

IN THE SUPREME COURT OF THE STATE OF NEVADA

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

Appellant,

v.

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

Respondents.

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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 XXIII
JA5559 – JA5808**

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CERTIFICATE OF SERVICE

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

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By: /s/ Gabriela Mercado

EXHIBIT 1

EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA

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

(CAPTION CONTINUED ON NEXT PAGE.)

VIDEOTAPED DEPOSITION OF MYRON STEELE
Philadelphia, Pennsylvania
Wednesday, October 19, 2016

Reported by:
Susan Marie Migatz, RMR, CRR
JOB No. 2463323

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1 then skimming his deposition, I reached the
2 conclusion that I could find insufficient facts to
3 suggest to me there was a reasonable doubt about his
4 independence or his disinterestedness. So his
5 deposition as a result became less important to me.

6 Q. But separate and apart from
7 disinterestedness or a lack of independence, were
8 you or are you offering any opinion as to whether
9 Mr. Gould might have breached a fiduciary duty?

10 A. I am not.

11 Q. All right. And so that -- that's
12 what I wanted to get to next.

13 In terms of your report -- and I
14 first thought it was an oversight, but now from your
15 testimony, I'm beginning to think it was
16 intentional -- on Page 2, if you look at 441, you
17 define "defendants" to be the various individuals
18 stated there, but it doesn't include Mr. Gould.

19 A. It does not.

20 Q. And that was on purpose.

21 A. Yes.

22 Q. All right. And then in terms of each
23 of the opinions that you provided in this report,
24 those opinions only apply to the defendants as you
25 defined them and they do not apply to Mr. Gould.

1 A. That's correct.

2 Q. All right. This could be shorter
3 than I thought.

4 A. I knew I was answering that question
5 correctly.

6 Q. I thought -- I honestly did think it
7 might have been an oversight, but I'm glad you
8 corrected that for me.

9 Now, hang on.

10 And to be clear, and this is what
11 I -- I think you did cover this with Mr. Searcy --
12 that based on your review of the Complaint, based on
13 the various depositions you reviewed, you saw no
14 evidence that supports the conclusion that, in fact,
15 Mr. Gould was not independent and was interested?

16 A. Yeah. And -- and let --

17 Q. Is that true?

18 A. Well, the way you phrased it causes
19 me difficulty in answering it because what I've
20 tried to do both in the report and here today is
21 develop the Delaware two-step analysis.

22 In the first step, if there are no
23 facts sufficiently pleaded to suggest a lack of
24 independence and interest -- in -- interestedness,
25 then you get -- don't go to the next inquiry and

1 reach any decision about whether there was a breach
2 of fiduciary duty because they get the benefit of
3 the business judgment rule.

4 So there's no reason for me to carry
5 the analysis of Mr. Gould any farther than that. So
6 I reached no opinion about whether he breached his
7 fiduciary duty or not. I just say the pleadings
8 don't support the second step.

9 Q. Okay. And so -- and when you say
10 "the pleadings," what you did is you accepted each
11 of the pleadings -- I'm sorry -- you accepted the
12 allegations of the pleadings as true in forming your
13 opinion about Mr. Gould.

14 MR. KRUM: Well, objection;
15 mischaracterizes the testimony.

16 THE WITNESS: I -- I don't accept the
17 pleadings as true or false. It's
18 sufficiency to give rise to whether or not
19 there is a reasonable doubt about an
20 individual's independence or
21 disinterestedness. That's all I say.

22 BY MR. RHOW:

23 Q. Okay. All right. Now, one of the
24 things that was mentioned earlier was this concept
25 of preventing familial disputes. I don't know if

C E R T I F I C A T E

I do hereby certify that I am a Notary Public in good standing; that the aforesaid testimony was taken before me, pursuant to notice, at the time and place indicated; that said deponent was by me duly sworn to tell the truth, the whole truth, and nothing but the truth; that the testimony of said deponent was correctly recorded in machine shorthand by me and thereafter transcribed under my supervision with computer-aided transcription; that the deposition is a true and correct record of the testimony given by the witness; and that I am neither of counsel nor kin to any party in said action, nor interested in the outcome thereof.

WITNESS my hand and official seal this 2nd day of November, 2016.



Susan Marie Migatz
Notary Public

EXHIBIT 2

EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA

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

vs.

Case No.

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

and

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

(CAPTION CONTINUED ON NEXT PAGE.)

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

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

1 Reading -- "of RDI."

2 Does that refresh your recollection that
3 that's, in fact, what you're still asking for?

4 A. It is still in there.

5 Q. But is it your understanding that you're 01:42PM
6 not actually seeking that?

7 A. That's correct.

8 Q. Was that a decision that was made by you
9 and Mr. Tilson that that was not something you were
10 seeking? 01:42PM

11 A. Yes.

12 Q. Describe for me how that decision was made.

13 A. I don't recall exactly. It's a body of
14 thought that's emerged over the course of the last
15 few months. 01:42PM

16 Q. And what was that decision based on,
17 generally? Why did you originally think that was
18 something you wanted but now you think that that's
19 not something you want?

20 A. I guess I'd just say it's not a high 01:42PM
21 priority, that I'm personally comfortable with Ellen
22 as CEO or a third party. It's not -- it's just not
23 a high priority to put Jim, Jr. back. And I'm not
24 opining on whether he's a good CEO or not a good
25 CEO. I don't know. But in the scope of what we're 01:43PM

1 what was going on.

2 Q. Bill Gould, is he independent?

3 A. I believe so.

4 Q. And why do you believe Bill Gould was
5 independent?

02:34PM

6 A. I believe I've -- well, relying on counsel.
7 From what I understand, he also seems to be -- have
8 had, you know, a level head in this mess.

9 Q. Okay. Can you think of specific instances
10 that exhibited what you're describing as a level
11 head?

02:34PM

12 A. At the moment, I can't.

13 Q. Judy Coddington, do you believe she was --
14 she's independent?

15 A. No.

02:34PM

16 Q. Why not?

17 A. Because I believe she was appointed at a
18 time when they couldn't -- because of all -- what's
19 called the noise going on, that it was probably
20 difficult to find the best possible directors. I'm
21 not sure anybody would want to step into this mess.

02:35PM

22 I believed Judy Coddington is a personal
23 friend of either Ellen or Margaret's, and so I don't
24 think she's independent. I'm not saying she's not
25 qualified. I don't think she's independent.

02:35PM

1 cover.

2 Q. Okay. And then, just so we're clear,
3 looking at pages, say, 117 and 118, after each line
4 there's a number which indicates -- I believe on
5 these pages at least, indicates the number of 04:17PM
6 options or shares.

7 A. Yes.

8 Q. Then there's the code name for the company,
9 RDI.

10 A. Yeah. 04:17PM

11 Q. And what's the number --

12 A. That's prob- --

13 Q. -- and the letters that follow?

14 A. That's probably a security ID number. So
15 that's -- that, I'm guessing, is an ID number for 04:17PM
16 the contract, for the specific options contract.

17 Q. And does that include all the way into the
18 letters that end --

19 A. Yeah. And then they -- where you see PCMJ
20 or JMG or Glaser, that would be the account that it 04:17PM
21 goes into.

22 Q. You said at one point that you would not
23 fire Ellen Cotter. Why not?

24 A. I don't have any evidence that she's not a
25 good CEO. I -- in fact, I told -- when the 04:18PM

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

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

8 A. I don't recall, no.

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

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

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

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

21 A. Yes.

22 Q. -- Pico Holdings?

23 A. Yeah.

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

1
2 I, JANICE SCHUTZMAN, Certified Shorthand
3 Reporter of the State of California, do hereby
4 certify:

5 That the foregoing proceedings were taken
6 before me at the time and place herein set forth;
7 that any witnesses in the foregoing proceedings,
8 prior to testifying, were placed under oath; that
9 the testimony of the witness and all objections made
10 by counsel at the time of the examination were
11 recorded stenographically by me, and were thereafter
12 transcribed under my direction and supervision; and
13 that the foregoing pages contain a full, true and
14 accurate record of all proceedings and testimony to
15 the best of my skill and ability.

16 I further certify that I am neither financially
17 interested in the action nor a relative or employee
18 of any attorney or any of the parties.

19 IN WITNESS WHEREOF, I have subscribed my name
20 this 13th day of June, 2016.

21
22 
23

24 JANICE SCHUTZMAN

25 CSR No. 9509

EXHIBIT 3

EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA

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

vs.) Case No.
A-15-719860-B

MARGARET COTTER, ELLEN COTTER,) Case No.
GUY ADAMS, EDWARD KANE, DOUGLAS) P-14-082942-E
McEACHERN, TIMOTHY STOREY, WILLIAM)
GOULD, JUDY CODDING, MICHAEL)
WROTONIAK, and DOES 1 through 100,)
inclusive,)
Defendants.)

and)

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

-----)
(CAPTION CONTINUED ON NEXT PAGE.)

VIDEOTAPED DEPOSITION OF ANDREW SHAPIRO
San Francisco, California
Monday, June 6, 2016
Volume I

Reported by:
CARLA SOARES
CSR No. 5908
Job No. 2324228
Pages 1 - 322

1 I don't have a problem with the Cotter 17:44:14
2 family having a say in a mutual agreement as to who
3 gets appointed to the board. I just think the
4 shareholders who have been abused in the past and
5 have risk of abuse in the future get a say in the 17:44:26
6 matter to protect their interests.

7 BY MR. UYENO:

8 Q You're touching upon what was going to be
9 my next question, Mr. Shapiro, which is, when you're
10 referring to these Cotter family cronies, is your 17:44:37
11 criticism of them that they're not independent?

12 MR. SEARCY: Objection. Lacks foundation.

13 MR. SWANIS: Join.

14 THE WITNESS: Yes, my criticism of them is
15 that while they may be defined as technically 17:44:49
16 independent under stock exchange rules, they don't
17 come anywhere close to being socially independent
18 but for Bill Gould.

19 McEachern potentially; but Ed Kane
20 definitely not; Guy Adams certainly not in terms of 17:45:07
21 all of his financial dependence on all the various
22 Cotter largesse that's been bestowed upon him.

23 Michael Wrotniak, as I may have mentioned
24 in my earlier testimony, is classmates and good
25 friends with Margaret Cotter and the husband of 17:45:25

Page 292

1 I, the undersigned, a Certified Shorthand
2 Reporter of the State of California, do hereby
3 certify:

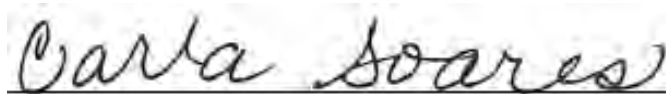
4 That the foregoing proceedings were taken
5 before me at the time and place herein set forth;
6 that any witnesses in the foregoing proceedings,
7 prior to testifying, were administered an oath; that
8 a record of the proceedings was made by me using
9 machine shorthand which was thereafter transcribed
10 under my direction; that the foregoing transcript is
11 a true record of the testimony given.

12 Further, that if the foregoing pertains to
13 the original transcript of a deposition in a Federal
14 Case, before completion of the proceedings, review
15 of the transcript [X] was [] was not requested.

16 I further certify I am neither financially
17 interested in the action nor a relative or employee
18 of any attorney or any party to this action.

19 IN WITNESS WHEREOF, I have this date
20 subscribed my name.

21
22 Dated: 6/17/2016

23 
24

25 CARLA SOARES

CSR No. 5908

EXHIBIT 4

EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA

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

vs.

Case No.

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

and

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

(CAPTION CONTINUED ON NEXT PAGE.)

VIDEOTAPED DEPOSITION OF WHITNEY TILSON
Los Angeles, California
Wednesday, May 25, 2016
Volume I

Reported by:
JANICE SCHUTZMAN, CSR No. 9509
Job No. 2312209
Pages 1 - 217

1 BY MR. SEARCY:

2 Q. All right. Okay. We were talking before
3 the break about the motion for preliminary
4 injunction. I want to come back to a couple of
5 items on that.

02:11PM

6 Again, assuming that the motion for
7 preliminary injunction was successful, I think you
8 indicated that you'd want to get rid of a couple
9 members of the board of directors?

10 A. A majority, I said.

02:11PM

11 Q. Okay. Which members of the board of
12 directors would you seek to take off the board?

13 A. Probably the two sisters, Kane, and Adams
14 would be the first four.

15 Q. Anyone else?

02:11PM

16 A. I don't know. I'd have to consult with
17 other shareholders, but they would be the top of my
18 list.

19 Q. What about Doug McEachern?

20 A. I have less strong feelings about him.

02:12PM

21 Q. How about Bill Gould?

22 A. Same. More positive feelings towards him.

23 Q. Judy Coddington?

24 A. I'd like to meet her and talk to her.

25 I've -- I actually know someone who knows her just

02:12PM

Page 160

1 personally and heard she's a smart and respected
2 person. Not sure what she brings to the table as it
3 relates to RDI's business, but I'd want to give her
4 a fair hearing.

5 Q. Other than the conversation that you had 02:12PM
6 with someone who knows her, have you done anything
7 else to investigate or look into Judy Coddington?

8 A. I read her bio.

9 Q. Anything else?

10 A. No. 02:12PM

11 Q. And when you say that you weren't sure what
12 she brings to the table as it relates to RDI's
13 business, is that because she doesn't have a
14 background in --

15 A. In either real estate or cinema.

16 THE REPORTER: I'm sorry. In?

17 THE WITNESS: I'm sorry. He said "cinema,"
18 question mark.

19 THE REPORTER: Did you say "cinema"?

20 MR. SEARCY: I did.

21 BY MR. SEARCY:

22 Q. And you went ahead and answered my next
23 question to boot.

24 THE WITNESS: Did you get my answer?

25 THE REPORTER: I did not.

1
2 I, JANICE SCHUTZMAN, Certified Shorthand
3 Reporter of the State of California, do hereby
4 certify:

5 That the foregoing proceedings were taken
6 before me at the time and place herein set forth;
7 that any witnesses in the foregoing proceedings,
8 prior to testifying, were placed under oath; that
9 the testimony of the witness and all objections made
10 by counsel at the time of the examination were
11 recorded stenographically by me, and were thereafter
12 transcribed under my direction and supervision; and
13 that the foregoing pages contain a full, true and
14 accurate record of all proceedings and testimony to
15 the best of my skill and ability.

16 I further certify that I am neither financially
17 interested in the action nor a relative or employee
18 of any attorney or any of the parties.

19 IN WITNESS WHEREOF, I have subscribed my name
20 this 31st day of May, 2016.

21
22 
23

24 JANICE SCHUTZMAN

25 CSR No. 9509

EXHIBIT 5

DISTRICT COURT
CLARK COUNTY, NEVADA

JAMES J. COTTER, JR.,)
individually and derivatively on))
behalf of Reading International,))
Inc.,))
))
Plaintiff,) Case No.)
))
vs.) A-15-719860-B)
))
MARGARET COTTER, ELLEN COTTER,))
GUY ADAMS, EDWARD KANE, DOUGLAS))
McEACHERN, WILLIAM GOULD, JUDY))
CODDING, MICHAEL WROTONIAK, and))
DOES 1 through 100, inclusive,) VOLUME IV)
))
Defendants.))

READING INTERNATIONAL, INC., a))
Nevada Corporation;))
))
Nominal Defendant.))

CONFIDENTIAL

DEPOSITION OF JAMES COTTER
LOS ANGELES, CALIFORNIA
TUESDAY, JULY 11, 2017

Job No. 2656312
Reported by:
RICKI Q. MELTON, RPR
CSR No. 9400
PAGES 839 - 1260

CONFIDENTIAL
James Cotter, Vol IV, 7/11/2017

1	EXAMINATION	02:32:42
2		02:32:45
3	BY MR. RHOW:	02:32:45
4	Q Good afternoon. Mr. Cotter, Jr., it's	02:32:46
5	been awhile. Actually, it's been never since I've	02:32:49
6	gotten to question you. My name is Ekwan Rhow. I	02:32:51
7	represent Bill Gould.	02:32:54
8	Let's go back in time, and I know you	02:32:56
9	covered this -- some of this in the morning, but	02:32:58
10	I -- just in terms of a time marker, June 12th,	02:33:01
11	2015, is when there was a vote by the board of	02:33:04
12	Reading on your termination; right?	02:33:08
13	A Correct.	02:33:09
14	Q And you recall that Mr. Gould voted	02:33:09
15	against your termination?	02:33:13
16	A Correct.	02:33:14
17	Q And I take it that you have no issue with	02:33:14
18	the way that Mr. Gould voted that day?	02:33:17
19	A I have no issue with his vote, no.	02:33:22
20	Q You believe his vote was in the best	02:33:24
21	interest of the company; right?	02:33:26
22	A Correct.	02:33:29
23	Q And certainly on that day you do not	02:33:29
24	believe that Mr. Gould was acting under any	02:33:32
25	improper conflict of interest.	02:33:35

Page 1017

1	Q	And I'm focused obviously on the	02:42:04
2		"disinterested" part of that phrase.	02:42:06
3		What does that mean to you, if anything?	02:42:08
4	A	That a director has no interest in the	02:42:10
5		outcome of a transaction that would sway his	02:42:16
6		behavior.	02:42:22
7	Q	And on the day that Mr. Gould voted on	02:42:23
8		your termination, did you believe he was interested	02:42:28
9		or disinterested based on the definition you just	02:42:31
10		provided?	02:42:34
11	A	Well, again, I think that his behavior	02:42:34
12		leading up to my termination suggested to me that	02:42:38
13		there was something else afoot in his behavior for	02:42:45
14		all of the reasons that I had enumerated earlier	02:42:53
15		where he was acting with a purpose to advance Ellen	02:42:57
16		and Margaret's interests. And so am I aware of any	02:43:05
17		financial relationships? No, but I -- I feel as	02:43:12
18		though his behavior suggested that he was acting to	02:43:20
19		advance their personal interests, not the interest	02:43:22
20		of the company.	02:43:25
21	Q	But not his personal financial interests;	02:43:26
22		right?	02:43:26
23	A	Well, I mean to the extent that he curried	02:43:29
24		favor with Ellen and Margaret once he was told that	02:43:34
25		they controlled the voting stock, that would	02:43:38

JA5584

1	continue his service on the board of RDI.	02:43:41
2	Q Other than that --	02:43:48
3	A Other than that --	02:43:48
4	Q -- you're not aware of any other	02:43:50
5	financial -- let me -- let me get the question out.	02:43:50
6	MR. KRUM: Let him finish.	02:43:51
7	BY MR. RHOW:	02:43:53
8	Q Other than what you just described, you're	02:43:54
9	not aware of any other financial interests that	02:43:55
10	Mr. Gould had with respect to that vote or any	02:43:57
11	other vote; fair?	02:44:00
12	A Correct.	02:44:01
13	MR. KRUM: Objection. Foundation.	02:44:01
14	BY MR. RHOW:	02:44:03
15	Q All right. Now, this may sound obvious to	02:44:03
16	you, but if he had voted -- strike that.	02:44:19
17	Given that he voted against your	02:44:24
18	termination, do you think he was favoring your	02:44:26
19	interest?	02:44:28
20	MR. KRUM: Objection. Foundation.	02:44:32
21	THE WITNESS: If -- if he voted against my	02:44:33
22	termination, was he favoring my interest?	02:44:35
23	BY MR. RHOW:	02:44:38
24	Q Yeah.	02:44:39
25	A Well, I mean -- I mean, I was the	02:44:39

JA5585

CONFIDENTIAL
James Cotter, Vol IV, 7/11/2017

1 believes it's in the best interest of the company; 03:10:20
2 true? 03:10:22
3 A It is not inappropriate, did you say? 03:10:22
4 Q It is -- you know what? I'm saying these 03:10:24
5 double negatives. 03:10:26
6 It's okay for a board member to consider 03:10:27
7 board harmony if he or she believes it's in the 03:10:31
8 best interest of the company -- 03:10:34
9 MR. KRUM: Same objection. 03:10:35
10 BY MR. RHOW: 03:10:36
11 Q -- right? 03:10:36
12 MR. KRUM: Same objection. 03:10:36
13 THE WITNESS: As one factor of -- of many, 03:10:37
14 it might not be inappropriate. 03:10:42
15 BY MR. RHOW: 03:10:44
16 Q Good. Let's stop. I'll take that. 03:10:44
17 All right. My -- my instinct tells me to 03:10:47
18 not ask this, but I'm going to ask this. 03:11:02
19 MR. KRUM: Go on. Follow your instinct. 03:11:05
20 BY MR. RHOW: 03:11:06
21 Q It is possible that prove -- two board 03:11:07
22 members will vote -- will vote differently on an 03:11:09
23 issue while both fulfilling their fiduciary duties; 03:11:10
24 fair? 03:11:14
25 MR. KRUM: Same objection. 03:11:14

Page 1055

1 STATE OF CALIFORNIA)
2 COUNTY OF LOS ANGELES)
3

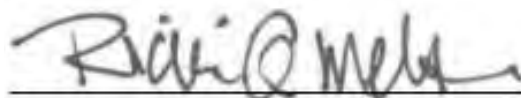
4 I, RICKI Q. MELTON, CSR No. 9400, RPR No. 45429,
do hereby certify:
5

6 That the foregoing deposition testimony of
JAMES COTTER, JR., was taken before me at the time
and place therein set forth, at which time the
7 witness was placed under oath and was sworn by me
to tell the truth, the whole truth, and nothing but
8 the truth;

9 That the testimony of the witness and all objections
made by counsel at the time of the examination were
10 recorded stenographically by me and were thereafter
transcribed under my direction and supervision, and
11 that the foregoing pages contain a full, true, and
accurate record of all proceedings and testimony to
12 the best of my skill and ability.

13 I further certify that I am neither counsel for
any party to said action nor am I related to any
14 party to said action, nor am I in any way
interested in the outcome thereof.
15
16

17 IN WITNESS WHEREOF, I have subscribed my name
this 17th day of July, 2017.
18
19
20

21 
22
23

24 RICKI Q. MELTON, C.S.R. No. 9400
25

EXHIBIT 6

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BIRD, MARELLA, BOXER, WOLPERT,
NESSIM, DROOKS, LINCENBERG & RHOW
1875 Century Park East, 23rd Floor
Los Angeles, CA 90067-2561

Attorneys for Defendants William Gould and
Timothy Storey

DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiff,

v.

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.

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

Coordinated with:

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

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

Jointly Administered

**DR. ALFRED E. OSBORNE, JR.'S
REBUTTAL TO THE EXPERT REPORT
OF MYRON STEELE AND DR. ALFRED
E. OSBORNE, JR.'S REBUTTAL TO
THE EXPERT REPORT OF RICHARD
SPITZ**

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

Plaintiffs,

vs.

MARGARET COTTER, ELLEN COTTER,
GUY ADAMS, EDWARDS KANE,
DOUGLAS McEACHERN, WILLIAM
GOULD, JUDY CODDING, MICHAEL
WROTONIAK, CRAIG TOMPKINS, AND
DOES 1 THROUGH 100, INCLUSIVE,

Defendants.

and


READING INTERNATIONAL, INC., a
Nevada corporation,

Nominal Defendant.

Dr. Alfred E. Osborne, Jr.'s Rebuttal to the Expert Report of Myron Steele is attached
hereto as **Exhibit A**. Dr. Alfred E. Osborne, Jr.'s Rebuttal to the Expert Report of Richard Spitz
is attached hereto as **Exhibit B**.

DATED this 29th day of September, 2016.

MAUPIN, COX & LeGOY

By  Donald A. Lattin, Esq., #693
CAROLYN K. RENNER, ESQ. #9164
Attorneys for Defendants
William Gould and Timothy Storey

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CERTIFICATE OF SERVICE

I hereby certify that on this 29th day of September, 2016, I caused a true and correct copy of the forgoing 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.

Kaitlin Arnold
Employee

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EXHIBIT A

**DR. ALFRED E. OSBORNE, JR.'S REBUTTAL TO
THE EXPERT REPORT OF MYRON STEELE**

DR. ALFRED E. OSBORNE, JR.'S REBUTTAL TO THE EXPERT REPORT OF MYRON STEELE

I, ALFRED E. OSBORNE, JR., Ph.D., declare as follows:

I. ASSIGNMENT AND QUALIFICATIONS

1. Justice Myron Steele was retained by counsel for the plaintiff James J. Cotter, Jr. ("JJC"), to provide his expert opinion on the conduct of the Director Defendants as alleged in the Second Amended Complaint ("SAC") in the above-referenced matter. I have been jointly retained by counsel for William Gould ("WDG") and counsel for Ellen Cotter ("EC"), Margaret Cotter ("MC"), Ed Kane ("EK"), Douglas McEachern ("DM"), Judy Coddington ("Coddington"), and Michael Wrotniak ("MW") for the purpose of responding to Justice Myron Steele's opinion as it pertains to: (1) the conduct of the Defendants in creating and acting through the Executive Committee comprised of EC, MC, EK, and Guy Adams ("GA"); (3) the conduct of the Defendants regarding the process used to appoint EC as President and CEO; (4) the conduct of Defendants regarding the process to appoint MC as Executive Vice President-Real Estate Management and Development-NYC; (5) the award of revised compensation to EC, MC, and GA; and (6) the response of the Defendants to an offer from a third party to purchase all of the outstanding shares of the Company's stock.
2. My qualifications are set forth in my August 25, 2016 Expert Report in this matter. In formulating my opinions, I have relied on my knowledge, prior experience, and formal training in economics, finance, and business management. As a member of several boards of directors for more than

30 years, I have developed considerable experience in the hiring of CEOs and the use of executive search firms in that process. My board service is broad and extensive, so I am knowledgeable about the use of board committees, compensation of directors and executives, appointments of executives, and purchase offers.

3. In performing my analysis, I have examined a variety of materials, including legal pleadings, RDI's Bylaws and Articles of Incorporation, RDI's Board or Committee Minutes, and the Agenda and supporting materials established for the various meetings, RDI's filings with the SEC, deposition exhibits, and deposition testimony. In forming my opinions, I considered the materials attached as Exhibit 3 to my August 25, 2016 Report. Attached as Exhibit A is a list of additional materials I relied on.

II. SUMMARY OF OPINIONS

4. Justice Myron Steele (hereafter "Justice Steele" or "Steele") is a former Chief Justice of the Delaware Supreme Court. He offers no opinions as to the custom and practice regarding the various challenged corporate actions. Instead, his expert "opinion" is merely a legal argument about what he thinks a Delaware court would hold as a legal matter if (and only if) a fact-finder made various factual findings. His conditional assumptions about what a fact-finder may do are a qualifying precedent to each legal opinion rendered. Steele notes that IF the Defendants were not disinterested and independent, and IF entire fairness applies, and IF the Defendants acquiesced to the wishes of the controlling stockholders, then

the Defendants breached their duty of loyalty. Steele's final conclusion relies on stringing together several assumptions that, when taken together, ignore the actual conduct and processes followed by the Board of Directors and its delegated committees in real time, all of which, based on my experience on boards and educating and working with directors and officers, and my knowledge of corporate governance, were appropriate and consistent with good governance practices.

5. From the outset, I note that I am not a lawyer, and I am not opining on the law or what a finder of fact would find or not find. Instead, I will focus on rebutting the assumptions that Judge Steele relies upon based on my expert knowledge of the custom and best practice of boards of directors and board members.
6. The evidence does not support Justice Steele's conditional opinion that the Defendants all put their individual economic interests and/or friendships ahead of all shareholders and the corporation. As discussed below in detail, when taking into account the context and dynamics of the RDI Boardroom and taking a pragmatic approach towards relationships in the Boardroom, it is my opinion (based on my extensive knowledge of boards of directors) that decisions were made by a majority of independent directors in each of the above-listed transactions examined by Justice Steele.
7. Justice Steele does not discuss and does not opine on whether any of the directors engaged in intentional misconduct with respect to: (1) the

third-party offer, (2) the repopulation of the executive committee, or (3) the payments to EC, MC, and GA. As to Justice Steele's suggestion that a finder of fact could find that the CEO Search Committee's ("CEOSC") actions constituted intentional misconduct and a finder of fact could find that directors' actions in appointing MC as EVP-RED-NYC constituted intentional misconduct (Steele at 31), I find that opinion speculative and reaching. In any event, as discussed in detail below, because my analysis of the events and the specific facts considered in the decision-making processes established by the Board of Directors and its standing and special committees finds that the CEO search and the appointment of MC were appropriate, and consistent with good governance practice and the obligations of an independent director, there was no misconduct and therefore no intentional misconduct.

8. Stated simply, Justice Steele's assumptions are incorrect, and his conclusions vague and speculative. In particular, Justice Steele's analyses of: (1) the CEO search process, (2) the appointment of EC and MC to their executive positions, (3) the reorganization of the Executive Committee, and (4) the Board's response to the unsolicited offer are flawed and simply incorrect, when considered in their total context. Overall, I find that the processes used by the Board with respect to each of the specific challenged actions were fair, appropriate, and consistent with good governance practices. In particular:

- a. The conduct of the CEOSC was consistent with good governance practice in the search for a CEO, the selection of EC by the CEOSC was reasonable and appropriate in the judgement of an independent and disinterested CEOSC, and the CEO search was conducted to the satisfaction of the Board, which was fully informed as to the activities of the CEOSC by memorandum and presentation;
- b. The appointment of MC to a senior position was appropriate and consistent with good governance practice given the recommendation by EC, the CEO of the Company, because the Board should support the CEO in her choice of team;
- c. The Board's approval of the Executive Committee was appropriate and consistent with good governance practice, because such committees are a useful way to streamline decision making and, for this reason, many boards use executive committees. The conduct of the Executive Committee to date in apprising the Board of all of its actions and the types of actions it has taken does not suggest that it is being used to minimize the involvement of any directors;
- d. The Board appropriately relied on its independent committees and experts to approve compensation to EC and MC and payments to MC related to the termination of her Consulting Agreement with the Company, and the process used by these committees in determining the fact and amount of such payments and

compensation was fair and appropriate, as was the process used to determine the one-time payment to Adams; and

- e. The Board's decision to reject the conditional, unsolicited third-party offer without first incurring the expense of hiring outside experts to value the Company was reasonable, consistent with the duties the Directors owed to the Company and its shareholders, and consistent with good corporate governance practice, given that, following a detailed presentation by the CEO (which summarized earlier presentations by the CEO and CFO of the Company's strategic direction and current financials), among other reasons, the offer appeared to be grossly undervalued. There was no obligation in this situation to do any more.

- 9. In sum, Justice Steele's "IFs" and "COULDS" are all incorrect assumptions given the facts in this case and the standards of good governance practice. In particular, I find that the RDI Board is independent and disinterested because directors EK, DM, WDG, MW, and Coddington as individuals are independent and disinterested. Simply being a friend or a friend of a relative (or a relative of a friend) to JJC, MC, and EC does not *a priori* make that individual not independent. As to each of the individual challenged actions, I find the members of the Board of Directors acted reasonably and consistent with appropriate governance practice at a Controlled Company, and that the processes employed by the Board

and each of the relevant committees with respect to each challenged action were fair.

III. DIRECTOR INDEPENDENCE, GENERALLY

10. **Ed Kane**: Justice Steele opines that “*if* a finder-of-fact finds that [Ed Kane] is beholden to EC and MC as a result of their relationship, he would not be considered independent of EC and MC under Delaware law.” Steele Rep. at 25 (emphasis added). Justice Steele bases that opinion on his claim that EK is very close to EC and MC, who refer to him as “Uncle Ed.”
11. In my opinion, EK is independent for each of the challenged actions enumerated above. EK’s long-standing relationship with the Cotter siblings is open and transparent to all of the other members of the Board. His primary relationship was his friendship with Cotter, Sr. Kane Dep. at p. 29. His relationship with all three Cotter children is substantially similar—he has known them all since birth, and they have all called him “Uncle Ed” at one time or another. Kane Dep. at pp. 36-37. EK’s non-business relationship with the Cotter siblings, which appears in recent years to consist of occasional dinners, does not seem any more significant than many relationships between directors or between directors and officers that I have observed on boards that I have served on or advised over the years, and many of those directors were considered independent for decision-making purposes.

12. My opinion that the relationship between EK and the Cotter siblings does not interfere with his independent decision-making is also based on the fact that EK had a long-standing relationship with all three Cotters, and JJC on the one hand, and EC and MC on the other hand, advocated for different positions for all of the challenged actions. As such for each of the challenged transactions, a relationship with the Cotters would not necessarily influence EK in one direction as opposed to the other. I do not see any evidence that EK sided only with EC and MC. I note that EK supported appointing JJC as CEO in the first instance, and supported many of JJC's positions during his tenure as CEO. See, for example, JJC Dep. at 178-180-183; 350-53; 369-370; Dep. Exh. 187. And EK has said that as a "director of this company ... I do what I think is in the best interest of the shareholders and the employees of the company. I don't mix my personal feelings for [the Cotter siblings] with my decisions." Kane Dep. at 37-38.
13. In addition, I see potential benefits to shareholders from EK participating in voting on the challenged actions. Because EK was friends with Cotter, Sr. he knew all three Cotter siblings well, and may therefore be a better judge of the temperament and character for leadership and fair dealing of JJC, EC, and MC.
14. **Guy Adams**: Justice Steele states that "Adams derives a substantial portion of his income from entities that are currently controlled by EC and MC as co-executors of JJC, Sr.'s estate." Steele Rep. at 30. Based on

this alleged fact, Justice Steele opines that "*if* a finder of fact finds that [Adams] is beholden to EC and MC, then he was not independent at the time the challenged actions were made." Steele Rep. at 26 (emphasis added). None of the decisions at issue that involved GA's vote expressly benefitted him. While I have reviewed testimony indicating that GA received income from Cotter-controlled entities, I have not seen any evidence that EC or MC—either explicitly or implicitly—threatened GA's income from any source if he did not vote to their liking. However, based on my opinion on the independence of the other directors (discussed below), I do not need to reach an opinion on GA's independence in order to determine that the relevant decisions were made by an independent and disinterested majority on the Board and the committees. Therefore, I have not, as part of my work on this matter, formed an expert opinion as to GA's independence.

15. **Other Directors:** Justice Steele does not opine on the other directors' independence generally, so I will discuss the independence of WDG, DM, Coddington, and MW below in the specific context of the CEO search, because Justice Steele appears to assert that they may not be independent with respect to only that particular action. For the reasons, discussed below, however, I find all four directors are generally independent with respect to the challenged actions enumerated above.

IV. THE CEO SEARCH PROCESS

16. Justice Steele concedes that there is no Delaware case law that governs the fiduciary duties and standards applicable to the appointment of officers. Steele Rep. at p. 29. Despite this fact, Justice Steele's "opinions" regarding the CEO search consist entirely of what a Delaware Court would find if a fact-finder made various factual findings. As discussed below, Justice Steele's hypotheticals are all invalid because they are inconsistent with the facts, the basic tenets of good corporate governance, and the practicalities of CEO searches.
17. With respect to Justice Steele's specific "opinions" regarding the CEO search process, Justice Steele **first** concludes that if a finder of fact found that a majority of the CEOSC, in recommending that EC be appointed as CEO, or the Board itself, in appointing EC as CEO, was not disinterested and independent, then entire fairness would apply. Steele Report at p. 30. Steele appears to contend that a fact-finder may find that the CEOSC or Board was not interested or independent because of the relationship between EC and certain members of the Board and the fact that EC and MC had demonstrated in the past that as controlling stockholders, they would remove members of the Board if they did not approve of their actions. Steele Report at p. 30. This assertion is not supportable. Both a majority of the CEOSC that voted to recommend EC and a majority of the Board that voted to appoint EC as CEO were disinterested and independent with respect to appointing EC as CEO.

- a. **Independence and Disinterest of CEOSC.** At the time that the CEOSC recommended that EC be appointed as CEO, the CEOSC was comprised of MC, DM, and WDG. Dep. Exh. 416. MC recused herself from the vote and both DM and WDG voted to recommend EC as CEO. Dep. Exh. 313. In my opinion, both DM and WDG are disinterested. Neither DM nor WDG personally received any benefit or suffered any detriment, let alone one of a subjective material significance, as a result of the CEO search. And Steele does not appear to contend otherwise. Steele Rep. at 23-24. Further, in my opinion, both DM and WDG are also independent. Both WDG and DM are independent under NASDAQ rules. NASDAQ Listing Rule 5605(a)(2). Neither DM nor WDG had any relationship with EC apart from serving on the RDI Board with her.
- i. Steele contends that a fact-finder could rely on “the fact that EC and MC had demonstrated in the past that as controlling stockholders they would remove members of the Board if they did not approve of their actions.” This is wrong both as a principle of corporate governance and as a factual matter. As a factual matter, Steele relies exclusively on testimony from GA. Steele Rep. at p. 30 (citing Adams at p. 274). But the cited GA testimony does not say that EC and MC had in the past removed members of the Board if they did not

approve of their actions. Rather, GA testified that the three people on the nominating committee were unanimous in a decision not to re-nominate Director Timothy Storey, and that, while the controlling stockholders were not going to support Storey's re-nomination and vote for him, each person had their own reasons not to support Storey's nomination. Adams Dep. at 272-277. Nowhere does GA state that the controlling shareholders did not support Storey because they disagreed with his prior votes. In any event, as a matter of corporate governance, by definition a controlling shareholder can always decide not to vote for a director, if the shareholder does not like the director's action. If knowledge of this possibility caused a director to not be independent, it would mean that a controlled company could not have an independent board, and that is certainly not the case.

- ii. But even more importantly, Steele does not explain why WDG—a name partner in a law firm—or DM—a former Deloitte & Touche partner—would abdicate their fiduciary duties to the Company merely to ensure that they stayed on the Board. That is especially true, where, as here, 2015 director payments were only approximately \$85,000,

including a special one-time \$25,000 payment.¹ RDI 2015 Proxy Statement. And there is no evidence that such an amount is material to WDG's or DM's net worth. Indeed, the Plaintiff himself does not believe that WDG and DM's independence is compromised. He has conceded that both WDG and DM are independent. JJC Dep. at 79-80, 84-86.

iii. In addition, Justice Steele recognizes that a director is independent if his decision is based on the merits of the matter at hand, rather than extraneous influences. As discussed in detail below, WDG and DM both made the decision to recommend EC because they thought that she was the best choice for CEO, based on attributes that are typically taken into account in choosing a chief executive. In short, based on my extensive experience with boards of directors, by every measure, I conclude that WDG and DM were independent. Because both WDG and DM were independent and disinterested, the decision to recommend EC was made by a majority of independent and disinterested members of the CEOSC.

b. **Disinterested and Independent Board of Directors:** At the time that the Board voted to appoint EC as permanent CEO, the Board of Directors was comprised of JJC, EC, MC, WDG, DM, EK,

¹ WDG made \$85,000 in director compensation in 2015; DM made \$81,000. 2015 RDI Proxy Statement.

Codding, and MW. The Board voted 7-1 to appoint EC permanent CEO, with EC not participating and JJC voting against.

JCOTTER008369-8372. As discussed above, EK, WDG, and DM were independent. Codding is also independent. While she is friends with Mary Cotter, the Cotter siblings' mother, she does not appear to have a close relationship with any of the Cotter siblings.

EC Dep. at 307-308. Similarly, MW is married to a friend of MC.

MW does not appear to have any significant independent relationship with MC. They see each other about once per year, and he contacts her if he wants theater tickets. MC at 320-321.

Again, this minimal type of relationship does not cause any concern about director independence. There is no reason to believe that either Codding or MW would be so interested in maintaining their recent Board positions that they would abandon their fiduciary duties and do what the controlling shareholder wanted. This is especially true because there is no evidence that the director fees were significant in light of Codding or MW's overall net worth. With EK, WDG, DM, Codding, and MW all independent, that means that EC was appointed by an independent and disinterested majority.

18. **Second**, Justice Steele concludes that “*if* a finder of fact finds that EC was not appointed by an independent and disinterested majority, a Delaware court would likely find that the process used to appoint EC as CEO was not entirely fair.” Steele Rep. at 30 (emphasis added). I

disagree. As discussed above, based on my extensive experience serving on boards and in training directors, officers, and future directors and officers on how to avoid conflicts, it is my opinion that EC was appointed by an independent and disinterested majority, and as a result, under Justice Steele's articulation of Delaware law, entire fairness is not the correct standard. But even if entire fairness did apply, based on my experience with executive searches, for the reasons discussed below, I conclude that the process used to appoint EC as CEO was fair and consistent with good governance practices.

- a. Attached as Exhibit B is a timeline for the CEO search process. This timeline diagrams the key activities and communications that occurred during the process, which lasted some six months. In my opinion, the CEOSC and the RDI Board conducted a transparent and even-handed process. I discussed this process extensively in August 25, 2016 Declaration, and I incorporate paragraphs 45-48 here.
- b. As noted in the search process timeline, the CEOSC received assistance from Korn Ferry International ("KFI") an executive search firm retained in August 2015. The CEOSC worked with KFI in September and October to develop position specifications based on their initial views of the desired experience areas. After KFI recommended candidates for interviews, but before the interviews began, EC resigned from the CEOSC. The CEOSC then

conducted most of the interviews in November. The CEOSC interviewed EC and another candidate in December. After EC's resignation, the CEOSC was comprised of MC, DM, and WDG. With DM and WDG both independent and disinterested, the CEOSC had a majority of independent and disinterested directors to consider the final five candidates, and at the same time to consider EC's candidacy relative to the capabilities of all finalists in context of RDI's total needs. WDG assumed the leadership of the CEOSC and led the search to its conclusion. After interviewing the KFI-recommended candidates and EC, and discussing the pluses and minuses of the EC candidacy and her qualifications (both objective and subjective skills), the majority of disinterested and independent directors on the CEOSC (WDG and DM), voted 2-0 to recommend EC to the Board of Directors. As WDG explained:

[A]fter listening to Ellen, thinking about it, and looking at the prior candidates, even though they were all good, that she probably made the most sense for where we were at this time. Because she had a great reputation, the people liked her at the company ... we all thought highly of her, every one of us. She is intelligent. She has the kind of personality that could help get through some of these difficulties dealing with other people. And she had theatrical experience. She was willing to bring in real estate help. And that this was a very tough time to bring in somebody from the outside given the fact that nobody knew who would actually control this company a year down the line. And for all those reasons, you know, it just became apparent to me -- I just said, 'This makes the most sense for the Company.'

Gould Dep. at 368.

- c. In my experience, the reasons stated by WDG recommending EC over the other candidates that were interviewed are acceptable, legitimate reasons to prefer a candidate and are consistent with good corporate governance practices. Even if an outside candidate has superior technical skills, where an inside candidate knows the culture, the people, a deep understanding of corporate history, already commands respect from employees, officers, and directors of the Company, will support continuity, and is aligned with the controlling shareholder and shareholder interests generally, the selection of an inside candidate is a reasonable business decision. That is because such an inside candidate is most likely able to mitigate the risk inherent in a company with significant controlling shareholders embroiled in litigation. Any gap in technical skills (such as EC's alleged lack of real estate development experience) can be readily dealt with by hiring an employee or consultant with that skill set to advise the CEO. In my opinion, hiring an outsider into the uncertain situation at RDI represents a larger risk to shareholder value.
- d. The full Board, which, as discussed above is composed of a majority of independent and disinterested directors, provided oversight to the search process. After a discussion that all of the Directors participated in, the Board accepted the recommendation of its independent and disinterested committee and appointed EC

CEO, voting 7-1 with JJC casting the sole negative vote (and EC not participating in the voting).

e. I conclude that the CEOSC and the RDI Board conducted a transparent and even-handed process. While different candidates may display differing capabilities relative to the Position Specification and the total demands for the job, including both hard and soft skills, a subjective element which has to be taken into account, is the fit with the existing RDI culture and experience with the key elements of the business. Based on my experience and my review of the deposition testimony, deposition exhibits, and other documents, I believe that the decision of the CEOSC is reasonable and prudent, and that the CEOSC and the RDI Board fully complied with all of their obligations as directors to the Company and the shareholders.

19. **Third**, Justice Steele opines that a finder of fact could find that EC and MC intentionally manipulated the search for a new CEO in order to ensure that EC be appointed to the position. Steele Rep. at 31. Based on my experience with CEO searches, it is my opinion that the search was not manipulated in order to ensure that EC was appointed. Both EC and MC, along with WDG and DM, were interviewed by KFI regarding their views on the desired qualifications and characteristics for the CEO. EC, MC, WDG, and DM all initially emphasized that they were looking for a CEO with experience in real estate development. Mayes Dep. at 15:25-16:3;

71:10-16. As a result, the Position Specification emphasized real estate development experience. Dep. Ex. 308 (noting that specific qualifications will include “minimum of 20 years of relevant experience with the real estate sector” and a “proven track record in the full cycle management of development investments from planning and entitlement through infrastructure development, land sales, joint ventures and vertical construction with a proven record of value creation.”). It is my understanding from reviewing documents and deposition testimony that, while EC had some real estate experience, she did not have the level of experience described in the Position Specification. Mayes Dep. at 68. If EC and MC had intentionally manipulated the search for a new CEO to ensure that EC was appointed, as Steele suggests, they would have helped to develop an original position specification that closely matched EC’s qualifications. But EC and MC did not do so.

20. Nor can I conclude that the change in direction to put an increased emphasis on operating the company was part of an effort by EC and MC to intentionally manipulate the search. After interviewing candidates with real estate development experience, the CEO SC realized that those skills may have been overemphasized. Mayes Dep. at 15-16. Gould Dep. at 321-322. The members of the CEO SC were not the only directors who believed that real estate development experience had been overemphasized. JJC also opined that the original Position Specification was too focused on real estate development experience, and JJC was

clearly not trying to ensure that EC was appointed CEO.

JCOTTER016893-95 (“This is not a CEO specification. That is a specification for a glorified director of real estate position.”) The fact that the CEOSC changed the position requirements does not indicate that the search was manipulated. To the contrary, in my experience, it is not unusual that what a company is looking for would change during the process of the search. Mr. Mayes’ testimony on this point is consistent with my experience that these changes can occur for any number of reasons, including changes in the nature of the business or a realization that the focus was slightly off during the course of trying to fill the role. Mayes Dep. at 52-53.

21. Mr. Steele also opines that a fact-finder could conclude that “through their control of the Board, [EC and MC] prevented the other directors from making an informed independent decision.” Based on my experiences serving on boards that have conducted CEO searches and training directors on how to responsibly carry out their duties, it is my opinion that both WDG and DM made an informed, independent decision. Both WDG and DM behaved in a thoughtful and effective manner. They were fully engaged, careful, attentive, informed, deliberate, loyal, and obedient in the exercise of their responsibilities in the interview sessions with potential candidates, in the CEOSC deliberations, and in recommending EC as CEO. Indeed, as KFI’s Robert Mayes testified, he had sophisticated conversations with both WDG and DM. Mayes Dep. at 73:4-14. WDG

and DM met with several high-quality external candidates, then carefully thought through what the Company needed at this point in time and concluded that EC was a better choice than any external candidate. Gould Dep. at 368; McEachern Dep. at 458:23-460:4; 472:5-12. The decision of the CEO SC, and in turn of the Board in accepting the recommendation of the CEO SC, was reasonable and prudent, and reflected informed, independent decision-making.

22. Justice Steele also opines that a finder of fact could find that “these actions” constituted “intentional misconduct, given the CEO Search Committee’s affirmative decision not to have Korn Ferry perform any of its proprietary assessments and to revise the qualifications necessary for the CEO.” Justice Steele does not specify which or whose actions a finder of fact could find constituted intentional misconduct. But as I previously explained, based on my experience, I find that the CEO search was conducted adequately and with due care, and that both WDG and DM’s actions on the CEO SC were consistent with good corporate governance and their obligations as independent directors, and, as such, there was no misconduct, let alone intentional misconduct.
 - a. I have already discussed the fact that the revised qualifications are not unusual for CEO searches and that it is a practical reality of a search that directors who are trying to make the best decision for the Company will continue to revise and update position specifications as the need becomes apparent.

b. Similarly, there is nothing wrong with the CEO SC's decision not to have KFI perform any of its proprietary assessments. In my experience with CEO searches, the plan established by the executive search firm does not always proceed as planned, nor does it go to some expected conclusion. The CEO SC can alter the agreed plan with KFI as it sees fit, in deciding what activities to pursue in carrying out its responsibilities. In this instance the CEO SC supported aspects of the initial KFI plan, then changed some proposed activities later in the process, but still interviewed all of the recommended candidates, plus EC who was given very careful scrutiny. In the end, the CEO SC decided to recommend EC to the Board, which meant that it did not require a proprietary assessment, given the CEO SC's and the Board's long history with EC and the fact that she had already been acting as CEO for six months. Even the KFI witness conceded that the assessment would not be useful as an evaluation tool for EC. Mayes Dep. at 67.²

In sum, I conclude that the CEO search process, as conducted by the CEO SC composed of a majority of independent and disinterested directors, was even-handed and entirely fair. The Board reviewed and concurred in their recommendation by voting to elect EC CEO.

² By not proceeding with the assessment, the CEO SC saved RDI \$35,000. Dep. Exh. 373; RDI0058287-58297.

JCOTTER008369-8372 (referring to Dep. Exh. 313). The Steele IFs string together a scenario that is speculative and simply wrong.

V. THE APPOINTMENT OF MC TO AN EXECUTIVE POSITION

23. In March 2016, MC was appointed EVP-RED-NYC. RDI0054790-54807; March 15, 2016 RDI Form 8-K. Justice Steele opines that “a finder of fact may conclude that the Board intentionally selected a less qualified candidate in order to acquiesce to the wishes of the controlling stockholders, notwithstanding the fact that the Board knew that she was less than qualified.” Steele Rep. at 30. As an initial matter, once again, Justice Steele is not opining that the Board did intentionally select a less-qualified candidate. Rather he is merely offering an opinion that a ***fact-finder may*** find that the Board intentionally selected a less-qualified candidate. As discussed below, based on my experiences on Boards and in teaching corporate governance, I find that the Board acted appropriately and consistent with good governance practices in approving EC’s recommendation of MC for the role of EVP-RED-NYC. Because the Board acted reasonably and appropriately, there is no basis to conclude that they intentionally selected a less qualified candidate.
24. As CEO, EC appointed MC to an executive vice president role with the advice and consent of the Board of Directors (which, as discussed above, is composed of a majority of disinterested and independent directors). RDI0054790-54807. The Board voted 6-0 in favor of the appointment, with EC and MC not participating, and JJC abstaining. *Id.* The

appointment of MC to a senior position is entirely within EC's prerogative as CEO. EC is entitled to choose the employees that she believes will allow her to best carry out her work. This is her choice to make, and all Board members should support her decision and endeavor to help her succeed for the company and all of its shareholders. Then, as events unfold, the Board, in its oversight function, has the responsibility to hold EC accountable for the performance of the company and its key units.

25. Ignoring this division of responsibility between CEO and Board with respect to the appointment of senior executives, Steele's opinion appears to rest exclusively on his contention that "[b]efore JJC's removal from the Board, the majority of the Board found MC to be unqualified to serve in that role." Steele Rep. at 31. I note that Steele does not cite any documents or testimony for this assertion whatsoever. And my understanding is to the contrary.

- a. GA testified that he hadn't initially formed an opinion as to whether or not MC was qualified to serve as head of NY Real Estate but over time, after viewing her success with landmarking and her deep knowledge of the properties themselves, was convinced that she was qualified. Adams Dep. at 150-51; 178-79.
- b. Similarly, EK testified that by the time of JJC's termination, he was persuaded by MC's handling of the landmarking process, her handling of Stomp, and the pre-development of the New York

properties that MC was qualified to lead the New York real estate development. Kane Dep. at 57; 72-3.

- c. EC testified that she had confidence in MC's ability to lead New York real estate development. EC Dep. at 55-60.
- d. There is no evidence that DM ever thought that MC was unqualified; he did testify that he was impressed with her work in the landmark process and believed MC created an enormous amount of value. McEachern Dep. at 262-3.
- e. Both Coddling and MW, who voted in favor of MC's appointment, were not on the Board at the time JJC was terminated, and I am not aware of any evidence that either Coddling or MW ever thought MC was not qualified for the role.
- f. While WDG did testify that, at one point, he did not view MC as being qualified to lead a major real estate project (Gould Dep at p. 64), it was before MC demonstrated her competence through her handling of the landmarking process, the Stomp litigation, and her work on the pre-development phase of the NY project. I find it reasonable that a director would change his mind about someone's abilities over time, especially where, as here, MC hired a consultant, Michael Buckley, who does have significant real estate experience.

26. Based on all of the above, Justice Steele's unsupported factual assertion appears to be erroneous.

27. While I have no opinion on whether MC was in fact qualified to be EVP-RED-NYC, I find that taking into account: (1) MC's team that she would work with; (2) her willingness to hire people to help her with areas where she was less experienced; and (3) MC's other highly developed skills, including project specific knowledge, was appropriate and it was an adequate basis on which a director could approve the CEO's choice of senior team. I find that the Board of Directors acted responsibly and consistent with good corporate governance and complied with their obligations as independent directors when they approved EC's choice of MC for a senior position in New York real estate.

VI. COMPENSATION OF EC AND GA; PAYMENT TO MC

28. Justice Steele also addresses what he deems are "substantial bonus" payments to MC and GA, and EC's "revis[ed] compensation." Steele Rep. at 31. Steele opines that "[w]hile an independent compensation committee can be used to award salaries and bonuses to officers, *if* a finder of fact determines that the directors who decided EC's, MC's, and Adams' compensation and bonuses were not independent, including by the directors, other than EC and MC acquiescing to EC and MC's wishes as controlling stockholders, entire fairness will apply." Steele Rep. at 32 (emphasis added). As an initial matter, I disagree that the directors who decided these compensation and other payments are not independent.
29. All three payments were approved in March 2016. March 2016 Form 8-K.

30. The Compensation Committee recommended EC's executive compensation. RDI0054790-54807. At the time, the Compensation Committee consisted of Coddington, EK, and GA. RDI 2016 Proxy Statement. As discussed above, both Coddington and EK were independent and disinterested, and therefore the Compensation Committee was independent.
31. The Compensation Committee along with the Audit and Conflicts Committee recommended MC's payment. RDI March 15, 2016 Form 8-K. The Audit and Conflicts Committee consisted of DM, EK, and MW. RDI 2016 Proxy Statement. DM, EK, and MW are independent and disinterested for the reasons discussed above.
32. Moreover, as discussed above, the larger Board of Directors that approved the executive compensation, director compensation, and other payments at issue was also independent.
33. Next Justice Steele opines that if a finder of fact finds that the process used to revise EC and MC's compensation and to determine the bonuses for MC and GA was not entirely fair; the Defendants have breached their duty of loyalty under Delaware law. Steele Rep. at 32. I note that this is irrelevant because these decisions were all made by a majority of disinterested and independent directors on the relevant committees and the full Board. I further note that, once again, Justice Steele himself is not opining that the process used for the challenged payments was not entirely fair. And, in my opinion, based on my experiences with such

payments, there is no basis to so find. For the following reasons, it is my opinion, based on my experiences on boards in awarding compensation and approving payments and my knowledge of corporate governance, that the process used to approve the challenged payments was appropriate, consistent with good governance practice, and fair.

34. With respect to the executive compensation of EC (and MC) that was recommended by the Compensation Committee and approved by the full Board, it was entirely appropriate for the Board to accept the recommendation of the independent and disinterested Compensation Committee. The Compensation Committee evaluated compensation considerations with the assistance of experts who indicated that the total compensation that had been paid to EC was below the 25th percentile in a comparison to similar companies. RDI March 15, 2016 Form 8-K. Based on the information provided by these experts, the amounts approved to be paid EC and MC was well within the range of what similarly situated executives earn. RDI March 15, 2016 Form 8-K. At the full Board Meeting, WDG asked the directors present if there were any questions about EC and MC's proposed executive compensation, and there were none. RDI0054790-54807. No one voted against EC and MC's proposed executive compensation, including Plaintiff. *Id.*
35. With respect to the \$200,000 payment to MC in March 2016, Justice Steele characterizes that payment as "a substantial bonus." Steele's characterization is inaccurate. The \$200,000 was compensation for work

outside her existing consulting agreement and in consideration for certain releases and waivers granted by her company as part of the termination agreement between RDI and MC's company. RDI March 15, 2016 Form 8-K. In my opinion, it is consistent with good corporate governance to pay a contractor for additional work and in consideration for releases and waivers. The particular amount paid - \$200,000 - was discussed, considered, and recommended by two separate committees of the Board—both the Compensation Committee and the Audit and Conflicts Committee. RDI March 15, 2016 Form 8-K; RDI0054871-54875; RDI0054871-54786; RDI0054787-54789. The Board was entitled to rely on the recommendation of either or both of these independent and disinterested committees. Based on my experience, the directors who accepted these recommendations and voted to approve the payments acted appropriately, acted consistently with good government practices, and consistently with their obligations as directors.

36. Finally, with respect to the extra payment of \$50,000 to GA in March 2016, EC proposed the payment at a Board Meeting. RDI0054790-54807. EC explained that GA had rendered extraordinary services and devoted significant amounts of time beyond what was typical for a director. *Id.* His services included assisting EC during her transition to interim and then permanent CEO, advising on investor relations, traveling to New York to assist in the evaluation of the Union Square Project, assisting with other potential transactions, and significant time spent on the Compensation

Committee and the Executive Committee. *Id.* Based on my experience with executives' and directors' compensation, it is not unusual to reward a director with an additional payment when the director has spent an extraordinary amount of time on Company business. The payment is also consistent with the general practice of the RDI Board, which previously approved one-time payments for significant time spent on RDI business above and beyond what was typically expected of RDI directors. Kane Dep. at p. 487-498; RDI 2015 Proxy Statement. The Board voted 7-1 in favor, with GA not participating, and JJC voting against.

RDI0054790-54807. Coddington, MW, WDG, DM, EK, MC, and EC all voted to approve the payment. *Id.* Here, because the one-time payment was at the recommendation of the CEO who worked closely with GA, was based on specific projects that required increased expenditures of time, and was within the range of other one-time payments made by the Company to the Board members, the Directors' approval was rational, appropriate, and consistent with their obligations as directors.

VII. THE REORGANIZATION OF THE EXECUTIVE COMMITTEE

37. With respect to the Executive Committee, Steele opines,

If a finder of fact finds that the EC Committee was repopulated and reactivated in order to minimize the involvement of JJC and the other directors who voted not to terminate JJC, then those actions likely constitute a breach of ... duty of loyalty ... of the other Defendants, who acquiesced to the controlling stockholders personal wishes.

Steele Rep. at 33 (emphasis added).

38. Boards often establish an executive committee to act on behalf of the board between meetings and/or to vet or to serve as a sounding board for emerging issues, strategies, or transactions. The substance of those conversations would subsequently be presented to the full board for further discussion and final action.
39. An executive committee works under delegated authority from the board, which is ultimately responsible for the resolution of matters which are placed on its agenda. The authority granted to the RDI Executive Committee was “to take any and all actions that the Board may take (other than as restricted by Nevada law and the Bylaws of the Company) between the regular and special meetings of the Board of Directors.” Dep. Ex. 348. There is nothing unusual about the authority granted to the RDI Executive Committee, and it is consistent with the authority of other executive committees I have seen and/or have served on myself.
40. Here, it appears that the RDI Executive Committee acted consistently within the scope of the appropriate authority delegated to it. The RDI Executive Committee, which did not meet in 2014, was reconstituted in 2015 with four directors: EC, MC, EK, and GA, with GA acting as Chair. The Executive Committee met at least four times in the relevant time period. The record demonstrates that these meetings occurred in the period between Board Meetings, and the actions taken at the Executive Committee Meetings were all reported to the full Board, and the minutes of

Executive Committee Meetings were accepted by the full Board.

JCOTTER 11389-11393.

41. Steele does not opine that the Executive Committee acted beyond its charter or took actions that were improper under Nevada law or RDI's Bylaws. Instead, Steele contends that the Executive Committee was problematic, because the purpose of the Executive Committee was to minimize the involvement of JJC and the other directors who voted against his termination. Steele Rep. at 33. But WDG, who voted against terminating JJC, was asked by EC to join the Executive Committee. Gould Dep. at p. 25. WDG declined because he could not allocate the time that such a commitment might require. Gould Dep. at p. 25. That fact alone suggests to me that the purpose of the Executive Committee was not to exclude JJC, Storey, and WDG.
42. And I find no other real evidence of any effort by the Executive Committee to minimize the involvement of JJC, Storey, and WDG in the business affairs of the company. On the contrary, there is evidence that Board members not on the Executive Committee had access to the Executive Committee members. In addition, there are rational business reasons to not include a director, like Storey, on an executive committee because he lives in New Zealand, which could impede quick decision-making—one of the primary purposes of an executive committee. Finally, replacing the former CEO (JJC) with the current CEO (EC) is sensible and also

commonplace. The CEO is typically a member of a board's executive committee.

43. In sum, it is my opinion that an executive committee is an appropriate forum to make time-sensitive and/or routine decisions in between full board meetings and also for deeper, more focused examinations, analyses, and discussions of complex issues to later present to the full board for action. As such, in my opinion, WDG's, EC's, MC's, EK's, DM's, and GA's actions in voting to reactivate and populate the Executive Committee were appropriate and consistent with good governance practice and their obligations as directors.

VIII. THE BOARD'S RESPONSE TO THE UNSOLICITED EXPRESSION OF INTEREST

44. Justice Steele opines that “[i]f a finder of fact finds that the Board’s rejection of the Offer was not the product of an independent and disinterested majority, and [if it] was born out of the desire to keep EC and MC ... in office, then the rejection out of hand intentionally breached the duty of loyalty.” Steele Rep. at 34 (emphasis added). This reasoning is flawed. As an initial matter, the first IF premise is wrong. Whatever assessment led to the Board’s rejection was the product of an independent and disinterested majority. The second IF presumes that the rejected Offer was a result of some desire to keep EC and MC in their jobs. I have seen no evidence to support the second IF.

- a. First, I have created a timeline of the various communications, meetings, and related information and events which can be framed in a time period associated with the unsolicited offer, beginning with May 31, 2016, and ending with the final public rejection of the offer on July 18, 2016, shown here as Exhibit C.
- b. Because the SAC and Steele's Expert Report contend that the RDI Board was not adequately informed about RDI's value and business strategy, management presentations of RDI's financial condition, and/or business strategy at various investor presentations, board meetings, and annual meetings of shareholders between November 15, 2015, and June 9, 2016, are also positioned on the timeline noted in (i) above.
- c. Second, I have reviewed the events and communications reported above which can be summarized as follows:³
 - i. On November 10, 2015, at the Annual Stockholders Meeting, EC and Dev Ghose made a presentation about the financial condition and business strategy of RDI.
 - ii. On February 18, 2016, EC and CFO Dev Ghose made a presentation to the full Board about the financial condition and business strategy of RDI.

³ These events are compiled from the following documents: RDI0058012; RDI0058013-58014; RDI0058015-58028; RDI0058029-58042; RDI0058043-58070; RDI0058071-58116; RDI0058172-58207; RDI0058208-58243; RDI0058244-RDI58279; RDI0058298-58299.

- iii. EC as CEO of RDI received an unsolicited offer from Paul Heth on May 31, 2016, for \$17 a share to purchase 100% of the common stock of the company.
- iv. EC shared the offer letter with the entire RDI Board of Directors in advance of the June 2 Board Meeting.
- v. On June 2, 2016, at the Annual Stockholder's Meeting, EC and Dev Ghose once again made a presentation about RDI's financial condition and business strategy, noting its core values and guiding principles inspired by founder James Cotter, Sr. proposing interactions guided by integrity (the E's)⁴ and the synchronization of its cinema and real estate operations.
- vi. RDI Board met on June 2 with their advisors to review the offer letter. Minutes from that meeting indicate a robust discussion of the pluses and minuses of a sale of the company at \$17/share.
- vii. RDI made a presentation on its business plans at the Gabelli Conference on June 9, 2016. The Gabelli presentation appears to build upon earlier strategic plans, such as those reviewed at recent annual meetings, the B. Riley Conference on May 26, 2016, and the February 18, 2016 Board Meeting, among other management presentations.

⁴

RDI0058123

- viii. RDI Board met again on June 23 with their advisors and after further review and discussion, determines that the Heth offer is inadequate.
 - ix. RDI issued public press release on July 18.
 - x. On August 3, JJC filed motion to amend complaint, noting the offer in the proposed amended complaint.
 - xi. B. Riley issued an initial coverage investor report with a BUY rating and a target price of \$26 per share.
45. After an examination of the Minutes of the June 2 and June 23 Board Meeting (including the suggested revisions of JJC), and a review of the timeline and activities, which occurred during the offer time period, and after further analysis of the various RDI plans and presentations designed to unlock the synergistic value of RDI properties, it is my opinion that the RDI decision to reject the Heth offer was reasonable and appropriate.
46. Based on my experience as a director having been in similar circumstances as those described herein, is my opinion that rejecting the offer is rational business strategy. It is perfectly reasonable to just say “no” and wait to see what, if anything, a potential suitor decides to do next, particularly if you know that the initial offer is woefully inadequate.
47. Justice Steele’s “opinion” relies on his contention that the “Board did not receive the information management informed the Board that it would receive, which may have permitted the Board to adequately evaluate the offer.” Steele Rep. at 32. Relying exclusively on allegations in Plaintiff’s

Second Amended Complaint, he contends that “[t]he Board determined that it would meet the week following the receipt of the Offer to determine its response to the Offer, after receiving a business plan and valuation material from the Company’s management. The business plan and valuation materials were never submitted to the Board.” Steele Rep. at 17. But after a thorough examination of the Minutes of the June 2, 2016 Board Meeting and JJC’s comments to the Minutes of the June 2, 2016 Board Meeting, I cannot find any support for Justice Steele’s assertion that management informed the Board that it would provide a business plan and valuation material, specifically.

a. Instead, the Board Minutes reflect that

Management should over the next couple of weeks, prepare **background information** in preparation for a Board Meeting at which the Board could make a further evaluation of the Share Purchase IOI and consider in greater detail whether it would be in the best interests of the Company and its stockholders to continue with its current business plan as an independent company or to consider a process that could include negotiations regarding the Share Purchase IOI.

RDI0058015-RDI0058028 (emphasis added). Relevant background information was provided as promised by way of EC’s presentation at the June 23 Telephonic Board Meeting. In particular, EC presented an overview of the cinema and real estate assets and operations, including the worldwide adjusted cash-flow for cinema and appropriate multipliers, and the appraisal value of

the current real estate portfolio. RDI0058029-58042. These numbers, taken together, greatly exceeded the Heth offer. *Id.*

- b. In any event, on numerous recent occasions, EC has presented to the Board RDI's current business strategy, including at the Stockholders Meeting held the same day as the June 2 Board Meeting. RDI58013-58014; RDI0058117-58171.

- 48. Justice Steele's "opinion" also rests on his suggestion that it was improper to vote on the offer without seeking the advice of independent legal or financial advisors. Steele Rep. at 32. But even JJC's comments to the June 2 Board Minutes reflect the fact that the Board resolved that "it would not be cost effective at this point in time for the Company to incur the cost and expense of retaining outside financial advisors (banker or valuation experts), and that Management should, for now, look to information readily available to Management at the Company." RDI0058244-58279. Based on my experience as a director having been in similar circumstances to those described above, I find it reasonable and consistent with good governance practice that the Directors did not undertake the cost of retaining outside financial advisors at this point in time, given the fact that the offer was not only inadequate, but also conditional.
- 49. Justice Steele's "opinion" also relies on his partial suggestion that members of the Board who voted to reject the Offer did so out of either a personal interest in retaining their management positions or out of deference to the wishes of the controlling shareholder. Steele Rep. at 33.

But I have seen neither any evidence indicating a desire on the part of the Board mounting a campaign to keep EC and MC in office through its rejection of the offer nor any evidence that EC or MC acted out of personal interest. To the contrary, as RDI's largest stockholders, EC and MC stood to make a substantial amount of money—far more than they would through their executive compensation. And, while my opinion that the Board relied on rational and legitimate business matters to reject the offer (as opposed to Steele's suggestion that they acted solely to keep EC and MC in management positions) does not rely on the opinion of independent investment analyst B. Riley that RDI's stock was worth \$26/share, it suggests that regardless of whether B. Riley's conclusion is right or wrong, rational, independent thinkers who are not beholden to EC or MC could and would view \$17/share as undervalued. September 9, 2016 Article from B. Riley, entitled "Leading Theater Circuit Poised to Unlock Meaningful Shareholder Value in Coming Years with Global Property Development Strategy; Initiating with a Buy and a \$26.00 PT."⁵

50. In sum, it is my opinion that the process used by the Board in deciding to reject the offer, was appropriate and consistent with good corporate governance. The decision is the product of a majority of independent and disinterested directors. Justice Steele provides an "opinion" that fails to take into account reasonable, rational business considerations and that is based on solely on the allegations of the Second Amended Complaint,

⁵ Indeed, another of JJC's own experts in this litigation contends that the "stock price of the Company was depressed." Spitz Rep. ¶ 11.

which blatantly mischaracterizes the actual facts as demonstrated by the relevant documents.

IX. CONCLUSION

Stated simply, Justice Steele's speculative and contingent "opinion" is based on incorrect assumptions given the facts in this case and the standards of good governance practice. In particular, I find that the RDI Board is independent and disinterested because directors DM, WDG, MW, EK, and Coddington as individuals are independent and disinterested. Independence is not compromised by mere friendship without more, and here there is no more. As to each of the individual challenged actions, I find the members of the Board of Directors acted reasonably and consistent with appropriate governance practices at a controlled company, and that the processes employed by the Board and each of the relevant committees with respect to each challenged action were fair.

Executed on September 28, 2016



ALFRED E. OSBORNE, JR.

Exhibit A

List of Additional Materials Considered By Dr. Albert E. Osborne, Jr.

JCOTTER016893-95

September 9, 2016 Article from B. Riley entitled "Leading Theater Circuit Poised to Unlock Meaningful Shareholder Value in Coming Years with Global Property Development Strategy; Initiating with a Buy and a \$26.00 PT."

RDI0058012

RDI0058013-58014

RDI0058015-58028

RDI0058029-58042

RDI0058043-58070

RDI0058071-58116

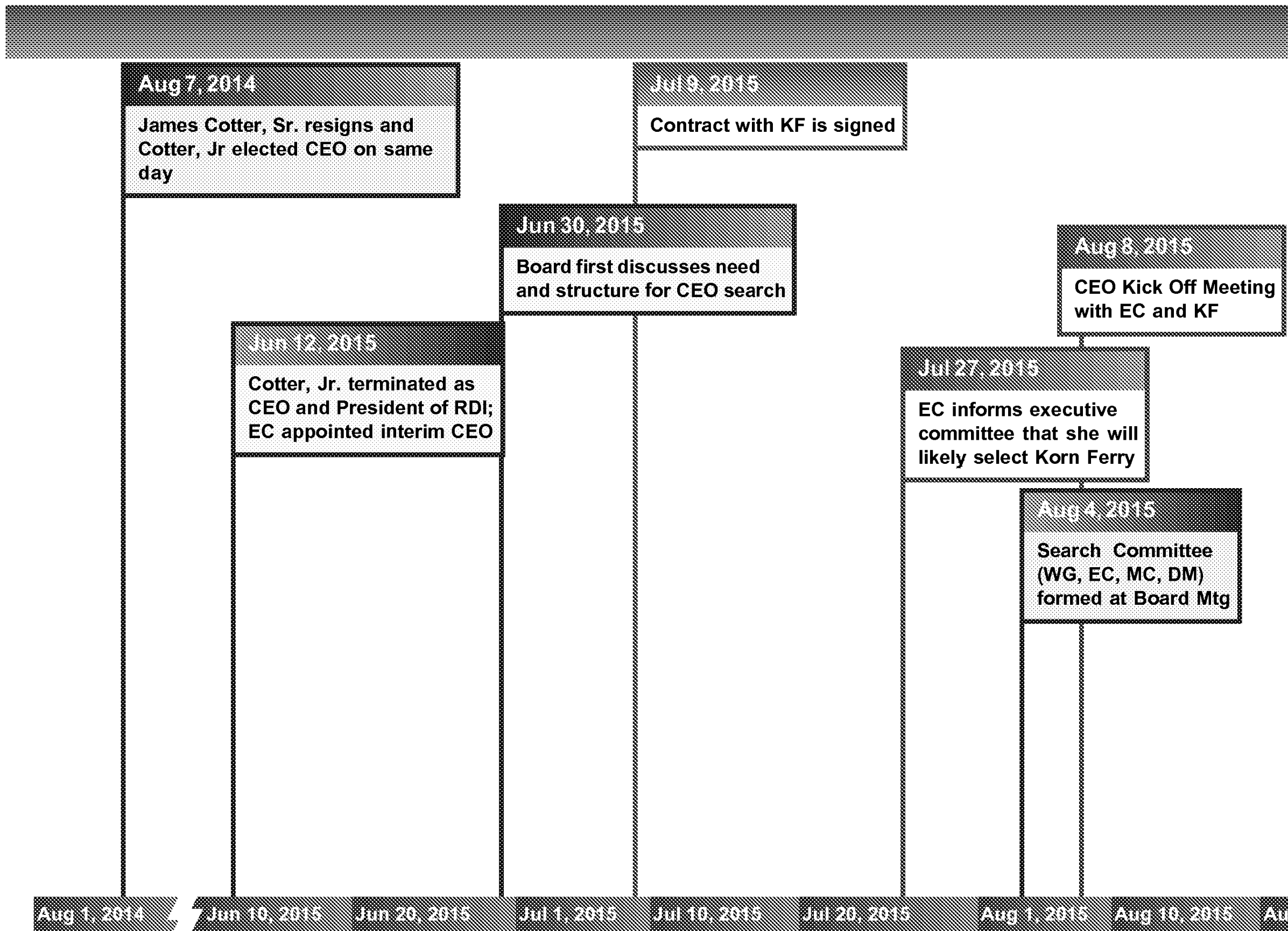
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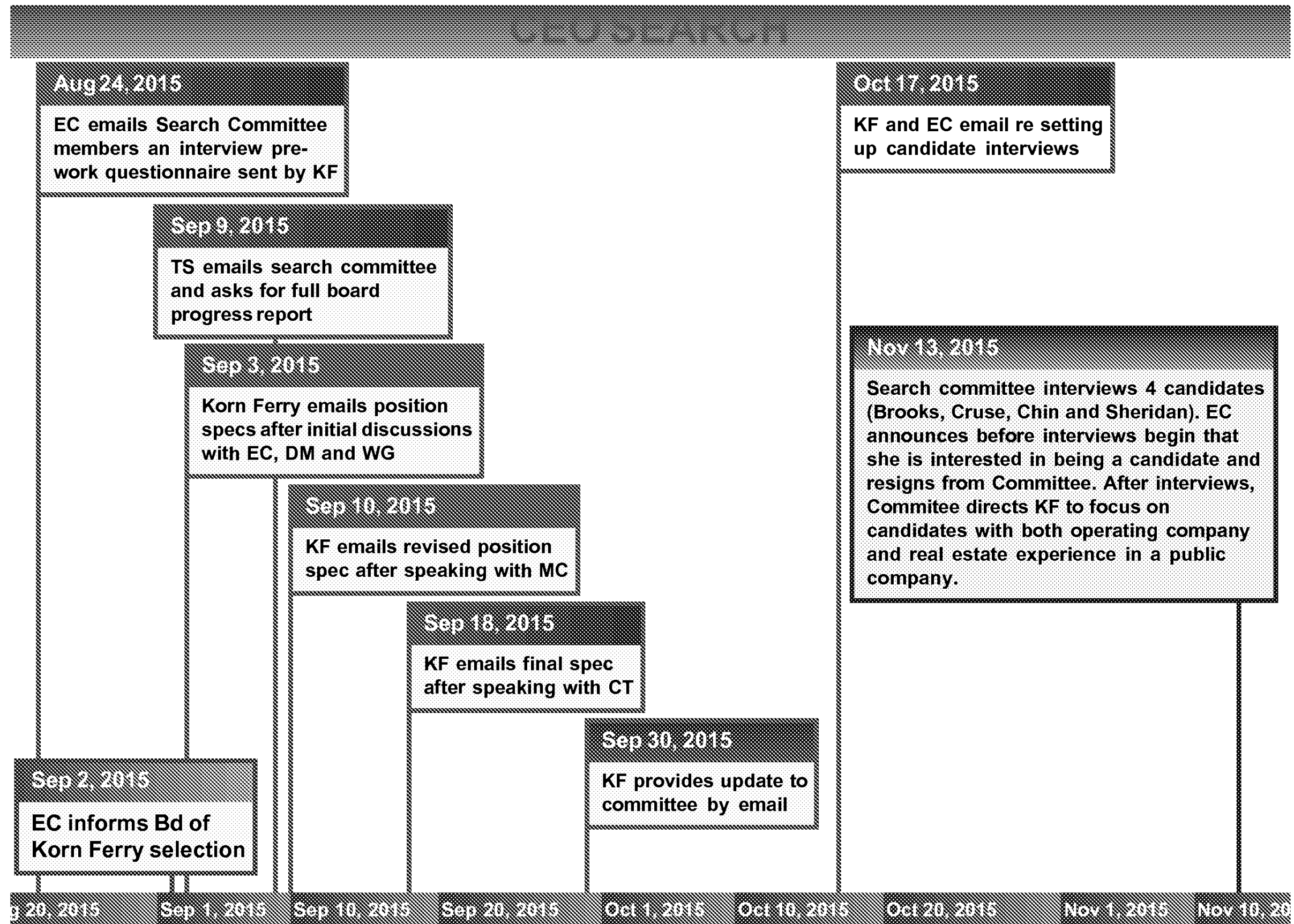
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RDI0058244-RDI58279

RDI0058298-58299

Exhibit B





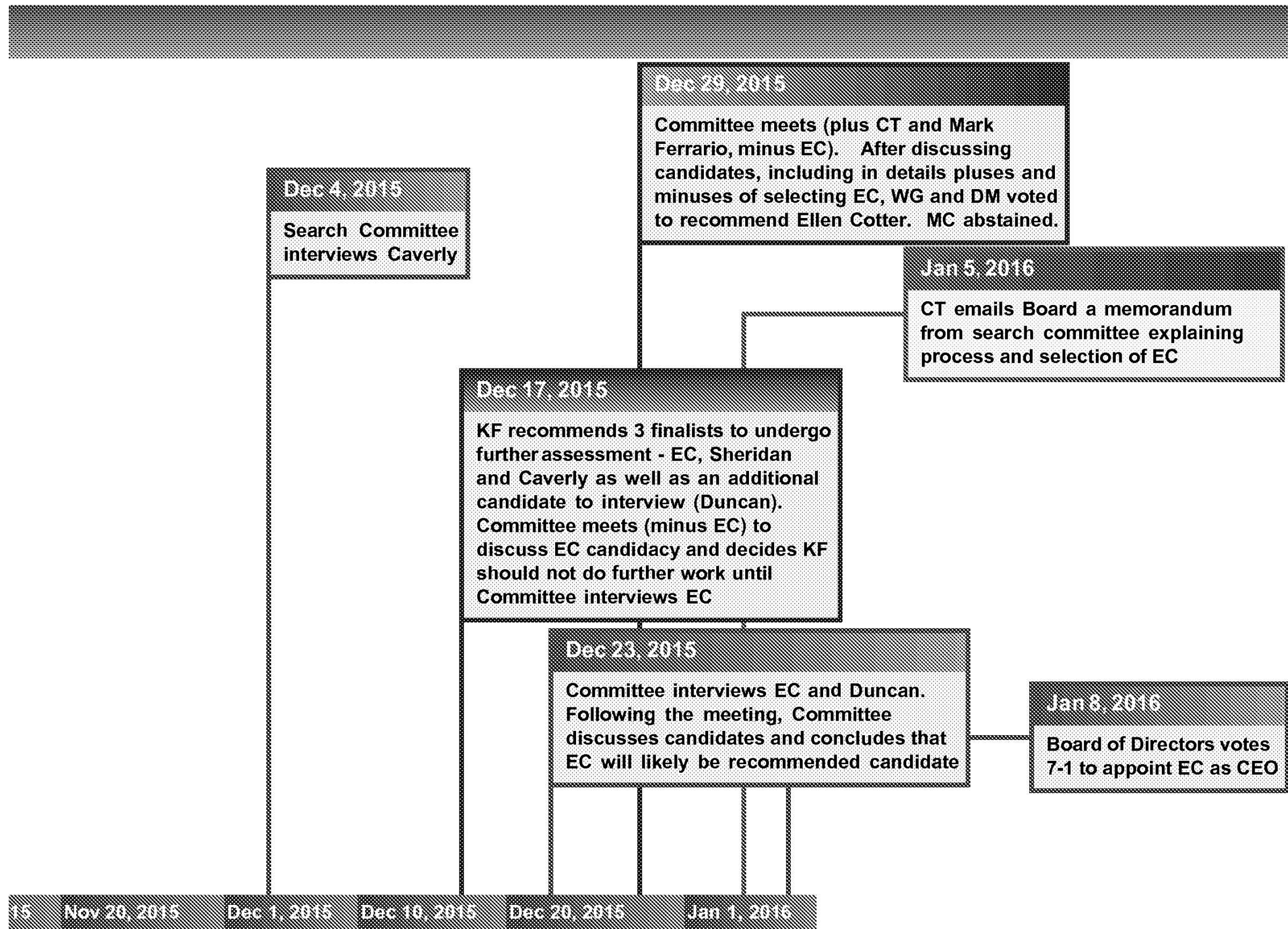
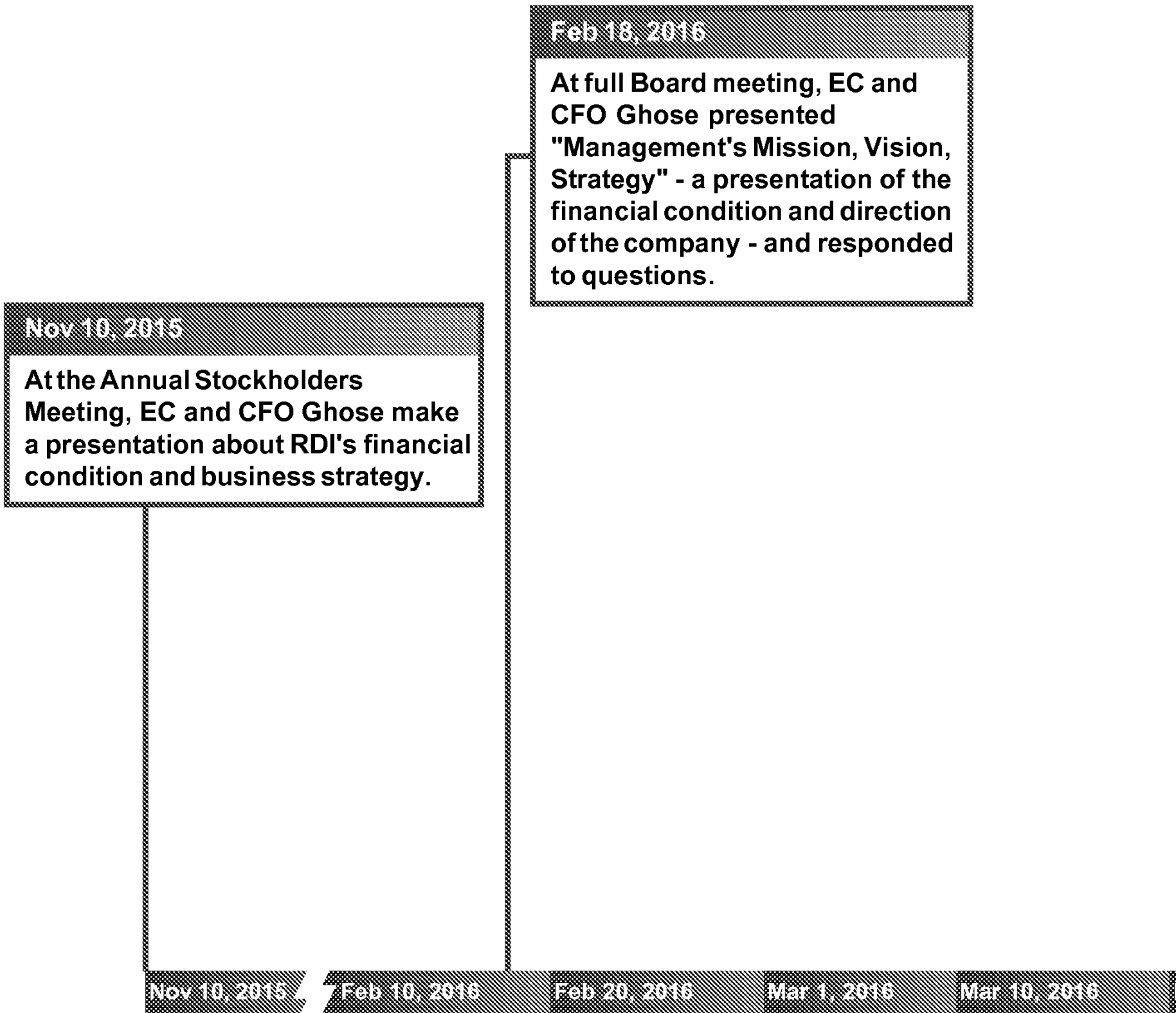
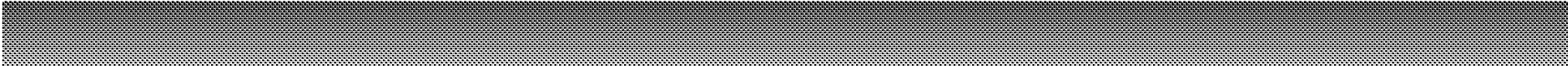
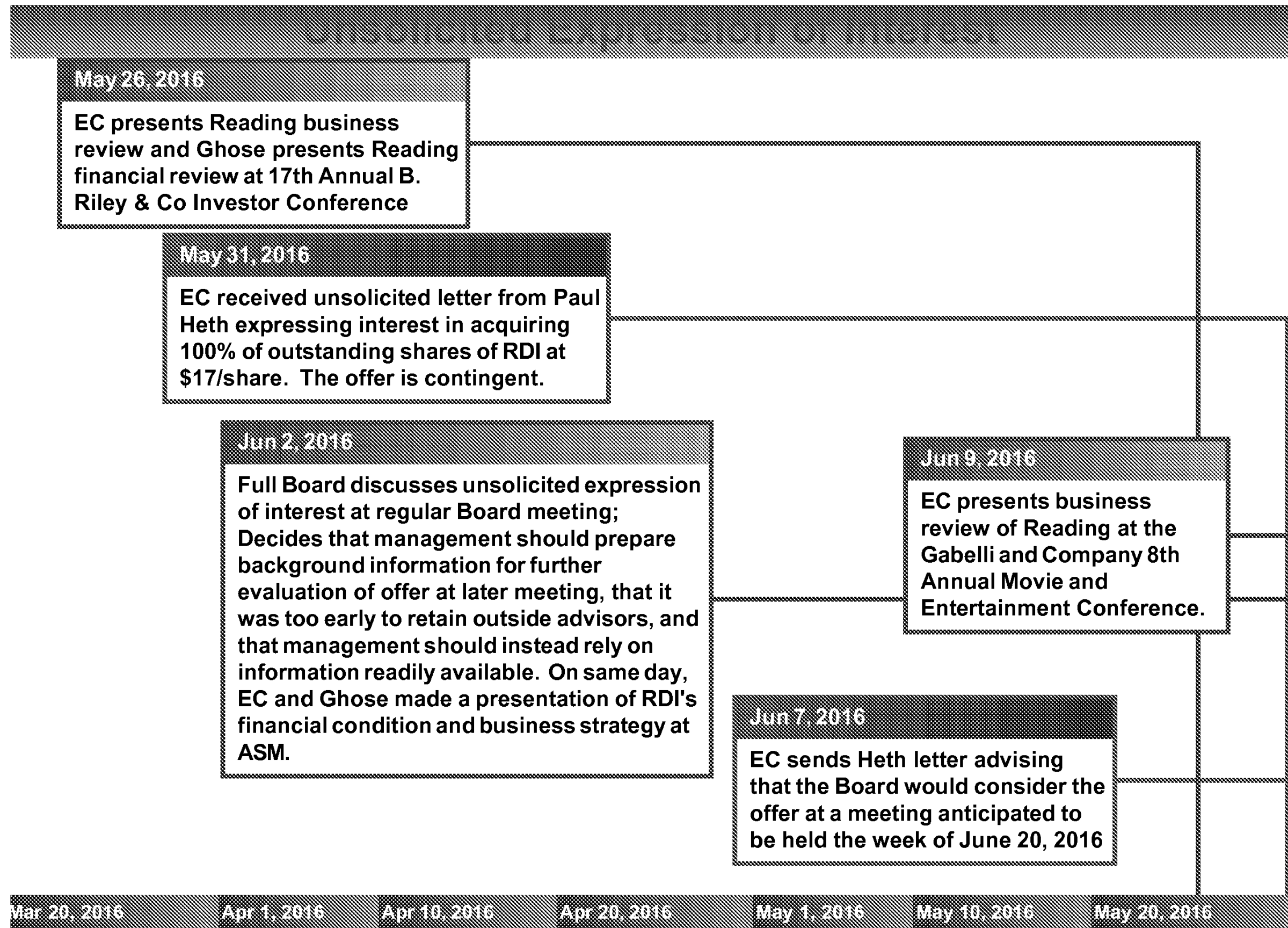


Exhibit C





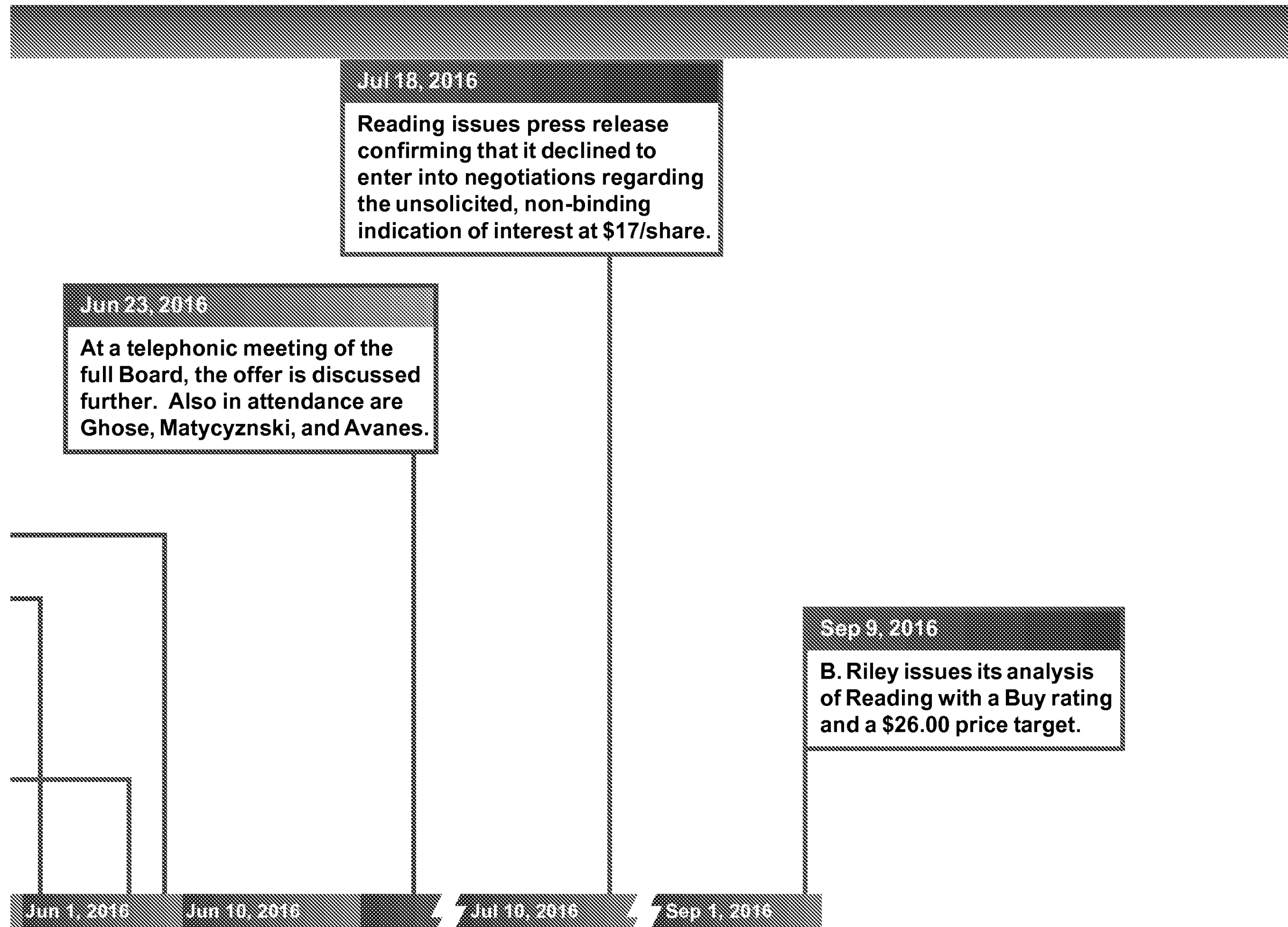


EXHIBIT 7



Minutes of the
Board of Directors
of
Reading International, Inc.

March 10, 2016

A duly noticed meeting of the Board of Directors of Reading International, Inc. was held on March 10, 2016, in the third floor conference room of Pepperdine University, located at 6100 Center Drive, Los Angeles, California, 90045. Chair Ellen Cotter called roll and verified the following: participating in person were Chair Ellen Cotter, Vice Chair Margaret Cotter, and Directors Guy Adams, Judy Coddling, James Cotter, Jr., Edward L. Kane, Doug McEachern, and William Gould; participating by telephone conference call was Director Michael Wrothiak; participating at the invitation of the Chair and present in person were Dev Ghose, Chief Financial Officer and Treasurer, William Ellis, General Counsel, Robert Smerling, President of Domestic Cinemas, and Craig Tompkins, Recording Secretary; and participating at the invitation of the Chair by telephone conference call were Andrzej Matyczynski, Corporate Advisor, Wayne Smith, Managing Director, Australia and New Zealand, Steve Lucas, Principal Accounting Officer and Controller, and Matthew Bourke, Director of Real Estate, Australia and New Zealand; participating for the discussion of management's endeavors with respect to the leasing of the Company's Union Square property were Michael Buckley from Edifice Real Estate Partners and Jeff Roseman from Newmark Grubb Frank Knight.

Chair Cotter reminded the Board that the Board's proceedings were confidential and verified that no one was recording the meeting and that no one other than the persons responding to the roll call were on the phone. She confirmed that should anyone join the call, that their presence would be announced to the meeting.

Chair Cotter called the meeting to order at approximately 12:30 PM.

Union Square Redevelopment Project

Chair Cotter advised the Board that the first order of business was to receive a report from Margaret Cotter concerning the status of management's endeavor to lease the Company's Union Square property.

Ms. Cotter first displayed the video prepared by Newmark. Thereafter Mr. Roseman discussed marketing efforts to date, and the results of those efforts. He stated that they had received ten indications of substantial interest from credit tenants who were interested in utilizing all of the available retail space; that they were talking with some smaller users as well (Pottery Barn and William Sonoma type tenants); and that they are not looking at this time to local retailers, but rather focusing on major credit tenants.

Mr. Roseman advised the Board that it was still early days in the marketing process, and that the email blast to the market had only gone out the prior day. He further advised that retail rents were continuing to rise in applicable markets. Mr. Roseman responded to various questions from the Board as to the

strength of the market and his confidence that the building would be substantially leased up by the time that major financial commitments were made by the Company. Mr Roseman noted that there were trade-offs in leasing immediately, as opposed to letting a competitive market develop, but that he was confident that the construction would not be a speculative venture from a leasing point of view. He noted that the timeline for renting the office space was likely longer than the time line for the retail, as office tenants were typically seeking more immediate occupancy than major retail tenants.

Michael Buckley stated that the project was continuing to progress on time and on budget, and volunteered to address such questions as might be presented by the Directors. There were no questions for Mr. Buckley.

Vice Chair Cotter reviewed with the directors the materials included in the Board book, and responded to questions.

At this point, Messrs. Buckley and Roseman terminated their conference call connection.

Thereafter, the Directors further discussed the project with management, and asked that management prepare for consideration at the next meeting a presentation of developer's anticipated profits and a buy/sell analysis (i.e. was it better to sell now or to redevelop the property and take the risks of redevelopment).

Report on Status of Annual Report on Form 10K

Following this discussion, Chair Cotter advised the Board that the next order of business was an update on the status of the Company's Annual Report on Form 10K and the report of the Audit and Conflicts Committee.

Dev Ghose, the Company's Chief Financial Officer and Treasurer, updated the Board on the status of the Company's Annual Report on Form 10K.

Mr. Ghose reported that there was still work to do on the audit. He advised the Board that, in response to the determination with respect to the 2014 Audit that there was a material weakness in internal controls related to the accounting for income taxes with respect to Australia and New Zealand, the Company had retained Deloitte to review and revise as to these tax accounting matters. In the course of this work other tax accounting issues had been identified.

To date, Deloitte had identified seven issues, six of which had been resolved. At this point in time, these adjustments appear to cancel out, so as to have no material impact on after tax earnings. However, the work was ongoing, and there still remained one unresolved item. Mr. Ghose stated that the issues all related to non-cash accounting items, not to the tax returns, and did not impact items above the net income after taxes level.

Audit and Conflicts Committee Chair Douglas McEachern next presented the Audit and Conflicts Committee (the "Committee") Preliminary Report. Committee Chair McEachern reiterated the

information presented by Mr. Ghose. He advised that the Committee had reviewed the Draft Annual Report on Form 10K with Management, and had met and heard the preliminary report of the Company's auditors, Grant Thornton. He stated that the Committee was prepared to sign off on the draft Annual Report on Form 10K, subject to the completion of the audit by Grant Thornton, and that the Committee had delegated to him authority to review any proposed changes to the Draft Annual Report on Form 10K, and to approve any changes which, in his judgment were not material. Any material changes would need to be brought back to the full Committee.

Director James Cotter, Jr., complained that he had only received a draft of the Annual Report on Form 10K on Tuesday evening (March 8, 2016) and, accordingly, had not had time to review the same. Chair Cotter noted that the filing deadline for the Annual Report on Form 10K was March 15, and requested that Mr. Cotter, Jr. provide any comments that he might have directly to Committee Chair McEachern in writing. Director James Cotter, Jr., also complained that he had not been permitted to participate in the Committee meeting. Chair McEachern responded that he had been advised by outside counsel [REDACTED]

[REDACTED] Ellen Cotter had participated in the meeting but both in her capacity as Chair of the Board and as the Company's President and Chief Executive Officer. Committee Chair McEachern noted also that the responsibility for the audit and for dealing with and interfacing with the auditors had been delegated to the Committee and that he had confidence in the ability of the Committee to discharge its duties and responsibilities. He further noted, that the open issues were accounting driven, rather than tax driven.

A motion was made and seconded to accept the report of the Committee and to delegate to management responsibility for the finalization of the Annual Report on Form 10K, subject to obtaining the approval of Committee Chair McEachern of any immaterial changes from the form previously distributed and subject to a review and approval of the Committee of any material changes. Mr. Tompkins noted that the Form 10K did not require execution by all of the directors, and that only execution by a majority of the Board was required. So, as a matter of mechanics, the Form 10K could be filed so long as it was approved by the Committee, the Chair and the Vice Chair.

The motion passed 8 in favor and one (James Cotter, Jr.) abstaining.

Chair Cotter thanked the Committee for its work, and the Directors for reviewing the 10K on relatively short notice. She urged any director having comments to forward them to Committee Chair McEachern as soon as possible.

Earnings Release

Chair Cotter stated that the next order of business was a review of the earnings release. She apologized for the fact that it had only been circulated the previous evening, and asked that Directors give Mr. Ghose any comments they might have as soon as possible. She advised that after collecting comments, Mr. Ghose would work with Committee Chair McEachern to finalize the release.

Debt Obligations Review

Chair Cotter advised that the next order of business was the review of the Company's debt situation and turned the floor over to Mr. Ghose.

Mr. Ghose reviewed the materials in the board package, and responded to questions.

Domestic Cinemas Report

Chair Cotter advised that the next order of business was the review of the Company's Domestic Cinema Operations and turned the floor over to Mr. Smerling. Mr. Smerling referred directors to the materials in the Board Book regarding the results of operations for the Company's domestic cinemas and discussed the anti-trust implications of the potential AMC/Carmike merger and the state of clearance issues. He advised that, while no assurance could be given, it appeared that the old clearance system was breaking down, which would provide both opportunities and challenges for the Company. At Mr. Smerling's request, Mr. Tompkins gave a brief update of the pending anti-trust litigation brought by iPic and Landmark against AMC and Regal. Messrs. Smerling and Tompkins responded to questions for the Board.

Australia and New Zealand Cinema Operations

Chair Cotter advised that the next order of business was the review of the Company's Australia and New Zealand Cinema operations and turned the floor over to Mr. Smith. Mr. Smith referred the Board to the Board Book regarding the results of operation. At the invitation of Chair Cotter, Mr. Smith discussed his value pricing initiatives in Australia and New Zealand, and the results being achieved, and responded to questions.

Live Theater Operations

Chair Cotter advised that the next order of business was the review of the Company's live theater operations and turned the floor over to Vice Chair Margaret Cotter. Vice Chair Cotter referred the Board to the Board Book regarding the results of operation, and invited questions from the Board. There were no questions.

Australia and New Zealand Real Estate Operations

Chair Cotter advised that the next order of business was the review of the Company's real estate operations in Australia and New Zealand and turned the floor over to the Company's Head of Real Estate for Australia and New Zealand, Matthew Bourke. Mr. Bourke reviewed with the Board the materials in the Board book and invited questions from the Board. There were no questions.

Potential Purchase of 5995 Sepulveda Boulevard Office Building

Chair Cotter advised that the next order of business was the consideration of a possible purchase of the office building located at 5995 Sepulveda Boulevard to house the Company's corporate headquarters.

Mr. Matyczynski reviewed the materials included in the Board Book with the Directors, concluding that it was management's recommendation that the Board approve the purchase of the property and authorize management to proceed with the transaction.

There followed a discussion among the directors during which a variety of points were considered by the Directors, including the following:

- The projected impact on the Company's headquarters occupancy costs, and the benefits of being an owner/occupier as opposed to a tenant,
- The comparative benefits of the alternative allocation of the capital need to purchase the building to acquire other operating assets,
- The potential long term value of the property as an investment asset,
- The potential domestic demands for cash in the near to medium term,
- The limited amount of cash available in the US, and the issues involved in bringing cash into the United States from Australia and/or New Zealand, and
- Possible rental or purchase alternatives.

Following discussion, in which management responded to a variety of Director questions a motion was made by Director Adams and seconded by Director McEachern that management be authorized and directed to acquire the Sepulveda Property on terms substantially similar to those presented to the meeting, and to take all such actions necessary or convenient to carry out the intentions of these resolutions.

The motion passed 7 to 2, with Directors Wrotniak and Cotter, Jr. voting no.

Legal Update

Chair Cotter advised the Board that the next order of business was the litigation update, and turned the meeting over to Mr. Tompkins. Mr. Tompkins referred the committee to the materials in the Board Book and made himself available to respond to questions. There were no questions.

Stockholder Annual Meeting

Chair Cotter advised the Board that the next order of business was to fix the stockholder proposal date, the record date and the meeting date for the 2016 Annual Meeting of Stockholders, to select an inspector of elections and to appoint secretaries for the meeting. Chair Cotter advised that it was her anticipation that all of the current directors would be renominated.

On motion made and seconded, the following dates and appointments were approved.

- Stockholder Proposal Deadline: April 8, 2016

- Broker Search Date: March 25, 2016
- Record Date: April 22, 2016
- Stockholder Meeting: June 2, 2016
- Inspector of Elections: First Coast Results, Inc.
- Meeting Secretary: Craig Tompkins
- Meeting Assistant Secretary: Susan Villeda

Following discussion, during which Mr. Cotter Jr. stated his view that Mr. Tompkins should not be secretary due to the fact that he had been named as a defendant in the T2 litigation, the above motion was passed unanimously, but with Mr. Cotter Jr. voting no on the appointment of Mr. Tompkins as Meeting Secretary, abstained as to the fixing of the annual meeting date.

Executive Session

At this time the Chair excused all of the members of management other than Mr. Tompkins, Recording Secretary, advising that the remainder of the meeting would be held in executive session.

Review and Approval of Minutes

Chair Cotter advised the Board that the next order of business was the review and approval of the minutes for the Board meeting held on February 18, 2016:

In the discussion that followed, Mr. Cotter Jr. objected to the preparation of minutes by Mr. Tompkins on the basis that Mr. Tompkins had been named as a defendant in the T2 litigation. No motion was made on this topic. Several directors questioned the propriety of allowing directors to include, in essence, dissenting views in the Company's Minute Books. Following discussion, on motion made and seconded, the Directors approved the minutes in the form submitted to the Board and the inclusion in the Minute Book of Director Cotter's comments, by a vote of 8 to 1, with Mr. Cotter, Jr. voting no.

Review and Approval of Compensation and Stock Option Committee Charter

Chair Cotter advised the Board was the review of a proposed Compensation and Stock Option Committee Charter. She noted that the Company did not currently have a formal charter, and that the proposed charter included in the Board materials [REDACTED]

[REDACTED] was being recommended for adoption by the Compensation and Stock Option Committee. Chair Cotter advised that, in the view of management, the proposed charter was consistent with current best practices.

Following discussion it was determined that with respect to the compensation to be paid to Ellen Cotter, Margaret Cotter and/or James Cotter, Jr., the Compensation and Stock Option Committee should make its recommendation to the Board, but that the approval of such compensation should be determined ultimately by the Board and not by the Compensation and Stock Option Committee. Management was directed to amend the proposed charter to reflect this change. Subject to the making of this change, on

motion made and seconded, the proposed Compensation and Stock Option Committee Charter was approved by an 8 to 1 vote, with Mr. Cotter, Jr. abstaining.

Amended and Restated Audit and Conflicts Committee Charter

Chair Cotter advised the Board that the next item of business was the review of a possible amended and restated Audit and Conflicts Committee Charter. Chair Cotter advised that the draft was a work in process, as it had not yet been reviewed by Dev Ghose or Grant Thornton. Management had taken input from Frank Reddick of Akin Gump and Mike Bonner of Greenberg Traurig and believed that it was in conformity with best practices. It was anticipated that a final draft would be presented to the Board at its next Board meeting. Committee Chair McEachern explained that the proposed charter was substantially longer than the current charter but this was due, in part, to the inclusion within the Audit and Conflicts Committee of responsibility for tax oversight, cyber security, risk assessment, and the inclusion in the charter of the Audit and Conflicts Committee's responsibility for oversight of the Company's management of Shadow View Land & Farming, LLC.

Mr. Cotter Jr., raised again the issue of director attendance at meetings of the Audit and Conflicts Committee, expressing his view that such meetings should be open to all directors. Committee Chair McEachern said that while he would look into the matter further, he believed that best practices was for the Audit and Conflicts Committee to have control over attendance at its meetings, and that based on his discussions with counsel, this was completely consistent with applicable Nevada Law.

Review and Acceptance of Committee Meeting Minutes

Chair Cotter advised the Board that the next order of business was the review and acceptance of the following committee minutes:

- (a) Compensation Committee Meeting: January 25, 2016
- (b) Compensation Committee Meeting: January 28, 2016
- (c) Compensation Committee Meeting: February 5, 2016
- (d) Compensation Committee Meeting: February 17, 2016
- (e) Compensation Committee Meeting: February 29, 2016
- (f) Audit and Conflicts Committee Meeting: February 29, 2016
- (g) Executive Committee Meeting: February 26, 2016

During discussion, Mr. Cotter, Jr. asked that he be permitted to ask questions about and to give comments on the committee minutes.

The sense of the Board was that committee minutes were the responsibility of the applicable committee, that they were basically provided for the information of the Board and that "acceptance" was simply the procedure to allow the minutes to be included in the minute books of the Company. If a director had a question about the minutes, that director was certainly free to discuss the matter with the applicable committee chair, and if such director did not get a satisfactory answer, was likewise free to ask the Chair to place the matter on the agenda for a subsequent Board meeting.

On motion duly made and seconded, the above referenced minutes were accepted for inclusion in the minute books of the Company by an 8 to 1 vote, Director Cotter, Jr. abstaining.

Compensation and Stock Option Committee Report

Chair Cotter advised the Board that the next order of business was the review of the report of the Compensation and Stock Option Committee. At this point, Mr. Tompkins left the meeting, Mr. Bonner being appointed to serve as recording secretary for this portion of the meeting.

At 4:04 pm Mr. Tompkins was excused, and Mr. Bonner was asked to take the minutes until Mr. Tompkins returned.

a. Executive Compensation and Appointments

James Cotter, Jr. expressed his objections to not having been provided with more detail supporting proposed 2016 executive compensation along with the individual goals and benchmarks to be used for each executive's short-term incentive bonus opportunity.

Ellen Cotter responded that each director had been provided in advance of the meeting with the schedule showing each senior executive officer's proposed 2016 compensation package and that she was happy to respond to any questions any director had on the recommendations. Ellen Cotter had presented detailed schedules and proposed individual goals and benchmarks to be used for the senior level executives to the Company's Compensation and Stock Options Committee (the "Compensation Committee") which had thoroughly reviewed and vetted such recommendations. Ms. Cotter reminded the Board that the intent is to utilize the Compensation Committee to review and give input on the specific compensation components for the senior executive officers. The Compensation Committee gave its unanimous approval to the executive compensation recommendations.

Mr. Cotter, Jr. repeated his objection on not having had the opportunity to review the detailed back up information or the detailed individual goals and benchmarks for short term incentive bonuses that had been used by the Chief Executive Officer and the Compensation Committee. Ms. Cotter acknowledged the objection and asked if Mr. Cotter had any specific questions or concerns.

Questions were asked about the Dev Ghose compensation recommendations. Ms. Cotter noted that unlike the other senior management members, Mr. Ghose's compensation was set in his April 10, 2015 employment contract. Mr. Ghose's contract had been entered into when James Cotter, Jr. was the Chief Executive Officer and the terms had been negotiated and approved by Mr. Cotter. James Cotter, Jr. pointed out that Mr. Ghose's contract had been negotiated under the supervision of Mr. Gould, the Lead Independent Director.

Ms. Cotter asked if there were any other comments or questions. Mr. Cotter, Jr. stated that he objected to the employment and appointment of Craig Tompkins as General Counsel. Mr. Cotter, Jr. stated that he had seen a memo written by his father, James Cotter, Sr., in 2007 that made several negative statements

about Mr. Tompkins, including a statement by James Cotter, Sr. that Mr. Tompkins should not serve in a position of trust for the Company or in a position under which he could bind the Company.

Ellen Cotter questioned Mr. Cotter about his assertions and stated that she (Ellen Cotter) had never heard of this before. Margaret Cotter also expressed surprise and agreed with Ellen Cotter. Other directors were not aware of these allegations and observed that James Cotter Jr. was referring to matters that were nine years old (2007). Further, it was noted that Mr. Tompkins had continued to provide extensive consulting and legal services to the Company after 2007, including services authorized by and which involved reporting directly to James Cotter, Sr.

James Cotter, Jr. stated that he had this information in his possession. He once again expressed his objections.

After further discussions, the Board decided that James Cotter, Jr.'s allegations were of such a nature that justified a prompt investigation. The Board instructed that this investigation be commenced immediately and that Mr. Cotter, Jr., as the person making the allegations, would be expected to cooperate and provide whatever materials he claims to have. The Board's intention was that Mr. Tompkins's employment would be considered following such inquiry.

After further discussion, and upon motion duly made and seconded, the following resolution was adopted (on a vote of eight votes in favor and James Cotter, Jr. abstaining):

It is Hereby Resolved that the schedule of proposed 2016 executive compensation as set forth on Exhibit A to these minutes, excluding Ellen Cotter, Margaret Cotter and Craig Tompkins, as unanimously recommended by the Compensation Committee, be approved.

The Board also discussed the appointment of certain executives to certain offices. Ms. Cotter discussed with the Board the various appointments and the reasons therefor. Ellen Cotter recommended the new titles be given as below:

Dev Ghose – Executive Vice President, Chief Financial Officer & Treasurer
Andrzej Matyczynski – Executive Vice President – Global Operations
Matthew Bourke – Managing Director – Real Estate – Australia & New Zealand
Gilbert Avanes – Vice President – Finance, Planning & Analysis
Mark Douglas – Director of Property Development – Australia and New Zealand
Terri Moore – Vice President – Cinema Operations (US)
Doug Hawkins – Vice President – Construction and Facilities Management (US)
Ken Lee – Vice President – Food & Beverage (US)

After further discussion, and upon motion duly made and seconded, the following resolution was adopted (on a vote of eight votes in favor and James Cotter, Jr. abstaining).

It is hereby Resolved that the above executives be appointed to the offices listed above, as unanimously recommended by the Compensation Committee, be approved.

Next, Margaret Cotter was asked to leave. Ellen Cotter gave a summary of her assessment of the reasons for Margaret Cotter's new position as Executive Vice President, as well as a summary of the factors she had used in recommending the compensation package for her. Directors asked questions. Ellen Cotter was then excused.

William Gould, as Lead Independent Director, asked if there were any further questions about the proposed compensation for 2016 for Ellen Cotter or Margaret Cotter or the title designation for Margaret Cotter. There was none. Upon motion duly made and seconded, the following resolution was adopted (Ellen Cotter and Margaret Cotter not participating; James Cotter, Jr. abstaining):

It is Hereby Resolved that the schedule of proposed 2016 executive compensation for Ellen Cotter and Margaret Cotter and the title of Executive Vice President – Real Estate Management and NYC Development be given to Margaret Cotter, as set forth on Exhibit A to these minutes, as unanimously recommended by the Compensation Committee, be approved.

Ellen Cotter and Margaret Cotter returned to the meeting.

b. Directors Compensation

The next item of business was to consider the 2016 compensation to be paid to outside directors, as recommended by the Compensation Committee. The Board briefly discussed the materials provided to it; was advised that the proposal was based upon the recommendations of Willis Towers Watson and such proposal represented an effort to bring the Company's outside director compensation practices in line with best practices with a view to peer and competitor outside director compensation. The Compensation Committee had approved (subject to personal abstentions for each director's own compensation) the recommendation for outside director compensation. James Cotter, Jr. expressed his objection to the process of changing outside director compensation.

After further discussion, upon motion duly made and seconded, the following resolution was approved (each director abstaining as to his or her own compensation, and James Cotter, Jr. voting against):

It is Hereby Resolved that compensation for outside directors of the Company starting with calendar year 2016 shall be as follows:

- (i) maintaining the annual board retainer at \$50,000;
- (ii) increasing the annual lead director fee to \$10,000;
- (iii) increasing the annual Audit and Conflicts Committee Chair and Executive Committee Chair fee to \$20,000;
- (iv) increasing the annual Compensation Committee Chair fee to \$15,000;
- (v) increasing the annual committee member fees to \$7,500 for the Executive and Audit and Conflicts Committee and \$5,000 for the Compensation Committee; and

- (vi) establishing annual grants of \$60,000 of restricted stock units to board members (vesting 12 months following the award of the restricted stock units) based on the closing stock price on NASDAQ on today's date, subject to the approval of the recommended amendment to the 2010 Stock Incentive Plan.

Next, the Board considered possible additional compensation for extraordinary services rendered by certain directors. Ellen Cotter made a presentation to the Board with respect to her recommendation for special one-time compensation to be paid to three directors.

Ms. Cotter first expressed a request that the Board consider extraordinary compensation to Director Guy Adams. Mr. Adams was excused. Ms. Cotter summarized the extraordinary services and time devoted by Mr. Adams above and beyond the usual role of a director in the past year. Ms. Cotter noted that Mr. Adams had provide the following extraordinary services: assisting Ms. Cotter in a variety of support services as the Company underwent the stresses and controversies of the last year; assisting Ms. Cotter in an advisory capacity in her transition of roles into interim CEO and permanent CEO; advice on investor relations; personal travel to New York to assist in the evaluation of the Union Square project; assistance with evaluation of certain potential transactions; significant commitment of time in evaluating potential new executive compensation practices before the same was considered by the Compensation Committee; and extraordinary services on the Executive Committee.

James Cotter, Jr. expressed his opposition to consideration of extra board compensation.

After further discussion, upon motion duly made and seconded, the following resolution was adopted (Guy Adams not participating, and James Cotter, Jr. voting against):

It Is Hereby Resolved that Guy Adams be compensated \$50,000 in recognition of extraordinary services to the Board of Directors.

Mr. Adams returned to the meeting, and Mr. Kane was excused. Ms. Cotter provided a summary of the extraordinary services provided by Ed Kane, particularly in the area of overseeing the complete overhaul of executive compensation which had required additional time and work outside of his regular duties for the Compensation Committee. After further discussion, upon motion duly made and seconded, the following resolution was adopted (Ed Kane not participating, and James Cotter, Jr. abstaining):

It Is Hereby Resolved that Ed Kane be compensated \$10,000 in recognition of extraordinary services to the Board of Directors.

Mr. Kane returned to the meeting, and Mr. McEachern was excused. Ms. Cotter provided a summary of the extraordinary services provided by Douglas McEachern, particularly in the area of additional time beyond the typical requirements of the Audit and Conflicts Committee in tax and related matters. After further discussion, upon motion duly made and seconded, the following resolution was adopted (Douglas McEachern not participating, and James Cotter, Jr. abstaining):

It is Hereby Resolved that Douglas McEachern be compensated \$10,000 in recognition of extraordinary services to the Board of Directors.

Amendment to the 2010 Stock Incentive Plan

Next, the Board considered an amendment to the 2010 Reading International, Inc. Stock Incentive Plan (the "Plan"). The Board had been briefed that the principal reason for the amendment is to allow the grant of restricted stock units under the Plan, in accordance with recommendations of Willis Towers Watson.

Upon motion duly made and seconded, the following resolution was unanimously adopted:

It is Hereby Resolved that the amendment to 2010 Reading International, Inc. Stock Incentive Plan in the form of Exhibit B to these minutes is approved.

Mr. Tompkins returned and resumed as Recording Secretary.

Conclusion of Meeting

The meeting was adjourned at approximately 6:00 PM, Pacific Standard Time.



S. Craig Tompkins, Recording Secretary

Exhibit A

READING INTERNATIONAL, INC.
FIRST AMENDMENT TO THE
2010 STOCK INCENTIVE PLAN

This First Amendment (the "Amendment") to the Reading International, Inc. 2010 Stock Incentive Plan (the "Plan"), is made and shall be effective as of this [_____] day of [____], 2016 (the "Effective Date").

RECITALS

WHEREAS, the stockholders of Reading International, Inc. (the "Company") approved the Plan on May 13, 2010 at the annual meeting of stockholders in accordance with the recommendation of the board of directors; and

WHEREAS, the Plan provides for awards of stock options, restricted stock, bonus stock, and stock appreciation rights to eligible employees, directors, and consultants;

WHEREAS, the Company believes that it would be in the best interests of the Company and its stockholders to permit awards of restricted stock units;

WHEREAS, NASDAQ rules do not require stockholders to approve an amendment to an equity incentive plan if the amendment relates to adding restricted stock units as long as the Plan provides for the award of restricted stock;

WHEREAS, the Plan provides for the award of restricted stock;

NOW, THEREFORE, in accordance with Section 12 of the Plan, the Plan is amended as follows as of the Effective Date:

AMENDMENTS

1. Section 2(y) the definition of "Rule 16b-3" is hereby renumbered as Section 2(z).
2. Section 2(z) the definition of "Securities Act" is hereby renumbered as Section 2(aa).
3. Section 2(aa) the definition of "Stock Award" is hereby renumbered as Section 2(bb).
4. Section 2(bb) the definition of "Service" is hereby renumbered as Section 2(cc).
5. Section 2(cc) the definition of "Stock Award Agreement" is hereby renumbered as Section 2(dd).
6. Section 2(dd) the definition of "Ten Percent Stockholder" is hereby renumbered as Section 2(ee).
7. Section 2(y) the definition of "Restricted Stock Units" is hereby added.

LV 420611046v3

LV 420611046v4

"Restricted Stock Units" means a Stock Award which may be earned in whole or in part upon the passage of time or the attainment of performance criteria established by the Board and which may be settled for Common Stock, other securities or cash or a combination of Common Stock, other securities or cash as established by the Board.

8. Section 2(bb) of the Plan is hereby deleted and replaced in its entirety by the following:

"Stock Award" means any right granted under the Plan, including an Option, a stock bonus, a right to acquire restricted stock, a restricted stock unit and a stock appreciation right granted under the Plan, whether singly, in combination or in tandem, to a Participant by the Board pursuant to such terms, conditions, restrictions and/or limitations, if any, as the Board may establish.

9. Section 7(d) is hereby added to the Plan as follows:

Restricted Stock Units. Each restricted stock unit agreement shall be in such form and shall contain such terms and conditions as the Board shall deem appropriate. The terms and conditions of the restricted stock unit agreements may change from time to time, and the terms and conditions of separate restricted stock unit agreements need not be identical, but each restricted stock unit agreement shall include (through inclusion or incorporation of provisions hereof by reference in the agreement or otherwise) the substance of each of the following provisions:

- i. **Consideration.** A restricted stock unit may be awarded upon the passage of time, the attainment of performance criteria or the satisfaction or occurrence of such other events as established by the Board.
- ii. **Vesting Generally.** At the time of the grant of a restricted stock unit, the Board may impose such restrictions or conditions to vesting, and/or the acceleration of the vesting, of such restricted stock unit as it, in its sole discretion, deems appropriate. Vesting provisions of individual restricted stock units may vary.
- iii. **Termination of Service.** In the event that a Participant's Service terminates, any or all of the restricted stock units held by the Participant that have not vested as of the date of termination under the terms of the restricted stock unit agreement shall be forfeited to the Company in accordance with the restricted stock unit agreement, except as otherwise provided in the applicable restricted stock unit agreement.
- iv. **Transferability.** A restricted stock unit shall be subject to similar transfer restrictions as awards of restricted stock, except that no shares are actually awarded to a Participant who is granted restricted stock units on the date of grant, and such Participant shall have no rights of a stockholder with respect to such restricted stock units until the restrictions set forth in the restricted stock unit agreement have lapsed. Restricted stock units may be transferred to any trust established by a Participant for the benefit of the Participant, his or her spouse, and/or any one or more lineal descendants.

LV 420611046v3

LV 420611046v4

- v. **Voting, Dividend & Other Right.** Holders of restricted stock units will not be entitled to vote or to receive the dividend equivalent rights in respect of the restricted stock units at the time of any payment of dividends to stockholders on Common Stock until they become owners of the Common Stock pursuant to their restricted stock unit agreement. If the applicable restricted stock unit agreement specifies that a Participant will be entitled to dividend equivalent rights, (i) the amount of any such dividend equivalent right shall equal the amount that would be payable to the Participant as a stockholder in respect of a number of shares equal to the number of vested restricted stock units then credited to the Participant, and (ii) any such dividend equivalent right shall be paid in accordance with the Company's payment practices as may be established from time to time and as of the date on which such dividend would have been payable in respect of outstanding shares of Common Stock (and in accordance with Section 409A of the Code with regard to awards subject thereto); provided that no dividend equivalents shall be currently paid on restricted share units that are not yet vested.

10. Except as modified hereby, the provisions of the Plan shall remain in full force and effect, and the Plan may be restated, as amended hereby, in its entirety.

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CONFIDENTIAL

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Exhibit B

Proposed Executive Compensation and Appointments -- Recommended by Compensation Committee Board of Directors Meeting -- March 10, 2016						
Name	Proposed or Existing Executive Title	Proposed 2016 Base Salary	Proposed 2016 Short Term Incentive Bonus Potential	Proposed 2016 Long Term Incentive**	Potential "Named Executive Officer"	Section 16 Officer
Ellen Cotter	President & Chief Executive Officer*	\$450,000†	\$427,500 (95% of Base Salary)	\$300,000	X	X
Dev Ghose	Executive Vice President, Chief Financial Officer & Treasurer	\$400,000***†	\$200,000*** (50% of Base Salary)	\$0	X	X
S. Craig Tompkins	Executive Vice President, General Counsel & Corporate Secretary	\$410,000	\$102,500 (25% of Base Salary)	\$100,000	X	X
Andrzej Matczynski	Executive Vice President -- Global Operations	\$136,000†	\$168,000 (150% of Base Salary)	\$75,000	X	X
Robert Smerling	President -- US Chemicals*	\$375,000†	\$112,500 (30% of Base Salary)	\$100,000	X	X
Wayne Smith	Managing Director -- Australia & New Zealand*	AU\$370,000†	AU\$148,000 (40% of Base Salary)	AU\$75,000		X
Margaret Cotter	Executive Vice President -- Real Estate Management & NYC Development	\$350,000	\$105,000 (30% of Base Salary)	\$100,000		X
Matthew Bourke	Managing Director -- Real Estate -- Australia & New Zealand	AU\$325,000	AU\$97,500 (30% of Base Salary)	AU\$35,000		X

We are proposing that the Board approve the following Executives' titles:

Gilbert Avanes	Vice President -- Finance, Planning & Analysis
Mark Douglas	Director -- Property Development -- Australia & New Zealand
Terri Moore	Vice President -- Cinema Operations (US)
Doug Hawkins	Vice President -- Construction & Facilities Management (US)
Ken Lee	Vice President -- Food & Beverage (US)

*No proposed change: Existing title reflected in red.

**Proposed includes: 50% Non-Qualified Options and 50% Restricted Share Units

***Required by Employment Agreement

† The Committee is recommending the elimination of car allowances. Management will work towards this goal in 2016.

EXHIBIT 8

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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 ELLEN COTTER

New York, New York

Thursday, June 16, 2016

Reported by:
MICHELLE COX
JOB NO. 316936

1 construction agreement. There's something
2 called an "early start agreement" that dealt
3 with abatement and demolition.

4 I don't know if, at this point, they had
5 actually picked the contractor, but I know that
6 they had worked on evaluating the different
7 contractors, and ultimately selected CNY to
8 pursue the project.

9 I think at this point they were still
10 working on getting the variance done to provide
11 us with the appropriate office and retail
12 zoning. They were working on the plans with
13 BKSK, the architect. And we had obviously
14 started talking to real estate brokers. I'm
15 sure, at this point they had talked to a number
16 of real estate brokers and ultimately selected
17 Newmark.

18 **Q What was the range of anticipated costs of**
19 **all the activities you just described?**

20 A Well, ultimately, the project will cost
21 us -- we're seeking financing for \$85 million.

22 **Q Was it your view that -- was it your view**
23 **in July of 2015 that RDI would not benefit from**
24 **the input of someone with the real estate**
25 **development experience and expertise as the --**

1 as any of the director of real estate
2 candidates possessed, in terms of planning and
3 executing all these activities with the cost at
4 least financed of 85 million?

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

7 You can answer.

8 A I believe at this point I put the search
9 on hold, because we were looking for a
10 permanent CEO, that the specification required
11 somebody with a real estate background. So I
12 thought it would be better if we were hiring a
13 CEO to be able to let him or her choose who
14 they would be working with.

15 At this point, with respect to the real
16 estate projects in New York, I was very
17 comfortable with Margaret and the team that she
18 had been working with. Michael Buckley from
19 Edifice, who's referred to, he's the developer
20 who we were getting the development management
21 agreement done with, is an experienced real
22 estate developer, had built buildings in
23 New York City, understood the process, and
24 probably was the best person because he was on
25 the ground and had a team on the ground to get

1 it done properly.

2 Q Well, as a practical matter, then, this is
3 the -- some of the responsibilities of a person
4 holding the position of director of real estate
5 at RDI had been mooted or completed, as the
6 case may be, in the time that passed between
7 July 2015 and the selection of this new CEO in
8 January of 2016, right?

9 MR. TAYBACK: Object the form of the
10 question.

11 You can answer.

12 A Between -- between this period of time and
13 when I became the CEO, I became very
14 comfortable with Margaret and what she was
15 doing in New York, together with the consultant
16 team.

17 MR. KRUM: I'll ask the court reporter to
18 read the question back.

19 Q It was about, Ms. Cotter, what happened
20 during the approximate six-month period from
21 July of 2015 to January of 2016, at least
22 that's what I think it was, but we'll see when
23 the court reporter reads it.

24 MR. TAYBACK: I'm not sure.

25 If you want to ask her that question, I

1 won't have an objection.

2 (Record read.)

3 MR. TAYBACK: Restate my objection. Vague
4 and confusing. Vague is for a practical
5 matter.

6 You can answer.

7 A Some of the work that a director of real
8 estate would have done was actually -- we
9 couldn't stop the process. So the whole
10 management team was working on moving the
11 projects forward.

12 Q And the projects moved forward, correct?

13 A Yes.

14 Q And insofar as the director of real estate
15 might have expressed a view different than the
16 view that was accepted and implemented, that
17 didn't happen because he or she wasn't hired,
18 right?

19 A Well, we didn't have a new person hired,
20 but all of the work we've done to date,
21 together with Margaret and Edifice and the
22 architects, the contractor, the leasing agent,
23 I think that we've done a very good job
24 positioning this project.

25 Q The arch- -- excuse me.

1 **The contractor was CNY, right?**

2 A CNY.

3 **Q The contractor was hired when?**

4 A I don't remember exactly when they were
5 hired. They -- so far, they've been hired
6 under an early start agreement to conduct
7 abatement and demolition, internal demolition
8 work.

9 The actual construction management
10 agreement that will govern the -- you know,
11 broader construction hasn't been signed yet.

12 **Q Has the leasing agent been hired?**

13 A Yes.

14 **Q When was the leasing agent hired?**

15 A I'm not sure exactly when they were hired.
16 I would think sometime during the summer of
17 2015.

18 **Q Was the fact that those activities that**
19 **had been completed in the July through**
20 **December 2015 time period, were now done and**
21 **behind, a consideration in your decision to**
22 **give Margaret, your sister, a job as the senior**
23 **person at RDI responsible for development of**
24 **these New York City real estate projects or**
25 **properties?**

1 A I don't know if that factored into my
2 decision.

3 But as we worked on this project through
4 the year, it was clear to me that she was doing
5 everything that anybody else would have done.
6 So -- and she cared so much about the project
7 and making sure that the project was done, was
8 done correctly, and was done in a way that we
9 would have a satisfactory return.

10 Q Directing your attention, Ms. Cotter, to
11 the July 27 executive committee meeting minutes
12 that are part of Exhibit 329, those are the
13 pages that are numbered ending in 107 to 110 in
14 the lower right.

15 Do you have those?

16 A Yes.

17 Q Was there any reason that any of the items
18 discussed on those minutes of the executive
19 committee from July 27, 2015, could not have
20 been raised with the full board of directors of
21 RDI, rather than simply the executive
22 committee?

23 MR. TAYBACK: Objection. Assumes facts.

24 You can answer.

25 A If you read these minutes, they are really

1 A Prior to June 12th, there was no
2 discussion about me being interim CEO.

3 Q By the time of the first meeting
4 concerning the subject of termination of
5 Jim Cotter, Jr. as CEO, by which I'm referring
6 to May 21, 2015, did you understand that each
7 of Doug McEachern, Ed Kane and Margaret Cotter
8 were agreeable to Guy Adams serving as interim
9 CEO?

10 A That's my recollection.

11 Q That's based on conversations you had with
12 each of them, correct?

13 A Yes.

14 Q And as you sit here today, it's your best
15 recollection that the first time the notion of
16 you serving as interim CEO arose was at the
17 meeting of June 12, 2015, following the vote to
18 terminate Jim Cotter, Jr. as CEO?

19 A Yes.

20 THE VIDEOGRAPHER: Mr. Krum, sorry to
21 interrupt, but try not to touch the cord,
22 thanks. It's making noise.

23 MR. KRUM: Sorry.

24 Q Who said what at that time about Guy Adams
25 serving as interim CEO or not?

1 **"At the time" being June 12th.**

2 A My recollection of the board meeting was
3 that we were discussing who would be the
4 interim CEO. I was in New York on a conference
5 call with my sister. People were different
6 places. It was a telephonic meeting. And I
7 don't remember the exact conversation, but
8 somehow it came up that I should take on the
9 role as the interim CEO for a limited period of
10 time so that we can consider this a little bit
11 further, and determine who would be the "real
12 interim CEO."

13 So I was -- I was surprised, but I told
14 the board that I would take on that role.

15 **Q Who raised the subject of you being the**
16 **interim CEO on June 12th?**

17 A I don't recall.

18 **Q You became the interim CEO on June 12,**
19 **2015, correct?**

20 A Yes.

21 **Q And what's the first time on or after**
22 **June 12, 2015, when you thought about the**
23 **subject of a permanent CEO?**

24 A When I thought about hiring a permanent
25 CEO?

1 C E R T I F I C A T E

2 STATE OF NEW YORK)

3 :ss

4 COUNTY OF NEW YORK)

5

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

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

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

17 IN WITNESS WHEREOF, I have hereunto set my
18 hand this 29th day of June 2016.

19

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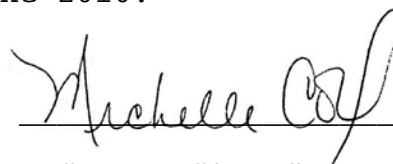

MICHELLE COX, CLR

EXHIBIT 9

1 DISTRICT COURT
2 CLARK COUNTY, NEVADA
3
4 JAMES J. COTTER, JR.,)
individually and)
5 derivatively on behalf of)
Reading International,)
6 Inc.,)
7 Plaintiff,) Case No. A-15-719860-B
8 vs.) Coordinated with:
9 MARGARET COTTER, et al.,) Case No. P-14-082942-E
10 Defendants.)
and)
11 _____)
READING INTERNATIONAL,)
12 INC., a Nevada)
corporation,)
13)
14 Nominal Defendant)
_____)

15
16 DEPOSITION OF: EDWARD KANE
17 TAKEN ON: MAY 2, 2016
18
19
20
21
22
23

24 REPORTED BY:
25 PATRICIA L. HUBBARD, CSR #3400

1 middle of that. So let me actually restate it.

2 What experience does Margaret Cotter
3 have in predevelopment with respect to real estate,
4 if any?

5 MR. SEARCY: Objection. Vague.

6 THE WITNESS: I don't know all of her
7 experience. I know that she worked with her father
8 in that area. They worked together.

9 And she has been instrumental -- I
10 forgot one other thing that she's been instrumental
11 in is we have a piece of property, the
12 Cinema 1, 2, 3. We've been trying to figure out
13 ways of developing that. It is much more valuable
14 if we make a deal with the owners of the Greek
15 restaurant next door.

16 It went back and forth. Margaret has
17 come to some general understanding with them also on
18 a joint venture with them for that Cinema 1, 2, 3
19 property.

20 I'm very impressed with the work she's
21 done.

22 BY MR. KRUM:

23 Q. To your knowledge, Mr. Kane, what
24 experience does Margaret Cotter have in real estate
25 development?

1 Q. Then we'll go on.

2 Directing your attention, Mr. Kane, back
3 to your prior testimony regarding your assessment of
4 Margaret Cotter's abilities to handle real estate
5 development matters, were you of the view on
6 June 12, 2015 when Mr. Jim Cotter, Jr., was
7 terminated as president and C.E.O. that Margaret
8 Cotter was competent to be the senior executive in
9 charge of real estate development activities for
10 RDI?

11 A. Was I confident?

12 Q. Were you -- in June 12, 2015, when Jim
13 Cotter, Jr., was terminated as president and C.E.O.,
14 was it your view then that Margaret Cotter was
15 competent to be the senior executive at RDI in
16 charge of its real estate development activities in
17 New York?

18 A. Yes.

19 Q. How long before June 12, 2015 did you
20 come to that conclusion?

21 A. It evolved over period of time. I can't
22 say when.

23 I do know that I was very impressed with
24 what she had done with the Landmark Commission,
25 making development of that property possible and

1 work on it. And I was impressed, as I said, with
2 Michael Buckley, and that would be a terrific team
3 going forward.

4 Q. Did you ever share that view with anyone
5 else at RDI including Jim Cotter, Jr.?

6 MR. SEARCY: Objection. Vague as to
7 time.

8 THE WITNESS: I don't -- I don't know.
9 I don't recall.

10 BY MR. KRUM:

11 Q. You recall that in and before May 2015 a
12 search was being conducted for a director of real
13 estate for RDI, right?

14 MR. SEARCY: Objection. Vague.

15 THE WITNESS: I just don't recall.

16 BY MR. KRUM:

17 Q. Well, did you -- did you ever hear or
18 learn or were you ever told that a search was being
19 conducted to hire a person with real estate
20 experience or expertise at a senior executive level
21 at RDI?

22 A. I don't recall if there was. There was
23 some talk, but I don't recall anything specific.

24 Q. So it was your understanding from
25 September of 2014 on that Margaret Cotter was going

1 That the foregoing pages contain a full,
2 true and accurate record of the proceedings and
3 testimony to the best of my skill and ability;
4

5 I further certify that I am not a relative
6 or employee or attorney or counsel of any of the
7 parties, nor am I a relative or employee of such
8 attorney or counsel, nor am I financially interested
9 in the outcome of this action.
10

11 IN WITNESS WHEREOF, I have subscribed my
12 name this 4th day of May, 2016.
13

14 

15 _____
16 PATRICIA L. HUBBARD, CSR #3400
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EXHIBIT 10

1	DISTRICT COURT		
2	CLARK COUNTY, NEVADA		
3			
4	JAMES J. COTTER, JR.,)	
	individually and)	
5	derivatively on behalf of)		
	Reading International,)	
6	Inc.,)	
)	Case No. A-15-719860-B
7	Plaintiff,)	
)	Coordinated with:
8	vs.)	
)	Case No. P-14-082942-E
9	MARGARET COTTER, et al.,)	
)	
10	Defendants.)	
	and)	
11	_____)	
	READING INTERNATIONAL,)	
12	INC., a Nevada)	
	corporation,)	
13)	
	Nominal Defendant)		
14	_____)	

15

16 VIDEOTAPED DEPOSITION OF DOUGLAS McEACHERN

17 TAKEN ON MAY 6, 2016

18

19

20

21

22

23

24 REPORTED BY:

25 PATRICIA L. HUBBARD, CSR #3400

1 Chicago, there were three in New York. One of them
2 in New York was located in the Union Square
3 Building.

4 BY MR. NATION:

5 Q. Which theater is that?

6 A. I don't know the name of it. It was the
7 Union Square Theater.

8 Q. Okay. And Margaret wanted to be in
9 charge of developing the Union Square Theater is
10 your understanding?

11 A. My understanding is that Margaret has
12 been involved in the Union Square Building as -- the
13 shows and the theater production activities and
14 acting as our representative, and in addition on an
15 uncompensated basis worked through the process of
16 getting the Union Square Building through the
17 Landmark Commission, which, by the way, was a
18 12-year period for which she was paid no money to
19 get it entitled and get the building expanded by
20 some 25,000 square feet.

21 The mere ability to get that -- and
22 these will be rough numbers -- created enormous
23 value in that building by getting it entitled for
24 redevelopment from the Landmark Commission and
25 getting the -- I think we went from 45,000 square

1 feet to close to 70,000 square feet approval from
2 that Landmark Commission.

3 And then the building and safety
4 group -- somebody else just recently gave us
5 permission to continue and go forward with our
6 plans.

7 So the enormous amount of value that was
8 created in that building was Margaret Cotter working
9 with her father, as I understand it, and getting the
10 entitlements.

11 MR. NATION: Could you please read me
12 the question that started that.

13 (Whereupon the question was read
14 as follows:

15 "Question: And Margaret wanted to
16 be in charge of developing the
17 Union Square Theater is your
18 understanding?")

19 BY MR. NATION:

20 Q. All right. So, at the time that --
21 picking up our narrative here, at the time that Jim
22 Cotter came in as C.E.O. --

23 A. Junior?

24 Q. Jim Cotter, Jr., came in as C.E.O. --

25 A. Okay.

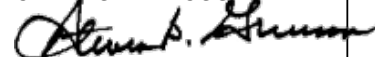
1 That the foregoing pages contain a full,
2 true and accurate record of the proceedings and
3 testimony to the best of my skill and ability;
4

5 I further certify that I am not a relative
6 or employee or attorney or counsel of any of the
7 parties, nor am I a relative or employee of such
8 attorney or counsel, nor am I financially interested
9 in the outcome of this action.
10

11 IN WITNESS WHEREOF, I have subscribed my
12 name this 10th day of May, 2016.
13

14 
15

16 PATRICIA L. HUBBARD, CSR #3400
17
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25



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JPTM

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Mark G. Krum, Bar No. 10913

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Boston, MA 02108

Telephone: (617) 723-6900

Facsimile: (617) 723-6905

Email: mkrum@bizlit.com

Attorneys for Plaintiff

James J. Cotter, Jr.

(See signature page for additional counsel.)

**DISTRICT COURT
CLARK COUNTY, NEVADA**

JAMES J. COTTER, JR.,) Case No. A-15-719860-B

derivatively on behalf of Reading) Dept. No. XI

International, Inc.,)

Plaintiff,) Coordinated with:

)

v.) Case No. P-14-0824-42-E

MARGARET COTTER, ELLEN) Dept. No. XI

COTTER, GUY ADAMS,)

EDWARD KANE, DOUGLAS) Jointly Administered

McEACHERN, WILLIAM)

GOULD, JUDY CODDING,) **JOINT PRETRIAL**

MICHAEL WROTONIAK,) **MEMORANDUM**

)

Defendants.) **DATE: 12/11/2017**

And) **TIME: 10:30 a.m.**

READING INTERNATIONAL,)

INC., a Nevada corporation,)

Nominal Defendant.)

_____)

1 The parties, through their respective counsel of record, hereby
2 submit the following joint pre-trial memorandum in accordance with this
3 Court's 1st Amended Order Setting Civil Jury Trial, Pre-trial Conference and
4 Calendar Call dated September 29, 2017 and Local Rule 2.67 after counsel for
5 all parties¹ conferred regarding the same on November 15, 2017 and
6 November 20, 2017.

7 **I. MATTER REFERENCED IN OCTOBER 4, 2017 ORDER,**
8 **PARAGRAPH D**

9 **A. Motions in Limine (December 11, 2017)**

- 10 1. Plaintiff James J. Cotter Jr.'s Motion In Limine No. 1
11 Regarding Advice of Counsel
- 12 2. Plaintiff James J. Cotter Jr.'s Motion In Limine No. 2
13 Regarding the Submission of Merits-Related Evidence By
14 Nominal Defendant Reading International, Inc.
- 15 3. Plaintiff James Cotter Jr.'s Motion In Limine No. 3 Regarding
16 After Acquired Evidence
- 17 4. Margaret Cotter, Ellen Cotter, Guy Adams, Edward Kane,
18 Douglas McEachern, William Gould, Judy Coddington, Michael
19 Wrotniak's Motion In Limine to Exclude Evidence that is
20 More Prejudicial Than Probative
- 21 5. Renewed Motion In Limine to Exclude Expert Testimony of
22 Myron Steele Based on Supplemental Authority
- 23 6. Defendant William Gould's Motion In Limine Exclude
24 Irrelevant Speculative Evidence

25
26 ¹ Counsel participating in the pretrial conference included: Mark Krum and
27 Steve Morris on behalf of Plaintiff; Marshall Searcy and Noah Helpen on
28 behalf of Defendants Margaret Cotter, Ellen Cotter, Douglas McEachern,
Guy Adams, Edward Kane, Judy Coddington and Michael Wrotniak; Shoshana
Bennett on behalf of William Gould; and Kara Hendricks on behalf of
Reading International, Inc.

B. Motions for Summary Judgment (December 11, 2017)

1. Defendants Margaret Cotter, Ellen Cotter, Guy Adams, Edward Kane, Douglas McEachern, William Gould, Judy Coddington, Michael Wrotniak's Supplement to Motions for Partial Summary Judgment Nos. 1, 2, 3, 5 and 6

2. See also Section II. J.

II. OTHER PRETRIAL MATTER

A. Statement of Facts

Plaintiff's Statement:

In view of the significant prior proceedings in this case, including motions to dismiss and summary judgment motions, as well as the detail in the pending Second Amended Complaint (the particular allegations of which have been or will be admitted or denied in the individual defendants' respective answers), and the Court's resulting familiarity with this case, the parties respectfully provide the following abbreviated, summary statement of facts of the case:

Plaintiff James J. Cotter, Jr. ("Mr. Cotter" or "Plaintiff") was and is a substantial shareholder and a director of nominal defendant Reading International, Inc. ("RDI" or the "Company"), as well as a former President and Chief Executive Officer ("CEO"). Defendants Ellen Cotter and Margaret Cotter were and are members of the RDI board of directors (the "Board") and at all times relevant hereto have purported to be and/or been the controlling shareholder(s) of RDI. Each of the remaining individual defendants was at relevant times and is a member of the RDI Board, as well of certain Board committees.

The facts of this case include and concern acts and omissions of individual director defendants which the Plaintiff claims give rise to entail breaches of fiduciary duties individually and/or together with other acts

1 and omissions, including with respect to the following matters: the threat to
2 terminate Mr. Cotter as President and CEO of RDI, the termination of
3 Mr. Cotter as President and CEO of RDI, the demand that he resign from the
4 Board, RDI Board governance matters, RDI SEC filings and press releases,
5 the search for a permanent CEO that resulted in Ellen Cotter becoming
6 permanent CEO, the hiring and compensation of Margaret Cotter as EVP
7 RED NY, the payment of certain monies to certain of the individual
8 defendants and the actions and or lack of actions by each of the individual
9 defendants in response to offers or expressions of interest by Patton Vision
10 and others to purchase all of the outstanding stock of RDI.

11 **Director Defendants' Statement:**

12 On June 12, 2015, the Board of Directors of Reading
13 International, Inc. ("RDI") voted to terminate Plaintiff James J. Cotter, Jr. as
14 President and CEO of RDI. Plaintiff claims that this decision was a breach of
15 fiduciary duty. Plaintiff also claims various other breaches of fiduciary
16 duty, including with respect to the search for a new President and CEO of
17 RDI, the hiring of Margaret Cotter as an Executive Vice President for Real
18 Estate -- NYC, the exercise of an option held by the Estate of James J. Cotter,
19 Sr. to purchase 100,000 shares of RDI Class B voting stock, and the response
20 to a third party's indication of interest in purchasing all outstanding shares
21 of RDI. The Director Defendants contend that they acted in the best
22 interests of RDI stockholders at all times and fulfilled their fiduciary duties
23 to the Company.

24 One of the Director Defendants, William Gould is separately
25 represented. On the central claim that initiated this case—Plaintiff's
26 termination—Mr. Gould voted *against* terminating Plaintiff. Although
27 Mr. Gould is separately represented, there is substantial overlap in his
28 witness list and his responses to other portions of this pre-trial

1 memorandum with that of the other director defendants and individual
2 defendants have therefore chosen to present a combined defense position in
3 the pre-trial memorandum.

4 **RDI's Statement:**

5 RDI joins in the Director Defendants' Statement above.

6 **B. List of Claims**

7 Plaintiffs' list of claims for relief is as follows:

8 **A. Breaches of the Duty of Care (SAC 1–179) (First Cause)**

- 9 **1. Process in connection with termination, including aborting**
10 **ombudsman and lack of process/process failures (SAC 3, 35,**
11 **36, 43, 50 – 57, 61 – 94) (EC, MC, GA, EK, DM, WG)**
12 **(equitable relief)²**
13 **2. Breach(es) of the duty of care and abdication of fiduciary**
14 **responsibilities by some or all acts and omissions in SAC**
15 **(SAC - all), including paragraph A. 1. above and the**
16 **following:**
17
 - 18 • Use of executive committee (SAC 8, 99) (EC, MC, Kane,
 - 19 Adams/WG, JC, MW)
 - 20 • Process/process failures from aborted CEO search selecting
 - 21 EC (SAC 6, 14, 137 – 147, 152) (Search Committee: MC, DM,
 - 22 WG) (Board: All)
 - 23 • Erroneous and/or materially misleading statements in board
 - 24 materials such as agendas and minutes, and in public
 - 25 disclosures including SEC filings and press releases (SAC 9,
 - 26 13, 72, 101a.-i., 109 – 119, 135a.-k., 136a.-i., 147) (all)

27
28 ² Arabic numbered bold typeface paragraphs indicate matters which
Plaintiff contends give rise to and/or constitute breaches of fiduciary duty
independently, as well as together with other matter.

- Process/process failures in connection with nomination and retention of directors, including adding Coddington and/or Wrotniak (SAC 11, 12, 121-134) (EC, MC, DM, GA, EK, WG)
 - Hiring MC as EVP RED NY (SAC 6, 15, 57 – 61, 92, 95, 149 – 151, 166) and paying the \$200,000 pre-employment bonus (committees - members) (Board - all)
 - \$50,000 to Adams (SAC 153, 166) (Committees – members) (Board – all but GA)
 - Process/process failures in response to Patton Vision offer(s) (SAC 16, 154-162) (all)
- 3. Damages/injury (SAC 163 – 168)**
- a. injury to RDI's reputation and goodwill (164)
 - b. impairment of shareholder rights due to SEC filings (165)
- B. Breaches of the Duty of Loyalty (SAC 1 – 172, 180-186) (Second Cause)**
1. Threat to terminate (SAC 2, 35, 36, 64-71, 78 – 82, 84, 87, 88, 91) (GA, EK, DM, EC, MC)
 2. Termination (SAC 3, 35, 36, 43, 50 – 57, 64 – 94) (GA, EK, DM, EC, MC) (equitable relief also sought)
 3. Authorizing exercise of the 100,000 share option (SAC 10, 102 – 108) (GA, EK) (equitable relief also sought)
 4. Aborted CEO search selecting EC (SAC 6, 14, 137 – 147, 152) (Search Committee: MC, DM, WG) (Board: all)
 5. Hiring MC as EVP RED NY (SAC 6, 15, 57 – 61, 92, 95, 149 – 151, 166) and paying \$200,000 pre-employment bonus (Committee members) (Board: all)
 6. Process/process failures in response to Patton Vision offer(s) (SAC 16, 154-162) (all)
 7. Breach of the duty of loyalty (all) and misuse of their

position as controlling shareholders (EC, MC) by some or all such acts and omissions in the SAC, including those in paragraphs B. 1. – 7. above and the following:

- Threat to terminate insurance if JJC, Jr. does not resign as a director (SAC 4, 38) (EC, WG)
- use of executive committee (SAC 8, 99) (EC, MC, Kane, Adams, WG)
- manipulating board materials (SAC 9, 72, 100) (EC)
- involuntary retirement of Storey (SAC 12, 127-130) (EC, MC, DM, GA, EK)
- Board stacking/adding Coddington and Wrotniak (SAC 11, 121-134) (nominating committee) (Board - all others)
- \$50,000 to Adams (SAC 153, 166) (EC) (all)
- SEC filings (SAC 13, 101a.-i., 109 – 119, 135a.-k., 136a.-i., 147) (all)

8. Damages/injury (SAC 163 – 168)

- a. diminution in value of RDI (163)
- b. injury to reputation and goodwill (164)
- c. impairment of shareholder rights due to SEC filings (165)
- d. other monetary damages (166)
 - i. \$200,000 and job to MC
 - ii. \$50,000 to Adams
 - iii. duplicate cost of paying consultants to perform MC's position's responsibilities
 - iv. class A nonvoting stock accepted *in lieu* of cash consideration for exercise of 100,000 share option

C. Breaches of the Duty of Candor (SAC 1 – 172, 187 – 192) (Third Cause)

1. SEC filings and press releases (SAC 13, 101a.-i., 109 – 119, 135a.-k., 136a.-i., 147) (EC - all) (WG - Form 8-Ks and press releases about termination and CEO) (each as to disclosures regarding themselves (e.g., proxies))
2. Damages/injury (SAC 163 – 168)
 - a. diminution in value of RDI (163)
 - b. impairment of shareholder rights due to SEC filings (165)
 - c. injury to reputation and goodwill (168)

D. Aiding and Abetting Breaches of Fiduciary Duty (SAC 193 – 200) (Fourth Cause)

1. Threat to terminate (SAC 2, 35, 36, 64-71, 78 – 82, 84, 87, 88, 91) (EC, MC)
2. Termination (SAC 3, 35, 36, 43, 50 – 57, 64 – 94) (Threat to terminate (SAC 2, 35, 36, 78 – 82, 87, 88, 91) (EC, MC)
3. Authorizing exercise of the 100,000 share option (SAC 10, 102 – 108) (EC)
4. Involuntary retirement of Storey (SAC 12, 127-130) (EC, MC)
5. Board stacking/adding Coddington and Wrotniak (SAC 11, 121-134) (EC, MC)
6. Aborted CEO search selecting EC (SAC 6, 14, 137 – 147, 152) (EC)
7. Hiring MC as EVP RED NY (SAC 6, 15, 57 – 61, 92, 95, 149 – 151, 166) and paying \$200,000 pre-employment bonus (EC, MC)
8. Patton Vision offer(s) (SAC 16, 154-162) (EC, MC)

9. Damages/injury (SAC 163 – 168)
 - a. diminution in value of RDI (163)
 - b. injury to reputation and goodwill (164)
 - c. impairment of shareholder rights due to SEC filings (165)
 - d. other monetary damages (166)
 - i. \$200,000 and job to MC
 - ii. \$50,000 to Adams
 - iii. duplicate cost of paying consultants to perform MC's position's responsibilities
 - iv. class A nonvoting stock accepted *in lieu* of cash consideration for exercise of 100,000 share option

C. List of Affirmative Defenses

Plaintiff has not abandoned any purported claims identified in the Second Amended Complaint. Director Defendants therefore cannot abandon any affirmative defenses asserted in its Answer to the Second Amended Complaint. Depending on which particular claims for relief Plaintiff actually pursues at trial, Director Defendants may raise the following affirmative defenses:

- Failure to State a Cause of Action;
- Statute of Limitations and Repose;
- Laches;
- Unclean Hands;
- Spoliation;
- Illegal Conduct and Fraud;
- Waiver, Estoppel, and Acquiescence;
- Ratification and Consent;

- 1 • No Unlawful Activity;
- 2 • No Reliance;
- 3 • Failure to Plead Fraud with Particularity;
- 4 • Uncertain and Ambiguous Claims;
- 5 • Privilege and Justification;
- 6 • Good Faith and Lack of Fault;
- 7 • No Entitlement to Injunctive Relief;
- 8 • Damages too Speculative;
- 9 • No Entitlement to Punitive Damages;
- 10 • Failure to Mitigate;
- 11 • Comparative Fault;
- 12 • Business Judgment Rule;
- 13 • Equitable Estoppel;
- 14 • Election of Remedies;
- 15 • N.R.S. 78.138;
- 16 • Failure to Make Appropriate Demand;
- 17 • Conflict of Interest and Unsuitability to Serve as a Derivative
- 18 Representative.
- 19 **RDI**
- 20 • Failure To State A Claim
- 21 • Failure To Make Demand
- 22 • Corporate Governance
- 23 • Irreparable Harm To Company
- 24 • Unclean Hands
- 25 • Spoliation
- 26 • Waiver, Estoppel, And Acquiescence
- 27 • Ratification And Consent
- 28 • No Unlawful Activity

- Privilege And Justification
- Good Faith And Lack Of Fault
- No Entitlement To Injunctive Relief
- Damages Too Speculative
- Mitigation Of Damages
- Comparative Fault
- Equitable Estoppel
- Nevada Revised Statute 78.138
- Conflict Of Interest And Unsuitability To Serve As Representative

D. Claims or Defenses to be Abandoned

None. However, Plaintiff will not seek equitable relief with respect to historical or past actions relating to the executive committee, to corporate governance of RDI such as misleading or inaccurate meeting agendas and/or minutes, to the addition or removal of persons to and/or from the RDI board of directors and to SEC filings and press releases. Plaintiff will seek equitable relief with respect to the vote to terminate James J. Cotter Jr. as President and CEO and reserves the right to do so with respect to authorization of the exercise of the so-called 100,000 share option.

E. List of Exhibits

The Court has given the parties to and including December 13, 2017 to provide exhibit list(s).

F. Agreements to Limit or Exclude Evidence

None presently.

1 **G. Witness List**

2 **1. Nonexpert Witnesses**

3 For Plaintiff:

- 4 1. James Cotter, Jr. (*plaintiff expects to present this witness*)
5 c/o Mark Krum
6 Yurko, Salvesen & Remz. P.C.
7 One Washington Mall, 11th Floor
8 Boston, MA 02108
9 617.723.6900
- 10 2. Person Most Knowledgeable, Reading International, Inc. (*plaintiff*
11 *may call this witness if the need arises*)
12 c/o Mark E. Ferrario, Esq.
13 Leslie S. Godfrey, Esq.
14 Greenberg Traurig LLP
15 3773 Howard Hughes Parkway, Suite 400 North
16 Las Vegas, Nevada 89169
17 702-792-3773
- 18 3. Margaret Cotter (*plaintiff expects to present this witness*)
19 c/o Stan Johnson
20 COHEN | JOHNSON | PARKER | EDWARDS
21 375 E. Warm Springs Road, Ste. 104
22 Las Vegas, NV 89119
23 702-823-3500
- 24 4. Ellen Cotter (*plaintiff expects to present this witness*)
25 c/o Stan Johnson
26 COHEN | JOHNSON | PARKER | EDWARDS
27 375 E. Warm Springs Road, Ste. 104
28 Las Vegas, Nevada 89119
 702-823-3500
5. Douglas McEachern (*plaintiff expects to present this witness*)
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 702-823-3500

- 1 6. Guy Adams (*plaintiff expects to present this witness*)
2 c/o Stan Johnson
3 Cohen-Johnson, LLC
4 255 East Warm Springs Road, Suite 100
5 Las Vegas, Nevada 89119
6 702-823-3500
- 7 7. Edward Kane (*plaintiff expects to present this witness*)
8 c/o Stan Johnson
9 Cohen-Johnson, LLC
10 255 East Warm Springs Road, Suite 100
11 Las Vegas, Nevada 89119
12 702-823-3500
- 13 8. William Gould (*plaintiff expects to present this witness*)
14 Donald A. Lattin, Esq.
15 Carolyn K. Renner, Esq.
16 MAUPIN, COX & LeGOY
17 4785 Caughlin Parkway
18 Reno, Nevada 89519
19 775-827-2000
- 20 9. Timothy Storey (*plaintiff expects to present this witness*)
21 Donald A. Lattin, Esq.
22 Carolyn K. Renner, Esq.
23 MAUPIN, COX & LeGOY
24 4785 Caughlin Parkway
25 Reno, Nevada 89519
26 775-827-2000
- 27 10. John Hunter (*plaintiff may call this witness if the need arises*)
28 Milken Institute, Chief Financial Officer
1250 4th Street
Santa Monica, CA 90401
11. Antoinette Jefferies (*plaintiff may call this witness if the need arises*)
10488 Eastborne Avenue, Unit #211
Los Angeles, California 90024
310-293-7384

12. Eric Barr (*plaintiff may call this witness if the need arises*)
9 Park Street, Brighton, VIC 3186
Southern Melbourne, Australia
011-61-488-096-616
ebarr@optushome.com.au
13. Al Villasenor (*plaintiff may call this witness if the need arises*)
116 – 19th Street
Manhattan Beach, California 90266
Home- 310-546-5193
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14. Lois Marie Kwasigroch (*plaintiff may call this witness if the need arises*)
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15. Harry P. Susman (*plaintiff may call this witness if the need arises*)
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1000 Louisiana, Suite 5100
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713-653-7875 (w)
hsusman@susmangodfrey.com
16. Fehmi Karahan (*plaintiff may call this witness if the need arises*)
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Plano, Texas 75024
214-473-9700 (w)
fehmi@karahaninc.com
17. Judy Coddling (*plaintiff expects to present this witness*)
2266 Canyon Back Road
Los Angeles, California 90049
18. Michael J. Wrotniak (*plaintiff expects to present this witness*)
Aminco Resources USA
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81 Main Street Suite 110

1 White Plains, NY 10601
2 914 949 4400
3 M.Wrotniak@Aminco.biz

4 19. Gil Borok (*plaintiff may call this witness if the need arises*)
5 3835 Hayvenhurst Avenue
6 Encino, California 91436
7 Mobile- 818-0528-3689
8 Email- gborok@me.com

9 20. Robert Wagner (*plaintiff may call this witness if the need arises*)
10 Korn Ferry
11 1900 Avenue of the Stars Suite 2600
12 Los Angeles, CA 90067
13 310-226-2672 (w)
14 Robert.wagner@kornferry.com

15 21. John M. Genovese (*plaintiff may call this witness if the need arises*)
16 7584 Coastal View Drive
17 Los Angeles, CA 90045
18 Mobile: 310-245-1760
19 Email- jngenovese@yahoo.com

20 22. William D. Ellis (*plaintiff expects to present this witness and/or*
21 *present the witness's testimony by means of a deposition*)
22 c/o Mark E. Ferrario, Esq.
23 Leslie S. Godfrey, Esq.
24 Greenberg Traurig LLP
25 3773 Howard Hughes Parkway, Suite 400 North
26 Las Vegas, Nevada 89169
27 702-792-3773

28 23. Craig Tompkins (*plaintiff may call this witness if the need arises*)
c/o Mark E. Ferrario, Esq.
Leslie S. Godfrey, Esq.
Greenberg Traurig LLP
3773 Howard Hughes Parkway, Suite 400 North
Las Vegas, Nevada 89169
702-792-3773

- 1 24. Gary McLaughlin (*plaintiff may call this witness if the need arises*)
2 Akin Gump
3 2029 Century Park East, Suite 2400
4 Los Angeles, CA 90067
5 310-728-3358
- 6 25. C.N. Franklin Reddick, III (*plaintiff may call this witness if the*
7 *need arises*)
8 Akin Gump
9 2029 Century Park East, Suite 2400
10 Los Angeles, CA 90067
11 310-728-3358
- 12 26. Robert Mayes (*plaintiff expects to present this witness and/or*
13 *present the witness's testimony by means of a deposition*)
14 Korn Ferry
15 c/o Samantha Goodman
16 1900 Avenue of the Stars, Suite 2600
17 Los Angeles, CA 90067
18 310.556.8557
- 19 27. Andrew Shapiro (*plaintiff expects to present this witness and/or*
20 *present the witness's testimony by means of a deposition*)
21 c/o Jahan Raissi
22 Shartsis Freise LLP
23 One Maritime Plaza, 18th Floor
24 San Francisco, CA 94111
25 415.421.6500
- 26 28. Jonathan Glaser (*plaintiff expects to present this witness and/or*
27 *present the witness's testimony by means of a deposition*)
28 c/o Alexander Robertson, IV
Robertson & Associates, LLP
32121 Lindero Canyon Road, Suite 200
Westlake Village, CA 91361
818.851.3850

1 29. Whitney Tilson (*plaintiff expects to present this witness's*
2 *testimony*
3 *by means of a deposition*)
4 c/o Alexander Robertson, IV
5 Robertson & Associates, LLP
6 32121 Lindero Canyon Road, Suite 200
7 Westlake Village, CA 91361
8 818 851 3850

9 30. Andrez Matycynski (*plaintiff may call this witness if the need*
10 *arises*)
11 c/o Greenberg Traurig, LLP
12 3773 Howard Hughes Pkwy., Ste. 400N
13 Las Vegas, NV 89169

14 31. Dev Ghose (*plaintiff may call this witness if the need arises*)
15 c/o Greenberg Traurig, LLP
16 3773 Howard Hughes Pkwy., Ste. 400N
17 Las Vegas, NV 89169

18 For the Director Defendants:

19 1. Ellen Cotter (*the director defendants expect to present this witness*)
20 c/o COHEN | JOHNSON | PARKER | EDWARDS
21 375 E. Warm Springs Road, Ste. 104
22 Las Vegas, NV 89119
23 702-823-3500

24 And
25 Quinn Emanuel Urquhart & Sullivan, LLP
26 865 S. Figueroa St., 10th Floor
27 Los Angeles, 90017
28 213-443-3000

1 Margaret Cotter (*the director defendants expect to present this*
2 *witness*)
3 c/o COHEN | JOHNSON | PARKER | EDWARDS
4 375 E. Warm Springs Road, Ste. 104
5 Las Vegas, NV 89119
6 702-823-3500

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And
Quinn Emanuel Urquhart & Sullivan, LLP
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213-443-3000

3. James Cotter, Jr. (*the director defendants expect to present this witness*)
c/o Mark Krum
Yurko, Salvesen & Remz. P.C.
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617-723-6900
4. Guy Adams (*the director defendants expect to present this witness*)
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And
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5. Edward Kane (*the director defendants expect to present this witness*)
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And
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213-443-3000
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And
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213-443-3000
9. Bill Gould (*the director defendants expect to present this witness*)
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Reno, NV 89519
775-827-2000

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And
c/o Bird, Marella, Boxer, Wolpert,
Nessim, Drooks, Lincenberg & Rhow
1875 Century Park East, 23rd Floor
Los Angeles, CA 90067
310-201-2100

10. Timothy Storey (*the director defendants expect to present this witness*)
c/o Maupin Cox & LeGoy
4785 Caughlin Parkway
Reno, NV 89519
775-827-2000

And
c/o Bird, Marella, Boxer, Wolpert,
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11. Craig Tompkins (*the director defendants expect to present this witness*)
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702-792-3773

12. Bob Smerling (*the director defendants expect to present this witness*)
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13. Terri Moore (*the director defendants expect to present this witness*)
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- 1 14. Andrzej Matyczynski (*the director defendants expect to present this*
2 *witness*)
3 c/o Greenberg Traurig, LLP
3773 Howard Hughes Pkwy., Ste. 400N
4 Las Vegas, NV 89169
5 702-792-3773
- 6 15. Linda Pham (*the director defendants expect to present this witness*)
7 c/o Greenberg Traurig, LLP
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8 Las Vegas, NV 89169
9 702-792-3773
- 10 16. Debbie Watson (*the director defendants expect to present this*
11 *witness*)
12 c/o Greenberg Traurig, LLP
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13 Las Vegas, NV 89169
14 702-792-3773
- 15 17. Laura Batista (*the director defendants expect to present this witness*)
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17 Las Vegas, NV 89169
18 702-792-3773
- 19 18. David Roth (*the director defendants expect to present this witness*)
20 Cecelia Packing Corp.
21 24780 E South Ave.
22 Orange Cove, CA 93646
23 559-626-5000
- 24 19. Michael Buckley (*the director defendants may call this witness if the*
25 *need arises*)
26 Edifice Real Estate Partners
545 8th Ave.
27 New York, NY 10018
28 347-826-4569

1 20. Derek Alderton (*the director defendants expect to present this*
2 *witness*)

3 Highpoint Associates
4 100 N Sepulveda Blvd.
5 El Segundo, CA 90245
6 310-616-0100

7 21. Mary Cotter (*the director defendants expect to present this witness*)

8 2818 Dumfries Road
9 Los Angeles, CA 90064
10 310-559-0581

11 22. Jill Van (*the director defendants expect to present this witness*)

12 Grant Thornton
13 515 S. Flower St., 7th Floor
14 Los Angeles, CA 90071
15 213-627-1717

16 23. Whitney Tilson (*the director defendants may call this witness if the*
17 *need arises*)

18 c/o Alexander Robertson, IV
19 Robertson & Associates, LLP
20 32121 Lindero Canyon Road, Suite 200
21 Westlake Village, CA 91361
22 818-851-3850

23 24. Jon Glaser (*the director defendants may call this witness if the need*
24 *arises*)

25 c/o Alexander Robertson, IV
26 Robertson & Associates, LLP
27 32121 Lindero Canyon Road, Suite 200
28 Westlake Village, CA 91361
818-851-3850

For Reading International, Ind.:

RDI does not intend to call witnesses, but reserves all rights to
question witnesses identified by Plaintiff and/or the other defendants in this
matter.

2. Expert Witnesses and Summaries of Opinions

For Plaintiff:

1. Former Chief Justice Myron Steele will offer opinion testimony relating to matters of corporate governance, including regarding proper exercise of directors' fiduciary duties. Among other things, he will offer opinion testimony regarding appropriate corporate governance practices and activities where a board of directors is faced with circumstances in which directors lack or may lack independence and/or disinterestedness, including the appropriate practices and activities to address such circumstances, and to evaluate the success of such practices and activities, including with respect to the following matters (i) the process used to terminate James J. Cotter, Jr. as President and Chief Executive Officer of Reading International, Inc. ("RDI"), (ii) the use of the Executive Committee of RDI's Board of Directors, (iii) the appointment of EC and MC to their respective current positions and the revised compensation and bonuses that they and Adams were given and (iv) the rejection of the Offer.³ Former Chief Justice Steele also will offer opinion

³ As stated in the Steele Report, it is Justice Steele's understanding that Nevada courts look to Delaware case law when there is no Nevada statutory or case law on point for an issue of corporate law. See, e.g. *Brown v. Kinross Gold U.S.A., Inc.*, 531 F. Supp. 2d 1234, 1245 (D. Nev. 2008) ("Because the Nevada Supreme Court frequently looks to the Delaware Supreme Court and the Delaware Courts of Chancery as persuasive authorities on questions of corporation law, this Court often looks to those sources to predict how the Nevada Supreme Court would decide the question."); *Hilton Hotels Corp. v. ITT Corp.*, 978 F. Supp. 1342, 1346 (D. Nev. 1997) ("Where, as here, there is no Nevada statutory or case law on point or an issue of corporate law, this Court finds persuasive authority in Delaware case law."); *Cohen v. Mirage Resorts, Inc.*, 62 P.3d 720, 727 n.10 (Nev. 2003) ("Because the Legislature relied upon the Model Act and the Model Act relies heavily on New York

1 testimony to rebut opinions offered by defendants' experts
2 Michael Klausner and Alfred Osborne.

- 3 2. Richard Spitz will offer opinion testimony relating to executive
4 and CEO searches and RDI's supposed CEO search. It is
5 anticipated that he will offer opinion testimony that the
6 execution of the (supposed) executive search process undertaken
7 at RDI in 2015 to find a CEO was not conducted properly and
8 that the search failed, including because the selection of Ellen
9 Cotter as CEO was not the product of completing the search
10 process undertaken and was not a result of the search activities
11 conducted. Mr. Spitz also will offer opinion testimony to rebut
12 opinions offered by defendants' expert Alfred Osborne.
- 13 3. Albert Nagy will offer opinion testimony in rebuttal to
14 defendants' expert Alfred Osbourne. Among other things, it is
15 anticipated that he will offer opinion testimony that Margaret
16 Cotter's compensation from RDI is not within a reasonable range
17 for a person with her experience and qualifications.
- 18 4. Tiago Duarte-Silva will offer opinion testimony about money
19 damages Plaintiff seeks by this action. It is anticipated that his
20 opinion testimony will include opinions that (i) Reading's
21 earnings have declined and underperformed since Ellen Cotter
22 became Reading's CEO, (ii) Reading's value has declined and
23

24 and Delaware case law, we look to the Model Act and the law of those states
25 in interpreting the Nevada statutes.").

26 Justice Steele is aware that the defendants in this action have filed a motion
27 in limine because the Steele Report stated that the opinions therein were
28 based on what a court that applied Delaware law would find. That
phraseology was intended simply to refer to Justice Steele's years of
experience in Delaware's well-versed body of law. The Delaware law on
which Justice Steele relies neither supplants nor modifies the plain meaning
of Nevada law, but only is used to inform Nevada law.

1 underperformed since Ellen Cotter became Reading's CEO, and
2 (iii) failing to respond favorably to an acquisition offer impeded
3 an increase in Reading's market value. Mr. Duarte-Silva also will
4 offer opinion testimony to rebut opinions offered by defendants'
5 expert Richard Roll.

- 6 5. Dr. John Finnerty will offer opinion testimony to rebut opinions
7 offered by defendants' expert Richard Roll. It is anticipated that
8 his opinion testimony will include opinions that Dr. Roll's
9 conclusions that (1) "the news regarding James Cotter, Jr.'s
10 termination did not have an adverse effect on the price of RDI
11 stock;" (2) "the risk adjusted performance of RDI Stock since the
12 termination of James Cotter, Jr. through June 30,2016 does not
13 support Plaintiff's contention that RDI Stock has
14 underperformed and/or suffered irreparable harm;" and (3) "the
15 risk adjusted performance of RDI Stock since the termination of
16 James Cotter, Jr. through June 30, 2016, is not distinguishable
17 from the performance of RDI Stock while he was CEO" are
18 incorrect.

19 For the Director Defendants:

- 20 1. Michael Klausner – Mr. Klausner will offer opinion testimony
21 regarding the Board of Directors' proper exercise of their duties
22 and obligations in connection with their decision to terminate
23 James Cotter, Jr. as President and CEO and their decision not to
24 pursue the third-party indication of interest, including as a
25 rebuttal to Plaintiffs' expert Justice Myron Steele.
26 2. Jon Foster – Mr. Foster will offer opinion testimony regarding
27 the Board of Directors' decision-making and analysis in
28 connection with their consideration of the third-party indication

of interest, as a rebuttal to the expected testimony of Plaintiffs' expert Tiago Duarte-Silva.

3. Richard Roll – Dr. Roll will offer opinion testimony about the claimed money damages being sought by Plaintiff in this action based on fluctuations or changes in RDI's stock price, including as a rebuttal to Plaintiffs' purported damages experts.
4. Bruce Strombom – Mr. Strombom will offer opinion testimony to rebut the purported damages analysis set forth by Plaintiffs' expert Tiago Duarte-Silva.
5. Alfred Osborne – Dr. Osborne will offer opinion testimony on matters relating to corporate governance and assess Williams Gould's role, responsibilities and conduct in certain corporate governance processes at RDI. He will also offer opinion testimony to rebut opinions offered by Plaintiffs' experts Justice Myron Steele and Mr. Richard Spitz regarding purported breaches of fiduciary duty by members of the Board of Directors. For Reading international, Inc.:
RDI joins in the expert designations of the Director Defendants.

H. Issues of Law

Plaintiff's Position:

Plaintiff's position is that any such issues will be raised with the Court in the context of jury instructions.

Director Defendants' Position:

As described in detail in the Director Defendants' pending Motions for Partial Summary Adjudication, the Director Defendants believe that for each purported breach of fiduciary described in the Second Amended Complaint, each of them (1) were subject to the protections and

1 presumptions afforded by Nevada's business judgment rule, (2) properly
2 exercised their fiduciary obligations, (3) did not engage in any "intentional
3 misconduct, fraud or a knowing violation of law" required by N.R.S. 78.138
4 to impose individual liability on corporate directors, and, although not
5 relevant under Nevada law, (4) were independent for each relevant decision
6 made by the Board in which they participated. Moreover, as previously
7 argued in the context of the Director Defendants' Motion for Partial
8 Summary Judgment No. 1 and Opposition to Plaintiff's Motion for Partial
9 Summary Judgment, Plaintiff lacks standing to bring this derivative action
10 or to derivatively assert certain claims that are wholly-personal to him, such
11 as his termination claim. Similarly, the equitable relief that Plaintiff seeks—
12 *i.e.*, reinstatement as President and CEO of RDI—is not available as a matter
13 of law.

14 **RDI's Position:**

15 RDI's business decisions challenged by Plaintiff were the result
16 of valid business judgment. Additionally, RDI joins in the position of the
17 Director Defendants.

18 **I. Previous Orders on Motions in Limine**

19 a. Defendants' Motion In Limine to Exclude Expert
20 Testimony of Myron Steele, Tiago Duarte-Silva, Richard
21 Spitz, Albert Nagy, and John Finnerty

22 i. Granted in Part. With respect to Chief Justice
23 Steele, he may testify only for the limited purpose
24 of identifying what appropriate corporate
25 governance activities would have been, including
26 activities where directors are interested, including
27 how to evaluate if directors are interested.

28 Withdrawn as to Dr. Finnerty. Denied as to all

1 other experts. See December 21, 2016 Order
2 Regarding Defendants' Motions for Partial
3 Summary Judgment Nos. 1-6 and Motion In
4 Limine to Exclude Expert Testimony ("December
5 21, 2016 Order"), attached as Ex. ____.

6 **J. Previous Orders on Motions for Partial Summary Judgement**

- 7 a. Individual Defendants' Motion for Summary
8 Judgment (No. 1.) Re: Plaintiff's Termination and
9 Reinstatement Claims
10 i. Denied. See December 21, 2016 Order.
11 b. Individual Defendants' Motion for Partial Summary
12 Judgment (No. 2) Re: The Issue of Director
13 Independence
14 i. Continued. See December 21, 2016 Order.
15 c. Individual Defendants' Motion for Partial Summary
16 Judgment (No. 3) On Plaintiff's Claims Related to the
17 Purported Unsolicited Offer
18 i. Continued. See December 21, 2016 Order.
19 d. Individual Defendants' Motion for Partial Summary
20 Judgment (No. 4) On Plaintiff's Claims Related to the
21 Executive Committee
22 i. Granted in Part. Granted as to the formation
23 and revitalization (activation) of the Executive
24 Committee; Denied as to the utilization of the
25 committee. See December 21, 2016 Order.
26 e. Individual Defendant's Motion for Partial Summary
27 Judgment (No. 5) On Plaintiff's Claims Related to the
28 Appointment of Ellen Cotter as CEO

- 1 i. Continued. See December 21, 2016 Order.
- 2 f. Individual Defendants' Motion for Partial Summary
- 3 Judgment (No. 6) Re: Plaintiff's Claims Related to the
- 4 Estate's Option Exercise, the Appointment of
- 5 Margaret Cotter, the Compensation Packages of
- 6 Ellen Cotter and Margaret Cotter, and the Additional
- 7 Compensation of Margaret Cotter and Guy Adams
- 8 i. Continued. See December 21, 2016 Order.
- 9 g. Plaintiff James J. Cotter, Jr.'s Motion for Partial
- 10 Summary Judgment.
- 11 i. Denied. See October 3, 2016 Order Denying
- 12 James J. Cotter Jr.'s Motion for Partial
- 13 Summary Judgment and Granting RDI's
- 14 Countermotion for Summary Judgment.
- 15 h. Defendant William Gould's Motion for Summary
- 16 Judgment
- 17 i. Continued.

18 **K. Estimated Length of Trial**

19 The parties estimate 15 to 19 days; 80-100 trial hours.

20

21 **L. Other Issues**

22 **Plaintiff's Statement:**

23 Plaintiff is unable to locate an answer from defendant Gould to

24 the Second Amended Complaint, which the individual defendants should

25 have answered long ago.

26 **Director Defendants' Statement:**

27 Plaintiff's list of claims above neither complies with the rules for

28 pre-trial disclosures nor provides *any* clarity about what claims Plaintiff

1 actually intends to prove at trial or what damages (money or equitable) he
2 seeks. Eighth District Rule of Practice 2.67(b)(2) requires Plaintiff to provide
3 "[a] list of all claims for relief designated by reference to each claim or
4 paragraph of a pleading and a description of the claimant's theory of
5 recovery with each category of damage requested." The Director
6 Defendants intend to address at trial any purported breaches of fiduciary
7 duty—and will show that Plaintiff's claims are baseless—but must be told
8 which specific actions are at issue in order to properly prepare their defense.

9 Plaintiff states that he will pursue claims for breaches of
10 fiduciary duty potentially based on each and every allegation in the Second
11 Amended Complaint by, for example, stating his intent to pursue
12 "[b]reach(es) of the duty of care and abdication of fiduciary responsibilities
13 by some or all acts and omissions in SAC." This provides no more
14 information than if Plaintiff had never made his pre-trial disclosures—he
15 may or may not pursue a claim based on any act or omission mentioned or
16 alluded to anywhere in the Second Amended Complaint. Plaintiff's witness
17 list similarly fails to shed any light on the claims Plaintiff intends to
18 pursue—his list strays so far afield that Plaintiff has stated his intent to call
19 Defendant Guy Adams' ex-wife (Lois Marie Kwasigroch) at trial.

20 Plaintiff also fails to disclose the actual monetary damages or
21 equitable relief he intends to seek at trial. For example, Plaintiff states that
22 his damages resulting from Defendants' alleged breaches of the duty of care
23 are "injury to RDI's reputation and goodwill" and "impairment of
24 shareholder rights due to SEC filings." If these are supposed money
25 damages, Plaintiff does not state his claim for damages, or even explain
26 what shareholder rights are purportedly impacted. With the exception of
27 the equitable relief he seeks in connection with his termination from RDI
28 (*i.e.*, being reinstated as President and CEO), Plaintiff does not link any

1 particular claim to any particular category or amount of damages. For
2 example, Defendants have no idea what relief Plaintiff is seeking in
3 connection with the "involuntary retirement of Storey" or "process/process
4 failures in connection with nomination and retention of directors, including
5 Coddington and/or Wrotniak." Plaintiff's list of claims/damages is
6 indecipherable and nonsensical; Plaintiff has attempted to reserve the right
7 at trial to pursue any claim he wants and seek whatever damages he wants.
8 Defendants cannot prepare for trial based on these inadequate disclosures,
9 which amount to nothing but gamesmanship and are highly prejudicial.

10 **RDI's Position:**

11 RDI contends the equitable relief sought would result in
12 significant disruption of RDI management and the pursuit of its long term
13 business strategy. Additionally, RDI joins in the statement of the Director
14 Defendants regarding Plaintiff's purported damages.

15 MORRIS LAW GROUP

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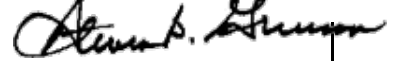
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TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

JAMES COTTER, JR.

Plaintiff

vs.

MARGARET COTTER, et al.

Defendants
.

CASE NO. A 15 719860 B
A 16 735305 B
P 14 082942 E

DEPT. NO. XI

**Transcript of
Proceedings**

BEFORE THE HONORABLE ELIZABETH GONZALEZ, DISTRICT COURT JUDGE

HEARING ON MOTIONS IN LIMINE AND PRETRIAL CONFERENCE

MONDAY, DECEMBER 11, 2017

COURT RECORDER:

JILL HAWKINS
District Court

TRANSCRIPTION BY:

FLORENCE HOYT
Las Vegas, Nevada 89146

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

APPEARANCES:

FOR THE PLAINTIFF:

MARK G. KRUM, ESQ.
STEVE L. MORRIS, ESQ.
AKKE LEVIN, ESQ.

FOR THE DEFENDANTS:

H. STANLEY JOHNSON, ESQ.
MARSHALL M. SEARCY, ESQ.
CHRISTOPHER TAYBACK, ESQ.
JAMES L. EDWARDS, ESQ.
MARK E. FERRARIO, ESQ.
KARA B. HENDRICKS, ESQ.
EKWAN RHOW, ESQ.

1 LAS VEGAS, NEVADA, MONDAY, DECEMBER 11, 2017, 10:24 A.M.

2 (Court was called to order)

3 MR. FERRARIO: Ms. Hendricks has something to take
4 up with you.

5 MS. HENDRICKS: I just have a question.

6 THE COURT: On what?

7 MS. HENDRICKS: On how many drives we each need.

8 THE COURT: Wait. That's not me. Wait. Don't go
9 there yet.

10 MS. HENDRICKS: Okay.

11 THE COURT: Who are you looking for?

12 MR. MORRIS: I'm so unaccustomed to being on the
13 plaintiff's side.

14 (Pause in the proceedings)

15 THE COURT: All right. So moving on. Good morning.
16 We were talking about the pro bono awards at the 8:00 o'clock
17 session this morning, and Mr. Ferrario didn't get one this
18 year, so I was giving him a hard time because nobody from his
19 firm did a lot of work. But apparently they did. It just
20 didn't get reported because it was done with a different
21 agency.

22 Right, Ms. Hendricks?

23 MS. HENDRICKS: Yes. We're getting that fixed right
24 now.

25 THE COURT: Okay. So before we start on your

1 motions I need to hit some practical problems. As those
2 lawyers who practice here in the Eighth all the time know, as
3 the chief judge I do not have a courtroom. That occurred
4 because when the Complex Litigation Center was investigated
5 for purposes of conducting the CityCenter trial we determined
6 that it had a structural issue and some electrical issues. As
7 a result, we did not renew the lease --

8 When was that, Mr. Ferrario?

9 MR. FERRARIO: It was 2013.

10 THE COURT: In 2013 we did not renew the lease, and
11 since that time we have been down one courtroom. The person
12 who gets screwed is the chief judge. So since 2013 we have
13 had the chief judge be a floater. Unfortunately for you guys,
14 I'm the first judge who kept my docket, because Business Court
15 cases have a lot of history and it's not one of those things
16 you can get rid of and assume somebody else is going to be
17 able to be familiar with it fairly quickly.

18 So the down side for all of you is that I don't have
19 a courtroom. Which is why sometimes we borrow Judge
20 Togliatti's courtroom when you guys see me, sometimes in this
21 courtroom. And you've been in the two Family Court courtrooms
22 a couple of times here. I also have judges who lend me their
23 courtrooms on a regular basis on the third floor, and
24 sometimes I have courtrooms in other places in the building I
25 borrow.

1 Recently I learned that I am going to be able on
2 behalf of the court to acquire the seventeenth floor that used
3 to be occupied by the Supreme Court and to build a new Complex
4 Litigation Center, because since 2013 every time we have a
5 complex trial we build out a courtroom, it costs a quarter of
6 a million dollars, and then when we're done with it we take it
7 back down to put it back in regular shape. And so finally the
8 County has realized that's probably not an effective use of
9 the funds, and so we're going to build out the seventeenth
10 floor as a complex litigation, jury, and criminal caseload
11 accommodated. Unfortunately, that's a construction project,
12 and it is in process. And when I say in process it means
13 they're still in the bid evaluation process and it has to now
14 go to something called long-term planning at County
15 management, which means that some day there'll be a courtroom
16 there. In the meantime --

17 MR. MORRIS: So our trial will start when the
18 construction is complete on 17?

19 THE COURT: No, no. You're going to start. I just
20 don't know where we're going to be, Mr. Morris. This is the
21 reason for the speech, because Mr. Ferrario says nobody
22 believes me that I don't have a courtroom. I don't have a
23 courtroom. So I will have a courtroom when I end being chief
24 judge. I'll go back to being a regular judge and I'll have a
25 courtroom, and then the new chief won't have a courtroom

1 unless we finish building out the seventeenth floor by then.

2 So right now the reason I'm telling you that is it
3 impacts your trial. The trial I am currently in is a bench
4 trial, so it's not a jury trial and we have moved from
5 courtroom to courtroom during our 10 days we've been in
6 proceedings so far. So we've not been in the same courtroom
7 every day. But that's sort of the life of being in this
8 department at the moment. That's the history.

9 Now let's go to the electronic exhibit part of our
10 problem. Brandi is the head of the Clerk's Office, Mike is
11 the head of IT, so they are the two people who are here to
12 make sure that they are able to interact with you -- and then
13 I'll let them leave while I hear your motions -- about the
14 electronic exhibit protocol. Because when we use the
15 electronic exhibit protocol there's two ways that we have to
16 deal with it, from an IT standpoint and from the Clerk's
17 Office standpoint. So instead of us hauling all the paper
18 volumes from courtroom to courtroom, depending on where we're
19 going to be, the clerk won't have to do that. They will have
20 the drives, as Ms. Hendricks mentioned earlier, for that
21 purpose so that Dulce will then -- after IT has cleared the
22 drives Dulce will then work with the drives, and then we
23 usually keep one that is called golden that we don't mess
24 with, and we have one that's a working drive. But I'll let
25 Mike explain that and Brandi explain it, because not all of

1 you have been through the electronic exhibit protocol in the
2 past.

3 Mike, you're up.

4 MR. DOAN: So this is a jury trial, so a high level.
5 We expect three drives, a working copy, a golden copy, and
6 then a blank for the jury that everything that gets accepted
7 or submitted in a group will be over on that drive.

8 Depending on the number of drives is just based on
9 the space. So if your teams, whoever's putting these drives
10 together -- we have problems if you get a million exhibits on
11 one drive or even 600,000 on one drive. Not so much even the
12 space, it's just navigating through those files. And so as
13 long as your team can navigate and view the files, that's okay
14 for us. We don't have like a set number. We just ask that
15 the drives be twice as big as the amount of the exhibits,
16 because in theory everything could get accepted, and therefore
17 everything would be stamped and there'd be duplicate on the
18 drive.

19 THE COURT: And when it's stamped there's a program
20 that goes through and it puts a stamp on each page of the
21 electronic exhibit that says it's admitted so that we have
22 your original proposed copy and then your admitted copy. The
23 one drawback for lawyers is if you decide you want to admit a
24 partial version of an exhibit, we cannot do that with
25 electronic exhibits. We need you to submit a replacement

1 electronic exhibit that includes only the pages that you are
2 offering. That will then have an exhibit marker placed upon
3 it. But I can't with the electronic exhibits admit pages 6
4 through 10 of the 25-page document.

5 So, Mike, what did I miss?

6 MR. DOAN: That's it.

7 THE COURT: Okay, Brandi. You're up.

8 MS. WENDELL: Have you already given them the
9 ranges? Do we have --

10 THE COURT: No, we have not done ranges yet.

11 MS. WENDELL: Okay. The protocol is pretty basic.
12 Your paralegals or your IT people that are going to be working
13 on those might have questions. Usually -- a lot of times on
14 all the other trials Litigation Services was used. They're
15 very familiar with this program. I'm not advocating for them
16 or anything, but if anybody's contracted with them, they're
17 pretty familiar with how to do it. It's really important that
18 you pay attention to the naming convention. Make sure there
19 are no letters in it. It has to be strictly numbers and then
20 .pdf. The last time there was a question about whether .tifs
21 worked, and Mike was able to verify that .tifs are -- we're
22 able to use those. But color photos can be done as long as
23 there's a little border up at the top for the stamping program
24 to mark all of the information.

25 Another thing that we have found useful, it's not in

1 the protocol, but at least a couple weeks before the trial
2 starts we do like a dry run, because your exhibit list, the
3 templates that Dulce went ahead and emailed to you, you cannot
4 change that, the formatting. It's critical because Mike's
5 team will do a validation, and it validates the exhibit
6 numbers to what is on the drive, each exhibit. And it'll
7 identify if there's something that's missed or skipped that's
8 on the list but it's not actually on the drive. And a lot of
9 times there's been some formatting problems when people try to
10 get creative. So, you know, just a little advice that we
11 found from trial and error that that is an important piece.

12 What else?

13 MR. DOAN: That's the biggest thing, is if you can
14 get with us -- and we'll make ourselves available as soon as
15 you're available to do like an initial run before you start
16 all printing and doing all these other things just so
17 everything can be tested for format so there's not a lot of
18 time wasted.

19 MS. WENDELL: The clerk must have -- the exhibit
20 list must be printed out.

21 THE COURT: Not in 2 font, Ms. Hendricks.

22 MS. HENDRICKS: [Inaudible] that was not our
23 office's fault, Your Honor.

24 MS. WENDELL: That should be in a binder so that the
25 clerk as you're actually offering and admitting the evidence

1 during the trial, she'll be working on that. Later that day
2 she'll be doing the electronic stuff or we'll have a second
3 clerk that'll be helping her. Antoinette is court clerk
4 supervisor, and so she's here to make sure that, you know, if
5 we have any questions that have to be answered.

6 A lot of times -- oh. Last trial somebody asked if
7 because the exhibit list itself was going to be like 14 of
8 those big binders, they asked if they could print on the front
9 and the back. That was in Judge Kishner's big trial. We let
10 them do it, and -- but the trial settled, so it wasn't an
11 issue.

12 THE COURT: It's not a good idea.

13 MS. WENDELL: It's not ideal, so --

14 THE COURT: Please don't do a front and back.

15 MS. WENDELL: Anybody have any idea how many
16 exhibits you're looking at?

17 THE COURT: We're going to start with them and do
18 our ranges first. But we're not quite there yet.

19 So if anybody has questions or your staffs have
20 questions, would you like contact information to reach out to
21 either Antoinette, Brandi, or Mike?

22 MR. TAYBACK: Yes.

23 MS. HENDRICKS: That would be great, Your Honor.

24 THE COURT: So tell them or give them business
25 cards.

1 MS. WENDELL: Okay.

2 MR. FERRARIO: If you all have cards, then that'd be
3 easiest.

4 THE COURT: They're County employees. Does that
5 mean they get cards?

6 MR. DOAN: Yeah.

7 THE COURT: Oh. Look at that.

8 MR. DOAN: You know, and it's best to have one point
9 of contact so then we don't get confused.

10 MS. WENDELL: I'm putting my cards away now.

11 THE COURT: Who do you guys want to be the person
12 that calls? Do they want to call Antoinette, they want to
13 call you, want call Mike?

14 MS. WENDELL: Well, Antoinette is -- she's not
15 Dulce's direct supervisor, but I can be the point of contact,
16 and then I can go ahead and let you guys know. My email
17 address and my phone number are both on here. If you could
18 pass some of these out, that'd be great. And then I'll
19 probably hand you off depending on the questions that come up.
20 Most of them are going to be technical questions, but I'll try
21 to help if I can.

22 THE COURT: All right. So do you have any more
23 questions for the Clerk's Office, the IT folks, in the
24 electronic exhibit protocol? You will notice because of what
25 happened in CityCenter in paragraph 6 it now says the exhibit

1 list will be font size 12, Times New Roman. So we're very
2 specific on what size, because the clerk's actually have to
3 work with the paper copy. And so although you can blow up the
4 Xcel spreadsheet and see it when it's 2 font, they can't. So
5 we have to have it in a larger font.

6 Any more questions?

7 Okay. Mr. Krum, how many exhibits do you think
8 you're going to have so I can set the exhibit ranges?

9 MR. KRUM: The answer is it's in the hundreds, not
10 in the thousands. So if --

11 THE COURT: So if I give you 1 to 9999, you will be
12 okay?

13 MR. KRUM: Yes.

14 THE COURT: All right. Who wants to have 10000 as
15 their start? Mr. Searcy, how many have you got?

16 MR. SEARCY: I think our approximation is basically
17 the same. It's in the hundreds, not the thousands. So if we
18 had 10000 to --

19 THE COURT: 1999 [sic]?

20 MR. SEARCY: Yeah, that would be perfect.

21 THE COURT: I have to give you lots of extras,
22 because if you're going to do partial exhibits, we need that
23 space to be able to add those. So if you've got subparts of
24 one exhibit, I need an exhibit number for each one of those.
25 So I'm giving you more than you need.

1 Mr. Ferrario, how many do you need?

2 MR. FERRARIO: Your Honor, Your Honor, I would
3 suspect our -- any exhibits we would introduce independent of
4 what Mr. Krum and the other defendants would be nominal. So
5 you can give us a very short range.

6 THE COURT: 20000 to 2499 [sic].

7 THE COURT: Who else wants exhibit lists that's not
8 one of those three? Anybody else need --

9 MR. TAYBACK: Counsel for Mr. Gould is sitting
10 behind me.

11 THE COURT: So Mr. Gould's counsel, you want about
12 the same range Mr. Ferrario has, 25000 to 30000?

13 MR. RHOW: That's fine, Your Honor. Just for
14 protocol --

15 THE COURT: Hold on. They've got to get your name,
16 because otherwise I'm going to get really -- I'm going to
17 screw up.

18 MR. FERRARIO: Can you let Ekwan speak today? He's
19 been here all -- he hasn't even got to argue one time, Your
20 Honor.

21 THE COURT: All right, Mr. --

22 MR. RHOW: I'm actually in this case. Ekwan Rhow,
23 Your Honor. Thank you.

24 THE COURT: Okay.

25 MR. RHOW: We can have a separate range for sure,

1 but is there any problem with incorporating Mr. Gould's
2 exhibits into the exhibits for Mr. Searcy that he presents?

3 THE COURT: There is absolutely no problem with your
4 exhibits being within their exhibit range, but I need to give
5 you a separate range for your own in case you all don't reach
6 an agreement.

7 MR. RHOW: I see.

8 THE COURT: So my exhibit ranges based on what I've
9 heard today is 1 to 9999 for the plaintiffs, 10000 to 1999
10 [sic] for the Quinn Emanuel folks and their associated, which
11 includes Mr. Edwards; right? Okay. And 20000 to 2499 [sic]
12 for Mr. Ferrario and his team. And, Mr. Krum, we gave you
13 25000 to 2999 [sic] for Mr. Gould.

14 Do we anticipate there is anyone else who's going to
15 need more numbers? Anybody else who's going to show up
16 randomly in the case?

17 All right. Any other stuff I need to do on your
18 part?

19 MS. WENDELL: No. Based on that, that's very good
20 news. The goal will be for all counsel to prepare your
21 exhibits and then everybody put them one drive. The only
22 reason why we do different drives is because if there's like
23 10,000 exhibits on one, like Mike said, so if there's any way
24 possible -- and you all have to use the same exhibit list
25 template. Now, if that's a problem to do that, then if your

1 exhibits are on your own hard drive, then your exhibit list
2 must be what is on that drive. So if two of you get together
3 or three of you get together, everything that's on that drive
4 must be one exhibit list, because it cross-checks and makes
5 sure it validates.

6 THE COURT: So it's okay for the plaintiffs to have
7 one drive and an exhibit list of 1 through 9999 -- or up to
8 that number, and the defendants to decide jointly they're just
9 going to use the 10000 to 1999 [sic], have one drive, and one
10 exhibit list?

11 MS. WENDELL: That is okay. But based on the size,
12 you know, we're -- I think that, you know, it's better to
13 always have one --

14 THE COURT: Yeah. But you're asking for
15 cooperation?

16 MS. WENDELL: Yes.

17 THE COURT: Just because you worked for Commissioner
18 Biggar for however many years and you could make them
19 cooperate doesn't make I can as a trial judge.

20 All right. So anybody else have more stuff?

21 Yeah. Your history will never die.

22 MS. WENDELL: I know. It's going to follow me out
23 of here in February.

24 THE COURT: All right. Anybody else have any more
25 questions for my IT team or my Clerk's Office team so that

1 they can leave and not have to sit here through your motion
2 practice?

3 Dulce wants you to set the dry run date today. We
4 have a holiday coming up, and you have asked me to let you go
5 the second week. I'm going to be able to accommodate that
6 request. I found some victim to go the first week.

7 MR. FERRARIO: So we start on the 8th now?

8 THE COURT: Plan is for you to start on the 8th. So
9 when do you want your dry run to be with your staff to bring
10 over the lists and the drives? It doesn't have to be you
11 guys. It can be your paralegals.

12 MR. FERRARIO: But you said you want enough time in
13 case there's glitches. So --

14 MS. WENDELL: If there's a glitch, then you'll need
15 time to fix it.

16 MR. FERRARIO: So at least the week before -- we
17 need it two weeks before; right?

18 THE COURT: Two weeks before is the week of
19 Christmas, so we'll be here the 26th through the 29th working
20 that week.

21 MR. FERRARIO: And then you guys will be here to do
22 that?

23 MR. DOAN: We'll make it work.

24 THE COURT: Some of them will be here.

25 MR. FERRARIO: I think it has to be that week in

1 case there's a problem. Because then the following week is
2 short, and then we're right up on trial and won't be able to
3 correct any of the stuff.

4 MR. KRUM: So why don't we say the 29th?

5 THE COURT: You guys all okay with the 29th? What
6 time do you want to meet?

7 MR. KRUM: I think we need to talk to the people who
8 are going to do it.

9 THE COURT: Okay. I would recommend the morning.
10 And the reason I recommend the morning is typically on the
11 weekend of New Year's Eve they try and get everybody out of
12 downtown by about 2:00 o'clock because of all the things that
13 happen in the streets here on that weekend.

14 MR. KRUM: Understood.

15 THE COURT: So -- and we will tell you what
16 courtroom we are able to find. I'm pretty sure on that day I
17 could get a courtroom on this floor. And if you guys want a
18 morning, if you can accommodate that, we'll do that.
19 Otherwise --

20 MR. FERRARIO: I'm going to tell you, Judge,
21 [inaudible] people are going to be in this trial, I think if
22 you could convince Judge Sturman to let you have this for the
23 length of the trial, that would [inaudible].

24 THE COURT: She has a trial that I had to vacate
25 when her mom became ill that I think she's going to try and

1 restart in January. I will know better when she actually gets
2 back to town. But we will talk to her. Her courtroom and
3 Judge Johnson's courtrooms are equipped differently than the
4 other courtrooms, so they are a little bit bigger.

5 MR. FERRARIO: Yes. This would accommodate
6 [inaudible].

7 THE COURT: I was thinking of putting you in
8 Potter's courtroom and having a special corner for you.

9 MR. KRUM: Your Honor, I've just been reminded that
10 it was presumptuous of me to speak for others.

11 THE COURT: You want to talk to the staff members to
12 see who's taking the week off?

13 MR. KRUM: Here's the question. And I'm now taking
14 Mr. Ferrario's line. Would it be possible for us to start the
15 following week so we could make --

16 THE COURT: No. We won't get done. If we do that,
17 we won't get done in time for me to do my February stuff.
18 It's a five-week stack. It starts on the 2nd of January. So
19 if you need to talk to your teams and see if being here on
20 January 2nd at 8:00 o'clock in the morning is a preference for
21 them instead of the 29th, which gives you -- you lose the
22 weekend, but you're here the rest of the time. It gives you
23 almost two weeks to straighten it out.

24 MR. KRUM: Okay.

25 THE COURT: And that's okay with me. Even though

1 Mike would say he needs two weeks before, January 2nd is okay
2 with me.

3 MR. KRUM: Okay. We will check with our people.

4 THE COURT: Okay. So any other electronic exhibit
5 lists?

6 So, Dulce, just mark them down that they are
7 planning to visit with you on January 2nd. I'm fairly certain
8 I can find a courtroom on January 2nd, but there's no
9 guarantees on that day.

10 All right. 'Bye, guys. Thank you for being here.
11 Antoinette, thank you for being here. I know it's going to be
12 exciting again.

13 All right. That takes me to the motions. Do you
14 have a preferred order you'd like to argue them in? I usually
15 try and do the summary judgments and then go to the motions in
16 limine.

17 MR. KRUM: That would be our suggestion, as well.

18 MR. TAYBACK: That makes sense, Your Honor. You can
19 go numerical order is fine.

20 THE COURT: Whatever you want to do.

21 Can I have my calendar. I don't need -- well, I
22 have notes all over the motions, so --

23 MR. FERRARIO: Are we on the clock?

24 THE COURT: You have until five till 12:00. So
25 we've got an hour.

1 (Pause in the proceedings)

2 MR. TAYBACK: Mr. Krum was just suggesting that I
3 raise the parties' -- both filed joint motions -- or filed
4 motions to seal. We'd ask you to grant them.

5 THE COURT: Is there any objection to any of the
6 motions to seal? They weren't all motions to seal. Some of
7 them were motions to redact, and that was appropriate. The
8 motions to seal I do have a question for Mr. Morris's office,
9 and so I'll ask you -- hold on, if I can find the one I wrote
10 the page on. Got a question. It was a process question, not
11 a substance question, so let me hit it before we go to the
12 next step.

13 When you sent me a courtesy copy and the courtesy
14 copy had a sealed envelope in that did you also file the
15 sealed version of the document that has like this sealed
16 envelope that's with the Clerk's Office?

17 MS. LEVIN: I don't believe, Your Honor.

18 THE COURT: And we have to do it that way --

19 MS. LEVIN: Okay.

20 THE COURT: Because otherwise I can't even grant
21 your motion now, because then it's going to get screwed up.

22 MS. LEVIN: I understand, Your Honor. And I think
23 that this was based on our conversations with the clerk, who
24 said you cannot submit it until you have the order. And we
25 were saying, but that --

1 THE COURT: No. You submit it when you file the
2 motion. When you file the motion with it, which is why you
3 have to file them at the counter. You can't efile when you're
4 filing under seal.

5 MS. LEVIN: Right.

6 THE COURT: And that's why it gets screwed up.

7 So I have some process concerns about the
8 plaintiff's filings related to that, and I'm going to let you
9 and Dulce talk about those after we finish the hearing to see,
10 if we can.

11 I'm going to grant the motion, but it may be that
12 you have to do something different to have a motion that
13 actually goes with it to the Clerk's Office instead of an
14 order. Because having the order will not accomplish what you
15 want.

16 All right. So to the extent that you asked
17 previously for a motion to seal and/or redact, it appears to
18 be commercially sensitive information related to financial
19 issues, and there's some other sensitive information that
20 relates to individuals' personal information, so I'm going to
21 grant the requests for sealing and redacting that have been
22 submitted.

23 Okay. You're up. What motion do you want to start
24 with?

25 MR. TAYBACK: It'll be Summary Judgment Motion

1 Number 1. And it also -- there's -- relates to Summary
2 Judgment Motion Number 2. So I will argue them jointly. They
3 were at least opposed jointly, and we replied jointly with
4 respect to those two motions.

5 THE COURT: Okay.

6 MR. TAYBACK: I'm here on behalf of the director
7 defendants Michael Wrotniak, Judy Coddington, Douglas McEachern,
8 Edward Kane, Guy Adams, Margaret Cotter, and Ellen Cotter. As
9 Your Honor will recall and as addressed in the briefing, Your
10 Honor said, and this is a truism, really, for any case, you've
11 got to analyze claims defendant by defendant, in this case
12 director by director, and transaction by transaction. And
13 that's, you know, just basic, basic legal analysis.

14 On top of that, sort of as an overlay, another thing
15 that I know Your Honor is well aware of is the recent law that
16 clarifies -- I see you chuckling --

17 THE COURT: I don't know anything about the Wynn-
18 Okada case. You don't know anything about it, because your
19 firm wasn't involved at all, and Mr. Ferrario doesn't know
20 anything, and Mr. Morris I'm sure was involved, too, because
21 he's been involved in some of the appellate process in that
22 case, too.

23 Right, Mr. Morris?

24 MR. MORRIS: Yes.

25 THE COURT: See, so we all know.

1 MR. TAYBACK: But all I need to know, all I need to
2 know and all I really care about here and all that matters
3 here is the language of the Supreme Court's opinion, because
4 that's really what animates the business judgment rule in
5 Nevada as we stand here now. And I think that combined with
6 the recent clarifications by the legislature regarding the
7 latitude afforded directors work together to set the bar very,
8 very high. I'm sure Your Honor has read the opinion multiple
9 times, applied it in that case, a case I'm not privy to, but
10 it's --

11 THE COURT: I did. I granted partial summary
12 judgment, which is on a writ.

13 MR. TAYBACK: And, as you well know --

14 THE COURT: Are we supposed to be calling somebody?

15 MR. FERRARIO: No.

16 THE COURT: I have a call-in number. I'm not in
17 charge of doing this.

18 (Pause in the proceedings)

19 THE COURT: Hold on. Apparently someone thinks
20 they're calling in.

21 MR. RHOW: It's okay, Your Honor. No need. I'm
22 here.

23 THE COURT: Oh. It was you?

24 MR. RHOW: Not necessary.

25 THE COURT: Okay. Good. I'm glad we don't have to

1 call you.

2 Okay. Keep going. So I granted partial summary
3 judgment, but I found some directors were not disinterested,
4 so not all of the directors were covered by the summary
5 judgment. I also in that case made a determination the
6 business judgment rule only applies to officers and directors,
7 it does not apply to the corporation itself. Just so you
8 know.

9 MR. TAYBACK: And I'm aware of that only through
10 having read the pleadings and having read now the court's
11 opinion here. But the question is as it applies to this case.
12 And as it applies to this case collectively that recent
13 guidance and the guidance from the legislature make it clear
14 that it's not really the province of a plaintiff or a court or
15 jury to come in and say the business judgment rule should be
16 overridden in order to second guess a particular decision made
17 by a corporation's directors or its officers. And if you
18 start at that premise, the idea that the applicable Nevada
19 statutes here elevate -- give that sort of latitude to
20 directors in the first instance and then you take it to sort
21 of the next level of analysis, that is to say, even if one
22 could rebut the presumption, even it's rebutted the standard
23 then for imposing liability is even higher, because there
24 remains still a two-prong test for which plaintiffs have to
25 show a material disputed issue of fact to proceed to trial.

1 Both an individual director on a particular transaction
2 breached their fiduciary duty and, secondly, that that
3 individual director did so with fraud, knowing -- as a knowing
4 violation of the law or engaged in intentional misconduct.

5 THE COURT: Well, you understand that finding is
6 only needed to make a determination as to whether the
7 individual officer or director is insulated from -- for
8 personal liability purposes, as opposed to derivative
9 liability, which would be funded through the corporation.

10 MR. TAYBACK: Correct.

11 THE COURT: Okay.

12 MR. TAYBACK: Though they are seeking personal
13 liability. Their complaint makes that clear.

14 THE COURT: I understand they are. But your motion
15 seemed to take the position that unless I found fraud they
16 need to be dismissed. And that's not how it works.

17 MR. TAYBACK: Well, but they do need to rebut the
18 presumption with respect to the business judgment rule.

19 THE COURT: That's a different issue, Counsel.

20 MR. TAYBACK: It is a different issue. And it's a
21 multiple-hurdle test.

22 THE COURT: Yes.

23 MR. TAYBACK: And with respect to that second hurdle
24 even the issue comes down to Your Honor's adjudicating their
25 claim for personal liability, then that's also part of the

1 motion.

2 But you don't need to get there, because they have
3 not established the evidence necessary to rebut the initial
4 presumption. And that's clear because when you look at what
5 governs the decision here by these individual directors on
6 termination, which I'm going to take that transaction because
7 that's the subject of our first motion for summary judgment,
8 if you look at that, what governs that decision are the
9 bylaws. And the bylaws which we've submitted are amply clear
10 that the board was given complete discretion, that officers,
11 including the CEO, serve at the pleasure of the board and can
12 be terminated with or without cause at any time.

13 With the bylaws being the operative rules of the
14 road, so to speak, and the law being what it is with respect
15 to the deference afforded boards and individual board members,
16 plaintiff's efforts to try to get around the idea that that
17 presumption should be applied here are based on generalized
18 allegations of disinterestedness. But you don't see specific
19 evidence in the record anywhere that any of the three
20 directors who voted to terminate Mr. Cotter, Jr. --

21 THE COURT: And you're including Mr. Adams in that,
22 are you?

23 MR. TAYBACK: I am including Mr. Adams in that.

24 THE COURT: Just checking. So what happens if I
25 make a determination that Mr. Adams is not disinterested? You

1 then do not have a majority of disinterested directors;
2 correct?

3 MR. TAYBACK: If you made that finding that would be
4 true. But it wouldn't change the liability, the claim against
5 Mr. McEachern or Mr. Kane.

6 THE COURT: You mean for personal liability?

7 MR. TAYBACK: I mean whether -- not whether or not
8 you can say we need to revisit that action, but whether or not
9 they were disinterested, whether they breached their fiduciary
10 duty. That would be adjudicated in their favor even if you
11 found against Mr. Adams on a particular transaction -- but I
12 would say you should not find against Mr. Adams on this
13 transaction. The evidence isn't that his -- that the decision
14 to terminate had any connection to his -- the level of his
15 income, the amount of his -- the amount of his income, the
16 amount of his expenditures, his continuity on the board.
17 There's no connectivity, which is required in order to find
18 disinterestedness even if disinterestedness was the standard.
19 Because I will say the standard in Nevada is not independence
20 for -- unless it's a transaction in which the director is on
21 both sides of the transaction or it's a change of control
22 circumstance. The termination of a CEO is an operational
23 matter where you don't get to the independence question unless
24 and until you have established a basis, a legitimate basis in
25 the law to show that the presumption should not apply.

1 In light of the law, in light of the bylaws, in
2 light of the undisputed evidence with respect to Mr. Adams,
3 Mr. Kane, Mr. Wrotniak, the Cotter sisters, and Ms. Coddington --
4 and, of course, Mr. Wrotniak and Ms. Coddington weren't even on
5 the board at the time of this transaction -- the fact is that
6 there's no basis upon which to allow plaintiff's claim to
7 proceed.

8 The last point that I want to make with respect to
9 Summary Judgment Motion Number 1 and 2 as it relates to that
10 point is the plaintiff has tried to really muddy the law. And
11 I think whatever you ultimately decide on this motion for
12 summary judgment -- and I absolutely believe that these
13 defendants are entitled to summary judgment on this record,
14 but whatever you decide the parties will be well served by
15 understanding Your Honor's view of the law. Because we do not
16 see eye to eye with the plaintiffs on the law. They strive to
17 import this Delaware entire fairness test.

18 THE COURT: I rejected that in Wynn, because that
19 was the part that the Okada parties argued once the writ came
20 back on [inaudible].

21 MR. TAYBACK: And notwithstanding that, I believe
22 the plaintiffs are still advocating for it. It shows up in
23 their papers.

24 THE COURT: I understand it's in their briefing.

25 MR. TAYBACK: And the law at least in Nevada with

1 respect to that is that it doesn't apply here. Independence
2 for the same reasons is not required for the benefit of the
3 business judgment rule where, as here --

4 THE COURT: You don't think the Shoen case says that
5 independence is required for application of business judgment
6 rule?

7 MR. TAYBACK: In Shoen to the extent it says that at
8 all it says it in the context of demand futility. It's not
9 the presumption that we're talking about here. And in fact
10 that's -- I believe that's exactly what certainly the Wynn
11 Supreme Court --

12 THE COURT: There's two Shoen cases; right?

13 MR. TAYBACK: Yes.

14 THE COURT: There's the first Shoen case and the
15 second one that they gave a different name to.

16 MR. TAYBACK: Independence is not required unless
17 you have a director who's on both sides of a transaction.

18 THE COURT: Okay.

19 MR. TAYBACK: I believe the law is amply clear on
20 that.

21 THE COURT: Okay. I think their analysis is
22 slightly broader than that, but okay.

23 MR. TAYBACK: Given the bylaws, given the fact that
24 entire fairness does not apply, you cannot simply get past or
25 rebut the presumption of the applicability of the business

1 judgment rule by saying a director is biased, a director has
2 some family connection, a director has income that's
3 attributable to the company. And that's really what this case
4 comes down to. Where the facts here are frankly undisputed
5 summary judgment is warranted.

6 That's it for Summary Judgment 1 and 2, Your Honor,
7 unless you have any questions.

8 THE COURT: No. It's okay.

9 Mr. Krum, Mr. Morris?

10 MR. KRUM: Good morning, Your Honor. Thank you.

11 So I have some argument to make about what are
12 pervasive misstatements of the law that were made with respect
13 to Number 1, as well as the other ones. That said, if I'm
14 listening, you're prepared to deny Number 1, just as you did
15 previously, nothing has changed, including the law; and if
16 that's the case, I'll just defer those comments till we get to
17 something else.

18 THE COURT: Well, then let me ask you a question.
19 Because when I read all these I have notes all over them,
20 because some of them are interrelated and the
21 disinterestedness issue is an issue that is involved in some
22 of the motions in limine, as well as this.

23 Can you tell me what evidence, other than what is
24 listed on page -- you had -- in your brief you had a list of
25 all of the company activities that you believe show decisions

1 that were made by certain of the directors that showed they
2 were interested. Can you tell me, other than that list -- and
3 I can't, of course, find it right now, but I'm looking for it
4 -- is there any other information other than from Mr. Adams
5 that you have that would provide a basis for the Court to
6 determine that they are not disinterested?

7 MR. KRUM: I'm sorry. That who is not disinterested
8 with respect --

9 THE COURT: Anyone except Mr. Adams and the two Ms.
10 Cotters. The two Ms. Cotters I think is fairly easy. They
11 didn't even move, from what I can tell. But, for instance,
12 for Mr. Kane.

13 MR. KRUM: Certainly, Your Honor. In our -- first
14 let me say I think the list to which you're referring is a
15 list that I had understood the Court to request when we last
16 argued summary judgment motions and was intended, Your Honor,
17 to identify the particular matters which we contend give rise
18 to or constitute breaches of fiduciary duty in and of
19 themselves as well as together with other matters. And so --

20 THE COURT: I don't know that that's the reason you
21 did it. I found it. It is on pages 5 and 6. I'm on the
22 Supplemental Opposition to Motion for Summary Judgment Number
23 1 and 2 and Gould Motion for Summary Judgment, and there is a
24 list that includes threats of termination if you don't get
25 along with your sisters and resolve the probate case --

1 MR. KRUM: Yes.

2 THE COURT: -- exercise of the options, the
3 termination, the method of the CEO search. All of those are
4 company transactions. What I'm trying to find out is, other
5 than for Mr. Adams, is there other evidence of a lack of
6 disinterestedness that you have other than what is included in
7 the list of activities that relate to their work as directors
8 which are on pages 5 and 6 of that brief in the bullet points.

9 MR. KRUM: Let me answer it this way, Your Honor. 5
10 and 6 was our effort to do what I just said. And what that
11 is, to try to be clear, is to identify particular activities
12 that we thought would be the subject of, as is appropriate,
13 either instructions or interrogatories to the jury with
14 respect to these particular matters.

15 So let's take Number 1 bullet point, the first
16 bullet point, the threat by Adams, Kane, and McEachern to
17 terminate plaintiff if he did not resolve trust disputes with
18 his sisters on terms satisfactory to them. That, Your Honor,
19 from our perspective is separate from the termination which is
20 the subject of Number 1. And on this --

21 THE COURT: I see that. But let me have you fall
22 back, because I certainly understand those may be issues that
23 you may want to submit interrogatories or just to include in
24 jury instructions related to breaches of fiduciary duty by
25 someone who survives this motion, who I don't grant it on

1 behalf of.

2 But my question is different. Other than these
3 which you've argued in your brief are evidence of a lack of
4 disinterestedness separate and apart from Mr. Adams, who you
5 have other evidence that is presented related to a lack of
6 disinterestedness, is there any evidence that has been
7 attached to your various supplements and other motions related
8 to a lack of disinterestedness for the other directors known
9 as Mr. Kane, Mr. McEachern, Mr. Gould, Ms. Coddington, and Mr.
10 Wrotniak?

11 MR. KRUM: The answer is yes, Your Honor. So I'm
12 going to try to do it a couple ways.

13 THE COURT: Tell me where to go. Because I looked
14 through this whole pile of about 2 foot of paper last night
15 trying to find it, and the only one I could find specific
16 allegations of a lack of disinterestedness, besides the two
17 Cotter sisters, was Mr. Adams.

18 MR. KRUM: Okay. Well, so, for example, with
19 respect to Mr. Kane in the response to MSJ Number 1 and 2 we
20 introduced evidence that showed that Kane was of the view that
21 he knew best what James Cotter, Sr., wanted in his trust
22 documentation.

23 THE COURT: I see he understood what Mr. Cotter,
24 Sr.'s plan was. How does that make him have a lack of
25 disinterestedness?

1 MR. KRUM: Well, the answer, Your Honor, is he acted
2 on that. That was the basis on which he decided to vote to
3 terminate the plaintiff. He -- and, for example, the evidence
4 includes an email from Mr. Adams to Mr. Kane in April or early
5 May 2015 in which Mr. Adams says, "This was difficult. We had
6 to pick sides in this family dispute. But we can take comfort
7 that Sr. would have approved our decision." And so the point
8 from our perspective, Your Honor, is Kane, in acting as a
9 director, in fact acted to carry out what in his judgment were
10 the personal interests of Sr. with respect to his trust
11 planning. And on that basis he voted to terminate Mr. Cotter.
12 There are emails from Mr. Kane to Mr. Cotter telling him, I
13 don't know what the sisters' settlement is but I urge you to
14 take it. Well, we think the evidence also shows that he knew
15 what it was, that it entailed Mr. Cotter giving up control of
16 the issues they've been litigating.

17 THE COURT: Under the Shoen analysis do you believe
18 that that contact and that information is sufficient to show
19 that Mr. Kane is not disinterested?

20 MR. KRUM: Well, the answer is, yes, we do, Your
21 Honor. And I hasten to add that the way Shoen puts it is that
22 disinterestedness and independence are a prerequisite to
23 having standing to invoke the business judgment rule.

24 THE COURT: I'm aware of that. Which is why we're
25 having this discussion. So -- but usually we have either a

1 direct financial relationship, even if it's not on both sides
2 of the transaction, or we have a very close personal or
3 familial relationship with the people who are subject to the
4 transaction. And simply believing you understand Sr.'s plan
5 -- estate plan does not, I don't think, rise to that same
6 level to show a lack of disinterestedness; but I'm waiting for
7 you to give me a spin on that argument I may not have thought
8 of.

9 MR. KRUM: Sure, Your Honor. The answer is -- and I
10 say this because I appreciate what the finder of fact -- what
11 the Court has to do now and what the finder of fact has to do.
12 The evidence has to be assessed collectively, not
13 individually. And you understand that. We've cited cases for
14 that. The other side disputes that. There's "The complaint
15 of acts and omissions upon which plaintiff's claims are based
16 must be viewed and assessed collectively, not separately in
17 isolation." That's the Ebix case that we've cited. And there
18 are other cases for that proposition. The point, Your Honor,
19 is "assessing whether a director was independent and in a
20 particular instance acted independently or whether the
21 director was disinterested as required or whether -- and made
22 the decision based entirely on the corporate merits, not
23 influence by personal or extraneous considerations," that was
24 CVV Technicolor, that's the test. And so, Your Honor, in
25 Shoen, just to go back to that, "Independence can be

1 challenged by showing that the directors' execution of their
2 duties is unduly influenced." If Kane made a decision based
3 in any respect on his view that Sr. intended for one or both
4 of the sisters to have something and Jr. was in the way of
5 that, that, Your Honor, at a minimum survives summary judgment
6 so the finder of fact can make a determination after
7 considering all the evidence whether the director acted and
8 decided in that particular instance entirely on the corporate
9 merits. So what is --

10 THE COURT: Let's skip ahead, then. Mr. McEachern.
11 What evidence of disinterestedness do you have for Mr.
12 McEachern? And if you could tell me where in the briefing it
13 is, I will look at it again. But, as I've said, other than
14 Mr. Adams I did not see evidence of disinterestedness as
15 opposed to allegations of breach of fiduciary duty.

16 MR. KRUM: Mr. McEachern attempted to extort Mr.
17 Cotter. Along with Mr. Kane and Mr. Adams he told Mr. Cotter,
18 you need to go resolve your disputes with your sisters and
19 we're going to reconvene at 6:00 o'clock and if you don't
20 you'll be terminated. Now, there's no dispute about that. We
21 have in evidence the testimony --

22 THE COURT: I understand that that's one of your
23 claims of breach of fiduciary duty. But I'm trying to
24 determine if there was any additional evidence, other than
25 those items that are those bullet points you put in the brief,

1 which are on pages 5 and 6 of your supplemental opposition,
2 that goes to Mr. McEachern. And then I'm going to ask you the
3 same question for Mr. Gould and Ms. Coddington and Mr. Wrotniak.

4 MR. KRUM: Your Honor, as a threshold matter, the
5 presumption can be rebutted by showing conduct in derogation
6 of the presumption. It's not simply a interest or
7 disinterested phenomenon, cite Shoen. Let me be clear. I
8 don't want to talk past you. The other side argues there are
9 only two circumstances in which interestedness matters. Well,
10 that's belied by Shoen. It says, "Business judgment rule
11 pertains only to directors whose conduct falls within its
12 protections. Thus, it applies only in the context of a valid
13 interested director transaction --" that's 138 -- 78.140,
14 excuse me "-- or the valid exercise of business judgment by
15 disinterested director in light of their fiduciary duties."
16 And to be a valid exercise, Your Honor, it has to be made in
17 the interest of the corporation.

18 So Mr. McEachern -- let me go through the list
19 mentally. He attempted to extort Mr. Cotter to resolve the
20 trust disputes in favor of the sisters, he voted to terminate
21 -- he decided not to terminate after he understood an
22 agreement had been reached to resolve those disputes. And
23 when that didn't come to pass he voted to terminate. He,
24 along with Mr. Gould, chose the wishes of the controlling
25 shareholders. Rather than to complete the process he had set

1 up, they aborted the CEO search. So, Your Honor, that's
2 squarely within the Shoen language of manifesting a direction
3 of corporate conduct in such a way as to comport with the
4 wishes or interests of the person doing the controlling.

5 Now, I heard you. You view that as a fiduciary
6 breach.

7 THE COURT: An allegation of a fiduciary duty
8 breach.

9 MR. KRUM: Allegation of fiduciary duty breach,
10 right. But that's -- if proven, that rebuts the presumption,
11 and off we go.

12 I skipped over Mr. McEachern's role in involuntarily
13 retiring Mr. Storey. Mr. McEachern, together with Mr. Adams
14 and Mr. Kane, in October and November -- September or October
15 I guess it was of 2015 comprised the ad hoc first time one
16 time special nominating committee. That committee had two
17 roles. One was to tell noncompliant director Timothy Storey
18 that he wasn't going to be renominated, and they explained to
19 him that the sisters, who controlled the vote, had told him
20 they weren't going to vote to elect him so he could either
21 resign and get a year's benefits of some sort or just be left
22 off.

23 What else did that committee do? They approved Judy
24 Coddington and Michael Wrotniak. Did they undertake to search
25 for candidates? No. Did they do anything that one would do

1 as a director of a nominating committee to identify and
2 recruit directorial candidates? No. What did they do? They
3 did what they were asked and told. Ellen Cotter gave them
4 Judy Coddington, good friend of Mary Ellen Cotter, the mother,
5 with whom Ellen Cotter lives, and Michael Wrotniak, husband of
6 Patricia Wrotniak, one of Margaret Cotter's few good friends.
7 And they obviously did virtually nothing, because promptly
8 after the company announced Ms. Coddington had been added to
9 board a shareholder brought to their attention there were lots
10 of Google articles that raised questions about Ms. Coddington's
11 relationship with her prior employer and the prior employer's
12 conduct.

13 So on the nominating issue, Your Honor, on the board
14 stacking our view is that all evidences loyalty to the
15 controlling shareholders. And that, Your Honor, would be
16 somewhere in the range of lack of independence or
17 disinterestedness.

18 THE COURT: So, Mr. Krum, if we're going to get
19 through all the motions this morning I need you to wrap up.
20 Because I think I have all the information I need on Motion
21 for Summary Judgment Number 1.

22 MR. KRUM: Okay. Certainly, Your Honor.

23 So just to finish the bullet points which you
24 brought to my attention, these directors, Kane, Adams,
25 McEachern, they're all on record dating back to the fall of

1 2014 that, yes, we should find a position for Margaret Cotter
2 at the company so she can have health insurance, but, no, she
3 can't be running our real estate. Well -- that's in the
4 emails we have in the evidence actually, Your Honor, the first
5 time around. And there's some more from Mr. Gould or
6 McEachern. We had some additional testimony that we added
7 this time. And so what happens? Ellen Cotter is made CEO
8 after the aborted CEO search, she says, I want Margaret to the
9 have the senior executive position, for which she has no prior
10 experience and no qualifications. And what do these people do
11 as committee members and board members? They say, where do we
12 sign.

13 So, Your Honor, it's an ongoing, recurring,
14 pervasive lack of independence or disinterestedness. And the
15 conclusion of that, Your Honor, of course, was by what they
16 did in response to the offer -- and I've sort of wrapped up
17 the whole thing without talking about the law I intended to
18 discuss -- and that is they ascertained what the controlling
19 shareholders wanted to do and they did it in an hour-and-
20 twenty-five-minute telephonic board meeting.

21 I didn't discuss what I intended to discuss, but I
22 tried to answer your questions.

23 THE COURT: I understand, Mr. Krum. But the
24 briefing was very thorough, which is why I tried to hit the
25 questions --

1 MR. KRUM: Understood.

2 THE COURT: -- because I had some questions after
3 reading it.

4 So Motion for Partial Summary Judgment Number 1 is
5 granted in part. It is granted with respect to Edward Kane,
6 Douglas McEachern, William Gould, Judy Coddington, and Michael
7 Wrotniak.

8 It is denied as to Margaret Cotter, Ellen Cotter,
9 and Guy Adams because there are genuine issues of material
10 fact related to the disinterestedness of each of those
11 individuals. As a result, they cannot at this point rely upon
12 the business judgment rule.

13 MR. TAYBACK: Your Honor, is there a ruling on the
14 aspect of the motion that goes to inability to hold the
15 individuals personally liable for this claim?

16 THE COURT: For the three that I didn't grant the
17 business judgment?

18 MR. TAYBACK: Correct.

19 THE COURT: No, you do not get a ruling to that
20 effect.

21 Did you want to go to your next motion for summary
22 judgment?

23 MR. TAYBACK: Yes, Your Honor.

24 THE COURT: And I'm trying to be consistent with the
25 decision I made in the Wynn based upon the facts that seem to

1 be slightly different on the conduct of directors. I've got
2 this thing in my head that nobody understands but me, so I'm
3 trying to draw that line by asking questions so I can figure
4 out where that is. Mr. Ferrario knows nobody understands but
5 me. And I can't say it in a way the Supreme Court will
6 understand, because they don't understand it, except for Chris
7 Pickering, and she won't be deciding your appeal.

8 MR. TAYBACK: Your Honor, we have a second motion.
9 It's Motion Number 2. It's also woven through some of the
10 other motions. For the sake of just clarity I'll address
11 Motion Number 2 separately, and I'll only --

12 THE COURT: Briefly.

13 MR. TAYBACK: -- briefly. I'll only say this. Even
14 if you go to the -- well, I've certainly said my piece
15 already, and I think you can just incorporate what I've said
16 previously on this point, that independence I do not believe
17 is a legal prerequisite to the invocation of the business
18 judgment rule. Even if you look at the Shoen case, which Your
19 Honor has discussed, where it talks about interestedness and
20 the word it uses "interestedness," the quote there is, "To
21 show interestedness a shareholder must allege that --" it's
22 talking about allegations in that case "-- allege that a
23 majority of the board members would be, quote, 'materially
24 affected' either to benefit or detriment by a decision of the
25 board in a manner not shared by the corporation and the

1 stockholders." To the extent there is a question of
2 independence, it's not the generalized allegations that I
3 think pollute the claims here, the transaction-by-transaction
4 claims that the plaintiff seems to be asserting. You can't
5 just say independence is lacking because there's -- one of the
6 directors favored one of the board members versus one of the
7 others, favored the sisters versus the brother. You have to
8 show that there's a material impact in the transaction itself
9 that was being voted upon, and that's the contention that
10 we're making with respect to independence and how plaintiff's
11 claims, all of them against all of the individual defendants
12 transaction by transaction should fail under a summary
13 judgment standard.

14 With that I'll stop, and then I'll allow him to
15 address it, and then I've got on Motion Number 3.

16 THE COURT: Okay. Mr. Krum, anything else on Motion
17 Number 2?

18 MR. KRUM: Just briefly, Your Honor, because I think
19 we have a fundamental -- I'm going to repeat myself in one
20 respect -- misapprehension of law. This is not a check-the-
21 box exercise.

22 THE COURT: No, it is not.

23 MR. KRUM: So in Shoen the court says, "Thus, as
24 with the Aronson test, under the Brehm test, director
25 independence can be implicated by particularly alleging that

1 the directors' execution of their duties is unduly influenced,
2 manifesting a direction of corporate conduct in such a way as
3 to comport with the wishes or interests of the person doing
4 the controlling."

5 Now, we know that's a demand case, but that doesn't
6 change the law, it just changes the application of the law.
7 And so the point isn't any more complicated than what it said
8 elsewhere in Shoen, and that is "Directors' discretion must be
9 free from the influence of other interested persons."

10 So Motion Number 2 is -- it's nonsensical, because
11 that has to be assessed based on facts and based on the
12 particular application. You just did it with respect to
13 Number 1. And so it doesn't work that way. And the -- in
14 Rails the court said, of which Shoen is cited with approval,
15 "Directorial interest exists whenever divided loyalties are
16 present." And we have this ongoing set of transactions that
17 entail furthering and protecting the interests of the Cotter
18 sisters. That, Your Honor, is a perfect example of
19 circumstances that show divided loyalties. Thank you.

20 THE COURT: Thank you.

21 Motion for Summary Judgment Number 2 is granted in
22 part. To the extent that you asked me to make a determination
23 as to whether there has been a showing of a lack of
24 disinterestedness there is a lack of disinterestedness for
25 Margaret Cotter, Ellen Cotter, and Guy Adams.

1 With respect to the other directors who were
2 involved in the motion there does not appear to be sufficient
3 evidence presented to the Court to proceed with a claim of
4 lack of disinterestedness.

5 Okay. That takes you to Number 3.

6 MR. TAYBACK: Your Honor, with respect to the Motion
7 for Summary Judgment Number 3, which relates to what's called
8 the patent vision expression of interest --

9 THE COURT: Yeah.

10 MR. TAYBACK: -- there are --

11 THE COURT: The unaccepted offer which may not have
12 been a real offer.

13 MR. TAYBACK: Not may not have been. Was admitted
14 by plaintiff --

15 THE COURT: Eh, you know.

16 MR. TAYBACK: Was admitted by the plaintiff was
17 nonbinding expression of interest that could have been
18 withdrawn or rejected at any point in time. Moreover, when
19 you look -- that in and of itself disposes of the claim,
20 because there are no damages that flow from that. There
21 cannot be. And that Cook case, which is a Delaware case, but
22 the Cook case really makes that clear.

23 THE COURT: I thought I wasn't supposed to look at
24 Delaware law according to you. You know the legislature can't
25 tell the court what it's allowed to look at.

1 MR. TAYBACK: And I did know that.

2 THE COURT: Okay.

3 MR. TAYBACK: I'm encouraging you to look at it.

4 THE COURT: I'm looking at all sorts of things, but
5 I'm trying to interweave it into the legislative intent
6 related to business judgment and the protections that we
7 should give to officers and directors in Nevada.

8 MR. TAYBACK: Yeah. And I think what it is is it's
9 factually analogous. It's factually analogous.

10 THE COURT: Right. I just had to give you a hard
11 time. Anything else you want to tell me?

12 MR. TAYBACK: The only other thing that I would tell
13 you is that when you look at what it is that the board members
14 can look at with respect to the consideration of potential
15 change of control overtures, call it expression of interest or
16 anything else, it's nonexclusive. It says they may consider
17 any of the relevant facts. And here the undisputed evidence
18 is that they did consider a lot of relevant facts, including
19 the views of the plaintiff, the views of the two Cotter
20 sisters, including the presentations of the board. And
21 they're entitled to rely upon that. And the reasonableness of
22 the decision is not something that can be second guessed at
23 this juncture based upon the showing that plaintiff has made.

24 THE COURT: Mr. Krum. Let's skip past a couple of
25 those arguments and focus on a different issue. Other than as

1 evidence of breaches of fiduciary duty, do you have any claim
2 of specific damages to the failure to accept the unsolicited
3 offer?

4 MR. KRUM: Well, first, Your Honor, the notion that
5 it's nonbinding and therefore it cannot result in damages is
6 belied --

7 THE COURT: No. I asked you a very direct question.

8 MR. KRUM: I'm sorry.

9 THE COURT: Do you have damages that you have
10 provided me evidentiary basis for strictly related to the
11 failure of the company or the directors to accept the
12 unsolicited offer?

13 MR. KRUM: Mr. Duarte Solis speaks to that in his
14 expert opinion which was the subject of a motion in limine you
15 denied in October of last year.

16 THE COURT: I know. But I'm asking you a question.
17 Do you have specific evidence of damages related to the
18 decision by the board not to accept the unsolicited offer?

19 MR. KRUM: No. The answer I have is the one I just
20 gave, Your Honor.

21 THE COURT: All right. So that's the only answer
22 you have. Okay. Anything else you want to tell me?

23 MR. KRUM: I just wanted to say again on law,
24 different point, though, intentional misconduct, one of the
25 ways that occurs is where the fiduciary acts with a purpose

1 other than advancing the best interests of the corporation. I
2 think the evidence on this subject, Your Honor, the offer
3 raises a question of fact, a disputed question of material
4 fact as to whether that's what the directors did.

5 Another category of intentional misconduct is where
6 the fiduciary intentionally fails to act in the face of a
7 known duty to act, demonstrating a conscious disregard for his
8 duties. That is a pervasive and recurring phenomenon here,
9 and I submit, Your Honor, with respect to the so-called offer
10 that's what happened. So the point is, as I said before on
11 the offer in particular, Your Honor, it sort of bookends this
12 whole sequence of events, starting with the seizure of
13 control. And you've read the papers, so I'll leave it at
14 that.

15 THE COURT: Anything else?

16 MR. KRUM: No.

17 THE COURT: Okay. Because of the failure of damages
18 related to an unenforceable, unsolicited, nonbinding offer, I
19 am granting the motion.

20 However, that does not preclude the plaintiff from
21 utilizing that factual basis for claims of a breach of
22 fiduciary duty. Okay?

23 MR. TAYBACK: Or for other alleged -- to prove other
24 alleged breaches you're saying it might be admissible as
25 evidence.

1 THE COURT: Well, it may be additional evidence of
2 breach of fiduciary duty. But they don't get to claim any
3 damages from it, since they haven't established damages
4 related to that because of the legal issues related to the
5 nature of the offer.

6 So what is your next motion for summary judgment, if
7 any? I think there were six.

8 MR. SEARCY: Your Honor, I'm addressing Motion for
9 Summary Judgment Number 5. That relates to the CEO search.
10 And --

11 THE COURT: Ready for me to say denied?

12 MR. SEARCY: If you'll let me --

13 THE COURT: You can talk, Mr. Searcy, but we're
14 leaving here in 25 minutes whether you guys are done or not.

15 MR. SEARCY: All right. Well, if you're going to --
16 before you say denied then let me just address a few of the
17 points in it. If you're going to say granted, then I'll
18 certainly sit down.

19 THE COURT: I'm not going to say granted.

20 MR. SEARCY: The point, Your Honor, is that there's
21 no dispute on the material facts here. There was a process
22 that was undertaken by the board here to appoint a CEO. The
23 board appointed a special committee, the special committee
24 hired a search firm, that search firm went out and got
25 information, they interviewed candidates, those candidates

1 were selected by the search firm Korn Ferry, and they were
2 considered along with internal candidates. The board -- or
3 the committee, rather, interviewed Ellen Cotter and decided
4 that she was the best candidate, and the board agreed with
5 that decision. And in the context of the law here you have a
6 majority of disinterested directors who agreed with that
7 decision. There's a presumption that all of this was
8 conducted in good faith. There hasn't been a rebuttal of the
9 presumption here, Your Honor, and, as a result, the motion
10 should be granted.

11 Are there particular issues, though, that I can
12 address for Your Honor?

13 THE COURT: Not that will cause you to be able to
14 get me to change my mind on denied.

15 MR. SEARCY: Okay. Are there any that I can at
16 least make an effort on, Your Honor?

17 THE COURT: Nope.

18 MR. SEARCY: Thank you, Your Honor.

19 THE COURT: All right. So that motion is denied.

20 Can we go to Number 6.

21 MR. SEARCY: Number 6 is mine, as well.

22 THE COURT: This has to do with the special bonus to
23 Mr. Adams.

24 MR. SEARCY: That's correct, Your Honor. There are
25 three main issues here. One has to do with the exercise of

1 options, and in that case there was an executive committee
2 that considered those options. There's no doubt, no dispute
3 that that was an existing plan, that the committee received
4 advice from counsel, and approved of the -- approved of the
5 exercise of the options.

6 THE COURT: Okay. Anything else?

7 MR. SEARCY: In addition to that -- and that's --
8 again, that is an exercise that is presumed to be done in good
9 faith and especially here, where the statute provides that you
10 can obtain information. And that's what the committee did.

11 In addition to that, Your Honor, there's the issue
12 of the payment to Mr. Adams that you just raised. That again
13 was approved by the board, approved by unanimous board who
14 were disinterested in the subject and are entitled to business
15 judgment on that subject.

16 And finally, with respect to Margaret Cotter's
17 appointment it's certainly within the board's discretion to
18 decide that someone who's worked for the company and been
19 affiliated with the company for approximately 20 years or so
20 has the qualifications to take on that job. And as Mr.
21 Tayback said, hiring someone to fill a role is certainly --
22 that's an operational decision that's within the discretion of
23 a board of directors, and certainly they're entitled to be
24 able to exercise the business judgment when it comes to that,
25 especially here. And with all of these decisions, Your Honor,

1 you're talking about a decision made by a majority of
2 disinterested directors, directors that you've found to be
3 disinterested.

4 THE COURT: Some directors I found to be
5 disinterested.

6 MR. SEARCY: Well, for those directors, though, Your
7 Honor, that you found to be disinterested, they constitute a
8 majority of the decision makers here. And --

9 THE COURT: Well, they're protected. Those people
10 are protected.

11 MR. SEARCY: And exercising their business judgment
12 they approved these decisions.

13 THE COURT: Okay. Anything else?

14 MR. SEARCY: Thank you, Your Honor. That's it.

15 THE COURT: Denied.

16 So you had Number 4 I think we didn't get to. Was
17 Number 4 reserved for this time, or had I ruled on it
18 previously?

19 MR. TAYBACK: Your Honor, you --

20 MR. KRUM: You ruled on it previously.

21 THE COURT: Okay. So that takes me to your motions
22 in limine. There were two that I think are important. One is
23 Mr. Gould's motion in limine to exclude irrelevant and
24 speculative evidence.

25 MR. RHOW: Your Honor, can I speak on this one?

1 THE COURT: It's your motion.

2 MR. RHOW: Thank you, Your Honor.

3 MR. FERRARIO: Hey, come on. This is his first
4 time.

5 MR. RHOW: I feel honored to actually --

6 THE COURT: Here's my first question.

7 MR. RHOW: By the way, is it tentative to grant?
8 I'd like to know that first.

9 THE COURT: My first question for you is one that
10 I'm going to ask all the people in motions in limine. Did you
11 have an opportunity to meet and confer with opposing counsel
12 before you filed the motion to see if there were areas of
13 agreement?

14 MR. RHOW: The answer is I don't think we did.

15 THE COURT: You know, we have a rule.

16 MR. SEARCY: I'm going to have to disagree with Mr.
17 Rhow. We actually did meet and confer with Mr. Krum on the
18 phone.

19 MR. RHOW: Oh. I'm sorry.

20 MR. SEARCY: Mr. Rhow wasn't part of the meet and
21 confer, but his associate, Shoshana Bannett, was.

22 THE COURT: Oh. Okay. All right.

23 MR. RHOW: Okay. I had looked at -- I should have
24 looked at Mr. Searcy.

25 THE COURT: Because usually -- usually I get a

1 declaration that tells me, we met and conferred on this
2 date --

3 MR. RHOW: Correct.

4 THE COURT: -- so that I can then gauge whether
5 somebody's being unreasonable or not. So it's your motion.

6 MR. RHOW: Thank you, Your Honor.

7 I think the motion was short and sweet on purpose.
8 During the deposition of Mr. Cotter, Jr., and it lasted days
9 and days and days, and throughout the questioning it was quite
10 clear that he was testifying based on not what he saw, what he
11 heard, what he observed; he was literally saying, here's what
12 I think -- thought at the time, here's what I was thinking Mr.
13 Gould was thinking and others were thinking and so therefore I
14 believe the claim is sufficient because of my subjective
15 belief as to what other directors were thinking. If that's
16 going to be part of this trial, first, this trial's not going
17 to be four weeks, it's going to be eight weeks; but, second,
18 there's nothing in the law, there's nothing based on common
19 sense that tells you that what the subjective beliefs of the
20 plaintiff are none of that is relevant, none of that is
21 relevant under the law, none that is relevant under common
22 sense. So to streamline this case, if he's going to talk
23 about what he saw, what he heard, certainly that's admissible.
24 But if he's going to talk about what he believes, that's
25 subjective and should not be part of this trial.

1 THE COURT: Thank you.

2 Ms. Levin, is this your motion?

3 MS. LEVIN: Yes, Your Honor.

4 As we said in our opposition, we believe this is an
5 improper and premature motion just because Mr. Cotter
6 obviously will be here at trial testifying.

7 THE COURT: So you want me to rule on the questions
8 and answers as they're given. So if somebody asks him, well,
9 did you talk to Mr. Adams about what he was going to do, he
10 can then tell me what he said.

11 MS. LEVIN: Correct, Your Honor.

12 THE COURT: Well, what did you think he meant?
13 That's speculation.

14 MS. LEVIN: Unless, of course, he's got a basis for
15 his belief. And I think that some of the deposition
16 testimony, those responses were invited by the very questions.
17 So to the extent that he has a basis to believe -- you know,
18 to state his belief I think that, again, it should be
19 determined on the question by question.

20 THE COURT: Okay. So the motion is denied. It's
21 premature. It's an issue that has to be handled at trial
22 based upon the foundation that is laid related to the issue.

23 So -- and plus you won't be here. You won't be
24 here; right?

25 MR. RHOW: I'm sorry?

1 THE COURT: You won't be here; right?

2 MR. RHOW: I don't know. I hope not. Is Your Honor
3 saying I should not be here or that my client won't be here
4 then?

5 THE COURT: That's what the business judgment ruling
6 deals with; right? So I granted your client's business
7 judgment rule motion. Well, you know, he may be a witness.

8 MR. KRUM: I'm sorry, Your Honor. Did I miss
9 something?

10 THE COURT: What?

11 MR. KRUM: We haven't had that motion argued yet,
12 Mr. Gould's motion.

13 THE COURT: I included Mr. Gould because you briefed
14 it relate to all of the motions for summary judgment and I
15 asked you questions about all the directors, except Mr. Adams.

16 MR. KRUM: I'm sorry. I didn't understand that,
17 Your Honor. I didn't answer as to Mr. Gould.

18 THE COURT: Do you want to tell me an answer to Mr.
19 Gould?

20 MR. KRUM: I do, because we have a hearing set for
21 the 8th on his motion, which is why misunderstood that.

22 THE COURT: I used it because it was included in
23 your opposition, the supplement to those motions.

24 MR. KRUM: That was confusion that we created, and I
25 apologize. The reason we did that, Your Honor, is that we

1 didn't have an opportunity to prepare a Gould brief, but we
2 didn't want to be accused of doing nothing. And some of the
3 evidence in those motions in our view did relate to Gould, and
4 we therefore put him on there.

5 That said, he filed two pieces of paper, they asked
6 me if we could have the hearing today. I told them no, I
7 wanted to respond. So -- but let me try to answer your
8 question with respect to Mr. Gould. So we start, Your Honor,
9 as we do, with the threat to terminate and the termination.
10 And I respectfully submit --

11 THE COURT: I will tell you that on your Mr. Gould
12 you've got the same list that we've already talked about.
13 What I'm trying to find out is -- and I understand the threat
14 is part of what you've alleged related to Mr. Gould along with
15 the other six or seven bullet points that are on pages 5 and 6
16 of the opposition. Is there something else related to Mr.
17 Gould, something like you have with Mr. Adams that would
18 establish a lack of disinterestedness?

19 MR. KRUM: Let me answer, and then you'll decide.

20 THE COURT: Yeah. That's what I'm trying to pull
21 out of you.

22 MR. KRUM: So, for example, with respect to the
23 termination Mr. Cotter raised the question of Mr. Adams's
24 independence before a vote was taken, and Mr. Gould asked Mr.
25 Adams, well, can you tell us about that. And Mr. Adams got

1 mad and said in words or substance, no. And Mr. Gould said,
2 okay. That, Your Honor, is a perfect example of a failure to
3 act in the face of a known duty to act. We're not talking
4 about someone who is unfamiliar with fiduciary obligations
5 here. Mr. Gould is a corporate lawyer.

6 So we get to the -- we get to the executive
7 committee, same meeting, June 12. Ellen Cotter says, I want
8 to repopulate the executive committee, Mr. Gould, would you
9 like to be on it. His testimony, his deposition testimony was
10 that he declined because he knew that it would take a lot of
11 time. Now, if he knew that it would take a lot of time, Your
12 Honor, how is it that it didn't occur to him that this was
13 what the sisters were doing in October of 2014 when they were
14 trying to circumvent the board?

15 THE COURT: These are all on your list of bullet
16 points.

17 MR. KRUM: Okay.

18 THE COURT: What I'm trying to find out is if
19 there's anything that's not on the list of bullet points that
20 are on pages 5 and 6 of your supplemental opposition that
21 relate to Mr. Gould. Because when I made my ruling I was
22 including Mr. Gould as someone because I specifically excluded
23 Mr. Adams and the two Ms. Cotters.

24 MR. KRUM: Bear with me. I'm mentally working.

25 THE COURT: I'm watching you. I'm watching him

1 work.

2 MR. KRUM: So I don't think we had the executive
3 committee there, but I just said that.

4 So then, Your Honor, the composition of the board.
5 So Mr. Gould was not a member of the nominating committee.
6 His testimony was that, on a Friday Ellen Cotter called me and
7 asked me if she could come to my office and she and Craig
8 Tompkins came to my office and showed me Judy Coddington's resume
9 and said we were going to have a board meeting on Monday to
10 put Ms. Coddington on the board. And Bill Gould said, this isn't
11 sufficient time, I can't do my job. But he voted for her
12 nonetheless. That, Your Honor, is the same thing that happens
13 over and over and over again with Mr. Gould. That is, in the
14 face of a known duty to act he chooses not to do so. That is
15 intentional misconduct. Your Honor, you've denied the motion
16 with respect to the CEO search. That is Mr. Gould. It is Mr.
17 Gould and Mr. McEachern who are the ones who together with
18 Margaret Cotter aborted the CEO search. Literally the last
19 time they spoke to Korn Ferry was the day Ellen Cotter
20 declared her candidacy. After that what did they do? They
21 told Craig Tompkins to tell Korn Ferry to do no more work.
22 And Mr. Gould, he was the one whose name was on a press
23 release saying, Ellen Cotter was made CEO following a thorough
24 search. She was not made CEO as a result of that search. She
25 was made CEO in spite of that search.

1 THE COURT: Okay. So all of those are issues that
2 I'm aware of considered when I had previously included Mr.
3 Gould in the granting of the summary judgment related to the
4 business judgment rule. The fact that I am denying certain
5 issues related to other summary judgments does not diminish
6 the fact that the directors that I found there was not
7 evidence of a lack of disinterestedness have the protection
8 the statute provides to them.

9 Okay. So let's go back to Mr. Cotter's Motion
10 Number 3. This is related to the coach.

11 MS. LEVIN: Your Honor, this motion should be denied
12 because the hiring of High Point, that's post hoc --

13 THE COURT: It's your motion. You wanted it
14 granted.

15 MS. LEVIN: I'm sorry. You know, the Court -- I'm
16 sorry. The Court should exclude the after-acquired evidence
17 on the -- in the form of any testimony or documents relating
18 to the hiring of High Point, because the breach of fiduciary
19 duty claims, they are -- they concern what the directors did
20 and knew at the time that they decided to fire the plaintiff.
21 So we cited the Smith versus Van Gorkom case, which holds post
22 hoc data is not relevant to the decision.

23 So at the time that they made this decision they did
24 not have nor did they rely on the High Point evidence. So
25 therefore the after-acquired evidence cannot be as a matter of

1 law relevant to their decision to terminate the plaintiff.
2 That would amount to a retroactive assessment of his ability,
3 which are not at issue. And I think that that's the -- you
4 know, the --

5 THE COURT: The problem I have with that is part of
6 what your client's position has been in this case is he is
7 suitable to be acting as the CEO, and if there is information
8 that is relevant to that suitability, that's where I have the
9 problem on this. I certainly understand from a decision-
10 making process that that information was not in the possession
11 of anyone who was making the decisions at the time. But given
12 the affirmative proposition by your client that he is suitable
13 to CEO, I have concerns about granting the motion at this
14 stage.

15 MS. LEVIN: Well -- okay. So -- but with respect to
16 the decision which you can agree that they could not use that
17 evidence to show that after the fact they made the right
18 decision because of the after --

19 THE COURT: No. That's a problem if your client is
20 saying he's suitable and therefore he should be able to be
21 CEO. Because part of what he originally asked for was to make
22 them make him be CEO.

23 MS. LEVIN: All right. And here at issue I believe
24 it's the -- we're seeking to void the termination.

25 THE COURT: I know.

1 MS. LEVIN: So -- but I think that even -- and I
2 think that in that respect if you were inclined to allow it on
3 his suitability, the problem then becomes first of all the
4 hiring of consultant doesn't necessary mean that somebody is
5 unsuitable.

6 THE COURT: Absolutely. It may mean they're trying
7 to get better.

8 MS. LEVIN: Exactly. And I was thinking -- when I
9 read these facts I was thinking about the analogy. If you
10 were a professional runner and you hire a runner coach --

11 THE COURT: Coach.

12 MS. LEVIN: -- doesn't mean that you're not a good
13 runner. You may --

14 THE COURT: You want to be better.

15 MS. LEVIN: Exactly. So that was --

16 THE COURT: I understand.

17 MS. LEVIN: So and the other thing is that, you
18 know, the opposition argues, well, but it looks like in his
19 own assessment he wasn't good for it. And that, of course,
20 again doesn't follow from that. And so then we get into the
21 category of even if there's a remote relevance, Your Honor,
22 then whatever that relevance is would be substantially
23 outweighed by the unfair prejudicial effect that that would
24 cause. Because, again, his assumed thoughts, then the jury
25 could think like, well, you know, he thinks he's not qualified

1 because he hired a coach. So all in all I believe that it's
2 unfairly prejudicial.

3 Just on the point of the unclean hands defense,
4 again they are citing the Fetish, Las Vegas Fetish case. But,
5 again, the unclean hands defense requires egregious misconduct
6 and serious harm caused by it. And they haven't further
7 substantiated that. So with that being said, our position is
8 to exclude it for those reasons.

9 THE COURT: Thank you.

10 MS. LEVIN: Thank you.

11 THE COURT: Mr. Searcy --

12 MR. SEARCY: I'll address that.

13 THE COURT: -- I am inclined to deny the motion.
14 But if the evidence is admitted at trial, to admit it with a
15 limiting instruction that says that it only goes to
16 suitability.

17 MR. SEARCY: And, Your Honor, I think that we're
18 okay with that.

19 THE COURT: Okay.

20 MR. SEARCY: I just want to clarify that we can
21 certainly ask Mr. Cotter about the Alderton documents --

22 THE COURT: You ask him about it, then I'm going to
23 give the limiting instruction, and we'll probably give it five
24 times or six times, and it'll be a written instruction, so
25 it's part of it. And if the plaintiff doesn't want me to give

1 the limiting instruction because they believe that calls to
2 much attention to it, they can, of course, waive that request.

3 MR. SEARCY: Thank you, Your Honor.

4 THE COURT: Okay. So think about whether you really
5 want the limiting instruction, come up with your text for the
6 limiting instruction, and then we'll talk about it when we
7 have our final pretrial conference as to whether you think you
8 really want it.

9 That takes me to the last motion in limine by Mr.
10 Cotter, which relates to the ability of Mr. Ferrario to
11 participate at trial, also known as Motion in Limine Number 2.

12 MR. KRUM: Thank you, Your Honor. I enjoy this very
13 much, showing that perhaps I've spent too many years in the
14 corporate governance jurisprudence. Three points, and it's
15 not complicated. First, as a general rule a nominal defendant
16 is not allowed to introduce evidence and defend the merits of
17 claims against the director defendants.

18 Second, the handful of exceptions to that are
19 exceptions where it's a serious fundamental corporate interest
20 that is challenged by the derivative suit, a reorganization or
21 restructuring, an effort to appoint a receiver. None of those
22 exist here.

23 Third, if you disagree with us on all of that,
24 there's a question of unfair prejudice and waste of time.
25 And, you know, the individual defendants are represented by

1 capable counsel. They don't need a second lawyer carrying
2 their water. And for a jury to have someone who represents
3 the company asking questions that imply conclusions adverse to
4 the plaintiff is, if not unfairly prejudicial, something
5 beyond that.

6 So that's the argument in a nutshell, Your Honor.
7 If you have any questions, I'd be happy to answer them.

8 THE COURT: Nope. Motion's denied.

9 All right. So let's go to your Motion in Limine
10 Number 1 regarding advice of counsel. I forgot we need to hit
11 that one. Ms. Levin.

12 And then we're going to go to the Chief Justice
13 Steel that I'm not going to really hear, because I didn't give
14 you permission to refile.

15 MS. LEVIN: Your Honor is familiar with the share
16 options, so if I talk about the share option, I don't --

17 THE COURT: I am.

18 MS. LEVIN: Okay. Well --

19 THE COURT: And also with the drama related to the
20 production and the creation and all the stuff about the advice
21 of counsel issue.

22 MS. LEVIN: Okay. I'll just --

23 THE COURT: But I also am aware the Nevada Supreme
24 Court has told us on a business judgment issue we cannot reach
25 behind the advice of counsel except to make a determination as

1 to essentially process issues, how the attorney was hired,
2 what the scope of the retention was, and those kind of issues,
3 as opposed to the actual advice.

4 MS. LEVIN: That's true, Your Honor. And so our
5 arguments are really twofold. Number one is that Adams and
6 Kane, who were two of the three directors on the compensation
7 committee, they testified, as the Court found in its October
8 27, 2016, hearing, that they relied solely on the substance of
9 advice of counsel to determine whether the authorization
10 decision to authorize the estate to invoke the option was
11 proper. So, unlike in Wynn or in Comverge, on which the
12 defendants rely, they did not rely on anything else. So if
13 they are asked at trial to explain why they authorized the
14 option, they must rely on that legal advice.

15 So the second point is that the defendants waived
16 the attorney-client privilege by partially disclosing
17 attorney-client privileged information. Now, they're saying
18 -- or RDI says in the opposition that individual directors
19 cannot waive the privilege.

20 THE COURT: That's the Jacobs versus Sands case.

21 MS. LEVIN: Exact, Your Honor. And I agree with
22 that. But, of course, RDI can only act through its officers
23 and directors.

24 THE COURT: That's the Jacobs versus Sands case.

25 MS. LEVIN: And the current officer -- and I think

1 in particular if you look at the Exhibit 4 that we attached
2 to our motion, is that that email was produced by Ellen
3 Cotter, who is a current CEO and is an officer and director,
4 and she --

5 THE COURT: I understand.

6 MS. LEVIN: So, in other words --

7 THE COURT: And then Mr. Ferrario clawed it back.

8 MS. LEVIN: Right. So she produced it, and so
9 there's a Supreme Court case that says, "The power to waive
10 the corporate attorney-client privilege rests with the
11 corporation's management and is usually -- and is normally
12 exercised by its officers and directors." And that's what
13 happened here.

14 So I think especially Exhibit 4, but even Exhibit 2
15 and 3, the 2 and 3 they raise the legal issues. 2 and 3
16 identify the legal issues of whether there was a reason why
17 Ellen Cotter could not exercise the option and whether enough
18 -- whether the trust documents did not pour over -- the share
19 option didn't pour over into the trust. But Exhibit 4
20 specifically seeks legal advice from the company attorney and
21 as to the legal rights of the estate to exercise the option in
22 light of the proxy language. So that is -- under our statute
23 is an attorney-client communication for the purpose of
24 obtaining legal advice. So they partially disclosed that, so
25 we believe there's a waiver issue. And under Wardleigh you

1 cannot use the attorney privilege both as a shield and a
2 sword, which is what they're now doing, is because what
3 they're going to say is, well, we partially disclosed but you
4 cannot find out what it was. But even the very --

5 THE COURT: But that's the Nevada Supreme Court
6 who's made that decision, not the rest of us. They were very
7 clear that we're not allowed to get behind that.

8 MS. LEVIN: Correct. But one thing that the Wynn
9 decision did not decide was the waiver issue. And that was in
10 Footnote 3 of the decision.

11 THE COURT: I made that decision separately after
12 that came back. But that's a case by case, and I haven't made
13 that decision in this case. In fact, my belief is you guys
14 have a writ pending on this issue still. Right?

15 MR. KRUM: I think the writ pending is on a
16 different privilege issue, Your Honor.

17 THE COURT: Okay.

18 MS. HENDRICKS: Your Honor, the writ relating to
19 this issue was filed by RDI, and the Supreme Court actually
20 came back and said the facts were analogous to Wynn and it
21 needed to make a decision, and that was shortly after you did
22 make the decision when we were back before you on it.

23 THE COURT: Yeah. We had a hearing.

24 MS. HENDRICKS: And we had the supplemental
25 briefing.

1 THE COURT: Yep. Okay. So anything else on this
2 one?

3 MS. LEVIN: Only -- the only thing is that the
4 partially disclosed privileged emails themselves show that the
5 board had information that would cause reliance on advice to
6 be improper. So that would --

7 THE COURT: Okay. So your motion's denied. Come up
8 here. I'm going to give you these. These are your I believe
9 documents you actually want sealed. Since I granted your
10 motion, it was on the calendar today, hopefully you can work
11 out with the Clerk's Office so they will actually take the
12 sealed documents and put them so they're part of the record in
13 some way.

14 MS. LEVIN: And I brought them with me, too.

15 THE COURT: Yeah. Good luck. You've got to do it
16 at the counter.

17 MS. LEVIN: Okay. Thank you.

18 THE COURT: Okay. So I am declining to hear again
19 the motion in limine on Chief Justice Steel. I've previously
20 made a ruling on that. I've reviewed your brief, and there's
21 nothing in it that causes me to change my mind.

22 I have already granted your motions to seal and
23 redact. It was on calendar for today.

24 And now we need to set our final pretrial
25 conference. I usually do it the week before.

1 MR. KRUM: The week before is fine, Your Honor.

2 (Pause in the proceedings)

3 THE COURT: The week before is fine?

4 MR. KRUM: The week before is fine, Your Honor.

5 THE COURT: What day are you guys arguing in the
6 Supreme Court?

7 MR. TAYBACK: That's the 3rd.

8 THE COURT: 3rd. So do you want to come in on --

9 MR. TAYBACK: 4th?

10 THE CLERK: [Inaudible].

11 THE COURT: No, I'm not seeing them on January 2,
12 you're seeing them on January 2.

13 How about on January 5 at 3:00 o'clock?

14 MR. TAYBACK: That's good. Thank you.

15 MR. KRUM: Perfect.

16 MR. FERRARIO: Thank you, Judge.

17 THE COURT: That will be your final pretrial
18 conference. At your final pretrial conference we're not going
19 to bring exhibits, because you're already going to deal with
20 that. But you are going to bring any jury instructions,
21 you're going to exchange your draft jury instructions. If you
22 have limiting instructions you think are appropriate, try and
23 have those, as well. And we're also going to deal with any
24 exhibits that you want in a notebook for the jury. The only
25 reason I suggest that is sometimes documents that we show on

1 screens aren't easily able to be seen by a juror. There's
2 contract documents and things you may want. If there are
3 selected items you want to have in a jury notebook, it will be
4 a single jury notebook. It will be not more than 3 inches.
5 So whatever we put in it has to fit in the 3 inches. And so
6 if you have things you think you want included in that, we'll
7 talk about that. And you're going to -- I will make final
8 decisions on voir dire questions at that time. I encourage
9 you to exchange them a week ahead of time.

10 MR. KRUM: Your Honor, with respect to exhibits we
11 have a date this week of Wednesday or Thursday for our exhibit
12 list. I think in view of today's developments it would be a
13 good idea to push that back to next week.

14 THE COURT: You guys need to get working on it.

15 MR. KRUM: No, we're working on it.

16 THE COURT: It takes a lot longer than you think it
17 does.

18 All right. Anything else that I missed?

19 MR. FERRARIO: There may be some utility to that,
20 Mark, in light of the rulings of the Court today, because the
21 complexion of the case has changed.

22 MR. KRUM: Well, that's -- we're working on it. We
23 understand that, Your Honor. So may we have until Wednesday
24 of next week you think, Mark?

25 MR. TAYBACK: Yeah, that's fine.

1 THE COURT: I still need to see representatives from
2 those parties who remain in the case at the calendar call on
3 December 18th. If you are out of town, I do not do call-ins
4 for calendar calls, Mr. Krum, so just make sure Mr. Morris and
5 Ms. Levin know whatever it is they need to say.

6 I am going to be asking you whether given the
7 rulings I made today it has changed the estimate that you
8 provided to me through Ms. Hendricks on December 4th as the
9 amount of time for trial. Because I need to negotiate for
10 space, and knowing the time that I need is important for me in
11 my space negotiations.

12 MR. RHOW: Your Honor, sorry. One point of
13 clarification as to Mr. Gould specifically. He is out of the
14 case entirely?

15 THE COURT: Well, I granted the motion on the
16 business judgment for him. My understanding is that is the
17 only way that you would be involved, because there are no
18 direct breach of contract claims against you. If there were
19 other types of claims against you that were not protected by
20 the business judgment rule, you might not be out. But I
21 didn't see that in the briefing. But I don't know your case
22 as well as you do.

23 MR. RHOW: Assuming that's the case, I just want to
24 make sure that no one's going to sanction me if I don't show
25 up.

1 THE COURT: Do you think you have any remaining
2 claims against Mr. Gould given my ruling today?

3 MR. KRUM: Your Honor, probably not. But I'll go
4 back through it.

5 THE COURT: If you could communicate if you think
6 there are any, and then I'll have to handle that on a
7 supplemental motion practice.

8 MR. RHOW: Understood, Your Honor.

9 THE COURT: Okay. So the people who I anticipate
10 will be here only in the capacity as witnesses would be --
11 okay, I've got to go back to this list -- Kane, McEachern,
12 Gould, Coddington, Wrotniak. That's all of them. So the people
13 who remain parties are Cotter, Cotter, Adams, and then Mr.
14 Cotter.

15 MR. TAYBACK: Yes, Your Honor. I understand that.

16 THE COURT: All right. So see you on the 18th.

17 MR. TAYBACK: Thank you, Your Honor.

18 MR. KRUM: Thank you.

19 MR. EDWARDS: Your Honor --

20 THE COURT: Yes, Jim.

21 MR. EDWARDS: -- on the 2nd is local counsel going
22 to be here for the exhibits? Do you want local counsel here?

23 THE COURT: Counsel does not need to be here. They
24 can send paralegals. So local counsel does not need to come
25 sit through it if they don't want to.

1 MR. EDWARDS: Okay.

2 THE COURT: But it may be helpful if local counsel
3 is going to be intimately involved in the process of doing it
4 for you to have someone here. But I leave that to work out
5 with your people.

6 Anything else?

7 MS. HENDRICKS: Your Honor, on the exhibit list did
8 we get an extra week, then, so we kind of work through these
9 issues?

10 THE COURT: I'm not involved in the exhibit list
11 issue. That's you guys on 2.67. I'm out of that.

12 MR. FERRARIO: Thank you, Your Honor.

13 THE PROCEEDINGS CONCLUDED AT 12:00 NOON

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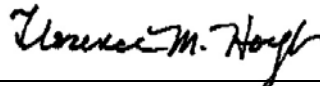
CERTIFICATION

I CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT FROM THE AUDIO-VISUAL RECORDING OF THE PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

AFFIRMATION

I AFFIRM THAT THIS TRANSCRIPT DOES NOT CONTAIN THE SOCIAL SECURITY OR TAX IDENTIFICATION NUMBER OF ANY PERSON OR ENTITY.

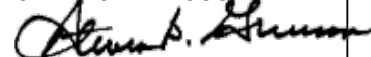
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Las Vegas, Nevada 89146**



FLORENCE M. HOYT, TRANSCRIBER

12/12/17

DATE



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Attorneys for Plaintiff

James J. Cotter, Jr.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

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

Plaintiff,

v.

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

Defendants.

And

READING INTERNATIONAL,
INC., a Nevada corporation,

Nominal Defendant.

) Case No. A-15-719860-B

) Dept. No. XI

)

) Coordinated with:

)

) Case No. P-14-0824-42-E

) Dept. No. XI

)

) Jointly Administered

)

**MOTION FOR
RECONSIDERATION OR
CLARIFICATION OF RULING
ON MOTIONS FOR SUMMARY
JUDGMENT NOS 1, 2, AND 3
AND GOULD'S SUMMARY
JUDGMENT MOTION**

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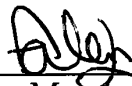
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**AND
APPLICATION FOR ORDER
SHORTENING TIME**

1 Plaintiff James J. Cotter, Jr. ("Plaintiff") hereby moves the Court
2 under EDCR 2.24(b) to reconsider and/or clarify the Court's ruling on the
3 individual defendants' motions for partial summary judgments Nos. 1 and 2
4 ("Partial MSJ Nos. 1 and 2") and William Gould's motion for summary
5 judgment ("Gould MSJ"). Plaintiff further moves the Court under EDCR
6 2.26 for an Order shortening time to notice and hear this Motion.

7
8 MORRIS LAW GROUP

9 By: 
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11 Akke Levin, Bar No. 9102
12 411 E. Bonneville Ave., Ste. 360
13 Las Vegas, Nevada 89101

14 Mark G. Krum, Bar No. 10913
15 YURKO, SALVESEN & REMZ, P.C.
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18 Attorneys for Plaintiff
19 James J. Cotter, Jr.
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DECLARATION OF AKKE LEVIN
IN SUPPORT OF APPLICATION FOR
ORDER SHORTENING TIME

I, Akke Levin, declare:

1. I am an attorney with Morris Law Group, counsel for Plaintiff James J. Cotter, Jr. I have personal knowledge of the facts stated in this declaration except as to those stated on information and belief, which facts I have investigated and believe to be true. I would be competent to testify to them if called upon to do so.

2. On December 11, 2017, the Court heard oral argument on the defendants' motions for summary judgment and some of the parties' motions *in limine*. The Court granted Partial MSJ No. 1 regarding Plaintiff's termination and reinstatement; Partial MSJ No. 2 regarding director independence; and Partial MSJ No. 3 regarding the unsolicited Patton Vision offer as to five of the eight defendants. The Court also granted defendant William Gould's MSJ on all claims. The Court further ruled in favor of Edward Kane, Douglas McEachern, Judy Coddington, and Michael Wrotniak on all four of Plaintiff's breach of fiduciary duty claims asserted against them.

3. During the December 11 hearing, the Court set January 8, 2018 as the trial start date.

4. Good cause exists under EDCR 2.26 to shorten the time for notice and hearing of this Motion for Reconsideration and Clarification because trial is less than fourteen business days away, and the issues raised by this Motion have substantial impact on trial preparation and the scope of issues and claims remaining for trial. Plaintiff's counsel is available any day of the week of December 18, 2017.

5. This Motion is being served by the court's E-Service System to all counsel of record.

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


Akke Levin, Bar No. 9102

ORDER SHORTENING TIME

On application of Akke Levin, counsel for plaintiff James J. Cotter, Jr., and good cause appearing,

IT IS HEREBY ORDERED that the time for notice and hearing of the Motion for Reconsideration and Clarification shall be, and it hereby is, shortened and shall be heard on shortened time on the 12th day of December, 2017, at the hour of 9⁰⁰ 9.m. . Chm 10A.



Judge Elizabeth Goff Gonzalez
District Court Judge, Dept. 11 CR

DATED: _____

I. INTRODUCTION

The defendants, except Gould, moved for partial summary judgment only on specific *issues*. The Court, however, without giving plaintiff proper notice and adequate time to respond, elected to treat the motions as directed to the *claims* made against the defendants and granted three of the five pending motions as to defendants Kane, McEachern, Coddling, and Wrotniak on all claims and dismissed them from the case. The Court also dismissed defendant Gould although his separately-filed motion for summary judgment had not been fully briefed and was scheduled for hearing next month, on January 8, 2018. Granting summary

1 judgment on all claims against these defendants under these circumstances
2 was error and should be reconsidered by the Court.¹

3 The Court also erred in granting summary judgment for these
4 defendants under the business judgment rule because the Court did not
5 adequately consider that intentional misconduct by directors rebuts the
6 presumption that they acted in good faith and are entitled to immunity for
7 their misconduct by the rule. Moreover, in assessing the dismissed
8 directors' conduct for summary judgment purposes, the Court apparently
9 overlooked the law that says the acts and omissions of individual directors
10 must be viewed *collectively*, not separately, to determine, for example,
11 whether their conduct and motives show independence of actions in the
12 *interest* of their corporation, as distinct from their own interests or that of
13 control shareholders.

14 As these observations suggest and the following law and
15 evidence support, the Court erred in dismissing the five subject directors
16 without allowing the jury to hear the evidence on disputed material facts
17 and render a verdict on whether the dismissed directors were acting in
18 RDI's interest or to protect and further the interests of the controlling
19 shareholders, as alleged in detail in the Second Amended Complaint
20 ("SAC") and set out again in the Joint Pretrial Memo.

21 **II. STATEMENT OF FACTS AND PROCEDURAL HISTORY**

22 **A. Plaintiff's Complaint and Claims/Causes of Action**

23 The SAC pleads four claims: (1) breach(es) of the duty of care; (2)
24 breach(es) of the duty of loyalty; (3) breach(es) of the duty of candor; and (4)
25 aiding and abetting breaches of fiduciary duty. SAC at 47–54. The Claims
26

27
28 ¹ The Court denied summary judgment for defendants Ellen Cotter ("EC" hereafter), Margaret Cotter ("MC" hereafter), and Guy Adams ("Adams" hereafter).

1 1–3 are against each of the individual director defendants; the fourth claim is
2 against EC and MC. *See id.*

3 Plaintiff's duty of care claim(s) are based on acts and omissions
4 set out in the SAC, some of which were *not* the subject of a motion for partial
5 summary judgment. Examples of such acts and omissions include: (i) the
6 one time "special nominating committee" of McEachern, Kane and Adams
7 forcing director Storey to "retire" and adding unqualified persons loyal to
8 EC and/or MC to the RDI Board; and (ii) knowingly disseminating
9 erroneous and materially misleading statements in RDI public disclosures
10 (SEC filings and press releases). The acts and omissions on which fiduciary
11 duty claims of care and loyalty are based also include one as to which MSJ
12 No. 4 was denied in relevant part—misuse of the executive committee. *See*
13 December 21, 2016 Order Regarding Defendants' Motions For Partial
14 Summary Judgment Nos. 1-6..." (the "MSJ Order"), Ex. 1 at 3:15–19 (granting
15 MSJ No. 4 "[a]s to formation and revitalization (activation) of the Executive
16 Committee," but denying it "as to utilization of the committee").

17 Plaintiff's duty of loyalty claims also were based in part on
18 matters which were *not* the subject of the motions for partial summary
19 judgment, including breaches of the duty of loyalty arising from the misuse
20 by EC and MC of their position as controlling shareholders *and* breaches of
21 the duty of loyalty by the other director defendants in acquiescing to the
22 wishes of EC and MC and actively assisting them in protecting and
23 pursuing their personal interests rather than acting solely in the interests of
24 the Company. These breaches are evidenced by other matters pleaded in
25 the SAC and summarized in section II. B. below, some of which were *not* the
26 subject of a partial summary judgment motion, such as the threat to
27 terminate Plaintiff if he did not settle trust disputes unrelated to his sisters
28 on terms satisfactory to them *and* the threat to terminate Plaintiff's family's

1 health insurance if he did not resign as a director, among others. The breach
2 of the duty of loyalty claims also are based on the misuse of the executive
3 committee, as to which a prior motion for summary judgment (Partial MSJ
4 No. 4) was denied in relevant part.

5 **B. The Partial Summary Judgment Motions**

6 On September 23, 2016, the individual director defendants other
7 than Gould filed six separate motions for *partial* summary judgment
8 numbered 1 through 6 ("Partial MSJ Nos. 1–6"), each of which was directed
9 only at specific matter raised in the respective motions. None sought
10 summary judgment on any of the four claims pleaded in the SAC.

11 The Court on October 27, 2016 denied Partial MSJ No. 1, finding
12 that "there are genuine issues of material fact and issues related to interested
13 directors participating in the process." *See* Oct. 27, 2016 Hearing Tr., Ex. 2 at
14 117:9–12. The Court granted in part and denied in part Partial MSJ No. 4
15 regarding the executive committee of the RDI Board. The Court ruled:

16 The motion related to the executive committee is granted in part.
17 As the formation and revitalization of the committee the Motion
18 is granted. *As to the utilization of the committee it's denied.*

19 *Id.* at 93:10–13 (emphasis added).

20 Other Partial MSJs regarding particular matters—director
21 independence (No. 2), the offer (No. 3), the CEO search (No. 5) and other
22 matters including the exercise of the 100,000 share option and the
23 employment and compensation of MC (No. 6), were denied on rule 56 (f)
24 grounds. *See* December 21, 2016 Order, Ex. 1.

25 All of those motions were reset for hearing and heard on
26 December 11, 2017. As Plaintiff understands the Court's oral rulings, the
27 Court granted Partial MSJ No. 1 regarding termination as to defendants
28 Kane, McEachern, Gould, Wrotniak, and Coddington on the grounds that
Plaintiff had failed to raise a disputed issue of material fact regarding their

1 disinterestedness or independence. December 11, 2017 Hearing Tr., Ex. 3, at
2 41:4-20. The Court granted Partial MSJ No. 2 regarding director
3 independence on the same grounds as to the same five defendants. *Id.* at
4 44:20-45:4. The Court granted Partial MSJ No. 3 regarding the unsolicited
5 offer on separate grounds. *Id.* at 48:17-22. The Court denied Partial MSJ No.
6 5 regarding the CEO search and denied Partial MSJ No. 6 regarding the
7 option exercise, compensation package and related conduct. *Id.* at 49:11-
8 52:15.

9 Although the director defendants who filed Partial MSJ Nos. 1-6
10 did not seek summary judgment with respect to any of the *claims* for breach
11 of fiduciary duty against them in the SAC, the Court indicated that only EC,
12 MC and Adams remain defendants in the case. *Id.* at 73:9-14. As to director
13 defendant Gould, his separate summary judgment motion had been noticed
14 for hearing on January 8, 2018. *See* Request for Hearing on Gould MSJ, on
15 file at 3. Nevertheless, on December 11, 2017 the Court ruled that Gould
16 was entitled to summary judgment on the same grounds as the director
17 defendants other than EC, MC and Adams. December 11, 2017 Hearing Tr.
18 at 41:4-20; 44:20-45:4; 73:9-14.

19 III. ARGUMENT

20 A. Reconsideration and clarification of the Court's rulings are 21 warranted.

22 The Court has authority under EDCR 2.24(b) to reconsider prior
23 rulings, and inherent authority to "reconsider, rescind, or modify an
24 interlocutory order for [sufficient] cause" *City of L.A., Harbor Div. v.*
25 *Santa Monica Baykeeper*, 254 F.3d 882, 885 (9th Cir. 2001). Courts may grant
26 reconsideration based on new evidence or if the decision is clearly
27 erroneous. *Masonry & Tile Contractors Ass 'n of S. Nev. v. Jolley, Urga & Wirth,*
28 *Ltd.*, 113 Nev. 737, 741, 941 P.2d 486, 489 (1997). As discussed below, the
Court should reconsider and clarify its rulings on Partial MSJ Nos. 1, 2, and

1 3 and the Gould MSJ, because in ruling in favor of defendants Coddington,
2 Kane, Gould, Wrotniak, and McEachern on all four claims for breaches of
3 fiduciary duty, the Court overlooked that: (1) Partial MSJ Nos. 1, 2, and 3
4 did not seek complete relief on all four claims for breaches of fiduciary duty
5 and briefing on Gould's MSJ was incomplete; and (2) Plaintiff's fiduciary
6 duty claims are supported by other conduct not addressed by these Partial
7 MSJs that is sufficient to rebut application of the business judgment rule.

8 **B. The Court erred in granting summary judgment on all claims**
9 **against five defendants.**

10 When reviewing a motion for summary judgment, "the evidence,
11 and any reasonable inferences drawn from it, must be viewed in a light most
12 favorable to the nonmoving party." *Wood v. Safeway, Inc.*, 121 Nev. 724, 729,
13 121 P.3d 1026, 1029 (2005). Although a district court has the inherent power
14 under Nev. R. Civ. P. 56 to *sua sponte* grant summary judgment on claims
15 that are not a part of a motion for summary judgment, before doing so the
16 Court must give the non-moving party 10 days notice and the opportunity
17 to defend himself. *Renown Reg'l Med. Ctr. v. Second Jud. Dist. Ct.*, 130 Nev.
18 ___, ___, 335 P.3d 199, 202 (2014) ("*Renown*"); *Soebbing v. Carpet Barn*, 109
19 Nev. 78, 83-84, 847 P.2d 731, 735 (1993)(holding that the defending party
20 must be given the full 10 days notice under Nev. R. Civ. P. 56(c) and an
21 opportunity to defend itself before a court may grant summary judgment
22 *sua sponte*).

23 *Renown* is instructive, because its procedural history is similar to
24 this case. There, the defendant hospital moved for summary judgment on
25 three specific issues: policy coverage, third-party beneficiary status of the
26 plaintiff, and *Renown's* compliance with certain statutes. *Renown*, 335 P.2d
27 at 201. "The full merits of Wiley's claims for breach of the provider
28 agreement and intentional interference with his Cigna policy were not at
issue in the summary judgment proceedings." *Id.* The district court initially

1 denied the motion, holding there were issues of fact. *Id.* Thereafter,
2 Renown renewed its motion for summary judgment on the same three
3 issues and Wiley filed summary judgment motion but only on the statute
4 violation issue. *Id.* After a hearing on the summary judgment motions, the
5 district court denied Renown's motion and granted Wiley's motion. But in
6 granting that motion, the court decided not only the three issues raised by
7 Renown; it also found "in favor of Wiley on his breach of contract and
8 intentional interference with contract claims, *even though the full merits of*
9 *these claims were not specifically argued in the cross-motions for summary*
10 *judgment or at the hearing.*" *Id.* (emphasis added). "The district court stayed
11 the remainder of the case so that Renown could seek writ relief in this
12 court," which it did. *Id.* The Nevada Supreme Court granted the writ
13 petition with respect to that portion of the order because the "claims for
14 breach of contract and intentional interference with contract . . . were
15 nowhere mentioned in the six summary judgment briefs." *Id.* at 202.

16 **1. Partial MSJ Nos. 1, 2, and 3 did not argue the full merits**
17 **of Plaintiff's fiduciary duty claims.**

18 Here, the individual defendants (other than Gould) moved for
19 partial summary judgment on distinct issues only—*i.e.*, Plaintiff's
20 termination and reinstatement (Partial MSJ No. 1); director independence
21 (No. 2); the unsolicited Patton Vision offer (No. 3); the executive committee
22 (No. 4); the appointment of EC as CEO (No.5); and option exercise and other
23 issues (No. 6). *See, e.g.*, Partial MSJ No. 1 at 2 (Defendants seek summary
24 judgment "as to the First, Second, Third, and Fourth Causes of Action in
25 Plaintiffs Second Amended Complaint, *to the extent that they assert claims*
26 *based on Plaintiffs [sic] June 12, 2015 termination . . .*") (emphasis added).

27 Unlike defendant Gould, the individual defendants did not
28 move for summary judgment on all four **claims** for breach of fiduciary duty,
which involve additional issues not addressed in the MSJs—*e.g.*, materially

1 misleading and erroneous board materials published in public disclosures
2 and process failures. See Pretrial Memo at 5–9. Moreover, the Court *denied*
3 Partial MSJ Nos. 5 and 6, which involve conduct by dismissed defendants.
4 For example, Partial MSJ No. 5 relates to the appointment of Ellen Cotter as
5 CEO, which is a decision in which defendants Gould and McEachern
6 participated.

7 **2. The Court's ruling deprived Plaintiff of Notice and an**
8 **Opportunity to be heard.**

9 A party's right to notice and an opportunity to be heard on
10 matter not addressed in a motion for summary judgment "has nothing to do
11 with the merits of the case." *Soebbing*, 109 Nev. at 83, 847 P.2d at 735 (citing
12 *U.S. Dev't Corp. v. Peoples Fed. Savings and Loan Ass'n*, 873 F.2d 731, 734 (4th
13 Cir.1989)). " '[R]egardless of a claim's merit, a district court may not *sua*
14 *sponte* enter summary judgment against it until the claim's proponent has
15 been given notice and a reasonable opportunity to be heard.' " *Soebbing*, 109
16 Nev. at 83, 847 P.2d at 735 (quoting *U.S. Dev't Corp.*, 873 F.2d at 734).

17 Here, because the individual defendants other than Gould did
18 not seek summary judgment across the board on all claims against all five
19 defendants, and the Court's ruling went beyond the issues raised in Partial
20 MSJ Nos. 1, 2, and 3 and dismissed all claims against five defendants,
21 Plaintiff should have received ten days' notice and been given an
22 opportunity to be heard. Nev. R. Civ. P. 56(c); *Renown*, 335 P.3d at 202.
23 Plaintiff was entitled to the same notice on the Gould MSJ, because briefing
24 was still open on that MSJ on December 11. See Request for Hearing on
25 Gould MSJ at 3 (setting hearing on the MSJ for January 8).

26 **C. The Court overlooked the conduct, acts and omissions stated**
27 **in the SAC and Pretrial Memorandum.**

28 During the October 27, 2016 hearing, the Court asked counsel to
apprise the Court of the topics that would be the subject of special

1 interrogatories, which Plaintiff's counsel understood to mean matters
2 Plaintiff would claim also gave rise to or constitute breaches of fiduciary
3 duty *alone*, not just a breach of duty when considered together with other
4 complained of conduct. Oct. 27, 2016 Hearing Tr., Ex. 2 at 60:23–61:8. That
5 is what Plaintiff did on pages 5 to 6 of his supplemental opposition that was
6 discussed with the Court at the December 11, 2017 hearing.

7 But those matters were not the entirety of the bases for the
8 claims of breaches of fiduciary duty, as the SAC reflects on its face, (which
9 the Court observed during the October 27, 2016 hearing (*id.* at 58:19–25)), as
10 Plaintiff explained in the Joint Pretrial Memorandum, and as the list below,
11 included for the convenience of the Court, reflects. Likewise, the evidence
12 proffered with Plaintiff's oppositions to Partial MSJ Nos. 1–6 (and Gould's
13 MSJ) was of course focused on, *but not confined to*, the matters listed on pages
14 5 to 6 of the supplemental opposition that was discussed with Court at the
15 December 11, 2017 hearing.

16 The matters which evidence fiduciary breaches by the individual
17 director defendants include the following:

- 18 1. The threat by Adams, Kane and McEachern to terminate
19 Plaintiff as President and CEO of RDI if he did not resolve trust
20 disputes with his sisters on terms acceptable to them (which
21 included giving them control of RDI);
- 22 2. The vote by Adams, Kane and McEachern to terminate
23 Plaintiff because he failed to acquiesce to the threat;
- 24 3. EC's threat to terminate health insurance for JJC and his
25 family if JJC did not resign as a director, which Gould
26 acknowledged was an erroneous position, but to which he
27 acquiesced, resulting in erroneous SEC filings by RDI, among
28 other things;
4. Use of the executive committee of Kane, Adams, EC and
MC to limit the participation of Plaintiff and Storey as directors,
to which Gould acquiesced;
5. Manipulating board materials, including creating
inaccurate minutes, to which Gould acquiesced;

6. Kane and Adams as compensation committee members authorizing exercise of the 100,000 share option to assist EC and MC in their efforts to retain control of RDI, over the stated reservations of Storey;

7. The involuntary "retirement" of director Storey by the one-time "special nominating committee" of McEachern, Adams and Kane, at the direction of EC and MC, because Storey failed to exhibit the required subservience to EC and MC as controlling shareholders;

8. Board stacking/adding Coddington and Wrotniak by the one-time "special nominating committee" of McEachern, Adams and Kane, to which Gould acquiesced while acknowledging that he had insufficient time to fulfill his fiduciary responsibilities;

9. The CEO search committee of MC, McEachern and Gould aborting the CEO search and selecting EC even though she did not possess the required experience and qualifications for the position, which the Board acknowledged;

10. Hiring MC as EVP RED NY and paying a \$200,000 pre-employment bonus "recommended" by EC, even though all directors had acknowledged that she had no real estate development experience and was not qualified for the position;

11. Paying \$50,000 to Adams because EC "recommended" it;

12. Erroneous and/or materially misleading statements in board materials, such as agendas and minutes; and

13. Materially misleading and inaccurate statements and omissions in public disclosures, including SEC filings and press releases

SAC ¶¶ 9, 13, 72, 101(a)–(i), 109–119, 135(a)–(k), 136(a)–(i), 147 (all).

D. Plaintiff Proffered Evidence of Fiduciary Breaches and Intentional Misconduct More Than Sufficient to Raise Disputed Issues of Material Fact.

The business judgment rule presumes that directors in making business decisions acted in good faith, on an informed basis and with a view to the interests of the corporation. NRS 78.138(3). Courts therefore give deference to directors' decisions reached by proper *process*, and do not evaluate the reasonableness of the subject decision itself, as distinct from the process by which it was made. *Brazen v. Bell Atl. Corp.*, 695 A.2d 43, 49 (Del.

1 1997). Thus, the business judgment rule presumption "is a rule of evidence
2 that places the initial burden of proof on the plaintiff challenging the board's
3 decision." *Cinerama v. Technicolor, Inc.*, 663 A.2d 1156, 1162 (Del. 1995). To
4 rebut this presumption, the plaintiff bears "the burden of providing
5 evidence that the Board of Directors, in reaching its challenged decision,
6 breached any one of its... fiduciary duties [of] good faith, loyalty or due
7 care." *Id.* at 1164.

8 In particular, NRS 78.138(7) requires the plaintiff to: (a) rebut the
9 presumption under NRS 78.138(3) that directors are presumed to act in good
10 faith, on an informed basis and with a view to the interests of the
11 corporation; (b) show that the director's act or failure to act constituted a
12 breach of fiduciary duty; and (c) show that such breach involved intentional
13 misconduct, fraud or a knowing violation of law.

14 "Intentional misconduct" is one of three ways in which a
15 fiduciary can fail to act in good faith. *In re Walt Disney Co. Derivative Litig.*,
16 906 A.2d 27, 67 (Del. 2006). The first occurs "where the fiduciary
17 intentionally acts with a purpose other than that of advancing the best
18 interests of the corporation." *Id.* The second occurs "where the fiduciary acts
19 with the intent to violate applicable positive law." *Id.* The third occurs
20 "where the fiduciary intentionally fails to act in the face of a known duty to
21 act, demonstrating a conscious disregard for his duties." *Id.*

22 Additionally, as a matter of law and, in cases such as this, logic
23 as well, the acts and omissions of the individual director defendants must be
24 viewed collectively, not in isolation. *See, e.g., In re Ebix, Inc. Stockholder Litig.*,
25 2016 Del. Ch. LEXIS 5 at *66-67 n.137, 2016 WL 208402 (Del. Ch. Jan. 15,
26 2016) (rejecting director defendants' contention that bylaw amendments
27 should be viewed individually rather than collectively); *Carmody v. Toll*
28 *Brothers., Inc.*, 723 A.2d 1180, 1189 (Del. Ch. 1998) (finding that particularized

1 allegations that directors acted for entrenchment purposes sufficient to
2 excuse demand); *Chrysogelos v. London*, 1992 WL 58516, at *8 (Del. Ch. 1992)
3 ("None of these circumstances, if considered individually and in isolation
4 from the rest, would be sufficient to create a reasonable doubt as to the
5 propriety of the director's motives. However, when viewed as a whole, they
6 do create such a reasonable doubt . . ."); *Cal. Pub. Employees' Ret. Sys. v.*
7 *Coulter*, 2002 Del. Ch. LEXIS 144 at *29-30, 2002 WL 31888343 (Del. Ch. Dec.
8 18, 2002) (concluding that allegations which individually would be
9 insufficient to show a lack of disinterestedness or independence when taken
10 together, were sufficient to do so).¹

11 Plaintiff respectfully submits that the evidence proffered with
12 his various oppositions to the various motions, including the evidence
13 highlighted below, is more than sufficient to raise disputed issues of
14 material fact and rebut the presumptions that the RDI directors in taking the
15 actions raised in this case and described above acted in good faith, on an
16 informed basis and with a view to the interest of the corporation.

17 **1. Examples of Evidence Sufficient to Rebut the Business**
18 **Judgment Rule Presumptions.**

19 **a) The (a) Attempted Extortion (by threatening**
20 **termination) and (b) the Termination Because**
21 **Plaintiff Refused to Be Extorted.**

22 As Plaintiff demonstrated in his own summary judgment motion
23 and in his oppositions to Partial MSJ No. 1, and as summarized again below,
24 Kane, McEachern, and Adams attempted to extort plaintiff by telling him
25 that they would vote to terminate him as President and CEO of RDI if he did
26 not resolve personal disputes with his sisters concerning trust and estate

27 ¹ Plaintiff understood the Court to recognize and agree that, even if
28 individual matters or activities did not in and of themselves constitute
breaches of fiduciary duty, that "taken with other activities [they may]
evidence... a breach of fiduciary duty." See Oct. 27, 2016 Hearing Tr., Ex. 2 at
57:9-11.

1 matters (including control of RDI), unrelated to his performance as an officer
2 and director of the corporation. Once Kane, McEachern and Adams had
3 threatened JJC with termination, Kane used his position as a RDI director to
4 pressure Plaintiff to acquiesce to that extortion.

5 When Kane, McEachern (who personally solicited plaintiff to
6 resign rather than be terminated, Oct. 13, 2016 Decl. of JJC, ¶ 14) and Adams
7 failed to extort him, they acted on their threat and terminated plaintiff. They
8 did so because, as Adams memorialized contemporaneously, they had
9 picked the sisters' side in their *family dispute* with plaintiff, as opposed to
10 acting in the interest of RDI. Remarkably, Kane admitted to plaintiff just
11 before he terminated Plaintiff, **"there is no one more qualified to be the**
12 **CEO of this company than you."** Appendix ("App.") Ex. 2
13 (JCOTTER009286) (emphasis added). In making this statement, Kane not
14 only admitted that he, Adams, and McEachern were not acting in the
15 interests of RDI, but also admitted that they were acting *in derogation of*
16 RDI's interests. (The details of these events are summarized below from
17 Plaintiff's motion for summary judgment and opposition to Partial MSJ No.
18 1, and the citations are to the Appendices of evidence Plaintiff submitted
19 previously therewith).

20 On May 19, 2015, EC distributed an agenda for a RDI board of
21 directors meeting two days later, May 21, 2015. App. Ex. 6 (EC Dep. Ex.
22 339). The first agenda item was "Status of President and CEO." *Id.* This
23 subject had not been previously addressed at an RDI Board of Directors
24 meeting. Indeed, a draft agenda a few days earlier made no mention of the
25 subject. App. Ex. 7 (EC Dep. Ex. 338). Storey wrote in a May 20, 2015 email
26 to Director Gould that "I am only assuming the matter before us is a
27 resolution to immediately remove the CEO—that isn't clear from the
28 agenda, or any direct comment made to me by any party." App. Ex. 8