

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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76981, 77648 & 77733

District Court Case
No. A-15-719860-B

Coordinated with:
Case No. P-14-0824-42-E

Appeal (77648 & 76981)
Eighth Judicial District Court, Dept. XI
The Honorable Elizabeth G. Gonzalez

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

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

19
20 **3. The Historical and Ongoing Use by the "Independent" Directors
Of Company Counsel.**

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

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

1 option. As explained by Kane, both in emails produced in this case by defendants and in
2 his deposition testimony, one issue the compensation committee members needed
3 resolved to authorize (or not) the exercise of the 100,000 share option was whether it was
4 the property of the James J. Cotter, Sr. Trust (the "Trust"), as RDI's Proxy Statement in
5 2014 and years prior had stated and as Plaintiff contended, or whether it was the
6 property of the Estate, as EC contended. In an April 17, 2015 email (produced by
7 defendants and provided to the Court by Plaintiff previously), Kane summarized the
8 issue(s) as whether there was "any legal reason why Ellen [Cotter], as executor, could not
9 exercise" the share option. (E-mail from Edward Kane to Craig Tompkins, Ellen Cotter,
10 Margaret Cotter, Tim Storey, and Guy Adams, Apr. 17, 2015, 22:44, Exhibit 16 at 186
11 (emphasis added), to James Cotter Jr's Reply in support of Motion to Reconsider Order.)
12 In another email (produced by defendants and also previously filed with the Court),
13 Kane identified a particular legal issue as whether, by operation of the Trust documents
14 of James J. Cotter, Sr. (under California law), the 100,000 share option had poured over
15 into his Trust upon his death. (E-mail from Edward Kane to Tim Storey, Apr. 18, 2015,
16 12:26, Exhibit 19 at 194, to James Cotter Jr's Reply in support of Motion to Reconsider
17 Order.)

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

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Q. Did you ask her - - well, what did you do to ascertain [the 100,000 share option] was her asset?

A. I informed myself through legal counsel.

MR. TAYBACK: Don't - - don't disclose the communications with Legal counsel. You can simply say you conferred with legal counsel.

THE WITNESS: I conferred with legal counsel.

BY MR. KRUM:

Q. Who?

A. Craig Tompkins, Greenberg Traurig and Bill Ellis.

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

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

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

A. I have no knowledge about that.

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

As the Court will recall, Kane testified as follows:

Q. What were the other issues?

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

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

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

* * *

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

A. I asked for a legal opinion.

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

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

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

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

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

9 Kane and Adams had reason to doubt the independence of the attorneys on whom
10 they relied. Kane testified that he (Kane) understood that Tompkins was on the side of
11 EC in her disputes with Plaintiff, as well as that he (Kane) was of the view that
12 "Tompkins always acted in his own self-interest." (Ex. 12 to JJC 6/13/18 Opp., at 427:3-9,
13 428:2-9 and 432:13-25.) In the former regard, Kane at deposition explained that words he
14 used in an email stating "according to [EC], Craig is also on the 'team[,]'" meant that
15 Tompkins "was [with] Ellen and Margaret versus Jim." (Ex. 6 to JJC 6/13/18 Opp., at
16 176:18-177:1.)

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

24 **III. ARGUMENT**

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

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

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

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

7 "[W]hen the [complaint] is sufficient to excuse pre-suit demand, defendants are, of
8 course, still free to show on summary judgment by uncontradicted facts that the
9 allegations made are untrue." *Kahn v. Tremont*, 1992 WL 205637, at *2, n. 2 (Del. Ch. Aug.
10 21, 1992). "On such a motion the parties would be entitled to develop an evidentiary
11 record in affidavit or other appropriate form." *Siegman v. Tri-Star Pictures, Inc.*, 1989 WL
12 48746, at *12, n. 16 (Del Ch. May 5, 1989), *affirmed in part and reversed in part on other*
13 *grounds sub nom. In re Tri-Star pictures, Inc. Litig.*, 634 A.2d 319 (Del. 1993).

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

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

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

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

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

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

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

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

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

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

9 **1. Defendants Bear the Burden of Proof.**

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

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

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

23 The Motion is based on the premise that the Court's ruling that Plaintiff failed to
24 raise disputed issues of fact regarding the disinterestedness of five directors with respect
25 to the matters that were the subject of their motions for partial summary judgment
26 obviates defendants' burden of proof in this (summary judgment) Motion and requires
27 granting it. For example, the Motion (at 11:9-13) asserts that because "this Court found
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1 Plaintiff's evidence insufficient to support his allegations regarding the bases for the
2 claimed interest and lack of independence with respect to the challenged decisions[,]...[i]t
3 necessarily follows that such evidence could not suffice to show the claimed interest and
4 lack of independence that purport (sic) to preclude impartial review of his claims." On its
5 face, this purported syllogism is a *non sequitur*.

6 Similar statements were made in the original demand MSJ and in the Motion for
7 Leave, in response to which Plaintiff correctly pointed out that those statements
8 erroneously assumed that demand futility is assessed based on whether directors are
9 personally interested in the challenged matters. As a matter of law, demand futility is
10 assessed based on the directors' views of the derivative action, not the underlying
11 matters which are the subject of the derivative action. *Rales v. Blasband*, 634 A.2d 927, 932
12 (Del. 1993) (Demand is futile where "the directors are incapable of making an impartial
13 decision regarding such litigation"); *Drage v. Procter & Gamble*, 694 N.E.2d 479, 482-83
14 (Ohio Ct. App. 1997) ("Futility means that the directors' minds are closed to argument
15 and that they cannot properly exercise their business judgment in determining whether
16 the suit should be filed") (quoted in *Carlson v. Rabkin*, 789 N.E. 1122, 1128 (Ohio Ct. App.
17 2003)).

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

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

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

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

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

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

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

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

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

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

7 1. The First Prong: Independence and Disinterestedness

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

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

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

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

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

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

3 Courts repeatedly have found that the use of company counsel, whether by special
4 committees or other directors supposedly acting independently, raises questions about
5 the independence of the advisors and, thereby, the committee and the individual
6 directors. *Gesoff v. IIC Industries Inc.*, 902 A.2d 1130, 1147 (Del. Ch. 2006), *subsequent*
7 *proceedings*, 2006 WL 2521441 (Del. Ch. Aug. 22, 2006) ("[A] special committee's decision
8 to use the legal and financial advisors already advising the parent 'alone rais[ed]
9 questions regarding the quality and independence of the counsel and advice received' ")
10 (citing *In re Tele-Communications, Inc. Shareholders Litig.*, 2005 WL 3642727 (Del. Ch. Dec.
11 21, 2005); *see generally* William T. Allen, *Independent Directors in MBO Transactions: Are*
12 *They Fact or Fantasy?*, 45 BUS. LAW. 2055 (1990). Thus, courts reject determinations made
13 by directors based on advice of counsel where such advice may be tainted by a conflict of
14 interest. *In re Oracle Securities Litig.*, 820 9F. Supp. 1176, 1189 (N. D. Cal. 1993) (a board
15 committee reliance on the inherently biased advice of in-house counsel made the
16 committee's determination "worthless.")

17 In *In re Par Pharm., Inc. Derivative Litig.*, 750 F. Supp. 641 (S.D.N.Y. 1990), the
18 nominal defendant company moved to dismiss after a special litigation committee
19 conducted an investigation and recommended dismissal, and the supposedly
20 independent members of the company's board of directors accepted that
21 recommendation and voted to dismiss. The court denied the motion to dismiss, in part
22 "because the Committee failed to retain independent counsel," "but instead relied upon
23 the firm [that represented the Company] and its board in th[at] litigation." *Id.* at 644, 647.
24 The court described that counsel as having a "conflict of interest . . ." *Id.* at 647. With
25 respect to the jurisprudence, the Court observed that "[b]oth New York and Delaware
26 law contemplate that a special litigation committee be represented by independent
27 counsel." *Id.* (citing *Spiegel v. Buntrock*, 571 A.2d 767, 772 (Del. 1990); *Kaplan v. Wyatt*, 484
28

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

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

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

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

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

1 Gould and McEachern, as members of the "CEO search committee," failed to seek
2 the advice of independent counsel and instead relied on "advice" from Tompkins and GT
3 lawyer Ferrario regarding their fiduciary duties, which is when they aborted the CEO
4 search and selected Ellen Cotter to be CEO notwithstanding the fact that she possessed
5 none of the qualifications the CEO search specification identified as most important. (Ex.
6 2 hereto, Minutes of the CEO Search Committee Meeting, December 29, 2015, Dep. Ex.
7 389)

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

16 2. The Second Prong: Valid Exercises of Business Judgment

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

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

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

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

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

3 The threshold the Plaintiff must meet is "reasonable doubt." The Delaware
4 Supreme Court in *Grimes v. Donald* explained that "[r]easonable doubt can be said to
5 mean that there is a reason to doubt." 673 A.2d 1207, 1217 (Del 1996). "This concept [of
6 reasonable doubt] is sufficiently flexible and workable to provide the stockholder with
7 'the keys to the courthouse' in an appropriate case where the claim is not based on mere
8 suspicions are stated solely in conclusory terms." *Id.*; see also *Beam v. Stewart*, 845 A.2d
9 1040, 1050 (Del. 2004) (quoting *Grimes* and holding same)

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

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

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

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

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

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

5 Where a plaintiff properly identifies additional facts necessary to oppose a
6 summary judgment motion and seeks additional time to obtain that discovery, summary
7 judgment is improper. *Aviation Ventures, Inc. v. Joan Morris, Inc.* 121 Nev. 113, 117-18, 110
8 P.3d 59, 62 (2005). Where it is "unclear whether genuine issues of material fact exists," a
9 Rule 56(f) continuance allows for "proper development of the record." *Aviation Ventures,*
10 121 Nev. at 115, 110 P.3d at 60. Here, due to the delay of Responding Parties in providing
11 court-ordered discovery, Plaintiff through no fault of his own is not yet in a position to
12 present all "facts essential to justify the party's opposition." For the reasons set forth
13 above and in the accompanying declaration of Mark G. Krum, Plaintiff is entitled to
14 NRCP 56(f) relief.

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

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

IV. CONCLUSION

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

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By: /s/ Akke Levin

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CERTIFICATE OF SERVICE

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

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DATED this 13th day of June, 2018.

By: Judy Estrada

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19 James J. Cotter, Jr.

DISTRICT COURT
CLARK COUNTY, NEVADA

16 JAMES J. COTTER, JR., derivatively on) Case No. A-15-719860-B
17 behalf of Reading International, Inc.,) Dept. No. XI
18)
19 Plaintiff,) Coordinated with:
20 v.)
21) Case No. P-14-0824-42-E

20 MARGARET COTTER, ELLEN COTTER,) Dept. No. XI
21 GUY ADAMS, EDWARD KANE,)
22 DOUGLAS McEACHERN, WILLIAM) Jointly Administered
23 GOULD, JUDY CODDING, MICHAEL)
24 WROTONIAK,)

25) **DECLARATION OF MARK G. KRUM**
26) **PURSUANT TO NRCP 56(f) AND IN**
27) **OPPOSITION TO SUMMARY**
28) **JUDGMENT MOTIONS**

24 And)
25)
26 READING INTERNATIONAL, INC., a) **Hearing Date: June 19, 2018**
27 Nevada corporation,)
28 Nominal Defendant.) **Hearing Time: 8:30 a.m.**

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I, Mark G. Krum, declare:

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

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

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

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

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

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

1 interrogatory responses.

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

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

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

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

27 (5/2/18 hearing tr. at 79:6-13.) (Emphasis supplied.)

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

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

3 THE COURT: Yeah. So I want Mr. Krum, instead of me
4 facing a 56(f) issue at the time you file that motion, he's ready to file
5 his opposition, I want him to have the opportunity to get these
6 documents with the privilege logs, look at them, and then have a
7 period of time he can decide

8 whether he needs to take additional depositions and, if you
9 fight about it, for me to rule on it. So I'm going to grant your request
10 even though I am hesitant to do so under the circumstances, but I
11 don't want to be in a position where you guys slow play them and
12 then I'm sitting back here again that he didn't get the stuff

13 (5/2/18 hearing tr. at 81:6-16.)

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

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

30 13. However, even if the documents listed on the May 30 and 31, 2018 privilege
31 logs are properly withheld based on claims of attorney-client privilege, work product or
32 both, they must be properly logged so counsel for Plaintiff is able to use the entries on the

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

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

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

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

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

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

4 19. Counsel for Plaintiff will need time to complete the review of documents
5 produced on June 9, 2018, and to commence and complete the review of documents
6 produced on June 11 and 12, 2018. Counsel for Plaintiff likewise will be time to review a
7 supplemental privilege log, if and when it is produced. If the course of discovery is any
8 indication, such a log is unlikely to cure all of the deficiencies from which the May 30 and
9 31, 2018 logs suffered. Even if it did so, Plaintiff has not had the opportunity to use the
10 that log for any purpose, or the May 30 and 31, 2018 logs to further depose any of Ellen
11 Cotter, Craig Tompkins, Margaret Cotter, William Gould, Judy Coddling, Michael
12 Wrotniak and/or Ed Kane, each of whom was (according to documents produced on May
13 30 and 31, 2018 and/or entries in the May 30 and 31, 2018 privilege logs) party to
14 communications that concerned one or more of the three subjects of the Court's May 2,
15 2018 order.

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

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

Executed this 13th day of June, 2018.



Mark G. Krum, Esq.

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CERTIFICATE OF SERVICE

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

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DATED this 13th day of June, 2018.

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By: /s/ JUDY ESTRADA

Exhibit 1
(filed under seal)

Exhibit 2



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

December 29, 2015

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

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

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

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

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

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

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

JCOTTER011449

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

- Ellen Cotter's plan for transitioning out of her current position as chief of operations of the Company's domestic cinemas in order to be able to appropriately handle the duties of President and Chief Executive Officer;
- The scope and extent of the other demands upon Ellen Cotter's time, given her other duties and responsibilities with respect to the administration of her father's estate and the other assets included within that Estate (including, by way of example, the Estate's interest in Cecelia Packing, Sutton Hill Associates, Shadow View Land & Farming, and the 86th Street Cinema) and the various conflicts of interest arising due to her, at times, potentially conflicting duties in her capacity as an officer and director of the Company and as a Co-Executor of the James J. Cotter, Sr. Estate and a Co-Trustee of the James J. Cotter, Sr. Trust;
- The scope and extent of her personal financial interest in the Company, and the scope and extent of her control over the Company given her position as Co-Executor of the James J. Cotter, Sr. Estate, and as a Co-Trustee of the James J. Cotter, Sr. Trust, and the likely impact of such interests and obligations on her performance as President and Chief Executive Officer;
- The qualifications, experience and compensation demands of the other candidates;
- The fact that her appointment would likely be opposed by James J. Cotter, Jr., and would likely be made an issue in the pending derivative litigation being prosecuted by James J. Cotter, Jr.; and
- The need, for the stability of the Company, to bring the CEO search to a conclusion.

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

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

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

Reading International, Inc.
Minutes of the CEO Search Committee Meeting
December 29, 2015
Page 4

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



S. Craig Tompkins, Recording Secretary

JCOTTER011452

JA7839

Exhibit 3
(filed under seal)



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18 **EIGHTH JUDICIAL DISTRICT COURT**

19 **CLARK COUNTY, NEVADA**

20 **JAMES J. COTTER, JR.** individually and
21 derivatively on behalf of Reading
22 International, Inc.,

23 Plaintiff,

24 v.

25 **MARGARET COTTER, et al.,**
26 Defendants.

27 AND

28 **READING INTERNATIONAL, INC.,** a Nevada
corporation,

Nominal Defendant.

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

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

Related and Coordinated Cases

BUSINESS COURT

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

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

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1 **INTRODUCTION**

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

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

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

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

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

14 ARGUMENT¹

15 **I. THE BOARD'S DECISION REGARDING PLAINTIFF'S TERMINATION AND** 16 **THE 100,000 SHARE EXERCISE WERE PROPERLY THE SUBJECT OF A** 17 **RATIFICATION VOTE UNDER NEVADA LAW**

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

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

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

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

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

19 Moreover, Plaintiff's assertion is demonstrably false; the RDI Board did not conduct a
20 partial ratification involving the share option exercise. As the undisputed minutes of the
21 December 29, 2017 meeting show, the Board “ratifie[d] the decision of the Compensation
22 Committee of the Company, as outlined in the minutes of the September 21, 2015 meeting, to
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24
25 result of allowing Plaintiff to take extensive discovery of RDI and its directors regarding the
Board's December 29, 2017 ratification vote.

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

1 permit the Estate of James J. Cotter, Sr. to use Class A non-voting stock as the means of payment
2 for the exercise of an option to purchase 100,000 shares of Class B voting stock of the
3 Company.” (Helpern Decl., Ex. B.) There was no discussion about the Board only ratifying *part*
4 of the at-issue decision made by the Compensation Committee in September 2015. In any event,
5 even if Plaintiff’s factual claim was accurate, summary judgment is still appropriate. The only
6 alleged damages arising from this option exercise relate to the purportedly improper use of Class
7 A stock as consideration. (See Pl.’s Supp’l Opp’n to Mot. for Summ. J. Nos. 2 & 6, filed
8 12/1/17, at 10 (“[T]he consideration provided for the exercise, RDI Class A non-voting shares,
9 was not consideration of value or at least sufficient value to the Company to warrant approval of
10 the exercise, and that the Company incurred losses and/or damages as a result.”).) Absent any
11 injury to the Company, there can be no derivative claim for breach of fiduciary duty.
12 Accordingly, if an independent group of the Board ratified only this aspect of the option
13 exercise—which is what Plaintiff contends—then Plaintiff’s breach of fiduciary duty claim still
14 fails as a matter of law.

15 Pursuant to NRS 78.140, these transactions have now been ratified by directors whom the
16 Court has ruled are disinterested, meaning that the transactions are “valid” and that the business
17 judgment rule applies. See *Shoen v. SAC Holding Corp.*, 122 Nev. 621, 636, 137 P.3d 1171,
18 1181 (2006). Of course, if Plaintiff now wishes to withdraw his allegation that allegedly
19 interested directors were involved in the initial transactions at issue in this case, that would
20 obviate the need for the pending motion for summary judgment regarding ratification (and also
21 resolve this case entirely).

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

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

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

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

15 In reality, the vote to ratify the RDI Board’s decisions regarding Plaintiff’s termination
16 and the 100,000 share option was held at the December 29, 2017 meeting of RDI’s full Board of
17 Directors. No decision or vote relevant to Defendants’ motion for summary judgment was made
18 by the Special Independent Committee of RDI’s Board (which Plaintiff refers to as the “SLC” in
19 his Opposition, *see* Opp. at 3, intentionally misnaming the committee for rhetorical effect).

20 **Every single director, including Plaintiff himself, participated in the December 29 meeting.**

21 At this meeting of the full Board, five directors—all of whose independence has been
22 extensively litigated and ruled on by this Court—voted in favor of ratification. Simply put,
23 Plaintiff’s characterization of the ratification decision as having been made by a purported
24 “Special Litigation Committee” are inaccurate.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

27 And, of course, Plaintiff himself is completely silent on what occurred at the December
28 29 Board meeting or what he did to inform himself of the issues up for consideration, even
though he was in attendance, cast a vote, and was given full opportunity to ask questions and

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

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

1 two years that I've spent on the board with interacting with Jim Cotter, Jr. I considered the
2 documents that I've read. I've considered the conversations that I've had with Jim Cotter, Jr., and
3 myself. I've considered conversations that I've had with other directors, and came to my own
4 conclusion about what would be in the best interests of all shareholders of Reading.” (*Id.* at
5 210:23-211:16). None of this testimony is in dispute. Nor is there any dispute about the
6 extensive discussion about relevant matters that took place at the December 29, 2017 Board
7 meeting, as embodied in the meeting minutes. All evidence shows that the Board engaged in an
8 adequate process prior to voting on ratification, and Plaintiff has not provided any basis why
9 their business judgment should be questioned or second-guessed.

10 **B. The Board’s Consultation With Greenberg Traurig Does Not Somehow**
11 **Invalidate the Ratification Vote**

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

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

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

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

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

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

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

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

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

3 Plaintiff’s mere speculation that he will discover favorable evidence is not sufficient to
4 grant his request for a continuance and additional discovery. For example, in *Halebian v. Berv*,
5 the Plaintiff in a derivative action requested additional discovery under Federal Rule of Civil
6 Procedure 56(d)—which is analogous to NRCP 56(f)—by “articulating a number of arguments
7 that are constructed from facts already in his possession and that are intended to assail
8 defendants’ independence” and asserting that he “expects discovery to uncover other examples
9 of defendants putting the interests of Citigroup before those of the investors.” 869 F. Supp. 2d
10 420, 440-41 (S.D.N.Y. 2012), *aff’d*, 548 F. App’x 641 (2d Cir. 2013). The court determined that
11 in the absence of facts other than the plaintiff’s conclusory allegations about the defendants’
12 independence, “plaintiff’s confidence that discovery will reveal any evidence favorable to him at
13 all is merely speculation.” *Id.* at 441. The plaintiff’s “apparent inability to identify the facts that
14 he [sought] with any particularity reveal[ed] that his motion for discovery [was] a *de facto*
15 application for a fishing expedition.” *Id.* at 440. The plaintiff did identify with specificity three
16 questions on which he sought discovery (relating to defendants’ compensation as trustees). *Id.*
17 at 442. However, the court found that “none of the possible answers to these questions would
18 raise a dispute of material fact bearing on the only possibly relevant legal issue: whether the
19 defendants are independent under the law of Massachusetts,” and therefore discovery on those
20 issues would “serve no purpose other than to delay these proceedings[.]” *Id.*

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

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CONCLUSION

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

Dated: June 15, 2018

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CERTIFICATE OF SERVICE

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

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

Exhibit A

Exhibit A

1 DISTRICT COURT
CLARK COUNTY, NEVADA

2 -----X
3 JAMES J. COTTER, JR., individually and
4 derivatively on behalf of Reading
5 International, Inc.,

PLAINTIFF,
Case No:
A-15-719860-B
DEPT. NO. XI

6 -against-

7 Consolidated with

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

Case No:
P-14-082942-E
DEPT. NO. XI

DEFENDANTS.

12 -----X

13

14 DATE: March 6, 2018

15 TIME: 9:17 A.M.

16

17

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

25 JOB NO.: 455310

1 A P P E A R A N C E S:

2

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9 McEACHERN, GUY ADAMS and EDWARD KANE
865 South Figueroa Street
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BY: MARSHALL M. SEARCY, III, ESQ.
11 213.443.3000
marshallsearcy@quinnemanuel.com
12

13

14

ALSO PRESENT:

15

16 CONNOR EICHENBERG, Videographer

17

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1 you received the board package, Exhibit 525?

2 A. I don't recall.

3 Q. How long did that call last?

4 A. Specifically, I don't recall.

5 Q. Well, can you give it a range? Was it

6 five to ten minutes, three to five hours, something

7 else?

8 A. Less than an hour.

9 Q. Where were you when you took that call?

10 A. In Florida.

11 Q. When were you in Florida?

12 A. I go there frequently.

13 Q. When were you there in the time frame of

14 this telephone call?

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

16 Florida.

17 Q. So the 26th was a Tuesday, obviously the

18 day after Christmas for a lot of people. And the 29th,

19 the day of the telephonic board meeting, was a Friday.

20 So it was sometime in that time frame that you had this

21 call with Mr. Ferrario and Mr. Bonner and Ms. Coddling?

22 A. Yes. Must have been.

23 Q. Other than reviewing the board package,

24 Exhibit 525, what, if anything, did you do to prepare

25 for the telephonic board meeting of December 29, 2017?

1 A. I thought a lot.

2 Q. About what?

3 A. The contents of the board package.

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

6 A. I don't recall.

7 Q. When did you review it?

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

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

16 A. Yes.

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

24 A. I don't recall.

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

1 earlier.

2 Q. Otherwise it's all news to you?

3 A. Yes, correct.

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

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

11 A. Yes.

12 Q. When did you decide to do that?

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

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

17 A. Is that the name of this exhibit?

18 Q. Yes.

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

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

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

4 A. Yes.

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

11 A. No.

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

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

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

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

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

1 former president and CEO acting as another director?

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

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

6 A. Yes.

7 Q. Yes, correct?

8 A. Correct.

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

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

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

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

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

1 A. He's often rude.

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

4 A. Significantly less than polite.

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

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

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

11 A. Yes.

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

14 A. I don't recall.

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

17 MR. SEARCY: Objection; vague.

18 A. I don't recall.

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

21 MR. SEARCY: Objection; vague.

22 A. I'd say no.

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

25 A. No. I don't recall.

Exhibit B

Exhibit B

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DISTRICT COURT

CLARK COUNTY, NEVADA

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

) Case No.
) A-15-719860-B
)
) Coordinated with:

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

) Case No.
) P-14-082942-E
) Case No.
) A-16-735305-B
)
) Volume II

and)

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

(Caption continued on next
page.)

VIDEOTAPED DEPOSITION OF JUDY CODDING

Wednesday, February 28, 2018

Los Angeles, California

REPORTED BY:

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

FILE NO.: 453340-B

1 T2 PARTNERS MANAGEMENT, LP.,)
 a Delaware limited)
 2 partnership, doing business as)
 KASE CAPITAL MANAGEMENT,)
 3 et al.,)
)
 4 Plaintiff,)
)
 5 vs.)
)
 6 MARGARET COTTER, ELLEN COTTER,)
 GUY ADAMS, EDWARD KANE,)
 7 DOUGLAS McEACHERN, WILLIAM)
 GOULD, JUDY CODDING, MICHAEL)
 8 WROTNIAK, CRAIG TOMPKINS,)
 and DOES 1 through 100,)
 9)
 Defendants.)
 10)
 and)
 11)
 _____)
 12 READING INTERNATIONAL, INC.,)
 a Nevada corporation,)
)
 13 Nominal Defendant.)

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

1 Q. -- 2017?

2 A. Right.

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

5 A. I did.

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

11 (Pause in proceedings.)

12 A. Yes.

13 Q. "This" -- "this" being Exhibit 525 is the
14 board package you read in advance of the December
15 29, 2017, board meeting?

16 A. Yes.

17 Q. When did you read it?

18 A. The day or two before the September [sic]
19 29th meeting.

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

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

25 A. Yes.

1 Q. Does that refresh your recollection that
2 you received the board package by email on December
3 27th, about 5:30 p.m.?

4 A. Yes.

5 Q. How much time did you spend reviewing it?

6 A. Several hours.

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

11 A. Not between September 27th and September
12 29th.

13 MR. TAYBACK: You mean December?

14 A. I mean December. Sorry.

15 BY MR. KRUM:

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

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

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

1 individually?

2 A. Yes.

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

6 A. Yes.

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

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

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

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

20 A. For that specific meeting?

21 Q. Right.

22 A. Nothing.

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

1 president and CEO, you have that in mind?

2 A. Yes.

3 Q. You voted to ratify that decision;
4 correct?

5 A. I did.

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

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

17 Q. As of the date you voted?

18 A. Yes.

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

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

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

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

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

9 You can answer the question, who you spoke
10 to.

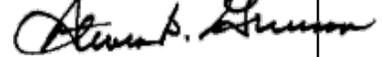
11 A. I spoke to Bill Gould, Doug McEachern, Ed
12 Kane, Guy Adams, Mike Wrotniak, although he wasn't
13 there either, but we spoke about what our
14 understandings have been. I spoke with Jim Cotter,
15 Jr., Margaret Cotter, and Ellen Cotter.

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

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

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

25 A. I didn't have to consider it until



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17 *Counsel for Reading International, Inc.*

18 **DISTRICT COURT**
19 **CLARK COUNTY, NEVADA**

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

23 Plaintiff,

24 v.

25 MARGARET COTTER, et al,

26 Defendants.

27 **Case No. A-15-719860-B**
28 Dept. No. XI

Coordinated with:

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

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

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

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

In the Matter of the Estate of

JAMES J. COTTER,

Deceased.

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JAMES J. COTTER, JR.,

Plaintiff,

v.

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

Defendants.

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

DATED this 18th day of June, 2018.

GREENBERG TRAUIG, LLP

/s/ MARK E. FERRARIO
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Kara B. Hendricks, Esq. (NBN 7743)
Tami D. Cowden, Esq. (NBN 8994)
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Counsel for Reading International, Inc.

1 MEMORANDUM OF POINTS AND AUTHORITIES

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

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

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

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

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

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

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

27
28 based on these challenged transactions.

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

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

15 **REVIEW OF RELEVANT ISSUES AND EVENTS IN THE THIS LITIGATION**

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

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

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

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

3 And so now there are but two remaining challenged transactions in this case – the two
4 that had not, (prior to ratification) been approved by a majority of undisputedly independent
5 directors: 1) the Compensation Committee’s decision to permit the Estate to pay the exercise
6 price for options to acquire stock with other stock, instead of cash (the “Stock Transfer”),²
7 which was approved by Independent Director Kane, and by Purported Interested Director
8 Adams; and 2) the termination of Cotter, Jr. as CEO (the “Termination”), which had been
9 opposed by two Independent votes against³ and approved by the vote of two Independent
10 Directors, plus, three purportedly interested Directors.

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

23 **The Ratification Issue**

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

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

1 It is with the knowledge of the hopelessness of his case that Cotter, Jr. has seized upon
2 his phantom theories regarding the December 29, 2017 ratification of the two remaining board
3 decisions. Although he has yet to clearly articulate the relevance of the discovery that he seeks,
4 it appears Cotter, Jr. believes if a ratification of a challenged board decision is cited in briefings
5 seeking summary judgment of claims that challenge the ratified transaction, then somehow that
6 ratification can have no effect. There is, of course, no support for such a belief. Nevada law
7 expressly makes both approval and *ratification* of purported interested transactions by
8 shareholders, or by independent directors, a circumstance which negates the possibility of
9 voiding the transaction. Accordingly, no equitable relief can be granted here. NRS
10 78.140(2)(a). Given that *ratification*, which by its very nature involves a secondary approval of
11 a previous decision, is an express statutory basis for shielding board decisions from challenge,
12 use of ratification to resolve any doubts about the whether the challenged decision was and is in
13 the company best interests is entirely proper.

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

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

7 Nothing in this testimony, or in any of the other evidence he gathered through the costly
8 discovery he forced upon RDI, suggests that any Director viewed the ratification question as
9 involving anything other than whether the specific issues addressed – i.e., permitting a stock
10 option to be exercised through the payment of stock rather than funds, or the approving the
11 termination of Cotter, Jr. as CEO and president of RDI, were in the best interest of RDI.
12 Specifically, through this discovery, as well as through the evidentiary hearing held on May 2,
13 2017, in addition to obtaining testimony about the participants’ reasons for voting, Cotter, Jr.
14 obtained information that the issue of ratification was presented to Director Gould by the RDI’s
15 counsel; that RDI’s counsel spoke with the Special Independent Committee (“SIC”) and other
16 board members on the issue; that RDI counsel drafted the email that Director Gould sent to Ellen
17 Cotter. None of this negates that the Independent Directors’ decision was based on their view of
18 the best interests of RDI.

19 Cotter, Jr. insistence that he needed still more discovery this spring was essentially based
20 upon testimony from Mr. Gould regarding events that occurred at a December 21, 2017 meeting
21 of the Special Independent Committee. The Minutes of that meeting were provided in redacted
22 form, and accordingly, Cotter, Jr.’s counsel leaped to conclusions about had occurred during it.⁴
23 Cotter, Jr was unsatisfied by the privilege log and documents produced by the parties, and
24 demanded more documents and depositions of more than half a dozen persons, and insisted that
25 he would not have time sufficient to prepare for trial. This Court partially granted his request,
26

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

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

7 **RDI's Compliance with the Court's Order**

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

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

22 It is here that Cotter, Jr.'s malicious and self-interested desire to delay things, shown by
23 his insistence on such broad search terms, had the greatest impact. The number of *documents*
24 (**not pages**) that the overbroad search terms and time periods from all the demanded sources was
25 **17,967**. RDI was therefore forced to foot the bill as two attorneys, and three paralegals spent a
26 combined total of **226.9 hours** reviewing the documents for both responsiveness and for
27
28

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

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

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

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

25 _____
26 ⁵ Based on these numbers, RDI's team reviewed approximately 79 documents per hour.

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

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

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

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

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

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

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

3 Unsatisfied with the privileged material that RDI graciously provided Cotter, Jr., he also
4 contends that he is entitled to even more. It was in response to that discovery that Cotter, Jr.'s
5 *second* motion was filed - just one business day after he received the first rolling production of
6 what he had demanded. In this Motion, he complains that he has received *too many*
7 documents to review prior to responding to the dispositive motions filed on June 1, 2018.⁹ And
8 of course, he says he needs to conduct more discovery, including more depositions, for reasons
9 such as the privilege logs entries might jog a witness' memory about their privileged discussions
10 with RDI's counsel. And, therefore, as ever, Cotter, Jr. insists that the trial must be delayed.

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

15 LEGAL ARGUMENT

16 Once again, Cotter, Jr. will say anything to further his efforts to delay the trial in this
17 matter. For example, he even contends that RDI and the Remaining Defendants violated this
18 Court's order by filing their respective dispositive motions on June 1, 2018, even though this
19 Court expressly ordered on May 28 that any dispositive motions had to be filed by that date.¹⁰
20 However, his Motion to Compel filed June 8, 2017 has essentially been mooted by RDI's proffer
21 of privileged material pursuant to Cotter, Jr.'s agreement, and so Cotter, Jr. needed to come up
22 with other reasons why the trial needed to be put off. But his Motion for Relief filed on June 11,
23 2018 merely illustrates the unreasonableness of Cotter, Jr. Obviously, he is not entitled to any
24 relief based on the fact that RDI gave him what he asked for.

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

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

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

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

18 **I. THERE IS NO BASIS FOR INVADING RDI’S PRIVILEGE.**

19 The entirety of Cotter, Jr’s argument that he is entitled to invade RDI’s privilege is based
20 on a footnote in an unpublished SEC prosecution case, which noted that a special litigation
21 committee with a “mandate to ascertain whether members of the Board that may have engaged in
22 wrongdoing” did not share a common interest privilege with a company’s board of directors.
23 *SEC v. Roberts*, 254 F.R.D. 371, 378 n.4 (N.D. Cal. 2008). The SIC is not, of course, a
24 committee that has any such mandate. Nor did (or should have) the December 29, 2017
25 ratification vote address whether the motivations of the Remaining Director Defendants in
26 approving the two challenged decisions were pure. Instead, the Independent Directors addressed
27 whether the two challenged decisions were in the Company’s best interests
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1 Cotter, Jr.’s reliance on *Ryan v. Gifford*, 2007 Del. Ch. Lexis 168, (2007) is also
2 inapposite. Not only did that case involve a special litigation committee charged with assessing
3 the conduct of board members, which authority the SIC has not been granted, but also because in
4 *Ryan*, the privileged material was deemed responsive based on the requesting parties purported
5 need for the documents - a doctrine that is expressly contrary to Nevada’s privilege law. *See*
6 *Wardleigh v. Second Judicial District Court*, 111 Nev. 345, 891 P.2d 1180 (1995).

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

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

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

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CONCLUSION

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

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

DATED this 18th day of June, 2018.

GREENBERG TRAUIG, LLP

/s/ MARK E. FERRARIO
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Counsel for Reading International, Inc.

CERTIFICATE OF SERVICE

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

DATED this 18th day of June 2018.

/s/ Andrea Lee Rosehill

An employee of GREENBERG TRAUIG, LLP

EXHIBIT A

Opposition Exhibit Page 001

JA7891

1	DISTRICT COURT		
	CLARK COUNTY, NEVADA		
2			
3	JAMES J. COTTER, JR.,)	
4	individually and)	
5	derivatively on behalf of)	
6	Reading International,)	
7	Inc.,)	
8)	
9	Plaintiff,)	
10	vs.	)	Case No.
11		)	A-15-719860-B
12)	
13	MARGARET COTTER, et al.,)	
14		)	Coordinated With:
15	Defendants,)	
16	_____	)	Case No.
17	_____and _____	)	P-14-082942-E
18)	
19	READING INTERNATIONAL,)	
20	INC., a Nevada)	
21	Corporation,)	
22)	
23	Nominal Defendant.	)	Volume 3
24	_____	)	Pages 496 to 578
25)	

VIDEOTAPED DEPOSITION OF
WILLIAM GOULD

Thursday, April 5, 2018
9:32 A.M. TO 11:34 A.M.
Century City, California

Job No. 461424

<p style="text-align: right;">Page 541</p> <p>1 to anybody else on those things, or the people you 2 mentioned.</p> <p>3 But I think on the day of the board 4 meeting, during the early parts of the board 5 meeting, there were conversations going on about 6 this, but they were very fleeting.</p> <p>7 They were not -- we were sitting in a room 8 and Jim, Jr., was either on the phone or there, so 9 the conversations were obviously not totally candid.</p> <p>10 Q. When you say they obviously were not 11 totally candid, that's because Jim was there?</p> <p>12 A. Well, because it was an adversarial 13 lawsuit, and so we weren't like we were all on the 14 same team.</p> <p>15 Q. Well, what difference did that make to this 16 particular subject, ratification?</p> <p>17 A. Because -- because the ratification might 18 be a litigation strategy.</p> <p>19 Q. Did you have any discussions with Judy 20 Codding about the termination of Jim Cotter, 21 including any and all of the matters referenced in 22 the May 21 and 29, and June 12, 2015 board minutes, 23 in this time frame from mid December up to 24 December 29 board meeting?</p> <p>25 A. No. Judy -- Judy made it clear that she</p>	<p style="text-align: right;">Page 542</p> <p>1 had done a pretty good diligence review of what had 2 happened, and seemed to be pretty much up to speed 3 on what had occurred. So she and I never had a 4 conversation about the details of what went on 5 during that period back in 2015.</p> <p>6 Q. When she said -- when you said she made it 7 clear, was this comments that she made at the 8 December 29 board meeting?</p> <p>9 A. No, comments at the Special Committee 10 meeting.</p> <p>11 Q. What did she say that she had done?</p> <p>12 A. She didn't say what she had done, but it 13 was clear from her -- the extent of her comments at 14 that meeting that she was very well aware of what 15 had happened, how it happened, read the minutes, and 16 felt very comfortable that she knew what the facts 17 were.</p> <p>18 Q. What did she say that -- from which you 19 draw the conclusion that you just described?</p> <p>20 A. She said I looked into this and I feel I'm 21 comfortable that I understand what happened at that 22 time. Words to that effect.</p> <p>23 It's not a direct quote, obviously.</p> <p>24 Q. Prior to the December 29, 2017 board 25 meeting, had you had any conversations with Michael</p>
<p style="text-align: right;">Page 543</p> <p>1 Wrotniak about the termination of Jim Cotter, Jr.?</p> <p>2 A. I don't believe I had, no.</p> <p>3 Q. Did you have any communications with Ellen 4 Cotter about ratification, being either the concept 5 or notion generally, or ratifications that were the 6 subject of the December 29 board meeting, other than 7 what -- the conversation you've already described 8 this morning, at any time prior to the board meeting 9 on December 29?</p> <p>10 A. No.</p> <p>11 Q. Did you have any conversations with 12 Margaret Cotter about ratification, either 13 generally, conceptually or particularly as raised on 14 the 29th of December, prior to the December 29th 15 board meeting?</p> <p>16 A. No.</p> <p>17 Q. Why did you vote to ratify item 1 on 18 Exhibit 527?</p> <p>19 A. Because I thought it was in the best 20 interest of the company to do so.</p> <p>21 Q. As of December 29, 2017?</p> <p>22 A. Yes.</p> <p>23 Q. Why?</p> <p>24 A. Well, going back to -- you know, I feel 25 sort of like I could be called John Cary, because I</p>	<p style="text-align: right;">Page 544</p> <p>1 voted against it before I voted for it.</p> <p>2 But you remember that, back in 2015, I was 3 one of two directors who voted against the 4 termination of Jim Cotter, Jr.</p> <p>5 And things had changed, in my mind, from 6 that date to the date, December -- whenever it 7 was -- December 29, '17, where my decision was now 8 made on a whole different set of assumptions and 9 factors that weighed into the equation.</p> <p>10 Q. Was one of those factors the decision by 11 the Los Angeles Superior Court in validating the 12 2014 trust documentation?</p> <p>13 A. No.</p> <p>14 Q. Was one of those factors the effect that 15 the ratification might have on the pending 16 derivative lawsuit?</p> <p>17 A. No -- well, let me take that back. I'm 18 sure it had some bearing in my mind, but that was 19 not one of the key factors.</p> <p>20 Q. What were the key factors?</p> <p>21 A. The key factors, in my mind, were at the 22 time, back in 2015, you recall that Jim, Jr., was 23 terminated when -- at a time when we were -- I 24 thought, in my opinion, we gave him a period of time 25 to have his performance monitored, and then there</p>

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

10 A. You know something, I don't think it did.
 11 It might have, but I don't remember that.
 12 I remember some other topic we were considering.
 13 (DEPOSITION EXHIBIT 531 MARKED FOR
 14 IDENTIFICATION)

15 MR. KRUM: Mr. Gould, I show you what has
 16 been marked as Exhibit 531.
 17 Among other things at the top it says:
 18 "Gould's Privileged Log dated March 29, 2018."
 19 A. (Perusing document)

20 BY MR. KRUM:
 21 Q. Have you seen this document previously?
 22 A. No.
 23 Q. And without having the documents that are
 24 listed on it in front of you to reference, can you
 25 figure out what any of them are here?

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

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

8 Q. Early on, meaning --

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

11 MR. KRUM: Mr. Gould, I show you what has
 12 been marked as Exhibit 530. It's a document that
 13 bears the production number WG0000506.
 14 THE WITNESS: Yes.
 15 (DEPOSITION EXHIBIT 530 MARKED FOR
 16 IDENTIFICATION)

17 BY MR. KRUM:
 18 Q. Do you recognize this document?
 19 A. Yes.
 20 Q. What is it?
 21 A. It's an e-mail from Doug McEachern to me,
 22 asking me if we're going to have a -- a telephonic
 23 meeting of the Special Committee.

24 Q. Was there one on or about December 1?
 25 A. There wasn't one on that date, I don't

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

5 Q. Okay. Then I'm going to ask you to focus
 6 on the last two, which I understand to indicate an
 7 e-mail from you to McEachern -- I understand each of
 8 them to indicate an e-mail from you to McEachern on
 9 December 27th. And the description is: "Forwarding
 10 attorney-client e-mail regarding a director
 11 conference call."
 12 Can you recall -- can you tell what that
 13 is?

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

18 Q. Exhibit 527?
 19 A. Yeah ...
 20 Q. I'll show it to you. Here. (Indicating)
 21 A. Yes, Exhibit 527.
 22 MR. KRUM: Let's take a break.
 23 THE WITNESS: Okay.
 24 THE VIDEO OPERATOR: And we're off the
 25 record at 10:38 A.M.

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1 A. Correct.

2 Q. I direct your attention to the middle of

3 the Ed Kane e-mail at the top. There's a sentence

4 that reads as follows: "Bill suggested we ask Ellen

5 to seek judicial approval for the exercise."

6 Do you see that?

7 A. I do.

8 Q. Does that refresh your recollection?

9 A. A little bit, yes.

10 Q. And how so? What do you now recall?

11 A. Well, again, as I said, I do remember quite

12 clearly when I did talk to Ed, he first was just

13 calling me because I have had experience with this

14 area as a lawyer. And I told him that I would -- I

15 didn't see a problem with it, but that to be safe

16 here, given the litigation -- or the

17 controversies -- that he should have counsel --

18 independent counsel give him an opinion on it.

19 Q. Well --

20 A. But I also -- I might have mentioned if it

21 was possible -- practical to get approval, that it

22 would be obviously the best way to go, and that

23 would eliminate any question.

24 Q. Did you ever have any communications with

25 any or all of -- well, strike that.

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1 Kara?

2 MS. HENDRICKS: Okay with me.

3 THE VIDEO OPERATOR: This concludes the

4 deposition of William Gould, volume 3, on April 5th,

5 2018.

6 Off the video record at 11:34 A.M.

7 (Off video record)

8 THE REPORTER: Did you have a stipulation

9 from before?

10 MS. HENDRICKS: 'Bye, everybody.

11 THE REPORTER: Do you have a stipulation

12 that you would like to use from a prior deposition

13 for this witness?

14 MR. KRUM: Yes, the same as we've been

15 doing.

16

17

18 (DEPOSITION OF WILLIAM GOULD,

19 SIGNATURE NOT WAIVED,

20 CONCLUDED AT 11:34 A.M.)

21

22

23

24

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1 Did you ever have any communications with

2 Judy Coddling and/or Michael Wrotniak about either

3 the notion of obtaining a legal opinion, as you just

4 described, or the notion of obtaining a court order

5 as you just described, with respect to the exercise

6 of the 100,000 share option?

7 A. I don't believe I ever had a conversation

8 with either one of them about that.

9 Q. Did you ever have a conversation of that

10 nature with Doug McEachern?

11 A. I might have, yes.

12 Q. Okay.

13 As you sit here today, what's your best

14 recollection? Did you?

15 A. I don't have any -- my best recollection is

16 I somehow believe that I did, but I don't recall

17 anything, when it was, or what was said.

18 I do remember specifically the conversation

19 with Ed Kane.

20 Q. Okay.

21 MR. KRUM: I don't have any further

22 questions at this time.

23 Mr. Gould, thank you for your time.

24 THE WITNESS: Thank you.

25 MR. KRUM: So we can go off the record?

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1 REPORTER'S CERTIFICATION

2

3 I, Lori Byrd, Registered Professional Reporter,

4 Certified Realtime Reporter, Certified LiveNote

5 Reporter, Realtime Systems Administrator, Kansas

6 Certified Court Reporter 1681, Oklahoma Certified

7 Shorthand Reporter 1981, and Certified Shorthand

8 Reporter 13023 in and for the State of California, do

9 hereby certify:

10

11 That the foregoing witness was by me duly sworn;

12 that the deposition was then taken before me at the

13 time and place herein set forth; that the testimony and

14 proceedings were reported stenographically by me and

15 later transcribed into typewriting under my direction;

16 that the foregoing is a true record of the testimony

17 and proceedings taken at that time.

18

19 IN WITNESS WHEREOF, I have subscribed my name on

20 this date: April 19th, 2018

21 

22

23

24

25

Lori Byrd, CSR 13023

EXHIBIT B

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DISTRICT COURT
CLARK COUNTY, NEVADA

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

VOLUME V
(Pages 664-695)

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

Job No.: 465069

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1 May I say something to you? I don't have to say this
2 but I will. I'm not trying to be evasive, but I have
3 had probably eight or nine, maybe ten meetings --
4 compensation committee, board meetings, audit committee
5 meetings -- since December 29, 2017. I cannot recall --
6 and those have all been in the interim. So you ask me
7 about what did I remember in December 29, 2017, after
8 all those meetings and being 80 years of age, I can't be
9 specific. I can't recall with specificity any of that
10 because it all blends together after a while. I'm
11 telling you that so you'll understand where from I come.
12 Q. Very well. I need to ask the questions
13 nonetheless.
14 A. Go ahead. Go ahead.
15 Q. I'm not harassing you, sir. I'm just trying to
16 cover the material I need to cover.
17 A. I understand.
18 Q. Do you recall anything anybody said at the
19 December 29, 2019 board meeting regarding the
20 termination of Mr. Cotter as president and CEO?
21 A. I do not.
22 Q. Do you recall anything anybody said with
23 respect to item 3b on the second page of Exhibit 525,
24 which I'll refer to as shorthand, and that is,
25 ratification of the use of Class A voting stock to pay

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1 for the exercise in the so-called 100,000 share options?
2 A. I do not.
3 Q. Do you recall if you said anything about that
4 subject?
5 A. I don't recall if I did or didn't.
6 Q. Did anyone ask you any questions about either
7 of those subjects? Meaning the subjects of 3a and b on
8 the second page of Exhibit 525 at the December 29, 2017
9 board meeting?
10 A. I don't recall any questions asked of me.
11 Q. You voted in favor of ratifying both of those
12 matters, correct?
13 A. Yes, sir.
14 Q. And in doing so you were voting in favor of the
15 decisions you'd made previously, right?
16 A. Yes, sir.
17 Q. And I don't mean to be glib with the following
18 question so don't take it that way. No, seriously.
19 A. Okay.
20 Q. Did you give much thought to those matters, or
21 is it fair to say, Mr. Kane, that basically you thought
22 you were correct when you decided and did what you did
23 and so you voted in favor of ratifying?
24 A. You're absolutely correct. I had voted to
25 terminate Mr. Cotter at the time he was terminated. And

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1 then I was deemed by Mr. Cotter through you to somehow
2 have a conflict of interest. So I had no problem, which
3 I never had. I had no problem reaffirming my vote to
4 terminate Mr. Cotter at that time. And as chairman of
5 the comp committee who approved, voted to approve the
6 exercise of the Class B voting stock, I had approved it
7 then, and I saw no reason why I wouldn't approve it
8 again.
9 Q. Directing your attention, Mr. Kane, back to the
10 December 29, 2017 board meeting. Do you recall whether
11 there was any discussion of the subject of whether or
12 not Mr. Adams was independent for any particular purpose
13 or purposes?
14 A. I don't recall such discussion if there was
15 one.
16 Q. Again, directing your attention to the December
17 29, 2017 board meeting. Do you recall any discussions
18 of or relating to Highpoint Associates?
19 A. I don't recall if there was.
20 Q. Have you ever heard of Highpoint Associates?
21 A. Yes, sir.
22 Q. When and how did you first hear of Highpoint
23 Associates?
24 A. I can't remember exactly when. It was sometime
25 after I believe -- I believe it was sometime after

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1 Mr. Cotter, Jr. was terminated as president -- or CEO.
2 I don't recall the context of it, and I was quite
3 surprised to see it. But I was privy to some
4 documentation indicating that Mr. Cotter, Jr. had hired
5 Highpoint to help him become a CEO and had signed a
6 contract with him that was not presented to the other
7 directors or any director, as it should have been.
8 That's the most I can say about it.
9 Q. Did what you understand about Highpoint
10 Associates make any difference to your decision to vote
11 to ratify the termination of Mr. Cotter?
12 A. No.
13 Q. How did you come to have the understanding you
14 just described of the purpose or purposes for which
15 Highpoint Associates had been hired, which had to do
16 with Mr. Cotter being a CEO or becoming a better CEO or
17 something to that effect?
18 MR. FERRARIO: Ed, if it came from -- Mark
19 Ferrario. If it came from your attorneys, let me know.
20 I don't know how else you may have learned.
21 THE WITNESS: I don't recall how I was made aware
22 of it.
23 MR. FERRARIO: Okay.
24 MR. KRUM:
25 Q. Have you reviewed any documents concerning

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1 **Highpoint Associates?**
 2 A. I was given yesterday, I think, some pages of
 3 Highpoint. I scanned them. I didn't pay much attention
 4 to it.
 5 **Q. Prior to yesterday have you ever seen any**
 6 **documents relating to or concerning Highpoint**
 7 **Associates?**
 8 A. I may have. But when it was given to me
 9 yesterday it didn't refresh my recollection of having
 10 seen it previously. I'd only heard about it.
 11 **Q. From whom had you heard about it?**
 12 A. It was so long ago I don't remember.
 13 **Q. Did Mr. McEachern tell you about Highpoint**
 14 **Associates?**
 15 A. I don't remember how I knew.
 16 **Q. Did Mr. McEachern ever give you any documents**
 17 **about Highpoint Associates?**
 18 A. I have no recollection of discussing it with
 19 him or him giving it to me.
 20 **Q. Do you possess any documents concerning**
 21 **Highpoint Associates?**
 22 A. No, sir.
 23 MR. FERRARIO: Other than --
 24 THE WITNESS: Well, other than what I was given
 25 by --

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1 MR. SEARCY: Mr. Searcy.
 2 THE WITNESS: Mr. Searcy. Sorry. I'm sorry. I
 3 missed it. Other than what Mr. Searcy gave me I don't
 4 recall. I may have but I just don't recall it.
 5 MR. KRUM:
 6 **Q. If you were afforded the opportunity today to**
 7 **vote on whether this derivative lawsuit should proceed**
 8 **or be terminated how would you vote?**
 9 A. Terminate it tomorrow, please, sir.
 10 **Q. And why?**
 11 A. And why? We had -- that, as you well know,
 12 sir, that derivative suit was joined by an independent
 13 investor in Reading, T-2. They put a lot of money into
 14 it. They were present at one or more of my depositions.
 15 And they came to the conclusion that the company was
 16 well run. And they were laudatory as to how it is run
 17 and they pulled out. They didn't receive anything for
 18 pulling out. Their expenses were their expenses.
 19 If someone with that sophistication and their own
 20 money in it said the company is well run, without
 21 Mr. Cotter, Jr., then I cannot foresee why there even is
 22 a derivative action. Never made much sense to me. And
 23 I'm not criticizing you, sir. You're his counsel. But
 24 to me it's a total waste of time and money of all
 25 parties.

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1 And if the directors of a company who are
 2 operating, as I was and what I thought, in the best
 3 interest of the company and thought it was in the best
 4 interest of the company that Mr. Cotter step down from
 5 his role, how else can I think, other than there
 6 shouldn't have been a derivative suit and it's a waste
 7 of his money and our money.
 8 **Q. Directing your attention, Mr. Kane, to your**
 9 **last response insofar as it concerned the intervening**
 10 **plaintiffs. What is the basis or what are the bases for**
 11 **your understanding of the conclusions you described them**
 12 **as reaching?**
 13 A. I saw some -- at the time I believe I saw some
 14 correspondence from them to that effect. And there was
 15 also some discussion with regard to the peer group.
 16 They made some recommendations for a change in the peer
 17 group which we used to determine compensation. It was
 18 well thought out. And we had already adopted some of
 19 their recommendations of the peer group. And in there
 20 they again I believe -- it's a long time ago when I saw
 21 the correspondence -- that they were pleased with the
 22 way the company was being run and going forward. And
 23 they were making recommendations as to the peer group
 24 for compensation.
 25 **Q. When you refer to correspondence are you**

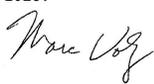
Page 692

1 **actually -- do you actually have in mind a press release**
 2 **issued by RDI that included a quote ascribed to one of**
 3 **the intervening plaintiff representatives?**
 4 A. I wasn't but now that you mentioned it I did --
 5 I must have. And I have some vague recollection of some
 6 of that press release.
 7 **Q. Mr. Kane, excluding your prior depositions in**
 8 **this case, have you ever met or communicated with any**
 9 **representative of any of the intervening plaintiffs?**
 10 A. By intervening plaintiffs you mean T-2?
 11 **Q. Right. T-2 or the folks you referenced earlier**
 12 **as having settled.**
 13 A. No. I never personally discussed it with any
 14 of them.
 15 **Q. What or who was the source of the information**
 16 **you've described about interactions with T-2 and the**
 17 **intervening plaintiffs?**
 18 A. I can't recall. I do know that I saw -- maybe
 19 it was directed to me, I don't know -- their
 20 recommendations for companies that we should use as part
 21 of our peer group for compensation purposes. So I
 22 probably saw that as chair of the compensation
 23 committee. But otherwise, I don't know whether they
 24 sent things to the board as a whole or things were given
 25 to me. I just don't recall.

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1 Q. Okay. This calls for a yes or no response,
 2 Mr. Kane. Was counsel, meaning an attorney who
 3 represents you and/or an attorney who represents RDI,
 4 the source of some or all of the information you
 5 received regarding T-2 and the intervening plaintiffs?
 6 A. Sir, I can't recall so I can't say yes or no.
 7 Q. Very well.
 8 MR. KRUM: Let's take a break.
 9 THE VIDEOGRAPHER: Off the record. The time is
 10 10:21 a.m.
 11 (Recess.)
 12 MR. KRUM: Back on the record. So in light of what
 13 we've covered and how we've covered it and the
 14 circumstances that bear upon that I don't have anything
 15 further at this time. Mr. Kane, thank you for your
 16 time. Have a nice day, sir.
 17 THE WITNESS: Thank you. You too.
 18 MR. SEARCY: Thank you.
 19 MR. KRUM: Bye, guys.
 20 (The proceedings concluded at 10:41 a.m.)
 21 ***
 22
 23
 24
 25

Page 694

1 STATE OF CALIFORNIA) ss
 2
 3 I, Marc Volz, CSR 2863, RPR, CRR, CRC, do hereby
 4 declare:
 5 That, prior to being examined, the witness named in
 6 the foregoing deposition was by me duly sworn pursuant
 7 to Section 2093(b) and 2094 of the Code of Civil
 8 Procedure;
 9 That said deposition was taken down by me in
 10 shorthand at the time and place therein named and
 11 thereafter reduced to text under my direction.
 12 I further declare that I have no interest in the
 13 event of the action.
 14 I declare under penalty of perjury under the laws
 15 of the State of California that the foregoing is true
 16 and correct.
 17
 18 WITNESS my hand this 23rd day of
 19 April, 2018.
 20 
 21 _____
 22 MARC VOLZ, CSR NO. 2863, RPR, CRR, CRC
 23
 24
 25

Page 695

ERRATA SHEET

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 5 I declare under penalty of perjury that I have read the
 6 foregoing _____ pages of my testimony, taken
 7 on _____ (date) at
 8 _____(city), _____(state),
 9
 10 and that the same is a true record of the testimony given
 11 by me at the time and place herein
 12 above set forth, with the following exceptions:
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 14 Page Line Should read: Reason for Change:
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Page 696

ERRATA SHEET

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EXHIBIT C

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DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiff,)

VS.)

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

Defendants.)

and)

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

Nominal Defendant.)

(Caption continued on next)
page.))

VIDEOTAPED DEPOSITION OF DOUGLAS McEACHERN

Wednesday, February 28, 2018

Los Angeles, California

REPORTED BY:

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

JOB NO.: 453340-A

Page 503

1 Q. And do you see that the meeting actually
2 occurred on Friday, December 29?
3 A. Yes.
4 Q. Okay. And I'm not asking you what the
5 document says. I'm not asking you for the purposes
6 of this question to look at the document. What
7 were the subjects raised and addressed at that
8 December 29, 2017, board meeting?
9 A. I think there were four items that were
10 addressed, and there is an agenda, I think, in the
11 second page here. One was an approval of a minimum
12 level of bonuses for executives for 2017. One was
13 an approval of a payment to individual members of a
14 special committee that had been set up, I think in
15 August -- July or August of 2017. One was a
16 reconfirmation -- I may have the wrong word -- of
17 an action the board took to terminate Jim Cotter,
18 Jr., as CEO of the company in June of 2015.
19 And the other was to re -- I'm not sure if
20 approved originally, but to approve or reapprove a
21 transaction that the compensation committee
22 approved in 2015 or 2016, for the exercise of an
23 option by either the Cotter Estate or the Cotter
24 Trust -- I couldn't tell you which one it was -- to
25 purchase 100,000 shares of voting stock in the

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1 company in exchange for a set number of nonvoting
2 shares. I think those were the four items.
3 Q. When did you first learn or hear that
4 either/or both of the third and fourth items were
5 to be part of the December 29, 2017, board meeting?
6 A. I don't want to be cute. I don't remember
7 what third and fourth were on my list.
8 Q. Okay. So I will -- I will ask it
9 differently. It will require two questions but we
10 have the time. When did you first hear or learn
11 that approval of the compensation committee
12 decision that you referenced in your answer a
13 moment ago was to be taken up at the December 29th,
14 2017, board meeting?
15 A. Sometime in early to mid-December.
16 Q. What did you learn at that time?
17 A. That the compensation committee had -- I
18 was aware of this -- had approved the use of stock,
19 nonvoting stock, to exercise an option in the
20 company's voting stock.
21 Q. What else, if anything, did you learn
22 about that in early to mid-December?
23 A. That it was an issue that had been raised
24 by Jim Cotter, Jr., in his lawsuit against the
25 company, that it was somehow inappropriate, which I

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1 still, to this day, don't understand what the issue
2 is.
3 Q. What is it -- what's your understanding of
4 what the board voted to ratify or approve at the
5 telephonic December 29, 2017, board meeting with
6 respect to the compensation committee's prior
7 decision?
8 A. Can -- can I just go back and give some
9 history of what -- what I think happened here?
10 Q. Sure.
11 A. So at some point -- and I think this was
12 in -- it was either in the fall of 2015, more
13 likely the fall of 2016 -- had to be '15 because
14 Tim Storey was around -- there was a desire on the
15 part of Ellen Cotter and Margaret Cotter, trustees
16 of the Cotter Estate or the Cotter Trust, whichever
17 one had the option to purchase voting shares in the
18 company, they were going to use Class A nonvoting
19 shares to exercise the option and pay whatever the
20 option price was.
21 I don't know why, but at that time, Tim
22 Storey wanted a legal opinion that that was okay to
23 do, as I recall. I don't know why, Mr. Krum, in
24 retrospect that that was needed. This estate or the
25 trust, whichever it was, held the option. They held

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1 the stock. They could easily have sold the stock in
2 the marketplace to get the cash to exercise the
3 option.
4 Our plan permitted the submission of stock
5 that was held by an individual or the trust to submit
6 that stock to buy the voting share exercise and
7 option. And I don't know why -- why it became an
8 issue. That was the transaction that we were
9 ratifying in December of 2017.
10 Q. You voted in favor of ratifying that;
11 correct?
12 A. Yes, I did.
13 Q. And as of the December 29, 2017, meeting,
14 did you have any understanding of what issue or
15 issues Mr. Storey had raised previously beyond what
16 you just said?
17 A. No, I don't.
18 Q. What was the basis or what were the bases
19 of your decision to vote in favor of ratifying the
20 decision of the compensation committee from
21 September of 2015?
22 A. What was my basis for doing it?
23 Q. Yeah. On December 29, 2017, you voted in
24 favor of ratifying or approving --
25 A. Sure.

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1 Q. -- to the prior compensation committee
 2 decision or decisions. On what basis or bases did
 3 you do so?
 4 A. Number one, I didn't think there was an
 5 issue here at all for the board to deal with. It
 6 was delegated to the compensation committee to
 7 handle this type of matters. We were approving
 8 this. And I believe we had -- I think we had a
 9 call to talk about a couple of issues that were
 10 still existing in this -- in this derivative case
 11 by Jim Cotter, Jr., and we were trying to address
 12 them in a fashion to resolve them.
 13 Q. When you say you were trying to address
 14 them in a fashion to resolve them, what does that
 15 mean? Does that mean you were trying to moot the
 16 issues?
 17 A. I don't know what "moot" means. I'm
 18 sorry. I'm not an attorney.
 19 Q. Okay. Well, when you say you were trying
 20 to address them in a fashion to resolve them,
 21 resolve them how?
 22 A. To say that the -- the corporation
 23 ratified these, and that -- that there was no -- no
 24 issue or concern that we approved them. If anybody
 25 in the past thought that there was an issue, our

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1 action there was to cure any issue anybody might
 2 think existed.
 3 Q. What did you do, meaning what documents
 4 did you review, with whom did you have
 5 conversations, or anything else, to inform yourself
 6 to make the decision you made to vote in favor of
 7 ratifying or affirming the prior compensation
 8 committee decision?
 9 A. I reviewed whatever documents were handed
 10 out, Mr. Krum, in this -- this package. But I had
 11 been there at the time that this transaction took
 12 place. I was aware of what went on. At the time,
 13 I couldn't understand why this was an issue. I
 14 still couldn't understand why it was an issue. And
 15 it seemed to me to be pretty perfunctory to
 16 approve.
 17 Q. Directing your attention, Mr. McEachern,
 18 to Exhibit 525, that's the board package for the
 19 December 29 meeting; correct?
 20 A. I believe so, yes.
 21 Q. Now, this is not intended to require you
 22 to look at every page, but if you think you need to
 23 do so, you are welcome to do so.
 24 A. Uh-huh.
 25 Q. My question is: Was there anything in

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1 particular in Exhibit 525, the December 27 board
 2 package, that you considered or valued in making
 3 the decision you made to vote in favor of ratifying
 4 the September 2015 compensation committee decision?
 5 A. Uh-huh. And did you say the December 27th
 6 board meeting or the December 29th?
 7 Q. I called the package -- the package
 8 December 27 because it has a December 27
 9 transmission date. But -- so I'm not confusing
 10 you, I am referring to the December 29 board
 11 meeting and your vote there.
 12 So with that clarification, let me ask: Is
 13 there anything in Exhibit 525 that made any
 14 difference to your vote on December 29 to vote in
 15 favor of ratifying or approving the 2015 decision by
 16 the compensation committee that's the subject of --
 17 one subject of this package?
 18 A. No.
 19 MR. SEARCY: Objection. Vague.
 20 A. And no.
 21 BY MR. KRUM:
 22 Q. Okay. Directing your attention back to
 23 your prior testimony to the effect that you first
 24 heard or learned in early to mid-December that the
 25 ratification or approval of the prior compensation

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1 committee decision might or would be taken on the
 2 December 29 board meeting, was that -- did you
 3 learn that by speaking to somebody, by receiving an
 4 email, or otherwise?
 5 A. I just couldn't tell you, Mr. Krum.
 6 Q. Okay. What was the next communication you
 7 had with anybody, after that initial one, with
 8 respect to the possible ratification or approval of
 9 the September 2015 compensation committee decision
 10 regarding the 100,000 share option, at any time
 11 prior to the December 29 board meeting?
 12 A. I could have been involved in discussions
 13 that predated this. I just can't remember. I'm
 14 generally aware that it was raised as an issue. As
 15 I said, I still don't understand why. I know that
 16 we had a call with Mike Bonner, maybe Mark
 17 Ferrario, and maybe somebody from Greenberg,
 18 I'm not certain, to discuss this --
 19 MR. SEARCY: Let me just caution you.
 20 When you start to get into attorney-client
 21 privileged discussions, I want you to be able to
 22 answer the question, but I don't want you to get
 23 into the specifics of any particular discussions
 24 you may have had with Mr. Ferrario or Mr. Bonner.
 25 THE WITNESS: Okay.

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1 damaged as a result of our termination of him as
2 the CEO. I don't believe the company was damaged.
3 **Q. Are there any other reasons why you would**
4 **vote to dismiss the lawsuit absent somebody**
5 **presenting other information than which you are**
6 **presently unaware?**
7 MR. SEARCY: Objection. Vague.
8 A. I -- I guess I don't understand the
9 question. I'm sorry.
10 BY MR. KRUM:
11 **Q. Well, I asked --**
12 A. I thought I answered.
13 **Q. I asked why you -- you answered the way**
14 **you did.**
15 A. Uh-huh.
16 **Q. And then you described your understanding**
17 **of what Jim Cotter seeks to do by way of this**
18 **lawsuit.**
19 A. Uh-huh.
20 **Q. And so I'll just ask a follow-on -- a**
21 **simple follow-on question. Anything else?**
22 A. To why I would vote to dismiss the case?
23 **Q. Right.**
24 A. Because I think it's -- it's cost an awful
25 lot of money, and I don't think anything has been

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1 proven.
2 **Q. When did you develop the view that you**
3 **just described?**
4 A. About the money?
5 **Q. About the lawsuit.**
6 A. I couldn't -- I couldn't tell you when I
7 reached a conclusion. It's -- everything evolves
8 over a period of time, you find out more
9 information.
10 **Q. What was your view at the time you first**
11 **learned of the derivative lawsuit?**
12 A. I don't know that it was called a
13 derivative lawsuit originally. But Jim Cotter,
14 Jr., threatened me with litigation should I vote to
15 terminate him in the May -- late April, May 2015
16 time frame. There was much -- many -- that was
17 raised a number of times.
18 And I think you showed up sometime in
19 May -- I have to get the minutes out -- and said
20 that if we voted to terminate Jim, you would file a
21 lawsuit. So I don't know that it was called a
22 derivative suit at that time. But a lawsuit was
23 filed, I believe, the day after we terminated
24 Mr. Cotter.
25 **Q. Any time, since then, have you held a view**

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1 **different than the one you hold today?**
2 A. Which view was that?
3 **Q. The view that you would vote to dismiss**
4 **the lawsuit if you were afforded an opportunity to**
5 **do so.**
6 A. I was a defendant in the lawsuit. Did I
7 think that the lawsuit had merit from the outset?
8 No.
9 **Q. Directing your attention back to**
10 **Exhibit 525, you see it on the first page,**
11 **Mr. McEachern, it indicates that it was transmitted**
12 **at 5:30 p.m., on Wednesday December 27th?**
13 A. I see that.
14 **Q. Is that when you received this board**
15 **package?**
16 A. Sometime after that. It could have been
17 an hour or two hours later, sometime that evening.
18 **Q. Did you review the board package?**
19 A. I believe I did, yes.
20 **Q. Did you review the entirety of the board**
21 **package prior to the December 29, 2017, telephonic**
22 **board meeting?**
23 A. I scanned things. I may not have read
24 in-depth the 1999 stock option plan of Reading
25 International as distributed, and I'm trying to see

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1 what this MSA is all about. Oh, the High Point
2 Associates document, I read the minutes that were
3 there. I scanned it enough to be familiar with it,
4 yes.
5 **Q. How much time did you spend looking at**
6 **Exhibit 525?**
7 A. Probably a couple of hours.
8 **Q. Directing your attention, Mr. McEachern,**
9 **to the subject of the December 29 board meeting**
10 **with respect to the ratification of certain actions**
11 **regarding the termination of Jim Cotter. Do you**
12 **have that mind?**
13 A. Jim Cotter, Jr.?
14 **Q. Jim Cotter, Jr.; right.**
15 Other than what you just described in
16 terms of scanning Exhibit 525, did you review any
17 documents for taking any other steps with respect
18 to your decision to vote in favor of ratifying the
19 termination of Jim Cotter, Jr., as president and
20 CEO as such actions are outlined in the board
21 minutes of May 21, May 29, and June 12, 2015?
22 A. I was present and lived with this decision
23 until we made the decision to fire Jim Cotter, Jr.
24 And I'm not sure I can tell you documents,
25 Mr. Krum, but I've lived with Jim on the board of

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1 directors and his behavior and actions since we
 2 terminated him.
 3 And all of that has reinforced my
 4 conclusion. But I -- if I had discussions -- I'm
 5 sure I've had discussions with Ellen or Margaret or
 6 Ed Kane or Bill Gould or Mike Wrotniak. I've had
 7 discussions with board members about this decision,
 8 but I don't keep a record and can't tell you when
 9 they took place.
 10 **Q. What discussions have you had with Judy**
 11 **Codding regarding the decision in 2015 to terminate**
 12 **Jim Cotter, Jr., as president and CEO?**
 13 A. I think we discussed it at the special
 14 committee meetings. I don't recall having had a
 15 separate one-on-one meeting with Judy to discuss
 16 it.
 17 **Q. How many times have you discussed the**
 18 **termination of Jim Cotter, Jr., in 2015 with Judy**
 19 **Codding at the special committee meetings?**
 20 A. More than once. I told you that there
 21 were 12 to 15 or 17 meetings between July or August
 22 of 2017 and December 31st, 2017. I couldn't tell
 23 you how many times it came up.
 24 **Q. What did you tell her -- what did you say**
 25 **to her? What did she say to you with respect to**

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1 your discussions with her regarding the 2015
 2 termination of Jim Cotter, Jr.?
 3 A. I do not recall.
 4 **Q. Do you recall even generally?**
 5 A. I'm sorry, no. I'm sure I had some sort
 6 of discussions where we -- what were we doing, how
 7 do we conclude. I just couldn't tell you
 8 specifically anything that took place.
 9 **Q. Did you have discussions with her**
 10 **regarding why you voted, in 2015, to terminate**
 11 **Mr. Cotter, Jr.?**
 12 A. I was part of the committee that
 13 interviewed Judy Codding when she was being
 14 considered as a board member of Reading. That was
 15 either in the fall of 2015 or '16. I'm sorry; I
 16 just don't remember. I think we talked about this
 17 before. And I think that topic was discussed for
 18 the first time there. But I can't tell you what --
 19 what the discussion was. I'm sure she asked
 20 questions about the litigation that was going on
 21 and how we reached the conclusion. But other than
 22 the general impression, I just don't remember.
 23 **Q. All right. Confining the time frame,**
 24 **Mr. McEachern, to 2017 --**
 25 A. Uh-huh. Yes.

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1 **Q. -- do you recall any discussions you had**
 2 **with Judy Codding about the 2015 termination of Jim**
 3 **Cotter, Jr.?**
 4 A. Not specifically, no.
 5 **Q. Do you recall anything generally?**
 6 A. Other than what I've already mentioned to
 7 you? No.
 8 **Q. In 2017, at any time, including any of**
 9 **these -- strike that.**
 10 At any time in 20 -- strike that, wrong
 11 person.
 12 What communications or conversations or
 13 emails or otherwise, I guess, have you had with
 14 Michael Wrotniak regarding the 2015 termination of
 15 Jim Cotter, Jr.?
 16 A. I was on the committee that interviewed --
 17 in 2017 or at any time?
 18 **Q. At any time.**
 19 A. I was on the committee that interviewed
 20 Michael Wrotniak to be a board member, and I
 21 believe this topic, similar with Judy Codding, came
 22 up and we discussed Jim Cotter, Jr.,'s termination.
 23 Have we talked about it since? Probably.
 24 Can I remember those discussions and tell you what
 25 took place? No. I just had general impressions

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1 **Q. Did you have discussions with**
 2 **Mr. Wrotniak, at any point in December of 2017,**
 3 **about the termination -- the decision to terminate**
 4 **Jim Cotter, Jr., in 2015?**
 5 A. Outside of this board meeting?
 6 **Q. Yes.**
 7 A. Not that I recall.
 8 **Q. With respect to the discussions, if any,**
 9 **of the 2000 -- excuse me, at the December 29, 2017,**
 10 **board meeting, regarding the termination of Jim**
 11 **Cotter, Jr., in 2015, who said what?**
 12 A. Could you read back the question? I'm
 13 sorry.
 14 MR. KRUM: Please.
 15 (Reporter read back the requested text.)
 16 A. I would refer you to the minutes to see
 17 what's there. I couldn't have a specific
 18 recollection of who said what.
 19 BY MR. KRUM:
 20 **Q. Did you say anything?**
 21 A. I would have to see the minutes.
 22 **Q. Without having your memory prompted, you**
 23 **don't recall sitting --**
 24 A. No, I don't.
 25 I would point out that whatever I said,

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1 A. Not that I -- no.

2 Q. And do you recall anybody else discussing

3 them, the minutes or the contents of these minutes,

4 in your presence either in anticipation of the

5 December 29, 2017, board meeting or at it?

6 MR. SEARCY: Objection. Vague.

7 A. I don't recall discussion at the meeting,

8 but I would have to check the minutes. And I don't

9 recall having had a discussion with anyone

10 beforehand, although Ed Kane and I may have had an

11 offhand discussion about them.

12 BY MR. KRUM:

13 Q. And do you recall that you did or you just

14 recall that there may have been?

15 A. It might have been.

16 Q. Did you travel together? Is there

17 breakfast or lunch about that time frame?

18 A. We lunched on Monday at Rockies.

19 Q. Yeah.

20 A. And we see each other socially. We don't

21 date, but we see each other.

22 Q. In particular, have you ever discussed

23 these minutes of the May 21 and 29, 2015, board

24 meeting and June 12, 2015, board meeting with Judy

25 Coddling or Michael Wrotniak?

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1 A. Not that I have any recollection of.

2 Q. Mr. McEachern, were you ever party or

3 privy to any communications to which Judy Coddling

4 or Michael Wrotniak also were party or privy

5 regarding the time frame over which -- strike that.

6 Were you ever a party to any communications

7 to which either --

8 (Reporter clarification.)

9 BY MR. KRUM:

10 Q. Were you ever a party to any

11 communications to which either or both Judy Coddling

12 and Michael Wrotniak were a party in which the

13 subject of the request to authorize the exercise of

14 the 100,000 share option was raised, excluding the

15 December 29, 2017, board meeting?

16 A. Not that I recollect.

17 Q. Okay. Let's go off the record for a

18 minute.

19 THE VIDEOGRAPHER: We are off the record

20 at 12:45 p.m.

21 (Recess taken from 12:45 p.m. to

22 12:51 p.m.)

23 MR. KRUM: Okay. So I don't have any

24 further questions of Mr. McEachern at this time.

25 If you guys could follow through on that document

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1 or the documents about which I inquired, perhaps

2 produce those so we can use them with Ms. Coddling,

3 that would make progress. Reserve my rights,

4 whatever they are, and we do, too. Let's adjourn

5 and move on.

6 MR. SEARCY: We will look into your

7 requests and reserve our rights, too.

8 MR. FERRARIO: I don't think I actually

9 can quote it off the top of my head about that.

10 MR. KRUM: I understand.

11 MR. FERRARIO: On the other one, I'm

12 pretty sure what happened: Rather than call a

13 special board meeting to approve those minutes,

14 just going to let it happen in the ordinary course,

15 but, obviously, if there's any changes, you'll get

16 those, but I suspect there won't be.

17 MR. KRUM: All right.

18 MR. FERRARIO: That's why those were

19 drafts.

20 MR. KRUM: Let's go off the record.

21 (Discussion held off the record.)

22 (Proceedings adjourned at 12:52 p.m.)

23

24

25

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1 STATE OF CALIFORNIA)

2) ss.

3 COUNTY OF LOS ANGELES)

4

5 I, GRACE CHUNG, RMR, CRR, CSR No. 6246, a

6 Certified Shorthand Reporter in and for the County

7 of Los Angeles, the State of California, do hereby

8 certify:

9 That, prior to being examined, the witness

10 named in the foregoing deposition was by me duly

11 sworn to testify the truth, the whole truth, and

12 nothing but the truth;

13 That said deposition was taken down by me

14 in shorthand at the time and place therein named,

15 and thereafter reduced to typewriting by

16 computer-aided transcription under my direction;

17 That the dismantling, unsealing, or

18 unbinding of the original transcript will render

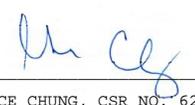
19 the reporter's certificate null and void.

20 I further certify that I am not interested

21 in the event of the action.

22 In witness whereof, I have hereunto subscribed my

23 name.

24 Dated: March 14, 2018 

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

EXHIBIT D

1 DISTRICT COURT
CLARK COUNTY, NEVADA
2 -----X
3 JAMES J. COTTER, JR., individually and
4 derivatively on behalf of Reading
International, Inc.,
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12 -----X
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-against-

PLAINTIFF,
Case No:
A-15-719860-B
DEPT. NO. XI

Consolidated with
Case No:
P-14-082942-E
DEPT. NO. XI

DEFENDANTS.

DATE: March 6, 2018
TIME: 9:17 A.M.

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

JOB NO.: 455310

<p style="text-align: right;">Page 54</p> <p>1 A. My compliments.</p> <p>2 Q. There were only three. That is the outer</p> <p>3 limit for me.</p> <p>4 As you sit here today, does it make any</p> <p>5 difference to your assessment of that ratification vote</p> <p>6 that you've seen Exhibits 82 and 85?</p> <p>7 A. These two exhibits.</p> <p>8 Q. Right.</p> <p>9 A. No.</p> <p>10 Q. Why not?</p> <p>11 MR. SEARCY: Objection; vague.</p> <p>12 A. I don't know.</p> <p>13 Q. What is your understanding, if any, as to</p> <p>14 how the subject of the termination of Jim Cotter, Jr. as</p> <p>15 president and CEO of RDI came to be raised at a meeting</p> <p>16 on May 21, 2015?</p> <p>17 A. I'm sorry, repeat that.</p> <p>18 Q. Sure. What is your understanding, if</p> <p>19 any, as to how the subject of the termination or the</p> <p>20 possible termination of Jim Cotter, Jr. as president and</p> <p>21 CEO of RDI came to be raised at the meeting of May 21,</p> <p>22 2015?</p> <p>23 A. The board's dissatisfaction with Jim</p> <p>24 Cotter, Jr.</p> <p>25 Q. What's the basis for that answer? How do</p> <p style="text-align: center;">54</p>	<p style="text-align: right;">Page 56</p> <p>1 So when you say boardroom discussion, as you</p> <p>2 mentioned, nothing more, you're referring to your prior</p> <p>3 testimony, is that correct?</p> <p>4 A. Yes.</p> <p>5 Q. Did you ever hear or learn or were you</p> <p>6 ever told, including by Bill Gould in particular, that</p> <p>7 either he or then RDI director Tim Storey first learned</p> <p>8 that the possible termination of Jim Cotter, Jr. was</p> <p>9 going to be taken up on May 21, 2015, only a couple days</p> <p>10 or days beforehand?</p> <p>11 A. No.</p> <p>12 Q. When you voted on December 29 to ratify</p> <p>13 the decision concerning the termination of Jim Cotter,</p> <p>14 Jr. as president and CEO of RDI, why did you do so?</p> <p>15 A. I was asked to take a vote, and it was my</p> <p>16 decision.</p> <p>17 Q. Why did you vote yes, is the question I'm</p> <p>18 asking? When you voted on December 29 affirmatively to</p> <p>19 ratify the decision on the termination of Jim Cotter,</p> <p>20 Jr. as president and CEO of RDI, why did you do so?</p> <p>21 A. I relied on the minutes of the meetings</p> <p>22 leading up to his termination and my firsthand</p> <p>23 experience with him at the board level.</p> <p>24 Q. When you say your firsthand experience</p> <p>25 with him at the board level, you mean with him as the</p> <p style="text-align: center;">56</p>
<p style="text-align: right;">Page 55</p> <p>1 you know that?</p> <p>2 A. The most important job of a board is to</p> <p>3 hire and fire, if necessary, a CEO. And Jim's</p> <p>4 employment agreement gave the board the specific right</p> <p>5 for both of those items.</p> <p>6 Q. The question was, how do you know that</p> <p>7 the subject of the termination of Jim Cotter, Jr. as</p> <p>8 president and CEO of RDI was raised on May 21, 2015</p> <p>9 because of, to use your words, the board's</p> <p>10 dissatisfaction with Jim Cotter, Jr.?</p> <p>11 A. Specific to that date I don't know.</p> <p>12 Q. And when you referred to the board's</p> <p>13 dissatisfaction with Jim Cotter, Jr., how and when did</p> <p>14 you learn what you're characterizing as the board's</p> <p>15 dissatisfaction with Jim Cotter, Jr.?</p> <p>16 A. I don't recall specifically.</p> <p>17 Q. When you used the phrase "the board's</p> <p>18 dissatisfaction with Jim Cotter, Jr.," are you referring</p> <p>19 to something other than what you've already described to</p> <p>20 me this morning? And if so, what?</p> <p>21 A. Boardroom discussion, as I mentioned.</p> <p>22 Nothing more.</p> <p>23 Q. Okay, I'm trying to exhaust your</p> <p>24 testimony, Mr. Wrotniak, but I'm not asking you to</p> <p>25 repeat anything.</p> <p style="text-align: center;">55</p>	<p style="text-align: right;">Page 57</p> <p>1 former president and CEO acting as another director?</p> <p>2 A. As -- I -- yes, as a director of RDI.</p> <p>3 Q. You never had an opportunity or occasion</p> <p>4 to interact with Jim Cotter, Jr. as president and CEO of</p> <p>5 RDI, right?</p> <p>6 A. Yes.</p> <p>7 Q. Yes, correct?</p> <p>8 A. Correct.</p> <p>9 Q. And when you refer to your firsthand</p> <p>10 experience with him as a director, what about that</p> <p>11 experience factored into your affirmative vote to ratify</p> <p>12 his termination as president and CEO of RDI?</p> <p>13 A. His temperament, his unwillingness to</p> <p>14 take decisions, his what I interpreted as his lack of</p> <p>15 leadership skill.</p> <p>16 Q. When you say what you interpreted as lack</p> <p>17 of leadership skill, is that referring to his</p> <p>18 unwillingness to take decisions, or something else or</p> <p>19 both?</p> <p>20 A. I'm there referring to the aggressive way</p> <p>21 that he deals with people on the board. I also</p> <p>22 interpreted as his lack of vision.</p> <p>23 Q. When you say "aggressive way," what does</p> <p>24 that mean? Is he forward, direct, rude, or something</p> <p>25 else?</p> <p style="text-align: center;">57</p>

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1 A. He's often rude.
2 Q. When you say "rude," what do you
3 characterize as rude?
4 A. Significantly less than polite.
5 Q. Ed Kane has been rude at board meetings,
6 correct?
7 A. I think you could interpret that as being
8 rude.
9 Q. Particularly directed at Jim Cotter, Jr.,
10 right?
11 A. Yes.
12 Q. Doug McEachern has been rude with
13 Mr. Cotter, Jr. also, correct?
14 A. I don't recall.
15 Q. What about Guy Adams, has he ever been
16 rude in your presence?
17 MR. SEARCY: Objection; vague.
18 A. I don't recall.
19 Q. Margaret Cotter, she's been rude at board
20 meetings, right?
21 MR. SEARCY: Objection; vague.
22 A. I'd say no.
23 Q. Have you ever heard Margaret Cotter be
24 rude to Jim Cotter, Jr.?
25 A. No. I don't recall.

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

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1 vote at that point.
2 Q. Well, is it also possible that everyone
3 simply abdicated their decision-making responsibilities
4 and didn't pursue the matter and allowed him to vote?
5 MR. SEARCY: Objection; argumentative, lacks
6 foundation, calls for speculation.
7 A. I don't know.
8 Q. You understand Mr. Adams remains a
9 defendant in this derivative action?
10 A. I do.
11 Q. Do you understand why?
12 A. No.
13 Q. Did you think about that in connection
14 with your vote to vote yes to ratify the prior decision
15 to terminate Jim Cotter as president and CEO of RDI?
16 A. No.
17 Q. Was there discussion at the January 29,
18 2017 board meeting about --
19 MR. SEARCY: December.
20 MR. KRUM: Thank you.
21 A. I was a little nervous there because I
22 thought --
23 Q. You may have missed one, right? For some
24 lawyers that may be a technique. For others it's just a
25 hiccup. I'm in the hiccup category. So let me try that

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Page 61

1 again.
2 Was there a discussion at the December 29,
3 2017 board meeting about whether Mr. Adams was
4 independent?
5 A. I don't recall.
6 Q. What is your understanding, if any, as to
7 what the term "independent" means as used in the context
8 of the subject of whether Guy Adams is independent?
9 A. Can you repeat that, please?
10 MR. KRUM: Can you read it for me.
11 (Whereupon, the referred to question was read
12 back by the Reporter.)
13 A. The issue related to Guy is his -- the
14 amount of income that he earns from the Cotter-related
15 assets.
16 Q. How does that relate to the subject of
17 his independence, as you understand it?
18 MR. SEARCY: He's not asking you, as I
19 understand -- let me make sure that I clarify here,
20 otherwise I'd object that it calls for a legal
21 conclusion.
22 He's asking you for your personal
23 understanding.
24 Q. That's correct.
25 MR. SEARCY: He's not asking for a legal

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<p style="text-align: right;">Page 78</p> <p>1 A. I don't recall.</p> <p>2 Q. Directing your attention, Mr. Wrotniak,</p> <p>3 to your vote on December 29, 2017 to ratify the</p> <p>4 compensation committee decision authorizing the use of</p> <p>5 non-voting stock as consideration to pay for the</p> <p>6 exercise of the 100,000 share option, on what basis did</p> <p>7 you vote in favor of that?</p> <p>8 A. I relied on the board book materials that</p> <p>9 were provided to us.</p> <p>10 Q. At the December 29, 2017 meeting, who</p> <p>11 said what, if anything, about the subject of whether the</p> <p>12 estate actually owned the 100,000-share option?</p> <p>13 A. I don't recall anyone.</p> <p>14 Q. You took no steps prior to voting in</p> <p>15 favor of ratification with respect to the 100,000-share</p> <p>16 option on December 29, 2017 to determine whether the</p> <p>17 estate in fact owned that option, correct?</p> <p>18 MR. SEARCY: Objection; vague, lacks</p> <p>19 foundation.</p> <p>20 A. I relied on the board materials that were</p> <p>21 provided.</p> <p>22 Q. Do you recall if any of those board</p> <p>23 materials actually addressed the subject of whether the</p> <p>24 estate owned the 100,000-share option?</p> <p>25 A. I did not see anything in Jim's e-mail,</p> <p style="text-align: center;">78</p>	<p style="text-align: right;">Page 80</p> <p>1 A. Yes.</p> <p>2 Q. When you did, did you notice it used the</p> <p>3 word "held"?</p> <p>4 A. I do not recall.</p> <p>5 Q. Does that mean anything to you that it</p> <p>6 says "held"?</p> <p>7 MR. SEARCY: Objection; vague. Lacks</p> <p>8 foundation.</p> <p>9 A. I don't know.</p> <p>10 MR. SEARCY: Mark, I think that last night</p> <p>11 Noah, or someone from our office, sent out one of the</p> <p>12 properly redacted versions of these. I don't know if</p> <p>13 you're getting into any of the stuff that's been</p> <p>14 redacted. I certainly reserve my rights on that.</p> <p>15 MR. KRUM: Okay.</p> <p>16 MR. SEARCY: I don't want to slow down your</p> <p>17 examination, but I also don't want to get into anything</p> <p>18 privileged.</p> <p>19 MR. KRUM: Well, you're not waiving anything</p> <p>20 is what you're telling me. And I acknowledge that.</p> <p>21 MR. SEARCY: Appreciate it.</p> <p>22 Q. Do you own securities of public companies</p> <p>23 other than RDI?</p> <p>24 A. Yes.</p> <p>25 Q. Are they in your name or -- well, strike</p> <p style="text-align: center;">80</p>
<p style="text-align: right;">Page 79</p> <p>1 nor in Dev's e-mail that would suggest that there was an</p> <p>2 issue.</p> <p>3 Q. What steps, if any, did you take to</p> <p>4 inform yourself with respect to the ratification vote</p> <p>5 regarding the 100,000-share option, if any, other than</p> <p>6 reviewing Exhibit 525, the board package?</p> <p>7 A. I don't recall any.</p> <p>8 Q. I direct your attention, Mr. Wrotniak, to</p> <p>9 the page in Exhibit 525 that has the production number</p> <p>10 7213 at the lower right-hand corner. You'll see that</p> <p>11 purports to be the first page of four pages of minutes</p> <p>12 from a September 21, 2015 compensation and stock option</p> <p>13 committee meeting. Do you have that?</p> <p>14 A. Yes.</p> <p>15 Q. In particular I direct your attention to</p> <p>16 the second full paragraph on that page. You'll see that</p> <p>17 five lines from the top it begins with the word "held by</p> <p>18 the estate to acquire 100,000 shares of the company's</p> <p>19 Class B common stock." So if you work down the</p> <p>20 left-hand margin of the paragraph that begins with</p> <p>21 Chairman Kane --</p> <p>22 A. Held, yes.</p> <p>23 Q. Do you recall -- well, first of all, did</p> <p>24 you review these minutes in preparation for the December</p> <p>25 29, 2017 meeting?</p> <p style="text-align: center;">79</p>	<p style="text-align: right;">Page 81</p> <p>1 that. Do the proxy materials come directly to you or do</p> <p>2 they come through the brokerage company through which</p> <p>3 you hold the securities?</p> <p>4 A. Both.</p> <p>5 Q. Do you understand the distinction between</p> <p>6 being a legal and beneficial owner of securities?</p> <p>7 A. As opposed to?</p> <p>8 Q. Well, the difference between being a</p> <p>9 legal and beneficial owner.</p> <p>10 A. I wouldn't want to have that conversation</p> <p>11 with you.</p> <p>12 Q. Have you ever looked at -- do you know</p> <p>13 what a NOBO list is?</p> <p>14 A. No.</p> <p>15 Q. Have you ever looked at any RDI books and</p> <p>16 records that purport to identify the holders or owners</p> <p>17 of RDI stock?</p> <p>18 A. Have I looked at any books or records. I</p> <p>19 don't recall. Doug McEachern suggested that we look at</p> <p>20 the list of the major shareholders. I've looked at</p> <p>21 that.</p> <p>22 Q. For what purpose?</p> <p>23 A. General background.</p> <p>24 Q. By "major shareholders," you're talking</p> <p>25 about Class A, Class B or both?</p> <p style="text-align: center;">81</p>

EXHIBIT E

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DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiff,)

VS.)

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

Defendants.)

and)

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

Nominal Defendant.)

(Caption continued on next)
page.)

VIDEOTAPED DEPOSITION OF JUDY CODDING

Wednesday, February 28, 2018

Los Angeles, California

REPORTED BY:

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

FILE NO.: 453340-B

1 individually?

2 A. Yes.

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

6 A. Yes.

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

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

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

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

20 A. For that specific meeting?

21 Q. Right.

22 A. Nothing.

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

1 **president and CEO, you have that in mind?**

2 A. Yes.

3 **Q. You voted to ratify that decision;**
4 **correct?**

5 A. I did.

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

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

17 **Q. As of the date you voted?**

18 A. Yes.

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

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

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

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

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

9 You can answer the question, who you spoke
10 to.

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

16 **Q. Were any of those conversations in**
17 **December of 2017?**

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

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

25 A. I didn't have to consider it until

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

4 Do you see that?

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

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

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

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

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

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

8 A. Yes.

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

13 A. Oh, that --

14 **Q. -- to review it?**

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

19 **Q. You also referred to strategy.**
20 **What are you referencing by "strategy"?**

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

1 happened.

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

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

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

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

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

18 A. Yes.

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

21 MR. TAYBACK: Sure.

22 MR. KRUM: -- anything.

23 MR. TAYBACK: Okay. I get it.

24 BY MR. KRUM:

25 Q. What did Michael Wrotniak say, if

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

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

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

11 A. No.

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

15 A. Okay.

16 Q. -- before we start slogging through --

17 A. All right.

18 Q. -- the documents.

19 What's your recollection of what it is you
20 voted to ratify on December 29, 2017, in terms of the
21 100,000 share option?

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

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

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

3 A. In general.

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

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

10 **Q. And --**

11 A. And we had --

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

16 A. And sought legal counsel --

17 (Speakers talking simultaneously.)

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

20 MR. TAYBACK: Very good.

21 BY MR. KRUM:

22 **Q. The attorney in question is who?**

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

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

3 Q. "Mark" meaning Mark Ferrario?

4 A. Yes.

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

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

12 Q. Well, all of my questions, Ms. Coddling,
13 are confined to the exercise of the 100,000 share
14 option --

15 A. Do you mind if I look at it?

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

18 A. Oh, wait. I --

19 Q. -- options held --

20 A. -- this thing --

21 Q. -- individually by Margaret or Ellen.

22 (Miscellaneous comments.)

23 BY MR. KRUM:

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

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

3 A. It was for the estate.

4 Q. For the estate?

5 A. Uh-huh.

6 Q. And did your ratification decision ratify
7 anything other than the use of Class A nonvoting
8 stock as consideration for the exercise of the
9 100,000 share option?

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

12 You can answer.

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

21 BY MR. KRUM:

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

25 A. Yes.

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

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

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

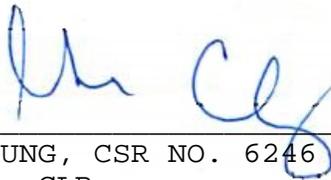
12 That said deposition was taken down by me
13 in shorthand at the time and place therein named,
14 and thereafter reduced to typewriting by
15 computer-aided transcription under my direction;

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

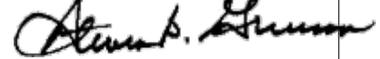
19 I further certify that I am not interested
20 in the event of the action.

21 In witness whereof, I have hereunto subscribed my
22 name.

23 Dated. March 14, 2018



24 _____
25 GRACE CHUNG, CSR NO. 6246
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13 **EIGHTH JUDICIAL DISTRICT COURT**

14 **CLARK COUNTY, NEVADA**

15 **JAMES J. COTTER, JR.** individually and
16 derivatively on behalf of Reading
17 International, Inc.,

18 Plaintiff,

19 v.

20 **MARGARET COTTER, et al.,**
21 Defendants.

22 AND

23 **READING INTERNATIONAL, INC.,** a Nevada
24 corporation,

25 Nominal Defendant.

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

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

Related and Coordinated Cases

BUSINESS COURT

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

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

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

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



Marshall M. Searcy, III

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1 INTRODUCTION

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

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

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

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

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

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

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

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

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

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

1 **ARGUMENT**

2 **I. THE COURT HAS ALREADY REJECTED PLAINTIFF’S PRIVILEGE**
3 **CHALLENGE TO MANY OF THE DOCUMENTS AT ISSUE**

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

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

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

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

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

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

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

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

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

7 For instance, in *SEC v. Roberts*, the court noted, in *dicta*, that the board would not have
8 possessed “a common interest with the Special Committee since it was the Special Committee’s
9 mandate to ascertain whether members of the Board . . . may have engaged in in wrongdoing.”
10 254 F.R.D. 371, 378 n.4 (N.D. Cal. 2008).² Similarly, the special committee in *Ryan v. Gifford*
11 had “a relationship more akin to one adversarial in nature” with several directors; because of this,
12 the court, holding in the alternative through *dicta*, determined that any attorney-client privilege
13 over the special committee’s investigation and final report to the full board would have been
14 waived by the “presentation of the report,” especially because “the individual director defendants
15 specifically rely on the findings of the report for exculpation as individual defendants.” Civ. A.
16 No. 2213-CC, 2007 WL 4259557, at *3 (Del. Ch. Nov. 30, 2007).³ And both in *Klein ex rel.*
17 *Klein v. FPL Grp., Inc.*, No. 02-20170-CIV, 2003 WL 22768424, at *11 (S.D. Fla. 2003), and
18

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

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

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

5 These situations are vastly different from what occurred in this case. Here, RDI has a
6 Special Independent Committee, which is constituted with three members: William Gould,
7 Douglas McEachern, and Judy Coddling. (See Searcy Decl. Ex. 1 (5/2/18 Hr’g Tr.) at 20:9-11
8 (Bonner, M.)) But, as Mr. Gould (its Chairman) explained, the Special Independent Committee
9 is not like the special litigation committees in the cases cited by Plaintiff; RDI’s committee does
10 not “have different objectives” from the rest of the Board, and it has never been involved in “a
11 situation where the committee felt that there could possibly be any conflict.” (Searcy Decl. Ex. 3
12 (4/5/18 Gould Dep.) at 516:11-519:2.) Indeed, RDI’s Special Independent Committee was not
13 focused on investigating or exonerating certain directors, nor did it engage with any of the
14 current or former director-defendants in an adversarial manner. Rather, as its counsel, Mike
15 Bonner of Greenberg Traurig, confirmed, the Special Independent Committee meetings, of
16 which “there were several of them, were basically updates.” (Searcy Decl. Ex. 1 (5/2/18 Hr’g
17 Tr.) at 40:20-41:25 (Bonner, M.)) The Special Independent Committee meetings “were merely
18 update status calls” where the committee “was getting updates on the status of some potential
19 settlements of either this action or related actions” and discussing “significant concerns about the
20 timing of the trial.” (*Id.*) Thus, unlike in the cases relied on by Plaintiff, the current or former
21 Defendants never became adversarial third parties to RDI’s Special Independent Committee such
22 that the “common interest” between the committee and RDI itself could have been placed in
23 jeopardy. There is thus no basis for Plaintiff’s “waiver” analogy to the cases he collects.

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

1 not true. In fact, the Special Independent Committee held no votes on any ultimate issue of
2 liability, generated no reports (draft or final), and made no recommendations that any directors
3 be exonerated. As Mr. Bonner testified under oath before the Court at the May 2, 2018 hearing
4 (when explaining his delay in preparing minutes for the insignificant Special Independent
5 Committees meetings as opposed to the critical Minutes of the RDI Board of Directors Meeting
6 on December 29, 2017): “[T]here was *no formal action taken* in any of these [Special
7 Independent Committee meetings], so *they didn’t have any particular consequence*. . . . The
8 special independent committee meetings were merely update status calls, if you will.” (Searcy
9 Decl. Ex. 1 (5/2/18 Hr’g Tr.) at 40:20-41:25 (Bonner, M.) (emphasis added); *see also id.* at 34:3-
10 6 (Bonner, M.) (confirming that the scheduling emails calling for a full RDI Board meeting to
11 vote on possible ratification in late December 2017 were not “prepared as a result of what
12 happened at the special independent committee’s meeting in December”).) Thus, unlike the
13 cases cited by Plaintiff, this also was not a situation where a special litigation committee,
14 composed of a subset of directors and cordoned off from the full board, exercised its powers in
15 secret to itself extinguish a litigation and thereafter rendered a report to the full board, causing a
16 waiver of its report and any underlying data utilized.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6 **IV. THERE WAS NO WAIVER OF THE WORK PRODUCT DOCTRINE**

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

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

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

24
25 ⁴ It is also noteworthy that RDI’s Special Independent Committee is a subcommittee of
26 the Board. It acts, within its delegated authority, “as the Board.” In this context, there could not
27 be a conflict of interest between Board and itself. Nevada statute specifically authorizes the use
28 of committees, *see* NRS 78.125, and Nevada law does not draw any distinction, to the extent of
any delegation, between any authorized committee and the board itself. It would chill the use of
committees if such usage threw open the door to discovery of any legal advice received by a
committee.

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

8 Second, Plaintiff entirely ignores the fact that under Nevada’s work-product doctrine,
9 opinion work product—the “mental impressions, conclusions, opinions, and legal theories of
10 counsel”—receives absolute protection and is “not discoverable *under any circumstances.*”
11 *Wardleigh v. Second Judicial Dist. Ct. in and for Cnty. of Washoe*, 111 Nev. 345, 359, 891 P.2d
12 1180, 1189 (1995) (emphasis added); NRC 26(b)(3). Thus, regardless of whether Plaintiff
13 could even show a “substantial need,” he would never be entitled to any opinion work product
14 within the challenged documents.

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

1 Fourth, Plaintiff’s assertion—unsupported by any case law—that “documents prepared or
2 reviewed by Craig Tompkins or Ellen Cotter cannot be claimed” as protected by the work
3 product doctrine in this context is a non-starter. (*See Mot. to Compel* at 28.) As an initial
4 matter, under Nevada law, “unlike the attorney-client privilege, selective disclosure of work
5 product to some, but not others, is permitted, and disclosure to third parties does not
6 automatically waive the privilege.” *Cotter v. Eighth Judicial Dist. Ct. in and for Cnty. of Clark*,
7 134 Nev. Adv. Op. 32, 416 P.3d 228, 232 (2018) (citation omitted). Thus, even if it could have
8 been potentially problematic, any disclosure of work product to Mr. Tompkins or Ms. Cotter is
9 not outcome-determinative.

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

24 **V. NO FURTHER DISCOVERY IS WARRANTED**

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

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

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

10 As a result of this extensive production by Defendants, Plaintiff’s manufactured
11 grievances concerning RDI’s privilege log have been obviated—a fact that Plaintiff has not
12 revealed to the Court. Instead, in his Motion for Relief, Plaintiff cites to numerous entries on
13 RDI’s May 30 and 31, 2018 privilege logs as a purported basis for additional time to challenge
14 what he calls “improper” entries. (*See* Mot. for Relief at 14-20.) For example, Plaintiff contends
15 that “almost twenty (20) entries [on the May 31 privilege log] dated 12/28/2017 have a
16 description of ‘Re: Call’” and “provide absolutely no information regarding the subject matter(s)
17 of the call(s).” (Mot. for Relief at 18.) Notwithstanding the fact that these particular entries all
18 included outside counsel Mark Ferrario and/or Mike Bonner of Greenberg Traurig, and clearly
19 described the nature of the privilege (*e.g.*, “Communication with Counsel,” etc.), Defendants
20 produced *all these emails* to Plaintiff. (*See* RDI 76390, 76391, 76403, 76466, 76469, 76511,
21 76522, 76544, 76552, 76563, 76565, 76621, 76629, 76633, 76915, 77009, and 77154.)

22 Accordingly, Plaintiff’s complaints regarding these emails are now entirely moot.

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

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

- 1 • December 22, 2017 email regarding “call re: letter for special committee meeting
2 re ratification” from Mark Ferrario’s assistant to Craig Tompkins (RDI 64872).
(*See id.* at 16.)
- 3 • December 27, 2017 email regarding “Board agenda” from Laura Batista to Craig
4 Tompkins (RDI 65942, 65942) and later from Craig Tompkins to Michael
5 Bonner, Mark Ferrario and Tami Cowden (RDI 70072). (*See id.* at 16.)
- 6 • December 27, 2017 email regarding “Special Board Meeting” from William
7 Gould to Ellen Cotter (RDI 67080, 73495, 67080, 73495). (*See id.* at 16.)
- 8 • December 27, 2017 email regarding “DRAFT BOD Agenda & Special Board
9 Meeting” from Laura Batista to Michael Bonner (RDI 65939). (*See id.* at 16.)
- 10 • December 27, 2017 emails regarding “Ratification” between Craig Tompkins,
11 Ellen Cotter and Greenberg Traurig lawyers Michael Bonner, Mark Ferrario and
12 Tami Cowden (RDI 68619, 70083, 70094). (*See id.* at 16.)
- 13 • December 28, 2017 email regarding “Final Version” from Laura Batista to
14 Michael Bonner (RDI 65937, 73079). (*See id.* at 17.)
- 15 • December 20, 2017 emails “to which no outside counsel is a party[,]” but were
16 sent at the direction of outside counsel (CN 2174, 2496, 2558, 2559). (*See id.*
17 at 25.)

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

26 ⁵ (*See* RDI 72770, 72782, 73097, 75825, 76442, 76887, 77200, 77316, 67532, 73397,
27 75816, 75821, 76481, 77001, 73393, 76477, 77003 and CN 2532, 3218.)

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

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

9 Plaintiff also tries to challenge what he calls "insufficiently described" entries in RDI's
10 May 30 and 31, 2018 privilege logs. (*See* Mot. for Relief at 20-21.) But RDI's May 30 and 31,
11 2018 privilege logs identify each entry's sender and recipient(s) (including cc), the email subject,
12 the *basis of privilege*, and more. Indeed, this is essentially the same procedure Plaintiff adopted
13 in his own privilege log in this case, served on August 8, 2016. (*Compare* Searcy Decl. Ex. 7.)
14 While that supplemental privilege log contained a "Description" column, the descriptions were
15 basically several variations of "Email regarding litigation." (*See e.g.*, "Email to counsel re:
16 litigation," "Email for purposes of legal advice in connection with litigation," "Communication
17 to counsel re: potential litigation.") In any event, many of Plaintiff's complaints have been
18 mooted by RDI's production,⁹ and the remainder of Plaintiff's issues have also been resolved by
19 RDI's June 15, 2018 second amended privilege log, which further detailed the basis for privilege
20 of the remaining documents and communications withheld. (*See* Searcy Decl. Ex. 8.) In
21 addition to the information provided in previous logs (*e.g.*, sent from/to/cc, email subject, basis
22 for privilege, etc.), RDI further identified the general subject of the privileged communication.

23
24 _____
25 ⁷ (*See* RDI 67993, 69457, 73981, 67998, 69640, 74087, 68569, 69627, 74079, 63431,
26 63179, 68584, 63161, 70286, 70305, 74649, 63465, 67464, 63467, 73388, 68536, 67885, 67462,
75272, 68559, 67888, 69494, 74010, 67877, 65456, 67875, 69586, 63117, 69570, 69106, 69100,
63451, 69282, 63478, 63480, 69102 and 69448.)

27 ⁸ (*See e.g.*, RDI 76390, 76391, 76403, 76466, 76469, 76511, 76522, 76544, 76552,
28 76563, 76565, 76621, 76629, 76633, 76915, 77009, and 77154.)

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

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

5 Enough is enough. After months of discovery and evidentiary hearings, Plaintiff has had
6 sufficient opportunity to expand the scope of discovery far beyond the scope of the
7 December 29, 2017 meeting actually at issue. Plaintiff should not be allowed to pass through
8 every single privilege entry arising from that expanded scope simply so he can delay his day of
9 reckoning. See *MGM Grand, Inc. v. Eighth Judicial Dist. Ct. of & for Cnty. of Clark*, 107 Nev.
10 65, 70, 807 P.2d 201, 203 (1991) (affirming this Court’s discretion in limiting discovery).

11 **B. No Additional Depositions Are Necessary or Appropriate**

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

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

9 Of course, Plaintiff did depose William Gould, Judy Coddling, Douglas McEachern,
10 Edward Kane, and Ellen Cotter about ratification. (*See id.*) Plaintiff’s additional hindsight
11 desire to have asked them better questions or used other methods to attempt to refresh those
12 deponents’ recollections in the vain hope that he could obtain more favorable answers (*see id.*)
13 also does not support his request for delay. *See Exmark Mfg. Co. Inc. v. Briggs & Stratton*
14 *Power Prods. Grp., LLC*, No. 8:10CV187, 2015 WL 1004359, at *3 (D. Neb. Mar. 5, 2015)
15 (denying motion to reopen deposition because “counsel could have better used his time to
16 address pertinent questions” and deponent “should not bear the burden of [the questioner’s]
17 tactics and choices during the deposition”). At some point, Plaintiff’s spate of harassing
18 depositions needs to come to an end: Ellen Cotter (RDI’s CEO) has already been deposed for
19 five days in this case, Mr. McEachern for four days, and Margaret Cotter and William Gould for
20 three days each. *See Francis v. Wynn Las Vegas, LLC*, 127 Nev. 657, 669, 262 P.3d 705, 714
21 (2011) (“[I]f the movant has previously failed diligently to pursue discovery, it is not an abuse of
22 discretion for the court to deny the motion.”) (citation omitted).

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

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

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

16 **VI. PLAINTIFF’S REQUESTED SANCTION, WHICH WOULD PRECLUDE A**
17 **RATIFICATION DEFENSE, IS LEGALLY AND FACTUALLY BASELESS**

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

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

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

7 Moreover, Nevada law provides that, under Nevada Rule of Civil Procedure 37, "a
8 district court may impose sanctions only when there has been *willful* noncompliance with [a]
9 discovery order or *willful* failure to produce documents as required under NRCP 16.1." *Clark*
10 *Cnty. Sch. Dist. v. Richardson Constr., Inc.*, 123 Nev. 382, 391, 168 P.3d 87, 93 (2007)
11 (emphasis added); *see also Young v. Johnny Ribeiro Bldg., Inc.*, 106 Nev. 88, 92, 787 P.2d 777,
12 779 (1990) (same). Here, Plaintiff has not even attempted to argue that the contested privilege
13 calls were the result of any "willful" noncompliance with any court order by RDI or the
14 Remaining Director Defendants, let alone provide actual evidence establishing such willfulness.
15 And, of course, Nevada law requires a two-stage process before any sanctions are allowed: First,
16 the Court would have to determine that the documents in question were improperly withheld in a
17 willful manner, and then there would have to be a hearing as to whether Plaintiff's proposed
18 discovery sanction is proportionate to the purported offense. *See Bahena v. Goodyear Tire &*
19 *Rubber Co.*, 126 Nev. 243, 256, 235 P.3d 592, 600-01 (2010). Here, Plaintiff seeks to obtain
20 sanctions without going through the required proof or procedural hoops.

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

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CONCLUSION

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

Dated: June 18, 2018

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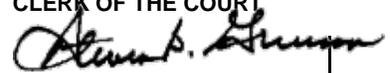
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CERTIFICATE OF SERVICE

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

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

EXHIBIT 1



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

EVIDENTIARY HEARING

WEDNESDAY, MAY 2, 2018

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:

SHOSHANA E. BANNETT, ESQ.
MARSHALL SEARCY, ESQ.
KEVIN M. JOHNSON, ESQ.
MARK E. FERRARIO, ESQ.
KARA B. HENDRICKS, ESQ.

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

2 (Court was called to order)

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

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

7 THE COURT: Do you have the exhibits?

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

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

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

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

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

19 THE COURT: You've got it covered?

20 MR. SEARCY: I've got it covered.

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

22 MR. FERRARIO: And, Your Honor --

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

25 MR. SEARCY: I tried to tell him that.

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

4 THE COURT: About which subject?

5 MR. FERRARIO: Monday about --

6 THE COURT: Deleting in boxes?

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

11 THE COURT: Amazing.

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

23 THE COURT: Okay. Ms. Levin.

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

1 11:18, late morning, about further production. The documents
2 that we received were ones already produced. But, more
3 importantly, we were told that they were going to provide us
4 with a supplemental privilege log but not today, not until
5 after the hearing. And our problem is that we won't be able
6 to test Mr. Gould's testimony as against those privilege log
7 entries that we haven't seen. So we are taking the position
8 that this -- we don't believe we can make a determination
9 today as to what he will testify to, because we haven't had an
10 opportunity to see those privilege log entries. And we would
11 say that, you know, we would reserve the right to depose him
12 further on those entries.

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

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

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

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

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

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

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

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

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

5 THE COURT: You got that.

6 MS. LEVIN: Okay.

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

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

14 THE COURT: Okay. Ms. Hendricks.

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

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

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

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

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

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

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

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

19 MS. BANNETT: Then, Your Honor --

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

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

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

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

1 has them all.

2 THE COURT: What did you send him?

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

4 THE COURT: Who sent him the documents?

5 Ms. Hendricks, what did you send him?

6 MS. HENDRICKS: [Inaudible].

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

8 THE COURT: No.

9 MS. HENDRICKS: Sent him the notes. You've got --
10 the two sets you have in front of you are what were sent to
11 Mr. Gould. So we forwarded it to the Court, and then
12 forwarded it to --

13 THE COURT: So I have two sets of documents, one
14 called Plaintiff's Proposed Exhibits for Evidentiary Hearing,
15 which appear to have -- are they sequential Bates numbers, Mr.
16 Krum?

17 MR. KRUM: No.

18 THE COURT: No, they're not sequential. So those
19 would be P-1 through P-5. And then I have those that are
20 Defendants' Proposed Exhibits for Evidentiary Hearing, and
21 these are A through D, and they appear to be sequentially
22 numbered.

23 MS. HENDRICKS: Correct, Your Honor. The only thing
24 I would bring to your attention is they were not marked with
25 exhibit numbers before they were sent to Mr. Gould, so --

1 THE COURT: And that's why I said Bates numbers.

2 MS. HENDRICKS: We do have somebody with Mr. Gould
3 that is going to help him find the right documents and get the
4 exhibits in front of him, so they'll --

5 MR. FERRARIO: And, Your Honor, you will see I've
6 got, for example, Mr. Bonner's declaration which is already
7 part of the record. But having been in front of you on other
8 hearings like this, you I think want us to reintroduce it
9 here. So that's what we're --

10 THE COURT: I want you to introduce it here, because
11 it's not introduced when it's filed with a brief.

12 MR. FERRARIO: Thank you.

13 THE COURT: Okay. Did you want to ask Mr. Gould
14 some questions?

15 MS. BANNETT: I do.

16 THE COURT: How do I get Mr. Gould on the camera,
17 Jill?

18 MR. KRUM: There he is.

19 THE COURT: Mr. Gould, how are you?

20 MR. GOULD: I'm fine, thank you.

21 THE COURT: Can you hear me okay?

22 MR. GOULD: Yes, I can.

23 THE COURT: The lawyers have microphones in front of
24 them, but sometimes you won't be able to hear them. I'm going
25 to ask them to stand near a microphone and keep their voice

1 up. Our cameras do automatically go to folks when they speak,
2 so if someone makes an objection, please remember I need you
3 to pause for a minute before you answer so I can rule on their
4 objection. Okay? Is that okay, sir? Sir, can you hear me?

5 MR. GOULD: Oh. You were talking to me? I --

6 THE COURT: Yes.

7 MR. GOULD: Oh. Yes, that's fine.

8 THE COURT: Okay. Can you raise your right hand so
9 I can swear you in, please. Sir, are you agreeing to be sworn
10 by my clerk over the video line?

11 MR. GOULD: Yes.

12 THE COURT: Okay.

13 WILLIAM GOULD, A DEFENDANT HEREIN, SWORN

14 THE CLERK: Thank you. Please state and spell your
15 name for the record.

16 THE WITNESS: My name is William Gould, G-O-U-L-D.

17 THE COURT: You may proceed, Counsel. Please
18 remember to keep your voice up.

19 MS. BANNETT: Thank you for the reminder, Your
20 Honor.

21 DIRECT EXAMINATION

22 BY MS. BANNETT:

23 Q Mr. Gould, good afternoon.

24 A Good afternoon to you.

25 Q Did you receive a subpoena duces tecum from the

1 plaintiff in January of this year?

2 A Yes, I did.

3 Q And what did you do to collect documents when you
4 received the subpoena?

5 A I asked my secretary to collect all the documents
6 that were responsive to the subpoena.

7 Q And were you able to collect at that time all of the
8 documents that you sent or received relating to ratification?

9 MR. KRUM: Objection. Foundation.

10 THE COURT: Overruled. You can answer.

11 THE WITNESS: Okay. Well, I was concerned about one
12 thing, and that is about a few months ago I was trying to mess
13 around with my computer and delete a few things, and I must
14 have pressed a button that completely eliminated my in box.
15 And I tried to get it back. I couldn't do it. And then I
16 asked my secretary, who's more well versed in these kinds of
17 things than I am, to help me, and she couldn't do it.

18 So I called in the IT Department. They came in,
19 they fiddled with my computer for about 20 minutes, and
20 finally they said, no, you can't get those back, we cannot get
21 you those emails back.

22 So I think there may have been some -- probably were
23 some Reading emails on that in box.

24 BY MS. BANNETT:

25 Q Mr. Gould, how did you accidentally delete your in

1 box?

2 A I don't know. I have no idea what happened. It's a
3 mystery to me.

4 Q After the hearing do you remember that I called you
5 and told you that the Judge was very surprised that these
6 emails couldn't be recovered?

7 A Yes, I do.

8 Q And what did you do after that phone call?

9 A Well, after that phone call it disturbed me, because
10 apparently a lot of people in the courtroom were skeptical of
11 the story. So I went back to the IT Department and I asked
12 them, there has to be some way that this -- these things can
13 be produced -- excuse me, somehow brought back. And they
14 said, no, we told you before, nothing has changed, can't do
15 it. Then after discussion they finally came back and said
16 that they actually could get these emails back.

17 Q And did they tell you what it was technically that
18 they were going to?

19 A No. On the technical side I couldn't understand
20 that part of it, but I did have them get in touch with you to
21 go over why this was able to be done.

22 MS. BANNETT: No further questions at this time.

23 THE COURT: Mr. Krum, cross-examination?

24 //

25 //

1 CROSS-EXAMINATION

2 BY MR. KRUM:

3 Q Good afternoon, Mr. Gould.

4 A Good afternoon, you.

5 Q When did you lose your emails, meaning when did you
6 delete your in box?

7 A You know, I don't -- I don't actually remember the
8 exact time, but I think it was -- must have been, oh, maybe
9 two or three months ago.

10 Q Is there some means by which you could determine the
11 exact time?

12 A I don't know. I'll ask if there's a way -- probably
13 there would be. I don't know.

14 Q Was it also in the same time range, two or three
15 months ago, that your IT Department first told you that the
16 emails could not be retrieved?

17 A Yes, it was.

18 Q Is there any reason a person from your IT Department
19 could not testify in this proceeding?

20 A No. They're standing by, ready to testify if you
21 would like to hear them.

22 Q Do you have any documents that reflect your request
23 to them and their efforts to retrieve your emails?

24 A No. This was all done orally. I mean, we had this
25 conversation and, you know, I grilled them, and they said they

1 just couldn't do it. And I'm not -- I don't know enough about
2 technology and modern developments, but I take them at their
3 word.

4 Q Do you recall that the subpoena directed to you was
5 served on or about January 12, 2018?

6 A Yes.

7 Q Were your emails -- was your in box deleted before
8 or after that?

9 A After that, I would think. My recollection, after
10 that.

11 Q When did you first communicate with your secretary
12 about retrieving documents responsive to that subpoena?

13 A Shortly after I discovered that my email for that
14 particular day had gone away I call to tell her that, because
15 I knew that there might be some Reading emails on there and
16 that she should know that.

17 Q So your testimony, Mr. Gould, is that you had asked
18 her to retrieve documents responsive to the subpoena you
19 received on or about January 12 prior to when you deleted your
20 in box?

21 A I'm not sure about the sequence of timing, but I'm
22 -- I really don't know. I'm not sure about that.

23 Q Do you know when she began looking for documents
24 responsive to that subpoena?

25 A When you say she you mean my secretary?

1 Q Well, that's who did it; right?

2 A Right. I just wanted to make sure that's what you
3 were referring to.

4 Q Yes.

5 A Would you repeat that question.

6 Q Of course. When did your secretary begin looking
7 for documents responsive to the subpoena you received on or
8 about January 12th?

9 A I believe it was shortly after I received the
10 subpoena.

11 Q So your best understanding is that she began the
12 search for documents responsive to that subpoena before you
13 deleted your in box?

14 A Not sure.

15 Q Do you have any understanding, Mr. Gould, as to why
16 it was nobody searched your sent email box prior to the
17 hearing in this case?

18 A Yes, I do.

19 Q What happened?

20 A What happened was the question posed to the IT
21 people was, can you recover those emails. And they focused on
22 that particular thing and they said, no, we can't recover
23 them. Later it turned out that they could recover both my in
24 box and my outgoing emails, and at that point what had
25 happened was just a misunderstanding on the scope of what they

1 were looking at.

2 Q Is it your testimony that the misunderstanding was
3 on the part of your secretary?

4 A Not necessarily. I would blame it more -- the
5 misunderstanding on both my secretary and I and the IT
6 Department. You know, we weren't asking them -- you know,
7 they knew we wanted these memos -- or these emails back, and,
8 in fairness, we just asked them, is there any way to retrieve
9 these emails. What happened here is it turns out there's
10 another way to retrieve them other than going back and trying
11 to get the actual deleted emails.

12 Q When did you first tell your lawyers at Bird Marella
13 about the deleted in box?

14 A It was not too long after the deletion occurred.

15 Q So you would put that in the two to three months ago
16 time frame?

17 A Yes. Or maybe -- yeah, that's about right.

18 Q At any point in time after you deleted your in box,
19 Mr. Gould, did you have any discussions about engaging an
20 outside IT person to do what your law firm IT Department had
21 initially told you could not be done, which is to recover
22 those deleted emails?

23 A No. We hadn't considered that.

24 MR. KRUM: I have no further questions, Your Honor.

25 THE COURT: Thank you.

1 Anyone else have any questions for Mr. Gould?
2 Hold on, sir. They're consulting.
3 MS. BANNETT: I don't believe so.
4 THE COURT: All right. Thank you, sir. We
5 appreciate your time. Have a nice afternoon. We're going to
6 close the video link.
7 THE WITNESS: Thank you, Your Honor.
8 THE COURT: Who's your next witness?
9 MR. FERRARIO: Mike Bonner.
10 THE COURT: Mr. Bonner, come on up.
11 MICHAEL J. BONNER, ESQ., DEFENDANTS' WITNESS, SWORN
12 THE CLERK: Thank you. Please be seated. Please
13 state and spell your name for the record.
14 THE WITNESS: My name is Michael J. Bonner. Last
15 name is Bonner.
16 MR. FERRARIO: Can I dispense with background?
17 THE COURT: Mr. Bonner, you're an attorney; right?
18 Been an attorney for 30 years or so?
19 THE WITNESS: Yes, Your Honor.
20 THE COURT: Okay. Keep going.
21 MR. FERRARIO: I was going to ask him what he got in
22 -- what grades he got in law school, but I won't do that.
23 THE COURT: Thank you, Mr. Ferrario.
24 //
25 //

1 DIRECT EXAMINATION

2 BY MR. FERRARIO:

3 Q Mr. Bonner, you currently work at Greenberg Traurig;
4 correct?

5 A Yes.

6 Q And is a company called Reading International a
7 client?

8 A Yes. It's a client of our firm.

9 Q Okay. And are you the principal contact for that
10 client?

11 A Yes.

12 Q Okay. And in your capacity as a lawyer for that
13 client do you get involved with something called the special
14 independent committee of the board of directors of Reading
15 International, Inc.?

16 A Yes.

17 Q Okay. Can you tell the Court a little bit about
18 that committee, how it came into existence and what its
19 purpose is.

20 A Yes. Board of directors of Reading formed the
21 special independent committee in August of 2017. It was
22 formed to consist of independent directors only to allow an
23 independent committee separate from the Cotter directors to
24 overview, oversee, and take a supervisory position, if you
25 will, with respect to the various litigation involving the

1 Cotter's, including the derivative litigation, the James
2 Cotter, Jr., employment litigation, the Trust, the Cotter
3 Family Trust litigation in California, and related similar
4 matters.

5 THE COURT: And the probate case here in Nevada.

6 THE WITNESS: Yes, Your Honor.

7 MR. FERRARIO: That's true.

8 BY MR. FERRARIO:

9 Q And who are the members of that committee?

10 A Member of the committee are William Gould, who's the
11 chairman; Judy Coddling; and Douglas McEachern.

12 MR. FERRARIO: Your Honor, I'd like to show the
13 witness Exhibit B. May I approach?

14 THE COURT: Yes.

15 Sir, this is not our usual organized set of binders.
16 Mr. Ferrario's hopefully going to get you to the right
17 document. I think it's your declaration.

18 MR. FERRARIO: We're going to pass the dec. We're
19 going to go back to [inaudible].

20 THE COURT: All right. So we're going to do
21 minutes. The redacted version?

22 MR. FERRARIO: We're going to go to the charter.

23 THE COURT: The charter.

24 BY MR. FERRARIO:

25 Q Do you recognize what I've put in front of you as

1 Exhibit B?

2 A Yes.

3 Q And what is that?

4 A It's a copy of the charter of the special
5 independent committee of the board of directors of Reading
6 International, Inc.

7 MR. KRUM: I apologize for interrupting. We don't
8 have that set.

9 MS. HENDRICKS: Here you go.

10 THE COURT: You do now.

11 Thank you, Ms. Hendricks.

12 MR. KRUM: Thank you, Ms. Hendricks.

13 THE COURT: And at the time they offer it if you
14 have an objection, let me know. I'm going to let him try and
15 lay some foundation first.

16 BY MR. FERRARIO:

17 Q All right. And this charter sets forth the purpose
18 and duties of the committee; correct?

19 A Yes.

20 Q Okay. And were you involved in preparing this
21 charter?

22 A Yes.

23 MR. FERRARIO: Your Honor, I would offer Exhibit B
24 into evidence.

25 THE COURT: Any objection to B, the charter?

1 MR. KRUM: No objection, Your Honor. We still have
2 an issue, though. Excuse me.

3 (Pause in the proceedings)

4 THE COURT: So the charter will be admitted, but
5 we're in the process of making sure that Mr. Krum has a copy
6 of A through D.

7 Hold on, sir.

8 MS. HENDRICKS: They were all sent via email. I
9 apologize, Your Honor.

10 THE COURT: Even my copy?

11 Are you okay now, Mr. Krum?

12 MR. KRUM: We are.

13 THE COURT: Okay.

14 MR. KRUM: Thank you.

15 THE COURT: B has been admitted.

16 (Defendants' Exhibit B admitted)

17 BY MR. FERRARIO:

18 Q Okay. Mr. Bonner, now, you've explained to the
19 Court the purposes of the committee. How are meetings called,
20 and how does the committee generally operate?

21 A The meeting -- I'm sorry. The committee thus far
22 since its formation in August has basically started out in a
23 somewhat planning mode for the first several meetings. As the
24 months have gone by the committee has scheduled meetings for
25 updates relative principally to the status of the derivative

1 case as it proceeded toward trial, and also some events that
2 were occurring with respect to the Trust case. And so
3 typically the chairman of the committee, Mr. Gould, will call
4 a meeting of the committee. They're almost always held by
5 telephone, and they're typically done in that fashion.

6 Q And are you the person that is charged with
7 preparing minutes regarding committee meetings?

8 A Yes.

9 Q Okay. And what is your typical practice in regard
10 to preparing minutes?

11 A I participate in the meeting, I'm in the room or on
12 the telephone, as the case may be, I have a legal tablet, and
13 I write down summaries to myself in my own handwriting and I
14 -- you know, they're done contemporaneously. And at some
15 point I will transfer those typically by dictation. I dictate
16 often -- when I get to actually turn them into a document I
17 typically dictate those through our firm's dictation system
18 and oftentimes through our document center, which is located
19 in another state, and they're returned to me.

20 Q There's been an issue raised in -- that brings us
21 here today regarding kind of the timeliness of the preparation
22 of minutes. Is it your practice to prepare minutes, you know,
23 a day after the meeting, a week after the meeting? Or what is
24 your practice I guess would be a better way to ask the
25 question.

1 A All of the above. I mean, if I have the time, I
2 would prefer to do it sooner. But it's not uncommon due tot
3 press of business I may do them weeks later at times. It
4 would also depend on if the meeting -- if there's any
5 important action taken in the meeting where the existence of
6 the minutes may have some import.

7 Q Okay. And once you prepare the minutes what do you
8 typically do with them?

9 A In the case of the special independent committee my
10 practice was to prepare them and then send them to Chair Gould
11 for his review. And then ultimately we sent them on to the
12 other members for their review.

13 Q If you'll look at the packet in front of you and
14 turn to Exhibit A, which is the declaration. Go the other
15 way. There you go. Take a look at that for a minute? You
16 recognize that document?

17 A Yes.

18 Q Okay. And does that declaration set forth what
19 occurred with regard to the preparation of minutes for the
20 meetings that are reflected on page 2 of the declaration?

21 A Yes.

22 Q And as you said in the declaration, you essentially
23 prepared minutes for all of these meetings, starting with the
24 meeting in November, on November 28, 2017, sometime in late
25 January 2018?

1 A Yes.

2 Q Okay. And as you said in your declaration, the only
3 reason that it took so long -- if you want to say it that way
4 -- to prepare these minutes was because you were busy doing
5 other things?

6 A Yes.

7 Q I know you can't tell the Court -- or can't tell the
8 parties here what companies were involved in a transaction,
9 but were you involved in a rather time-pressing transaction
10 through the month of January?

11 A Yes. We were retained just before Christmas on a
12 significant transaction in which I was lead merger counsel.
13 It had a very short fuse, and so I was very busy in that
14 particular transaction from just before Christmas into January
15 and beyond. As a postscript, that deal was cancelled, so much
16 of the work was for naught, but it took up a lot of time.

17 In addition, I'm co-managing shareholder of the Las
18 Vegas office. We have significant duties with respect to
19 year-end collections, and that took up much of the time toward
20 the end of the year, amongst other demands on my time.

21 MR. FERRARIO: Nothing further, Your Honor.

22 THE COURT: Cross-examination.

23 CROSS-EXAMINATION

24 BY MR. KRUM:

25 Q Good afternoon, Mr. Bonner.

1 A Good afternoon.

2 Q You attended an RDI board meeting on December 29,
3 2017; correct?

4 A Yes. By telephone, as I recall.

5 Q You prepared minutes for that meeting; correct?

6 A Yes.

7 MR. FERRARIO: Your Honor, I'm going to object.
8 This is beyond the scope of this hearing.

9 THE COURT: Overruled.

10 MR. FERRARIO: We're talking now about the board
11 meeting, not the special committee.

12 THE COURT: I know. The one I was told about, as
13 opposed to the one I wasn't told about. Remember we had this
14 discussion on Monday?

15 MR. FERRARIO: Well, you know why you weren't told.

16 THE COURT: No, I still don't know why I wasn't
17 told.

18 MR. FERRARIO: Yes, you do.

19 THE COURT: But okay.

20 MR. FERRARIO: You read the minutes.

21 THE COURT: I have now read the minutes.

22 Mr. Krum, you may continue.

23 MR. KRUM: Thank you, Your Honor.

24 BY MR. KRUM:

25 Q You prepared those minutes for the December 29 board

1 meeting within days of the meeting; correct?

2 A I participated in them. I would have to double
3 check and see if I was the sole preparer. But I did
4 participate in it.

5 Q Who else participated?

6 A I don't know. I'd need to check.

7 Q Those minutes were prepared on an expedited basis;
8 right?

9 A Yes.

10 Q For use in litigation; correct?

11 A No. They were prepared because an action was taken
12 by the board.

13 Q Well, they weren't approved -- in fact, they weren't
14 submitted to the board for approval until much later; correct?

15 A They were -- the minutes themselves were approved at
16 a subsequent meeting of the board.

17 Q So the only use to which those minutes were put
18 within a week or so of the meeting was to be an exhibit in a
19 motion filed in this case; correct?

20 A I don't know if that was the only use. They were
21 prepared in the normal course of business of maintaining
22 records of the company.

23 Q Is it your testimony, Mr. Bonner, that minutes of
24 RDI board meetings are ordinarily prepared within days of the
25 meetings?

1 A That's not my testimony. What I said is they were
2 -- minutes were maintained in the normal course of the
3 business of the company.

4 Q Directing your attention to the December 29 board
5 meeting, there were matters characterized as ratification that
6 were raised; correct?

7 A Yes.

8 Q And in your own terms, if you would, succinctly, if
9 you can, just describe what those matters were so that I can
10 use some of your words to refer to them.

11 A There was a matter put on the agenda of the board of
12 directors. The issue was with respect to the fact that due
13 to, as I understand it, recent rulings of this Court, certain
14 members of the board were dismissed. And these are my words,
15 not legal words, so you can correct me if I misstate this;
16 but, as a result, the conclusion was that there were a number
17 of directors who would be deemed independent for certain
18 purposes. As a result, a matter was put on the agenda to
19 determine whether it was appropriate to ratify certain actions
20 of the board pursuant to Nevada statute.

21 Q The actions in question were two different sets of
22 actions that were taken in 2015; right?

23 A I don't remember the exact dates, but, yes, they
24 were prior actions taken by the board.

25 MR. KRUM: Your Honor, may I approach?

1 THE COURT: You may.

2 Somebody's cell phone is too close to the
3 microphones.

4 MR. FERRARIO: What document are you looking at?

5 MS. LEVIN: P-1.

6 MR. FERRARIO: Okay.

7 MR. KRUM: Plaintiff's Exhibit 1, Counsel.

8 THE COURT: Dulce, do you have their stack? I'll
9 hand it to Mr. Bonner.

10 Mr. Bonner, here's their stack of exhibits. Counsel
11 says this is P-1.

12 BY MR. KRUM:

13 Q Mr. Bonner, do you recognize that document?

14 A What you handed me, or what the Judge handed me? I
15 just want to get to the right page.

16 Should I be referring, Your Honor, to the one handed
17 me, or the one Mr. Krum handed me?

18 THE COURT: If they're the same, it doesn't matter.
19 If they're not, then I need to know that.

20 THE WITNESS: It looks like they have the same
21 numbering at the bottom --

22 THE COURT: Okay.

23 THE WITNESS: -- this 918, the last three digits.

24 THE COURT: You can look at whichever is easier for
25 you.

1 THE WITNESS: Okay. Great.

2 BY MR. KRUM:

3 Q Mr. Bonner, do you recognize that document?

4 A Yes.

5 Q What is it?

6 A It's -- well, it's an email addressed to Ellen
7 Cotter from Marsha Weitsman, who I believe is William Gould's
8 secretary. And it is a letter addressed to Ms. Cotter, and
9 it's I guess typed signatures by Judy Coddington, William Gould,
10 Edward Kane, Douglas McEachern, Michael Wrotniak.

11 Q Did you prepare this document?

12 A I question whether any of this privileged or work
13 product.

14 THE COURT: So I'm assuming not, since we're talking
15 about it now and it's in your hand in my evidentiary hearing.
16 So I'm assuming nobody's expressed a privilege related to it.

17 THE WITNESS: I don't know if I prepared it. I
18 definitely saw it and may have had input in it.

19 BY MR. KRUM:

20 Q Well, directing your attention in particular, Mr.
21 Bonner, to a paragraph numbered 1 and 2, did you prepare those
22 or were you a participant in the preparation of those two
23 paragraphs?

24 A I don't recall if I prepared them. I definitely
25 saw them. I may have participated in the preparation. I just

1 don't recall.

2 MR. FERRARIO: Your Honor, can I renew an objection.
3 This is beyond the scope of this hearing. The scope of this
4 hearing I thought was going to be whether Mr. Gould produced
5 documents and whether Mr. -- it had to do with the timeliness
6 of Mr. Bonner's minutes. If you want to get into a full
7 evidentiary hearing regarding --

8 THE COURT: Oh, no. No.

9 MR. FERRARIO: -- what happened on December 29th,
10 I'm more than comfortable doing that. But I think we should
11 have notice of that.

12 THE COURT: I don't know that we have -- y'all told
13 me we're going to do two hours, so I don't think you can do
14 all of that in two hours. But as there is a difference in the
15 handling of the minutes from the meeting I was told about and
16 the minutes of the meeting I didn't know about it, I think
17 it's relevant for that purpose. I have no idea what P-1 is,
18 because I'm not looking at it because it's not admitted. So I
19 can't give you any more information than that, Mr. Ferrario.
20 If there's something more specific you want to tell me, let me
21 know.

22 MR. FERRARIO: This has nothing to do with minutes.
23 This is going into the substance of the December 27th meeting.
24 And you know what --

25 THE COURT: December 27th, or December 29th?

1 MR. FERRARIO: December 29th. I'm sorry.

2 THE COURT: Okay. The meeting I knew about.

3 MR. FERRARIO: The meeting you knew about. Why
4 would you want to know about the other meeting? Do you want
5 me to -- you want to know about every meeting they have?

6 THE COURT: Only if it's --

7 MR. FERRARIO: Do you want to know about the ones
8 that happened in January when Mr. Bonner and I got undressed
9 for two hours by -- because the trial got continued and I had
10 to explain that to a group of people?

11 THE COURT: I wasn't real happy with it, either,
12 remember?

13 MR. FERRARIO: Yeah. I could tell you it wasn't
14 fun. That's why you've got two meetings in January.

15 THE COURT: Okay.

16 MR. FERRARIO: Having said that --

17 THE COURT: Let me ask Mr. Krum a question.

18 MR. FERRARIO: -- I have no -- okay. Go ahead.

19 THE COURT: Mr. Krum, why are we talking about this
20 now?

21 MR. KRUM: For the same reason, Your Honor, they
22 included information relating to this in their supplemental
23 opposition filed this morning. What happened and what I want
24 to walk through with Mr. Bonner because he was a participant
25 in all of it is that at the December 21 special independent

1 committee meeting the three members of that committee --

2 THE COURT: The December 27th one?

3 MR. KRUM: No. The December 21 one that -- a
4 meeting which you and I did not know until I learned on
5 April 12 when they produced the document for the first time.
6 The three committee members authorized the preparation of
7 Plaintiff's Exhibit 1. So it all ties together. This is
8 working backwards to the meeting --

9 THE COURT: So you're going to establish this
10 relates to the first meeting?

11 MR. KRUM: Yes. That's exactly right.

12 THE COURT: Well, then, could you do that.

13 MR. KRUM: Of course.

14 THE COURT: Thanks.

15 BY MR. KRUM:

16 Q Who else participated in the preparation of
17 Plaintiff's Exhibit 1?

18 A The best of my recollection, Mr. Gould and probably
19 general counsel, Mr. Tompkins.

20 Q Craig Tompkins?

21 A Yes, sir.

22 Q And how did it come to pass that Plaintiff's
23 Exhibit 1 was prepared to begin with?

24 MR. FERRARIO: Can I renew my objection? I don't
25 see any relevance to this hearing on this.

1 THE COURT: Sir, is this --

2 Wait.

3 Was this prepared as a result of what happened at
4 the special investigation committee -- special independent
5 committee's meeting in December?

6 THE WITNESS: No.

7 THE COURT: Thank you.

8 Mr. Krum, it doesn't sound like it's related to that
9 meeting.

10 MR. KRUM: Well, according to all the committee
11 members it is. We'll argue that.

12 THE COURT: I guess.

13 MR. KRUM: Including the testimony in their
14 supplement today.

15 All right. Well, I move to admit this. He's
16 authenticated it.

17 THE COURT: Any objection to P-1? P-1's okay.

18 (Plaintiff's Exhibit 1 admitted)

19 THE COURT: What else have you got, Mr. Krum, with
20 Mr. Bonner?

21 BY MR. KRUM:

22 Q Why was Mr. Tompkins involved in the preparation of
23 the document purportedly sent on behalf of the five directors
24 named at the bottom of Plaintiff's P-1?

25 MR. FERRARIO: Object. Attorney-client privilege,

1 Your Honor.

2 THE COURT: Sustained.

3 BY MR. KRUM:

4 Q You attended the telephonic meeting of the special
5 independent committee on December 21, 2017; right?

6 A Yes.

7 Q How did that meeting come to be scheduled?

8 A It was scheduled by Chairman Gould to receive an
9 update on certain developments.

10 Q How?

11 A How physically? Mechanically?

12 Q Did he send an email?

13 A I don't recall. Typically either he or his office
14 would send out a dial-in. Sometimes I believe our office
15 would send out a dial-in.

16 Q How were the dates and times picked, including in
17 particular for the December 21 meeting?

18 A The December 21 meeting was a further updated
19 briefing for certain events that the committee was monitoring.
20 If you like, I can sort of summarize what those were, but --

21 Q Well, was the subject of ratification discussed at
22 that meeting?

23 MR. FERRARIO: I'm going to object, Your Honor.
24 Attorney-client privilege.

25 THE COURT: Overruled. It's a yes or no.

1 THE WITNESS: Yes.

2 BY MR. KRUM:

3 Q You took notes on your legal pad for the purpose of
4 preparing minutes of that meeting?

5 A Yes.

6 Q Do those notes contain references to the discussion
7 of ratification?

8 A No.

9 Q Why not?

10 A Because there was a attorney-client privilege
11 strategy discussion. I did not maintain minutes of that
12 session.

13 Q At some point, whether at the end of the
14 December 21 special independent committee meeting or at
15 another point in the meeting did one or more of the committee
16 members say in words or substance that they agreed with or
17 approved pursuing the subject of ratification with the full
18 board of directors?

19 MR. FERRARIO: Objection, Your Honor. Attorney-
20 client privilege.

21 THE COURT: Sustained.

22 BY MR. KRUM:

23 Q How did it come to pass, Mr. Bonner, that the
24 subject of ratification was raised with the full board of
25 directors pursuant to Plaintiff's Exhibit 1?

1 MR. FERRARIO: Same objection, Your Honor.

2 THE COURT: How did it come to be raised at the full
3 board meeting, Mr. Krum?

4 MR. KRUM: Yes.

5 THE COURT: Overruled.

6 THE WITNESS: The letter you had me refer to is a
7 request by those directors that it be placed on the agenda.

8 BY MR. KRUM:

9 Q When did --

10 MR. FERRARIO: For the record, Your Honor, that's?

11 THE COURT: P-1.

12 MR. FERRARIO: P-1.

13 THE COURT: I saw him hold it up. But, for the
14 record, it's P-1. Good catch, Mr. Ferrario.

15 MR. FERRARIO: It's taking me a long time, but I'm
16 getting there.

17 BY MR. KRUM:

18 Q When did Mr. Gould determine to make that request?

19 A I don't -- I don't know the exact time. Sometime
20 between December 21 and December 27.

21 Q When did Ms. Coddling determine to make that request?

22 A I don't know.

23 Q Did she indicate at the December 21 meeting that she
24 was agreeable to making a request of the nature made in
25 Plaintiffs' Exhibit 1?

1 MR. FERRARIO: Objection. Attorney-client
2 privilege.

3 THE COURT: Sustained.

4 Mr. Krum, please be careful of the mike.

5 BY MR. KRUM:

6 Q When did Mr. McEachern determine to make the request
7 that's reflected in Plaintiffs' Exhibit 1?

8 MR. FERRARIO: Same objection, Your Honor.

9 MR. KRUM: This is the same question about it raised
10 pursuant to Plaintiffs' Exhibit 1 at the December 29th board
11 meeting.

12 MR. FERRARIO: Outside of the December 21st meeting?
13 You changed your question there.

14 THE COURT: Mr. Krum, can you rephrase your
15 question, please.

16 BY MR. KRUM:

17 Q When did Mr. McEachern agree to raise at the
18 December 29 board meeting or special meeting to be called for
19 the purpose of the matters set out in Plaintiffs' Exhibit 1?

20 MR. FERRARIO: Objection. Attorney-client, Your
21 Honor.

22 THE COURT: Sustained.

23 BY MR. KRUM:

24 Q What communications did you have with Judy Coddling,
25 if any, between December 21 and December 29 with respect to

1 the subject --

2 MR. FERRARIO: The number of communications, not
3 substance; right?

4 MR. KRUM: Yeah.

5 MR. FERRARIO: Oh. You're laying a foundation.

6 MR. KRUM: Foundation.

7 MR. FERRARIO: Okay.

8 THE COURT: How many?

9 THE WITNESS: I apologize. Could you repeat the
10 question.

11 BY MR. KRUM:

12 Q How many communications did you have with Judy
13 Coddling following the December 21 special independent
14 committee meeting and prior to the December 29 board meeting,
15 if any?

16 A I don't recall. And the answer could be none. I
17 just don't recall.

18 Q Same question with respect to Mr. Gould.

19 A I would say I had at least one communication with
20 Mr. Gould during that period of time.

21 Q Do you recall what that was, meaning what the
22 subject matter was?

23 THE COURT: And this is do you recall, yes or no.

24 THE WITNESS: Generally, yes.

25 //

1 BY MR. KRUM:

2 Q Without disclosing the substance of the
3 communication, what was the subject matter or what were the
4 subject matters?

5 A The scheduling of the request that this be placed on
6 the agenda.

7 Q You're referring to the request embodied in
8 Plaintiffs' Exhibit 1?

9 A Yes.

10 Q Are you aware of any communications between or among
11 any of the five directors listed at the bottom of Plaintiffs'
12 Exhibit 1 regarding the subject of ratification, other than at
13 the December 21 special independent committee meeting and the
14 December 29 board meeting?

15 A I have no recollection at the moment. I don't know
16 if I ever would have had any knowledge of that.

17 Q If you look at the exhibit binder that Mr. Ferrario
18 used -- no, I'm sorry. He didn't bring your attention to
19 that.

20 THE COURT: So, sir, while he's looking let me ask
21 the elephant-in-the-room question for me. Why was one set of
22 minutes prepared so quickly, and the other set of minutes was
23 delayed by the press of business?

24 THE WITNESS: Great question. I'm happy to answer
25 it, actually. The action of the board on December 29 was

1 actually a decision of the board that had -- it was a decision
2 of the board that had some consequence. The committee
3 meeting, the special independent committee meetings, there
4 were several of them, were basically updates. There's a
5 series of updates of special committee where the special
6 committee was getting updates on status of some potential
7 settlements of this either this action or related actions.
8 There were significant concerns about the timing of the trial,
9 directors were trying to make plans. So there were several
10 update special independent committee meetings. The
11 independent committee is charged with overseeing the company's
12 role, you know, with respect to the derivative litigation. So
13 these were basically updates. They were typically 20, 30, 40
14 minutes long. And there was no formal action taken in any of
15 these, so they didn't have any particular consequence. I just
16 simply had a big stack of materials. I knew I'd get to them,
17 and that's absolutely the only reason they didn't get prepared
18 sooner.

19 THE COURT: But the board meeting, because, in your
20 words, had consequences to it, that was put on the front
21 burner to make sure that they were typed and distributed?

22 THE WITNESS: There's a formal action of the board
23 taken, and so there's a legal consequence to what that board
24 did. The special independent committee meetings were merely
25 update status calls, if you will.

1 THE COURT: Okay. Thank you.

2 Mr. Krum.

3 BY MR. KRUM:

4 Q What was the consequence of the actions taken at the
5 December 29 board meeting?

6 A A ratification of the acts that were considered at
7 that time.

8 Q And the minutes were needed to do what?

9 A Memorialize the action taken.

10 Q Why?

11 A Good corporate practice.

12 Q So they were prepared on an expedited basis for the
13 purpose of putting them in the minute book?

14 A They were prepared on an expedited basis to
15 memorialize the action taken by the board of directors, as
16 opposed to a status conference call that had no legal
17 consequence.

18 Q The action needed to be memorialized on an expedited
19 basis why?

20 A Because there was a particular import to that
21 action.

22 Q When did RDI start preparing minutes on an expedited
23 basis because the minutes memorialized an action?

24 A You mischaracterize what I said, and you
25 mischaracterize the policy of Reading. There is no such

1 policy. The intent is to prepare the minutes when you can.
2 import, whether it's a loan closing, a transactional approval,
3 something that has some legal consequence, you typically
4 prepare those resolutions quite quickly.

5 Q What was the particular legal import in this
6 instance?

7 A The ratification of the matters that were considered
8 at the December 29 meeting.

9 Q And is it your testimony, Mr. Bonner, that the
10 existence of minutes had some legal import?

11 A Well, no. I think as you probably know, the board's
12 vote constitutes the action of the board. The minutes are
13 merely a memorialization of that. But where there's something
14 that had some significance you typically prepare the
15 resolutions quite quickly.

16 Q To what use have those minutes been put since they
17 were drafted?

18 MR. FERRARIO: We used them in the motion.

19 THE COURT: Yeah. We all know that. But Mr. Bonner
20 has to now say that.

21 MR. FERRARIO: He's the minute guy. I'm the
22 litigator.

23 THE COURT: He may not -- he may not know that,
24 because he's a transactional guy.

25 MR. FERRARIO: You're right.

1 THE COURT: He does business stuff.

2 MR. FERRARIO: Okay.

3 THE COURT: He may not know that. All the rest of
4 us know.

5 MR. FERRARIO: We all know what happened.

6 THE COURT: That was why you required them so
7 quickly, Mr. Ferrario.

8 MR. FERRARIO: Who cares?

9 THE COURT: So you could come and wave it and say,
10 hey, Judge, I win now.

11 MR. FERRARIO: That's exactly what I did. Thank
12 you. Okay. This is fascinating, but --

13 BY MR. KRUM:

14 Q Do you have the question in mind, Mr. Bonner, or do
15 you want me to repeat it?

16 THE COURT: You guys are killing me.

17 THE WITNESS: If you don't mind, would you repeat
18 the question?

19 BY MR. KRUM:

20 Q To what use were the minutes of the December 29
21 board meeting put?

22 A Number one, they memorialized the ratification of
23 the board of directors of two events. Number two, I
24 understand they were in fact the subject of a motion filed in
25 this case.

1 Q Thank you, Mr. Bonner. Directing your attention,
2 Mr. Bonner, back to the December 21 meeting of the special
3 independent committee, which, if any, of those three committee
4 members had been told beforehand that the subject of
5 ratification would be discussed at that meeting?

6 MR. FERRARIO: Objection. Attorney-client, Your
7 Honor.

8 THE COURT: We're only identifying individuals with
9 whom he had a communication, not the nature of the
10 communication?

11 MR. FERRARIO: Before the meeting.

12 MR. KRUM: Only the subject matter.

13 THE COURT: Before the meeting.

14 MR. FERRARIO: Okay. All right.

15 THE COURT: So, sir, you could answer it or just
16 give me names if you remember.

17 THE WITNESS: There's a -- I don't know if I'm
18 permitted to ask Mr. Ferrario a question. There's an issue
19 relative to the way the question --

20 THE COURT: If you think there is a privilege
21 related to it, you are absolutely entitled to -- under the
22 Harvey Whittemore decision to ask Mr. Ferrario questions about
23 the extent and claim of the privilege. And I will take a
24 break for you to do so. And you will not be subject to
25 interrogation about that subject.

1 Did I summarize it correctly?

2 MR. FERRARIO: That's pretty good.

3 THE COURT: Okay. You know, I can take direction
4 from the Nevada Supreme Court.

5 MR. FERRARIO: I'm glad you started laughing.

6 THE WITNESS: So may I ask Mr. --

7 THE COURT: Do you need to talk to Mr. Ferrario?

8 THE WITNESS: For one minute.

9 THE COURT: We're going to take a short break --

10 THE WITNESS: One minute.

11 THE COURT: -- for you to consult with Mr. Ferrario
12 on a privilege issue.

13 (Court recessed at 3:10 p.m., until 3:13 p.m.)

14 THE COURT: Mr. Bonner, have you had an opportunity
15 to discuss with Mr. Ferrario whether you need to assert any
16 privileges?

17 THE WITNESS: Yes, Your Honor.

18 THE COURT: Okay.

19 BY MR. KRUM:

20 Q So the question --

21 MR. KRUM: Can I ask that it be read back?

22 THE COURT: Nope.

23 MR. KRUM: That's right.

24 BY MR. KRUM:

25 Q Can you answer the question, Mr. Bonner, without

1 disclosing privilege?

2 MR. FERRARIO: On topic, Mark -- on the topic of
3 ratification, yes, he can. Just that.

4 THE WITNESS: And I'm sorry. Could you now ask the
5 question again or have it read back?

6 THE COURT: I think we were on the names of the
7 people who may have been talked to about ratification before
8 the meeting.

9 MR. KRUM: Thank you.

10 MR. FERRARIO: December 21st meeting, yes.

11 MR. KRUM: Right.

12 THE COURT: The 12/21 meeting.

13 BY MR. KRUM:

14 Q So with --

15 THE COURT: Did I do good?

16 BY MR. KRUM:

17 Q Did you or anyone else at Greenberg Traurig,
18 including Mr. Ferrario, have communications with any of the
19 special independent committee members prior to the December
20 21, 2017, meeting about the subject of ratification?

21 THE COURT: And this is a yes or a no.

22 THE WITNESS: Yes as to me. I can't speak as to
23 other GT lawyers.

24 BY MR. KRUM:

25 Q With whom did you have such communications?

1 THE COURT: And that's just identification of the
2 individuals.

3 THE WITNESS: The best of my recollection, we may
4 have had a conversation -- I may have had a conversation with
5 Mr. Gould. That's all I recall.

6 BY MR. KRUM:

7 Q One conversation, or multiple conversations with Mr.
8 Gould?

9 A Don't recall.

10 Q Over what period of time did you have those
11 conversations?

12 A Days, one or two days.

13 Q Okay. And what time frame? Was it December, was it
14 November, was it earlier?

15 A Oh. No. It would have been just prior to the
16 December 21 meeting.

17 Q Not speaking to the substance, did either of those
18 communications speak to a topic of a formal request such as
19 Plaintiffs' Exhibit 1?

20 MR. FERRARIO: Objection. Attorney-client.

21 THE COURT: Sustained.

22 BY MR. KRUM:

23 Q Each of Gould, Coddling, and McEachern at the
24 December 21 special independent committee meeting agreed that
25 ratification would be formally pursued with the full RDI

1 board; correct?

2 MR. FERRARIO: Same objection, Your Honor.

3 THE COURT: Sustained.

4 MR. KRUM: I'm not asking if they gave him a
5 direction. I'm asking merely if they took a position.

6 THE COURT: I understand what you're asking, Mr.
7 Krum. I've sustained the objection on the privilege issue.

8 BY MR. KRUM:

9 Q Did you have any discussions prior to the
10 December 29 board meeting about the subject of ratification
11 with Mr. Wrotniak?

12 A I've no recollection of any.

13 Q With Mr. Ferrario?

14 A I do not know.

15 Q Do you recall having a telephone call with Mr.
16 Ferrario and Mr. Wrotniak and Ms. Coddling in December shortly
17 before the December 29 board meeting at which the subject of
18 ratification was discussed?

19 THE COURT: And that's a yes or no.

20 THE WITNESS: I don't have any particular -- no.

21 BY MR. KRUM:

22 Q Were any documents provided to the committee members
23 either in anticipation of or as a result of the December 21,
24 2017, special independent committee meeting?

25 THE COURT: Did you give them any documents? Is

1 that the question?

2 MR. FERRARIO: And you're talking about the special
3 independent committee?

4 THE COURT: The 12/21 meeting.

5 MR. KRUM: Right.

6 MR. FERRARIO: Prior to that meeting, or --

7 THE COURT: He said prior to or as a result of. Do
8 you want him to break it up?

9 MR. FERRARIO: Yeah.

10 THE COURT: Or is the answer just no?

11 MR. FERRARIO: I think the answer's no, but go
12 ahead.

13 THE WITNESS: No.

14 BY MR. KRUM:

15 Q Are you excluding Plaintiffs' Exhibit 1?

16 A Yes.

17 THE COURT: And that's the December 27th email.

18 THE WITNESS: No, I'm not excluding it.

19 BY MR. KRUM:

20 Q So is it your testimony, Mr. Bonner, that
21 Plaintiffs' Exhibit 1 is unrelated to the conversations
22 concerning ratification at the December 21, 2017, special
23 independent committee meeting?

24 MR. FERRARIO: Objection. Attorney-client, Your
25 Honor. He's trying to back door into this.

1 THE COURT: Sustained.

2 BY MR. KRUM:

3 Q Were any documents, other than your handwritten
4 notes about what you've already testified, used at or created
5 in connection with -- strike that.

6 Did you have discussions with McEachern, Doug
7 McEachern in the fall of 2017 about the subject of
8 ratification?

9 A Not that I recall.

10 Q Direct your attention, Mr. Bonner, to Plaintiffs'
11 Exhibit 3.

12 MS. HENDRICKS: Mark, our exhibits aren't marked.
13 Can you tell us what you're referring to?

14 MR. FERRARIO: Do you have a Bates number?

15 THE COURT: Sir, I'm going to hand you mine, because
16 mine is tabbed and I'm not writing on it.

17 MR. FERRARIO: Oh. The redacted minutes?

18 MR. KRUM: Yes.

19 MR. FERRARIO: Thank you.

20 THE COURT: I've given him my copy to speed up the
21 process, guys.

22 MS. HENDRICKS: Thank you.

23 BY MR. KRUM:

24 Q Mr. Bonner, do you recognize the page of redacted
25 minutes -- page and a half, I guess, on the second and third

1 pages of Plaintiffs' Exhibit 3?

2 A Yes.

3 Q You prepared those; correct?

4 A Yes.

5 Q These are the very minutes about which you testified
6 in response to some questions from Mr. Ferrario; correct?

7 A Yes.

8 MR. KRUM: Move to admit.

9 THE COURT: Any objection to P-3?

10 MR. FERRARIO: No objection.

11 THE COURT: Admitted.

12 (Plaintiffs' Exhibit 3 admitted)

13 BY MR. KRUM:

14 Q Okay. And you provided these minutes to Mr. Gould
15 on or about January 30, 2018; is that correct?

16 A Yes.

17 Q How?

18 A Email.

19 Q Was anyone copied on that email?

20 A I have to look at the email. May I?

21 Q Of course.

22 A Is there a copy? I think it's --

23 THE COURT: And if you find it, sir, if you'd tell
24 us the Bates numbers on the bottom.

25 THE WITNESS: What I'm looking at doesn't have a

1 Bates number. It's --

2 THE COURT: Is it under a tab?

3 MS. HENDRICKS: If I can help, it would be
4 Defendant's Exhibit 1.

5 THE COURT: So --

6 MS. HENDRICKS: Or Exhibit A. Excuse me.

7 THE COURT: Defendant's A. It's attached to the
8 declaration?

9 MS. HENDRICKS: Correct.

10 THE COURT: Okay. Sir, after you've refreshed your
11 recollection, let us know.

12 THE WITNESS: This does not appear that there's a
13 cc. I don't have any recollection that I would have sent it
14 to anybody else.

15 BY MR. KRUM:

16 Q And you heard back from Mr. Gould within a week
17 or so with -- in response to your sending him Plaintiffs'
18 Exhibit 3?

19 A Yes.

20 Q And you sent it on to Ms. Coddington and Mr. McEachern?

21 A Yes.

22 Q You did that on or about February 10; is that right?

23 A Yes.

24 Q How did you transmit it to them? Was that by email,
25 as well?

1 A Do you need me to indicate how I'm refreshing my
2 recollection?

3 Q Please.

4 A I'm looking at the email that's attached to my
5 declaration. It says at the bottom "Opposition Exhibit Page
6 077." And I see it's an email from me to William Gould,
7 Douglas McEachern, and Judy Coddling. And it doesn't indicate
8 any cc.

9 Q Directing your attention back, Mr. Bonner, to your
10 prior testimony about people with whom you shared either
11 Plaintiffs' Exhibit 1 or a draft of it, Tompkins was one of
12 those people; correct?

13 A Yes.

14 Q Did you send him a draft, the final version, or
15 both?

16 A I don't recall if I reviewed a draft, if I prepared
17 a draft. I just don't know. So I don't know if I prepared
18 it, somebody else prepared it. I just don't recall.

19 Q Did you also share Plaintiffs' Exhibit 1 or a draft
20 of it with Ellen Cotter?

21 A I don't recall. She was the ultimate recipient, I
22 guess, but --

23 Q Mr. Bonner, I'd ask you to take a look at
24 Plaintiffs' Exhibit 2, please.

25 MR. KRUM: Counsel, that's your February 22

1 privilege log.

2 THE COURT: It should be on the tab that says P-2.

3 MR. KRUM: I'd move to admit this.

4 THE COURT: Any objection to P-2, the privilege log?

5 MR. FERRARIO: Your Honor, it's authentic and
6 obviously it's our privilege log. I don't know what relevance
7 it has to this --

8 THE COURT: That's a different issue. We'll find
9 out in a minute.

10 So it's admitted.

11 (Plaintiffs' Exhibit 2 admitted)

12 THE COURT: What page do you want to send him to, or
13 what entry?

14 BY MR. KRUM:

15 Q Mr. Bonner, I direct your attention to page 32,
16 using the numbers at the bottom of the document where -- so
17 I'd be page 32 of 37. Let me know when you have that.

18 Do you have it, sir?

19 A Yes.

20 Q Okay. If you would, please, I direct your attention
21 to the fourth entry. Moving top to bottom on the left-hand
22 side, it ends with the number 60780. Do you have that?

23 A Yes.

24 Q This lists a document from you to Mr. Tompkins with
25 a copy to Ellen Cotter and others, including Mr. Gould and Mr.

1 Ferrario. You see that?

2 A I do.

3 Q You see that the date is December 26?

4 A I do.

5 Q See that the re line, apparently, on the email said,
6 "Draft for your review"?

7 A I do see that, yes.

8 Q See the description of it -- for the privilege log
9 purposes is "Communication regarding notice and agenda for
10 upcoming board meeting? See that?

11 A I do.

12 Q You recall you were involved in the preparation of
13 the notice and agenda for the board meeting; right? The
14 December 29 board meeting.

15 A I was involved in the -- in that meeting. I don't
16 recall if I prepared the notice, but --

17 Q To what use, if any, was Plaintiffs' Exhibit 1 put
18 in the preparation of any of the board materials, including in
19 particular the agenda?

20 MR. FERRARIO: Could you flip that around and just
21 ask, was it put to any use, so I can see if there's any --

22 MR. KRUM: Of course.

23 MR. FERRARIO: -- attorney-client.

24 BY MR. KRUM:

25 Q Was Plaintiffs' Exhibit 1, the December 27 Gould

1 email, put to any use in preparation of the board package,
2 including in particular the agenda?

3 THE COURT: And that's a yes or no. Was it put to a
4 use?

5 THE WITNESS: Presumably, yes.

6 BY MR. KRUM:

7 Q I direct your attention, Mr. Bonner, to page 1 of
8 this document. Page 1 of 37.

9 THE COURT: You're back on the privilege log?

10 MR. KRUM: Yes, back on the privilege log.

11 THE COURT: That's P-2.

12 MR. KRUM: Thank you.

13 BY MR. KRUM:

14 Q Do you have that?

15 A 1 of 37?

16 Q That's correct.

17 A Yes.

18 Q I direct your attention, Mr. Bonner, to the next-to-
19 last entry on the left-hand side. It ends in 59792, I think.

20 Do you have that?

21 A Yes.

22 Q Do you see that's an email from you to Mr. Gould
23 with copies to others?

24 A I see that, yes.

25 Q You see the description is "Fwd: For Bill Gould to

1 sign"? That apparently is the re line; is that right?

2 A I assume it is just by looking at the top column.

3 Q Okay. And do you see on the right-hand side the
4 description for privilege log purposes is "Communication
5 regarding draft letter re special board meeting"?

6 A I see that, yes.

7 Q Okay. So did you on or -- on December 27th send Mr.
8 Gould an email concerning a draft letter for a special board
9 meeting?

10 A Based on this description, yes.

11 Q Does that comport with your independent
12 recollection?

13 A I don't know if I remember this specific email, but
14 generally I do. Generally the whole --

15 Q That's what I'm asking. So I direct your attention
16 on the same page, Mr. Bonner, two entries left of the entry
17 ending in 68, I believe the numbers are. Do you have that?

18 A I do.

19 Q Do you see that has the -- apparently the re line is
20 "For Bill Gould to sign." Do you see that?

21 A I do.

22 Q And the description is the same as the last one at
23 which we looked, "Communication regarding draft letter re
24 special board meeting"; right?

25 A I see that, yes.

1 Q You see this is an email from you to Craig Tompkins
2 and others?

3 A I see that, yes, indicated in the box.

4 Q So did you -- did you have email communications with
5 Mr. Tompkins on or about the 27th of December with respect to
6 the matters reflected in the re line of the privilege
7 description?

8 A Based on this document I guess I did, yes.

9 Q Did you disclose to Mr. Gould that you had had
10 communications with Mr. Tompkins about a draft letter
11 regarding a special board meeting?

12 MR. FERRARIO: Objection. Attorney-client, Your
13 Honor.

14 MR. KRUM: Yes or no, Your Honor.

15 THE COURT: Sustained.

16 BY MR. KRUM:

17 Q Did you have any communications -- strike that.

18 Did you ever have any discussions with any or all of
19 the members of the special independent committee about the
20 subject matter of Greenberg Traurig jointly representing the
21 company and the special independent committee?

22 MR. FERRARIO: Objection, Your Honor. That's beyond
23 the scope of this hearing, calls the attorney-client --

24 THE COURT: Sustained.

25 MR. KRUM: Your Honor, it actually goes to exactly

1 what's transpired here.

2 THE COURT: No.

3 BY MR. KRUM:

4 Q Was there a point in time, Mr. Bonner, when you
5 learned or were told that documents in your possession needed
6 to be reviewed for purposes of possible production in this
7 litigation?

8 A Yes.

9 Q When was that?

10 A Sometime in -- sometime, as I recall, in January,
11 February.

12 Q What did you do, if anything, after you were told
13 that to comply with whatever you were told?

14 A I think we had people in the department look for
15 some documents.

16 Q And when you say the department to what are you
17 referring?

18 A I'm sorry. The legal -- corporate -- our corporate
19 group in the firm.

20 THE COURT: The not litigators part?

21 THE WITNESS: Yes, Your Honor.

22 THE COURT: Those of you who aren't actually
23 litigating all the time?

24 THE WITNESS: Yes.

25 THE COURT: Okay.

1 BY MR. KRUM:

2 Q What did you do, if anything, to make your
3 electronically stored information, meaning emails and draft
4 documents, available to be searched for the purposes of
5 possible production in this case?

6 A My recollection is that the IT people were given
7 access electronically so they could conduct whatever search
8 they --

9 Q Did you give them directions as to what it was for
10 which they should search?

11 A I think they were given a broad search, you know,
12 scope. I didn't establish the scope. Others did.

13 Q What's the basis for the testimony you just gave?

14 A Just recollection.

15 Q How did you learn that if you didn't establish the
16 scope?

17 MR. FERRARIO: What do you mean? He didn't
18 establish the scope.

19 THE COURT: How does he remember who set the ESI
20 search terms and the scope of custodians; right? How does he
21 know that? He says he recalls generally. He just ran into
22 somebody in the hallway, somebody told him, he got an email.
23 Those are all kinds of options for the answer. Or, I don't
24 remember, which is also an option.

25 THE WITNESS: My recollection is either I was asked

1 for permission or it was indicated to me that there was going
2 to be a scope, some kind of search electronically. And I
3 can't remember if I had to consent or not. But if I was asked
4 for consent, I did. I may have just been told it was going to
5 happen.

6 BY MR. KRUM:

7 Q Do you know, Mr. Bonner, whether that search --
8 strike that.

9 THE COURT: There's now a Greenberg Traurig Privacy
10 Act.

11 MR. KRUM: I'm not going there. I am not going
12 there.

13 THE COURT: We're not going to talk about data
14 privacy?

15 MR. KRUM: Oh, no.

16 THE COURT: Oh, no. Okay. Come on.

17 MR. KRUM: I didn't then, either, you'll recall.

18 BY MR. KRUM:

19 Q Were your handwritten notes from special independent
20 committee board meeting minutes made available to the people
21 conducting the search?

22 A They were not -- they were not electronically
23 stored, so no.

24 Q What about drafts of documents, such as drafts --
25 strike that.

1 Were the drafts -- was the draft you prepared of the
2 December 21, 2017, special independent committee meeting
3 minutes made available to the people who were searching for
4 documents for production in this case?

5 A Again, as I recall, they had carte blanche
6 electronic access to anything in the system. So they would
7 have had access to anything I have.

8 Q And the same would be true for the file version of
9 those minutes that you sent to Ms. Coddling and Mr. McEachern
10 in early February; correct?

11 A I suppose so. Again, I don't know what the various
12 time frames of the searches were. But if the searches were
13 done at a time those documents existed, then they would have
14 picked them up.

15 Q Do you have any understanding as to when the
16 searches were conducted?

17 A I don't.

18 Q Do you have any understanding as to what the time
19 frame of your documents was that -- which documents were
20 searched?

21 A I really don't. I just recall generally it
22 happening.

23 Q Did you have any discussions with anybody who
24 conducted the search and review of your hard-copy documents or
25 your electronically stored information?

1 A Again, I recall the inquiry, I recall being asked to
2 be sure that if there's anything -- you know, that these
3 searches were coming, and we gave permission to access
4 whatever they needed to.

5 MR. KRUM: Your Honor, if I may have a moment.

6 THE COURT: You may.

7 (Pause in the proceedings)

8 MR. KRUM: I have nothing further, Your Honor.

9 THE COURT: Thank you.

10 Mr. Ferrario, did you have any more?

11 MR. FERRARIO: Just one.

12 THE COURT: You know now dangerous that is.

13 MR. FERRARIO: This is off the wall.

14 REDIRECT EXAMINATION

15 BY MR. FERRARIO:

16 Q During the break it was brought to my attention that
17 a tax issue reared its head toward the end of 2017. Do you
18 recall that?

19 A Yes.

20 Q Now, I think we're all aware that President Trump
21 passed the tax bill; right?

22 MR. KRUM: Objection. Beyond the scope.

23 THE COURT: Overruled.

24 BY MR. FERRARIO:

25 Q Right?

1 A Yes.

2 Q And Mr. Krum asked you a number of questions
3 regarding why these meetings were prepared, you know,
4 regarding the 29th meeting, you know, within a week or so. Do
5 you remember the tax issue coming up?

6 A Yes.

7 Q And is that what prompted the immediate -- primarily
8 what prompted the immediate preparation of these meeting
9 minutes?

10 A That was the biggest driver of the urgency.

11 Q Was it the biggest driver of the meeting itself?

12 A I believe it was the principal purpose for which the
13 meeting was called.

14 Q And there were certain actions that need to be taken
15 in order for the company to avail itself of certain tax
16 benefits; correct?

17 A Absolutely. Yes.

18 MR. FERRARIO: Thank you. Nothing further.

19 THE COURT: Anything else, Mr. Krum?

20 MR. KRUM: Yes, Your Honor.

21 RE-CROSS-EXAMINATION

22 BY MR. KRUM:

23 Q The December 29 board meeting previously had been
24 scheduled for the purpose of the compensation, or, as Mr.
25 Ferrario says, tax issues being taken up; correct?

1 A Yes.

2 Q And what happened is the matters we referred to as
3 ratification were added to the agenda a day or two before the
4 meeting; correct?

5 A They were added to the agenda. Whether it was a day
6 or two, that sounds about right.

7 MR. KRUM: Okay. Thank you, Your Honor.

8 THE COURT: Anything else?

9 MR. KRUM: Nope.

10 THE COURT: Thank you, Mr. Bonner. Have a nice day.
11 Leave before they change their mind.

12 THE WITNESS: Thank you, Your Honor.

13 THE COURT: Have a nice day. Travel safely.

14 Mr. Ferrario, next witness.

15 MR. FERRARIO: That's it.

16 THE COURT: Mr. Krum, do you have any additional
17 witnesses that you'd like to call at this time?

18 MR. KRUM: Well, Your Honor, the answer is it
19 depends how you want to handle this. The testimony offered
20 today is, as I think I suggested previously, in at least one
21 respect inconsistent with deposition testimony we've taken
22 before.

23 THE COURT: Happens all the time. Witnesses testify
24 differently about recollections all the time. And that goes
25 to their credibility.

1 MR. KRUM: Well, to answer your question, though, I
2 don't think it's necessary to take the time of everyone here
3 to ask Mr. McEachern and Ms. Coddling to come testify, but
4 we'll need an opportunity to bring to your attention their
5 deposition testimony, as well as that of Mr. Gould, that's
6 inconsistent with what we heard today.

7 THE COURT: I anticipate we will have that
8 opportunity before long.

9 All right. So that concludes the evidence that I am
10 hearing at this evidentiary hearing. I have had -- before we
11 close the hearing, Exhibit B was admitted, and Exhibit P-1,
12 P-3, and P-2 were admitted.

13 MR. FERRARIO: I would ask for A, as well, Your
14 Honor. It's Mr. Bonner's declaration.

15 THE COURT: Any objection to the declaration being
16 admitted, since he was subject to cross-examination?

17 MR. KRUM: No objection, Your Honor.

18 THE COURT: A will be admitted, as well.

19 (Defendants' Exhibit A admitted)

20 THE COURT: Any additional exhibits anyone wants to
21 offer before I let you argue?

22 All right. Since all of the motions except one were
23 yours, Mr. Krum, I'm going to let you have the first bite at
24 any additional argument, remembering it's only Wednesday and I
25 remember what you said on Monday.

1 MR. KRUM: Well, Your Honor, let me ask about the
2 process.

3 THE COURT: I've already written down what I'm going
4 to do. You may be able to change my mind, but I've written
5 down what I'm going to do.

6 Mr. Ferrario is unlikely to be able to change my
7 mind on what I'm going to do.

8 MR. KRUM: Well, two things, Your Honor. First of
9 all --

10 MR. FERRARIO: That must mean I'm winning.

11 THE COURT: Not necessarily.

12 MR. KRUM: First of all, Your Honor, the point Ms.
13 Levin made at the outset is meaningful here. It is not only
14 the motion directed at Mr. Gould that may be impacted by the
15 supplemental log that Mr. Gould's going to provide, there's
16 also the motion directed I would say at McEachern and Coddling,
17 but it's also I guess RDI, because Greenberg Traurig prepared
18 the privilege log, withheld the document, and belatedly
19 produced it and so forth. And I say that, Your Honor, not to
20 speak in an open-ended hypothetical way --

21 THE COURT: And that's part of Mr. Cotter's, your
22 client's, motion for omnibus relief, which is also being
23 argued at the same time. So I've got you arguing two motions
24 right now, the motion to compel that we've heard testimony
25 about, and your motion for omnibus relief, which is what

1 resulted in the scheduling of this hearing.

2 I'm also going to then talk to Mr. Ferrario about a
3 motion that he wants to file. But you've got two issues that
4 are interrelated that we're talking about here that you've
5 asked me for some relief related to. I am prepared to give
6 you some relief related to it in addition to what I've already
7 done today, but I am waiting for you and Mr. Ferrario to
8 finish arguing before I tell you what I'm going to do.

9 MR. KRUM: Right. The point I'm attempting to make
10 and I didn't conclude, Your Honor, is, as we pointed out in
11 our reply, I think it was, in support of the motion directed
12 at Mr. Gould, his privilege log listed 11 documents that had
13 not been listed on the February 22 privilege log produced by
14 Greenberg Traurig, nine of which were email communications to
15 or from Greenberg Traurig lawyers.

16 Now, today for the first time there was -- Ms.
17 Hendricks addressed that point, and she made comments that
18 were difficult to follow about de-duplication and email chains
19 and so forth.

20 THE COURT: I followed it perfectly.

21 MR. KRUM: Well, the point -- my point, Your Honor,
22 is we can't respond to that. They've offered nothing in
23 writing, they've made no reference to privilege log.

24 THE COURT: You're going to have an opportunity to.

25 MR. KRUM: Okay.

1 THE COURT: But you've got to let me get to my part
2 about the ruling.

3 MR. KRUM: Yes. Okay.

4 THE COURT: Is there anything else you want to tell
5 me?

6 MR. KRUM: Well, that's the procedural stuff.

7 THE COURT: Okay.

8 MR. KRUM: And so you'd like me to speak to the
9 motions directed at Gould in the omnibus motion?

10 THE COURT: If you have anything else you'd like to
11 add.

12 MR. KRUM: I do.

13 THE COURT: Okay.

14 MR. KRUM: Very briefly on the Gould motion. The
15 production today, on the 2nd of May, of documents and the
16 promise today, on the 2nd of May, of a second supplemental
17 privilege log obviously is woefully untimely. According to
18 Mr. Gould, it was two or three months ago, and he was unclear
19 about that, and it could have been more, because, after all,
20 it was January when our subpoena to him was served that the
21 issue of lost emails arose. He said it was after the
22 subpoena. So probably February.

23 As you saw from the email exchanges, there was no
24 indication by his counsel of any issue of the nature that they
25 disclosed for the first time at his April 5 deposition. I

1 would have expected and I'm flabbergasted we didn't receive
2 what was given today and more, including a declaration or
3 something from the IT people in March, if not February.

4 So the relief we request on that is all
5 appropriately sought.

6 And now to speak to the other motion. As I said
7 already, the uncertainty occasioned by the debacle with the
8 Gould documents, it also adds uncertainty as to the omnibus
9 motion. The testimony today as I understood it said, we
10 didn't put anything in the minutes -- which haven't been put
11 on a privilege log, so we don't know, Your Honor, what the
12 wholly redacted December 11, 2017, minutes reference in terms
13 of subjects, including whether they reference the subject of
14 ratification. Presumably there's a line to the effect that
15 the minutes are complete, there was a privileged discussion on
16 the subject of ratification. And if there is no such line and
17 ratification is not mentioned in the minutes, we do not have
18 the issue we thought we had, which is improper withholding of
19 minutes that are responsive, we have that and the issue of
20 what amounts to manipulating the contrived evidence for the
21 purpose of use in litigation.

22 We all do minutes. We all see minutes. Because the
23 subject is privileged doesn't mean the subject isn't
24 identified as one that was discussed. And while Mr. Bonner
25 couldn't speak to that because his comments were privileged,

1 the testimony of each of Gould, Coddington, and McEachern was
2 that the subject of ratification was discussed and they agreed
3 that the matter would be -- the proposed ratifications would
4 be pursued and taken up with the full board. That is in --
5 the Coddington and McEachern testimony to that effect is in the
6 supplemental brief they filed this morning. The Gould
7 testimony was in our motion. And there are emails about this.
8 Well, do the emails mention ratification? Presumably not,
9 because they just say, let's have a meeting. Although was the
10 meeting about ratification? If you listen to Mr. Bonner,
11 either no or he can't speak to it. If you listen to the three
12 committee members, it was.

13 One of the issues, if not the issue, raised in the
14 motion -- in their motion seeking leave to renew their so-
15 called ratification motion for summary judgment is whether
16 there was a good-faith process, whether the directors made an
17 informed decision.

18 THE COURT: Whether they're entitled to protection
19 under the business judgment rule, those kind of things.

20 MR. KRUM: Right. And so what we eventually learned
21 on April 5th because of Mr. Gould's testimony, but not from
22 McEachern or Coddington, is that those three decided on
23 December 11th. But we had no way to ask them the questions
24 about on what basis did they do so because we didn't know
25 about December 11th, that they decided, until Mr. Gould's

1 testimony.

2 THE COURT: You mean December 21st?

3 MR. KRUM: No. I mean December 11th, when the
4 special independent committee meeting met.

5 THE COURT: I thought it met on December 21st.

6 MR. KRUM: I misspoke. You're right. I apologize.

7 THE COURT: Okay.

8 MR. KRUM: So on December 21st they all made that
9 decision. But McEachern was -- anyway, I [unintelligible].

10 So the point, Your Honor, is we have a document that
11 they claim wasn't responsive. I don't know whether it is or
12 not, because we don't have it listed on a privilege log. And
13 we're asking that you order them to do so and that they
14 properly log it and identify the subject matters. It either
15 says ratification and should have been logged, because you
16 already determined it's properly withheld as privileged, so
17 I've got to abide by that, talk about the log, or it omits
18 information.

19 THE COURT: I ruled that after doing an in-camera
20 review of it.

21 MR. KRUM: Right. What we asked, though, Your
22 Honor, that you did not address in your minute order is that
23 they log it. And now, if it doesn't say anything about
24 ratification, then I guess you would deny that request. If it
25 has the sentence it ought to have, which is there was a

1 privileged conversation about the subject of ratification,
2 then it should be logged.

3 THE COURT: It could have a privileged conversation
4 about something else, too.

5 MR. KRUM: I understand that, Your Honor. The
6 question is whether the document as prepared is responsive. I
7 don't know.

8 THE COURT: I understand. Is there anything else
9 you want to tell me?

10 MR. KRUM: So -- I'm sorry, Your Honor. I lost my
11 train of thought.

12 THE COURT: Sorry.

13 MR. KRUM: I'll let Mr. Ferrario speak, and
14 perhaps --

15 THE COURT: Mr. Ferrario.

16 MR. FERRARIO: Well, having listened to you before,
17 you've already made up your mind before I start rambling.

18 THE COURT: Well, I haven't made up my mind, but --

19 MR. FERRARIO: Why don't you tell me what you're
20 inclined to do.

21 THE COURT: -- I have outlined the relief that I
22 intend to grant to Mr. Krum, which may result in other things
23 eventually happening. But I have outlined based on Mr.
24 Bonner's testimony and the testimony of Mr. Gould what it
25 appears now that we have found some information what we need

1 to do.

2 MR. FERRARIO: Why don't you tell me what you need
3 to do, and then maybe I'll respond accordingly.

4 THE COURT: Not me. You guys.

5 MR. FERRARIO: Well, tell me what we need to do, and
6 then -- because I have -- I have a lot to say here, but I
7 might be able to refrain from saying it.

8 THE COURT: All right. I am inclined to order
9 Coddling, McEachern, Gould, Kane, Wrotniak, and RDI to produce
10 all documents which mention the scheduling or the holding or
11 the minutes related to the December 21st special independent
12 committee or relate to the subject matter contained in P-1 or
13 any draft of P-1 or the preparation of P-1 or discuss the
14 subject of ratification, understanding that there may be
15 assertions of privilege that occur.

16 In addition, I will consider whether additional
17 depositions need to be taken after the production of that
18 information once I've seen the volume of the information.

19 MR. FERRARIO: Your Honor, we're comfortable doing
20 that. We're not here to hide anything, okay. And you saw Mr.
21 Gould come and testify, and it's unfortunate he couldn't be
22 here today, but he's sick.

23 THE COURT: It's okay. He was by video.

24 MR. FERRARIO: And we'll be happy to do that. We're
25 not hiding anything.

1 THE COURT: Now that his in box has been located and
2 the --

3 MR. FERRARIO: It hasn't been located.

4 THE COURT: Okay. Now that the historical backups
5 of his in box material have been located --

6 MR. FERRARIO: Mr. Gould learned something new.
7 It's called The Cloud, okay. So we didn't drag you through
8 that, because that would have been like a 45-minute
9 exposition.

10 THE COURT: Yeah. I don't need to know.

11 MR. FERRARIO: Yeah. We're happy to do that, and
12 we're happy to do it on a relatively short time frame.

13 One thing I did want to talk about today is
14 scheduling.

15 THE COURT: I'm not there yet. Let me hear from Mr.
16 Krum so I can --

17 MR. FERRARIO: I'm comfortable with that relief, and
18 I'll just save --

19 THE COURT: Once I say the order then we can talk
20 about scheduling.

21 MR. FERRARIO: -- save my breath on the merits of
22 the motion.

23 THE COURT: You then have a -- you have a motion you
24 need to argue.

25 Mr. Krum.

1 MR. KRUM: Your Honor, that's all appropriate, and I
2 concur with your assessment that we need to see what the
3 result is to see what, if anything else, we need to do.

4 THE COURT: Okay. So the motion for omnibus relief
5 is granted in part. The individuals I outlined will produce
6 the information that I outlined. If there is an issue related
7 to the logging of any of that information on a privilege log,
8 given the definition of the scope of the relevant information
9 I have ordered produced, I would appreciate you addressing
10 those among yourselves if there's an issue, and then I will be
11 happy to rule on it if you need me to.

12 With respect to Cotter's motion to compel production
13 of documents and for privilege, that has been covered under
14 the ruling that I've made today. Part of the alternative
15 relief was that I require additional information to be
16 provided.

17 And with respect to the motion for leave to file
18 summary judgment motion --

19 MR. FERRARIO: Yes, Your Honor.

20 THE COURT: -- I want you to wait to file such a
21 motion until Mr. Krum has had an opportunity to review the
22 information that I've just ordered.

23 How long is it going to take you to produce that
24 information?

25 MR. FERRARIO: I was just going to speak to Mr.

1 Krum. I think the original date range we used was, what, the
2 -- was after Your Honor's order, and I don't remember what
3 that date was, forward. Then we moved it back.

4 THE COURT: Remember how I tried to set you for
5 trial last week and you didn't like it?

6 MR. FERRARIO: No. I want to get to that.

7 So we'll start -- we'll back it up -- you want back
8 to September 1st of 2017?

9 MR. KRUM: Well, you're asking about when is the
10 beginning date for the search for responsive documents?

11 MR. FERRARIO: Yeah. That'll give us -- that gives
12 us --

13 MR. KRUM: My answer is that would be the day I
14 picked based on the information I have.

15 MR. FERRARIO: That's fine.

16 MR. KRUM: But if you know better, then back it up
17 further.

18 MR. FERRARIO: I will check. But we'll start with
19 September --

20 MS. HENDRICKS: Your Honor, could you read the scope
21 one more time? Because I thought we were talking just about
22 the December special independent committee minutes. If it's
23 broader than that --

24 MR. FERRARIO: No. It's ratification.

25 THE COURT: No, you were not -- you were not talking

1 about just the December special committee --

2 MS. HENDRICKS: This --

3 MR. FERRARIO: No, it's not. It's prior to --

4 MS. HENDRICKS: -- and the ratification, as well.

5 MR. FERRARIO: Right.

6 THE COURT: And the P-1 and the preparation of P-1
7 and the drafts of P-1 and all that stuff. So three
8 categories, the 12/21 special committee meeting, whether it's
9 scheduling, content, scope, minutes, whatever, related to that
10 meeting; P-1, whether it's subject matter, preparation,
11 drafting, circulation, how we're going to get it on the agenda
12 for the 12/29 meeting; and then the third issue is any
13 discussion of ratification, not limited by time.

14 MR. FERRARIO: We'll work -- we're going to work the
15 date out.

16 THE COURT: So -- well, but I need to know. How
17 long do you think? Best guess.

18 MR. FERRARIO: We'll do it within a week.

19 THE COURT: No, you can't do it in a week.

20 MR. FERRARIO: Why not?

21 THE COURT: Because it's going to take you longer.

22 MR. FERRARIO: It's not going to take --

23 THE COURT: You're going to need to give a privilege
24 log when you do it, because I anticipate some of the
25 information is going to be a claim of privilege.

1 MR. FERRARIO: Your Honor, right now we're going to
2 proceed on the assumption we're going to start in September.
3 I need to talk to my folks.

4 MS. HENDRICKS: We already have pulled all the data.

5 MR. FERRARIO: I know. So we've got to just verify.

6 MS. HENDRICKS: So I would say even if we did it, if
7 you'd give us till May 11th, which is a couple extra days, but
8 by a week from Friday we should be able to get it in.

9 MR. FERRARIO: If we start from that date, we're
10 fine. I will talk to Mr. Krum more. I'm going to talk to my
11 team. I can't sit here and tell you that at some point in
12 2015 or 2016 in one of the many discussions we may have had
13 where we talked about Nevada statute that that topic didn't
14 come up. I can't tell you that. Do I -- as I stand in front
15 of Your Honor do I believe there's any written document that
16 mentions that? I don't believe there is, okay.

17 THE COURT: You will notice that my order does not
18 have a time limitation.

19 MR. FERRARIO: If you want us to go back to 2015,
20 then we'll have to work on search terms, and we can pump those
21 through the system. But I suspect it's going to come up with
22 nothing. And it might take a little longer.

23 THE COURT: That may be. So you've asked for
24 permission, you've asked for permission --

25 MR. SEARCY: I did ask.

1 THE COURT: -- to file a new motion for summary
2 judgment --

3 MR. KRUM: We have.

4 THE COURT: -- on the, I win, Judge, thing.

5 MR. FERRARIO: The, I win, Judge, thing, yeah.

6 THE COURT: Yeah. So I want Mr. Krum, instead of me
7 facing a 56(f) issue at the time you file that motion, he's
8 ready to file his opposition, I want him to have the
9 opportunity to get these documents with the privilege logs,
10 look at them, and then have a period of time he can decide
11 whether he needs to take additional depositions and, if you
12 fight about it, for me to rule on it.

13 So I'm going to grant your request even though I am
14 hesitant to do so under the circumstances, but I don't want to
15 be in a position where you guys slow play them and then I'm
16 sitting back here again that he didn't get the stuff.

17 MR. FERRARIO: We're not going to do that, Your
18 Honor.

19 MR. KRUM: Well, Your Honor --

20 THE COURT: It's called sandbagging.

21 MR. FERRARIO: You don't do that.

22 MR. KRUM: My suggestion -- and this is not for any
23 purpose other than what you just articulated -- is that,
24 rather than granting the motion today, it be continued for
25 whatever time they predict, two weeks, four weeks --

1 THE COURT: No. I granted it today.

2 MR. KRUM: -- and in chambers, because --

3 THE COURT: No. I granted it --

4 MR. KRUM: -- I don't want to be back fighting about
5 whether they've prematurely filed the motion when we haven't
6 finished this process.

7 MR. FERRARIO: Mark, I'm going to get you the
8 documents, and the Judge has already indicated you're going to
9 have a chance to depose people if you want. We're going to
10 make them available. We want this heard. We're not going to
11 screw around, we're not going to have a 56(f) problem.

12 And can we now pick a trial date?

13 MR. KRUM: I was told that in January, by the way.

14 MR. SEARCY: Before we pick the trial date --

15 THE COURT: I've been trying to keep you guys under
16 control for four years.

17 MR. SEARCY: Your Honor, I have one logistical
18 question about the summary judgment motion. We attached our
19 motion with the motion for leave to file.

20 THE COURT: You don't want to file that motion. You
21 want to file a new motion that includes the issues that we
22 talked about today.

23 MR. SEARCY: Thank you, Your Honor. That's --

24 MR. KRUM: And, Your Honor --

25 Thank you, Mr. Searcy.

1 -- they included in their proposed summary judgment
2 motion two arguments that were not ratification arguments, and
3 we objected to that in the last section of our opposition.

4 THE COURT: They can include whatever they want, and
5 I'm going to rule on it. Because otherwise the Supreme Court
6 will send it back and say, gosh, Judge Gonzalez, they had
7 plenty of time since you vacated the trial because Mr. Cotter
8 said he was sick. And so, instead of getting missive, I'd
9 rather just do it.

10 All right. But I'm not giving everybody new time.
11 What?

12 MR. FERRARIO: Trial date.

13 THE COURT: Yes. I don't have a courtroom. I don't
14 even know what my assignment is going to be.

15 MR. FERRARIO: I gotta say, you know, I've been now
16 on the seventeenth floor with you, now we're on the sixteenth
17 floor, we've been on 10, we've been on 14.

18 THE COURT: We've been on 3.

19 MR. FERRARIO: We've been on 3, that's true.

20 THE COURT: So I don't know when I'll have a
21 courtroom. I am hopeful that Judge Bell is going to move
22 quickly. I told her today I was ready to move overnight if
23 she was ready to become chief judge tomorrow, and she said,
24 don't count on it. So I am hopeful we will have a courtroom
25 by the time of your trial, because you want to go when?

1 MR. FERRARIO: We had originally suggested June 4th.
2 That's a lot of work we're going to have to do before then.

3 THE COURT: I don't think you're going to make it.

4 MR. FERRARIO: Okay. My understanding is you're
5 starting that receiver trial --

6 THE COURT: Yes.

7 MR. FERRARIO: -- the end of July; right?

8 THE COURT: Yes.

9 MR. FERRARIO: If we could get in before that, then
10 we can -- I know we can make that.

11 THE COURT: How long is it going to take you to try
12 this case, understanding I might have a regular assignment
13 back and have to hear motion practice every day?

14 MR. FERRARIO: Yeah. I just don't see it being more
15 than three weeks. I mean, we're going to have a jury probably
16 in two days, I would imagine.

17 MR. KRUM: I think three weeks is --

18 THE COURT: Three to four weeks?

19 MR. KRUM: I think three weeks is probably doable,
20 but --

21 THE COURT: And you told me that you couldn't start
22 until when because of travel and witnesses?

23 MR. KRUM: The week following Fourth of July
24 weekend.

25 THE COURT: When did I set NCIC to start?

1 THE CLERK: [Inaudible].

2 THE COURT: Okay.

3 MR. FERRARIO: That's close. So we could start --
4 what week is that, Mark?

5 MS. HENDRICKS: That is July 9th.

6 MR. FERRARIO: July 9th? Okay.

7 That doesn't work for you?

8 MR. SEARCY: I'm not here on July [inaudible].

9 MR. FERRARIO: Let us talk about that, Your Honor,
10 when we get out of here, okay.

11 THE COURT: So if you go after the NCIC people --

12 MR. FERRARIO: That'll be late August; right?

13 THE COURT: It's going to take them four weeks.

14 MR. FERRARIO: I talked to those guys the other day.
15 I'm not going to speak for them, but --

16 THE COURT: They're trying a malpractice case on the
17 CD, which means I have to try the underlying CD case related
18 to Chateau Versailles and the default judgments that were --

19 MR. FERRARIO: That's what that case is about?

20 THE COURT: That's part of what that case is about.

21 MR. FERRARIO: Forget about it.

22 THE COURT: And so that's going to make my life a
23 bit miserable.

24 MR. FERRARIO: Okay. That's all I need now.

25 THE COURT: If I have to do that.

1 MR. FERRARIO: I'll talk to Mr. Whitmire.

2 MR. KRUM: I'm sorry, Your Honor. They're
3 anticipated to go all of August; is that correct?

4 MR. FERRARIO: That's what --

5 THE COURT: I'm thinking four weeks.

6 MR. FERRARIO: See, that's why we've got to this
7 done.

8 MR. KRUM: Well, what's -- I'm sorry. I don't
9 recall what the discussion was, if anything, about what
10 follows them.

11 THE COURT: I have no idea.

12 MR. FERRARIO: She's -- that's --

13 THE COURT: I'm going to be a regular judge. I
14 don't even know what kind of regular judge. I just asked not
15 to be sent back to Family Court, because I did my part and did
16 guardianship for eight months. And I'm not doing it again.

17 MR. KRUM: Okay. Thank you, Your Honor.

18 MR. FERRARIO: Thank you, Your Honor.

19 THE COURT: Other than that, I have no idea what
20 Judge Bell will assign me.

21 I'm going to set you for a status check on whether
22 the documents got exchanged three weeks from Friday. All I
23 want, Mr. Krum, is a status report saying, we got them and
24 everything is perfect, or, gosh, Judge, we have problems, it
25 would be nice if you would schedule a conference call to talk

1 about how we're going to handle them.

2 MR. KRUM: This is in chambers? You just need a
3 status report?

4 THE CLERK: May 25.

5 THE COURT: Okay.

6 MR. KRUM: Got it. Thank you, Your Honor.

7 MR. FERRARIO: Thank you, Your Honor.

8 THE COURT: Have a lovely afternoon. You were
9 pretty close to your estimate of two hours. I'm impressed.

10 THE PROCEEDINGS CONCLUDED AT 4:05 P.M.

11 * * * * *

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INDEX

<u>NAME</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RE CROSS</u>
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DEFENDANTS' WITNESSES

William Gould	11	14		
Michael J. Bonner	19	25	64	65

* * *

EXHIBITS

<u>DESCRIPTION</u>	<u>ADMITTED</u>
--------------------	-----------------

PLAINTIFF'S EXHIBIT NO.

1	34
2	55
3	52

* * *

DEFENDANTS' EXHIBIT NO.

A	67
B	22

* * *

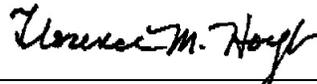
CERTIFICATION

I CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT FROM THE AUDIO-VISUAL RECORDING OF THE PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

AFFIRMATION

I AFFIRM THAT THIS TRANSCRIPT DOES NOT CONTAIN THE SOCIAL SECURITY OR TAX IDENTIFICATION NUMBER OF ANY PERSON OR ENTITY.

**FLORENCE HOYT
Las Vegas, Nevada 89146**



FLORENCE M. HOYT, TRANSCRIBER

5/3/18

DATE

EXHIBIT 2

[Skip to Main Content](#) [Logout My Account](#) [Search Menu](#) [New District Civil/Criminal Search](#) [Refine Search](#) [Close](#)

Location : District Court Civil/Criminal [Help](#)

REGISTER OF ACTIONS
CASE No. A-15-719860-B

James Cotter, Jr., Plaintiff(s) vs. Margaret Cotter, Defendant(s)

§
§
§
§
§
§
§

Case Type: **NRS Chapters 78-89**
Date Filed: **06/12/2015**
Location: **Department 11**
Cross-Reference Case Number: **A719860**
Supreme Court No.: **75053**

RELATED CASE INFORMATION

Related Cases

P-14-082942-E (Coordinated - Certain Matters)
A-16-735305-B (Coordinated - Certain Matters)

PARTY INFORMATION

Defendant	Adams, Guy	Lead Attorneys Harold Stanley Johnson
Defendant	Codding, Judy	Harold Stanley Johnson
Defendant	Cotter, Ellen	Harold Stanley Johnson
Defendant	Cotter, Margaret	Harold Stanley Johnson
Defendant	Gould, William	Donald A. Lattin
Defendant	Kane, Edward	Harold Stanley Johnson
Defendant	McEachern, Douglas	Harold Stanley Johnson
Defendant	Wrotniak, Michael	Harold Stanley Johnson

Other	Diamond A Investors LP	James E. Murphy
Other	Diamond A Partners LP	James E. Murphy
Plaintiff	Cotter, James J, Jr.	Mark G. Krum

EVENTS & ORDERS OF THE COURT

05/02/2018 **Minute Order** (9:40 AM) (Judicial Officer Gonzalez, Elizabeth)
Minute Order: In Camera Review of December 21, 2017 Meeting Minutes

Minutes

05/02/2018 9:40 AM

- The Court has reviewed in camera the redacted version of the meeting minutes, MARKED as Court's Exhibit 1, and the unredacted version, MARKED as Court's Exhibit 2, and SUSTAINS the privilege assertions and does not order that further information be produced at this time. Court's Exhibits 1 and 2 are SEALED as they include privileged and commercially sensitive information. CLERK'S NOTE: A copy of this minute order was distributed to the parties via electronic mail. / dr 5-2-18

[Return to Register of Actions](#)

EXHIBIT 3

1	DISTRICT COURT		
	CLARK COUNTY, NEVADA		
2			
3	JAMES J. COTTER, JR.,)	
4	individually and)	
5	derivatively on behalf of)	
6	Reading International,)	
7	Inc.,)	
8)	
9	Plaintiff,)	
10	vs.	)	Case No.
11		)	A-15-719860-B
12)	
13	MARGARET COTTER, et al.,	)	Coordinated With:
14)	
15	Defendants,)	
16)	
17	_____ and _____	)	Case No.
18		)	P-14-082942-E
19)	
20	READING INTERNATIONAL,)	
21	INC., a Nevada)	
22	Corporation,)	
23)	
24	Nominal Defendant.	)	Volume 3
25	_____	)	Pages 496 to 578

VIDEOTAPED DEPOSITION OF
WILLIAM GOULD

Thursday, April 5, 2018
9:32 A.M. TO 11:34 A.M.
Century City, California

Job No. 461424

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DISTRICT COURT
CLARK COUNTY, NEVADA

JAMES J. COTTER, JR.,)
individually and)
derivatively on behalf of)
Reading International,)
Inc.,)
Plaintiff,)
vs.)
MARGARET COTTER, et al.,)
Defendants,)
_____)
_____ and _____)
READING INTERNATIONAL,)
INC., a Nevada)
Corporation,)
Nominal Defendant.)
_____)

Case No.
A-15-719860-B
Coordinated With:
Case No.
P-14-082942-E

Videotaped Deposition of
WILLIAM GOULD,

taken at the offices of Sheppard, Mullin, Richter &
Hampton, LLP, 16th Floor Conference Room, 1901
Avenue of the Stars, Suite 1600, Century City,
California, on Thursday, April 5, 2018 at 9:32 A.M.,
before Lori Byrd, Registered Professional Reporter,
Certified Realtime Reporter, Certified LiveNote
Reporter, Realtime Systems Administrator, Kansas
Certified Court Reporter 1681, Oklahoma Certified
Shorthand Reporter 1981, and Certified Shorthand
Reporter in and for the State of California 13023.

1 APPEARANCES

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16 ALSO PRESENT

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18 Cory Tyler
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20 Litigation Services
21 Phone 800-330-1112

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3	WITNESS: WILLIAM GOULD	
4	VOLUME 3	
5		
6	CONTINUING EXAMINATION	PAGE
7	By Mr. Krum	504
8		
9	-----	
10		
11	INSTRUCTION BY COUNSEL NOT TO ANSWER	
12	None	
13		
14	-----	
15		
16	RECORD MARKED PER REQUEST OF COUNSEL	
17	None	
18	-----	
19		
20	STIPULATIONS	
21	Page 512	
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1	INDEX OF WILLIAM GOULD DEPOSITION EXHIBITS		
	MARKED IN THIS DEPOSITION, VOLUME 3		
2			
3		DESCRIPTION	MARKED
4	Exhibit 530	E-mail headed From: Doug	550
5		McEachern, To: William Gould,	
6		Date: 12/01/2017, Text: "Is	
		there a call today?"	
		(WG_0000506, 1 page total)	
7	Exhibit 531	Gould's Privilege Log dated	551
8		03/29/2018, James J. Cotter,	
9		Jr. -v- Margaret Cotter, et al.,	
		Nevada District Court Case	
		A-15-719860-B	
		(1 page)	
10	Exhibit 532	(DESIGNATED CONFIDENTIAL)	563
11		E-mail headed From: Laura	
12		Batista, To: Guy Adams and	
13		others, Date: 12/29/2017,	
14		Subject: Materials for Board	
		of Directors Meeting - 1	
		12/29/2017, with attachments	
		(RDI0063811 - 63917, 108 pages	
		total)	
15			
16			
17			
18		ORIGINAL EXHIBITS ATTACHED	
19		TO ORIGINAL TRANSCRIPTS	
20			
21		EXHIBIT COPIES ATTACHED	
22		TO ELECTRONIC TRANSCRIPT IN PDF FORMAT	
23			
24			
25			

		Page 502
1	PREVIOUSLY MARKED DEPOSITION EXHIBITS REFERRED TO IN THIS DEPOSITION	
2	DESCRIPTION	MARKED
3	Exhibit 284	572
4	E-mail series headed From:	
5	elkane@san.rr.com, To: Guy	
6	Adams and others, Date:	
7	04/19/2015, Subject: JJC	
8	Options	
9	(EK00001673, 1 page total)	
10	Exhibit 526	567
11	(DESIGNATED CONFIDENTIAL)	
12	Reading International, Inc.	
13	Minutes of the Board of	
14	Directors Meeting, December	
15	29, 2017	
16	(RDI0063804 - 63809)	
17	Exhibit 527	529
18	DESIGNATED CONFIDENTIAL	
19	E-mail headed From: Marcia E.	
20	Wizelman, To: Craig Tompkins	
21	and others, Date: 12/27/2017,	
22	Subject: Special Board Meeting	
23	(RDI0063918)	
24	Exhibit 528	553
25	Cover letter 02/22/2018, From:	
26	Kara Hendricks, To: All Counsel	
27	of Record, Attachment: Reading	
28	International's Privilege Log	
29	(Responses to JJC Jr.'s RFPs	
30	dated 01/12/2018)	
31	(Letter 1 page, Attachment 37	
32	pages - 38 pages total)	
33	PREVIOUSLY MARKED EXHIBITS ATTACHED	
34	TO ORIGINAL TRANSCRIPTS	
35	EXHIBIT COPIES ATTACHED	
36	TO ELECTRONIC TRANSCRIPT IN PDF FORMAT	
37		

1 Thursday, April 5, 2018

2 9:32 A.M.

3 LOS ANGELES, CALIFORNIA

4

5 THE VIDEO OPERATOR: And good morning.

6 This is the beginning of media one in the deposition
7 of William Gould, in the matter of Cotter, Jr.,
8 versus Cotter, et al., held at 1901 Avenue of the
9 Stars, Suite 1600, Century City, California, on
10 April 5th, 2018, at 9:32 A.M.

11 The court reporter is Lori Byrd. And I am
12 Cory Tyler, the videographer, an employee of
13 Litigation Services.

14 This deposition is being videotaped at all
15 times unless specified to go off the video record.

16 Would all present identify themselves,
17 beginning with the witness.

18 THE WITNESS: My name is William Gould, and
19 I am the witness.

20 MS. BANNETT: Shoshana Bannett,
21 representing the witness.

22 MR. HELPERN: Noah Helpern, with Quinn
23 Emanuel, for defendants Ellen Cotter, Margaret
24 Cotter and Guy Adams.

25 MR. KRUM: Mark Krum, on behalf of the

1 plaintiff.

2 MS. HENDRICKS: And appearing
3 telephonically, Kara Hendricks, on behalf of Reading
4 International, Inc.

5 THE VIDEO OPERATOR: And will the court
6 reporter please swear in the witness.

7 -----

8 WILLIAM GOULD
9 called as a witness in this case,
10 having been first duly sworn
11 upon his oath,
12 testified as follows:

13 CONTINUING EXAMINATION

14 BY MR. KRUM:

15 Q. Good morning, Mr. Gould.

16 A. Good morning.

17 Q. What did you do, if anything, to prepare
18 for your deposition today?

19 A. Basically I did three things. I went and
20 met with my lawyer for about 30, 40 minutes
21 yesterday.

22 I pulled together some -- I made sure that
23 the response to your discovery request was accurate
24 and up-to-date.

25 And I reviewed the minutes of the