 917 (Del. Ch. 2003) 19

In re Tele-Commc'ns Inc. Shareholders Litig.,
2005 Del. Ch. LEXIS 206, 2005 WL 3642727 (Del. Ch. Sept. 29, 2005) 21

In re Trados Inc. S'Holder Litig.,
73 A.3d 17 (Del. Ch. 2013) 16

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954 A.2d 346 (Del. Ch. 2008) 13

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2007 WL 2351071 (Del. Ch. Aug. 15, 2007) 15, 16

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906 A.2d 27 (Del. 2006) 17

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907 A.2d 693 (Del. Ch. 2005) 16

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1992 WL 212595 (Del. Ch. Sept. 1, 1992) 22

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629 F.2d 764 (2d Cir. 1980) 18

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2009 WL 2263406 (Del. Ch. July 28, 2009) 16

Lewis Roca
ROTHGERBER CHRISTIE
3993 Howard Hughes Pkwy, Suite 600
Las Vegas, NV 89169-5996

Malone v. Brincat,
722 A.2d 5 (Del. 1998) 14, 15, 16

McMillan v. Intercargo Corp.,
768 A.2d 492 (Del. Ch. 2000) 21

McMullin v. Beran,
765 A.2d 910 (Del. 2000) 16, 20

O'Reilly v. Transworld Healthcare, Inc.,
745 A.2d 902 (Del. Ch. 2014) 21

Orman v. Cullman,
794 A.2d 5 (Del. Ch. 2002) 19, 20, 21

Paramount Commc'ns, Inc. v. QVC Network Inc.,
637 A.2d 34 (Del. 1994) 19

Parfi Holding AB v. Mirror Image Internet, Inc.,
794 A.2d 1211 (Del. Ch. 2001) 19

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355 F. Supp. 2d 704 (S.D.N.Y. 2005) 13

Rales v. Blasband,
634 A. 2d 927 (Del. 1993) 18, 19, 20

Roselink Investors, L.L.C. v. Shenkman,
386 F. Supp. 2d 209 (S.D.N.Y. 2004) 17

SEPTA v. Volgenau, C.A.,
No. 6354-VCN, 2013 WL 4009193 (Del. Ch. Aug. 5, 2013) 13

Shoen v. SAC Holding Corp.,
137 P.3d 1171 (Nev. 2006) 14, 15

Smith v. Van Gorkom,
488 A. 2d 858 (Del. 1985) 14

Solomon v. Armstrong,
747 A.2d 1098 (Del.Ch. 1999) 20

Stone v. Ritter,
911 A.2d 362 (Del. 2006) 15

Teamsters Union 25 Health Servs. & Ins. Plan v. Baiera,
119 A.3d 44 (Del. Ch. 2015) 12, 13

Telxon Corp. v. Meyerson,
802 A.2d 257 (Del. 2003) 1, 4, 19

Unocal Corp. v. Mesa Petroleum Co.,
493 A.2d 946 (Del. 1985) 21

Venhill Ltd. P'ship v. Hilman,
2008 WL 2270488 (Del. Ch. June 3, 2008) 21

Lewis Roca
ROTHGERBER CHRISTIE
3993 Howard Hughes Pkwy, Suite 600
Las Vegas, NV 89169-5996

Yucaipa Am. Alliance Fund II, L.P. v. Riggio,
1 A.3d 310 (Del. Ch. 2010) 10

Rules

NRCP 56 12

NRCP 56(f) 11

13

2006 (,
Del. Ch. LEXIS 161, 2000 WL 2521441 (Del. Ch. Aug. 22, 2006) 19

Lewis Roca
ROTHGERBER CHRISTIE
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Las Vegas, NV 89169-5996

Plaintiff James J. Cotter, Jr., ("JJC" or "Plaintiff"), by and through his attorney Mark G. Krum of Lewis Roca Rothgerber Christie LLP, files this Opposition to **INDIVIDUAL DEFENDANTS' MOTION FOR PARTIAL SUMMARY JUDGMENT (NO. 2) RE: THE ISSUE OF DIRECTOR INDEPENDENCE** filed by Reading International, Inc. (the "Motion"), as follows.

I. INTRODUCTION

This court should deny defendants' Motion for Partial Summary Judgment. Directorial independence is not a claim or an element of a claim. It is a factual question raised where, as here, directors seek to protect their conduct by invoking the business judgment rule. Thus, "[i]ndependence is a fact-specific determination made in the context of a particular case. The Court must make that determination by answering the inquiries: independent from whom and independent for what purpose?" *Beam ex rel. Martha Stewart Living Omnimedia, Inc. v. Stewart*, 845 A.2d 1040, 1049-50 (Del. 2004); *see also Telxon Corp. v. Meyerson*, 802 A.2d 257, 264 (Del. 2003) ("Directors must not only be independent, [they also] must act independently."). For such reasons, MSJ No. 2 seeks relief that cannot be obtained pursuant to Rule 56 and, even if that were not the case, raises exactly the type of factual determination that is not properly made on a Rule 56 motion for summary judgment.

The actual questions the Court would need to answer are questions not raised in MSJ No. 2. Those questions concern whether, with respect to challenged actions the individual director defendants seek to excuse by invoking the business judgment rule, the director defendants can establish that the majority of those making the challenged decisions were independent generally and independent specifically with respect to the challenged decisions. These are not questions that are properly resolved by way of a Rule 56 motion for summary judgment.

II. FACTUAL CLARIFICATION

Kane Maintained a Close Quasi-Familial Relationship with JJC, Sr. for Five Decades

The Director Defendants claim that the "evidence establishes that any 'deep friendship' was between Kane and the deceased James J. Cotter, Sr.—not with his daughters Ellen and

Lewis Roca ROTHGERBER CHRISTIE
3993 Howard Hughes Pkwy, Suite 600
Las Vegas, NV 89169-5996

Margaret Cotter." (Defs.' MSJ No. 2 at 16:18–19; *see also id.* at 1:26–28 ("First, 'the deep friendship' of which Plaintiff complains with respect to director Kane was actually between Kane and the now-deceased James J. Cotter, Sr.—not between Kane and the Cotter sisters.")) This is *exactly* the point Plaintiff makes.

The evidence shows that (1) Kane generally lacked independence from EC and MC because, among other things, of his five-decade long *quasi-familial* relationship with their father and Kane's understanding that their father intended for MC alone, not MC together with Plaintiff, to be the trustee of the voting trust (which was a fundamental issue and dispute between plaintiff, on one hand, and MC and EC on the other hand) and (2) with respect to decisions to threaten with termination and to terminate plaintiff, Kane lacked disinterestedness because, among other things, it was his view that the wishes of his five-decade deceased friend, JJC, Sr., were that MC along, not MC and Plaintiff together, would be the trustee of the voting trust that controlled RDI, which was one of the points on which MC and EC—and Kane—insisted that Plaintiff accept as part of a global resolution of disputes between Plaintiff, on one hand, and MC and EC, on the other hand.

Kane was a close friend of JJC, Sr. for five decades. Kane and JJC Sr. had known each other since attending a L.L.M. program at the NYU Law School in 1963 and "became fast friends" and had a "very close relationship." (Appendix Ex. [1] (Kane 5/2/16 Dep. 29:8–23, 32:20–25).) Kane served as an officer of both Craig Corporation, an entity controlled by JJC, Sr., and as a director of RDI a number of different times in the 1980s and 1990s, most recently returning as an RDI board member in 2004. (Appendix Ex. [1] (Kane 5/2/16 Dep. Tr. 15–16).) Although they had disputes that prompted Kane to resign a number of times, the two were "too good friends to let [things] fester too long." (Appendix Ex. [1] (Kane 5/2/16 Dep. Tr. 25:1–2).)

Kane in deposition repeatedly claimed that "I think I knew better than anybody what [Sr.] would have wanted. I've known him for—I knew him for 50 years." (Appendix Ex. [2] (Kane 5/3/16 Dep. Tr.264:2–4).) Kane has known the Cotter children since their births; he testified that they address him as "Uncle Ed." (Appendix Ex. [1] (Kane 5/2/16 Dep. Tr. 37).) This exceptionally close and lengthy personal relationship rendered Kane unable to make decisions as an independent and disinterested member of RDI's Board of Directors regarding matters that

Lewis Roca ROTHGERBER CHRISTIE
3993 Howard Hughes Pkwy, Suite 600
Las Vegas, NV 89169-5996

touched upon disputes between MC and EC, on one hand, and Plaintiff, on the other, hand.

First, Kane was well aware of the fundamental disputes between MC and EC, on one hand, and Plaintiff, on the other, regarding who would be the trustee of the Voting Trust that would control apparently seventy percent of RDI's class B voting stock:

> Q.: When you refer to "all issues within the family," to what were you referring?
>
> Kane: I can't recall. I see "litigation" there. That was one thing. But I can't recall what the other issues were at the time.
>
> Q.: Well, one of the issues was the lack of agreement regarding whether Margaret or Jim and Margaret would be the trustees of the voting trust, correct?
>
> Kane: Well, that's litigation in my mind.

(Appendix Ex. [1] (Kane 5/2/16 Dep. Tr. 128:7–19); *see also id.* at 210:20—211:3 (confirming that Kane understood that "one of the issues in dispute was who would control the—the trust that held class B voting stock"); 211:5–18 (noting Kane's understanding that there were two outcomes: (1) either MC would sole trustee of the voting trust under the so-called 2013 Amendment or (2) JCJ and MC would be co-trustees of the voting trust under the so-called 2014 Amendment); *see also* Appendix Ex. [2] (Kane 5/3/16 Dep. Tr.276:15–20).)

Second, Kane has his own opinion about what JJC, Sr. intended in that regard. Kane's opinion was that it was JJC, Sr.'s wishes that MC alone be trustee of the voting trust.

> Q: Referring you, Mr. Kane, to your testimony about your understanding as to why in the 2013 amendment Margaret had been designated as trustee of the voting trust, how did you come to have that understanding?
>
> Kane: Mr. Cotter informed me. In one of our conversations he said he was making Margaret the trustee of the voting stock. And I asked him why. And he told me -- and it's right in my brain, it's imprinted on it -- that "that will force them to work together." That's a quote.
>
> Q: What else did you say or what else did he say in that conversation about either the trust documentation or [t]he Cotter children working together?
>
> Kane: Excuse me. Repeat that, please.
>
> Q.: What else did he say, if anything, during that conversation about the trust documentation?
>
> Kane: Nothing that I can recall.

Lewis Roca ROTHGERBER CHRISTIE
3993 Howard Hughes Pkwy, Suite 600
Las Vegas, NV 89169-5996

> Q.: What else, if anything, did he say during that conversation about prompting or forcing the three -- his three Cotter children to work together?
>
> Kane: *He didn't need to say anything. I knew what he was talking about.*
>
> Q.: What was your understanding at the time?
>
> Kane: Understanding was that their diverse personalities, and there had been some incidents -- I call incidents, nothing specific or difficult -- at board meetings that I thought it was a good idea to make Margaret, given the background -- I was surprised, *but I thought it was a good idea that he made Margaret the sole trustee.*

(Appendix Ex. [2] (Kane 5/3/16 Dep. Tr. 257:22–259:6 (emphasis supplied); *see also id.* at 264:5–11 ("We would have regular meetings in Laguna just the two of us, talk over strategy, talk over his children, talk over all issues. And it was reflected in his comment to me that he was giving Margaret the voting power to force them to work together. *So, I knew that's what he wanted.*") (emphasis supplied); Appendix Ex. [3] (Kane 6/9/16 Dep. Tr. 602:8–17).) Kane testified further at his deposition as follows:

> Q.: Were you about to tell me something about whether you thought the 2014 amendment reflected what you understand to be Jim Cotter, Sr.'s wishes?
>
> Kane: That's what the Court will decide. I don't -- I try to stay out of That. I have my own opinion, but I don't have all the facts.
>
> Q.: What's the basis for your opinion? The conversation that you described to us already?
> Kane: Yes.
>
> Q.: Anything else?
>
> Kane: 50 years of friendship. And so I think I knew him in some respects better than any member of his family.
>
> Q.: Okay. And your opinion is that based on the facts you have –
>
> Kane: Yes.
>
> Q.: and not considering the facts you acknowledge you do not have –
>
> Kane: I don't know if there are any.
>
> Q.: Right. But based on the facts you have, you think it's the 2013 amendment that reflects Jim Cotter, Sr.'s wishes?
>
> Kane: Yes.

(Appendix Ex. [2] (Kane 5/3/16 Dep. Tr. 277:2–278:4 (objection omitted).)

Lewis Roca ROTHGERBER CHRISTIE
3993 Howard Hughes Pkwy, Suite 600
Las Vegas, NV 89169-5996

Third, that is exactly what Kane acted to make happen, by sending emails to Plaintiff pressuring him to resolve his disputes with his sisters by acceding to their demands. On the evening of May 28th Kane wrote Plaintiff stating, "Ellen is going to present you with a global plan to end the litigation and move the Company forward. *If you agree to it*, you, Ellen and Margaret will work in a collaborative manner *and you will retain your title*." (Appendix Ex. [4] (Dep. Ex. 118 at EK 00000396 (emphasis supplied).) Kane further warned, "If it is a take-it-or-leave-it, then I STRONGLY ADVISE YOU TO TAKE IT, even though I have not seen or heard the particulars." (Appendix Ex. [4] (Dep. Ex. 118 at EK 00000396).)

On May 29, 2015, the vote to terminate Plaintiff was not had, because Plaintiff appeared to have reached an agreement with MC and EC satisfactory to the two of them. (Appendix Ex. [1] (Kane 5/2/16 Dep. Tr. (191:6–24).)

When that tentative agreement did not come to fruition, Kane resumed his advocacy toward Plaintiff, including on June 11, 2015, stating: "I do believe that if you give up what you consider 'control' for now to work cooperatively with your sisters," Kane admonished, "you will find that you will have a lot more commonality than you think." (Appendix Ex. [5] (Kane Dep. Ex. 306 at p. EK 00001613).) "Otherwise," Kane threatened, "you will be sorry for the rest of your life, they and your mother will be hurt and your children will lose a golden opportunity." (*Id.*) Tellingly, Kane also wrote:

> "[F]or now I think you have to concede that Margaret will vote the B stock. As I said, you dad told me that giving Margaret the vote was his way of 'forcing' the three of you to work together. Asking to change that is a *nonstarter*."

(Appendix Ex. [5] (Kane Dep. Ex. 306 (emphasis original)).)

The termination vote went forward on June 12, 2015. (191:25–192:11). Kane voted to terminate Plaintiff:

> Kane: I—I said to him at one point, "Take it. You have nothing to lose. You're going to get terminated if you don't. If you can work it out with your sisters, it will go on and I will support you. I'll even make a motion to see if the company will reimburse the legal fees." I did not want him to go. And you, I'm sure, see emails in there to that effect. Even though I voted—was voting against him, I wanted him to stay as C.E.O.
>
> * * *

Lewis Roca ROTHGERBER CHRISTIE
3993 Howard Hughes Pkwy, Suite 600
Las Vegas, NV 89169-5996

> Q.: But that resolution did not come to pass because Jim Cotter, Jr., rejected it, correct?
>
> Kane: He rejected it, yes.
>
> Q.: And he got himself terminated, right?
>
> Kane: Yes.

(Appendix Ex. [1] (Kane 5/2/16 Dep. Tr.194–195 (objection omitted).)

The Director Defendants insist that "there is no evidence that Plaintiff's mother has chosen sides in the intra-family dispute, that she has related this choice to Codding, or that Codding would consider that view to be any way material to her exercise of her duties as an RDI director." (Defs.' MSJ No. 2 at 2:17–19.) In fact, Plaintiff's mother has chosen sides: EC lives with her mother. (JJC Dec. at ¶ 24.) Additionally, after the "civil war erupted" between the Cotter siblings, Mary Cotter reacted by constantly calling Director Kane for advice on how to react and what to do. (Appendix Ex. [6] (JJC 5/16/16 Dep. Tr. 105:15–23).)

Michael Wrotniak has nothing more to recommend him as an RDI director than his and his wife's close, personal relationship with MC, which make them beholden to her. MC has known Michael and Patricia Wrotniak since college, and MC describes Patricia Wrotniak as a "close" friend whom she sees on a regular basis in social settings. (Appendix Ex. [7] (MC 5/13/16 Dep. Tr. 322–323).) Patricia Wrotniak was one of a select few friends to whom MC sent a tribute email regarding her father's passing, inviting Patricia Wrotniak to the funeral and celebratory mass. (Appendix Ex. [8] (MC00006333).)

Trisha Wrotniak was MC's roommate in her freshman year of college at Georgetown University. (JJC Dec. at ¶ 23.) MC and Trisha Wrotniak have been life-long best friends starting with their first year in college together. (JJC Dec. at ¶ 23.) Michael Wrotniak also went to Georgetown University where he met his wife Trisha Wrotniak and also developed a very close friendship with MC. (JJC Dec. at ¶ 23.) Plaintiff believes that because MC has few friends, her relationship with Trisha and Michael Wrotniak is extremely important and close. (JJC Dec. at ¶ 23.) MC has spent a great deal of time with the Wrotniaks over the years, as they live in Bronxville just outside of New York City, close to MC. (JJC Dec. at ¶ 23.) MC became like an aunt to the Wrotniaks' children. (JJC Dec. at ¶ 23.) MC and the Cotter children's mother, Mary,

Lewis Roca ROTHGERBER CHRISTIE
3993 Howard Hughes Pkwy, Suite 600
Las Vegas, NV 89169-5996

know the Wrotniaks very well also, as they have all attended social events in New York, such as birthdays and cocktail parties MC has hosted at her apartment in New York City. (JJC Dec. at ¶ 23.) Plaintiff believes MC's oldest child refers to Trisha and Michael Wrotniak as aunt and uncle. (JJC Dec. at ¶ 23.) Michael Wrotniak's communication with Plaintiff has been very limited and guarded given his knowledge of this lawsuit and his close relationship with MC. (JJC Dec. at ¶ 23.)

The documents also bear out the compromising relationship: before and after JJC, Sr.'s passing, MC corresponded extensively with both Michael and Patricia Wrotniak regarding MC providing show tickets for the Wrotniaks and the women's respective vacation plans. (Appendix Ex. [9-13] (MC00000901, -1201, -3887, -6355, -7906,).) For example, Michael Wrotniak, whom the Director Defendants portray as a distant acquaintance of MC's, began an email to her, "Hi M, I hope you had nice Thanksgiving with your kiddies—I am sure this year was more difficult than most with the adults—but day by day," after which he asked for two tickets to STOMP. (*Id.* at MC00007906.)

Like Director Wrotniak, Judy Codding owes her role as director exclusively to the fact of her friendship with MC. For example, MC used her RDI computer (and assistant) to process invoices for Judy Codding's travel. (Appendix Ex. [14] (MC00004424, -4425.) Judy Codding also approached MC in an attempt to procure tickets to the musical *Hamilton*. (Appendix Ex. [15] (MC00013935.) EC first met Judy Codding at Mary Cotter's home in a social setting. (Appendix Ex. [16] (EC 5/19/16 Dep. Tr. 307:19–308).)

Judy Codding has a very close personal relationship with Plaintiff's mother, and over the more than thirty years she has known Plaintiff's mother, Ms. Codding has become close with EC and MC in turn. (JJC Dec. at ¶ 24.) On October 13, 2015, Plaintiff met Ms. Codding, and she expressed to Plaintiff that RDI is a family business and that the only people who should manage RDI should be one of the Cotters and that Ms. Codding would help make sure of that, whether it be Ellen or Plaintiff. (JJC Dec. at ¶ 24.)

Ms. Codding's reaction to the bid from Paul Heth reflected her unwavering loyalty to EC. (JJC Dec. at ¶ 24.) Before the board meeting at which the Board was going to discuss the bid, Ms.

Lewis Roca ROTHGERBER CHRISTIE
3993 Howard Hughes Pkwy, Suite 600
Las Vegas, NV 89169-5996

Codding asked Plaintiff's views on the bid and indicated that there was no way that the bid should even be considered (clearly having spoken to EC about it before the board meeting). (JJC Dec. at ¶ 24.)

There is no dispute that EC and MC lack independence, a fact they freely concede: "The Individual Defendants, for the purposes of this motion, do not contest the independence of Ellen and Margaret Cotter as RDI directors with respect to the transactions and/or corporate conduct at issue." (Defs.' MSJ No. 2 at p. 14 n.2.)

Similarly, the Director Defendants agree with Plaintiff's position regarding Adams: that he was financially dependent on MC and EC. "Adams' income from GWA Capital Partners and GWA Investments has been inconsistent and limited in recent years, and—outside some recent stock or asset sales—his compensation relating to RDI and/or the Cotter family entities has represented a noteworthy portion of his annual income." (Defs.' MSJ No. 2 at p. 25:15–17.)

Defendants do not dispute that at the time he acted to terminate Plaintiff, Adams—by his own admission—was financially dependent on the Cotter sisters: he received a majority of his income from entities controlled by them. First, Adams was to be paid, was paid, and is paid $1,000 per week pursuant to an agreement with through JC Farm Management Co. (Appendix Ex. [17] (GA 4/28/16 Tr. 41:16–42:25).) Adams testified that the "person who [initially] made the decision that [he] would be paid $52,000 a year" was JJC, Sr., and that the person that makes that decision today is "the estate," which he understands and agrees is controlled by MC and EC. (Appendix Ex. [17] GA 4/28/16 Tr. (28:12–29:2).)

Second, Adams helps manage four real estate developments around the country in which JJC, Sr. invested, for which Adams received a 5 percent interest in the ventures. (Appendix Ex. [17] GA 4/28/16 (41:16–42:25).) Adams already has received about $30,000 from one real estate venture, and stands to be paid significant additional compensation, potentially more than $100,000, which he will receive from the Estate. (Appendix Ex. [17] (Adams 4/28/16 Dep. Tr. 52:6–52:3, 54:3–55:4, 56:12–58:10).) It is EC and MC (as executors) who will approve these payouts. (*Id.*) Adams continues to report to the Cotter sisters in these Cotter business roles unrelated to RDI. (55:5–21, 56:12–58:10, 161:15–162:12).)

Lewis Roca ROTHGERBER CHRISTIE
3993 Howard Hughes Pkwy, Suite 600
Las Vegas, NV 89169-5996

To attempt to cover up these facts, Defendants' second summary judgment motion overemphasizes the importance of Adams's savings, claiming he "has a net worth of nearly $1 million," meaning in Defendants' judgment that "focusing on the importance of RDI and/or Cotter family entities to Adam's *yearly* income vastly overstates the materiality of such funds on his *overall* economic picture." (Defs.' MSJ No. 2 at 25:26–28, 26:2.) First, the proffered figure is inaccurate. Defendants themselves earlier report that Adams's net worth is "approximately $900,000," (*id.* at 8:28), which lower figure is consistent with Adams's own testimony, (Appendix Ex. [17] (Adams 4/28/16 Dep. Tr. 36:18–25). Second, such a statement discounts that Adams, at 65 years of age, is statistically likely to live at least 20 more years. *See, e.g.*, Social Security Administration, Calculators: Life Expectancy, https://ssa.gov/planners/lifeexpectancy.html (last visited Sept. 29, 2016) ("A man reaching age 65 today can expect to live, on average, until age 84.3."). In connection with his divorce, Adams submitted declarations related to his expenses, and they total, conservatively, about $63,222 per year or $5,268.50 per month. (*See* Appendix Ex. [18] (Adams Dep. Ex. 53 at JCOTTER014973).) Were Adams to spend money at even this conservative rate, he would not be able to support himself for the remainder of his expected lifespan. Furthermore, if Adams wishes to enjoy the standard of living to which he is accustomed and to provide for the future, he needs to earn additional money. Therefore, Adams cannot maintain a living without the Cotter income he has come to rely upon. His financial dependence on the Cotter sisters for his living deprived him of independence generally and it made him interested particularly with respect to Plaintiff's termination.

Similarly, the Director Defendants emphasize that "Adams, as advocated by director Gould, later voluntarily resigned as a member of RDI's Compensation Committee on May 14, 2016." (Defs.' MSJ No. 2 at p. 26 n.7.) If Adams lacked independence for purposes of Cotter income, he indisputably lacked independence for purposes of Cotter employment and status, whether terminating Plaintiff, making EC CEO, or making MC executive vice president of New York real estate development.

If Adams sincerely believed he had done nothing untoward, he would not have hid his dependence on Cotter family businesses on his D&O questionnaire—but he mentioned none of

Lewis Roca ROTHGERBER CHRISTIE
3993 Howard Hughes Pkwy, Suite 600
Las Vegas, NV 89169-5996

that. (Appendix Ex. [19] (Adams Dep. Ex. 55).) Defendant Gould became aware from Adams's deposition testimony that Adams depended upon "the Cotter family" for "a great percentage" of his "earnings." (App. Ex. [20] (WG 6/08/16 Dep. Tr. 32:1–5).) Consequently, Mr. Gould expressed to EC and to Craig Tompkins that Gould "did not believe [Adams] was independent for purposes of serving on the . . . compensation committee." (*Id.* at 33:14–18; *see also id.* at 36:2–7.) Gould reasoned that "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." (*Id.* at 33:21–34:7.) Adams later resigned from the RDI compensation committee. (*Id.* at 36:8–10.) Gould agreed that Mr. Adams was a "vocal proponent in support of terminating" Plaintiff. (*Id.* 36:19–22.)

NASDAQ Independence Issue

Director Defendants repeatedly claim that Adams is independent under NASDAQ Rule 5605(a)(2). (*See, e.g.*, Defs.' Mot. Sum. J. No. 2 at 2:23, 7:23, 10:7, 26:9, and 26 n.7.) However, a board's determination that a director is independent for the purposes of listing standards does not mean that the director is independent as a matter of Delaware law. *Teamsters Union 25 Health Serv. & Ins. Plan v. Baiera*, 199 A.3d 44, 61 (Del. Ch. 2015); *Yucaipa Am. Alliance Fund II, L.P. v. Riggio*, 1 A.3d 310, 315 (Del. Ch. 2010) (declining to find that a director was independent as a matter of Delaware law even though he was independent under New York Stock Exchange rules because of investments made by a large stockholder of the company into the director's business and because of donations the stockholder made to candidates the director suggested in his capacity as a political operative). The issue of independence under NASDAQ standards is irrelevant to the question of independence under the substantive law that will decide this case.

III. ARGUMENT

A. Summary Judgment Standard

Where Plaintiff properly identifies additional facts necessary to oppose the motion and seeks additional time to conduct this discovery, summary judgment is improper. *Aviation Ventures, Inc. v. Joan Morris, Inc.*, 121 Nev. 113, 117-18, 110 P.3d 59, 62 (2005). Under NRCP 56(f), the party opposing a motion for summary judgment may request the denial or continuance

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of a motion for summary judgment to obtain additional affidavits or conduct further discovery. Rule 56(f) "requires that the party opposing summary judgment provide an affidavit stating the reasons why denial or continuance of the motion for summary judgment is necessary to allow the opposing party to obtain further affidavits or discovery." *Choy v. Ameristar Casinos*, 127 Nev. 265 P.3d 698, 700 (2011). Where it is "unclear whether genuine issues of material fact exist" a Rule 56(f) continuance allows for "proper development of the record." *Aviation Ventures,* 121 Nev. at 115, 110 P.3d at 60.

B. RDI Improperly Seeks Summary Judgment of Contested Factual Issues

RDI's motion seeks summary judgment "on the *issue* of director independence," not on any of their claims. *See* Motion at p. 1 (emphasis added). While NRCP 56 authorizes partial summary judgment on a particular claim, or even a dispositive element of that claim, RDI does not seek that relief. Instead, RDI inappropriately seeks determination of contested factual *issues*, *i.e.* director independence and interestedness. *See* Motion at pp. 14-15 (no citation to any claim in the Second Amended Complaint, and only addressing issue of director interestedness).

The Delaware Supreme Court has been clear that director "independence is a fact-specific determination made in the context of a particular case." *Beam ex rel. Martha Stewart Living Omnimedia, Inc. v. Stewart*, 845 A.2d 1040, 1049 (Del. 2004); *In re Facebook, Inc., IPO Sec. & Derivative Litig.*, 922 F. Supp. 2d 445, 468 (S.D.N.Y. 2013) (same); *In re Finisar Corp. Derivative Litig.*, 542 F. Supp. 2d 980, 988 (N.D. Cal. 2008) (same). "Delaware law does not contain bright-line tests for determining independence but instead engages in a case-by-case fact specific inquiry . . . ." *Teamsters Union 25 Health Servs. & Ins. Plan v. Baiera*, 119 A.3d 44, 61 (Del. Ch. 2015).

Defendants' argument that director independence is a question of law is unavailing. *See* Motion at pp.14-15, citing *In re MFW S'holders Litig.,* 67 A.3d 496, 509 (Del. Ch. 2013), *aff'd sub nom., Kahn v. M & F Worldwide,* 88 A.2d 635 (Del. 2014).[1] It ignores the clear teaching from

[1] *See, e.g., SEPTA v. Volgenau,* C.A. No. 6354-VCN, 2013 WL 4009193, at *12-21 (Del. Ch. Aug. 5, 2013) (same); *In re Transkaryotic Therapies, Inc.,* 954 A.2d 346, 369-70 (Del. Ch. 2008) (same); *In re Gaylord Container Corp. S'holders Litig.,* 753 A.2d 462, 465 (Del. Ch. 2000) (same).

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Delaware's highest court, the Delaware Supreme Court, and is contrary to a more recent Court of Chancery opinion. *Beam ex rel. Martha Stewart Living Omnimedia, Inc. v. Stewart*, 845 A.2d 1040, 1049; *Teamsters Union 25 Health Servs. & Ins. Plan v. Baiera*, 119 A.3d 44, 61. In short, director independence is a factual determination which should not be determined on a motion for summary judgment.

Similarly, a director's disinterestedness is a clear-cut question of fact. *Gearhart Indus., Inc. v. Smith Int'l, Inc.*, 741 F.2d 707, 719 (5th Cir. 1984) ("Whether a director is 'interested' is a question of fact.") "Whether a director is 'interested' or 'independent' is generally regarded as a question of fact, depending on the circumstances of the case."*Drobbin v. Nicolet Instrument Corp.*, 631 F. Supp. 860, 880 (S.D.N.Y. 1986); *Patrick v. Allen*, 355 F. Supp. 2d 704, 712 (S.D.N.Y. 2005) (same).

In short, the Defendant directors' motives and intent that play into whether they were interested or independent, as well as their credibility about their reasons for acting as they did, are squarely questions of fact. These fact-specific inquiries cannot be resolved by summary judgment.

C. Legal Analysis Applicable Here

1. Director Defendants' Fiduciary Duties.

The power of directors to act on behalf of a corporation is governed by their fiduciary relationship to the corporation and to its shareholders. *Shoen v. SAC Holding Corp.*, 137 P.3d 1171, 1178 (Nev. 2006) (citations omitted). Generally, those duties are described as the duty of care and the duty of loyalty. *Id.* The duty of good faith may be viewed as implicit in the duties of care and loyalty, or as part of a "triumvirate" of fiduciary duties. *See In re BioClinica, Inc. Shareholder Litig.*, No. CV 8272-VCG, 2013 WL 5631233, at *5 (Del. Ch. Oct. 16, 2013); *Malone v. Brincat*, 722 A.2d 5, 10 (Del. 1998).

a. The Duty of Care

The duty of care typically is described as requiring directors to act on an informed basis. *Schoen*, 137 P.3d at 1178. Whether directors acted on an informed basis "turns on whether the directors have informed themselves "prior to making a business decision, of all material information reasonably available to them." *Smith v. Van Gorkom*, 488 A. 2d 858, 872 (Del. 1985)

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(*quoting Aronson v. Lewis*, 473 A. 2d 805, 812 (Del. 1984). Due care thus is a function of the decision-making process, not the decision. *See, e.g., Citron v. Fairchild Camera & Instrument Corp.*, 569 A. 2d 53, 66 (Del. 1989). This necessarily raises "[t]he question [of] whether the process employed [in making the challenged decision] was either rational or employed in a good faith effort to advance the corporate interests." *In re Greater Se. Cmty. Hosp. Corp. I*, 353 B.R. 324, 339 (Bankr. D.D.C. 2006).

b. The Duty Of Loyalty

The director's duty of loyalty requires that directors "maintain, in good faith, the corporation's and its shareholders' best interests over anyone else's interests." *Schoen*, 137 P.3d at 1178 (citations omitted). The duty of loyalty was described in the seminal Delaware Supreme Court case of *Guth v. Loft* as follows:

> Corporate officers and directors are not permitted to use their position of trust and confidence to further their private interests. While technically not trustees, they stand in a fiduciary relation to the corporation and [to] its shareholders. A public policy, existing through the years, and derived from a profound knowledge of human characteristics and motives, has established a rule that demands of a corporate . . . director, peremptorily and inexorably, the most scrupulous observance of his duty [of loyalty], not only affirmatively to protect the interests of the corporation committed to his charge, but also to refrain from doing anything that would work injury to the corporation [or its shareholders] . . . The rule that requires an undivided and unselfish loyalty to the corporation demands that there shall be no conflict between duty and self-interests.

Guth v. Loft, 5 A.2d 503, 510 (Del. 1939).

The duty of loyalty is "unremitting." *See, e.g., Malone v. Brincat*, 722 A.2d 5, 10 (Del. 1998). The duty of good faith, discussed elsewhere herein, is one element of the duty of loyalty. *Stone v. Ritter*, 911 A.2d 362, 370 (Del. 2006). The terms "loyalty" and "good faith," like the terms "independence" and "candor," are "words pregnant with obligation" and "[d]irectors should not take a seat at the board table prepared to offer only conditional loyalty, tolerable good faith, reasonable disinterest or formalistic candor." *In re Tyson Foods, Inc., Consol. Shareholder Litig.*, 2007 WL 2351071, at *4 (Del. Ch. Aug. 15, 2007).

c. The Duty of Good faith

The element of good faith requires the director to act with a "loyal state of mind."

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Hampshire Group, Ltd., v. Kuttner, 2010 WL 2739995, at *12 (Del. Ch. July 12, 2010). The concept of good faith is particularly relevant in cases in which there is a "controlling shareholder with a supine or passive board." *In Re Walt Disney Co. Derivative Litig.*, 907 A.2d 693, 761 n.487 (Del. Ch. 2005), *aff'd*, 906 A.2d 27 (Del. 2006). In such cases, "[g]ood faith may serve to fill [the] gap [between a fiduciary duties of care and loyalty] and insure that the persons entrusted *by shareholders* to govern [the] corporation do so with an honesty of purpose and with an understanding of whose interests they are there to protect." *Id.*

d. The Duty of Disclosure

"Whenever directors communicate publicly or directly with shareholders about the corporation's affairs . . . directors have a fiduciary duty to shareholders to exercise due care, good faith and loyalty." *Malone v. Brincat*, 722 A.2d 5, 10 (Del. 1998). "Shareholders are entitled to rely upon the truthfulness of all information disseminated to them by the directors [of the corporation]." *Id.* at 10-11. When directors communicate with stockholders, they must do so with "complete candor." *In Re Tyson Foods*, 2007 WL 2351071, at *3.

e. Directors' Fiduciary Duties Are Owed to All Shareholders, Not Just the Controlling Shareholder(s)

Directors owe all stockholders, not just the stockholders who appointed them, "an uncompromising duty of loyalty." *In re Trados Inc. S'Holder Litig.*, 73 A.3d 17, 36 (Del. Ch. 2013). Under some circumstances, it is a breach of loyalty for directors not to act to protect the minority stockholders from a controlling stockholder. *Louisiana Mun. Police Emp. Ret. Sys. v. Fertitta*, 2009 WL 2263406, at *8 (Del. Ch. July 28, 2009) (finding that the failure to act in the face of a controlling stockholder's threat to the corporation and its minority stockholders supported a reasonable inference that the board of directors breached its duty of loyalty by deciding not to cross the controlling stockholder); *see also McMullin v. Beran*, 765 A.2d 910, 919 (Del. 2000) (finding that directors are required to make informed, good faith decisions about whether to the sale of a corporation to a third party that had been proposed and negotiated by a controlling stockholder would maximize the value for minority stockholders).

2. The Business Judgment Rule Is a Rebuttable Presumption, Rebutted Here

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The business judgment rule is a rebuttable presumption that "in making a business decision the directors of a corporation acted on an informed basis, in good faith, and in the honest belief that the action was taken in the best interests of the company." *See, e.g. In Re Walt Disney Co. Derivative Litig.*, 906 A.2d 27, 52 (Del. 2006) (*quoting Aronson v. Lewis*, 473 A.2d 805, 812 (Del. 1984).[2] In Nevada, the business judgment rule is codified in NRS 78.138.3, which provides that "[d]irectors and officers, in deciding upon matters of business, are presumed to act in good faith, on an informed basis and with a view to the interests of the corporation."

The business judgment rule typically is articulated as consisting of four elements, namely, (i) a business decision, (ii) disinterestedness and independence, (iii) due care, and (iv) good faith. *Roselink Investors, L.L.C. v. Shenkman*, 386 F. Supp. 2d 209, 2016 (S.D.N.Y. 2004) (internal citations omitted). The presumptions of the business judgment rule are rebutted where it is shown that any of the four elements above was not present. *Id.* at 216-17. Here, at least each of the last three elements is absent.

As to MC and EC, there is no dispute that, as to at least any and all matters of disagreement between them and JJC, including but not limited to ultimate control of RDI by controlling the voting trust as trustee(s), immediate control of RDI, whether by removing JJC as CEO, constraining his authority as CEO and/or having a newly activated and repopulated executive committee, and matters involving the employment status, titles and compensation of MC and EC, among other things, MC and EC lack disinterestedness and lack independence. The Interested Director Defendants admit that in their summary judgment motions, including as follows:

> The Individual Defendants, for the purposes of this motion [regarding "director independence"], do not contest the independence of Ellen and Margaret Cotter as RDI directors with respect to the transactions and, or corporate conduct at issue---which are addressed in the Individual Defendants' other, contemporaneously-filed summary judgment motions.

[2] Due to the development of Delaware case law with respect to issues of corporate law, Nevada courts find Delaware case law persuasive authority. *See Cohen v. Mirage Resorts, Inc.*, 119 Nev. 1, 26, 62 P.3d 720, 737 (2003) (noting that "the case law . . . [of] Delaware is persuasive authority" when interpreting Nevada's corporate law).

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("Individual Defendants' Motion for Partial Summary Judgment (No. 2) Re: the Issue of Director Independence" at p. 14, fn. 2.)

a. Individual Defendants' Lack of Disinterestedness

With respect to disinterestedness, because the business judgment rule presumes that directors have no conflict of interest, the business judgment rule does not apply where "directors have an interest other than as directors of the corporation." *Lewis v. S.L. & E., Inc.*, 629 F.2d 764, 769 (2d Cir. 1980). This is because "[d]irectorial interest exists whenever divided loyalties are present." *Rales v. Blasband*, 634 A. 2d 927, 933 (Del. 1993) (citations and quotations omitted). Thus, a director must be disinterested in the challenged conduct in particular and, as a general matter, otherwise independent. *Beam*, 845 A.2d at 1049.

As the Interested Director Defendants acknowledge, EC and MC lack disinterestedness with respect to the challenged actions, starting with the threat to terminate Plaintiff as President and CEO of RDI unless he resolved the California Trust Action on terms satisfactory to EC and MC, and continuing thereafter with the termination of him on account of his failure to do so.

The same is true, for largely the same reasons, for defendant Kane, who is called "Uncle Ed" by EC and MC and who, by his contemporaneous conduct demonstrated that he acted as "Uncle Ed" throughout to effectuate what he thought were JJC, Sr.'s wishes, and not as a disinterested RDI director exercising disinterested business judgment.

Likewise, Adams admittedly picked sides in a family dispute. He also demonstrated his lack of disinterestedness by, among other things, vigorously pursuing the EC and MC agenda, starting with the termination of Plaintiff as President and CEO, to further his own interest (including to be interim CEO) and to protect the interests of EC and MC, on whom he is financially dependent.[3]

b. Individual Defendants' Lack of Independence

Independence, as used in the context of an element of the business judgment rule, requires that a director is able to engage, and in fact engages, in decision-making "based on the corporate

[3] Plaintiff does not concede that McEachern was disinterested and/or independent. Because Plaintiff can prevail on this Motion without showing McEachern to have lacked disinterestedness or independence, he chooses not to address McEachern.

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merits of the subject before the board rather than extraneous considerations or influences." *Gilbert v. El Paso, Co.*, 575 A.2d 1131, 1147 (Del. 1990); *Rales*, 634 A.2d at 936. "Directors must not only be independent, [they also] must act independently." *Telxon Corp. v. Meyerson*, 802 A.2d 257, 264 (Del. 2003). Assessing directorial independence therefore "focus[es] on impartiality and objectiveness." *In Re Oracle Corp. Derivative Litig.*, 824 A.2d 917, 920, 938 (Del. Ch. 2003) (*quoting Parfi Holding AB v. Mirror Image Internet, Inc.*, 794 A.2d 1211, 1232 (Del. Ch. 2001), *rev'd in part on other grounds,* 817 A.2d 149 (Del. 2002), *cert. denied,* 538 U.S. 1032 (2003). *See, also, Cede & Co. v. Technicolor, Inc.*, 634 A.2d 345, 362 (Del. 1993) ("We have generally defined a director as being independent only when the director's decision is based entirely on the corporate merits of the transaction and is not influenced by personal or extraneous considerations.") *modified in part on other grounds,* 636 A.2d 956 (Del. 1994).

"Independence is a fact-specific determination made in the context of a particular case. The Court must make that determination by answering the inquiries: independent from whom and independent for what purpose?" *Beam*, 845 A.2d at 1049-50.

Independence is lacking in situations in which a corporate fiduciary "derives a benefit *from the transaction* that is not generally shared with the other shareholders. In situations in which the benefit is derived by another (e.g., by EC and MC from Plaintiff acceding to their demands to resolve trust and estate disputes on terms acceptable to the two of them), the issue is whether the [corporate fiduciary]'s decision (e.g., Adams and/or Kane) resulted from that director being *controlled* by another." *Orman v. Cullman*, 794 A.2d 5, 25 n.50 (Del. Ch. 2002) (explaining the distinction between interest and independence). Control may exist where a corporate fiduciary has close personal or financial ties to or is beholden to another. (*Id.*)

A close personal friendship in which the director and the person with whom he or she has the questioned relationship are "as thick as blood relations" would likely be sufficient to demonstrate that a director is not independent. *In re MFW S'Holders Litig.*, 67 A.3d 496, 509 n.37 (Del. Ch. 2013).

Similarly, a director who is financially beholden to another person, such as a controlling stockholder, is not independent of that person. *In re Emerging Commc'n, Inc. S'Holders Litig.*,

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2004 WL 1305745, at *33 (Del. Ch. May 3, 2004). The Court of Chancery has found that directors who derive a substantial portion of their income from a controlling stockholder are not independent of that stockholder. *Id.* at *34. "In such circumstances, a director cannot be expected to exercise his or her independent business judgment without being influenced by the . . . personal consequences resulting from the decision." *Beam v. Stewart*, 845 A.2d 1040, 1049 (Del. 2004) (*quoting Rales v. Blasband*, 634 A.2d 927, 936 (Del. 1993)).

Here, the conduct of EC, MC, Kane and Adams to extort Plaintiff into resolving trust and estate disputes on terms dictated by EC and MC are squarely and unequivocally efforts to obtain personal benefits for EC and MC not shared with other RDI shareholders.

Kane's personal relationship with JJC, Sr., Kane's view that JJC, Sr. intended MC control the Voting Trust, and Kane's actions to make that happen, among other things, demonstrate his lack of independence.

As shown by his own sworn testimony in his Los Angeles Superior Court divorce proceeding and in this case, Adams as a general matter is not independent of EC and MC, because he is financially dependent upon income he receives from companies that EC and MC control.

For such reasons, among others, each of Kane and Adams (and MC and EC) lacked independence and therefore are not entitled to the presumptions of the business judgment rule.

3. Defendants Must and Cannot Satisfy the Entire Fairness Standard

"If the shareholder succeeds in rebutting the presumption of the business judgment rule, the burden shifts to the defendant directors to prove the 'entire fairness' of the transaction." *McMullin v. Brand,* 765 A.2d 910, 917 (Del. 2000). "[I]f the presumption is rebutted, the board's decision is reviewed through the lens of entire fairness, pursuant to which the directors lose the presumption of [the] business judgment [rule]." *Solomon v. Armstrong*, 747 A.2d 1098, 1112 (Del.Ch. 1999). *Horwitz v. SW. Forest Indus., Inc.*, 604 F.Supp. 1130, 1134 (D. Nev. 1985), which defendants cite for the platitude that the business judgment rule applies to claims of breach of fiduciary duty against a director, is not to the contrary and does not address circumstance of where, as here, the plaintiff has rebutted the presumptions of the business judgment rule.

Under the entire fairness test, "[d]irector defendants therefore are required to establish to

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the *court's* satisfaction that the transaction was the product of both fair dealing and fair price." *Cinerama, Inc.* v. *Technicolor,* 663 A.2d 1156, 1163 (Del. 1995) (*quoting Cede & Co. v. Technicolor,* 634 A.2d 345, 361 (Del. 1993). Thus, a test of entire fairness is a two-part inquiry into the fair-dealing, meaning the process leading to the challenged action and, separately, the end result. *In re Tele-Commc'ns Inc. Shareholders Litig.,* 2005 Del. Ch. LEXIS 206, at *235, 2005 WL 3642727, at *9 (Del. Ch. Sept. 29, 2005).

The Motion makes no mention of this standard. In addition the Motion does not discuss the "omnipresent specter" that the Defendants were acting primarily in their own interests or for entrenchment purposes. *Unocal Corp. v. Mesa Petroleum Co.*, 493 A.2d 946, 954 (Del. 1985); *see also eBay Domestic Holdings, Inc. v. Newmark*, 16 A.3d 1, 36 (Del. Ch. 2010).

The entire fairness requirement entails "exacting scrutiny" to determine whether the challenged actions were entirely fair. *Paramount Commc'ns, Inc. v. QVC Network Inc.,* 637 A.2d 34, 42 n.9 (Del. 1994). Under the entire fairness standard, the challenged action itself must be objectively fair, independent of the beliefs of the director defendants. *Geoff v. II Cindus.Inc.,* 902 A.2d 1130, 1145 (Del. Ch. 2006) subsequent proceedings, 2006 (Del. Ch. LEXIS 161, 2000 WL 2521441 (Del. Ch. Aug. 22, 2006); *see also Venhill Ltd. P'ship v. Hilman*, 2008 WL 2270488, at *22 (Del. Ch. June 3, 2008).

"The fairness test therefore is "an inquiry designed to access whether a self-dealing transaction should be respected or set aside in equity." *Venhill*, 2008 WL 2270488 at *22.[4]

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[4] First, invocation of Nevada's exculpatory statute, NRS 78.138.7, misapprehends the function of the statute, which is to limit monetary liability and recovery, not to serve as a means by which the legal sufficiency of a fiduciary duty claim is assessed. *Emerald Partners v. Berlin*, 787 A.2d 85, 92 (Del. 2001) ("a Section 102(b)(7) provision does not operate to defeat the validity of a plaintiff's claim on the merits," but "it can operate to defeat the plaintiff's ability to recover monetary damages.")

Second, even if the exculpatory statute were properly invoked, which it is not, it has no application where, as here, duty of loyalty (and disclosure) claims also are made. *McMillan v. Intercargo Corp.*, 768 A.2d 492, 501 n. 41 (Del. Ch. 2000) (the exculpatory statute does not apply to breaches duty of loyalty because "conduct not in good faith, intentional misconduct, and knowing violations of law" are "quintessential examples of disloyal, i.e., faithless, conduct"). Here, the complained of or challenged conduct also and obviously entails breaches of the duty of loyalty (and disclosure). *Orman v. Cullman*, 794 A.2d 5, 41 (Del. Ch. 2002) (plaintiff pleaded a breach of the duty of loyalty claim where it "pled facts which made it reasonable to question the independence and disinterest of a majority of the Board that decided what information to include in the Proxy Statement"); *O'Reilly v. Transworld Healthcare, Inc.*, 745 A.2d 902, 914-15, 920, n.34 (Del. Ch. 2014) ("right complaint alleges or pleads facts sufficient to support the inference that the disclosure violation was made in bad faith, knowingly or intentionally, the alleged violation implicates the duty of loyalty" and is relevant to the availability of the exculpatory

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Here, Defendants cannot carry their burden of proving the entire fairness of their action.

IV. CONCLUSION

In light of the forgoing, plaintiff requests that this court deny the Motion for Partial Summary Judgment (No. 2).

DATED this 13th day of October, 2016.

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provisions of section 102(b)(7)): *In re Wheelabrator Techs., Inc. Sh. Litig.*, 1992 Del. Ch. LEXIS at *41 n.18, 1992 WL 212595, at *12 n.18 (Del. Ch. Sept. 1, 1992) (§102(b)(7) did not require dismissal where the plaintiffs pleaded that "the breach of the duty of disclosure wasn't intentional violation of the duty of loyalty").

CERTIFICATE OF SERVICE

I hereby certify that on this 13th day of October, 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/ Luz Horvath
An employee of Lewis Roca Rothgerber Christie LLP

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DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiff,

v.

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

Defendants.

and

READING INTERNATIONAL, INC., a Nevada corporation;

Nominal Defendant.

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

Plaintiffs,

vs.

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

CASE NO. A-15-719860-B
DEPT. NO. XI
Coordinated with:
CASE NO. P-14-082942-E
DEPT. NO. XI
CASE NO. A-16-735305-B
DEPT. NO. XI
Jointly administered

PLAINTIFF JAMES J. COTTER, JR.'S OPPOSITION TO INDIVIDUAL DEFENDANTS' MOTION FOR PARTIAL SUMMARY JUDGMENT (NO. 6) "RELATED TO THE ESTATE'S OPTION EXERCISE [AND OTHER MATTERS]"

[Business Court Requested: [EDCR 1.61]

[Exempt From Arbitration: declaratory relief requested; action in equity]

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TOMPKINS, and DOES 1 through 100, inclusive,

Defendants.

and

READING INTERNATIONAL, INC., a Nevada corporation,

Nominal Defendant.

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TABLE OF CONTENTS

Page

MEMORANDUM OF POINTS AND AUTHORITIES 1

I. INTRODUCTION 1

II. STATEMENT OF FACTS 2

A. The Earlier Search for a Director of Real Estate ...**Error! Bookmark not defined.**

B. Creation of the CEO Search Committee and Engagement of Korn Ferry**Error! Bookmark**

C. The CEO Search Committee Sets Criteria for Identifying Candidates and Selecting RDI's Next CEO .....**Error! Bookmark not defined.**

III. ARGUMENT 4

A. Summary Judgment Standard 4

B. The MSJs Mischaracterize the Allegations and Claims Made and Ignore Law Regarding Them, to Create "Straw Man" Claims Against Which to Move 4

C. Directors' Fiduciary Duties.....6

1. Director Defendants' Fiduciary Duties 6

a. The Duty of Care 6

b. The Duty of Loyalty.....7

c. The Duty of Good Faith 8

d. The Duty of Disclosure 8

e. Directors' Fiduciary Duties Are Owed to All Shareholders, Not Just the Controlling Shareholder(s) 8

2. The Business Judgment Rule Is a Rebuttable Presumption, Rebutted Here.....9

a. Individual Defendants' Lack of Disinterestedness 10

b. Individual Defendants' Lack of Independence 11

c. Individual Defendants' Lack of Good Faith 12

d. The Individual Defendants Failed to Exercise Due Care.....13

e. Defendants Must and Cannot Satisfy the Entire Fairness Standard 13

Lewis Roca ROTHGERBER CHRISTIE
3993 Howard Hughes Pkwy, Suite 600
Las Vegas, NV 89169-5996

3. That an Executive Committee Is Allowed by NS 78 and RDI's Bylaws Does Not Resolve the Issue of Whether the Use of It Here Is Additional Evidence of the Alleged Entrenchment Scheme**Error! Bookmark not defined.**

4. N.R.S. 78.138(7) Does Not Preclude Liability in This Case 14

5. The Interested Director defendants' "Economic Harm" Argument Is Erroneous as a Matter of Law 19

IV. CONCLUSION 22

Lewis Roca
ROTHGERBER CHRISTIE
3993 Howard Hughes Pkwy, Suite 600
Las Vegas, NV 89169-5996

TABLE OF AUTHORITIES

Page

Cases

Aronson v. Lewis,
473 A. 2d 805 (Del. 1984) 8, 10

Beam v. Stewart,
845 A.2d 1040 (Del. 2004) 11, 12, 13

Brown v. Kinross Gold U.S.A., Inc.,
531 F. Supp. 2d 1234 (D. Nev. 2008) 20

California Pub. Employees Ret. Sys. v. Coulter,
2002 WL 31888343 (Del. Ch. Dec. 18, 2002) 6

Carlton Invs. v. TLC Beatrice Int'l Holdings, Inc.,
1996 Del. Ch. LEXIS 47, 1996 WL 189435 (Del. Ch. Apr. 16, 1996) 21

Carmody v. Toll Brothers., Inc.,
723 A.2d 1180 (Del. Ch. July 24, 1998) 7

Cede & Co. v. Technicolor, Inc.,
634 A.2d 345 (Del. 1993), *modified in part on other grounds*,
636 A.2d 956 (Del. 1994) 12, 15, 21

Chrysogelos v. London,
1992 WL 58516 (Del. Ch. Mar. 25, 1992) 7

Cinerama, Inc. v. *Technicolor,*
663 A.2d 1156 (Del. 1995) 15, 21

Citron v. Fairchild Camera & Instrument Corp.,
569 A. 2d 53 (Del. 1989) 8

Cohen v. Mirage Resorts, Inc.,
119 Nev. 1, 62 P.3d 720 (2003) 10

Cuzze v. Univ. & Cmty. Coll. Sys.,
172 P.3d 131 (2007) 4, 5

eBay Domestic Holdings, Inc. v. Newmark,
16 A.3d 1 (Del. Ch. 2010) 15

Emerald Partners v. Berlin,
787 A.2d 85 (Del. 2001) 16

Fergason v. LVMPD,
364 P.3d 592 (2015) 4

Ferreira v. P.C.H. Inc.,
774 P.2d 1041 (1989) 5

Lewis Roca ROTHGERBER CHRISTIE
3993 Howard Hughes Pkwy, Suite 600
Las Vegas, NV 89169-5996

Geoff v. II Cindus, Inc.,
902 A.2d 1130 (Del. Ch. 2006).....15

Gilbert v. El Paso, Co.,
575 A.2d 1131 (Del. 1990).....12

Guth v. Loft,
5 A.2d 503 (Del. 1939).....8

Hampshire Group, Ltd., v. Kuttner,
2010 WL 2739995 (Del. Ch. July 12, 2010).....9, 13

Horwitz v. SW. Forest Indus., Inc.,
604 F. Supp. 1130 (D. Nev. 1985).....14

In re Ebix, Inc. Stockholder Litig.,
2016 WL 208402 (Del. Jan. 15, 2016).....6

In re Emerging Commc'n, Inc. S'holders Litig.,
2004 WL 1305745 (Del. Ch. May 3, 2004).....13

In re Greater Se. Cmty. Hosp. Corp. I,
353 B.R. 324 (Bankr. D.D.C. 2006).....8

In re MFW S'holders Litig.,
67 A.3d 496 (Del. Ch. 2013).....13

In re Oracle Corp. Derivative Litig.,
824 A.2d 917 (Del. Ch. 2003).....12

In re Tele-Commc'ns Inc. Shareholders Litig.,
2005 Del. Ch. LEXIS 206, 2005 WL 3642727 (Del. Ch. Sept. 29, 2005).....15

In re Trados Inc. S'holder Litig.,
73 A.3d 17 (Del. Ch. 2013).....8

In re Tyson Foods, Inc., Consol. Shareholder Litig.,
2007 WL 2351071 (Del. Ch. Aug. 15, 2007).....9

In re Walt Disney Co. Derivative Litig.,
906 A.2d 27 (Del. 2006).....10, 17

In re Walt Disney Co. Derivative Litig.,
907 A.2d 693 (Del. Ch. 2005).....9, 13, 14

In re Wheelabrator Techs., Inc. Sh. Litig., 1992 Del. Ch. LEXIS at *41,
1992 WL 212595 (Del. Ch. Sept. 1, 1992).....17

Krasner v. Moffett,
826 A.2d 277 n.40 (Del. 2003).....15

Lewis v. S.L.&E., Inc.,
629 F.2d 764 (2d Cir. 1980).....11

Louisiana Mun. Police Emp. Ret. Sys. v. Fertitta,
2009 WL 2263406 (Del. Ch. July 28, 2009).....9

LEWIS ROCA
ROTHGERBER CHRISTIE
3993 Howard Hughes Pkwy, Suite 600
Las Vegas, NV 89169-5996

Maine v. Stewart,
857 P.2d 755 (1993).....5

Malone v. Brincat,
722 A.2d 5 (Del. 1998).....7, 8

Marsters v. Umpqua Valley Oil, Co.,
49 Or. 374, 90 P. 151 (1907).....22

McMillan v. Intercargo Corp.,
768 A.2d 492 (Del. Ch. 2000).....16

McMullin v. Beran,
765 A.2d 910 (Del. 2000).....10, 14

O'Reilly v. Transworld Healthcare, Inc.,
745 A.2d 902 (Del. Ch. 2014).....16

Orman v. Cullman,
794 A.2d 5 (Del. Ch. 2002).....13, 16

Paramount Commc'ns, Inc. v. QVC Network Inc.,
637 A.2d 34.....15

Parfi Holding AB v. Mirror Image Internet, Inc.,
794 A.2d 1211 (Del. Ch. 2001).....12

Rales v. Blasband,
634 A. 2d 927 (Del. 1993).....11, 12, 13

Roselink Investors, L.L.C. v. Shenkman,
386 F. Supp. 2d 209 (S.D.N.Y. 2004).....10

Shoen v. SAC Holding Corp.,
137 P.3d 1171 (Nev. 2006).....7, 8

Smith v. Van Gorkom,
488 A. 2d 858 (Del. 1985).....8

Solomon v. Armstrong,
747 A.2d 1098 (Del.Ch. 1999).....14

Stone v. Ritter,
911 A.2d 362 (Del. 2006).....8

Telxon Corp. v. Meyerson,
802 A.2d 257 (Del. 2003).....12

Kendall v. Henry Mountain Mines, Inc.,
78 Nev. 408, 374 P.2d 889 (1962).....22

Unocal Corp. v. Mesa Petroleum Co.,
493 A.2d 946 (Del. 1985).....15

Venhill Ltd. P'ship v. Hilman,
2008 Del. Ch. LEXIS 67, 2008 WL 2270488 (Del. Ch. June 3, 2008).....14, 15

LEWIS ROCA ROTHGERBER CHRISTIE
3993 Howard Hughes Pkwy, Suite 600
Las Vegas, NV 89169-5996

Statutes

N.R.S. 78.138(7) .....ii, 16, 17

Rules

EDCR 1.61 1

NRCP 56 5

NRCP 56(c) 4

NRCP 56(e) 5

Other Authorities

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3993 Howard Hughes Pkwy, Suite 600
Las Vegas, NV 89169-5996

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Plaintiff James J. Cotter, Jr., ("JJC" or "Plaintiff"), by and through his attorney Mark G. Krum of Lewis Roca Rothgerber Christie LLP, files this Opposition to INDIVIDUAL DEFENDANTS' MOTION FOR PARTIAL SUMMARY JUDGMENT (NO. 5) ON PLAINTIFF'S CLAIMS RELATED TO THE APPOINTMENT OF ELLEN COTTER AS CEO filed by Reading International, Inc. (the "Motion"), as follows.

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

The Interested Director Defendants' motion for summary judgment No. 6 (the "Motion" or "MSJ No.6) should be denied, for a number of independent reasons.

First, the Motion fundamentally misapprehends, or purposefully mischaracterizes, the nature of the allegations made in this action, which assert an ongoing course of self-dealing undertaken for entrenchment purposes, not a series of unrelated one-off, one time fiduciary breaches. That matters, both as a matter of fact, in terms of what evidence is to be considered in assessing the claims made, and as a matter of law

Second, one of the subjects of the Motion, the authorization by RDI directors Adams and Kane of the exercise of a supposed option to acquire 100,000 shares of RDI class B voting stock, in addition to not properly being assessed outside the context of the entrenchment scheme of which it was a part, is a matter as to which defendants have failed to provide discovery the Court ordered. For that reason, among others, Rule 56(f) applies and the motion should be denied.

Third, the Motion is predicated on an incomplete and inaccurate depiction of the actual facts. As the evidence cited herein (and in the opposition to Gould's motion) shows, there are at a minimum significant disputed material facts. Those factual matters include how it came to pass that MS holds a high-paying job for which she is, according to the defendants, unqualified. The same is true as to EC. Thus, the issues are not compensation issues; they are issues of fundamental breaches of the fiduciary duties of both care and loyalty.

Fourth, the Motion dutifully omits any discussion of the applicable legal standards given the actual facts, which goes to the threshold issue (beyond the Rule 56 summary judgment standard) of which party bears what burden. Additionally, where, as here, as here, the director

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Las Vegas, NV 89169-5996

defendants are sued for breaches of the duty of loyalty, as distinct from only for breach of the duty of care, the entire legal rubric changes, such that their invocation of Nevada's exculpatory statue in unavailing.

For the foregoing and other reasons set out herein, Plaintiff respectfully submits that MSJ No. 6 should be denied.

II. STATEMENT OF FACTS

A. Procedural History

On August 30, 2016, the Court granted Plaintiff's motion to compel the production of documents and information concerning the advice of counsel on which director defendants Adams and Kane testified they relied in making the decision, as two of three members of the RDI board of directors compensation committee, to authorize the exercise of these supposed 100,000 share option. The court issued its order on October 3, 2016. To date, neither the Company nor any of the individual defendants have produced any of these or any other advice of counsel documents on which they claim to have relied and on which they predicate certain of their summary judgment motion. As to the Court's prior order, the individual defendants have filed a motion to reconsider or clarify.

Plaintiff respectfully incorporates herein the discussion of Rule 56(f) contained in his opposition to MSJ No. 3, and respectfully submits that, in order to respond to this Motion, Plaintiff is entitled to receive and must receive the discovery the Court ordered previously, described above.

B. Factual Statement

1. The Supposed 100,000 Share Option

It is undisputed that approximately seventy per cent (70%) of RDI's class B voting stock is held in one manner or another by the Trust and or the Estate of James J Cotter, Sr. Not less than approximately forty four percent (44%) of the Class B voting stock of RDI is held in the name of the James J. Cotter Living Trust, which became irrevocable upon JJC, Sr.'s death on September 13, 2014 (the "Trust"). (*Id.*) Who has authority to vote the RDI Class B voting stock held in the name of the Trust is a subject of dispute in the California trust and estate litigation between EC

Lewis Roca ROTHGERBER CHRISTIE
3993 Howard Hughes Pkwy, Suite 600
Las Vegas, NV 89169-5996

and MC, on one hand, and JJC, on the other hand. As the court records reflect, EC and MC are the executors of the estate.

EC and MC, purporting to act as executors of the Estate of JJC, Sr., in April 2015 sought to exercise a supposed option to have the Estate acquire 100,000 shares of Class B voting stock. Plaintiff contends that they did so because they feared that, without being able to vote the stock held in the name of the Trust, they might not have votes sufficient to outvote other RDI class B shareholders at the company's annual shareholders meeting.

On or about September 21, 2015, two of three members of the Compensation Committee, Adams and Kane, authorized the request of EC and MC that the Estate be allowed to (use liquid Class A stock to) exercise the supposed option to acquire the 100,000 shares using shares of RDI Class A stock. Kane and Adams claimed that they decided to allow EC and MC to exercise the supposed 100,000 share option based on the advice of counsel, including Craig Tompkins. The third director who was a member of the Compensation Committee, Timothy Storey, was unable to attend the supposed meeting of the Compensation Committee because it was called with too little notice.

2. The Looting of RDI

Following the appointment of EC as President and CEO in January 2016, the individual defendants turned their attention to the subjects of employment, titles and compensation.

On or about March 10, 2016, MC was appointed EVP--RED – NYC on EC's recommendation as President and CEO. In that position, MC became the senior executive at RDI responsible for the development of its valuable NYC Properties. However, MC has no real estate development experience. She is unqualified to hold that senior executive position. As EVP--RED – NYC, MC was awarded a compensation package that includes a base salary of $350,000 and a short-term incentive target bonus of $105,000 (30% of her base salary), and was granted a long-term incentive of a stock option for 19,921 shares of Class A common stock and 4,184 restricted stock units under the Company's 2010 Stock Incentive Plan. Additionally, the Compensation Committee, comprised of Adams, Kane and Codding, and the Audit and Conflicts Committee, comprised of Kane, McEachern and Wrotniak, in or about March 2016 each unanimously

3993 Howard Hughes Pkwy, Suite 600
Las Vegas, NV 89169-5996
Lewis Roca

approved so-called "additional consulting fee compensation" of $200,000 to MC. Each of the Individual Director Defendants (with EC and MC abstaining) approved this $200,000 payment to MC.

Also, at the request of EC, the EC Committee requested the Compensation Committee to review executive compensation. The result was that EC as President and CEO received a new compensation package. If all bonuses available are paid to her, she will be paid over three times what Plaintiff was paid as President and CEO.

Not finished, the Compensation Committee also recommended and the RDI Board of Directors (meaning all of the individual director defendants) also approved so-called "additional special compensation" of $50,000 to Adams.

III. ARGUMENT

A. Summary Judgment Standard

Summary judgment is only appropriate "where 'the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is **no genuine issue as to any material fact** and that the moving party is entitled to a judgment as a matter of law.'" *Fergason v. LVMPD*, 364 P.3d 592, 595 (2015) (*citing* NRCP 56(c) (emphasis added)). "'[T]he moving party will bear the burden of persuasion, [and] that party must present evidence that would entitle it to a judgment as a matter of law in the absence of contrary evidence.'" Id. (*citing Cuzze v. Univ. & Cmty. Coll. Sys.*, 172 P.3d 131, 134 (2007)).

"'Put more simply: 'The burden of proving the nonexistence of a genuine issue of material fact is on the moving party.'" *Id.* (*citing Maine v. Stewart*, 857 P.2d 755, 758 (1993)). "When the party moving for summary judgment fails to bear his burden of production, 'the opposing party has no duty to respond on the merits and summary judgment may not be entered against him.'" *Id. (citing Maine*, 857 P.2d at 759 (reversing summary judgment where burden of production never shifted) (*citing Clauson v. Lloyd*, 103 Nev. 432, 435, 743 P.2d 631, 633 (1987) (reversing summary judgment where movant did not meet the test in NRCP 56)); *see* NRCP 56(e) (summary judgment burden shifts to the non-movant only when the motion is "made and supported as provided in this rule")).

Lewis Roca ROTHGERBER CHRISTIE
3993 Howard Hughes Pkwy, Suite 600
Las Vegas, NV 89169-5996

"[I]n deciding whether summary judgment is appropriate, the evidence must be viewed in the light most favorable to the party against whom summary judgment is sought." *Ferreira v. P.C.H. Inc.,* 774 P.2d 1041, 1042 (1989).

1. "[I]n deciding whether summary judgment is appropriate, the evidence must be viewed in the light most favorable to the party against whom summary judgment is sought." Ferreira v. P.C.H. Inc., 774 P.2d 1041, 1042 (1989). The MSJs Mischaracterize the Allegations and Claims Made and Ignore Law Regarding Them, to Create "Straw Man" Claims Against Which to Move

No doubt by design, the Interested Director Defendants' motions for summary judgment mischaracterize the claims made against them in this case. Contrary to what their motions for summary judgment assume, Plaintiff has not made a smorgasbord of unrelated claims. Although Plaintiff's initial complaint, filed the day he was terminated, addressed the actions about which he had prior knowledge, namely, the actions of the Interested Director Defendants to threaten him with termination if he did not resolve trust and estate disputes with EC and MC on terms satisfactory to them and, when he failed to do so, execution on that threat, Plaintiff's FAC and now pending SAC assert an ongoing course of conduct that amounts to entrenchment. The SAC pleads various actions and omissions, including for example aborting the CEO search to make EC the new CEO, and giving MC a highly compensated executive position for which she has no professional or educational qualifications, one of the matters raised (and mischaracterized) in MSJ No. 6.[1]

Simply put, in bringing the MSJs they have brought, the Interested Director Defendants have assumed out of existence the plain allegations of Plaintiff's SAC and the very nature of their

[1] Also by way of example, the executive committee has been parsed out to be the sole subject of MSJ No. 4, as if it were the only complained of conduct in the SAC. In fact, however, it is not simply the activation and repopulation of the executive committee as an early and purposeful course of action by the Interested Director Defendants to entrench themselves that makes it actionable. It is the fact that—together with all of the other actions alleged in the SAC—the executive committee was intended to be and was used as a means to entrench the individual director defendants, including by eliminating Plaintiff and then director Tim Storey as directors.

Likewise, the Offer has been parsed out to be the sole subject of MSJ No.3, as if the response of the individual director defendants must be assessed solely in view of the record they attempted to create at the single board meeting at which they supposedly deliberated about the Offer, and without regard to their historical conduct and relationships. (That said, their carefully prepared minutes of that one meeting clearly evidence the wishes of EC and MC to retain control of RDI and the fact that the other director defendants acceded to the wishes of MC and EC in agreeing to take no action in response to the Offer.)

Lewis Roca ROTHGERBER CHRISTIE
3993 Howard Hughes Pkwy, Suite 600
Las Vegas, NV 89169-5996

complained of course of conduct. They have done so in an effort to create "straw man" claims to challenge by multiple motions for summary judgment. In doing so, the Interested Director Defendants ignore well-developed law that the various complained of acts and omissions upon which Plaintiff's claims are based must be viewed and assessed collectively, not separately and in isolation, as the Interested Director Defendants' multiple MSJs ask the Court to do. *See, e.g., In re Ebix, Inc. Stockholder Litig.*, 2016 WL 208402, at *20 (Del. Jan. 15, 2016) (rejecting director defendants' contention that bylaw amendments should be viewed individually rather than collectively); *Carmody v. Toll Brothers., Inc.*, 723 A.2d 1180, 1189 (Del. Ch. July 24, 1998) (finding that particularized allegations that directors acted for entrenchment purposes sufficient to excuse demand); *Chrysogelos v. London*, 1992 WL 58516, at *8 (Del. Ch. Mar. 25, 1992) ("None of these circumstances, if considered individually and in isolation from the rest, would be sufficient to create a reasonable doubt as to the propriety of the director's motives. However, when viewed as a whole, they do create such a reasonable doubt . . ."); *California Pub. Employees Ret. Sys. v. Coulter*, 2002 WL 31888343, at *6 (Del. Ch. Dec. 18, 2002) (concluding that allegations that individually would be insufficient to show a lack of disinterestedness or independence were, taken together, sufficient to do so).

B. Directors' Fiduciary Duties

1. Director Defendants' Fiduciary Duties

The power of directors to act on behalf of a corporation is governed by their fiduciary relationship to the corporation and to its shareholders. *Shoen v. SAC Holding Corp.*, 137 P.3d 1171, 1178 (Nev. 2006) (citations omitted). Generally, those duties are described as the duty of care and is the duty of loyalty. (*Id.*) The duty of good faith may be viewed as implicit in the duties of care and loyalty, or as part of a "triumvirate" of fiduciary duties.

a. The Duty of Care

The duty of care typically is described as requiring directors to act on an informed basis. *Schoen*, 137 P.3d at 1178. Whether directors acted on an informed basis "turns on whether the directors have informed themselves "prior to making a business decision, of all material information reasonably available to them." *Smith v. Van Gorkom*, 488 A. 2d 858, 872 (Del. 1985)

Lewis Roca ROTHGERBER CHRISTIE
3993 Howard Hughes Pkwy, Suite 600
Las Vegas, NV 89169-5996

(*quoting Aronson v. Lewis*, 473 A. 2d 805, 812 (Del. 1984). Due care thus is a function of the decision-making process, not the decision. *See, e.g., Citron v. Fairchild Camera & Instrument Corp.*, 569 A. 2d 53, 66 (Del. 1989). This necessarily raises "[t]he question [of] whether the process employed [in making the challenged decision] was either rational or employed in a good faith effort to advance the corporate interests." *In re Greater Se. Cmty. Hosp. Corp. I*, 353 B.R. 324, 339 (Bankr. D.D.C. 2006).

b. The Duty of Loyalty

The director's duty of loyalty requires that directors "maintain, in good faith, the corporation's and its shareholders' best interests over anyone else's interests." *Schoen*, 137 P.3d at 1178 (citations omitted). The duty of loyalty was described in the seminal Delaware Supreme Court case of *Guth v. Loft* as follows:

> "Corporate officers and directors are not permitted to use their position of trust and confidence to further their private interests. While technically not trustees, they stand in a fiduciary relation to the corporation and [to] its shareholders. A public policy, existing through the years, and derived from a profound knowledge of human characteristics and motives, has established a rule that demands of a corporate . . . director, peremptorily and inexorably, the most scrupulous observance of his duty [of loyalty], not only affirmatively to protect the interests of the corporation committed to his charge, but also to refrain from doing anything that would work injury to the corporation [or its shareholders] . . . The rule that requires an undivided and unselfish loyalty to the corporation demands that there shall be no conflict between duty and self-interests."

Guth v. Loft, 5 A.2d 503, 510 (Del. 1939).

The duty of loyalty is "unremitting." *See, e.g.*, *Malone v. Brincat*, 722 A.2d 5, 10 (Del. 1998). The duty of good faith, discussed elsewhere herein, is one element of the duty of loyalty. *Stone v. Ritter*, 911 A.2d 362, 370 (Del. 2006). The terms "loyalty" and "good faith," like the terms "independence" and "candor," are "words pregnant with obligation" and "[d]irectors should not take a seat at the board table prepared to offer only conditional loyalty, tolerable good faith, reasonable disinterest or formalistic candor." *In re Tyson Foods, Inc., Consol. Shareholder Litig.*, 2007 WL 2351071, at *4 (Del. Ch. Aug. 15, 2007).

Lewis Roca ROTHGERBER CHRISTIE
3993 Howard Hughes Pkwy, Suite 600
Las Vegas, NV 89169-5996

c. The Duty of Good Faith

The element of good faith requires the director to act with a "loyal state of mind." *Hampshire Group, Ltd., v. Kuttner*, 2010 WL 2739995, at *12 (Del. Ch. July 12, 2010). The concept of good faith is particularly relevant in cases in which there is a "controlling shareholder with a supine or passive board." *In re Walt Disney Co. Derivative Litig.*, 907 A.2d 693, 761 n.487 (Del. Ch. 2005), *aff'd*, 906 A.2d 27 (Del. 2006). In such cases, "[g]ood faith may serve to fill [the] gap [between a fiduciary duties of care and loyalty] and insure that the persons entrusted *by shareholders* to govern [the] corporation do so with an honesty of purpose and with an understanding of whose interests they are there to protect." *Id.*

d. The Duty of Disclosure

"Whenever directors communicate publicly or directly with shareholders about the corporation's affairs . . . directors have a fiduciary duty to shareholders to exercise due care, good faith and loyalty." *Malone v. Brincat*, 722 A.2d at 10. "Shareholders are entitled to rely upon the truthfulness of all information disseminated to them by the directors [of the corporation]." *Id.* at 10-11. When directors communicate with stockholders, they must do so with "complete candor." *In re Tyson Foods*, 2007 WL 2351071, at *3.

e. Directors' Fiduciary Duties Are Owed to All Shareholders, Not Just the Controlling Shareholder(s)

Directors owe all stockholders, not just the stockholders who appointed them, "an uncompromising duty of loyalty." *In re Trados Inc. S'holder Litig.*, 73 A.3d 17, 36 (Del. Ch. 2013). Under some circumstances, it is a breach of loyalty for directors not to act to protect the minority stockholders from a controlling stockholder. *Louisiana Mun. Police Emp. Ret. Sys. v. Fertitta*, 2009 WL 2263406, at *8 (Del. Ch. July 28, 2009) (finding that the failure to act in the face of a controlling stockholder's threat to the corporation and its minority stockholders supported a reasonable inference that the board of directors breached its duty of loyalty by deciding not to cross the controlling stockholder); *see also McMullin v. Beran*, 765 A.2d 910, 919 (Del. 2000) (finding that directors are required to make informed, good faith decisions about whether to the sale of a corporation to a third party that had been proposed and negotiated by a controlling stockholder would maximize the value for minority stockholders).

Lewis Roca ROTHGERBER CHRISTIE
3993 Howard Hughes Pkwy, Suite 600
Las Vegas, NV 89169-5996

2. The Business Judgment Rule Is a Rebuttable Presumption, Rebutted Here

The business judgment rule is a rebuttable presumption that "in making a business decision the directors of a corporation acted on an informed basis, in good faith, and in the honest belief that the action was taken in the best interests of the company." *See, e.g., In re Walt Disney Co. Derivative Litig.*, 906 A.2d 27, 52 (Del. 2006) (*quoting Aronson v. Lewis*, 473 A.2d 805, 812 (Del. 1984).[2] In Nevada, the business judgment rule is codified in NRS 78.138.3, which provides that "[d]irectors and officers, in deciding upon matters of business, are presumed to act in good faith, on an informed basis and with a view to the interests of the corporation."

The business judgment rule typically is articulated as consisting of four elements, namely, (i) a business decision, (ii) disinterestedness and independence, (iii) due care and (iv) good faith. *See, e.g., Roselink Investors, L.L.C. v. Shenkman*, 386 F. Supp. 2d 209, 2016 (S.D.N.Y. 2004) (internal citations omitted). The presumptions of the business judgment rule are rebutted where it is shown that any of the four elements above was not present. *Id.* at 216-17. Here, at least each of the last three elements is absent.

As to MC and EC, there is no dispute that, as to at least any and all matters of disagreement between them and JJC, including but not limited to ultimate control of RDI by controlling the voting trust as trustee(s), immediate control of RDI, whether by removing JJC as CEO, constraining his authority as CEO and/or having a newly activated and repopulated executive committee, and matters involving the employment status, titles and compensation of MC and EC, among other things, MC and EC lack disinterestedness and lack independence. The Interested Director Defendants admit that in their summary judgment motions, including as follows:

> The Individual Defendants, for the purposes of this motion [regarding "director independence"], do not contest the independence of Ellen and Margaret Cotter as RDI directors with respect to the transactions and, or corporate conduct at issue---which are addressed in the Individual Defendants' other, contemporaneously-filed summary judgment motions.

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[2] Due to the development of Delaware case law with respect to issues of corporate law, Nevada courts find Delaware case law persuasive authority. *See Cohen v. Mirage Resorts, Inc.*, 119 Nev. 1, 26, 62 P.3d 720, 737 (2003) (noting that "the case law . . . [of] Delaware is persuasive authority" when interpreting Nevada's corporate law).

Lewis Roca ROTHGERBER CHRISTIE
3993 Howard Hughes Pkwy, Suite 600
Las Vegas, NV 89169-5996

("Individual Defendants' Motion for Partial Summary Judgment (No. 2) Re: the Issue of Director Independence" at p. 14, fn. 2.)

a. Individual Defendants' Lack of Disinterestedness

With respect to disinterestedness, because the business judgment rule presumes that directors have no conflict of interest, the business judgment rule does not apply where "directors have an interest other than as directors of the corporation." *Lewis v. S.L.&E., Inc.*, 629 F.2d 764, 769 (2d Cir. 1980). This is because "[d]irectorial interest exists whenever divided loyalties are present . . ." *Rales v. Blasband*, 634 A. 2d 927, 933 (Del. 1993) (internal citations and quotations omitted). Thus, a director must be disinterested in the challenged conduct in particular and, as a general matter, otherwise independent. *Beam*, 845 A.2d at 1049.

As the Interested Director Defendants acknowledge, EC and MC lack disinterestedness with respect to the challenged actions, starting with the threat to terminate Plaintiff as President and CEO of RDI unless he resolved the California Trust Action and other matters on terms satisfactory to EC and MC, and continuing thereafter, including regarding the termination of him on account of his failure to do so, and each of the matters raised in MSJ No. 6, including obviously the compensation of EC and MC as RDI executives.

The same is true, for largely the same reasons, for defendant Kane, who is called "Uncle Ed" by EC and MC and who, by his contemporaneous conduct demonstrated that he acted as "Uncle Ed" throughout to effectuate what he thought were JJC, Sr.'s wishes, and not as a disinterested RDI director exercising disinterested business judgment, including with respect to the matters raised in MSJ No. 6.

Likewise, Adams admittedly picked sides in a family dispute. He also demonstrated his lack of disinterestedness by, among other things, vigorously pursuing the EC and MC agenda, starting with the termination of Plaintiff as President and CEO and the activation and repopulation of the executive committee with him as a member, to further his own interest and to protect the interests of EC and MC, on whom he is financially dependent, including with respect to the matters raised in MSJ No. 6.

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b. Individual Defendants' Lack of Independence

Independence, as used in the context of an element of the business judgment rule, requires that a director is able to engage, and in fact engages, in decision-making "based on the corporate merits of the subject before the board rather than extraneous considerations or influences." *Gilbert v. El Paso, Co.*, 575 A.2d 1131, 1147 (Del. 1990); *Rales*, 634 A.2d at 936. "Directors must not only be independent, [they also] must act independently." *Telxon Corp. v. Meyerson*, 802 A.2d 257, 264 (Del. 2003). Assessing directorial independence therefore "focus[es] on impartiality and objectiveness." *In re Oracle Corp. Derivative Litig.*, 824 A.2d 917, 920, 938 (Del. Ch. 2003) (*quoting Parfi Holding AB v. Mirror Image Internet, Inc.*, 794 A.2d 1211, 1232 (Del. Ch. 2001), *rev'd in part on other grounds,* 817 A.2d 149 (Del. 2002), *cert. denied,* 538 U.S. 1032 (2003). *See also Cede & Co. v. Technicolor, Inc.*, 634 A.2d 345, 362 (Del. 1993) ("[w]e have generally defined a director as being independent only when the director's decision is based entirely on the corporate merits of the transaction and is not influenced by personal or extraneous considerations"), *modified in part on other grounds,* 636 A.2d 956 (Del. 1994).

"Independence is a fact-specific determination made in the context of a particular case. The Court must make that determination by answering the inquiries: independent from whom and independent for what purpose?" *Beam*, 845 A.2d at 1049-50.

Independence is lacking in situations in which a corporate fiduciary "derives a benefit *from the transaction* that is not generally shared with the other shareholders. In situations in which the benefit is derived by another (e.g., by EC and MC from Plaintiff acceding to their demands to resolve trust and estate disputes on terms acceptable to the two of them), the issue is whether the [corporate fiduciary]'s decision (e.g., Adams and/or Kane) resulted from that director being *controlled* by another." *Orman v. Cullman*, 794 A.2d 5, 25 n.50 (Del. Ch. 2002) (explaining the distinction between interest and independence). Control may exist where a corporate fiduciary has close personal or financial ties to or is beholden to another. (*Id.*)

A close personal friendship in which the director and the person with whom he or she has the questioned relationship are "as thick as blood relations" would likely be sufficient to

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demonstrate that a director is not independent. *In re MFW S'holders Litig.*, 67 A.3d 496, 509 n.37 (Del. Ch. 2013).

Similarly, a director who is financially beholden to another person, such as a controlling stockholder, is not independent of that person. *In re Emerging Commc'n, Inc. S'holders Litig.*, 2004 WL 1305745, at *33 (Del. Ch. May 3, 2004). The Court of Chancery has found that directors who derive a substantial portion of their income from a controlling stockholder are not independent of that stockholder *Id.* at *34.

"In such circumstances, a director cannot be expected to exercise his or her independent business judgment without being influenced by the . . . personal consequences resulting from the decision." *Beam v. Stewart*, 845 A.2d 1040, 1049 (Del. 2004) (*quoting Rales v. Blasband*, 634 A.2d 927, 936 (Del. 1993)).

Here, the evidence demonstrates that EC and MC, Kane and Adams each lack independence generally and specifically with respect to the matters raised in MSJ No. 6, which matters each were of debilitating and conflicting personal interest to each of the four of them, because these matters each concerned control of RDI, employment of MC at RDI and payment by RDI of monies to ED, MC and Adams. .

For such reasons, among others, each of Kane and Adams (and MC and EC) lacked independence and therefore are not entitled to the presumptions of the business judgment rule.

c. Individual Defendants' Lack of Good Faith

The element of good faith requires the director to act with a "loyal state of mind." *Hampshire Group, Ltd., v. Kuttner*, 2010 WL 2739995, at *12 (Del. Ch. July 12, 2010). The concept of good faith is particularly relevant in cases in which there is a "controlling shareholder with a supine or passive board." *In re Walt Disney Co. Derivative Litig.*, 907 A.2d 693, 761 n.487 (Del. Ch. 2005), *aff'd*, 906 A.2d 27 (Del. 2006). In such cases, "[g]ood faith may serve to fill [the] gap [between a fiduciary duties of care and loyalty] and insure that the persons entrusted *by shareholders* to govern [the] corporations do so with an honesty of purpose and with an understanding of whose interests they are there to protect." *Id.*

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Here, agreeing to activate and repopulate the executive committee, sought by EC and MC since October 2014 to avoid reporting or answering to anyone or anybody, demonstrated unwavering loyalty—to MC and EC—not RDI by its other shareholders, by each of the directors (other than Storey and Plaintiff), and previewed what was to come, namely, wholesale abdications of duty and rubber-stamping.

3. The Individual Defendants Failed to Exercise Due Care

Even had the individual defendants acted in good faith and in a manner that each reasonably could have believed to be in the best interests of RDI in taking the actions complained of herein, which was not the case, they failed to engage in a process to decide and act on an informed basis in view of the nature and importance of the decisions made, for the reasons described herein. Insofar as they seek to invoke "advice of counsel," they do so in violation of the Court's August 30, 2016 ruling and October 3, 2016 Order.

a. Defendants Must and Cannot Satisfy the Entire Fairness Standard

"If the shareholder succeeds in rebutting the presumption of the business judgment rule, the burden shifts to the defendant directors to prove the 'entire fairness' of the transaction." *McMullin v. Brand,* 765 A.2d 910, 917 (Del. 2000). "[I]f the presumption is rebutted, the board's decision is reviewed through the lens of entire fairness, pursuant to which the directors lose the presumption of [the] business judgment [rule]." *Solomon v. Armstrong*, 747 A.2d 1098, 1112 (Del.Ch. 1999). *Horwitz v. SW. Forest Indus., Inc.,* 604 F. Supp. 1130, 1134 (D. Nev. 1985), which defendants cite for the platitude that the business judgment rule applies to claims of breach of fiduciary duty against a director, is not to the contrary and does not address circumstance of where, as here, the plaintiff has rebutted the presumptions of the business judgment rule.

Under the entire fairness test, "[d]irector defendants therefore are required to establish to the *court's* satisfaction that the transaction was the product of both fair dealing and fair price." *Cinerama, Inc.* v. *Technicolor,* 663 A.2d 1156, 1163 (Del. 1995) (*quoting Cede & Co. v. Technicolor,* 634 A.2d 345, 361 (Del. 1993). Thus, a test of entire fairness is a two-part inquiry into the fair-dealing, meaning the process leading to the challenged action and, separately, the end

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result. *In re Tele-Commc'ns Inc. Shareholders Litig.,* 2005 Del. Ch. LEXIS 206, at *235, 2005 WL 3642727, at *9 (Del. Ch. Sept. 29, 2005).

The Motion makes no mention of this standard. In addition the Motion does not discuss the "omnipresent specter" that the Defendants were acting primarily in their own interests or for entrenchment purposes. *Unocal Corp. v. Mesa Petroleum Co.*, 493 A.2d 946, 954 (Del. 1985); *see also eBay Domestic Holdings, Inc. v. Newmark*, 16 A.3d 1, 36 (Del. Ch. 2010).

The entire fairness requirement entails "exacting scrutiny" to determine whether the challenged actions were entirely fair. *Paramount Commc'ns, Inc. v. QVC Network Inc.,* 637 A.2d 34, 42 N.9 (Del. 1994), *quoted in Krasner v. Moffett,* 826 A.2d 277, 285, n.26, 287 n.40 (Del. 2003). Under the entire fairness standard, the challenged action itself must be objectively fair, independent of the beliefs of the director defendants. *Geoff v. II Cindus, Inc.,* 902 A.2d 1130, 1145 (Del. Ch. 2006) subsequent proceedings, 2006 (Del. Ch. LEXIS 161, 2000 WL 2521441 (Del. Ch. Aug. 22, 2006); *see also Venhill Ltd. P'ship v. Hilman*, 2008 Del. Ch. LEXIS 67, at *67-68, 2008, WL 2270488, at *22 (Del. Ch. June 3, 2008).

"The fairness test therefore is "an inquiry designed to access whether a self-dealing transaction should be respected or set aside in equity." *Venhill*, 208 Del. Ch. LEXIS 67 at *66, 2008 WL 2270488 at *22. Here, Defendants cannot carry their burden of proving the entire fairness of their actions, as part of an ongoing course of entrenchment oriented conduct, aborting the CEO search they touted to RDI shareholders and the public to select EC for regions that had nothing to do with the skills and experience they had previously determined was necessary to even be a candidate for RDI's CEO position.

4. N.R.S. 78.138(7) Does Not Preclude Liability in This Case

The individual director defendants in most if not all of their MSJs cite to NRS 78.138(7) and, in particular, to the portion that requires that fiduciary breaches "involve[] intentional misconduct, fraud, or a knowing violation of law" and, based on that language, and cases that quote that language, conclude that they are "protected" or "immune" from liability. (See e.g., MSJ No. 4 at 8:3-8.) In doing so, they invariably provide no substantive discussion of the notion of "intentional misconduct." Indeed, they cite only one case, a Federal District Court case from the

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10th Circuit, for the proposition that intentional misconduct and a knowing violation of law "both require knowledge that the conduct was wrongful." In other words, the complained of conduct needs to be something beyond and unintentional breach of the duty of care.

First, invocation of Nevada's exculpatory statute, NRS 78.138.7, misapprehends the function of the statute, which is to limit monetary liability and recovery, not to serve as a means by which the legal sufficiency of a fiduciary duty claim is assessed. *Emerald Partners v. Berlin*, 787 A.2d 85, 92 (Del. 2001) ("a Section 102(b)(7) provision does not operate to defeat the validity of a plaintiff's claim on the merits," but "it can operate to defeat the plaintiff's ability to recover monetary damages.")

Second, even if the exculpatory statute were properly invoked, which it is not, it has no application where, as here, duty of loyalty (and disclosure) claims also are made. *McMillan v. Intercargo Corp.*, 768 A.2d 492, 501 n. 41 (Del. Ch. 2000) (the exculpatory statute does not apply to breaches duty of loyalty because "conduct not in good faith, intentional misconduct, and knowing violations of law" are "quintessential examples of disloyal, i.e., faithless, conduct"). Here, the complained of or challenged conduct also and obviously entails breaches of the duty of loyalty (and disclosure). *Orman v. Cullman*, 794 A.2d 5, 41 (Del. Ch. 2002) (plaintiff pleaded a breach of the duty of loyalty claim where it "pled facts which made it reasonable to question the independence and disinterest of a majority of the Board that decided what information to include in the Proxy Statement"); *O'Reilly v. Transworld Healthcare, Inc.*, 745 A.2d 902, 914-15, 920, n.34 (Del. Ch. 2014) ("right complaint alleges or pleads facts sufficient to support the inference that the disclosure violation was made in bad faith, knowingly or intentionally, the alleged violation implicates the duty of loyalty" and is relevant to the availability of the exculpatory provisions of section 102(b)(7)): *In re Wheelabrator Techs., Inc. Sh. Litig.*, 1992 Del. Ch. LEXIS at *41 n.18, 1992 WL 212595, at *12 n.18 (Del. Ch. Sept. 1, 1992) (§102(b)(7) did not require dismissal where the plaintiffs pleaded that "the breach of the duty of disclosure wasn't intentional violation of the duty of loyalty").

"Intentional misconduct" is one of three ways in which a fiduciary can fail to act in good faith. *In re Walt Disney Co. Derivative Litig.*, 906 A.2d 27, 67 (Del. 2006). The first occurs

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"where the fiduciary intentionally acts with a purpose other than that of advancing the best interests of the corporation." *Id.* The second occurs "where the fiduciary tax with the intent to violate applicable positive law." *Id.* The third occurs "where the fiduciary intentionally fails to act in the face of a known duty to act, demonstrating a conscious disregard for his duties." *Id.* Obviously, the first two of the foregoing three ways fiduciaries can fail to act in good faith track language of 203 portions of NRS 78.138(7), namely, "intentional misconduct" and "A knowing violation of law."

Here, Plaintiff has proffered substantial evidence of an ongoing course of self-dealing and entrenchment undertaken for the purpose of protecting and furthering the personal financial and other interests of EC and MC, as well as other individual director defendants, including for example maintaining Adams' principal sources of income. These actions on their face and by their very nature were and are "intentional[] acts with a purpose other than that of advancing the best interests of [RDI]." Do the individual director defendants really expect the Court to decide at summary judgment that their actions to threaten Plaintiff with termination if he did not resolve trust and estate disputes with EC and MC on terms satisfactory to the two of them were not intentional acts with a purpose other than that of advancing the best interests of RDI? Do they really expect the Court to determine on summary judgment that the activation and repopulation of an executive committee, about which director Storey complained at the time and which he testified was intended to and had the effect of limiting his ability to serve as a director of RDI, was not an intentional act with a purpose other than advancing the best interests of RDI? Do they really expect the Court to determine on summary judgment that, in effectively firing Korn Ferry and in completely ignoring the criteria set by the CEO search committee for identifying candidates and hiring a new CEO, was not an intentional act with a purpose other than advancing the best interests of RDI? Do they really expect the Court to decide on summary judgment that hiring and paying MC as if she had decades of experience in real estate development when, in fact, she had no prior experience, was not an intentional act with a purpose other than advancing the best interests of RDI?

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The Motion goes to great lengths to depict a benign and ostensibly thorough process involving the Compensation Committee, the Audit and Conflicts Committee and the full RDI Board of Directors involvement in the decision to hire MC as the senior executive at RDI responsible for the development of the Company's valuable New York real estate.

What is missing from that depiction is any discussion of the lack of disinterestedness and lack of independence of the directorial decision-makers. As demonstrated herein and in other oppositions, Adams is beholden to EC and to MC, as is Kane, for different reasons. Wrotniak would disappoint MC at the risk of angering his wife, and Codding would disappoint MC at the risk of angering MC and EC's mother. That Codding and Wrotniak have never served as directors of a public company evidences that they are not persons for whom their professional reputations as directors even approximate the importance of their personal relationships with MC and EC. Codding's comments to plaintiff to the effect that only a Cotter should run RDI evidence this.

What also is missing is any discussion of their indisputable knowledge that MC had no prior real estate development experience and was wholly unqualified for the highly compensated position she was given. Simply put, the process of consulting with a compensation consultant was a ruse, because the compensation consultant advised with respect to the position, not the person, MC. The audit committee members, including King and Adams, indisputably knew this. Indeed, there is no evidence proffered to suggest that a single member of the RDI Board of Directors did not know that MC was being given a senior executive position, and was being paid as if she were a senior executive, for which she had no prior experience that would have enabled her to secure that employment, but for the fact that she is believed by the director defendants to be a controlling shareholder.

Similarly, as to the $200,000 paid to MC, the notion that it was paid for past services when she was not an employee of the Company is not evidenced by any prior communications, claims or documents. Were that actually the rationale, she would have been paid at the time or immediately thereafter, not upon becoming an employee. As to the claim that those monies also were to compensate her for relinquishing certain debatable rights, there is no evidence that she would not have relinquished those rights otherwise. In fact, the evidence, which is undisputed, is

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that MC since at least the Fall of 2014 sought and angled to become employee of RDI, including for the purposes of obtaining health insurance for herself and her two children. There is no evidence that, throughout her repeated efforts to become employee, a condition of doing so was being compensated for relinquishing any rights.

As to EC, the situation is substantially the same as it is as to MC. The question is not whether someone holding her position should be compensated in the manner she now is compensated. The question is whether she should. In view of the fact that she met virtually none of the position specification criteria that the CEO search committee determined would be used to identify candidates and, ultimately, select the new CEO, the obvious question raised by the undisputed facts is why EC was not required by the RDI Board to accept less money as CEO. Simply put, neither the use of the compensation consultant nor the illusion of process changes the actual facts, which are disputed material facts.

Finally, as to be $50,000 bonus provided to Adams, for supposed extraordinary efforts in doing his job, the Motion mischaracterizes the evidence it proffers. Contrary to what the Motion concludes, a bonus of $50,000 paid to a RDI director is one for which there is no clear historical precedent. The payment of $75,000 to director Storey for his role as ombudsman is not an appropriate point of reference, given that the time and magnitude of his responsibilities and efforts exceeded those of Adams by a multiple. Moreover, historical precedent makes clear that directorial bonuses given by RDI typically were $10,000. Independent of the foregoing, an obvious question is whether Adams was given this bonus due to loyalty to EC and/or MC, because he needed the money, or both. Proffering a list of reasons, unsubstantiated by actual evidence to support them, is insufficient to explain such an extraordinary bonus, in derogation of historical practices.

Finally, given the lack of disinterestedness and lack of independence on the part of the director decision-makers, and given the overall context of ongoing entrenchment and self-enrichment, as well as Rule 56 standards, each of the matters above our matters as to which there are disputed material facts to require denial of the Motion which, for the reasons explained above, should be assessed based on the entire fairness standard.

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5. The Interested Director defendants' "Economic Harm" Argument Is Erroneous as a Matter of Law

The Individual Director Defendants assert that, to avoid summary judgment, Plaintiff must produce "cognizable evidence" showing "that the breaches [of fiduciary duty] proximately caused the damages" claimed incurred by the Company. For that proposition, they cite *Brown v. Kinross Gold U.S.A., Inc.*, 531 F. Supp. 2d 1234, 1245 (D. Nev. 2008). The Individual Director Defendants also assert that, to sustain a fiduciary duty claim, there must be "cognizable evidence" of "economic harm suffered" by the Company resulting from the alleged breaches of fiduciary duty, citing a federal district court case from Colorado and an Arizona state court case. (Motion at 22:13-21.)

The Individual Director Defendants' "economic harm" argument is mistaken as a matter of law and is in reality a disguised exercise at question-begging. The Individual Director Defendants argue that their complained of conduct is governed by and should be assessed by the business judgment rule. However, Plaintiff has introduced evidence sufficient to rebut the presumptions of the business judgment rule and require the Individual Director Defendants to satisfy the entire fairness test, as to which they bear the burden. Part of that burden is to show that the challenged result was entirely fair. The Individual Director Defendants' "economic harm" argument therefore begs the threshold question of what is the standard by which the Individual Director Defendants' conduct is to be assessed, which in this case is the entire fairness test, which places the burden on them.

The Delaware Supreme Court in *Cede & Co. v. Technicolor, Inc.*, 634 A.2d 345 (Del. 1993), *modified*, 636 A.2d 956 (Del. 1994), concluded that a requirement that a plaintiff show proof of loss "may" be "good law" in a tort action seeking to recover damages for negligence, but that such a requirement does not apply to a breach of fiduciary duty claim where an issue is the appropriate standard of review of the director defendants' challenged conduct. (*Id.* at 370.) The Court explained that that is the proper rule of law because "[t]he purpose of a trial court's application of an entire fairness standard of review to a challenged business transaction is simply to shift to the defendant directors the burden of demonstrating to the court the entire fairness of the transaction . . ." (*Id.* at 369.)

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In a subsequent decision in the same case, the Delaware Supreme Court emphasized that "[t]o inject a requirement of proof of injury into the [business judgment] rule's formulation for burden shifting purposes is to lose sight of the underlying purpose of the rule . . ." *Cinerama, Inc. v. Technicolor, Inc.*, 663 A.2d 1156, 1166 (Del. 1995). Explaining further, the Court stated that "[t]to require proof of injury as a component of the proof necessary to rebut the business judgment presumption would convert the burden shifting process from a threshold determination of the appropriate standard of review to a dispositive adjudication on the merits." (*Id.*) *See also Carlton Invs. v. TLC Beatrice Int'l Holdings, Inc.*, 1996 Del. Ch. LEXIS 47, at *11, 1996 WL 189435, *4 (Del. Ch. Apr. 16, 1996) (holding that there is "no obligation to plead or prove injury" as part of a breach of fiduciary duty claim and that allegations and evidence "sufficient to strip the board of the business judgment presumption" are sufficient).

Separately, and contrary to the "economic harm" argument proffered by the Individual Director Defendants in most if not all of their MSJs, the Court may "fashion any form of equitable and monetary relief as may be appropriate" under the circumstances in a breach of fiduciary duty care. (*Technicolor*, 663 A.2d at 1166 (quoting *Technicolor*, 634 A.2d at 371).)

Here, the Individual Director Defendants' repeated invocation of an imaginary "economic harm" requirement ignores the nature of this action, which is for breach of fiduciary duty, which is an action in equity, in which equitable relief may be sought and obtained.

Here, the prayer for relief in Plaintiff's SAC includes several requests for equitable relief, relating both to the termination of Plaintiff and to subsequent actions of the Individual Director Defendants to entrench themselves in control of the Company. Such relief may be sought and secured by way of a breach of fiduciary duty claim.

"A general common law presumption is that a director's or officer's conflict of interest can result in the voiding of a transaction." Keith Paul Bishop & Jeffrey P. Zucker, *Bishop and Zucker on Nevada Corporations and Limited Liability Companies*, § 8.16, 8-44 (2013), citing, *see, e.g.,* William Meade Fletcher, *Fletcher Cyclopedia of the Law of Corporations*, §§ 915.10, 917 (2010). The Nevada Supreme Court in *Kendall v. Henry Mountain Mines, Inc.,* stated that directorial conflicts are such that the challenged action of the directors "may be avoided by the

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corporation or its stockholders." 78 Nev. 408, 410-11, 374 P.2d 889, 890 (1962) (*quoting Marsters v. Umpqua Valley Oil, Co.*, 49 Or. 374, 378, 90 P. 151, 153 (1907).

Finally, MSJ No. 6 also asserts (at 20-22) that there were no damages from the matters which are the subject of MSJ No. 6, including the payment of a senior executive salary to a person undisputedly unqualified to hold that position, MC, and the payment of a historically unprecedented $50,000 "bonus" to a director, Adams.

Additionally, although not required to do so, given the nature of the claims made and the relief sought, Plaintiff has produced evidence of damages. For example, Plaintiff has claimed, and defendant's own documents and testimony have acknowledged, monies paid to third-party consultants (e.g., Edifice) and/or monies paid to MC arising from the fact that MC has no prior real estate development experience, which requires the third-party consultants be paid to do what is part of her job.

Plaintiff also has claimed and publicly available information shows diminution in the price at which RDI stock traded in the days following disclosure of the termination of Plaintiff, as well as on the day of and following disclosure of the selection of EC as permanent President and CEO.

Plaintiff has claimed and evidence shows corporate waste and monetary damages to RDI, including from the inflated salary paid to MC and including from what amounted to a gift of $200,000 to MC (supposedly for services she had provided over a number of preceding years, for which neither her father is the former CEO or the board soffits compensator at the time) and a gift of $50,000 Adams (for serving as a director over the course of the preceding year, during which there was nothing memorializing his supposed special services as such, much less the notion that he should receive special compensation for those services which only were identified after the fact).

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IV. CONCLUSION

For all of the foregoing reasons, Plaintiff respectfully submits that MSJ No. 5 should be denied.

DATED this 13th day of October, 2016.

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CERTIFICATE OF SERVICE

I hereby certify that on this 13th day of October, 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/ Annette Jaramillo
An employee of Lewis Roca Rothgerber Christie LLP

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DISTRICT COURT
CLARK COUNTY, NEVADA

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

Plaintiff,

vs.

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

Defendants.

READING INTERNATIONAL, INC., a Nevada corporation,

Nominal Defendant.

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

Plaintiffs,

vs.

MARGARET COTTER, ELLEN COTTER, GUY ADAMS, EDWARD KANE, DOUGLAS McEACHERN, WILLIAM GOULD, JUDY CODDING, MICHAEL WROTNIAK, CRAIG TOMPKINS, 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

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

Jointly Administered

Business Court

APPENDIX OF EXHIBITS IN SUPPORT OF PLAINTIFF JAMES J. COTTER, JR.'S OPPOSITION TO INDIVIDUAL DEFENDANTS' MOTION FOR PARTIAL SUMMARY JUDGMENT (NO. 1) RE PLAINTIFF'S TERMINATION AND REINSTATEMENT CLAIMS (Exhibits 3, 5, 6, 9, 19, 24, 25 and 29 filed under seal)

APPENDIX OF EXHIBITS

TABLE OF CONTENTS

Exhibit	Description	Page Nos.
1	JCOTTER014536	001
2	JCOTTER009286	002
3	Depo Exhibit 61 – Filed separately under seal	003-005
4	Excerpts from February 12, 2016 deposition of Timothy Storey	006-018
5	TS0000061 – Filed separately under seal	019-021
6	Depo Exhibit 339 – Filed separately under seal	022
7	Depo Exhibit 338	023
8	TS00000073	024-026
9	GA00003863 – Filed separately under seal	027-030
10	Excerpts from June 15, 2016 deposition of Margaret Cotter	031-035
11	Depo Exhibit 322	036-040
12	Depo Exhibit 327	041
13	Excerpts from May 13, 2016 deposition of Margaret Cotter	042-058
14	Depo Exhibit 156	059-063
15	Depo Exhibit 306	064
16	Excerpts from May 2, 2016 deposition of Edward Kane	065-071
17	Excerpts from August 3, 2016 deposition of Timothy Storey	072-085
18	Excerpts from August 31, 2016 deposition of Timothy Storey	086-089
19	Depo Exhibit 131 – Filed separately under seal	090

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20	Excerpts from June 8, 2016 deposition of William Gould	091
21	Excerpts from April 29, 2016 deposition of Guy Adams	092-097
22	Depo Exhibit 82	098
23	Depo Exhibit 318	099-104
24	Depo Exhibit 116 – Filed separately under seal	105-106
25	Depo Exhibit 117 – Filed separately under seal	107-109
26	June 15, 2016 Letter	110
27	Depo Exhibit 347	111-119
28	Depo Exhibit 81	120
29	Depo Exhibit 85 – Filed separately under seal	121-122
30	Excerpts from June 16, 2016 deposition of Ellen Cotter	123-126
31	Excerpts from April 28, 2016 deposition of Guy Adams	127-130
32	Excerpts from June 8, 2016 deposition of William Gould	131-136
33	JJC Declaration	137-151

DATED this 17th day of October, 2016.

LEWIS ROCA ROTHGERBER CHRISTIE LLP

By: */s/ Mark G. Krum*
Mark G. Krum (SBN 10913)
3993 Howard Hughes Pkwy, Suite 600
Las Vegas, NV 89169-5996
Tel: 702.949.8200
Fax: 702.949.8398

Attorneys for Plaintiff James J. Cotter, Jr.

LEWIS ROCA ROTHGERBER CHRISTIE
3993 Howard Hughes Pkwy, Suite 600
Las Vegas, NV 89169-5996

CERTIFICATE OF SERVICE

I hereby certify that on this 17th day of October, 2016, I caused a true and correct copy of the foregoing **APPENDIX OF EXHIBITS IN SUPPORT OF PLAINTIFF JAMES J. COTTER, JR.'S OPPOSITION TO INDIVIDUAL DEFENDANTS' MOTION FOR PARTIAL SUMMARY JUDGMENT (NO. 1) RE PLAINTIFF'S TERMINATION AND REINSTATEMENT CLAIMS INDEPENDENCE (Exhibits 3, 5, 6, 9, 19, 24, 25 and 29 filed under seal)** to be electronically filed and served via this Court's electronic filing system to all parties listed on the E-Service Master List.

/s/ Luz Horvath
An employee of Lewis Roca Rothgerber Christie LLP

Lewis Roca ROTHGERBER CHRISTIE
3993 Howard Hughes Pkwy, Suite 600
Las Vegas, NV 89169-5996

Exhibit 1

Exhibit 1

JAMES J. COTTER
120 N. Robertson Boulevard
Los Angeles, CA 90048
(310) 659-7224 (t)
(310) 659-7226 (f)

MEMO

To: Alfred Villaseñor, Chairman of the Compensation Committee

From: James J. Cotter

Date: January 16, 2009

Subject: James J. Cotter, Jr.

CC: Andrzej Matyczynski
James J. Cotter, Jr.
Rita Rice

A few years ago, the Board had expressed its concern that Reading needed a succession plan in the event that I became incapacitated or resigned from the company. Thereafter, I suggested that James Cotter, Jr., a Board member for over five years, begin spending more time at the company's office in Commerce liaising with the top management.

The Board agreed and James Cotter, Jr. began a program of meeting with the top executives of the company here and telephonically with those in Australia, New Zealand, and New York. He furthermore went to New Zealand and Australia with me this last year and besides seeing some of our properties, he met all the key executives.

On each Monday and Wednesday for one and a half to two hours each time, he has chaired discussions on all aspects of domestic and foreign exhibition and real estate development and operations in New Zealand, Australia, and the USA. After such meetings, he prepares and distributes to these same executives management reports on the discussions and follow-up assignments. He has also been on conference calls involving these same executives outside of the Monday and Wednesday meetings. His compensation was agreed to be $100,000 per annum, which was paid out of my salary and duly noted in our minutes and public filings.

Now his first year assignment is up and I believe it was a success; he is most informed on all aspects of our business and, in addition, is completely conversant with top management. As he now begins the 2009 fiscal year, I am suggesting the Board consider its objectives met and have Reading assume the responsibility for Jim's $100,000 per year compensation.

Exhibit 2

Exhibit 2

From: Kane
To: James Cotter JR
Sent: 6/8/2015 9:30:15 PM
Subject: Re: A proposal

My only response is: shit!! I won't say who it is directed at but there is no one more qualified to be the CEO of this company than you. That is not to say you don't have warts like the rest of us, but there is no one else to pinch hit. So stay in there, if not for your mom's sake or for you dad's memory or your sisters' sake, do it for your kids, so they can grow up and fight with their cousins!!This too shall pass and, if I'm not too maudlin, you will be stronger for it.

-----Original Message-----
From: James Cotter JR
Sent: Monday, June 08, 2015 10:34 AM
To: 'Kane (elkane@san.rr.com)'
Subject: RE: A proposal

I offered Ellen and Margaret a complete time-out standstill...stop all litigation....stop all boardroom and Reading threats and posturing. All I asked of them was that they agree to a formal mediation process. Their response was that I had to accept their settlement proposal or be terminated as President and CEO. I remain willing to proceed on the basis of a complete standstill.

From: Kane [mailto:elkane@san.rr.com]
Sent: Sunday, June 07, 2015 5:15 PM
To: James Cotter JR
Subject: A proposal

The people who count: Mother-Mary, Ellen , Margaret and I want you to be CEO and run the company for the next 30 years or more. Now you have been presented with a proposal – I have not read or heard all the particulars – that you obviously find objectionable, at least in some aspects. Your and their "legal advisors", who don't give a fuck about any of you other than to see their bills are paid, will argue back and forth with the hope that more lucrative litigation will ensue.
So, why not consider a 6-month time-out standstill. If your original prognostication holds, the stock price may well increase during this period so there is nothing to lose on your part.
You tell the sisters what you now find objectionable but will agree to try it as is for 6-months. After that period, the three of you agree to sit down and go over all your objections with a tacit agreement that if things improve and you have arrived at a way of working together the three of you will address all of your concerns in good faith; that the goal will be a solid long-term relationship of working together and each of you then to return to and concentrate on your respective responsibilities with you assuming leadership once more. What's there to lose? All you really need to do is restore trust and understanding and take back control of your company.

EXHIBIT 3

(Filed Separately Under Seal)

Exhibit 4

Exhibit 4

DISTRICT COURT

CLARK COUNTY, NEVADA

JAMES J. COTTER, JR., individually and derivatively on behalf of Reading International, Inc., Plaintiff, vs. MARGARET COTTER, ELLEN COTTER, GUY ADAMS, EDWARD KANE, DOUGLAS McEACHERN, TIMOTHY STOREY, WILLIAM GOULD, and DOES 1 through 100, inclusive, Defendants. and READING INTERNATIONAL, INC., a Nevada corporation, Nominal Defendant.	No. A-15-719860-B Coordinated with: P-14-082942-E

DEPOSITION OF TIMOTHY STOREY, a defendant herein, noticed by LEWIS ROCA ROTHGERBER CHRISTIE LLP, at 1453 Third Street Promenade, Santa Monica, California, at 9:28 a.m., on Friday, February 12, 2016, before Teckla T. Hollins, CSR 13125.

Job Number 291961

a communication from the Stomp producers with respect to issues of the nature that were raised in the letter to which you referred?

MR. SEARCY: Occasion. Vague.

THE WITNESS: My understanding was that there had been some correspondence in the preceding year, and that those issues had been dealt -- we thought those issues had been dealt with.

MR. KRUM:

Q. How did you come to have that understanding?

A. I don't recall a specific matter, but I think Margaret said that to me.

Q. Do you recall that Bill Gould expressed some concern about the Stomp issue?

MR. SEARCY: Objection. Vague.

MR. RHOW: Join.

THE WITNESS: I don't specifically recall Bill Gould making a comment. On reflection, I do recollect that we did have a discussion amongst board members, but I think all of us were concerned about the matter. But I don't have a specific recollection.

MR. KRUM:

Q. Did you ever hear or were you ever told, or did you ever learn that Bill Gould had said, in words or substance, that the Stomp issue could or might cost RDI

$20 million or some other figure of a similar magnitude?

MR. RHOW: Form of the question.

MR. SEARCY: Join. It's vague.

MR. KRUM:

Q. You may answer.

MR. RHOW: You can answer.

THE WITNESS: I'm sorry. Can you repeat the question?

MR. KRUM: I'll ask the court reporter to read it for me.

(The record is read by the reporter.)

THE WITNESS: Yes, I think people were of the view that something like that had been said by Bill Gould.

MR. KRUM:

Q. And what do you recall either Mr. Gould or anybody else saying about such a statement?

A. It was a general comment. I can remember that Mr. Kane was not very happy about the comment.

Q. Why do you say that? What did he -- In other words --

A. Just a memory.

Q. -- what did Mr. Kane say or do that prompts that memory?

A. I don't know that he said anything, but I think this is a subject of an exchange of e-mails between Ed

Kane and Bill Gould, which Bill Gould took umbrage to, but I don't -- to be fair, I don't recollect that specifically.

Q. Did you ever hear or were you ever told that anybody said or thought that the Stomp issue was or might be relevant to Margaret's employment or possible employment with RDI?

MR. SEARCY: Objection. Vague.

THE WITNESS: Well, I think at this point in time, which from memory is in May, right, that all sorts of things were happening around the board table, and it was one of the issues that was live at the time.

MR. KRUM:

Q. When you say, "it was one of the issues that was live," does that mean that yes, there were discussions about whether -- or the possibility that the Stomp issue should be taken into consideration in assessing Margaret's employment situation?

MR. SEARCY: Objection. Vague.

THE WITNESS: I don't recollect that that was discussed. I think that, as I say here in paragraph 6 of Exhibit 9, you know, it was -- as I said, it was an issue on the table. But as I see here, it was agreed that a review could wait for another day. Our efforts should be on trying to recover the money if Stomp moved.

got lost.

MR. KRUM: I'll just repeat it.

MR. FERRARIO: Yeah.

MR. KRUM:

Q. When did you first hear or learn or when were you first told that any of the non-Cotter directors had concluded that Jim Cotter should be removed as CEO?

A. About a week before the meeting, I would say, mid- -- around about the 15th of May, I got a phone call from Doug McEachern, who informed me that there had been various discussions. It was intended to remove Jim at the board meeting. That he had been in discussions with Guy Adams, and that Guy Adams was -- my recollection, was leading the charge or was involved with it.

I made some commentary on the procedure. And Mr. McEachern said he was aware of that, but that's where things stood. And the next day, I got a phone call -- the next day, I had a phone call from Guy Adams, who basically affirmed that.

Q. And what did Mr. Adams say, in sum and substance, unless you actually remember the words?

A. I think he said, in substance, that the time had come for the matter to be dealt with, that they had the legal advice that they could do that, that it shouldn't be an issue. My recollection is, it was a

pretty short conversation.

Q. And when you say "the matter" should be dealt with, what was "the matter"?

A. The removal of the CEO.

Q. Did he indicate from whom they had received legal advice?

A. No.

Q. Did you ever subsequently learn who that was?

MR. FERRARIO: Object that --

MR. KRUM: I'm not asking for the substance. I'm asking --

MR. FERRARIO: Assumes he got any legal advice.

MR. KRUM: Okay. He testified that Adams said he had legal advice. So I'm not doing anything other than following on that testimony.

Q. So did you ever hear or learn or did you ever otherwise develop an understanding as to whom Mr. Adams was referring when he talked about legal advice?

A. I don't recollect.

Q. Was it Akin Gump?

A. I don't know.

Q. It's just an appropriate follow-up question.

MR. RHOW: The reason I have a problem with the question, sometimes when you say, "Did you ever subsequently learn," first, I don't know if what his --

what the relevance is of his current knowledge, but I understand why you're asking.

MR. KRUM: I just want to know who it was.

MR. RHOW: My other concern in general is, if he's learning from me or other sources, that's not necessarily something I can object to, since I'm not sure if he currently knows. But anyway, that question is fine.

MR. KRUM: Well, I assume you prepared him, but let me make it clear.

Q. Mr. Storey, when I ask questions that in any respect call for anything touching on legal advice, I'm not asking you to disclose the substance of any legal advice, whether it was provided to you as a director of the company by in-house or outside counsel representing the company, whether it was provided to you by your own counsel. If the question calls for information of that type, all I want to hear is the identity of the lawyer and the subject matter of the advice, not the substance.

A. Thank you.

Q. So the call with Adams was -- when in time was it relative to the -- to your receipt of the notice from Ellen Cotter of the special meeting?

A. From recollection, prior to.

Q. And the call from Adams was the day after you

spoke to McEachern; correct?

A. Correct.

Q. And in the McEachern call, he told you that he, Adams, and Kane had determined to vote to remove Jim Cotter, Jr. as CEO; is that correct?

MR. SEARCY: Objection. Vague.

THE WITNESS: For some reason, my recollection of the conversation is that it was going to be -- that the time had come to remove the CEO, or to that effect.

MR. KRUM:

Q. Well, when you hung up from the call with Mr. McEachern that you just described, did you understand that he had communicated to you that he had decided to vote to remove Jim Cotter, Jr. as CEO?

A. Yes.

Q. The next day when you hung up the call from Mr. Adams, did you understand that Mr. Adams had told you that he also had decided to vote to remove Jim Cotter, Jr. as CEO?

MR. SEARCY: Objection. Lacks foundation.

THE WITNESS: Yes.

MR. KRUM: Okay.

Q. And as best you can recall, what were the words Mr. Adams used that led you to that conclusion?

A. I don't recollect specific words.

spoke to McEachern; correct?

A. Correct.

Q. And in the McEachern call, he told you that he, Adams, and Kane had determined to vote to remove Jim Cotter, Jr. as CEO; is that correct?

MR. SEARCY: Objection. Vague.

THE WITNESS: For some reason, my recollection of the conversation is that it was going to be -- that the time had come to remove the CEO, or to that effect.

MR. KRUM:

Q. Well, when you hung up from the call with Mr. McEachern that you just described, did you understand that he had communicated to you that he had decided to vote to remove Jim Cotter, Jr. as CEO?

A. Yes.

Q. The next day when you hung up the call from Mr. Adams, did you understand that Mr. Adams had told you that he also had decided to vote to remove Jim Cotter, Jr. as CEO?

MR. SEARCY: Objection. Lacks foundation.

THE WITNESS: Yes.

MR. KRUM: Okay.

Q. And as best you can recall, what were the words Mr. Adams used that led you to that conclusion?

A. I don't recollect specific words.

our somebody else told you that Mr. Kane had decided to vote to remove Jim Cotter, Jr. as president and CEO?

MR. SEARCY: Objection. Vague.

THE WITNESS: You'll have to repeat the question.

MR. KRUM: Sure.

Q. When did you first learn or were you first told that Ed Kane had decided to vote to remove Jim Cotter, Jr. as president and CEO?

A. I don't recollect.

Q. Okay.

A. Obviously, prior to those discussions.

Q. Right. Now, during your call with Mr. McEachern about what you've testified already, what did you say to him?

A. I don't recollect that I said much. I think I talked about adopted process, and looking at the matter properly as a board. As I said earlier, my recollection is that Mr. McEachern said "yes," he understood that position.

I didn't see it as my position, at that point or at any point, to be an advocate one way or another. My concern was around adopting a robust procedure to go through that process.

Q. Did you say to Mr. McEachern, in words or substance, that there had not been to that point in time

with respect to trust and estate matters that was reported on or about 6:00 o'clock in the evening on May 29th, had not come to fruition?

A. Yes, I had understood that it didn't come to fruition.

Q. How did you learn that or what were you told?

A. I don't recollect.

Q. Do you recall that a board meeting was convened on or about June 12?

A. I do.

Q. That was a Friday; correct?

A. Was it telephonic or in person?

Q. I believe it was in person.

Do you recall -- Okay. I believe it was telephonic. I misspoke. You're correct.

A. I think.

Q. Thank you.

And do you recall that --

A. Telephonic for me, I think. I don't know about anybody else.

Q. Understood. Thank you for the clarification.

Do you recall that there was a vote to terminate Jim Cotter, Jr. as president and CEO?

A. I do.

Q. And what was the outcome of that?

A. I think that two voted against it, and the others -- Two voted against; is that right? I have to look at the record, but certainly I voted against.

Q. Is it your best recollection that Mr. Gould also voted against?

A. Yes. I was just thinking about Mr. Cotter. Perhaps it was three against.

Q. And the votes for termination were by Messrs. Kane, Adams and McEachern, and by Ellen and Margaret Cotter; correct?

A. Correct.

Actually, on reflection, perhaps Mr. Cotter abstained and didn't vote because he was interested. I don't recollect.

Q. Or at least he acknowledged that he was interested?

A. Yes.

Q. Do you recall learning at some point that on or about June 15th, Ellen Cotter had sent a letter to Jim Cotter, Jr. asserting that, pursuant to his executive employment agreement, he was required to resign as a director upon termination as an officer?

A. Yes, I do.

Q. When did you first learn that?

A. I think at or shortly after the termination

I, Teckla T. Hollins, CSR 13125, do hereby declare:

That, prior to being examined, the witness named in the foregoing deposition was by me duly sworn pursuant to Section 30(f)(1) of the Federal Rules of Civil Procedure and the deposition is a true record of the testimony given by the witness.

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

____ That the witness was requested to review the transcript and make any changes to the transcript as a result of that review pursuant to Section 30(e) of the Federal Rules of Civil Procedure.

____ No changes have been provided by the witness during the period allowed.

____ The changes made by the witness are appended to the transcript.

____ No request was made that the transcript be reviewed pursuant to Section 30(e) of the Federal Rules of Civil Procedure.

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

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

WITNESS my hand this 3rd day of March, 2016.

Teckla T. Hollins, CSR 13125

EXHIBIT 5

(Filed Separately Under Seal)

EXHIBIT 6

(Filed Separately Under Seal)

Exhibit 7

Exhibit 7

From:	Ellen Cotter <Ellen.Cotter@readingrdl.com>
Sent:	Tuesday, May 19, 2015 6:38 PM
To:	Margaret Cotter; James Cotter JR; Karie (elkane@san.rr.com); rimcoachern@deloitte.com; Tim Storey; Guy Adams; wgould@troygould.com
Cc:	William Ellis
Subject:	Agenda - Board of Directors Meeting - May 21, 2015

Dear All: Below is the agenda for Thursday's Meeting of the Board of Directors. Please note that Bill Gould asked that the Meeting begin at 11.15am.

Reading International, Inc.

Meeting of the Board of Directors

May 21, 2015 – 11.15am

1. Status of President and CEO
2. Directors' Compensation
3. Tim Storey's Compensation
4. Nevada Interpleader Action
5. Proposed By-Law Amendments
6. Status of Craig Tompkins and Robert Smerling
7. Status of Ellen Cotter and Margaret Cotter
8. Director of Real Estate Candidate Search
9. Stomp Litigation Update
10. Review of Operations

Chairperson of the Board
Ellen M. Cotter

EXHIBIT
338
6/16/16

GA00005340

Exhibit 8

Exhibit 8

Message

From: Tim Storey [tim.storey@prolex.co.nz]
Sent: 5/20/2015 4:45:47 AM
To: 'William David Gould' [wgould@troygould.com]
Subject: FW: Thursday board meeting
Flag: Follow up

Can we discuss - a draft response below

Ed – good to hear directly from you.

I am not sure how to respond to this.

[redacted]

But in any event I don't understand the import of your comments here - they suggest Margaret and Ellen's view is determinative of the issues. In my analysis, the view of the shareholder/s is immaterial to the matters before the board. Each director and the board needs to act in the best interests of the company etc – as I have said, a different concept to your apparent view that we should act as directed by a shareholder or as what we think a shareholder might desire (and again as previously noted, noting even the issue of who the shareholder is, is yet to be clarified!)

My concern is we need to act appropriately from a procedural point of view – see my earlier email. If we act inappropriately, that is not cured by any steps I may be able to take subsequently as you suggest. Just to do as the Chair may ask is not an appropriate response.

And for the record, I am only assuming the matter before us is a resolution to immediately remove the CEO – that isn't clear from the agenda, or any direct comment made to me by any party.

Tim Storey
Director

Prolex Advisory

PO Box 2974 Shortland Street, Auckland
Phone +64(0)21 633-089

From: Kane [mailto:elkane@san.rr.com]
Sent: Wednesday, 20 May 2015 3:40 p.m.
To: Tim Storey

Cc: Adams Guy; Cotter Ellen; Cotter Margaret; Cotter Jr. James; McEachern Doug (US - Retired); Gould Bill
Subject: Re: Thursday board meeting

Tim, I respect your concerns. However, we have heard from Nevada counsel via their memos and I assume that appropriate counsel will be present at the Board meeting called by the Chairperson. We owe her the duty and respect to attend the meeting she has called for the purposes set out in her agenda. I see no purpose in holding a per-meeting to discuss what is already on her agenda. If, after the meeting, you feel another so-called "independent committee" meeting is advisable you can suggest this at the end of the meeting called by Ellen. From my perspective a pre meeting can only exacerbate the tensions now felt by all and can only rehash what will be discussed at the Chairperson's meeting. You well know what we will be discussing/debating so let's move forward as requested by the Chairperson. We owe her that.

From: Tim Storey
Sent: Tuesday, May 19, 2015 12:29 PM
To: Kane ; Gould Bill
Cc: Adams Guy ; Cotter Ellen ; Cotter Margaret ; Cotter Jr. James ; McEachern Doug (US - Retired)
Subject: RE: Thursday board meeting

My apologies for my delay in response – I have been travelling. (And my apologies in advance for a lengthy comment!) I am surprised by the tone and possible implications of this email. I think we need to take time to carefully consider the legal position and our clear duties as directors.
My understanding was that this Thursday we were to have a meeting of the independent directors to hear from the CEO as to progress, and also from each of the Cotters separately so they can express their views to us (I am not sure in what capacity/on what basis this is being done, but I have no objection to hearing from people). I was also to make some comments, as requested when I was appointed to the independent committee (and following on from my prior comments and my brief emails reporting progress). All this to keep the independent board members informed as to the current position, and perhaps/likely in preparation for a further review of the position.
But I have heard from Bill Gould that it may be that someone will propose a resolution on Thursday morning that the CEO be removed from office with immediate effect. I have just seen an agenda for the meeting - while preparing this note at about 1130 am – and that simply has an agenda item captioned "Status of CEO and President"), otherwise I have not heard directly from anyone in this regard.
With respect, I think as directors we need to ensure we are acting in an appropriate manner, following an appropriate path. I have no doubt whatever way all this turns out litigation will likely ensure so we should be very concerned about the manner in which we act.
As directors, we have to act properly – with deliberation and reason – we can't act arbitrarily, capriciously etc. You will recall we also resolved/reconfirmed some months ago that we would all act in accord with best governance principles. All this imposes duties on us as directors; as directors we can't just do what a shareholder asks – or do what we think a shareholder might want (not to mention that at the moment there remains significant uncertainty as to the (ultimate) identity of some shareholders).
If we are to look at the position of the CEO and whether he should be removed, then we should do so properly – with proper notice, having determined the basis on which we are conducting this review (presumably based on his performance to date as CEO) and following due enquiry. We should also take into account the implications for the company – and that I think would include a clear view as to an alternative way forward.
We also need to look at the proper way to conduct this review. My recollection is that we have previously resolved that the removal of any Cotter needs to be approved by a majority of the independent directors, so presumably this may not be a full board issue.
I think the issue may be further complicated as when we talked to the CEO in April (I think) we advised the CEO we all agreed that the committee approach was short term and said that we would look to review his progress as CEO in June and at which point we would evaluate how he and the company were performing, and what other steps may need to be taken.

In my view, we need to get our procedure correct. This is a separate issue to the merits of a decision before us. We should be clear between us as to the proper procedure – [redacted]

This is a matter of urgency; I for one don't want to take part in a kangaroo court (or what might appear to be a kangaroo court).

To be clear, my concern here is we act with appropriate procedure. The merits of the matter (whether the CEO should be removed, I assume) are a separate issue to be considered with care – and one concluded following an appropriate procedure.

Of course, I am not a US native so perhaps some of my views may be off key – perhaps Bill Gould as an experienced US corporate and board adviser can comment!

Happy to discuss.

Tim Storey
Director

Prolex Advisory

PO Box 2974 Shortland Street, Auckland
Phone +64(0)21 633-089

From: Kane [mailto:elkane@san.rr.com]
Sent: Tuesday, 19 May 2015 7:24 a.m.
To: Gould Bill
Cc: Adams Guy; Cotter Ellen; Cotter Margaret; Cotter Jr. James; McEachern Doug (US - Retired); Tim Storey
Subject: Thursday board meeting

As a follow-up to yesterday's phone conversation, I strongly suggest that the "independent" committee not meet before the 11:00 AM Board meeting scheduled by the Chairperson. We are all fully aware of the topics to be discussed and there is nothing to be gained by hashing them over before the Board meeting and then again at the Board meeting. Some of the items are obviously contentious and nothing can be gained by double exposure. We are all adults – I assume – so let's get right to the major issues. If, after the formal Board meeting, you feel we should have a meeting of the "independents" I will not be opposed to staying and discussing topics of your choosing.

EXHIBIT 9

(Filed Separately Under Seal)

Exhibit 10

Exhibit 10

DISTRICT COURT
CLARK COUNTY, NEVADA

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

Plaintiff,

vs. Index No. A-15-179860-B

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

Defendants.

READING INTERNATIONAL, INC., a Nevada corporation,

Nominal Defendant.

VIDEOTAPED DEPOSITION OF MARGARET COTTER

New York, New York

Wednesday, June 15, 2016

Reported by:
MICHELLE COX
JOB NO. 316939

Q These were the -- this was the revised papers that followed the prior board meeting at, which, on a telephone call -- strike that.

I don't need to talk to you about that. I'll just show you something and ask you a question.

MR. KRUM: I'll ask the court reporter to mark as Exhibit 321, a document bearing Production Nos. JCOTTER2362 through '68.

For the purposes of your examination, all but the first page are what I believe Ms. Cotter previously described as the first such document.

Q And for your benefit, Ms. Cotter, all I intend to do with this is to make sure that I have shown you both documents so that you've identified them.

So, go ahead.

(Deposition Exhibit 322, E-mail dated May 27, 2015 from Harry Susman to Adam Streisand with Attachment, marked for identification as of this date.)

Q Ms. Cotter, do you recognize Exhibit 322?

A Yes.

Q Is this the document that you and Ellen

and Jim Cotter, Jr. discussed when the three of you met on Friday, the 29th of May, between a supposed board meeting that convened late morning, early afternoon, and supposed reconvened telephonic board meeting about 6:00 p.m. that night?

A This document reflects the terms that we discussed and agreed to on -- I can't remember that date, Friday.

Q Friday the 29th of May before the Memorial Day weekend; is that it?

A No.

Q It was a Friday; you remember that?

A Yes, but this document is from May 27th. So it was prior to May 27th.

Q Well, do you recall that the initial board meeting at which the subject of the termination of Jim Cotter, Jr. was raised, occurred on or about May 21?

A The first board meeting?

Q Right.

A Yes.

Q And that you recall that the second board meeting, or supposed board meeting, I should say, occurred on a Friday and convened,

supposedly and adjourned, and then reconvened telephonically?

A The same day.

Q The same day, right.

A Yeah.

Q And my question to you: Is Exhibit 322 the document to which -- I think you've just said this, but let me ask the question.

Is Exhibit 322 the document to which you understood you and Ellen and Jim had agreed?

A Yes, this document, Exhibit 322, replaced the terms that the three of us collectively decided.

Q Okay. And this was what was purported to -- the other members of RDI board of directors on the telephone call that convened at or about 6:00 o'clock that Friday evening; is that right?

A That's correct.

Q All I'm trying to do is get the documents identified correctly.

MR. KRUM: Okay. So we're at 323 now?

THE COURT REPORTER: Yes.

MR. KRUM: I'll ask the court reporter to mark as 323 a document that purports to be a

C E R T I F I C A T E

STATE OF NEW YORK)
:ss
COUNTY OF NEW YORK)

I, MICHELLE COX, a Notary Public within and for the State of New York, do hereby certify:

That MARGARET COTTER, the witness whose deposition is hereinbefore set forth, was duly sworn by me and that such deposition is a true record of the testimony given by the witness.

I further certify that I am not related to any of the parties to this action by blood or marriage, and that I am in no way interested in the outcome of this matter.

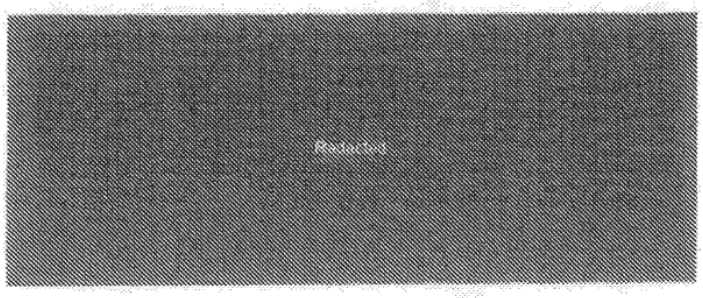
IN WITNESS WHEREOF, I have hereunto set my hand this 27th day of June 2016.

MICHELLE COX, CLR

Exhibit 11

Exhibit 11

Redacted



From: Harry Susman [mailto:HSUSMAN@SusmanGodfrey.com]
Sent: Wednesday, May 27, 2015 3:39 PM
To: Adam Streisand
Cc: Meg Lodise
Subject: Confidential Settlement Proposal--Subject to R. 409

Adam: Attached is the proposal that I mentioned on the phone.

Attention: This message is sent by a law firm and may contain information that is privileged or confidential. If you received this transmission in error, please notify the sender by reply e-mail and delete the message and any attachments.

EXHIBIT
322
6/15/16

JCOTTER002362

Confidential Settlement Memo of Understanding

The following is intended to be used as a part of confidential and "without prejudice" settlement negotiations between Ellen Cotter and Margaret Cotter, on the one hand, and James J. Cotter, Jr. ("JJC") on the other hand. It is provided under the understanding that the contents hereof are confidential and not to be used in any litigation or other proceeding.

The proposal outlined below sets forth the basis on which Ellen Cotter ("EMC") and Margaret Cotter ("AMC") would be willing to proceed towards a negotiated settlement, but, with respect to the items related to the Company's management structure only, is subject to the ultimate approval of the independent directors, in the exercise of their fiduciary duties and obligations. Nothing herein is intended to interfere with the appropriate exercise by the directors of their fiduciary duties and obligations.

If these terms are acceptable to JJC, then JJC should sign below to indicate his agreement. AMC and EMC will do the same. By signing below, the parties agree that the terms of this Understanding represent a binding agreement, subject to approval by the independent directors of the RDI management structure and necessary court approvals. However, the parties acknowledge that their agreement will be memorialized in a more formal document, and the parties agree to work diligently and good faith to prepare all required documentation that reflects the terms of this Understanding. The initial draft of such documentation will be prepared by counsel to Ellen Cotter and Margaret Cotter.

TERM/CONDITION	EMC/AMC SETTLEMENT TERMS AND CONDITIONS
Reading International Management Structure (JJC, EMC & AMC would cooperate in good faith in the implementation of this changes)	JJC would continue to serve as CEO and President under the terms of his existing contract, but in the overall management structure and subject to the limitations set forth below: *Executive Committee Structure* The existing Executive Committee would be renewed as a standing committee of the Board of Directors, as follows. • Members: EMC, AMC, JJC and Guy Adams (Chairman). • Delegated Authority to the Executive Committee would be as determined by the Board of Directors, but would include, at a minimum, the following: (i) Approval over the Hiring/Firing/Compensation of all senior level consultants/employees; (ii) Review and approval/disapproval of all contracts/commitments have an overall exposure to the Company in excess of $1 million, and (iii) Review and approval of annual Budget and Business Plan. Meetings would be held on a regularly scheduled basis weekly. Executive Committee members would naturally be free to attend and participate in internal meetings called by the CEO, and would

	endeavor to make themselves reasonably available to attend such meetings as to which they may be invited by the CEO. Unless approved in advance by the Executive Committee, all investor relations would be handled by CFO in consultation with the GC, not CEO. All press releases and public filings would be subject to review and sign-off by the Executive Committee and the GC. The Company would enter into employment agreements with EMC and AMC on substantially the same terms and conditions as IR. EMC will be appointed President of the US Cinema division. Margaret Cotter will be appointed as Chairman of the NYC Real Estate Oversight Committee (members to include JIC, AMC, SCT and WE). It is recognized that the implementation of the above will require the adoption of various bylaws, policies and procedures.
Reading Voting Stock – Class B	JIC will decline to serve as Co-Trustee of the Voting Trust and renounces any intention or desire to serve as a successor trustee. Margaret Cotter will be the Sole Voting Trustee of the Voting Stock. JIC, EMC and AMC will sign an acknowledgement that there is an inconsistency in the 2014 Amendment between SR's expressed intent that AMC serve as Chair and another provision that says SR intended for rotation; JIC, EMC and AMC will agree that SR intended for AMC to serve as Chair and that neither EMC nor JR wish to serve as Chair.
Immediate Release and Waiver signed by JIC with respect to all litigation, including any matters covered by the specified litigation	1. California Superior Court case 2. Nevada case filed by JIC 3. All threats against Directors 4. All threats of Company Derivative Action 5. Agreement that Reading International, Inc. can drop the interpleader action in Nevada and recognize the Estate as the owner of Class B Shares and Option 6. JIC further agrees to not sue Company over these matters or participate in any lawsuit related to the Company
2014 Trust Amendment	Subject to the terms and conditions herein, EMC and AMC will drop any challenge to the enforceability of the 2014 Amendment.
Trustees of the Living Trust	JIC resigns as Trustee and renounces any intent or desire to serve as successor trustee while either EMC or AMC are alive.
Specific Bequests	Laguna Beach Condo will be sold immediately to provide liquidity to the Estate. The parties will agree to consent to such sale under terms determined by AMC and EMC in their sole discretion as Co-Trustees.

Ownership of Agriculture Assets	Cotter Family Farms, LLC Agreement amended • Majority rule for decision-making by Co-Managers; • Remove restrictions on distributions or sale of assets; • JJC, EMC and AMC will sign an agreement that they have unanimously agreed that the assets of the Citrus Trust, including ownership interests in the LLC, will be distributed pro rata to EMC, AMC, and JJC.
JJC's "Lead Director" Agreement with Cecelia $200,000 per annum	JJC's "lead director" Agreement will be voided. JJC will relinquish any remaining rights in such Agreement.
$1.5 million Loan	As executors, EMC and AMC will work out a reasonable payment back to Estate over time, taking into due consideration JJC's ability to make such repayments.
Legal Expenses	All legal expenses and other professional fees incurred to date by JJC, EMC, AMC, the Trust, and the Estate relating to the litigation or administration issues will reimbursed by Trust or Estate as appropriate, and JJC will sign an acknowledgment that this is appropriate and reasonable.
Release by EMC and AMC	EMC and AMC will take all actions to have their claims pending in CA and NV over JJC's estate and trust dismissed with prejudice, except to the extent such dismissal would be inconsistent with any term of this Agreement, such as with regard to the $1.5 million loan (in which case the parties will work to carve out such claims).
2014 Gifts	JJC delivers EMC check for $28,000.
James J. Cotter Foundation	AMC, EMC and JJC will become co-trustees and/or co-directors of the James J. Cotter Foundation. They further will agree that decision-making will be done by majority rule.
Court Approval	The parties will use their best efforts to obtain court approval in CA and NV of any settlement agreement.
Counseling	AMC, JJC and EMC will engage in professional counseling to determine how to work cooperatively together and with respect.

AGREED:

_____

James J. Cotter, Jr. (individually and in all representative capacities)

_____

Ellen Cotter (individually and in all representative capacities)

_____

Margaret Cotter (individual and in all representative capacities)

Exhibit 12

Exhibit 12

From: Margaret Cotter <margaret.cotter@readingrdi.com>
Sent: Tuesday, June 09, 2015 3:22 AM
To: emcotter1@aol.com
Subject: Fwd: Confidential- For Settlement

Sent from my iPhone

Begin forwarded message:

> From: Margaret Cotter <margaret.cotter@readingrdi.com>
> Date: June 8, 2015 at 11:20:04 PM EDT
> To: James Cotter JR <james.j.cotter@readingrdi.com>
> Cc: Ellen Cotter <Ellen.Cotter@readingrdi.com>
> Subject: Re: Confidential- For Settlement
>
> I object. I will notify the board that you are unwillingly to take our offer despite your acceptance to most of it last week.
>
> Sent from my iPhone
>
> On Jun 8, 2015, at 11:14 PM, James Cotter JR <james.j.cotter@readingrdi.com> wrote:
>
> > I cannot agree to your latest take-it or leave-it global settlement proposal for a number of reasons. However, I remain willing to promptly follow through on a formal settlement process to attempt to resolve all of our family disputes. In the meantime, I remain agreeable to a complete standstill that would bring a halt to all litigation activities and all boardroom or other Reading related threats and posturing. I am agreeable to any reasonable steps to implement a complete standstill and promptly follow through on the best settlement process we can employ. What objection do either of you have to proceeding in that matter?
> >
> > **From:** James Cotter JR
> > **Sent:** Friday, June 05, 2015 2:17 PM
> > **To:** Ellen Cotter; Margaret Cotter
> > **Subject:** Confidential- For Settlement
> >
> > My plan is to have response Monday.
> >
> > Regards,
> >
> > Jim

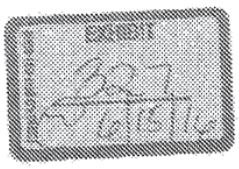


Exhibit 13

Exhibit 13

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 12, 2016

VOLUME I

REPORTED BY:

PATRICIA L. HUBBARD, CSR #3400

A. That's correct.

Q. Okay. At any point in time in the time frame of January 1st, 2015, through June 12, 2015, was it your desire to sign an agreement with Edifice before someone was hired for the position of director of real estate at RDI?

A. I can't answer that question. I don't recall.

Q. At any point in that time frame did it ever occur to you that if a person was hired for the position of director of real estate at RDI, they would by virtue of having that position weigh in on whether to sign a contract with Edifice?

A. I don't know if I was thinking about that.

Q. Okay. What's your best recollection as to why you said what you said in this May 28 email that before hiring anyone, you think we need to get Edifice's agreement signed?

A. I believe I testified I don't recall what I was thinking when I wrote this.

Q. Okay. Let's look at the first page of Exhibit 156.

You see at the bottom of the first page there's an email response from your brother to your

email that we just discussed. In fact, this is one at which we've looked previously.

A. Right. Right.

Q. Okay. So then let's go to your email reply in the middle of the first page of Exhibit 156. It's the one dated June 4, 2015, time stamped 11:11 A.M. It reads as follows, quote,

"Frankly, I would be more concerned about yourself and getting your position squared away than dealing with another employee. I think your priorities are a little skewed. What is the status of the paperwork we sent to you yesterday," close quote.

Do you see that?

A. Yes.

Q. To what were you referring, Ms. Cotter, when you said to your brother that he should be -- that if you were him, you would be more concerned about getting your position squared away?

A. I believe he was already told by the board that he would be terminated.

Q. And to what were you referring in the last sentence when you said,

"What is the status of the paperwork we sent to you yesterday?"

A. It was the revised settlement.

Q. Meaning the revised settlement agreement that Sussman sent to Streisand?

A. That's correct.

Q. And so was the point of this your telling your brother that he needed to finalize the settlement paperwork or he would be terminated --

MR. SEARCY: Objection.

BY MR. KRUM:

Q. -- and that he should be focused on -- let me finish.

Okay. Was the point of this email to tell your brother he should be focused on completing a settlement and preserving his job rather than hire another employee?

MR. SEARCY: Objection. Misstates the testimony, lacks foundation, is argumentative.

THE WITNESS: Can you repeat the question.

BY MR. KRUM:

Q. Sure.

MR. KRUM: Actually I'll have the court

reporter read it back for you.

THE WITNESS: Okay.

(Whereupon the question was read as follows:

"Question: Was the point of this email to tell your brother he should be focused on completing a settlement and preserving his job rather than hire another employee?")

MR. SEARCY: Objection. Argumentative, vague, lacks foundation.

THE WITNESS: No.

BY MR. KRUM:

Q. What was the point?

A. To focus on himself and -- to focus on himself and try and save his job.

Q. By doing what?

MR. SEARCY: Objection. Vague, plus argumentative.

MR. KRUM: It's actually an open-ended question.

BY MR. KRUM:

Q. But go ahead, Ms. Cotter?

A. I don't put by doing what in here.

MR. SEARCY: So, Mark, if you're close to finishing, it's about 6:22 right now.

MR. KRUM: Yeah. We should finish up by 6:30 if not before.

BY MR. KRUM:

Q. Ms. Cotter, directing your attention to your testimony of a moment ago to the effect that your brother already had been told by the board that he would be terminated, do you have that in mind?

A. Do I have my statement in mind?

Q. Yeah. I just want to direct your attention to that.

A. Yes.

Q. And what was it you understood your brother needed to do, if anything, as of June 4, 2015, to avoid being terminated?

A. I believe at that point there was a -- we had collectively agreed that we would resolve this dispute and the lawyers put together a settlement.

We told the board that we resolved it and that we're going to put it in the hands of the lawyers. And we revised the settlement.

I don't know if it was -- I don't know if we revised it because my brother asked for

additional things or if we just decided to throw in, you know, additional elements of the settlement, but that's where we were on June 4th.

Q. When you refer to "this dispute," you're referring to the trust disputes?

MR. SEARCY: Objection. Vague.

BY MR. KRUM:

Q. Well, let me ask an open-ended question.

In your last response you referred to resolving this dispute.

To what were you referring when you said "this dispute"?

A. There were elements of the trust dispute and there were also some terms regarding going forward in the company in the settlement.

Q. So what had transpired is that at a reconvened -- a supposed reconvened telephonic board meeting, Ellen reported that you and Ellen had reached a resolution with your brother and that the lawyers were going to prepare the paperwork; is that correct?

MR. SEARCY: Objection. Vague.

THE WITNESS: Which -- when are you referring to?

///

BY MR. KRUM:

Q. Okay. Do you recall that there was a Friday where there was a board meeting that convened in the morning or early afternoon and that that supposed board meeting adjourned and supposedly reconvened in a telephonic meeting at about 6 o'clock in the evening?

A. That's correct.

Q. And do you recall that on the telephonic -- or on the telephone call, Ellen reported that a tentative agreement had been struck by you and her on one hand and by your brother on the other?

A. I don't know if she said "tentative."

Q. Okay. Do you recall that she reported that an agreement had been reached?

A. Yes.

Q. And the agreement was between you and her on one hand and your brother on the other hand?

A. Yes.

Q. And that in Exhibit 156, when you asked your brother, quote, "What is the status of the paperwork we sent you yesterday," close quote, you're referring to the paperwork that Sussman sent to Streisand about the agreement that Ellen had

reported during the 6:00 P.M. telephone call we just discussed, right?

MR. SEARCY: Objection. Vague, lacks foundation.

THE WITNESS: No.

BY MR. KRUM:

Q. Okay. To what are you referring, then?

A. This is the revised settlement. This was not -- this settlement offer that I'm referring to in this email was not the settlement that my sister was referring to on that telephonic board meeting.

Q. Okay.

MR. SEARCY: So, Mr. Krum, I can tell by the way my witness is slouching in her seat that we're reaching the end here.

MR. KRUM: We'll be there in a minute.

BY MR. KRUM:

Q. So, that settlement -- that documentation was not accepted by your brother, correct?

MR. SEARCY: Objection. Vague.

MR. FERRARIO: Obviously. We're here.

THE WITNESS: That's correct.

///

BY MR. KRUM:

Q. And then -- and then he was terminated after that, right?

MR. SEARCY: Objection. Vague, lacks foundation.

THE WITNESS: My brother was terminated on June 12th.

MR. KRUM: Okay. So let's adjourn for the day.

VIDEOTAPE OPERATOR: This concludes the deposition of Margaret Cotter, volume one, May 12, 2016, which consists of four media files.

The original media files will be retained by Hutchings Litigation Services.

Off the video record at 6:30 P.M.

(Whereupon at 6:30 P.M. the deposition proceedings were continued to May 13, 2016 at 9:00 A.M.)

* * *

REPORTER'S CERTIFICATE

I, PATRICIA L. HUBBARD, do hereby certify:

That I am a duly qualified Certified Shorthand Reporter in and for the State of California, holder of Certificate Number 3400, which is in full force and effect, and that I am authorized to administer oaths and affirmations;

That the foregoing deposition testimony of the herein named witness, to wit, MARGARET COTTER, was taken before me at the time and place herein set forth;

That prior to being examined, MARGARET COTTER was duly sworn or affirmed by me to testify the truth, the whole truth, and nothing but the truth;

That the testimony of the witness and all objections made at the time of examination were recorded stenographically by me and were thereafter transcribed by me or under my direction and supervision;

That the foregoing pages contain a full, true and accurate record of the proceedings and testimony to the best of my skill and ability;

I further certify that I am not a relative or employee or attorney or counsel of any of the parties, nor am I a relative or employee of such attorney or counsel, nor am I financially interested in the outcome of this action.

IN WITNESS WHEREOF, I have subscribed my name this 16th day of May, 2016.

Patricia L. Hubbard

PATRICIA L. HUBBARD, CSR #3400

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

suggestion by one of the directors, Bill Gould might have said, "Jim, how about we keep you as president and we get a new C.E.O.?"

And I then said, "Jim, and then you can get your training over the next five years and gain more experience and possibly you become C.E.O. in another five years."

And I remember my brother thanked everyone and said he'll think about it.

Q. That's your recollection as to how that meeting ended?

A. Yes.

Q. And then the next meeting occurred how much later?

A. I don't recall the date or how far it was. But I believe at that meeting that there was more discussion on his termination and the reasons why.

And there came a time when there was a -- a discussion about possibly ending it all, meaning we would end the trust litigation, we would end, you know, our disputes within the company.

And we dismissed the non-Cotters at some point, and my brother, I and my sister sat in a room and we talked about the company, working together.

We talked about the -- the trust dispute that we had.

And we -- I mean I think this was going on for like three or four hours.

And we reached a settlement that we all agreed upon. We called the board back -- or the board told us that we would reconvene at 6:00. And at 6 o'clock we told the board that we all reached an agreement.

And the board congratulated us and said let's move forward.

Q. And then what happened?

A. I think that our -- my lawyer, my sister's lawyer and I -- mine, our trust attorney put together a settlement offer that -- that we had given him in writing saying this is what we all decided.

He put it -- he put together an agreement, and he forwarded it over to my brother's attorney, to his trust attorney.

Q. Sussman to Streisand, yours to his?

A. Sussman to Streisand, correct.

Q. I'm sorry. Please continue.

A. And I don't -- I don't know what happened with that settlement, but then there was a

REPORTER'S CERTIFICATE

I, PATRICIA L. HUBBARD, do hereby certify:

That I am a duly qualified Certified Shorthand Reporter in and for the State of California, holder of Certificate Number 3400, which is in full force and effect, and that I am authorized to administer oaths and affirmations;

That the foregoing deposition testimony of the herein named witness, to wit, MARGARET COTTER, was taken before me at the time and place herein set forth;

That prior to being examined, MARGARET COTTER was duly sworn or affirmed by me to testify the truth, the whole truth, and nothing but the truth;

That the testimony of the witness and all objections made at the time of examination were recorded stenographically by me and were thereafter transcribed by me or under my direction and supervision;

That the foregoing pages contain a full, true and accurate record of the proceedings and testimony to the best of my skill and ability;

I further certify that I am not a relative or employee or attorney or counsel of any of the parties, nor am I a relative or employee of such attorney or counsel, nor am I financially interested in the outcome of this action.

IN WITNESS WHEREOF, I have subscribed my name this 17th day of May, 2016.

PATRICIA L. HUBBARD, CSR #3400

Exhibit 14

Exhibit 14

Message

From: Margaret Cotter (Margaret Cotter)
Sent: 6/4/2015 6:14:53 PM
To: James Cotter JR
CC: Ellen Cotter
Subject: RE: John Genovese

I told you, give me a call I will articulate over the phone.

From: James Cotter JR
Sent: Thursday, June 04, 2015 2:14 PM
To: Margaret Cotter
Subject: RE: John Genovese

Currently reviewing with lawyers… can you please tell me your thoughts about John?

From: Margaret Cotter
Sent: Thursday, June 04, 2015 11:11 AM
To: James Cotter JR; Ellen Cotter
Subject: RE: John Genovese

Frankly, I would be more concerned about yourself and getting your position squared away than dealing with another employee. I think your priorities are a little skewed. What is the status of the paperwork we sent you yesterday.

From: James Cotter JR
Sent: Thursday, June 04, 2015 1:53 PM
To: Margaret Cotter; Ellen Cotter
Subject: RE: John Genovese
Importance: High

Bill and Dev do not believe Ellen's candidate has experience to oversee our U.S. real estate. I do not believe he does either. Bill and Dev are very impressed with John and believe he should be hired. We have met a lot of candidates and John is by far the best. If the Company waits any longer, we will lose this candidate. You should not view him as a threat to your role or Edifice's role. The decision to wait is not in the Company's best interest, whether I am here or not. This Company needs an experienced real estate developer who has been there and done that. He has long tenure at Macerich and Equity Office. This is a no-brainer. What are your reasons for not wanting to hire John? If he does not work out, we can fire him and lose one year salary. If he works out, we will be able to move all our properties forward at fast pace. You gave me one reason, that of him being arrogant. He has experience in all areas- retail leasing, construction, buying, selling, financing. . a full-service real estate guy. I would note that John scored highest on team play on Korn Ferry's test. He is to be viewed as a resource and he fully understands corporate structure here and the mandate to help everyone. There is now a fear of losing John as a candidate. Why he is not the right guy?

I am talking to Korn Ferry this morning and would like both of your input.

EXH 156
DATE 5-12-16
WIT M. Cotter
PATRICIA HUBBARD

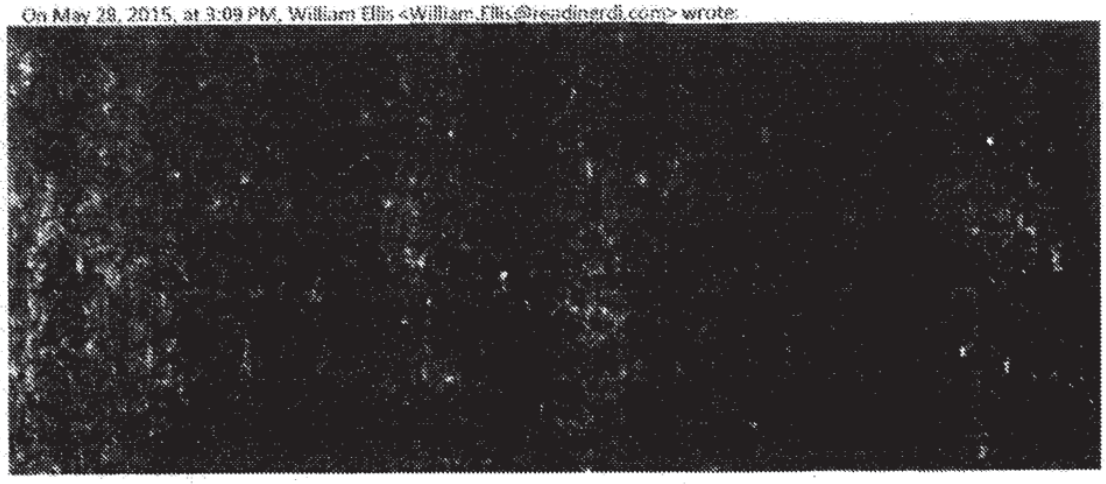
RDI0047818

From: Margaret Cotter
Sent: Thursday, May 28, 2015 7:33 PM
To: William Ellis
Cc: James Cotter JR; Ellen Cotter; Dev Ghose; Craig Tompkins
Subject: Re: John Genovese

Bill and team: we are not finished with our search. Ellen has a candidate that she has worked with and spoke to you about. I am not in favor of hiring John for reasons I may have discussed with you personally. If not I will share when I see you. I think this search should and will continue.
Before hiring anyone I think we need to get Edifice's agreement signed. They have a staff of people working on our project and were anticipating getting signed in May.

Sent from my iPhone

On May 28, 2015, at 3:09 PM, William Ellis <William.Ellis@readingrdi.com> wrote:



William D. Ellis
General Counsel
Reading International, Inc.
5100 Center Drive, Suite 900
Los Angeles, CA 90045
Phone: (323) 271-1854
Fax: (213) 235-2229

<image001.jpg>

May 27, 2015

Candidate Assessment
Reading International, Inc.
FOR THE POSITION OF:

Head of Real Estate

John Genovese

President
GENCO Realty Group, LLC.

Korn Ferry's Four Dimensions of Leadership

By leveraging the largest set of data on talent —more than 2.5 million assessments— Korn Ferry has insight into the dimensions of talent crucial for executives. The four dimensions include competencies, traits, drivers, and experiences. Taking all four dimensions into account gives your company a holistic view of how each candidate's qualities fit a specific role.

Experiences

Experiences are the roles and assignments that make up a candidate's career history and resume. Examples of experiences include things like managing a turnaround, taking a global assignment, or managing a crisis. Learning from experiences is instrumental to developing readiness for new challenges and roles. Korn Ferry has identified the qualities that make an experience most developmental. Highly developmental assignments are those that take people out of their comfort zone and involve high visibility, a risk of failure, ambiguity, and a broad scope of responsibility.

Traits

Traits are personality characteristics that exert a strong influence on behavior. These include attitudes, such as optimism, and other natural leanings, such as social astuteness. Traits are core to who a person is, but they don't represent a predetermined fate. Depending on the role and context, specific traits may be more or less crucial for success. Korn Ferry has identified 14 key traits for executive candidates.

Competencies

Competencies are the leadership skills that matter most for success in the 21st century. Korn Ferry has identified key competencies related to high performance in executive roles. Examples include situational adaptability and global perspective. These skills enable leaders to make a meaningful impact because they determine how leaders drive results. The unique competency profile generated for this role is based on the nature of the position, the organization, and key requirements.

Drivers

Drivers are the preferences, values, and motivations that influence a person's career aspirations. They lie at the heart of critical questions: What is important to me? What do I find rewarding? Drivers are informed by who a person is, but also by the circumstances or context at any given time. Most importantly, Drivers factor in to culture fit, engagement and performance, as well as talent retention. They operate as a pivot point for all other dimensions (Traits, Competencies, Experiences).

****

Summary

John thrives on complex, problems, and pursues cutting-edge solutions with intellectual rigor. Candidates like John place an ideal emphasis on working with other people in pursuit of collective goals, sharing credit for accomplishments, and building strong teams. They are passionate and steadfast in the pursuit of ambitious goals despite obstacles or setbacks. In general, John is motivated to integrate work and life in a sustainable, enjoyable, and meaningful way.

Experiences

Experiences comprise career history. They are key roles and assignments such as managing a turnaround, taking a global assignment, or handling a crisis. Korn Ferry has identified the experiences most instrumental to developing a leader's readiness for new challenges and roles. Depending on the industry, function, and level, certain experiences may be more or less crucial for success.

KEY EXPERIENCES FOR JOHN

- **External stakeholders (government, lobbies, media, shareholders, unions)**
- **Financial acumen**
- **Development Project Depth**
- **Urban retail asset expertise**
- **Large scale team Leadership**

John tackles complex challenges with an optimal Traits balance of creativity, flexibility and careful analysis. Candidates like John motivate and influence others with an ideal mix of strong interpersonal skills, emotional intelligence, and a focus on relationships. They have tremendous drive, very high expectations, and are not likely to give up easily.

Competencies

John establishes systems that monitor organizational performance and holds others accountable for meeting or exceeding objectives. Candidates like John create a culture that encourages experimentation and learning in order to identify new ideas and opportunities that will drive performance. They build partnerships across functional, cultural, organizational, and global boundaries to connect key people who can help accomplish goals.

Ensures accountability ★
Engages and inspires
Navigates networks
Develops talent
Nimble learning
Cultivates innovation
Aligns execution ★

Situational adaptability
Courage ★
Global perspective
Strategic vision ★
Financial acumen
Manages ambiguity ★
Balances stakeholders
Persuades

Drivers

John is motivated by a variety of tasks and responsibilities and the flexibility to set a schedule and pace. John is also motivated by the opportunity to work with others on a common goal. An ideal work context would allow for team efforts to be pursued at a sustainable pace. In general, John may be less energized by stability and consistency, and more invigorated when work is unpredictable and ambiguous.

<John Genovese.docx>

Exhibit 15

Exhibit 15

From: Kane <eikane@san.rr.com>
Sent: Thursday, June 11, 2015 1:43 PM
To: Cotter Jr. James

This morning, without the wine I was drinking last night during and after talking with your mother, I'm thinking more about your call to me last night and our conversation. I can see that from your point of view having Guy in on the meetings with your sisters could be a problem and doesn't solve the need to be able to work with them cohesively going forward. If you explain that to them they may be willing to accommodate you.

But, the main question is what are you going to do to accommodate them?

1. For now, I think you have to concede that Margaret will vote the B stock. As I said, your dad told me that giving Margaret the vote was his way of "forcing" the three of you to work together. Asking to change that is a *nonstarter*. Again, you need to compromise your "wants" as they have been willing to do. If you can work together than it becomes a non-issue and eventually your and her kids will have the vote. What's wrong with that?
2. For now you need ASAP to agree on the nominees for the Board going forward. As I told you months ago, changes are necessary and you need some quality people with expertise in fields where it is needed and lacking. You also need to get rid of divisive persons.
3. I do believe that if you give up what you consider "control" for now to work cooperatively with your sisters, you will find that you will have a lot more commonality than you think. You all want the same things: a vibrant growing business. After trust is established you can all go back to where you want to be.
4. I think if you make the proper and needed concessions, they might well relent on having Guy in the meetings as they can easily see there is great animosity between the two of you.
5. Bottom line: recognize you are not dealing from strength right now and be willing to compromise as they are rational and reasonable people who have been hurt and demeaned and you need to help heal the family. Otherwise you will be sorry for the rest of your life, they and your mother will be hurt and your children will lose a golden opportunity.
6. I am willing to help but I'd much prefer that you bend a bit and work it out between you to build the trust that is necessary so that you don't lose control of the company, as you presently have.

EXH 306
DATE 6-9-16
WIT
PATRICIA HUBBARD

Exhibit 16

Exhibit 16

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

lacks foundation.

THE WITNESS: I didn't -- I don't recall that part of the -- of the meeting after we were -- ended.

BY MR. KRUM:

Q. Do you recall that the -- that that evening there was a conference call during which Ellen Cotter reported that she and Margaret on one hand and Jim Cotter, Jr., on the other hand had reached a tentative settlement that resolved the trust and estate litigation and disputes between them and included certain items relating to the governance of RDI?

MR. SEARCY: Objection. Vague.

THE WITNESS: I recall a phone call or something saying they had reached an agreement. I don't recall what they had reached or what it involved, but an agreement whereby they would work together going forward.

BY MR. KRUM:

Q. And do you recall that as a result of that, the vote to terminate Jim Cotter, Jr., as president and C.E.O. was not had?

A. Correct, it was not had then.

Q. And do you recall that a week or ten

days later when no agreement between Ellen and Margaret Cotter on one hand and Jim Cotter, Jr., on the other had come to pass or into existence that the supposed board meeting was reconvened on June 12, comma -- June 12, 2015 and that the vote was had and he was terminated as president and C.E.O.?

A. Yes.

MR. SEARCY: Objection. Vague, assumes facts.

THE WITNESS: I recall that, yes.

BY MR. KRUM:

Q. And did you ever communications with Ellen or Margaret Cotter during the course of these supposed board meetings regarding whether a settlement of any sort had been reached with Jim Cotter, Jr.?

MR. SEARCY: Objection. Argumentative.

THE WITNESS: I may have.

BY MR. KRUM:

Q. What's your best recollection about what you communicated with them and what they communicated to you?

A. I can't recall directly. My communications by that time were all with Jim

Cotter, Jr.

But I know there were other emails.

Q. And what communications did you have with Jim Cotter, Jr., regarding a resolution with his sisters during the time frame commencing with the supposed board meeting of May 20, 2015, through the supposed board meeting of June 12, 2015?

MR. SEARCY: Objection. Argumentative.

THE WITNESS: I was told that -- and it may have been by one of the Cotter sisters, that -- and in fact at a meeting, one of the last meetings we had, my recollection is Bill Gould suggested that Jim take the title of president, giving up the C.E.O. He refused.

Then Margaret Cotter -- and that may have been the May 29th -- said, "No. Keep the title of C.E.O., and we'll have a committee, executive committee, Margaret, Ellen, Jimmy" -- and initially they said Guy Adams -- and he would keep the title because it was important to him.

And I communicated with him. He -- usually my communications were not me advising. It was him asking my advice or they'd ask my advice. I didn't want to lecture them and tell them what to do.

I -- I said to him at one point, "Take it. You have nothing to lose. You're going to get terminated if you don't. If you can work it out with your sisters, it will go on and I will support you. I'll even make a motion to see if the company will reimburse the legal fees."

I did not want him to go.

And you, I'm sure, see emails in there to that effect. Even though I voted -- was voting against him, I wanted him to stay as C.E.O.

BY MR. KRUM:

Q. If you wanted him to stay as C.E.O. --

A. Right.

Q. -- why did you vote against him?

A. Because I wanted him to stay as C.E.O., working with his sisters who were work -- willing to work with him for the benefit of the company.

And to me it was a wonderful solution, and it had no adverse impact. If it didn't work out, then we would deal with it. But he would work with them and -- as an executive committee.

He told me that he didn't want Guy Adams on there. And I told him, "I'll do my best to make sure that he isn't on that; just you and your sisters."

And if they could work together, that's all we wanted.

Q. Are you drawing a distinction, Mr. Kane, between Ellen and Margaret working with Jim Cotter, Jr., as distinct from working for him?

MR. SEARCY: Objection. Vague.

THE WITNESS: I don't think I ever made that distinction, but I think he would glean and learn a lot working with them.

After all they were the operating executives of this company.

BY MR. KRUM:

Q. And did you understand that -- strike that.

But that resolution did not come to pass because Jim Cotter, Jr., rejected it, correct?

MR. SEARCY: Objection. Vague.

THE WITNESS: He rejected it, yes.

(Whereupon Ms. Bannett left the deposition proceedings at this time.)

BY MR. KRUM:

Q. And he got himself terminated, right?

MR. SEARCY: Objection. Vague.

THE WITNESS: Yes.

That the foregoing pages contain a full, true and accurate record of the proceedings and testimony to the best of my skill and ability;

I further certify that I am not a relative or employee or attorney or counsel of any of the parties, nor am I a relative or employee of such attorney or counsel, nor am I financially interested in the outcome of this action.

IN WITNESS WHEREOF, I have subscribed my name this 4th day of May, 2016.

PATRICIA L. HUBBARD, CSR #3400

Exhibit 17

Exhibit 17

DISTRICT COURT

CLARK COUNTY, NEVADA

JAMES J. COTTER, JR., individually and derivatively on behalf of Reading International, Inc.,	)	
Plaintiff,	)	Case No. A-15-719860-B
VS.	)	Coordinated with:
MARGARET COTTER, ELLEN COTTER, GUY ADAMS, EDWARD KANE, DOUGLAS McEACHERN, TIMOTHY STOREY, WILLIAM GOULD, and DOES 1 through 100, inclusive,	)	Case No. P-14-082942-E
	)	Case No. A-16-735305-B
Defendants.	)	
and	)	
READING INTERNATIONAL, INC., a Nevada corporation,	)	
Nominal Defendant.	)	

(Caption continued on next page.)

VIDEOTAPED DEPOSITION OF TIMOTHY STOREY

Wednesday, August 3, 2016

Wednesday, California

REPORTED BY:

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

Job No.: 323867

remain as executives of the company, then they were going to have to put that aside when dealing with company issues.

Obviously, as this e-mail speaks out, the litigation or the circumstance surrounding litigation raised all sorts of issues. But, you know, as I said earlier, my view from a strict point -- corporate point of view was that, leaving aside the issue of how it would affect shareholding, it wasn't really a matter that it should impinge on the operation of the company.

Q. Did you and Bill Gould meet with -- separately with Jim Cotter, Jr., on the one hand, and then Margaret and Ellen, either together or individually, at Mr. Gould's offices, at some point, in and around March of 2015?

MR. SEARCY: Objection. Vague.

A. I recollect those meetings. I can't say I remember exactly when they were, but I'm sure they would have been around that time.

BY MR. KRUM:

Q. Well, let me backtrack. How did those meetings come to pass?

A. The -- my memory is that there had been some discussions between all of the independent

directors as to how to progress matters. And that we had resolved to establish -- I think this is the occasion where a further statement was to establish this ombudsman, or whatever the term was, very difficult to find a term for it.

But we wanted to say to all three Cotters that we had resolved as independent directors to ask me to do what I could to assist in progressing matters as a representative of the independent directors. So my recollection is that we asked Jim and the others to come in separately to hear that and to gauge their reaction.

Q. And by "the others," you are referring to Margaret and Ellen?

A. Yes, I think that's right. I mean, certainly we -- I can't quite remember whether Margaret was physically there, but certainly we communicated with both of them.

Q. What was -- what was communicated to -- to Ellen and to Margaret, whether together or separately?

A. I don't recollect the detail, but it would have been along the lines of the resolution by the independent directors to -- of the independent directors having asked me to spend some time --

THE REPORTER: I'm sorry. Directors to?

THE WITNESS: Of the independent directors had asked me to spend some time, to see if I could advance matters as a representative of the board between the three Cotters.

BY MR. KRUM:

Q. When you say "advance matters between the three Cotters," to what does that refer?

A. Well, I think I -- Bill and I were, and I think all the independent directors assumed to observe the difference between governance and management. So I think we took the view that the CEO and the senior executives needed some assistance to move forward with plans and managing the company.

So primarily, my view, it's a matter of assisting in a corporate sense. But, again, clearly there were the personal issues between the Cotters, that were going to be there anyway. So predominantly for me it was important not to overstep the matter of -- between governance and management. And, secondly, to concentrate more on doing, addressing corporate issues, rather than the personal issues.

Q. By "corporate," you are referring to plans

and strategic plans and budgets, those sort of things?

A. Yes. And ensuring that the executives could function together as a team and not be -- and put aside differences and act as proper corporate executives.

Q. What did you and/or Mr. Gould tell Ellen and/or Margaret, if anything, regarding the length of time you would be serving in the role of ombudsman?

A. The intent was to see if this approach would work over a period of time until the end of -- until June, end of June is my recollection. And at that point, if we hadn't made progress, if the progress was not made, then the matter would have to be relooked at.

Q. When you say that was the intent, was that timetable what was communicated by you and/or Bill Gould to one or both of Ellen and Margaret?

MR. SEARCY: Objection. Vague.

A. I don't recollect specifically that, but I'm sure that's what would have been said.

BY MR. KRUM:

Q. Was Mr. -- was Jim Cotter told that by you?

A. I don't specifically recollect saying that, but I'm sure that would have been said. It was a -- it was an important part of the decision the independent directors made as to how to -- how to try and progress things.

Q. I'm sorry. What was an important part of the decision that the independent directors made?

A. That we had a reasonably -- we had a reasonable time frame in which we could see -- we can see that the process was working, that they were getting on, that things were moving forward. Clearly, if that wasn't achieved, then we would have to relook at how we thought it best that the management of the company should progress.

Q. Was it your understanding, at the time, Mr. Storey, that each of the five non-Cotter directors had agreed that you would serve in the role as ombudsman to the end of June and that an assessment would be made at that point?

MR. SEARCY: Objection. Lacks foundation. It's vague. Calls for speculation.

A. It was the resolution we made.

BY MR. KRUM:

Q. When you say it was the resolution you made, do you mean that was the -- that that was

what the five non-Cotter directors discussed and agreed?

MR. SEARCY: Objection. Lacks foundation.

A. It was what we agreed.

BY MR. KRUM:

Q. Did you ever hear or learn, or were you ever told that any of the five non-Cotter directors ever claimed that they had never approved you serving the ombudsman role?

A. My answer to that is that they all agreed. I would never have taken what I thought was a pretty unusual position. I would not have taken that role without clear endorsement by all of the independent board members. I was getting -- you know, I had lots of other things to do. I didn't really anticipate -- well, I was happy to do as requested to see if we could advance things. But I would never have taken the role had I thought there was any -- any question of not all of us agreeing to it.

Q. Did Mr. Adams ever say to you, at any point in time, in words or substance, that he had not agreed to you serving in the ombudsman role?

A. I don't recollect any such statement. In fact, my recollection, he was on phone calls

paragraph?

A. I do.

Q. And do you see that in the third line, and carrying over to the fourth line, you say as follows: "As directors, we can't just do what a shareholder asks or do what we think a shareholder might want, not to mention that at the moment there remains significant uncertainty as to the ultimate identity of some shareholders."

Do you see that?

A. I do.

Q. Was it your view that one or more of the non-Cotter directors were, in part, or in total, doing what they thought Ellen and Margaret wanted?

MR. SEARCY: Objection. Lacks foundation. Calls for speculation.

A. Ed Kane had expressed to me, on a number of occasions, that we should -- that Margaret and Ellen were the shareholders and that they had control and that we needed to take direction from shareholders. And my point was that -- or my view to that was that we weren't to act at the direction of shareholders and that we needed to make decisions as a board.

And as I say in this part of the comment

in this note, is to say we need to act as a board, and we need to act properly to come to a decision. And we need to address ourselves to the appropriate question. So, yes, my view was, at times, Mr. Kane was of the view that we would simply -- we should just simply be acting as director -- well, acting in a manner consistent with what he believed the shareholder required.

BY MR. KRUM:

Q. And by the shareholders -- shareholder, you are referring to Ellen and Margaret?

MR. SEARCY: Objection. Argumentative and vague. Lacks foundation.

A. Well, he -- I think he took that view, but as I say here, there remains uncertainty as to the ultimate identity of some shareholders. It seemed to me that it was a difficult proposition to do, even if that was an appropriate response. At this point, given litigation, we didn't know who the -- we didn't know for certain who the shareholder was.

BY MR. KRUM:

Q. Mr. Storey, I show you what previously was marked at Exhibit 131.

A. Yes, I have read the document.

Q. Did you send Exhibit 131 on or about the

THE VIDEOGRAPHER: We are on the record. The time is 12:03.

BY MR. KRUM:

Q. Mr. Storey, the court reporter has handed you what's been marked as Exhibit 416. Take as much time as you would like to review the document. The only portion I'm going to inquire is on page 6 of 8. That is the approval of the minute section, so you would want to read that.

(Deposition Exhibit 416 was marked for identification by the reporter and is attached hereto.)

A. Yes, I have read that section.

BY MR. KRUM:

Q. Okay. First of all, do you recall any of the RDI board of directors, on or about August 4, 2015, the supposed minutes from prior meetings, including May 21, and 29, and June 12, and 30, were presented for approval?

A. I remember in general terms, yes.

Q. Do you recall Mr. Cotter making comments to the effect that the minutes were not -- were not accurate and that insufficient time had been provided to reviewing comment on it?

A. I do.

Q. And what, if anything, did you say with respect to the minutes?

A. From memory, my view was that we were receiving complex minutes a long time after the meetings were held. The minutes had clearly been reviewed by a number of parties, including, as I understood, legal counsel; and that, frankly, I neither had the time nor the inclination to go through and attempt to change them so they reflected more accurately what I thought had occurred.

My view was that they had been unprepared purposely, and not a lot of benefit was going to be there, if I sat there and spent a considerable amount of time trying to adjust them. So I didn't want to do so and simply abstained for that reason.

Q. When you said, Mr. Storey, that you thought they had been prepared purposely, you mean purposely for some purpose other than to simply memorialize what transpired?

MR. SEARCY: Objection. Calls for opinion. Calls for speculation.

MS. HENDRICKS: Join.

A. I thought that they had been written carefully, to ensure they properly reflected the

A. You mean internal counsel or external?

Q. Either one.

A. My recollection is that I spoke -- I think I spoke to Craig Tompkins to see where are the minutes, or maybe Bill Ellis, I guess. But my recollection is that the reason the minutes weren't being distributed was that they were going to --

MS. BANNETT: I'm just going to interrupt to the extent that it reflects any conversation that you had with counsel, don't reveal any attorney-client communications.

THE WITNESS: No. No. You can -- you can jump in.

A. Anyway, so I was told that the reason that I wasn't seeing, or the minutes weren't available promptly, is that they were going through an approval process and equally, I think so, was going to the chairman.

THE REPORTER: Going to?

THE WITNESS: The chairman, chairperson.

BY MR. KRUM:

Q. So did you look at the draft minutes for the meetings of May 21, and 29, and June 12, 2015?

A. Yes, I recollect I looked at them, and I thought that it would take me a considerable amount

of time to try and make them reflect what I thought had been said. And it seemed to me that I could do all that and probably get nowhere. And it was going to be a pointless exercise for me, sitting on the airplane for three hours or whatever, and that it seemed better to simply abstain.

MR. KRUM: I will ask the court reporter to mark as Exhibit 417 a one-page document bearing production number GA 1439. It purports to be an October 19th e-mail from Ed Kane.

(Deposition Exhibit 417 was marked for identification by the reporter and is attached hereto.)

A. Yes, I have read that.

BY MR. KRUM:

Q. Do you recognize the subject matter of Exhibit 417?

A. Yes, I do.

Q. What's your recollection as to, if any, independent of Exhibit 417, as to how it came -- whether and how -- whether it came to pass that Ellen Cotter was paid an extra $50,000 on account of matters referenced in Exhibit 417?

A. My recollection is that it was a view that the company had given incorrect advice on various

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

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

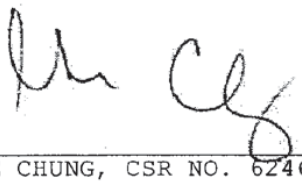
That, prior to being examined, the witness named in the foregoing deposition was by me duly sworn to testify the truth, the whole truth, and nothing but the truth;

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

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

In witness whereof, I have hereunto subscribed my name.

Dated: August 10, 2016



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

Exhibit 18

Exhibit 18

DISTRICT COURT

CLARK COUNTY, NEVADA

JAMES J. COTTER, JR., individually and derivatively on behalf of Reading International, Inc.,	)	
Plaintiff,	)	Case No. A-15-719860-B
VS.	)	Coordinated with:
MARGARET COTTER, ELLEN COTTER, GUY ADAMS, EDWARD KANE, DOUGLAS McEACHERN, TIMOTHY STOREY, WILLIAM GOULD, and DOES 1 through 100, inclusive,	)	Case No. P-14-082942-E Case No. A-16-735305-B
Defendants.	)	
and	)	
READING INTERNATIONAL, INC., a Nevada corporation,	)	
Nominal Defendant.	)	

(Caption continued on next page.)

VIDEOTAPED DEPOSITION OF TIMOTHY STOREY

Wednesday, August 3, 2016

Wednesday, California

REPORTED BY:

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

Job No.: 323867

in this note, is to say we need to act as a board, and we need to act properly to come to a decision. And we need to address ourselves to the appropriate question. So, yes, my view was, at times, Mr. Kane was of the view that we would simply -- we should just simply be acting as director -- well, acting in a manner consistent with what he believed the shareholder required.

BY MR. KRUM:

Q. And by the shareholders -- shareholder, you are referring to Ellen and Margaret?

MR. SEARCY: Objection. Argumentative and vague. Lacks foundation.

A. Well, he -- I think he took that view, but as I say here, there remains uncertainty as to the ultimate identity of some shareholders. It seemed to me that it was a difficult proposition to do, even if that was an appropriate response. At this point, given litigation, we didn't know who the -- we didn't know for certain who the shareholder was.

BY MR. KRUM:

Q. Mr. Storey, I show you what previously was marked at Exhibit 131.

A. Yes, I have read the document.

Q. Did you send Exhibit 131 on or about the

date it bears, May 20, 2015?

A. I did.

Q. At the end of the first paragraph, you refer to Guy's apparent view that no discussion is necessary. Do you see that?

A. I do.

Q. To what does that refer?

A. I think the sequence here is that I spoke to Doug McEachern, and as I said earlier, he proffered his view, and I said to him, "You should talk to our lawyer to understand our duties as directors," which is why I have given him Neil -- Neil's number.

And, secondly, I assume or I suspect that this e-mail follows the discussion I had with Guy, that I discussed earlier, about Guy's -- about his view, even as both Ed and Guy were of the view that there was no point in any discussion at all, that the matter was simply going to be put, and that was that.

Q. Let me show you what previously has been marked as Exhibit 98.

A. You wish me to read this document?

Q. Let me ask you a question first, and you can take such time as you wish to read it.

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

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

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

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

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

In witness whereof, I have hereunto subscribed my name.

Dated: August 10, 2016

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

EXHIBIT 19

(Filed Separately Under Seal)

Exhibit 20

Exhibit 20

From: Kane <elkane@sanrr.com>
Sent: Monday, May 18, 2015 10:18 PM
To: Guy Adams

See if you can get someone else to second the motion. If the vote is 5-3 I might want to abstain, and make it 4—3. If it's needed I will vote. It's personal and goes back 51 years. If no one else will second it I will.

GA00005500

Exhibit 21

Exhibit 21

EIGHTH JUDICIAL 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 Case No. P-14-082942-E Related and Coordinated Cases

Complete caption, next page.

VIDEOTAPED DEPOSITION OF GUY ADAMS

LOS ANGELES, CALIFORNIA

FRIDAY, APRIL 29, 2016

VOLUME II

REPORTED BY: LORI RAYE, CSR NO. 7052

JOB NUMBER 305149

(Exhibit 82 was marked for identification.)

THE WITNESS: Yes, I remember this.

BY MR. KRUM:

Q. You recognize Exhibit 82?

A. Yes.

Q. This is an email exchange you had with Mr. Kane on May 18 and 19?

A. Yes.

Q. During the telephone conversation you had with him on May -- Sunday or Monday, May 17 or 18, did the two of you discuss other motions?

A. Evidently not.

Q. What was your understanding as of the date of -- as of May 18 and 19, what the other motions were or might be?

A. Well, there were like two other motions. One was the removal of Jim Junior as CEO and president. Another motion -- there were three motions. One of them was to -- if you remove the CEO, you have to appoint an interim CEO. And there was a third motion which, I apologize, for the life of me, I can't remember what it is. There must be a board agenda or something with those items.

Q. The subject of interim CEO, where did

that stand as of May 19th?

A. Ellen, Margaret and Ed and Doug McEachern were of the opinion, yes, on an interim basis.

Q. Yes what?

A. Yes to Guy Adams being the interim CEO on a short-term basis.

Q. What about Ed Kane?

A. As interim?

Q. Okay. I'm sorry.

So how did you know that each of Ellen, Margaret, Ed Kane and Doug McEachern were agreeable to you being appointed CEO on an interim -- interim CEO or a short-term basis?

MR. TAYBACK: Objection to the extent it's asked and answered.

You can answer.

THE WITNESS: My recollection -- and I can't remember if it was Ellen or Ed Kane -- one of them told me and I followed up with a phone call to Doug McEachern to confirm it. So that's how I knew.

BY MR. KRUM:

Q. Okay. When did you have the follow-up phone call with Doug McEachern?

A. Help me -- what was the date of the meeting, that meeting? We're up to May 19. What

A. No.

Q. Did you have a practice of sitting down and chatting with Ellen when you were in the office?

A. Yes, when she'd come in my office.

Q. So directing your attention to those three or four conversations when you were in RDI's offices and you spoke to Ellen about the status of the CEO search, doing them sequentially, if you're able to do so, who said what in the first conversation?

A. That's a real test of my memory but I'll try.

I remember when she was -- we talked about how we were paying for it and there was like a psychological profile they would do in addition. Since we weren't hiring the real estate guy, there was some things about the financial arrangement there. And she told me about that. That was one conversation, probably one of the earlier ones.

Then the -- I had another conversation with her about the candidates that were -- the résumés that were coming in, and she commented to me about the, quote, Some of them want more than a million dollars.

And then maybe the third conversation we had about it was, I'm not on the committee, it's not my business, but I gave her my thoughts about it, as I mentioned yesterday in my testimony, that the only concern I had was the person we get would be with us for a while and not just looking to make a notch on his belt, come aboard -- for example, come aboard, stay for a year or two, sell an asset, do something to jazz the stock up and then he would leave and go to a bigger company; we'd be his training ground.

And I just suggested to her that she look for a candidate who would have longevity of these candidates that she was looking at. When I had that conversation, I had no notion she was putting her name in the hat at the time. That was the last conversation I had with her.

I'm sorry. Then a period of time, which I don't remember, went by and she says, You know, I'm looking at these people and I think I can do the job. I want to put my name in the hat.

I said, Well, you can't be on the committee if you do that. She says, Yeah, I'm going to resign. I said, Okay, it's up to the committee.

CERTIFICATE OF REPORTER

STATE OF CALIFORNIA)
)SS:
COUNTY OF LOS ANGELES)

I, Lori Raye, a duly commissioned and licensed court reporter for the State of California, do hereby certify:

That I reported the taking of the deposition of the witness, GUY ADAMS, commencing on Friday, April 29, 2016 at 9:10 a.m.;

That prior to being examined, the witness was, by me, placed under oath to testify to the truth; that said deposition was taken down by me stenographically and thereafter transcribed; that said deposition is a complete, true and accurate transcription of said stenographic notes.

I further certify that I am not a relative or an employee of any party to said action, nor in anywise interested in the outcome thereof; that a request has been made to review the transcript.

In witness whereof, I have hereunto subscribed my name this 2nd day of May 2016.

Lori Raye

LORI RAYE
CSR No. 7052

Exhibit 22

Exhibit 22

From: Kane <elkane@san.rr.com>
Sent: Tuesday, May 19, 2015 12:27 AM
To: Guy Adams
Subject: Re:

which are?

From: Guy Adams
Sent: Monday, May 18, 2015 3:26 PM
To: Kane
Subject: RE:

Ok.
Can you second the other motions?

From: Kane [mailto:elkane@san.rr.com]
Sent: Monday, May 18, 2015 3:16 PM
To: Guy Adams
Subject:

See if you can get someone else to second the motion. If the vote is 5-3 I might want to abstain, and make it 4—3. If it's needed I will vote. It's personal and goes back 51 years. If no one else will second it I will.

GA00005501

Exhibit 23

Exhibit 23

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

SCHEDULE 13D

Under the Securities Exchange Act of 1934

Reading International, Inc.

(Name of Issuer)

(Exact Name of Issuer as Specified in its Charter)

Class B Voting Common Stock
(Title of Class of Securities)

755408200
(CUSIP Number)

James J. Cotter Living Trust
6100 Center Drive
Suite 900
Los Angeles, CA 90045
(213) 235-2240
(Name, Address and Telephone Number of Person
Authorized to Receive Notices and Communications)

September 13, 2014
(Date of Event which Requires Filing of this Statement)

If the filing person has previously filed a statement on Schedule 13G to report the acquisition that is the subject of this Schedule 13D, and is filing this schedule because of §§240.13d-1(e), 240.13d-1(f) or 240.13d-1(g), check the following box. ☐

Note : Schedules filed in paper format shall include a signed original and five copies of the schedule, including all exhibits. See §240.13d-7 for other parties to whom copies are to be sent.

* The remainder of this cover page shall be filled out for a reporting person's initial filing on this form with respect to the subject class of securities, and for any subsequent amendment containing information which would alter disclosures provided in a prior cover page.

The information required on the remainder of this cover page shall not be deemed to be "filed" for the purpose of Section 18 of the Securities Exchange Act of 1934, as amended (the "Act"), or otherwise subject to the liabilities of that section of the Act but shall be subject to all other provisions of the Act (however, see the Notes).

EXHIBIT
318
6/15/16

EC00002564

CUSIP No. 755408200

1.	Name of Reporting Person. I.R.S. Identification Nos. of above persons (entities only) **James J. Cotter Living Trust**	
2.	Check the Appropriate Box if a Member of a Group (See Instructions) (a) ☒(1) (b) ☐	
3.	SEC Use Only	
4.	Source of Funds (See Instructions) OO	
5.	Check if Disclosure of Legal Proceedings Is Required Pursuant to Items 2(d) or 2(e) ☐	
6.	Citizenship or Place of Organization California	
Number of Shares Beneficially Owned by Each Reporting Person With	7.	Sole Voting Power 0
	8.	Shared Voting Power 696,080
	9.	Sole Dispositive Power 0
	10.	Shared Dispositive Power 696,080
11.	Aggregate Amount Beneficially Owned by Each Reporting Person 696,080	
12.	Check if the Aggregate Amount in Row (11) Excludes Certain Shares (See Instructions) ☐	
13.	Percent of Class Represented by Amount in Row (11) 41.4% (2)	
14.	Type of Reporting Person (See Instructions) OO – Trust	

(1) The James J. Cotter Living Trust (the "Trust") is a member of a group for purposes of Schedule 13D. The other members of the group are the Estate of James J. Cotter, Sr. (the "Estate"), Ms. Margaret Cotter and Ms. Ellen Cotter. The Trust is separately filing this report on Schedule 13D from the other members of the group.

(2) Based upon 1,680,590 shares of Class B voting common stock, $0.01 par value per share (the "Voting Stock"), outstanding, which consist of (i) 1,586,590 shares of the Voting Stock outstanding as of June 30, 2015, as reported on the Issuer's Form 10-Q filed with the Securities and Exchange Commission on August 10, 2015 and (ii) 100,000 shares of Voting Stock issued upon the exercise of the Estate of 100,000 options to acquire Voting Stock.

ITEM 1. SECURITY AND ISSUER

The common stock of Reading International, Inc., a Nevada corporation (the "Issuer" or the "Company"), is divided into two classes, Class A non-voting common stock, $0.01 par value per share (the "Non-Voting Stock"), and Class B voting common stock, $0.01 par value per share (the "Voting Stock" and together with the Non-Voting Stock, the "Shares"). This Schedule 13D (this "Schedule 13D") is being filed by the James J. Cotter Living Trust (the "Trust" or the "Reporting Person") with respect to the Voting Stock by Ms. Ellen Cotter and Ms. Margaret Cotter, two of the three co-trustees of the Trust. The shares of the Voting Stock and the shares of the Non-Voting Stock are listed on NASDAQ.

The address of the principal executive offices of the Issuer is Reading International, Inc., 6100 Center Drive, Suite 900, Los Angeles, California 90045.

ITEM 2. IDENTITY AND BACKGROUND

The Trust is a trust organized under the laws of California. During the lifetime of Mr. James J. Cotter, Sr., the Trust was revocable by Mr. James J. Cotter, Sr., but the Trust became irrevocable upon the death of Mr. James J. Cotter, Sr. on September 13, 2014. The Trust serves as a vehicle for the management and distribution of the assets of Mr. James J. Cotter, Sr. According to a purported Amendment to the Trust signed on June 19, 2014 ("2014 Amendment"), the children of Mr. James J. Cotter, Sr., including Ms. Ellen Cotter, Ms. Margaret Cotter and Mr. James J. Cotter, Jr., serve as co-trustees of the Trust and therefore may be deemed to share voting and investment power over the shares of the Voting Stock directly beneficially owned by the Trust. In litigation filed in the Superior Court of the State of California, County of Los Angeles, captioned *In re James J. Cotter Living Trust dated August 1, 2009* (Case No. BP159755) ("Trust Litigation"), Ms. Ellen Cotter and Ms. Margaret Cotter have challenged the validity of the 2014 Amendment, according to the pre-existing trust agreement, only Ms. Ellen Cotter and Ms. Margaret Cotter were named as co-trustees. The extent of any pecuniary interest in the Voting Stock owned by the Trust attributable to Ms. Margaret Cotter and Ms. Ellen Cotter as co-trustees of the Trust is dependent upon the outcome of the Trust Litigation. The Trust's principal business office address is c/o Reading International, Inc., 6100 Center Drive, Suite 900, Los Angeles, California 90045.

During the last five years, the Reporting Person has not been (a) convicted in a criminal proceeding (excluding traffic violations or similar misdemeanors) or (b) a party to any civil proceeding of a judicial or administrative body of competent jurisdiction and as a result of which such person was or is subject to a judgment, decree or final order enjoining future violations of, or prohibiting or mandating activities subject to, Federal or State securities laws, or finding any violation with respect to such laws.

ITEM 3. SOURCE AND AMOUNT OF FUNDS OR OTHER CONSIDERATION

The Trust was established by a Declaration of Trust, dated August 1, 2009, as amended from time to time, and was initially funded with the shares of the Voting Stock owned by Mr. James J. Cotter, Sr. Mr. James J. Cotter, Sr. passed away on September 13, 2014, and the Trust became an irrevocable living trust.

ITEM 4. PURPOSE OF TRANSACTION

The Reporting Person is deemed to have acquired beneficial ownership of 696,980 shares of the Voting Stock as a result of Mr. James J. Cotter, Sr.'s death, as described in Item 3 of this Schedule 13D. Such shares of the Voting Stock were deemed to have been owned by Mr. James J. Cotter, Sr. through the Trust during his lifetime and, upon Mr. James J. Cotter, Sr.'s death and the Trust's conversion into an irrevocable trust, are now deemed to be directly beneficially owned by the Trust, of which the children of Mr. James J. Cotter, Sr. serve as co-trustees. The shares of the Voting Stock directly beneficially owned by the Trust ultimately will be held in further trust for the benefit of the descendants of Mr. James J. Cotter, Sr., and such shares will be held for investment purposes and the co-trustees of the Trust are directed to retain such shares for as long as possible and are relieved from any obligation to diversify the Trust's investments.

On September 21, 2015, the Estate exercised vested stock options and received 108,000 shares of Voting Stock. On April 8, 2015, Ms. Margaret Cotter exercised vested stock options and received 12,500 shares of Non-Voting Stock. On April 17, 2015, Ms. Margaret Cotter exercised vested stock options and received 35,100 shares of Voting Stock. On April 16, 2015, Ms. Ellen Cotter exercised vested stock options and received 50,000 shares of

Voting Stock. Ms. Ellen Cotter and Ms. Margaret Cotter currently intend to hold any shares of Voting Stock directly beneficially owned by them for investment purposes.

Ms. Ellen Cotter and Ms. Margaret Cotter currently intend to vote all of the shares of Voting Stock that they control, including all of the shares of Voting Stock owned by them individually, by the Estate and by the Trust, at the Company's 2015 annual meeting of stockholders.

Each of Ms. Ellen Cotter and Ms. Margaret Cotter, as a co-trustee of the Trust, has been in the past and will be in the future involved on behalf of the Company in their respective capacities as senior executive officers of, directors of and/or consultants to the Company, as applicable, in reviewing and evaluating possible transactions involving the Company and identifying candidates to serve on the Company's board of directors, including transactions of the sort described in clauses (a) through (f) of Item 4 of Schedule 13D. In light of their responsibilities to the Company, Ms. Ellen Cotter and Ms. Margaret Cotter do not anticipate making any disclosures in connection with their participation in the transactions and activities of the Company separate and apart from relevant disclosures by the Company.

The Reporting Person intends to review its investment in the Issuer on a continuing basis and may from time to time and at any time in the future depending on various factors, including, without limitation, the requirements of the Trust, the Issuer's financial position and strategic direction, actions taken by the board of directors of the Issuer, price levels of the Shares, other investment opportunities available to the Reporting Person, conditions in the securities market and general economic and industry conditions, take such actions with respect to the investment in the Issuer as the Reporting Person deems appropriate, including: (i) acquiring additional Shares and/or other equity, debt, notes, other securities or derivative or other instruments of the Issuer that are based upon or relate to the value of the Shares or the Issuer (collectively, "Securities") in the open market or otherwise; (ii) disposing of any or all of their Securities in the open market or otherwise; (iii) engaging in any hedging or similar transactions with respect to the Securities; or (iv) proposing or considering one or more of the actions described in subsections (a) through (j) of Item 4 of Schedule 13D.

ITEM 5. INTEREST IN SECURITIES OF THE ISSUER

As of the date hereof, the Trust directly beneficially owns 696,080 shares of the Voting Stock, representing 11.4% of outstanding Voting Stock of the Issuer. Because the children of Mr. James J. Cotter, Sr. serve as co-trustees, the children may be deemed to be indirect beneficial owners of 696,080 shares of the Voting Stock directly beneficially owned by the Trust. The extent of any pecuniary interest in the Voting Stock directly beneficially owned by the Trust attributable to Ms. Margaret Cotter and Ms. Ellen Cotter, as co-trustees, is dependent upon the outcome of the Trust Litigation. As of the date hereof, the Trust also directly beneficially owns 1,897,640 shares of the Non-Voting Stock, representing 8.7% of outstanding Non-Voting Stock of the Issuer.

Because Ms. Ellen Cotter and Ms. Margaret Cotter (two of the three children of Mr. James J. Cotter, Sr.) also serve as co-executors (the "Co-Executors") of the Estate, each of them may be deemed to share indirect beneficial ownership of 427,896 shares of the Voting Stock directly beneficially owned by the Estate, representing 25.5% of outstanding Voting Stock of the Issuer. All of the Voting Stock held by the Estate will be transferred to the Trust after a reasonable period of administration. As of the date hereof, the Estate also directly beneficially owns 726,800 shares of the Non-Voting Stock, representing 3.3% of outstanding Non-Voting Stock of the Issuer. As of the date hereof, the Co-Executors of the Estate disclaim beneficial ownership of the Voting Stock and Non-Voting Stock directly beneficially owned by the Estate, except to the extent of their respective pecuniary interest therein.

As of the date hereof, (1) Ms. Ellen Cotter also directly beneficially owns 50,000 shares of the Voting Stock, representing 1.0% of outstanding Voting Stock of the Issuer, and (2) Ms. Margaret Cotter directly beneficially owns 35,103 shares of the Voting Stock subject to stock options, representing 2.1% of outstanding Voting Stock of the Issuer. As of the date hereof, (1) Ms. Ellen Cotter also directly beneficially owns 819,768 shares of the Non-Voting Stock (which amount also includes currently exercisable options to acquire an additional 20,000 shares of the Non-Voting Stock), representing 3.8% of outstanding Non-Voting Stock of the Issuer, (2) Ms. Margaret Cotter also directly beneficially owns 804,177 shares of the Non-Voting Stock, representing 3.7% of outstanding Non-Voting Stock of the Issuer and (3) Mr. James J. Cotter, Jr. (the third child of Mr. James J. Cotter, Sr.) also directly beneficially owns 856,426 shares of the Non-Voting Stock, representing 4.0% of outstanding Non-Voting Stock of the Issuer, according to Mr. James Cotter, Jr.'s public filings.

Ms. Margaret Cotter also serves as a co-trustee of the James J. Cotter Grandchildren Trust, a trust for Mr. James J. Cotter, Sr.'s grandchildren, which holds 289,390 shares of the Non-Voting Stock, representing 1.3% of outstanding Non-Voting Stock of the Issuer. Ms. Ellen Cotter and Ms. Margaret Cotter also serve as co-trustees of the James J. Cotter Foundation, which holds 120,751 shares of the Non-Voting Stock, representing 0.5% of outstanding Non-Voting Stock of the Issuer.

The percentages reported in this Item 5 are based upon 21,707,938 shares of the Non-Voting Stock outstanding and 1,680,590 shares of the Voting Stock outstanding, which consist of (i) 1,580,590 shares of the Voting Stock outstanding as of June 30, 2015, as reported on the Issuer's Form 10-Q filed with the Securities and Exchange Commission on August 10, 2015 and (ii) 100,000 shares of Voting Stock issued upon the exercise of the Estate of 100,000 options to acquire Voting Stock.

(b) See rows 7-10 of the cover page for information regarding the power to vote or direct the vote and the power to dispose or direct the disposition of the shares by the Reporting Person. The Estate, Ms. Margaret Cotter and Ms. Ellen Cotter have separately filed a Schedule 13D on the date hereof.

(c) Except as described herein, none of the Reporting Person, the Estate, Ms. Margaret Cotter and Ms. Ellen Cotter have acquired, or disposed of, any shares of the Voting Stock of the Issuer during the past 60 days.

(d) No persons other than Ms. Margaret Cotter and Ms. Ellen Cotter, as co-trustees of the Trust, and the beneficiaries of the Trust have the right to receive, or the power to direct the receipt of dividends from, the proceeds from the sale of the shares to which this Schedule 13D relates.

(e) Not applicable.

ITEM 6. CONTRACTS, ARRANGEMENTS, UNDERSTANDINGS OR RELATIONSHIPS WITH RESPECT TO SECURITIES OF THE ISSUER

Except as described in Item 3, Item 4 and Item 5, the Reporting Person has no contracts, arrangements, understandings or relationships (legal or otherwise) with any person with respect to any voting securities of the Company, including, but not limited to, the transfer or voting of any of the securities, finder's fees, joint ventures, loan or option arrangements, puts or calls, guarantees of profits, division of profits or losses, or the giving or withholding of proxies.

ITEM 7. MATERIALS TO BE FILED AS EXHIBITS

None.

After reasonable inquiry and to the best of my knowledge and belief, the undersigned certifies that the information set forth in this statement is true, complete and correct.

Dated: October 8, 2015

JAMES J. COTTER LIVING TRUST

By: /s/ Margaret Cotter
Name: Margaret Cotter
Title: Co-Trustee

By: /s/ Ellen Cotter
Name: Ellen Cotter
Title: Co-Trustee

EXHIBIT 24

(Filed Separately Under Seal)

EXHIBIT 25

(Filed Separately Under Seal)

Exhibit 26

Exhibit 26

READING
INTERNATIONAL

June 15, 2015

James J. Cotter, Jr.
311 Homewood Rd
Los Angeles, CA 90049

Dear Jim:

As you are aware, your Employment Agreement (the "Agreement") with Reading International, Inc. (the "Company"), and your employment with and position as President and Chief Executive Officer of the Company, has been terminated effective Friday, June 12, 2015. Pursuant to Section 11 of your Agreement, this termination obligates you to resign immediately from the Board of Directors of the Company. This letter shall serve as notice that your failure to resign from the Board of Directors places you in material breach of your Agreement. You have 30 days from today to cure this breach by submitting your written resignation from the Board of Directors. Failure to do so within 30 days will result in you forfeiting any compensation or benefits you might otherwise have been entitled to under your Agreement.

You must also immediately return any Company property, documents, or data that you may have in your possession. You may arrange for the return of these items, as well as for your personal belongings at the office to be collected, by having your attorney contact the Company's attorney, Gary McLaughlin at Akin Gump Strauss Hauer & Feld (310-728-3358).

This letter is without prejudice to any of the Company's rights or remedies, all of which are expressly reserved.

Very Truly Yours,

Ellen M. Cotter

Reading International, Inc.
6100 Center Drive, Suite 900
Los Angeles, California 90045

t: 213.235.2240 f: 213.235.2229

www.readingrdi.com

Exhibit 27

Exhibit 27

8-K 1 rdi-20150618x8k.htm 8-K

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM 8-K

Current Report
Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934

Date of Report (Date of Earliest Event Reported): June 12, 2015

READING INTERNATIONAL, INC.
(Exact Name of Registrant as Specified in its Charter)

Nevada
(State or Other Jurisdiction of Incorporation)

1-8625	95-3885184
(Commission File Number)	(I.R.S. Employer Identification No.)
6100 Center Drive Suite 900 Los Angeles, California	90045
(Address of Principal Executive Offices)	(Zip Code)

(213) 235-2240
(Registrant's Telephone Number, Including Area Code)

n/a
(Former Name or Former Address, if Changed Since Last Report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions (see General Instruction A.2. below):

☐ Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425).

☐ Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12).

☐ Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b)).

☐ Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c)).

EXH 347
DATE 6-22-16
WIT
PATRICIA HUBBARD

ITEM 5.02 Departure of Directors or Certain Officers; Election of Directors; Appointment of Certain Officers; Compensatory Arrangements of Certain Officers

On June 12, 2015, the board of directors (the "Board") of Reading International, Inc. ("we," "our," "us," "Reading" or the "company") terminated the employment of James J. Cotter, Jr. as our President and Chief Executive Officer, effective immediately. The Company currently intends to engage the assistance of a leading executive search firm to identify a permanent President and Chief Executive Officer, which will consider both internal and external candidates.

On June 12, 2015, our Board appointed Ellen Marie Cotter, 49, Chairperson of the Board and the Chief Operating Officer of our Domestic Cinemas Division, to serve as our interim President and Chief Executive Officer. No new compensatory arrangements were entered into with Ms. Cotter in connection with her appointment as interim President and Chief Executive Officer.

Ellen Cotter has been a member of the Board since March 7, 2013, and on August 7, 2014 was appointed as its Chairperson. Prior to joining our company in 1998, Ms. Cotter spent four years in private practice as a corporate attorney with the law firm of White & Case in Manhattan. She is a graduate of Smith College and holds a Juris Doctorate from Georgetown Law School. Ms. Cotter is the sister of James J. Cotter, Jr. and Margaret Cotter.

Under Mr. Cotter, Jr.'s employment agreement with the company, he is entitled to the compensation and benefits he was receiving at the time of a termination without cause for a period of twelve months from notice of termination. At the time of termination, Mr. Cotter Jr.'s annual salary was $335,000.

Under his employment agreement, Mr. Cotter, Jr. is required to tender his resignation as a director of our company immediately upon the termination of his employment. After a request to do so, Mr. Cotter, Jr. has not yet tendered his resignation. The company considers such refusal as a material breach of Mr. Cotter, Jr.'s employment agreement, and has given him thirty (30) days in which to resign. If he does not do so, the company will terminate further severance payments, as permitted under the employment agreement.

No new compensatory arrangements were entered into with Mr. Cotter, Jr. in connection with his termination.

ITEM 8.01 OTHER EVENTS

On June 12, 2015, Mr. Cotter, Jr. filed a lawsuit against us and each of our other directors in the District Court of the State of Nevada for Clark County, titled James J. Cotter, Jr., individually and derivatively on behalf of Reading International, Inc. vs. Margaret Cotter, et. al. The lawsuit alleges, among other allegations, that the other directors breached their fiduciary duties in taking the actions to terminate Mr. Cotter, Jr. as President and Chief Executive Officer of the company and that

Margaret Cotter and Ellen Cotter aided and abetted the breach of such fiduciary duties of the other directors. The lawsuit seeks damages and other relief, including an injunctive order restraining and enjoining the defendants from taking further action to effectuate or implement the termination of Mr. Cotter, Jr. as President and Chief Executive Officer of the company and a determination that Mr. Cotter, Jr.'s termination as President and Chief Executive Officer is legally ineffectual and of no force or effect. The company believes that numerous of the factual allegations included in the complaint are inaccurate and untrue and intends to vigorously defend against the claims in this action. The company has been informed that the other directors intend to seek indemnification from the Company for any losses arising under the lawsuit, in which case the company will tender a claim under its director and officers liability insurance policy.

EX-99.1 2 rdi-20150618ex991400879.htm EX-99.1

ITEM 9.01 FINANCIAL STATEMENTS AND EXHIBITS

(d) The following exhibit is included with this Report and incorporated herein by reference:

Exhibit No.	Description
99.1	Press release of Reading International, Inc. of June 15, 2015

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the Registrant has duly caused this Report to be signed on its behalf by the undersigned, thereunto duly authorized.

Dated: June 18, 2015

READING INTERNATIONAL, INC.

By: /s/ William D. Ellis

William D. Ellis

General Counsel and Secretary

Exhibit 99.1

Reading International Announces Appointment of Ellen Cotter as Interim Chief Executive Officer

Los Angeles, California, (Business Wire) June 15, 2015 – Reading International, Inc. (NASDAQ:RDI) announced today that its Board of Directors has appointed Ellen M. Cotter as interim President and Chief Executive Officer, succeeding James J. Cotter, Jr. The Company currently intends to engage the assistance of a leading executive search firm to identify a permanent President and Chief Executive Officer, which will consider both internal and external candidates.

Ms. Cotter is the Chairman of the Board of Directors of the Company and has served as the senior operating officer of the Company's US cinemas operations for the past 14 years. In addition, Ms. Cotter is a significant stockholder in the Company.

Ms. Cotter commented, "James Cotter, Sr., who served as our Company's Chairman and Chief Executive Officer for over 20 years, grew Reading International, Inc. to a major international developer and operator of multiplex cinemas, live theaters and other commercial real estate assets. I look forward to continuing his vision and commitment to these businesses as we move forward to conduct our search for our next Chief Executive Officer. I will work diligently to ensure that this transition is seamless to all of our stakeholders."

The Company plans to report its second quarter financial results on or before August 10, 2015.

About Ellen Cotter
Ellen M. Cotter has been a member of our Company's Board of Directors since March 2013, and in August 2014 was appointed as Chairman of the Board. She joined Reading International, Inc. in 1998 and brings to the position her 17 years of experience working in our Company's cinema operations, both in the United States and Australia. For the past 14 years, she has served as the senior operating officer of our Company's domestic cinema operations. Ms. Cotter is a graduate of Smith College and holds a Juris Doctorate from Georgetown Law School. Prior to joining our Company, Ms. Cotter was a corporate attorney with the law firm of White & Case in New York, New York.

About Reading International, Inc.
Reading International (http://www.readingrdi.com) 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 retail centers ("ETRC") in Australia and New Zealand and live theater assets in Manhattan and Chicago in the United States.

Reading manages its worldwide business under various different brands;

Exhibit 99.1

- in the United States, under the
  - o Reading brand (http://www.readingcinemasus.com);
  - o Angelika Film Center brand (http://www.angelikafilmcenter.com);
  - o Consolidated Theatres brand (http://www.consolidatedtheatres.com);
  - o City Cinemas brand (http://www.citycinemas.com);
  - o Beekman Theatre brand (http://www.beekmantheatre.com);
  - o The Paris Theatre brand (http://www.theparistheatre.com);
  - o Liberty Theatres brand (http://libertytheatresusa.com/); and
  - o Village East Cinema brand (http://villageeastcinema.com)

- in Australia, under the
  - o Reading brand (http://www.readingcinemas.com.au); and
  - o Newmarket brand (http://readingnewmarket.com.au)
  - o Red Yard Entertainment Centre (http://www.redyard.com.au)

- in New Zealand, under the
  - o Reading brand (http://www.readingcinemas.co.nz);
  - o Rialto brand (http://www.rialto.co.nz);
  - o Reading Properties brand (http://readingproperties.co.nz);
  - o Courtenay Central brand (http://www.readingcourtenay.co.nz);
  - o Steer n' Beer restaurant brand (http://steernbeer.co.nz);

Media Contact:
Andrzej Matyczynski
Tel: 213-235-2240

Exhibit 28

Exhibit 28

From: Kane <elkane@sanjrr.com>
Sent: Monday, May 18, 2015 10:16 PM
To: Guy Adams

See if you can get someone else to second the motion. If the vote is 5-3 I might want to abstain, and make it 4—3. If it's needed I will vote. It's personal and goes back 51 years. If no one else will second it I will.

GA00005500

EXHIBIT 29

(Filed Separately Under Seal)

Exhibit 30

Exhibit 30

DISTRICT COURT
CLARK COUNTY, NEVADA

JAMES J. COTTER, JR. individually and derivatively on behalf of Reading International, Inc., Plaintiff, vs. MARGARET COTTER, ELLEN COTTER, GUY ADAMS, EDWARD KANE, DOUGLAS WILLIAM GOULD, and DOES 1 through 100, inclusive, Defendants.	Index No. A-15-179860-B
READING INTERNATIONAL, INC., a Nevada corporation, Nominal Defendant.	

VIDEOTAPED DEPOSITION OF ELLEN COTTER

New York, New York

Thursday, June 16, 2016

Reported by:
MICHELLE COX
JOB NO. 316936

MR. TAYBACK: Objection. Asked and answered.

A No.

Q So when you use the same phraseology status to refer to the president and CEO in Item 1 as you use to refer to Craig Tomkins and Robert Smerling in Item 6, and yourself and Margaret Cotter in Item 7, were you attempting to obscure or conceal the fact that Item 1 was actually about terminating Jim Cotter as president and CEO?

MR. TAYBACK: Objection; argumentative, compound.

You can answer.

A I mean, there was no intention on my part to deceive anybody.

Q Well, in point of fact, prior to distributing Exhibit 338, you already had had discussions with Ed Kane, Guy Adams, Doug McEachern and Margaret Cotter about terminating Jim Cotter, Jr. as president and CEO, correct?

A Prior to this meeting we did have discussions about whether Jim would remain as the CEO and president.

Q Well, you had discussions with each of -- Guy Adams, Ed Kane, Doug McEachern and Margaret Cotter about terminating Jim Cotter, Jr. as CEO prior to distributing Exhibit 338 on May 19th, correct?

MR. TAYBACK: Objection. Asked and answered.

A Yes.

Q You had no such discussions with Tim Storey, correct?

A I did have discussions with Tim Storey.

Q What discussions did you have with Tim Storey and when did you have them?

A I had had discussions with Tim Storey about Jim and his performance.

Q Okay. The question is: What discussions did you have with Tim Storey, if any, prior to distributing Exhibit 338 on May 19, 2015, about terminating Jim Cotter, Jr. as president and CEO?

A I don't remember the specific discussion that I had with Tim.

Q Did you have any conversation with Tim Storey prior to distributing Exhibit 338 on May 19, 2015, in which the subject of

C E R T I F I C A T E

STATE OF NEW YORK)
:ss
COUNTY OF NEW YORK)

I, MICHELLE COX, a Notary Public within and for the State of New York, do hereby certify:

That ELLEN COTTER, the witness whose deposition is hereinbefore set forth, was duly sworn by me and that such deposition is a true record of the testimony given by the witness.

I further certify that I am not related to any of the parties to this action by blood or marriage, and that I am in no way interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set my hand this 29th day of June 2016.

MICHELLE COX, CLR

Exhibit 31

Exhibit 31

EIGHTH JUDICIAL 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 Case No. P-14-082942-E Related and Coordinated Cases

Complete caption, next page.

VIDEOTAPED DEPOSITION OF GUY ADAMS

LOS ANGELES, CALIFORNIA

THURSDAY, APRIL 28, 2016

VOLUME I

REPORTED BY: LORI RAYE, CSR NO. 7052

JOB NUMBER: 305144

time?

A. I strongly suspected she had spoken with Ed Kane.

Q. And had either you or Ed Kane spoken to Doug McEachern about that?

A. I haven't, no. I don't know if Ed did.

Q. Okay. When was the first time you spoke with Doug McEachern about either terminating Jim Junior as CEO or about a subject of -- the subject of an interim CEO?

A. That I talked to McEachern? I would say it was maybe -- again, I can only approximately guess. Maybe two weeks before the meeting.

Q. And you're referring to the May 18th -- May 21st meeting, it was, wasn't it?

A. Yes. I don't know the exact date, but yeah.

Q. So what else did Ellen say and what else did you say during this approximate hour-plus breakfast meeting?

A. My recollection, we talked about Jim Junior and the CEO position, and Ellen, I guess, talked to other people because she was feeling that there was support for Jim Junior to be removed.

Q. What did she say that caused you to

conclude she had talked to other people about Jim Junior being removed?

A. I don't know specifically what she said. Maybe it was innuendos that she maybe talked to McEachern, maybe. But it wasn't specific.

Q. Did you ever learn after the fact whether that was the case?

A. Considering McEachern, when I did call him, like two weeks before the vote, he said he was on board with that. I suspect she called and talked to him. I sure didn't. So I suspect -- I suspect she did or maybe Ed Kane did. I don't know.

Q. What else, if anything, did you discuss with Ellen Cotter at the breakfast meeting at the Peninsula in April?

A. Nothing further that I can remember at this time.

Q. What, if anything, did she say about why she wanted Jim Junior removed as CEO?

A. I think she felt he wasn't doing an adequate job as CEO.

Q. Excuse me. My question is, what did she say?

A. What did she say about -- I'm sorry.

CERTIFICATE OF REPORTER

STATE OF CALIFORNIA)
)SS:
COUNTY OF LOS ANGELES)

I, Lori Raye, a duly commissioned and licensed court reporter for the State of California, do hereby certify:

That I reported the taking of the deposition of the witness, GUY ADAMS, commencing on Thursday, April 28,2016, at 10:13 a.m.;

That prior to being examined, the witness was, by me, placed under oath to testify to the truth; that said deposition was taken down by me stenographically and thereafter transcribed; that said deposition is a complete, true and accurate transcription of said stenographic notes.

I further certify that I am not a relative or an employee of any party to said action, nor in anywise interested in the outcome thereof; that a request has been made to review the transcript.

In witness whereof, I have hereunto subscribed my name this 2nd day of May 2016.

Lori Raye

LORI RAYE
CSR No. 7052

Exhibit 32

Exhibit 32

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

Margaret on one hand and Jim Cotter, Jr., on the other hand, right?

A. Correct.

Q. And then somebody moved and seconded the motion to terminate Jim Cotter, Jr.; is that right?

A. Yes.

Q. And then a vote was had, and as among the non-Cotter directors, each of Messrs. Kane and Adams and McEachern voted to terminate?

A. That's correct.

Q. And you and Mr. Gould voted against?

A. Yes.

Q. And did Ellen and Margaret Cotter vote or did they recuse themselves?

A. I don't remember.

Q. And do you recall that at that meeting Ellen Cotter stated that it was -- Jim was required by the terms of his executive employment agreement to resign as a director if he were terminated as an officer?

A. At that meeting I -- I'm not sure I remember at that meeting, but I do remember that very well.

Q. And what did you say in response?

A. I said I didn't believe he was obligated

to resign as a director.

Q. And what was your explanation for that, if any?

A. Well, I drafted the -- I drafted the contract with -- with Jim. And it did say in there he would resign. But what we intended that to mean was his position as president.

He had been on this board for many years. I mean it had no bearing at all, in my opinion, on his requirement that he resign as a director.

Q. Did you communicate that view to -- you communicated that view at a directors meeting?

A. Yes.

Q. Did you ever communicate that view to Akin Gump lawyers?

A. Yes.

Q. Was that before or after Ellen Cotter on or about June 15 sent a letter to Jim Cotter, Jr., demanding his resignation as a director?

MR. HELPERN: Objection. Form, lacks foundation, assumes facts.

MR. SWANIS: Join.

THE WITNESS: Well, I want the -- I want to just correct one thing.

I may have -- I may have been too glossy on this one point. I communicated to Akin Gump, but not directly. I think it was through Ellen and Craig. They asked my opinion. And I told them what it was, that he was not obligated, in my opinion, to resign as a director.

BY MR. KRUM:

Q. Okay. Thanks.

And my question is --

A. Yes.

Q. -- when did that happen?

A. Shortly after the termination.

Q. Was it the same day?

A. I don't remember.

Q. Was it the following Monday?

A. I can't recall the exact day it was.

Q. Was it in person or by telephone?

A. I don't remember.

MR. KRUM: Okay. We're about out of tape, so why don't we adjourn for the day.

MR. RHOW: Thank you.

MR. KRUM: Thank you for your time.

THE WITNESS: Thank you.

VIDEOTAPE OPERATOR: This concludes the deposition of William Gould, volume one, June 8,

REPORTER'S CERTIFICATE

I, PATRICIA L. HUBBARD, do hereby certify:

That I am a duly qualified Certified Shorthand Reporter in and for the State of California, holder of Certificate Number 3400, which is in full force and effect, and that I am authorized to administer oaths and affirmations;

That the foregoing deposition testimony of the herein named witness, to wit, WILLIAM GOULD, was taken before me at the time and place herein set forth;

That prior to being examined, WILLIAM GOULD was duly sworn or affirmed by me to testify the truth, the whole truth, and nothing but the truth;

That the testimony of the witness and all objections made at the time of examination were recorded stenographically by me and were thereafter transcribed by me or under my direction and supervision;

That the foregoing pages contain a full, true and accurate record of the proceedings and testimony to the best of my skill and ability;

I further certify that I am not a relative or employee or attorney or counsel of any of the parties, nor am I a relative or employee of such attorney or counsel, nor am I financially interested in the outcome of this action.

IN WITNESS WHEREOF, I have subscribed my name this 13th day of June, 2016.

Patricia L. Hubbard

PATRICIA L. HUBBARD, CSR #3400

Exhibit 33

Exhibit 33

DEC
MARK G. KRUM (Nevada Bar No. 10913)
MKrum@LRRC.com
LEWIS ROCA ROTHGERBER CHRISTIE LLP
3993 Howard Hughes Parkway, Suite 600
Las Vegas, Nevada 89169
(702) 949-8200
(702) 949-8398 fax

Attorneys for Plaintiff
James J. Cotter, Jr.

DISTRICT COURT
CLARK COUNTY, NEVADA

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

Plaintiff,

v.

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

Defendants.

and

READING INTERNATIONAL, INC., a Nevada corporation;

Nominal Defendant.

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

Plaintiffs,

vs.

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

CASE NO. A-15-719860-B
DEPT. NO. XI
Coordinated with:
CASE NO. P-14-082942-E
DEPT. NO. XI
CASE NO. A-16-735305-B
DEPT. NO. XI
Jointly administered

DECLARATION OF PLAINTIFF JAMES J. COTTER, JR. IN OPPOSITION TO ALL INDIVIDUAL DEFENDANTS' MOTIONS FOR PARTIAL SUMMARY JUDGMENT *(AND GOULD JOINDERS)*

[Business Court Requested: [EDCR 1.61]

[Exempt From Arbitration: declaratory relief requested; action in equity]

Lewis Roca ROTHGERBER CHRISTIE
3993 Howard Hughes Pkwy, Suite 600
Las Vegas, NV 89169-5996

Defendants.

and

READING INTERNATIONAL, INC., a Nevada corporation,

Nominal Defendant.

I, James J. Cotter, Jr. hereby declare, under the penalty of perjury and the laws of Nevada, as follows:

1. I am over eighteen (18) years of age. I have personal knowledge of the facts contained in this declaration, except on those matters stated upon information and belief, and as to those matters, I believe them to be true. If called upon to testify as to the contents of this declaration, I am legally competent to do so in a court of law.

2. I am the Plaintiff in the above-captioned action. I am, and at all times relevant hereto was, a shareholder of RDI. I have been a director of RDI since on or about March 21, 2002. I have been involved in RDI management since mid-2005, I was appointed Vice Chairman of the RDI board of directors in 2007 and President of RDI on or about June 1, 2013. I was appointed CEO by the RDI Board on or about August 7, 2014, immediately after James J. Cotter, Sr. (JJC, Sr.) resigned from that position. I am the son of the late JJC, Sr., and the brother of defendants Margaret Cotter ("MC") and Ellen Cotter ("EC"). I presently own approximately 560,186 shares of RDI Class A non-voting stock and options to acquire another 50,000 shares of RDI Class A non-voting stock. I am also the co-trustee and beneficiary of the James J. Cotter Living Trust, dated August 1, 2000, as amended (the "Trust"), which owns 2,115,539 shares of RDI Class A (non-voting) stock and 1,123,888 shares of RDI Class B (voting) stock. The Trust became irrevocable upon the passing of JJC, Sr. on September 13, 2014.

3. I submit this declaration in support of the oppositions to all of the motions for summary judgment filed by one or more of the individual defendants in this action.

4. Nominal defendant Reading International, Inc. (RDI or Company) is a Nevada corporation and is, according to its public filings with the United States Securities and Exchange

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Commission (the "SEC"), an internationally diversified company principally focused on the development, ownership and operation of entertainment and real estate assets in the United States, Australia and New Zealand. The Company operates in two business segments, namely, cinema exhibition, through approximately 58 multiplex cinemas, and real estate, including real estate development and the rental of retail, commercial and live theater assets. The Company manages world-wide cinemas in the United States, Australia and New Zealand. RDI has two classes of stock, Class A stock held by the investing public, which stock exercises no voting rights, and Class B stock, which is the sole voting stock with respect to the election of directors. An overwhelming majority (approximately eighty percent (80%)) of the Class A stock is legally and/or beneficially owned by shareholders unrelated to me, EC or MC. Approximately seventy percent (70%) of the Class B stock is subject to disputes and pending trust and estate litigation in California between EC and MC, on the one hand, and me, on the other hand, and a probate action in Nevada. Of the Class B stock, approximately forty-four percent (44%) is held in the name of the Trust. RDI is named only as a nominal defendant in this derivative action.

5. I signed a verification of a Second Amended Verified Complaint (the "SAC") in this action. I stand by the substantive allegations of the SAC and incorporate them herein by reference.

The Position of CEO at RDI

6. Certain of the motions for summary judgment brought by the individual defendants in this action suggest that I was appointed CEO of RDI in August 2014 after what amounted to no deliberation by the Board of Directors. That is absolutely false. In fact, as early as 2006, James J Cotter, Sr. ("JJC, Sr."), then the CEO and controlling shareholder of RDI, had communicated to the RDI board of directors his proposed succession plan for the positions of President and CEO. That plan was for me to work under the direction of JJC, Sr. to learn the businesses of RDI, including by functioning in a senior executive role.

7. Since 2005, I was involved in most RDI executive management meetings and privy to most significant internal senior management memos. As mentioned above, I was appointed Vice Chairman of the RDI board in 2007. The RDI Board appointed me President of

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RDI on or about June 1, 2013, and I filled those responsibilities without objection by the RDI board of directors.

8. Soon after I became CEO, my sisters, Ellen, who was an executive at RDI in the domestic cinema segment of the Company's business, and Margaret, who managed RDI's limited live theater operations as a third-party consultant, both communicated to me and to members of the RDI Board of Directors that they did not want to report to me as CEO. In fact, neither of them previously while working for or with the Company effectively had ever reported to anyone other than our father, JJC, Sr. Margaret in particular resisted and effectively refused to report to me until she no longer needed to do so, following my (purported) termination as President and CEO of the Company. They also co-opted at least one employee, Linda Pham, who claimed at some point in 2014 that I had created a hostile work environment for her, which accusation was not well-taken and, in any event, moot with the passage of time by Spring 2015, as director Kane acknowledged at the time.

Disputes With My Sisters

9. My sisters and I had certain disputes with respect to matters of our father's estate. The most significant and contentious dispute concerned who would be the trustee or trustees of the voting trust that, following our father's death, holds approximately 70% of the voting stock of RDI. According to a 2013 amendment to his trust documentation, Margaret was to be the sole trustee. Pursuant to a 2014 amendment to his trust documentation, Margaret and I were to serve contemporaneously as co-trustees. In early February 2015, Ellen and Margaret commenced a lawsuit in California state court challenging the validity of the 2014 amendment to our father's trust documents (the "California Trust Action").

10. My sisters and I also had certain disputes with respect to RDI. Most generally, they disagreed with my view and approach of running RDI like a public company, including hiring a senior executive qualified to oversee the development of the Company's valuable real estate and, more fundamentally, operating the Company to increase its value for all shareholders, not just its value to the Cotter family as controlling shareholders.

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Threatened Termination and Termination

11. Late in the day on May 19, 2015, I received from Ellen, as the chairperson of the RDI Board of Directors, an agenda for a supposed special meeting of the RDI board on May 21, 2015, two days later. I learned that the benignly described first item on the agenda, "status of president and CEO," apparently referred to a secret plan of Ellen and Margaret, together with Ed Kane, Guy Adams and Doug McEachern, to vote to remove me as President and CEO of RDI. However, that meeting commenced and concluded without the threatened vote being taken.

12. Next, on or about May 27, 2015, the lawyer representing Ellen and Margaret in the California Trust Action transmitted to my lawyer in that action a document that proposed to resolve the disputes between my sisters and me, including with respect to who would be the trustee of the voting trust and whether Margaret and Ellen would report to me as CEO of RDI. (A true and correct copy of the May 27, 2015 document, which was marked as deposition exhibit 322, is attached hereto as exhibit "A.")

13. On Friday, May 29, 2015, the (supposed) special board meeting of May 21 was to resume. That morning, before the meeting, I met with Ellen and Margaret. At that meeting, they told me that they were unwilling to mediate or to negotiate any of the terms of the May 27 document described above. They also told me that if I did not agree to resolve my disputes with them on the terms set out in that document, that the RDI Board of Directors would vote at the (supposed) meeting that day to terminate me as President and CEO.

14. The (supposed) special board meeting commenced on May 29 and the issue of my termination as President and CEO was the subject. At this (supposed) special meeting, or another, McEachern pressured me to resign as President and CEO. Eventually, the non-Cotter members of the RDI Board of Directors met with my sisters separately from me. Following that, the majority of the non-cotter directors, namely, Messrs. Adams, Kane and McEachern, advised me that the meeting would adjourn temporarily and resume telephonically at 6 p.m. They further advised that, if I had not reached a resolution of disputes between me and my sisters by the time the (supposed) special meeting reconvened telephonically at 6 p.m. that day, they would proceed with the vote to

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terminate me, meaning that the three of them would vote to terminate me as President and CEO of RDI.

15. That afternoon, Ellen and Margaret again refused to mediate and again refused to negotiate. Ultimately, I indicated a willingness to resolve disputes based on the document provided, subject to conferring with counsel. At or about 6 p.m., the (supposed) special RDI board meeting resumed telephonically, at which time Ellen reported to the five non-Cotter directors that we had reached an agreement in principle to resolve our disputes, subject to conferring with respective counsel. Ed Kane congratulated us and made a statement to the effect that he hoped that I was CEO of the Company for 30 years. No vote was taken on my termination.

16. On or about June 8, 2015, I communicated to my sisters that I could not agree to the document their lawyer had transmitted to my lawyer on or about June 2, 2015. Ellen called a (supposed) special board meeting for June 12, 2015, at which meeting each of Messrs. Adams, Kane and McEachern made good on their threat to vote to terminate me and did so.

Director Interest and Independence

17. One or more of the defendants' motions for summary judgment claim that SEC filings by RDI describe the non-Cotter directors as "independent," that I signed one or more of those SEC filings and that I therefore admit that those directors are independent for the purposes of this action. That is inaccurate. The term "independent" as used in RDI's SEC filings do not refer to matters of Nevada law. It referred usually to the fact that, pursuant to the terms of the Company's listing agreement with NASDAQ, the stock exchange on which RDI stock trades, directors meet the standard of independence of NASDAQ. None of the director defendants have ever suggested to me that they understood use of the term "independent" in RDI's SEC filings to communicate anything other than that non-Cotter directors were not members of the Cotter family which, in one manner or another, controlled approximately 70% of the voting stock of RDI. As among members of the RDI Board of Directors, the term "independent" was used historically to refer to directors who were not members of the Cotter family.

18. Ed Kane was a life-long friend of my father, having met when they were graduate students. Kane was in my father's wedding and was a speaker at my father's funeral. Over my

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lengthy tenure as a director at RDI, I observed Kane as a director of RDI acting at all times as if his job as a director was to carry out my father's wishes. Kane admitted to me that he was not independent for purposes other than the NASDAQ listing agreement and suggested after I became CEO that the Company would benefit from independent directors knowledgeable about its two principal businesses, cinemas and real estate.

19. On the contentious issue between me and my sisters regarding who would be the trustee(s) of the voting trust, Kane communicated to me that his view was that it was my fathers' wishes that Margaret alone be the trustee, and he pressured me to agree to that. At one point in the context of discussions regarding terminating me as President and CEO of RDI, Kane said to me angrily that he thought I "f*#*ed Margaret" by the 2014 amendment to my father's trust documentation, which amendment made me a co-trustee with Margaret of the voting trust.

20. Kane remains very close with my sisters, who still call him "Uncle Ed"" (which I ceased doing after joining RDI). They continue to get together socially, including for family meals during holiday periods, which is what they admittedly did around the Christmas holidays in 2015.

21. Guy Adams is a long time friend of my father. After Adams effectively became unemployed, my father attempted to provide him work and income. Eventually, my father through a company he wholly-owned entered into an agreement with Adams to pay Adams $1000 per month. That company now is part of my father's estate, of which my sisters are executors, such that they are in a position to control whether Adams is paid that money or not. Adams also has carried interests in certain real estate in which my father invested. My sisters as executors of my father's estate are in position to see to it that Adams is or is not paid any monies he is owed on account of those carried interests.

22. Prior to on or about May 2015, Adam's financial condition and, more particularly, his dependence on or independence from my sisters, in terms of his financial situation, had not arisen as a subject. When I suspected that Adams had agreed with my sisters to vote to terminate me as President and CEO of RDI, that raised the issue of whether he was financially dependent on them. I now know that he is. I learned from Adams' sworn declarations in his California state court divorce case that almost all of his income comes from RDI and from one or more companies

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that my sisters control. Adams is not independently wealthy. I asked him about his financial dependence or independence at the (supposed) May 21, 2015 special board meeting, at which time he refused to answer.

23. Michael Wrotniak's wife Trisha was Margaret's roommate in her freshman year of college at Georgetown University. Margaret and Trisha have been life-long best friends starting with their first year in college together. Michael also went to Georgetown University where he met his wife Trisha and also developed a very close friendship with Margaret in college. Given that Margaret only has a few friends, her relationship with Trisha and Michael is extremely important. Margaret has spent a lot of time with Michael and his wife over the years, as all three live in metropolitan New York City. Margaret became like an aunt to Trisha and Michael's children. My sister Ellen and mother also know Trisha and Michael very well, and they have all attended social events together in New York, such as birthday and cocktail parties my sister Margaret has hosted at her apartment in New York City. I believe Margaret's oldest child refers to Trisha and Michael as Aunt and Uncle. Michael's communication with me as a director has been very guarded, which I understand to reflect his knowledge of the lawsuit and his close relationship with Margaret.

24. Judy Codding has had a very close personal relationship with my mother for more than thirty years. (Ellen lives with our mother, who has chosen my sisters' side in the disputes between us.) Ms. Codding has become close with my sisters Ellen and Margaret. On October 13, 2015, over breakfast I had with her, she expressed to me that RDI is a family business and that the only people who should manage it should be one of the Cotters and that she would help make sure of that, whether it be Ellen or me. Her reaction to the offer to purchase all of the stock of the Company at a price in excess of what it trades in the market (the "Offer"), first made by correspondence dated on or about May 31, 2015, reflected Ms. Codding's unwavering loyalty to Ellen. Before the board meeting at which the Board was going to discuss the Offer, she indicated to me that there was no way that the Offer should even be considered (clearly having spoken to Ellen about it before the board meeting).

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25. Bill Gould was a professional acquaintance and friendly with my father for years. Repeatedly since my termination as President and CEO, he has said to me that he has acquiesced as an RDI director to conduct to which he objects and/or to conclusions with which he disagrees, stating in words or substance that he must "pick his fights."

26. For example, at a board meeting at which the board was asked to approve minutes from the (supposed) special board meetings of May 21 and 29, 2015 in June 12, 2015, at which I objected because the minutes contained significant factual inaccuracies, at which I voted against approving the minutes and at which Tim Storey abstained, reflecting that he that too thought the minutes inaccurate (as he testified unequivocally in deposition in this case), Bill Gould voted to approve the minutes. When I asked him afterwards why he had voted to approve inaccurate minutes, he said that, although he could not remember the meetings well enough to state that the minutes were accurate, he thought the ultimate descriptions of action taken, meaning the termination of me, the appointment of Ellen as interim CEO and the repopulation of the executive committee, were accurate, and that he did not want to fight about them.

27. Also as an example, Bill Gould admitted to me that he thought the process deficient, and the time inadequate, to make a genuinely informed decision about whether to add Judy Codding to the RDI Board of Directors. At the board meeting when that happened, he described the decision to add her as a director as having been "slammed down," but he acquiesced.

28. It is clear to me that Bill Gould effectively has given up trying to do what he thinks is the proper thing to do as an RDI director, and is and since June 2015 has been in "go along, get along" mode. He first failed to cause any proper process to occur regarding my termination, and allowed the ombudsman process (by which then director Tim Storey as the representative of the non-Cotter directors was working with me and my sisters to enable us to work together as professionals, which process was to continue into June 2015) to be aborted. That, together with the forced "retirement" of Tim Storey, apparently so chastened Bill Gould that he became unwilling to take a stand on any matter in which doing so would place him in disagreement with my sisters. For example, he has acknowledged that Margaret lacks the experience and qualifications to hold the

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highly compensated job she now holds at RDI, but Bill Gould did not object to it or the compensation being given to her.

The Executive Committee

29. My sisters first proposed an executive committee as a means to avoid reporting to me or, as a practical matter, to anyone, in the Fall of 2014. I resisted that executive committee construct, which was not implemented at that time. As part of the resolution of our disputes that they attempted to force me to accept in May and June 2015, described above, they included an executive committee construct that would have had them reporting to the executive committee that they, together with Guy Adams who is financially beholden to them, would control. As part of their seizure of control of RDI, in addition to terminating me as President and CEO, they activated and repopulated RDI's Board of Directors executive committee. That executive committee previously had never met and never made a decision. After it was activated and repopulated on June 12, 2015, it was used as a means to exclude me and then director Tim Storey, and to a lesser extent Bill Gould, from functioning as directors of RDI and, in some instances, even having knowledge of matters that were handled by the executive committee that historically and ordinarily were handled by RDI's Board of Directors.

The Supposed CEO Search

30. When RDI filed a Form 8-K with the SEC and issued a press release announcing the termination of me as President and CEO, RDI also announced that it would engage a search firm to conduct the search for a new President and CEO. The board empowered Ellen to select the search firm. Ellen selected Korn Ferry ("KF"). She explained to the RDI Board of Directors the she selected KF because KF offered a proprietary assessment tool, which would be used to assess the three finalists for the position of President and CEO, which assessment she asserted would "de-risk" the search process. The Board agreed. Ellen also told the Board that the three final candidates would be presented to the Board for interviews. The Board agreed. Ellen selected herself, Margaret, Bill Gould and Doug McEachern to be members of the CEO search committee, which the Board accepted without substantive discussion.

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31. After the CEO search committee was put in place and KF engaged, the full board received effectively no information about whether and how the CEO search was proceeding. In the time frame from August through December 2015, Ellen for the CEO search committee provided approximately two reports, the latter of which was in mid-December which, as it turned out, was after the process had been aborted and Ellen selected, at least preliminarily. Tim Storey objected to the full board not being apprised of the status of the CEO search, prior to his forced "retirement."

32. Ultimately, in early January 2016, the CEO search committee presented Ellen as their choice for President and CEO. They did not offer, much less present, three finalists to the Board for interviews. They did not have KF perform its paid for, proprietary assessment of the finalists, or of anyone. Before that Board meeting, at which Ellen was made President and CEO, the material provided to the Board effectively amounted to a memorandum prepared by Craig Tompkins, which memorandum claimed to summarize the reasons for the CEO search committee selecting Ellen. The stated reasons are reasons thay no outside candidate could have met. The stated reasons are reasons that do not approximate, much less match, the criteria that the CEO search committee created and KF memorialized as the criteria to identify candidates and ultimately select a new President and CEO. The stated reasons for selecting Ellen were, as I heard them explained at the January board meeting, effectively distilled into a single consideration, namely, that Ellen and Margaret were controlling shareholders.

33. Although I did not agree with the termination of me as President and CEO, and thought and maintain that it was improper, I had hoped that the CEO search committee would conduct a bona fide search and provide to the board for interview three qualified finalists, as had been agreed. I now know that not only did that not happen, but that the CEO search committee terminated the search, and effectively terminated KF, after meeting with Ellen as a declared candidate for the positions of President and CEO. Independent of the results of that process, which at the time I asserted did not serve the interests of the Company, that the process was manipulated and/or aborted in my view amounts to abdication of the board's responsibilities.

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Actions to Secure Control and Use It to Pay those Who Have It

34. In April 2015, I learned that Ellen and Margaret had exercised options they held personally to acquire RDI class B voting stock and that, with the advice and assistance of Craig Tompkins, a lawyer who was a consultant to the Company, they sought to exercise a supposed option in my father's name to acquire 100,000 shares of RDI Class B voting stock. The factual context for the effort to exercise the supposed 100,000 share option is that a majority of the voting stock controlled by my father was held in the name of his Trust, of which the three of us were trustees. Because of that, Ellen and Margaret could not properly vote that stock without my agreement. The stock that was held—not owned—in my father's estate, which was controlled by Ellen and Margaret as the executors, approximated the amount of RDI class B voting stock held by third parties, including Mark Cuban. The point of the effort to exercise the supposed 100,000 share option was to ensure that Ellen and Margaret as executors would have more class B stock then third parties, including Mark Cuban.

35. There were a host of issues faced by the Company due to the request of Margaret and Ellen to exercise these supposed 100,000 share option. For example, one threshold question the Company would have needed to have answered was whether the option was legally effective. That question was not answered. Another threshold question was whether the supposed 100,000 share option automatically had transferred to my father's trust upon his death. That also was not answered, to my knowledge. Possibly due to such unanswered questions, the compensation committee of the Board did not authorize the exercise of the supposed 100,000 share option in April. Margaret and Ellen therefore delayed to the 2015 annual shareholders meeting. After the executive committee (at Ellen's request) had set the annual shareholders meeting for November (meaning that as a board member I had no say on the subject) and the record date for it in October 2015, Ellen had Kane and Adams as two of three members of the compensation committee authorize the request to exercise the supposed 100,000 share option, which was done in September shortly before a hearing in the Nevada probate case. I understand they did so so that the 100,000 shares supposedly could be registered with the Company in the name of Ellen and Margaret as executors prior to the record date. The Company received no benefit from this, in fact suffered the

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