

1 **OPPS**  
2 MORRIS LAW GROUP  
3 Steve Morris, Bar No. 1543  
4 Akke Levin, Bar No. 9102  
5 411 E. Bonneville Ave., Ste. 360  
6 Las Vegas, Nevada 89101  
7 Telephone: (702) 474-9400  
8 Facsimile: (702) 474-9422  
9 Email: sm@morrislawgroup.com  
10 Email: al@morrislawgroup.com

11 Attorneys for Plaintiff  
12 James J. Cotter, Jr.

13 DISTRICT COURT  
14 CLARK COUNTY, NEVADA

15 JAMES J. COTTER, JR., derivatively on ) Case No. A-15-719860-B  
16 behalf of Reading International, Inc., ) Dept. No. XI

17 Plaintiff,

) Coordinated with:

18 v.

)

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

19 MARGARET COTTER, ELLEN COTTER,) Dept. No. XI

20 GUY ADAMS, EDWARD KANE, )

21 DOUGLAS McEACHERN, WILLIAM ) Jointly Administered

22 GOULD, JUDY CODDING, MICHAEL )

23 WROTNIAK, ) **PLAINTIFF'S OPPOSITION TO ELLEN**

24 Defendants.

) **COTTER, MARGARET COTTER AND**

) **GUY ADAMS' MOTION FOR**

25 And ) **SUMMARY JUDGMENT (BASED**

26 READING INTERNATIONAL, INC., a ) **ON "RATIFICATION");**

27 Nevada corporation, ) **DECLARATION OF MARK G. KRUM**

28 Nominal Defendant. )

) **HEARING DATE: JUNE 19, 2018**

)

) **HEARING TIME: 8:30 A.M.**

)

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411 E. BONNEVILLE AVE., STE. 360 · LAS VEGAS, NEVADA 89101  
702/474-9400 · FAX 702/474-9422

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**MORRIS LAW GROUP**

900 BANK OF AMERICA PLAZA · 300 SOUTH FOURTH STREET · LAS VEGAS, NEVADA 89101  
702/474-9400 · FAX 702/474-9422

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1 **I. INTRODUCTION**

2 "Ellen Cotter, Margaret Cotter, and Guy Adams Motion for Summary Judgment"  
3 (the "Ratification MSJ") argues that certain Reading International, Inc. ("RDI" or the  
4 "Company") directors, pursuant to NRS 78.140, "ratified" certain prior conduct that  
5 remains at issue in this case and that, because the Court previously had determined that  
6 no disputed issues of material fact existed regarding their independence with respect to  
7 the matters raised in motions for partial summary judgment, those directors are  
8 independent for the purposes of the Ratification MSJ which, they argue, therefore should  
9 be granted. The Ratification MSJ must be denied for a number of independent reasons,  
10 including the following:

11 NRS 78.140 has no application here and, even if it did, would not warrant the  
12 relief sought by the Ratification MSJ. By its terms, NRS 78.140 applies solely to contracts  
13 and transactions between the corporation, here RDI, and the interested directors and/or  
14 officers, here, Ellen Cotter, Margaret Cotter and Guy Adams. Here, neither of the matters  
15 purportedly ratified are contracts or transactions between RDI and any or all of those  
16 defendants. Moreover, even if NRS 78.140 applied here, which it does not, it requires any  
17 decision made pursuant to it be made by independent directors acting in good faith.

18 Unlike the motions for partial summary judgment, in which Plaintiff bore the  
19 burden of proof on the issue of the independence of individual directors who sought to  
20 invoke the business judgment rule, here the moving party bears the burden of proving (i)  
21 the independence of the board members whose actions and/or decisions serve as the  
22 basis for the relief sought, and (ii) that those directors conducted a good faith and  
23 thorough investigation. The Ratification MSJ fails to satisfy either of those burdens.

24 With respect to the independence of the directors whose conduct serves as the  
25 basis for the Ratification MSJ, it proffers no evidence whatsoever. That failure alone  
26 requires denial. Moreover, the record evidence shows a lack of independence, as a matter  
27 of fact and law. First, the "independent" directors here relied entirely on "advice" from  
28 counsel representing RDI. Courts repeatedly have found that the use of company counsel  
evidences a lack of independence of the supposedly independent committee and/or

1 individual directors who do so. Second, other factors considered in determining director  
2 independence also show a lack of independence, as shown below.

3         With respect to whether the directors whose conduct serves as the basis for the  
4 Ratification MSJ conducted a thorough investigation in good faith, resulting in an  
5 informed decision-making process, the sole evidence proffered in support of the Motion  
6 is the minutes of the December 29, 2017 board meeting, as if defendants had succeeded in  
7 concealing from Plaintiff and the Court the hasty, sham exercise that preceded that  
8 meeting and resulted in the preordained result, "ratification." What the belatedly  
9 produced evidence and privilege logs show is that the "ratification" scheme was  
10 conceived by GT lawyers, who first obtained approval from defendants Ellen Cotter and  
11 Margaret Cotter to pursue it, and then "advised" supposedly independent directors to  
12 "ratify" certain conduct the Court previously found to be actionable, all for the purpose of  
13 creating a purported basis on which to seek dismissal of this derivative action.

14         For their part, not one of the supposedly independent board members undertook  
15 in good faith to make an informed decision; instead, each did as he or she was "advised"  
16 by the conflicted lawyers on whom they mistakenly relied. Indeed, privilege log entries  
17 appear to indicate that RDI in-house counsel Craig Tompkins and defendant Ellen Cotter  
18 herself at least reviewed if not provided input regarding the operative language of  
19 Gould's December 27, 2017 email. Of course, that became the operative language of the  
20 agenda for the December 29, 2017 board meeting and, ultimately, the draft minutes  
21 which serve as the basis for the ratification MSJ.

22         Independent of the foregoing, the purported ratification with respect to the  
23 exercise of the so-called 100,000 share option by its terms does not "ratify" the disputed  
24 determination regarding ownership of the purported option, which remains at issue in  
25 this case. That alone also requires denial of the Ratification MSJ.

26         Separately, Plaintiff is entitled to relief under NRCP 56(f). Plaintiff is still  
27 reviewing and analyzing privilege logs and documents produced on May 30 and 31,  
28 2018, as well as thousands of pages of documents produced on Saturday, June 9, 2018,  
Monday and Tuesday, June 11 and 12, and anticipates receiving a further supplemental

1 privilege log to be produced on or about June 13, 2018. The Court previously ruled that  
2 Plaintiff is entitled to time to review such material to determine what further discovery if  
3 any Plaintiff needs. Given the significance of the responsive documents not disclosed  
4 (produced and or logged) until the very end of May 2018, and in view of the  
5 supplemental productions of June 9, 11 and 12, 2018, as well as the advice that a  
6 supplemental and/or superseding privilege log will be produced on or about June 13,  
7 2018, Plaintiff is entitled to Rule 56(f) relief.

8 Finally, if the Court does not deny the Ratification MSJ or provide Plaintiff with  
9 Rule 56(f) relief, Plaintiff is entitled to and requests an evidentiary hearing with respect to  
10 both issues as to which defendants bear the burden of proof, namely, independence and  
11 a thorough investigation conducted in good faith. *Shoen v. SAC Holding Corp.*, 122 Nev.  
12 621, 645, 137 P.3d 1171, 1187 (2006). As the record (including from May 2, 2018  
13 evidentiary hearing) makes clear, questions of fact and credibility, the latter on the part  
14 of both the "independent" directors and their conflicted counsel, predominate.

15 **II. STATEMENT OF FACTS AND PROCEDURAL BACKGROUND**

16 **A. Creation and Delegation of Authority to the SIC**

17 In August 2017, the RDI board of directors to (the "Board") authorized the  
18 formation of a "Special Independent Committee" (the "SIC" or "SLC"). (*See Ex. 1* hereto,  
19 RDI's February 23, 2018 Form 8-K.) On or about February 23, 2018, RDI filed a Form 8-K  
20 with the SEC. That Form 8-K attached and disclosed publicly for the first time the  
21 Charter of the SIC. (*Id.* at Ex. 99.2) (The charter was admitted as defendants' Ex. B at the  
22 May 2, 2018 evidentiary hearing.) Section IV of the Charter describes the responsibilities  
23 and duties of the SIC, including the authority delegated to it with respect to this  
24 derivative action and other lawsuits (defined therein as "Cotter Related Proceedings").  
25 The Charter states in relevant part as follows:

26 **RESPONSIBILITIES AND DUTIES**

27 To fulfill its responsibilities and duties, the [SIC] is authorized to, in its discretion:

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ii. ... [I]nstruct legal counsel representing the Company to take certain actions, including but not limited to, file pleadings or other papers, appear in any proceedings... and otherwise take such steps as the [SIC] deemed to be in the best interest of the Company in any Cotter Related Proceedings [which includes this derivative action] or

iii. Participate in and direct legal counsel representing the Company to conduct negotiations and take actions to resolve matters related to the Cotter Related Proceedings...

iv. Report to the Board, as it determines to be appropriate (subject to the maintenance of attorney-client privileges and with due regard for and the institution of appropriate safeguards in order to take into account any conflicts of interest that may exist involving other members of the Board and without limiting its delegated authority under this Charter), its recommendations and conclusions with respect to the determinations delegated to it by this Charter; and

v. Take all such other actions as the [SIC] may deem to be necessary or appropriate in connection with the above.

\*\*\*\*\*

*The [SIC] shall have the authority to enter into or bind the Company in connection with a Cotter Related Proceedings... provided, however, that the [SIC] shall not have any authority to ...approve any merger, consolidation or liquidation of the Company.*

(*Id.*) (Emphasis supplied.)

**B. The Inception of "Ratification" With the SIC.**

According to deposition testimony of former defendants and current RDI directors Douglas McEachern ("McEachern") and William Gould ("Gould"), the subject of ratification was first raised with them by lawyers from Greenberg Traurig ("GT"). McEachern testified that the subject of ratification was raised "in late Fall sometime of 2017," at which time it was tabled. (*See Ex. 7 hereto, McEachern 2/28/18 dep. tr. at 548:21-550:1.*) McEachern explained that the "main focus was on the termination of Jim Cotter,

1 Jr." (*Id.*) McEachern also testified that "ratification" was within the purview of the SIC's  
2 responsibilities, as follows:

3 *"[I]t was delegated to the [SIC] to handle this type of matters. We were*  
4 *approving [ratification]...."*

5 (*Id.* at 507:1-508:2, 546:1-10.) (Emphasis supplied.)

6 Gould testified that the first communication he had regarding ratification was  
7 telephonically in mid or late November 2017 with GT lawyers Michael Bonner ("Bonner")  
8 and Mark Ferrario ("Ferrario"). (*See Ex. 6 hereto, Gould 4/5/18 dep. tr. at 509:13-15.*)

9 Gould testified that "ratification" was within the scope of his responsibilities as Chair of  
10 the SIC, as follows:

11 "I was the chairman of the special [independent] committee and [GT  
12 lawyers Bonner and Ferrario] were discussing [ratification] with me in my  
13 capacity as the chairperson of that committee."

14 (*Id.*)

15 **C. GT Previously Cleared "Ratification" With Defendants Ellen and Margaret**  
16 **Cotter.**

17 **1. Late 2016 and Early 2017**

18 For the first time on May 30 (and 31), 2018, GT produced supplemental privilege  
19 logs jointly on behalf of RDI and the five dismissed directors. The May 30 log discloses  
20 for the first time what apparently were communications in *November or December 2016 and*  
21 *January 2017* regarding "ratification," among other things. (Although the log entries are  
22 deficient on their face, the inclusion of them in the log must mean that they concern  
23 "ratification.") The first entry, dated November 22, 2016, is an email from Craig  
24 Tompkins, who then was special counsel to Ellen Cotter as CEO of RDI (Ex. 18 to Plaintiff  
25 James J. Cotter Jr.'s Motion to Compel, Filed on June 8, 2018 ("JJC 6/8/18 Motion")),  
26 Tompkins 10/18/17 dep. tr. at 60:1-12), to GT attorneys Bonner and Ferrario, copied to  
27 Ellen Cotter, the subject of which is "alternative approaches: attorney-client privileged  
28 attorney work product communication." (*See Ex. 2 to JJC 6/8/18 Motion, entry ending in*  
*71278.*) The next entry is a December 7, 2016 email from Ferrario to Tompkins and Quinn  
Emanuel attorneys Marshall Searcy and Christopher Tayback, the subject of which is the



1 attached "option memo." (*See id.*, entry ending in 67300.) The next two entries are dated  
2 January 6 and 7, 2017, concern "alternative litigation resolution approaches" and are  
3 between Tompkins and Bonner, and copied to Ferrario *and to Ellen Cotter.* (*See id.*, entries  
4 ending in 71290 and 64891.)

5 **2. December 2017.**

6 In December 2017, before seeking and securing approval of "ratification" from the  
7 SIC on December 21 (described below), GT lawyers cleared the "ratification" "process"  
8 with Margaret Cotter, Ellen Cotter and Tompkins.<sup>1</sup> On December 13, 2017, Ferrario and  
9 Bonner exchanged emails with Tompkins, *which emails were copied to Ellen Cotter,*  
10 regarding the subject of a "Special Committee." (*See Ex. 1 to JJC 6/8/18 Motion, entry*  
11 *ending in 60907 and 60911; see also Ex. 3 to JJC 6/8/18 Motion, GT May 31, 2018 privilege*  
12 *log, entries ending in RDI 73538, 76569, 76783.*) Those emails are described as  
13 "Communication[s] regarding Ratification process." (Ex. 1 to JJC 6/8/18 Motion, entries  
14 ending in 60907 and 60911.)

15 Again on December 15, 2017, Bonner exchanged emails with Tompkins, *which*  
16 *emails also were copied to Ellen Cotter, regarding "Misc."* (*See Ex. 1 to JJC 6/8/18 Motion,*  
17 *entries ending in 60823 and 60824.*) Those emails are described as "Communication[s]  
18 regarding ratification process." (*Id.*)

19 Also on December 15, 2017, Ferrario discussed the subject of ratification with  
20 *Margaret Cotter* in person. (*See Ex. 16 to JJC 6/8/18 Motion, Margaret Cotter's February 14,*  
21 *2018 Interrogatory Responses, No. 2.*) (*Margaret Cotter's interrogatory responses*  
22 *disclosed this communication regarding "ratification," but not others described herein.*)

23 On December 21, 2015, Bonner sent an email to Tompkins, copied to *Ellen Cotter*  
24 and Ferrario, regarding "special committee/stockholder action alternatives." (*See Ex. 1 to*  
25 *JJC 6/8/18 Motion, entry ending in 60533.*) *Ellen Cotter* at her deposition acknowledged  
26

27 \_\_\_\_\_  
28 <sup>1</sup>As to Craig Tompkins, RDI's General Counsel to whom GT attorneys report, Kane at deposition explained that the words he used in an email stating "according to [Ellen Cotter], Craig is also on the 'team[.]" meant that Tompkins "was [with] Ellen and Margaret versus Jim." (*See Ex. 14 to JJC 6/8/18 Motion, Kane 5/2/16 dep. tr. at 176:18-177:1; Ex. 17 to JJC 6/8/18 Motion (Dep. Ex. 105).*)

1 receiving this email. (See Ex. 9 to JJC 6/8/18 Motion, Ellen Cotter 4/4/18 dep. tr. at 479:21-  
2 480:6.)

3 **D. The SIC Approves "Ratification."**

4 The SIC met telephonically with GT attorneys Bonner and Ferrario on December  
5 21, 2017. (See Ex. 5 to JJC 6/8/18 Motion, redacted minutes of that December 21, 2017  
6 meeting; see also GT May 31, 2018 Privilege log, entries CN 2075, 2174, 2494, 2504, 2634.)  
7 As described below, they approved "ratification" of the two decisions which thus became  
8 the subject of "ratification" votes at the December 29, 2017 Board meeting.

9 McEachern testified that the SIC at the December 21, 2017 telephonic meeting  
10 approved ratification in an effort to "resolve" certain issues that remained in this  
11 derivative action, stating as follows:

12 *"[I]t was delegated to the [SIC] to handle this type of matters. We were*  
13 *approving [ratification]. ... I think we had a call [on December 21,*  
14 *2017] to talk about a couple issues that were still existing in this -- in*  
15 *this derivative case by Jim Cotter, Jr., and we were trying to address*  
16 *them in a fashion to resolve them."*

16 (See Ex. 7 hereto, at 507:1-508:2, 546:1-10.) (Emphasis supplied.)

17 With respect to the December 21, 2017 SIC meeting, Gould testified that the SIC  
18 "formally [took] action" to advance "ratification." (See Ex. 5 hereto, at 529:10-18.) As to the  
19 purpose of the "ratification(s)," Gould admitted that "ratification might be a litigation  
20 strategy" employed in this derivative action (in an effort to create a basis upon which to  
21 seek dismissal in advance of trial). (See *id.*, at 541:15-18.)

22 With respect to the December 21, 2017 SIC meeting, Coddling testified that Bonner  
23 and/or Gould explained the notion of ratification with respect to the two matters later  
24 taken up at the December 29, 2017 Board meeting. Coddling testified that the SIC  
25 approved "ratification," explaining that she did not distinguish between the process or  
26 fact of "ratification" and the merits of the two "ratification" decisions (that defendants  
27 claim were made at the December 29, 2017 Board meeting). (See Ex. 4 hereto, at 205:24-  
28 207:4.)

1                   **E. GT Works With Tompkins and Ellen Cotter to Effectuate the "Ratification"**  
2                   **by "Independent" Directors**

3                   The next day, December 22, 2017, GT lawyers followed through with the  
4 ratification scheme. Ferrario's assistant sent emails, one to Tompkins' assistant and one to  
5 Ellen Cotter's assistant, regarding "call re letter for special committee meeting re  
6 ratification." (See Ex. 2 to JJC 6/8/18 Motion, at entries RDI 67258 and 64872.) Tompkins  
7 responded and an email chain ensued. (See Ex. 1 to JJC 6/8/18 Motion, entries ending in  
8 60258, 60260, 60262, 60265 and 60267.) (The "letter for special committee meeting re  
9 ratification" it appears to refer to what came to be the December 27, 2017 email from  
10 Gould purportedly on behalf of the five "independent" Directors.)

11                   **F. The December 27, 2017 Email Was Prepared by Litigation Counsel With**  
12                   **Input From Tompkins and Probably Ellen Cotter, But Not Gould, and Not**  
13                   **the "Independent" Directors, Who Did Not See It Before It Was Sent.**

14                   On December 27, 2017, Bonner and other GT lawyers exchanged emails with  
15 Tompkins about one or more drafts of what came to be the December 27, 2017 email<sup>2</sup> sent  
16 by Gould, purportedly on behalf of the five dismissed directors. Several privilege log  
17 entries describe the emails as "Communication regarding draft letter re Special Board  
18 Meeting." (See Ex. 1 to JJC 6/8/18 Motion, entries ending in 57090, 59768, 59899, 59911,  
19 59912, 59959, 60790, 60802 and 60810.) Also on December 27, 2017, Tompkins and GT  
20 lawyers exchanged the subjects of which were "Ratification," and which are described as  
21 "Communication[s] regarding draft letter re Special Board Meeting" or  
22 "Communication[s] regarding Special Meeting Request." (See *id.*, entries ending in 60404,  
23 60408, 60412, 60424, 60428, 60450, 60464, 60843, 60846.)

24                   Several of the December 27, 2017 emails with the subject "Ratification" also *were*  
25 *copied to Ellen Cotter.* (See *id.*, entries ending in entries ending in 60450, 60452, 60464 and  
26 60846; Ex. 2, 5/30/18 privilege log, entries ending in RDI 68619, 68626, 70083, 70095.)

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<sup>22</sup> That email was marked as Dep. Ex. 527 and Ex. P-1 from the 5/2/18 evidentiary hearing. It is attached as Ex. 6 to the JJC 6/8/18 Motion.

1 After receiving responses from Tompkins and possibly Ellen Cotter regarding the  
2 draft of what came to be Gould's December 27, 2017 email, GT attorney Bonner on  
3 December 27, 2017 sent Gould an email, with a copy to GT attorney Ferrario, the "re" line  
4 of which read "FW: for Bill Gould to sign," which RDI's privilege log also describes as  
5 "communication regarding draft letter re Special Board Meeting." (*See id.*, entries ending  
6 in 59792 and 59937.) (Emphasis supplied.)

7 At his deposition, Gould identified the December 27, 2017 email<sup>3</sup> which was sent  
8 shortly before 8:00 p.m. Pacific by Marcia Wizelman, Gould's assistant, to Ellen Cotter, as  
9 the notice ("call") by the five dismissed directors for "ratification" be raised and approved  
10 at the next regularly scheduled board meeting. (*See Ex. 5* hereto, at 530:2-10.) Gould  
11 testified that he did not draft or edit the December 27, 2017 email, but rather that it was  
12 drafted by GT attorneys Bonner and Ferrario. (*Id.* at 530:18-25.)

13 However, none of the five other than Gould saw the December 27, 2017 email  
14 (Dep. Ex. 527) prior to their depositions. McEachern testified with respect to Dep. Ex. 527  
15 that "I don't recall having seen this before, but I do recall speaking in our [December 21,  
16 2017] special committee [meeting] with Bill Gould and Judy Coddling about asking to  
17 have this done." (*See Ex. 7* hereto, at 544:3-8.) Coddling's testimony was to the same effect.  
18 (*See Ex. 4* hereto, at 231:7-232-5.) Wrotniak testified that he did not recall seeing Dep. Ex.  
19 527 prior to preparing for his deposition. (*See Ex. 10* hereto, at 91:17-92:4.) Kane also  
20 testified that he had no recollection of seeing Dep. Ex. 527 prior to his deposition. (*See Ex.*  
21 *11* hereto, at 681:14-19.)

22

23 **G. The December 27 Email was the Source of the "Ratification" Agenda for the**  
24 **December 29, 2017 Board Meeting.**

25 The text of December 27, 2017 email was used to prepare the corresponding  
26 portion of the agenda for the December 29, 2017 board meeting. (*See* 5/2/18 hearing tr. at  
27 56:25-57:5; Ex. 9 to JJC 6/8/18 Motion, Ellen Cotter dep. tr. at 485:9-486:3.) The February

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<sup>3</sup> Ex. 6 to JJC 6/8/18 Motion, marked as Dep. Ex. 527 and as Ex. P-1 from the 5/2/18 evidentiary hearing.

1 22, 2018 privilege log also identified an email exchange between Bonner with Tompkins,  
2 Ellen Cotter, Gould, and GT litigators regarding "Draft for your review," which was  
3 described as a "Communication regarding notice and agenda for upcoming board  
4 meeting," (*See* Ex. 1 to JJC 6/8/18 Motion, entries ending in 60777 and 60780); *see also id.*,  
5 entry ending in 60273, described as "[c]ommunication re draft board meeting materials.")

6 That agenda<sup>4</sup> was distributed at approximately 5:30 p.m. Pacific on December 27,  
7 2017. The draft minutes of the December 29, 2017 meeting<sup>5</sup> reflect that they were  
8 prepared in part by copying from the agenda, which was prepared in relevant part based  
9 upon the December 27, 2017 email.

10 **H. "Independent" Directors Approved "Ratification" to Terminate this Action.**

11 **1. Gould**

12 Gould testified that the key factor in his vote to ratify the termination of Plaintiff  
13 as President and CEO of RDI was that this derivative litigation already had occurred. (Ex.  
14 5 hereto, at 544:10-545:17.) He explained that he had voted against the termination of  
15 Plaintiff because the directors had given Plaintiff "a period of time to have his  
16 performance monitored, and then there would be an evaluation by the board. The actual  
17 termination occurred maybe a month before that. I viewed that as a mistake...[a]nd  
18 secondly, at the time I was worried... that would lead to extensive, expensive litigation,  
19 which turned out to be the case." He concluded that "the litigation has occurred, so I can  
20 take that factor out of my equation..." (*Id.*) Thus, Gould voted to "ratify" for reasons  
21 unrelated to the merits of the subjects of "ratification," and instead did so in furtherance  
22 of what he admitted was a "litigation strategy" for dealing with this derivative action. (*Id.*  
23 at 541:15-18.) Gould testified that "[m]y vote would be to terminate, to terminate the  
24 derivative action." (*Id.* at 547:17-19, 548:19-23.) He acknowledged that the reason he  
25 would vote to terminate this derivative action is that he was a defendant. (*Id.* at 548:24-  
26 549:4.)

27 \_\_\_\_\_  
28 <sup>4</sup> The agenda was marked as Dep. Ex. 525, and is attached as Ex. 7 to JJC 6/8/18 Motion.

<sup>5</sup> The draft minutes were marked as Dep. Ex. 526, and are attached as Ex. 21 hereto.

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**2. McEachern**

With respect to his support for "ratification," McEachern testified as follows:

"And I believe we had -- I think we had a [Special Independent Committee] call [on December 21, 2017] to talk about a couple of issues that were still existing in this -- in this derivative case by Jim Cotter, Jr., and *we were trying to address them in a fashion to resolve them.*"

(Ex. 7 hereto, McEachern 2/28/18 dep. tr. at 506:23-507:12.) (Emphasis supplied.)

When asked how the "ratification" vote would "resolve" issues remaining in this derivative action, McEachern acknowledged that the "ratification" vote was to "cure any issue anybody might think existed." (*Id.* at 507:13-508:2.) McEachern likewise testified that he would "vote to dismiss the [derivative] lawsuit." (*Id.* at 526:14-21.)

**3. Coddling**

Coddling testified that the first time she learned of "ratification" was the (telephonic) SIC meeting (of December 21, 2017). (Ex. 4 hereto, at 206:16-207:4.) When asked if there was any discussion bearing upon the merits of the ratification decision as distinct from the fact of ratification, Coddling testified there was no distinction in her mind. (*Id.* at 205:8-207:14.)

Coddling identified Bonner and Ferrario and Quinn lawyers Tayback and Searcy as lawyers who have spoken to the SIC. (*Id.* at 217:24-215:3.) She testified that the SIC has never discussed engaging its own independent counsel. (*Id.*)

With respect to "ratification" of the decision to terminate Plaintiff as President and CEO of RDI, Coddling admits that she does not know if the (May 21 and 29, 2015 and June 12, 2015) minutes included as part of Exhibit 525, the Board package for the December 29, 2017 meeting, are accurate. (*Id.* at 222:14-25.) She admitted that she was not present and therefore does not know when Adams, Kane and McEachern determined to vote to terminate Plaintiff as President and CEO. (*Id.*) Coddling also admitted that she had never heard that Plaintiff was told at the May 29, 2015 meeting that the meeting would reconvene telephonically at 6 p.m. and that, if he had not resolved his differences

1 with his sisters, they would proceed with the termination vote. (*Id.* at 229:20-230:2.)<sup>6</sup>  
2 Coddling's understanding of what exactly she voted to ratify with respect to the  
3 termination of Plaintiff was that RDI would not hire him as the CEO; and to ratify the  
4 vote that was taken to not have him as the CEO. (*Id.* at 230:10-21.)

5 Prior to voting in favor of "ratification" with respect to the 100,000 share option,  
6 Coddling had no discussions with Kane or Adams about what they did or did not do as  
7 Compensation Committee members in determining to authorize the exercise of the  
8 100,000 share option. (*Id.* at 258:6 – 15.)

9 *As to her efforts generally to make an informed decision about the matters to be "ratified,"*  
10 *Coddling admitted she has not read any deposition transcript in this case other than her own and*  
11 *has not looked at any deposition exhibits other than from her own deposition. (Id. at 230:3-9.)*

12 In response to the question of whether she would vote to allow the derivative  
13 lawsuit to proceed, she answered "I don't think it should go forward." (*Id.* at 234:12-17.)  
14 She explained that she did not see the purpose of it or understand it. (*Id.*) *When asked if her*  
15 *decision to vote in favor of "ratification" reflected her view of this derivative action, Coddling*  
16 *testified that she could not answer the question without disclosing an attorney client*  
17 *communication. (Id. at 232:19-233:1.)*

#### 18 4. Wrotniak

19 Wrotniak first learned that "ratification" would be taken up at the December 29,  
20 2017 Board meeting from a telephone call he and Coddling had with Ferrario and Bonner.  
21 Wrotniak described the subject matter of the call as the agenda for the December 29  
22 meeting and "*protection for Reading.*" (**Ex. 10** hereto, Wrotniak 3/6/18 dep. tr. at 41:2-42:25.)  
23

24 <sup>6</sup> Prior to May 19, 2015, Adams and Kane (and McEachern) communicated to EC and/or between or among  
25 themselves their respective agreement to terminate Plaintiff as President and CEO. (**Ex. 13**, Ellen Cotter 6/16/16 Dep.  
26 Tr. 175:17-176:8; **Ex. 8**, Storey 2/12/16 Dep. Tr. at 96:5-97:4; 98:21-100:8, 100:14-101:11; **Ex. 2**, Adams 4/28/16  
27 Dep. Tr. at 98:7-17, 98:18-99:22, **Ex. 3**, Adams 4/29/16 Dep. Tr. 368:15-370:5; **Ex. 9**, Storey 8/03/16 Dep. Tr. at  
28 66:22-67:20; and **Ex. 19** hereto, Dep. Ex. 131). Kane emailed Adams in which Kane agreed to second a motion for  
Plaintiff's termination, if necessary. (**Ex. 16**, Dep. Ex. 81.) Meanwhile, Gould and Storey objected that the directors  
had not undertaken an appropriate process regarding any decision to terminate Plaintiff as President and CEO, and  
requested that the directors meet prior to the May 21, 2015 meeting. (**Ex. 20**, Dep. Ex. 318, and **Ex. 17** hereto, Dep  
Ex. 116.) Kane replied that there was no need to meet as "the die is cast." (**Ex. 18**, Dep. Ex. 117) The May 21, 2015  
meeting was adjourned until May 29, 2015 at 11:00am. That meeting was then adjourned until 6:00pm that evening,  
and Plaintiff was told that he needed to resolve his disputes with his sister by then or he would be terminated. (**Ex. 14**  
hereto, JJC Decl. ¶15).

1 The call lasted less than an hour and occurred in the days before the December 29 Board  
2 meeting. (*Id.* at 44:3-22.) The May 31, 2018 privilege log includes entries that appear to  
3 indicate that the call occurred on December 28, 2018. (Ex. 3 to JJC 6/8/18 Motion, at entries  
4 RDI 76466 and 76469.) Wrotniak testified that "[i]t was agreed" in that call that the  
5 December 29 Board meeting would include "ratification." (*See* Ex. 10 hereto, at 87:7-22.)

6 Wrotniak received Dep. Ex. 525, the Board package for the December 29, 2017  
7 (telephonic) Board meeting, at or about 8:30 p.m. Eastern on December 27, 2015. (Ex. 10,  
8 at 39:17-40:19.) That was the first time he had seen the agenda. (*Id.*)

9 In explaining why he voted to ratify the termination of Plaintiff as President and  
10 CEO of RDI, Wrotniak testified that he relied on the May 21 and 29, 2015 and June 12,  
11 2015 Board minutes included in the Board package. (*Id.* at 71:18 – 72:6.) With respect to  
12 the board minutes, he testified that he recalled noting "that approximately a week had  
13 passed, giving everybody time to pause and to think[,] but he admitted that he had no  
14 information regarding whether anyone did so. (*Id.* at 62:20 – 63:20.)

15 As for what actually happened in connection with the termination of Plaintiff,  
16 Wrotniak does not know. He does not recall ever learning that Adams, Kane, McEachern  
17 and Ellen Cotter had agreed prior to the May 21, 2015 meeting to vote to terminate  
18 Plaintiff. (*Id.* at 49:16 – 50:18.) For example, he testified he had never seen Dep. Ex. 81  
19 (Ex. 16 hereto), the Kane May 18, 2015 email to Adams that memorializes their (prior)  
20 agreement to vote to terminate Plaintiff. (Ex. 10, at 50:19-51:2.)

21 As to the May 21 and 29, 2015 and June 12, 2015 Board minutes that were the  
22 stated basis for his "ratification" vote, Wrotniak admitted that he has no basis upon which  
23 to determine whether those minutes are accurate or fairly depict what transpired. (*Id.* at  
24 74:8–22.) (In fact, those minutes are rife with inaccuracies, as former director Tim Storey  
25 confirmed.)<sup>7</sup>

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28 <sup>7</sup> (Ex. 9 hereto, Storey 8/03/16 Dep. Tr. at 81:22 – 82:6; *see also* Ex. 15 hereto, Dep. Ex. 17 (Storey Handwritten notes from meeting))



1           Likewise, Wrotniak never heard or learned that, when the May 29 meeting  
2 recessed to be reconvened telephonically at 6:00 p.m., Plaintiff was told that he needed to  
3 resolve his disputes with his sisters, failing which the termination vote would proceed  
4 when the meeting reconvened. (Ex. 10, at 65:10 – 18.)<sup>8</sup> Wrotniak saw that the May 29  
5 minutes referenced an agreement in principle, but he has never communicated with  
6 anyone about that. (*Id.* at 66:3 – 13). Wrotniak does not know whether a vote to terminate  
7 Plaintiff would have occurred had Plaintiff resolved his disputes with his sisters. (*Id.* at  
8 67:3–13.) Wrotniak likewise has no understanding how the June 12 meeting came to be  
9 scheduled. (*Id.* at 66:20–24.) Wrotniak does not recall ever talking to Gould about what  
10 happened at the May 21 and 29, 2015 and June 12, 2015 meetings. (*Id.* at 65:19–66:2.)

11           With respect to his "ratification" of the use of RDI Class A nonvoting stock as  
12 consideration for the exercise of the 100,000 share option, Wrotniak did not recall taking  
13 any steps to inform himself other than reading Exhibit 525, the board package. (*Id.* at  
14 79:3-7.) Wrotniak does not recall having heard anything about a pour over will or trust,  
15 including whether it caused the 100,000 share option to be held or owned by the Trust  
16 rather than the Estate. (*Id.*, at 82:2–17.) Wrotniak testified that "that would have impacted  
17 my investigation and thought process." (*Id.* at 82:18 – 83:10.) Wrotniak had no  
18 communications with Kane or Adams about what they did in 2015 in response to the  
19 request to exercise the 100,000 share option. (*Id.* at 83:11–1.)

20           *As for his efforts generally to make an informed decision about the matters "ratified,"*  
21 *Wrotniak testified that he has not read any of the deposition transcripts in this derivative case and*  
22 *has not talked with anyone about their deposition testimony. (Id. at 51:17-22)*

23           *Finally, Wrotniak testified that he has no understanding of the import or significance of*  
24 *the two ratification votes that occurred on December 29, 2017 beyond what he was told by GT*  
25 *lawyers Ferrario and Bonner. (Id. at 88:12–23.)*

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<sup>8</sup> See evidence cited at footnote 3, *supra*.

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## 5. Kane

Kane voted to "ratify" both matters raised at the December 29, 2017 board meeting. (Ex. 11 hereto, Kane 4/20/18 dep. tr. at 686:11-13.) In doing in doing so, he voted in favor of decisions he had made previously. (*Id.* at 686:14-16.) In voting to "ratify," Kane acknowledged that he thought he was correct when he made the original decisions and that he therefore voted for "ratification." (*Id.* 686:14-16.) With respect to how he would vote on whether this derivative lawsuit should proceed or be terminated, Kane answered "terminate it tomorrow, please sir." (*Id.*, at 686:14-16.)

### I. What Was Not "Ratified" Regarding the 100,000 Share Option.

#### 1. Ownership of the 100,000 Share Option Remains an Issue in the Case.

Plaintiff contends Kane and Adams, in breach of their fiduciary duties, authorized Ellen Cotter as an executor of the estate of James J. Cotter, Sr. (the "Estate") to exercise a supposed option to acquire 100,000 shares of RDI class B voting stock (the "100,000 share option") so that EC and MC could prevail in the event non-Cotter shareholders challenged them at RDI's 2015 Annual Stockholder Meeting ("ASM"). (*See* Second Amended Complaint ("SAC"), ¶¶ 10, 102 – 108.) More particularly for present purposes, Plaintiff claims that Kane and Adams breached their fiduciary duties by failing to take proper steps to determine ownership of that option. (SAC ¶¶10, 107.) As the Court knows from prior motion practice, Kane and Adams failed to obtain independent advice, failed to obtain a judicial decision authorizing the exercise, and failed to obtain answers to the questions Kane posed regarding whether the Estate owned the 100,000 share option.<sup>9</sup> Plaintiff claims that these failures constitute breaches of fiduciary duty, independent of the use of RDI class A nonvoting stock as consideration for the exercise of the 100,000 share option. (SAC ¶¶10, 102-108; Plaintiff's May 18, 2018 Pre-Trial Memo Section II.B.2)

As explained by Kane, both in emails produced in this case by defendants and in his deposition testimony, the issue(s) the compensation committee members needed resolved to authorize (or not authorize) the exercise of the 100,000 share option included

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<sup>9</sup> *See* Ex. 2 hereto, Adams 4/28/18 Dep. Tr. at 215:24-216:22, 218:3-219:2, 220:9-20; Ex. 6 hereto, Kane 5/2/16 Dep. Tr. at 94:19-95:20, 100:23-102:21, 104:13-23.

1 the threshold issue of whether that option was the property of the James J. Cotter, Sr.  
2 Trust (the "Trust"), as RDI's Proxy Statement in 2014 and years prior had stated and as  
3 Plaintiff contended, or whether it was the property of the Estate, as Ellen Cotter  
4 contended. In an April 17, 2015 email, Kane summarized the issue(s) as whether there  
5 was "any legal reason why Ellen [Cotter], as executor, could not exercise" the share  
6 option. (See E-mail from Kane to Tompkins, Ellen Cotter, Margaret Cotter, Tim Storey,  
7 and Guy Adams, Apr. 17, 2015, 22:44, Exhibit 16 to James Cotter Jr's Reply in support of  
8 Motion to Reconsider Order, at 186.) In another email, Kane identified a particular legal  
9 issue as whether, by operation of the Trust documents of James J. Cotter, Sr. (under  
10 California law), the 100,000 share option had poured over into his Trust upon his death.  
11 (See E-mail from Kane to Storey, Apr. 18, 2015, 12:26, Exhibit 19 to James Cotter Jr's Reply  
12 in support of Motion to Reconsider Order, at 194.)

13 As Plaintiff previously demonstrated and the Court found, Adams and Kane testified  
14 that the sole basis upon which they concluded that the Estate owned the 100,000 share option  
15 was the substance of the advice of counsel, including attorney Craig Tompkins ("Tompkins"),  
16 at the time a Company "consultant" (and former officer), and the law firm of GT (collectively,  
17 "Company Counsel"). (Ex. 2 hereto, at 215:24-216:9 and 220:9-221:2); Ex. 6 hereto, at 94:19-  
18 95:20, 100:23-102:21 & 104:13-23)

19  
20 **2. Only the Use of RDI Class A Nonvoting Stock as Consideration for the  
Exercise of the 100,000 Share Option Was "Ratified."**

21 The December 27, 2017 email prepared by GT lawyers (and reviewed if not edited  
22 by Tompkins and Ellen Cotter) and sent by Gould's assistant on behalf of the five  
23 "independent" directors (Dep. Ex. 527), the agenda for the December 29, 2017 RDI board  
24 meeting (Dep. Ex. 525), and the minutes from that meeting (Dep. Ex. 526) each describe  
25 the "ratification" of the exercise of the 100,000 share option as concerning only the use of  
26 RDI class A nonvoting stock as a consideration. Each reads as follows:

27 "The ratification of the decision of the Compensation Committee, as  
28 outlined in the Minutes of the September 21, 2015 Meeting of the  
Compensation Committee, to permit the estate of James J. Cotter, Sr.

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to use Class A nonvoting stock as a means of payment for the exercise of the option to purchase 100,000 shares of Class B voting stock of RDI."

**III. ARGUMENT**

**A. The Ratification MSJ Is Untimely.**

As described above, the Court previously denied the Ratification MSJ because the failure to file it in a timely manner was not shown to be excused. Nothing in the Motion provides an excuse for the failure to timely file the Ratification MSJ. The Motion does not even contend, much less show, that the very same choreography, and the same purported ratifications, could not have occurred in time to have been the subject of a timely summary judgment motion.

On the contrary, it now is clear from McEachern's testimony described above that defendants chose not to pursue "ratification" when doing so would have enabled them to file a summary judgement motion based thereon in a timely manner, but instead "tabled" it. The Motion therefore should be denied.

**B. NRS 78.140 Does Not Apply to the Matters Purportedly "Ratified."**

The Ratification MSJ argues that "independent" members of the RDI board "ratified" prior conduct of certain of them in terminating Plaintiff as President and CEO of RDI in 2015 and later in 2015 in authorizing the acceptance of RDI class A nonvoting stock as consideration for the exercise of the 100,000 option. NRS 78.140 is the sole authority upon which they rely.

However, under the plain meaning of NRS 78.140, it applies solely to *transactions between the corporation and interested directors and/or officers*. NRS 78.140 provides in relevant part as follows:

**Restrictions on transactions involving interested directors or officers; compensation of directors.**

1. A contract or other transaction is not void or voidable solely because:
  - (a) The contract or transaction is between a corporation and:

- (1) One or more of its directors or officers; or

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(2) Another corporation, firm or association in which one or more of its directors or officers are directors or officers or are financially interested;

(b) A common or interested director or officer:

(1) Is present at the meeting of the board of directors or a committee thereof which authorizes or approves the contract or transaction; or

(2) Joins in the signing of a written consent which authorizes or approves the contract or transaction pursuant to subsection 2 of NRS 78.315; or

(c) The vote or votes of a common or interested director are counted for the purpose of authorizing or approving the contract or transaction, if one of the circumstances specified in subsection 2 exists.

2. The circumstances in which a contract or other transaction is not void or voidable pursuant to subsection 1 are:

(a) The fact of the common directorship, office or financial interest is known to the board of directors or committee, and the directors or members of the committee, approve or ratify the contract or transaction in good faith.

NRS.78.140 (emphasis supplied).

NRS 78.140 has no application here, as the plain language of the statute, italicized above, shows. Clearly, the purpose of NRS 78.140 is to create a path for the approval of director or officer self-interested transactions *with the corporation* that might otherwise be void or voidable. The specific language of subsection (1)(a) makes clear that, for the statute to apply, there must be a contract or transaction between a corporation and one or more of its directors or officers (or corporations with which they are affiliated in certain ways). Only that situation triggers the remaining provisions of Section 1, which are qualified by section (1)(a) and must be read in conjunction with section (1)(a). The "contract or transaction" in subsections (1)(b) and (1) (c) indisputably refers to the contract or transaction described in (1)(a), which is a contract or transaction between a

1 corporation and one or more of its directors or officers. Such a transaction is not void or  
2 voidable, and the participation of the interested directors or officers as contemplated by  
3 subsections (1)(b) and (1)(c) is permitted, if the board or committee ratifies the contract or  
4 transaction in good faith as set forth in subsection (2).

5 Delaware's substantially similar counterpart, DGCL §144, likewise is limited to  
6 contracts or transactions between a corporation and its directors and officers (or other  
7 corporations in which its directors or officers have a financial interest):

8  
9 **(a) No contract or transaction between a corporation and 1 or more of its**  
10 **directors or officers, or between a corporation and any other corporation . . . in**  
11 **which 1 or more of its directors or officers, are directors or officers, or have a**  
12 **financial interest, shall be void or voidable [a] solely for this reason, or [b] solely**  
13 **because the director or officer is present at or participates in the meeting of the**  
14 **board or committee which authorizes the contract or transaction, or [c] solely**  
15 **because any such director's or officer's votes are counted for such purpose, if:**

16 (1) The material facts as to the director's or officer's relationship or interest and  
17 as to the contract or transaction are disclosed or are known to the board of  
18 directors or the committee, and the board or committee in good faith  
19 authorizes the contract or transaction by the affirmative votes of a majority of  
20 the disinterested directors, even though the disinterested directors be less than  
21 a quorum; or

22 . . . .

23 (3) The contract or transaction is fair as to the corporation as of the time it is  
24 authorized, approved or ratified, by the board of directors, a committee or the  
25 stockholders.

26 *See, e.g., Cinerama, Inc. v. Technicolor, Inc.*, 663 A.2d 1156, 1169 (Del. 1995) (§ 144 "deals  
27 with the related problem of the conditions under which a corporate contract can be  
28 rendered 'un-voidable' solely by reason of a director interest"). There is no basis under  
either NRS 78.140 or the parallel Delaware statute for applying the statute other than to a  
contract or transaction between the corporation and one or more directors or officers.

As the Ratification MSJ itself asserts, the purported ratifications were not of a  
contract or transaction between RDI and the Cotter sisters (or defendant Guy Adams).  
The first subject of "ratification" was the 2015 board vote to terminate Plaintiff as CEO of  
RDI. While, of course, the Cotter sisters and therefore Guy Adams were interested in the

1 outcome of the termination vote, the matter "ratified" did not involve a contract or  
2 transaction between any of them and RDI.

3         The same is true with respect to the purported ratification of the 2015 decision by  
4 Kane and Adams to authorize acceptance of Class A non-voting stock as consideration  
5 for the exercise of the 100,000 share option. By its terms, the "ratification" was not of the  
6 underlying option agreement (between the Company and James J Cotter, Sr.). Nor did  
7 "ratification" concern the validity (or ownership) of that assumed contractual right.  
8 Rather, the "ratification" addressed only the subject of the consideration for the exercise.

9         Thus, the subject of the "ratifications" was not a contract or transaction between  
10 RDI and its directors or officers. NRS 78.140 therefore is inapplicable.

11         Even if, *arguendo*, NRS 78.140 were to apply, that does not mean that the so-called  
12 "ratification" was effective here. First, NRS 78.140(2)(a) requires that any decision  
13 pursuant to that statutory provision be made by independent directors acting in "good  
14 faith." As demonstrated herein, there are at a minimum disputed issues of material fact  
15 with respect to whether the "ratifying" directors were independent, and whether they  
16 acted in good faith and on an informed basis.

17         Second, the Ratification MSJ simply assumes without explanation or authority that  
18 actionable conduct can be cured by "ratification." However, it cites absolutely no  
19 authority for such proposition. *Shoen v. SAC Holding Corp.*, 122 Nev. 621, 137 P.3d 1171  
20 (2006), which it cites, is not authority for such a proposition. In *Shoen*, the Nevada  
21 Supreme Court merely cited NRS 78.140 as "governing interested director transactions."  
22 *Shoen*, 122 Nev. at 636 n. 34, 137 P.3d at 1181 n. 34. Defendants in *Shoen* did not assert  
23 ratification as a defense or rely on NRS 78.140. And, in contrast to the so-called  
24 ratification here, *Shoen* did not involve a board's "ratification" of a prior decision by the  
25 board or board committee. Rather, *Shoen* involved a web of interested business dealings  
26 and transactions between the corporation (Amerco) and the SAC entities that were  
27 controlled by certain directors of Amerco. Thus, Defendants fail to cite any case applying  
28 NRS 78.140, let alone a case applying it outside of a contract or transaction between a  
corporation and its director or officer

1 For the reasons explained above, NRS 78.140 by its terms does not provide for  
2 curing actionable conduct; it merely provides for authorization of interested director  
3 contracts or transactions by independent directors acting in good faith on an informed  
4 basis.

5 **C. The Moving Party Bears the Burdens of Proof.**

6 **1. The Moving Party Bears the Burden of Proving That the "Independent"**  
7 **Directors "Resorted in Good Faith to an Informed Decision-Making Process."**

8 Although the actions of the "independent" directors have been depicted for  
9 litigation purposes as "ratification," they are the type of actions taken by a special  
10 litigation committee seeking dismissal of a derivative action. The reason that the  
11 Ratification MSJ does not refer to the "independent" directors as such is because their acts  
12 and omissions over the few days in which the "ratification" "process" was executed  
13 evidence a wholesale failure to perform a good faith and thorough investigation leading  
14 to good faith and informed "ratification" decisions.

15 Where, as here, relief is sought based on the conduct of a subset or committee of a  
16 board of directors to whom or which decision-making authority has been delegated, the  
17 movant bears the burden of proving that those directors conducted a good faith and  
18 thorough investigation. *Jacksonville Police and Fire Pension Fund v. Brokaw (In re DISH*  
19 *Network Derivative Litig.)*, 401 P.3d 1081, 1088 (Nev. 2017). In assessing "whether an  
20 individual director or Board of Directors acted in good faith and, in turn whether  
21 protection under the business judgment rule is available[,]" the Court may and should  
22 conduct an "inquiry into the procedural indicia of whether the directors resorted in good  
23 faith to an informed decision making process." *Wynn Resorts, Ltd. v. Eighth Jud. Dist. Ct.*,  
24 399 P. 3d. 334, 343 (Nev. 2017 (citing *WLR Foods, Inc. v. Tyson Foods, Inc.*, 857 F. Supp. 492,  
25 494 (W.D. Va. 1994)). This includes, among other things, "inquiry into the identity and  
26 qualifications of any sources of information or advice sought which bear upon the  
27 decision reached, the circumstances surrounding selection of the sources [and] the  
28 general topics ... of the information sought are imparted..." *Id.*



1           Moreover, evidence that "the investigation [by a special committee of supposedly  
2 independent directors] has been so restricted in scope, so shallow execution, or otherwise  
3 so *pro forma* or halfhearted as to constitute a pretext or sham... would raise questions of  
4 good faith or conceivably fraud which would never be shielded by [the business  
5 judgment] doctrine." *In re DISH Network Derivative Litig.*, 401 P.3d at 1092 (citing and  
6 quoting *Auerbach v. Bennett*, 47 N.Y.2d 619, 419 N.Y.S.2d 920, 393 N.E.2d 994, 1003 (1979)).

7                           **2. The Moving Party Also Bears the Burden of Proving the**  
8                           **Independence of the "Ratifying" Directors**

9           A board of directors may "delegate to a committee of disinterested directors the  
10 board's power to control corporate [derivative] litigation." *Kaman v. Kemper Fin. Servs.,*  
11 *Inc.*, 500 U.S. 90, 102 (1991). Such a committee typically is called a special litigation  
12 committee or an "SLC." *Beam v. Stewart*, A.2d 1040, 1055 (Del. 2004).

13           Where, as here, that has occurred, the moving party also bears the burden of  
14 proving the independence of board members whose actions and/or decisions serve as the  
15 basis for the relief sought. *In re DISH Network Derivative Litig.*, 401 P.3d at 1088, 1089.  
16 Therefore, the District Court "should not presume [a special litigation committee] to be  
17 independent nor require the derivative plaintiff to bear the burden of proof" with respect  
18 to the issue of independence. *Id.* at 1089.

19           Put differently, the party seeking dismissal of a derivative action based upon the  
20 actions or recommendations of a board committee "bears the burden of persuasion" and  
21 must "demonstrate that no material factual question exists regarding... independence [of  
22 the committee members]." *In re Oracle Corp. Derivative Litig.*, 624 A.2d 917, 920 (Del. Ch.  
23 2003). The test of committee member independence is whether connections between  
24 them and the directors who are the subject of the committee's decision "would weigh on  
25 the mind of a reasonable special litigation committee member." *Id.* at 947. If so, those  
26 connections "generate a reasonable doubt about the [committee members'] impartiality  
27 because they suggest that material considerations other than the best interests of [the  
28 corporation] could have influenced the[ir] inquiry and judgments." *Id.* Thus, the District

1 Court must "assess whether any improper influences prevented the SLC from impartially  
2 considering the merits of a derivative suit before recommending it be dismissed." *In re*  
3 *DISH Network Derivative Litig.*, 401 P.3d at 1090.

4 Unlike the motions for partial summary judgment, in which Plaintiff bore the  
5 burden of proof with respect to the issue of the independence of individual directors who  
6 sought to invoke the business judgment rule, here the moving party bears the burden of  
7 "establishing... independence by a yardstick that must be 'like Caesar's wife -- above  
8 reproach.'" *Beam v. Stewart*, 845 A.2d 1040, 1055 (Del. 2004).

9 For the foregoing reasons, this Court's prior determinations that Plaintiff had  
10 failed to raise disputed issues of material fact regarding the independence of the five  
11 directors with respect to the matters that were the subject of motions for partial summary  
12 judgment does not and cannot excuse the moving party here from satisfying its burden  
13 of proof with respect to their independence. Simply put, both the burdens of proof and  
14 the substantive standards applicable here are different than those which were applicable  
15 to the motions for partial summary judgment.

16 Additionally, if the Court does not deny the Ratification MSJ, Plaintiff is entitled to  
17 and hereby requests an evidentiary hearing with respect to both issues as to which  
18 defendants bear the burden of proof, namely, independence and a thorough  
19 investigation conducted in good faith. *Shoen*, 122 Nev. at 645, 137 P.3d at 1187. As the  
20 record (including from May 2, 2018 evidentiary hearing) makes clear, questions of fact  
21 and credibility, the latter on the part of both the "independent" directors and their  
22 conflicted counsel, predominate.

23 **D. The Ratification MSJ Satisfies None of the Burdens of Proof It Bears.**

24 As demonstrated below, the Ratification MSJ fails to satisfy the burdens of  
25 proving that there are no disputed issues of material fact with respect to both (i) the  
26 independence of the "ratifying" directors, and (ii) whether those directors who approved  
27 "ratification" as a result of a good faith, thorough investigation that enabled them to  
28 make a good faith, informed decision.

1                   **1. Use of Company Counsel Establishes a Lack of Independence, as a**  
2                   **Matter of Law and Fact**

3                   Courts repeatedly hold that the use of company counsel, whether by special  
4                   committees or other supposedly independent directors, raises questions about the  
5                   independence of the advisors and, thereby, the committee and the individual directors.  
6                   *Gesoff v. IIC Industries Inc.*, 902 A.2d 1130, 1147 (Del. Ch. 2006), *subsequent proceedings*,  
7                   2006 Del. Ch. LEXIS 161, 2006 WL 2521441 (Del. Ch. Aug. 22, 2006) ("[A] special  
8                   committee's decision to use the legal and financial advisors already advising the parent  
9                   'alone rais[ed] questions regarding the quality and independence of the counsel and  
10                  advice received")(citing *In re Tele-Communications, Inc. Shareholders Litig.*, 2005 WL  
11                  3642727 (Del. Ch. Dec. 21, 2005)); *see generally* William T. Allen, *Independent Directors in*  
12                  *MBO Transactions: Are They Fact or Fantasy?*, 45 BUS. LAW. 2055 (1990). Thus, courts reject  
13                  determinations made by directors based on advice of counsel where such advice may be  
14                  tainted by a conflict of interest. *In re Oracle Securities Litig.*, 829 F. Supp. 1176, 1189 (N. D.  
15                  Cal. 1993) (a board committee reliance on the inherently biased advice of in-house  
16                  counsel made the 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                  A.2d 501, 511 (Del. Ch. 1984), *aff'd*, 499 A.2d 1184 (Del. 1985); *Byers v. Baxter*, 69 A.D. 2d  
343, 348, 419 N.Y.S. 2d 497, 500 (App. Div. 1979)).

1 Here, the "independent" directors have relied entirely on "advice" from Company  
2 Counsel, who face actual, pervasive and debilitating conflicts arising from the fact that  
3 the Company that employs and pays them is controlled by the Cotter sisters.

4 As to Craig Tompkins, RDI's General Counsel who reports to Ellen Cotter and to  
5 whom GT attorneys report, Kane testified that he (Kane) understood that Tompkins was  
6 on the side of Ellen Cotter in her disputes with Plaintiff, as well as that he (Kane) was of  
7 the view that "Tompkins always acted in his own self-interest." (*See Ex. 12* hereto, Kane  
8 dep. 6/9/16 dep. tr. at 427:3-9, 428:2-9 and 432:13-25.) In the former regard, Kane at  
9 deposition explained that the words he used in an email stating "according to [Ellen  
10 Cotter], Craig is also on the 'team[,] meant that Tompkins "was [with] Ellen and  
11 Margaret versus Jim." (*See Ex. 6* hereto Kane 5/2/16 dep. tr. at 176:18-177:1, and Ex. 17 to  
12 JJC 6/8/18 Motion (Dep. Ex. 105))

13 As to GT, GT lawyers ignored the conflicts with which they are faced and  
14 consistently acted to further the interests of the individuals who control the Company  
15 and employ them as Company counsel, both in this action and in the board room.

16 GT as counsel of record for nominal defendant RDI has acted vigorously to  
17 terminate this case, thereby protecting and pursuing the interests of the Cotter sisters.  
18 This began with a contrived motion to compel arbitration (following the filing of a  
19 contrived arbitration) and included, among other things, motions to dismiss and motions  
20 for summary judgment asserting bases available only to individual defendants.

21 During the pendency of this action, GT repeatedly has "advised" "independent"  
22 directors, who have acted in reliance on GT's advice in making decisions that benefit  
23 Ellen and Margaret Cotter, who control RDI, which employs and pays GT. For example,  
24 GT in 2015 "advised" Kane and Adams, to work around rather than address the issue of  
25 ownership of the so-called 100,000 share option.

26 With respect to the purported "ratification," GT lawyers actually viewed their  
27 client as the Company. GT attorney Bonner testified as follows:  
28

1 BY MR. FERRARIO:  
2 Q Mr. Bonner, you currently work at Greenberg Traurig; correct?  
3 A Yes.  
4 Q *And is a company called Reading International a client?*  
5 A *Yes. It's a client of our firm.*  
6 Q Okay. And are you the principal contact for that client?  
7 A Yes.  
8 Q Okay. *And in your capacity as a lawyer for that client do you get involved with*  
9 *something called the special independent committee of the board of directors of Reading*  
10 *International, Inc.?*  
11 A Yes.  
12 (See Ex. 15 to JJC 6/8/18 Motion, 5/2/18 hearing tr. at 19:3-16.) (Emphasis supplied.)  
13 In view of the foregoing, there can be little if any doubt that "ratification" is a  
14 "litigation strategy" hatched by GT lawyers for use in this derivative action for the benefit  
15 of defendants Ellen Cotter and Margaret Cotter. As described above, GT lawyers cleared  
16 "ratification" with Ellen Cotter, Margaret Cotter and Tompkins before "advising" SIC  
17 committee members Gould, McEachern and Coddling at the (previously concealed)  
18 telephonic SIC meeting on December 21, 2017 that and how to use "ratification" as a  
19 "litigation strategy." Next, GT lawyers provided Tompkins and Ellen Cotter drafts of  
20 what came to be Gould's December 27, 2017 email on behalf of the "independent"  
21 directors requesting that the two "ratification" matters be approved at the board meeting  
22 on December 29, 2017. Presumably in an effort to avoid the open issue of the reliance of  
23 Adams and Kane on GT's 2015 "advice" as the sole basis for their conclusion regarding  
24 ownership of the 100,000 share option, the December 27, 2017 email omits that issue.  
25 Most recently, GT lawyers have withheld evidence in discovery, the effect of  
26 which was to conceal the actual "ratification" "process." Nevertheless, the May 30 and 31  
27 supplemental productions and (facially inadequate) privilege logs reveal that  
28 "ratification" was a "litigation strategy" approved by Ellen Cotter, Margaret Cotter and  
Tompkins, and that the "independent" directors simply did what GT lawyers told them  
to do. To that end, GT lawyers belatedly prepared the minutes of the December 21, 2017  
SIC meeting, but excluded the portion of the meeting concerning "ratification." They also  
failed to produce or log those minutes.

1 Now, the lawyers who "advised" the "independent" directors are asserting  
2 attorney-client privilege, on behalf of the Company, with respect to their  
3 communications with those directors in an effort to render the actual basis for the  
4 "independent" directors' "ratification" decisions ("advice" from conflicted counsel)  
5 undiscoverable. Tellingly, in the face of such conflicts, GT has not advised the  
6 "independent" directors to seek advice from independent counsel.

7 As the foregoing shows, the record before the Court shows that the "independent"  
8 directors lacked independence or, at a minimum, raises disputed issues of material fact  
9 about their independence that require denial of the Ratification MSJ.

## 10 2. Other Factors Also Show a Lack of Independence

11 Courts have identified a number of factors to be considered in determining the  
12 independence of directors as members of special litigation committees. Several of those  
13 factors weigh decidedly against a determination of independence.

14 One such factor is whether the directors were members of the corporation's board  
15 at the time of the alleged wrongdoing. *In re KLA-Tencor Corp. Shareholder Derivative Litig.*,  
16 No. C06-03445 JW Slip Op. at 5, 7 (N.D. Cal. Dec. 11, 2008) (finding a lack of  
17 independence because one of two committee members was a member of the board  
18 during the alleged wrongdoing). Gould, McEachern and Kane each were members of the  
19 Board at the time of all complained of actions, and Coddling and Wrotniak were board  
20 members at the time of several of the complained of actions.

21 Another factor is whether the directors participated in the alleged wrongdoing.  
22 *Grynberg v. Farmer*, 1980 WL 1456, at \*6 (D. Colo. Oct. 8, 1980). A similar factor is whether  
23 they approved the conduct or transaction involving the alleged wrongdoing. *KLA-*  
24 *Tencor*, Slip Op. at 5, 7. Here both are the case for each of the five insofar as he or she was  
25 a Board member at the time.

26 And, critically here, whether the committee received advice from independent  
27 counsel also is a factor. *In re Par Pharm. Inc. Derivative Litig.*, 750 F. Supp. at 644 (denying  
28 motion to dismiss the derivative action where the committee "did not obtain independent  
legal counsel but instead relied upon... counsel for [the nominal defendant corporation]

1 and its Board in this litigation.") As discussed above, none sought or obtained the advice  
2 of independent counsel but, instead, accepted and relied on the advice of conflicted  
3 Company Counsel.

4 Finally, statements "conflating the SLC and the Company" also weigh against a  
5 finding of independence. *KLA-Tencor*, Slip Op. at 5, 7. Here, there are statements by  
6 Company Counsel (Bonner's testimony identifying RDI as his client in his dealings with  
7 the SIC) that do so, and statements by directors (*e.g.*, Wrotniak's "protection for Reading"  
8 statement) that do so.

9 In view of this evidence, there exists at a minimum disputed issues of material fact  
10 regarding their independence, which requires denial of the Ratification MSJ.

11 **3. The Evidence Shows an Inadequate if Not Fraudulent Process**  
12 **Undertaken in Bad faith in Furtherance of a Preordained Result**

13 Discovery to date, including as described above, shows that the "ratification"  
14 scheme was conceived by GT lawyers, who first obtained approval from defendants  
15 Ellen Cotter and Margaret Cotter to pursue it, and who then "advised" "independent"  
16 directors to "ratify" certain conduct the Court previously found to be actionable.  
17 Dutifully "advised," SIC members Gould, Coddington and McEachern on December 21, 2017  
18 each agreed after a brief telephonic discussion claimed privileged to approve  
19 "ratification." Next, GT attorneys worked with Tompkins and EC to draft the December  
20 27, 2017 email Gould sent, purportedly on behalf of the "independent" directors, to  
21 approve "ratification" of two matters. With respect to that email, Gould had no input into  
22 the contents, and the other four did not even see it until their depositions in this case.  
23 Wrotniak first heard about "ratification" on December 27 or 28, 2017, when he spoke  
24 telephonically with GT attorneys Bonner and Ferrario, who told him that "ratifying" prior  
25 conduct would be on the agenda for the December 29, 2017 board meeting. Kane's  
26 agreement was foregone, because it was his decisions that were being "ratified." As  
27 Gould acknowledged at his deposition, "ratification" is a "litigation strategy." The  
28 evidence shows that the preordained purpose of that "litigation strategy," which was

1 hastily carried out by "independent" directors in reliance on advice from conflicted  
2 counsel.

3       When combined with the ongoing efforts of defense counsel to conceal what  
4 actually transpired with respect to the purported ratifications, the evidence presents a  
5 clear picture of a sham or fraudulent exercise undertaken to reach a preordained  
6 conclusion, namely, "ratification" as a "litigation strategy" intended to bring about the  
7 dismissal of this derivative action.

8       Thus, defendants have failed to bear the burden of showing that the  
9 "independent" directors engaged in a good faith, informed decision-making process  
10 leading to good faith, informed, disinterested and independent decisions. The  
11 Ratification MSJ therefore must be denied, for this reason alone.

12                   **E. "Ratification" Did not Address All of the Issues Arising from the**  
13                   **Authorization of the Exercise of the 100,000 Share Option**

14       As described above, and as admitted by Kane at the time, a threshold issue in  
15 determining whether to authorize the exercise of the 100,000 share option was whether  
16 that option was owned by the Estate. However, the "ratification" is confined to the use of  
17 RDI class A nonvoting stock as consideration for the exercise. Thus, the purported  
18 ratification does not eliminate the authorization of the exercise of the 100,000 share  
19 option as an issue in this case.

20                   **F. Plaintiff is Entitled to Rule 56(f) Relief**

21       Where a plaintiff properly identifies additional facts necessary to oppose a  
22 summary judgment motion and seeks additional time to obtain that discovery, summary  
23 judgment is improper. *Aviation Ventures, Inc. v. Joan Morris, Inc.* 121 Nev. 113, 117-18, 110  
24 P.3d 59, 62 (2005). Where it is "unclear whether genuine issues of material fact exists," a  
25 Rule 56(f) continuance allows for "proper development of the record." *Aviation Ventures,*  
26 121 Nev. at 115, 110 P.3d at 60. Here, due to the delay of Responding Parties in providing  
27 court-ordered discovery, Plaintiff through no fault of his own is not yet in a position to  
28 present all "facts essential to justify the party's opposition." For the reasons set forth



**MORRIS LAW GROUP**

411 E. BONNEVILLE AVE., STE. 360 · LAS VEGAS, NEVADA 89101  
702/474-9400 · FAX 702/474-9422

1 above and in the accompanying declaration of Mark G. Krum, Plaintiff is entitled to  
2 NRCP 56(f) relief.

3 **IV. CONCLUSION**

4 For the foregoing reasons, Plaintiff respectfully submits that the Ratification  
5 MSJ should be denied.

6 MORRIS LAW GROUP

7  
8 By: /s/ AKKE LEVIN

9 Steve Morris, Bar No. 1543  
10 Akke Levin, Bar No. 9102  
11 411 E. Bonneville Ave., Ste. 360  
12 Las Vegas, Nevada 89101

13 Mark G. Krum, Bar No. 10913  
14 YURKO, SALVESEN & REMZ, P.C.  
15 1 Washington Mall, 11th Floor  
16 Boston, MA 02108

17 Attorneys for Plaintiff  
18 James J. Cotter, Jr.  
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21  
22  
23  
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26  
27  
28

**MORRIS LAW GROUP**  
411 E. BONNEVILLE AVE., STE. 360 · LAS VEGAS, NEVADA 89101  
702/474-9400 · FAX 702/474-9422

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: **PLAINTIFF'S OPPOSITION TO ELLEN COTTER, MARGARET COTTER AND GUY ADAMS' MOTION FOR SUMMMARY JUDGMENT (BASED ON RATIFICATION")**; **DECLARATION OF MARK G. KRUM**, 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.

Stan Johnson  
Cohen-Johnson, LLC  
255 East Warm Springs Road, Ste. 110  
Las Vegas, Nevada 89119

Donald A. Lattin  
Carolyn K. Renner  
Maupin, Cox & LeGoy  
4785 Caughlin Parkway  
Reno, Nevada 89519

Christopher Tayback  
Marshall Searcy  
Quinn Emanuel Urquhart & Sullivan LLP  
865 South Figueroa Street, 10th Floor  
Los Angeles, CA

Ekwan E. Rhow  
Shoshana E. Barnett  
Bird, Marella, Boxer, Wolpert, Nessim,  
Drooks, Lincenberg & Rhow, P.C.  
1875 Century Park East, 23rd Fl.  
Los Angeles, CA 90067-2561

Attorneys for /Defendants Edward Kane,  
Douglas McEachern, Judy Codding, and Michael  
Wrotniak

Attorneys for Defendant William  
Gould

Mark Ferrario  
Kara Hendricks  
Tami Cowden  
Greenberg Traurig, LLP  
3773 Howard Hughes Parkway  
Suite 400 North  
Las Vegas, NV 89169

Attorneys for Nominal Defendant Reading  
International, Inc.

DATED this 13<sup>th</sup> day of July, 2018.

By: /s/ JUDY ESTRADA

**MORRIS LAW GROUP**

411 E. BONNEVILLE AVE., STE. 360 · LAS VEGAS, NEVADA 89101  
702/474-9400 · FAX 702/474-9422

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**DECL**  
MORRIS LAW GROUP  
Steve Morris, Bar No. 1543  
Akke Levin, Bar No. 9102  
411 E. Bonneville Ave., Ste. 360  
Las Vegas, Nevada 89101  
Telephone: (702) 474-9400  
Facsimile: (702) 474-9422  
Email: sm@morrislawgroup.com  
Email: al@morrislawgroup.com

Mark G. Krum, Bar No. 10913  
Yurko, Salvesen & Remz, P.C.  
1 Washington Mall, 11th Floor  
Boston, MA 02108  
Telephone: (617) 723-6900  
Facsimile: (617) 723-6905  
Email: mkrum@bizlit.com

Attorneys for Plaintiff  
James J. Cotter, Jr.

DISTRICT COURT  
CLARK COUNTY, NEVADA

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

MARGARET COTTER, ELLEN COTTER,) Dept. No. XI  
GUY ADAMS, EDWARD KANE, )  
DOUGLAS McEACHERN, WILLIAM ) Jointly Administered  
GOULD, JUDY CODDING, MICHAEL )  
WROTNIAK, )

Defendants. )

And )

READING INTERNATIONAL, INC., a )  
Nevada corporation, ) **Hearing Date: June 19, 2018**  
)  
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  
the third item is [iii] any discussion of ratification, not limited by  
time.

25 (5/2/18 hearing tr. at 79:6-13.) (Emphasis supplied.)

26 10. The Court on May 2, 2018 also granted the remaining defendants motion to  
27 file what is the now filed Ratification MSJ, but instructed them not to file it until after  
28 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 to 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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702/474-9400 · FAX 702/474-9422

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

7 Executed this 13th day of June, 2018.

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11 \_\_\_\_\_  
12 Mark G. Krum, Esq.  
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411 E. BONNEVILLE AVE., STE. 360 · LAS VEGAS, NEVADA 89101  
702/474-9400 · FAX 702/474-9422

**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.

Stan Johnson  
Cohen-Johnson, LLC  
255 East Warm Springs Road, Ste. 110  
Las Vegas, Nevada 89119

Donald A. Lattin  
Carolyn K. Renner  
Maupin, Cox & LeGoy  
4785 Caughlin Parkway  
Reno, Nevada 89519

Christopher Tayback  
Marshall Searcy  
Quinn Emanuel Urquhart & Sullivan LLP  
865 South Figueroa Street, 10th Floor  
Los Angeles, CA

Ekwan E. Rhow  
Shoshana E. Bannett  
Bird, Marella, Boxer, Wolpert, Nessim,  
Drooks, Lincenberg & Rhow, P.C.  
1875 Century Park East, 23rd Fl.  
Los Angeles, CA 90067-2561

Attorneys for /Defendants Edward Kane,  
Douglas McEachern, Judy Codding, and Michael  
Wrotniak

Attorneys for Defendant William  
Gould

Mark Ferrario  
Kara Hendricks  
Tami Cowden  
Greenberg Traurig, LLP  
3773 Howard Hughes Parkway  
Suite 400 North  
Las Vegas, NV 89169

Attorneys for Nominal Defendant Reading  
International, Inc.

DATED this 13<sup>th</sup> day of June, 2018.

By:           /s/ JUDY ESTRADA

# Exhibit 1

8-K 1 rdi-20180223x8k.htm 8-K

**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
Washington, DC 20549**

**FORM 8-K**

CURRENT REPORT

Pursuant to Section 13 OR 15(d) of the Securities Exchange Act of 1934

Date of report (Date of earliest event reported): February 23, 2018

**Reading International, Inc.**

(Exact Name of Registrant as Specified in its Charter)

<b><u>Nevada</u></b> (State or Other Jurisdiction of Incorporation)	<b><u>1-8625</u></b> (Commission File Number)	<b><u>95-3885184</u></b> (IRS Employer Identification No.)
<b><u>5995 Sepulveda Boulevard, Suite 300, Culver City, California</u></b> (Address of Principal Executive Offices)		<b><u>90230</u></b> (Zip Code)

Registrant's telephone number, including area code: **(213) 235-2240**

N/A

(Former Name or Former Address, if Changed Since Last Report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Indicate by check mark whether the registrant is an emerging growth company as defined in as defined in Rule 405 of the Securities Act of 1933 (§230.405 of this chapter) or Rule 12b-2 of the Securities Exchange Act of 1934 (§240.12b-2 of this chapter).

Emerging growth company

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act.

**Item 8.01 Other Events.**

Reading International, Inc.'s through its press release dated February 23, 2018, announced that the Superior Court of the State of California for the County of Los Angeles entered a statement of decision (the "Statement of Decision") in the matter regarding the James J. Cotter Living Trust ("Cotter Living Trust"), Case No. BP159755 (the "Trust Litigation") on February 14, 2018.

For more information, see the press release attached as exhibit 99.1, the charter of the Special Independent Committee attached as exhibit 99.2, and the California Superior Court issued Statement of Decision dated February 14, 2018 attached as exhibit 99.3, hereto.

**Item 9.01 Financial Statements and Exhibits.**

- 99.1 [Press release issued by Reading International, Inc. providing an update on the California Superior Court's Ruling regarding the Cotter Living Trust](#)
  - 99.2 [Reading International, Inc.'s Board of Directors Special Independent Committee Charter adopted on August 7, 2017](#)
  - 99.3 [California Superior Court issued Statement of Decision dated February 14, 2018 in the matter In Re: James V. Cotter, Living Trust, Ellen Marie Cotter, Margaret Cotter, Petitioners, vs. James J. Cotter, Jr., Respondent, Case No: BP159755](#)
-

**SIGNATURES**

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

READING INTERNATIONAL, INC.

Date: February 23, 2018

By: /s/ Ellen Cotter  
Name: Ellen Cotter  
Title: Chief Executive Officer and  
President

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EX-99.1 2 rdi-20180223xex99\_1.htm EX-99.1

***Reading International Announces  
Trial Court Decision to Appoint Temporary  
Trustee Ad Litem to Obtain Offers to  
Purchase RDI Voting Stock in James J.  
Cotter, Sr., Voting Trust***

**Culver City, California, - (BUSINESS WIRE) – February 23, 2018 –** Reading International, Inc. (the “Company”) today announced that the California Superior Court has issued a statement of decision (the “Statement of Decision”) in the matter *In Re: James V. Cotter, Living Trust, Ellen Marie Cotter, Margaret Cotter, Petitioners, vs. James J. Cotter, Jr., Respondent*, Case No: BP159755 (the “Cotter Trust Case”), relating to Mr. James J. Cotter, Jr.’s February 8, 2017 petition to appoint a temporary trustee ad litem (a “Temporary TAL”) to pursue a sale of the Class B Voting-Stock owned, before his death, by Mr. James J. Cotter, Sr. These shares represent more than 66% of the outstanding voting power of our Company. In response to Mr. Cotter, Jr.’s petition, the California Superior Court has determined to appoint a Temporary TAL “with the narrow and specific authority to obtain offers to purchase the RDI stock in the voting trust, but not to exercise any other powers without court approval, specifically the sale of the company or any other powers possessed by the trustees.”

In a prior statement of decision dated December 8, 2017, the California Superior Court determined Ellen Cotter and Margaret Cotter to be the sole trustees of the James J. Cotter, Sr., Living Trust (the “Cotter Trust”), and Margaret Cotter to be the sole trustee of the voting trust to be created under the Cotter Trust (the “Voting Trust”). The Statement of Decision, except with respect to the limited authority granted to the Temporary TAL, leaves Ellen Cotter and Margaret Cotter in place as trustees, with all powers granted to them under the applicable trust documents, over all other matters relating to the Cotter Trust, the Voting Trust and their respective assets, including authority to vote the Class B Stock held by the Cotter Trust and/or the Voting Trust.

The Statement of Decision does not name a Temporary TAL, but provides that if the parties cannot agree on a Temporary TAL, one will be appointed at some future date by the California Superior Court.

Our Company’s Board of Directors previously established a Special Independent Committee comprised of directors William Gould (our lead independent director who also serves as the Chair of the Special Independent Committee), Judy Codding and Douglas McEachern to, among other things, address any potential change of control transaction relating to the sale of the shares of Class B Voting Stock, which may now or in the future be held by the Cotter Trust.

The Charter of the Special Independent Committee includes the following statements: “Due to the fact that the Voting Stock held by the [Cotter] Trust and the [Cotter] Estate represents less than 5% of the outstanding equity of the Company, there is a risk that the interests of the person or group acquiring such a controlling block would not be consistent with the long term business strategy adopted by the Company’s Board or would otherwise be inconsistent with the interest of holders of Class A Common Stock or other holders of Class B Common Stock. The Board had previously determined that it would be in the best interests of the Company and its stockholders for the Company to pursue its long-term business strategy as an independent company. Ellen Cotter, Margaret Cotter, and/or an entity in which they have a

controlling interest may be involved in the Trust Share Sale Process as a potential purchaser

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of such shares, and have advised the Board that they intend to continue with the implementation of the business strategy adopted by the Board. Mr. Cotter, Jr., voted against approval of that business strategy.” A complete copy of the Special Independent Committee Charter will be attached to our filing on Form 8-K, being made with respect to this press release.

Our Company has advised the California Superior Court that it opposes the appointment of a Temporary TAL, as it believes that such an appointment is not in the best interests of our Company and our stockholders generally. Such a marketing process, conducted without the participation or support of the Board of Directors and without any protections for minority stockholders, risks an acquisition of control that does not reflect our Company’s value and growth opportunities and transfers value from our stockholders to a potentially unqualified individual or group. Moreover, irrespective of who may eventually end up with control, such a process risks distracting key employees from executing our business plan and disrupting present and future business relations, valuation creation strategies and development projects.

Our Board of Directors has not changed its position that it is in the best interests of our Company and our stockholders generally to continue the independent pursuit of our Company’s current business plan and that a sale of the Company at this time would not be in the best interests of stockholders generally. The Special Independent Committee and our Board of Directors will monitor further developments arising out of the Statement of Decision and determine what steps, if any, should be taken in the best interests of our Company and our stockholders generally.

As previously announced, on December 11, 2017, the District Court in Nevada in the matter *Cotter vs. Cotter, et al.*, Case No.: A-15-719860-B, Dept. No. XXVII (the “Cotter Derivative Litigation”) dismissed all derivative claims against Directors Judy Coddling, William Gould, Edward L. Kane, Doug McEachern and Michael Wrotniak determining that Mr. James J. Cotter, Jr., had failed to demonstrate any “genuine issues of material fact related to the disinterestedness and/or independence of those directors.” On December 29, 2017, these five directors (constituting a majority of our Board of Directors) voted to ratify the actions of our Board of Directors in terminating Mr. Cotter, Jr., as President and CEO, and the actions of our Compensation Committee in permitting the Cotter Estate to use shares of Class A Non-Voting Stock to pay the exercise price of options held by the Cotter Estate to acquire Class B Voting Stock. Based on this ratification, our Company intends to seek dismissal of Mr. Cotter, Jr.’s derivative claims relating to these actions.

### **About Reading International, Inc.**

Reading International, Inc. (NASDAQ: RDI) is a leading entertainment and real estate company, engaging in the development, ownership and operation of multiplex cinemas and retail and commercial real estate in the United States, Australia and New Zealand.

The family of Reading brands includes cinema brands Reading Cinemas, Angelika Film Centers, Consolidated Theatres, and City Cinemas; live theaters operated by Liberty Theatres in the United States; and signature property developments, including Newmarket Village, Auburn Red Yard and Cannon Park in Australia, Courtenay Central in New Zealand and 44 Union Square in New York City.

Additional information about Reading can be obtained from the Company's website: <http://www.readingrdi.com>.



**Forward-Looking Statements**

*Our statements in this press release contain a variety of forward-looking statements as defined by the Securities Litigation Reform Act of 1995. Forward-looking statements reflect only our expectations regarding future events and operating performance and necessarily speak only as of the date the information was prepared. No guarantees can be given that our expectation will in fact be realized, in whole or in part. You can recognize these statements by our use of words such as, by way of example, “may,” “will,” “expect,” “believe,” and “anticipate” or other similar terminology.*

*These forward-looking statements reflect our expectation after having considered a variety of risks and uncertainties. However, they are necessarily the product of internal discussion and do not necessarily completely reflect the views of individual members of our Board of Directors or of our management team. Individual Board members and individual members of our management team may have different views as to the risks and uncertainties involved, and may have different views as to future events or our operating performance.*

*Among the factors that could cause actual results to differ materially from those expressed in or underlying our forward-looking statements are the following:*

- Future actions, developments and decisions by one or more litigants, a temporary trustee ad litem or other trustee or guardian appointed by a court, or the courts, including appellate courts, in the above-described legal matters.*
- Future actions by members of the Cotter family or their respective affiliates and representatives.*
- Future actions by the Company’s Special Independent Committee or the Board of Directors or any of the Company’s stockholders.*
- Future actions of third parties.*

*The above list is not necessarily exhaustive.*

*Given the variety and unpredictability of the factors that will ultimately influence the matters covered in this press release, no guarantees can be given that any of our forward-looking statements will ultimately prove to be correct. Actual results will undoubtedly vary and there is no guarantee as to how our securities will perform, either when considered in isolation or when compared to other securities or investment opportunities.*

*Finally, we undertake no obligation to publicly update or to revise any of our forward-looking statements, whether as a result of new information, future events or otherwise, except as may be required under applicable law. Accordingly, you should always note the date to which our forward-looking statements speak.*

**Investor Contacts:**

Reading International, Inc.  
Dev Ghose, Executive Vice President & Chief Financial Officer  
Andrzej Matyczynski, Executive Vice President for Global Operations  
(213) 235-2240

**Media Contacts:**

Joele Frank, Wilkinson Brimmer Katcher  
Ed Trissel or Matthew Gross  
(212) 355-4449

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EX-99.2 3 rdi-20180223xex99\_2.htm EX-99.2

**CHARTER OF THE SPECIAL INDEPENDENT COMMITTEE OF THE BOARD OF DIRECTORS OF READING INTERNATIONAL, INC.****I. PURPOSE**

This Special Committee (the “Committee”) is formed for the purpose set forth below with respect to the following background:

Up until his death on September 13, 2014, James J. Cotter, Sr., the father of Ellen Cotter, James J. Cotter, Jr. and Margaret Cotter, was the controlling stockholder of Reading International, Inc. (“Reading” or the “Company”), having the sole power to vote approximately 66.9% of the outstanding Class B Voting Stock (“Voting Stock”) of the Company.

Since James Cotter, Sr.’s death, disputes have arisen among Ellen Cotter, James J. Cotter, Jr. and Margaret Cotter (collectively, the “Cotter Siblings”) and between James J. Cotter, Jr. and the Company, including, among other things:

- (A) The voting control of the Voting Stock owned by Mr. Cotter, Sr. and certain matters related thereto, which became part of the Estate of James J. Cotter, Sr. Deceased (the “Cotter Estate”), are currently being probated in the District Court of Clark County, Nevada (the “Cotter Estate Probate”).
- (B) Various matters regarding the living trust (the “Cotter Trust) and a voting trust to be created to hold the Class B Voting Stock held by the Cotter Trust (the “Voting Trust” and the “Trust Voting Shares”, respectively) created by Mr. Cotter, Sr. which matters are being litigated in the Superior Court of the State of California, County of Los Angeles (the “California Superior Court”), captioned In re James J. Cotter Living Trust dated August 1, 2000 (Case No. BP159755) (the “Trust Case”), including, but not limited to, an Ex Parte Petition for Appointment of a trustee ad litem and of a guardian ad litem for the benefit of Cotter, Sr.’s, minor grandchildren (two of whom are the children of Margaret Cotter and three of whom are the children of James Cotter, Jr., and who are referred to herein as the “Cotter Grandchildren”) (collectively, the “Trust Case”).
- (C) Mr. Cotter, Jr. filed a lawsuit entitled “James J. Cotter, Jr., individually and derivatively on behalf of Reading International, Inc. vs. Margaret Cotter, et al.” Case No.: A-15-719860-V, Dept. XI, against our Company and each of the Company’s then sitting Directors (Ellen Cotter, Margaret Cotter, Guy Adams, William Gould, Edward Kane, Douglas McEachern, and Tim Storey) in the Eighth Judicial District Court of the State of Nevada for Clark County (the “Nevada District Court”). Subsequently, Mr. Cotter Jr. added additional claims and also added as defendants Directors Judy Coddington and Michael Wrotniak (the “Derivative Case”). Consequently, all of the current Directors, other than Mr. Cotter, Jr., are currently defendants in the Derivative Case. The requested relief include reinstatement of Mr. Cotter, Jr. as CEO of the Company.
- (D) An arbitration matter with Mr. Cotter, Jr. (Reading International, Inc. v. James J. Cotter, AAA Case No. 01-15-0004-2384, filed July 2015)( the “Cotter Jr. Employment Arbitration”).



- (E) While the Company is presently unaware of any others, it is possible that other litigation, alternative dispute resolution proceedings or other proceedings may be brought in the future by any of the above referenced parties, by third parties or by the Company directly or indirectly related to the foregoing matters, including, but not limited to, claims related to Cotter family matters, Cotter Estate Probate or the Trust Case that directly or indirectly impact the Company (collectively “Future Proceedings”).

Collectively, all matters described in paragraphs A through E above, including, but not limited to, the Cotter Estate Probate, the Trust Case, the Derivative Case, the Cotter Jr. Employment Arbitration, Employment Direct Action, and the Future Proceedings, are referred to herein as “Cotter Related Proceedings”).

Mr. Cotter, Jr., is also seeking to have all of the Class B voting stock currently owned by the Cotter Trust (and which may upon the rollover of the Cotter Estate into the Cotter Trust, be owned in the future by the Cotter Trust) sold to the highest bidder in a public or similar auction sale process (“Trust Share Sale Process”) in which Ellen Cotter and Margaret Cotter would be prohibited from participating. If Ellen Cotter and Margaret Cotter are permitted to participate in as potential buyers, Mr. Cotter, Jr., has stated to the Court his desire to likewise be permitted to participate as a potential buyer. The public auction proposed by Mr. Cotter, Jr., could result in a change of control of the Company (the “Potential Change of Control Transaction”). Due to the fact that the Voting Stock held by the Trust and the Estate represents less than 5%<sup>1</sup> of the outstanding equity of the Company, there is a risk that the interest of the person or group acquiring such a controlling block would not be consistent with the long term business strategy adopted by the Company’s Board or would otherwise be inconsistent with the interests of holders of Class A Common Stock or other holders of Class B Common Stock. The Board had previously determined that it would be in the best interests of the Company and its stockholders for the Company to pursue its long term business strategy as an independent company. Ellen Cotter, Margaret Cotter, and/or an entity in which they have a controlling interest may be involved in a Trust Share Sale Process as a potential purchaser of such shares, and have advised the Board that they intend to continue with the implementation of the business strategy adopted by the Board. Mr. Cotter, Jr., voted against the approval of that business strategy. The Board has an interest in the preservation of and execution on its business strategy. Bidders in the Trust Share Sale Process or any Potential Change of Control Transaction may seek the involvement of the Company in connection with due diligence or other aspects of such a Potential Change of Control Transaction.

Because of the material impact of the Cotter Related Proceedings and the Potential Change of Control Transaction on the Company, the Board, acting through the Executive Committee, has determined that it is in the best interests of the Company and the stockholders to delegate consideration of matters related to the Cotter Related Proceedings, the Trust Share Sale Process and the Potential Change of Control Transaction.,(collectively, the “Purpose”).

The Committee has the authority to retain its own financial, legal and other advisors, consultants and experts in connection with the Purpose. The Company will pay or reimburse all reasonable costs, fees and expenses incurred by or on behalf of the Committee, including out-of-pocket expenses of members of the Committee, and the reasonable costs, fees and

<sup>1</sup> Based on 696,080 shares of Class B Common Stock held by the Voting Trust, 427,808 shares of Class B Common Stock held by the Estate, and 21,497,717 shares of Class A Common Stock

and 1,680,590 shares of Class B Common Stock outstanding on December 31, 2016.

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expenses of the Committee's financial, legal and other advisors, consultants and experts, if any.

The Committee will fulfill its purpose by carrying out the responsibilities and duties enumerated in Section IV of this Charter.

## **II. COMPOSITION**

The Committee shall be comprised of more than one member of the Board as determined by the Board (or the Executive Committee). The members of the Committee may be appointed or replaced by the Board (or the Executive Committee) by majority action. The Committee may determine its own rules and procedures as are necessary and proper for the conduct of its business, including designation of a chair of the Committee, if determined to do so by the Committee.

Each Committee member must satisfy all of the following criteria (the "Criteria"): The Committee shall be composed of directors who are each (i) an "independent director", pursuant to the definition in section 5605(a)(2) of the NASDAQ Listing Rules; and (ii) is not a Cotter Sibling. The Committee shall be delegated authority to determine whether its members satisfy the Criteria.

The Committee shall initially be composed of [To Come], each of whom the Board has previously determined to satisfy the Criteria set forth in (i) above and none of whom is a Cotter Sibling. The Board, upon recommendation of the Compensation and Stock Options Committee, will establish compensation for service on the Committee.

## **III. MEETINGS**

The Committee shall meet periodically, as deemed necessary or appropriate by the Committee, to carry out its responsibilities and duties and to act upon matters falling within its responsibility. Written minutes of each meeting of the Committee shall be maintained, and shall be distributed to each member of the Committee. Such meetings may be in-person, telephonically or electronically, at such locations as determined by the Committee. Additionally, the Committee may act by unanimous written consent of its members in lieu of a meeting.

## **IV. RESPONSIBILITIES AND DUTIES**

To fulfill its responsibilities and duties, the Committee is authorized to, in its discretion:

i. Review, consider, deliberate, investigate, analyze, explore, evaluate, monitor and exercise general oversight of any and all activities of the Company directly or indirectly involving, responding to or relating to the Purpose or any directly or indirectly related proposals, agreements or transactions involving the Company, and any matters that it deems advisable with respect to the Purpose;

ii. Meet, confer and receive advice of legal counsel, advisors, management, other directors, stockholders and/or third parties in connection with the Purpose, and, instruct legal counsel representing the Company to take certain actions, including, but not limited to, file pleadings or other papers, appear in any proceedings, participate in any discovery or other proceeding of any kind, including any form of alternate dispute resolution forum, or any appellate body, and otherwise take such steps as the Committee deems to be in the best interest of the Company in any Cotter Related Proceedings or





in connection with any Potential Change of Control Transaction;

iii. Participate in and direct legal counsel representing the Company to conduct negotiations and take actions to resolve matters related to the Cotter Related Proceedings, or any Potential Change of Control Transaction, including, without limitation, to negotiate the form of any and all requisite agreements and other documentation directly or indirectly related to the Purpose;

iv. Report to the Board, as it determines to be appropriate (subject to the maintenance of attorney-client privileges and with due regard for and the institution of appropriate safeguards in order to take into account any conflicts of interest that may exist involving other members of the Board and without limiting its delegated authority under this Charter), its recommendations and conclusions with respect the determinations delegated to it by this Charter; and

v. Take all such other actions as the Committee may deem to be necessary or appropriate in connection with the above.

In the execution of its duties, the Committee may rely upon the officers, executives and other employees of the Company, and such outside consultants as the Committee may from time to time determine to retain, including, without limitation, legal counsel.

The Committee shall have the authority to enter into or bind the Company in connection with a Cotter Related Proceedings, or any Potential Change of Control Transaction; provided, however, that the Committee shall not have any authority to issue or to obligate the Company to issue any shares of Company stock, or to approve any merger, consolidation or liquidation of the Company.

Each of the independent directors of the Company is named as a defendant in the Derivative Case. Nothing herein or in the delegation to the Committee to consider certain matters is intended to impact such directors' rights and defenses, representation by their own separate counsel or any other right in the Derivative Case. Any actions taken by the Committee in respect of the Derivative Case is intended to be taken with respect to the interests of the Company. Nothing herein is intended to limit, waive or reduce in any way such directors' rights and entitlement to defend the Derivative Case in their respective defendant capacities and to obtain all indemnification and other rights they may possess.

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# Exhibit 2

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EIGHTH JUDICIAL DISTRICT COURT  
CLARK COUNTY, NEVADA

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

Plaintiff, )

vs. )

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

Defendants, )

and )

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

Nominal Defendant. )  
\_\_\_\_\_ )

Case No.  
A-15-719860-B  
  
Case No.  
P-14-082942-E  
  
Related and  
Coordinated Cases

Complete caption, next page.

VIDEOTAPED DEPOSITION OF GUY ADAMS  
LOS ANGELES, CALIFORNIA  
THURSDAY, APRIL 28, 2016  
VOLUME I

REPORTED BY: LORI RAYE, CSR NO. 7052  
JOB NUMBER: 305144

GUY ADAMS, VOLUME I - 04/28/2016

<p>1 EIGHTH JUDICIAL DISTRICT COURT  2 CLARK COUNTY, NEVADA  3 JAMES J. COTTER, JR., )  4 derivatively on behalf of )  5 Reading International, Inc., )  6 )  7 )  8 )  9 )  10 )  11 )  12 )  13 )  14 )  15 )  16 )  17 )  18 )  19 )  20 )  21 )  22 )  23 )  24 )  25 )</p>	<p>Page 2</p>	<p>1 Videotaped deposition of GUY ADAMS,  2 held at Jeffer Mangels Butler &amp; Mitchell, LLP,  3 located at 1900 Avenue of the Stars, Tenth Floor,  4 Los Angeles, California, 90067, on Thursday,  5 April 28, 2016, at 10:13 a.m., before Lori Raye,  6 Certified Court Reporter, in and for the State of  7 California.  8  9 Appearances:  10  11 For Plaintiff:  12  13 LEWIS ROCA ROTHGERBER CHRISTIE, LLP  14 BY: MARK G. KRUM, ESQ,  15 3993 Howard Hughes Parkway  16 Suite 600  17 Las Vegas, Nevada, 89169  18 (702) 949-8200  19 mkrum@lrlaw.com  20  21 For Defendants Margaret Cotter, Ellen Cotter, Guy  22 Adams, Douglas McEachern, Edward Kane, Judy Coddling  23 and Michael Wrotniak:  24  25 QUINN EMANUEL URQUHART &amp; SULLIVAN, LLP  26 BY: CHRISTOPHER TAYBACK, ESQ.  27 865 South Figueroa Street  28 Tenth Floor  29 Los Angeles, California 90017  30 (213) 443-3199  31 christayback@quinnemanuel.com</p>	<p>Page 3</p>
<p>1 Appearances: (Continued)  2  3  4 For Plaintiffs-in-Intervention T2 Partners  5 Management, LP, dba Kase Capital Management,  6 et al.:  7  8 ROBERTSON &amp; ASSOCIATES, LLP  9 BY: ROBERT NATION, ESQ.  10 32121 Lindero Canyon Road  11 Suite 200  12 Westlake Village, California 91361  13 (818) 851-3850  14 rnation@arobertsonlaw.com  15  16 For Nominal Defendant Reading International, Inc.:  17  18 GREENBERG TRAUERIG  19 BY: ERIC W. SWANIS, ESQ.  20 3773 Howard Hughes Parkway  21 Las Vegas, Nevada 89169  22 (702) 792-3773  23 swanise@gtlaw.com  24  25 For Defendants William Gould and Timothy Storey:  26  27 BIRD   MARELLA, PC  28 BY: EKWAN E. RHOW, ESQ.  29 1875 Century Park East  30 23rd Floor  31 Los Angeles, California 90067  32 (310) 201-2100  33 eer@birdmarella.com  34  35 Also Present:  36  37 JAMES J. COTTER, JR.  38 BRIAN MURPHY (Videographer)</p>	<p>Page 4</p>	<p>1 I N D E X  2  3 WITNESS: GUY ADAMS  4  5 EXAMINATION PAGE  6 By Mr. Krum 8  7  8  9  10 E X H I B I T S  11  12 NUMBER DESCRIPTION MARKED  13  14 Exhibit 53 10-9-13 Income and Expense118  15 Declaration  16 (JCOTTER14954-14974)  17 Exhibit 54 3-28-14 Reply Declaration 121  18 in Support of Request for  19 Order Re Spousal Support  20 and Attorneys' Fees and  21 Costs (JCOTTER14932-14953)  22 Exhibit 55 2-6, 2-11-15 Emails and122  23 D&amp;O Questionnaire  24 (RDI46282-46311)  25 Exhibit 56 Highly Confidential Agenda147  26 (GA5286)  27  28 Exhibit 57 8-9, 8-21-14 Emails155  29 (GA1423-1424)  30 Exhibit 58 10-14, 10-15-14 Emails162  31 (GA1616)</p>	<p>Page 5</p>

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1 room with the three Cotter siblings to discuss the  
2 business issues and try to get that disentangled so  
3 they could move forward.  
4 And Doug McEachern called me after a  
5 couple of those meetings and told me they were not  
6 going very well. They weren't very productive,  
7 excuse me.  
8 **Q. There were only a total of three such**  
9 **meetings; correct?**  
10 MR. TAYBACK: Objection; foundation.  
11 If you know.  
12 THE WITNESS: Which -- oh, I thought there was  
13 two. I don't know, is the answer.  
14 BY MR. KRUM:  
15 **Q. But you think there were something in the**  
16 **range of two or three meetings where McEachern and**  
17 **Storey met with each of the three Cotters?**  
18 A. Yes.  
19 **Q. Okay. And when did those occur,**  
20 **approximately? What time period?**  
21 A. I would say --  
22 MR. TAYBACK: Objection; foundation.  
23 You can answer what you know.  
24 THE WITNESS: I'm really not sure. I guess  
25 they were in the -- maybe the October/November time

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1 **meeting with you personally instead of --**  
2 A. No.  
3 **Q. -- you together with other board members?**  
4 A. No.  
5 **Q. Did you think about that?**  
6 A. No.  
7 **Q. Did you tell anybody you were going to**  
8 **meet with her before you met with her?**  
9 A. I think I didn't.  
10 **Q. Not Ed Kane?**  
11 A. Not that I remember.  
12 **Q. So directing your attention, Mr. Adams,**  
13 **to the actual breakfast meeting with Ellen Cotter**  
14 **at the Peninsula, was it just the two of you?**  
15 A. Yes.  
16 **Q. How long did it last?**  
17 A. A little over an hour, I guess.  
18 **Q. What did she say and what did you say?**  
19 A. The purpose of the breakfast was, she  
20 said, I want you to reconsider being interim CEO.  
21 And I remarked that I already had a job and I was  
22 doing things and I really wasn't all that  
23 interested in it. She said, No, we really need  
24 you -- somebody to take the interim role. And I  
25 said, I'll do it on three conditions.

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1 period.  
2 BY MR. KRUM:  
3 **Q. 2014?**  
4 A. 2014, yes.  
5 **Q. So directing your attention back to your**  
6 **April breakfast meeting at the Peninsula with Ellen**  
7 **Cotter, tell me again how that came about.**  
8 A. Ellen called me.  
9 **Q. What did she say and what did you say?**  
10 A. She says, I want to talk to you and I  
11 have a lot of things to talk about so why don't we  
12 have breakfast at the Peninsula. She suggested a  
13 day or -- it came about that way.  
14 **Q. What else, if anything, did either of you**  
15 **say on that phone call?**  
16 A. In that phone call with Ellen? That's  
17 all I recall.  
18 **Q. Did you ask her to give you some sense as**  
19 **to what she wanted to discuss?**  
20 A. My recollection is that she said on her  
21 opening burst that we had a lot of things to talk  
22 about and I think we should do it in person, so if  
23 you're available, let's have breakfast. And I  
24 didn't press what the issues were.  
25 **Q. Did she say or did you ask why she was**

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1 One, I want -- I'll accept that there's a  
2 majority of the Cotter siblings that agree to it;  
3 and Number 2, I'll do it if the majority of the  
4 independent directors agree to it. And I had no  
5 idea whether they would or wouldn't, but that was a  
6 condition. And the third condition was, I agreed  
7 to be an interim -- an interim, one month,  
8 two months, I'm thinking max three. So it was a  
9 short scope of time.  
10 **Q. Why?**  
11 A. Because I didn't want to be CEO. I  
12 wanted to just to tide it over till we got a CEO in  
13 there to run the company.  
14 **Q. Okay. So at this breakfast conversation,**  
15 **did Ellen say that Margaret was in agreement with**  
16 **her that they wanted you to be interim CEO?**  
17 A. Yes.  
18 **Q. And did Ellen say anything about any**  
19 **discussions she had had with any other RDI board**  
20 **member?**  
21 A. No. No. We didn't talk about her  
22 discussions with other people, that I recall.  
23 **Q. Did you have any understanding as to**  
24 **whether she had had discussions with any other RDI**  
25 **board members about an interim CEO at that point in**

<p style="text-align: right;">Page 98</p> <p>1 time?</p> <p>2 A. I strongly suspected she had spoken with</p> <p>3 Ed Kane.</p> <p>4 Q. And had either you or Ed Kane spoken to</p> <p>5 Doug McEachern about that?</p> <p>6 A. I haven't, no. I don't know if Ed did.</p> <p>7 Q. Okay. When was the first time you spoke</p> <p>8 with Doug McEachern about either terminating Jim</p> <p>9 Junior as CEO or about a subject of -- the subject</p> <p>10 of an interim CEO?</p> <p>11 A. That I talked to McEachern? I would say</p> <p>12 it was maybe -- again, I can only approximately</p> <p>13 guess. Maybe two weeks before the meeting.</p> <p>14 Q. And you're referring to the May 18th --</p> <p>15 May 21st meeting, it was, wasn't it?</p> <p>16 A. Yes. I don't know the exact date, but</p> <p>17 yeah.</p> <p>18 Q. So what else did Ellen say and what else</p> <p>19 did you say during this approximate hour-plus</p> <p>20 breakfast meeting?</p> <p>21 A. My recollection, we talked about Jim</p> <p>22 Junior and the CEO position, and Ellen, I guess,</p> <p>23 talked to other people because she was feeling that</p> <p>24 there was support for Jim Junior to be removed.</p> <p>25 Q. What did she say that caused you to</p>	<p style="text-align: right;">Page 99</p> <p>1 conclude she had talked to other people about Jim</p> <p>2 Junior being removed?</p> <p>3 A. I don't know specifically what she said.</p> <p>4 Maybe it was innuendos that she maybe talked to</p> <p>5 McEachern, maybe. But it wasn't specific.</p> <p>6 Q. Did you ever learn after the fact whether</p> <p>7 that was the case?</p> <p>8 A. Considering McEachern, when I did call</p> <p>9 him, like two weeks before the vote, he said he was</p> <p>10 on board with that. I suspect she called and</p> <p>11 talked to him. I sure didn't. So I suspect -- I</p> <p>12 suspect she did or maybe Ed Kane did. I don't</p> <p>13 know.</p> <p>14 Q. What else, if anything, did you discuss</p> <p>15 with Ellen Cotter at the breakfast meeting at the</p> <p>16 Peninsula in April?</p> <p>17 A. Nothing further that I can remember at</p> <p>18 this time.</p> <p>19 Q. What, if anything, did she say about why</p> <p>20 she wanted Jim Junior removed as CEO?</p> <p>21 A. I think she felt he wasn't doing an</p> <p>22 adequate job as CEO.</p> <p>23 Q. Excuse me. My question is, what did she</p> <p>24 say?</p> <p>25 A. What did she say about -- I'm sorry.</p>
<p style="text-align: right;">Page 100</p> <p>1 Jim --</p> <p>2 Q. I'll ask it again.</p> <p>3 A. Would you say it one more time, please.</p> <p>4 Q. Sure.</p> <p>5 What, if anything, did Ellen Cotter say</p> <p>6 to you during this breakfast meeting at the</p> <p>7 Peninsula about why she wanted Jim Junior removed</p> <p>8 as CEO?</p> <p>9 A. I don't recall a conversation where she</p> <p>10 said this is why I want it -- want him removed.</p> <p>11 Q. You understood that she didn't want to</p> <p>12 report to him; correct?</p> <p>13 MR. TAYBACK: Objection; vague as to time. At</p> <p>14 that lunch?</p> <p>15 MR. KRUM: Yes.</p> <p>16 MR. TAYBACK: Breakfast, lunch.</p> <p>17 MR. KRUM: Breakfast, yeah.</p> <p>18 MR. SWANIS: Object to the form as well.</p> <p>19 THE WITNESS: The answer is yes.</p> <p>20 BY MR. KRUM:</p> <p>21 Q. In fact, you understood as far back as</p> <p>22 the fall of 2014 that she did not want to report to</p> <p>23 Jim Junior; correct?</p> <p>24 A. Yes.</p> <p>25 Q. You also understood as far back as the</p>	<p style="text-align: right;">Page 101</p> <p>1 fall of 2014 that Margaret didn't want to report to</p> <p>2 Jim Junior; correct?</p> <p>3 MR. SWANIS: Objection to form.</p> <p>4 THE WITNESS: I'm not sure if I had that</p> <p>5 communicated to me from Margaret. I'm not sure</p> <p>6 about that. I'd say no, I don't know. I don't</p> <p>7 recall that.</p> <p>8 BY MR. KRUM:</p> <p>9 Q. Well, did there come a time when you</p> <p>10 heard or learned that Margaret did not want to</p> <p>11 report to Jim Junior?</p> <p>12 A. Yes.</p> <p>13 Q. When was that?</p> <p>14 A. I don't -- I have no recollection of the</p> <p>15 time when that transpired.</p> <p>16 Q. Do you recall how you learned that or</p> <p>17 heard that?</p> <p>18 A. Well, with Ellen, I -- she told me.</p> <p>19 Q. Ellen told you that she --</p> <p>20 A. Ellen told me.</p> <p>21 Q. That she did not want to report to Jim</p> <p>22 Junior?</p> <p>23 A. She did not, yes.</p> <p>24 Q. When did she tell --</p> <p>25 A. She said she didn't want to. She didn't</p>

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1 stock. I didn't -- I didn't see the  
2 differentiating -- or the conflict.  
3 **Q. Did you think it made sense when she said**  
4 **to you in the office that she wanted to exercise a**  
5 **supposed option to acquire 100,000 shares of**  
6 **Class B voting stock and pay for it with Class A**  
7 **nonvoting stock, because doing so made good**  
8 **economic sense, or whatever words she used?**  
9 MR. SWANIS: Objection; form.  
10 BY MR. KRUM:  
11 **Q. Did you -- did you agree with her?**  
12 MR. TAYBACK: Object to the form of the  
13 question.  
14 THE WITNESS: It wasn't mine to agree or not  
15 to agree whether that was -- she was the trustee.  
16 That was her decision; it wasn't my decision.  
17 BY MR. KRUM:  
18 **Q. I'm asking what you thought about what**  
19 **she said to you.**  
20 A. My personal opinion? It didn't matter,  
21 my personal opinion. I didn't give her my personal  
22 opinion. I didn't state a personal opinion.  
23 **Q. What did you think?**  
24 A. I don't -- candidly, I don't have enough  
25 facts about what's going on in the estate, the need

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1 A. I informed myself through legal counsel.  
2 MR. TAYBACK: Don't -- don't disclose the  
3 communications with legal counsel. You can simply  
4 say you conferred with legal counsel.  
5 THE WITNESS: I conferred with legal counsel.  
6 BY MR. KRUM:  
7 **Q. Who?**  
8 A. Craig Tompkins, Greenberg Traurig and  
9 Bill Ellis.  
10 **Q. When did you confer with each of them?**  
11 A. There were emails about this particular  
12 thing, and Tim Storey wanted -- if I -- as I  
13 recall, he wanted a legal written opinion or  
14 something like that. And I didn't think there was  
15 a question that the shares were within the estate,  
16 and anyway, Ed Kane agreed, we should -- we should  
17 make sure we're on a firm basis that they have it  
18 and can do -- can exercise this.  
19 So I inquired, and to my knowledge, Ed  
20 Kane inquired, and we both became of the opinion  
21 that it was an asset of the estate and they could  
22 exercise this transaction.  
23 **Q. Did either you or Mr. Kane confer with**  
24 **anybody that -- well, strike that.**  
25 **What did -- what did Ed Kane do, if you**

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1 of money, what's there, what's happening, where  
2 it's going. She said this is what she wanted to  
3 do. She was in charge of it, and it seemed okay to  
4 me.  
5 **Q. And did you give any thought to what**  
6 **reason, if any, might cause or prompt Ellen and/or**  
7 **Margaret to acquire Class B voting stock?**  
8 MR. TAYBACK: Objection; calls for  
9 speculation.  
10 You can answer.  
11 THE WITNESS: Repeating myself, she told me it  
12 was the economics associated with the stock had  
13 gone up. The options have a finite life, and she  
14 expressed her concern that if she didn't do it and  
15 the stock went down, she could be faulted for not  
16 overseeing those assets properly.  
17 BY MR. KRUM:  
18 **Q. What was the expiration of the supposed**  
19 **option?**  
20 A. I have no idea.  
21 **Q. Did you ever learn that?**  
22 A. No. Again, it's not my asset; it's her  
23 asset.  
24 **Q. Did you ask her -- well, what did you do**  
25 **to ascertain it was her asset?**

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1 **know --**  
2 A. He voted for it.  
3 **Q. Okay. What did Ed Kane do, if anything,**  
4 **to seek advice of counsel?**  
5 MR. TAYBACK: Objection; foundation.  
6 Whatever you know.  
7 THE WITNESS: I'm pretty sure he talked to  
8 Craig Tompkins as well, legal counsel. I don't  
9 know if he spoke to Bill Ellis. And beyond that, I  
10 don't know what Ed Kane did.  
11 BY MR. KRUM:  
12 **Q. Your communications were with what**  
13 **lawyer?**  
14 MR. TAYBACK: You okay?  
15 THE WITNESS: Went down the wrong way.  
16 MR. TAYBACK: Need a minute?  
17 THE WITNESS: Just 30 seconds.  
18 MR. TAYBACK: Why don't we go off the camera  
19 so you don't need to have a coughing --  
20 MR. KRUM: Yeah, we'll go off the record for a  
21 couple of minutes. That's fine.  
22 THE VIDEOGRAPHER: We are off the record. The  
23 time is 4:50.  
24 (Recess.)  
25 THE VIDEOGRAPHER: We are on the record. The

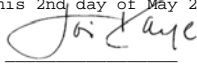


<p style="text-align: right;">Page 218</p> <p>1 time is 4:59.</p> <p>2 BY MR. KRUM:</p> <p>3 <b>Q. Mr. Adams, referring to your testimony a</b></p> <p>4 <b>few minutes ago that you consulted with Greenberg</b></p> <p>5 <b>Traurig, with whom did you speak or communicate?</b></p> <p>6 A. I didn't speak to anyone. It was a</p> <p>7 written communication.</p> <p>8 <b>Q. From Greenberg Traurig?</b></p> <p>9 A. Yes.</p> <p>10 <b>Q. To you?</b></p> <p>11 MR. TAYBACK: Vague as to the "you." You,</p> <p>12 Mr. Adams or --</p> <p>13 MR. KRUM: Yeah, that's what I'm asking.</p> <p>14 MR. TAYBACK: Okay.</p> <p>15 THE WITNESS: No, it wasn't to me. I'm not --</p> <p>16 I don't -- at the top, I don't know who it was to.</p> <p>17 BY MR. KRUM:</p> <p>18 <b>Q. How did you come to have it?</b></p> <p>19 A. It was given to me by -- the counsel of</p> <p>20 the company gave it to me.</p> <p>21 <b>Q. Mr. Ellis or Mr. Tompkins?</b></p> <p>22 A. I don't know -- one of them, yes, gave it</p> <p>23 to me.</p> <p>24 <b>Q. Okay. And what was the subject matter of</b></p> <p>25 <b>this document?</b></p>	<p style="text-align: right;">Page 219</p> <p>1 MR. TAYBACK: General subject matter.</p> <p>2 THE WITNESS: Ownership of the voting stock.</p> <p>3 BY MR. KRUM:</p> <p>4 <b>Q. Was the subject matter of the memo -- did</b></p> <p>5 <b>it address the subject of who had the right to vote</b></p> <p>6 <b>certain stock at or in connection with the annual</b></p> <p>7 <b>shareholders meeting?</b></p> <p>8 MR. TAYBACK: I'm going to object to that</p> <p>9 question to the extent I think it's a little --</p> <p>10 MR. KRUM: It's not what they said. It's a</p> <p>11 particular subject matter. It's different -- it</p> <p>12 may or may not be a different subject matter than</p> <p>13 what he just said. And he may know not know, but</p> <p>14 I'm entitled to the subject matter.</p> <p>15 MR. TAYBACK: Could I just have the subject</p> <p>16 matter read back to me again.</p> <p>17 MR. KRUM: Sure. Go ahead.</p> <p>18 MR. TAYBACK: At some point it becomes so</p> <p>19 specific that it does become a disclosure. You</p> <p>20 know what -- the point I'm making, so I just want</p> <p>21 to make --</p> <p>22 MR. KRUM: I understand.</p> <p>23 (Record read as follows:</p> <p>24 "Q. Was the subject matter of the</p> <p>25 memo -- did it address the subject of</p>
<p style="text-align: right;">Page 220</p> <p>1 who had the right to vote certain stock</p> <p>2 at or in connection with the annual</p> <p>3 shareholders meeting?")</p> <p>4 MR. TAYBACK: I'll let you answer the question</p> <p>5 if you know.</p> <p>6 THE WITNESS: I'm not sure if it specified</p> <p>7 that.</p> <p>8 BY MR. KRUM:</p> <p>9 <b>Q. Okay. But you relied on this particular</b></p> <p>10 <b>Greenberg Traurig memo in connection with making</b></p> <p>11 <b>the decision to vote as a member of the</b></p> <p>12 <b>compensation committee to allow Ellen and Margaret</b></p> <p>13 <b>Cotter, as executors, to exercise the supposed</b></p> <p>14 <b>option to acquire 100,000 shares of Class B voting</b></p> <p>15 <b>stock; is that right?</b></p> <p>16 MR. TAYBACK: Objection to the extent that</p> <p>17 misstates his prior testimony.</p> <p>18 You can answer.</p> <p>19 THE WITNESS: Yes, in addition to Craig</p> <p>20 Tompkins and Bill Ellis.</p> <p>21 BY MR. KRUM:</p> <p>22 <b>Q. Now, to your knowledge, were -- are any</b></p> <p>23 <b>of those lawyers -- did any of those lawyers</b></p> <p>24 <b>possess any expertise in trust and estate matters?</b></p> <p>25 MR. TAYBACK: Objection; lack of foundation.</p>	<p style="text-align: right;">Page 221</p> <p>1 You can answer if you know.</p> <p>2 THE WITNESS: I have no knowledge about that.</p> <p>3 BY MR. KRUM:</p> <p>4 <b>Q. Okay. And I don't want to know what was</b></p> <p>5 <b>said, but was there any discussion in the Greenberg</b></p> <p>6 <b>Traurig memo of what you understood to be trust and</b></p> <p>7 <b>estate issues?</b></p> <p>8 MR. SWANIS: Objection; form.</p> <p>9 MR. TAYBACK: Join.</p> <p>10 THE WITNESS: Yes, there were some --</p> <p>11 MR. TAYBACK: You can answer yes or no.</p> <p>12 THE WITNESS: Yes.</p> <p>13 BY MR. KRUM:</p> <p>14 <b>Q. And in terms of your thinking, not what</b></p> <p>15 <b>any lawyer said in a memo, did whatever discussion</b></p> <p>16 <b>there was that you understood to be of trust and</b></p> <p>17 <b>estate matters bear upon your decision-making?</b></p> <p>18 A. I'm sorry. Would you say that question</p> <p>19 again.</p> <p>20 <b>Q. Sure. I'll ask it a little differently.</b></p> <p>21 <b>Did you rely on a portion of the</b></p> <p>22 <b>Greenberg Traurig memo that you understood</b></p> <p>23 <b>addressed trust and estate matters in making your</b></p> <p>24 <b>decision to vote in favor of allowing Ellen and</b></p> <p>25 <b>Margaret Cotter to exercise the supposed option to</b></p>

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1 A. Yes and no. Not all of it but some, yes.  
 2 And I thought also, there might be a point where I  
 3 could buy it back later on.  
 4 Q. What were the proceeds, meaning how much  
 5 money did you net from exercising the option and  
 6 selling RDI stock?  
 7 A. I want to say I netted like \$120,000  
 8 maybe.  
 9 Q. And I'm sorry. I said March or April.  
 10 Do you recall when that was?  
 11 A. No, I don't. I really don't.  
 12 MR. KRUM: What's our number? Where are we?  
 13 THE REPORTER: We are on 67.  
 14 MR. KRUM: Okay. I'll ask the court reporter  
 15 to mark as Exhibit 67, a two-page document bearing  
 16 production numbers GA00005504 and 05.  
 17 (Exhibit 67 was marked for  
 18 identification.)  
 19 THE WITNESS: I remember this.  
 20 BY MR. KRUM:  
 21 Q. What do you recognize Exhibit 67 to be?  
 22 A. An email from Ed Kane to Tim Storey,  
 23 responding to Tim Storey's letter to the entire  
 24 board, it looks like, the day before.  
 25 Q. Directing your attention, Mr. Adams, to

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1 CERTIFICATE OF REPORTER  
 2  
 3 STATE OF CALIFORNIA )  
 4 )SS:  
 5 COUNTY OF LOS ANGELES )  
 6  
 7 I, Lori Raye, a duly commissioned and  
 8 licensed court reporter for the State of  
 9 California, do hereby certify:  
 10 That I reported the taking of the deposition  
 11 of the witness, GUY ADAMS, commencing on Thursday,  
 12 April 28, 2016, at 10:13 a.m.;  
 13 That prior to being examined, the witness was,  
 14 by me, placed under oath to testify to the truth;  
 15 that said deposition was taken down by me  
 16 stenographically and thereafter transcribed;  
 17 that said deposition is a complete, true and  
 18 accurate transcription of said stenographic notes.  
 19 I further certify that I am not a relative or  
 20 an employee of any party to said action, nor in  
 21 anywise interested in the outcome thereof; that a  
 22 request has been made to review the transcript.  
 23 In witness whereof, I have hereunto  
 24 subscribed my name this 2nd day of May 2016.  
 25   
 LORI RAYE  
 CSR No. 7052

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1 Mr. Kane's email --  
 2 A. Yes.  
 3 Q. -- do you see in the first line, it says:  
 4 "We have heard from Nevada counsel via  
 5 their memos"?  
 6 A. Yes.  
 7 Q. At the time, did you have any  
 8 understanding to what that referred?  
 9 A. As I recall, I think Ed was referring to  
 10 the memos from Nevada counsel about who could vote  
 11 the stock in the various trusts or whatever.  
 12 MR. KRUM: Okay. Why don't we go off the  
 13 record.  
 14 THE VIDEOGRAPHER: We are off the record. The  
 15 time is 5:27.  
 16 (Discussion held off the record.)  
 17 THE VIDEOGRAPHER: This concludes the  
 18 deposition of Guy Adams, Volume I, April 28, 2016,  
 19 which consists of four media files. The original  
 20 media files will be retained by Hutchings  
 21 Litigation Services. Off the video record at  
 22 5:28 p.m.  
 23 (The deposition was adjourned  
 24 at 5:28 p.m.)  
 25

Page 241

2 ERRATA SHEET  
 3  
 4  
 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:  
 13  
 14 Page Line Should read: Reason for Change:  
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# Exhibit 3

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EIGHTH JUDICIAL DISTRICT COURT  
CLARK COUNTY, NEVADA

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

Plaintiff, )

vs. )

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

Defendants, )

and )

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

Nominal Defendant. )  
\_\_\_\_\_ )

Case No.  
A-15-719860-B  
  
Case No.  
P-14-082942-E  
  
Related and  
Coordinated Cases

Complete caption, next page.

VIDEOTAPED DEPOSITION OF GUY ADAMS  
LOS ANGELES, CALIFORNIA  
FRIDAY, APRIL 29, 2016  
VOLUME II

REPORTED BY: LORI RAYE, CSR NO. 7052  
JOB NUMBER 305149

GUY ADAMS, VOLUME II - 04/29/2016

<p style="text-align: right;">Page 243</p> <p>1 EIGHTH JUDICIAL DISTRICT COURT  2 CLARK COUNTY, NEVADA  3 JAMES J. COTTER, JR., )  4 derivatively on behalf of )  5 Reading International, Inc., )  6 )  7 Plaintiff, ) Case No.  8 vs. ) A-15-719860-B  9 ) P-14-082942-E  10 )  11 MARGARET COTTER, ELLEN )  12 COTTER, GUY ADAMS, EDWARD )  13 KANE, DOUGLAS McEACHERN, )  14 TIMOTHY STOREY, WILLIAM )  15 GOULD, and DOES 1 through )  16 100, inclusive, )  17 )  18 Defendants. )  19 and )  20 READING INTERNATIONAL, INC., )  21 a Nevada corporation, )  22 )  23 Nominal Defendant. )  24 )  25 T2 PARTNERS MANAGEMENT, LP, )  a Delaware limited )  partnership, doing business )  as KASE CAPITAL MANAGEMENT, )  et al., )  Plaintiffs, )  vs. )  MARGARET COTTER, ELLEN )  COTTER, GUY WILLIAMS, EDWARD )  KANE, DOUGLAS McEACHERN, )  WILLIAM GOULD, JUDY CODDING, )  MICHAEL WROTONIAK, CRAIG )  TOMPKINS, and DOES 1 through )  100, inclusive, )  Defendants, )  and )  READING INTERNATIONAL, INC., )  a Nevada corporation, )  Nominal Defendant. )</p>	<p style="text-align: right;">Page 244</p> <p>1 Videotaped deposition of GUY ADAMS,  2 held at Jeffer Mangels Butler &amp; Mitchell, LLP,  3 located at 1900 Avenue of the Stars, Tenth Floor,  4 Los Angeles, California, 90067, on Friday,  5 April 29, 2016, at 9:10 a.m., before Lori Raye,  6 Certified Court Reporter, in and for the State of  7 California.  8  9 Appearances:  10  11 For Plaintiff:  12  13 LEWIS ROCA ROTHGERBER CHRISTIE, LLP  14 BY: MARK G. KRUM, ESQ,  15 3993 Howard Hughes Parkway  16 Suite 600  17 Las Vegas, Nevada, 89169  18 (702) 949-8200  19 mkrum@lrlaw.com  20  21 For Defendants Margaret Cotter, Ellen Cotter, Guy  22 Adams, Douglas McEachern, Edward Kane, Judy Coddling  23 and Michael Wrotoniak:  24  25 QUINN EMANUEL URQUHART &amp; SULLIVAN, LLP  BY: CHRISTOPHER TAYBACK, ESQ.  865 South Figueroa Street  Tenth Floor  Los Angeles, California 90017  (213) 443-3199  christayback@quinnemanuel.com</p>
<p style="text-align: right;">Page 245</p> <p>1 Appearances: (Continued)  2  3  4 For Plaintiffs-in-Intervention T2 Partners  5 Management, LP, dba Kase Capital Management,  6 et al.:  7 ROBERTSON &amp; ASSOCIATES, LLP  8 BY: ROBERT NATION, ESQ.  9 32121 Lindero Canyon Road  10 Suite 200  11 Westlake Village, California 91361  12 (818) 851-3850  13 rnation@arobertsonlaw.com  14  15 For Nominal Defendant Reading International, Inc.:  16  17 GREENBERG TRAURIG  18 BY: ERIC W. SWANIS, ESQ.  19 3773 Howard Hughes Parkway  20 Las Vegas, Nevada 89169  21 (702) 792-3773  22 swanise@gtlaw.com  23  24 For Defendants William Gould and Timothy Storey:  25  26 BIRD   MARELLA, PC  27 BY: EKWAN E. RHOW, ESQ.  28 HERNAN D. VERA, ESQ.  29 1875 Century Park East  30 23rd Floor  31 Los Angeles, California 90067  32 (310) 201-2100  33 eer@birdmarella.com  34  35 Also Present:  36  37 JAMES J. COTTER, JR.  38  39 COREY TYLER (Videographer)</p>	<p style="text-align: right;">Page 246</p> <p style="text-align: center;">I N D E X</p> <p>1  2  3 WITNESS: GUY ADAMS  4  5 EXAMINATION PAGE  6 By Mr. Krum 250  7 By Mr. Nation 439  8  9 E X H I B I T S  10  11 NUMBER DESCRIPTION MARKED  12  13 Exhibit 68 3-10-15 Email, 6-10-13 301  14 Memorandum (GA5529-5532)  15  16 Exhibit 69 Emails Re: Stock Option 302  17 Agreement and Form 4  18 (GA5236-5237)  19  20 Exhibit 70 3-20-15 Email (GA5246) 307  21  22 Exhibit 71 4-24-15 Email, Unanimous 309  23 Written Consent of Board of  24 Directors of Reading  25 International (GA5564-5569)  26  27 Exhibit 72 3-19-15 Minutes of Meeting 316  28 of Board of Reading  29 International (GA3828-3831)  30  31 Exhibit 73 4-18, 4-19-15 Emails 323  32 (GA5473-5474)  33  34 Exhibit 74 5-9-15 Email (GA5482) 334  35</p>

Page 367

1 that stand as of May 19th?  
2 A. Ellen, Margaret and Ed and Doug McEachern  
3 were of the opinion, yes, on an interim basis.  
4 Q. Yes what?  
5 A. Yes to Guy Adams being the interim CEO on  
6 a short-term basis.  
7 Q. What about Ed Kane?  
8 A. As interim?  
9 Q. Okay. I'm sorry.  
10 So how did you know that each of Ellen,  
11 Margaret, Ed Kane and Doug McEachern were agreeable  
12 to you being appointed CEO on an interim -- interim  
13 CEO or a short-term basis?  
14 MR. TAYBACK: Objection to the extent it's  
15 asked and answered.  
16 You can answer.  
17 THE WITNESS: My recollection -- and I can't  
18 remember if it was Ellen or Ed Kane -- one of them  
19 told me and I followed up with a phone call to Doug  
20 McEachern to confirm it. So that's how I knew.  
21 BY MR. KRUM:  
22 Q. Okay. When did you have the follow-up  
23 phone call with Doug McEachern?  
24 A. Help me -- what was the date of the  
25 meeting, that meeting? We're up to May 19. What

Page 369

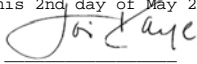
1 want you to guess a date but if you can put it in  
2 context or sequence of time or point of reference  
3 to a date we can -- an event we can date.  
4 A. My recollection would be two weeks,  
5 three weeks before May 19th.  
6 Q. And at that point in time, it was either  
7 Ellen Cotter or Ed Kane who told you that Doug  
8 McEachern had --  
9 A. Yes, I didn't have conversations with Ed  
10 about it.  
11 Q. I'm sorry. Let me finish.  
12 So you learned that McEachern --  
13 A. I apologize.  
14 Q. No, it's okay. It happens. I've done  
15 it, too.  
16 You were told by one or the other of  
17 Ellen Cotter or Ed Kane that Doug McEachern had  
18 determined to vote to terminate Jim Cotter Junior  
19 as president and CEO; correct?  
20 A. Yes.  
21 Q. And as you sit here today, do you recall  
22 if it was Ellen Cotter or Ed Kane who told you  
23 that?  
24 A. It may have been both.  
25 Q. And do you recall that as happening in a

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1 was the date of the meeting?  
2 Q. I think it was May 21st.  
3 A. 21st?  
4 Q. Yes.  
5 A. I called Doug either one or two days  
6 before the meeting.  
7 Q. What did you say and what did he say?  
8 A. I said, I understand you're going to vote  
9 for the removal of Jim Junior. He said yes. And I  
10 said, Are you comfortable with me being interim CEO  
11 for a short duration? He said yes. And I said,  
12 Okay. I'll see you in Los Angeles.  
13 Q. That was it?  
14 A. That was pretty much it.  
15 Q. When did you first come to understand  
16 that Mr. McEachern had agreed or determined to vote  
17 to remove Jim Cotter Junior as president and CEO?  
18 A. Again, either Ellen or Ed Kane informed  
19 me of that.  
20 Q. When?  
21 A. I'm not sure. Maybe -- I mean, I could  
22 guess.  
23 Q. Well, if you would --  
24 A. It was prior to this date.  
25 Q. If you would do this, Mr. Adams, I don't

Page 370

1 single conversation with the two of them or  
2 separate conversations --  
3 A. Separate.  
4 Q. -- with each?  
5 A. Separate conversation with each, yes.  
6 Q. Okay. So as best you can recall, in the  
7 conversation with Ellen, was that in person or  
8 telephonic?  
9 A. Ellen, could have been in person.  
10 Q. Okay. And what did she say and what did  
11 you say?  
12 A. I said, Well, if we're going to go  
13 through this stress of replacing a CEO, it's a very  
14 weighty decision. Before you have a board meeting  
15 call, you better make sure there are people that  
16 think like you do to remove him.  
17 Q. To remove Jim Junior as president and  
18 CEO?  
19 A. Yes.  
20 Q. What was her response?  
21 A. Well, she said, Well, Ed's going to vote,  
22 you're going to vote and I'm talking to Doug  
23 McEachern tomorrow. I talked to him earlier last  
24 week, or something like that. So she was clearly  
25 talking to him.

<p style="text-align: right;">Page 543</p> <p>1 original media files will be retained by Hutchings                  2 Litigation Services.                  3 Off the video record at 5:29 p.m.                  4 (The deposition was adjourned                  5 at 5:29 p.m.)                  6                  7                  8                  9                  10                  11                  12                  13                  14                  15                  16                  17                  18                  19                  20                  21                  22                  23                  24                  25</p>	<p style="text-align: right;">Page 544</p> <p style="text-align: center;">CERTIFICATE OF REPORTER</p> <p>1                  2 STATE OF CALIFORNIA )                  3 )SS:                  4 COUNTY OF LOS ANGELES )                  5                  6 I, Lori Raye, a duly commissioned and                  7 licensed court reporter for the State of                  8 California, do hereby certify:                  9 That I reported the taking of the deposition                  10 of the witness, GUY ADAMS, commencing on Friday,                  11 April 29, 2016 at 9:10 a.m.;                  12 That prior to being examined, the witness was,                  13 by me, placed under oath to testify to the truth;                  14 that said deposition was taken down by me                  15 stenographically and thereafter transcribed;                  16 that said deposition is a complete, true and                  17 accurate transcription of said stenographic notes.                  18 I further certify that I am not a relative or                  19 an employee of any party to said action, nor in                  20 anyway interested in the outcome thereof; that a                  21 request has been made to review the transcript.                  22 In witness whereof, I have hereunto                  23 subscribed my name this 2nd day of May 2016.  <div style="text-align: center;">                       _____                      LORI RAYE                      CSR No. 7052                 </div>                 24                  25</p>																																																																																																																																																								
<p style="text-align: right;">Page 545</p> <p style="text-align: center;">ERRATA SHEET</p> <p>1                  2                  3                  4                  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:                  13  <table style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="text-align: left;">Page</th> <th style="text-align: left;">Line</th> <th style="text-align: left;">Should read:</th> <th style="text-align: left;">Reason for Change:</th> </tr> </thead> <tbody> <tr><td>14</td><td>_____</td><td>_____</td><td>_____</td></tr> <tr><td>15</td><td>_____</td><td>_____</td><td>_____</td></tr> <tr><td>16</td><td>_____</td><td>_____</td><td>_____</td></tr> <tr><td>17</td><td>_____</td><td>_____</td><td>_____</td></tr> <tr><td>18</td><td>_____</td><td>_____</td><td>_____</td></tr> <tr><td>19</td><td>_____</td><td>_____</td><td>_____</td></tr> <tr><td>20</td><td>_____</td><td>_____</td><td>_____</td></tr> <tr><td>21</td><td>_____</td><td>_____</td><td>_____</td></tr> <tr><td>22</td><td>_____</td><td>_____</td><td>_____</td></tr> <tr><td>23</td><td>_____</td><td>_____</td><td>_____</td></tr> <tr><td>24</td><td>_____</td><td>_____</td><td>_____</td></tr> <tr><td>25</td><td>_____</td><td>_____</td><td>_____</td></tr> </tbody> </table> </p>	Page	Line	Should read:	Reason for Change:	14	_____	_____	_____	15	_____	_____	_____	16	_____	_____	_____	17	_____	_____	_____	18	_____	_____	_____	19	_____	_____	_____	20	_____	_____	_____	21	_____	_____	_____	22	_____	_____	_____	23	_____	_____	_____	24	_____	_____	_____	25	_____	_____	_____	<p style="text-align: right;">Page 546</p> <p style="text-align: center;">ERRATA SHEET</p> <table style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="text-align: left;">Page</th> <th style="text-align: left;">Line</th> <th style="text-align: left;">Should read:</th> <th style="text-align: left;">Reason for Change:</th> </tr> </thead> <tbody> <tr><td>2</td><td>_____</td><td>_____</td><td>_____</td></tr> <tr><td>3</td><td>_____</td><td>_____</td><td>_____</td></tr> <tr><td>4</td><td>_____</td><td>_____</td><td>_____</td></tr> <tr><td>5</td><td>_____</td><td>_____</td><td>_____</td></tr> <tr><td>6</td><td>_____</td><td>_____</td><td>_____</td></tr> <tr><td>7</td><td>_____</td><td>_____</td><td>_____</td></tr> <tr><td>8</td><td>_____</td><td>_____</td><td>_____</td></tr> <tr><td>9</td><td>_____</td><td>_____</td><td>_____</td></tr> <tr><td>10</td><td>_____</td><td>_____</td><td>_____</td></tr> <tr><td>11</td><td>_____</td><td>_____</td><td>_____</td></tr> <tr><td>12</td><td>_____</td><td>_____</td><td>_____</td></tr> <tr><td>13</td><td>_____</td><td>_____</td><td>_____</td></tr> <tr><td>14</td><td>_____</td><td>_____</td><td>_____</td></tr> <tr><td>15</td><td>_____</td><td>_____</td><td>_____</td></tr> <tr><td>16</td><td>_____</td><td>_____</td><td>_____</td></tr> <tr><td>17</td><td>_____</td><td>_____</td><td>_____</td></tr> <tr><td>18</td><td>Date:</td><td>_____</td><td>_____</td></tr> <tr><td>19</td><td></td><td style="text-align: center;">Signature of Witness</td><td>_____</td></tr> <tr><td>20</td><td></td><td style="text-align: center;">Name Typed or Printed</td><td>_____</td></tr> <tr><td>21</td><td></td><td></td><td>_____</td></tr> <tr><td>22</td><td></td><td></td><td>_____</td></tr> <tr><td>23</td><td></td><td></td><td>_____</td></tr> <tr><td>24</td><td></td><td></td><td>_____</td></tr> <tr><td>25</td><td></td><td></td><td>_____</td></tr> </tbody> </table>	Page	Line	Should read:	Reason for Change:	2	_____	_____	_____	3	_____	_____	_____	4	_____	_____	_____	5	_____	_____	_____	6	_____	_____	_____	7	_____	_____	_____	8	_____	_____	_____	9	_____	_____	_____	10	_____	_____	_____	11	_____	_____	_____	12	_____	_____	_____	13	_____	_____	_____	14	_____	_____	_____	15	_____	_____	_____	16	_____	_____	_____	17	_____	_____	_____	18	Date:	_____	_____	19		Signature of Witness	_____	20		Name Typed or Printed	_____	21			_____	22			_____	23			_____	24			_____	25			_____
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DISTRICT COURT

CLARK COUNTY, NEVADA

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

Case No.  
A-15-719860-B

VS.

Coordinated with:

MARGARET COTTER, 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

JUDY CODDING, VOL II - 02/28/2018

<p style="text-align: right;">Page 195</p> <p>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 )  READING INTERNATIONAL, INC., )  12 a Nevada corporation, )  ) )  13 Nominal Defendant. )  ) )  14 )  15 )  16 Videotaped Deposition of JUDY CODDING,  17 taken on behalf of Plaintiff, at 1901 Avenue of the  18 Stars, Suite 600, Los Angeles, California, beginning  19 at 2:22 a.m. and ending at 4:38 p.m., on Wednesday,  20 February 28, 2018, before GRACE CHUNG, CSR No. 6246,  21 RMR, CRR, CLR.  22 )  23 )  24 )  25 )</p>	<p style="text-align: right;">Page 197</p> <p style="text-align: center;">I N D E X</p> <p>2 WITNESS EXAMINATION PAGE  3 JUDY CODDING  4 BY MR. KRUM 199  5 BY MR. TAYBACK 273  6 BY MR. KRUM 277  7 )  8 )  9 (The following previously marked exhibits were  10 referenced: Deposition Exhibits 525, 527, 176.)  11 )  12 )  13 )  14 )  15 )  16 )  17 )  18 )  19 )  20 )  21 )  22 )  23 )  24 )  25 )</p>
<p style="text-align: right;">Page 196</p> <p style="text-align: center;">A P P E A R A N C E S</p> <p>3 For the Plaintiff:  4 YURKO, SALVESEN, &amp; REMZ  BY: MARK G. KRUM, ESQ.  5 One Washington Mall  11th Floor  6 Boston, Massachusetts 02108  (617)-723-6900  7 )  8 )  9 For the Plaintiff Reading International:  10 GREENBERG TRAUIG  BY: MARK FERRARIO, ESQ.  1840 Century Park East  11 Suite 1900  Los Angeles, California 90067  (310) 586-7700  12 ferrariom@gtlaw.com  13 )  14 For the Defendants Margaret Cotter, Ellen Cotter  Guy Adams, Edward Kane:  15 )  16 QUINN EMANUEL  BY: CHRISTOPHER TAYBACK, ESQ.  865 South Figueroa Street  17 10th Floor  Los Angeles, California 90017  (213) 443-3000  18 christayback@quinnemanuel.com  19 )  20 Also Present: CORY TYLER, Videographer  21 )  22 )  23 )  24 )  25 )</p>	<p style="text-align: right;">Page 198</p> <p>1 Los Angeles, California  2 Wednesday February 28, 2018  3 2:22 p.m.  4 THE VIDEOGRAPHER: And this is the  5 beginning of Media 2 and the beginning of  6 deposition of Judy Coddling, Volume II, in the  7 matter of Cotter, Jr., versus Cotter, et al., held  8 at 1901 Avenue of the Stars, Suite 1600, Century  9 City, California, on February 28th, 2018, at 2:22  10 p.m.  11 The court reporter is Grace Chung, and I am  12 Cory Tyler, the videographer, an employee of  13 Litigation Services. This deposition is being  14 videotaped at all times unless specified to go off  15 the video record.  16 Would all present please identify  17 themselves, beginning with the witness.  18 THE WITNESS: Judy Coddling.  19 MR. TAYBACK: Christopher Tayback for the  20 witness and director defendants.  21 MR. FERRARIO: Mark Ferrario for Reading  22 or RDI.  23 MR. KRUM: Mark Krum for plaintiff.  24 THE VIDEOGRAPHER: And will the court  25 reporter please swear in the witness.</p>

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1 A. I don't remember that.  
2 Q. Okay. Did the Highpoint Associates  
3 document or any information regarding Highpoint  
4 Associates make any difference to you in any  
5 decision you made or conclusion you reached?  
6 A. It's just one small piece of knowledge.  
7 Q. What's your understanding of what happened  
8 at Highpoint Associates?  
9 A. Well, I haven't seen the work order. I've  
10 only read the contract, and it appears that Jim  
11 Cotter, Jr., went out and hired a group to help  
12 him, it appears, with maybe strategy. But it  
13 wasn't that clear in the contract.  
14 The contract called for him to -- for  
15 Highpoint Associates interview directors that had  
16 access to all materials, et cetera, but it wasn't  
17 clear to me, since there wasn't a work order, what  
18 the particulars were.  
19 Q. Other than what you've already told me,  
20 have you had any conversations or been privy to any  
21 conversations about the Highpoint Associates'  
22 document or documents or Highpoint Associates?  
23 A. After the meeting, I asked about what --  
24 who was Highpoint Associates and why they were  
25 hired.

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1 Q. Who did you ask?  
2 A. I asked Ellen Cotter, the CEO.  
3 Q. What did she say, if anything?  
4 A. She said that she didn't know about it  
5 during the time and she thinks that Jim Cotter  
6 hired them to help him think about issues that had  
7 to be addressed within the company, but she wasn't  
8 sure since she didn't know anything about it. She  
9 just knew that there -- we had paid \$60,000, and we  
10 had received no product as a result.  
11 Q. The December 29, 2017, board meeting  
12 included two matters with respect to which you were  
13 asked to ratify prior decisions; right?  
14 A. Yes.  
15 Q. And what were those two matters, in your  
16 words?  
17 A. One was on Mr. Jim Cotter as CEO, and the  
18 second matter had to do with a stock, with Ellen  
19 Cotter and Mark Cotter.  
20 Q. It had to do with their request to  
21 exercise an option to acquire 100,000 shares of RDI  
22 Class B voting stock; right?  
23 A. For one of them, yes.  
24 Q. For the second one you just described;  
25 right?

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1 A. Right.  
2 Q. For ease of reference, Ms. Coddling, I'm  
3 going to refer to that as the 100,000 share option.  
4 A. Okay.  
5 Q. Ms. Coddling, with respect to --  
6 (Miscellaneous comments.)  
7 BY MR. KRUM:  
8 Q. Ms. Coddling, with respect to either of the  
9 two ratification matters you just identified, when  
10 did you first hear or learn that either/or both of  
11 them would be or might be raised at the December  
12 29, 2017, board meeting?  
13 A. We had a discussion in the special  
14 committee about the ratification of Jim Cotter,  
15 Jr., being the CEO before that meeting -- shortly  
16 before that meeting.  
17 Q. And by "that meeting," you're referring to  
18 the December 29th, 2017 --  
19 A. Right.  
20 Q. -- board meeting?  
21 MR. KRUM: Did you hear the answer?  
22 THE REPORTER: Yes.  
23 BY MR. KRUM:  
24 Q. Who was present for or a party to the  
25 special committee discussion you just referenced?

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1 A. Our attorney, Mike Bonner --  
2 Q. Uh-huh.  
3 A. -- and Bill Gould, Doug McEachern.  
4 Q. Was this in person, by telephone, or both?  
5 A. By telephone.  
6 Q. Who raised the subject of ratification?  
7 A. I don't --  
8 MR. TAYBACK: You can just answer the  
9 question who, only because there's a lawyer  
10 present. So I'm going to make -- make objections.  
11 So you can answer the question, though, as  
12 it was phrased.  
13 A. I don't remember whether it was Bill Gould  
14 or whether it was Mike Bonner.  
15 BY MR. KRUM:  
16 Q. And without saying what was said, meaning  
17 without speaking to the substance, did one or the  
18 other of -- or both, Mike Bonner or Bill Gould,  
19 explain the notion of ratification of these two  
20 issues?  
21 A. Yes.  
22 Q. At the special committee meeting, was  
23 there any discussion that you viewed as bearing  
24 upon the merits of either ratification decision as  
25 distinct from the fact of or reasons for

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1 ratification?

2 MR. TAYBACK: Object as being confusing.

3 A. I'm not -- I'm not sure whether there was

4 a distinction in my mind between those two.

5 BY MR. KRUM:

6 Q. Okay. So -- and what's your best estimate

7 of when in time -- meaning how far shortly before

8 the December 29, 2017, board meeting -- that the

9 special committee telephonic meeting occurred?

10 A. Just a couple of days.

11 Q. Are there minutes?

12 A. There are minutes that have not been

13 approved that -- with our attorney. We haven't had

14 a meeting with our attorney.

15 Q. You have minutes of every special

16 committee meeting; is that right?

17 A. I think most, if not all.

18 Q. And when you say "our attorney," are you

19 referring to Mr. Bonner?

20 A. I am.

21 Q. At Greenberg Traurig?

22 A. Yes. And on other occasions, other

23 attorneys have joined --

24 Q. Who?

25 A. -- to explain.

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1 MR. TAYBACK: Let -- let her finish her

2 answer. Just --

3 BY MR. KRUM:

4 Q. Sure. Please go ahead.

5 A. To -- to explain whatever issue we were

6 dealing with at that time, and I -- because we

7 dealt with lawyers in the special committee and we

8 dealt with them in other kinds of discussions,

9 basically, we have dealt with Chris and with Mark

10 and with Marshall and with Mike.

11 Q. Okay. Mike is Mike Bonner of Greenberg

12 Traurig?

13 A. Uh-huh.

14 Q. Yes?

15 A. Yes.

16 Q. Chris being Mr. Tayback?

17 A. Yes.

18 Q. And Marshall being his colleague, Marshall

19 Searcy?

20 A. Yes.

21 Q. And Mark being Mr. Ferrario with

22 Greenberg --

23 A. Yes.

24 Q. -- Traurig?

25 Has the special committee ever discussed

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1 engaging its own independent counsel?

2 MR. TAYBACK: I'm going to -- I'm just

3 going to admonish the witness. If you had a

4 discussion about retaining independent counsel with

5 counsel for the company or with counsel for any of

6 the directors, I suppose, that would be privileged.

7 THE WITNESS: Okay.

8 BY MR. KRUM:

9 Q. So -- so he's instructing you not to

10 answer insofar as the answer is yes with Quinn

11 Emanuel lawyers or yes with Greenberg Traurig

12 lawyers, and I'll understand that you're excluding

13 that from your answer.

14 So with that understanding, meaning

15 excluding those lawyers and those law firms, based on

16 the instruction that Mr. Tayback just gave, has the

17 special committee ever discussed the subject of

18 engaging separate independent counsel for the special

19 committee?

20 A. No.

21 Q. Do you understand that Greenberg Traurig

22 represents RDI?

23 A. Yes.

24 Q. And that Mr. Tayback and Mr. Searcy

25 represent you and certain other directors

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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. Coddling, 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

<p style="text-align: right;">Page 215</p> <p>1 I can't tell you when that occurred, but  2 over a period of time that has occurred, and I -- I  3 just can't tell you the dates.  4 Q. Other than the example or -- strike that.  5 Other than the testimony you just gave, do  6 you recall the substance of any conversation you've  7 had with any other director regarding the removal of  8 Jim Cotter, Jr., as president and CEO?  9 A. Yes. I spoke to Bill Gould about why he  10 did not vote to remove Jim when at this -- over the  11 past year I knew he believed that that decision was  12 a mistake, but at the time he thought that it was  13 the right decision to give Jim the time, an extra  14 several weeks that they had agreed to. And so we  15 spoke about that. I was interested in  16 understanding, from Bill's point of view, why he  17 voted the way he did.  18 Q. When you refer to "give Jim the extra  19 several weeks he agreed to," to what are you  20 referring?  21 A. My understanding from Bill was that they  22 had a time frame that ended up, I guess, being  23 pretty much what -- what the time frame was. But  24 when this issue first came up in the discussion and  25 they had board meetings, two board meetings in May,</p>	<p style="text-align: right;">Page 217</p> <p>1 these," your concerns are based upon your  2 interaction with him as a director; is that  3 correct?  4 A. It is.  5 Q. You also referenced conversations you had  6 had with Jim Cotter, Jr., and one of the things you  7 considered in your December 29 vote to ratify the  8 prior termination decision, what conversations are  9 you referencing?  10 A. Jim and I had two conversations. This  11 goes -- I -- this is covered in the deposition.  12 Q. The -- we covered this in your last  13 deposition?  14 A. Yes.  15 Q. These -- so these were conversations that  16 occurred prior to March 1 of last year?  17 A. Right.  18 Q. Well, I'm not going to ask you to repeat  19 that. You also refer in your answer to documents  20 you've reviewed.  21 Are you referring to any documents other  22 than Exhibit 525?  23 A. No.  24 Q. Now, with respect to Exhibit 525, you  25 referred to meeting minutes.</p>
<p style="text-align: right;">Page 216</p> <p>1 I think that Bill wanted to give Jim the time that  2 they had agreed to for him to have the opportunity  3 to make the changes that were necessary in order  4 for him to continue as CEO.  5 Q. And by the -- by the time frame to which  6 they agreed, who is the "they" to whom you're  7 referring?  8 A. I -- I understood that it was with -- I  9 think it was with Jim and either with a full group  10 of directors or maybe just with the lead director.  11 But you're asking me questions -- I have to say  12 you're asking me questions that I wasn't present  13 for the discussions.  14 Q. I'm just asking your understanding, and if  15 you don't have any because you weren't there and  16 you haven't learned anything after the fact, then  17 that's the answer.  18 You referred to changes that were necessary  19 in order for Jim Cotter, Jr., to continue as CEO.  20 What did you understand those to be?  21 A. I think I understand those to be the same,  22 that I have concerns about Jim, and it has to do  23 with experience, knowledge, decision-making,  24 leadership, temperament.  25 Q. And when you say "you have concerns about</p>	<p style="text-align: right;">Page 218</p> <p>1 Are you referring to the minutes of the  2 meetings of May and June 2015?  3 A. I am.  4 Q. Have you ever had any discussions with  5 anyone about those minutes?  6 A. Specifically about those minutes, no.  7 Q. Do you have any independent basis upon  8 which to determine whether they are accurate?  9 A. Based on the collective conversations that  10 I have had and my own subsequent observations, Jim  11 Cotter, Jr., they would appear to me to be  12 accurate.  13 Q. You're referring to comments that pertain  14 to the stated reasons for terminating him?  15 A. Yes.  16 Q. Independent of those particular board  17 meetings of the May and June 2015 minutes, do you  18 have any basis upon which to assess whether the  19 minutes are accurate?  20 A. Oh, I wasn't present, so I could not tell  21 you other than that.  22 Q. So that we're clear, directing your  23 attention, Ms. Coddling, to Exhibit 525, starting  24 with the page that -- in the lower right-hand  25 production number ending in 7189 and going</p>

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1 through 7199, you'll see that page range purports  
 2 to be the minutes of the May 21, May 29, and June  
 3 12th, 2015, meetings.  
 4 Are those the minutes that you're  
 5 referencing?  
 6 A. Yes.  
 7 Q. I direct your attention, Ms. Coddling, to  
 8 the second page of the -- what purports to be the  
 9 May 21 minutes, so that's the one ending in  
 10 production number 7188 in the lower right-hand  
 11 corner.  
 12 Do you have that?  
 13 A. I do.  
 14 Q. I'm going to ask you a question that calls  
 15 for a yes-or-no answer. You see that in the last  
 16 paragraph above the subhead "Review of Operations,"  
 17 there's an entry saying Mr. Ellis made some  
 18 statements.  
 19 And my question --  
 20 A. Excuse me. I have to find that.  
 21 Q. Okay.  
 22 MR. TAYBACK: I'm going -- I'm going to  
 23 object. I believe that this document was produced  
 24 as a redacted version, and I don't know if this  
 25 came up in the last one --

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1 MR. FERRARIO: Which one? Are you looking  
 2 at the September 2015?  
 3 MR. TAYBACK: He's looking at May 21.  
 4 MR. KRUM: No, I'm looking at May --  
 5 (Speakers talking simultaneously.)  
 6 A. I don't see a -- I don't see a Mr. Ellis.  
 7 MR. KRUM: Okay. I'm going to -- let me  
 8 -- let me be clear here. I'm not going to ask for  
 9 the substance of anything. I'm just going to ask  
 10 if she has ever had a conversation with anybody  
 11 about that subject matter. So this is really to  
 12 assist --  
 13 MR. TAYBACK: Okay.  
 14 MR. KRUM: -- the witness. I can ask an  
 15 open-ended question.  
 16 MR. TAYBACK: Okay. I'll let you ask that  
 17 subject to the fact that I do believe there was a  
 18 redacted version of this, and I would probably send  
 19 you a clawback letter with respect to this.  
 20 MR. FERRARIO: This one too?  
 21 BY MR. KRUM:  
 22 Q. All right. So --  
 23 A. Under "Review of Operations," I see no  
 24 mention --  
 25 Q. Right --

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1 A. -- of Mr. Ellis.  
 2 Q. Right above that, the paragraph  
 3 immediately above that.  
 4 A. Yeah, I see it.  
 5 Q. So my question is: Have you ever had any  
 6 conversations with anyone about the subject of  
 7 whether either both Guy Adams or Ed Kane suffered  
 8 from some conflict that made a difference to  
 9 whether they could vote or their vote should be  
 10 counted with respect to the subject of terminating  
 11 Jim Cotter, Jr., as president and CEO? Yes or no?  
 12 MR. TAYBACK: Ever or at any point in  
 13 time?  
 14 BY MR. KRUM:  
 15 Q. Other than with counsel in this lawsuit.  
 16 A. Could you separate out the two?  
 17 Q. Sure.  
 18 MR. FERRARIO: And you heard him. He  
 19 said, "other than with counsel," just so you're  
 20 clear.  
 21 BY MR. KRUM:  
 22 Q. Right. So I'll -- I'll include that  
 23 expressly in the next question.  
 24 So excluding any conversations you've had  
 25 counsel with connection -- had with counsel in

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1 connection with this derivative lawsuit, Ms. Coddling,  
 2 have you ever had any conversations with anyone about  
 3 the subject of whether Ed Kane suffered from any  
 4 conflict of interest that would make any difference  
 5 to his vote or his -- the propriety or right in  
 6 voting with respect to the termination of Jim Cotter,  
 7 Jr., as president and CEO?  
 8 A. No.  
 9 Q. And the same question with respect to Guy  
 10 Adams.  
 11 A. Without counsel present?  
 12 Q. With -- excluding counsel; correct.  
 13 A. No, not that I recall.  
 14 Q. At the bottom of the same page, you see  
 15 the very last two lines read as follows: Quote,  
 16 The board then proceeded to discuss at length the  
 17 performance of Mr. Cotter as chief executive  
 18 officer and president of the company since he was  
 19 appointed in August 7, 2014.  
 20 Do you see that?  
 21 A. I do.  
 22 Q. Do you know if that's accurate?  
 23 A. I wasn't there.  
 24 Q. Okay. So you don't know?  
 25 A. No.

<p style="text-align: right;">Page 227</p> <p>1 A. I covered that in the last deposition  2 about my conversations with Ellen, Margaret, and  3 Jim in hopes that we could find a way to resolve  4 it.</p> <p>5 Q. And you have not had any additional  6 conversations since your last deposition?</p> <p>7 A. On that issue -- I've had many  8 conversations since that last issue [sic]. On that  9 particular issue, I'm constantly asking Ellen and  10 Margaret. I've even asked Jim at different board  11 meetings if there was any way that they could find  12 a way to settle all their issues and have a family.</p> <p>13 I come from a family where my father and  14 his two brothers ran a business, and they ran it  15 together. And they got along beautifully and  16 business prospered and grew. I've seen it work. And  17 I'm -- I was very hopeful that Ellen and Margaret and  18 Jim could find a way to take the asset that their  19 father had started and grow it in ways that they  20 would all be proud of.</p> <p>21 Q. Other than what you just said, including  22 with respect to your personal family's business,  23 are there any other reasons why you've continued to  24 ask -- to raise this issue with Ellen, Margaret,  25 and Jim?</p>	<p style="text-align: right;">Page 229</p> <p>1 A. Accurately.</p> <p>2 Q. I direct your attention, Ms. Coddling, to  3 the page of Exhibit 525 that ends in production  4 number 7193. You'll see that is the third page of  5 the May 29, 2015 --</p> <p>6 A. Uh-huh.</p> <p>7 Q. -- minutes.  8 Do you have that?</p> <p>9 A. I do.</p> <p>10 Q. At the end of the last full paragraph on  11 that page, it reads as follows: "The meeting went  12 into recess at approximately 2:00 p.m. to permit  13 Mr. Cotter and Madams Ellen Cotter and Margaret  14 Cotter to continue their discussion of settlement  15 terms," close quote.</p> <p>16 Do you see that?</p> <p>17 A. I do.</p> <p>18 Q. Do you know if that's accurate?</p> <p>19 A. I don't know.</p> <p>20 Q. Did you ever hear or learn or were you  21 ever told that Jim Cotter, Jr., was told, in words  22 or substance, "We're going to reconvene this  23 meeting telephonically at 6 o'clock, and if you do  24 not resolve your differences with your sisters by  25 then, we're going to proceed with the termination</p>
<p style="text-align: right;">Page 228</p> <p>1 A. Yes, because it's in the best interest of  2 Reading and its stockholders. That goes, to me,  3 without saying that that's -- it -- it could be a  4 win-win for everyone, a win for the Cotter family  5 and a win for Reading and its stockholders. And I  6 don't quite understand all of these lawsuits, why  7 they're necessary.</p> <p>8 Q. How do you -- how do you anticipate that  9 it would be a win for Reading stockholders?</p> <p>10 A. Because I think it would put all of the --  11 these issues aside. I think the money that is  12 being spent on this is outrageous, and I think  13 having an end to disagreements is always  14 beneficial.</p> <p>15 Q. Directing your attention back to the May  16 21, 29, and June 12, 2015, minutes that is part of  17 Exhibit 525, you do not know what, if anything, is  18 omitted from those minutes because you weren't  19 there; right?</p> <p>20 A. Right. And I also understand that minutes  21 are not a verbatim, but they capture the essence of  22 what happens in meeting. And so I would expect  23 that the major issues that were dealt with would be  24 reflected in the minutes.</p> <p>25 Q. Accurately?</p>	<p style="text-align: right;">Page 230</p> <p>1 vote"?</p> <p>2 A. I didn't hear that.</p> <p>3 Q. Have you read any of the deposition  4 transcripts in this case?</p> <p>5 A. No. My own.</p> <p>6 Q. Have you looked at any of the documents  7 marked as deposition exhibits other than those in  8 your own deposition?</p> <p>9 A. No.</p> <p>10 Q. What is it exactly that you understand  11 that you voted to ratify with respect to the  12 termination of Jim Cotter, Jr.?</p> <p>13 A. That we would not hire Jim Cotter, Jr., as  14 the CEO.</p> <p>15 MR. TAYBACK: You're asking for her  16 recollection, not what's written in the --</p> <p>17 MR. KRUM: Right.</p> <p>18 MR. TAYBACK: -- minutes?</p> <p>19 MR. KRUM: Yeah.</p> <p>20 A. To ratify that the vote that was taken to  21 not have him as a CEO, that we concurred with.</p> <p>22 BY MR. KRUM:</p> <p>23 Q. Ms. Coddling, to your right there are two  24 other documents that have been marked previously.  25 I'd ask that you take a look at the one that has</p>

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1 been marked --  
2 A. This one?  
3 Q. No. Okay. It should be -- you should  
4 have one that says 526 and one that says 527.  
5 Do you have those?  
6 A. Yes.  
7 Q. I'd ask you to take a look at Exhibit 527.  
8 A. Yeah.  
9 Q. Have you seen Exhibit 527 previously?  
10 A. I have not seen it, but I knew that we had  
11 requested that a note be sent to Ellen.  
12 Q. How did you know that?  
13 A. I knew it from discussion, asking with the  
14 special committee that Bill Gould was going to ask  
15 Ellen for a discussion of these matters.  
16 Q. Okay. And by the special committee and  
17 Bill Gould, are you referring to the December 27,  
18 2017, special committee meeting about which you've  
19 testified earlier today?  
20 A. Whatever date that was. I don't remember.  
21 Earlier, as I said, I didn't know whether it was  
22 26th, 27th, 28th. I don't remember.  
23 Q. Okay. But whatever the date was --  
24 A. Whatever the date --  
25 Q. -- the same reference --

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1 A. Yeah.  
2 Q. Okay. Did you have any discussions with  
3 anybody about the phraseology of either Items 1 --  
4 either Item 1 or 2 of Exhibit 527?  
5 A. Not the phraseology. The intent, yes.  
6 Q. What was your personal understanding of  
7 the -- of the purpose for which you were going to  
8 be doing this?  
9 A. My understanding was that since the judge  
10 made the decision that myself and Bill Gould and  
11 Doug McEachern and Ed Kane and Michael were now  
12 declared definitely independent, that we would have  
13 the opportunity to ratify a decision if we so  
14 chose.  
15 Q. What was your understanding of why you  
16 would do so?  
17 A. To make sure that the court knew where we  
18 stood about Jim Cotter, Jr., being the CEO.  
19 Q. Was your decision to vote in favor of  
20 ratification based in any respect on your view of  
21 this derivative lawsuit?  
22 MR. TAYBACK: Objection. Vague.  
23 And if you can answer the question without  
24 divulging attorney-client communications, you can  
25 answer it.

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1 A. I can't answer it.  
2 MR. TAYBACK: If her understanding, with  
3 respect to the relationship of this issue to the  
4 lawsuit, came from a conversation with a lawyer,  
5 I'd instruct her not to answer.  
6 MR. KRUM: Right.  
7 Q. Is that the case, Ms. Coddling?  
8 A. It is.  
9 Q. Okay. So independent of that conversation  
10 or those conversations with lawyers, with respect  
11 to the ratification or otherwise, do you have an  
12 independent view of this derivative lawsuit?  
13 MR. TAYBACK: Object to the form of the  
14 question. Does she have a view of the derivative  
15 lawsuit?  
16 MR. KRUM: Yes.  
17 MR. TAYBACK: She can answer that  
18 question.  
19 MR. FERRARIO: Other than what she's  
20 already testified to that she thought it was a  
21 waste and all that.  
22 MR. KRUM: I'm not asking her to repeat  
23 it.  
24 MR. FERRARIO: Okay. All right.  
25 MR. KRUM: I mean, I don't think that's a

Page 234

1 fair characterization. Well, it doesn't matter  
2 whether it is. She can answer.  
3 A. I don't really understand the lawsuit as  
4 it exists today. I -- I really don't understand  
5 it. I don't understand how it's a derivative  
6 lawsuit, and I've asked for an explanation of it  
7 from our attorneys. And it's hard for me to  
8 understand why there is this derivative lawsuit.  
9 And the attorneys can verify that I've  
10 asked that question many times.  
11 BY MR. KRUM:  
12 Q. So if you were able to vote on whether  
13 this derivative lawsuit should proceed or not,  
14 would you -- how would you vote, if at all?  
15 A. Well, I don't think it should -- I don't  
16 think it should go forward. I don't see the  
17 purpose of it. I don't understand it.  
18 Q. Ms. Coddling, take a look at Exhibit 526.  
19 You have that in front of you as well. And take  
20 such time as you need to review it.  
21 My first question is, have you ever seen  
22 Exhibit 526?  
23 A. I have.  
24 Q. When did you first see it?  
25 A. I don't remember the date.



<p style="text-align: right;">Page 255</p> <p>1 You had the CFO saying it was fine. And you had 2 the compensation committee back then who reviewed 3 it thoroughly, and so it appeared, to me, that 4 everything was in order -- correctly in order for 5 this to happen.</p> <p>6 Q. Let's take a look at the page ending in 7 7213 as part of Exhibit 525. You'll see that's the 8 first page of the compensation stock option 9 committee, September 21, 2015, minutes.</p> <p>10 A. Uh-huh.</p> <p>11 Q. Do you have that?</p> <p>12 A. I do.</p> <p>13 Q. First of all, are you aware, independent 14 of reading these minutes, that committee member Tim 15 Storey was not a participant in the meeting of the 16 vote.</p> <p>17 A. I only know it reading the minutes that he 18 wasn't -- he was preoccupied.</p> <p>19 Q. Do you know why the meeting proceeded on 20 September 21, 2015?</p> <p>21 A. I think that in reading the minutes, Ed 22 Kane had said that they had dealt with Jim's 23 request in an expeditious manner, and that he 24 wanted to treat Margaret and Ellen the same as he 25 had treated Jim.</p>	<p style="text-align: right;">Page 257</p> <p>1 Q. It doesn't sit with you, meaning it makes 2 no difference?</p> <p>3 A. Well, I -- I didn't live it, so I can't 4 say whether I heard it before April, before May, 5 before September. It doesn't -- this is not my -- 6 in my recollection.</p> <p>7 Q. Did you make any efforts to determine 8 whether the estate was the owner of the 100,000 9 share option?</p> <p>10 MR. TAYBACK: Other than reviewing the 11 materials she's already testified about?</p> <p>12 A. I've already -- I've already told you what 13 I knew.</p> <p>14 BY MR. KRUM:</p> <p>15 Q. Okay. So the answer is: Other than what 16 you've already said, the answer is no?</p> <p>17 A. Right.</p> <p>18 Q. Take a look at the top of page 2 of the 19 September 21, 2015, meeting minutes. That's 7214 20 in Exhibit 525.</p> <p>21 Do you see the -- there's a phrase that 22 reads, "Including whether the committee can rely on 23 the records of the company in determining who was the 24 owner of the options."</p> <p>25 A. Where is that?</p>
<p style="text-align: right;">Page 256</p> <p>1 Q. What's your understanding, as you sit here 2 today, Ms. Coddling, about when the compensation of 3 stock option committee first considered a request 4 by Ellen to exercise the 100,000 share option?</p> <p>5 A. I don't know.</p> <p>6 Q. Have you ever heard or learned or been 7 told that that request was made in or before April 8 of 2015?</p> <p>9 A. I don't know.</p> <p>10 Q. You think you've ever heard that?</p> <p>11 A. You know, I wasn't there at the time. The 12 sequence of events, you know, aren't with me 13 because I wasn't there at the time, so for me to 14 vote on this, I had to believe that people thought 15 this was legitimate and right.</p> <p>16 And that was what I was concerned about. I 17 wasn't concerned about the sequence of events, what 18 happened, when, by whom. I just wanted to know: 19 Legally was it all right, and did the CFO support it? 20 And once I was convinced that it was legally correct, 21 I was very willing to ratify it.</p> <p>22 So --</p> <p>23 Q. Did you --</p> <p>24 A. -- the sequence makes no -- it doesn't sit 25 with me.</p>	<p style="text-align: right;">Page 258</p> <p>1 Q. It's the first two lines of page 2 of the 2 September 21, 2015, compensation meeting minutes.</p> <p>3 A. Up here.</p> <p>4 When I read this, it appeared to me that 5 everything was in order.</p> <p>6 Q. Prior to voting in favor of ratification 7 with respect to the 100,000 share option on 8 December 29, 2017, did you have any discussions 9 with Ed Kane or Guy Adams about what they did or 10 did not do as compensation committee members in 11 connection with the request to exercise the 100,000 12 --</p> <p>13 A. No.</p> <p>14 Q. -- share option?</p> <p>15 A. No.</p> <p>16 Q. Did you ever hear or learn or were you 17 ever told that Bill Gould had suggested that Ellen 18 Cotter or the company or both seek some sort of 19 judicial determination regarding whether the -- 20 whether Ellen on behalf of the estate could 21 exercise the 100,000 share --</p> <p>22 A. No.</p> <p>23 Q. -- option?</p> <p>24 Did you ever talk to Bill Gould about the 25 --</p>

JUDY CODDING, VOL II - 02/28/2018

<p style="text-align: right;">Page 279</p> <p>1 STATE OF CALIFORNIA )                  ) ss.                  2 COUNTY OF LOS ANGELES )                  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 _____                  GRACE CHUNG, CSR NO. 6246                  25 RMR, CRR, CLR</p>	<p style="text-align: right;">Page 281</p> <p style="text-align: center;">ERRATA SHEET</p> <table style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 5%;">2</th> <th style="width: 10%;">Page</th> <th style="width: 10%;">Line</th> <th style="width: 45%;">Should read:</th> <th style="width: 30%;">Reason for Change:</th> </tr> </thead> <tbody> <tr><td>3</td><td></td><td></td><td></td><td></td></tr> <tr><td>4</td><td>---</td><td>---</td><td>_____</td><td>_____</td></tr> <tr><td>5</td><td></td><td></td><td>_____</td><td>_____</td></tr> <tr><td>6</td><td>---</td><td>---</td><td>_____</td><td>_____</td></tr> <tr><td>7</td><td></td><td></td><td>_____</td><td>_____</td></tr> <tr><td>8</td><td>---</td><td>---</td><td>_____</td><td>_____</td></tr> <tr><td>9</td><td></td><td></td><td>_____</td><td>_____</td></tr> <tr><td>10</td><td>---</td><td>---</td><td>_____</td><td>_____</td></tr> <tr><td>11</td><td></td><td></td><td>_____</td><td>_____</td></tr> <tr><td>12</td><td>---</td><td>---</td><td>_____</td><td>_____</td></tr> <tr><td>13</td><td></td><td></td><td>_____</td><td>_____</td></tr> <tr><td>14</td><td>---</td><td>---</td><td>_____</td><td>_____</td></tr> <tr><td>15</td><td></td><td></td><td>_____</td><td>_____</td></tr> <tr><td>16</td><td>---</td><td>---</td><td>_____</td><td>_____</td></tr> <tr><td>17</td><td></td><td></td><td>_____</td><td>_____</td></tr> <tr><td>18</td><td>---</td><td>---</td><td>_____</td><td>_____</td></tr> <tr><td>19</td><td></td><td></td><td>_____</td><td>_____</td></tr> <tr><td>20</td><td>---</td><td>---</td><td>_____</td><td>_____</td></tr> <tr><td>21</td><td></td><td></td><td>_____</td><td>_____</td></tr> <tr><td>22</td><td></td><td></td><td></td><td></td></tr> <tr><td>23</td><td colspan="2">Date: _____</td><td colspan="2">_____</td></tr> <tr><td>24</td><td></td><td></td><td colspan="2" style="text-align: center;">Signature of Witness</td></tr> <tr><td>25</td><td></td><td></td><td colspan="2">_____</td></tr> <tr><td></td><td></td><td></td><td colspan="2" style="text-align: center;">Name Typed or Printed</td></tr> </tbody> </table>	2	Page	Line	Should read:	Reason for Change:	3					4	---	---	_____	_____	5			_____	_____	6	---	---	_____	_____	7			_____	_____	8	---	---	_____	_____	9			_____	_____	10	---	---	_____	_____	11			_____	_____	12	---	---	_____	_____	13			_____	_____	14	---	---	_____	_____	15			_____	_____	16	---	---	_____	_____	17			_____	_____	18	---	---	_____	_____	19			_____	_____	20	---	---	_____	_____	21			_____	_____	22					23	Date: _____		_____		24			Signature of Witness		25			_____					Name Typed or Printed	
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<p style="text-align: right;">Page 280</p> <p style="text-align: center;">ERRATA SHEET</p> <p>1 2 3 4 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: 13 14 Page Line Should read: Reason for Change: 15 16 --- --- _____ _____ 17 _____ _____ 18 --- --- _____ _____ 19 _____ _____ 20 --- --- _____ _____ 21 _____ _____ 22 --- --- _____ _____ 23 _____ _____ 24 --- --- _____ _____ 25 _____ _____</p>																																																																																																																														

# Exhibit 5

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		)	
15	Defendants,	)	Coordinated With:
16		)	
17	_____ and _____	)	Case No.
18		)	P-14-082942-E
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

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1 DISTRICT COURT  
2 CLARK COUNTY, NEVADA

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 )  
15 Defendants, ) Coordinated With:  
16 )  
17 ) Case No.  
18 ) P-14-082942-E  
19 )  
20 )  
21 )  
22 )  
23 )  
24 )  
25 )

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

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.

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1 APPEARANCES  
2  
3 For the Plaintiff:  
4 LEWIS ROCA ROTHGERBER CHRISTIE, LLP  
5 BY: MARK G. KRUM, ESQUIRE  
6 3993 Howard Hughes Parkway  
7 Suite 600  
8 Las Vegas, Nevada 89169  
9 Phone 702-949-8200  
10 E-mail mkrum@lrrc.com

11 For the Witness William Gould:  
12 BIRD, MARELLA, BOXER, WOLPERT, NESSIM,  
13 DROOKS, LINCENBERG & RHOW, P.C.  
14 BY: SHOSHANA E. BANNETT, ESQUIRE  
15 1875 Century Park East  
16 Los Angeles, California 90067-2561  
17 PHONE 310-201-2100  
18 FAX 310-201-2110  
19 E-MAIL sbannett@birdmarella.com

20 For the Defendants Margaret Cotter, Ellen Cotter,  
21 Douglas McEachern, Guy Adams and Edward Kane:  
22  
23 QUINN EMANUEL URQUHART & SULLIVAN, LLP  
24 BY: NOAH HELPERN, ESQUIRE  
25 865 South Figueroa Street  
10th Floor  
Los Angeles, California 90017  
Phone 213-443-3000  
Fax 213-443-3100  
E-mail noahhelpern@quinnemanuel.com

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1 APPEARANCES, CONTINUING  
2  
3 For the Defendant Reading International, Inc.:  
4 (Counsel present by speakerphone from remote site)

5 GREENBERG TRAURIG, LLP  
6 BY: KARA HENDRICKS, ESQUIRE  
7 3773 Howard Hughes Parkway  
8 Suite 400 North  
9 Las Vegas, Nevada 89169  
10 Phone 702-792-3773  
11 E-mail hendricksk@gtlaw.com

12 ALSO PRESENT  
13 Cory Tyler  
14 Legal Videographer  
15 Litigation Services  
16 Phone 800-330-1112

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1 INDEX OF EXAMINATIONS  
2  
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  
22 Page 575  
23  
24 -----  
25

<p style="text-align: right;">Page 509</p> <p>1 <b>ratifications?</b></p> <p>2 A. I believe that the first contact I had was</p> <p>3 either in mid-November, or late November of 2017.</p> <p>4 <b>Q. With whom?</b></p> <p>5 A. Counsel.</p> <p>6 <b>Q. Who?</b></p> <p>7 A. Mike Bonner and Mike Ferrario of Greenberg</p> <p>8 Traurig.</p> <p>9 <b>Q. Was this contact in person or telephonic?</b></p> <p>10 A. This was a telephonic contact.</p> <p>11 <b>Q. And it was just the two or three of you,</b></p> <p>12 <b>meaning you and one or both Bonner and Ferrario?</b></p> <p>13 A. Yes. I was the chairman of the special</p> <p>14 committee and they were discussing it with me in my</p> <p>15 capacity as the chairperson of that committee.</p> <p>16 <b>Q. Okay. I'm not going to ask you who said</b></p> <p>17 <b>what.</b></p> <p>18 A. Okay.</p> <p>19 <b>Q. Let me ask you about all the logistics.</b></p> <p>20 <b>Was this call a scheduled call?</b></p> <p>21 A. I don't recall.</p> <p>22 <b>Q. Do you recall who placed or initiated the</b></p> <p>23 <b>call?</b></p> <p>24 A. No.</p> <p>25 <b>Q. Okay. When the subject of ratification was</b></p>	<p style="text-align: right;">Page 511</p> <p>1 members of the committee, which was Judy Coddling --</p> <p>2 Judy Coddling and Doug McEachern, that I had had this</p> <p>3 conversation with Mark and Mike, and that I wanted</p> <p>4 to explain to them what the concept was and why it</p> <p>5 was important.</p> <p>6 <b>Q. And when did that occur?</b></p> <p>7 A. I would think sometime early December.</p> <p>8 <b>Q. Was that in person or by telephone?</b></p> <p>9 A. That would be by telephone.</p> <p>10 <b>Q. Was anyone else, other than you, McEachern</b></p> <p>11 <b>and Coddling, party to that conversation?</b></p> <p>12 A. My recollection is that Mike Bonner was on</p> <p>13 that call.</p> <p>14 <b>Q. So excluding anything Mike Bonner said, or</b></p> <p>15 <b>excluding anything anyone else said that repeated</b></p> <p>16 <b>something Bonner said, who said what about</b></p> <p>17 <b>ratification?</b></p> <p>18 MS. BANNETT: Objection. I don't think</p> <p>19 that adequately --</p> <p>20 MS. HENDRICKS: I'm going to object here,</p> <p>21 Mark. I think we need to be very careful. He also</p> <p>22 said he talked to Mr. Ferrario. And to the extent</p> <p>23 any of the discussions were related to anything from</p> <p>24 counsel, they're protected by attorney-client</p> <p>25 privilege.</p>
<p style="text-align: right;">Page 510</p> <p>1 <b>raised by Bonner or Ferrario or both of them, as the</b></p> <p>2 <b>case may be on this call, was that literally the</b></p> <p>3 <b>first time you had heard the concept, or notion?</b></p> <p>4 MS. BANNETT: Assume --</p> <p>5 MR. KRUM: In the context of RDI business.</p> <p>6 MS. BANNETT: Assumes facts not in</p> <p>7 evidence.</p> <p>8 A. In the context of RDI business, I believe</p> <p>9 it is. I was vaguely aware that Nevada law had a</p> <p>10 provision that was kind of unique, but I had never</p> <p>11 operated under it before, so I wasn't intimately</p> <p>12 familiar with it.</p> <p>13 BY MR. KRUM:</p> <p>14 <b>Q. What was the next -- strike that.</b></p> <p>15 <b>Did you have any understanding, exclusive</b></p> <p>16 <b>of something you acquired from talking to Bonner</b></p> <p>17 <b>and/or Ferrario, about how or why the notion or</b></p> <p>18 <b>concept of ratification was raised in mid to late</b></p> <p>19 <b>November of 2017?</b></p> <p>20 A. No. It came solely from Bonner and</p> <p>21 Ferrario.</p> <p>22 <b>Q. Okay. What was your next communication</b></p> <p>23 <b>with respect to the notion or concept of</b></p> <p>24 <b>ratification at RDI?</b></p> <p>25 A. My next communication was to notify the</p>	<p style="text-align: right;">Page 512</p> <p>1 MR. KRUM: Okay.</p> <p>2 MS. HENDRICKS: Other than that, he can</p> <p>3 answer.</p> <p>4 MR. KRUM: Go ahead, Ms. Barnett.</p> <p>5 MS. BANNETT: I just would like to add to</p> <p>6 the extent that anyone asked a question that</p> <p>7 reflected a request for attorney-client advice, that</p> <p>8 should also be encompassed in the scope of the</p> <p>9 attorney-client privilege.</p> <p>10 MR. HELPERN: Can we have maybe a</p> <p>11 stipulation that the defendants will join in each</p> <p>12 other's objections? We don't have to verbally join</p> <p>13 every single time?</p> <p>14 MR. KRUM: Yes.</p> <p>15 So let me rephrase the question.</p> <p>16 BY MR. KRUM:</p> <p>17 <b>Q. During this conversation in early December</b></p> <p>18 <b>with the other Special Committee members, McEachern</b></p> <p>19 <b>and Coddling, to which Mike Bonner was party,</b></p> <p>20 <b>excluding anything that Bonner said, and excluding</b></p> <p>21 <b>anything that anyone else said that came from or</b></p> <p>22 <b>repeated something a lawyer had said, what was said</b></p> <p>23 <b>about ratification?</b></p> <p>24 MR. HELPERN: Can you do that one more</p> <p>25 time? I just want to make sure -- I'm not sure that</p>

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1 this easier for you and me to not be asking about  
2 your personal life.

3 Q. Did you travel over the year-end holidays?  
4 A. No.  
5 Q. Well, that doesn't help, then.  
6 Two prior witnesses did and said they were  
7 in different places and it helped them place things  
8 in time, is why I asked.  
9 A. Uh-huh. Uh-huh.  
10 Q. So what was the next communication or  
11 action you had or did with respect to ratification?  
12 A. The next action was a meeting of the  
13 Special Committee to request that the board consider  
14 the ratification.  
15 And we sent that out -- after it had been  
16 approved, that notice was then sent to Ellen Cotter  
17 and the company.  
18 Q. When was this -- and by the "Special  
19 Committee" you're referring to you, McEachern and  
20 Coddling, correct?  
21 A. Yes.  
22 Q. And was Mr. Bonner there or on the phone,  
23 as the case may be?  
24 A. He's on the phone for every meeting of the  
25 Special Committee.

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1 Q. For the entire meeting?  
2 A. Unless we have to meet with him, we have a  
3 session in camera, but that's it.  
4 Q. When did this Special Committee meeting  
5 occur?  
6 A. I would have to think it would be the week  
7 immediately -- right around Christmas. Right around  
8 that time.  
9 Q. Christmas was on Monday. The notice, I  
10 think, you're calling it, was set on Wednesday, the  
11 27th. And the meeting was on Friday, the 29th.  
12 Does that chronology sound right?  
13 A. That sounds right to me, yes.  
14 Q. Okay. With that in mind, can you identify  
15 the date of the Special Committee meeting as the  
16 week of Christmas or the week before?  
17 A. I can't identify it with accuracy, but I  
18 think it was certainly in that range, either the  
19 week before or the week of Christmas.  
20 MR. KRUM: So I don't know what lawyers  
21 should be handling this. I previously asked that  
22 the minutes of the Special Committee be produced.  
23 So I'll ask it again. And we don't need to  
24 talk about whether it's Greenberg Traurig, or  
25 whoever else.

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1 I just ask that the lawyers at this  
2 deposition do what the lawyers previously didn't,  
3 which is follow through and tell me they're going to  
4 be produced or they're not.  
5 MS. HENDRICKS: Mark, I don't think  
6 anybody's made that request to RDI, at least that  
7 I've been told. I'll look into it.  
8 MR. KRUM: Well, in my view, the documents  
9 are responsive to our written requests. And it was  
10 raised, Kara, at a deposition that you did not  
11 attend. I think Mark was at that deposition for  
12 RDI.  
13 All right. So, by the way --  
14 MS. BANNETT: I haven't been present at any  
15 other depositions --  
16 MR. KRUM: You haven't been there, no.  
17 That's why I didn't ask you. And you're not in the  
18 litigation, so --  
19 MS. BANNETT: Correct.  
20 MR. KRUM: -- although I think it's  
21 responsive to the request, let me help you out.  
22 BY MR. KRUM:  
23 Q. Have you received the minutes, or draft  
24 minutes of that meeting? Presumably yes. It's now  
25 April.

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1 A. Yes.  
2 Q. Have they been approved?  
3 A. Yes, I believe they have.  
4 Q. Okay.  
5 A. I believe they have, yes.  
6 Q. Okay.  
7 MR. KRUM: All right. So anyway, I'll  
8 reiterate my request for those minutes.  
9 BY MR. KRUM:  
10 Q. So to clarify, Mr. Gould, did the Special  
11 Committee formally take some action with respect to  
12 ratification?  
13 A. Yes.  
14 Q. And what was that?  
15 A. It requested that the company include the  
16 subject on the agenda for its next meeting, and call  
17 for a special meeting if there was not a regular  
18 meeting being scheduled.  
19 Q. What was the next communication or action  
20 you personally had or did with respect to  
21 ratification after that Special Committee meeting?  
22 A. Then we had the December 29th board  
23 meeting. And I gave a report at that meeting about  
24 the ratification and why it was being requested.  
25 Q. What did you say about why it was being

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1 to anybody else on those things, or the people you  
2 mentioned.

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.

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.

10 **Q. When you say they obviously were not**  
11 **totally candid, that's because Jim was there?**

12 A. Well, because it was an adversarial  
13 lawsuit, and so we weren't like we were all on the  
14 same team.

15 **Q. Well, what difference did that make to this**  
16 **particular subject, ratification?**

17 A. Because -- because the ratification might  
18 be a litigation strategy.

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?**

25 A. No. Judy -- Judy made it clear that she

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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.

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?**

9 A. No, comments at the Special Committee  
10 meeting.

11 **Q. What did she say that she had done?**

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.

18 **Q. What did she say that -- from which you**  
19 **draw the conclusion that you just described?**

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.

23 It's not a direct quote, obviously.

24 **Q. Prior to the December 29, 2017 board**  
25 **meeting, had you had any conversations with Michael**

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1 **Wrotniak about the termination of Jim Cotter, Jr.?**

2 A. I don't believe I had, no.

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?**

10 A. No.

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?**

16 A. No.

17 **Q. Why did you vote to ratify item 1 on**  
18 **Exhibit 527?**

19 A. Because I thought it was in the best  
20 interest of the company to do so.

21 **Q. As of December 29, 2017?**

22 A. Yes.

23 **Q. Why?**

24 A. Well, going back to -- you know, I feel  
25 sort of like I could be called John Cary, because I

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1 voted against it before I voted for it.

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.

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.

10 **Q. Was one of those factors the decision by**  
11 **the Los Angeles Superior Court in validating the**  
12 **2014 trust documentation?**

13 A. No.

14 **Q. Was one of those factors the effect that**  
15 **the ratification might have on the pending**  
16 **derivative lawsuit?**

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.

20 **Q. What were the key factors?**

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



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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 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 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 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 Codding 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 Codding 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 Codding or Michael Wrotniak or both,

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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 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 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.

WILLIAM GOULD, VOLUME III - 04/05/2018

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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 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 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

25

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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

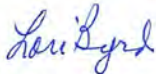
17 and proceedings taken at that time.

18

19 IN WITNESS WHEREOF, I have subscribed my name on

20 this date: April 19th, 2018

21

22 

23

24 Lori Byrd, CSR 13023

25

# Exhibit 6

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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

DEPOSITION OF: EDWARD KANE

TAKEN ON: MAY 2, 2016

REPORTED BY:

PATRICIA L. HUBBARD, CSR #3400

EDWARD KANE, VOLUME I - 05/02/2016

<p style="text-align: right;">Page 2</p> <p>1 DEPOSITION OF EDWARD KANE, taken 2 on behalf of the Plaintiffs, at 3 3043 Fourth avenue, San Diego, 4 California, commencing at 5 10:12 A.M. on May 2, 2016, before 6 PATRICIA L. HUBBARD, CSR #3400, a 7 Certified Shorthand Reporter in 8 and for the State of California, 9 pursuant to Notice. 10 11 12 APPEARANCES OF COUNSEL: 13 14 For the Plaintiff: 15 16 LEWIS ROCA ROTHGERBER CHRISTIE, LLP 17 BY: MARK G. KRUM, ESQ. 18 3993 Howard Hughes Parkway 19 Suite 600 20 Las Vegas, Nevada 89169 21 702.949.8200 22 mkrum@lrrc.com 23 24 For the Nominal Defendant: READING INTERNATIONAL, 25 INC. 26 27 GREENBERG TRAUERIG, LLP 28 BY: MARK E. FERRARIO, ESQ. 29 3773 Howard Hughes Parkway 30 Suite 400 North 31 Las Vegas, Nevada 89169 32 702.792.3773 33 ferrariom@gtlaw.com</p>	<p style="text-align: right;">Page 3</p> <p>1 APPEARANCES OF COUNSEL: (Continued) 2 3 For the Defendants: MARGARET COTTER, ELLEN COTTER, 4 DOUGLAS, McEACHERN, GUY ADAMS and EDWARD KANE 5 QUINN EMANUEL URQUHART &amp; SULLIVAN, LLP 6 BY: MARSHALL M. SEARCY, ESQ. 7 865 South Figueroa Street 8 10th Floor 9 Los Angeles, California 90017 10 213.443.3000 11 marshallsearcy@quinnemanuel.com 12 13 For the Defendants: WILLIAM GOULD and TIMOTHY 14 STOREY 15 16 BIRD, MARELLA, BOXER, WOLFPERT, NESSIM, 17 DROOKS, LINCENGERG &amp; RHOW 18 BY: SHOSHANA E. BANNETT, ESQ. 19 1875 Century Park East 20 23rd Floor 21 Los Angeles, California 90067 22 310.201.2100 23 sbannett@birdmarella.com 24 25 Derivatively on behalf of READING INTERNATIONAL, 26 INC. 27 28 ROBERTSON &amp; ASSOCIATES, LLP 29 BY: ROBERT NATION, ESQ. 30 32121 Lindero Canyon Road 31 Suite 200 32 Westlake Village, California 91361 33 818.851.3850 34 rnation@arobertson.law.com 35 36 Also Present: 37 38 Douglas McEachern 39 40 James J. Cotter, Jr. 41 42 Kristy Pittman, Videographer</p>																														
<p style="text-align: right;">Page 4</p> <p>1 I N D E X 2 3 WITNESS PAGE 4 EDWARD KANE 5 (By Mr. Krum) 8 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p> <p style="text-align: center;">E X H I B I T S</p> <p>9 PLAINIFFS' DESCRIPTION PAGE REFERENCED 10 Exhibit 60 Email dated October 14, 2014 71 11 from Gould to Adams and 12 Storey 13 (Previously marked) 14 15 Exhibit 61 Email dated October 14, 2014 124 16 from Ellen Cotter to Adams 17 and Storey 18 (Previously marked) 19 Exhibit 76 Email dated May 9, 2015 from 183 20 Kane to Adams 21 (Previously marked) 22 Exhibit 94 Email dated October 1, 2014 53 23 from Kane to Storey 24 (Previously marked) 25 Exhibit 99 Email date 2/10/2015 from 83 26 James Cotter, Jr. to 27 McEachern, et al. 28 Exhibit 100 Email dated 2/25/2015 from 88 29 Kane to Gould and Storey 30 31 Exhibit 101 Email dated October 16, 2014 119 32 from Kane to Gould and 33 McEachern 34 35</p>	<p style="text-align: right;">Page 5</p> <p>1 E X H I B I T S (Continued) 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p> <table border="1"> <thead> <tr> <th>PLAINTIFF'S</th> <th>DESCRIPTION</th> <th>PAGE REFERENCED</th> </tr> </thead> <tbody> <tr> <td>3</td> <td>Exhibit 102 Email dated November 5, 2014 4 from Kane to Adams, et al.</td> <td>126</td> </tr> <tr> <td>5</td> <td>Exhibit 103 Email dated January 28, 2015 6 from Kane to McEachern</td> <td>144</td> </tr> <tr> <td>7</td> <td>Exhibit 104 Email dated February 6, 2015 8 from McEachern to Kane, et al.</td> <td>149</td> </tr> <tr> <td>9</td> <td>Exhibit 105 Email dated March 1, 2015 from 10 Adams to Kane</td> <td>170</td> </tr> <tr> <td>11</td> <td>Exhibit 106 Email dated March 16, 2015 from 12 Kane to Gould and Storey</td> <td>177</td> </tr> <tr> <td>13</td> <td colspan="2">INFORMATION REQUESTED:</td> </tr> <tr> <td>14</td> <td colspan="2">(NONE)</td> </tr> <tr> <td>15</td> <td colspan="2">WITNESS INSTRUCTED NOT TO ANSWER:</td> </tr> <tr> <td>16</td> <td colspan="2">(NONE)</td> </tr> </tbody> </table>	PLAINTIFF'S	DESCRIPTION	PAGE REFERENCED	3	Exhibit 102 Email dated November 5, 2014 4 from Kane to Adams, et al.	126	5	Exhibit 103 Email dated January 28, 2015 6 from Kane to McEachern	144	7	Exhibit 104 Email dated February 6, 2015 8 from McEachern to Kane, et al.	149	9	Exhibit 105 Email dated March 1, 2015 from 10 Adams to Kane	170	11	Exhibit 106 Email dated March 16, 2015 from 12 Kane to Gould and Storey	177	13	INFORMATION REQUESTED:		14	(NONE)		15	WITNESS INSTRUCTED NOT TO ANSWER:		16	(NONE)	
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15	WITNESS INSTRUCTED NOT TO ANSWER:																														
16	(NONE)																														

<p style="text-align: right;">Page 94</p> <p>1 "Question: Did you ever reach a 2 conclusion at any time in 2015, 3 conclusion or conclusions at any 4 time in 2015, about where any 5 class B voting stock that was 6 either owned legally and/or 7 beneficially by Jim Cotter, Sr., 8 or a trust that he had controlled 9 as trustee was held, whether it 10 was in a trust, a voting trust, an 11 estate or someplace else?") 12 MR. SEARCY: Same objections. Vague and 13 lacks foundation. 14 THE WITNESS: I left that -- I think I 15 had conversations with attorneys over at -- and 16 asked for an opinion as to the ability to vote 17 certain shares. 18 BY MR. KRUM: 19 <b>Q. So, is it your testimony that you came</b> 20 <b>to no conclusion independent of any conclusion</b> 21 <b>offered to you by attorneys?</b> 22 A. Yes. 23 <b>Q. And was any conclusion offered to you by</b> 24 <b>any attorneys?</b> 25 MR. SEARCY: And that's a -- that's a</p>	<p style="text-align: right;">Page 95</p> <p>1 "yes" or "no" question. 2 MR. FERRARIO: Yeah. 3 THE WITNESS: Say that again. 4 BY MR. KRUM: 5 <b>Q. Did any attorneys proffer to you any</b> 6 <b>conclusions regarding the subject of who had the</b> 7 <b>right to vote any class B voting stock? Yes or no?</b> 8 A. Yes. 9 <b>Q. When did that happen?</b> 10 A. I think -- I think in September of 2015. 11 <b>Q. And who was the attorney or who were the</b> 12 <b>attorneys?</b> 13 A. I think there was an opinion from Neal 14 Brockmeyer -- Brockmeyer, which he sent to the 15 independent committee. I think that was in there. 16 And there was corporate counsel in Nevada. And 17 there was opinions from them. 18 <b>Q. Corporate counsel being Greenberg</b> 19 <b>Traurig?</b> 20 A. Yes. 21 <b>Q. And there were -- there was more than</b> 22 <b>one opinion from them?</b> 23 A. I can only recall one. 24 <b>Q. And the one that you recall, Mr. Kane,</b> 25 <b>when was that provided approximately?</b></p>
<p style="text-align: right;">Page 96</p> <p>1 MR. SEARCY: And again he's only asking 2 for the date. Don't get into the substance of any 3 legal advice. 4 THE WITNESS: No. That would have been 5 in September of 2015. 6 BY MR. KRUM: 7 <b>Q. To what use, if any, did you put the</b> 8 <b>Greenberg Traurig memo or opinion?</b> 9 A. To what use? 10 MR. SEARCY: Objection. Vague. 11 MR. FERRARIO: Can you -- hang on for 12 just one second. I need to counsel -- 13 (Off-the-record discussion.) 14 MR. KRUM: Gentlemen, it does not -- 15 indisputably does not call for the disclosure of 16 privileged information. I have not asked -- 17 MR. FERRARIO: It's the next question. 18 MR. KRUM: -- Mr. Kane what the 19 substance was and I'm taking this at, as you can see 20 it, nice small incremental steps so that he doesn't 21 get ahead of us and speak to that. 22 MR. FERRARIO: We appreciate that. It's 23 this question, though -- I don't want to say how he 24 could answer it and not take the next step. 25 But if he goes -- he gives the wrong, I</p>	<p style="text-align: right;">Page 97</p> <p>1 think we have now gone into that. We've crossed the 2 line. 3 I mean I think that you've done a fine 4 job. I'm not -- I'm not in any way critiquing how 5 you proceed -- 6 MR. KRUM: Look, I wasn't asking to be 7 credited or blamed. I just want to move the process 8 forward. 9 So let's do this. Let's have the court 10 reporter read the question for him. 11 I'm going to make sure -- and he's done 12 a good job of allowing you to interpose objections 13 if I ask another question that you think calls for 14 privileged information. 15 So let's just do it the way we've been 16 doing it one step at a time. 17 Can you read the question for him, 18 please. 19 (Whereupon the question was read 20 as follows: 21 "Question: To what use, if any, 22 did you put the Greenberg Traurig 23 memo or opinion?") 24 MR. SEARCY: I'll object as vague. 25 MR. FERRARIO: I'm going to object. I</p>

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1 think we're now starting to invade the  
 2 attorney-client privilege. Because you're  
 3 reading -- you're asking him did he read it?  
 4 MR. KRUM: I'm asking him to what use,  
 5 if any, did he put it. Not what it said.  
 6 BY MR. KRUM:  
 7 **Q. Mr. Kane, directing your attention to**  
 8 **the Greenberg Traurig memo or opinion, to what use,**  
 9 **if any, did you put that?**  
 10 MR. FERRARIO: I'm going to object to  
 11 that, because I do think this invades the  
 12 attorney-client privilege.  
 13 MR. SEARCY: Join.  
 14 BY MR. KRUM:  
 15 **Q. Go ahead, sir.**  
 16 MR. FERRARIO: I don't --  
 17 BY MR. KRUM:  
 18 **Q. Don't tell me about the substance. Just**  
 19 **tell me, did you rely on it for any purpose?**  
 20 MR. FERRARIO: That's where the problem  
 21 comes, Mark.  
 22 MR. KRUM: Well, it might be a problem  
 23 for you guys.  
 24 MR. FERRARIO: It's not a problem for  
 25 me.

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1 **Traurig document to you; that is, the opinion to**  
 2 **which you have just referred?**  
 3 MR. SEARCY: You can answer that  
 4 question.  
 5 THE WITNESS: I'm trying --  
 6 MR. SEARCY: Again, don't get into the  
 7 substance. Just --  
 8 THE WITNESS: No. I understand. And my  
 9 question is I don't know that I can answer his  
 10 question in the sense that I may have received it  
 11 directly from Greenberg.  
 12 BY MR. KRUM:  
 13 **Q. Did you ask them to provide it to you?**  
 14 A. I think I did, yes.  
 15 **Q. With whom did you communicate? Not what**  
 16 **was communicated, just with whom did you**  
 17 **communicate?**  
 18 A. I don't recall whether it was Mark or  
 19 whether it was someone else in the firm that I  
 20 communicate with.  
 21 **Q. Was it orally or in writing?**  
 22 A. I don't recall.  
 23 **Q. Was anyone else party or privy to that**  
 24 **communication?**  
 25 A. I think Guy Adams was. That's -- he

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1 MR. KRUM: The answer --  
 2 MR. FERRARIO: It depends on what -- it  
 3 depends on what position the company -- or that  
 4 Mr. Kane wants to take. And that's -- that's what  
 5 I'm -- that's where I think this is an issue at this  
 6 point in time.  
 7 MR. KRUM: It's not an issue.  
 8 MR. FERRARIO: Yes, it is.  
 9 MR. KRUM: It may be, but --  
 10 MR. FERRARIO: I'll tell you what, we'll  
 11 deal with it down the road. I'm going to tell him  
 12 -- I'm going instruct him to not answer based upon  
 13 --  
 14 MR. KRUM: On what basis?  
 15 MR. FERRARIO: -- the privilege. Just  
 16 what I just said.  
 17 MR. KRUM: Okay. Can we mark this part  
 18 of the transcript. We're going to come back to it  
 19 presumably over the lunch break.  
 20 MR. FERRARIO: Yeah. And I'll visit  
 21 this with Marshall over the break, but at this point  
 22 in time we're going to assert the attorney-client  
 23 privilege.  
 24 BY MR. KRUM:  
 25 **Q. Mr. Kane, who provided the Greenberg**

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1 would have been if I was, because it was a  
 2 compensation committee question. And Tim Storey may  
 3 well have been.  
 4 **Q. And it is your best recollection --**  
 5 **strike that.**  
 6 **Is it your best recollection as you sit**  
 7 **here today, Mr. Kane, that the first time you had**  
 8 **communications of the type you're describing now was**  
 9 **in September of 2015?**  
 10 MR. SEARCY: Objection. Vague and lacks  
 11 foundation.  
 12 THE WITNESS: There may have been some  
 13 communication with them earlier also.  
 14 BY MR. KRUM:  
 15 **Q. Earlier being when? Either in time or**  
 16 **relative to any other particular events that you**  
 17 **recall?**  
 18 A. It was a particular event having to do  
 19 with the exercise of voting share options by  
 20 Margaret and Ellen Cotter.  
 21 **Q. And approximately when was that?**  
 22 A. I don't recall. I think -- I don't  
 23 recall.  
 24 **Q. Do you recall it relative to any other**  
 25 **developments or events?**



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1 A. Well, there was a fight between Jimmy  
2 and his sisters, and I did not on behalf of the  
3 committee want to get in the middle of it.  
4 So, I required -- I required an opinion  
5 of counsel.  
6 I didn't care who won. It's just that  
7 we wanted to do the right thing, the committee did.  
8 Q. The compensation committee?  
9 A. Right.  
10 Q. With respect to requests by Ellen and  
11 Margaret to exercise options?  
12 A. That was one issue, yes.  
13 Q. What were the other issues?  
14 A. There was the issue of exercising the  
15 options that were granted to Jim Cotter, Sr.  
16 Q. What was the issue there or what were  
17 the issues, as best you can recall?  
18 A. Mr. Cotter, Jr., was saying those  
19 options belong to the trust, that they had been  
20 transferred to the living trust, and that they could  
21 not exercise that option on behalf of the estate.  
22 Q. Did you ever come to a conclusion  
23 whether Ellen and Margaret Cotter could exercise the  
24 option you just referenced?  
25 A. The one that was in Jim Cotter, Sr.'s

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1 A. The committee did.  
2 Q. When did that occur?  
3 A. I'm having difficulty, because there's  
4 two sets of options, their personal options and the  
5 estate and which came when, because there were both  
6 issues presented to the committee.  
7 And I think -- I know there was some  
8 meeting in September of 2015, and I don't -- I think  
9 those were the Estate's options.  
10 Q. By which you mean what we're going to  
11 call the 100,000 share option?  
12 A. Yes, yes.  
13 Q. Well, as to you personally, Mr. Kane,  
14 what did you do to reach a conclusion with respect  
15 to the question of whether Ellen and Margaret Cotter  
16 as executors of the estate of Jim Cotter, Sr., had  
17 the right to exercise the 100,000 share option?  
18 A. I asked for a legal opinion.  
19 Q. And I don't want to repeat everything  
20 you've already told me.  
21 You're referring to the Greenberg  
22 Traurig opinion you discussed earlier?  
23 A. I believe that's correct, yes.  
24 Q. And you also mentioned Mr. Brockmeyer.  
25 Did you seek his advise with respect to

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1 estate?  
2 Q. Well, let's do this. Let's -- instead  
3 of not knowing if we're referring to the same one,  
4 let me back up and ask a couple questions.  
5 Do you recall there came a time when  
6 Ellen and Margaret Cotter purporting to act as  
7 executives of the estate of Jim Cotter, Sr.,  
8 undertook to exercise a supposed option to acquire  
9 100,000 shares of class B voting stock?  
10 A. Yes.  
11 MR. SEARCY: Objection. Argumentative.  
12 BY MR. KRUM:  
13 Q. So I'm just going to call that the  
14 100,000 dollar -- excuse me. I'm going to call that  
15 the 100,000 share option. We can drop the word  
16 "suppose" so we have a handy short point of  
17 reference.  
18 Does that work for you, Mr. Kane?  
19 A. Yes.  
20 Q. Now, did you ever -- what did you do to  
21 come to a conclusion -- strike that.  
22 Did you ever come to a conclusion  
23 whether Ellen and Margaret Cotter as executors of  
24 the Estate of Jim Cotter, Sr., had the right to  
25 exercise the 100,000 share option?

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1 the 100,000 share option?  
2 A. I think -- I may be confused, but I  
3 think his advice had to do with -- I may have turned  
4 it around, but I think his advice had to do with  
5 their exercise of their own B options.  
6 Q. Did you understand in September of 2015  
7 that Greenberg Traurig was counsel of record in this  
8 case, the derivative case for the company?  
9 A. Yes.  
10 Q. Did you ever hear or learn or were you  
11 ever told that Greenberg Traurig had previously  
12 provided an opinion, the subject matter of which was  
13 who had the right to vote what shares at the 2015  
14 annual shareholders meeting?  
15 A. I can't recall.  
16 Q. Do you recall ever hearing or learning  
17 or being told that that was an issue or a potential  
18 issue?  
19 MR. SEARCY: Objection. Vague.  
20 THE WITNESS: Yeah. Repeat that,  
21 please.  
22 BY MR. KRUM:  
23 Q. Were you ever -- did you ever hear or  
24 learn or were you ever told that there was a  
25 question or were questions regarding who, if anyone,

<p style="text-align: right;">Page 174</p> <p>1 contingency plan if they win the 2 lawsuit. But if Tim has been 3 offered something, he cannot 4 continue on the independent 5 committee, as it would taint the 6 committee and their position." 7 Do you see that? 8 A. Yes. 9 Q. To what does that refer? 10 A. What it refers to is if Tim really was 11 interested in becoming C.E.O., then he should have 12 gotten off the committee, because we would make that 13 decision. And it would be inappropriate for him to 14 be on the committee of non-Cotter directors. 15 That was my view. 16 Q. And what did Ellen say that she had 17 done, if anything, with respect to Tim or anyone 18 else serving as interim C.E.O.? 19 MR. SEARCY: Objection. Vague. 20 THE WITNESS: I don't think Ellen -- I 21 don't know if I ever had a discussion with Ellen 22 about it. 23 BY MR. KRUM: 24 Q. To what does the term "contingency plan" 25 refer in the sentence I read?</p>	<p style="text-align: right;">Page 175</p> <p>1 Or I guess I should say to what does 2 "contingency plan if they win the lawsuit" refer to? 3 MR. SEARCY: Objection. Vague. 4 THE WITNESS: I'm not 100 percent sure 5 what I had in mind. 6 BY MR. KRUM: 7 Q. How many times did you ask Ellen whether 8 she had -- she or Margaret had discussed with Tim 9 Storey his becoming interim C.E.O.? 10 MR. SEARCY: Objection. Assumes facts, 11 misstates testimony, is vague. 12 THE WITNESS: This was probably the only 13 time. 14 BY MR. KRUM: 15 Q. Well, I refer your attention, 16 Mr. Kane -- 17 A. Uh-huh. 18 Q. -- to the third line that's not redacted 19 which begins, 20 "I did talk with Ellen to ask again 21 whether she or Margaret had 22 discussed with Tim his 23 becoming interim C.E.O." -- 24 A. I see that, but I don't think I had more 25 than one discussion with her.</p>
<p style="text-align: right;">Page 176</p> <p>1 Q. You don't think you had more than one -- 2 one discussion with Ellen regarding the subject of 3 Tim Storey becoming interim C.E.O.? 4 A. I don't think so. 5 Q. You have discussions with her about the 6 subject of an interim C.E.O. other than that what 7 you believe to be one discussion about Tim Storey? 8 MR. SEARCY: Objection. Vague. 9 THE WITNESS: I don't think so. 10 BY MR. KRUM: 11 Q. Did you ever have any communications 12 with Ellen Cotter about Guy Adams serving as interim 13 C.E.O.? 14 MR. SEARCY: Objection. Vague. 15 THE WITNESS: I may have. I just don't 16 recall. 17 BY MR. KRUM: 18 Q. Three lines from the bottom of your 19 March 1 email on Exhibit 105, it reads, 20 "According to Ellen, Craig is also 21 on the 'team';" 22 Do you see that? 23 A. Yeah. 24 Q. What team are you referencing there? 25 A. I think it was Ellen and Margaret versus</p>	<p style="text-align: right;">Page 177</p> <p>1 Jim. 2 Q. Was that word "team" used by Ellen? Is 3 that why you put it in quotes? 4 A. No. 5 MR. SEARCY: Objection. Lacks 6 foundation. 7 THE WITNESS: No. 8 BY MR. KRUM: 9 Q. That was just your usage? 10 A. Yes. 11 Q. Why was that, if you recall? 12 A. That's the kind of writer I am. I don't 13 know. 14 Q. Okay. 15 A. I don't have a secretary. I make this 16 stuff up myself. 17 MR. KRUM: I'll ask the court reporter 18 to mark as Exhibit 106 a one-page document bearing 19 production number GA5123. 20 (Whereupon the document referred 21 to was marked Plaintiffs' 22 Exhibit 106 by the Certified 23 Shorthand Reporter and is attached 24 hereto.) 25 ///</p>

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1 I -- I said to him at one point, "Take  
 2 it. You have nothing to lose. You're going to get  
 3 terminated if you don't. If you can work it out  
 4 with your sisters, it will go on and I will support  
 5 you. I'll even make a motion to see if the company  
 6 will reimburse the legal fees."  
 7 I did not want him to go.  
 8 And you, I'm sure, see emails in there  
 9 to that effect. Even though I voted -- was voting  
 10 against him, I wanted him to stay as C.E.O.  
 11 BY MR. KRUM:  
 12 Q. If you wanted him to stay as C.E.O. --  
 13 A. Right.  
 14 Q. -- why did you vote against him?  
 15 A. Because I wanted him to stay as C.E.O.,  
 16 working with his sisters who were work -- willing to  
 17 work with him for the benefit of the company.  
 18 And to me it was a wonderful solution,  
 19 and it had no adverse impact. If it didn't work  
 20 out, then we would deal with it. But he would work  
 21 with them and -- as an executive committee.  
 22 He told me that he didn't want Guy Adams  
 23 on there. And I told him, "I'll do my best to make  
 24 sure that he isn't on that; just you and your  
 25 sisters."

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1 MR. KRUM: Marshall, you wanted to quit  
 2 at 4:30, and I see it's 4:29. So --  
 3 Let me be clear.  
 4 You advised me we were going to quit at  
 5 4:30 to accommodate Mr. Kane, and we're going to do  
 6 that.  
 7 So, it's 4:30, we'll go off the record.  
 8 MR. SEARCY: Appreciate that.  
 9 VIDEOTAPE OPERATOR: This concludes the  
 10 deposition of Edward Kane, volume one on May 2,  
 11 2016, which consists of four media files. The  
 12 original media files will be maintained by Hutchings  
 13 Litigation Services.  
 14 Off the video record.  
 15 The time is 4:30 P.M.  
 16  
 17 (Whereupon at 4:30 P.M. the  
 18 deposition proceedings were  
 19 concluded.)  
 20 \* \* \*  
 21  
 22  
 23  
 24  
 25

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1 And if they could work together, that's  
 2 all we wanted.  
 3 Q. Are you drawing a distinction, Mr. Kane,  
 4 between Ellen and Margaret working with Jim  
 5 Cotter, Jr., as distinct from working for him?  
 6 MR. SEARCY: Objection. Vague.  
 7 THE WITNESS: I don't think I ever made  
 8 that distinction, but I think he would glean and  
 9 learn a lot working with them.  
 10 After all they were the operating  
 11 executives of this company.  
 12 BY MR. KRUM:  
 13 Q. And did you understand that -- strike  
 14 that.  
 15 But that resolution did not come to pass  
 16 because Jim Cotter, Jr., rejected it, correct?  
 17 MR. SEARCY: Objection. Vague.  
 18 THE WITNESS: He rejected it, yes.  
 19 (Whereupon Ms. Bannett left the  
 20 deposition proceedings at this  
 21 time.)  
 22 BY MR. KRUM:  
 23 Q. And he got himself terminated, right?  
 24 MR. SEARCY: Objection. Vague.  
 25 THE WITNESS: Yes.


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1 REPORTER'S CERTIFICATE  
 2  
 3 I, PATRICIA L. HUBBARD, do hereby certify:  
 4  
 5 That I am a duly qualified Certified  
 6 Shorthand Reporter in and for the State of California,  
 7 holder of Certificate Number 3400, which is in full  
 8 force and effect, and that I am authorized to  
 9 administer oaths and affirmations;  
 10  
 11 That the foregoing deposition testimony of  
 12 the herein named witness, to wit, EDWARD KANE, was  
 13 taken before me at the time and place herein set  
 14 forth;  
 15  
 16 That prior to being examined, EDWARD KANE  
 17 was duly sworn or affirmed by me to testify the truth,  
 18 the whole truth, and nothing but the truth;  
 19  
 20 That the testimony of the witness and all  
 21 objections made at the time of examination were  
 22 recorded stenographically by me and were thereafter  
 23 transcribed by me or under my direction and  
 24 supervision;  
 25

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

4  
5 I further certify that I am not a relative  
6 or employee or attorney or counsel of any of the  
7 parties, nor am I a relative or employee of such  
8 attorney or counsel, nor am I financially interested  
9 in the outcome of this action.

10  
11 IN WITNESS WHEREOF, I have subscribed my  
12 name this 4th day of May, 2016.

13   
14 \_\_\_\_\_  
15 PATRICIA L. HUBBARD, CSR #3400

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# Exhibit 7

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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.  
VS. ) A-15-719860-B  
MARGARET COTTER, ELLEN COTTER, ) Coordinated with:  
GUY ADAMS, EDWARD KANE, DOUGLAS ) Case No.  
McEACHERN, TIMOTHY STOREY, ) P-14-082942-E  
WILLIAM GOULD, and DOES 1 ) Case No.  
through 100, inclusive, ) A-16-735305-B  
Defendants. ) Volume 4  
and )  

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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

DOUGLAS MCEACHERN, VOL IV - 02/28/2018

<p style="text-align: right;">Page 495</p> <p>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 )  READING INTERNATIONAL, INC., )  12 a Nevada corporation, )  13 )  Nominal Defendant. )  14 )  15 )  16 Videotaped Deposition of DOUGLAS  17 MCEACHERN, taken on behalf of Plaintiff, at 1901  18 Avenue of the Stars, Suite 600, Los Angeles,  19 California, beginning at 11:02 a.m. and ending at  20 12:52 p.m., on Wednesday, February 28, 2018, before  21 GRACE CHUNG, CSR No. 6246, RMR, CRR, CLR.  22 )  23 )  24 )  25 )</p>	<p style="text-align: right;">Page 497</p> <p style="text-align: center;">I N D E X</p> <p>1 )  2 WITNESS EXAMINATION PAGE  3 DOUGLAS MCEACHERN  4 BY MR. KRUM 499  5 )  6 )  E X H I B I T S  7 NO. DESCRIPTION PAGE  8 Exhibit 525 Email from Laura Batista, dated 501  December 27, 2017, with  9 attachment  10 Exhibit 526 Minutes of the Board of Directors 522  Meeting, December 29, 2017  11 )  Exhibit 527 Email from Marcia Wizelman to 543  12 Ellen Cotter  13 )  14 )  15 )  16 )  17 )  18 )  19 )  20 )  21 )  22 )  23 )  24 )  25 )</p> <p style="text-align: center;">QUESTIONS INSTRUCTED NOT TO ANSWER</p> <p style="text-align: center;">PAGE LINE  547 3</p>
<p style="text-align: right;">Page 496</p> <p style="text-align: center;">A P P E A R A N C E S</p> <p>1 )  2 )  3 For the Plaintiff:  4 YURKO, SALVESEN, &amp; REMZ  BY: MARK G. KRUM, ESQ.  5 One Washington Mall  11th Floor  6 Boston, Massachusetts 02108  (617)-723-6900  7 )  8 )  9 For the Plaintiff Reading International:  10 GREENBERG TRAUIG  BY: MARK FERRARIO, ESQ.  1840 Century Park East  11 Suite 1900  Los Angeles, California 90067  (310) 586-7700  12 ferrariom@gtlaw.com  13 )  14 For the Defendants Margaret Cotter, Ellen Cotter,  Guy Adams, Edward Kane:  15 )  16 )  17 )  18 )  19 )  20 )  21 )  22 )  23 )  24 )  25 )</p> <p>QUINN EMANUEL  BY: MARSHALL SEARCY, ESQ.  865 South Figueroa Street  17 10th Floor  Los Angeles, California 90017  (213) 443-3000  marshallsearcy@quinnemanuel.com</p> <p>Also Present: CORY TYLER, Videographer</p>	<p style="text-align: right;">Page 498</p> <p>1 Los Angeles, California  2 Wednesday February 28, 2018  3 11:02 a.m.  4 )  5 )  6 THE VIDEOGRAPHER: This is the beginning  of Media 1 in the deposition of Douglas McEachern,  7 Volume IV, in the matter of Cotter, Jr., versus  8 Cotter, et al., held at 1901 Avenue of the Stars,  9 Suite 1600, Century City, California, on February  10 28, 2018, at 11:02 a.m.  11 The court reporter is Grace Chung, 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 please identify  17 themselves, beginning with the witness.  18 THE WITNESS: Douglas McEachern.  19 MR. SEARCY: Marshall Searcy for  20 Mr. McEachern, Ed Kane, Margaret Cotter, Ellen  21 Cotter, Guy Adams, Judy Coddington, and Michael  22 Wrotniak.  23 MR. FERRARIO: Mark Ferrario for RDI or  24 Reading.  25 MR. KRUM: Mark Krum for plaintiff.</p>

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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 MR. SEARCY: I can't answer for you on  
 2 that.  
 3 A. I don't know the answer. I just don't  
 4 know if we approved the minutes.  
 5 BY MR. KRUM:  
 6 Q. Let me direct your attention to page 5 of  
 7 Exhibit 526 and, in particular, Mr. McEachern, the  
 8 subhead B in the middle of the page. Let me know  
 9 when you've reviewed subhead B.  
 10 A. Uh-huh. Subhead B continues until the  
 11 "Adjournment" comment?  
 12 Q. Sure. Go ahead.  
 13 A. Yes. It's a pretty good summary of what  
 14 took place in that discussion.  
 15 Q. Okay. And you are referring to subhead B  
 16 and the text that follows down to "Adjournment"?  
 17 A. Yes, I am.  
 18 Q. Does it comport with your recollection  
 19 that what was ratified, what you voted to ratify in  
 20 December 29, the compensation committee decision to  
 21 permit use of Class A nonvoting stock as the means  
 22 of payment for the exercise of the 100,000 share  
 23 option?  
 24 A. Yes.  
 25 Q. Now, you see here, in both the subhead B

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1 itself and the paragraph that follows, it refers to  
 2 the estate being the entity that exercised the  
 3 option?  
 4 A. Okay.  
 5 Q. With that having been brought to your  
 6 attention, was there any discussion at the December  
 7 29, 2017, board meeting of whether it was the  
 8 estate or the trust or any other entity or person  
 9 that held or owned the option?  
 10 MR. SEARCY: Objection. Vague.  
 11 A. Not that I recall.  
 12 BY MR. KRUM:  
 13 Q. The bottom of page 5, top of page 6, the  
 14 document reads as follows: Director McEachern also  
 15 noted his view that the allegations made by  
 16 Mr. Cotter in this regard had caused a waste of  
 17 company's resources, as it was perfectly clear that  
 18 neither the Cotter Estate nor Ellen and Margaret  
 19 Cotter would gain an advantage from the  
 20 transaction, given that the Cotter Estate could  
 21 have sold Class A shares in the market and used the  
 22 cash to exercise the option in question, close  
 23 quote.  
 24 Do you see that?  
 25 A. Yes, I do.

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1 Q. Does that fairly describe the comment or  
 2 comments you made?  
 3 A. Generally describes what I said. Whether  
 4 I said "Cotter Estate" or not, I don't recall, but  
 5 the entity that exercised it, yes, I -- I'm in  
 6 concurrence with this.  
 7 Q. When you say -- did you use words to the  
 8 effect of "wasted company resources"?  
 9 A. Absolutely.  
 10 Q. So was it one of the reasons you voted to  
 11 ratify the compensation committee's September 2015  
 12 decision to authorize the exercise of the 100,000  
 13 share option, your view of this derivative lawsuit,  
 14 in any respect?  
 15 MR. SEARCY: Objection. Vague.  
 16 A. I don't think it had anything to do with  
 17 the derivative lawsuit. It had to -- had to do  
 18 with whether this was an issue, and I didn't see an  
 19 issue. I saw this as a perfectly normal  
 20 transaction that would be executed by a company.  
 21 BY MR. KRUM:  
 22 Q. What is your view of this derivative  
 23 lawsuit?  
 24 A. Of the derivative lawsuit?  
 25 Q. Yes.

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1 A. I'm baffled.  
 2 Q. What does that mean?  
 3 A. What does that mean?  
 4 Q. Why are you baffled? Why do you say you  
 5 are baffled?  
 6 A. I don't understand the issues being raised  
 7 by Jim Cotter, Jr.  
 8 Q. If you were to vote on whether this  
 9 derivative lawsuit should proceed, how would you  
 10 vote?  
 11 A. Against the company?  
 12 Q. As framed.  
 13 A. Huh?  
 14 Q. So if -- if you were, as a member of the  
 15 RDI board of directors, given an opportunity to  
 16 vote on whether the derivative lawsuit is presently  
 17 pending, should continue or not, how would you  
 18 vote?  
 19 A. Absent somebody presenting some other  
 20 additional information to me, which I'm not unaware  
 21 of, I would vote to dismiss the lawsuit.  
 22 Q. Why?  
 23 A. As I understand this derivative lawsuit,  
 24 Jim Cotter, Jr., wants to be reinstated as CEO of  
 25 the company and believes that the company was

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1 MR. KRUM: Well, I gave him a birthday  
2 present also; right?  
3 MR. FERRARIO: That's right, you did.  
4 BY MR. KRUM:  
5 Q. So I --  
6 A. You gave him wine?  
7 Q. No, I didn't give him wine, I -- I told  
8 him he didn't -- I told counsel that Mr. Kane did  
9 not need to appear for further depositions. So I'm  
10 sure he appreciated that.  
11 MR. KRUM: Why don't we take a short  
12 break.  
13 MR. SEARCY: Sure.  
14 THE VIDEOGRAPHER: We are off the record  
15 at 12:07 p.m.  
16 (Recess taken from 12:07 p.m. to  
17 12:21 p.m.)  
18 THE VIDEOGRAPHER: We are back on the  
19 record. The time now is 12:21 p.m.  
20 MR. KRUM: I will ask the court reporter  
21 to mark as Exhibit 527 a single-page document  
22 bearing production number RDI63918.  
23 (Deposition Exhibit 527 was marked for  
24 identification by the reporter and is  
25 attached hereto.)

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1 (Miscellaneous discussion.)  
2 BY MR. KRUM:  
3 Q. Mr. McEachern, take such time as you need.  
4 My question is: Have you seen Exhibit 527 before?  
5 A. I don't recall having seen this before,  
6 but I do recall speaking in our special committee  
7 with Bill Gould and Judy Codding about asking to  
8 have this done.  
9 Q. When was that conversation with the  
10 special committee to which you just referred?  
11 A. Sometime in mid to late December.  
12 Q. Who said what?  
13 A. Generally, I believe it was a special  
14 committee meeting. I can't remember if Mr. Kane  
15 and Michael Wrotniak were part of it or not, with  
16 Michael Bonner of Greenberg Traurig referring again  
17 to the law that he wrote for the state of Nevada on  
18 ratification matters by the board of director --  
19 directors.  
20 Q. Was this meeting scheduled for that  
21 purpose, or was the meeting scheduled for other  
22 purposes as well?  
23 A. The meeting of the special committee?  
24 Q. Yeah.  
25 A. I don't recall if there were any other

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1 topics at the meeting.  
2 Q. Does the special committee take or  
3 maintain meeting minutes?  
4 A. Yes, they do.  
5 Q. Are there minutes of the meeting you just  
6 described?  
7 A. I believe they are drafts. I don't think  
8 we have done anything to approve -- I take that  
9 back. I'm not sure if the committee's approved  
10 them or not. I know they have not been presented  
11 to the board.  
12 MR. KRUM: Okay. Mark and Marshall, I  
13 would ask getting special meetings minutes that  
14 referred to these matters also be produced.  
15 Q. What was the conclusion, if any, reached  
16 at that meeting with respect to the subject of  
17 ratification?  
18 A. That we would pursue that activity and --  
19 and present it to the board of directors.  
20 Q. Who first raised the subject?  
21 A. I believe Mike Bonner.  
22 Q. Is Mr. Bonner ordinarily at the meetings  
23 of the special committee?  
24 A. I believe he's attended all of them. He  
25 may have missed one or two.

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1 Q. Now, the special committee in question,  
2 which committee -- which special committee is that,  
3 Mr. McEachern?  
4 A. It's a committee that was put together by  
5 the board in the summer of 2017 to deal with the  
6 litigation matters, and specifically the derivative  
7 lawsuit, and/or reacting -- figuring out what our  
8 reaction would be given actions that may or may not  
9 be taken with respect to the trust and the estate  
10 case.  
11 Q. And the actions that may or may not be  
12 taken with respect to the trust and estate case, do  
13 those include the appointment of a trustee ad litem  
14 with responsibilities with respect to the  
15 controlling block of RDI Class B voting stock?  
16 A. Can you restate that again? I'm sorry.  
17 MR. KRUM: I will ask the court reporter  
18 to read it.  
19 A. That's fine.  
20 (Reporter read back the requested text.)  
21 A. I don't know that we have anything to do  
22 with the appointment of a trustee ad litem. But in  
23 reacting to whatever takes place in that, that's  
24 what the committee is of, to react to. I believe  
25 we have a charter that was approved by the board

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1 that one could get and see what our charter is.  
2 BY MR. KRUM:  
3 **Q. Has the committee directed counsel,**  
4 **Greenberg Traurig, or anybody else, to take action?**  
5 **And by "committee," I'm referring to the same**  
6 **special committee about which you are testifying.**  
7 MR. FERRARIO: I'm going to object.  
8 Overbroad.  
9 A. I remember sometime in the fall of 2017,  
10 Mike Bonner was -- and when I say "Mike Bonner,"  
11 I'm not sure if it was Mike Bonner and Bill Gould,  
12 who is the chairman of the committee.  
13 MR. FERRARIO: Don't -- don't divulge  
14 attorney-client communications. Okay. So that's  
15 what I'm trying to get. If somebody directs a  
16 lawyer to do something, that to me implicates  
17 attorney-client communication, because it could be  
18 reflective of advice or a scope of litigation,  
19 something like that. I don't want to impede this  
20 because it's been going very smooth, but that's my  
21 admonition. I don't really understand the  
22 question, but go ahead without divulging any  
23 attorney-client communication.  
24 THE WITNESS: Can I ask a question? So if  
25 we asked Mike Bonner to participate with Bill Gould

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1 in doing something, that's attorney-client  
2 privilege?  
3 MR. FERRARIO: If you're asking -- if you  
4 are asking him, Bill Gould, to the grocery store  
5 and pick up sodas for a meeting, I don't care. If  
6 you are asking him to do something that would  
7 encompass the giving of legal advice that is going  
8 be reflective of what -- you know, what was being  
9 discussed between the lawyer and the client, I  
10 would instruct you not to answer that.  
11 A. Then I won't answer that question.  
12 BY MR. KRUM:  
13 **Q. All right. Well, let me weigh in on this.**  
14 **What I'm attempting to ascertain is the scope of**  
15 **the actions with respect to the special committee.**  
16 **So let me just ask you about a couple of subjects.**  
17 **Has the special committee taken any steps**  
18 **to communicate any positions in any action, whether**  
19 **the derivative action or the California trust action?**  
20 A. No, not to my recollection.  
21 **Q. Directing your attention, Mr. McEachern,**  
22 **specifically with respect to the subject of**  
23 **ratification, as best as you can recall, sir, when**  
24 **and how did that subject first arise before the**  
25 **special committee?**

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1 A. Ratification of what? The actions by the  
2 compensation committee or the ratification of the  
3 termination of Jim Cotter, Jr.?  
4 **Q. Either or both.**  
5 A. I think it's in late fall sometime of  
6 2017. But there was nothing that could be done, I  
7 don't think, until such time as -- as I recall, the  
8 judge in the derivative case took some action with  
9 respect to dismissing directors from the lawsuit.  
10 **Q. So the subject was raised in the late fall**  
11 **of 2017 and, in effect, it was tabled for the time**  
12 **being?**  
13 A. I believe that's correct.  
14 **Q. What did you say, if anything, about that**  
15 **subject in the late fall of 2017?**  
16 A. I do not recall.  
17 **Q. What about did Bill Gould say?**  
18 A. I do not recall.  
19 **Q. What did Judy Codding say?**  
20 A. I do not recall.  
21 **Q. Did it concern the ratification of the**  
22 **termination decision or the decision to authorize**  
23 **the exercise of the 100,000 share option by way of**  
24 **Class A voting stock or both?**  
25 A. I believe the main focus was on the

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1 termination of Jim Cotter, Jr.  
2 **Q. What was said, if anything, at that time**  
3 **about the subject of Guy Adams' disinterest in this**  
4 **independence or both?**  
5 A. With respect to what?  
6 **Q. The vote to terminate Jim Cotter, Jr., in**  
7 **2015.**  
8 MR. SEARCY: Let's have the question read  
9 back.  
10 THE WITNESS: I'm sorry?  
11 MR. SEARCY: I was asking if we could have  
12 the question read back.  
13 (Reporter read back the requested text.)  
14 MR. SEARCY: And you're asking about --  
15 involved 2017?  
16 MR. KRUM: Right.  
17 MR. FERRARIO: It's to non-lawyers.  
18 A. I don't recall, but the judge dismissed  
19 five directors from the case, and the case still  
20 has Ellen Cotter, Margaret Cotter, and Guy Adams as  
21 defendants. And I believe the discussion was as  
22 long as he was a defendant in the case, he couldn't  
23 vote on this type of matter. I don't recall a  
24 discussion about his independence at that -- in  
25 connection with that.

1	ERRATA SHEET			Page 559
2				
3				
4				
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:			
13				
14	Page	Line	Should read:	Reason for Change:
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1	ERRATA SHEET			Page 560
2	Page	Line	Should read:	Reason for Change:
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23	Date:	_____	_____	
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# Exhibit 8

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DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiff, ) )

vs. ) )

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

Defendants. ) )

and ) )

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

Nominal Defendant. ) )

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No. A-15-719860-B  
Coordinated with:  
P-14-082942-E

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

Job Number 291961

TIMOTHY STOREY - 02/12/2016

<p style="text-align: right;">Page 2</p> <p>1 APPEARANCES OF COUNSEL:  2  3 For Plaintiff JAMES J. COTTER, JR.:  4 LEWIS ROCA ROTHGERBER CHRISTIE LLP  5 BY MARK G. KRUM  6 3993 Howard Hughes Parkway, Suite 600  7 Las Vegas, Nevada 89169-5996  8 Telephone: 702-949-8200  9 Facsimile: 702-949-8398  10 E-mail: Mkrum@lrrc.com  11  12 For Defendants MARGARET COTTER, ELLEN COTTER, DOUGLAS  13 McEACHERN, GUY ADAMS and EDWARD KANE:  14 QUINN EMANUEL URQUHART &amp; SULLIVAN LLP  15 BY MARSHALL M. SEARCY and LAUREN LAIOLO  16 865 South Figueroa Street, 10th Floor  17 Los Angeles, California 90017  18 Telephone: 213-443-3000  19 Facsimile: 213-443-3100  20  21  22  23  24  25</p>	<p style="text-align: right;">Page 3</p> <p>1 APPEARANCES OF COUNSEL (Continued):  2  3 For Nominal Defendant GREENBERG &amp; TRAUIG LLP:  4 GREENBERG TRAUIG LLP  5 BY MARK E. FERRARIO  6 1840 Century Park East, Suite 1900  7 Los Angeles, California 90067  8 Telephone: 310-586-7700  9 Facsimile: 310-586-7800  10 E-mail: Ferrarion@gtlaw.com  11  12 For Defendants WILLIAM GOULD and TIMOTHY STOREY:  13 BIRD, MARELLA, BOXER, WOLFPERT, NESSIM, DROOKS,  14 LINCENGER &amp; RHOW  15 BY EKWAN E. RHOW  16 1875 Century Park East, 23rd Floor  17 Los Angeles, California 90067-2561  18 Telephone: 310-201-2100  19 Facsimile: 310-201-2110  20 E-mail: Eer@birdmarella.com  21  22  23  24  25</p>																																																																																				
<p style="text-align: right;">Page 4</p> <p>1 APPEARANCES OF COUNSEL (Continued):  2  3 Derivatively on behalf of READING INTERNATIONAL, INC.:  4 ROBERTSON &amp; ASSOCIATES, LLP  5 BY ALEXANDER ROBERTSON  6 550 West C Street, Suite 500  7 San Diego, California 92101  8 Telephone: 619-531-7000  9 Facsimile: 619-531-7007  10 E-mail: Arobertson@arobertsonlaw.com  11  12 Also Present:  13 WILLIAM SLOGGATT, Videographer  14 ELLEN COTTER  15 DOUG McEACHERN  16 JAMES J. COTTER, JR.  17  18  19 I N D E X  20 WITNESS: TIMOTHY STOREY  21 EXAMINATION BY: PAGE  22 Mr. Krum 10  23 Mr. Robertson 213  24  25</p>	<p style="text-align: right;">Page 5</p> <p style="text-align: center;">E X H I B I T S</p> <table border="1"> <thead> <tr> <th>EXHIBIT</th> <th>DESCRIPTION</th> <th>IDENTIFIED</th> <th>MARKED</th> </tr> </thead> <tbody> <tr> <td>3</td> <td>EXHIBIT 1 Document with production numbers TS 1289 to 91</td> <td>19</td> <td>19</td> </tr> <tr> <td>4</td> <td>EXHIBIT 2 Document with production numbers TS 272 to 274</td> <td>24</td> <td>24</td> </tr> <tr> <td>6</td> <td>EXHIBIT 3 Document with production numbers TS 280 and 281</td> <td>30</td> <td>30</td> </tr> <tr> <td>7</td> <td>EXHIBIT 4 Document with production numbers TS 462 and 463</td> <td>33</td> <td>33</td> </tr> <tr> <td>8</td> <td>EXHIBIT 5 Document with production numbers TS 464 to 467</td> <td>37</td> <td>37</td> </tr> <tr> <td>10</td> <td>EXHIBIT 6 Document with production numbers TS 294 and 295</td> <td>39</td> <td>39</td> </tr> <tr> <td>11</td> <td>EXHIBIT 7 Document with production number 169</td> <td>49</td> <td>49</td> </tr> <tr> <td>13</td> <td>EXHIBIT 8 Document with production numbers TS 157 to 160</td> <td>50</td> <td>50</td> </tr> <tr> <td>14</td> <td>EXHIBIT 9 Document with production numbers 1169 and 1170</td> <td>54</td> <td>54</td> </tr> <tr> <td>15</td> <td>EXHIBIT 10 Document with production number TS 121</td> <td>63</td> <td>63</td> </tr> <tr> <td>16</td> <td>EXHIBIT 11 Document with production numbers TS 246 to 250</td> <td>73</td> <td>73</td> </tr> <tr> <td>17</td> <td></td> <td></td> <td></td> </tr> <tr> <td>18</td> <td></td> <td></td> <td></td> </tr> <tr> <td>19</td> <td></td> <td></td> <td></td> </tr> <tr> <td>20</td> <td></td> <td></td> <td></td> </tr> <tr> <td>21</td> <td></td> <td></td> <td></td> </tr> <tr> <td>22</td> <td></td> <td></td> <td></td> </tr> <tr> <td>23</td> <td></td> <td></td> <td></td> </tr> <tr> <td>24</td> <td></td> <td></td> <td></td> </tr> <tr> <td>25</td> <td></td> <td></td> <td></td> </tr> </tbody> </table>	EXHIBIT	DESCRIPTION	IDENTIFIED	MARKED	3	EXHIBIT 1 Document with production numbers TS 1289 to 91	19	19	4	EXHIBIT 2 Document with production numbers TS 272 to 274	24	24	6	EXHIBIT 3 Document with production numbers TS 280 and 281	30	30	7	EXHIBIT 4 Document with production numbers TS 462 and 463	33	33	8	EXHIBIT 5 Document with production numbers TS 464 to 467	37	37	10	EXHIBIT 6 Document with production numbers TS 294 and 295	39	39	11	EXHIBIT 7 Document with production number 169	49	49	13	EXHIBIT 8 Document with production numbers TS 157 to 160	50	50	14	EXHIBIT 9 Document with production numbers 1169 and 1170	54	54	15	EXHIBIT 10 Document with production number TS 121	63	63	16	EXHIBIT 11 Document with production numbers TS 246 to 250	73	73	17				18				19				20				21				22				23				24				25			
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<p style="text-align: right;">Page 94</p> <p>1 MR. RHOW: -- we'll defer to the company.  2 MR. FERRARIO: It's privileged as to him. He has a  3 point on him.  4 MR. KRUM: Yeah, the two plaintiffs are not  5 similarly situated.  6 Q. So all I'm asking, Mr. Storey, is sort of the  7 Dragnet questions. I'm not asking for you to relate to  8 me any of the substance of what was communicated to you  9 by Mr. Tompkins, Mr. Ellis or both. So with that --  10 A. So as I said, I do recollect receiving  11 something in writing.  12 Q. And what was it? Was it a memo? Was it an  13 e-mail?  14 A. I think all correspondence was by e-mail.  15 Q. And was it from Tompkins or Ellis?  16 A. I don't recollect.  17 Q. Okay.  18 And tell me what the subject matter was. Not what  19 it said, just what the subject matter was.  20 A. The import of names on the share register.  21 Q. The import of those names relative to the issue  22 of the exercise of options?  23 A. Voting rights of shares.  24 Q. Okay.  25 Directing your attention back to Exhibit 16, do you</p>	<p style="text-align: right;">Page 95</p> <p>1 have that?  2 A. Yes.  3 Q. Second page, item 11, it reads, quote,  4 "Discussion re special committee's continuing role,"  5 closed quote.  6 A. Yes.  7 Q. Do you understand that to be a reference to  8 your role as the ombudsman?  9 A. Yes.  10 Q. And was there any -- Was there a -- Well, okay.  11 That never happened at the May board meeting;  12 correct?  13 A. That's my understanding.  14 Q. Point of fact, the May board meeting as  15 envisioned by Mr. Gould in Exhibit 16 never occurred;  16 correct?  17 A. Correct.  18 Q. And it was preempted by a special board meeting  19 called by Ellen Cotter; correct?  20 A. That's my recollection.  21 Q. So when did you first hear or learn or were you  22 first told that some of the non-Cotter directors -- any  23 of the non-Cotter directors had concluded that Jim  24 Cotter, Jr. should be removed as CEO?  25 MR. FERRARIO: Can you read that question back? I</p>
<p style="text-align: right;">Page 96</p> <p>1 got lost.  2 MR. KRUM: I'll just repeat it.  3 MR. FERRARIO: Yeah.  4 MR. KRUM:  5 Q. When did you first hear or learn or when were  6 you first told that any of the non-Cotter directors had  7 concluded that Jim Cotter should be removed as CEO?  8 A. About a week before the meeting, I would say,  9 mid- -- around about the 15th of May, I got a phone call  10 from Doug McEachern, who informed me that there had been  11 various discussions. It was intended to remove Jim at  12 the board meeting. That he had been in discussions with  13 Guy Adams, and that Guy Adams was -- my recollection,  14 was leading the charge or was involved with it.  15 I made some commentary on the procedure. And  16 Mr. McEachern said he was aware of that, but that's  17 where things stood. And the next day, I got a phone  18 call -- the next day, I had a phone call from Guy Adams,  19 who basically affirmed that.  20 Q. And what did Mr. Adams say, in sum and  21 substance, unless you actually remember the words?  22 A. I think he said, in substance, that the time  23 had come for the matter to be dealt with, that they had  24 the legal advice that they could do that, that it  25 shouldn't be an issue. My recollection is, it was a</p>	<p style="text-align: right;">Page 97</p> <p>1 pretty short conversation.  2 Q. And when you say "the matter" should be dealt  3 with, what was "the matter"?  4 A. The removal of the CEO.  5 Q. Did he indicate from whom they had received  6 legal advice?  7 A. No.  8 Q. Did you ever subsequently learn who that was?  9 MR. FERRARIO: Object that --  10 MR. KRUM: I'm not asking for the substance. I'm  11 asking --  12 MR. FERRARIO: Assumes he got any legal advice.  13 MR. KRUM: Okay. He testified that Adams said he  14 had legal advice. So I'm not doing anything other than  15 following on that testimony.  16 Q. So did you ever hear or learn or did you ever  17 otherwise develop an understanding as to whom Mr. Adams  18 was referring when he talked about legal advice?  19 A. I don't recollect.  20 Q. Was it Akin Gump?  21 A. I don't know.  22 Q. It's just an appropriate follow-up question.  23 MR. RHOW: The reason I have a problem with the  24 question, sometimes when you say, "Did you ever  25 subsequently learn," first, I don't know if what his --</p>

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1 what the relevance is of his current knowledge, but I  
 2 understand why you're asking.  
 3 MR. KRUM: I just want to know who it was.  
 4 MR. RHOW: My other concern in general is, if he's  
 5 learning from me or other sources, that's not  
 6 necessarily something I can object to, since I'm not  
 7 sure if he currently knows. But anyway, that question  
 8 is fine.  
 9 MR. KRUM: Well, I assume you prepared him, but let  
 10 me make it clear.  
 11 Q. Mr. Storey, when I ask questions that in any  
 12 respect call for anything touching on legal advice, I'm  
 13 not asking you to disclose the substance of any legal  
 14 advice, whether it was provided to you as a director of  
 15 the company by in-house or outside counsel representing  
 16 the company, whether it was provided to you by your own  
 17 counsel. If the question calls for information of that  
 18 type, all I want to hear is the identity of the lawyer  
 19 and the subject matter of the advice, not the substance.  
 20 A. Thank you.  
 21 Q. So the call with Adams was -- when in time was  
 22 it relative to the -- to your receipt of the notice from  
 23 Ellen Cotter of the special meeting?  
 24 A. From recollection, prior to.  
 25 Q. And the call from Adams was the day after you

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1 Q. Okay.  
 2 Then in substance, what did he say?  
 3 A. That the time had come to remove the CEO.  
 4 Q. And what was the substance of what  
 5 Mr. McEachern had said to you the day before that --  
 6 from which you concluded that he had determined to vote  
 7 to remove Jim Cotter, Jr. as the CEO?  
 8 A. Similar comment.  
 9 Q. Okay.  
 10 Now, did either of those two gentlemen in either of  
 11 those calls indicate to you anything about what Ed Kane  
 12 intended to do or had decided to do?  
 13 A. I don't recollect.  
 14 Q. Did you have any impression, after either or  
 15 both of those calls, of what Ed Kane had decided to do,  
 16 if anything?  
 17 A. Did I have any impression of what Ed Kane had  
 18 decided to do. I think prior to that point, I was aware  
 19 that Ed Kane was of the view that a change should be  
 20 made.  
 21 Q. And how did you develop that awareness?  
 22 A. I think that was just the outcome discussed  
 23 earlier -- as I mentioned earlier, it was the outcome of  
 24 where things had got to by late April, early May.  
 25 Q. Did there come a time when either Mr. Kane told

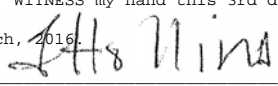
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1 spoke to McEachern; correct?  
 2 A. Correct.  
 3 Q. And in the McEachern call, he told you that he,  
 4 Adams, and Kane had determined to vote to remove Jim  
 5 Cotter, Jr. as CEO; is that correct?  
 6 MR. SEARCY: Objection. Vague.  
 7 THE WITNESS: For some reason, my recollection of  
 8 the conversation is that it was going to be -- that the  
 9 time had come to remove the CEO, or to that effect.  
 10 MR. KRUM:  
 11 Q. Well, when you hung up from the call with  
 12 Mr. McEachern that you just described, did you  
 13 understand that he had communicated to you that he had  
 14 decided to vote to remove Jim Cotter, Jr. as CEO?  
 15 A. Yes.  
 16 Q. The next day when you hung up the call from  
 17 Mr. Adams, did you understand that Mr. Adams had told  
 18 you that he also had decided to vote to remove Jim  
 19 Cotter, Jr. as CEO?  
 20 MR. SEARCY: Objection. Lacks foundation.  
 21 THE WITNESS: Yes.  
 22 MR. KRUM: Okay.  
 23 Q. And as best you can recall, what were the words  
 24 Mr. Adams used that led you to that conclusion?  
 25 A. I don't recollect specific words.

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1 our somebody else told you that Mr. Kane had decided to  
 2 vote to remove Jim Cotter, Jr. as president and CEO?  
 3 MR. SEARCY: Objection. Vague.  
 4 THE WITNESS: You'll have to repeat the question.  
 5 MR. KRUM: Sure.  
 6 Q. When did you first learn or were you first told  
 7 that Ed Kane had decided to vote to remove Jim  
 8 Cotter, Jr. as president and CEO?  
 9 A. I don't recollect.  
 10 Q. Okay.  
 11 A. Obviously, prior to those discussions.  
 12 Q. Right. Now, during your call with  
 13 Mr. McEachern about what you've testified already, what  
 14 did you say to him?  
 15 A. I don't recollect that I said much. I think I  
 16 talked about adopted process, and looking at the matter  
 17 properly as a board. As I said earlier, my recollection  
 18 is that Mr. McEachern said "yes," he understood that  
 19 position.  
 20 I didn't see it as my position, at that point or at  
 21 any point, to be an advocate one way or another. My  
 22 concern was around adopting a robust procedure to go  
 23 through that process.  
 24 Q. Did you say to Mr. McEachern, in words or  
 25 substance, that there had not been to that point in time

<p style="text-align: right;">Page 102</p> <p>1 an adequate process or procedure to make a decision 2 regarding whether to terminate Jim Cotter, Jr. as the 3 president and CEO? 4 MR. SEARCY: Objection. Vague. Assumes facts. 5 THE WITNESS: I don't recollect that. I don't 6 recollect that either way. 7 MR. KRUM: Okay. 8 Q. And the conversation you had the next day with 9 Mr. Adams, did you ever -- 10 A. I don't -- 11 Q. -- communicate that notion? 12 A. I don't recollect that either way. 13 Q. And did you say to either of Mr. McEachern 14 during the call with him, or to Mr. Adams during the 15 call with him the day following, in words or substance, 16 "We haven't even finished" -- "I haven't even finished 17 the ombudsman process we commenced in March"? 18 MR. SEARCY: Objection. Vague. Assumes facts. 19 THE WITNESS: I don't recollect that. 20 MR. KRUM: Okay. 21 Q. Prior to the special board meeting that 22 occurred on -- It occurred on May 20th; correct? 23 A. Around about that time, yes. 24 Q. Okay. 25 So prior to the special board meeting that occurred</p>	<p style="text-align: right;">Page 103</p> <p>1 on or about May 20th, what other conversations, if any, 2 did you have with any other non-Cotter director with 3 respect to a decision or a possible decision, or a 4 process with respect to a decision, to vote to terminate 5 Jim Cotter, Jr. as president and CEO? 6 A. I don't recollect. 7 Q. So at the board meeting that occurred on or 8 about May 20, 2015, the first matters taken up were 9 votes about what lawyers would be allowed to attend the 10 meeting; correct? 11 A. Correct. 12 Q. And there was a vote about whether Jim Cotter, 13 Jr.'s lawyer would be allowed to attend the meeting; 14 correct? 15 A. Correct. 16 Q. And then there was a separate vote about 17 whether if the Akin Gump lawyer was allowed to attend 18 the meeting, then both the Akin Gump lawyer and Jim 19 Cotter, Jr.'s lawyer would be allowed to attend; 20 correct? 21 MR. SEARCY: Objection. Vague. 22 THE WITNESS: I don't recollect. 23 MR. KRUM: Okay. 24 Q. Do you recall that? 25 A. I don't recollect. I recollect the meeting.</p>
<p style="text-align: right;">Page 104</p> <p>1 Q. But do you recall that there was a -- there was 2 a seven-to-one vote against Mr. Cotter's lawyer 3 attending the meeting? 4 A. I don't recollect. I would need to look at the 5 minutes. 6 Q. Do you recall that one or the other of you or 7 Bill Gould said that if the Akin Gump lawyer was allowed 8 to attend, then Jim Cotter, Jr.'s lawyer should be 9 allowed to attend? 10 MR. SEARCY: Objection. Lacks foundation. 11 THE WITNESS: It was my view, it would be unusual 12 for lawyers to be at the board meeting. But it was my 13 view, and it is my view, that if -- in the 14 circumstances, if lawyers were going to be there, I 15 didn't see the harm in having Mr. Cotter's lawyer there, 16 was my view. 17 MR. KRUM: 18 Q. And do you recall that Mr. Adams interjected 19 that it was not appropriate to vote on the motion that 20 if one lawyer stayed for -- the Akin Gump lawyer stayed, 21 Mr. Cotter's lawyer should stay as well because there 22 had already been a vote with respect to Mr. Cotter's 23 lawyer staying? 24 MR. SEARCY: Objection. Vague. Argumentative. 25 THE WITNESS: I don't recollect.</p>	<p style="text-align: right;">Page 105</p> <p>1 MR. KRUM: Okay. 2 Q. Do you recall what the -- Okay. So at the -- 3 at the May 20 -- at the directors meeting on or about 4 May 20, 2015, was there a motion to terminate Jim 5 Cotter, Jr. as president and CEO? 6 A. Yes. 7 Q. Who made that? 8 A. The chair. 9 Q. Was the motion seconded? 10 A. From recollection, yes. 11 Q. Was there a vote? 12 A. It was a very tumultuous period. I don't 13 recollect the vote happening, a formal vote being taken. 14 Q. Do you recall that the meeting was adjourned 15 for a period of time? 16 A. I do. 17 Q. And how did that happen? What happened to 18 cause the meeting to be adjourned? 19 A. I don't recollect in detail. 20 Q. Do you recall if there was any discussion about 21 giving Jim Cotter, Jr. on one hand and Ellen and 22 Margaret Cotter on the other hand time to attempt to 23 resolve their differences before the vote was taken? 24 A. Yes. 25 Q. And what was discussed in that respect?</p>

<p style="text-align: right;">Page 258</p> <p>1 I, Teckla T. Hollins, CSR 13125, do hereby declare:                  2 That, prior to being examined, the witness named in                  the foregoing deposition was by me duly sworn pursuant                  3 to Section 30(f)(1) of the Federal Rules of Civil                  Procedure and the deposition is a true record of the                  4 testimony given by the witness.                  5 That said deposition was taken down by me in                  shorthand at the time and place therein named and                  6 thereafter reduced to text under my direction.                  7 _____ That the witness was requested to review the                  transcript and make any changes to the                  8 transcript as a result of that review                  pursuant to Section 30(e) of the Federal                  9 Rules of Civil Procedure.                  10 _____ No changes have been provided by the witness                  during the period allowed.                  11 _____ The changes made by the witness are appended                  to the transcript.                  12 _____ No request was made that the transcript be                  reviewed pursuant to Section 30(e) of the                  13 Federal Rules of Civil Procedure.                  14 I further declare that I have no interest in the                  15 event of the action.                  16 I declare under penalty of perjury under the laws                  17 of the United States of America that the foregoing is                  true and correct.                  18 WITNESS my hand this 3rd day of                  19 March, 2016.                   20 _____                  21 Teckla T. Hollins, CSR 13125                  22                  23                  24                  25</p>	<p style="text-align: right;">Page 259</p> <p style="text-align: center;">ERRATA SHEET</p> <p>2                  3                  4                  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:                  13                  14 Page Line Should read: Reason for Change:                  15                  16 _____                  17 _____                  18 _____                  19 _____                  20 _____                  21 _____                  22 _____                  23 _____                  24 _____                  25</p>
<p style="text-align: right;">Page 260</p> <p style="text-align: center;">ERRATA SHEET</p> <p>2 Page Line Should read: Reason for Change:                  3                  4 _____                  5 _____                  6 _____                  7 _____                  8 _____                  9 _____                  10 _____                  11 _____                  12 _____                  13 _____                  14 _____                  15 _____                  16 _____                  17                  18 Date: _____                  Signature of Witness                  19 _____                  Name Typed or Printed                  20 _____                  21                  22                  23                  24                  25</p>	

# Exhibit 9

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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 TIMOTHY STOREY

Wednesday, August 3, 2016

Wednesday, California

REPORTED BY:

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

Job No.: 323867

TIMOTHY STOREY - 08/03/2016

<p style="text-align: right;">Page 2</p> <p>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 )  READING INTERNATIONAL, INC., )  12 a Nevada corporation, )  ) )  13 Nominal Defendant. )  ) )  14 )  15 )  16 Videotaped Deposition of TIMOTHY STOREY  17 taken on behalf of Plaintiff, at 3993 Howard Hughes  18 parkway, Suite 600, Las Vegas, California, beginning  19 at 9:39 a.m. and ending at 12:19 p.m., on Wednesday,  20 August 3, 2016, before GRACE CHUNG, CSR No. 6246,  21 RMR, CRR, CLR.  22 )  23 )  24 )  25 )</p>	<p style="text-align: right;">Page 4</p> <p>1 Also Present: BRIAN MURPHY, Videographer  2 JAMES COTTER  3 )  4 )  5 )  6 )  7 )  8 )  9 )  10 )  11 )  12 )  13 )  14 )  15 )  16 )  17 )  18 )  19 )  20 )  21 )  22 )  23 )  24 )  25 )</p>																																																																								
<p style="text-align: right;">Page 3</p> <p style="text-align: center;">A P P E A R A N C E S</p> <p>1 For the Plaintiff:  2 LEWIS ROCA ROTHGERBER CHRISTIES  3 BY: MARK G. KRUM, ESQ.  4 3993 Howard Hughes Parkway  Suite 600  5 Las Vegas, Nevada 89169  (702) 949-8200  6 mkrum@lrrc.com  7 )  For the Plaintiff Reading International:  8 GREENBERG TRAUIG  9 BY: KARA HENDRICKS, ESQ.  1840 Century Park East  10 Suite 1900  Los Angeles, California 90067  11 (310) 586-7700  hendricksk@gtlaw.com  12 )  For the Defendants Timothy Storey and William  13 Gould:  14 BIRD MARELLA  15 BY: EKWAN E. RHOW, ESQ.  SHOSHANA E. BANNETT, ESQ.  16 1875 Century Park East  23rd Floor  17 Los Angeles, California 90067  (310) 201-2100  18 eer@birdmarella.com  sbannett@birdmarella.com  19 )  For the Defendants Margaret Cotter, Ellen Cotter  20 Guy Adams, Edward Kane:  21 QUINN EMANUEL  22 BY: MARSHALL SEARCY, ESQ.  NOAH HALPERN, ESQ.  23 865 South Figueroa Street  10th Floor  24 Los Angeles, California 90017  marshallsearcy@quinnemanuel.com  25 noahhalpern@quinnemanuel.com</p>	<p style="text-align: right;">Page 5</p> <p style="text-align: center;">INDEX</p> <table style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 5%;"></th> <th style="width: 70%;">WITNESS EXAMINATION</th> <th style="width: 25%;">PAGE</th> </tr> </thead> <tbody> <tr> <td>2</td> <td>TIMOTHY STOREY</td> <td></td> </tr> <tr> <td>4</td> <td>BY MR. KRUM</td> <td>7</td> </tr> <tr> <td>5</td> <td>BY MR. SEARCY</td> <td>84</td> </tr> <tr> <td>6</td> <td></td> <td></td> </tr> <tr> <td>7</td> <td style="text-align: center;">EXHIBITS</td> <td></td> </tr> <tr> <td>8</td> <td>NO. DESCRIPTION</td> <td>PAGE</td> </tr> <tr> <td>9</td> <td>Exhibit 416 Minutes of the Meeting of the Board of Directors of Reading International, Inc.</td> <td>75</td> </tr> <tr> <td>10</td> <td></td> <td></td> </tr> <tr> <td>11</td> <td>Exhibit 417 E-mail from Ed Kane, dated October 19, 2014</td> <td>82</td> </tr> <tr> <td>12</td> <td></td> <td></td> </tr> <tr> <td>13</td> <td></td> <td></td> </tr> <tr> <td>14</td> <td></td> <td></td> </tr> <tr> <td>15</td> <td></td> <td></td> </tr> <tr> <td>16</td> <td></td> <td></td> </tr> <tr> <td>17</td> <td></td> <td></td> </tr> <tr> <td>18</td> <td></td> <td></td> </tr> <tr> <td>19</td> <td></td> <td></td> </tr> <tr> <td>20</td> <td></td> <td></td> </tr> <tr> <td>21</td> <td></td> <td></td> </tr> <tr> <td>22</td> <td></td> <td></td> </tr> <tr> <td>23</td> <td></td> <td></td> </tr> <tr> <td>24</td> <td></td> <td></td> </tr> <tr> <td>25</td> <td></td> <td></td> </tr> </tbody> </table>		WITNESS EXAMINATION	PAGE	2	TIMOTHY STOREY		4	BY MR. KRUM	7	5	BY MR. SEARCY	84	6			7	EXHIBITS		8	NO. DESCRIPTION	PAGE	9	Exhibit 416 Minutes of the Meeting of the Board of Directors of Reading International, Inc.	75	10			11	Exhibit 417 E-mail from Ed Kane, dated October 19, 2014	82	12			13			14			15			16			17			18			19			20			21			22			23			24			25		
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1 in this note, is to say we need to act as a board,  
2 and we need to act properly to come to a decision.  
3 And we need to address ourselves to the appropriate  
4 question. So, yes, my view was, at times, Mr. Kane  
5 was of the view that we would simply -- we should  
6 just simply be acting as director -- well, acting  
7 in a manner consistent with what he believed the  
8 shareholder required.  
9 BY MR. KRUM:  
10 Q. And by the shareholders -- shareholder,  
11 you are referring to Ellen and Margaret?  
12 MR. SEARCY: Objection. Argumentative and  
13 vague. Lacks foundation.  
14 A. Well, he -- I think he took that view, but  
15 as I say here, there remains uncertainty as to the  
16 ultimate identity of some shareholders. It seemed  
17 to me that it was a difficult proposition to do,  
18 even if that was an appropriate response. At this  
19 point, given litigation, we didn't know who the --  
20 we didn't know for certain who the shareholder was.  
21 BY MR. KRUM:  
22 Q. Mr. Storey, I show you what previously was  
23 marked at Exhibit 131.  
24 A. Yes, I have read the document.  
25 Q. Did you send Exhibit 131 on or about the

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1 date it bears, May 20, 2015?  
2 A. I did.  
3 Q. At the end of the first paragraph, you  
4 refer to Guy's apparent view that no discussion is  
5 necessary. Do you see that?  
6 A. I do.  
7 Q. To what does that refer?  
8 A. I think the sequence here is that I spoke  
9 to Doug McEachern, and as I said earlier, he  
10 proffered his view, and I said to him, "You should  
11 talk to our lawyer to understand our duties as  
12 directors," which is why I have given him Neil --  
13 Neil's number.  
14 And, secondly, I assume or I suspect that  
15 this e-mail follows the discussion I had with Guy,  
16 that I discussed earlier, about Guy's -- about his  
17 view, even as both Ed and Guy were of the view that  
18 there was no point in any discussion at all, that  
19 the matter was simply going to be put, and that was  
20 that.  
21 Q. Let me show you what previously has been  
22 marked as Exhibit 98.  
23 A. You wish me to read this document?  
24 Q. Let me ask you a question first, and you  
25 can take such time as you wish to read it.

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1 A. Uh-huh.  
2 Q. Have you ever seen Exhibit 98 before?  
3 A. I don't believe so, but I show it is the  
4 document prepared following the -- our previous  
5 negotiation between the three Cotters.  
6 Q. Well, do you recall, Mr. Storey, that at a  
7 -- on a telephone call among the directors of RDI,  
8 at or about 6 p.m. on a Friday evening, that Ellen  
9 Cotter reported that she and Margaret had reached  
10 some agreement with Jim Junior?  
11 A. I do.  
12 Q. And you recall what she read -- stated she  
13 read portions of the document and then did so?  
14 A. That is my memory.  
15 Q. And I apologize for the memory test nature  
16 of this question. But if you would take a moment  
17 and look at Exhibit 98, and tell me if, over a year  
18 later, you recognize any of that as what she read  
19 or part of what she read?  
20 A. Well, I read the first part of the draft  
21 agreement -- and this obviously follows the meeting  
22 with Ellen -- read out terms she said would be  
23 generally -- would affect the company. And this  
24 largely confirms my recollection of what was  
25 stated, the formation of the executive committee.

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1 Q. Do you recall one way or the other, Mr.  
2 Storey, whether Ellen Cotter read or summarized the  
3 information contained on the third page of Exhibit  
4 98, in the box to the right of the left-hand box  
5 that reads, "Reading Voting Stock Class B"?  
6 MR. SEARCY: Objection. Lacks foundation.  
7 Calls for speculation.  
8 A. I don't recollect that. I think that what  
9 Ellen said was that they had come to tentative  
10 arrangements about how matters would be -- could be  
11 resolved between them. It was subject to  
12 documentation, but that the issues that would  
13 affect the company, from memory, were along the  
14 lines that were set here on the -- in the first  
15 box, page 1 and 2 of the draft confidential  
16 settlement agreement.  
17 BY MR. KRUM:  
18 Q. I will show what previously was marked as  
19 Exhibit 33.  
20 MR. KRUM: And while you are reading that,  
21 I'm going to ask the court reporter, do you have  
22 the next exhibit number, by any chance?  
23 THE REPORTER: No, I don't.  
24 A. Yes, I have read the document.  
25 BY MR. KRUM:



<p style="text-align: right;">Page 78</p> <p>1 document, not the final, as best we can tell. It                  2 does, in fact -- second, it does, in fact, have a                  3 redaction. And, obviously, if someone wants to --                  4 send a clawback letter with respect to portions of                  5 this, we will be happy to comply.                  6 MR. SEARCY: With respect to this                  7 document, Mr. Krum, this was produced by your                  8 client, so to the extent it might be clawed back, I                  9 believe it would be you and your client.                  10 MR. KRUM: Well, what we will do is what                  11 we have done every time a request has been made                  12 previously, which is if somebody wants us to redact                  13 part of it, just send us a letter telling us that,                  14 and then we will send a clawback letter that does                  15 so.                  16 MR. SEARCY: That may be the case, and I                  17 am sorry to interrupt Ms. Hendricks on this, but it                  18 certainly -- I want to reiterate my point, which by                  19 allowing you to use this document and not going                  20 through the whole rigmarole of it, we are not                  21 waiving any rights to send you a letter like that.                  22 MR. KRUM: That's perfectly fine.                  23 MS. HENDRICKS: And the only thing that I                  24 would add to that, too, is we will certainly do our                  25 review of it, but with Mr. Cotter, Jr., being on</p>	<p style="text-align: right;">Page 80</p> <p>1 recollect what was said. And a fair amount of my                  2 objection, on a number of occasions, was that we                  3 were getting minutes a long time after the event.                  4 And that they -- as I have been told, I think it --                  5 the reasons they were being delayed was because                  6 they were going through a lengthy approval process.                  7 BY MR. KRUM:                  8 Q. With respect to the approval process, did                  9 you understand that counsel was reviewing them for                  10 litigation purposes as well?                  11 MR. SEARCY: Objection. Calls for                  12 attorney-client privileged information.                  13 MS. HENDRICKS: Join.                  14 BY MR. KRUM:                  15 Q. It's a yes or no.                  16 MR. SEARCY: Well, no, but you are asking                  17 him whether it was intended for litigation. So you                  18 are getting into the substance of the                  19 attorney-client advice.                  20 BY MR. KRUM:                  21 Q. Well, did you have a -- let me back up.                  22 Did you have any communications with                  23 counsel for the company with respect to the                  24 preparation of the minutes of the supposed meetings                  25 of May 21, 29, and June 12, 2015?</p>
<p style="text-align: right;">Page 79</p> <p>1 the board of directors, he has a right to maintain                  2 the confidentiality and obligation when it comes to                  3 work product and attorney-client privilege that he                  4 may be subject to.                  5 We have some concerns of this production                  6 without any kind of redactions, when it does appear                  7 that there are some attorney-client references, and                  8 I don't think that's client's obligation. I think                  9 Mr. Cotter, Jr., has his own obligation to do a                  10 review and to redact information before it's                  11 produced in this case.                  12 MR. KRUM: Well, we are well into the                  13 gratuitous comment category at this point. We used                  14 this document because we couldn't find one produced                  15 by the company. So send whatever letters you want                  16 to send, and we will do, as I said, what we will                  17 do, which is what we have done in the past.                  18 Q. Okay. Mr. Storey, when you refer to the                  19 May 21 and 29, and June 12 and June 30, 2015, draft                  20 minutes as having been reviewed by legal counsel,                  21 what was the import of that comment?                  22 MR. SEARCY: Objection. Vague.                  23 A. Well, I think that -- my preference in                  24 these things is to have minutes quite soon after                  25 the meeting so that we can all -- all members can</p>	<p style="text-align: right;">Page 81</p> <p>1 A. You mean internal counsel or external?                  2 Q. Either one.                  3 A. My recollection is that I spoke -- I think                  4 I spoke to Craig Tompkins to see where are the                  5 minutes, or maybe Bill Ellis, I guess. But my                  6 recollection is that the reason the minutes weren't                  7 being distributed was that they were going to --                  8 MS. BANNETT: I'm just going to interrupt                  9 to the extent that it reflects any conversation                  10 that you had with counsel, don't reveal any                  11 attorney-client communications.                  12 THE WITNESS: No. No. You can -- you can                  13 jump in.                  14 A. Anyway, so I was told that the reason that                  15 I wasn't seeing, or the minutes weren't available                  16 promptly, is that they were going through an                  17 approval process and equally, I think so, was going                  18 to the chairman.                  19 THE REPORTER: Going to?                  20 THE WITNESS: The chairman, chairperson.                  21 BY MR. KRUM:                  22 Q. So did you look at the draft minutes for                  23 the meetings of May 21, and 29, and June 12, 2015?                  24 A. Yes, I recollect I looked at them, and I                  25 thought that it would take me a considerable amount</p>

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1 of time to try and make them reflect what I thought  
 2 had been said. And it seemed to me that I could do  
 3 all that and probably get nowhere. And it was  
 4 going to be a pointless exercise for me, sitting on  
 5 the airplane for three hours or whatever, and that  
 6 it seemed better to simply abstain.

7 MR. KRUM: I will ask the court reporter  
 8 to mark as Exhibit 417 a one-page document bearing  
 9 production number GA 1439. It purports to be an  
 10 October 19th e-mail from Ed Kane.

11 (Deposition Exhibit 417 was marked for  
 12 identification by the reporter and is  
 13 attached hereto.)

14 A. Yes, I have read that.

15 BY MR. KRUM:

16 Q. Do you recognize the subject matter of  
 17 Exhibit 417?

18 A. Yes, I do.

19 Q. What's your recollection as to, if any,  
 20 independent of Exhibit 417, as to how it came --  
 21 whether and how -- whether it came to pass that  
 22 Ellen Cotter was paid an extra \$50,000 on account  
 23 of matters referenced in Exhibit 417?

24 A. My recollection is that it was a view that  
 25 the company had given incorrect advice on various

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1 things, and to rectify that, the payment was made.

2 Q. Do you know whether similar payments had  
 3 ever been made to any other RDI executive?

4 MR. SEARCY: Objection. Vague. Lacks  
 5 foundation.

6 A. I don't recollect at this point, no.

7 BY MR. KRUM:

8 Q. Was there, to your recollection, any  
 9 discussion that this was a one-time payment for  
 10 Ellen Cotter alone, that no other executives, even  
 11 if similarly situated, would be treated the same  
 12 way?

13 MR. SEARCY: Objection. Vague and  
 14 argumentative. Lacks foundation.

15 A. My recollection is this was a one-off  
 16 event which we were asked to approve and did so.

17 BY MR. KRUM:

18 Q. Did you ever hear or were you ever told  
 19 that Jim Cotter, Jr., was similarly situated,  
 20 meaning the supposed -- instead of stock options,  
 21 that it, in fact, gave rise to some sort of taxable  
 22 event?

23 MR. SEARCY: Objection. Lacks foundation.  
 24 Assumes facts. Calls for speculation.

25 A. I don't recollect that at this point.

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1 BY MR. KRUM:

2 Q. As you sit here today, would you know of  
 3 any basis upon which to have distinguished the  
 4 treatment received by Ellen Cotter with respect to  
 5 this issue of instead of stock options and the  
 6 \$50,000 from any other executive who also had, or  
 7 were supposedly incentive stock options, but were  
 8 not treated for that -- not treated that way on  
 9 account of some of tax issues?

10 MR. SEARCY: Objection. Lacks foundation.  
 11 Assumes facts. Calls for speculation and calls for  
 12 an opinion and incomplete hypothetical.

13 A. I'm comfortable my view would be that  
 14 everybody should be treated the same. So if other  
 15 executives were in the same position, then my view  
 16 would have been that we should have treated them  
 17 the same.

18 MR. KRUM: I don't have any other  
 19 questions at this time. Mr. Storey, I thank you  
 20 for your time.

21 MR. SEARCY: A quick follow-up.

22

23 EXAMINATION

24 BY MR. SEARCY:

25 Q. Mr. Storey, you testified earlier today,

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1 and I believe also in your prior deposition, about  
 2 an exercise of options by Margaret and Ellen Cotter  
 3 in September of 2015?

4 A. Yes.

5 Q. And you received an opinion from Greenberg  
 6 Traurig who was the company -- or counsel for the  
 7 company; correct?

8 A. Right.

9 Q. And at the time that you received that  
 10 opinion, Jim Cotter, Jr., had sued you personally;  
 11 correct?

12 MR. KRUM: Objection. Assumes facts not  
 13 in evidence.

14 A. You have to remind me, but I assume -- I  
 15 assume you can do that easily. I assume I had been  
 16 sued by them, yes.

17 BY MR. SEARCY:

18 Q. In September of 2015?

19 A. I don't recollect.

20 Q. But at some point time, Mr. Cotter, Jr.,  
 21 had sued you personally; correct?

22 A. Yes.

23 Q. And in September of 2015, in addition to  
 24 the Greenberg Traurig opinion, you wanted  
 25 additional advice on the exercise of the options;

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1 correct?

2 A. Correct. I sought advice from my lawyer

3 about the circumstances in which the subcommittee

4 was asked to approve the matter.

5 Q. When you say you sought advice from your

6 lawyer, that was from Bird and Marella; correct?

7 A. Correct.

8 Q. And Bird and Marella is your personal

9 litigation counsel in litigation brought by

10 Mr. Cotter, Jr.; is that right?

11 A. Correct.

12 MR. SEARCY: No further questions.

13 MS. HENDRICKS: No questions.

14 MR. KRUM: Okay.

15 THE VIDEOGRAPHER: This concludes the

16 deposition of Timothy Storey, Volume 1, August 3rd,

17 2016, which consists of two media files. The

18 original media file will be retained by Litigation

19 Services. Off the video record at 12:19 p.m.

20 THE REPORTER: Counsel, would you like to

21 order a copy of the transcript?

22 MR. SEARCY: Yes.

23 MS. BANNETT: Yes.

24 MS. HENDRICKS: Yes, please.

25 MR. KRUM: I would like a rough as soon as

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1 you can send it, please. Thank you.

2 MS. HENDRICKS: If you could send me a

3 rough as well.

4 MR. SEARCY: Me, too.

5 (Proceedings adjourned at 12:19 p.m.)

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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 I further certify that I am not interested

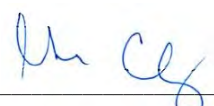
18 in the event of the action.

19 In witness whereof, I have hereunto subscribed my

20 name.

21 Dated: August 10, 2016

22

23 

24 GRACE CHUNG, CSR NO. 6246

25 RMR, CRR, CLR

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2 ERRATA SHEET

3

4

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:

13

14 Page	Line	Should read:	Reason for Change:
15			
16	---	_____	_____
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# Exhibit 10

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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-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

Page 2

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

2

3 YURKO, SALVESEN, & REMZ, P.C.  
 Attorneys for the Plaintiff  
 One Washington Mall, 11th floor  
 Boston, Massachusetts 02108

4 BY: MARK G. KRUM, ESQ.  
 617.723.6900  
 mkrum@bizlit.com

5

6 QUINN EMANUEL URQUHART & SULLIVAN, LLP  
 Attorneys for the Defendants and the Witness  
 MARGARET COTTER, ELLEN COTTER, DOUGLAS  
 McEACHERN, GUY ADAMS and EDWARD KANE  
 865 South Figueroa Street  
 Los Angeles, California 90017

7 BY: MARSHALL M. SEARCY, III, ESQ.  
 213.443.3000  
 marshallsearcy@quinnemanuel.com

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15 ALSO PRESENT:

16 CONNOR EICHENBERG, Videographer

17

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19

20 \* \* \*

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Page 4

1 THE VIDEOGRAPHER: This is tape 1. We are  
 2 now on the record at 9:17 a.m., Tuesday, March 6th,  
 3 2018.

4 This is the deposition of Michael Wrotniak in  
 5 the matter of Cotter, Jr., versus Cotter, et al. This  
 6 deposition is being held at the offices of Lowey,  
 7 Dannenberg, Bemporad & Selinger, PC, located at 44 South  
 8 Broadway, White Plains, New York.

9 The court reporter is Sue Pastor with Diamond  
 10 Reporting and Legal Video. I'm the legal videographer,  
 11 Connor Eichenberg, also with Diamond Reporting and Legal  
 12 Video.

13 Would counsel please introduce themselves and  
 14 state whom they represent.

15 MR. KRUM: Mark Krum on behalf of plaintiff.

16 MR. SEARCY: Marshall Searcy for the witness,  
 17 for Ed Kane, Doug McEachern, Judy Coddling as well as  
 18 Ellen Cotter, Margaret Cotter and Guy Adams.

19 THE VIDEOGRAPHER: Will the court reporter  
 20 please swear in the witness.

21 M I C H A E L W R O T N I A K, called as a  
 22 witness, having been first duly sworn by a Notary Public  
 23 of the State of New York, was examined and testified as  
 24 follows:

25 EXAMINATION BY

4

Page 3

1 F E D E R A L S T I P U L A T I O N S

2

3

4 IT IS HEREBY STIPULATED AND AGREED by and between  
 5 the counsel for the respective parties herein that the  
 6 sealing, filing and certification of the within  
 7 deposition be waived; that the original of the  
 8 deposition may be signed and sworn to by the witness  
 9 before anyone authorized to administer an oath, with the  
 10 same effect as if signed before a Judge of the Court;  
 11 that an unsigned copy of the deposition may be used with  
 12 the same force and effect as if signed by the witness,  
 13 30 days after service of the original & 1 copy of same  
 14 upon counsel for the witness.

15

16 IT IS FURTHER STIPULATED AND AGREED that all  
 17 objections except as to form, are reserved to the time  
 18 of trial.

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Page 5

1 MR. KRUM:

2 Q. Please state your name for the record.

3 A. Michael Wrotniak.

4 Q. Good morning, Mr. Wrotniak.

5 A. Good morning.

6 Q. Would you spell your last name for us,  
 7 please.

8 A. W-R-O-T-N-I-A-K.

9 Q. Thank you.

10 Have you ever been deposed before?

11 A. Yes.

12 Q. On how many occasions?

13 A. Once.

14 Q. When was that?

15 A. 2002, 2003, sometime in that time frame.

16 Q. Were you a party to a legal proceeding?

17 A. Company I worked for had a shipping  
 18 problem, and the company was.

19 Q. What did you do to prepare for your  
 20 deposition today?

21 A. I read the documents that my counsel  
 22 provided to me and I met with my counsel yesterday.

23 Q. That's Mr. Searcy?

24 A. Yes.

25 Q. For how long?

5

<p style="text-align: right;">Page 38</p> <p>1 don't specifically recall if I read those or not.</p> <p>2 Q. At any point in time between around the</p> <p>3 time you were nominated and put on the board and reading</p> <p>4 board minutes concerning the termination or possible</p> <p>5 termination of Jim Cotter in preparation for the</p> <p>6 December 29, 2017 meeting, did you read or review such</p> <p>7 minutes?</p> <p>8 A. I'm sorry, repeat that.</p> <p>9 Q. Yes. At any time between when you were</p> <p>10 nominated and put on the board of RDI, at which time you</p> <p>11 may or may not have read the minutes, and when you did</p> <p>12 read these minutes in anticipation of the December 29,</p> <p>13 2017 meeting, did you read any minutes that concerned</p> <p>14 the termination or possible termination of Jim Cotter,</p> <p>15 Jr.?</p> <p>16 A. I don't recall.</p> <p>17 Q. And when you say you don't recall, you</p> <p>18 have no recollection of doing so, or do you have no</p> <p>19 recollection one way or another? Or is that the same</p> <p>20 for you?</p> <p>21 A. Would you clarify what the difference is?</p> <p>22 Q. I don't mean to make this is an</p> <p>23 epistemology course, Mr. Wrotniak. I don't mean to be a</p> <p>24 pointy-headed lawyer. If you have no recollection</p> <p>25 whatsoever about reading any minutes in that time frame,</p> <p style="text-align: center;">38</p>	<p style="text-align: right;">Page 40</p> <p>1 A. The entirety of this is document 525?</p> <p>2 Q. That's correct.</p> <p>3 A. I do recognize it.</p> <p>4 Q. What do you recognize it to be?</p> <p>5 A. The documents which were prepared for the</p> <p>6 board for our December 29th, 2018 meeting.</p> <p>7 Q. This is the so-called board package for</p> <p>8 that meeting, correct?</p> <p>9 A. Yes.</p> <p>10 Q. Did you receive it on or about the date</p> <p>11 and time reflected at the e-mail on the first page, 5:30</p> <p>12 p.m. Pacific time on Wednesday, December 27th?</p> <p>13 A. Yes.</p> <p>14 Q. When did you first learn that there was</p> <p>15 going to be a board meeting on December 29th?</p> <p>16 A. In late December, prior to this.</p> <p>17 Q. Was Exhibit 525 the first time you had</p> <p>18 seen an agenda for the December 29 board meeting?</p> <p>19 A. Yes.</p> <p>20 Q. And you see on the agenda, which is the</p> <p>21 second page of Exhibit 525, paragraph 3, subparagraphs A</p> <p>22 through C have some matters that are referred to as</p> <p>23 ratification matters. Do you see that?</p> <p>24 A. You're referring to this?</p> <p>25 Q. Yes.</p> <p style="text-align: center;">40</p>
<p style="text-align: right;">Page 39</p> <p>1 then say you have no recollection. If you just don't</p> <p>2 recall whether you read these particular minutes, then</p> <p>3 I'd say you don't recall these particular minutes. If</p> <p>4 that distinction doesn't make sense to you, then you can</p> <p>5 say so.</p> <p>6 A. "Whatsoever" in the legal term is a very</p> <p>7 important word. So I hesitate to use such a word. I</p> <p>8 have read a lot of minutes and I don't recall when was</p> <p>9 the first time I read those specific minutes.</p> <p>10 Q. All I'm trying to do, sir, is get your</p> <p>11 best recollection. I'm not embedding any legal gotchas</p> <p>12 in the questions. Thank you for your patience.</p> <p>13 A. I understand.</p> <p>14 Q. Let's take a look at --</p> <p>15 MR. KRUM: Did you bring yours?</p> <p>16 MR. SEARCY: No, I didn't bring mine.</p> <p>17 MR. KRUM: I'm going to give the witness what</p> <p>18 previously was marked as deposition Exhibit 525. It</p> <p>19 bears production number DM 00007142 through 7251.</p> <p>20 Q. Mr. Wrotniak, I'm first going to ask you</p> <p>21 if you recognize Exhibit 525. So take such time as you</p> <p>22 need, sir, to familiarize yourself with the document. I</p> <p>23 will give you more time any time I ask you about any</p> <p>24 particular pages or portions of it. So the threshold</p> <p>25 question is, do you recognize Exhibit 525?</p> <p style="text-align: center;">39</p>	<p style="text-align: right;">Page 41</p> <p>1 A. Yes, I do see it.</p> <p>2 Q. When was the first time you heard or</p> <p>3 learned that the board ratifying any prior conduct would</p> <p>4 be taken up at the December 29 board meeting?</p> <p>5 MR. SEARCY: Objection; vague.</p> <p>6 A. We had an advice from counsel.</p> <p>7 Q. Was that written or oral?</p> <p>8 A. Oral.</p> <p>9 Q. When was that?</p> <p>10 A. Specifically, I don't know.</p> <p>11 Q. How did you receive it? Was it a</p> <p>12 telephone call?</p> <p>13 A. Yes.</p> <p>14 Q. Who else was on the call?</p> <p>15 A. Our Reading corporate counsel, Judy</p> <p>16 Codding.</p> <p>17 Q. Who was the Reading corporate counsel?</p> <p>18 A. Mark Ferrario. And Bonner.</p> <p>19 Q. Mike Bonner?</p> <p>20 A. Yes.</p> <p>21 Q. Both from Greenberg Traurig.</p> <p>22 A. Yes, Greenberg Traurig. There are a few</p> <p>23 of you.</p> <p>24 Q. How was this call scheduled? If it was.</p> <p>25 A. I don't know.</p> <p style="text-align: center;">41</p>

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1 Q. How long did it last?  
2 A. I don't specifically recall.  
3 Q. Who initiated the call?  
4 A. Greenberg Traurig.  
5 Q. I'm not asking you to tell me about who  
6 said what. I'm just asking about the subject matter, or  
7 the substance in the most general way.  
8 During that call, one or both of Mr. Ferrario  
9 and Mr. Bonner explained to you and Ms. Codding the  
10 ratification matters?  
11 MR. SEARCY: I'm going to object to that.  
12 Maybe there's a way that you can come at it a little  
13 more generally.  
14 MS. HENDRICKS: I'm going to join in that  
15 objection. I have a concern about attorney-client  
16 privilege here. So if you can ask it a different way,  
17 Mark.  
18 Q. Well, what was the subject matter of the  
19 call?  
20 MR. SEARCY: He's asking you at a very  
21 general level. I'll let you answer it at a very general  
22 level about the subject matter. But I don't want you to  
23 get into any specifics.  
24 A. The general matter was the agenda and  
25 protection for Reading.

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1 Q. Prior to this telephone call that you and  
2 Ms. Codding had with Mr. Ferrario and Mr. Bonner, had  
3 you had any communications with anyone about the same  
4 subject or subjects?  
5 MR. SEARCY: Objection; vague.  
6 A. Can you clarify?  
7 Q. Well, the reason I phrased it as "same  
8 subject or subjects" is so that I didn't characterize  
9 your testimony. But I guess no good deed goes  
10 unpunished, so let me attempt to quote it.  
11 MR. SEARCY: I think the term he used was the  
12 agenda and protection of the company.  
13 Q. Okay, so prior to the call with  
14 Mr. Ferrario and Mr. Bonner, had you had any  
15 communications with anyone else about the same subject  
16 or subjects, the agenda and protection of the company,  
17 or however you'd characterize it?  
18 A. No.  
19 Q. Did you have any communications with  
20 Ellen Cotter about those subjects or any other subjects  
21 in anticipation of or preparation for the December 29,  
22 2017 board meeting?  
23 A. I don't recall.  
24 Q. At the time of the call that you and  
25 Ms. Codding had with Mr. Ferrario and Mr. Bonner, had

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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. Codding?  
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?

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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

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1 right-hand corner 7179 of Exhibit 525. Let me know when  
2 you have that.  
3 A. 7179.  
4 Q. Right. It's entitled "documents to be  
5 reviewed for December 29, 2017 meeting of the board of  
6 directors, agenda item 3." Do you have that?  
7 A. Yes.  
8 Q. Item number 1, excerpts from plaintiff  
9 Jim Cotter, Jr.'s motion for summary judgment, that's  
10 pages 7181 through 85. Did you review that?  
11 A. I read everything.  
12 Q. Did you see that particular portion had a  
13 discussion, the point of which was to assert that Guy  
14 Adams receives most, if not substantially all, of his  
15 income from RDI and other companies controlled by Ellen  
16 and Margaret Cotter?  
17 A. Yes, I see that.  
18 Q. Had you seen or heard or been told that  
19 previously?  
20 MR. SEARCY: Objection; vague.  
21 A. Guy has spoken at board meetings about  
22 his income from Cotter assets.  
23 Q. At board meetings you attended?  
24 A. Yes.  
25 Q. What has he said?  

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1 A. He has said a substantial portion of his  
2 income comes from Cotter related assets.  
3 Q. How did it come to pass, meaning what was  
4 the conversation or context that gave rise to him making  
5 those comments?  
6 A. I don't recall.  
7 Q. Have you ever been party or privy to any  
8 discussion about whether Mr. Adams is conflicted in  
9 terms of voting with respect to any matters of personal  
10 interests to Ellen and/or Margaret Cotter, whether it be  
11 compensation or something else?  
12 A. I'm sorry, will you repeat that?  
13 Q. Have you ever been party or privy to any  
14 discussion about whether Mr. Adams is conflicted in  
15 terms of voting about any matters of personal interest  
16 to Ellen or Margaret Cotter, whether it be their  
17 compensation or any other matters?  
18 A. Guy has addressed that issue. As I  
19 mentioned.  
20 Q. Anything else?  
21 A. I think that Bill Gould has addressed the  
22 issue of Guy with regard to the compensation committee.  
23 Q. Anything else?  
24 A. No.  
25 Q. What has Bill Gould said?  

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1 MR. SEARCY: Objection, vague.  
2 Q. What has Bill Gould addressed with  
3 respect to Guy having conflicts or not with respect to  
4 the compensation committee?  
5 A. I believe that Bill mentioned that he  
6 should not be on the compensation committee.  
7 Q. Did he say why?  
8 A. I don't recall.  
9 Q. I direct your attention, Mr. Wrotniak, to  
10 the document bearing production number DM 7187 through  
11 90 as part of Exhibit 525. Do you see that purports to  
12 be minutes of a May 21, 2015 board meeting? 7187  
13 through 7190.  
14 A. Yes.  
15 Q. You read these minutes, these purported  
16 minutes, in preparation for the December 29 meeting,  
17 right?  
18 A. Yes.  
19 Q. Now, I'm not going to ask you to read  
20 them again. You're free to do so if you wish, but I'm  
21 asking for your memory. And if you don't have any, you  
22 can tell me that.  
23 Do you remember anything in particular from  
24 this particular document, 7187 through 90?  
25 A. Yes.  

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1 Q. What do you recall in particular?  
2 A. I recall that point X on the agenda was  
3 specifically requested by Jim prior to the meeting. And  
4 it struck me as interesting that Jim then declined to  
5 speak about that point but rather spoke about his  
6 father's wishes.  
7 Q. Anything else? Meaning is there anything  
8 else from DM 7187 through 90 as part of Exhibit 525 that  
9 you recall in particular?  
10 A. Yes.  
11 Q. What?  
12 A. A significant amount of deliberation made  
13 regarding Jim's performance and his status.  
14 Q. Anything else?  
15 A. No.  
16 Q. Have you ever heard or learned or have  
17 you ever been told that Guy Adams had agreed prior to  
18 the May 21, 2015 meeting to vote to terminate Jim  
19 Cotter, Jr. as president and CEO?  
20 MR. SEARCY: Objection; vague.  
21 A. Repeat that.  
22 MR. KRUM: Would you read it back for me.  
23 (Whereupon, the referred to question was read  
24 back by the Reporter.)  
25 A. I don't recall.  

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1 Q. Had you ever heard or learned that about  
2 Ed Kane?  
3 MR. SEARCY: Objection; vague.  
4 A. I don't recall.  
5 Q. Now, when you say you don't recall, does  
6 that mean you may have heard or learned that but you  
7 don't recall whether you did, or that you do not recall  
8 having learned that?  
9 A. I do not recall having learned that.  
10 Q. That's true with respect to both Mr. Kane  
11 and Mr. Adams?  
12 A. Yes.  
13 Q. Same question for Mr. McEachern.  
14 MR. SEARCY: Objection; vague.  
15 A. I don't recall.  
16 Q. Would your answer be the same -- well,  
17 same question for Ellen and Margaret Cotter.  
18 A. I don't recall.  
19 Q. Mr. Wrotniak, I'm going to show you a  
20 document that previously has been marked as Exhibit 81  
21 in depositions in this case. It's only a couple lines  
22 but take such time as you need to review it and let me  
23 know when you've reviewed it to your satisfaction.  
24 A. (The witness reviews the document.)  
25 Okay.

50

Page 51

1 Q. Have you ever seen Exhibit 81?  
2 A. No.  
3 Q. You see it's dated May 18, 2015 and  
4 purports to be an e-mail from Ed Kane to Guy Adams?  
5 A. Yes.  
6 Q. Do you understand what they're  
7 discussing?  
8 MR. SEARCY: Objection; lacks foundation.  
9 A. They're discussing a vote.  
10 Q. Do you know what vote?  
11 A. I suppose you could ask them.  
12 Q. Well, I'm asking you. You're the  
13 deponent today. I've asked them already.  
14 A. I could guess.  
15 MR. SEARCY: Don't guess.  
16 A. I don't know.  
17 Q. Have you read any of the deposition  
18 transcripts in this case, the derivative action?  
19 A. No.  
20 Q. Have you talked to anyone about their  
21 testimony?  
22 A. No.  
23 Q. I just skipped one. I'm trying to be  
24 efficient here, Mr. Wrotniak.  
25 A. Take your time.

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1 Q. I'll do what I need to do but I won't  
2 take any of your time that I don't need to take.  
3 I'm going to show you Exhibit 85, which  
4 you'll see is a continuation of the e-mail chain that  
5 was Exhibit 82. Take such time as you need to review  
6 that and let me know when you reviewed it to your  
7 satisfaction.  
8 A. (The witness reviews the document.)  
9 Q. Have you reviewed it to your  
10 satisfaction?  
11 A. I've read them.  
12 Q. Have you seen Exhibit 85 before?  
13 A. No.  
14 Q. Have you ever heard or learned prior to  
15 reading it any of the information set out in it?  
16 A. Prior to reading it, 1 and 2 look like  
17 they made it into the minutes.  
18 Q. 1 and 2, motion for a new interim CEO and  
19 to reorganize the executive committee?  
20 A. I believe so, yes.  
21 Q. But otherwise, everything in Exhibit 85  
22 is information and material you've not seen or been told  
23 before?  
24 A. Other than seeing in here Guy mentioning  
25 Ed is trying to help the children, which I mentioned

52

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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.

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1 understanding --  
 2 A. That's good.  
 3 MR. SEARCY: -- if that helps you with that  
 4 question.  
 5 A. The income that he receives could cause a  
 6 conflict to him.  
 7 Q. How's that, as you understand it?  
 8 A. For some people that could present a  
 9 problem. In Guy's case it does not.  
 10 Q. Why not?  
 11 A. He's an independent thinker in my  
 12 assessment.  
 13 Q. What's the basis for that assessment?  
 14 A. My time on the board with him.  
 15 Q. What discussions, if any, have you had  
 16 with Guy Adams about his financial dealings with Jim  
 17 Cotter, Sr. or Ellen and Margaret Cotter as executors of  
 18 the Jim Cotter, Sr. estate?  
 19 A. I don't recall any.  
 20 Q. I direct your attention, Mr. Wrotoniak, to  
 21 what purports to be the May 29, 2015 meeting minutes.  
 22 That's pages 7191 through 94 of Exhibit 525. Do you  
 23 have that?  
 24 A. 91, 2, 3 -- yes, I have it.  
 25 Q. Was there anything in particular from  
 62

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1 these purported minutes that you recall as you sit here  
 2 today noting in terms of your review of them in  
 3 preparation for the December 29, 2017 board meeting?  
 4 A. (The witness reviews the document.)  
 5 Yes.  
 6 Q. What?  
 7 A. I recall firstly that approximately a  
 8 week had passed giving everybody time to pause and to  
 9 think.  
 10 I also recall seeing that it was reconfirmed  
 11 that the board had the right with or without cause to  
 12 terminate Jim Cotter, Jr.  
 13 I also see that they discussed solutions,  
 14 resolutions that would make the board comfortable, and  
 15 Jim declined those. And also noticed an agreement in  
 16 principle between the Cotter siblings.  
 17 Q. When you refer to time to pause and  
 18 think, do you have any information regarding whether  
 19 anyone did so? Meaning thought about it or not.  
 20 A. No.  
 21 Q. Did you see that these purported minutes  
 22 on page 3 of them, that's production number 7193, in the  
 23 third full paragraph beginning "Ms. Ellen Cotter then  
 24 informed the board," that a lawyer representing Ellen  
 25 and Margaret had contacted a lawyer representing Jim  
 63

Page 64

1 Cotter, Jr. about resolving their trust and estate  
 2 disputes?  
 3 A. Did I see this paragraph?  
 4 Q. Right.  
 5 A. Yes, I did see that paragraph.  
 6 Q. Had you ever heard or learned anything  
 7 about that previously?  
 8 A. No.  
 9 Q. What's your understanding as to what  
 10 communications Ellen and Margaret Cotter had with Jim  
 11 Cotter about those matters, meaning their disputes,  
 12 including in particular in the trust case on May 29,  
 13 2015?  
 14 MR. SEARCY: Objection; vague.  
 15 A. I don't have any knowledge of that.  
 16 Q. Have you ever heard or learned or been  
 17 told that on the morning of May 29, 2015, before the  
 18 meeting that's the subject of these purported minutes  
 19 commenced, Ellen and Margaret Cotter communicated in  
 20 words or substance to Jim Cotter, Jr. that the proposals  
 21 their lawyer had made to his lawyers were take it or  
 22 leave it, that he had to accept them or face a  
 23 termination vote?  
 24 MR. SEARCY: Objection; lacks foundation.  
 25 Argumentative.  
 64

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1 A. I have no knowledge of that.  
 2 Q. Did you note when you reviewed these  
 3 purported minutes of May 29, 2015 as part of Exhibit 525  
 4 that the meeting recessed at approximately 2 p.m. in the  
 5 afternoon and reconvened telephonically at 6 p.m. that  
 6 night? I'm just asking if you noted that previously.  
 7 I'm not asking you to read it and tell me what they say.  
 8 A. I recall that in one of these sets of  
 9 minutes there was that break, yes.  
 10 Q. Have you ever heard or learned or been  
 11 told that at or about the time the meeting recessed that  
 12 Jim Cotter, Jr. was told in words or substance you need  
 13 to resolve your disputes with your sisters, failing  
 14 which when we reconvene telephonically at 6 we're going  
 15 to proceed with a vote to terminate you?  
 16 MR. SEARCY: Objection; lacks foundation.  
 17 MS. HENDRICKS: Join.  
 18 A. No.  
 19 Q. Have you ever met or spoken with Tim  
 20 Storey?  
 21 A. No.  
 22 Q. Have you ever tried to contact him?  
 23 A. No.  
 24 Q. Have you ever talked with Bill Gould  
 25 about what happened at any or all of these meetings of  
 65

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1 May 21, May 29 and June 12, 2015?  
 2 A. I don't recall.  
 3 Q. But you saw, I take it, in these  
 4 purported minutes of May 29 that when the meeting  
 5 reconvened telephonically at or about 6 p.m., Ellen  
 6 Cotter had reported that an agreement in principle had  
 7 been reached by her and Margaret with Jim, Jr.?  
 8 MR. SEARCY: Objection; lacks foundation.  
 9 A. According to the minutes, they had an  
 10 agreement in principle.  
 11 Q. Have you ever had any communications with  
 12 anybody about that?  
 13 A. No.  
 14 Q. Do you have any understanding independent  
 15 of anything you would read in the purported minutes of  
 16 June 12, 2015, and that's production numbers 7195  
 17 through 99, how that meeting came to be scheduled and  
 18 occur?  
 19 A. I'm sorry, repeat that.  
 20 Q. Independent of reading something in the  
 21 purported June 12, 2015 meeting minutes that are part of  
 22 Exhibit 525, do you have any understanding as to how  
 23 that meeting came to be scheduled and had occurred?  
 24 A. No.  
 25 Q. Is it your understanding as you sit here

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1 today that Jim Cotter, Jr. would still be president and  
 2 CEO of RDI -- strike that.  
 3 Is it your understanding, Mr. Wrotniak, as  
 4 you sit here today that no vote to terminate Jim Cotter,  
 5 Jr. as president and CEO of RDI would have occurred had  
 6 he resolved his disputes with his sisters Ellen and  
 7 Margaret?  
 8 MR. SEARCY: Objection; lacks foundation,  
 9 argumentative, calls for speculation.  
 10 A. I don't know.  
 11 Q. Have you ever discussed that with  
 12 anybody?  
 13 A. No.  
 14 Q. Was Mr. Cotter rude when the subject of  
 15 making Margaret a senior executive at the company with  
 16 responsibility for development of its New York City real  
 17 estate was considered by the board?  
 18 A. I don't recall.  
 19 MR. KRUM: Why don't we take a break.  
 20 MR. SEARCY: Sounds good.  
 21 THE VIDEOGRAPHER: Off the record at 11:16  
 22 a.m.  
 23 (Whereupon, a short recess was taken.)  
 24 THE VIDEOGRAPHER: This is tape 3 of the  
 25 deposition of Michael Wrotniak. We're now on the record

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1 at 11:28 a.m.  
 2 BY MR. KRUM:  
 3 Q. Mr. Wrotniak, have you ever heard or  
 4 were you ever told that one of the matters in dispute  
 5 between Jim Cotter, Jr. on one hand and either or both  
 6 Margaret and Ellen Cotter in or about May of 2015 was  
 7 whether Margaret Cotter would become an employee of RDI?  
 8 A. No.  
 9 Q. Without regard to timing, did you ever  
 10 hear or learn that there were issues in dispute between  
 11 Margaret Cotter on one hand and Jim Cotter, Jr. on the  
 12 other hand about Margaret's role or position at RDI?  
 13 A. Margaret became an employee during the  
 14 time that I was on the board. And there were  
 15 discussions regarding that at the board level.  
 16 Q. What discussions were there? Meaning who  
 17 said what, in words or substance?  
 18 A. Audit committee discussion where it  
 19 financially made sense for Reading to consider this  
 20 opportunity.  
 21 Q. "This opportunity" being what?  
 22 A. To have Margaret become an employee and  
 23 obtain some rights to Stomp fees that we were not before  
 24 that entitled to.  
 25 Q. How much money was that?

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1 A. I don't recall.  
 2 Q. Did you understand at the time that  
 3 Margaret's compensation was a function of net revenues  
 4 of the live theater operations that she oversaw  
 5 including the Orpheum Theater including Stomp?  
 6 A. Please repeat that.  
 7 Q. Did you understand at the time that  
 8 Margaret's compensation was a function of the net  
 9 revenues of the live theater operations she oversaw,  
 10 which included the Orpheum Theater where Stomp was  
 11 performing?  
 12 A. Yes.  
 13 Q. Did you understand at the time what those  
 14 numbers were, either gross revenues at the Orpheum or  
 15 net revenues?  
 16 A. I read them. Yes.  
 17 Q. As you sit here today, do you recall what  
 18 they were, even in terms of the magnitude?  
 19 A. No.  
 20 Q. Do you recall whether they were six  
 21 figures?  
 22 A. I don't recall.  
 23 Q. Did you ever hear or learn or were you  
 24 ever told that in 2015, prior to being terminated as  
 25 president and CEO of RDI, Jim Cotter was leading up a

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1 search for a senior executive with commercial real  
2 estate development experience?  
3 A. I'm sorry, repeat the question.  
4 Q. Have you ever heard, learned or been told  
5 that in 2015, prior to his termination as president and  
6 CEO of RDI, Jim Cotter was leading up a search at RDI to  
7 hire a senior executive with commercial real estate  
8 development experience?  
9 MR. SEARCY: Objection; lacks foundation.  
10 A. When I reviewed the minutes I saw that  
11 was on the agenda for the -- one of the meetings in  
12 2015.  
13 Q. Other than what you just testified, have  
14 you ever heard or learned anything about a search at RDI  
15 to hire a senior executive with commercial real estate  
16 development experience?  
17 A. No.  
18 Q. The position Margaret Cotter was given is  
19 the senior executive at RDI responsible for overseeing  
20 development and predevelopment activities with respect  
21 to its New York City real estate, correct?  
22 A. Yes.  
23 Q. She has no prior real estate development  
24 experience, correct?  
25 MR. SEARCY: Objection; vague, lacks  
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1 foundation.  
2 A. I don't know.  
3 Q. When you voted yes on December 29, 2017  
4 to ratify the prior decision to terminate Jim Cotter,  
5 Jr. as president and CEO of RDI, were you aware that his  
6 termination did or might or could have had something to  
7 do with Margaret Cotter being employed or not being  
8 employed at RDI?  
9 MR. SEARCY: Objection; argumentative, lacks  
10 foundation.  
11 A. I'm sorry, please repeat that.  
12 Q. When you voted on December 29, 2017 to  
13 ratify the prior decision to terminate Jim Cotter, Jr.  
14 as president and CEO of RDI, did you consider any issues  
15 or disputes between him and Margaret with respect to her  
16 being or not being an RDI employee?  
17 A. No.  
18 Q. Would you have voted affirmatively to  
19 ratify the decision to terminate Jim Cotter, Jr. as CEO,  
20 as you did on December 29, 2017, if you had not reviewed  
21 the May 21, May 29 and June 12, '15 meeting minutes as  
22 they are included in deposition Exhibit 525?  
23 MR. SEARCY: Objection; calls for  
24 speculation. Lacks foundation.  
25 A. If those minutes didn't exist -- I'm not  
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1 sure I follow the question.  
2 Q. What difference, if any, did those  
3 minutes make to your decision to vote in favor of  
4 ratifying the decision to terminate Jim Cotter, Jr. as  
5 president and CEO of RDI?  
6 A. I relied on the minutes.  
7 Q. And you testified to that earlier and I'm  
8 not going to ask you to repeat that.  
9 Did you ever hear or learn or were you ever  
10 told that there was any process in place in May of 2015  
11 that was ongoing that was in any respect terminated or  
12 pre-empted by the vote to terminate Jim Cotter, Jr.?  
13 MR. SEARCY: Objection; vague. Lacks  
14 foundation.  
15 A. I'm sorry, I'm going to have to ask you  
16 to repeat that.  
17 Q. Has Bill Gould or anybody else ever told  
18 you in words or substance that the vote to terminate Jim  
19 Cotter, Jr. ended or pre-empted or interrupted a  
20 preexisting process that was supposed to continue into  
21 June 2015?  
22 MR. SEARCY: Objection; vague, lacks  
23 foundation. Argumentative.  
24 A. No.  
25 Q. Let me show you what previously has been  
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1 marked as deposition Exhibit 116, which is a two-page  
2 document bearing production numbers GA 00005417 and 18.  
3 Take such time as you wish to review that,  
4 Mr. Wrotniak, and let me know when you reviewed it to  
5 your satisfaction.  
6 A. (The witness reviews the document.)  
7 Would you like it back?  
8 Q. No, no. Have you read it to your  
9 satisfaction, Exhibit 116?  
10 A. I've read it, yes.  
11 Q. Have you seen Exhibit 116 before?  
12 A. No.  
13 Q. Have you ever had any conversations with  
14 anybody about any of the subjects set out in 116?  
15 A. I've heard the term "kangaroo court"  
16 before. I don't know to what degree. Who knows.  
17 Q. Have you heard the term "kangaroo court"  
18 used with respect to the Reading board of directors?  
19 A. I don't recall.  
20 Q. Do you see at the bottom of the first  
21 page of Exhibit 116, the very last paragraph, that  
22 Mr. Storey says on May 19th, the day date of the  
23 document, that they would review Jim's progress as CEO  
24 in June of 2015? That's the very last paragraph on the  
25 first page.  
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1 A. I see that.  
2 Q. Prior to reading that or hearing a  
3 question from me about it, have you ever heard about  
4 that before?  
5 MR. SEARCY: Objection; vague, lacks  
6 foundation.  
7 A. No.  
8 Q. Directing your attention back to  
9 deposition Exhibit 525, and I see you still have it  
10 open, and to those three sets of purported board minutes  
11 from May 21, 2015, May 29, 2015 and June 12, 2015 found  
12 on pages bearing production numbers DM 00007187 through  
13 99, you don't have any independent information that  
14 would enable you to determine whether those minutes  
15 fairly and accurately depicted what actually transpired,  
16 correct?  
17 A. I relied on the minutes as were placed in  
18 the minute book.  
19 Q. But you don't have any independent basis  
20 upon which to determine whether they're accurate or  
21 fairly depict what transpired, do you?  
22 A. I do not.  
23 Q. Did you ever hear or learn or were you  
24 ever told anything to the effect that Jim Cotter, Jr.  
25 had been told that he needed to resolve his disputes

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1 with his sisters, failing which a vote to terminate him  
2 as president and CEO would occur?  
3 MR. SEARCY: Objection. Asked and answered  
4 and lacks foundation, calls for speculation. It's  
5 argumentative.  
6 Q. Go ahead.  
7 A. No.  
8 Q. Have you ever expressed the view that the  
9 Cotter siblings should resolve their disputes?  
10 A. I don't recall.  
11 Q. Was your decision to vote in favor of  
12 ratification of either of the matters with respect to  
13 which you voted affirmatively on December 29, 2017 based  
14 in any part on your view of this derivative lawsuit?  
15 MR. SEARCY: Objection; vague.  
16 A. Can you clarify that, please?  
17 Q. Okay. Well, you voted in favor -- strike  
18 that.  
19 On December 29, 2017 you voted in favor of  
20 ratifying the prior decision to terminate Jim Cotter as  
21 president and CEO of RDI, right?  
22 A. Yes.  
23 Q. And you also voted in favor of a prior  
24 compensation committee meeting decision with respect to  
25 accepting Class A non-voting stock as consideration for

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1 the exercise of the so-called 100,000 share option,  
2 right?  
3 A. Yes.  
4 Q. With respect to either or both of those  
5 decisions, was your view of this derivative lawsuit part  
6 of your decision-making?  
7 MR. SEARCY: Again, object as vague.  
8 A. I don't know.  
9 Q. Well, do you have a view of this  
10 derivative lawsuit?  
11 A. Yes.  
12 Q. What is it?  
13 A. That the board had a right to terminate  
14 Jim Cotter and made an informed decision and took it.  
15 Q. Do you have any other views of this  
16 derivative lawsuit? Including whether it should proceed  
17 or be dismissed.  
18 A. Nothing that I can --  
19 Q. Nothing beyond what you just told me?  
20 A. Yes. Other than the fact that it's quite  
21 expensive.  
22 Q. And when you say the board had a right to  
23 terminate Jim Cotter and made an informed decision and  
24 took it, that view is based on your review of the May 21  
25 and 29 and June 12, 2015 meeting minutes and

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1 Mr. Cotter's employment contract, right?  
2 A. Yes.  
3 Q. Some of these questions help us move the  
4 process forward.  
5 What difference, if any, did the -- well,  
6 strike that.  
7 Do you recall that Exhibit 525, the board  
8 package, has some information regarding a company called  
9 Highpoint Associates?  
10 A. Yes.  
11 Q. What did you understand that information  
12 to be? What difference, if any, did it make?  
13 A. I believe that Highpoint was a consultant  
14 hired by Reading.  
15 Q. What's the basis for that understanding?  
16 A. I reviewed the invoice.  
17 Q. That's part of Exhibit 525?  
18 A. Yes.  
19 Q. What difference did the hiring of  
20 Highpoint make, if any, to your decision to vote in  
21 favor of ratifying the decision to terminate Jim Cotter,  
22 Jr. as president and CEO of RDI?  
23 A. I don't recall.  
24 Q. Who said what, if anything, at the  
25 December 29 board meeting about Highpoint?

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1 A. I don't recall.

2 Q. Directing your attention, Mr. Wrotniak,

3 to your vote on December 29, 2017 to ratify the

4 compensation committee decision authorizing the use of

5 non-voting stock as consideration to pay for the

6 exercise of the 100,000 share option, on what basis did

7 you vote in favor of that?

8 A. I relied on the board book materials that

9 were provided to us.

10 Q. At the December 29, 2017 meeting, who

11 said what, if anything, about the subject of whether the

12 estate actually owned the 100,000-share option?

13 A. I don't recall anyone.

14 Q. You took no steps prior to voting in

15 favor of ratification with respect to the 100,000-share

16 option on December 29, 2017 to determine whether the

17 estate in fact owned that option, correct?

18 MR. SEARCY: Objection; vague, lacks

19 foundation.

20 A. I relied on the board materials that were

21 provided.

22 Q. Do you recall if any of those board

23 materials actually addressed the subject of whether the

24 estate owned the 100,000-share option?

25 A. I did not see anything in Jim's e-mail,

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1 nor in Dev's e-mail that would suggest that there was an

2 issue.

3 Q. What steps, if any, did you take to

4 inform yourself with respect to the ratification vote

5 regarding the 100,000-share option, if any, other than

6 reviewing Exhibit 525, the board package?

7 A. I don't recall any.

8 Q. I direct your attention, Mr. Wrotniak, to

9 the page in Exhibit 525 that has the production number

10 7213 at the lower right-hand corner. You'll see that

11 purports to be the first page of four pages of minutes

12 from a September 21, 2015 compensation and stock option

13 committee meeting. Do you have that?

14 A. Yes.

15 Q. In particular I direct your attention to

16 the second full paragraph on that page. You'll see that

17 five lines from the top it begins with the word "held by

18 the estate to acquire 100,000 shares of the company's

19 Class B common stock." So if you work down the

20 left-hand margin of the paragraph that begins with

21 Chairman Kane --

22 A. Held, yes.

23 Q. Do you recall -- well, first of all, did

24 you review these minutes in preparation for the December

25 29, 2017 meeting?

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1 A. Yes.

2 Q. When you did, did you notice it used the

3 word "held"?

4 A. I do not recall.

5 Q. Does that mean anything to you that it

6 says "held"?

7 MR. SEARCY: Objection; vague. Lacks

8 foundation.

9 A. I don't know.

10 MR. SEARCY: Mark, I think that last night

11 Noah, or someone from our office, sent out one of the

12 properly redacted versions of these. I don't know if

13 you're getting into any of the stuff that's been

14 redacted. I certainly reserve my rights on that.

15 MR. KRUM: Okay.

16 MR. SEARCY: I don't want to slow down your

17 examination, but I also don't want to get into anything

18 privileged.

19 MR. KRUM: Well, you're not waiving anything

20 is what you're telling me. And I acknowledge that.

21 MR. SEARCY: Appreciate it.

22 Q. Do you own securities of public companies

23 other than RDI?

24 A. Yes.

25 Q. Are they in your name or -- well, strike

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1 that. Do the proxy materials come directly to you or do

2 they come through the brokerage company through which

3 you hold the securities?

4 A. Both.

5 Q. Do you understand the distinction between

6 being a legal and beneficial owner of securities?

7 A. As opposed to?

8 Q. Well, the difference between being a

9 legal and beneficial owner.

10 A. I wouldn't want to have that conversation

11 with you.

12 Q. Have you ever looked at -- do you know

13 what a NOBO list is?

14 A. No.

15 Q. Have you ever looked at any RDI books and

16 records that purport to identify the holders or owners

17 of RDI stock?

18 A. Have I looked at any books or records. I

19 don't recall. Doug McEachern suggested that we look at

20 the list of the major shareholders. I've looked at

21 that.

22 Q. For what purpose?

23 A. General background.

24 Q. By "major shareholders," you're talking

25 about Class A, Class B or both?

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1 A. Both.  
2 Q. Have you ever heard or learned or been  
3 told anything about a pour-over will or a pour-over  
4 trust executed by Jim Cotter, Sr.?  
5 A. I have heard the term.  
6 Q. What have you heard?  
7 A. The term.  
8 Q. You don't recall anything else?  
9 A. No.  
10 Q. "No" meaning correct?  
11 A. No, I have not heard anything else.  
12 Q. In particular, have you ever heard or  
13 learned that anyone raised a question about whether the  
14 pour-over will or trust or whatever it is caused the  
15 100,000-share option to be held or owned by the trust  
16 rather than the estate?  
17 A. No.  
18 Q. If you had heard or learned or been told  
19 at or prior to the December 29, 2017 board meeting that  
20 a question had been raised, whether by Jim Cotter, Jr.  
21 or anybody else, about whether the trust or estate owned  
22 the 100,000-share option, would that have made any  
23 difference to your decision on December 29, 2017 to vote  
24 to ratify what you voted to ratify with respect to the  
25 100,000-share option?

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1 MR. SEARCY: Objection, lacks foundation.  
2 Calls for speculation.  
3 A. Can you repeat that, please.  
4 (Whereupon, the referred to question was read  
5 back by the Reporter.)  
6 A. That would have impacted my investigation  
7 and thought process.  
8 Q. How so?  
9 A. I would have had the -- had to find out  
10 more about the issue and understand it.  
11 Q. What discussions or communications have  
12 you had, if any, with either or both Ed Kane and Guy  
13 Adams about what they did in 2015 in response to the  
14 request to exercise the 100,000-share option?  
15 A. I have not had any.  
16 Q. Mr. Wrotniak, I show you what previously  
17 was marked as deposition Exhibit 36 in this action.  
18 Take such time as you would like to review that and let  
19 me know when you've reviewed it to your satisfaction.  
20 A. (The witness reviews the document.)  
21 Q. Ready?  
22 A. As ready as I'm going to be.  
23 Q. Have you seen Exhibit 36 before?  
24 A. No.  
25 Q. You see that it's an e-mail exchange

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1 dated April 18, 2015?  
2 A. Yes.  
3 Q. Do you see that it relates to the request  
4 to exercise the 100,000-share option?  
5 A. Yes.  
6 Q. Prior to looking at Exhibit 36, had you  
7 ever heard or learned or been told the request had been  
8 made and considered by the RDI board of directors  
9 compensation committee in April of 2015?  
10 A. No.  
11 Q. And as you sit here today, you have no  
12 understanding or information as to why it was not acted  
13 on at that time, correct?  
14 A. Correct.  
15 Q. As you sit here today, Mr. Wrotniak, you  
16 have no information why the RDI compensation committee  
17 did not act on the request to exercise the 100,000-share  
18 option prior to September of 2015, right?  
19 MR. SEARCY: Lacks foundation.  
20 A. I believe there was a note in the minutes  
21 in the board book here that said Ed said they've been  
22 wanting to exercise for a while.  
23 Q. Did you note in the minutes of --  
24 September 21, 2015 meeting minutes that Mr. Storey was a  
25 member of the compensation committee but that he did not

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1 participate in the meeting at which Adams and Kane voted  
2 to authorize the exercise?  
3 A. Yes.  
4 Q. Did you ever hear or learn or were you  
5 ever told independent of anything you read in the  
6 September 21, 2015 meeting minutes that Mr. Storey had  
7 expressed any concerns, questions or reservations with  
8 respect to the --  
9 A. No. Excuse me, I apologize.  
10 Q. -- with respect to the request to  
11 exercise the 100,000-share option?  
12 A. My answer remains no.  
13 Q. Directing your attention back to Exhibit  
14 36, and in particular to the first paragraph that has a  
15 portion of it redacted, do you see that the balance of  
16 the paragraph reads as follows: "There is also the  
17 issue of whether the certificates belong to the  
18 pour-over trust even though they have not been turned  
19 over by the estate, at least that's Jim's position," and  
20 then there's a closed quote, and then there's another  
21 sentence. Do you see that?  
22 A. I don't see the closed quote --  
23 Q. No, I say that so the transcript reflects  
24 that I'm reading something.  
25 A. Yes, I see that paragraph.

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1 Q. And prior to seeing that, you've never  
2 heard or learned that Jim Cotter raised any question  
3 about the ownership of the 100,000-share option,  
4 correct?  
5 A. That's correct.  
6 Q. Do you intend to ask Guy Adams or Ed Kane  
7 about this subject; that is, the ownership of the  
8 100,000-share option?  
9 MR. SEARCY: Objection; vague, calls for  
10 speculation.  
11 A. I don't know.  
12 Q. I'm going to show you what previously has  
13 been marked as Exhibit 526. This document bears  
14 production number RDI 0063804 through 09. It purports  
15 to be -- I guess these are draft, right?  
16 MR. SEARCY: Correct.  
17 Q. Draft minutes of the December 29, 2017  
18 meeting.  
19 If I recall correctly, you saw these minutes  
20 yesterday for the first time, Mr. Wrotniak.  
21 A. Yes.  
22 Q. How much time did you spend reviewing  
23 them?  
24 A. I read them twice I believe.  
25 Q. Did you read them for the purpose of

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1 assessing whether they were accurate and/or complete?  
2 A. Yes.  
3 Q. What did you conclude in that regard, if  
4 anything?  
5 A. I find them to be a good representation  
6 of the meeting.  
7 Q. Did you request that the December 29,  
8 2017 meeting address or include the ratification  
9 matters?  
10 MR. SEARCY: Objection; vague.  
11 A. Yes.  
12 Q. When and how did you make that request?  
13 A. It was agreed in the meeting with Mark  
14 Ferrario.  
15 Q. When did that meeting occur?  
16 A. Prior to the compensation committee, when  
17 we were advised of the Nevada law.  
18 Q. When you say the meeting with Mark  
19 Ferrario, Mr. Wrotniak, are you referring to the  
20 telephone call you and Ms. Coddling had with Mark  
21 Ferrario and Mike Bonner?  
22 A. Yes.  
23 Q. When you say prior to the compensation  
24 committee meeting, you're talking about the compensation  
25 committee meeting of December 28th?

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1 A. Yes.  
2 Q. And when you say prior to that, you mean  
3 prior to that the same day?  
4 A. I don't recall.  
5 Q. How many conversations did you have with  
6 Mark Ferrario and Mike Bonner the week of Christmas,  
7 which was Monday, December 25?  
8 A. One that I recall.  
9 Q. And it's the one that you and Ms. Coddling  
10 had with Ferrario and Bonner?  
11 A. Yes.  
12 Q. What is your understanding of the import  
13 or significance of the two ratification votes that  
14 occurred on December 29, 2017?  
15 MR. SEARCY: I'm going to object to the  
16 extent it calls for attorney-client privilege. If you  
17 have information beyond that, Mr. Wrotniak, you're  
18 welcome to testify in that regard.  
19 A. I don't have any further information  
20 about that.  
21 Q. Meaning you don't have an understanding  
22 beyond what you learned from counsel?  
23 A. Correct.  
24 Q. I direct your attention, Mr. Wrotniak, to  
25 Exhibit 526, and in particular the page that has the

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1 production number ending in 63807 in the lower right.  
2 Let me know when you have that page.  
3 A. We're going backwards?  
4 Q. We could be, yes.  
5 MR. SEARCY: What was the page number again,  
6 Mark?  
7 MR. KRUM: 807 are the last three digits.  
8 It's also numbered 4, page 4 of the draft minutes.  
9 A. Oh, I'm sorry.  
10 Q. It's approximately where we were I think.  
11 A. So you said --  
12 Q. I'm sorry, it's Exhibit 526. We're  
13 looking at a different document. You're looking at 525.  
14 MR. SEARCY: You're looking at the board  
15 package. He's asking about the minutes.  
16 A. These minutes.  
17 Q. Yes.  
18 A. Okay.  
19 Q. Okay, now that we're squared away with  
20 the document, I direct your attention, Mr. Wrotniak, to  
21 page 4 of Exhibit 526.  
22 A. One moment while I fix my mic, please.  
23 Q. Of course.  
24 A. 4, okay.  
25 Q. The last full paragraph on that page

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1 begins with the words "Mr. Wrotniak also expressed his  
2 views." Do you have that paragraph?  
3 A. Yes.  
4 Q. Let me know when you've finished reading  
5 it.  
6 A. (The witness reviews the document.)  
7 Yes.  
8 Q. Does that fairly summarize comments you  
9 made?  
10 A. Yes.  
11 Q. When you said in words or substance that  
12 the board has attempted to work with Mr. Cotter but had  
13 no alternative to take the action it did, termination,  
14 what were you referencing when you said "work" with him?  
15 A. They offered him a position as president  
16 working under a CEO.  
17 Q. When you say they had no -- in words or  
18 substance, had no alternative but to vote to terminate  
19 him, what exactly were you saying or referencing?  
20 A. That if they concluded based on his  
21 performance that he was not fulfilling his  
22 responsibilities, that he needed to be terminated.  
23 Q. I direct your attention to page 6, the  
24 last page of Exhibit 526. Do you have that?  
25 A. Yes.

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1 Q. The first full paragraph on that page  
2 reads as follows: "Upon motion duly made by Director  
3 McEachern and seconded by Dr. Wrotniak, the following  
4 resolution was adopted." Do you see that paragraph?  
5 A. I do.  
6 Q. Is that correct, that you seconded the  
7 ratification motion with respect to the 100,000-share  
8 option?  
9 A. Yes.  
10 Q. How did that come to pass?  
11 A. I don't understand the question.  
12 Q. Had you had any discussions about  
13 seconding that motion --  
14 A. No.  
15 Q. -- prior to doing so?  
16 A. No.  
17 Q. Mr. Wrotniak, I show you what previously  
18 has been marked as Exhibit 527. It bears production  
19 number RDI 0063918.  
20 Have you seen Exhibit 527 previously?  
21 A. Yes.  
22 Q. When?  
23 A. I don't recall when the first time I saw  
24 it was.  
25 Q. You saw it yesterday, correct?

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1 A. Oh, I did see it yesterday.  
2 Q. Do you recall whether you saw it prior to  
3 yesterday?  
4 A. I don't recall.  
5 Q. Do you see that you're not identified as  
6 either a -- well, you're not identified on the from, to  
7 or cc section.  
8 A. Correct.  
9 Q. Does that refresh your recollection that  
10 the first time you saw Exhibit 527 was yesterday?  
11 MR. SEARCY: Objection; lacks foundation.  
12 A. I don't recall when I saw it.  
13 Q. Did you ever see a draft of Exhibit 527?  
14 A. I don't recall.  
15 Q. Did you ever have any discussions with  
16 anybody about Exhibit 527, excluding any you had with  
17 Mr. Searcy yesterday?  
18 A. Yes.  
19 Q. When and with whom?  
20 A. In my conversation with Mike Bonner and  
21 Mark Ferrario.  
22 Q. This is the telephone call you and  
23 Ms. Coddling had with Bonner and Ferrario?  
24 A. Correct.  
25 Q. Have you had any other communications

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1 regarding Exhibit 527?  
2 A. No.  
3 Q. In your call with Bonner and Ferrario,  
4 did you have 527 or a draft of that in your hand or in  
5 front of you at the time of the call?  
6 A. No.  
7 Q. Had you seen it at that time?  
8 A. No.  
9 MR. KRUM: Let's go off the record.  
10 THE VIDEOGRAPHER: We are now off the record  
11 at 12:16 p.m.  
12 (Whereupon, a short recess was taken.)  
13 THE VIDEOGRAPHER: This is tape 3, part 2 of  
14 the deposition of Michael Wrotniak. We are now on the  
15 record at 12:25 p.m.  
16 MR. KRUM: Marshall, there was a particular  
17 document that was mentioned at the last two depositions  
18 that you were going to check on. Were you able to do  
19 that?  
20 MR. SEARCY: Oh, that was something that  
21 Ferrario was going to look into. I'll follow up with  
22 him.  
23 MR. KRUM: Okay.  
24 MR. SEARCY: That had to do with special  
25 committee meeting minutes, is that right?

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MICHAEL WROTNIAK - 03/06/2018

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1 MR. KRUM: I believe that was, yes.  
2 MR. SEARCY: I'll follow up with him on that.  
3 MR. KRUM: I don't think there's any reason  
4 to take Mr. Wrotniak's time about that.  
5 MR. SEARCY: He's not even part of that  
6 committee, so.  
7 MR. KRUM: I don't have any further  
8 questions. All rights are reserved.  
9 Thank you, sir, for your time and off we go  
10 to the next one I guess.  
11 MR. SEARCY: Thank you. No questions from  
12 me.  
13 THE VIDEOGRAPHER: This concludes today's  
14 deposition of Michael Wrotniak. We are now off the  
15 record at 12:25 p.m.  
16 (Whereupon, at 12:25 P.M., the Examination of  
17 this witness was concluded.)  
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Page 95

1 D E C L A R A T I O N  
2  
3 I hereby certify that having been first duly  
4 sworn to testify to the truth, I gave the above  
5 testimony.  
6  
7 I FURTHER CERTIFY that the foregoing transcript  
8 is a true and correct transcript of the testimony given  
9 by me at the time and place specified hereinbefore.  
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13 \_\_\_\_\_  
14 MICHAEL WROTNIAK  
15  
16 Subscribed and sworn to before me  
17 this \_\_\_\_ day of \_\_\_\_\_ 20\_\_.  
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21 NOTARY PUBLIC  
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Page 96

1 E X H I B I T S  
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3 (None)  
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9 EXAMINATION BY PAGE  
10 MR. KRUM 5  
11  
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13 INFORMATION AND/OR DOCUMENTS REQUESTED  
14 (None)  
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18 QUESTIONS MARKED FOR RULINGS  
19 (None)  
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Page 97

1 C E R T I F I C A T E  
2  
3 STATE OF NEW YORK )  
: SS.:  
4 COUNTY OF WESTCHESTER )  
5  
6 I, SUZANNE PASTOR, a Notary Public for and  
7 within the State of New York, do hereby certify:  
8 That the witness whose examination is  
9 hereinbefore set forth was duly sworn and that such  
10 examination is a true record of the testimony given by  
11 that witness.  
12 I further certify that I am not related to any  
13 of the parties to this action by blood or by marriage  
14 and that I am in no way interested in the outcome of  
15 this matter.  
16 IN WITNESS WHEREOF, I have hereunto set my hand  
17 this 16th day of March 2018.  
18  
19  
20 *Suzanne Pastor*  
SUZANNE PASTOR  
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# Exhibit 11

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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

EDWARD KANE, VOLUME V - 04/20/2018

<p style="text-align: right;">Page 665</p> <p>1 APPEARANCES OF COUNSEL:                  2 For Plaintiff, James J. Cotter, Jr.:                  3 YURKO, SALVESEN, &amp; REMZ, P.C.                  4 BY MARK G. KRUM (Telephonic.)                  5 One Washington Mall, 11th Floor                  6 Boston, Massachusetts 02108                  7 mkrum@bizlit.com                  8                  9 For the Nominal Defendant, Reading International, Inc.:                  10 GREENBERG TRAURIG, LLP                  11 BY MARK E. FERRARIO                  12 3773 Howard Hughes Parkway, Suite 400 North                  13 Las Vegas, Nevada 89169                  14 ferrario@gtlaw.com                  15                  16 For the Defendants, Doug McEachern, Guy Adams, Judy                  17 Coddling, Michael Wrotniak, Margaret Cotter, Ellen                  18 Cotter, Edward Kane:                  19 QUINN, EMANUEL, URQUHART &amp; SULLIVAN, LLP                  20 BY MARSHALL SEARCY                  21 865 South Figueroa Street, 10th Floor                  22 Los Angeles, California 90017                  23 marshallsearcy@quinnemanuel.com                  24                  25 Also Present: Alex Payam, videographer</p>	<p style="text-align: right;">Page 667</p> <p>1 THE VIDEOGRAPHER: Good morning. This is the                  2 beginning of media number 1 in the deposition of Edward                  3 Kane in the matter of James J. Cotter, Jr. versus                  4 Margaret Cotter, et al. and related actions, held at 655                  5 West Broadway, Suite 880 in San Diego, California, on                  6 April 20th 2018 at 9:26 a.m.                  7 The court reporter is Marc Volz. I am Alex Payam,                  8 the videographer, on behalf of Litigation Services.                  9 This deposition is being videotaped at all times unless                  10 specified to go off the video record. Would all present                  11 please identify themselves beginning with the witness.                  12 THE WITNESS: Edward Kane.                  13 MR. SEARCY: Marshall Searcy for defendants, Doug                  14 McEachern, Guy Adams, Judy Coddling, Michael Wrotniak,                  15 Margaret Cotter, Ellen Cotter and for the witness Ed                  16 Kane.                  17 MR. FERRARIO: Mark Ferrario for RDI -- or Reading.                  18 MR. KRUM: Mark Krum, appearing telephonically, for                  19 plaintiff.                  20 THE VIDEOGRAPHER: Thank you. Would the court                  21 reporter please swear in the witness.                  22 EDWARD KANE,                  23 defendant herein, having been sworn, testifies further                  24 as follows:                  25 -EXAMINATION-</p>
<p style="text-align: right;">Page 666</p> <p>1 I N D E X                  2                  3 WITNESS: EDWARD KANE                  4 EXAMINATION BY: PAGE                  5 Mr. Krum 667                  6                  7 E X H I B I T S                  8 PLAINTIFF DESCRIPTION PAGE                  9 EXHIBIT 525 Email: Batista to Adams, 673                  Coddling, Cotter, Jr.,                  10 Margaret Cotter, Gould,                  Kane, McEachern, Wrotniak,                  11 cc: Ellen Cotter, Craig                  Tompkins; Agenda for                  12 meeting, December 29, 2018                  (Previously marked.)                  13 EXHIBIT 527 Email: Ellen Cotter 683                  14 from Marcia Wizelman, cc:                  Tompkins Bonner                  15 (Previously marked.)                  16                  17                  18                  19                  20                  21                  22                  23                  24                  25</p>	<p style="text-align: right;">Page 668</p> <p>1 BY MR. KRUM:                  2 Q. Good morning, Mr. Kane.                  3 A. Morning.                  4 Q. Is there any reason that you cannot provide                  5 truthful, accurate and complete testimony today?                  6 A. No.                  7 Q. You're not taking any medication or anything of                  8 that nature that would impair your ability to do so?                  9 A. No.                  10 Q. I'm going to remind you of a couple ground                  11 rules that we will need to follow today to make this go                  12 as efficiently as possible. First, please afford me the                  13 time and perhaps an extra breath to finish my questions                  14 before you begin to answer. In turn, I will attempt to                  15 do the same. That way we will not be speaking over each                  16 other and we'll have a better, more comprehensible                  17 transcript. That's particularly true today, because if                  18 we talk at the same time, one or both of us will not                  19 hear the other. You recall that, right?                  20 A. Yes.                  21 Q. And of course, that was a segue to the next                  22 admonition. It's particularly important today that you                  23 provide audible responses in words because I may not                  24 understand an "uh-huh" or a "yeah" even if the court                  25 reporter does. And the court reporter may not. And</p>

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1 that will result in an erroneous transcript. What did  
2 you do to prepare for your deposition today, Mr. Kane?  
3 A. First, could you make this a little louder, I'm  
4 having a little trouble hearing.  
5 MR. SEARCY: It is a little soft.  
6 Mark, the phone was little soft. Maybe you could  
7 repeat your question.  
8 MR. KRUM: Of course. I actually forgot an  
9 admonition.  
10 Q. If you need to take a break, Mr. Kane, let me  
11 know. I'm not going to be able to discern that by  
12 looking at you. I'd ask only that you answer any  
13 question that's pending before you ask for a break. And  
14 I will add to that, Mr. Kane, that I hope to not need to  
15 have you appear for another deposition. Obviously I  
16 think I do, and I have some matters that I intend to  
17 cover as quickly as possible, and I'm hopeful that we  
18 will do so before we take a break and that will leave  
19 you the rest of the Friday to enjoy. So with that by  
20 way of admonitions, my first question is what did you do  
21 to prepare for your deposition today?  
22 A. I reviewed some testimony that I had previously  
23 given that was provided to me by Mr. Searcy. And I  
24 think there was some documents in there that I also  
25 briefly reviewed.

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1 Q. When you refer to testimony you have previously  
2 given, Mr. Kane, are you referring to prior deposition  
3 testimony in this case?  
4 A. Yes, I am.  
5 Q. Were you provided transcripts or excerpts of  
6 transcripts or both?  
7 A. I'm not sure I know the difference. If I may,  
8 perhaps Mr. Searcy could describe better what he  
9 provided me.  
10 MR. SEARCY: I don't get to answer any of the  
11 questions, Ed. Just do your best with the question.  
12 THE WITNESS: I think they were transcripts of  
13 prior depositions that you had with me.  
14 MR. KRUM:  
15 Q. What I meant, Mr. Kane, by the word excerpts is  
16 whether you were provided something less than complete  
17 deposition transcripts to review. Do you recall?  
18 A. I think they were complete. But I don't know  
19 how I would know if there was something left out, to  
20 tell you the truth. It's been so long since you last  
21 deposed me. However, my best guess is that they were  
22 complete transcripts.  
23 Q. Let's move forward. Mr. Kane, you recall that  
24 on the morning of December 29, 2017 there was a  
25 telephonic meeting of the Reading International board of

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1 directors?  
2 A. Yes.  
3 Q. By the way, I'm going to call Reading  
4 International RDI, if that's okay with you.  
5 A. Fine.  
6 Q. Mr. Kane, at any time prior to that telephonic  
7 board meeting on December 29, 2017 were you party to any  
8 communications with Judy Coddling about the termination  
9 of Jim Cotter, Jr. as its president and CEO of RDI?  
10 A. I can't recall any such conversations.  
11 Q. At any time prior to the telephonic board  
12 meeting on December 29, 2017 were you party to any  
13 communications with Michael Wrotniak regarding or that  
14 referenced the termination of Jim Cotter, Jr. as  
15 president and CEO of RDI?  
16 MR. SEARCY: Let me just pose the objection.  
17 Vague.  
18 You can answer, Ed.  
19 THE WITNESS: I cannot recall any such  
20 conversations.  
21 MR. KRUM:  
22 Q. You've eliminated quite a few of my follow-up  
23 questions which should please you. At the -- strike  
24 that.  
25 A. Strike it should please me?

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1 Q. That was my own comment. I apologize. It was  
2 not directed at you, sir.  
3 A. Okay.  
4 Q. Did there come a time when you heard or learned  
5 that ratification of prior actions or decisions would be  
6 taken up or considered at the December 29, 2017  
7 telephonic board meeting?  
8 A. I cannot recall whether I had such -- I may  
9 have, but I just can't recall them.  
10 Q. What is your best recollection, Mr. Kane, about  
11 when you first heard or learned that ratification of  
12 anything would be or was going to be taken up at the  
13 December 29, 2017 board meeting?  
14 A. I can't recall if I -- if there was any -- any  
15 conversation, any communication regarding the December  
16 29th meeting. There may have been, but I just don't  
17 have any recollection of such.  
18 Q. The following question, Mr. Kane, is asked for  
19 the purpose of assisting you in terms of remembering  
20 events at a particular time. I'm not asking about your  
21 personal life, sir. December 25th, Christmas day, was a  
22 Monday, right?  
23 A. If you say so. I don't have a calendar. I  
24 wouldn't know one way or the other.  
25 Q. You can accept that from me. Nobody will argue

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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**

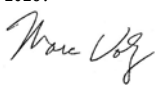
Page 692

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  
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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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 23 Date: \_\_\_\_\_  
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 25 \_\_\_\_\_  
 Signature of Witness  
 \_\_\_\_\_  
 Name Typed or Printed

# Exhibit 12

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DISTRICT COURT  
CLARK COUNTY, NEVADA

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

VIDEOTAPED DEPOSITION OF EDWARD KANE  
TAKEN ON JUNE 9, 2016  
VOLUME 3

Job No.: 315759  
REPORTED BY:  
PATRICIA L. HUBBARD, CSR #3400

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1  
2 VIDEOTAPED DEPOSITION OF EDWARD  
3 KANE, taken on behalf of the  
4 Plaintiffs, at 3043 Fourth Avenue,  
5 San Diego, California, commencing  
6 at 9:38 A.M. on June 9, 2016,  
7 before PATRICIA L. HUBBARD,  
8 CSR #3400, a Certified Shorthand  
9 Reporter in and for the State of  
10 California, pursuant to Notice.  
11  
12 APPEARANCES OF COUNSEL:  
13  
14 For the Plaintiff:  
  
15 LEWIS ROCA ROTHGERBER CHRISTIE, LLP  
16 BY: MARK G. KRUM, ESQ.  
17 3993 Howard Hughes Parkway  
18 Suite 600  
19 Las Vegas, Nevada 89169  
20 702.949.8200  
21 mkrum@lrrc.com  
  
22 For the Nominal Defendant: READING INTERNATIONAL,  
23 INC.  
  
24 GREENBERG TRAUERIG, LLP  
25 BY: KARA HENDRICKS, ESQ.  
3773 Howard Hughes Parkway  
Suite 400 North  
Las Vegas, Nevada 89169  
702.792.3773  
hendricksk@gtlaw.com

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13	Exhibit 197 Email dated 6/1/2015 from Kane to J. Cotter, Jr., et al. (Previously marked)	565
14	Exhibit 283 Email chain dated April 17, 2015 from Kane to Tompkins, et al.	389
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1 APPEARANCES OF COUNSEL: (Continued)  
2  
3 For the Defendants: MARGARET COTTER, ELLEN COTTER,  
4 DOUGLAS, McEACHERN, GUY ADAMS and EDWARD KANE  
5 QUINN EMANUEL URQUHART & SULLIVAN, LLP  
6 BY: MARSHALL M. SEARCY, ESQ.  
7 865 South Figueroa Street  
8 10th Floor  
9 Los Angeles, California 90017  
10 213.443.3000  
11 marshallsearcy@quinnemanuel.com  
12  
13 For the Defendants: WILLIAM GOULD and TIMOTHY  
14 STOREY  
15 BIRD, MARELLA, BOXER, WOLFPERT, NESSIM,  
16 DROOKS, LINCENBERG & RHOW  
17 BY: HERÑAN D. VERA, ESQ.  
18 1875 Century Park East  
19 23rd Floor  
20 Los Angeles, California 90067  
21 310.201.2100  
22 hdv@birdmarella.com  
23  
24 Derivatively on behalf of READING INTERNATIONAL,  
25 INC.  
  
ROBERTSON & ASSOCIATES, LLP  
BY: MARK UYENO, ESQ.  
32121 Lindero Canyon Road  
Suite 200  
Westlake Village, California 91361  
818.851.3850  
muyeno@arobertsonlaw.com  
(PRESENT VIA TELEPHONE)  
  
Also Present:  
  
James J. Cotter, Jr.  
Ryan Lafond, Videographer

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1 stated and what rights they had under those  
2 agreements.  
3 MR. KRUM: And I will move to strike  
4 both as non-responsive.  
5 I'll ask the court reporter to mark as  
6 Exhibit 285 a document that is an email chain of  
7 April 21 and 22, 2015, between Mr. Cotter and --  
8 Mr. Jim Cotter, Jr., and Mr. Kane. It bears  
9 production number EK77.  
10 (Whereupon the document referred  
11 to was marked Plaintiffs'  
12 Exhibit 285 by the Certified  
13 Shorthand Reporter and is attached  
14 hereto.)  
15 BY MR. KRUM:  
16 Q. Are you ready?  
17 A. Yes.  
18 Q. Mr. Kane, do you recognize Exhibit 285?  
19 A. I do now, yes.  
20 Q. Is this an email exchange you had with  
21 Jim Cotter, Jr., on April 21 and 22 --  
22 A. I assume --  
23 Q. -- 2015?  
24 A. I assume it was, yes.  
25 Q. Directing your attention to the first

Page 426

1 A. No.  
2 Q. Did you ever ask Ellen about whether she  
3 had communicated with Craig about that subject?  
4 A. No.  
5 Q. Did you ever speak to Craig about it?  
6 A. No.  
7 Q. Did you ever respond to Jim Cotter, Jr.,  
8 about that?  
9 MR. SEARCY: Objection. Vague.  
10 THE WITNESS: My response to Jim Cotter,  
11 Jr., is in this document you gave me.  
12 BY MR. KRUM:  
13 Q. Well, I'm asking if you ever responded  
14 to his advice that Craig Tompkins had advised Ellen  
15 that it was in her best interest to exercise the  
16 100,000-share option.  
17 A. No.  
18 Q. Did it surprise you to hear that  
19 Mr. Tompkins was advising Ellen about what was her  
20 best -- what was in her best interest?  
21 A. No.  
22 MR. SEARCY: Objection. Vague and lacks  
23 foundation.  
24 BY MR. KRUM:  
25 Q. Did you understand in or about April of

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1 email at the bottom of Exhibit 285, you see that the  
2 first sentence -- in the first sentence Mr. Cotter,  
3 Jr., recites that Craig Tompkins had told him that  
4 he, Craig, had advised Ellen that it was in her best  
5 interest to exercise the option or options --  
6 exercise what we're calling the 100,000-share  
7 option.  
8 You see that?  
9 A. Yes.  
10 Q. Had you previously heard or learn or  
11 been told that Craig Tompkins was speaking to Ellen  
12 Cotter about exercising RDI class B options for the  
13 purpose of ensuring that she could retain control of  
14 RDI at the next annual shareholders meeting?  
15 MR. SEARCY: Objection. Vague, assumes  
16 facts.  
17 THE WITNESS: No.  
18 MR. SEARCY: Also misstates the  
19 document.  
20 BY MR. KRUM:  
21 Q. Had you ever heard or learned or been  
22 told other than through Exhibit 285 that Craig  
23 Tompkins had communicated with Ellen Cotter about  
24 whether it was in her best interest to exercise the  
25 100,000-share option?

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1 2014 that --  
2 A. 2015, you mean.  
3 Q. I misspoke. Thank you, sir.  
4 Did you understand in or about April of  
5 2015 that Mr. Tompkins was on the side of Ellen in  
6 her disputes with Jim Cotter, Jr.?  
7 MR. SEARCY: Objection. Vague, assumes  
8 facts.  
9 THE WITNESS: Yes.  
10 BY MR. KRUM:  
11 Q. What did you understand in that respect?  
12 A. Mr. Cotter, Jr., had by this time hired  
13 Bill Ellis as general counsel. And I -- it's my  
14 belief, just mine alone -- I don't have any evidence  
15 of it, but that Craig Tompkins then spent a good  
16 deal of his time and energy with Ellen and Margaret  
17 Cotter, hoping to maintain his position in the  
18 company.  
19 Q. What was your view of Mr. Tompkins at  
20 the time?  
21 MR. SEARCY: Objection. Vague, calls  
22 for opinion. It also lacks foundation.  
23 THE WITNESS: When you say my view of  
24 him, he was overweight.  
25 What else would you like me to tell you?

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1 BY MR. KRUM:  
2 Q. Well, did you think he was consistently  
3 acting in the interest of the company rather than  
4 his own interest?  
5 MR. SEARCY: Objection. Vague, lacks  
6 foundation. Also calls for opinion.  
7 THE WITNESS: We're getting off this  
8 subject, but at that time I felt Craig Tompkins  
9 always acted in his own self-interest.  
10 BY MR. KRUM:  
11 Q. Mr. Tompkins previously had, in effect,  
12 been terminated from some position in the company,  
13 right?  
14 A. I don't recall him being terminated from  
15 any position.  
16 Q. Do you recall a circumstance in which  
17 Jim Cotter, Jr., learned that Craig Tompkins, while  
18 supposedly holding some position at the company, was  
19 chairman or vice chairman of another company?  
20 A. Oh, yeah.  
21 MR. SEARCY: You said Junior. Did you  
22 mean Junior or Senior?  
23 MR. KRUM: I meant Senior. Thank you.  
24 BY MR. KRUM:  
25 Q. You understood I meant Senior?

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1 recollection or understanding, put on seminars on  
2 behalf of Marshall Stevens.  
3 And I felt that was totally  
4 inappropriate, because they were our attorneys. We  
5 were paying them, and then we were pushing Marshall  
6 Stevens. He couldn't say no. And I was quite upset  
7 about it.  
8 Marshall Stevens also did some work for  
9 our company after it was known that Craig Tompkins  
10 was there, some valuation issues. But then Andrzej  
11 Matyczynski decided they weren't the right firm for  
12 us. But that happened.  
13 So, I thought that was inappropriate  
14 self-interest on his behalf.  
15 Q. The valuation issues that Marshall and  
16 Stevens handled for RDI, what were those? Or with  
17 respect to what?  
18 A. I don't recall. I think it had to do  
19 with maybe some acquisition, I'm guessing, we made  
20 and how to allocate the purchase price among various  
21 assets. And there were tax benefits and detriments,  
22 depending on how you did it.  
23 Q. Did you ever hear or learn, Mr. Kane,  
24 that Craig Tompkins had attempted to steer  
25 business -- RDI business with respect to one or both

Page 429

1 A. Yes.  
2 Q. Okay. What was that circumstance?  
3 A. I think Jim Cotter, Jr., discovered  
4 online that Mr. Tompkins had become an officer  
5 and -- of another company, and he had not asked  
6 Mr. Cotter, Sr., if that was -- if he could do that.  
7 And previous to that he had got on the  
8 board of a REIT, I believe, and again did not ask  
9 Mr. Cotter, Sr., if that was okay with him, and he  
10 being at that time full-time legal counsel.  
11 Q. Did you ever hear or learn or were you  
12 ever told that Craig Tompkins attempted to steer RDI  
13 business to Marshall and Stevens?  
14 MR. SEARCY: Objection. Lacks  
15 foundation.  
16 THE WITNESS: Yes.  
17 BY MR. KRUM:  
18 Q. What did you hear or learn in that  
19 regard?  
20 A. Craig Tompkins was taking the lead role  
21 on behalf of the company in the tax case that we  
22 had, the major tax case. And we had two firms  
23 representing us; Fried Frank in New York and  
24 Washington and Duane Morris in Philadelphia.  
25 And he asked them to put -- it's my

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1 of its New York City real estate properties and  
2 projects to Marshall Stevens?  
3 MR. SEARCY: Objection. Lacks  
4 foundation.  
5 THE WITNESS: I did not hear that, no.  
6 BY MR. KRUM:  
7 Q. Directing your attention, Mr. Kane, back  
8 to the circumstance of -- of Craig Tompkins having a  
9 position -- having positions that he had not  
10 disclosed to Jim Cotter, Sr., at a time when Craig  
11 Tompkins was a full-time employee of RDI -- when you  
12 learned that, were you of the view that Tompkins  
13 should have been terminated?  
14 MR. SEARCY: Objection. Lacks  
15 foundation, calls for opinion.  
16 THE WITNESS: It wouldn't have -- I  
17 didn't have a view that he should be terminated, but  
18 it wouldn't have bothered me if he was terminated.  
19 That's the best I can say.  
20 We had no back-up at the time for him,  
21 so -- and he was intimately and is intimately aware  
22 of all of the issues in the company. And he  
23 structured many of them.  
24 So I don't know if it would be in the  
25 best interest of the company then or now to

Page 432

1 terminate him.  
 2 BY MR. KRUM:  
 3 Q. Did -- did you ever express to Jim  
 4 Cotter, Sr., Jim Cotter, Jr., or both at any point  
 5 in time that you thought Craig Tompkins should be  
 6 terminated or that the company's relationship with  
 7 him should be terminated?  
 8 A. I think I had mentioned to Jim Cotter,  
 9 Sr., and to Jim Cotter, Jr., that they should retain  
 10 an attorney to familiarize himself or herself with  
 11 the company's affairs. And the result of that might  
 12 well have been to terminate Craig Tompkins.  
 13 Q. Did you ever tell Jim Cotter, Sr., Jim  
 14 Cotter, Jr., or both that you thought Craig Tompkins  
 15 was amoral?  
 16 A. Amoral?  
 17 Q. Right.  
 18 A. I might have used that term.  
 19 Q. Do you recall doing so as you sit here  
 20 today?  
 21 A. I didn't hear your question.  
 22 Q. Oh, I'm sorry.  
 23 Do you recall describing Craig Tompkins  
 24 as amoral as you sit here today?  
 25 A. I think I did, yes.

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1 attachments on or about the date it bears April 17,  
 2 2015?  
 3 A. I assume I did. I have no recollection.  
 4 Q. I direct your attention, Mr. Kane, to  
 5 the page bearing production number ending in 1662 as  
 6 part of Exhibit 286.  
 7 Let me know when you have that.  
 8 A. I have it in front of me now, yes.  
 9 Q. And do you recognize that document?  
 10 A. No.  
 11 Q. Do you have any understanding as to what  
 12 it is or purports to be?  
 13 A. It purports to be an option agreement  
 14 between Reading and, I assume, James J. Cotter, Sr.  
 15 Q. Well, take such time as you need to  
 16 review it.  
 17 And my next question is do you recognize  
 18 this to be the option agreement for the supposed  
 19 100,000 shares?  
 20 A. I see the 100,000-share option in here  
 21 in paragraph one.  
 22 Q. I direct your attention toward -- to the  
 23 end of that five-page document. At the bottom it  
 24 says page five of five. It also bears the  
 25 production number ending in 1666.

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1 MS. HENDRICKS: Mark, we've been going  
 2 more than an hour. Can we take a break?  
 3 THE WITNESS: Yes. Can we have a  
 4 bathroom break?  
 5 MR. KRUM: Sure.  
 6 VIDEOTAPE OPERATOR: Off the record at  
 7 11:02 A.M.  
 8 (Brief recess.)  
 9 VIDEOTAPE OPERATOR: Back on the record  
 10 at 11:19 A.M.  
 11 MR. KRUM: I'll ask the court reporter  
 12 to mark as Exhibit 286 what purports to be an  
 13 April 17, 2015 email exchange between Craig Tompkins  
 14 and Mr. Kane with several attachments. It bears  
 15 production number EK63 through 68.  
 16 (Whereupon the document referred  
 17 to was marked Plaintiffs'  
 18 Exhibit 286 by the Certified  
 19 Shorthand Reporter and is attached  
 20 hereto.)  
 21 BY MR. KRUM:  
 22 Q. Mr. Kane, do you recognize Exhibit 286?  
 23 A. It's an email with my name on it.  
 24 Q. Did you receive the email from Craig  
 25 Tompkins which is part of 286 including the

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1 Let me know when you have that.  
 2 A. Yes.  
 3 Q. Do you see that it bears no signatures?  
 4 A. Yes.  
 5 Q. Does that refresh your recollection  
 6 regarding whether you ever saw an option agreement  
 7 with respect to the 100,000 shares of RDI class B  
 8 stock that was fully executed?  
 9 MR. SEARCY: Objection. Assumes facts,  
 10 lacks foundation.  
 11 THE WITNESS: It doesn't refresh my  
 12 recollection, but I see it.  
 13 BY MR. KRUM:  
 14 Q. Did you notice at the time it was  
 15 transmitted to you by Mr. Tompkins on April 17th  
 16 that what he had sent you was not signed?  
 17 A. Pardon me?  
 18 Q. I said did you notice when you  
 19 received --  
 20 A. Uh-huh.  
 21 Q. -- Exhibit 286 that the agreement, the  
 22 option agreement for 100,000 shares was not signed?  
 23 A. Yes.  
 24 Q. What, if anything, did you do upon  
 25 seeing that?



Page 604

1 A. Yes.

2 Q. Were you referring to the fact that he

3 was basically in a position of striking a deal or

4 facing a vote on termination?

5 A. I think that was my thinking, yes.

6 Q. And then at the bottom of -- at the end

7 of the paragraph numbered five there's a sentence

8 that reads as follows, quote,

9 "Otherwise you will be sorry for

10 the rest of your life. They and

11 your mother will be hurt and your

12 children will lose a golden

13 opportunity," close quote.

14 A. Yes.

15 Q. See that?

16 A. Yes, I do.

17 Q. And what was your point in saying that

18 to Jim Cotter, Jr., in this email, Exhibit 306?

19 A. It was a reiteration of what he told me

20 in his email that if he was out, the family and the

21 company would be destroyed.

22 Q. Did you share that view?

23 A. That was his view. I didn't -- one way

24 or another. But look where we are now.

25 Q. So you were saying this to him in your

Page 606

1 REPORTER'S CERTIFICATE

2

3 I, PATRICIA L. HUBBARD, do hereby certify:

4

5 That I am a duly qualified Certified

6 Shorthand Reporter in and for the State of California,

7 holder of Certificate Number 3400, which is in full

8 force and effect, and that I am authorized to

9 administer oaths and affirmations;

10

11 That the foregoing deposition testimony of

12 the herein named witness, to wit, EDWARD KANE, was

13 taken before me at the time and place herein set

14 forth;

15

16 That prior to being examined, EDWARD KANE

17 was duly sworn or affirmed by me to testify the truth,

18 the whole truth, and nothing but the truth;

19

20 That the testimony of the witness and all

21 objections made at the time of examination were

22 recorded stenographically by me and were thereafter

23 transcribed by me or under my direction and

24 supervision;

25

Page 605

1 will email of June 11th for the purpose of imploring

2 him to --

3 A. Yes.

4 Q. -- agree to the deal?

5 A. Yes.

6 Q. Okay.

7 MR. SEARCY: You have to wait for him to

8 finish his question before you answer. Okay?

9 THE WITNESS: All right.

10 BY MR. KRUM:

11 Q. The court reporter is doing quite well.

12 MR. SEARCY: Sometimes you have to wait

13 for him to actually ask the question before you

14 answer it.

15 MR. KRUM: Okay. So I have exceeded my

16 20 minutes, so let's adjourn for the day.

17 VIDEOTAPE OPERATOR: We'll go off the

18 record at 5:21 P.M.

19

20 (Whereupon at 5:21 P.M. the

21 deposition proceedings were

22 concluded.)

23 \* \* \*

24

25

Page 607

1 That the foregoing pages contain a full,

2 true and accurate record of the proceedings and

3 testimony to the best of my skill and ability;

4

5 I further certify that I am not a relative

6 or employee or attorney or counsel of any of the

7 parties, nor am I a relative or employee of such

8 attorney or counsel, nor am I financially interested

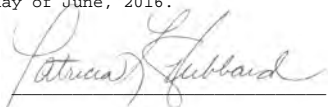
9 in the outcome of this action.

10

11 IN WITNESS WHEREOF, I have subscribed my

12 name this 15th day of June, 2016.

13

14 

15 PATRICIA L. HUBBARD, CSR #3400

16

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<p style="text-align: right; margin-bottom: 0;">Page 608</p> <p style="text-align: center; margin: 10px 0;">ERRATA SHEET</p> <p>I declare under penalty of perjury that I have read the foregoing _____ pages of my testimony, taken on _____ (date) at _____(city), _____(state),</p> <p>and that the same is a true record of the testimony given by me at the time and place herein above set forth, with the following exceptions:</p> <table border="1" style="width:100%; border-collapse: collapse; margin-top: 10px;"><thead><tr><th style="width: 10%;">Page</th><th style="width: 10%;">Line</th><th style="width: 30%;">Should read:</th><th style="width: 50%;">Reason for Change:</th></tr></thead><tbody><tr><td> </td><td> </td><td> </td><td> </td></tr><tr><td> </td><td> </td><td> </td><td> </td></tr><tr><td> </td><td> </td><td> </td><td> </td></tr><tr><td> </td><td> </td><td> </td><td> </td></tr><tr><td> </td><td> </td><td> </td><td> </td></tr><tr><td> </td><td> </td><td> </td><td> </td></tr><tr><td> </td><td> </td><td> </td><td> </td></tr><tr><td> </td><td> </td><td> </td><td> </td></tr><tr><td> </td><td> </td><td> </td><td> </td></tr><tr><td> </td><td> </td><td> </td><td> </td></tr><tr><td> </td><td> </td><td> </td><td> </td></tr></tbody></table>	Page	Line	Should read:	Reason for Change:																																													<p style="text-align: right; margin-bottom: 0;">Page 609</p> <table border="1" style="width:100%; border-collapse: collapse; margin-top: 10px;"><thead><tr><th style="width: 5%;">1</th><th style="width: 10%;">Page</th><th style="width: 10%;">Line</th><th style="width: 30%;">Should read:</th><th style="width: 45%;">Reason for Change:</th></tr></thead><tbody><tr><td> </td><td> </td><td> </td><td> </td><td> </td></tr><tr><td> </td><td> </td><td> </td><td> </td><td> </td></tr><tr><td> </td><td> </td><td> </td><td> </td><td> </td></tr><tr><td> </td><td> </td><td> </td><td> </td><td> </td></tr><tr><td> </td><td> </td><td> </td><td> </td><td> </td></tr><tr><td> </td><td> </td><td> </td><td> </td><td> </td></tr><tr><td> </td><td> </td><td> </td><td> </td><td> </td></tr><tr><td> </td><td> </td><td> </td><td> </td><td> </td></tr><tr><td> </td><td> </td><td> </td><td> </td><td> </td></tr><tr><td> </td><td> </td><td> </td><td> </td><td> </td></tr><tr><td> </td><td> </td><td> </td><td> </td><td> </td></tr><tr><td> </td><td> </td><td> </td><td> </td><td> </td></tr><tr><td> </td><td> </td><td> </td><td> </td><td> </td></tr><tr><td> </td><td> </td><td> </td><td> </td><td> </td></tr><tr><td> </td><td> </td><td> </td><td> </td><td> </td></tr><tr><td> </td><td> </td><td> </td><td> </td><td> </td></tr><tr><td> </td><td> </td><td> </td><td> </td><td> </td></tr><tr><td> </td><td> </td><td> </td><td> </td><td> </td></tr><tr><td> </td><td> </td><td> </td><td> </td><td> </td></tr><tr><td> </td><td> </td><td> </td><td> </td><td> </td></tr><tr><td> </td><td> </td><td> </td><td> </td><td> </td></tr><tr><td> </td><td> </td><td> </td><td> </td><td> </td></tr><tr><td> </td><td> </td><td> </td><td> </td><td> </td></tr><tr><td> </td><td> </td><td> </td><td> </td><td> </td></tr></tbody></table> <p>Date: _____</p> <p style="text-align: right;">Signature of Witness</p> <p style="text-align: right;">_____</p> <p style="text-align: right;">Name Typed or Printed</p>	1	Page	Line	Should read:	Reason for Change:																																																																																																																								
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# Exhibit 13

1 DISTRICT COURT  
2 CLARK COUNTY, NEVADA

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

7 Plaintiff, )

8 vs. )

Index No. A-15-179860-B

9 MARGARET COTTER, ELLEN )  
10 COTTER, GUY ADAMS, EDWARD )  
11 KANE, DOUGLAS WILLIAM GOULD, )  
12 and DOES 1 through 100, )  
13 inclusive, )

14 Defendants. )

15 ----- )  
16 READING INTERNATIONAL, INC., )  
17 a Nevada corporation, )

18 Nominal Defendant. )  
19 ----- )

20 VIDEOTAPED DEPOSITION OF ELLEN COTTER

21 New York, New York

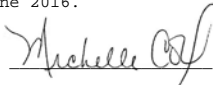
22 Thursday, June 16, 2016

23  
24 Reported by:  
25 MICHELLE COX  
JOB NO. 316936

ELLEN COTTER - 06/16/2016

<p style="text-align: right;">Page 2</p> <p>1 2 3 4 5 June 16, 2016 6 9:45 a.m. 7 8 Videotaped Deposition of ELLEN COTTER, 9 held at the offices of Kramer Levin Naftalis &amp; 10 Frankel LLP, 1177 Avenue of the Americas, New 11 York, New York, pursuant to Notice, before 12 Michelle Cox, a Certified LiveNote Reporter and 13 Notary Public of the State of New York and New 14 Jersey. 15 16 17 18 19 20 21 22 23 24 25</p>	<p style="text-align: right;">Page 3</p> <p>1 A P P E A R A N C E S: 2 3 LEWIS ROCA ROTHGERBER CHRISTIE, LLP 4 Attorneys for Plaintiff 5 3993 Howard Hughes Parkway, 6 Suite 600 7 Las Vegas, Nevada 89169 8 BY: MARK G. KRUM, ESQ. 9 10 QUINN EMANUEL URQUHART &amp; SULLIVAN, LLP 11 Attorneys for Margaret Cotter, Ellen 12 Cotter, Guy Adam, Edward Kane and 13 Douglas McEachern 14 865 South Figueroa Street 15 10th Floor 16 Los Angeles, California 90017 17 BY: MARSHALL M. SEARCY, ESQ. 18 19 BIRD, MARELLA, BOXER, WOLFPERT, NESSIM, 20 DROOKS, LINCENBERG &amp; RHOW, P.C. 21 Attorneys for William Gould and 22 Timothy Storey 23 1875 Century Park East, 23rd Floor 24 Los Angeles, California 90067 25 BY: EKWAN E. RHOW, ESQ.</p>
<p style="text-align: right;">Page 4</p> <p>1 A P P E A R A N C E S: 2 3 GREENBERG TRAUERIG, LLP 4 Attorneys for Plaintiff 5 3773 Howard Hughes Parkway 6 Suite 400 North 7 Las Vegas, Nevada 89169 8 BY: MARK E. FERRARIO, ESQ. 9 10 ROBERTSON &amp; ASSOCIATES, LLP 11 Attorneys for T2 Group of 12 Plaintiff in Intervention 13 32121 Lindero Canyon Road, 14 Suite 200 15 Westlake Village, California 91361 16 BY: ROBERT NATION, ESQ. 17 18 ALSO PRESENT: Phil Mazo, Videographer, 19 James J. Cotter, Jr. and 20 Whitney Tilson 21 22 23 24 25</p>	<p style="text-align: right;">Page 5</p> <p>1 IT IS HEREBY STIPULATED AND AGREED by 2 and between the attorneys for the respective 3 parties herein, that filing and sealing be and 4 the same are hereby waived. 5 IT IS FURTHER STIPULATED AND AGREED 6 that all objections, except as to the form of 7 the question, shall be reserved to the time of 8 the trial. 9 IT IS FURTHER STIPULATED AND AGREED 10 that the within deposition may be sworn to and 11 signed before any officer authorized to 12 administer an oath, with the same force and 13 effect as if signed and sworn to before the 14 Court. 15 16 17 18 19 20 21 22 23 24 25</p>

<p style="text-align: right;">Page 174</p> <p>1 about, if we were just talking about a 2 potential retirement benefit for Craig and Bob. 3 Q Take a look at Item 7. It reads: "Status 4 of Ellen Cotter and Margaret Cotter." 5 Do you see that? 6 A Yes. 7 Q So when you prepared this agenda and 8 distributed it at or about 6:38 p.m., Pacific 9 Time on May 19th, were you thinking that one of 10 the -- that one or two of the agenda items 11 might include the possible termination of you 12 as an executive employee and Margaret as a 13 consultant of RDI? 14 A Well, I think the reason we were on there 15 was to talk about our employment status. 16 Q Well, that meant talk about your title and 17 making Margaret an employee of the company, 18 right? 19 A That's my recollection. 20 Q Okay. So when you prepared this agenda 21 and distributed it, you were not thinking, with 22 respect to Item No. 7, that it include the 23 discussion of terminating you as an executive 24 and/or terminating Margaret as a consultant, 25 were you?</p>	<p style="text-align: right;">Page 175</p> <p>1 MR. TAYBACK: Objection. Asked and 2 answered. 3 A No. 4 Q So when you use the same phraseology 5 status to refer to the president and CEO in 6 Item 1 as you use to refer to Craig Tomkins and 7 Robert Smerling in Item 6, and yourself and 8 Margaret Cotter in Item 7, were you attempting 9 to obscure or conceal the fact that Item 1 was 10 actually about terminating Jim Cotter as 11 president and CEO? 12 MR. TAYBACK: Objection; argumentative, 13 compound. 14 You can answer. 15 A I mean, there was no intention on my part 16 to deceive anybody. 17 Q Well, in point of fact, prior to 18 distributing Exhibit 338, you already had had 19 discussions with Ed Kane, Guy Adams, 20 Doug McEachern and Margaret Cotter about 21 terminating Jim Cotter, Jr. as president and 22 CEO, correct? 23 A Prior to this meeting we did have 24 discussions about whether Jim would remain as 25 the CEO and president.</p>
<p style="text-align: right;">Page 176</p> <p>1 Q Well, you had discussions with each of -- 2 Guy Adams, Ed Kane, Doug McEachern and 3 Margaret Cotter about terminating Jim Cotter, 4 Jr. as CEO prior to distributing Exhibit 338 on 5 May 19th, correct? 6 MR. TAYBACK: Objection. Asked and 7 answered. 8 A Yes. 9 Q You had no such discussions with 10 Tim Storey, correct? 11 A I did have discussions with Tim Storey. 12 Q What discussions did you have with 13 Tim Storey and when did you have them? 14 A I had had discussions with Tim Storey 15 about Jim and his performance. 16 Q Okay. The question is: What discussions 17 did you have with Tim Storey, if any, prior to 18 distributing Exhibit 338 on May 19, 2015, about 19 terminating Jim Cotter, Jr. as president and 20 CEO? 21 A I don't remember the specific discussion 22 that I had with Tim. 23 Q Did you have any conversation with 24 Tim Storey prior to distributing Exhibit 338 on 25 May 19, 2015, in which the subject of</p>	<p style="text-align: right;">Page 177</p> <p>1 terminating Jim Cotter, Jr. as president and 2 CEO of RDI was discussed? 3 A Prior to this agenda being sent out, Tim 4 and I had had discussions about whether Jim 5 would continue as CEO and president. 6 Q What discussion did you have with 7 Tim Storey in that regard, and when did they 8 occur? 9 A I don't remember the specific 10 conversation, but I remember Tim taking the 11 position that he -- he understood that Jim was 12 inexperienced and it wasn't -- Jim's position 13 would be under review and under evaluation. 14 Q When did you have that discussion? 15 A As I said, I don't remember. 16 Q Was it in person? 17 A I probably did have -- Tim came to Los 18 Angeles a lot. I probably did have some of 19 these discussions in person. 20 Q What is it that you said during that 21 discussion or those discussions with respect to 22 the subject of Jim Cotter, Jr. continuing as 23 president and CEO or being terminated? 24 A I don't remember the specifics of the 25 discussion.</p>

<p style="text-align: right;">Page 254</p> <p>1 answer is yes, what I was about to say is                  2 there's some global proposal in the works --                  3 MR. TAYBACK: Yeah.                  4 MR. KRUM: -- so we may end up revising                  5 this until then.                  6 MR. TAYBACK: Understand. Yeah.                  7 MR. KRUM: Okay. And but, yes, please                  8 provide the transcript to Mr. Tayback for                  9 Ms. Cotter.                  10 MR. TAYBACK: Thank you.                  11 MR. NATION: All right.                  12 MR. KRUM: Sorry. Very good.                  13 MR. NATION: Those questions are more                  14 properly addressed to Mr. Krum than me. That's                  15 been my two cents.                  16 (Continued on the following page to                  17 include jurat.)                  18                  19                  20                  21                  22                  23                  24                  25</p>	<p style="text-align: right;">Page 255</p> <p>1 MR. TAYBACK: Can we go off the video.                  2 THE VIDEOGRAPHER: This concludes today's                  3 proceeding in the deposition of Ellen Cotter.                  4 We're ending Media No. 5 and going off the                  5 record at 6:05 p.m.                  6 (Time noted: 6:05 p.m.)                  7                  8 _____                  9 ELLEN COTTER                  10                  11 Subscribed and sworn to before me                  12 this _____ day of _____, 2016.                  13 _____                  14                  15                  16                  17                  18                  19                  20                  21                  22                  23                  24                  25</p>
<p style="text-align: right;">Page 256</p> <p>1 C E R T I F I C A T E                  2 STATE OF NEW YORK )                  3 :ss                  4 COUNTY OF NEW YORK )                  5                  6 I, MICHELLE COX, a Notary Public within                  7 and for the State of New York, do hereby                  8 certify:                  9 That ELLEN COTTER, the witness whose                  10 deposition is hereinbefore set forth, was duly                  11 sworn by me and that such deposition is a true                  12 record of the testimony given by the witness.                  13 I further certify that I am not related to                  14 any of the parties to this action by blood or                  15 marriage, and that I am in no way interested in                  16 the outcome of this matter.                  17 IN WITNESS WHEREOF, I have hereunto set my                  18 hand this 29th day of June 2016.                  19                  20                   21 MICHELLE COX, CLR                  22                  23                  24                  25</p>	<p style="text-align: right;">Page 257</p> <p>1 INDEX                  2 WITNESS EXAMINATION BY PAGE                  3 ELLEN COTTER MR. KRUM 7                  4 MR. NATION 221                  5                  6                  7 INFORMATION REQUESTS                  8                  9 DIRECTIONS: , 42 , 43 , 184 , 202                  10 EXHIBITS                  11 DEPOSITION EXHIBITS FOR ID.                  12 Exhibit 329 Document Bates-stamped WG104 37                  through WG112                  13                  14 Exhibit 330 E-mail Chain 97                  15                  16 Exhibit 331 E-mail dated June 29, 2015,                  from Ellen Cotter to Guy Adams                  and Others with                  17                  18 Exhibit 332 E-mail dated October 23, 2014, 130                  from Ed Kane to Ellen Cotter                  19 Exhibit 333 E-mail dated August 24, 2015, 140                  from Ellen Cotter to ed Kane                  with Attachment                  20 Exhibit 334 E-mail Chain 141                  21 Exhibit 335 E-mail Chain 152                  22 Exhibit 336 E-mail Chain with Attachment 160                  23 Exhibit 337 E-mail Chain with Attachment 164                  24 Exhibit 338 E-mail dated May 19, 2015, 171                  from Ellen Cotter to Margaret                  25 Cotter and Others</p>

ELLEN COTTER - 06/16/2016

<p style="text-align: right;">Page 258</p> <p>1 DEPOSITION EXHIBITS FOR ID.</p> <p>2 Exhibit 339 E-mail dated May 16, 2015, 179 from Ellen Cotter to nelle1438@gmail.com</p> <p>3</p> <p>4 Exhibit 340 E-mail dated May 27, 2015, 185 from Ellen Cotter Ellen Cotter to Other Members of the RDI Board of Directors</p> <p>5</p> <p>6 Exhibit 341 E-mail Chain 189</p> <p>7</p> <p>8 Exhibit 342 Document Bates-stamped EC1905 204</p> <p>9</p> <p>10 Exhibit 343 E-mail dated October 21, 2015, 205 from nelle1428@gmail.com to Laura Batista</p> <p>11</p> <p>12 Exhibit 344 E-mail Chain 211</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 259</p> <p style="text-align: center;">ERRATA SHEET</p> <p>2</p> <p>3</p> <p>4</p> <p>5 I declare under penalty of perjury that I have read the</p> <p>6 foregoing _____ pages of my testimony, taken</p> <p>7 on _____ (date) at</p> <p>8 _____ (city), _____ (state),</p> <p>9</p> <p>10 and that the same is a true record of the testimony given</p> <p>11 by me at the time and place herein</p> <p>12 above set forth, with the following exceptions:</p> <p>13</p> <table style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="text-align: left;">Page</th> <th style="text-align: left;">Line</th> <th style="text-align: left;">Should read:</th> <th style="text-align: left;">Reason for Change:</th> </tr> </thead> <tbody> <tr><td>14</td><td>---</td><td>_____</td><td>_____</td></tr> <tr><td>15</td><td>---</td><td>_____</td><td>_____</td></tr> <tr><td>16</td><td>---</td><td>_____</td><td>_____</td></tr> <tr><td>17</td><td>---</td><td>_____</td><td>_____</td></tr> <tr><td>18</td><td>---</td><td>_____</td><td>_____</td></tr> <tr><td>19</td><td>---</td><td>_____</td><td>_____</td></tr> <tr><td>20</td><td>---</td><td>_____</td><td>_____</td></tr> <tr><td>21</td><td>---</td><td>_____</td><td>_____</td></tr> <tr><td>22</td><td>---</td><td>_____</td><td>_____</td></tr> <tr><td>23</td><td>---</td><td>_____</td><td>_____</td></tr> <tr><td>24</td><td>---</td><td>_____</td><td>_____</td></tr> <tr><td>25</td><td>---</td><td>_____</td><td>_____</td></tr> </tbody> </table>	Page	Line	Should read:	Reason for Change:	14	---	_____	_____	15	---	_____	_____	16	---	_____	_____	17	---	_____	_____	18	---	_____	_____	19	---	_____	_____	20	---	_____	_____	21	---	_____	_____	22	---	_____	_____	23	---	_____	_____	24	---	_____	_____	25	---	_____	_____				
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# Exhibit 14

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

**Lewis Roca**  
**ROTHGERBER CHRISTIE**

1 **DEC**  
MARK G. KRUM (Nevada Bar No. 10913)  
2 MKrum@LRRC.com  
LEWIS ROCA ROTHGERBER CHRISTIE LLP  
3 3993 Howard Hughes Parkway, Suite 600  
Las Vegas, Nevada 89169  
4 (702) 949-8200  
(702) 949-8398 fax  
5  
Attorneys for Plaintiff  
6 *James J. Cotter, Jr.*

7 DISTRICT COURT  
8 CLARK COUNTY, NEVADA

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

12 Plaintiff,

13 v.

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

17 Defendants.

18 and

19 \_\_\_\_\_  
20 READING INTERNATIONAL, INC., a Nevada  
corporation;

21 Nominal Defendant.

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

24 Plaintiffs,

25 vs.

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

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

**DECLARATION OF PLAINTIFF  
JAMES J. COTTER, JR. IN  
OPPOSITION TO ALL INDIVIDUAL  
DEFENDANTS' MOTIONS FOR  
PARTIAL SUMMARY JUDGMENT  
(AND GOULD JOINDERS)**

**[Business Court Requested: [EDCR 1.61]**

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

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Defendants.

and

---

READING INTERNATIONAL, INC., a  
Nevada corporation,

Nominal Defendant.

I, James J. Cotter, Jr. hereby declare, under the penalty of perjury and the laws of Nevada, as follows:

1. I am over eighteen (18) years of age. I have personal knowledge of the facts contained in this declaration, except on those matters stated upon information and belief, and as to those matters, I believe them to be true. If called upon to testify as to the contents of this declaration, I am legally competent to do so in a court of law.

2. I am the Plaintiff in the above-captioned action. I am, and at all times relevant hereto was, a shareholder of RDI. I have been a director of RDI since on or about March 21, 2002. I have been involved in RDI management since mid-2005, I was appointed Vice Chairman of the RDI board of directors in 2007 and President of RDI on or about June 1, 2013. I was appointed CEO by the RDI Board on or about August 7, 2014, immediately after James J. Cotter, Sr. (JJC, Sr.) resigned from that position. I am the son of the late JJC, Sr., and the brother of defendants Margaret Cotter ("MC") and Ellen Cotter ("EC"). I presently own approximately 560,186 shares of RDI Class A non-voting stock and options to acquire another 50,000 shares of RDI Class A non-voting stock. I am also the co-trustee and beneficiary of the James J. Cotter Living Trust, dated August 1, 2000, as amended (the "Trust"), which owns 2,115,539 shares of RDI Class A (non-voting) stock and 1,123,888 shares of RDI Class B (voting) stock. The Trust became irrevocable upon the passing of JJC, Sr. on September 13, 2014.

3. I submit this declaration in support of the oppositions to all of the motions for summary judgment filed by one or more of the individual defendants in this action.

4. Nominal defendant Reading International, Inc. (RDI or Company) is a Nevada corporation and is, according to its public filings with the United States Securities and Exchange

1 Commission (the "SEC"), an internationally diversified company principally focused on the  
2 development, ownership and operation of entertainment and real estate assets in the United States,  
3 Australia and New Zealand. The Company operates in two business segments, namely, cinema  
4 exhibition, through approximately 58 multiplex cinemas, and real estate, including real estate  
5 development and the rental of retail, commercial and live theater assets. The Company manages  
6 world-wide cinemas in the United States, Australia and New Zealand. RDI has two classes of  
7 stock, Class A stock held by the investing public, which stock exercises no voting rights, and  
8 Class B stock, which is the sole voting stock with respect to the election of directors. An  
9 overwhelming majority (approximately eighty percent (80%)) of the Class A stock is legally  
10 and/or beneficially owned by shareholders unrelated to me, EC or MC. Approximately seventy  
11 percent (70%) of the Class B stock is subject to disputes and pending trust and estate litigation in  
12 California between EC and MC, on the one hand, and me, on the other hand, and a probate action  
13 in Nevada. Of the Class B stock, approximately forty-four percent (44%) is held in the name of the  
14 Trust. RDI is named only as a nominal defendant in this derivative action.

15 5. I signed a verification of a Second Amended Verified Complaint (the "SAC") in  
16 this action. I stand by the substantive allegations of the SAC and incorporate them herein by  
17 reference.

18 **The Position of CEO at RDI**

19 6. Certain of the motions for summary judgment brought by the individual defendants  
20 in this action suggest that I was appointed CEO of RDI in August 2014 after what amounted to no  
21 deliberation by the Board of Directors. That is absolutely false. In fact, as early as 2006, James J  
22 Cotter, Sr. ("JJC, Sr."), then the CEO and controlling shareholder of RDI, had communicated to  
23 the RDI board of directors his proposed succession plan for the positions of President and CEO.  
24 That plan was for me to work under the direction of JJC, Sr. to learn the businesses of RDI,  
25 including by functioning in a senior executive role.

26 7. Since 2005, I was involved in most RDI executive management meetings and  
27 privy to most significant internal senior management memos. As mentioned above, I was  
28 appointed Vice Chairman of the RDI board in 2007. The RDI Board appointed me President of

1 RDI on or about June 1, 2013, and I filled those responsibilities without objection by the RDI  
2 board of directors.

3 8. Soon after I became CEO, my sisters, Ellen, who was an executive at RDI in the  
4 domestic cinema segment of the Company's business, and Margaret, who managed RDI's limited  
5 live theater operations as a third-party consultant, both communicated to me and to members of  
6 the RDI Board of Directors that they did not want to report to me as CEO. In fact, neither of them  
7 previously while working for or with the Company effectively had ever reported to anyone other  
8 than our father, JJC, Sr. Margaret in particular resisted and effectively refused to report to me until  
9 she no longer needed to do so, following my (purported) termination as President and CEO of the  
10 Company. They also co-opted at least one employee, Linda Pham, who claimed at some point in  
11 2014 that I had created a hostile work environment for her, which accusation was not well-taken  
12 and, in any event, moot with the passage of time by Spring 2015, as director Kane acknowledged  
13 at the time.

#### 14 **Disputes With My Sisters**

15 9. My sisters and I had certain disputes with respect to matters of our father's estate.  
16 The most significant and contentious dispute concerned who would be the trustee or trustees of the  
17 voting trust that, following our father's death, holds approximately 70% of the voting stock of  
18 RDI. According to a 2013 amendment to his trust documentation, Margaret was to be the sole  
19 trustee. Pursuant to a 2014 amendment to his trust documentation, Margaret and I were to serve  
20 contemporaneously as co-trustees. In early February 2015, Ellen and Margaret commenced a  
21 lawsuit in California state court challenging the validity of the 2014 amendment to our father's  
22 trust documents (the "California Trust Action").

23 10. My sisters and I also had certain disputes with respect to RDI. Most generally, they  
24 disagreed with my view and approach of running RDI like a public company, including hiring a  
25 senior executive qualified to oversee the development of the Company's valuable real estate and,  
26 more fundamentally, operating the Company to increase its value for all shareholders, not just its  
27 value to the Cotter family as controlling shareholders.

28

1 **Threatened Termination and Termination**

2 11. Late in the day on May 19, 2015, I received from Ellen, as the chairperson of the  
3 RDI Board of Directors, an agenda for a supposed special meeting of the RDI board on May 21,  
4 2015, two days later. I learned that the benignly described first item on the agenda, “status of  
5 president and CEO,” apparently referred to a secret plan of Ellen and Margaret, together with Ed  
6 Kane, Guy Adams and Doug McEachern, to vote to remove me as President and CEO of RDI.  
7 However, that meeting commenced and concluded without the threatened vote being taken.

8 12. Next, on or about May 27, 2015, the lawyer representing Ellen and Margaret in the  
9 California Trust Action transmitted to my lawyer in that action a document that proposed to  
10 resolve the disputes between my sisters and me, including with respect to who would be the  
11 trustee of the voting trust and whether Margaret and Ellen would report to me as CEO of RDI. (A  
12 true and correct copy of the May 27, 2015 document, which was marked as deposition exhibit 322,  
13 is attached hereto as exhibit “A.”)

14 13. On Friday, May 29, 2015, the (supposed) special board meeting of May 21 was to  
15 resume. That morning, before the meeting, I met with Ellen and Margaret. At that meeting, they  
16 told me that they were unwilling to mediate or to negotiate any of the terms of the May 27  
17 document described above. They also told me that if I did not agree to resolve my disputes with  
18 them on the terms set out in that document, that the RDI Board of Directors would vote at the  
19 (supposed) meeting that day to terminate me as President and CEO.

20 14. The (supposed) special board meeting commenced on May 29 and the issue of my  
21 termination as President and CEO was the subject. At this (supposed) special meeting, or another,  
22 McEachern pressured me to resign as President and CEO. Eventually, the non-Cotter members of  
23 the RDI Board of Directors met with my sisters separately from me. Following that, the majority  
24 of the non-cotter directors, namely, Messrs. Adams, Kane and McEachern, advised me that the  
25 meeting would adjourn temporarily and resume telephonically at 6 p.m. They further advised that,  
26 if I had not reached a resolution of disputes between me and my sisters by the time the (supposed)  
27 special meeting reconvened telephonically at 6 p.m. that day, they would proceed with the vote to  
28

1 terminate me, meaning that the three of them would vote to terminate me as President and CEO of  
2 RDI.

3 15. That afternoon, Ellen and Margaret again refused to mediate and again refused to  
4 negotiate. Ultimately, I indicated a willingness to resolve disputes based on the document  
5 provided, subject to conferring with counsel. At or about 6 p.m., the (supposed) special RDI board  
6 meeting resumed telephonically, at which time Ellen reported to the five non-Cotter directors that  
7 we had reached an agreement in principle to resolve our disputes, subject to conferring with  
8 respective counsel. Ed Kane congratulated us and made a statement to the effect that he hoped that  
9 I was CEO of the Company for 30 years. No vote was taken on my termination.

10 16. On or about June 8, 2015, I communicated to my sisters that I could not agree to  
11 the document their lawyer had transmitted to my lawyer on or about June 2, 2015. Ellen called a  
12 (supposed) special board meeting for June 12, 2015, at which meeting each of Messrs. Adams,  
13 Kane and McEachern made good on their threat to vote to terminate me and did so.

14 **Director Interest and Independence**

15 17. One or more of the defendants' motions for summary judgment claim that SEC  
16 filings by RDI describe the non-Cotter directors as "independent," that I signed one or more of  
17 those SEC filings and that I therefore admit that those directors are independent for the purposes  
18 of this action. That is inaccurate. The term "independent" as used in RDI's SEC filings do not  
19 refer to matters of Nevada law. It referred usually to the fact that, pursuant to the terms of the  
20 Company's listing agreement with NASDAQ, the stock exchange on which RDI stock trades,  
21 directors meet the standard of independence of NASDAQ. None of the director defendants have  
22 ever suggested to me that they understood use of the term "independent" in RDI's SEC filings to  
23 communicate anything other than that non-Cotter directors were not members of the Cotter family  
24 which, in one manner or another, controlled approximately 70% of the voting stock of RDI. As  
25 among members of the RDI Board of Directors, the term "independent" was used historically to  
26 refer to directors who were not members of the Cotter family.

27 18. Ed Kane was a life-long friend of my father, having met when they were graduate  
28 students. Kane was in my father's wedding and was a speaker at my father's funeral. Over my

1 lengthy tenure as a director at RDI, I observed Kane as a director of RDI acting at all times as if  
2 his job as a director was to carry out my father's wishes. Kane admitted to me that he was not  
3 independent for purposes other than the NASDAQ listing agreement and suggested after I became  
4 CEO that the Company would benefit from independent directors knowledgeable about its two  
5 principal businesses, cinemas and real estate.

6 19. On the contentious issue between me and my sisters regarding who would be the  
7 trustee(s) of the voting trust, Kane communicated to me that his view was that it was my fathers'  
8 wishes that Margaret alone be the trustee, and he pressured me to agree to that. At one point in the  
9 context of discussions regarding terminating me as President and CEO of RDI, Kane said to me  
10 angrily that he thought I "f\*##\*ed Margaret" by the 2014 amendment to my father's trust  
11 documentation, which amendment made me a co-trustee with Margaret of the voting trust.

12 20. Kane remains very close with my sisters, who still call him "Uncle Ed" (which I  
13 ceased doing after joining RDI). They continue to get together socially, including for family meals  
14 during holiday periods, which is what they admittedly did around the Christmas holidays in 2015.

15 21. Guy Adams is a long time friend of my father. After Adams effectively became  
16 unemployed, my father attempted to provide him work and income. Eventually, my father through  
17 a company he wholly-owned entered into an agreement with Adams to pay Adams \$1000 per  
18 month. That company now is part of my father's estate, of which my sisters are executors, such  
19 that they are in a position to control whether Adams is paid that money or not. Adams also has  
20 carried interests in certain real estate in which my father invested. My sisters as executors of my  
21 father's estate are in position to see to it that Adams is or is not paid any monies he is owed on  
22 account of those carried interests.

23 22. Prior to on or about May 2015, Adam's financial condition and, more particularly,  
24 his dependence on or independence from my sisters, in terms of his financial situation, had not  
25 arisen as a subject. When I suspected that Adams had agreed with my sisters to vote to terminate  
26 me as President and CEO of RDI, that raised the issue of whether he was financially dependent on  
27 them. I now know that he is. I learned from Adams' sworn declarations in his California state  
28 court divorce case that almost all of his income comes from RDI and from one or more companies



1 that my sisters control. Adams is not independently wealthy. I asked him about his financial  
2 dependence or independence at the (supposed) May 21, 2015 special board meeting, at which time  
3 he refused to answer.

4 23. Michael Wrotniak's wife Trisha was Margaret's roommate in her freshman year of  
5 college at Georgetown University. Margaret and Trisha have been life-long best friends starting  
6 with their first year in college together. Michael also went to Georgetown University where he  
7 met his wife Trisha and also developed a very close friendship with Margaret in college. Given  
8 that Margaret only has a few friends, her relationship with Trisha and Michael is extremely  
9 important. Margaret has spent a lot of time with Michael and his wife over the years, as all three  
10 live in metropolitan New York City. Margaret became like an aunt to Trisha and Michael's  
11 children. My sister Ellen and mother also know Trisha and Michael very well, and they have all  
12 attended social events together in New York, such as birthday and cocktail parties my sister  
13 Margaret has hosted at her apartment in New York City. I believe Margaret's oldest child refers to  
14 Trisha and Michael as Aunt and Uncle. Michael's communication with me as a director has been  
15 very guarded, which I understand to reflect his knowledge of the lawsuit and his close relationship  
16 with Margaret.

17 24. Judy Coddling has had a very close personal relationship with my mother for more  
18 than thirty years. (Ellen lives with our mother, who has chosen my sisters' side in the disputes  
19 between us.) Ms. Coddling has become close with my sisters Ellen and Margaret. On October 13,  
20 2015, over breakfast I had with her, she expressed to me that RDI is a family business and that the  
21 only people who should manage it should be one of the Cotters and that she would help make sure  
22 of that, whether it be Ellen or me. Her reaction to the offer to purchase all of the stock of the  
23 Company at a price in excess of what it trades in the market (the "Offer"), first made by  
24 correspondence dated on or about May 31, 2015, reflected Ms. Coddling's unwavering loyalty to  
25 Ellen. Before the board meeting at which the Board was going to discuss the Offer, she indicated  
26 to me that there was no way that the Offer should even be considered (clearly having spoken to  
27 Ellen about it before the board meeting).

28

1           25.     Bill Gould was a professional acquaintance and friendly with my father for years.  
2 Repeatedly since my termination as President and CEO, he has said to me that he has acquiesced  
3 as an RDI director to conduct to which he objects and/or to conclusions with which he disagrees,  
4 stating in words or substance that he must “pick his fights.”

5           26.     For example, at a board meeting at which the board was asked to approve minutes  
6 from the (supposed) special board meetings of May 21 and 29, 2015 in June 12, 2015, at which I  
7 objected because the minutes contained significant factual inaccuracies, at which I voted against  
8 approving the minutes and at which Tim Storey abstained, reflecting that he that too thought the  
9 minutes inaccurate (as he testified unequivocally in deposition in this case), Bill Gould voted to  
10 approve the minutes. When I asked him afterwards why he had voted to approve inaccurate  
11 minutes, he said that, although he could not remember the meetings well enough to state that the  
12 minutes were accurate, he thought the ultimate descriptions of action taken, meaning the  
13 termination of me, the appointment of Ellen as interim CEO and the repopulation of the executive  
14 committee, were accurate, and that he did not want to fight about them.

15           27.     Also as an example, Bill Gould admitted to me that he thought the process  
16 deficient, and the time inadequate, to make a genuinely informed decision about whether to add  
17 Judy Coddling to the RDI Board of Directors. At the board meeting when that happened, he  
18 described the decision to add her as a director as having been “slammed down,” but he acquiesced.

19           28.     It is clear to me that Bill Gould effectively has given up trying to do what he thinks  
20 is the proper thing to do as an RDI director, and is and since June 2015 has been in “go along, get  
21 along” mode. He first failed to cause any proper process to occur regarding my termination, and  
22 allowed the ombudsman process (by which then director Tim Storey as the representative of the  
23 non-Cotter directors was working with me and my sisters to enable us to work together as  
24 professionals, which process was to continue into June 2015) to be aborted. That, together with the  
25 forced “retirement” of Tim Storey, apparently so chastened Bill Gould that he became unwilling to  
26 take a stand on any matter in which doing so would place him in disagreement with my sisters. For  
27 example, he has acknowledged that Margaret lacks the experience and qualifications to hold the  
28

1 highly compensated job she now holds at RDI, but Bill Gould did not object to it or the  
2 compensation being given to her.

### 3 **The Executive Committee**

4 29. My sisters first proposed an executive committee as a means to avoid reporting to  
5 me or, as a practical matter, to anyone, in the Fall of 2014. I resisted that executive committee  
6 construct, which was not implemented at that time. As part of the resolution of our disputes that  
7 they attempted to force me to accept in May and June 2015, described above, they included an  
8 executive committee construct that would have had them reporting to the executive committee that  
9 they, together with Guy Adams who is financially beholden to them, would control. As part of  
10 their seizure of control of RDI, in addition to terminating me as President and CEO, they activated  
11 and repopulated RDI's Board of Directors executive committee. That executive committee  
12 previously had never met and never made a decision. After it was activated and repopulated on  
13 June 12, 2015, it was used as a means to exclude me and then director Tim Storey, and to a lesser  
14 extent Bill Gould, from functioning as directors of RDI and, in some instances, even having  
15 knowledge of matters that were handled by the executive committee that historically and  
16 ordinarily were handled by RDI's Board of Directors.

### 17 **The Supposed CEO Search**

18 30. When RDI filed a Form 8-K with the SEC and issued a press release announcing  
19 the termination of me as President and CEO, RDI also announced that it would engage a search  
20 firm to conduct the search for a new President and CEO. The board empowered Ellen to select the  
21 search firm. Ellen selected Korn Ferry ("KF"). She explained to the RDI Board of Directors the  
22 she selected KF because KF offered a proprietary assessment tool, which would be used to assess  
23 the three finalists for the position of President and CEO, which assessment she asserted would  
24 "de-risk" the search process. The Board agreed. Ellen also told the Board that the three final  
25 candidates would be presented to the Board for interviews. The Board agreed. Ellen selected  
26 herself, Margaret, Bill Gould and Doug McEachern to be members of the CEO search committee,  
27 which the Board accepted without substantive discussion.

28

1           31.     After the CEO search committee was put in place and KF engaged, the full board  
2 received effectively no information about whether and how the CEO search was proceeding. In the  
3 time frame from August through December 2015, Ellen for the CEO search committee provided  
4 approximately two reports, the latter of which was in mid-December which, as it turned out, was  
5 after the process had been aborted and Ellen selected, at least preliminarily. Tim Storey objected  
6 to the full board not being apprised of the status of the CEO search, prior to his forced  
7 “retirement.”

8           32.     Ultimately, in early January 2016, the CEO search committee presented Ellen as  
9 their choice for President and CEO. They did not offer, much less present, three finalists to the  
10 Board for interviews. They did not have KF perform its paid for, proprietary assessment of the  
11 finalists, or of anyone. Before that Board meeting, at which Ellen was made President and CEO,  
12 the material provided to the Board effectively amounted to a memorandum prepared by Craig  
13 Tompkins, which memorandum claimed to summarize the reasons for the CEO search committee  
14 selecting Ellen. The stated reasons are reasons that no outside candidate could have met. The  
15 stated reasons are reasons that do not approximate, much less match, the criteria that the CEO  
16 search committee created and KF memorialized as the criteria to identify candidates and  
17 ultimately select a new President and CEO. The stated reasons for selecting Ellen were, as I heard  
18 them explained at the January board meeting, effectively distilled into a single consideration,  
19 namely, that Ellen and Margaret were controlling shareholders.

20           33.     Although I did not agree with the termination of me as President and CEO, and  
21 thought and maintain that it was improper, I had hoped that the CEO search committee would  
22 conduct a bona fide search and provide to the board for interview three qualified finalists, as had  
23 been agreed. I now know that not only did that not happen, but that the CEO search committee  
24 terminated the search, and effectively terminated KF, after meeting with Ellen as a declared  
25 candidate for the positions of President and CEO. Independent of the results of that process, which  
26 at the time I asserted did not serve the interests of the Company, that the process was manipulated  
27 and/or aborted in my view amounts to abdication of the board’s responsibilities.

28

1 **Actions to Secure Control and Use It to Pay those Who Have It**

2 34. In April 2015, I learned that Ellen and Margaret had exercised options they held  
3 personally to acquire RDI class B voting stock and that, with the advice and assistance of Craig  
4 Tompkins, a lawyer who was a consultant to the Company, they sought to exercise a supposed  
5 option in my father's name to acquire 100,000 shares of RDI Class B voting stock. The factual  
6 context for the effort to exercise the supposed 100,000 share option is that a majority of the voting  
7 stock controlled by my father was held in the name of his Trust, of which the three of us were  
8 trustees. Because of that, Ellen and Margaret could not properly vote that stock without my  
9 agreement. The stock that was held—not owned—in my father's estate, which was controlled by  
10 Ellen and Margaret as the executors, approximated the amount of RDI class B voting stock held  
11 by third parties, including Mark Cuban. The point of the effort to exercise the supposed 100,000  
12 share option was to ensure that Ellen and Margaret as executors would have more class B stock  
13 than third parties, including Mark Cuban.

14 35. There were a host of issues faced by the Company due to the request of Margaret  
15 and Ellen to exercise these supposed 100,000 share option. For example, one threshold question  
16 the Company would have needed to have answered was whether the option was legally effective.  
17 That question was not answered. Another threshold question was whether the supposed 100,000  
18 share option automatically had transferred to my father's trust upon his death. That also was not  
19 answered, to my knowledge. Possibly due to such unanswered questions, the compensation  
20 committee of the Board did not authorize the exercise of the supposed 100,000 share option in  
21 April. Margaret and Ellen therefore delayed to the 2015 annual shareholders meeting. After the  
22 executive committee (at Ellen's request) had set the annual shareholders meeting for November  
23 (meaning that as a board member I had no say on the subject) and the record date for it in October  
24 2015, Ellen had Kane and Adams as two of three members of the compensation committee  
25 authorize the request to exercise the supposed 100,000 share option, which was done in September  
26 shortly before a hearing in the Nevada probate case. I understand they did so so that the 100,000  
27 shares supposedly could be registered with the Company in the name of Ellen and Margaret as  
28 executors prior to the record date. The Company received no benefit from this, in fact suffered the

1 injury from replacing outstanding liquid class A stock with effectively illiquid class B stock and, I  
2 am informed and believe, from covering the tax obligation that belong to the person or entity  
3 exercising the option.

4 **Monetary Rewards to Margaret, Ellen and Adams**

5 36. In March 2016, the Board approved giving Margaret employment at the Company  
6 as the senior executive in charge of development of the Company's valuable New York real estate.  
7 That is a position Margaret had sought since my father passed. It is a position that I refused to give  
8 her, with the then support of all of the non-Cotter directors, because she was unqualified to hold it.  
9 She has no prior real estate development experience. What was discussed during my tenure as  
10 President and CEO was providing Margaret employment at the Company, so that she could have  
11 health benefits for herself and her two children, in a position in which she would continue to be  
12 responsible for the modest live theater operations and in which she could work in connection with  
13 any development of the Company's New York real estate, but not as the senior executive  
14 responsible for the development of the Company's New York real estate. In other words, Margaret  
15 could have a position, but she would not have a position that called upon her to do that which she  
16 had no experience doing and that which she was unqualified to do. That is the position Margaret  
17 was given in March. It is a highly compensated position that reflects its responsibilities. But  
18 Margaret has neither the prior experience nor the qualifications to hold it. Nevertheless, she is paid  
19 as if she does. Which, in my view, amounts to waste of Company monies. Additionally, the  
20 \$200,000 paid to Margaret, ostensibly for concessions Margaret previously was willing to make  
21 for free to become an employee of the Company, and reportedly for prior services rendered which  
22 the Board year after year had not chosen to pay her, is simply a gift, presumably because Margaret  
23 made less money in 2015 due to the Stomp debacle.

24 37. The compensation package provided to Ellen in March 2016, like the one provided  
25 to Margaret, is a departure from the Company's practices, in terms of the amount paid relative to  
26 the skill and experience of the person being paid. Ellen now is the CEO of what basically is the  
27 same company of which I was CEO, but she has a compensation package that could pay her twice  
28 to three times as much. No board member has ever explained to me why they think this is

1 appropriate, except to the extent they have alluded to the fact that they view Ellen and Margaret as  
2 controlling shareholders.

3 38. Adams in March 2016 was awarded what amounted to a \$50,000 bonus for being a  
4 director. As a director, I have not seen him provide extraordinary service that warrants a payment  
5 such as that, which is a material departure from past practices at the Company, in which extra cash  
6 payments to Directors typically were \$10,000. The sole notable exception was the \$75,000 paid  
7 to Tim Storey for his work as ombudsman, but the amount of time and effort he put in that role,  
8 including travel between New Zealand and Los Angeles, exceeded by a multiple the amount of  
9 time Adams has devoted to being a director in 2015 and 2016. I have no doubt that Adams was  
10 paid \$50,000 for what amounted to exemplary loyalty to Ellen.

11 **The Offer**

12 39. Ellen shared with the full Board, in or about early June, an offer by third parties to  
13 purchase all of the outstanding stock of RDI for cash consideration at a price of approximately  
14 33% above the prices of which RDI stock then traded (i.e., the "Offer"). The Board met on June 2,  
15 2016 regarding the Offer. At that time, Ellen proposed to have management prepare  
16 documentation regarding the value of the Company to be provided to Board members for their  
17 review and consideration in advance of another board meeting to consider the Offer. I objected,  
18 suggesting that an independent person or company be charged with preparing such documentation  
19 for review by the Board. My objection was noted and overruled, and the Board agreed to proceed  
20 in the manner Ellen suggested. Additionally, board members inquired what Ellen and Margaret as  
21 controlling shareholders wanted to do in response to the Offer.

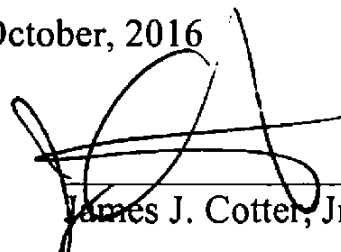
22 40. On or about June 7, 2016, in view of the Offer, I asked Ellen to provide me the  
23 Company's business plan. I understood that there was none and her failure to respond confirmed  
24 that.

25 41. The Board reconvened on June 23, 2016, regarding the Offer. No materials had  
26 been delivered to Board members prior to that meeting. At that meeting, Ellen made an oral  
27 presentation regarding the supposed value of the Company. I found it difficult to follow her oral  
28 presentation with no prior or contemporaneous documentation. I cannot imagine how outside

1 directors less familiar with the details of the Company followed it. Not one of the directors other  
2 than Ellen indicated that they had taken any action at all, whether reviewing Company  
3 documentation, speaking with experts such as counsel or bankers or doing anything else at all, to  
4 prepare to discuss the Offer. At that meeting, Ellen also indicated that she and Margaret would  
5 oppose any response other than rejecting the Offer, and added that it was their belief that the  
6 Company should proceed on its course as an independent company. No director asked questions  
7 about whether and how the Company could ever actualize the supposed value Ellen claimed it had.  
8 None asked questions about whether management was preparing a business plan to do so or, for  
9 that matter, simply preparing a long-term or strategic business plan. None exists. Instead, the non-  
10 Cotter directors simply ascertained that Ellen and Margaret wanted to reject the Offer and agreed  
11 that the price offered was inadequate. They all voted to proceed in the manner Ellen  
12 recommended.

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

15 DATED this 13<sup>th</sup> day of October, 2016

16   
17 \_\_\_\_\_  
18 James J. Cotter, Jr.

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21  
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28



# Exhibit 15

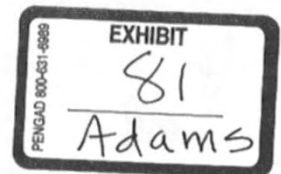
(filed under seal)

# Exhibit 16

---

**From:** Kane <elkane@san.rr.com>  
**Sent:** Monday, May 18, 2015 10:16 PM  
**To:** Guy Adams

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



GA00005500

RDI-A10147

# Exhibit 17

(filed under seal)

# Exhibit 18

(filed under seal)

# Exhibit 19

(filed under seal)

# Exhibit 20

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UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C. 20549

---

**SCHEDULE 13D**

Under the Securities Exchange Act of 1934

---

**Reading International, Inc.**

(Name of Issuer)

(Exact Name of Issuer as Specified in its Charter)

Class B Voting Common Stock  
(Title of Class of Securities)

755408200  
(CUSIP Number)

James J. Cotter Living Trust  
6100 Center Drive  
Suite 900  
Los Angeles, CA 90045  
(213) 235-2240  
(Name, Address and Telephone Number of Person  
Authorized to Receive Notices and Communications)

September 13, 2014  
(Date of Event which Requires Filing of this Statement)

If the filing person has previously filed a statement on Schedule 13G to report the acquisition that is the subject of this Schedule 13D, and is filing this schedule because of §§240.13d-1(e), 240.13d-1(f) or 240.13d-1(g), check the following box.

Note : Schedules filed in paper format shall include a signed original and five copies of the schedule, including all exhibits. See §240.13d-7 for other parties to whom copies are to be sent.

\* The remainder of this cover page shall be filled out for a reporting person's initial filing on this form with respect to the subject class of securities, and for any subsequent amendment containing information which would alter disclosures provided in a prior cover page.

The information required on the remainder of this cover page shall not be deemed to be "filed" for the purpose of Section 18 of the Securities Exchange Act of 1934, as amended (the "Act"), or otherwise subject to the liabilities of that section of the Act but shall be subject to all other provisions of the Act (however, see the Notes).



Americas 90516676 (25)

EC00002564

RDI-A10152



CUSIP No. 755408200

1.	Name of Reporting Person. I.R.S. Identification Nos. of above persons (entities only) <b>James J. Cotter Living Trust</b>
2.	Check the Appropriate Box if a Member of a Group (See Instructions) (a) <input checked="" type="checkbox"/> (1) (b) <input type="checkbox"/>
3.	SEC Use Only
4.	Source of Funds (See Instructions) OO
5.	Check if Disclosure of Legal Proceedings Is Required Pursuant to Items 2(d) or 2(e) <input type="checkbox"/>
6.	Citizenship or Place of Organization California
Number of Shares Beneficially Owned by Each Reporting Person With	7. Sole Voting Power 0
	8. Shared Voting Power 696,080
	9. Sole Dispositive Power 0
	10. Shared Dispositive Power 696,080
11.	Aggregate Amount Beneficially Owned by Each Reporting Person 696,080
12.	Check if the Aggregate Amount in Row (11) Excludes Certain Shares (See Instructions) <input type="checkbox"/>
13.	Percent of Class Represented by Amount in Row (11) 41.4% (2)
14.	Type of Reporting Person (See Instructions) OO – Trust

(1) The James J. Cotter Living Trust (the "Trust") is a member of a group for purposes of Schedule 13D. The other members of the group are the Estate of James J. Cotter, Sr. (the "Estate"), Ms. Margaret Cotter and Ms. Ellen Cotter. The Trust is separately filing this report on Schedule 13D from the other members of the group.

(2) Based upon 1,680,590 shares of Class B voting common stock, \$0.01 par value per share (the "Voting Stock"), outstanding, which consist of (i) 1,580,590 shares of the Voting Stock outstanding as of June 30, 2015, as reported on the Issuer's Form 10-Q filed with the Securities and Exchange Commission on August 10, 2015 and (ii) 100,000 shares of Voting Stock issued upon the exercise of the Estate of 100,000 options to acquire Voting Stock.

## ITEM 1. SECURITY AND ISSUER

The common stock of Reading International, Inc., a Nevada corporation (the "Issuer" or the "Company"), is divided into two classes, Class A non-voting common stock, \$0.01 par value per share (the "Non-Voting Stock"), and Class B voting common stock, \$0.01 par value per share (the "Voting Stock" and together with the Non-Voting Stock, the "Shares"). This Schedule 13D (this "Schedule 13D") is being filed by the James J. Cotter Living Trust (the "Trust" or the "Reporting Person") with respect to the Voting Stock by Ms. Ellen Cotter and Ms. Margaret Cotter, two of the three co-trustees of the Trust. The shares of the Voting Stock and the shares of the Non-Voting Stock are listed on NASDAQ.

The address of the principal executive offices of the Issuer is Reading International, Inc., 6100 Center Drive, Suite 900, Los Angeles, California 90045.

## ITEM 2. IDENTITY AND BACKGROUND

The Trust is a trust organized under the laws of California. During the lifetime of Mr. James J. Cotter, Sr., the Trust was revocable by Mr. James J. Cotter, Sr., but the Trust became irrevocable upon the death of Mr. James J. Cotter, Sr. on September 13, 2014. The Trust serves as a vehicle for the management and distribution of the assets of Mr. James J. Cotter, Sr. According to a purported Amendment to the Trust signed on June 19, 2014 ("2014 Amendment"), the children of Mr. James J. Cotter, Sr., including Ms. Ellen Cotter, Ms. Margaret Cotter and Mr. James J. Cotter, Jr., serve as co-trustees of the Trust and therefore may be deemed to share voting and investment power over the shares of the Voting Stock directly beneficially owned by the Trust. In litigation filed in the Superior Court of the State of California, County of Los Angeles, captioned *In re James J. Cotter Living Trust dated August 1, 2000* (Case No. BP159755) ("Trust Litigation"), Ms. Ellen Cotter and Ms. Margaret Cotter have challenged the validity of the 2014 Amendment; according to the pre-existing trust agreement, only Ms. Ellen Cotter and Ms. Margaret Cotter were named as co-trustees. The extent of any pecuniary interest in the Voting Stock owned by the Trust attributable to Ms. Margaret Cotter and Ms. Ellen Cotter as co-trustees of the Trust is dependent upon the outcome of the Trust Litigation. The Trust's principal business office address is c/o Reading International, Inc., 6100 Center Drive, Suite 900, Los Angeles, California 90045.

During the last five years, the Reporting Person has not been (a) convicted in a criminal proceeding (excluding traffic violations or similar misdemeanors) or (b) a party to any civil proceeding of a judicial or administrative body of competent jurisdiction and as a result of which such person was or is subject to a judgment, decree or final order enjoining future violations of, or prohibiting or mandating activities subject to, Federal or State securities laws, or finding any violation with respect to such laws.

## ITEM 3. SOURCE AND AMOUNT OF FUNDS OR OTHER CONSIDERATION

The Trust was established by a Declaration of Trust, dated August 1, 2000, as amended from time to time, and was initially funded with the shares of the Voting Stock owned by Mr. James J. Cotter, Sr. Mr. James J. Cotter, Sr. passed away on September 13, 2014, and the Trust became an irrevocable living trust.

## ITEM 4. PURPOSE OF TRANSACTION

The Reporting Person is deemed to have acquired beneficial ownership of 696,080 shares of the Voting Stock as a result of Mr. James J. Cotter, Sr.'s death, as described in Item 3 of this Schedule 13D. Such shares of the Voting Stock were deemed to have been owned by Mr. James J. Cotter, Sr. through the Trust during his lifetime and, upon Mr. James J. Cotter, Sr.'s death and the Trust's conversion into an irrevocable trust, are now deemed to be directly beneficially owned by the Trust, of which the children of Mr. James J. Cotter, Sr. serve as co-trustees. The shares of the Voting Stock directly beneficially owned by the Trust ultimately will be held in further trust for the benefit of the descendants of Mr. James J. Cotter, Sr., and such shares will be held for investment purposes and the co-trustees of the Trust are directed to retain such shares for as long as possible and are relieved from any obligation to diversify the Trust's investments.

On September 21, 2015, the Estate exercised vested stock options and received 100,000 shares of Voting Stock. On April 8, 2015, Ms. Margaret Cotter exercised vested stock options and received 12,500 shares of Non-Voting Stock. On April 17, 2015, Ms. Margaret Cotter exercised vested stock options and received 35,100 shares of Voting Stock. On April 16, 2015, Ms. Ellen Cotter exercised vested stock options and received 50,000 shares of

Voting Stock. Ms. Ellen Cotter and Ms. Margaret Cotter currently intend to hold any shares of Voting Stock directly beneficially owned by them for investment purposes.

Ms. Ellen Cotter and Ms. Margaret Cotter currently intend to vote all of the shares of Voting Stock that they control, including all of the shares of Voting Stock owned by them individually, by the Estate and by the Trust, at the Company's 2015 annual meeting of stockholders.

Each of Ms. Ellen Cotter and Ms. Margaret Cotter, as a co-trustee of the Trust, has been in the past and will be in the future involved on behalf of the Company in their respective capacities as senior executive officers of, directors of and/or consultants to the Company, as applicable, in reviewing and evaluating possible transactions involving the Company and identifying candidates to serve on the Company's board of directors, including transactions of the sort described in clauses (a) through (f) of Item 4 of Schedule 13D. In light of their responsibilities to the Company, Ms. Ellen Cotter and Ms. Margaret Cotter do not anticipate making any disclosures in connection with their participation in the transactions and activities of the Company separate and apart from relevant disclosures by the Company.

The Reporting Person intends to review its investment in the Issuer on a continuing basis and may from time to time and at any time in the future depending on various factors, including, without limitation, the requirements of the Trust, the Issuer's financial position and strategic direction, actions taken by the board of directors of the Issuer, price levels of the Shares, other investment opportunities available to the Reporting Person, conditions in the securities market and general economic and industry conditions, take such actions with respect to the investment in the Issuer as the Reporting Person deems appropriate, including: (i) acquiring additional Shares and/or other equity, debt, notes, other securities, or derivative or other instruments of the Issuer that are based upon or relate to the value of the Shares or the Issuer (collectively, "Securities") in the open market or otherwise; (ii) disposing of any or all of their Securities in the open market or otherwise; (iii) engaging in any hedging or similar transactions with respect to the Securities; or (iv) proposing or considering one or more of the actions described in subsections (a) through (j) of Item 4 of Schedule 13D.

#### ITEM 5. INTEREST IN SECURITIES OF THE ISSUER

As of the date hereof, the Trust directly beneficially owns 696,080 shares of the Voting Stock, representing 41.4% of outstanding Voting Stock of the Issuer. Because the children of Mr. James J. Cotter, Sr. serve as co-trustees, the children may be deemed to be indirect beneficial owners of 696,080 shares of the Voting Stock directly beneficially owned by the Trust. The extent of any pecuniary interest in the Voting Stock directly beneficially owned by the Trust attributable to Ms. Margaret Cotter and Ms. Ellen Cotter, as co-trustees, is dependent upon the outcome of the Trust Litigation. As of the date hereof, the Trust also directly beneficially owns 1,897,649 shares of the Non-Voting Stock, representing 8.7% of outstanding Non-Voting Stock of the Issuer.

Because Ms. Ellen Cotter and Ms. Margaret Cotter (two of the three children of Mr. James J. Cotter, Sr.) also serve as co-executors (the "Co-Executors") of the Estate, each of them may be deemed to share indirect beneficial ownership of 427,808 shares of the Voting Stock directly beneficially owned by the Estate, representing 25.5% of outstanding Voting Stock of the Issuer. All of the Voting Stock held by the Estate will be transferred to the Trust after a reasonable period of administration. As of the date hereof, the Estate also directly beneficially owns 326,800 shares of the Non-Voting Stock, representing 1.5% of outstanding Non-Voting Stock of the Issuer. As of the date hereof, the Co-Executors of the Estate disclaim beneficial ownership of the Voting Stock and Non-Voting Stock directly beneficially owned by the Estate, except to the extent of their respective pecuniary interest therein.

As of the date hereof, (1) Ms. Ellen Cotter also directly beneficially owns 50,000 shares of the Voting Stock, representing 3.0% of outstanding Voting Stock of the Issuer, and (2) Ms. Margaret Cotter directly beneficially owns 35,100 shares of the Voting Stock subject to stock options, representing 2.1% of outstanding Voting Stock of the Issuer. As of the date hereof, (1) Ms. Ellen Cotter also directly beneficially owns 819,765 shares of the Non-Voting Stock (which amount also includes currently exercisable options to acquire an additional 20,000 shares of the Non-Voting Stock), representing 3.8% of outstanding Non-Voting Stock of the Issuer, (2) Ms. Margaret Cotter also directly beneficially owns 804,173 shares of the Non-Voting Stock, representing 3.7% of outstanding Non-Voting Stock of the Issuer and (3) Mr. James J. Cotter, Jr. (the third child of Mr. James J. Cotter, Sr.) also directly beneficially owns 856,426 shares of the Non-Voting Stock, representing 4.0% of outstanding Non-Voting Stock of the Issuer, according to Mr. James Cotter, Jr.'s public filings.

Ms. Margaret Cotter also serves as a co-trustee of the James J. Cotter Grandchildren Trust, a trust for Mr. James J. Cotter, Sr.'s grandchildren, which holds 289,390 shares of the Non-Voting Stock, representing 1.3% of outstanding Non-Voting Stock of the Issuer. Ms. Ellen Cotter and Ms. Margaret Cotter also serve as co-trustees of the James J. Cotter Foundation, which holds 120,751 shares of the Non-Voting Stock, representing 0.5% of outstanding Non-Voting Stock of the Issuer.

The percentages reported in this Item 5 are based upon 21,707,938 shares of the Non-Voting Stock outstanding and 1,680,590 shares of the Voting Stock outstanding, which consist of (i) 1,580,590 shares of the Voting Stock outstanding as of June 30, 2015, as reported on the Issuer's Form 10-Q filed with the Securities and Exchange Commission on August 10, 2015 and (ii) 100,000 shares of Voting Stock issued upon the exercise of the Estate of 100,000 options to acquire Voting Stock.

(b) See rows 7-10 of the cover page for information regarding the power to vote or direct the vote and the power to dispose or direct the disposition of the shares by the Reporting Person. The Estate, Ms. Margaret Cotter and Ms. Ellen Cotter have separately filed a Schedule 13D on the date hereof.

(c) Except as described herein, none of the Reporting Person, the Estate, Ms. Margaret Cotter and Ms. Ellen Cotter have acquired, or disposed of, any shares of the Voting Stock of the Issuer during the past 60 days.

(d) No persons other than Ms. Margaret Cotter and Ms. Ellen Cotter, as co-trustees of the Trust, and the beneficiaries of the Trust have the right to receive, or the power to direct the receipt of dividends from, the proceeds from the sale of the shares to which this Schedule 13D relates.

(e) Not applicable.

#### **ITEM 6. CONTRACTS, ARRANGEMENTS, UNDERSTANDINGS OR RELATIONSHIPS WITH RESPECT TO SECURITIES OF THE ISSUER**

Except as described in Item 3, Item 4 and Item 5, the Reporting Person has no contracts, arrangements, understandings or relationships (legal or otherwise) with any person with respect to any voting securities of the Company, including, but not limited to, the transfer or voting of any of the securities, finder's fees, joint ventures, loan or option arrangements, puts or calls, guarantees of profits, division of profits or losses, or the giving or withholding of proxies.

#### **ITEM 7. MATERIALS TO BE FILED AS EXHIBITS**

None.

After reasonable inquiry and to the best of my knowledge and belief, the undersigned certifies that the information set forth in this statement is true, complete and correct.

Dated: October 8, 2015

**JAMES J. COTTER LIVING TRUST**

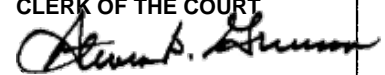
By: /s/ Margaret Cotter  
Name: Margaret Cotter  
Title: Co-Trustee

By: /s/ Ellen Cotter  
Name: Ellen Cotter  
Title: Co-Trustee

# Exhibit 21

(filed under seal)

RDI-A10159-10365  
Filed Under Seal



**MORRIS LAW GROUP**

411 E. BONNEVILLE AVE., STE. 360 · LAS VEGAS, NEVADA 89101  
702/474-9400 · FAX 702/474-9422

1 **OPPS**  
 2 MORRIS LAW GROUP  
 3 Steve Morris, Bar No. 1543  
 4 Akke Levin, Bar No. 9102  
 5 411 E. Bonneville Ave., Ste. 360  
 6 Las Vegas, Nevada 89101  
 7 Telephone: (702) 474-9400  
 8 Facsimile: (702) 474-9422  
 9 Email: sm@morrislawgroup.com  
 10 Email: al@morrislawgroup.com

11 Mark G. Krum, Bar No. 10913  
 12 YURKO, SALVESEN & REMZ, P.C.  
 13 One Washington Mall, 11th Floor  
 14 Boston, MA 02108

15 Attorneys for Plaintiff  
 16 James J. Cotter, Jr.

DISTRICT COURT  
CLARK COUNTY, NEVADA

15 JAMES J. COTTER, JR., derivatively on ) Case No. A-15-719860-B  
 16 behalf of Reading International, Inc., ) Dept. No. XI  
 17 )  
 18 Plaintiff, ) Coordinated with:  
 19 v. )  
 20 ) Case No. P-14-0824-42-E  
 21 MARGARET COTTER, ELLEN COTTER,) Dept. No. XI  
 22 GUY ADAMS, EDWARD KANE, )  
 23 DOUGLAS McEACHERN, WILLIAM ) Jointly Administered  
 24 GOULD, JUDY CODDING, MICHAEL )  
 25 WROTONIAK, ) **PLAINTIFF JAMES J. COTTER JR.'S**  
 26 ) **OPPOSITION TO READING**  
 27 Defendants. ) **INTERNATIONAL, INC.'S MOTION**  
 28 And ) **(FOR SUMMARY JUDGMENT)**  
 READING INTERNATIONAL, INC., a ) **BASED ON DEMAND FUTILITY**  
 Nevada corporation, )  
 Nominal Defendant. ) **Hearing Date: June 19, 2018**  
 )  
 ) **Hearing Time: 8:30 a.m.**



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IV. CONCLUSION.....25

1 Plaintiff James Cotter, Jr. respectfully submits this opposition to the renewed  
2 "Motion to Dismiss Pursuant to NRCP 12(B)(2)..." for failure to show demand futility  
3 (the "Renewed Demand Futility MSJ" or "Motion") filed by nominal defendant Reading  
4 International, Inc. ("RDI") for the benefit of the remaining individual defendants, Ellen  
5 Cotter, Margaret Cotter and Guy Adams (the "remaining defendants").

6 **I. INTRODUCTION**

7 RDI's Motion asks the Court to grant summary judgment and dismiss the  
8 remaining individual defendants, Ellen Cotter, Margaret Cotter and Guy Adams. The  
9 Motion is based on the premise that the Court's ruling that Plaintiff failed to raise  
10 disputed issues of fact regarding the disinterestedness of five directors with respect to the  
11 matters that were the subject of their motions for partial summary judgment obviates  
12 defendants' burden of proof in this (summary judgment) Motion and requires granting it.  
13 The Motion should be denied, including for the following reasons:

14 After motion practice directed to the pleadings, demand futility is to be  
15 determined by way of an evidentiary hearing. However, defendants previously did not  
16 request an evidentiary hearing and the Motion does not do so. The Motion therefore  
17 should be denied.

18 As a moving party seeking summary judgment and to deprive a derivative  
19 plaintiff of standing, RDI bears the burden of proving that there are no disputed issues of  
20 material fact with respect to the matters that are the subject of the two-pronged test used  
21 to determine demand futility. However, the Motion proffers *no evidence whatsoever* and  
22 therefore must be denied.

23 As a matter of law, demand futility is assessed based on the directors' ability to  
24 impartially assess the derivative action they are asked to approve or disapprove, not the  
25 matters which are the subject of the derivative action. The Court's prior rulings  
26 regarding interestedness with respect to particular matters raised in the motions for  
27 partial summary judgment therefore do not show, much less necessarily prove,  
28

1 independence of the dismissed directors for the purposes of the Renewed Demand  
2 Futility MSJ.

3       Moreover, the only evidence proffered, which was by Plaintiff, raises disputed  
4 questions of material fact which require denial of the Motion.

5       The first prong of the two-pronged demand futility analysis raises the question of  
6 whether the evidence creates a reasonable doubt that the directors are disinterested and  
7 independent for the purposes impartially assessing the derivative action. The only  
8 evidence proffered, by Plaintiff, shows that each of the five dismissed directors have  
9 prejudged the issue of whether this lawsuit should proceed or be dismissed, and  
10 otherwise shows that they are not disinterested and independent. Such evidence, at a  
11 minimum, raises disputed questions of material fact which require denial of the Motion.

12       The second, *alternative* prong of the two-pronged demand futility analysis raises  
13 the question of whether the complained-of conduct—which here includes matters that  
14 were the subject of motions for partial summary judgment as well as other matters (*e.g.*,  
15 the threat to terminate Plaintiff if he did not resolve his personal disputes with  
16 defendants Ellen and Margaret Cotter) that were not—gives rise to or constitutes  
17 breaches of fiduciary duty on the part of the directors in question. Here, as reflected by  
18 the Court's prior rulings denying most motions for partial summary judgment, Plaintiff  
19 at a minimum proffered evidence raising disputed issues of material fact about whether  
20 the challenged acts and omissions gave rise to or constituted breaches of fiduciary duty.

21       Independent of the foregoing, Responding Parties have not complied with the  
22 Court's May 2, 2018 orders and counsel for Plaintiff has not received, much less reviewed  
23 or had an opportunity to use, what the Court on May 2, 2018 ordered be provided. This  
24 evidence bears upon the issue of the independence of the directors the Motion simply  
25 assumes are independent, including by placing in a new light the prior reliance by these  
26 directors on advice from counsel representing nominal defendant Reading International,  
27 Inc. ("RDI" or the "Company".) As shown below, use of Company counsel by supposedly  
28 independent directors alone raises questions of fact regarding their independence. For

1 such reasons and for the reasons set out in the accompanying declaration of Mark G.  
2 Krum, Plaintiff is entitled to the relief pursuant to NRCP 56(f).

3 For the reasons described herein, and for the reasons and in view of the evidence  
4 included in Plaintiff's oppositions to defendants' motions for partial summary judgment  
5 and to Gould's motion for summary judgment, the Renewed Demand Futility MSJ  
6 should be denied.

## 7 II. STATEMENT OF FACTS AND PROCEDURAL HISTORY

### 8 A. Procedural History.

9 This action was commenced on June 15, 2015. Defendants moved to dismiss the  
10 original complaint and thereafter the first amended complaint on the grounds that  
11 Plaintiff had failed to adequately plead the futility of demand, among other grounds. *See*  
12 *Motion to Dismiss Complaint*, filed on 8/10/2015 at 7:6-14:8; *RDI's Joinder to Motion to*  
13 *Dismiss Complaint*, filed on 8/20/2015; *Motion to Dismiss First Amended Complaint*,  
14 filed on 11/12/2015 at 20:17-21:18; *Motion to Dismiss James Cotter Jr.'s First Amended*  
15 *Complaint*, filed on 11/24/2015. The Court rejected the demand futility arguments and  
16 the case proceeded. *See* *Notice of Entry of Order* filed on 10/20/2015, and *Court Minutes*  
17 dated 1/19/2016. In opposing Plaintiff's motion for leave to file a second amended  
18 complaint, defendants again argued demand futility. *See* *RDI's Opposition to James J.*  
19 *Cotter Jr.'s Motion to Amend Complaint*, filed on 8/8/2016 at 5:23-10:3; *Margaret Cotter,*  
20 *Ellen Cotter, Guy Adams, Edward Kane, Douglas McEachern, Judy Codding and*  
21 *Michael Wrotniak's Opposition to Plaintiff's Motion for Leave to Amend the First*  
22 *Amended Complaint*, filed on 8/8/2016 at 14:4-15:14. The Court rejected defendants'  
23 demand futility arguments. *See* *Notice of Entry of Order* filed on 9/2/2016.

24 Contrary to what the "Motion for Leave to File Dispositive Motion /Motion to  
25 Dismiss for Failure to Show Demand Futility" (the "Motion for Leave") asserted (at p. 6,  
26 n. 3 and at 10:19-20), at no time have defendants or any of them requested an evidentiary  
27 hearing on the subject of demand futility. Instead, they filed a motion requesting an  
28 evidentiary hearing on the subject of the adequacy of Plaintiff as a derivative plaintiff.

1 See Motion for Evidentiary Hearing Regarding James Cotter, Jr.'s Adequacy as a  
2 Derivative Plaintiff, filed on 10/12/2017. Understandably, the Motion does not repeat the  
3 false claim that defendants previously sought an evidentiary hearing with respect to  
4 demand futility, but instead is silent on the subject, tacitly acknowledging that they did  
5 not do so.

6 Pursuant to a scheduling order issued by the Court, discovery concluded on  
7 August 26, 2016 and summary judgment motions were required to be filed no later than  
8 September 23, 2016. See Scheduling Order and Order Setting Civil Jury Trial, Pre-Trial  
9 Conference and Calendar Call, filed on 11/10/2015. Defendants Ellen Cotter, Margaret  
10 Cotter, Guy Adams and other director defendants filed six separate motions for partial  
11 summary judgment, but filed no motion for summary judgment arguing the futility of  
12 demand. The Court denied all but one of those motions for partial summary judgment  
13 and granted Plaintiff's motion to reopen and/or finish discovery with respect to certain  
14 matters. See Court Minutes dated October 27, 2016. Individual director defendants  
15 including Ellen Cotter, Margaret Cotter and Guy Adams in November 2017 filed  
16 supplemental briefs and noticed their motions for partial summary judgment for hearing  
17 on December 11, 2017. See Defendants Margaret Cotter, Ellen Cotter, Guy Adams,  
18 Edward Kane, Douglas McEachern, William Gould, Judy Coddling, Michael Wrotniak's  
19 Supplement to Motions for Partial Summary Judgment Nos. 1, 2, 3, 5, and 6, filed on  
20 11/9/2017. One of those motions was granted and the balance were granted in part and  
21 denied in part. See Order Regarding Defendants' Motions for Partial Summary Judgment  
22 and Plaintiff's and Defendants' Motions In Limine, filed on 12/28/2017, at 4:8-5:15.

23 However, not until January 3, 2018 was a motion for summary judgment with  
24 respect to the futility of demand filed. See Motion to Dismiss for Failure to Show  
25 Demand Futility, filed on 1/3/2018. That motion, entitled "Motion to Dismiss for Failure  
26 to Show Demand Futility" (the "Original Demand Futility MSJ"), purported to be  
27 predicated on the Court's "determ[ination] that a majority of RDI's Directors were  
28

1 independent with respect to the decisions challenged by [Plaintiff]." Original Demand  
2 Futility MSJ at 8:8-9.

3 Like the Motion for Leave and the Original Demand Futility MSJ, the Motion  
4 posits that it was based upon the Court's December 11, 2017 rulings, which assumption  
5 the Court previously rejected. See Transcript of Proceedings for Hearing on Plaintiff's  
6 Motion for Continuance (Public), 1/8/18 at 13:19-25.

7 Like both the Motion for Leave and the Original Demand Futility MSJ, the Motion  
8 submits *no evidence whatsoever*, with respect to *either* matters relating to the first prong *or*  
9 the second prong of the two-pronged demand futility test applicable here.

10 \*\*\*\*\*

11 Defendants on January 4, 2018 also filed a separate motion for summary judgment  
12 based upon purported ratifications defendants claimed had occurred at a December 29,  
13 2017 RDI Board of Directors meeting. See The Remaining Director Defendants' Motion  
14 for Judgment as a Matter of Law, on file. In that motion for summary judgment,  
15 defendants argued that the same five directors they claim are independent for the  
16 purposes of their Renewed Demand Futility MSJ had "ratified" conduct the Court has  
17 found actionable, which conduct indisputably was not previously approved by a  
18 majority of independent directors.

19 The Court on January 8, 2018 had ordered defendants to provide Plaintiff  
20 discovery with respect to matters raised in those motions. Following argument on April  
21 30, 2018 on motions brought by Plaintiff regarding discovery, and following a May 2,  
22 2018 evidentiary hearing, the Court on May 2, 2018 ordered that RDI and former  
23 defendants and RDI directors William Gould, Judy Coddling, Michael Wrotniak, Doug  
24 McEachern and Ed Kane (the "Responding Parties") provide Plaintiff with additional  
25 discovery relating to "ratification," including the conduct of those five individuals  
26 leading up and related to the purported ratifications, among other things. See Transcript  
27 of Proceedings on Evidentiary Hearing, 5/2/2018 at 75:8-18.

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1                   **B. What The Evidence Shows Regarding the Futility of Demand.**

2                   **1. The Deposition Testimony of the Five Raises Reasonable Doubt about**  
3                   **Their Ability to Have Impartially Assessed this Derivative Action.**

4                   With respect to the question of whether they would have voted to allow this  
5 derivative action to proceed or to terminate it, each of the five testified that they had  
6 determined that it should not proceed. Gould testified that "[m]y vote would be to  
7 terminate, to terminate the derivative action." (*See* Ex. 5 to JJC 6/13/18 Opp.<sup>1</sup> at 547:17-19  
8 and 548:19-23). He acknowledged that the reason is that he was named as a defendant.  
9 (*See id.* at 548:24-549:4). Codding testified with respect to this derivative action as  
10 follows: "I don't think it should go forward." (Ex. 4 to JJC 6/13/18 Opp. at 234:12-17). She  
11 explained that she did not see the purpose of it or understand it. (*Id.*) McEachern  
12 likewise testified that he would "vote to dismiss the [derivative] lawsuit." (Ex. 7 to JJC  
13 6/13/18 Opp., at 526:14-21). He explained that he understood this derivative lawsuit to  
14 concern simply "reinstatement" of Plaintiff as CEO and damages from his termination,  
15 and McEachern does not believe there were any. (*Id.* at 526:22-527:2). Wrotniak's  
16 testimony was to the same effect; his answer to a question asking his view of this  
17 derivative lawsuit was that "the board had the right to terminate [Plaintiff] and made an  
18 informed decision and took it." (Ex. 10 to JJC 6/13/18 Opp. at 76:9-14.) In response to a  
19 question about how he would vote on whether this derivative lawsuit should proceed or  
20 be terminated, Kane answered "terminate it tomorrow, please, sir." (Ex. 11 to JJC 6/13/18  
21 Opp. at 690:6-9).

22                   **2. The Five Already Acted to Dismiss this Derivative Action**

23                   Promptly following their dismissal from this action, and as explained in Plaintiff's  
24 opposition to the "Ratification MSJ," the five hastily acted to cause this action to be  
25 dismissed as against the remaining defendants, approving "ratification" that Codding  
26 and Wrotniak acknowledged they did not understand, independent of what counsel of

27 \_\_\_\_\_  
28 <sup>1</sup> "JJC 6/13/18 Opp." refers to Plaintiff's Opposition to Ellen Cotter, Margaret Cotter and  
Guy Adams' Motion for Summary Judgment (Based on Ratification) filed on June 13,  
2018.

1 record for RDI told them. (Ex. 4 to JJC 6/13/18 Opp. at 232:19-233:1; Ex. 10 to JJC 6/13/18  
2 Opp. at 88:12-23.) Gould acknowledged at his deposition that "ratification" is a "litigation  
3 strategy" in this derivative action. (Ex. 5 to JJC 6/13/18 Opp. at 541:15-18). The foregoing  
4 events are among the following:

- 5 • In December 2017, before seeking and securing approval of "ratification" from the  
6 SIC on December 21 (described below), GT lawyers cleared the "ratification"  
7 "process" with Margaret Cotter, Ellen Cotter and Tompkins.<sup>2</sup> On December 13,  
8 2017, GT attorneys Mark Ferrario and Michael Bonner exchanged emails with  
9 Craig Tompkins, *which emails were copied to Ellen Cotter*, regarding the subject of a  
10 "Special Committee." (See Ex. 1 to JJC 6/8/18 Motion,<sup>3</sup> GT February 22, 2018  
11 privilege log at entry ending in 60907 and 60911; *see also* Ex. 3 to JJC 6/8/18 Motion,  
12 GT May 31, 2018 privilege log at entries ending in RDI 73538, 76569, 76783.) Those  
13 emails are described as "Communication[s] regarding Ratification process." (Ex. 1  
14 to JJC 6/8/18 Motion, February 22, 2018 Privilege log at entries ending in 60907 and  
15 60911.)
- 16 • Again on December 15, 2017, GT attorney Bonner exchanged emails with Craig  
17 Tompkins, *which emails also were copied to Ellen Cotter*, regarding "Misc." (See Ex. 1  
18 to JJC 6/8/18 Motion, at entries ending in 60823 and 60824.) Those emails are  
19 described as "Communication[s] regarding ratification process." (*Id.*)
- 20 • Also on December 15, 2017, GT attorney Ferrario discussed the subject of  
21 ratification with *Margaret Cotter* in person. (See Ex. 16 to JJC 6/8/18 Motion,  
22 Margaret Cotter's February 14, 2018 interrogatory responses at Response No. 2.)  
23

24  
25 <sup>2</sup>As to Craig Tompkins, RDI's General Counsel to whom GT attorneys report, Kane at  
26 deposition explained that the words he used in an email stating "according to [Ellen  
27 Cotter], Craig is also on the 'team[,]'" meant that Tompkins "was [with] Ellen and  
28 Margaret versus Jim." (See Ex. 14 to JJC 6/8/18 Motion, Kane 5/2/16 dep. tr. at 176:18-  
177:1; Ex. 17 to JJC 6/8/18 Motion (Dep. Ex. 105).)

<sup>3</sup> "JJC 6/8/18 Motion" refers to Plaintiff James J. Cotter Jr.'s Motion to Compel filed on June  
8, 2018.



1 (Margaret Cotter's interrogatory responses disclosed this communication  
2 regarding "ratification," but not others described herein.)  
3 • On December 21, 2015, GT attorney Bonner sent an email to Tompkins, copied to  
4 Ellen Cotter and GT attorney Ferrario, regarding "special committee/stockholder  
5 action alternatives." (See Ex. 1 to JJC 6/8/18 Motion, GT February 22, 2018  
6 privilege log at entry ending in 60533.) Ellen Cotter at her deposition  
7 acknowledged receiving this email. (See Ex. 9 to JJC 6/8/18 Motion, Ellen Cotter  
8 4/4/18 dep. tr. at 479:21-480:6.)  
9 • On December 21, 2017, GT attorneys Bonner and Ferrario discussed ratification  
10 telephonically with Special Independent Committee ("SIC") members Gould,  
11 Coddington and McEachern. (Ex. 5 to JJC 6/8/18 Motion, April 12, 2018  
12 correspondence from GT producing an almost entirely redacted version of  
13 December 21, 2017 Special Independent Committee meeting minutes); (Ex. 1 to JJC  
14 6/8/18 Motion, RDI Privilege Log at p. 2, 8, entries ending in 59829 and 60012,  
15 respectively);  
16 • According to Gould, the SIC on December 21, 2017 "formally" took action to  
17 approve and advance "ratification." (Ex. 5 to JJC 6/13/18 Opp. at 528:10-18).  
18 • On December 27, 2017, Bonner and other GT lawyers exchanged emails with  
19 Tompkins about one or more drafts of what came to be the December 27, 2017  
20 email sent by Gould, purportedly on behalf of the five dismissed directors (which  
21 email was marked as Dep. Ex. 527 and Ex. P-1 from the 5/2/18 evidentiary hearing;  
22 Ex. 6 to JJC 6/8/18 Motion). (See Ex. 15 to JJC 6/8/18 Motion, 5/2/18 hearing tr. at  
23 59:1-8.) Several of those emails had file names such as "For Bill Gould to sign.msg,"  
24 a subject of "For Bill Gould to sign," and a description of the emails as  
25 "Communication regarding draft letter re Special Board Meeting." (See Ex. 1 to JJC  
26 6/8/18 Motion, GT February 22, 2018 privilege log, entries ending in 57090, 59768,  
27 59899, 59911, 59912, 59959, 60790, 60802 and 60810.) The description of one email is  
28

- 1 slightly different, reading "Communication regarding board meeting, notice and  
2 ratification process." (*Id.*, entries ending in 60798.)
- 3 • Also on December 27, 2017, Tompkins and GT lawyers exchanged emails the file  
4 names of which included "Ratificat.zip?ratificat/For Bill Gould to sign," the  
5 subjects of which were "Ratification," and which are described as  
6 "Communication[s] regarding draft letter re Special Board Meeting" or  
7 "Communication[s] regarding Special Meeting Request." (*Id.*, entries ending in  
8 60404, 60408, 60412, 60424, 60428, 60450, 60464, 60843, 60846.)
  - 9 • Several of the December 27, 2017 emails with file names such as  
10 "Ratificat.zip?ratificat/Ratification" and "Ratification.msg" and the subject  
11 "Ratification" also *were copied to Ellen Cotter*. (*Id.*, entries ending in 60450, 60452,  
12 60464 and 60846; Ex. 2, 5/30/18 privilege log, entries ending in RDI 68619, 68626,  
13 70083, 70095.)
  - 14 • Another December 27, 2017 email from Tompkins to Bonner and Ferrario  
15 concerned "ratification" according to the email subject line, but the privilege log  
16 provides no description of the communication. (*Id.*, entry ending in 60843.) A  
17 subsequent entry also is an email regarding "ratification," and is from Bonner to  
18 Tompkins and Ferrario, *but also copied Ellen Cotter*. (*Id.*, entry ending in 60846.)
  - 19 • After receiving responses from Tompkins and possibly Ellen Cotter regarding the  
20 draft of what came to be Gould's December 27, 2017 email, GT attorney Bonner on  
21 December 27, 2017 sent Gould an email, with a copy to GT attorney Ferrario, the  
22 "re" line of which read "FW: for Bill Gould to sign," which RDI's privilege log also  
23 describes as "communication regarding draft letter re Special Board Meeting." (*Id.*,  
24 entries ending in entries ending in 59792 and 59937.) (Emphasis supplied.)
  - 25 • On December 27, 2017, Gould and his assistant transmitted the email bearing that  
26 date, which Gould testified that GT attorneys Bonner and Ferrario drafted. (Ex. 5  
27 to JJC 6/13/18 Opp. at 530:2–531:14).

- 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 NRC 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,<sup>4</sup> 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  
28

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.

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

26 Thus, the second prong of the two-pronged demand futility analysis requires the  
27 Court to review the challenged conduct to determine whether or not that conduct may  
28 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.

MORRIS LAW GROUP

By: /s/ Akke Levin  
Steve Morris, Bar No. 1543  
Akke Levin, Bar No. 9102  
411 E. Bonneville Ave., Ste. 360  
Las Vegas, Nevada 89101  
  
Mark G. Krum, Bar No. 10913  
YURKO, SALVESEN & REMZ, P.C.  
One Washington Mall, 11th Floor  
Boston, MA 02108  
  
Attorneys for Plaintiff  
James J. Cotter, Jr.

**MORRIS LAW GROUP**

411 E. BONNEVILLE AVE., STE. 360 · LAS VEGAS, NEVADA 89101  
702/474-9400 · FAX 702/474-9422

**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.

Stan Johnson  
Cohen-Johnson, LLC  
255 East Warm Springs Road, Ste. 110  
Las Vegas, Nevada 89119

Donald A. Lattin  
Carolyn K. Renner  
Maupin, Cox & LeGoy  
4785 Caughlin Parkway  
Reno, Nevada 89519

Christopher Tayback  
Marshall Searcy  
Quinn Emanuel Urquhart & Sullivan LLP  
865 South Figueroa Street, 10th Floor  
Los Angeles, CA

Ekwan E. Rhow  
Shoshana E. Barnett  
Bird, Marella, Boxer, Wolpert, Nessim  
Drooks, Lincenberg & Rhow, P.C.  
1875 Century Park East, 23rd Fl.  
Los Angeles, CA 90067-2561

Attorneys for /Defendants Edward Kane,  
Douglas McEachern, Judy Codding, and Michael  
Wrotniak

Attorneys for Defendant William  
Gould

Mark Ferrario  
Kara Hendricks  
Tami Cowden  
Greenberg Traurig, LLP  
3773 Howard Hughes Parkway  
Suite 400 North  
Las Vegas, NV 89169

Attorneys for Nominal Defendant Reading  
International, Inc.

DATED this 13<sup>th</sup> day of June, 2018.

By: Judy Estrada

**MORRIS LAW GROUP**

411 E. BONNEVILLE AVE., STE. 360 · LAS VEGAS, NEVADA 89101  
702/474-9400 · FAX 702/474-9422

1 **DECL**  
2 MORRIS LAW GROUP  
3 Steve Morris, Bar No. 1543  
4 Akke Levin, Bar No. 9102  
5 411 E. Bonneville Ave., Ste. 360  
6 Las Vegas, Nevada 89101  
7 Telephone: (702) 474-9400  
8 Facsimile: (702) 474-9422  
9 Email: sm@morrislawgroup.com  
10 Email: al@morrislawgroup.com

11 Mark G. Krum, Bar No. 10913  
12 Yurko, Salvesen & Remz, P.C.  
13 1 Washington Mall, 11th Floor  
14 Boston, MA 02108  
15 Telephone: (617) 723-6900  
16 Facsimile: (617) 723-6905  
17 Email: mkrum@bizlit.com

18 Attorneys for Plaintiff  
19 James J. Cotter, Jr.

DISTRICT COURT  
CLARK COUNTY, NEVADA

20 JAMES J. COTTER, JR., derivatively on ) Case No. A-15-719860-B  
21 behalf of Reading International, Inc., ) Dept. No. XI  
22 )  
23 Plaintiff, ) Coordinated with:  
24 v. )  
25 ) Case No. P-14-0824-42-E

26 MARGARET COTTER, ELLEN COTTER,) Dept. No. XI  
27 GUY ADAMS, EDWARD KANE, )  
28 DOUGLAS McEACHERN, WILLIAM ) Jointly Administered  
29 GOULD, JUDY CODDING, MICHAEL )  
30 WROTONIAK, )

Defendants.

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

And

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

**Hearing Date: June 19, 2018**

**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 to 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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411 E. BONNEVILLE AVE., STE. 360 · LAS VEGAS, NEVADA 89101  
702/474-9400 · FAX 702/474-9422

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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.

**MORRIS LAW GROUP**

411 E. BONNEVILLE AVE., STE. 360 · LAS VEGAS, NEVADA 89101  
702/474-9400 · FAX 702/474-9422

**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.

Stan Johnson  
Cohen-Johnson, LLC  
255 East Warm Springs Road, Ste. 110  
Las Vegas, Nevada 89119

Christopher Tayback  
Marshall Searcy  
Quinn Emanuel Urquhart & Sullivan LLP  
865 South Figueroa Street, 10th Floor  
Los Angeles, CA

Attorneys for /Defendants Edward Kane,  
Douglas McEachern, Judy Codding, and Michael  
Wrotniak

Mark Ferrario  
Kara Hendricks  
Tami Cowden  
Greenberg Traurig, LLP  
3773 Howard Hughes Parkway  
Suite 400 North  
Las Vegas, NV 89169

Attorneys for Nominal Defendant Reading  
International, Inc.

DATED this 13<sup>th</sup> day of June, 2018.

By:           /s/ JUDY ESTRADA          

Donald A. Lattin  
Carolyn K. Renner  
Maupin, Cox & LeGoy  
4785 Caughlin Parkway  
Reno, Nevada 89519

Ekwan E. Rhow  
Shoshana E. Bannett  
Bird, Marella, Boxer, Wolpert, Nessim,  
Drooks, Lincenberg & Rhow, P.C.  
1875 Century Park East, 23rd Fl.  
Los Angeles, CA 90067-2561

Attorneys for Defendant William  
Gould

**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

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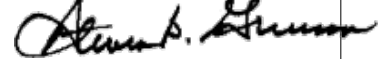
RDI-A10407

# Exhibit 3

(filed under seal)

RDI-A10409-10464  
Filed Under Seal

RDI-A10465-10507  
Filed Under Seal



1 **REPL**  
2 **COHENJOHNSONPARKEREDWARDS**

3 H. STAN JOHNSON, ESQ.  
4 Nevada Bar No. 00265  
5 sjohnson@cohenjohnson.com  
6 375 E. Warm Springs Rd., Suite 104  
7 Las Vegas, Nevada 89119  
8 Telephone: (702) 823-3500  
9 Facsimile: (702) 823-3400

6 **QUINN EMANUEL URQUHART & SULLIVAN, LLP**  
7 **CHRISTOPHER TAYBACK, ESQ.**

8 California Bar No. 145532, *pro hac vice*  
9 christayback@quinnemanuel.com  
10 **MARSHALL M. SEARCY, III, ESQ.**  
11 California Bar No. 169269, *pro hac vice*  
12 marshallsearcy@quinnemanuel.com  
13 865 South Figueroa Street, 10<sup>th</sup> Floor  
14 Los Angeles, CA 90017  
15 Telephone: (213) 443-3000

16 Attorneys for Defendants Margaret Cotter,  
17 Ellen Cotter, and Guy Adams

13 **EIGHTH JUDICIAL DISTRICT COURT**

14 **CLARK COUNTY, NEVADA**

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

19 Plaintiff,

20 v.

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

23 AND

24 READING INTERNATIONAL, INC., a Nevada  
25 corporation,

26 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 Codding,  
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 ARGUMENT<sup>1</sup>

##### 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 <sup>1</sup> 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.<sup>2</sup>

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  
23

---

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 <sup>2</sup> 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).

---

27 if approved by either a committee of independent directors, the shareholders, or the courts.” 663  
28 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* Helpern 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* Helpert 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 Coddling); 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 NRC 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

**COHENJOHNSONPARKEREDWARDS**

By: /s/ H. Stan Johnson  
H. STAN JOHNSON, ESQ.  
Nevada Bar No. 00265  
sjohnson@cohenjohnson.com  
255 East Warm Springs Road, Suite 100  
Las Vegas, Nevada 89119  
Telephone: (702) 823-3500  
Facsimile: (702) 823-3400

**QUINN EMANUEL URQUHART &  
SULLIVAN, LLP**  
CHRISTOPHER TAYBACK, ESQ.  
California Bar No. 145532, *pro hac vice*  
christayback@quinnemanuel.com  
MARSHALL M. SEARCY, III, ESQ.  
California Bar No. 169269, *pro hac vice*  
marshallsearcy@quinnemanuel.com  
865 South Figueroa Street, 10<sup>th</sup> Floor  
Los Angeles, CA 90017  
Telephone: (213) 443-3000

*Attorneys for Defendants Margaret Cotter, Ellen  
Cotter, and Guy Adams*

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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 WROTONIAK, 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

3 YURKO, SALVESEN, & REMZ, P.C.  
Attorneys for the Plaintiff  
4 One Washington Mall, 11th floor  
Boston, Massachusetts 02108  
5 BY: MARK G. KRUM, ESQ.  
617.723.6900  
6 mkrum@bizlit.com

7

8 QUINN EMANUEL URQUHART & SULLIVAN, LLP  
Attorneys for the Defendants and the Witness  
MARGARET COTTER, ELLEN COTTER, DOUGLAS  
9 McEACHERN, GUY ADAMS and EDWARD KANE  
865 South Figueroa Street  
10 Los Angeles, California 90017  
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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\* \* \*

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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, )

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

) Case No.  
) A-15-719860-B  
)  
) Coordinated with:  
)  
) Case No.  
) P-14-082942-E  
) Case No.  
) A-16-735305-B  
)  
) Volume II



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 )  
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 \_\_\_\_\_ )  
 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 Coddington, 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.

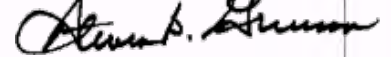
11 A. I spoke to Bill Gould, Doug McEachern, Ed  
12 Kane, Guy Adams, Mike Wrotniak, although he wasn't  
13 there either, but we spoke about what our  
14 understandings have been. I spoke with Jim Cotter,  
15 Jr., Margaret Cotter, and Ellen Cotter.

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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**EIGHTH JUDICIAL DISTRICT COURT  
CLARK COUNTY, NEVADA**

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

Plaintiff,

v.

MARGARET COTTER, *et al.*,  
Defendants.

AND

READING INTERNATIONAL, INC., a Nevada  
corporation,

Nominal Defendant.

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

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

Related and Coordinated Cases

**BUSINESS COURT**

**FINDINGS OF FACT AND  
CONCLUSIONS OF LAW**

Date of Hearing: June 19, 2018

This matter having come before the Court on June 19, 2018, Defendants Margaret Cotter, Ellen Cotter, and Guy Adams Motion for Summary Judgment and Defendant Reading International, Inc.'s Motion to Dismiss Pursuant to NRCP 12(b)(2), or in the alternative, NRCP 12(b)(5) for Lack of Standing, Plaintiff James J. Cotter, Jr. appearing by and through his counsel Mark G. Krum, Esq. of the law firm of Yurko, Salvese & Remz and Akke Levin, Esq. of the Morris Law Group; Defendants Margaret Cotter, Ellen Cotter, and Guy Adams by and through their counsel of record, Kevin M. Johnson, Esq. of the law firm of Cohen|Johnson|Parker|Edwards and Marshall M. Searcy, Esq. and Christopher Tayback, Esq. of the law firm of Quinn Emanuel Urquhart & Sullivan, LLP; Dismissed Defendant William Gould by and through Shoshana Bannett, Esq. of the law firm of Bird, Marella, Boxer, Wolpert, Nessim, Dooks, Lincenberg & Rhow, P.C.; and Defendant Reading International, Inc. appearing by and through Mark E. Ferrario, Esq. and Kara B. Hendricks, Esq. of the law firm of Greenberg

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1 Traurig, the Court having read and considered the pleadings filed by the parties; having  
2 considered the oral and written arguments of counsel, and with the intent of rendering a decision  
3 on all remaining claims before the Court, pursuant to NRCP 56; the Court makes the following  
4 findings of fact and conclusions of law:

5 **FINDINGS OF FACT**

6 1. On September 2, 2016, Plaintiff James J. Cotter, Jr. filed his Second Amended  
7 Complaint, which asserted derivative claims for breach of the duty of care (Count I), breach of  
8 the duty of loyalty (Count II), breach of the duty of disclosure (Count III), and aiding and  
9 abetting breaches of fiduciary duty (Count IV). Plaintiff asserted Counts I-III against Margaret  
10 Cotter, Ellen Cotter, Guy Adams, Edward Kane, Douglas McEachern, William Gould, Judy  
11 Coddling, and Michael Wrotniak (collectively, the "Original Defendants"), each of whom  
12 currently serve as directors of Reading International, Inc. ("RDI" or the "Company"). Plaintiff  
13 asserted Count IV against only Margaret and Ellen Cotter.

14 2. Nominal Defendant RDI is a Nevada corporation headquartered in Los Angeles,  
15 California, and publicly traded on the NASDAQ Stock Exchange.

16 3. Plaintiff James Cotter, Jr. ("Plaintiff") is an RDI stockholder and currently serves  
17 as a director on RDI's Board of Directors (the "Board"). On June 1, 2013, Plaintiff was  
18 appointed President of RDI. On August 7, 2014, Plaintiff was appointed CEO by RDI's Board.  
19 On June 12, 2015, the RDI Board voted to terminate Plaintiff as the Company's President and  
20 CEO a 5-2 vote. Directors Kane, McEachern, Adams, Ellen Cotter, and Margaret Cotter voted in  
21 favor of Plaintiff's termination, directors Gould and Timothy Storey (a non-party to this  
22 litigation) voted against terminating Plaintiff at that time, and Plaintiff abstained from the  
23 termination vote.

24 4. Storey left RDI's Board in October 2015. Coddling and Wrotniak joined RDI's  
25 Board as directors on October 5, 2015 and October 12, 2015, respectively.  
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1           5.     Ellen Cotter and Margaret Cotter, as two of three trustees of a trust established by  
2 their deceased father, James J. Cotter, Sr., and as co-executors of the estate of James J. Cotter  
3 Sr., control in excess of 50% of the class B voting stock of RDI.

4           6.     Following various motions for partial summary judgment brought by Kane,  
5 McEachern, Coddling, Adams, Ellen Cotter, Margaret Cotter, and Wrotniak, as well as a separate  
6 motion for summary judgment filed by Gould, the Court determined at a hearing held on  
7 December 11, 2017 that there were no genuine issues of fact related to the disinterestedness  
8 and/or independence of directors Kane, McEachern, Coddling, Wrotniak, and Gould (the  
9 “Dismissed Defendants” or the “Independent Directors”), and granted summary judgment in  
10 their favor. The Court determined that there were genuine issues of material fact related to the  
11 disinterestedness and/or independence of directors Guy Adams, Ellen Cotter, and Margaret  
12 Cotter (the “Remaining Defendants”), and denied summary judgment. The Court entered its  
13 summary judgment ruling pursuant to a written order dated December 28, 2017.  
14

15           7.     On January 4, 2018, the Court certified as final under NRCP 54(b) the portion of  
16 the Court's December 28, 2017 order granting summary judgment to the Dismissed Defendants  
17 with respect to all of Plaintiff's claims asserted against them.

18           8.     As a result of the Court's December 11, 2017 ruling and December 28, 2017  
19 order, all of the corporate actions alleged by Plaintiff in his Second Amended Complaint to be  
20 actionable breaches of fiduciary duty were approved by a majority of disinterested, independent  
21 directors, except for two: (1) Plaintiff's June 12, 2015 termination as President and CEO of RDI;  
22 and (2) the September 21, 2015 decision by directors Kane and Adams, as two of three members  
23 of RDI's Compensation and Stock Options Committee (the “Compensation Committee”), to  
24 approve the exercise of an option to purchase 100,000 shares of Class B voting stock in RDI held  
25 by the Estate of James J. Cotter, Sr.

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1           9.       On December 29, 2017, the RDI Board convened a special telephonic meeting for  
2       which the agenda included the proposed ratification of (1) Plaintiff's June 12, 2015 termination  
3       as President and CEO of RDI; and (2) the September 21, 2015 decision by directors Kane and  
4       Adams, as two of three members of RDI's Compensation Committee, to approve the use of Class  
5       A Stock to pay for the exercise of an option to purchase 100,000 shares of Class B voting stock  
6       in RDI held by the Estate of James J. Cotter, Sr. (collectively, the "Remaining Challenged  
7       Decisions"). In advance of this meeting, all members of the Board were provided with  
8       documents to review, which included copies of the minutes from the Board meetings held on  
9       May 21, 2015, May 29, 2015, and June 12, 2015, which concerned Plaintiff's termination, as  
10      well as other materials for consideration in connection with any ratification of the Remaining  
11      Challenged Decisions.  
12

13           10.      Lawyers from Greenberg Traurig, counsel for RDI, provided advice relating to  
14      ratification of the Remaining Challenged Decisions to members of the RDI Board. Among other  
15      things, Greenberg Traurig lawyers participated in (i) a December 21, 2017 meeting of the Special  
16      Independent Committee of RDI's Board (the "SIC"), the members of which were directors  
17      Gould, McEachern and Coddling, and (ii) the December 29, 2017 special meeting. Pursuant to  
18      NRS 78.138(2)(b), the Greenberg Traurig lawyers provided legal advice to the RDI Board  
19      relating to the scope of NRS 78.140, as well as legal advice regarding the Board's fiduciary  
20      duties under Nevada law, including the duties of due care and loyalty.

21           11.      Director Gould, the Company's Lead Independent Director, summarized the first  
22      issue for consideration: ratification of the actions taken by the Board relating to the termination  
23      of Plaintiff as President and CEO of RDI.

24           12.      In addition to their review of the Board materials provided, Independent Directors  
25      Coddling and Wrotniak, who were not members of the RDI Board at the time of Plaintiff's  
26      termination, stated that they were drawing on their "extensive knowledge about the Board's  
27  
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1 reasons for the termination of Mr. Cotter, Jr.,” including their observations of Plaintiff’s  
2 “behavior and demeanor in Board meetings” since each joined the Board over two years ago.

3 13. Director Codding expressed her view that Plaintiff “did not possess the  
4 knowledge, experience, ability, temperament or demeanor to be chief executive officer of the  
5 Company,” an opinion with which Mr. Wrotniak concurred.

6 14. Members of the Board also discussed the materials that had been provided to  
7 them in advance of the meeting.

8 15. Director McEachern then made a motion, seconded by Director Codding, as  
9 follows:

10 BE IT HEREBY RESOLVED that the Board ratifies the actions taken by  
11 the Company’s board members relating to the termination of James J.  
12 Cotter, Jr. as President and CEO as such actions are outlined in the  
13 minutes of the Board meetings held on May 21, 2015, May 29, 2015 and  
14 June 12, 2015.

15 16. After an opportunity for further discussion, the proposed resolution was adopted  
16 by a 5-1 vote. Directors Codding, Gould, Kane, McEachern, and Wrotniak voted in favor of the  
17 resolution, with Plaintiff casting the sole vote in opposition. The Remaining Defendants—Ellen  
18 Cotter, Margaret Cotter and Guy Adams—abstained from the vote.

19 17. Director Gould then introduced the second issue for consideration: ratification of  
20 the 2-0 September 21, 2015 decision by RDI’s Compensation Committee (with members Adams  
21 and Kane voting in favor) to permit the Estate of James J. Cotter, Sr. to use Class A non-voting  
22 stock as the means of payment (as opposed to cash) for the exercise of an option to purchase  
23 100,000 shares of Class B voting stock in RDI.

24 18. Counsel for RDI summarized the information regarding the matter considered by  
25 the Compensation Committee in 2015, including the fact that acceptance of stock was within the  
26 discretion of the Compensation Committee as Administrators of the 1999 Stock Option Plan  
27 under which the stock option was granted.  
28

1 19. Members of the Board then generally expressed their awareness of the  
2 information as well as their review of the Board materials and Compensation Committee  
3 minutes, and opened the floor up for discussion.

4 20. The Board noted, among other things, that the Compensation Committee had  
5 discretion under the 1999 Stock Option Plan to allow the use of Class A Shares to exercise  
6 options to acquire Class B Stock, that the Company was at the time buying in its Class A Shares  
7 under its stock repurchase plan, and that the market price of Class A shares has significantly  
8 increased since the date of the transaction.

9 21. A motion was made by Director McEachern and seconded by Director Wrotniak,  
10 as follows:

11 BE IT HEREBY RESOLVED that the Board ratifies the decision of the  
12 Compensation Committee of the Company, as outlined in the minutes of  
13 its September 21, 2015 meeting, to permit the Estate of James J. Cotter,  
14 Sr. to use Class A non-voting stock as the means of payment for the  
15 exercise of an option to purchase 100,000 shares of Class B voting stock  
16 of the Company.

17 22. The proposed resolution was then adopted by a 5-1 vote. Directors Coddington,  
18 Gould, Kane, McEachern, and Wrotniak voted in favor of the resolution, with Plaintiff casting  
19 the sole vote in opposition. The Remaining Defendants—Ellen Cotter, Margaret Cotter and Guy  
20 Adams—abstained from the vote.

21 23. The Board then moved, without objection, that its resolutions include the  
22 “authorization to take such other actions as may be necessary to accomplish the matters approved  
23 herein.”

24 24. After denying without prejudice the Remaining Defendants’ prior motion for  
25 summary judgment based on ratification of the Remaining Challenged Decisions at the  
26 December 29, 2017 RDI Board meeting, the Court in January 2018 allowed discovery with  
27 respect thereto. On May 2, 2018, following an evidentiary hearing, the Court granted a motion  
28 filed by Plaintiff to compel RDI and the Dismissed Defendants to produce and/or list on  
privilege logs all documents relating to (i) the December 21, 2017 meeting of the SIC, during  
which potential ratification of the Remaining Challenged Decisions was discussed; (ii) a

1 December 27, 2017 email sent by Gould on behalf of the Independent Directors requesting that  
2 ratification of the Remaining Challenged Decisions be added to the agenda for the December 29,  
3 2017 meeting; and (iii) the subject of ratification, not limited by time.

4 25. On June 1, 2018, the Remaining Defendants filed a motion seeking summary  
5 judgment in their favor (the "Motion for Summary Judgment"). The Remaining Defendants  
6 argued, *inter alia*, that the Remaining Challenged Decisions had been properly ratified by a  
7 majority of disinterested, independent directors pursuant to NRS 78.140.

8 26. Plaintiff filed a Motion to Compel and a Motion for Relief, in which he argued  
9 that RDI, the Dismissed Directors and the Remaining Defendants had not fully complied with  
10 the Court's May 2, 2018 rulings. Plaintiff's motions sought relief in the form of, *inter alia*, the  
11 provision of revised privilege logs, *in camera* inspection by the Court of certain documents, the  
12 production of additional documents, renewed depositions of certain previously-deposed  
13 individuals, delay of the scheduled July 9, 2018 trial on Plaintiff's claims against the Remaining  
14 Defendants, and the preclusion of any ratification defense by the Remaining Defendants.

15 27. On June 19, 2018, the Court held a hearing on Plaintiff's Motion to Compel and  
16 Motion for Relief, as well as the Remaining Defendants' Motion for Summary Judgment. The  
17 Court first heard argument on Plaintiff's motions, which is granted in part.<sup>1</sup> For purposes of any  
18 pretrial motions, as an evidentiary sanction, the Court infers and makes a rebuttable presumption  
19 that the documents at issue, if timely produced, would support Plaintiff's position that the  
20 ratification was a sham or fraudulent exercise.

21 28. The Court then heard argument on the Remaining Defendants' Motion for  
22 Summary Judgment. For the reasons outlined at the June 19, 2018 hearing and as set forth  
23 below, the Court grants the Remaining Defendants' Motion for Summary Judgment.

24 29. After consideration of the evidence presented by the parties in response the  
25 Remaining Defendants' Motion for Summary Judgment, the Court concludes that such evidence

26  
27 <sup>1</sup> The order related to those motions was filed on July 12, 2018.  
28

1 is sufficient to overcome the inferences and rebuttable presumption that the ratification process  
2 was a sham or fraudulent exercise.

3 30. The Court finds all of the requirements for the application of NRS 78.140, and the  
4 business judgment rule, are met with respect to the RDI Board's actions ratifying Plaintiff's  
5 termination and the approval of using Class A stock for the contested option exercise (the  
6 Remaining Challenged Decisions).

7 31. The RDI Board ratified each of the remaining challenged transactions, with the  
8 five affirmative votes being those directors whose disinterestedness and independence the Court  
9 had previously determined in its December 11, 2017 ruling and December 28, 2017 order.

10 32. The December 29, 2017 ratification vote was "in good faith," as required by NRS  
11 78.140(2)(a). The directors who were not present at the time these matters were initially  
12 decided—directors Wrotniak and Codding—reasonably informed themselves of the relative  
13 merits of the decisions, including by reviewing contemporaneous materials and drawing on their  
14 personal knowledge gleaned in their two years of Board service; corporate counsel was present  
15 and advised the entire Board of its fiduciary duties under Nevada law, as well as the history of  
16 each decision; no ratifying director had a personal stake in the derivative litigation brought by  
17 Plaintiff or in the particular transaction ratified; and discussion and debate occurred prior to the  
18 final votes, with all directors—including Plaintiff—afforded the chance to ask questions or make  
19 comments.

20 33. With respect to the Remaining Challenged Decisions and the RDI Board's  
21 subsequent ratification of them, all of the preconditions necessary for a "valid interested director  
22 transaction" under NRS 78.140(2)(a) are present.

23 34. The independent majority of RDI's Board who voted in favor of ratification of the  
24 Remaining Challenged Decisions on December 29, 2017 had a rational business purpose for  
25 doing so and exercised their good faith business judgment.

26 35. The Court also takes into consideration that RDI's Independent Directors engaged  
27 the Company's counsel, Greenberg Traurig, which provided legal advice regarding ratification.  
28 While it would have been better practice for the Independent Directors to have engaged

1 independent advisers to provide information to the Board and/or any special committees under  
2 NRS 78.138, it is uncontested that Greenberg Traurig is qualified and experienced.

3 36. Any finding of fact stated above that is more appropriately deemed a conclusion  
4 of law shall be deemed so.

#### 5 **CONCLUSIONS OF LAW**

6 37. The business judgment rule is a “presumption that in making a business decision  
7 the directors of a corporation acted on an informed basis, in good faith and in the honest belief  
8 that the action taken was in the best interests of the company.” *Shoen v. SAC Holding Corp.*, 122  
9 Nev. 621, 632, 137 P.3d 1171, 1178-79 (2006).

10 38. “The business judgment rule does not only protect individual directors from  
11 personal liability, rather, it expresses a sensible policy of judicial noninterference with business  
12 decisions and is designed to limit judicial involvement in business decision-making so long as a  
13 minimum level of care is exercised in arriving at the decision.” *Wynn Resorts, Ltd. v. Eighth  
14 Judicial Dist. Court in & for Cnty. of Clark*, 399 P.3d 334, 342 (Nev. 2017).

15 39. Nevada Revised Statute 78.140 provides that a “contract or other transaction is  
16 not void or voidable solely because” it is between a Nevada “corporation and [o]ne or more of its  
17 director or officers[,]” or because an interested or non-independent director “is present during a  
18 meeting of the board of directors or a committee thereof which authorizes or approves the  
19 contract or transaction,” or the votes of an interested director are counted for the purpose of  
20 authorizing or approving the contract or transaction, if “[t]he fact of the common directorship,  
21 office or financial interest is known to the board of directors or committee, and the directors or  
22 members of the committee, other than any common or interested directors or members of the  
23 committee, approve or ratify the contract or transaction in good faith.” NRS 78.140(2)(a).

24 40. Citing NRS 78.140, the Nevada Supreme Court has made clear that the business  
25 judgment rule applies “in the context of valid interested director action, or the valid exercise of  
26 business judgment by disinterested directors in light of their fiduciary duties.” *Shoen*. 122 Nev.  
27 at 636, 137 P.3d at 1181.  
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41. Nevada Revised Statute 78.138(b)(2) provides that, “[i]n exercising their respective powers, directors and officers may, and are entitled to, rely on information, opinions, reports, books of account or statements, including financial statements and other financial data, that are prepared or presented by . . . [c]ounsel . . . as to matters reasonably believed to be within the preparer’s or presenter’s professional or expert competence.” Here, the Court finds that RDI’s Board, including the Independent Directors, were entitled to rely upon Greenberg Traurig’s advice in making their decisions to ratify the Challenged Remaining Decisions.

42. The substance of the advice provided by Greenberg Traurig to RDI’s Board and its Independent Directors is protected by the attorney-client privilege and may not be considered by the Court. *See Wynn*, 399 P.3d at 341-42.

43. As the Remaining Challenged Decisions were ratified by a majority of independent, disinterested directors, the Court grants the Remaining Defendants’ Motion for Summary Judgment.

44. Any conclusion of law stated above that is more appropriately deemed a finding of fact shall be so deemed.

**ORDER**

Based upon the forgoing, the Court grants the Remaining Defendants’ Motion for Summary Judgment. Judgment is entered in favor of Defendants Ellen Cotter, Margaret Cotter, and Guy Adams on all claims asserted by Plaintiff.

Due to the fact that the Court’s ruling moots RDI’s Motion to Dismiss Pursuant to NRCPC 12(b)(2), or in the Alternative, NRCPC 12(b)(5) for Lack of Standing, the Court further denies without prejudice RDI’s Motion to Dismiss.

As here are pending issues remaining in the probate matter, the cases are ordered deconsolidated.

Dated this 8 day of August 2018.

  
Elizabeth Gonzalez, District Court Judge

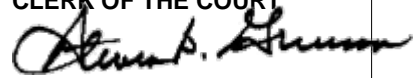


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**Certificate of Service**

I hereby certify that on or about the date filed, this document was Electronically Served to the Counsel on Record on the Clark County E-File Electronic Service List:  
James L Edwards, Esq. (Cohen Johnson, et al)  
Mark E Ferrario, Esq. (Greenberg Traurig)  
Steve Morris, Esq. (Morris Law Group)

  
Dan Kutinac



1 **COHEN|JOHNSON|PARKER|EDWARDS**  
H. STAN JOHNSON, ESQ.  
2 Nevada Bar No. 00265  
sjohnson@cohenjohnson.com  
3 375 E. Warm Springs Rd., Suite 104  
Las Vegas, Nevada 89119  
4 Telephone: (702) 823-3500  
Facsimile: (702) 823-3400  
5

6 **QUINN EMANUEL URQUHART & SULLIVAN, LLP**  
CHRISTOPHER TAYBACK, ESQ.  
California Bar No. 145532, *pro hac vice*  
7 christayback@quinnemanuel.com  
MARSHALL M. SEARCY, ESQ.  
8 California Bar No. 169269, *pro hac vice*  
marshallsearcy@quinnemanuel.com  
9 865 South Figueroa Street, 10<sup>th</sup> Floor  
Los Angeles, CA 90017  
10 Telephone: (213) 443-3000

11 Attorneys for Defendants Margaret Cotter,  
12 Ellen Cotter, and Guy Adams

13 **EIGHTH JUDICIAL DISTRICT COURT**

14 **CLARK COUNTY, NEVADA**

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

17 Plaintiff,

18 v.

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

21 AND

22 READING INTERNATIONAL, INC., a Nevada  
corporation,

23 Nominal Defendant.

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

**BUSINESS COURT**

**NOTICE OF ENTRY OF FINDINGS OF  
FACT AND CONCLUSIONS OF LAW**

1 NOTICE OF ENTRY OF FINDINGS OF FACT AND CONCLUSIONS OF LAW

2 NOTICE IS HEREBY GIVEN that the Findings of Fact and Conclusions of Law were  
3 entered in the above-captioned case on the 8<sup>th</sup> day of August, 2018, a copy of which is attached  
4 hereto.

5 Dated: August 16, 2018

6 **COHEN|JOHNSON|PARKER|EDWARDS**

7  
8 By: /s/ H. Stan Johnson

9 H. STAN JOHNSON, ESQ.

10 Nevada Bar No. 00265

11 sjohnson@cohenjohnson.com

12 375 East Warm Springs Road, Suite 104

13 Las Vegas, Nevada 89119

14 Telephone: (702) 823-3500

15 Facsimile: (702) 823-3400

16 **QUINN EMANUEL URQUHART &  
17 SULLIVAN, LLP**

18 CHRISTOPHER TAYBACK, ESQ.

19 California Bar No. 145532, *pro hac vice*

20 christayback@quinnemanuel.com

21 MARSHALL M. SEARCY, ESQ.

22 California Bar No. 169269, *pro hac vice*

23 marshallsearcy@quinnemanuel.com

24 865 South Figueroa Street, 10<sup>th</sup> Floor

25 Los Angeles, CA 90017

26 Telephone: (213) 443-3000

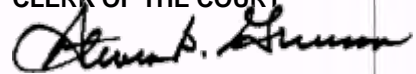
27 *Attorneys for Defendants Margaret Cotter, Ellen  
28 Cotter, and Guy Adams*

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**CERTIFICATE OF SERVICE**

I hereby certify that, on August 16, 2018, I caused a true and correct copy of the foregoing **NOTICE OF ENTRY OF FINDINGS OF FACT AND CONCLUSIONS OF LAW** 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



1 FFCL

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4

**EIGHTH JUDICIAL DISTRICT COURT**

5

**CLARK COUNTY, NEVADA**

6

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

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

8

Plaintiff,

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

9

v.

Related and Coordinated Cases

10

MARGARET COTTER, *et al.*,  
Defendants.

**BUSINESS COURT**

11

AND

**FINDINGS OF FACT AND  
CONCLUSIONS OF LAW**

12

READING INTERNATIONAL, INC., a Nevada  
corporation,

Date of Hearing: June 19, 2018

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Nominal Defendant.

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This matter having come before the Court on June 19, 2018, Defendants Margaret Cotter, Ellen Cotter, and Guy Adams Motion for Summary Judgment and Defendant Reading International, Inc.'s Motion to Dismiss Pursuant to NRCPC 12(b)(2), or in the alternative, NRCPC 12(b)(5) for Lack of Standing, Plaintiff James J. Cotter, Jr. appearing by and through his counsel Mark G. Krum, Esq. of the law firm of Yurko, Salvese & Remz and Akke Levin, Esq. of the Morris Law Group; Defendants Margaret Cotter, Ellen Cotter, and Guy Adams by and through their counsel of record, Kevin M. Johnson, Esq. of the law firm of Cohen|Johnson|Parker|Edwards and Marshall M. Searcy, Esq. and Christopher Tayback, Esq. of the law firm of Quinn Emanuel Urquhart & Sullivan, LLP; Dismissed Defendant William Gould by and through Shoshana Barnett, Esq. of the law firm of Bird, Marella, Boxer, Wolpert, Nessim, Dooks, Lincenberg & Rhow, P.C.; and Defendant Reading International, Inc. appearing by and through Mark E. Ferrario, Esq. and Kara B. Hendricks, Esq. of the law firm of Greenberg

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RDI-A10552 D//

1 Traurig, the Court having read and considered the pleadings filed by the parties; having  
2 considered the oral and written arguments of counsel, and with the intent of rendering a decision  
3 on all remaining claims before the Court, pursuant to NRC 56; the Court makes the following  
4 findings of fact and conclusions of law:

5 **FINDINGS OF FACT**

6 1. On September 2, 2016, Plaintiff James J. Cotter, Jr. filed his Second Amended  
7 Complaint, which asserted derivative claims for breach of the duty of care (Count I), breach of  
8 the duty of loyalty (Count II), breach of the duty of disclosure (Count III), and aiding and  
9 abetting breaches of fiduciary duty (Count IV). Plaintiff asserted Counts I-III against Margaret  
10 Cotter, Ellen Cotter, Guy Adams, Edward Kane, Douglas McEachern, William Gould, Judy  
11 Coddling, and Michael Wrotniak (collectively, the "Original Defendants"), each of whom  
12 currently serve as directors of Reading International, Inc. ("RDI" or the "Company"). Plaintiff  
13 asserted Count IV against only Margaret and Ellen Cotter.

14 2. Nominal Defendant RDI is a Nevada corporation headquartered in Los Angeles,  
15 California, and publicly traded on the NASDAQ Stock Exchange.

16 3. Plaintiff James Cotter, Jr. ("Plaintiff") is an RDI stockholder and currently serves  
17 as a director on RDI's Board of Directors (the "Board"). On June 1, 2013, Plaintiff was  
18 appointed President of RDI. On August 7, 2014, Plaintiff was appointed CEO by RDI's Board.  
19 On June 12, 2015, the RDI Board voted to terminate Plaintiff as the Company's President and  
20 CEO a 5-2 vote. Directors Kane, McEachern, Adams, Ellen Cotter, and Margaret Cotter voted in  
21 favor of Plaintiff's termination, directors Gould and Timothy Storey (a non-party to this  
22 litigation) voted against terminating Plaintiff at that time, and Plaintiff abstained from the  
23 termination vote.

24 4. Storey left RDI's Board in October 2015. Coddling and Wrotniak joined RDI's  
25 Board as directors on October 5, 2015 and October 12, 2015, respectively.

1           5.       Ellen Cotter and Margaret Cotter, as two of three trustees of a trust established by  
2 their deceased father, James J. Cotter, Sr., and as co-executors of the estate of James J. Cotter  
3 Sr., control in excess of 50% of the class B voting stock of RDI.

4           6.       Following various motions for partial summary judgment brought by Kane,  
5 McEachern, Coddling, Adams, Ellen Cotter, Margaret Cotter, and Wrotniak, as well as a separate  
6 motion for summary judgment filed by Gould, the Court determined at a hearing held on  
7 December 11, 2017 that there were no genuine issues of fact related to the disinterestedness  
8 and/or independence of directors Kane, McEachern, Coddling, Wrotniak, and Gould (the  
9 “Dismissed Defendants” or the “Independent Directors”), and granted summary judgment in  
10 their favor. The Court determined that there were genuine issues of material fact related to the  
11 disinterestedness and/or independence of directors Guy Adams, Ellen Cotter, and Margaret  
12 Cotter (the “Remaining Defendants”), and denied summary judgment. The Court entered its  
13 summary judgment ruling pursuant to a written order dated December 28, 2017.  
14

15           7.       On January 4, 2018, the Court certified as final under NRCP 54(b) the portion of  
16 the Court's December 28, 2017 order granting summary judgment to the Dismissed Defendants  
17 with respect to all of Plaintiff's claims asserted against them.

18           8.       As a result of the Court's December 11, 2017 ruling and December 28, 2017  
19 order, all of the corporate actions alleged by Plaintiff in his Second Amended Complaint to be  
20 actionable breaches of fiduciary duty were approved by a majority of disinterested, independent  
21 directors, except for two: (1) Plaintiff's June 12, 2015 termination as President and CEO of RDI;  
22 and (2) the September 21, 2015 decision by directors Kane and Adams, as two of three members  
23 of RDI's Compensation and Stock Options Committee (the “Compensation Committee”), to  
24 approve the exercise of an option to purchase 100,000 shares of Class B voting stock in RDI held  
25 by the Estate of James J. Cotter, Sr.

26 ...

27 ...

28

1           9.       On December 29, 2017, the RDI Board convened a special telephonic meeting for  
2 which the agenda included the proposed ratification of (1) Plaintiff's June 12, 2015 termination  
3 as President and CEO of RDI; and (2) the September 21, 2015 decision by directors Kane and  
4 Adams, as two of three members of RDI's Compensation Committee, to approve the use of Class  
5 A Stock to pay for the exercise of an option to purchase 100,000 shares of Class B voting stock  
6 in RDI held by the Estate of James J. Cotter, Sr. (collectively, the "Remaining Challenged  
7 Decisions"). In advance of this meeting, all members of the Board were provided with  
8 documents to review, which included copies of the minutes from the Board meetings held on  
9 May 21, 2015, May 29, 2015, and June 12, 2015, which concerned Plaintiff's termination, as  
10 well as other materials for consideration in connection with any ratification of the Remaining  
11 Challenged Decisions.  
12

13           10.       Lawyers from Greenberg Traurig, counsel for RDI, provided advice relating to  
14 ratification of the Remaining Challenged Decisions to members of the RDI Board. Among other  
15 things, Greenberg Traurig lawyers participated in (i) a December 21, 2017 meeting of the Special  
16 Independent Committee of RDI's Board (the "SIC"), the members of which were directors  
17 Gould, McEachern and Coddling, and (ii) the December 29, 2017 special meeting. Pursuant to  
18 NRS 78.138(2)(b), the Greenberg Traurig lawyers provided legal advice to the RDI Board  
19 relating to the scope of NRS 78.140, as well as legal advice regarding the Board's fiduciary  
20 duties under Nevada law, including the duties of due care and loyalty.

21           11.       Director Gould, the Company's Lead Independent Director, summarized the first  
22 issue for consideration: ratification of the actions taken by the Board relating to the termination  
23 of Plaintiff as President and CEO of RDI.

24           12.       In addition to their review of the Board materials provided, Independent Directors  
25 Coddling and Wrotniak, who were not members of the RDI Board at the time of Plaintiff's  
26 termination, stated that they were drawing on their "extensive knowledge about the Board's  
27  
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1 reasons for the termination of Mr. Cotter, Jr.," including their observations of Plaintiff's  
2 "behavior and demeanor in Board meetings" since each joined the Board over two years ago.

3 13. Director Coddling expressed her view that Plaintiff "did not possess the  
4 knowledge, experience, ability, temperament or demeanor to be chief executive officer of the  
5 Company," an opinion with which Mr. Wrotniak concurred.

6 14. Members of the Board also discussed the materials that had been provided to  
7 them in advance of the meeting.

8 15. Director McEachern then made a motion, seconded by Director Coddling, as  
9 follows:

10 BE IT HEREBY RESOLVED that the Board ratifies the actions taken by  
11 the Company's board members relating to the termination of James J.  
12 Cotter, Jr. as President and CEO as such actions are outlined in the  
13 minutes of the Board meetings held on May 21, 2015, May 29, 2015 and  
14 June 12, 2015.

15 16. After an opportunity for further discussion, the proposed resolution was adopted  
16 by a 5-1 vote. Directors Coddling, Gould, Kane, McEachern, and Wrotniak voted in favor of the  
17 resolution, with Plaintiff casting the sole vote in opposition. The Remaining Defendants—Ellen  
18 Cotter, Margaret Cotter and Guy Adams—abstained from the vote.

19 17. Director Gould then introduced the second issue for consideration: ratification of  
20 the 2-0 September 21, 2015 decision by RDI's Compensation Committee (with members Adams  
21 and Kane voting in favor) to permit the Estate of James J. Cotter, Sr. to use Class A non-voting  
22 stock as the means of payment (as opposed to cash) for the exercise of an option to purchase  
23 100,000 shares of Class B voting stock in RDI.

24 18. Counsel for RDI summarized the information regarding the matter considered by  
25 the Compensation Committee in 2015, including the fact that acceptance of stock was within the  
26 discretion of the Compensation Committee as Administrators of the 1999 Stock Option Plan  
27 under which the stock option was granted.  
28

1 19. Members of the Board then generally expressed their awareness of the  
2 information as well as their review of the Board materials and Compensation Committee  
3 minutes, and opened the floor up for discussion.

4 20. The Board noted, among other things, that the Compensation Committee had  
5 discretion under the 1999 Stock Option Plan to allow the use of Class A Shares to exercise  
6 options to acquire Class B Stock, that the Company was at the time buying in its Class A Shares  
7 under its stock repurchase plan, and that the market price of Class A shares has significantly  
8 increased since the date of the transaction.

9 21. A motion was made by Director McEachern and seconded by Director Wrotniak,  
10 as follows:

11 BE IT HEREBY RESOLVED that the Board ratifies the decision of the  
12 Compensation Committee of the Company, as outlined in the minutes of  
13 its September 21, 2015 meeting, to permit the Estate of James J. Cotter,  
14 Sr. to use Class A non-voting stock as the means of payment for the  
15 exercise of an option to purchase 100,000 shares of Class B voting stock  
16 of the Company.

17 22. The proposed resolution was then adopted by a 5-1 vote. Directors Coddling,  
18 Gould, Kane, McEachern, and Wrotniak voted in favor of the resolution, with Plaintiff casting  
19 the sole vote in opposition. The Remaining Defendants—Ellen Cotter, Margaret Cotter and Guy  
20 Adams—abstained from the vote.

21 23. The Board then moved, without objection, that its resolutions include the  
22 “authorization to take such other actions as may be necessary to accomplish the matters approved  
23 herein.”

24 24. After denying without prejudice the Remaining Defendants’ prior motion for  
25 summary judgment based on ratification of the Remaining Challenged Decisions at the  
26 December 29, 2017 RDI Board meeting, the Court in January 2018 allowed discovery with  
27 respect thereto. On May 2, 2018, following an evidentiary hearing, the Court granted a motion  
28 filed by Plaintiff to compel RDI and the Dismissed Defendants to produce and/or list on  
privilege logs all documents relating to (i) the December 21, 2017 meeting of the SIC, during  
which potential ratification of the Remaining Challenged Decisions was discussed; (ii) a

1 December 27, 2017 email sent by Gould on behalf of the Independent Directors requesting that  
2 ratification of the Remaining Challenged Decisions be added to the agenda for the December 29,  
3 2017 meeting; and (iii) the subject of ratification, not limited by time.

4 25. On June 1, 2018, the Remaining Defendants filed a motion seeking summary  
5 judgment in their favor (the "Motion for Summary Judgment"). The Remaining Defendants  
6 argued, *inter alia*, that the Remaining Challenged Decisions had been properly ratified by a  
7 majority of disinterested, independent directors pursuant to NRS 78.140.

8 26. Plaintiff filed a Motion to Compel and a Motion for Relief, in which he argued  
9 that RDI, the Dismissed Directors and the Remaining Defendants had not fully complied with  
10 the Court's May 2, 2018 rulings. Plaintiff's motions sought relief in the form of, *inter alia*, the  
11 provision of revised privilege logs, *in camera* inspection by the Court of certain documents, the  
12 production of additional documents, renewed depositions of certain previously-deposed  
13 individuals, delay of the scheduled July 9, 2018 trial on Plaintiff's claims against the Remaining  
14 Defendants, and the preclusion of any ratification defense by the Remaining Defendants.

15 27. On June 19, 2018, the Court held a hearing on Plaintiff's Motion to Compel and  
16 Motion for Relief, as well as the Remaining Defendants' Motion for Summary Judgment. The  
17 Court first heard argument on Plaintiff's motions, which is granted in part.<sup>1</sup> For purposes of any  
18 pretrial motions, as an evidentiary sanction, the Court infers and makes a rebuttable presumption  
19 that the documents at issue, if timely produced, would support Plaintiff's position that the  
20 ratification was a sham or fraudulent exercise.

21 28. The Court then heard argument on the Remaining Defendants' Motion for  
22 Summary Judgment. For the reasons outlined at the June 19, 2018 hearing and as set forth  
23 below, the Court grants the Remaining Defendants' Motion for Summary Judgment.

24 29. After consideration of the evidence presented by the parties in response the  
25 Remaining Defendants' Motion for Summary Judgment, the Court concludes that such evidence

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26  
27 <sup>1</sup> The order related to those motions was filed on July 12, 2018.

1 is sufficient to overcome the inferences and rebuttable presumption that the ratification process  
2 was a sham or fraudulent exercise.

3 30. The Court finds all of the requirements for the application of NRS 78.140, and the  
4 business judgment rule, are met with respect to the RDI Board's actions ratifying Plaintiff's  
5 termination and the approval of using Class A stock for the contested option exercise (the  
6 Remaining Challenged Decisions).

7 31. The RDI Board ratified each of the remaining challenged transactions, with the  
8 five affirmative votes being those directors whose disinterestedness and independence the Court  
9 had previously determined in its December 11, 2017 ruling and December 28, 2017 order.

10 32. The December 29, 2017 ratification vote was "in good faith," as required by NRS  
11 78.140(2)(a). The directors who were not present at the time these matters were initially  
12 decided—directors Wrotniak and Coddling—reasonably informed themselves of the relative  
13 merits of the decisions, including by reviewing contemporaneous materials and drawing on their  
14 personal knowledge gleaned in their two years of Board service; corporate counsel was present  
15 and advised the entire Board of its fiduciary duties under Nevada law, as well as the history of  
16 each decision; no ratifying director had a personal stake in the derivative litigation brought by  
17 Plaintiff or in the particular transaction ratified; and discussion and debate occurred prior to the  
18 final votes, with all directors—including Plaintiff—afforded the chance to ask questions or make  
19 comments.

20 33. With respect to the Remaining Challenged Decisions and the RDI Board's  
21 subsequent ratification of them, all of the preconditions necessary for a "valid interested director  
22 transaction" under NRS 78.140(2)(a) are present.

23 34. The independent majority of RDI's Board who voted in favor of ratification of the  
24 Remaining Challenged Decisions on December 29, 2017 had a rational business purpose for  
25 doing so and exercised their good faith business judgment.

26 35. The Court also takes into consideration that RDI's Independent Directors engaged  
27 the Company's counsel, Greenberg Traurig, which provided legal advice regarding ratification.  
28 While it would have been better practice for the Independent Directors to have engaged

1 independent advisers to provide information to the Board and/or any special committees under  
2 NRS 78.138, it is uncontested that Greenberg Traurig is qualified and experienced.

3 36. Any finding of fact stated above that is more appropriately deemed a conclusion  
4 of law shall be deemed so.

### 5 CONCLUSIONS OF LAW

6 37. The business judgment rule is a “presumption that in making a business decision  
7 the directors of a corporation acted on an informed basis, in good faith and in the honest belief  
8 that the action taken was in the best interests of the company.” *Shoen v. SAC Holding Corp.*, 122  
9 Nev. 621, 632, 137 P.3d 1171, 1178-79 (2006).

10 38. “The business judgment rule does not only protect individual directors from  
11 personal liability, rather, it expresses a sensible policy of judicial noninterference with business  
12 decisions and is designed to limit judicial involvement in business decision-making so long as a  
13 minimum level of care is exercised in arriving at the decision.” *Wynn Resorts, Ltd. v. Eighth  
14 Judicial Dist. Court in & for Cnty. of Clark*, 399 P.3d 334, 342 (Nev. 2017).

15 39. Nevada Revised Statute 78.140 provides that a “contract or other transaction is  
16 not void or voidable solely because” it is between a Nevada “corporation and [o]ne or more of its  
17 director or officers[,]” or because an interested or non-independent director “is present during a  
18 meeting of the board of directors or a committee thereof which authorizes or approves the  
19 contract or transaction,” or the votes of an interested director are counted for the purpose of  
20 authorizing or approving the contract or transaction, if “[t]he fact of the common directorship,  
21 office or financial interest is known to the board of directors or committee, and the directors or  
22 members of the committee, other than any common or interested directors or members of the  
23 committee, approve or ratify the contract or transaction in good faith.” NRS 78.140(2)(a).

24 40. Citing NRS 78.140, the Nevada Supreme Court has made clear that the business  
25 judgment rule applies “in the context of valid interested director action, or the valid exercise of  
26 business judgment by disinterested directors in light of their fiduciary duties.” *Shoen*, 122 Nev.  
27 at 636, 137 P.3d at 1181.

1 41. Nevada Revised Statute 78.138(b)(2) provides that, “[i]n exercising their  
2 respective powers, directors and officers may, and are entitled to, rely on information, opinions,  
3 reports, books of account or statements, including financial statements and other financial data,  
4 that are prepared or presented by . . . [c]ounsel . . . as to matters reasonably believed to be within  
5 the preparer’s or presenter’s professional or expert competence.” Here, the Court finds that  
6 RDI’s Board, including the Independent Directors, were entitled to rely upon Greenberg  
7 Traurig’s advice in making their decisions to ratify the Challenged Remaining Decisions.

8 42. The substance of the advice provided by Greenberg Traurig to RDI’s Board and  
9 its Independent Directors is protected by the attorney-client privilege and may not be considered  
10 by the Court. *See Wynn*, 399 P.3d at 341-42.

11 43. As the Remaining Challenged Decisions were ratified by a majority of  
12 independent, disinterested directors, the Court grants the Remaining Defendants’ Motion for  
13 Summary Judgment.

14 44. Any conclusion of law stated above that is more appropriately deemed a finding  
15 of fact shall be so deemed.

16 **ORDER**

17 Based upon the forgoing, the Court grants the Remaining Defendants’ Motion for  
18 Summary Judgment. Judgment is entered in favor of Defendants Ellen Cotter, Margaret Cotter,  
19 and Guy Adams on all claims asserted by Plaintiff.

20 Due to the fact that the Court’s ruling moots RDI’s Motion to Dismiss Pursuant to NRC  
21 12(b)(2), or in the Alternative, NRC 12(b)(5) for Lack of Standing, the Court further denies  
22 without prejudice RDI’s Motion to Dismiss.

23 As here are pending issues remaining in the probate matter, the cases are ordered  
24 deconsolidated.

25 Dated this 8 day of August 2018.

26   
27 Elizabeth Gonzalez, District Court Judge  
28

1 Certificate of Service

2 I hereby certify that on or about the date filed, this document was Electronically  
3 Served to the Counsel on Record on the Clark County E-File Electronic Service List:

4 James L Edwards, Esq. (Cohen Johnson, et al)

5 Mark E Ferrario, Esq. (Greenberg Traurig)

6 Steve Morris, Esq. (Morris Law Group)

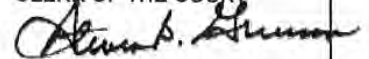
7  
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9 Dan Kutinac

# **EXHIBIT 7**



MORRIS LAW GROUP  
411 E. BONNEVILLE AVE., STE. 360 · LAS VEGAS, NEVADA 89101  
702/474-9400 · FAX 702/474-9422

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1 **JPTM**  
2 MORRIS LAW GROUP  
3 Steve Morris, Bar No. 1543  
4 Akke Levin, Bar No. 9102  
5 411 E. Bonneville Ave., Ste. 360  
6 Las Vegas, Nevada 89101  
7 Telephone: (702) 474-9400  
8 Facsimile: (702) 474-9422  
9 Email: sm@morrislawgroup.com  
10 Email: al@morrislawgroup.com

11 Mark G. Krum, Bar No. 10913  
12 Yurko, Salvesen & Remz, P.C.  
13 1 Washington Mall, 11th Floor  
14 Boston, MA 02108  
15 Telephone: (617) 723-6900  
16 Facsimile: (617) 723-6905  
17 Email: mkrum@bizlit.com

18 Attorneys for Plaintiff  
19 James J. Cotter, Jr.

20 **(See signature page for additional counsel.)**

21 DISTRICT COURT  
22 CLARK COUNTY, NEVADA

23 JAMES J. COTTER, JR., ) Case No. A-15-719860-B  
24 derivatively on behalf of Reading ) Dept. No. XI  
25 International, Inc., )  
26 Plaintiff, ) Coordinated with:  
27 v. )  
28 MARGARET COTTER, ELLEN ) Case No. P-14-0824-42-E  
COTTER, GUY ADAMS, ) Dept. No. XI  
EDWARD KANE, DOUGLAS ) Jointly Administered  
McEACHERN, WILLIAM )  
GOULD, JUDY CODDING, ) **JOINT PRETRIAL**  
MICHAEL WROTNIAK, ) **MEMORANDUM**  
Defendants. )  
And ) **DATE: 12/11/2017**  
READING INTERNATIONAL, ) **TIME: 10:30 a.m.**  
INC., a Nevada corporation, )  
Nominal Defendant. )

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

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

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

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

---

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

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

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

2. See also Section II. J.

**II. OTHER PRETRIAL MATTER**

**A. Statement of Facts**

**Plaintiff's Statement:**

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

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

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

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

11 **Director Defendants' Statement:**

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

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

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

**RDI's Statement:**

RDI joins in the Director Defendants' Statement above.

**B. List of Claims**

Plaintiffs' list of claims for relief is as follows:

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

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

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

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

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

- Threat to terminate insurance if JJC, Jr. does not resign as a director (SAC 4, 38) (EC, WG)
  - use of executive committee (SAC 8, 99) (EC, MC, Kane, Adams, WG)
  - manipulating board materials (SAC 9, 72, 100) (EC)
  - involuntary retirement of Storey (SAC 12, 127-130) (EC, MC, DM, GA, EK)
  - Board stacking/adding Coddington and Wrotniak (SAC 11, 121-134) (nominating committee) (Board - all others)
  - \$50,000 to Adams (SAC 153, 166) (EC) (all)
  - SEC filings (SAC 13, 101a.-i., 109 – 119, 135a.-k., 136a.-i., 147) (all)
- 8. Damages/injury (SAC 163 – 168)**
- a. diminution in value of RDI (163)
  - b. injury to reputation and goodwill (164)
  - c. impairment of shareholder rights due to SEC filings (165)
  - d. other monetary damages (166)
    - i. \$200,000 and job to MC
    - ii. \$50,000 to Adams
    - iii. duplicate cost of paying consultants to perform MC's position's responsibilities
    - iv. class A nonvoting stock accepted *in lieu* of cash consideration for exercise of 100,000 share option

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

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

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

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



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

**C. List of Affirmative Defenses**

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

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

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

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

**D. Claims or Defenses to be Abandoned**

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

**E. List of Exhibits**

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

**F. Agreements to Limit or Exclude Evidence**

None presently.

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**G. Witness List**

**1. Nonexpert Witnesses**

For Plaintiff:

1. James Cotter, Jr. (*plaintiff expects to present this witness*)  
c/o Mark Krum  
Yurko, Salvesen & Remz. P.C.  
One Washington Mall, 11<sup>th</sup> Floor  
Boston, MA 02108  
617.723.6900
  
2. Person Most Knowledgeable, Reading International, Inc. (*plaintiff may call this witness if the need arises*)  
c/o Mark E. Ferrario, Esq.  
Leslie S. Godfrey, Esq.  
Greenberg Traurig LLP  
3773 Howard Hughes Parkway, Suite 400 North  
Las Vegas, Nevada 89169  
702-792-3773
  
3. Margaret Cotter (*plaintiff expects to present this witness*)  
c/o Stan Johnson  
COHEN | JOHNSON | PARKER | EDWARDS  
375 E. Warm Springs Road, Ste. 104  
Las Vegas, NV 89119  
702-823-3500
  
4. Ellen Cotter (*plaintiff expects to present this witness*)  
c/o Stan Johnson  
COHEN | JOHNSON | PARKER | EDWARDS  
375 E. Warm Springs Road, Ste. 104  
Las Vegas, Nevada 89119  
702-823-3500
  
5. Douglas McEachern (*plaintiff expects to present this witness*)  
c/o Stan Johnson  
Cohen-Johnson, LLC  
255 East Warm Springs Road, Suite 100  
Las Vegas, Nevada 89119  
702-823-3500

**MORRIS LAW GROUP**

411 E. BONNEVILLE AVE., STE. 360 · LAS VEGAS, NEVADA 89101  
702/474-9400 · FAX 702/474-9422

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

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12. Eric Barr (*plaintiff may call this witness if the need arises*)  
9 Park Street, Brighton, VIC 3186  
Southern Melbourne, Australia  
011-61-488-096-616  
[ebarr@optushome.com.au](mailto:ebarr@optushome.com.au)
  
13. Al Villasenor (*plaintiff may call this witness if the need arises*)  
116 – 19th Street  
Manhattan Beach, California 90266  
Home- 310-546-5193  
Mobile- 310-897-0407
  
14. Lois Marie Kwasigroch (*plaintiff may call this witness if the need arises*)  
20100 Wells Drive  
Woodland Hills, California 91364  
(805) 447-6265
  
15. Harry P. Susman (*plaintiff may call this witness if the need arises*)  
Susman Godfrey, LLP  
1000 Louisiana, Suite 5100  
Houston, Texas 77002  
713-653-7875 (w)  
[hsusman@susmangodfrey.com](mailto:hsusman@susmangodfrey.com)
  
16. Fehmi Karahan (*plaintiff may call this witness if the need arises*)  
The Karahan Companies  
7200 Bishop Road, Suite 250  
Plano, Texas 75024  
214-473-9700 (w)  
[fehmi@karahaninc.com](mailto:fehmi@karahaninc.com)
  
17. Judy Coddling (*plaintiff expects to present this witness*)  
2266 Canyon Back Road  
Los Angeles, California 90049
  
18. Michael J. Wrotniak (*plaintiff expects to present this witness*)  
Aminco Resources USA  
World Headquarters  
81 Main Street Suite 110

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White Plains, NY 10601  
914 949 4400  
[M.Wrotniak@Aminco.biz](mailto:M.Wrotniak@Aminco.biz)

19. Gil Borok (*plaintiff may call this witness if the need arises*)  
3835 Hayvenhurst Avenue  
Encino, California 91436  
Mobile- 818-0528-3689  
Email- [gborok@me.com](mailto:gborok@me.com)

20. Robert Wagner (*plaintiff may call this witness if the need arises*)  
Korn Ferry  
1900 Avenue of the Stars Suite 2600  
Los Angeles, CA 90067  
310-226-2672 (w)  
[Robert.wagner@kornferry.com](mailto:Robert.wagner@kornferry.com)

21. John M. Genovese (*plaintiff may call this witness if the need arises*)  
7584 Coastal View Drive  
Los Angeles, CA 90045  
Mobile: 310-245-1760  
Email- [jmgenovese@yahoo.com](mailto:jmgenovese@yahoo.com)

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

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

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



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29. Whitney Tilson (*plaintiff expects to present this witness's testimony by means of a deposition*)  
c/o Alexander Robertson, IV  
Robertson & Associates, LLP  
32121 Lindero Canyon Road, Suite 200  
Westlake Village, CA 91361  
818.851.3850

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

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

For the Director Defendants:

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

And

Quinn Emanuel Urquhart & Sullivan, LLP  
865 S. Figueroa St., 10<sup>th</sup> Floor  
Los Angeles, 90017  
213-443-3000

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

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And  
Quinn Emanuel Urquhart & Sullivan, LLP  
865 S. Figueroa St., 10<sup>th</sup> Floor  
Los Angeles, 90017  
213-443-3000

3. James Cotter, Jr. (*the director defendants expect to present this witness*)  
c/o Mark Krum  
Yurko, Salvesen & Remz. P.C.  
One Washington Mall, 11<sup>th</sup> Floor  
Boston, MA 02108  
617-723-6900

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

And  
Quinn Emanuel Urquhart & Sullivan, LLP  
865 S. Figueroa St., 10<sup>th</sup> Floor  
Los Angeles, 90017  
213-443-3000

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

And  
Quinn Emanuel Urquhart & Sullivan, LLP  
865 S. Figueroa St., 10<sup>th</sup> Floor  
Los Angeles, 90017  
213-443-3000

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- 6. Douglas McEachern (*the director defendants expect to present this witness*)  
c/o COHEN | JOHNSON | PARKER | EDWARDS  
375 E. Warm Springs Road, Ste. 104  
Las Vegas, NV 89119  
702-823-3500  
And  
Quinn Emanuel Urquhart & Sullivan, LLP  
865 S. Figueroa St., 10<sup>th</sup> Floor  
Los Angeles, 90017  
213-443-3000
- 7. Michael Wrotniak (*the director defendants expect to present this witness*)  
c/o COHEN | JOHNSON | PARKER | EDWARDS  
375 E. Warm Springs Road, Ste. 104  
Las Vegas, NV 89119  
702-823-3500  
And  
Quinn Emanuel Urquhart & Sullivan, LLP  
865 S. Figueroa St., 10<sup>th</sup> Floor  
Los Angeles, 90017  
213-443-3000
- 8. Judy Codding (*the director defendants expect to present this witness*)  
c/o COHEN | JOHNSON | PARKER | EDWARDS  
375 E. Warm Springs Road, Ste. 104  
Las Vegas, NV 89119  
702-823-3500  
And  
Quinn Emanuel Urquhart & Sullivan, LLP  
865 S. Figueroa St., 10<sup>th</sup> Floor  
Los Angeles, 90017  
213-443-3000
- 9. Bill Gould (*the director defendants expect to present this witness*)  
c/o Maupin Cox & LeGoy  
4785 Caughlin Parkway  
Reno, NV 89519  
775-827-2000

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

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

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

11. Craig Tompkins (*the director defendants expect to present this witness*)  
c/o Greenberg Traurig, LLP  
3773 Howard Hughes Pkwy., Ste. 400N  
Las Vegas, NV 89169  
702-792-3773

12. Bob Smerling (*the director defendants expect to present this witness*)  
c/o Greenberg Traurig, LLP  
3773 Howard Hughes Pkwy., Ste. 400N  
Las Vegas, NV 89169  
702-792-3773

13. Terri Moore (*the director defendants expect to present this witness*)  
c/o Greenberg Traurig, LLP  
3773 Howard Hughes Pkwy., Ste. 400N  
Las Vegas, NV 89169  
702-792-3773

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- 14. Andrzej Matyczynski (*the director defendants expect to present this witness*)  
c/o Greenberg Traurig, LLP  
3773 Howard Hughes Pkwy., Ste. 400N  
Las Vegas, NV 89169  
702-792-3773
  
- 15. Linda Pham (*the director defendants expect to present this witness*)  
c/o Greenberg Traurig, LLP  
3773 Howard Hughes Pkwy., Ste. 400N  
Las Vegas, NV 89169  
702-792-3773
  
- 16. Debbie Watson (*the director defendants expect to present this witness*)  
c/o Greenberg Traurig, LLP  
3773 Howard Hughes Pkwy., Ste. 400N  
Las Vegas, NV 89169  
702-792-3773
  
- 17. Laura Batista (*the director defendants expect to present this witness*)  
c/o Greenberg Traurig, LLP  
3773 Howard Hughes Pkwy., Ste. 400N  
Las Vegas, NV 89169  
702-792-3773
  
- 18. David Roth (*the director defendants expect to present this witness*)  
Cecelia Packing Corp.  
24780 E South Ave.  
Orange Cove, CA 93646  
559-626-5000
  
- 19. Michael Buckley (*the director defendants may call this witness if the need arises*)  
Edifice Real Estate Partners  
545 8th Ave.  
New York, NY 10018  
347-826-4569

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20. Derek Alderton (*the director defendants expect to present this witness*)  
Highpoint Associates  
100 N Sepulveda Blvd.  
El Segundo, CA 90245  
310-616-0100

21. Mary Cotter (*the director defendants expect to present this witness*)  
2818 Dumfries Road  
Los Angeles, CA 90064  
310-559-0581

22. Jill Van (*the director defendants expect to present this witness*)  
Grant Thornton  
515 S. Flower St., 7th Floor  
Los Angeles, CA 90071  
213-627-1717

23. Whitney Tilson (*the director defendants may call this witness if the need arises*)  
c/o Alexander Robertson, IV  
Robertson & Associates, LLP  
32121 Lindero Canyon Road, Suite 200  
Westlake Village, CA 91361  
818-851-3850

24. Jon Glaser (*the director defendants may call this witness if the need arises*)  
c/o Alexander Robertson, IV  
Robertson & Associates, LLP  
32121 Lindero Canyon Road, Suite 200  
Westlake Village, CA 91361  
818-851-3850

For Reading International, Ind.:

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

2. Expert Witnesses and Summaries of Opinions

For Plaintiff:

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

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

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

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

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

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



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

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

For the Director Defendants:

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

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

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

**H. Issues of Law**

**Plaintiff's Position:**

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

**Director Defendants' Position:**

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

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

14 **RDI's Position:**

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

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

- 19 a. Defendants' Motion In Limine to Exclude Expert  
20 Testimony of Myron Steele, Tiago Duarte-Silva, Richard  
21 Spitz, Albert Nagy, and John Finnerty  
22 i. Granted in Part. With respect to Chief Justice  
23 Steele, he may testify only for the limited purpose  
24 of identifying what appropriate corporate  
25 governance activities would have been, including  
26 activities where directors are interested, including  
27 how to evaluate if directors are interested.  
28 Withdrawn as to Dr. Finnerty. Denied as to all

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

**J. Previous Orders on Motions for Partial Summary Judgment**

- a. Individual Defendants' Motion for Summary Judgment (No. 1.) Re: Plaintiff's Termination and Reinstatement Claims
  - i. Denied. See December 21, 2016 Order.
- b. Individual Defendants' Motion for Partial Summary Judgment (No. 2) Re: The Issue of Director Independence
  - i. Continued. See December 21, 2016 Order.
- c. Individual Defendants' Motion for Partial Summary Judgment (No. 3) On Plaintiff's Claims Related to the Purported Unsolicited Offer
  - i. Continued. See December 21, 2016 Order.
- d. Individual Defendants' Motion for Partial Summary Judgment (No. 4) On Plaintiff's Claims Related to the Executive Committee
  - i. Granted in Part. Granted as to the formation and revitalization (activation) of the Executive Committee; Denied as to the utilization of the committee. See December 21, 2016 Order.
- e. Individual Defendant's Motion for Partial Summary Judgment (No. 5) On Plaintiff's Claims Related to the Appointment of Ellen Cotter as CEO

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

**K. Estimated Length of Trial**

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

**L. Other Issues**

**Plaintiff's Statement:**

Plaintiff is unable to locate an answer from defendant Gould to the Second Amended Complaint, which the individual defendants should have answered long ago.

**Director Defendants' Statement:**

Plaintiff's list of claims above neither complies with the rules for pre-trial disclosures nor provides *any* clarity about what claims Plaintiff

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

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

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

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

10 **RDI's Position:**

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

15 MORRIS LAW GROUP

16  
17 By: /s/ AKKE LEVIN

18 Steve Morris, Bar No. 1543  
19 Akke Levin, Bar No. 9102  
20 411 E. Bonneville Ave., Ste. 360  
21 Las Vegas, Nevada 89101

22 Mark G. Krum, Bar No. 10913  
23 YURKO, SALVESEN & REMZ, P.C.  
24 1 Washington Mall, 11th Floor  
25 Boston, MA 02108

26 Attorneys for Plaintiff  
27 James J. Cotter, Jr.

28 H. Stan Johnson (00265)  
Cohen | Johnson | Parker | Edwards  
375 East Warm Springs Road, Suite 104  
Las Vegas, NV 89119  
702.823.3500

**MORRIS LAW GROUP**

411 E. BONNEVILLE AVE., STE. 360 • LAS VEGAS, NEVADA 89101  
702/474-9400 • FAX 702/474-9422

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Christopher Tayback (pro hac vice)  
Marshall Searcy (pro hac vice)  
Quinn Emanuel Urquhart & Sullivan LLP  
865 South Figueroa Street, 10th Floor  
Los Angeles, CA 90017  
213.443.3000

Attorneys for Defendants Margaret  
Cotter, Ellen Cotter, Douglas McEachern,  
Guy Adams, Edward Kane, Judy  
Coddling, and Michael Wrotniak

Mark Ferrario (No. 1625)  
Kara Hendricks (No. 7743)  
Tami Cowden (No. 8994)  
Greenberg Traurig, LLP  
3773 Howard Hughes Parkway  
Suite 400 North  
Las Vegas, NV 89169  
702.792.3773

Attorneys for Reading International, Inc.

Donald A. Lattin (NV SBN. 693)  
Carolyn K. Renner (NV SBN. 9164)  
Maupin, Cox & Legoy  
4785 Caughlin Parkway  
Reno, Nevada 89519  
775.827.2000

Ekwan E. Rhow (*admitted pro hac vice*)  
Shoshana E. Bannett (*admitted pro hac vice*)  
Bird, Marella, Boxer, Wolpert, Nessim,  
Drooks, Lincenberg & Rhow, P.C.  
1875 Century Park East, 23rd Floor  
Los Angeles, California 90067-2561  
310.201.2100



# **EXHIBIT 8**

4/23/2018

Gmail - Visitor at Cecelia



Laura Batista <laurabatista310@gmail.com>

## Visitor at Cecelia

**Karen Vargas** <kvargas@ceceliapack.com>  
To: Laura Batista <LauraBatista310@gmail.com>  
Cc: David Roth <droth@ceceliapack.com>

Mon, Apr 23, 2018 at 1:50 PM

Hi Laura,


Please see the attached incident description provided by our office staff Laura Lopez. We make every effort here to shield our employees from any personal complications. We do not allow visitors in the packing house for that very reason. We try to keep the drama down and make this a pleasant environment in which to work. I hope we do not receive any more visitors like this.

Thank you,  
Karen and David

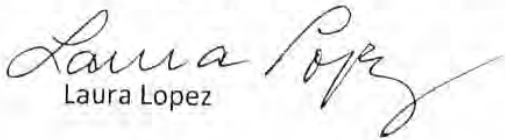
WHAT YOU DO TODAY CAN IMPROVE ALL YOUR TOMORROWS

*Karen C. Vargas, CPA*

Controller  
Cecelia Packing Corporation  
Phone: (559) 626-5000 Fax: (559) 626-7561  
kvargas@ceceliapack.com

 **Incident 3-29-18.pdf**  
59K

A gentlemen came in on 03/29/2018 looking for James Cotter Jr. I told him that Jim Jr. did not work out of this office. He started asking me if Jr. lived up at the front house. I told him no Jr. did not live at the house up front. He started asking for Jim Jr's address or what office he worked out of or if I had a phone number for him and I told him that I could not give out that kind of information. He was very persistent trying to get information about Jim Jr. which made me uncomfortable because I'm not to give out personal information. He did not look like any kind of professional person, just a scruffy off the street looking guy. He then asked me to mail a paper to Jim Jr and left.

  
Laura Lopez

# **EXHIBIT 9**

**Ellen Cotter**

---

**From:** amcotter1@aol.com  
**Sent:** Monday, April 23, 2018 12:06 PM  
**To:** Ellen Cotter  
**Subject:** Fwd: Letter 03/29/2018  
**Attachments:** Jim Jr. 03-29-2018.pdf; ATT00001.htm

Sent from my iPhone

Begin forwarded message:

**From:** David Roth <[droth@ceceliapack.com](mailto:droth@ceceliapack.com)>  
**Date:** April 17, 2018 at 2:22:56 PM EDT  
**To:** Margaret Cotter <[amcotter1@aol.com](mailto:amcotter1@aol.com)>  
**Subject:** Fwd: Letter 03/29/2018

David Roth

Cecelia Packing Corporation

559-626-5000

[www.ceceliapack.com](http://www.ceceliapack.com)

[www.facebook.com/dimplescitrus](https://www.facebook.com/dimplescitrus)

----- Forwarded message -----

**From:** David Roth <[droth@ceceliapack.com](mailto:droth@ceceliapack.com)>  
**Date:** Tue, Apr 17, 2018 at 11:20 AM  
**Subject:** Fwd: Letter 03/29/2018  
**To:** Margaret Cotter <[margaret.cotter@readingrdi.com](mailto:margaret.cotter@readingrdi.com)>

David Roth

Cecelia Packing Corporation

559-626-5000

[www.ceceliapack.com](http://www.ceceliapack.com)

[www.facebook.com/dimplescitrus](https://www.facebook.com/dimplescitrus)

----- Forwarded message -----

From: **David Roth** <[droth@ceceliapack.com](mailto:droth@ceceliapack.com)>  
Date: Tue, Apr 17, 2018 at 11:15 AM  
Subject: Fwd: Letter 03/29/2018  
To: Margaret Cotter <[margaret.cotter@readingrdi.com](mailto:margaret.cotter@readingrdi.com)>

David Roth

Cecelia Packing Corporation

559-626-5000

[www.ceceliapack.com](http://www.ceceliapack.com)

[www.facebook.com/dimplescitrus](https://www.facebook.com/dimplescitrus)

----- Forwarded message -----

From: **Laura Lopez** <[llopez@ceceliapack.com](mailto:llopez@ceceliapack.com)>  
Date: Thu, Mar 29, 2018 at 1:56 PM  
Subject: Letter 03/29/2018  
To: David Roth <[droth@ceceliapack.com](mailto:droth@ceceliapack.com)>

A gentleman came in today with a letter for Jim Jr. I told him that Jim Jr didn't work out of this office, so he asked me to email this sheet to him. Should I email it to him.

Thank you.

Laura Lopez

Cecelia Packing Corp

559-626-5000

[llopez@ceceliapack.com](mailto:llopez@ceceliapack.com)

## Urgent Message

---

March 28, 2018

Name: James Cotters

Account Number: 12690226

Concerning: Alix Partners LLP

Address:

24780 east South Avenue

Orange Cove, CA 93646

Dear Sir or Madam:

This is an URGENT message to inform you that your account is in a delinquent status. Since you have not responded to our continued efforts to reach you via telephone and mail, I have been forced to send your account for a field visit. I ask that upon receipt of this letter you immediately phone me so we can discuss this matter further.

Sincerely,

Account Manager:

Larry Klein

847-407-2666 Ext: 295

Manager:

Peter Gonzalez

847-407-2328 Ext:

---

*Urgent Message... Urgent Message...*

RDI-A09763



# **EXHIBIT 10**

**quinn emanuel** trial lawyers | los angeles

805 South Figueroa Street, 10th Floor, Los Angeles, California 90017-2543 | TEL (213) 443-3000 FAX (213) 443-3100

WRITERS DIRECT DIAL NO.  
**(213) 443-3152**

WRITER'S EMAIL ADDRESS  
**marshallsearcy@quinnemanuel.com**

May 7, 2018

**VIA E-MAIL**

Mark G. Krum, Esq.  
Yurko, Salvesen & Remz, P.C.  
One Washington Mall, 11th Floor  
Boston, MA 02108-2603  
mkrum@bizlit.com

Re: *James J. Cotter, Jr., v. Margaret Cotter, et al.*  
Case No. A-15-719860-B / P-14-082942-E

Dear Counsel:

We recently learned that a debt collector purporting to represent AlixPartners LLP, the consulting firm that employs Dr. John D. Finnerty (Plaintiff James J. Cotter, Jr.'s rebuttal damages expert), appeared at the offices of Cecelia Packing Corporation and demanded to see Plaintiff regarding unpaid bills to AlixPartners. Apparently, this field visit was triggered by the fact that Plaintiff's account was in a delinquent status and Plaintiff had not responded to earlier debt collection inquiries made via telephone and mail.

In the parties' December 8, 2017 Joint Pretrial Memorandum, submitted on the eve of the initial trial date for this matter, Plaintiff represented to the Court and Defendants that each of his disclosed experts—including Dr. Finnerty—would appear at trial and “will offer opinion testimony.”, (See 12/8/17 J. Pretrial Mem. at 24-25.) Plaintiff made similar representations to the Court and Defendants regarding the anticipated appearances of each of his experts at the final pretrial conference held on January 5, 2018. (See 1/5/18 Hr'g Tr. at 28:4-32:10.)

The recent visit from the AlixPartners representative calls into question the continued accuracy of Plaintiff's previous representations regarding the anticipated appearances of his experts. As you are aware, Nevada Rule of Civil Procedure 26(e)(1) creates a duty “to supplement at appropriate intervals,” a party's initial disclosures, disclosures regarding expert testimony, and pretrial disclosures whenever the previously-disclosed information “is incomplete or incorrect and if the additional or corrective information has not otherwise been made known to the other

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RDI-A09765

parties during the discovery process or in writing.,. In light of Plaintiff's obligations under NRCP 26(e)(1), and given the parties' need to file another Joint Pretrial Memorandum in less than two weeks, we ask that Plaintiff confirm by Wednesday, May 9, 2018 which of Plaintiff's disclosed experts will appear at the forthcoming trial.

In addition, in each of the deposition subpoenas (duces tecum) that they served upon Plaintiff and his experts, Defendants sought the production of all communications between the expert "and Plaintiff, Plaintiff's counsel, or anyone acting on their behalf, relating to this litigation., and "documents sufficient to identify the total fees paid to [the expert] for any work [the expert] performed on behalf of Plaintiff or Plaintiff's counsel during the course of this litigation.,. (*See, e.g.,* Dep. Subpoena (Duces Tecum) to John Finnerty, Req. Nos. 2, 6.) Information pertaining to the expert fees incurred by Plaintiff and his payment—or nonpayment—thereof is captured by these requests. Such information should be produced to Defendants, as it is not privileged. *See Subpoenaed Witness v. United States*, 171 F.3d 511, 513 (7th Cir. 1999) ("[I]nformation regarding . . . fees is not protected by the attorney-client privilege because the payment of fees is not a confidential communication.,); *Ralls v. United States*, 52 F.3d 223, 225 (9th Cir. 1995) (the attorney-client privilege "applies only to confidential professional communications, and the payment of fees is usually incidental to the attorney-client relationship.,); *Vingelli v. United States*, 992 F.2d 449, 452 (2d Cir. 1993) ("fee arrangements do not fall within the attorney-client privilege because they are not the kinds of disclosures that would not have been made absent the privilege and their disclosure does not incapacitate the attorney from rendering legal advice.,); *Washington v. Shepard*, 52 Wash. App. 707, 711, 763 P.2d 1232, 1234 (Wash. Ct. App. 1988) ("the amount, source, and manner of payment of the fee [must] be disclosed.,).

Accordingly, we further request that Plaintiff confirm by Wednesday, May 9, 2018 that, pursuant to Defendants' ongoing document requests and Plaintiff's obligation to timely supplement his document production, he will produce forthwith all correspondence with his expert witnesses regarding their fees and his payment (or nonpayment) of any amounts he owes or has owed resulting from expert services in this matter. Should Plaintiff fail to provide the requested assurances or fail to agree to produce all responsive information regarding his (non)payments to his experts, Defendants will be compelled to bring a motion before the Court. Defendants are available to meet and confer on Wednesday morning if any of this is unclear.

Very truly yours,



Marshall M. Searcy, III

cc: All Counsel

**David Armillei**

---

**From:** Marshall Searcy  
**Sent:** Wednesday, May 09, 2018 4:21 PM  
**To:** 'Mark G. Krum'; 'hendricksk@gtlaw.com'; 'ferrariom@gtlaw.com'  
**Cc:** 'sm@morrislawgroup.com'; 'al@morrislawgroup.com'; 'Sanford F. Remz'; 'Noemi A. Kawamoto'; Noah Helpern; 'sbannett@birdmarella.com'; 'sheffieldm@gtlaw.com'; Cotter Team  
**Subject:** RE: Cotter/RDI

Mark, I have not received a response to my letter from Monday. In light of the urgency of this matter, we again ask that you confer with us tomorrow morning or else we will be obligated to seek relief from the Court.

**From:** Marshall Searcy  
**Sent:** Monday, May 07, 2018 9:23 PM  
**To:** Mark G. Krum <mkrum@bizlit.com>; hendricksk@gtlaw.com; ferrariom@gtlaw.com  
**Cc:** sm@morrislawgroup.com; al@morrislawgroup.com; Sanford F. Remz <sremz@bizlit.com>; Noemi A. Kawamoto <nkawamoto@bizlit.com>; Noah Helpern <noahhelpern@quinnemanuel.com>; sbannett@birdmarella.com; sheffieldm@gtlaw.com; Cotter Team <CotterTeam@quinnemanuel.com>  
**Subject:** Cotter/RDI

Mark,  
Please see the attached letter.

## **EXHIBIT 12**

**David Armillei**

---

**From:** Mark G. Krum <mkrum@bizlit.com>  
**Sent:** Thursday, May 10, 2018 11:59 AM  
**To:** Marshall Searcy; 'hendricksk@gtlaw.com'; 'ferrariom@gtlaw.com'  
**Cc:** 'sm@morrislawgroup.com'; 'al@morrislawgroup.com'; Sanford F. Remz; Noemi A. Kawamoto; Noah Helpen; 'sbannett@birdmarella.com'; 'sheffieldm@gtlaw.com'; Cotter Team  
**Subject:** RE: Cotter/RDI

Marshall,

I have your letter transmitted at approximately 9:30 p.m. on Monday night, which demands a response within less than 48 hours. As a pretext for demanding a response in less than 48 hours, you claim to have “recently” learned that AlixPartners, who employs Dr. John D. Finnerty, an expert designated by plaintiff, apparently has a fee dispute with plaintiff. When I did not meet your less than 48 hour deadline, you sent an email last night at 7:22 p.m. eastern demanding that I be available this morning to speak because the matter is “urgent.”

That is utter fiction. Counsel for defendants have known about this matter for months, as evidenced by the fact that Mr. Ferrario raised it months ago. He likewise referred to it in court last week when he opted to obfuscate and accuse rather than speak to the failure of defense counsel to produce and/or log certain documents regarding the “ratifications” upon which they seek to have the case dismissed. Simply put, there is nothing “urgent” about the matter raised in your letter of Monday, which matter you delayed raising by months.

For those reasons and others, your letter is recognized for what it is, namely, a pretext to create a dispute you intend to use to raise with the Court in an effort to prejudice plaintiff and deflect attention from the machinations of defense counsel that resulted in the rulings of May 2. This squarely is in the category of Mr. Ferrario’s unfounded and shameless implications last week to the effect that what transpired in January precipitating a trial continuance was a fiction perpetrated by plaintiff. We have no obligation to acquiesce to, much less facilitate, additional misuse of the litigation process by defense counsel.

As to Dr. Finnerty, you may and should understand that we do not intend to call him as a witness at trial presently anticipated to occur in July. That advice moots both the claimed “urgency” and any reason to meet and confer. If you maintain something remains, kindly advise what it is and we can speak at a mutually convenient time. For me, the first such time will be Monday, when I can be available until 5 p.m. eastern.

Mark

Mark G. Krum, Esq.  
YURKO, SALVESEN & REMZ, P.C.  
One Washington Mall, 11<sup>th</sup> Floor  
Boston, Massachusetts 02108  
T: (617) 723 6900  
F: (617) 723 6905  
<http://www.bizlit.com>

**YURKO, SALVESEN & REMZ, P.C.**

**From:** Marshall Searcy [mailto:marshallsearcy@quinnemanuel.com]  
**Sent:** Wednesday, May 9, 2018 7:21 PM  
**To:** Mark G. Krum <mkrum@bizlit.com>; 'hendricksk@gtlaw.com' <hendricksk@gtlaw.com>; 'ferrariom@gtlaw.com' <ferrariom@gtlaw.com>  
**Cc:** 'sm@morrislawgroup.com' <sm@morrislawgroup.com>; 'al@morrislawgroup.com' <al@morrislawgroup.com>; Sanford F. Remz <sremz@bizlit.com>; Noemi A. Kawamoto <nkawamoto@bizlit.com>; Noah Helpern <noahhelpern@quinnemanuel.com>; 'sbannett@birdmarella.com' <sbannett@birdmarella.com>; 'sheffieldm@gtlaw.com' <sheffieldm@gtlaw.com>; Cotter Team <CotterTeam@quinnemanuel.com>  
**Subject:** RE: Cotter/RDI

Mark, I have not received a response to my letter from Monday. In light of the urgency of this matter, we again ask that you confer with us tomorrow morning or else we will be obligated to seek relief from the Court.

**From:** Marshall Searcy  
**Sent:** Monday, May 07, 2018 9:23 PM  
**To:** Mark G. Krum <mkrum@bizlit.com>; [hendricksk@gtlaw.com](mailto:hendricksk@gtlaw.com); [ferrariom@gtlaw.com](mailto:ferrariom@gtlaw.com)  
**Cc:** [sm@morrislawgroup.com](mailto:sm@morrislawgroup.com); [al@morrislawgroup.com](mailto:al@morrislawgroup.com); Sanford F. Remz <sremz@bizlit.com>; Noemi A. Kawamoto <nkawamoto@bizlit.com>; Noah Helpern <noahhelpern@quinnemanuel.com>; [sbannett@birdmarella.com](mailto:sbannett@birdmarella.com); [sheffieldm@gtlaw.com](mailto:sheffieldm@gtlaw.com); Cotter Team <CotterTeam@quinnemanuel.com>  
**Subject:** Cotter/RDI

Mark,  
Please see the attached letter.

# **EXHIBIT 13**



**quinn emanuel trial lawyers | los angeles**

863 South Figueroa Street, 10th Floor, Los Angeles, California 90017-2543 | TEL (213) 443-3000 FAX (213) 443-3100

WRITERS DIRECT DIAL NO.  
**(213) 443-3152**

WRITER'S EMAIL ADDRESS  
**marshallsearcy@quinnemanuel.com**

May 10, 2018

**VIA E-MAIL**

Mark G. Krum, Esq.  
Yurko, Salvesen & Remz, P.C.  
One Washington Mall, 11th Floor  
Boston, MA 02108-2603  
mkrum@bizlit.com

Re: James J. Cotter, Jr., v. Margaret Cotter, et al.,  
Case No. A-15-719860-B / P-14-082942-E

Dear Mark:

I write in response to the numerous inaccuracies in your May 10, 2018 email to me, which purports to “moot”—but does not actually address—the two simple questions posed in my May 7, 2018 letter to you.

First, my letter asked that you “confirm by Wednesday, May 9, 2018 which of Plaintiff’s disclosed experts will appear at the forthcoming trial.” (5/7/18 Searcy Ltr. at 2.) There is no reason that you could not answer this basic question over a 48-hour period. Indeed, this inquiry was perfectly reasonable in light of the potential consequences of Plaintiff’s apparent unpaid debt to AlixPartners (and possibly other experts), the rapidly-approaching trial for which Defendants need to prepare, the parties’ upcoming Joint Pretrial Memorandum (due in about one week), Plaintiff’s previous representations to the Court, and Plaintiff’s continuing obligations under NRCP 26(e)(1). You have now informed us that Dr. Finnerty will not be appearing at trial, but have avoided my actual question, which was not specific to him. Are there any other experts, previously disclosed by Plaintiff, that will not be appearing at trial? If so, who?

Second, my letter requested that you “confirm by Wednesday, May 9, 2018 that, pursuant to Defendants’ ongoing document requests and Plaintiff’s obligation to timely supplement his document production, [Plaintiff] will produce forthwith all correspondence with his expert witnesses regarding their fees and his payment (or nonpayment) of any amounts he owes or has owed resulting from expert services in this matter.” (5/7/18 Searcy Ltr. at 2.) Plaintiff

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previously produced some of these materials prior to expert depositions in 2016. (*See, e.g.*, Dep. Exs. 428, 467, 476.) Such communications are responsive, relevant, and not privileged, and Plaintiff has a duty under Rule 26(e)(1) to supplement his production. Again, there is no reason that you could not answer this “yes/no” question in a 48-hour period. You did not, and your May 10 email ignores this question entirely. Please answer the question: Are you producing the requested communications? If so, when can we expect them?

Finally, the attorney colloquy in your email is irrelevant, incorrect, and unnecessarily vituperative. Defendants were informed about the visit to Cecelia Packing Corporation by the AlixPartners debt collector in late April—which is far from “months” ago, as you inaccurately assert. Similarly, Defendants’ request that Plaintiff supplement his existing production to include relevant, newly-generated documents is in no way a “misuse of the litigation process by defense counsel”; rather, it is something that Plaintiff—like all litigants—is required to do by Nevada procedure. And your insinuation that Defendants’ request has anything to do with issues surrounding the production of ratification documents is sadly misguided.

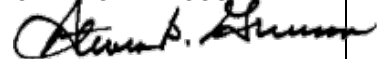
I ask that you actually respond to my two simple questions, originally posed on Monday, by the end of the day today. Should Plaintiff agree to produce the requested documents (as he is obligated), we are happy to meet and confer with you regarding a production schedule, including on Monday, May 14 as you suggest. But there is no reason for further baseless delay, especially in light of the rapidly-approaching trial.

Very truly yours,

A handwritten signature in black ink, appearing to read 'MS', written in a cursive style.

Marshall M. Searcy, III

cc: All Counsel



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**PTM**  
MORRIS LAW GROUP  
Steve Morris, Bar No. 1543  
Akke Levin, Bar No. 9102  
411 E. Bonneville Ave., Ste. 360  
Las Vegas, Nevada 89101  
Telephone: (702) 474-9400  
Facsimile: (702) 474-9422  
Email: sm@morrislawgroup.com  
Email: al@morrislawgroup.com

Attorneys for Plaintiff  
James J. Cotter, Jr.

DISTRICT COURT  
CLARK COUNTY, NEVADA

JAMES J. COTTER, JR., ) Case No. A-15-719860-B  
derivatively on behalf of Reading ) Dept. No. XI  
International, Inc., )

Plaintiff,

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

MARGARET COTTER, ELLEN )  
COTTER, GUY ADAMS, ) Jointly Administered  
EDWARD KANE, DOUGLAS )

McEACHERN, WILLIAM ) **PLAINTIFF'S PRE-TRIAL**  
GOULD, JUDY CODDING, ) **MEMORANDUM**  
MICHAEL WROTNIAK, )

Defendants. )

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

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702/474-9400 · FAX 702/474-9422

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The Plaintiff, through his counsel of record, hereby submits the following pre-trial memorandum in accordance with this Court’s 2<sup>nd</sup> Amended Order Setting Civil Jury Trial, Pre-trial Conference and Calendar Call dated May 4, 2018 and Local Rule 2.67. This pretrial memorandum is substantively the same as the joint pretrial memorandum previously submitted by the parties on December 8, 2017, except that it has been updated to reflect the Court’s order of December 29, 2017 with respect to motions for partial summary judgment, for summary judgment and motions *in limine* on which the Court ruled on December 11, 2017. A draft of this pretrial memorandum was provided to counsel for defendants at 2:40 p.m. on Tuesday, May 15, 2018, after counsel for nominal defendant Reading International, Inc. (“RDI”) had asked if counsel for plaintiff would modify the joint pretrial memorandum filed previously “given the grant of judgment to five of the defendants.” Notwithstanding the modest and straightforward edits required, counsel for defendants and RDI provided no response to the May 15, 2018 draft until approximately 2:10 p.m. Friday, May 18, the afternoon the pretrial memorandum was to be filed and a courtesy copy provided to the Court. The lateness of this response was only half of the problem; defendants included in their revised draft of the joint pretrial memorandum matter not appropriately included, as well as arguments to which counsel for plaintiff would respond, but for the eleventh hour provision of defendants’ draft. Faced with such gamesmanship by counsel for defendants, counsel for plaintiff had little if any choice but to file this separate pretrial memorandum.

1 **I. MATTER REFERENCED IN MAY 4, 2018 ORDER, PARAGRAPH D**

2 **A. Motions in Limine**

3 See Section II.H.

4 **B. Motions for Summary Judgment**

5 See Section II. I.

6 **II. OTHER PRETRIAL MATTER**

7 **A. Statement of Facts**

8  
9 In view of the significant prior proceedings in this case,  
10 including motions to dismiss and summary judgment motions, as well as  
11 the detail in the pending Second Amended Complaint (the particular  
12 allegations of which have been or will be admitted or denied in the  
13 individual defendants' respective answers), and the Court's resulting  
14 familiarity with this case, the parties respectfully provide the following  
15 abbreviated, summary statement of facts of the case:

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

25 The facts of this case include and concern acts and omissions of  
26 individual director defendants which the Plaintiff claims give rise to entail  
27 breaches of fiduciary duties individually and/or together with other acts  
28 and omissions, including with respect to the following matters: the threat to  
terminate Mr. Cotter as President and CEO of RDI, the termination of Mr.

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

10 **B. List of Claims**

11 Plaintiff's list of claims for relief is as follows:

12 **1. Breaches of the Duty of Care (SAC 1 - 179) (First Cause)**

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

27  
28 <sup>1</sup> Arabic numbered bold typeface paragraphs indicate matters which  
Plaintiff contends give rise to and/or constitute breaches of fiduciary duty  
independently, as well as together with other matter.

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- including SEC filings and press releases (SAC 9, 13, 72, 101a.-i., 109 – 119, 135a.-k., 136a.-i., 147) (all)
- Process/process failures in connection with nomination and retention of directors, including adding Coddling and/or Wrotniak (SAC 11, 12, 121-134) (EC, MC, DM, GA, EK, WG)
  - Hiring MC as EVP RED NY (SAC 6, 15, 57 – 61, 92, 95, 149 – 151, 166) and paying the \$200,000 pre-employment bonus (committees - members) (Board - all)
  - \$50,000 to Adams (SAC 153, 166) (Committees – members) (Board – all but GA)
  - Process/process failures in response to Patton Vision offer(s) (SAC 16, 154-162) (all)
  - Damages/injury (SAC 163 – 168)
    - a. injury to RDI’s reputation and goodwill (164)
    - b. impairment of shareholder rights due to SEC filings (165)
  - 2. **Breaches of the Duty of Loyalty (SAC 1 – 172, 180-186) (Second Cause)**
  - Threat to terminate (SAC 2, 35, 36, 64-71, 78 – 82, 84, 87, 88, 91) (GA, EC, MC)
  - Termination (SAC 3, 35, 36, 43, 50 – 57, 64 – 94) (GA, EC, MC) (equitable relief also sought)
  - Authorizing exercise of the 100,000 share option (SAC 10, 102 – 108) (GA, EK) (equitable relief also sought)
  - Aborted CEO search selecting EC (SAC 6, 14, 137 – 147, 152) (Search Committee: MC) (Board: all)
  - Hiring MC as EVP RED NY (SAC 6, 15, 57 – 61, 92, 95, 149 – 151, 166) and paying \$200,000 pre-employment bonus (Committee members) (Board: all)
  - Breach of the duty of loyalty (all) and misuse of their position

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

- Threat to terminate insurance if JJC, Jr. does not resign as a director (SAC 4, 38) (EC, WG)
- use of executive committee (SAC 8, 99) (EC, MC, Kane, Adams, WG)
- manipulating board materials (SAC 9, 72, 100) (EC)
- involuntary retirement of Storey (SAC 12, 127-130) (EC, MC, DM, GA, EK)
- Board stacking/adding Coddling and Wrotniak (SAC 11, 121-134) (nominating committee) (Board - all others)
- Process/process failures in response to Patton Vision offer(s) (SAC 16, 154-162) (all)
- \$50,000 to Adams (SAC 153, 166) (EC) (all)
- SEC filings (SAC 13, 101a.-i., 109 – 119, 135a.-k., 136a.-i., 147) (all)
- Damages/injury (SAC 163 – 168)
  - a. diminution in value of RDI (163)
  - b. injury to reputation and goodwill (164)
  - c. impairment of shareholder rights due to SEC filings (165)
  - d. other monetary damages (166)
    - i. \$200,000 and job to MC
    - ii. \$50,000 to Adams
    - iii. duplicate cost of paying consultants to perform MC's position's responsibilities



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iv. class A nonvoting stock accepted *in lieu* of cash consideration for exercise of 100,000 share option

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

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

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

- Threat to terminate (SAC 2, 35, 36, 64-71, 78 – 82, 84, 87, 88, 91) (EC, MC)
- Termination (SAC 3, 35, 36, 43, 50 – 57, 64 – 94) (Threat to terminate (SAC 2, 35, 36, 78 – 82, 87, 88, 91) (EC, MC)
- Authorizing exercise of the 100,000 share option (SAC 10, 102 – 108) (EC)
- Involuntary retirement of Storey (SAC 12, 127-130) (EC, MC)
- Board stacking/adding Coddington and Wrotniak (SAC 11, 121-134) (EC, MC)
- Aborted CEO search selecting EC (SAC 6, 14, 137 – 147, 152) (EC)
- Hiring MC as EVP RED NY (SAC 6, 15, 57 – 61, 92, 95, 149 – 151, 166) and paying \$200,000 pre-employment bonus (EC, MC)
- Damages/injury (SAC 163 – 168)
  - a. diminution in value of RDI (163)

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

10 **C. Claims or Defenses to be Abandoned.**

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

19 **D. List of Exhibits**

20 Under paragraph (F) of the Second Amended Order Setting Civil  
21 Jury Trial, Pre-Trial Conference and Calendar Call (dated May 4, 2018), the  
22 parties' exhibit lists are to be provided to the Court prior to the final Pre-  
23 Trial Conference, the date for which has not yet been set.

24 **E. Agreements to Limit or Exclude Evidence**

25 None presently.

26 **F. Witness List**

27 **(a) Nonexpert Witnesses**

28 For Plaintiff:

MORRIS LAW GROUP

411 E. BONNEVILLE AVE., STE. 360 · LAS VEGAS, NEVADA 89101  
702/474-9400 · FAX 702/474-9422

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1. James Cotter, Jr. (*plaintiff expects to present this witness*)  
c/o Mark Krum  
Yurko, Salvesen & Remz. P.C.  
One Washington Mall, 11<sup>th</sup> Floor  
Boston, MA 02108  
617.723.6900
  
2. Person Most Knowledgeable, Reading International, Inc. (*plaintiff may call this witness if the need arises*)  
c/o Mark E. Ferrario, Esq.  
Leslie S. Godfrey, Esq.  
Greenberg Traurig LLP  
773 Howard Hughes Parkway, Suite 400 North  
Las Vegas, Nevada 89169  
702-792-3773
  
3. Margaret Cotter (*plaintiff expects to present this witness*)  
c/o Stan Johnson  
Cohen-Johnson, LLC  
255 East Warm Springs Road, Suite 100  
Las Vegas, Nevada 89119  
702-823-3500
  
4. Ellen Cotter (*plaintiff expects to present this witness*)  
c/o Stan Johnson  
Cohen-Johnson, LLC  
255 East Warm Springs Road, Suite 100  
Las Vegas, Nevada 89119  
702-823-3500
  
5. Douglas McEachern (*plaintiff expects to present this witness and/or present the witness's testimony by means of a deposition*)  
c/o Stan Johnson  
Cohen-Johnson, LLC  
255 East Warm Springs Road, Suite 100  
Las Vegas, Nevada 89119  
702-823-3500

MORRIS LAW GROUP

411 E. BONNEVILLE AVE., STE. 360 · LAS VEGAS, NEVADA 89101  
702/474-9400 · FAX 702/474-9422

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- 6. Guy Adams (*plaintiff expects to present this witness*)  
c/o Stan Johnson  
Cohen-Johnson, LLC  
255 East Warm Springs Road, Suite 100  
Las Vegas, Nevada 89119  
702-823-3500
  
- 7. Edward Kane (*plaintiff expects to present this witness*)  
c/o Stan Johnson  
Cohen-Johnson, LLC  
255 East Warm Springs Road, Suite 100  
Las Vegas, Nevada 89119  
702-823-3500
  
- 8. William Gould (*plaintiff expects to present this witness*)  
Donald A. Lattin, Esq.  
Carolyn K. Renner, Esq.  
MAUPIN, COX & LeGOY  
4785 Caughlin Parkway  
Reno, Nevada 89519  
775-827-2000
  
- 9. Timothy Storey (*plaintiff expects to present this witness and/or present the witness's testimony by means of a deposition*)  
Donald A. Lattin, Esq.  
Carolyn K. Renner, Esq.  
MAUPIN, COX & LeGOY  
4785 Caughlin Parkway  
Reno, Nevada 89519  
775-827-2000
  
- 10. John Hunter (*plaintiff may call this witness if the need arises*)  
Milken Institute, Chief Financial Officer  
1250 4th Street  
Santa Monica, CA 90401

- 1 11. Antoinette Jefferies (*plaintiff may call this witness if the need arises*)  
2 10488 Eastborne Avenue, Unit #211  
3 Los Angeles, California 90024  
4 310-293-7384
- 5 12. Eric Barr (*plaintiff may call this witness if the need arises*)  
6 9 Park Street, Brighton, VIC 3186  
7 Southern Melbourne, Australia  
8 011-61-488-096-616  
9 [ebarr@optushome.com.au](mailto:ebarr@optushome.com.au)
- 10 13. Al Villasenor (*plaintiff may call this witness if the need arises*)  
11 116 – 19th Street  
12 Manhattan Beach, California 90266  
13 Home- 310-546-5193  
14 Mobile- 310-897-0407
- 15 14. Lois Marie Kwasigroch (*plaintiff may call this witness if the need*  
16 *arises*)  
17 20100 Wells Drive  
18 Woodland Hills, California 91364  
19 (805) 447-6265
- 20 15. Harry P. Susman (*plaintiff may call this witness if the need arises*)  
21 Susman Godfrey, LLP  
22 1000 Louisiana, Suite 5100  
23 Houston, Texas 77002  
24 713-653-7875 (w)  
25 [hsusman@susmangodfrey.com](mailto:hsusman@susmangodfrey.com)
- 26 16. Fehmi Karahan (*plaintiff may call this witness if the need arises*)  
27 The Karahan Companies  
28 7200 Bishop Road, Suite 250  
Plano, Texas 75024  
214-473-9700 (w)  
[fehmi@karahaninc.com](mailto:fehmi@karahaninc.com)

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17. Judy Coddling (*plaintiff expects to present this witness and/or present the witness's testimony by means of a deposition*)

2266 Canyon Back Road  
Los Angeles, California 90049

18. Michael J. Wrotniak (*plaintiff expects to present this witness and/or present the witness's testimony by means of a deposition*)

Aminco Resources USA  
World Headquarters  
81 Main Street Suite 110  
White Plains, NY 10601  
914 949 4400

[M.Wrotniak@Aminco.biz](mailto:M.Wrotniak@Aminco.biz)

19. Gil Borok (*plaintiff may call this witness if the need arises*)

3835 Hayvenhurst Avenue  
Encino, California 91436  
Mobile- 818-0528-3689  
Email- [gborok@me.com](mailto:gborok@me.com)

20. Robert Wagner (*plaintiff may call this witness if the need arises*)

Korn Ferry  
1900 Avenue of the Stars Suite 2600  
Los Angeles, CA 90067  
310-226-2672 (w)

[Robert.wagner@kornferry.com](mailto:Robert.wagner@kornferry.com)

21. John M. Genovese (*plaintiff may call this witness if the need arises*)

7584 Coastal View Drive  
Los Angeles, CA 90045  
Mobile: 310-245-1760  
Email- [jmgenovese@yahoo.com](mailto:jmgenovese@yahoo.com)

22. William D. Ellis (*plaintiff expects to present this witness and/or present the witness's testimony by means of a deposition*)

c/o Mark E. Ferrario, Esq.  
Leslie S. Godfrey, Esq.  
Greenberg Traurig LLP

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3773 Howard Hughes Parkway, Suite 400 North  
Las Vegas, Nevada 89169  
702-792-3773

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

24. Gary McLaughlin (*plaintiff may call this witness if the need arises*)  
Akin Gump  
2029 Century Park East, Suite 2400  
Los Angeles, CA 90067  
310-728-3358

25. C.N. Franklin Reddick, III (*plaintiff may call this witness if the need arises*)  
Akin Gump  
2029 Century Park East, Suite 2400  
Los Angeles, CA 90067  
310-728-3358

26. Robert Mayes (*plaintiff expects to present this witness and/or present the witness's testimony by means of a deposition*)  
Korn Ferry  
c/o Samantha Goodman  
1900 Avenue of the Stars, Suite 2600  
Los Angeles, CA 90067  
310.556.8557

27. Andrew Shapiro (*plaintiff expects to present this witness and/or present the witness's testimony by means of a deposition*)  
c/o Jahan Raissi

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Shartsis Freise LLP  
One Maritime Plaza, 18<sup>th</sup> Floor  
San Francisco, CA 94111  
415.421.6500

28. Jonathan Glaser (*plaintiff expects to present this witness and/or present the witness's testimony by means of a deposition*)  
c/o Alexander Robertson, IV  
Robertson & Associates, LLP  
32121 Lindero Canyon Road, Suite 200  
Westlake Village, CA 91361  
818.851.3850

29. Whitney Tilson (*plaintiff expects to present this witness's testimony by means of a deposition*)  
c/o Alexander Robertson, IV  
Robertson & Associates, LLP  
32121 Lindero Canyon Road, Suite 200  
Westlake Village, CA 91361  
818.851.3850

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

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

**(b) Expert Witnesses and Summaries of Opinions**

For Plaintiff:

1. Former Chief Justice Myron Steele will offer opinion testimony relating to matters of corporate governance, including regarding



1 proper exercise of directors' fiduciary duties. Among other  
2 things, he will offer opinion testimony regarding appropriate  
3 corporate governance practices and activities where a board of  
4 directors is faced with circumstances in which directors lack or  
5 may lack independence and/or disinterestedness, including the  
6 appropriate practices and activities to address such  
7 circumstances, and to evaluate the success of such practices and  
8 activities, including with respect to the following matters (i) the  
9 process used to terminate James J. Cotter, Jr. as President and  
10 Chief Executive Officer of Reading International, Inc. ("RDI"),  
11 (ii) the use of the Executive Committee of RDI's Board of  
12 Directors, (iii) the appointment of EC and MC to their respective  
13 current positions and the revised compensation and bonuses  
14 that they and Adams were given and (iv) the rejection of the  
15 Offer.<sup>2</sup> Former Chief Justice Steele also will offer opinion

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

Justice Steele is aware that the defendants in this action have filed a motion  
in limine because the Steele Report stated that the opinions therein were  
based on what a court that applied Delaware law would find. That  
phraseology was intended simply to refer to Justice Steele's years of  
experience in Delaware's well-versed body of law. The Delaware law on

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testimony to rebut opinions offered by defendants’ experts Michael Klausner and Alfred Osborne.

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

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which Justice Steele relies neither supplants nor modifies the plain meaning of Nevada law, but only is used to inform Nevada law.

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**G. Issues of Law**

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

**H. Previous Orders on Motions in Limine**

- a. Defendants' Motion In Limine to Exclude Expert Testimony of Myron Steele, Tiago Duarte-Silva, Richard Spitz, Albert Nagy, and John Finnerty
  - i. Granted in Part. With respect to Chief Justice Steele, he may testify only for the limited purpose of identifying what appropriate corporate governance activities would have been, including activities where directors are interested, including how to evaluate if directors are interested. Withdrawn as to Dr. Finnerty. Denied as to all other experts. *See* December 21, 2016 Order Regarding Defendants' Motions for Partial Summary Judgment Nos. 1-6 and Motion In Limine to Exclude Expert Testimony ("December 21, 2016 Order"), on file.
- b. Plaintiff James J. Cotter Jr.'s Motion In Limine No. 1 Regarding Advice of Counsel.
  - ii. **Denied** (see Order filed on 12/28/18)
- c. Plaintiff James J. Cotter Jr.'s Motion In Limine No. 2 Regarding the Submission of Merits-Related Evidence By Nominal Defendant Reading International, Inc.
  - iii. **Denied** (see Order filed on 12/28/18)

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- d. Plaintiff James Cotter Jr.’s Motion In Limine No. 3 Regarding After-Acquired Evidence.
  - iv. **Denied**, however, “to the extent that Plaintiff’s retention and use of Highpoint Associates and Derek Alderton is admitted at trial, it will be admitted with an instruction limiting the evidence solely to the issue of Plaintiff’s suitability as President and CEO of RDI.” (*see* Order filed on 12/28/18).
- e. Margaret Cotter, Ellen Cotter, Guy Adams, Edward Kane, Douglas McEachern, William Gould, Judy Coddling, Michael Wrotniak’s Motion In Limine to Exclude Evidence that is More Prejudicial Than Probative
  - v. **Denied** (*see* Order filed on 12/28/18).
- f. Renewed Motion In Limine to Exclude Expert Testimony of Myron Steele Based on Supplemental Authority
  - vi. **Denied** (*see* Order filed on 12/28/18).
- g. Defendant William Gould’s Motion In Limine Exclude Irrelevant Speculative Evidence
  - vii. **Denied as premature** (*see* Order filed on 12/28/18).

**I. Previous Orders on Motions for Partial Summary Judgment**

- a. Ellen Cotter, Margaret Cotter, and Guy Adams’ Motion Summary Judgment (motion is not to be filed until Plaintiff has a chance to review the discovery ordered on May 2, 2018);

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- b. Motion for Leave to File Dispositive Motion/Motion to Dismiss for Lack of Subject Matter Jurisdiction Due to Failure to Show Demand Futility (Hearing scheduled for May 25, 2018);
- c. RDI’s Motion to Dismiss for Failure to Show Demand Futility.
  - viii. Denied, without prejudice to renew after obtaining leave of Court to file renewed motion. (See Transcript on Hearing for Motion on Continuance (January 8, 2018 – Public), 10:22 – 11:1.)
- d. The Remaining Director Defendants’ Motion for Judgment as a Matter of Law.
  - ix. Denied, without prejudice to renew after obtaining leave of Court to file renewed motion. (See Transcript on Hearing for Motion on Continuance (January 8, 2018 – Public), 10:22 – 11:1.)
- e. Individual Defendants’ Motion for Summary Judgment (No. 1.) Re: Plaintiff’s Termination and Reinstatement Claims.
  - x. GRANTED with respect to Edward Kane, Douglas McEachern, Judy Coddling, Michael Wrotniak, and William Gould, and DENIED with respect to Guy Adams, Ellen Cotter, and Margaret Cotter. See Order dated December 28, 2017.
- f. Individual Defendants’ Motion for Partial Summary Judgment (No. 2) Re: The Issue of Director Independence.

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- xi. GRANTED with respect to Edward Kane, Douglas McEachern, Judy Coddling, Michael Wrotniak, and William Gould, and DENIED with respect to Guy Adams, Ellen Cotter, and Margaret Cotter. See Order dated December 28, 2017.
- g. Individual Defendants’ Motion for Partial Summary Judgment (No. 3) On Plaintiff’s Claims Related to the Purported Unsolicited Offer.
  - xii. Granted. See Order dated December 28, 2017.
- h. Individual Defendants’ Motion for Partial Summary Judgment (No. 4) On Plaintiff’s Claims Related to the Executive Committee.
  - xiii. Granted in Part. Granted as to the formation and revitalization (activation) of the Executive Committee; Denied as to the utilization of the committee. See December 21, 2016 Order.
- i. Individual Defendants’ Motion for Partial Summary Judgment (No. 5) On Plaintiff’s Claims Related to the Appointment of Ellen Cotter as CEO.
  - xiv. GRANTED with respect to Edward Kane, Douglas McEachern, Judy Coddling, Michael Wrotniak, and William Gould, and DENIED with respect to Guy Adams, Ellen Cotter, and Margaret Cotter. See December 28, 2017 Order.
- j. Individual Defendants’ Motion for Partial Summary Judgment (No. 6) Re: Plaintiff’s Claims Related to the Estate’s Option Exercise, the Appointment of Margaret Cotter, the Compensation Packages of Ellen Cotter and

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Margaret Cotter, and the Additional Compensation of Margaret Cotter and Guy Adams.

- xv. GRANTED with respect to Edward Kane, Douglas McEachern, Judy Coddling, Michael Wrotniak, and William Gould, and DENIED with respect to Guy Adams, Ellen Cotter, and Margaret Cotter. See Order dated December 28, 2017.
- k. Plaintiff James J. Cotter, Jr.'s Motion for Partial Summary Judgment.
  - xvi. Denied. See October 3, 2016 Order Denying James J. Cotter Jr.'s Motion for Partial Summary Judgment and Granting RDI's Countermotion for Summary Judgment.
  - l. Defendant William Gould's Motion for Summary Judgment.
    - xvii. Granted. See Order dated December 28, 2017.

**J. Estimated Length of Trial.**

Plaintiff estimates 15 to 19 days; 80-100 trial hours.

MORRIS LAW GROUP

By:           /s/ Akke Levin            
Steve Morris, Bar No. 1543  
Akke Levin, Bar No. 9102  
411 E. Bonneville Ave., Ste. 360  
Las Vegas, Nevada 89101

Mark G. Krum (10913)  
Yurko, Salvesen, & Remz, P.C.  
One Washington Mall, 11<sup>th</sup> Floor  
Boston, MA 02108

*Attorneys for Plaintiff  
James J. Cotter, Jr.*

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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: **PLAINTIFF'S PRETRIAL MEMORANDUM**, 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.

Stan Johnson  
Cohen-Johnson, LLC  
255 East Warm Springs Road, Ste. 110  
Las Vegas, Nevada 89119

Donald A. Lattin  
Carolyn K. Renner  
Maupin, Cox & LeGoy  
4785 Caughlin Parkway  
Reno, Nevada 89519

Christopher Tayback  
Marshall Searcy  
Quinn Emanuel Urquhart & Sullivan LLP  
865 South Figueroa Street, 10th Floor  
Los Angeles, CA

Ekwan E. Rhow  
Shoshana E. Bannett  
Bird, Marella, Boxer, Wolpert,  
Nessim, Drooks, Lincenberg &  
Rhow, P.C.  
1875 Century Park East, 23rd Fl.  
Los Angeles, CA 90067-2561

Attorneys for /Defendants Edward Kane,  
Douglas McEachern, Judy Codding, and  
Michael Wrotniak

Attorneys for Defendant William  
Gould

Mark Ferrario  
Kara Hendricks  
Tami Cowden  
Greenberg Traurig, LLP  
3773 Howard Hughes Parkway  
Suite 400 North  
Las Vegas, NV 89169

Attorneys for Nominal Defendant  
Reading International, Inc.

DATED this 18th day of May, 2018.

By: \_\_\_\_\_ /s/ Judy Estrada



1 **PTM**  
2 **COHENJOHNSONPARKEREDWARDS**  
3 H. STAN JOHNSON, ESQ.  
4 Nevada Bar No. 00265  
5 sjohnson@cohenjohnson.com  
6 375 E. Warm Springs Rd., Suite 104  
7 Las Vegas, Nevada 89119  
8 Telephone: (702) 823-3500  
9 Facsimile: (702) 823-3400

6 **QUINN EMANUEL UROUHART & SULLIVAN, LLP**  
7 **CHRISTOPHER TAYBACK, ESQ.**  
8 California Bar No. 145532, *pro hac vice*  
9 christayback@quinnemanuel.com  
10 **MARSHALL M. SEARCY, III, ESQ.**  
11 California Bar No. 169269, *pro hac vice*  
12 marshallsearcy@quinnemanuel.com  
13 865 South Figueroa Street, 10<sup>th</sup> Floor  
14 Los Angeles, CA 90017  
15 Telephone: (213) 443-3000

11 Attorneys for Defendants Margaret Cotter,  
12 Ellen Cotter, and Guy Adams

13  
14 (Additional attorneys listed on signature page)

15 DISTRICT COURT  
16 CLARK COUNTY, NEVADA

17 JAMES J. COTTER, JR., ) Case No. A-15-719860-B  
18 derivatively on behalf of Reading ) Dept. No. XI  
19 International, Inc., )  
20 Plaintiff, ) Coordinated with:  
21 v. )  
22 ) Case No. P-14-0824-42-E  
23 MARGARET COTTER, ELLEN ) Dept. No. XI  
24 COTTER, GUY ADAMS, )  
25 EDWARD KANE, DOUGLAS ) Jointly Administered  
26 McEACHERN, WILLIAM )  
27 GOULD, JUDY CODDING, ) **DEFENDANTS' PRE-TRIAL**  
28 MICHAEL WROTNIAK, ) **MEMORANDUM**  
Defendants. )  
And )  
READING INTERNATIONAL, )  
INC., a Nevada corporation, )  
Nominal Defendant. )

**DEFENDANTS' PRE-TRIAL MEMORANDUM**

1 Defendants Margaret Cotter, Ellen Cotter, and Guy Adams, and  
2 Nominal Defendant Reading International, Inc., through their counsel of  
3 record, hereby submit the following pre-trial memorandum in accordance  
4 with this Court's 2<sup>nd</sup> Amended Order Setting Civil Jury Trial, Pre-Trial  
5 Conference and Calendar Call, dated May 4, 2018, and Local Rule 2.67.  
6 Defendants are filing separately because, after providing their redline edits  
7 to Plaintiff's "discussion draft" of the Pre-Trial Memorandum, Plaintiff  
8 unilaterally filed his own Pre-Trial Memorandum separately. When  
9 Defendants provided their proposed edits, Plaintiff's counsel responded at  
10 2:53 p.m. that Defendants had "included material not properly included in  
11 a pre trial memorandum." See Ex. A (May 18, 2018 email chain). Also at  
12 2:53 p.m., Defendants' counsel asked Plaintiff's counsel to explain what he  
13 was referring to. *Id.* Rather than providing any explanation, Plaintiff's  
14 counsel proceeded to file his own Pre-Trial Memorandum separately.  
15 After Plaintiff's Pre-Trial Memorandum had already been filed, Plaintiff's  
16 counsel responded and stated: "For example, it argues the not yet  
17 filed 'ratification' summary judgment motion. I am out to dinner and will  
18 leave it at that." However, Defendants' proposed edits properly described  
19 ratification as a defense. Thus, Defendants are now forced to file their own  
20 version of the Pre-Trial Memorandum separately.

21 **I. MATTER REFERENCED IN MAY 4, 2018 ORDER,**  
22 **PARAGRAPH D**

23 **A. Motions in Limine**

- 24  
25 1. None currently pending. See Section II.I for motions *in*  
26 *limine* previously ruled upon.  
27  
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1                   **B. Motions for Summary Judgment**

2                   1. See Section II. J. Defendants contend there are several  
3                   potentially dispositive issues that must be resolved prior to  
4                   trial.

5                   **II. OTHER PRETRIAL MATTER**

6                   **A. Statement of Facts**

7                   **Plaintiff's Statement:**

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

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

24                  The facts of this case include and concern acts and omissions of  
25                  individual director defendants which the Plaintiff claims give rise to entail  
26                  breaches of fiduciary duties individually and/or together with other acts  
27                  and omissions, including with respect to the following matters: the threat  
28

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

10 **Director Defendants' Statement:**

11 On June 12, 2015, the Board of Directors of Reading International, Inc.  
12 ("RDI") voted to terminate Plaintiff James J. Cotter, Jr. as President and  
13 CEO of RDI. Plaintiff claims that this decision was a breach of fiduciary  
14 duty. Plaintiff also claims various other breaches of fiduciary duty,  
15 including with respect to the search for a new President and CEO of RDI,  
16 the hiring of Margaret Cotter as an Executive Vice President for Real Estate  
17 -- NYC, and the approval by the Compensation Committee of the use of  
18 Class A stock by the Estates of James J. Cotter, Sr. (the "Cotter Estate") to  
19 exercise an option held by the Cotter Estate to purchase 100,000 shares of  
20 RDI Class B voting stock (the "Cotter Estate Stock Option Exercise").. The  
21 Director Defendants contend that they acted in the best interests of RDI  
22 stockholders at all times and fulfilled their fiduciary duties to the  
23 Company. The Director Defendants further contend that the actions taken  
24 by the Board and its committees is protected by the Business Judgment  
25 Rule and, furthermore, that none of the actions of which Plaintiff complains  
26 caused any damage to the Company.

1 In December 2017, this Court entered judgment on behalf of five of  
2 the nine current Directors of RDI—William Gould, Douglas McEachern,  
3 Edward Kane, Judy Coddling, and Michael Wrotniak—because there is no  
4 material issue of fact that these Directors were independent and  
5 disinterested. As a result, all of the corporate “transactions” alleged by  
6 Plaintiff James J. Cotter, Jr. to be actionable breaches of fiduciary duty were  
7 indisputably approved by a majority of disinterested, independent  
8 directors, save for two: (1) the actions taken by Board members leading up  
9 to and including the termination of Plaintiff as CEO and President of RDI;  
10 and (2) the RDI Compensation Committee’s approval of the Cotter Estate  
11 Stock Option Exercise. Following the Court’s decision, the full RDI Board  
12 convened a Special Meeting on December 29, 2017 at the request of these  
13 five disinterested, independent directors to reevaluate these two remaining  
14 transactions.

15 After discussing Plaintiff’s allegations as to the potential  
16 interestedness or non-independence of Mr. Adams, Ellen Cotter, and  
17 Margaret Cotter, the independent directors addressed the challenged  
18 termination and stock-option decisions at the Special Meeting. In doing so,  
19 they were informed by the Company’s counsel, their own extensive  
20 knowledge of the applicable facts, their previous corporate-board  
21 experience, and a further review of the contemporaneous RDI Board  
22 materials relevant to those decisions. The Board also allowed additional  
23 debate and comment. Ultimately, with Mr. Adams, Ellen Cotter, and  
24 Margaret Cotter not voting, the RDI Board voted 5-1 (with only Plaintiff  
25 dissenting) to ratify Plaintiff’s termination and the Compensation  
26 Committee’s stock-option decision. With the RDI Board having met all of  
27 the legally required criteria, Nevada’s business judgment rule therefore  
28

1 applies to those “transactions,” as it does to the other corporate decisions  
2 questioned by Plaintiff in this derivative suit. Given the principal purpose  
3 of the Business Judgement Rule—to prevent the second-guessing of Board  
4 decisions—none of the actions of which Plaintiff complains (including  
5 these two actions specifically ratified in December) can now be invalidated  
6 or be a basis for a claim of damages regardless of any decision with respect  
7 to the independence of Guy Adams, Ellen Cotter, or Margaret Cotter. The  
8 five independent directors have exercised the authority vested in them by  
9 the Nevada Corporations Code, and their determination must under such  
10 law, be respected.

11 **RDI’s Statement:**

12 RDI joins in the Director Defendants’ Statement above.

13 **B. List of Claims**

14 Plaintiff’s list of claims for relief is as follows:

15 **A. Breaches of the Duty of Care (SAC 1 - 179) (First Cause)**

- 16 **1. Process in connection with termination, including aborting**  
17 **ombudsman and lack of process/process failures (SAC 3, 35,**  
18 **36, 43, 50 – 57, 61 – 94) (EC, MC, GA) (equitable relief)<sup>1</sup>**  
19 **2. Breach(es) of the duty of care and abdication of fiduciary**  
20 **responsibilities by some or all acts and omissions in SAC**  
21 **(SAC - all), including paragraph A. 1. above and the**  
22 **following:**  
23

24  
25 \_\_\_\_\_  
26 <sup>1</sup> Arabic numbered bold typeface paragraphs indicate matters which  
27 Plaintiff contends give rise to and/or constitute breaches of fiduciary duty  
28 independently, as well as together with other matter.

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- Use of executive committee (SAC 8, 99) (EC, MC, Kane, Adams/WG, JC, MW)
  - Process/process failures from aborted CEO search selecting EC (SAC 6, 14, 137 – 147, 152) (Search Committee: MC, DM, WG) (Board: All)
  - Erroneous and/or materially misleading statements in board materials such as agendas and minutes, and in public disclosures including SEC filings and press releases (SAC 9, 13, 72, 101a.-i., 109 – 119, 135a.-k., 136a.-i., 147) (all)
  - Process/process failures in connection with nomination and retention of directors, including adding Coddling and/or Wrotniak (SAC 11, 12, 121-134) (EC, MC, DM, GA, EK, WG)
  - Hiring MC as EVP RED NY (SAC 6, 15, 57 – 61, 92, 95, 149 – 151, 166) and paying the \$200,000 pre-employment bonus (committees - members) (Board - all)
  - \$50,000 to Adams (SAC 153, 166) (Committees – members) (Board – all but GA)
  - Process/process failures in response to Patton Vision offer(s) (SAC 16, 154-162) (all)
3. Damages/injury (SAC 163 – 168)
- a. injury to RDI’s reputation and goodwill (164)
  - b. impairment of shareholder rights due to SEC filings (165)

**B. Breaches of the Duty of Loyalty (SAC 1 – 172, 180-186) (Second Cause)**

- 1. **Threat to terminate (SAC 2, 35, 36, 64-71, 78 – 82, 84, 87, 88, 91) (GA, EC, MC)**

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2. **Termination (SAC 3, 35, 36, 43, 50 – 57, 64 – 94) (GA, EC, MC) (equitable relief also sought)**
3. **Authorizing exercise of the 100,000 share option (SAC 10, 102 – 108) (GA, EK) (equitable relief also sought)**
4. **Aborted CEO search selecting EC (SAC 6, 14, 137 – 147, 152) (Search Committee: MC) (Board: all)**
5. **Hiring MC as EVP RED NY (SAC 6, 15, 57 – 61, 92, 95, 149 – 151, 166) and paying \$200,000 pre-employment bonus (Committee members) (Board: all)**
6. **Breach of the duty of loyalty (all) and misuse of their position as controlling shareholders (EC, MC) by some or all such acts and omissions in the SAC, including those in paragraphs B. 1. – 7. above and the following:**
  - Threat to terminate insurance if JJC, Jr. does not resign as a director (SAC 4, 38) (EC, WG)
  - use of executive committee (SAC 8, 99) (EC, MC, Kane, Adams, WG)
  - manipulating board materials (SAC 9, 72, 100) (EC)
  - involuntary retirement of Storey (SAC 12, 127-130) (EC, MC, DM, GA, EK)
  - Board stacking/adding Coddington and Wrotniak (SAC 11, 121-134) (nominating committee) (Board - all others)
  - Process/process failures in response to Patton Vision offer(s) (SAC 16, 154-162) (all)
  - \$50,000 to Adams (SAC 153, 166) (EC) (all)
  - SEC filings (SAC 13, 101a.-i., 109 – 119, 135a.-k., 136a.-i., 147) (all)



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7. Damages/injury (SAC 163 – 168)

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

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

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

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

- 1. Threat to terminate (SAC 2, 35, 36, 64-71, 78 – 82, 84, 87, 88, 91) (EC, MC)

- 1 2. Termination (SAC 3, 35, 36, 43, 50 – 57, 64 – 94) (Threat to  
2 terminate (SAC 2, 35, 36, 78 – 82, 87, 88, 91) (EC, MC)
- 3 3. Authorizing exercise of the 100,000 share option (SAC 10, 102 –  
4 108) (EC)
- 5 4. Involuntary retirement of Storey (SAC 12, 127-130) (EC, MC)
- 6 5. Board stacking/adding Coddington and Wrotniak (SAC 11, 121-  
7 134) (EC, MC)
- 8 6. Aborted CEO search selecting EC (SAC 6, 14, 137 – 147, 152)  
9 (EC)
- 10 7. Hiring MC as EVP RED NY (SAC 6, 15, 57 – 61, 92, 95, 149 –  
11 151, 166) and paying \$200,000 pre-employment bonus (EC, MC)
- 12 8. Damages/injury (SAC 163 – 168)
  - 13 a. diminution in value of RDI (163)
  - 14 b. injury to reputation and goodwill (164)
  - 15 c. impairment of shareholder rights due to SEC filings (165)
  - 16 d. other monetary damages (166)
    - 17 i. \$200,000 and job to MC
    - 18 ii. \$50,000 to Adams
    - 19 iii. duplicate cost of paying consultants to perform  
20 MC's position's responsibilities
    - 21 iv. class A nonvoting stock accepted *in lieu* of cash  
22 consideration for exercise of 100,000 share option

### 23 **C. List of Affirmative Defenses**

24 Plaintiff has not abandoned any purported claims identified in the  
25 Second Amended Complaint. Director Defendants therefore cannot  
26 abandon any affirmative defenses asserted in its Answer to the Second  
27 Amended Complaint. Depending on which particular claims for relief  
28

1 Plaintiff actually pursues at trial, Director Defendants may raise the  
2 following affirmative defenses:

- 3 • Failure to State a Cause of Action;
- 4 • Statute of Limitations and Repose;
- 5 • Laches;
- 6 • Unclean Hands;
- 7 • Spoliation;
- 8 • Illegal Conduct and Fraud;
- 9 • Waiver, Estoppel, and Acquiescence;
- 10 • Ratification and Consent;
- 11 • No Unlawful Activity;
- 12 • No Reliance;
- 13 • Failure to Plead Fraud with Particularity;
- 14 • Uncertain and Ambiguous Claims;
- 15 • Privilege and Justification;
- 16 • Good Faith and Lack of Fault;
- 17 • No Entitlement to Injunctive Relief;
- 18 • Damages too Speculative;
- 19 • No Entitlement to Punitive Damages;
- 20 • Failure to Mitigate;
- 21 • Comparative Fault;
- 22 • Business Judgment Rule;
- 23 • Equitable Estoppel;
- 24 • Election of Remedies;
- 25 • N.R.S. 78.138;
- 26 • Failure to Make Appropriate Demand; and

- 1           • Conflict of Interest and Unsuitability to Serve as a Derivative  
2           Representative.

3           **RDI**

- 4           • Failure To State A Claim;  
5           • Failure To Make Demand;  
6           • Corporate Governance;  
7           • Irreparable Harm To Company;  
8           • Unclean Hands;  
9           • Spoliation;  
10          • Waiver, Estoppel, And Acquiescence;  
11          • Ratification And Consent;  
12          • No Unlawful Activity;  
13          • Privilege And Justification;  
14          • Good Faith And Lack Of Fault;  
15          • No Entitlement To Injunctive Relief;  
16          • Damages Too Speculative;  
17          • Mitigation Of Damages;  
18          • Comparative Fault;  
19          • Equitable Estoppel;  
20          • Nevada Revised Statute 78.138; and  
21          • Conflict Of Interest And Unsuitability To Serve As  
22          Representative.

23                           **D. Claims or Defenses to be Abandoned**

24           None. However, Plaintiff will not seek equitable relief with respect to  
25           historical or past actions relating to the executive committee, to corporate  
26           governance of RDI such as misleading or inaccurate meeting agendas  
27

1 and/or minutes, to the addition or removal of persons to and/or from the  
2 RDI board of directors and to SEC filings and press releases. Plaintiff will  
3 seek equitable relief with respect to the vote to terminate James J. Cotter Jr.  
4 as President and CEO and reserves the right to do so with respect to  
5 authorization of the exercise of the so-called 100,000 share option.

6 **E. List of Exhibits**

7 Under paragraph (B) of the Second Amended Order Setting Civil  
8 Jury Trial, Pre-Trial Conference and Calendar Call (dated May 4, 2018), the  
9 parties' exhibit lists are to be provided to the Court at the Calendar Call on  
10 June 18, 2018.

11 **F. Agreements to Limit or Exclude Evidence**

12 None presently.

13 **G. Witness List**

14 **A. Nonexpert Witnesses**

15 For Plaintiff:

- 16 1. James Cotter, Jr. (*plaintiff expects to present this witness*)  
17 c/o Mark Krum  
18 Yurko, Salvesen & Remz. P.C.  
19 One Washington Mall, 11<sup>th</sup> Floor  
20 Boston, MA 02108  
21 617.723.6900
- 22 2. Person Most Knowledgeable, Reading International, Inc.  
23 (*plaintiff may call this witness if the need arises*)  
24 c/o Mark E. Ferrario, Esq.  
25 Leslie S. Godfrey, Esq.  
26 Greenberg Traurig LLP  
27 773 Howard Hughes Parkway, Suite 400 North  
28 Las Vegas, Nevada 89169  
702-792-3773

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- 3. Margaret Cotter (*plaintiff expects to present this witness*)  
c/o Stan Johnson  
Cohen-Johnson, LLC  
255 East Warm Springs Road, Suite 100  
Las Vegas, Nevada 89119  
702-823-3500
  
- 4. Ellen Cotter (*plaintiff expects to present this witness*)  
c/o Stan Johnson  
Cohen-Johnson, LLC  
255 East Warm Springs Road, Suite 100  
Las Vegas, Nevada 89119  
702-823-3500
  
- 5. Douglas McEachern (*plaintiff expects to present this witness and/or present the witness's testimony by means of a deposition*)  
c/o Stan Johnson  
Cohen-Johnson, LLC  
255 East Warm Springs Road, Suite 100  
Las Vegas, Nevada 89119  
702-823-3500
  
- 6. Guy Adams (*plaintiff expects to present this witness*)  
c/o Stan Johnson  
Cohen-Johnson, LLC  
255 East Warm Springs Road, Suite 100  
Las Vegas, Nevada 89119  
702-823-3500
  
- 7. Edward Kane (*plaintiff expects to present this witness*)  
c/o Stan Johnson  
Cohen-Johnson, LLC  
255 East Warm Springs Road, Suite 100  
Las Vegas, Nevada 89119  
702-823-3500

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8. William Gould (*plaintiff expects to present this witness*)

Donald A. Lattin, Esq.  
Carolyn K. Renner, Esq.  
MAUPIN, COX & LeGOY  
4785 Caughlin Parkway  
Reno, Nevada 89519  
775-827-2000

9. Timothy Storey (*plaintiff expects to present this witness and/or present the witness's testimony by means of a deposition*)

Donald A. Lattin, Esq.  
Carolyn K. Renner, Esq.  
MAUPIN, COX & LeGOY  
4785 Caughlin Parkway  
Reno, Nevada 89519  
775-827-2000

10. John Hunter (*plaintiff may call this witness if the need arises*)

Milken Institute, Chief Financial Officer  
1250 4th Street  
Santa Monica, CA 90401

11. Antoinette Jefferies (*plaintiff may call this witness if the need arises*)

10488 Eastborne Avenue, Unit #211  
Los Angeles, California 90024  
310-293-7384

12. Eric Barr (*plaintiff may call this witness if the need arises*)

9 Park Street, Brighton, VIC 3186  
Southern Melbourne, Australia  
011-61-488-096-616  
[ebarr@optushome.com.au](mailto:ebarr@optushome.com.au)

13. Al Villasenor (*plaintiff may call this witness if the need arises*)

116 – 19th Street  
Manhattan Beach, California 90266

1 Home- 310-546-5193  
2 Mobile- 310-897-0407

3 14. Lois Marie Kwasigroch (*plaintiff may call this witness if the need*  
4 *arises*)

5 20100 Wells Drive  
6 Woodland Hills, California 91364  
7 (805) 447-6265

8 15. Harry P. Susman (*plaintiff may call this witness if the need arises*)

9 Susman Godfrey, LLP  
10 1000 Louisiana, Suite 5100  
11 Houston, Texas 77002  
12 713-653-7875 (w)  
13 [hsusman@susmangodfrey.com](mailto:hsusman@susmangodfrey.com)

14 16. Fehmi Karahan (*plaintiff may call this witness if the need arises*)

15 The Karahan Companies  
16 7200 Bishop Road, Suite 250  
17 Plano, Texas 75024  
18 214-473-9700 (w)  
19 [fehmi@karahaninc.com](mailto:fehmi@karahaninc.com)

20 17. Judy Coddling (*plaintiff expects to present this witness and/or*  
21 *present the witness's testimony by means of a deposition*)

22 2266 Canyon Back Road  
23 Los Angeles, California 90049

24 18. Michael J. Wrotniak (*plaintiff expects to present this witness and/or*  
25 *present the witness's testimony by means of a deposition*)

26 Aminco Resources USA  
27 World Headquarters  
28 81 Main Street Suite 110



1 White Plains, NY 10601  
2 914 949 4400  
3 [M.Wrotniak@Aminco.biz](mailto:M.Wrotniak@Aminco.biz)

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

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

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

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

28 23. Craig Tompkins (*plaintiff may call this witness if the need arises*)

1 c/o Mark E. Ferrario, Esq.  
2 Leslie S. Godfrey, Esq.  
3 Greenberg Traurig LLP  
4 3773 Howard Hughes Parkway, Suite 400 North  
5 Las Vegas, Nevada 89169  
6 702-792-3773

7 24. Gary McLaughlin (*plaintiff may call this witness if the need arises*)  
8 Akin Gump  
9 2029 Century Park East, Suite 2400  
10 Los Angeles, CA 90067  
11 310-728-3358

12 25. C.N. Franklin Reddick, III (*plaintiff may call this witness if the*  
13 *need arises*)  
14 Akin Gump  
15 2029 Century Park East, Suite 2400  
16 Los Angeles, CA 90067  
17 310-728-3358

18 26. Robert Mayes (*plaintiff expects to present this witness and/or*  
19 *present the witness's testimony by means of a deposition*)  
20 Korn Ferry  
21 c/o Samantha Goodman  
22 1900 Avenue of the Stars, Suite 2600  
23 Los Angeles, CA 90067  
24 310.556.8557

25 27. Andrew Shapiro (*plaintiff expects to present this witness and/or*  
26 *present the witness's testimony by means of a deposition*)  
27 c/o Jahan Raissi  
28 Shartsis Freise LLP  
One Maritime Plaza, 18<sup>th</sup> Floor  
San Francisco, CA 94111  
415.421.6500

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28. Jonathan Glaser (*plaintiff expects to present this witness and/or present the witness's testimony by means of a deposition*)  
c/o Alexander Robertson, IV  
Robertson & Associates, LLP  
32121 Lindero Canyon Road, Suite 200  
Westlake Village, CA 91361  
818.851.3850

29. Whitney Tilson (*plaintiff expects to present this witness's testimony by means of a deposition*)  
c/o Alexander Robertson, IV  
Robertson & Associates, LLP  
32121 Lindero Canyon Road, Suite 200  
Westlake Village, CA 91361  
818.851.3850

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

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

For the Director Defendants:

1. Ellen Cotter (*the director defendants expect to present this witness*)  
c/o COHEN | JOHNSON | PARKER | EDWARDS  
375 E. Warm Springs Road, Ste. 104  
Las Vegas, NV 89119  
702-823-3500  
And  
Quinn Emanuel Urquhart & Sullivan, LLP

1 865 S. Figueroa St., 10<sup>th</sup> Floor  
2 Los Angeles, 90017  
3 213-443-3000

- 4 2. Margaret Cotter (*the director defendants expect to present this*  
5 *witness*)

6 c/o COHEN | JOHNSON | PARKER | EDWARDS  
7 375 E. Warm Springs Road, Ste. 104  
8 Las Vegas, NV 89119  
9 702-823-3500

10 And

11 Quinn Emanuel Urquhart & Sullivan, LLP  
12 865 S. Figueroa St., 10<sup>th</sup> Floor  
13 Los Angeles, 90017  
14 213-443-3000

- 15 3. James Cotter, Jr. (*the director defendants expect to present this*  
16 *witness*)

17 c/o Mark Krum  
18 Yurko, Salvesen & Remz. P.C.  
19 One Washington Mall, 11<sup>th</sup> Floor  
20 Boston, MA 02108  
21 617-723-6900

- 22 4. Guy Adams (*the director defendants expect to present this witness*)

23 c/o COHEN | JOHNSON | PARKER | EDWARDS  
24 375 E. Warm Springs Road, Ste. 104  
25 Las Vegas, NV 89119  
26 702-823-3500

27 And

28 Quinn Emanuel Urquhart & Sullivan, LLP  
865 S. Figueroa St., 10<sup>th</sup> Floor  
Los Angeles, 90017  
213-443-3000

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5. Edward Kane (*the director defendants expect to present this witness*)

c/o COHEN | JOHNSON | PARKER | EDWARDS  
375 E. Warm Springs Road, Ste. 104  
Las Vegas, NV 89119  
702-823-3500

And

Quinn Emanuel Urquhart & Sullivan, LLP  
865 S. Figueroa St., 10<sup>th</sup> Floor  
Los Angeles, 90017  
213-443-3000

6. Douglas McEachern (*the director defendants expect to present this witness*)

c/o COHEN | JOHNSON | PARKER | EDWARDS  
375 E. Warm Springs Road, Ste. 104  
Las Vegas, NV 89119  
702-823-3500

And

Quinn Emanuel Urquhart & Sullivan, LLP  
865 S. Figueroa St., 10<sup>th</sup> Floor  
Los Angeles, 90017  
213-443-3000

7. Michael Wrotniak (*the director defendants expect to present this witness*)

c/o COHEN | JOHNSON | PARKER | EDWARDS  
375 E. Warm Springs Road, Ste. 104  
Las Vegas, NV 89119  
702-823-3500

And

Quinn Emanuel Urquhart & Sullivan, LLP  
865 S. Figueroa St., 10<sup>th</sup> Floor  
Los Angeles, 90017  
213-443-3000

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8. Judy Coddling (*the director defendants expect to present this witness*)

c/o COHEN | JOHNSON | PARKER | EDWARDS  
375 E. Warm Springs Road, Ste. 104  
Las Vegas, NV 89119  
702-823-3500

And

Quinn Emanuel Urquhart & Sullivan, LLP  
865 S. Figueroa St., 10<sup>th</sup> Floor  
Los Angeles, 90017  
213-443-3000

9. William Gould (*the director defendants expect to present this witness*)

c/o Maupin Cox & LeGoy  
4785 Caughlin Parkway  
Reno, NV 89519  
775-827-2000

And

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

10. Timothy Storey (*the director defendants may call this witness if the need arises*)

c/o Maupin Cox & LeGoy  
4785 Caughlin Parkway  
Reno, NV 89519  
775-827-2000

And

c/o Bird, Marella, Boxer, Wolpert,  
Nessim, Drooks, Lincenberg & Rhow  
1875 Century Park East, 23<sup>rd</sup> Floor

1 Los Angeles, CA 90067  
2 310-201-2100

- 3 11. Craig Tompkins (*the director defendants may call this witness if*  
4 *the need arises*)

5 c/o Greenberg Traurig, LLP  
6 3773 Howard Hughes Pkwy., Ste. 400N  
7 Las Vegas, NV 89169  
8 702-792-3773

- 9 12. Bob Smerling (*the director defendants expect to present this*  
10 *witness*)

11 c/o Greenberg Traurig, LLP  
12 3773 Howard Hughes Pkwy., Ste. 400N  
13 Las Vegas, NV 89169  
14 702-792-3773

- 15 13. Terri Moore (*the director defendants expect to present this witness*)

16 c/o Greenberg Traurig, LLP  
17 3773 Howard Hughes Pkwy., Ste. 400N  
18 Las Vegas, NV 89169  
19 702-792-3773

- 20 14. Andrzej Matyczynski (*the director defendants expect to present*  
21 *this witness*)

22 c/o Greenberg Traurig, LLP  
23 3773 Howard Hughes Pkwy., Ste. 400N  
24 Las Vegas, NV 89169  
25 702-792-3773

- 26 15. Linda Pham (*the director defendants expect to present this witness*)

27 c/o Greenberg Traurig, LLP  
28 3773 Howard Hughes Pkwy., Ste. 400N  
Las Vegas, NV 89169  
702-792-3773

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16. Debbie Watson (*the director defendants expect to present this witness*)  
c/o Greenberg Traurig, LLP  
3773 Howard Hughes Pkwy., Ste. 400N  
Las Vegas, NV 89169  
702-792-3773

17. Laura Batista (*the director defendants expect to present this witness*)  
c/o Greenberg Traurig, LLP  
3773 Howard Hughes Pkwy., Ste. 400N  
Las Vegas, NV 89169  
702-792-3773

18. David Roth (*the director defendants expect to present this witness*)  
Cecelia Packing Corp.  
24780 E South Ave.  
Orange Cove, CA 93646  
559-626-5000

19. Michael Buckley (*the director defendants may call this witness if the need arises*)  
Edifice Real Estate Partners  
545 8th Ave.  
New York, NY 10018  
347-826-4569

20. Derek Alderton (*the director defendants expect to present this witness*)  
Highpoint Associates  
100 N Sepulveda Blvd.  
El Segundo, CA 90245  
310-616-0100

21. Mary Cotter (*the director defendants expect to present this witness*)  
2818 Dumfries Road



1 Los Angeles, CA 90064  
2 310-559-0581

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

4 Grant Thornton  
5 515 S. Flower St., 7th Floor  
6 Los Angeles, CA 90071  
7 213-627-1717

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

10 c/o Alexander Robertson, IV  
11 Robertson & Associates, LLP  
12 32121 Lindero Canyon Road, Suite 200  
13 Westlake Village, CA 91361  
14 818-851-3850

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

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

22 For Reading International, Inc.:

23 RDI does not intend to call witnesses, but reserves all rights to  
24 question witnesses identified by Plaintiff and/or the other defendants in  
25 this matter.  
26

27 **B. Expert Witnesses and Summaries of Opinions**

28 For Plaintiff:

1. Former Chief Justice Myron Steele will offer opinion testimony relating to matters of corporate governance, including regarding proper exercise of directors' fiduciary duties. Among

1 other things, he will offer opinion testimony regarding  
2 appropriate corporate governance practices and activities  
3 where a board of directors is faced with circumstances in which  
4 directors lack or may lack independence and/or  
5 disinterestedness, including the appropriate practices and  
6 activities to address such circumstances, and to evaluate the  
7 success of such practices and activities, including with respect  
8 to the following matters (i) the process used to terminate James  
9 J. Cotter, Jr. as President and Chief Executive Officer of Reading  
10 International, Inc. ("RDI"), (ii) the use of the Executive  
11 Committee of RDI's Board of Directors, (iii) the appointment of  
12 EC and MC to their respective current positions and the revised  
13 compensation and bonuses that they and Adams were given  
14 and (iv) the rejection of the Offer.<sup>2</sup> Former Chief Justice Steele

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15  
16 <sup>2</sup> As stated in the Steele Report, it is Justice Steele's understanding that  
17 Nevada courts look to Delaware case law when there is no Nevada  
18 statutory or case law on point for an issue of corporate law. See, e.g. *Brown*  
19 *v. Kinross Gold U.S.A., Inc.*, 531 F. Supp. 2d 1234, 1245 (D. Nev. 2008)  
20 ("Because the Nevada Supreme Court frequently looks to the Delaware  
21 Supreme Court and the Delaware Courts of Chancery as persuasive  
22 authorities on questions of corporation law, this Court often looks to those  
23 sources to predict how the Nevada Supreme Court would decide the  
24 question."); *Hilton Hotels Corp. v. ITT Corp.*, 978 F. Supp. 1342, 1346 (D. Nev.  
25 1997) ("Where, as here, there is no Nevada statutory or case law on point or  
26 an issue of corporate law, this Court finds persuasive authority in  
27 Delaware case law."); *Cohen v. Mirage Resorts, Inc.*, 62 P.3d 720, 727 n.10  
28 (Nev. 2003) ("Because the Legislature relied upon the Model Act and the  
Model Act relies heavily on New York and Delaware case law, we look to  
the Model Act and the law of those states in interpreting the Nevada  
statutes.").

1 also will offer opinion testimony to rebut opinions offered by  
2 defendants' expert Michael Klausner.

3 2. Richard Spitz will offer opinion testimony relating to executive  
4 and CEO searches and RDI's supposed CEO search. It is  
5 anticipated that he will offer opinion testimony that the  
6 execution of the (supposed) executive search process  
7 undertaken at RDI in 2015 to find a CEO was not conducted  
8 properly and that the search failed, including because the  
9 selection of Ellen Cotter as CEO was not the product of  
10 completing the search process undertaken and was not a result  
11 of the search activities conducted.

12 3. Tiago Duarte-Silva will offer opinion testimony about money  
13 damages Plaintiff seeks by this action. It is anticipated that his  
14 opinion testimony will include opinions that (i) Reading's  
15 earnings have declined and underperformed since Ellen Cotter  
16 became Reading's CEO, and (ii) Reading's value has declined  
17 and underperformed since Ellen Cotter became Reading's CEO.  
18 Mr. Duarte-Silva also will offer opinion testimony to rebut  
19 opinions offered by defendants' expert Richard Roll.

20  
21 For the Director Defendants:

22  
23 Justice Steele is aware that the defendants in this action have filed a  
24 motion in limine because the Steele Report stated that the opinions therein  
25 were based on what a court that applied Delaware law would find. That  
26 phraseology was intended simply to refer to Justice Steele's years of  
27 experience in Delaware's well-versed body of law. The Delaware law on  
28 which Justice Steele relies neither supplants nor modifies the plain  
meaning of Nevada law, but only is used to inform Nevada law.

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1. Michael Klausner – Mr. Klausner will offer opinion testimony regarding the Board of Directors’ proper exercise of their duties and obligations in connection with their decision to terminate James Cotter, Jr. as President and CEO and their decision not to pursue the third-party indication of interest, including as a rebuttal to Plaintiffs’ expert Justice Myron Steele.
  2. Jon Foster – Mr. Foster will offer opinion testimony regarding the Board of Directors’ decision-making and analysis in connection with their consideration of the third-party indication of interest, as a rebuttal to the expected testimony of Plaintiffs’ expert Tiago Duarte-Silva.
  3. Richard Roll – Dr. Roll will offer opinion testimony about the claimed money damages being sought by Plaintiff in this action based on fluctuations or changes in RDI’s stock price, including as a rebuttal to Plaintiffs’ purported damages experts.
  4. Bruce Strombom – Mr. Strombom will offer opinion testimony to rebut the purported damages analysis set forth by Plaintiffs’ expert Tiago Duarte-Silva.

19 For Reading international, Inc.:

20 RDI joins in the expert designations of the Director Defendants.

21  
22 **H. Issues of Law**

23 **Plaintiff’s Position:**

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

26 **Director Defendants’ Position:**

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1 In order to allow Director Defendants to adequately prepare for trial,  
2 they request an early conference on jury instructions.

3 Director Defendants believe that for each purported breach of  
4 fiduciary described in the Second Amended Complaint, each of them (1)  
5 were subject to the protections and presumptions afforded by Nevada’s  
6 business judgment rule, (2) properly exercised their fiduciary obligations,  
7 (3) did not engage in any “intentional misconduct, fraud or a knowing  
8 violation of law” required by N.R.S. 78.138 to impose individual liability on  
9 corporate directors, and, although not relevant under Nevada law, and (4)  
10 were independent for each relevant decision made by the Board in which  
11 they participated. Their decisions were duly ratified by a majority of the  
12 Board consisting entirely of independent directors, and also did not result  
13 in any damages to RDI. Moreover, Plaintiff lacks standing to bring this  
14 derivative action or to derivatively assert certain claims (a) that are wholly  
15 personal to him, such as his termination claim and his claims that he was  
16 somehow “threatened” by one or more of the Defendant Directors, and (b)  
17 since he has not proven his allegations that demand would have been  
18 futile. Similarly, the equitable relief that Plaintiff seeks—*i.e.*, reinstatement  
19 as President and CEO of RDI—is not available as a matter of law. Finally,  
20 Director Defendants’ contend that the Board’s December 29, 2017 vote  
21 ratifying the Board’s earlier decisions with respect to Plaintiff’s termination  
22 and the exercise of the 100,000 share option eliminated any potential issues  
23 remaining for trial.<sup>3</sup>

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24  
25 <sup>3</sup> Additionally, certain documents remain which may be subject to in  
26 camera review regarding production shortly. *See James J. Cotter, Jr. v. The*  
27 *Eighth Judicial District Court of the State of Nevada*, Case No. 18-16774, 134  
28 Nev., Advance Opinion 32 (Nev. May 3, 2018).

**RDI's Position:**

1 RDI joins in the Director Defendants' request for an early conference  
2 on jury instructions.

3 RDI contends that Plaintiff lacks standing to act on behalf of RDI,  
4 because he is unable to show that it would have been futile for him to make  
5 a demand on RDI's Board of Directors with respect to his most recently  
6 amended Complaint. Because standing is jurisdictional, this Court lacks  
7 jurisdiction to proceed with this matter.

8 RDI notes that all decisions related to the compensation of any board  
9 member in any capacity, are presumed pursuant to Nevada statute,  
10 regardless of any contention of personal interest, to be fair to RDI, pursuant  
11 to NRS 78.240(5).

12 All board decisions challenged by Plaintiff, with the exception of the  
13 termination of Cotter, Jr., were approved by a majority of directors whose  
14 decisions in that regard this Court has already determined were the  
15 exercise of valid business judgment. Additionally, the termination of  
16 Cotter, Jr, and the decision by the Compensation Committee to permit the  
17 Estate of Cotter, Sr. to pay for the exercise of its option to purchase shares  
18 with shares that it already owned are decisions that have been ratified by a  
19 majority of the independent members of RDI's board. Accordingly,  
20 Plaintiff will be unable to prove any damages incurred by RDI.

21 Additionally, as the result of the Court's Dember 2017 ruling, much  
22 of the proposed testimony of former Justice Steele (specifically, that related  
23 to his conclusions (ii)-(iv)) has been rendered irrelevant. The Court's  
24 dismissal of the claim related to the rejected "offer" also renders testimony  
25 related to Steele's conclusion (iv) irrelevant. Moreover, because Steele's  
26 testimony involves application of the "entire fairness" doctrine, a doctrine  
27

1 inconsistent with Nevada law, Steele's proposed testimony with respect to  
2 his conclusion (i) is likely to confuse the jury.

3 Additionally, RDI joins in the position of the Director Defendants.

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

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

8 i. Granted in Part. With respect to Chief Justice  
9 Steele, he may testify only for the limited  
10 purpose of identifying what appropriate  
11 corporate governance activities would have  
12 been, including activities where directors are  
13 interested, including how to evaluate if directors  
14 are interested. Withdrawn as to Dr. Finnerty.  
15 Denied as to all other experts. See December 21,  
16 2016 Order Regarding Defendants' Motions for  
17 Partial Summary Judgment Nos. 1-6 and Motion  
18 In Limine to Exclude Expert Testimony  
19 ("December 21, 2016 Order"), on file.  
20

21 b. Plaintiff James J. Cotter Jr.'s Motion In Limine No. 1  
22 Regarding Advice of Counsel

23 i. **Denied** (see Order filed on 12/28/18)  
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- c. Plaintiff James J. Cotter Jr.’s Motion In Limine No. 2 Regarding the Submission of Merits-Related Evidence By Nominal Defendant Reading International, Inc.
  - i. **Denied** (see Order filed on 12/28/18)
  
- d. Plaintiff James Cotter Jr.’s Motion In Limine No. 3 Regarding After Acquired Evidence
  - i. **Denied**, however, “to the extent that Plaintiff’s retention and use of Highpoint Associates and Derek Alderton is admitted at trial, it will be admitted with an instruction limiting the evidence solely to the issue of Plaintiff’s suitability as President and CEO of RDI.” (see Order filed on 12/28/18)
  
- e. Margaret Cotter, Ellen Cotter, Guy Adams, Edward Kane, Douglas McEachern, William Gould, Judy Coddling, Michael Wrotniak’s Motion In Limine to Exclude Evidence that is More Prejudicial Than Probative
  - i. **Denied** (see Order filed on 12/28/18)
  
- f. Renewed Motion In Limine to Exclude Expert Testimony of Myron Steele Based on Supplemental Authority
  - i. **Denied** (see Order filed on 12/28/18)



1 g. Defendant William Gould's Motion In Limine To  
2 Exclude Irrelevant Speculative Evidence

3 i. **Denied as premature** (see Order filed on  
4 12/28/18)

5 **J. Previous Orders on Motions for Partial Summary**  
6 **Judgment**

7 a. Ellen Cotter, Margaret Cotter, and Guy Adams'  
8 Motion For Summary Judgment (motion is not to be  
9 filed until Plaintiff has an opportunity to review the  
10 discovery ordered on May 2, 2018);

11 b. Motion for Leave to File Dispositive Motion/Motion to  
12 Dismiss for Lack of Subject Matter Jurisdiction Due to  
13 Failure to Show Demand Futility (Hearing scheduled  
14 for May 25, 2018);

15 c. RDI's Motion to Dismiss for Failure to Show Demand  
16 Futility

17 i. Denied, without prejudice to renew after  
18 obtaining leave of Court to file renewed motion.  
19 (See Transcript on Hearing for Motion on  
20 Continuance (January 8, 2018 – Public), 10:22 –  
21 11:1.)

22 d. The Remaining Director Defendants' Motion for  
23 Judgment as a Matter of Law

24 i. Denied, without prejudice to renew after  
25 obtaining leave of Court to file renewed motion.  
26 (See Transcript on Hearing for Motion on  
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Continuance (January 8, 2018 – Public), 10:22 – 11:1.)

- e. Individual Defendants’ Motion for Summary Judgment (No. 1.) Re: Plaintiff’s Termination and Reinstatement Claims
  - i. GRANTED with respect to Edward Kane, Douglas McEachern, Judy Coddington, Michael Wrotniak, and William Gould, and DENIED with respect to Guy Adams, Ellen Cotter, and Margaret Cotter. See Order dated December 28, 2017.
- f. Individual Defendants’ Motion for Partial Summary Judgment (No. 2) Re: The Issue of Director Independence
  - i. GRANTED with respect to Edward Kane, Douglas McEachern, Judy Coddington, Michael Wrotniak, and William Gould, and DENIED with respect to Guy Adams, Ellen Cotter, and Margaret Cotter. See Order dated December 28, 2017.
- g. Individual Defendants’ Motion for Partial Summary Judgment (No. 3) On Plaintiff’s Claims Related to the Purported Unsolicited Offer
  - i. Granted. See Order dated December 28, 2017.
- h. Individual Defendants’ Motion for Partial Summary Judgment (No. 4) On Plaintiff’s Claims Related to the Executive Committee

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i. Granted in Part. Granted as to the formation and revitalization (activation) of the Executive Committee; Denied as to the utilization of the committee. See December 21, 2016 Order. Included among the claims dismissed against Directors Coddling, Gould, Kane, McEachern and Wrotniak.

i. Individual Defendants’ Motion for Partial Summary Judgment (No. 5) On Plaintiff’s Claims Related to the Appointment of Ellen Cotter as CEO

i. GRANTED with respect to Edward Kane, Douglas McEachern, Judy Coddling, Michael Wrotniak, and William Gould, and DENIED with respect to Guy Adams, Ellen Cotter, and Margaret Cotter. See December 28, 2017 Order.

j. Individual Defendants’ Motion for Partial Summary Judgment (No. 6) Re: Plaintiff’s Claims Related to the Estate’s Option Exercise, the Appointment of Margaret Cotter, the Compensation Packages of Ellen Cotter and Margaret Cotter, and the Additional Compensation of Margaret Cotter and Guy Adams

i. GRANTED with respect to Edward Kane, Douglas McEachern, Judy Coddling, Michael Wrotniak, and William Gould, and DENIED with respect to Guy Adams, Ellen Cotter, and Margaret Cotter. See Order dated December 28, 2017.

1 k. Judgment in favor of Defendants Edward Kane,  
2 Douglas McEachern, William Gould, Judy Coddling,  
3 and Michael Wrotniak GRANTED on all claims  
4 asserted by Plaintiff. See Order dated December 28,  
5 2017.

6 l. Plaintiff James J. Cotter, Jr.'s Motion for Partial  
7 Summary Judgment.

8 i. Denied. See October 3, 2016 Order Denying  
9 James J. Cotter Jr.'s Motion for Partial Summary  
10 Judgment and Granting RDI's Countermotion  
11 for Summary Judgment.

12 m. Defendant William Gould's Motion for Summary  
13 Judgment

14 i. Granted. See Order dated December 28, 2017.

#### 15 **K. Estimated Length of Trial**

16 Defendants estimate 15 days; 80 trial hours.

#### 18 **L. Other Issues**

##### 19 **Director Defendants' Statement:**

20 Plaintiff's list of claims above neither complies with the rules for pre-  
21 trial disclosures nor provides *any* clarity about what claims Plaintiff  
22 actually intends to prove at trial or what relief (money or equitable) he  
23 seeks. Eighth District Rule of Practice 2.67(b)(2) requires Plaintiff to  
24 provide "[a] list of all claims for relief designated by reference to each claim  
25 or paragraph of a pleading and a description of the claimant's theory of  
26 recovery with each category of damage requested." The Director  
27 Defendants intend to address at trial any purported breaches of fiduciary  
28

1 duty—and will show that Plaintiff’s claims are baseless—but must be told  
2 which specific actions are at issue in order to properly prepare their  
3 defense.

4 Plaintiff states that he will pursue claims for breaches of fiduciary  
5 duty potentially based on each and every allegation in the Second  
6 Amended Complaint by, for example, stating his intent to pursue  
7 “[b]reach(es) of the duty of care and abdication of fiduciary responsibilities  
8 by some or all acts and omissions in SAC.” This provides no more  
9 information than if Plaintiff had never made his pre-trial disclosures—he  
10 may or may not pursue a claim based on any act or omission mentioned or  
11 alluded to anywhere in the Second Amended Complaint.

12 Plaintiff’s list of claims also fails to recognize that Directors Coddling,  
13 Gould, Kane, McEachern and Wrotniak are no longer defendants in this  
14 case, and purports to continue to assert claims of wrongdoing against each  
15 of these individuals. He apparently seeks to end-run the determination of  
16 this Court that the actions taken by these individuals are protected by the  
17 Nevada Business Judgment Rule and seeks to overturn decisions (for  
18 example, hiring Margaret Cotter or promoting Ellen Cotter) that the Board  
19 made by arguing, nevertheless, that these actions constituted breaches of  
20 fiduciary duty. Once independence and disinterestedness is established,  
21 however, such corporate action is protected.

22 Plaintiff’s witness list similarly fails to shed any light on the claims  
23 Plaintiff intends to pursue—his list strays so far afield that Plaintiff has  
24 stated his intent to call Defendant Guy Adams’ ex-wife (Lois Marie  
25 Kwasigroch) at trial.

26 Plaintiff also fails to disclose the actual monetary damages or  
27 equitable relief he intends to seek at trial. For example, Plaintiff states that  
28

1 his damages resulting from Defendants' alleged breaches of the duty of  
2 care are "injury to RDI's reputation and goodwill" and "impairment of  
3 shareholder rights due to SEC filings." If these are supposed money  
4 damages, Plaintiff does not state his claim for damages, or even explain  
5 what shareholder rights are purportedly impacted. With the exception of  
6 the equitable relief he seeks in connection with his termination from RDI  
7 (*i.e.*, being reinstated as President and CEO), Plaintiff does not link any  
8 particular claim to any particular category or amount of damages. For  
9 example, Defendants have no idea what relief Plaintiff is seeking in  
10 connection with the "involuntary retirement of Storey" or "process/process  
11 failures in connection with nomination and retention of directors, including  
12 adding Coddington and/or Wrotniak." Moreover, Plaintiff's damages expert  
13 is unable to testify to any causal link between any alleged breach of duty  
14 and any alleged damage to the Company. In connection with his claims  
15 related to the Cotter Estate Stock Option, Plaintiff "reserves" the right to  
16 seek equitable relief, but he does not disclose what equitable relief he may  
17 seek.

18 Plaintiff's list of claims/damages is indecipherable and nonsensical;  
19 Plaintiff has attempted to reserve the right at trial to pursue any claim he  
20 wants and seek whatever damages he wants. Defendants cannot prepare  
21 for trial based on these inadequate disclosures, which amount to nothing  
22 but gamesmanship and are highly prejudicial.

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**RDI's Position:**

RDI joins in the Statement of the Director Defendants.

DATED this 18<sup>th</sup> day of May 2018.

COHEN|JOHNSON|PARKER|EDWARDS

By: /s/ CJ Barnabi Nevada Bar No.: 14477 for  
H. Stan Johnson (00265)  
Cohen | Johnson | Parker | Edwards  
375 East Warm Springs Road, Suite 104  
Las Vegas, NV 89119  
702.823.3500

Christopher Tayback (pro hac vice)  
Marshall Searcy (pro hac vice)  
Quinn Emanuel Urquhart & Sullivan LLP  
865 South Figueroa Street, 10<sup>th</sup> Floor  
Los Angeles, CA 90017  
213.443.3000

*Attorneys for Defendants Margaret  
Cotter, Ellen Cotter, Douglas McEachern,  
Guy Adams, Edward Kane, Judy Coddling,  
and Michael Wrotniak*

Mark Ferrario (No. 1625)  
Kara Hendricks (No. 7743)  
Tami Cowden (No. 8994)  
Greenberg Traurig, LLP  
3773 Howard Hughes Parkway  
Suite 400 North  
Las Vegas, NV 89169  
702.792.3773

*Attorneys for Reading International, Inc.*

**CERTIFICATE OF SERVICE**

1  
2 I hereby certify that on the 18<sup>th</sup> day of May 2018, I served a copy of  
3  
4 the foregoing **DEFENDANTS' PRE-TRIAL MEMORANDUM** upon each  
5 of the parties, and any other parties so identified, via Odyssey E-Filing  
6  
7 System pursuant to NRCP 5(b)(2)(D) and EDCR 8.05 to:

8 **James J Cotter:**

9 Akke Levin (al@morrislawgroup.com)  
10 Mark Krum (mkrum@bizlit.com)  
11 Steve Morris (sm@morrislawgroup.com)

12 **Other Service Contacts not associated with a party on the case:**

13 "Alan D. Freer, Esq." . (afreer@sdfnvlaw.com)  
14 "H. Stan Johnson, Esq." . (calendar@cohenjohnson.com)  
15 "Scott C. Thomas, Esq." . (stthomas@fr.com)  
16 "Thomas M. Melsheimer, Esq." . (tmelsheimer@fr.com)  
17 6085 Joyce Heilich . (heilichj@gtlaw.com)  
18 7132 Andrea Rosehill . (rosehilla@gtlaw.com)  
19 Aaron D. Shipley . (ashipley@mcwlaw.com)  
20 Adam Streisand . (astreisand@sheppardmullin.com)  
21 Allison Rose . (allisonrose@chubb.com)  
22 Andrea Sager . (sager@fr.com)  
23 Andrew D. Sedlock . (asedlock@psrlegal.com)  
24 Ashley Andrew . (aandrew@royalmileslaw.com)  
25 Asmeen Olila-Stoilov . (astoilov@santoronevada.com)  
26 Bora Lee . (blee@birdmarella.com)  
27 C.J. Barnabi . (cj@cohenjohnson.com)  
28 Calendar . (calendar@cohenjohnson.com)  
Carolyn K. Renner . (crenner@mcllawfirm.com)  
Christopher Tayback . (christayback@quinnemanuel.com)  
Craig Tompkins . (craig.tompkins@readingrdi.com)



1 Dana Provost . (dprovost@lrrc.com)  
2 Docket . (Docket@BirdMarella.com)  
3 Dolores Gameros . (dgameros@sheppardmullin.com)  
4 Donald A. Lattin . (dlattin@mcllawfirm.com)  
5 Ellen Cotter . (Ellen.Cotter@readingrdi.com)  
6 Hernan E. Vera . (hdv@birdmarella.com)  
7 IOM Mark Ferrario . (lvlitdock@gtlaw.com)  
8 Jason D. Smith . (jsmith@santoronevada.com)  
9 Jennifer Salisbury . (jsalisbury@mcllawfirm.com)  
10 Karen Bernhardt . (kbernhardt@mcllawfirm.com)  
11 Karen Minutelli . (kmm@birdmarella.com)  
12 Katie Arnold . (karnold@mcllawfirm.com)  
13 KBD Kara Hendricks . (hendricksk@gtlaw.com)  
14 Kenneth Tucker . (Kenneth.Tucker@readingrdi.com)  
15 Kirsten Story . (kstory@lrrc.com)  
16 Kristen Capella . (kcapella@santoronevada.com)  
17 Lauren Laiolo . (laurenlaiolo@quinnemanuel.com)  
18 Leah Jennings . (ljennings@mcdonaldcarano.com)  
19 LVGTDocketing . (lvlitdock@gtlaw.com)  
20 Margaret Cotter . (margaret.cotter@readingrdi.com)  
21 Mario Gutierrez . (mariogutierrez@quinnemanuel.com)  
22 Mark Krum . (mkrum@bizlit.com)  
23 Marshall M. Searcy III . (marshallsearcy@quinnemanuel.com)  
24 MNQ Megan Sheffield . (sheffieldm@gtlaw.com)  
25 Nelson Achaval . (nachaval@psrlegal.com)  
26 Nicholas J. Santoro . (nsantoro@santoronevada.com)  
27 Noah Helpern . (noahhelpern@quinnemanuel.com)  
28 Pam Miller . (pmiller@mcdonaldcarano.com)  
Rachel Jenkins . (rjenkins@santoronevada.com)  
Rebekah Graham . (rgraham@fr.com)  
Sarah Gondek . (sgondek@cohenjohnson.com)  
Shoshana E. Bannett . (seb@birdmarella.com)  
Stephen Lewis . (slewis@pattisgrolewis.com)  
Susan Villeda . (susan.villeda@readingrdi.com)  
William Gould . (wgould@troygould.com)

1 WTM Tami Cowden . (cowdent@gtlaw.com)  
2 ZCE Lee Hutcherson . (hutcherson@gtlaw.com)  
3 Erik Foley (efoley@lrrc.com)

4 Dated this 18<sup>th</sup> day of May, 2018.

5  
6 /s/ CJ Barnabi

7 An employee of Cohen Johnson Parker Edwards

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# **EXHIBIT A**

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**From:** Mark G. Krum <mkrum@bizlit.com>  
**Sent:** Friday, May 18, 2018 3:09 PM  
**To:** Lauren Lindsay; Noemi A. Kawamoto; hendricksk@gtlaw.com; Christopher Tayback  
**Cc:** sm@morrislawgroup.com; Marshall Searcy; Noah Helpen; ferrariom@gtlaw.com;  
cowdent@gtlaw.com; sbannett@birdmarella.com; erhow@birdmarella.com  
**Subject:** Re: Cotter/RDI - Pre trial Memo

For example, it argues the not yet filed "ratification" summary judgment motion. I am out to dinner and will leave it at that.

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**From:** Christopher Tayback <christayback@quinnemanuel.com>  
**Sent:** Friday, May 18, 2018 5:53:35 PM  
**To:** Mark G. Krum; Lauren Lindsay; Noemi A. Kawamoto; hendricksk@gtlaw.com  
**Cc:** sm@morrislawgroup.com; Marshall Searcy; Noah Helpen; ferrariom@gtlaw.com; cowdent@gtlaw.com;  
sbannett@birdmarella.com; erhow@birdmarella.com  
**Subject:** RE: Cotter/RDI - Pre trial Memo

Mark: what are you referring to?

---

**From:** Mark G. Krum [mailto:mkrum@bizlit.com]  
**Sent:** Friday, May 18, 2018 2:53 PM  
**To:** Lauren Lindsay <laurenlindsay@quinnemanuel.com>; Noemi A. Kawamoto <nkawamoto@bizlit.com>;  
hendricksk@gtlaw.com  
**Cc:** sm@morrislawgroup.com; Christopher Tayback <christayback@quinnemanuel.com>; Marshall Searcy  
<marshallsearcy@quinnemanuel.com>; Noah Helpen <noahhelpen@quinnemanuel.com>; ferrariom@gtlaw.com;  
cowdent@gtlaw.com; sbannett@birdmarella.com; erhow@birdmarella.com  
**Subject:** Re: Cotter/RDI - Pre trial Memo

Defendants have included material not properly included in a pre trial memorandum. Whether by design or oversight, you provided it to us too late to have any discussion, much less reach agreement. We therefore need to file separately.

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**From:** [hendricksk@gtlaw.com](mailto:hendricksk@gtlaw.com) <[hendricksk@gtlaw.com](mailto:hendricksk@gtlaw.com)>  
**Sent:** Friday, May 18, 2018 5:39:59 PM  
**To:** [laurenlindsay@quinnemanuel.com](mailto:laurenlindsay@quinnemanuel.com); Noemi A. Kawamoto  
**Cc:** Mark G. Krum; [sm@morrislawgroup.com](mailto:sm@morrislawgroup.com); [christayback@quinnemanuel.com](mailto:christayback@quinnemanuel.com); [marshallsearcy@quinnemanuel.com](mailto:marshallsearcy@quinnemanuel.com);  
[noahhelpen@quinnemanuel.com](mailto:noahhelpen@quinnemanuel.com); [ferrariom@gtlaw.com](mailto:ferrariom@gtlaw.com); [cowdent@gtlaw.com](mailto:cowdent@gtlaw.com); [sbannett@birdmarella.com](mailto:sbannett@birdmarella.com);  
[erhow@birdmarella.com](mailto:erhow@birdmarella.com)  
**Subject:** RE: Cotter/RDI - Pre trial Memo

RDI's comments are attached and have been added to the document circulated by Quinn Emanuel.

---

**From:** Lauren Lindsay [<mailto:laurenlindsay@quinnemanuel.com>]

**Sent:** Friday, May 18, 2018 2:10 PM

**To:** [nkawamoto@bizlit.com](mailto:nkawamoto@bizlit.com)

**Cc:** [mkrum@bizlit.com](mailto:mkrum@bizlit.com); [sm@morrislawgroup.com](mailto:sm@morrislawgroup.com); Christopher Tayback <[christayback@quinnemanuel.com](mailto:christayback@quinnemanuel.com)>; Marshall Searcy <[marshallsearcy@quinnemanuel.com](mailto:marshallsearcy@quinnemanuel.com)>; Noah Helpern <[noahhelpern@quinnemanuel.com](mailto:noahhelpern@quinnemanuel.com)>; Ferrario, Mark E. (Shld-LV-LT) <[ferrariom@gtlaw.com](mailto:ferrariom@gtlaw.com)>; Hendricks, Kara (Shld-LV-LT) <[hendricksk@gtlaw.com](mailto:hendricksk@gtlaw.com)>; Cowden, Tami D. (OfCnsl-LV-LT) <[cowdent@gtlaw.com](mailto:cowdent@gtlaw.com)>; Shoshana E. Barnett <[sbannett@birdmarella.com](mailto:sbannett@birdmarella.com)>; Ekwan E. Rhow <[erhow@birdmarella.com](mailto:erhow@birdmarella.com)>

**Subject:** RE: Cotter/RDI - Pre trial Memo

Noemi,

Attached is the pre-trial memo with our edits in redline. Let us know if there is anything you would like to discuss before filing with the court today.

We did not change this in the document, but think that a 10-15 day estimate for the trial length may be more appropriate.

Thanks,

**Lauren Lindsay**

*Associate*

Quinn Emanuel Urquhart & Sullivan, LLP

865 S. Figueroa Street, 10th Floor

Los Angeles, CA 90017

213-443-3224 Direct

213-443-3000 Main Office Number

213-443-3100 Fax

[laurenlindsay@quinnemanuel.com](mailto:laurenlindsay@quinnemanuel.com)

[www.quinnemanuel.com](http://www.quinnemanuel.com)

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---

**From:** Noemi A. Kawamoto [<mailto:nkawamoto@bizlit.com>]

**Sent:** Tuesday, May 15, 2018 2:40 PM

**To:** Noah Helpern <[noahhelpern@quinnemanuel.com](mailto:noahhelpern@quinnemanuel.com)>; [cowdent@gtlaw.com](mailto:cowdent@gtlaw.com); Mark G. Krum <[mkrum@bizlit.com](mailto:mkrum@bizlit.com)>; [sm@morrislawgroup.com](mailto:sm@morrislawgroup.com); [al@morrislawgroup.com](mailto:al@morrislawgroup.com)

**Cc:** [ferrariom@gtlaw.com](mailto:ferrariom@gtlaw.com); [hendricksk@gtlaw.com](mailto:hendricksk@gtlaw.com); Christopher Tayback <[christayback@quinnemanuel.com](mailto:christayback@quinnemanuel.com)>; Marshall Searcy <[marshallsearcy@quinnemanuel.com](mailto:marshallsearcy@quinnemanuel.com)>; [sbannett@birdmarella.com](mailto:sbannett@birdmarella.com); [erhow@birdmarella.com](mailto:erhow@birdmarella.com)

**Subject:** RE: Cotter/RDI - Pre trial Memo

Attached is a draft of the pre-trial memo for review and discussion.

Thanks,

Noemi

---

**From:** Noah Helpern [<mailto:noahhelpern@quinnemanuel.com>]

**Sent:** Tuesday, May 15, 2018 12:52 PM

**To:** Noemi A. Kawamoto <[nkawamoto@bizlit.com](mailto:nkawamoto@bizlit.com)>; [cowdent@gtlaw.com](mailto:cowdent@gtlaw.com); Mark G. Krum <[mkrum@bizlit.com](mailto:mkrum@bizlit.com)>; [sm@morrislawgroup.com](mailto:sm@morrislawgroup.com); [al@morrislawgroup.com](mailto:al@morrislawgroup.com)

**Cc:** [ferrariom@gtlaw.com](mailto:ferrariom@gtlaw.com); [hendricksk@gtlaw.com](mailto:hendricksk@gtlaw.com); Christopher Tayback <[christayback@quinnemanuel.com](mailto:christayback@quinnemanuel.com)>; Marshall

Searcy <[marshallsearcy@quinnemanuel.com](mailto:marshallsearcy@quinnemanuel.com)>; [sbannett@birdmarella.com](mailto:sbannett@birdmarella.com); [erhow@birdmarella.com](mailto:erhow@birdmarella.com)

**Subject:** RE: Cotter/RDI - Pre trial Memo

Noemi:

Can you let us know when we can expect to see a draft?

Thanks,

Noah

---

**From:** Noemi A. Kawamoto [<mailto:nkawamoto@bizlit.com>]

**Sent:** Monday, May 14, 2018 11:04 AM

**To:** [cowdent@gtlaw.com](mailto:cowdent@gtlaw.com); Mark G. Krum <[mkrum@bizlit.com](mailto:mkrum@bizlit.com)>; [sm@morrislawgroup.com](mailto:sm@morrislawgroup.com); [al@morrislawgroup.com](mailto:al@morrislawgroup.com)

**Cc:** [ferrariom@gtlaw.com](mailto:ferrariom@gtlaw.com); [hendricksk@gtlaw.com](mailto:hendricksk@gtlaw.com); Christopher Tayback <[christayback@quinnemanuel.com](mailto:christayback@quinnemanuel.com)>; Marshall Searcy <[marshallsearcy@quinnemanuel.com](mailto:marshallsearcy@quinnemanuel.com)>; [sbannett@birdmarella.com](mailto:sbannett@birdmarella.com); [erhow@birdmarella.com](mailto:erhow@birdmarella.com); Noah Helpern <[noahhelpern@quinnemanuel.com](mailto:noahhelpern@quinnemanuel.com)>

**Subject:** RE: Cotter/RDI - Pre trial Memo

Hi Tami,

We are working on this and expect to circulate a draft for discussion shortly.

Thanks,

Noemi

---

**From:** [cowdent@gtlaw.com](mailto:cowdent@gtlaw.com) [<mailto:cowdent@gtlaw.com>]

**Sent:** Thursday, May 10, 2018 1:15 PM

**To:** Mark G. Krum <[mkrum@bizlit.com](mailto:mkrum@bizlit.com)>; [sm@morrislawgroup.com](mailto:sm@morrislawgroup.com); [al@morrislawgroup.com](mailto:al@morrislawgroup.com)

**Cc:** [ferrariom@gtlaw.com](mailto:ferrariom@gtlaw.com); [hendricksk@gtlaw.com](mailto:hendricksk@gtlaw.com); [christayback@quinnemanuel.com](mailto:christayback@quinnemanuel.com); [marshallsearcy@quinnemanuel.com](mailto:marshallsearcy@quinnemanuel.com); [sbannett@birdmarella.com](mailto:sbannett@birdmarella.com); [erhow@birdmarella.com](mailto:erhow@birdmarella.com); [noahhelpern@quinnemanuel.com](mailto:noahhelpern@quinnemanuel.com); Noemi A. Kawamoto <[nkawamoto@bizlit.com](mailto:nkawamoto@bizlit.com)>

**Subject:** Cotter/RDI - Pre trial Memo

Mark, Steve and Akke,

Looking ahead, based on the new scheduling order, we need to file the Pretrial Memo by May 18. The one filed Dec. 8 needs to be modified, given the grant of judgment to five of the defendants.

Would you like to take the lead on this, and circulate a new draft?

Thanks,

**Tami D. Cowden**  
Of Counsel

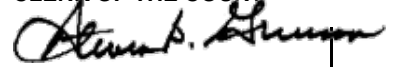
Greenberg Traurig, LLP  
Suite 400 North  
3773 Howard Hughes Parkway | Las Vegas, Nevada 89169  
T 702.938.6874  
[cowdent@gtlaw.com](mailto:cowdent@gtlaw.com) | [www.gtlaw.com](http://www.gtlaw.com) | [View GT Biography](#)



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TRAN

DISTRICT COURT  
CLARK COUNTY, NEVADA  
\* \* \* \* \*

JAMES COTTER, JR.	.	CASE NO. A-15-719860-B
Plaintiff	.	A-16-735305-B
	.	P-14-082942-E
vs.	.	
	.	DEPT. NO. XI
MARGARET COTTER, et al.	.	
	.	<b>Transcript of</b>
Defendants	.	<b>Proceedings</b>
.....	.	

BEFORE THE HONORABLE ELIZABETH GONZALEZ, DISTRICT COURT JUDGE

**HEARING ON DEFENDANTS' MOTION TO COMPEL**

MONDAY, MAY 21, 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.  
AKKE LEVIN, ESQ.

FOR THE DEFENDANTS:

MARSHALL M. SEARCY, ESQ.  
KEVIN M. JOHNSON, ESQ.  
TAMI COWDEN, ESQ.

1 LAS VEGAS, NEVADA, MONDAY, MAY 21, 2018, 8:54 A.M.

2 (Court was called to order)

3 THE COURT: That takes me to page 3, which is the  
4 Cotter case. Good morning.

5 MR. KRUM: Good morning, Your Honor.

6 MR. SEARCY: Good morning.

7 THE COURT: Who's arguing the motion?

8 MR. SEARCY: I'm arguing the motion, Your Honor.

9 THE COURT: All right?

10 MR. SEARCY: And, again, it's Marshall Searcy for  
11 defendants Ellen Cotter, Margaret Cotter, and Don Adams.

12 Your Honor, this motion is about seeking answers to  
13 basic questions, questions that are fundamental to the trial  
14 that we're supposed to have in July and the one that we were  
15 supposed to have in January.

16 THE COURT: No. The one we had in January. We  
17 actually almost started. The jury was here.

18 MR. SEARCY: That's right. The jury was here, Your  
19 Honor. And that question --

20 THE COURT: Just no Mr. Cotter.

21 MR. SEARCY: -- is has plaintiff paid his experts,  
22 does he have expert testimony to put on, and were those  
23 experts available to testify when he called in sick.

24 The opposition that's been submitted and all the  
25 correspondence in the case show that there are no answers to

1 these questions. There's no answer anywhere in plaintiff's  
2 brief. The only answer that we've received has to do with  
3 plaintiff's expert Mr. Finnerty [phonetic], and Mr. Finnerty,  
4 as we saw, has sent out a bill collector to Mr. Cotter and  
5 said, you haven't paid me.

6 When we presented that to plaintiff the answer we  
7 got back basically, Your Honor, was, you got me, I'm not going  
8 to call Finnerty.

9 Well, we're entitled to know about the rest of those  
10 experts, because we have reason to believe based upon Mr.  
11 Finnerty's, the fact that he hasn't been paid, that those  
12 other experts haven't been paid, either. Mr. Finnerty was a  
13 rebuttal expert, and his bill should actually be much smaller  
14 than the other experts that plaintiff, we suspect, hasn't  
15 paid. And if plaintiff isn't going to call those experts  
16 because he hasn't paid those experts, then we should be  
17 entitled to know that, and the Court should be entitled to  
18 know that, and the Court should be entitled to know whether or  
19 not those experts were paid at the time we were supposed to go  
20 to trial back in January.

21 The only answer that we've gotten back from  
22 plaintiff on this is a lot of excuses. And, Your Honor, this  
23 is really a straightforward application of Rule 26. Rule 26,  
24 especially Rule 26(e), says that there's a duty to supplement  
25 materials relating to a claim or defense when a party learns

1 that in some material respect the information disclosed is  
2 incomplete or incorrect. Clearly the information about  
3 payments to experts here is incomplete, because we haven't  
4 received it. But we don't know as a result of that whether or  
5 not those experts will be coming to trial.

6 THE COURT: You received it at the time you took  
7 their depositions. You haven't received updated information  
8 since the trial was cancelled at the last minute due to Mr.  
9 Cotter's illness.

10 MR. SEARCY: That's correct, Your Honor. We have  
11 not received updated information to know whether the bills  
12 that we received at the deposition have actually been paid.

13 THE COURT: Okay.

14 MR. SEARCY: And we're entitled to that information  
15 under Rule 26(e), particularly in light of the fact that that  
16 pertains to trial that's right around the corner, hopefully on  
17 July 9th, as Your Honor indicated.

18 THE COURT: No, no. It is July 9th. There's no  
19 questions about that.

20 MR. SEARCY: Well, okay. As we learned from the  
21 last hearing. Thank you, Your Honor.

22 THE COURT: Yes.

23 MR. SEARCY: And that's what this goes to. Rule  
24 26(e), plaintiff is required to supplement that information.  
25 There's no question that information about payments to experts

1 is relevant to claims and it's relevant to issues as to  
2 whether or not plaintiff may have misled this Court about  
3 whether or not he was ready to go to trial back in January.

4 THE COURT: That's really what you're trying to do;  
5 right? It's really about whether I was misled.

6 MR. SEARCY: That is-

7 THE COURT: It's not really as much about what the  
8 bills are and what happened; it's whether they lied to me  
9 about Mr. Cotter being ill or whether there was some other  
10 reason.

11 MR. SEARCY: That is a fundamental issue here, Your  
12 Honor. Absolutely. However --

13 THE COURT: Just be straight up and say it.

14 MR. SEARCY: Let me be absolutely clear. That is  
15 100 percent one of the reasons. However, it's not the only  
16 reason.

17 THE COURT: All right.

18 MR. SEARCY: The other reason is we do have a trial  
19 coming up.

20 THE COURT: Because, you know, there's still some  
21 people who don't believe Mr. Cotter was actually sick.

22 MR. SEARCY: There's some who are skeptical.

23 THE COURT: I required a letter from the doctor and  
24 an affidavit before I believed him. And I got it, and I  
25 believe the doctor would not have put his medical license on

1 the line to say Mr. Cotter's too sick to come for trial. But  
2 that's up to you guys whether you believe it or not.

3 MR. SEARCY: There's some skepticism, Your Honor --

4 THE COURT: I am aware of that.

5 MR. SEARCY: -- especially in light of these expert  
6 bills that we're seeking information about whether or not  
7 there was payment. And, frankly, Your Honor, with the July  
8 9th trial coming up we should know whether or not those  
9 experts are going to be coming to trial. That's also a  
10 fundamental issue.

11 THE COURT: You should know that.

12 MR. SEARCY: Okay. Thank you, Your Honor.

13 THE COURT: Let's see. Ms. Levin, are you handling  
14 this one?

15 MS. LEVIN: I am.

16 THE COURT: Thank you.

17 MS. LEVIN: Your Honor, this is -- I think the Court  
18 alluded to it, but this motion is really about something  
19 different. It's disingenuous, and it's a distraction. Apart  
20 from the delay in filing the motion and the absence of making  
21 any meaningful efforts to meet and confer, Mr. Krum was ready  
22 to discuss these matters on May 14. And even though Mr. Krum  
23 mooted the issue on which it was based, which is Mr.  
24 Finnerty's bill collector arriving at one of the sister  
25 companies, nevertheless they filed this motion. But the

1 motion was moot before it was filed, because, as I said, the  
2 expert -- Mark Krum already advised opposing counsel that Mr.  
3 Finnerty would not be an expert at trial.

4           The other thing is, Your Honor, there are no  
5 outstanding document requests to the plaintiff. They  
6 repeatedly say in their motion, well, you know --

7           THE COURT: But don't you have a duty to supplement?

8           MS. LEVIN: Maybe experts do. There were subpoenas  
9 served on the experts in 2016.

10           THE COURT: Well, but the parties have a duty to  
11 supplement, too; right?

12           MS. LEVIN: But in response to what? I mean, they  
13 haven't identified any outstanding document requests to the  
14 plaintiff that these documents are responsive to. Remember,  
15 they're asking for correspondence between the plaintiff and  
16 his experts regarding to the payment or nonpayment of the  
17 fees. They haven't pointed to a single document request to  
18 what that is that's responsive to -- that's outstanding. And  
19 although they are saying that this is clearly relevant,  
20 they're saying clearly relevant, they're not bothering to  
21 explain to the Court or to us what relevance --

22           THE COURT: Well, you got the relevance a minute  
23 ago, didn't you?

24           MS. LEVIN: Well, yeah. But if that's the  
25 relevance, then we're talking about a whole different motion,



1 Your Honor.

2 THE COURT: Yes. It's a different issue.

3 MS. LEVIN: Yeah. And I think that -- the trial  
4 prep, there's a time and place to disclose experts. We both  
5 served pretrial memorandums -- memoranda, and so it's a  
6 distraction. I think it's too late, and there's nothing  
7 outstanding. And they're speculating about other experts, but  
8 they don't know.

9 THE COURT: Okay. Thanks.

10 MS. LEVIN: Thank you, Your Honor.

11 THE COURT: So the motion's granted in part. The  
12 plaintiffs will produce updated billing statements for each of  
13 the experts they intend to use at trial. They are not  
14 required to produce their own correspondence with the experts  
15 at this point, but updated billing information is something  
16 that falls within the scope that is required to be provided.

17 I am denying the request for sanctions and  
18 attorneys' fees.

19 So that takes me to your pretrial conference. So  
20 what experts are coming for trial?

21 MR. KRUM: Well, Your Honor --

22 THE COURT: See how I managed to hit that, the next  
23 step that it's relevant to?

24 MR. KRUM: Yeah. That's good, Your Honor. We  
25 received even later than usual by the -- you know,

1 understanding some sandbagging is a methodology that they've  
2 employed. So we received about 2:15 on Friday their first  
3 proposed redline of the pretrial, and then a second one about  
4 a half hour later. So we didn't have a chance to process  
5 that. I note, by the way, Your Honor, the track changes  
6 showed most of the changes they made were made on Tuesday.  
7 There were some made on Thursday, and a single change beyond  
8 Friday.

9           So, among other things, to go to the point you  
10 raised, Your Honor, they changed the experts that are being  
11 called. So we'll have to look at that. I don't know if I  
12 [inaudible].

13           THE COURT: So answer my question. Just tell me.  
14 Are there any of your experts, other than Mr. Finnerty, that  
15 you know are not coming?

16           MR. KRUM: Not today. But that may change. And we  
17 will apprise them as you've just ordered. Well, that's not  
18 what you ordered, but --

19           THE COURT: I ordered billing statements and up-to-  
20 date payment ledgers.

21           So previously we had identified the jury notebooks,  
22 we'd worked on the electronic exhibits, we'd done the  
23 preinstructions, we'd done the jury instructions. You guys  
24 had talked to me about PowerPoint issues. We have previously  
25 been through this all once before because we were starting

1 trial when Mr. Cotter became ill.

2 So is there anything from that last pretrial  
3 conference, other than a reselection of alternate jurors that  
4 we will do at our final pretrial conference, that we need to  
5 talk about?

6 MR. KRUM: No.

7 THE COURT: Do you still think it's going to take  
8 the full three weeks?

9 MR. KRUM: 80 hours is the estimate that we had,  
10 Your Honor, so, yeah, we expect the two weeks. I believe that  
11 plaintiff has a longer estimate.

12 MR. SEARCY: Three weeks is fine, Your Honor.

13 THE COURT: Okay. Is there anything that you are  
14 going to update, other than arguably the list of experts, from  
15 which you previously provided me for our January trial that  
16 failed?

17 MR. SEARCY: That may well be, Your Honor. Well,  
18 so, for example, as you know, we've had discovery ordered  
19 which has not yet been provided. There was some provided  
20 before. We had motion practice and so forth. So there might  
21 be exhibits. I say might.

22 THE COURT: So the reason I'm asking you is,  
23 remember, we have an electronic exhibit protocol in place in  
24 this case --

25 MR. KRUM: Right.

1 THE COURT: -- and I have things I have to do if  
2 we're going to have stuff --

3 Did you return all their drives to them?

4 Okay. So we're going to have to start over with all  
5 the drives. So if you're going to add them, make sure that  
6 you give me enough advance notice so we can have the guys from  
7 our IT department be here for your calendar call, which should  
8 be on June 25th --

9 Am I correct?

10 THE CLERK: 18th.

11 THE COURT: -- June 18th with all your drives so we  
12 can run that.

13 MR. KRUM: Understood.

14 THE COURT: Okay. All right. Final pretrial  
15 conference. Anything else you want to update me on, other  
16 than you're going to file a nasty motion after you get the  
17 bills? I got that part.

18 MR. SEARCY: That's right, Your Honor. And, if I  
19 may, I don't believe that the Court set a time frame on  
20 production of the invoices, the updating billing statements.

21 MR. KRUM: Well, how about three weeks after they  
22 produce what you ordered them to produce?

23 THE COURT: How about a week.

24 MR. KRUM: Two weeks, Your Honor.

25 THE COURT: How about a week?

1 MR. KRUM: It's a Memorial Day holiday.

2 MR. SEARCY: A week is acceptable to us, Your Honor.

3 THE COURT: How about 10 days?

4 MR. SEARCY: Ten days.

5 THE COURT: Ten real days, not ten judicial days.

6 MR. KRUM: Well, that still puts me in the Memorial  
7 Day weekend, Your Honor. In fairness to me, I have to spend  
8 the day on the plane going back to my office. I do my best,  
9 Your Honor. When you scheduled that evidentiary hearing I was  
10 in Minneapolis on my way back.

11 THE COURT: I understand, Mr. Krum, when we moved  
12 that up. I understand. I'm not criticizing you about your  
13 travelling from the East Coast to here on a regular basis.

14 What I am concerned about is that you are trying to  
15 get to June 4th to produce this, which will then put any  
16 motion that I'm having up on the eve your trial. I don't want  
17 that happening. I want them produced by May 30th.

18 MR. KRUM: Okay, Your Honor. That'll be on the  
19 timetable that we'll be filing our motion.

20 THE COURT: Mr. Krum, May 30th.

21 MR. KRUM: Of course, Your Honor.

22 THE COURT: Thank you.

23 MR. KRUM: I'm just tired of not getting what you  
24 ordered them to produce until the day before it's too late.  
25 As I said, what you ordered on May 2nd we still don't have,

1 and I'll be reporting on whatever the state of play is later  
2 this week.

3 THE COURT: Thanks.

4 MR. KRUM: Thank you.

5 MR. SEARCY: Thank you, Your Honor.

6 THE COURT: All right. What else?

7 MR. SEARCY: Nothing else, Your Honor.

8 THE COURT: Okay. So please make sure -- we're  
9 going to need all new drives.

10 MR. SEARCY: Understood, Your Honor.

11 MR. KRUM: Understood.

12 THE COURT: Okay. 'Bye, guys.

13 THE PROCEEDINGS CONCLUDED AT 9:07 A.M.

14 \* \* \* \* \*

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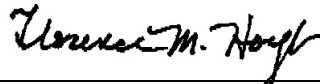
**CERTIFICATION**

I CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT FROM THE AUDIO-VISUAL RECORDING OF THE PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

**AFFIRMATION**

I AFFIRM THAT THIS TRANSCRIPT DOES NOT CONTAIN THE SOCIAL SECURITY OR TAX IDENTIFICATION NUMBER OF ANY PERSON OR ENTITY.

**FLORENCE HOYT  
Las Vegas, Nevada 89146**



\_\_\_\_\_  
FLORENCE M. HOYT, TRANSCRIBER

5/21/18

\_\_\_\_\_  
DATE



1 **COHENJOHNSONPARKEREDWARDS**

2 H. STAN JOHNSON, ESQ.  
3 Nevada Bar No. 00265  
4 sjohnson@cohenjohnson.com  
5 375 E. Warm Springs Rd., Suite 104  
6 Las Vegas, Nevada 89119  
7 Telephone: (702) 823-3500  
8 Facsimile: (702) 823-3400

9 **QUINN EMANUEL URQUHART & SULLIVAN, LLP**

10 CHRISTOPHER TAYBACK, ESQ.  
11 California Bar No. 145532, *pro hac vice*  
12 christayback@quinnemanuel.com  
13 MARSHALL M. SEARCY, ESQ.  
14 California Bar No. 169269, *pro hac vice*  
15 marshallsearcy@quinnemanuel.com  
16 865 South Figueroa Street, 10<sup>th</sup> Floor  
17 Los Angeles, CA 90017  
18 Telephone: (213) 443-3000

19 Attorneys for Defendants Margaret Cotter,  
20 Ellen Cotter, and Guy Adams

21 **EIGHTH JUDICIAL DISTRICT COURT**

22 **CLARK COUNTY, NEVADA**

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

26 Plaintiff,

27 v.

28 MARGARET COTTER, *et al.*,  
Defendants.

AND

READING INTERNATIONAL, INC., a Nevada  
corporation,

Nominal Defendant.

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

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

Related and Coordinated Cases

**BUSINESS COURT**

**ELLEN COTTER, MARGARET  
COTTER, AND GUY ADAMS' MOTION  
FOR SUMMARY JUDGMENT**

Judge: Hon. Elizabeth Gonzalez

Date of Hearing:

Time of Hearing:



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

Pursuant to Nevada Rule of Civil Procedure 56, Defendants Margaret Cotter, Ellen Cotter, and Guy Adams (collectively, “Defendants”), by and through their counsel of record, Cohen|Johnson|Parker|Edwards and Quinn Emanuel Urquhart & Sullivan, LLP, hereby submit this Motion for Summary Judgment.

This Motion is based upon the following Memorandum of Points and Authorities, the Declaration of Noah S. Helpen, the pleadings and papers on file, and any oral argument that the time of a hearing on this motion.

Dated: June 1, 2018

**COHEN|JOHNSON|PARKER|EDWARDS**

By: /s/ H. Stan Johnson  
H. STAN JOHNSON, ESQ.  
Nevada Bar No. 00265  
sjohnson@cohenjohnson.com  
375 East Warm Springs Road, Suite 104  
Las Vegas, Nevada 89119  
Telephone: (702) 823-3500  
Facsimile: (702) 823-3400

**QUINN EMANUEL URQUHART & SULLIVAN, LLP**

CHRISTOPHER TAYBACK, ESQ.  
California Bar No. 145532, *pro hac vice*  
christayback@quinnemanuel.com  
MARSHALL M. SEARCY, ESQ.  
California Bar No. 169269, *pro hac vice*  
marshallsearcy@quinnemanuel.com  
865 South Figueroa Street, 10<sup>th</sup> Floor  
Los Angeles, CA 90017  
Telephone: (213) 443-3000

*Attorneys for Defendants Margaret Cotter, Ellen Cotter, and Guy Adams*

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**NOTICE OF MOTION**

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

PLEASE TAKE NOTICE that the above Motion will be heard on July 5,  
2018 at 8:30 AM in Department XI of the above designated Court or as soon thereafter  
as counsel can be heard.

Dated: June 1, 2018

**COHEN|JOHNSON|PARKER|EDWARDS**

By: /s/ H. Stan Johnson  
H. STAN JOHNSON, ESQ.  
Nevada Bar No. 00265  
sjohnson@cohenjohnson.com  
255 East Warm Springs Road, Suite 100  
Las Vegas, Nevada 89119  
Telephone: (702) 823-3500  
Facsimile: (702) 823-3400

**QUINN EMANUEL URQUHART &  
SULLIVAN, LLP**  
CHRISTOPHER TAYBACK, ESQ.  
California Bar No. 145532, *pro hac vice*  
christayback@quinnemanuel.com  
MARSHALL M. SEARCY, ESQ.  
California Bar No. 169269, *pro hac vice*  
marshallsearcy@quinnemanuel.com  
865 South Figueroa Street, 10<sup>th</sup> Floor  
Los Angeles, CA 90017  
Telephone: (213) 443-3000

*Attorneys for Defendants Margaret Cotter,  
Ellen Cotter, Douglas McEachern, Guy Adams,  
Edward Kane, Judy Coddling, and Michael  
Wrotniak*



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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 1, 2018, in Los Angeles, California.

/s/ Noah Helpern  
Noah Helpern

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1 MEMORANDUM OF POINTS AND AUTHORITIES

2 INTRODUCTION

3 In December 2017, this Court entered judgment on behalf of five of the nine current  
4 Directors of RDI—William Gould, Douglas McEachern, Edward Kane, Judy Coddling, and  
5 Michael Wrotniak—because these Directors are independent as a matter of law. As a result, all  
6 of the corporate “transactions” alleged by Plaintiff James J. Cotter, Jr. to be actionable breaches  
7 of fiduciary duty were indisputably approved by a majority of disinterested, independent  
8 directors, save for two: (1) the actions taken by Board members leading up to and including the  
9 termination of Plaintiff as CEO and President of RDI; and (2) the RDI Compensation  
10 Committee’s approval of the exercise of a stock option held by the Estate of James J. Cotter, Sr.  
11 With respect to those transactions, the outcome-determinative vote was cast by Director Guy  
12 Adams, and the Court concluded there were issues of material fact as to his independence that  
13 precluded judgment as a matter of law in his favor.

14 Following the Court’s decision, the full RDI Board convened a Special Meeting on  
15 December 29, 2017 at the request of five disinterested, independent directors to reevaluate these  
16 two remaining transactions. Such reconsideration made logical sense, given that Plaintiff is  
17 asking that those Board decisions be re-reviewed through this litigation. This reexamination was  
18 also appropriate under NRS 78.140 and the Nevada Supreme Court’s decision in *Shoen v. SAC*  
19  *Holding Corp.*, 122 Nev. 621, 636, 137 P.3d 1171, 1181 (2006), which provide that a transaction  
20 involving or depending on an interested director shall become “valid” and subject to the business  
21 judgment rule following an informed ratification at any time.

22 After discussing Plaintiff’s allegations as to the potential interestedness or non-  
23 independence of Mr. Adams, the independent directors addressed the challenged termination and  
24 stock option decisions at the Special Meeting. In doing so, they were informed by the  
25 Company’s counsel, their own extensive knowledge of the applicable facts, their previous  
26 corporate board experience, and a further review of the contemporaneous RDI Board materials  
27 relevant to those decisions. The Board also allowed additional debate and comment. Ultimately,  
28 with Mr. Adams, Ellen Cotter, and Margaret Cotter not voting, the RDI Board voted 5-1 (with



1 only Plaintiff dissenting) to ratify Plaintiff’s termination and the Compensation Committee’s  
2 stock option decision. With the RDI Board having met all of the legally-required criteria,  
3 Nevada’s business judgment rule therefore applies to those “transactions,” as it does to the other  
4 corporate decisions questioned by Plaintiff in this derivative suit. Because Plaintiff’s breach of  
5 fiduciary duty claims cannot survive upon an application of Nevada’s business judgment rule  
6 and his aiding and abetting breach of fiduciary duty claim also fails without a cognizable breach,  
7 and judgment in favor of Defendants as to all claims is fully warranted.

8 **FACTUAL BACKGROUND**

9 **A. Plaintiff Failed to Show a Genuine Disputed Material Issue of Fact as to the**  
10 **Disinterestedness of William Gould, Edward Kane, Judy Coddling, Michael**  
**Wrotniak, or Douglas McEachern**

11 Plaintiff filed his currently-operative Second Amended Complaint in this action on  
12 September 2, 2016, which asserts broad derivative claims for breach of the fiduciary duties of  
13 care, loyalty, candor, and disclosure against the other eight current members of the RDI Board:  
14 Douglas McEachern, Edward Kane, William Gould, Judy Coddling, Michael Wrotniak, Guy  
15 Adams, Ellen Cotter, and Margaret Cotter—as well as an additional claim for aiding and abetting  
16 breach of fiduciary duty against Ellen and Margaret Cotter. (*See* Second Am. Compl. (“SAC”)  
17 ¶¶ 173-200.) As Plaintiff subsequently clarified, his Second Amended Complaint identifies six  
18 “actions or transactions” by these RDI directors that he claimed were “independently entailing or  
19 constituting breaches of fiduciary duty”: (1) the supposed threat to terminate Plaintiff “if he did  
20 not resolve [the Cotter family] trust disputes”; (2) Plaintiff’s actual termination; (3) the  
21 authorization of the exercise of the 100,000 share option by the Estate of James J. Cotter, Sr.; (4)  
22 the permanent CEO search, which resulted in Ellen Cotter’s selection; (5) the decision to hire  
23 Margaret Cotter as Executive Vice President, Real Estate Development-New York; and (6) the  
24 Board’s response to the indications of interest presented by Patton Vision. (*See, e.g.*, Pl.’s Opp’n  
25 to Ind. Defs.’ Suppl. Mot. for Summ. J. Nos. 1 & 2 at 5-6, filed on Dec. 1, 2017.)

26 In conformity with the case management schedule set forth by the Court, the Director  
27 Defendants moved for summary judgment on each of these issues, as well as generally as to all  
28 claims with respect to their independence and disinterestedness. At the hearing on the Director

1 Defendants' motions held on December 11, 2017, the Court determined that Plaintiff failed to  
2 raise a genuine issue of triable fact as to the disinterestedness and/or independence of Directors  
3 Wrotniak, Coddling, McEachern, Kane, and Gould. (*See* Helpern Dec., Ex. A (12/29/17 Notice  
4 of Entry of Order).) In light of Nevada's strong business judgment rule and consistent with well-  
5 established law, the Court granted summary judgment in favor of these directors on all breach of  
6 fiduciary duty claims asserted by Plaintiff. (*Id.*) Separately, the Court granted summary  
7 judgment in favor of *all* directors on the claims related to Patton Vision "because of Plaintiff's  
8 failure to show damages related to an unenforceable, unsolicited, nonbinding offer." (*Id.*)  
9 Shortly thereafter, Plaintiff moved for reconsideration of the Court's ruling, which the Director  
10 Defendants opposed. At a hearing held on December 28, 2017, the Court denied Plaintiff's  
11 motion for reconsideration and indicated it would enter a written order later that day granting  
12 summary judgment in favor of Directors Wrotniak, Coddling, McEachern, Kane, and Gould on  
13 all claims—which it subsequently did. (*Id.*)

14 **B. A Majority of Independent, Disinterested RDI Directors Subsequently**  
15 **Ratified the Board's Decision to Terminate Plaintiff and the Compensation**  
16 **Committee's Decision to Permit the Exercise of a Share Purchase Option**

17 Plaintiff cannot reasonably dispute that a majority of disinterested, independent RDI  
18 directors approved two of the transactions identified as "breaches" by Plaintiff, thereby  
19 triggering the application of Nevada's business judgment rule as to those decisions: the search  
20 for a permanent CEO of RDI, which culminated in the hiring of Ellen Cotter, and the hiring of  
21 Margaret Cotter as Executive Vice President, Real Estate Development-New York.<sup>1</sup> *See Shoen,*  
22 *122 Nev. at 632, 137 P.3d at 1178-79; NRS 78.138(3), (7); see also Goldman v. Pogo.com, Inc.,*  
23 *No. Civ. A. 18532-NC, 2002 WL 1358760, at \*2 (Del. Ch. June 14, 2002)* ("Only upon a  
24 showing by a challenger that raises a reasonable doubt as to the independence and/or  
25 disinterestedness of a majority of a company's directors who approved the challenged transaction

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26 <sup>1</sup> Discounting the votes of Guy Adams and Margaret Cotter, the selection of Ellen  
27 Cotter was approved by a vote of 5-1, with Plaintiff voting "no" and Ellen Cotter abstaining.  
28 (*See* Helpern Dec., Ex. C). Discounting the vote of Mr. Adams, the decision to hire Margaret  
Cotter was approved by a vote of 5-0, with each of the Cotters abstaining. (*See* Helpern Dec.,  
Ex. D).

1 will the presumption of director fealty which lies at the core of the business judgment rule be  
2 rebutted.”) (citation omitted).

3 Accordingly, only the following RDI Board decisions were arguably made without a  
4 majority of disinterested, independent RDI directors voting in favor: (1) Plaintiff’s June 12, 2015  
5 termination, which was approved by legally-independent directors McEachern and Kane, as well  
6 as Mr. Adams and the Cotter sisters, for whom independence/disinterestedness remains a jury  
7 question; and (2) the September 21, 2015 decision by RDI’s Compensation Committee,  
8 consisting of legally-independent director Kane and director Adams, to approve the use of Class  
9 A Stock to pay the exercise price of an option held by the Estate of James J. Cotter, Sr.<sup>2</sup>

10 The full RDI Board subsequently met on December 29, 2017. (*See* Helpern Dec., Ex. B  
11 (12/29/17 RDI Board Minutes) at 1.) Counsel for the Company was present, and updated the  
12 Board both on the status of this litigation as well as the content of Plaintiff’s allegations as to  
13 why Mr. Adams was purportedly not “independent” with respect to the at-issue decisions. (*Id.* at  
14 3.) Counsel further informed the Board as to the scope of NRS 78.140 (“Restrictions on  
15 Transactions Involving Interested Directors or Officers”), as well as the Board’s fiduciary duties  
16 under Nevada law, including the duties of due care and loyalty. (*Id.* at 4.) Without conceding  
17 the independence or disinterestedness of any directors that remain as Defendants in this action,  
18 the RDI Board then proceeded to consider the actions taken leading up and including Plaintiff’s  
19 termination, as well as the option decision. (*Id.* at 4-5.) Mr. Adams, as well as Margaret and  
20 Ellen Cotter, did not vote on either issue—leaving the ultimate decisions to the five disinterested,  
21 independent directors. (*Id.* at 4-6.)

22 1. The Ratification of Actions Taken by Board Members Relating to the  
23 Termination of Plaintiff as President and CEO of RDI

24 Following the introduction by counsel, Lead Independent Director Gould summarized the

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25 <sup>2</sup> The Board’s decision not to further pursue the Patton Vision indication of interest is no  
26 longer at issue because of the Court’s prior ruling that Plaintiff has failed to show any damages  
27 resulting from that decision. However, that claim would also be untenable due to the vote of a  
28 majority of disinterested directors in favor of not pursuing that indication of interest; discounting  
the votes of Mr. Adams and the Cotter sisters, the Board’s response to the Patton Vision  
indication of interest was approved by a vote of 5-0. (*See* Helpern Dec., Ex. E.)

1 first issue for consideration: ratification of the actions taken by the Board members relating to  
2 the termination of Plaintiff as President and CEO of RDI, as such actions are outlined in the  
3 Minutes of the Board Meetings held on May 21, May 29, and June 12, 2015. (*Id.* at 4.) All  
4 directors were provided copies of the referenced Minutes. (*Id.*) In addition to their “thorough”  
5 review of the relevant Board materials, Directors Coddling and Wrotniak, who were not yet  
6 members of the RDI Board at the time of Plaintiff’s termination, stated that they were drawing  
7 on their “extensive knowledge about the Board’s reasons for the termination of Mr. Cotter, Jr.,”  
8 including their observations of Plaintiff’s “behavior and demeanor in Board meetings” since each  
9 joined over two years ago. (*Id.*) Director Coddling expressed her view that Plaintiff “did not  
10 possess the knowledge, experience, ability, temperament or demeanor to be chief executive  
11 officer of the Company,” an opinion with which Mr. Wrotniak concurred. (*Id.*) Discussion then  
12 ensued regarding the Board materials, including the fact that Plaintiff had retained an outside  
13 consultant, Highpoint Associates, to assist him in his CEO duties—a fact that he did not disclose  
14 to the Board prior to his termination. (*Id.* at 4-5.)

15 Director McEachern then made a motion, seconded by Ms. Coddling, as follows:

16 BE IT HEREBY RESOLVED that the Board ratifies the actions taken by the  
17 Company’s board members relating to the termination of James J. Cotter, Jr. as  
18 President and CEO as such actions are outlined in the minutes of the Board  
meetings held on May 21, 2015, May 29, 2015 and June 12, 2015.

19 (*Id.* at 5.) After debate and further discussion, including an opportunity by Plaintiff to make  
20 comments, the proposed resolution was adopted by Directors Coddling, Gould, Kane,  
21 McEachern, and Wrotniak, with Plaintiff casting the sole vote in opposition. (*Id.*) Plaintiff  
22 characterized the ratification as simply being a litigation device (*id.*), despite the fact that the five  
23 ratifying directors were no longer parties to his derivative litigation and have no personal stake in  
24 whether the litigation goes forward.

25 2. The Ratification of the Compensation Committee’s Decision to Approve  
26 the Exercise of a Share Purchase Option Held by the Cotter, Sr. Estate

27 Director Gould then introduced the second issue for consideration: ratification of the  
28 September 21, 2015 decision by RDI’s Compensation Committee to permit the Estate of James J.

1 Cotter, Sr. to use Class A non-voting stock as the means of payment (as opposed to cash) for the  
2 exercise of an option to purchase 100,000 shares of Class B voting stock in RDI. (*Id.* at 5.)  
3 Counsel for the Company summarized the information regarding the matter considered by the  
4 Compensation Committee in 2015, including the fact that acceptance of stock was within the  
5 discretion of the Compensation Committee as Administrators of the 1999 Stock Option Plan  
6 under which the stock option was granted. (*Id.* at 5-6.) The disinterested, independent Board  
7 members then generally expressed their awareness of the information as well as their review of  
8 the relevant Board materials and Compensation Committee minutes, and opened the floor up for  
9 debate, including comment by Plaintiff. (*Id.*) The independent directors noted, among other  
10 things, that the Compensation Committee had discretion under the 1999 Stock Option Plan to  
11 allow the use of Class A Shares to exercise options to acquire Class B Stock, that the Company  
12 was at the time buying in its Class A Shares under its stock repurchase plan, that the market price  
13 of Class A shares has significantly increased since the date of the transaction, and that, from the  
14 point of view of the Cotter Estate, the same economic results could have been achieved by the  
15 sale of Class A shares into the market and using those sale proceeds to exercise the options to  
16 acquire Class B Stock. (*Id.*)

17 A motion was made and seconded, as follows:

18 BE IT HEREBY RESOLVED that the Board ratifies the decision of the Compensation  
19 Committee of the Company, as outlined in the minutes of its September 21, 2015  
20 meeting, to permit the Estate of James J. Cotter, Sr. to use Class A non-voting  
21 stock as the means of payment for the exercise of an option to purchase 100,000  
22 shares of Class B voting stock of the Company.

23 (*Id.* at 6.) The proposed resolution was then adopted by Directors Coddington, Gould, Kane,  
24 McEachern, and Wrotniak, with Plaintiff casting the sole vote in opposition. (*Id.*) Plaintiff  
25 failed to offer and substantive or material objection to the ratification, complaining simply that it  
26 was taken for a “litigation purpose.” (*Id.* at 5-6.)

27 The Board then moved, without objection, that its resolutions include the “authorization  
28 to take such other actions as may be necessary to accomplish the matters approved herein.” (*Id.*  
at 6.) Given the legal impact of the ratification of these previous decisions by a majority of

1 disinterested, independent directors under NRS 78.140 and Nevada Supreme Court precedent,  
2 Defendants now bring this Motion for Summary Judgment as to all claims asserted by Plaintiff.

3 **C. Plaintiff Took Full and Complete Discovery Regarding the Board's**  
4 **Ratification Decision and Does Not Challenge the Accuracy of the Relevant**  
5 **Board Meeting Minutes**

6 After the Court reopened discovery regarding the Board's December 29, 2017 vote on  
7 ratification, Plaintiff pursued discovery on this subject, including through interrogatories,  
8 requests for production, subpoenas, and depositions. Plaintiff deposed William Gould, Edward  
9 Kane, Judy Coddling, Ellen Cotter, Douglas McEachern, and Michael Wrotniak regarding the  
10 Board's ratification decisions. Plaintiff served document subpoenas on Judy Coddling, William  
11 Gould, Edward Kane, Douglas McEachern, and Michael Wrotniak. Plaintiff served  
12 interrogatories and requests for production of documents on Guy Adams, Ellen Cotter, and  
13 Margaret Cotter. Defendants (and dismissed former defendants) searched for, produced, and/or  
14 logged all documents relating to the Board's ratification vote, searching for documents dating  
15 back to 2015 (well before ratification was even being discussed) and using expansive search  
16 terms designed to capture all documents even potentially relevant.

17 During this process, Defendants sought to take Plaintiff's deposition. However, rather  
18 than appearing for deposition, Plaintiff (through his counsel) stipulated that he would not offer  
19 any written or oral testimony regarding the ratification process or meeting. In the words of  
20 Plaintiff's counsel: "Based on the deposition testimony and documents provided by defendants,  
21 we do not intend to offer testimony by Mr. Cotter about what happened regarding the  
22 ratifications at the December 29 telephonic board meeting, including the content of discussions,  
23 the accuracy of minutes and the reasons he voted against the ratifications." (*See* Helpern Dec.,  
24 Ex. G (Correspondence between counsel regarding Plaintiff's deposition).) Accordingly, the  
25 accuracy of the minutes of the December 29, 2017 meeting of the Board of Directors cited and  
26 referenced throughout this Motion is not in dispute.

1 ARGUMENT

2 I. THE BUSINESS JUDGMENT RULE APPLIES TO ALL DECISIONS  
3 COMPLAINED OF BY PLAINTIFF

4 NRS 78.140 provides, in relevant part, that a “transaction” by a Nevada corporation such  
5 as RDI “is not void or voidable” because an interested or non-independent director is present  
6 during a meeting or joins in a board resolution approving the transaction if “[t]he fact of the  
7 common directorship, office or financial interest is known to the board of directors or committee,  
8 and the directors or members of the committee, other than any common or interested directors or  
9 members of the committee, approve or *ratify* the contract or transaction in good faith.” NRS  
10 78.140(2)(a) (emphasis added). Citing NRS 78.140, the Nevada Supreme Court has made clear  
11 that the business judgment rule applies “in the context of *valid* interested director action, or the  
12 valid exercise of business judgment by disinterested directors in light of their fiduciary duties.”  
13 *Shoen*, 122 Nev. at 636, 137 P.3d at 1181 (emphasis added).

14 Here, all of the requirements for the application of NRS 78.140, and thus the business  
15 judgment rule, are met with respect to the Board’s actions relating to Plaintiff’s termination and  
16 the approval of the contested option exercise. All members of the RDI Board have long been  
17 aware of Plaintiff’s claims that Mr. Adams, Ellen Cotter, and Margaret Cotter are interested or  
18 not independent in light of their financial interests. Plaintiff made such allegations at the time of  
19 his termination, and in every iteration of his complaints; indeed, Plaintiff has not alleged that Mr.  
20 Adams’ purported conflicts were not “known,” but rather that RDI’s directors went forward in  
21 the face of these known conflicts. (*See, e.g.*, SAC ¶¶ 1, 6, 21, 33, 35, 37, 48, 49, 64-71.) The  
22 RDI Board has also repeatedly discussed Plaintiff’s allegations at various board meetings,  
23 including at the December 29, 2017 Special Meeting. (*See* Helpern Dec., Ex. B (12/29/17 RDI  
24 Board Minutes) at 3-4 (corporate counsel summarizing allegations of interestedness/non-  
25 independence against Director Adams).) Thus, the “fact” of the purported “financial interest”  
26 alleged by Plaintiff was certainly “known to the board of directors” at the time a majority of  
27 independent, disinterested directors made their ratification decisions on December 29, 2017, as  
28 required by NRS 78.140(2)(a).

1           Moreover, as required by NRS 78.140(2)(a), the RDI Board ratified each of the  
2 remaining challenged “transactions” by a 5-1 vote, counting only the votes of those directors  
3 whose disinterestedness and independence Plaintiff cannot reasonably challenge. (*See* Helpern  
4 Dec., Ex. B (12/29/17 RDI Board Minutes) at 5-6.) And the December 29, 2017 ratification vote  
5 was certainly “in good faith”: the directors who were not present at the time these matters were  
6 initially decided, Directors Wrotniak and Coddling, reasonably informed themselves of the  
7 relative merits of the decisions, including by reviewing contemporaneous materials and drawing  
8 on their personal knowledge gleaned in their two years of Board service; corporate counsel was  
9 present and advised the entire Board of its fiduciary duties under Nevada law, as well as the  
10 history of each decision; no ratifying director had a personal stake in the derivative litigation  
11 brought by Plaintiff or in the particular transaction ratified; and discussion and debate occurred  
12 prior to the final votes, with all directors—including Plaintiff—afforded the chance to ask  
13 questions or make comments. (*See id.*) Accordingly, all of the preconditions necessary for a  
14 “valid interested director transaction” under NRS 78.140(2)(a), and thus the application of the  
15 business judgment rule under *Shoen*, are present.<sup>3</sup>

16           Significantly, nothing in the text of NRS 78.140 places any deadline or time limitation  
17 upon ratification. In fact, the Nevada Supreme Court in *In re Amerco Deriv. Litig.*, 127 Nev.  
18 196, 252 P.3d 681 (2011), acknowledged that a ratification that occurred years after the  
19 challenged conduct could have a potentially case-dispositive effect. *See* 127 Nev. at 217, 252  
20 P.3d at 697, n. 6 (noting that a ratification that had apparently occurred in 2007, after the *Shoen*  
21 remand, could have had a dispositive effect, but refusing to reach the issue because it was raised  
22 for the first time on appeal); *see also id.*, 127 Nev. at 233, 252 P.3d at 707 n.4 (Pickering, J.,  
23 concurring in part and dissenting in part) (noting that “this issue is potentially dispositive in this  
24 case”). Nor should a deadline be unilaterally imposed here, especially given that Plaintiff  
25

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26  
27           <sup>3</sup> In taking this ratification action and making this argument, Defendants do not concede  
28 that Mr. Adams, Ellen Cotter, or Margaret Cotter are interested or not independent; rather, they  
continue to believe that Mr. Adams was not on both sides of any disputed transaction and  
satisfies the legal definition of a disinterested, independent director. Similarly, Defendants do



1 continues to seek injunctive relief to reverse his June 12, 2015 termination and to be forcibly  
2 reinstated as RDI’s CEO and President nearly three years after he was removed. As such, it  
3 makes logical sense that the present RDI Board can and should evaluate the actions leading up to  
4 and involving his termination, and either reverse or ratify the earlier decisions. Moreover, in the  
5 instant case, it would have been fruitless as a practical matter for the Board to have considered a  
6 motion for ratification prior to the Court’s determination of the independence and disinterest of  
7 Directors Coddington, Gould, Kane, McEachern, and Wrotniak; the effectiveness of any earlier  
8 ratification would have been subject to Plaintiff’s claim that these directors were in fact not  
9 independent or disinterested.

10 Here, because the RDI Board properly ratified the earlier termination and option approval  
11 actions in conformity with NRS 78.140, “valid interested director” transactions are present and  
12 the business judgment rule applies—as it does to those transactions that the Court has already  
13 found to be the product of actions by a majority of disinterested, independent directors.

14 **II. JUDGMENT ON ALL BREACH OF FIDUCIARY DUTY CLAIMS IN FAVOR**  
15 **OF DEFENDANTS IS WARRANTED UNDER THE BUSINESS JUDGMENT**  
16 **RULE**

17 In this litigation, Plaintiff has never contested that if the business judgment rule were to  
18 apply, his fiduciary duty claims would fail as a matter of law; instead, his entire argument has  
19 been that the business judgment rule does not apply. The business judgment rule is a  
20 “presumption that in making a business decision the directors of a corporation acted on an  
21 informed basis, in good faith and in the honest belief that the action taken was in the best  
22 interests of the company.” *Shoen*, 122 Nev. at 632, 137 P.3d at 1178-79 (citation omitted); *see*  
23 *also* NRS 78.138(3) (codifying the rule under Nevada law). “The business judgment rule  
24 postulates that if directors’ actions can arguably be taken to have been done for the benefit of the  
25 corporation, then the directors are presumed to have been exercising their sound business  
26 judgment rather than to have been responding to self-interest motivation.” *Horwitz v. SW. Forest*  
27 *Indus., Inc.*, 604 F. Supp. 1130, 1135 (D. Nev. 1985).

28 not concede the relevance of any independence/disinterestedness determination under Nevada  
law to any of the claims at issue.

1 Plaintiff has advocated, and the Court has accepted, a legal framework governing  
2 Plaintiff’s Nevada law claims under which, “with respect to the challenged actions the individual  
3 director defendants [can] . . . invok[e] the business judgment rule” if “the majority of those  
4 making the challenged decisions were independent generally and independent specifically with  
5 respect to the challenged decisions.” (Pl.’s Opp’n to Ind. Defs.’ Mot. for Partial Summ. J. (No.  
6 2) re: Director Independence at 1, filed October 13, 2016.) “The business judgment rule does not  
7 only protect individual directors from personal liability, rather, it expresses a sensible policy of  
8 judicial noninterference with business decisions and is designed to limit judicial involvement in  
9 business decision-making so long as a minimum level of care is exercised in arriving at the  
10 decision.” *Wynn Resorts, Ltd. v. Eighth Judicial Dist. Court in & for Cty. of Clark*, 399 P.3d  
11 334, 342 (Nev. 2017). Where “a majority of informed and disinterested directors of the Board  
12 voted in favor of the Transaction” at issue, the business judgment rule applies. *Benihana of  
13 Tokyo, Inc. v. Benihana, Inc.*, 891 A.2d 150, 173 (Del. Ch. 2005) (examining whether the  
14 “voting directors” were disinterested and independent such that the business judgment rule  
15 should apply); *Blackmore Partners, L.P. v. Link Energy LLC*, No. Civ. A. 454-N, 2005 WL  
16 2709639, at \*7 (Del. Ch. 2005) (“The protections of the business judgment rule may still insulate  
17 a board decision from challenge so long as a majority of the directors approving the transaction  
18 remain disinterested.”). Where a corporate decision is approved by a majority of independent,  
19 disinterested directors, the plaintiff’s claim “fails for lack of a valid premise.” *In re Frederick’s  
20 of Hollywood, Inc. S’holder Litig.*, No. C.A. 15944, 2000 WL 130630, at \*7-8 (Del. Ch. Jan. 31,  
21 2000) (granting a motion to dismiss because the merger was approved by a majority of  
22 disinterested directors); *In re NYMEX S’holder Litig.*, C.A. Nos. 3621-VCN, 3835-VCN, 2009  
23 WL 3206051, at \*6 (Del. Ch. Sept. 30, 2009) (to state a duty of loyalty claim, a plaintiff “must  
24 plead sufficient facts to show that a majority of the Board of Directors breached the fiduciary  
25 duty of loyalty”); *Benihana*, 891 A.2d at 191 (dismissing breach of duty of loyalty claim after  
26 finding that a majority of disinterested and independent directors approved the transaction at  
27 issue).

1 As the Nevada Supreme Court has stressed, “even a bad decision is generally protected  
2 by the business judgment rule” *Shoen*, 122 Nev. at 636, 137 P.3d at 1181, and the rule protects  
3 corporate decisions whenever they can be “attributed to any rational business purpose.” *Katz v.*  
4 *Chevron Corp.*, 22 Cal. App. 4th 1352, 1366 (1994). Courts have routinely found that the same  
5 concerns that animated the majority of RDI directors in their termination decisions to be valid  
6 business judgments, immune from any claims under the operation of the business judgment rule.  
7 *See, e.g., In re Walt Disney Co. Deriv. Litig.*, 906 A.2d 27, 72-73 (Del. 2006) (fact that a  
8 company’s CEO cannot “work well” with its directors or executives, and requires “close and  
9 constant supervision,” is a valid basis for terminating the officer, and is a decision protected by  
10 the business judgment rule); *Carlson v. Hallinan*, 925 A.2d 506, 540 n.232 (Del. Ch. 2006)  
11 (where “the evidence indicated that Carlson was not effective in the role of President of CR and  
12 that he had important managerial shortcomings,” “firing him could have fostered CR’s welfare”  
13 and was thus protected by the business judgment rule); *Franklin v. Tex. Int’l Petroleum Corp.*,  
14 324 F. Supp. 808, 813 (W.D. La. 1971) (an officer’s “inability to perform adequately” and lack  
15 of “experience, expertise, and proper degree of affability” are protected reasons under the  
16 business judgment rule for his or her termination). Defendants have identified no cases where  
17 such matters were found not to support a determination to terminate.

18 The business judgment rule also protects the Compensation Committee’s decision  
19 regarding the Estate's option exercise. *See Friedman v. Khosrowshahi*, No. CIV.A. 9161-CB,  
20 2014 WL 3519188, at \*12 (Del. Ch. July 16, 2014), *aff’d*, No. 442, 2014, 2015 WL 1001009  
21 (Del. Mar. 6, 2015) (Absent “a clear or intentional violation of a compensation plan,”  
22 compensation decisions made by a disinterested Board of Directors are protected by the business  
23 judgment rule). The Compensation Committee’s decision was made in accordance with the  
24 Company’s 1999 Stock Option Plan, which designates the Board as the ultimate controlling body  
25 with respect to stock option matters, the power held by the Compensation Committee being by  
26 delegation. (*See* Helpert Dec., Ex. H). Well before the Estate sought to exercise the option at  
27 issue, RDI had implemented this Stock Option Plan allowing exercise of options using Class A  
28 shares and a Company policy of repurchasing Class A shares when they were available. (*See*

1 Helpern Dec., Exs. H (1999 Stock Option Plan) and I (Minutes of 5/15/14 Board Meeting.) The  
2 votes attributable to the Class B shares issued in the transaction have had no impact on any  
3 election.<sup>4</sup> Moreover, the options were exercisable as a matter of right for cash; the only element  
4 of the transaction that was discretionary with the Compensation Committee and/or the Board was  
5 the use of Class A shares to pay the exercise price. Plaintiff has failed to provide any evidence  
6 whatsoever that the acceptance of Class A Shares to pay the exercise price caused any harm to  
7 RDI. The indisputable evidence is that such shares trade at a materially higher price today, then  
8 the price at which they were effectively repurchased by the Company.

9 In light of the Board's recent ratifications, all of the RDI Board transactions challenged  
10 by Plaintiff are protected by Nevada's strong business judgment rule. Because Plaintiff has not  
11 shown, and cannot establish, that the challenged transactions were not attributable to any rational  
12 business purpose, all of his breach of fiduciary duty claims are legally untenable. No trial on  
13 them is necessary. Summary judgment should be entered in favor of Defendants on all breach of  
14 fiduciary duty claims.

15 **III. ABSENT ANY COGNIZABLE BREACH, JUDGMENT ON PLAINTIFF'S**  
16 **AIDING AND ABETTING BREACH OF FIDUCIARY DUTY CLAIMS IN**  
17 **FAVOR OF ELLEN AND MARGARET COTTER IS APPROPRIATE**

18 In addition to his untenable breach of fiduciary duty claims against Mr. Adams, Ellen  
19 Cotter, and Margaret Cotter, Plaintiff has also asserted a claim against Ellen and Margaret Cotter  
20 for aiding and abetting breach of fiduciary duty, in which he contends that his sisters "solicited  
21 and aided and abetted the decisions and actions of" the other RDI Directors that he claims  
22 constituted breaches of his fiduciary duties. (See SAC ¶¶ 193-200.) In Nevada, "[a]iding and  
23 abetting the breach of a fiduciary duty has four required elements: (1) there must be a fiduciary  
24 relationship between the two parties, (2) that the fiduciary breached, (3) the defendant knowingly

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25 <sup>4</sup> Every director elected to the Board at the 2015 Annual Stockholders' Meeting  
26 received approximately 1.3 million votes, *i.e.*, the votes of more than 75% of the Class B  
27 stockholders. (See Helpern Dec. Ex. F (RDI 11/13/15 Form 8-K).) The 100,000 shares obtained  
28 by the Estate through exercising the option did not make, and could not have made, any  
difference to the outcome of the vote, rendering nonsensical Plaintiff's argument, made  
throughout this litigation, about the Compensation Committee helping Ellen and Margaret Cotter  
supposedly perpetuate control.

1 and substantially participated in or encouraged that breach, and (4) the plaintiff suffered damage  
2 as a result of the breach.” *Guilfoyle v. Olde Monmouth Stock Transfer Co., Inc.*, 130 Nev. Adv.  
3 Op. 78, 335 P.3d 190, 198 (2014); *see also In re Amerco Deriv. Litig.*, 127 Nev. at 225, 252 P.3d  
4 at 701 (same).

5 Given that the Court has awarded summary judgment to Directors Gould, Kane,  
6 McEachern, Coddling, and Wrotniak on all breach of fiduciary duty claims against them, Plaintiff  
7 cannot sustain an “aiding and abetting” claim against Ellen and Margaret Cotter based on any of  
8 those directors’ purported “breaches,” as one cannot aid and abet a breach that does not exist.  
9 *See Lift Certification Co. v. Thomas*, No. A521533, 2008 WL 8588925 (Nev. Dist. Ct. Dec. 2,  
10 2008) (because “Thomas did not breach his duty of loyalty to his employer Lift, while he  
11 prepared to change employment and compete with Lift, . . . it is not legally possible for  
12 American Equipment to have committed the Tort of Civil Aiding and Abetting”); *Manzo v. Rite*  
13 *Aid Corp.*, No. Civ. A. 18451-NC, 2002 WL 31926606, at \*6 (Del. Ch. Dec. 19, 2002)  
14 (“Because the breach of fiduciary duty claims are dismissed with prejudice, the claim against  
15 KPMG for aiding and abetting breach of fiduciary duty is similarly dismissed with prejudice.”).

16 With respect to Director Adams, the fact that a majority of disinterested, independent  
17 RDI directors has now either approved or ratified all challenged transactions involving Mr.  
18 Adams is further evidence that he did not commit any breach of fiduciary duty, since his  
19 decisions were fully consistent with those of legally disinterested, independent directors.  
20 Moreover, since Adams is only one of eight directors and he voted either along with a majority  
21 of disinterested directors or had his decisions ratified by a majority of such directors means that  
22 any purported “breach” by him could not have caused any damages to RDI. Plaintiff’s failure to  
23 show causal damages with respect to Mr. Adams, another required element, provides yet another  
24 reason why Plaintiff’s aiding and abetting claim against Ellen and Margaret Cotter is  
25 unsustainable. Accordingly, judgment also should be entered in favor of Ellen and Margaret  
26 Cotter on Plaintiff’s aiding and abetting breach of fiduciary duty claim—leaving no viable  
27 claims for 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 1, 2018

**COHEN|JOHNSON|PARKER|EDWARDS**

By: /s/ H. Stan Johnson \_\_\_\_\_  
H. STAN JOHNSON, ESQ.  
Nevada Bar No. 00265  
sjohnson@cohenjohnson.com  
375 East Warm Springs Road, Suite 104  
Las Vegas, Nevada 89119  
Telephone: (702) 823-3500  
Facsimile: (702) 823-3400

**QUINN EMANUEL URQUHART &  
SULLIVAN, LLP**  
CHRISTOPHER TAYBACK, ESQ.  
California Bar No. 145532, *pro hac vice*  
christayback@quinnemanuel.com  
MARSHALL M. SEARCY, ESQ.  
California Bar No. 169269, *pro hac vice*  
marshallsearcy@quinnemanuel.com  
865 South Figueroa Street, 10<sup>th</sup> Floor  
Los Angeles, CA 90017  
Telephone: (213) 443-3000

*Attorneys for Defendants Margaret Cotter, Ellen  
Cotter, and Guy Adams*

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**CERTIFICATE OF SERVICE**

I hereby certify that, on June 1, 2018, I caused a true and correct copy of the foregoing  
**ELLEN COTTER, MARGARET COTTER, AND GUY ADAMS' 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



**MORRIS LAW GROUP**

411 E. BONNEVILLE AVE., STE. 360 · LAS VEGAS, NEVADA 89101  
702/474-9400 · FAX 702/474-9422

1 **NEO**  
2 **MORRIS LAW GROUP**  
3 Steve Morris, Bar No. 1543  
4 Akke Levin, Bar No. 9102  
5 411 E. Bonneville Ave., Ste. 360  
6 Las Vegas, Nevada 89101  
7 Telephone: (702) 474-9400  
8 Facsimile: (702) 474-9422  
9 Email: [sm@morrislawgroup.com](mailto:sm@morrislawgroup.com)  
10 Email: [al@morrislawgroup.com](mailto:al@morrislawgroup.com)

11 Mark G. Krum, Bar No. 10913  
12 Yurko, Salvesen & Remz, P.C.  
13 1 Washington Mall, 11th Floor  
14 Boston, MA 02108  
15 Telephone: (617) 723-6900  
16 Facsimile: (617) 723-6905  
17 Email: [mkrum@bizlit.com](mailto:mkrum@bizlit.com)

18 Attorneys for Plaintiff  
19 James J. Cotter, Jr.

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

20 JAMES J. COTTER, JR.,  
21 derivatively on behalf of Reading  
22 International, Inc.,  
23 Plaintiff,  
24  
25 v.  
26 MARGARET COTTER, ELLEN  
27 COTTER, GUY ADAMS,  
28 EDWARD KANE, DOUGLAS  
McEACHERN, WILLIAM  
GOULD, JUDY CODDING,  
MICHAEL WROTNIAK,  
Defendants.

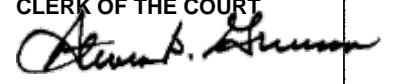
) Case No. A-15-719860-B  
) Dept. No. XI  
)  
) Coordinated with:  
)  
) Case No. P-14-0824-42-E  
) Dept. No. XI

) Jointly Administered

**NOTICE OF ENTRY OF ORDER**

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

Electronically Filed  
12/29/2017 1:23 PM  
Steven D. Grierson  
CLERK OF THE COURT



**MORRIS LAW GROUP**

411 E. BONNEVILLE AVE., STE. 360 · LAS VEGAS, NEVADA 89101  
702/474-9400 · FAX 702/474-9422

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PLEASE TAKE NOTICE that an Order Regarding Defendants' Motions for Partial Summary Judgment and Plaintiff's and Defendants' Motions *in Limine* was entered by this Honorable Court on the 28<sup>th</sup> day of December, 2017. A copy of the Order is attached hereto as Exhibit A.

MORRIS LAW GROUP

By: /s/ Akke Levin  
Steve Morris, Bar No. 1543  
Akke Levin, Bar No. 9102  
411 E. Bonneville Ave., Ste. 360  
Las Vegas, Nevada 89101

Mark G. Krum, Bar No. 10913  
YURKO, SALVESEN & REMZ, P.C.  
1 Washington Mall, 11th Floor  
Boston, MA 02108

Attorneys for Plaintiff  
James J. Cotter, Jr.

**MORRIS LAW GROUP**

411 E. BONNEVILLE AVE., STE. 360 · LAS VEGAS, NEVADA 89101  
702/474-9400 · FAX 702/474-9422

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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 on all interested parties as registered with the Court's E-Filing/E-Service System: **NOTICE OF ENTRY OF ORDER** . The date and time of the electronic proof of service is in place of the date and place of deposit in the mail.

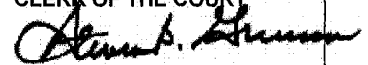
DATED this 29th day of December, 2017.

By: /s/ Linda P. Daniel  
An employee of Morris Law Group

# EXHIBIT A

RDI-A09887

Electronically Filed  
12/28/2017 4:22 PM  
Steven D. Grierson  
CLERK OF THE COURT



1 **ORDER**  
2 **COHEN|JOHNSON|PARKER|EDWARDS**  
3 **H. STAN JOHNSON, ESQ.**  
4 Nevada Bar No. 00265  
5 sjohnson@cohenjohnson.com  
6 375 E. Warm Springs Rd., Suite 104  
7 Las Vegas, Nevada 89119  
8 Telephone: (702) 823-3500  
9 Facsimile: (702) 823-3400

10 **QUINN EMANUEL URQUHART & SULLIVAN, LLP**  
11 **CHRISTOPHER TAYBACK, ESQ.**  
12 California Bar No. 145532, *pro hac vice*  
13 christayback@quinnemanuel.com  
14 **MARSHALL M. SEARCY, ESQ.**  
15 California Bar No. 169269, *pro hac vice*  
16 marshallsearcy@quinnemanuel.com  
17 865 South Figueroa Street, 10<sup>th</sup> Floor  
18 Los Angeles, CA 90017  
19 Telephone: (213) 443-3000

20 Attorneys for Defendants Margaret Cotter,  
21 Ellen Cotter, Douglas McEachern, Guy Adams, Edward Kane  
22 Judy Coddig, and Michael Wrotniak

23 **EIGHTH JUDICIAL DISTRICT COURT**

24 **CLARK COUNTY, NEVADA**

25 **JAMES J. COTTER, JR.** individually and  
26 derivatively on behalf of Reading  
27 International, Inc.,

28 Plaintiffs,

29 v.  
30 **MARGARET COTTER, et al.,**  
31 Defendants.

32 **AND**

33 **READING INTERNATIONAL, INC.,** a Nevada  
34 corporation,

35 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**

**ORDER REGARDING DEFENDANTS'  
MOTIONS FOR PARTIAL SUMMARY  
JUDGMENT AND PLAINTIFF'S AND  
DEFENDANTS' MOTIONS *IN LIMINE***

Judge: Hon. Elizabeth Gonzalez

Date of Hearing: December 11, 2017

Time of Hearing: 8:30 a.m.

1                   THIS MATTER HAVING COME TO BE HEARD BEFORE the  
2 Court on December 11, 2017, Mark G. Krum, Steve Morris, and Akke Levin  
3 appearing for plaintiff James J. Cotter, Jr. ("Plaintiff"); James L. Edwards,  
4 Christopher Tayback, and Marshall M. Searcy III appearing for defendants  
5 Margaret Cotter, Ellen Cotter, Douglas McEachern, Guy Adams, Edward  
6 Kane, Judy Coddling, and Michael Wrotniak (collectively, the "Individual  
7 Defendants"); Mark E. Ferrario and Kara B. Hendricks appearing for  
8 nominal defendant Reading International, Inc. ("RDI"); and Ekwan Rhow  
9 appearing for defendant William Gould ("Gould," together, with the  
10 Individual Defendants and RDI, "Defendants"), on the following motions:

- 11           • Individual Defendants' Motion for Partial Summary Judgment  
12           (No. 1) re: Plaintiff's Termination and Reinstatement Claims,  
13           and supplement thereto;
- 14           • Individual Defendants' Motion for Partial Summary Judgment  
15           (No. 2) re: The Issue of Director Independence, and supplement  
16           thereto;
- 17           • Individual Defendants' Motion for Partial Summary Judgment  
18           (No. 3) on Plaintiff's Claims Relating to the Purported  
19           Unsolicited Offer, and supplement thereto;
- 20           • Individual Defendants' Motion for Partial Summary Judgment  
21           (No. 5) on Plaintiff's Claims Related to the Appointment of  
22           Ellen Cotter as CEO, and supplement thereto;
- 23           • Individual Defendants' Motion for Partial Summary Judgment  
24           (No. 6) re: Plaintiff's Claims Related to the Estate's Option  
25           Exercise, the Appointment of Margaret Cotter, the  
26           Compensation Packages of Ellen Cotter and Margaret Cotter,

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- and the Additional Compensation to Margaret Cotter and Guy Adams, and supplement thereto;
- Defendant Gould's Motion for Summary Judgment;
  - Individual Defendants' Renewed Motion *in Limine* to Exclude Expert Testimony of Myron Steele Based on Supplemental Authority;
  - Individual Defendants' Motion *in Limine* to Exclude Evidence That Is More Prejudicial Than Probative;
  - Defendant Gould's Motion *in Limine* to Exclude Irrelevant Speculative Evidence;
  - RDI's Motion to Redact Opposition to Plaintiff James J. Cotter, Jr.'s Motion *in Limine* No. 1 re: Advice of Counsel and File Exhibit "E" Under Seal;
  - Plaintiff's Motion *in Limine* No. 1 re: Advice of Counsel;
  - Plaintiff's Motion *in Limine* No. 2 re: the Submission of Merits-Related Evidence by Nominal Defendant Reading International, Inc.;
  - Plaintiff's Motion *in Limine* No. 3 re: After-Acquired Evidence;
  - Plaintiff's Motion to Seal Exhibit 2 to Plaintiff James J. Cotter's Opposition to Motion *in Limine* to Exclude Evidence That Is More Prejudicial Than Probative;
  - Plaintiff's Motion to Seal Exhibits 3-6, 8-9, 11-2 and to Redact Portions of Plaintiff's Supplemental Opposition to Motion for Summary Judgment Nos. 2 and 3 and Gould Summary Judgment Motion;

- 1 • Plaintiff's Motion to Seal Exhibits 7-11, and 15-17 to Plaintiff's  
2 Supplemental Opposition to Motion for Summary Judgment  
3 Nos. 2 and 5 and Gould Summary Judgment Motion; and  
4 • Plaintiff's Motion to Seal Exhibits 4 Through 11 to Plaintiff's  
5 Supplemental Opposition to Motion for Summary Judgment  
6 Nos. 2 and 6 and Gould Summary Judgment Motion.

7 IT IS HEREBY ORDERED THAT the Individual Defendants'  
8 Motion for Partial Summary Judgment (No. 1) re: Plaintiff's Termination  
9 and Reinstatement Claims is GRANTED with respect to Defendants  
10 Edward Kane, Douglas McEachern, William Gould, Judy Coddling, and  
11 Michael Wrotniak because there are no genuine issues of material fact  
12 related to the disinterestedness and/or independence of those directors,  
13 and is DENIED with respect to Defendants Margaret Cotter, Ellen Cotter,  
14 and Guy Adams because there are genuine issues of material fact related to  
15 the disinterestedness and/or independence of those directors.

16 IT IS FURTHER ORDERED THAT the Individual Defendants'  
17 Motion for Partial Summary Judgment (No. 2) re: The Issue of Director  
18 Independence is GRANTED with respect to Defendants Edward Kane,  
19 Douglas McEachern, William Gould, Judy Coddling, and Michael Wrotniak  
20 because there are no genuine issues of material fact related to the  
21 disinterestedness and/or independence of those directors, and is DENIED  
22 with respect to Defendants Margaret Cotter, Ellen Cotter, and Guy Adams  
23 because there are genuine issues of material fact related to the  
24 disinterestedness and/or independence of those directors.

25 IT IS FURTHER ORDERED THAT the Individual Defendants'  
26 Motion for Partial Summary Judgment (No. 3) on Plaintiff's Claims  
27 Relating to the Purported Unsolicited Offer is GRANTED because of  
28



1 Plaintiff's failure to show damages related to an unenforceable, unsolicited,  
2 nonbinding offer. While Plaintiff at trial cannot claim any damages arising  
3 from Defendants' actions with respect to the Patton Vision indications of  
4 interest, Plaintiff may still attempt to use evidence regarding the Patton  
5 Vision indications to show a breach of fiduciary duty.

6 IT IS FURTHER ORDERED THAT the Individual Defendants'  
7 Motion for Partial Summary Judgment (No. 5) on Plaintiff's Claims Related  
8 to the Appointment of Ellen Cotter as CEO is DENIED.

9 IT IS FURTHER ORDERED THAT the Individual Defendants'  
10 Motion for Partial Summary Judgment (No. 6) re: Plaintiff's Claims Related  
11 to the Estate's Option Exercise, the Appointment of Margaret Cotter, the  
12 Compensation Packages of Ellen Cotter and Margaret Cotter, and the  
13 Additional Compensation to Margaret Cotter and Guy Adams is DENIED.

14 IT IS FURTHER ORDERED THAT Defendant Gould's Motion  
15 for Summary Judgment is GRANTED.

16 IT IS FURTHER ORDERED THAT judgment in favor of  
17 Defendants Edward Kane, Douglas McEachern, William Gould, Judy  
18 Coddling, and Michael Wrotniak is GRANTED on all claims asserted by  
19 Plaintiff.

20 IT IS FURTHER ORDERED THAT the Individual Defendants'  
21 Renewed Motion *in Limine* to Exclude Expert Testimony of Myron Steele  
22 Based on Supplemental Authority is DENIED.

23 IT IS FURTHER ORDERED THAT the Individual Defendants'  
24 Motion *in Limine* to Exclude Evidence That Is More Prejudicial Than  
25 Probative is DENIED.

26 IT IS FURTHER ORDERED THAT Defendant Gould's  
27 Motion *in Limine* to Exclude Irrelevant Speculative Evidence is DENIED as

1 premature, with the issues raised in the motion to be addressed at trial  
2 based upon the relevant foundation laid.

3 IT IS FURTHER ORDERED THAT Plaintiff's Motion *in Limine*  
4 No. 1 re: Advice of Counsel is DENIED.

5 IT IS FURTHER ORDERED THAT Plaintiff's Motion *in Limine*  
6 No. 2 re: the Submission of Merits-Related Evidence by Nominal  
7 Defendant Reading International, Inc. is DENIED.

8 IT IS FURTHER ORDERED THAT Plaintiff's Motion *in Limine*  
9 No. 3 re: After-Acquired Evidence is DENIED. However, to the extent that  
10 Plaintiff's retention and use of Highpoint Associates and Derek Alderton is  
11 admitted at trial, it will be admitted with an instruction limiting the  
12 evidence solely to the issue of Plaintiff's suitability as President and CEO of  
13 RDI.

14 IT IS FURTHER ORDERED THAT RDI's Motion to Redact  
15 Opposition to Plaintiff James J. Cotter, Jr.'s Motion *in Limine* No. 1 re:  
16 Advice of Counsel and File Exhibit "E" Under Seal is GRANTED.

17 IT IS FURTHER ORDERED THAT Plaintiff's Motions to Seal  
18 and/or Redact are GRANTED.

19  
20 DATED this 28<sup>th</sup> day of December, 2017.

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22 \_\_\_\_\_  
23 DISTRICT COURT JUDGE

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PREPARED AND SUBMITTED BY:

**COHEN|JOHNSON|PARKER|EDWARDS**

By: /s/ H. Stan Johnson

H. STAN JOHNSON, ESQ.  
Nevada Bar No. 00265  
sjohnson@cohenjohnson.com  
375 E. Warm Springs Rd., Suite 104  
Las Vegas, Nevada 89119  
Telephone: (702) 823-3500  
Facsimile: (702) 823-3400

**QUINN EMANUEL URQUHART &  
SULLIVAN, LLP**

CHRISTOPHER TAYBACK, ESQ.  
California Bar No. 145532, *pro hac vice*  
christayback@quinnemanuel.com  
MARSHALL M. SEARCY, ESQ.  
California Bar No. 169269, *pro hac vice*  
marshallsearcy@quinnemanuel.com  
865 South Figueroa Street, 10<sup>th</sup> Floor  
Los Angeles, CA 90017  
Telephone: (213) 443-3000

*Attorneys for Defendants Margaret Cotter,  
Ellen Cotter, Douglas McEachern, Guy Adams,  
Edward Kane, Judy Coddig, and Michael  
Wrotniak*

# Exhibit B

**FILED UNDER SEAL**

Exhibit B

# Exhibit C

**FILED UNDER SEAL**

# Exhibit C

# Exhibit D

**FILED UNDER SEAL**

Exhibit D

# Exhibit E

**FILED UNDER SEAL**

Exhibit E

**Exhibit F**

**Exhibit F**



UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
Washington, DC 20549

FORM 8-K

CURRENT REPORT

Pursuant to Section 13 OR 15(d) of the Securities Exchange Act of 1934

Date of report (Date of earliest event reported): November 13, 2015

**Reading International, Inc.**

(Exact Name of Registrant as Specified in its Charter)

<b><u>Nevada</u></b> (State or Other Jurisdiction of Incorporation)	<b><u>1-8625</u></b> (Commission File Number)	<b><u>95-3885184</u></b> (IRS Employer Identification No.)
<b><u>6100 Center Drive, Suite 900, Los Angeles, California</u></b> (Address of Principal Executive Offices)		<b><u>90045</u></b> (Zip Code)

Registrant's telephone number, including area code: **(213) 235-2240**

**N/A**

(Former Name or Former Address, if Changed Since Last Report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

**Item 5.07. Submission of Matters to a Vote of Security Holders.**

The Company held its Annual Meeting of Stockholders on November 10, 2015. The stockholders considered two proposals which are included in its proxy statement on Form DEF 14A filed with the Securities and Exchange Commission on October 20, 2015. The proposals voted upon and the results of the vote were the following:

---

Proposal 1: To elect nine Directors to serve until the Company's 2016 Annual Meeting of Stockholders and thereafter until their successors are duly elected and qualified

	FOR	WITHHOLD
<b>Ellen M. Cotter</b>	1,294,544	138,968
<b>Guy W. Adams</b>	1,324,103	109,409
<b>Judy Coddling</b>	1,325,103	108,409
<b>James J. Cotter, Jr.</b>	1,291,860	141,652
<b>Margaret Cotter</b>	1,294,544	138,968
<b>William D. Gould</b>	1,294,792	138,720
<b>Edward L. Kane</b>	1,324,103	109,409
<b>Douglas J. McEachern</b>	1,331,094	102,418
<b>Michael Wrotniak</b>	1,325,103	108,409

Proposal 2: To ratify the appointment of Grant Thornton LLP as the Company's independent auditors for the fiscal year ended December 31, 2015

FOR	AGAINST	ABSTAIN
1,649,828	3,135	1,048

**SIGNATURES**

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

READING INTERNATIONAL, INC.

Date: November 13, 2015

By: /s/ Ellen M. Cotter  
Name: Ellen M. Cotter  
Title: Chief Executive Officer

---

# Exhibit G

# Exhibit G

## Noah Helpern

---

**From:** Mark G. Krum <mkrum@bizlit.com>  
**Sent:** Tuesday, April 10, 2018 1:04 PM  
**To:** Noah Helpern  
**Cc:** Christopher Tayback; Marshall Searcy; Akke Levin; Steve Morris; Noemi A. Kawamoto  
**Subject:** RE: Cotter/RDI -- Deposition of James Cotter, Jr.

Noah,

Yes, "testimony" as used in my email below includes written testimony with respect to motion practice regarding the purported ratifications. To clarify, my reference to the May and June 2015 board minutes was an illustration, not a limited exception, of matters otherwise raised in the litigation, independent of being raised in connection with what we in shorthand have called the ratifications.

Mark

Dictated to smartphone.  
Get [Outlook for Android](#)

---

**From:** Noah Helpern <noahhelpern@quinnemanuel.com>  
**Sent:** Tuesday, April 10, 2018 1:48:03 PM  
**To:** Mark G. Krum  
**Cc:** Christopher Tayback; Marshall Searcy; Akke Levin; Steve Morris; Noemi A. Kawamoto  
**Subject:** RE: Cotter/RDI -- Deposition of James Cotter, Jr.

Mark:

Based on your representations below, we can likely agree to forego taking Plaintiff's deposition on the subject of ratification. However, before we do so, I want to confirm that where you indicate Plaintiff will not offer "testimony" about the Board's ratification decision—with the limited exception of possible testimony regarding minutes of *prior* Board meetings that were re-circulated in connection with the ratification decision—you are including written testimony (*i.e.*, declarations and affidavits) in addition to oral testimony. To the extent there is motion practice regarding the ratification decision, does Plaintiff agree not to submit any fact declarations or affidavits about that Board decision or the December 29 meeting?

Best,

Noah

---

**From:** Mark G. Krum [mailto:mkrum@bizlit.com]  
**Sent:** Monday, April 09, 2018 2:06 PM  
**To:** Noah Helpern <noahhelpern@quinnemanuel.com>  
**Cc:** Christopher Tayback <christayback@quinnemanuel.com>; Marshall Searcy <marshallsearcy@quinnemanuel.com>; Akke Levin <al@morrislawgroup.com>; Steve Morris <sm@morrislawgroup.com>; Noemi A. Kawamoto <nkawamoto@bizlit.com>  
**Subject:** Re: Cotter/RDI -- Deposition of James Cotter, Jr.

Noah,

I almost lost track of your 2 a.m. email below. We appreciate receiving an explanation of why defenddants contend they need and are entitled to take the deposition of Plaintiff with respect to what we collectively have called the ratifications.

Based on the deposition testimony and documents provided by defenddants, we do not intend to offer testimony by Mr. Cotter about what happened regarding the ratifications at the December 29 telephonic board meeting, including the content of discussions, the accuracy of minutes and the reasons he voted against the ratifications. Insofar as "the Board's preparation for that meeting" refers to deposition exhibit 525 (and the same document bearing a different production number and including redactions, which marked at the deposition of Bill Gould), we do not intend to offer his testimony about that exhibit (which of course is different than testimony regarding certain of the exhibits in it, such as the May and June 2015 board minutes about which he has been examined previously). So that obviates the stated need for his deposition.

Mark

Dictated to a smartphone.

Get [Outlook for Android](#)

---

**From:** Noah Helpern <[noahhelpern@quinnemanuel.com](mailto:noahhelpern@quinnemanuel.com)>

**Sent:** Monday, April 9, 2018 1:55:35 AM

**To:** Mark G. Krum

**Cc:** Christopher Tayback; Marshall Searcy; Akke Levin; Steve Morris; Noemi A. Kawamoto

**Subject:** Cotter/RDI -- Deposition of James Cotter, Jr.

Mark:

To follow up on our recent conversation, Defendants are entitled to take Plaintiff's deposition. Plaintiff participated in the December 29 Board meeting and to the extent he intends to offer any testimony about what happened at that meeting, including but not limited to the content of discussions, the accuracy of minutes, the reasons he voted against ratification, and/or the Board's preparation for that meeting, Defendants are entitled to know what Plaintiff intends to say. Please let us know by the end of the day Monday if you will agree to make Plaintiff available for deposition or if Defendants need to raise this issue with the Court.

Best,

Noah Helpern

Quinn Emanuel Urquhart & Sullivan, LLP

(213) 443-3653 / [noahhelpern@quinnemanuel.com](mailto:noahhelpern@quinnemanuel.com)

# Exhibit H

**FILED UNDER SEAL**

# Exhibit H

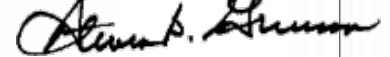
# Exhibit I

**FILED UNDER SEAL**

# Exhibit I



RDI-A9908-9968  
Filed Under Seal



1 **MCOM**  
2 **COHENJOHNSONPARKEREDWARDS**  
3 H. STAN JOHNSON, ESQ.  
4 Nevada Bar No. 00265  
5 sjohnson@cohenjohnson.com  
6 375 E. Warm Springs Rd., Suite 104  
7 Las Vegas, Nevada 89119  
8 Telephone: (702) 823-3500  
9 Facsimile: (702) 823-3400

10 **QUINN EMANUEL URQUHART & SULLIVAN, LLP**  
11 CHRISTOPHER TAYBACK, ESQ.  
12 California Bar No. 145532, *pro hac vice*  
13 christayback@quinnemanuel.com  
14 MARSHALL M. SEARCY, III, ESQ.  
15 California Bar No. 169269, *pro hac vice*  
16 marshallsearcy@quinnemanuel.com  
17 865 South Figueroa Street, 10<sup>th</sup> Floor  
18 Los Angeles, CA 90017  
19 Telephone: (213) 443-3000

20 Attorneys for Defendants Margaret Cotter,  
21 Ellen Cotter, and Guy Adams

22 **EIGHTH JUDICIAL DISTRICT COURT**

23 **CLARK COUNTY, NEVADA**

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

27 Plaintiff,

28 v.

MARGARET COTTER, *et al.*,  
Defendants.

AND

READING INTERNATIONAL, INC., a Nevada  
corporation,

Nominal Defendant.

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

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

Related and Coordinated Cases

**BUSINESS COURT**

**DEFENDANTS' MOTION TO COMPEL  
PLAINTIFF TO PRODUCE  
COMMUNICATIONS RELATING TO  
EXPERT FEE PAYMENTS**

**APPLICATION FOR ORDER  
SHORTENING TIME**

Judge: Hon. Elizabeth Gonzalez  
Date of Hearing: May 21, 2018  
Time of Hearing: 8:30 a.m.

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

Pursuant to EDCR 2.34 and Nevada Rules of Civil Procedure 26(b)(1), 26(e)(1), 34(c), and 45, Defendants Margaret Cotter, Ellen Cotter, and Guy Adams (collectively, "Defendants"), by and through their counsel of record, Cohen|Johnson|Parker|Edwards and Quinn Emanuel Urquhart & Sullivan, LLP, hereby submit this Motion to Compel Plaintiff to Produce Communications Relating to Expert Fee Payments. Defendants request that this matter be heard on an order shortening time.

This Motion is based upon the following Memorandum of Points and Authorities, the Declaration of Marshall M. Searcy, III, the pleadings and papers on file, and any oral argument that the time of a hearing on this motion.

Dated: May 11, 2018

**COHEN|JOHNSON|PARKER|EDWARDS**

By:           /s/ H. Stan Johnson             
H. STAN JOHNSON, ESQ.  
Nevada Bar No. 00265  
sjohnson@cohenjohnson.com  
255 East Warm Springs Road, Suite 100  
Las Vegas, Nevada 89119  
Telephone: (702) 823-3500  
Facsimile: (702) 823-3400

**QUINN EMANUEL URQUHART & SULLIVAN, LLP**

CHRISTOPHER TAYBACK, ESQ.  
California Bar No. 145532, *pro hac vice*  
christayback@quinnemanuel.com  
MARSHALL M. SEARCY, III, ESQ.  
California Bar No. 169269, *pro hac vice*  
marshallsearcy@quinnemanuel.com  
865 South Figueroa Street, 10<sup>th</sup> Floor  
Los Angeles, CA 90017  
Telephone: (213) 443-3000

*Attorneys for Defendants Margaret Cotter, Ellen Cotter, and Guy Adams*

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**ORDER SHORTENING TIME**

It appearing to the satisfaction of the Court and good cause appearing therefor, IT IS  
HEREBY ORDERED that Defendants Margaret Cotter, Ellen Cotter, and Guy Adams'  
(collectively, "Defendants") Motion to Compel Plaintiff to Produce Communications Relating to  
Expert Fee Payments shall be heard before the above-entitled Court in Department XI, on the 21  
~~14~~ day of May, 2018 at 8:30 a.m./p.m., or as soon thereafter as counsel  
can be heard.

Dated this 15<sup>th</sup> day of May, 2018

  
DISTRICT COURT JUDGE

CR

**PREPARED AND SUBMITTED BY:**  
**COHEN|JOHNSON|PARKER|EDWARDS**

By: /s/ H. Stan Johnson   
H. STAN JOHNSON, ESQ.  
Nevada Bar No. 00265  
sjohnson@cohenjohnson.com  
255 East Warm Springs Road, Suite 100  
Las Vegas, Nevada 89119  
Telephone: (702) 823-3500  
Facsimile: (702) 823-3400

**DECLARATION OF MARSHALL M. SEARCY III**

I, Marshall M. Searcy, III, state and declare as follows:

1. I am a member of the bar of the State of California, and am a partner with Quinn Emanuel Urquhart & Sullivan, LLP, attorneys for Defendants Margaret Cotter, Ellen Cotter, and Guy Adams (“Defendants”). I make this declaration based upon personal, firsthand knowledge, except where stated to be on information and belief, and as to that information, I believe it to be true. If called upon to testify as to the contents of this declaration, I am legally competent to testify to its contents in a court of law. This declaration is made in good faith and not for the purpose of delay.

2. Attached hereto as **Exhibit 1** is a true and correct copy of Defendants’ Notice of Taking Depositions – Duces Tecum (of Dr. John Finnerty, Tiago Duarte-Silva, and Myron T. Steele), served on Plaintiff on October 12, 2016, which attaches Deposition Subpoenas (Duces Tecum) for Dr. Finnerty, Mr. Duarte-Silva, and Mr. Steele.

3. Attached hereto as **Exhibit 2** is a true and correct copy of Defendants’ Notice of Taking Depositions – Duces Tecum (of Albert S. Nagy), served on Plaintiff on November 23, 2016, which attaches a Deposition Subpoena (Duces Tecum) for Mr. Nagy.

4. Attached hereto as **Exhibit 3** is a true and correct copy of Defendants’ Notice of Taking Depositions – Duces Tecum (of Richard Spitz), served on Plaintiff on December 2, 2016, which attaches a Deposition Subpoena (Duces Tecum) for Mr. Spitz.

5. Attached hereto as **Exhibit 4** is a true and correct copy of a September 14, 2016 invoice from AlixPartners LLP to Mark G. Krum, counsel for Plaintiff, marked as Exhibit 428 in the deposition of Dr. John D. Finnerty, held in this case on October 16, 2016.

6. Attached hereto as **Exhibit 5** is a true and correct copy of an August 16, 2016 invoice from Realty Capital Solutions, LLC to Mark G. Krum, counsel for Plaintiff, marked as Exhibit 467 in the deposition of Albert Nagy, held in this case on November 29, 2016.

7. Attached hereto as **Exhibit 6** is a true and correct copy of an August 16, 2016 invoice from Strong Force IP Strategies to Mark G. Krum, counsel for Plaintiff, marked as Exhibit 476 in the deposition of Richard Spitz, held in this case on December 7, 2016.

1           8.       Attached hereto as **Exhibit 7** is a true and correct copy of the parties' Joint  
2 Pretrial Memorandum, filed on December 8, 2017.

3           9.       Attached hereto as **Exhibit 8** is a true and correct copy of an April 23, 2018 email  
4 regarding "Visitor at Cecelia" from Karen Vargas, Controller of Cecelia Packing Corporation  
5 ("Cecelia"), to Laura Batista, executive assistant to Ellen Cotter, and David Roth, President of  
6 Cecelia, which attaches a March 29, 2018 Incident Report prepared by Laura Lopez, an  
7 employee in Cecelia's accounting department.

8           10.      Attached hereto as **Exhibit 9** is a true and correct of a March 29–April 17, 2018  
9 email chain regarding "Letter 03/29/2018" between Laura Lopez, David Roth, and Margaret  
10 Cotter, which attaches an "Urgent Message" for James J. Cotter, Jr., left at Cecelia's offices by a  
11 purported representative of AlixPartners LLP.

12           11.      I subsequently learned that a purported representative of AlixPartners LLP also  
13 called the offices of Reading International, Inc. ("RDI") regarding the collection of Plaintiff's  
14 apparent expert fee debt on January 22, 2018.

15           12.      Attached hereto as **Exhibit 10** is a true and correct copy of a May 7, 2018 letter  
16 from me to Mark G. Krum, counsel for Plaintiff, requesting that Plaintiff update and supplement  
17 his document production to include communications between Plaintiff and his experts regarding  
18 his payment (or nonpayment) of any amounts he owes or has owed resulting from expert services  
19 in this matter. Consistent with their obligations, Defendants offered to meet and confer  
20 telephonically with Plaintiff regarding this request.

21           13.      Attached hereto as **Exhibit 11** is a true and correct copy of a May 9, 2018 email  
22 from me to Mark G. Krum, counsel for Plaintiff, requesting a response to Defendants' May 7,  
23 2018.

24           14.      Attached hereto as **Exhibit 12** is a true and correct copy of a May 10, 2018 email  
25 from Mark G. Krum, counsel for Plaintiff, to me.

26           15.      Attached hereto as **Exhibit 13** is a true and correct copy of a May 10, 2018 letter  
27 from me responding to Mark G. Krum's May 10, 2018 email.

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16. I believe that the foregoing efforts, made in good faith to resolve this matter without Court intervention, satisfy the parties' obligations to meet and confer under Eighth District Rule of Practice 2.34.

17. Defendants respectfully submit that this Motion should be heard on an Order Shortening Time because of the need to prepare for the rapidly-approaching trial, which the Court has anticipated will take place between July 9 and July 27, 2018, and given Plaintiff's previous representations to the Court and Defendants as to the expected appearances and testimony of his expert witnesses at trial. Plaintiff's failure to provide full and complete document productions in response to Defendants' previous requests threatens to impair Defendants' trial preparations.

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

Executed on May 11, 2018, in Los Angeles, California.



---

Marshall M. Searcy III

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    I. COMMUNICATIONS BETWEEN PLAINTIFF AND HIS EXPERT  
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **INTRODUCTION**

3 It has become apparent that, at the time Plaintiff was declaring that he was “unfit” to  
4 attend trial on his own case, Plaintiff was also in arrears to one—and likely all—of the experts he  
5 promised to present at trial. For instance, in late March 2018, a debt collector purporting to  
6 represent AlixPartners LLP (the consulting firm that employs Plaintiff’s rebuttal damages expert,  
7 Dr. John D. Finnerty) made a field visit to a Cotter-owned company, looking for repayment of  
8 outstanding amounts owed to Plaintiff’s expert and leaving behind an “urgent” letter. And, an  
9 apparent debt collector also called RDI’s offices regarding Plaintiff’s significant debt to  
10 AlixPartners in January 2018.

11 Defendants’ motion to compel presents a simple, narrowly-tailored request that can be  
12 easily fulfilled. Defendants’ preexisting document requests cover all communications between  
13 Plaintiff, his experts, and their representatives that pertain to the expert fees incurred by Plaintiff  
14 and his payment (or nonpayment) of those fees. Plaintiff produced such correspondence prior to  
15 expert depositions in late 2016. The 2018 contacts by AlixPartners establish that more recent  
16 communications exist between Plaintiff and his experts concerning their bills. As evidenced by  
17 Plaintiff’s previous production and as is clear under established law, this correspondence is not  
18 privileged. Given that these communications are relevant to Defendants’ trial preparations,  
19 Plaintiff’s previous representations to the Court regarding the appearances of his experts, and  
20 Plaintiff’s ability to make out a *prima facie* case for his claims at trial, Plaintiff should be ordered  
21 to supplement his production in conformity with his indisputable obligations under Nevada Rule  
22 of Civil Procedure 26(e)(1) and provide forthwith all correspondence between him, his experts,  
23 or their representatives regarding expert fees and his payment (or nonpayment) of them to date.

24 **FACTUAL BACKGROUND**

25 **A. Defendants Request, and Plaintiff Produces, Communications Between**  
26 **Plaintiff and His Experts Concerning The Billing of Their Fees**

27 In his Initial Expert Disclosure Statement, served on August 25, 2016, Plaintiff identified  
28 Myron T. Steele, Esq., Tiago Duarte-Silva, and Richard Spitz as affirmative experts. In a

1 Rebuttal Expert Disclosure Statement served on September 19, 2016 and supplemented on  
2 September 28, 2016, Plaintiff also disclosed Dr. John D. Finnerty and Albert S. Nagy, along with  
3 Messrs. Steele and Duarte-Silva, as rebuttal experts. Following Plaintiff's disclosures,  
4 Defendants served Plaintiff on October 12, 2016 with a Notice of Taking Depositions – Duces  
5 Tecum (of Dr. John Finnerty, Tiago Duarte-Silva, and Myron T. Steele) that attached Deposition  
6 Subpoenas (Duces Tecum) for Dr. Finnerty, Mr. Duarte-Silva, and Mr. Steele. (*See* Searcy Decl.  
7 Ex. 1.) Defendants served Plaintiff with similar Notices of Taking Depositions – Duces Tecum,  
8 along with Deposition Subpoenas (Duces Tecum), for Messrs. Nagy and Spitz on November 23,  
9 2016 and December 2, 2016, respectively. (*See* Searcy Decl. Exs. 2-3.)

10 In each of the Deposition Subpoenas that Defendants served on Plaintiff and his experts,  
11 Defendants requested “all communications” between the expert and “Plaintiff, Plaintiff's  
12 counsel, or anyone acting on their behalf, relating to this litigation.” (*See, e.g.*, Searcy Decl.  
13 Ex. 1, Duarte-Silva Dep. Subpoena, Req. No. 2.) Similarly, Defendants requested “documents  
14 sufficient to identify the total fees paid to [the expert] for any work [the expert] performed on  
15 behalf of Plaintiff or Plaintiff's counsel during the course of this litigation.” (*See id.*, Req.  
16 No. 6.) In response to these requests, Plaintiff produced bills, invoices, and other  
17 communications with his experts reflecting the charges Plaintiff had incurred as of September  
18 2016 for the expert services he had engaged. (*See, e.g.*, Searcy Decl. Exs. 4-6.)

19 Following expert discovery, the parties submitted a Joint Pretrial Memorandum on  
20 December 8, 2017, in which Plaintiff promised the Court that each of his disclosed experts  
21 would appear at trial and “will offer opinion testimony.” (Searcy Decl. Ex. 7 at 24-25.) At the  
22 parties' final pretrial conference, held on January 5, 2018, Plaintiff similarly represented to the  
23 Court that, while it was “likely” that he was going to have “some expert scheduling issues,”  
24 those issues involved accommodating expert witnesses who may have a small subset of days  
25 they were not available during a four-week trial. (*See* 1/5/18 Hr'g Tr. at 28:4-32:10.) Plaintiff  
26 noted that, “I've got to put them in order that accommodates them,” but, when asked “Are there  
27 any particular witnesses who can't be here for the whole four weeks to testify?”, he informed the  
28 Court, “I don't think so” and “I know of no one.” (*Id.* at 28:18-29:22.) Accordingly, both the

1 Court and Defendants were left with the impression at the final pretrial conference that all  
2 experts disclosed by Plaintiff would be appearing at some point during the imminent trial.

3 **B. Evidence Emerges Indicating That Plaintiff Needs to Supplement His**  
4 **Production of Communications Between Him and His Experts Concerning**  
5 **the Billing of Their Fees and His (Non)Payment of Them**

6 Evidence has emerged following the last-minute continuance of trial on January 8, 2018  
7 indicating that there are additional, not-yet-produced communications between Plaintiff and his  
8 experts concerning the billing and collection of their expert fees in this matter. For instance, on  
9 March 29, 2018, a gentleman representing himself as a debt collector for AlixPartners LLP  
10 appeared at the offices of Cecelia Packing Corporation (“Cecelia”), and interacted with Laura  
11 Lopez, an employee in Cecelia’s accounting department that handles payroll and accounts  
12 payable for company’s farming operations, and also provides certain secretarial services. (*See*  
13 *Searcy Decl. Ex. 8.*)

14 Purporting to represent the consulting firm that employs Dr. Finnerty, Plaintiff’s rebuttal  
15 damages expert, this individual apparently demanded to see Plaintiff regarding an unpaid debt,  
16 and threatened to search all of Cecelia’s offices until he could be located. (*Id.*) Prior to his  
17 departure from Cecelia’s facilities, the AlixPartners debt collector left with Ms. Lopez an  
18 “Urgent Message” directed to Mr. Cotter, Jr., dated March 28, 2018. (*Id.*; *see also Searcy Decl.*  
19 *Ex. 9.*) According to this message, Plaintiff’s “account” with AlixPartners “is in a delinquent  
20 status” and “a field visit” was necessary because Plaintiff had “not responded” to the firm’s  
21 “continued efforts” to reach him “via telephone and mail.” (*Searcy Decl. Ex. 9.*) It turns out that  
22 a purported representative of AlixPartners also contacted RDI’s offices regarding Plaintiff’s  
23 expert fee debt on January 22, 2018. (*See Searcy Decl. ¶ 11.*)

24 Upon receiving and reviewing information relating to this March 29, 2018 visit,  
25 Defendants sent a letter to Plaintiff’s counsel, dated May 7, 2018. (*See Searcy Decl. Ex. 10.*)  
26 Defendants’ letter noted that the debt collector’s visit called into question the continued accuracy  
27 of Plaintiff’s previous representations regarding the anticipated appearances of his experts. (*See*  
28 *id.* at 1.) Accordingly, it requested that Plaintiff confirm, by Wednesday, May 9, 2018, which of  
Plaintiff’s disclosed experts will appear at the forthcoming trial. (*See id.*) In addition,

1 emphasizing Plaintiff's ongoing duty to supplement his document productions, it requested that  
2 Plaintiff (1) produce forthwith all correspondence with his expert witnesses regarding their fees  
3 and his payment (or nonpayment) of any amounts he owes or has owed resulting from expert  
4 services in this case, and (2) notify Defendants by Wednesday, May 9, 2018 whether he intended  
5 to make such a production. (*See id.* at 2.) Defendants offered to meet and confer with Plaintiff  
6 as necessary regarding their requests. (*See id.*)

7 Plaintiff did not respond to Defendants' May 7, 2018 letter for over two days.  
8 Defendants checked in again with Plaintiff on the afternoon of May 9, 2018 via email, requesting  
9 an immediate response to their letter and emphasizing that they would be forced to file a motion  
10 to compel should Plaintiff fail to respond. (*See Searcy Decl. Ex. 11.*) Finally, in an email on  
11 May 10, 2018 long on irrelevant and vituperative attorney colloquy but short on content, Plaintiff  
12 informed Defendants that—contrary to his prior representations—Dr. Finnerty would not be  
13 appearing at trial; however, Plaintiff's response failed to address the actual questions posed by  
14 Defendants concerning the appearances of his other experts or whether he was going to  
15 supplement his production to include additional communications relating to expert fees. (*See*  
16 *Searcy Decl. Ex. 12.*) Defendants pointed out that Plaintiff had avoided these questions in a  
17 letter on May 10, 2018, and asked for answers by the end of the day. (*See Searcy Decl. Ex. 13.*)  
18 Plaintiff failed to respond. After unsuccessfully attempting on multiple occasions to obtain from  
19 Plaintiff the requested assurances and required supplemental production concerning his disclosed  
20 experts, Defendants were compelled to bring this motion.

## 21 ARGUMENT

### 22 **I. COMMUNICATIONS BETWEEN PLAINTIFF AND HIS EXPERT WITNESSES** 23 **REGARDING THEIR FEES AND HIS (NON)PAYMENT OF THEM ARE** 24 **RELEVANT, NOT PRIVILEGED, AND RESPONSIVE TO EXISTING** **REQUESTS**

25 It is beyond dispute that documents or communications pertaining to the expert fees  
26 incurred by Plaintiff and his payment (or nonpayment) of those fees are captured by Defendants'  
27 existing document requests. (*See Searcy Decl. Exs. 1-3, Dep. Subpoenas, Req. Nos. 2, 6.*)  
28 Moreover, such correspondence is certainly not privileged. Plaintiff himself produced examples

1 of such correspondence prior to the depositions of his experts in this action, taken in the Fall of  
2 2016, and such communications were often entered into evidence—without objection from  
3 Plaintiff—as exhibits during those experts’ depositions. (*See, e.g.*, Searcy Decl. Exs. 4-6.)

4         Indeed, it is well settled as a matter of law that documents and communications  
5 concerning expert billing and collection efforts should be produced, as those materials are not  
6 privileged. *See Subpoenaed Witness v. United States*, 171 F.3d 511, 513 (7th Cir. 1999)  
7 (“[I]nformation regarding . . . fees is not protected by the attorney-client privilege because the  
8 payment of fees is not a confidential communication.”); *Ralls v. United States*, 52 F.3d 223, 225  
9 (9th Cir. 1995) (the attorney-client privilege “applies only to confidential professional  
10 communications, and the payment of fees is usually incidental to the attorney-client  
11 relationship”); *Vingelli v. United States*, 992 F.2d 449, 452 (2d Cir. 1993) (“fee arrangements do  
12 not fall within the attorney-client privilege because they are not the kinds of disclosures that  
13 would not have been made absent the privilege and their disclosure does not incapacitate the  
14 attorney from rendering legal advice”); *Washington v. Sheppard*, 52 Wash. App. 707, 711, 763  
15 P.2d 1232, 1234 (Wash. Ct. App. 1988) (“the amount, source, and manner of payment of the fee  
16 [must] be disclosed”).

17         Communications between Plaintiff and his expert witnesses or their representatives  
18 regarding expert fees, as well as documents relating to Plaintiff’s payment (or nonpayment) of  
19 any amounts he owes or has owed resulting from expert services, are also clearly relevant. Not  
20 only has Plaintiff produced such material in the past, attesting to its relevance, but his previous  
21 representations to the Court and Defendants promising the appearances of his experts at trial  
22 render these documents especially relevant. Moreover, lengthy delinquencies in payment by  
23 Plaintiff to his experts, such as the type apparently complained of by AlixPartners, could  
24 potentially imperil the appearance of Plaintiff’s experts at trial and lead to a directed verdict if  
25 Plaintiff lacks the expert testimony needed to make out a required *prima facie* element of his  
26 breach of fiduciary claims. And, of course, such correspondence is also likely to be easy to  
27 locate and is not anticipated to be voluminous.

28

1 In light of their responsiveness, relevance, and non-privileged nature, Plaintiff should be  
2 required to produce all communications between him and his experts (or any representatives  
3 thereof) concerning expert fees incurred in this litigation and Plaintiff's payment—or  
4 nonpayment—of such fees.

5 **II. PLAINTIFF HAS AN ONGOING DUTY UNDER THE NEVADA RULES TO**  
6 **SUPPLEMENT HIS DOCUMENT PRODUCTION**

7 Nevada Rule of Civil Procedure 16.1(a)(1)(B) requires litigants such as Plaintiff to  
8 produce "all documents, data compilations, and tangible things that are in the possession,  
9 custody, or control of the party and which are discoverable under Rule 26(b)." A party's  
10 obligation to produce responsive documents is ongoing; pursuant to Nevada Rule of Civil  
11 Procedure 26(e)(1), litigants have "a duty to supplement at appropriate intervals its disclosures  
12 under Rule 16.1(a) or 16.2(a) if the party learns that in some material respect the information  
13 disclosed is incomplete or incorrect and if the additional or corrective information has not  
14 otherwise been made known to the other parties." *See also Riccel Enters. v. Howe Arden Bus.*  
15 *Park, LLC*, No. A09-590904C, 2011 WL 1527239, at \*1 (Nev. Dist. Ct. Jan. 27, 2011)  
16 ("N.R.C.P. 26(e) provides the basis for a duty to provide continued supplements of witnesses and  
17 documents."); *Robbins & Myers, Inc. v. J.M. Huber Corp.*, 274 F.R.D. 63, 79 (W.D.N.Y. 2011)  
18 ("Rule 26(e) imposes a continuing obligation upon a responding party to supplement prior  
19 discovery responses based on later acquired information when the party learns of its existence  
20 and materiality."); *Arthur v. Atkinson Freight Lines Corp.*, 164 F.R.D. 19, 19-21 (S.D.N.Y.  
21 1995) (medical records created after plaintiff's initial response subject to continuing duty to  
22 supplement as relevant information of which plaintiff's attorney should have been aware as  
23 being subject to defendant's earlier document request—defendant was under no obligation to  
24 serve "successive requests" for updated records).

25 Given that documents or communications pertaining to the expert fees incurred by  
26 Plaintiff and his payment (or nonpayment) of those fees are captured by Defendants' existing  
27 document requests, and Plaintiff previously produced such documents on behalf of his experts  
28 prior to their depositions, Plaintiff has an indisputable duty under Nevada Rule of Civil

1 Procedure 26(e)(1) to supplement his existing production on an ongoing basis. The evidence  
2 concerning AlixPartners' recent debt collection efforts shows that additional responsive  
3 documents have been sent or received by Plaintiff since his prior production; indeed, the "Urgent  
4 Message" left by Dr. Finnerty's firm (not yet produced by Plaintiff) is one such example and, in  
5 light of that document's reference to previous "efforts" to reach Plaintiff "via telephone *and*  
6 *mail*," it is clear that there are also other new and relevant communications that render Plaintiff's  
7 previous production incomplete. (Searcy Decl. Ex. 9 (emphasis added).) Indeed, it is highly  
8 likely that there are additional communications concerning expert fees and the payment (or  
9 nonpayment) of them between Plaintiff and representatives of other experts engaged by him.  
10 Pursuant to Rule 26(e)(1), Plaintiff should be required to supplement his production and provide  
11 all correspondence between him and each of his experts (or their representatives) regarding their  
12 fees and his payment—or nonpayment—of them to date.

13 **CONCLUSION**

14 For the reasons set forth above, Defendants respectfully request that the Court grant their  
15 Motion to Compel Plaintiff to Produce Communications Relating to Expert Fee Payments.

16 Dated: May 11, 2018

17 **COHENJOHNSONPARKERREDWARDS**

18  
19 By: /s/ H. Stan Johnson 

20 H. STAN JOHNSON, ESQ.

21 Nevada Bar No. 00265

22 sjohnson@cohenjohnson.com

23 255 East Warm Springs Road, Suite 100

24 Las Vegas, Nevada 89119

25 Telephone: (702) 823-3500

26 Facsimile: (702) 823-3400

27 **QUINN EMANUEL URQUHART &  
28 SULLIVAN, LLP**

CHRISTOPHER TAYBACK, ESQ.

California Bar No. 145532, *pro hac vice*

christayback@quinnemanuel.com

MARSHALL M. SEARCY, III, ESQ.

California Bar No. 169269, *pro hac vice*

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marshallsearcy@quinnemanuel.com  
865 South Figueroa Street, 10<sup>th</sup> Floor  
Los Angeles, CA 90017  
Telephone: (213) 443-3000

*Attorneys for Defendants Margaret Cotter, Ellen  
Cotter, and Guy Adams*



**CERTIFICATE OF SERVICE**

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I hereby certify that, on May 15 , 2018, I caused a true and correct copy of the foregoing  
**DEFENDANTS' MOTION TO COMPEL PLAINTIFF TO PRODUCE  
COMMUNICATIONS RELATING TO EXPERT FEE PAYMENTS and  
APPLICATION FOR ORDER SHORTENING TIME** 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**

1 **COHEN|JOHNSON|PARKER|EDWARDS**  
2 H. Stan Johnson, ESQ.  
3 Nevada Bar No. 00265  
4 sjohnson@cohenjohnson.com  
5 255 East Warm Springs Road, Suite 100  
6 Las Vegas, Nevada 89119  
7 Telephone: (702) 823-3500  
8 Facsimile: (702) 823-3400

9 **QUINN EMANUEL URQUHART & SULLIVAN, LLP**  
10 **CHRISTOPHER TAYBACK, ESQ.**  
11 California Bar No. 145532, *pro hac vice*  
12 christayback@quinnemanuel.com  
13 **MARSHALL M. SEARCY, ESQ.**  
14 California Bar No. 169269, *pro hac vice*  
15 marshallsearcy@quinnemanuel.com  
16 865 South Figueroa Street, 10<sup>th</sup> Floor  
17 Los Angeles, CA 90017  
18 Telephone: (213) 443-3000

19 Attorneys for Defendants Margaret Cotter,  
20 Ellen Cotter, Douglas McEachern, Guy Adams,  
21 Edward Kane, Judy Coddling, and Michael Wrotniak

22 **EIGHTH JUDICIAL DISTRICT COURT**  
23 **CLARK COUNTY, NEVADA**

24 JAMES J. COTTER, JR. individually and  
25 derivatively on behalf of Reading International,  
26 Inc.,  
27  
28 Plaintiff,  
  
v.  
  
MARGARET COTTER, ELLEN COTTER, GUY  
ADAMS, EDWARD KANE, DOUGLAS  
McEACHERN, WILLIAM GOULD, JUDY  
CODDING, MICHAEL WROTONIAK, and DOES  
1 through 100, inclusive,  
  
Defendants,  
  
and  
  
READING INTERNATIONAL, INC., a Nevada  
corporation;  
  
Nominal Defendant.

Case No.: A-15-719860-B  
Dept. No.: XI  
  
Case No.: P-14-082942-E  
Dept. No.: XI  
  
Related and Coordinated Cases

**BUSINESS COURT**  
**NOTICE OF TAKING DEPOSITIONS**  
**- DUCES TECUM**



1 The depositions will be upon oral examination before a Notary Public, or before some  
2 other officer authorized by law to administer oaths. Said depositions may be videotaped. Copies  
3 of the related subpoenas are attached hereto.

4 Dated: October 12, 2016.

5 **COHEN|JOHNSON|PARKER|EDWARDS**

6  
7 By: /s/ H. Stan Johnson  
8 H. STAN JOHNSON, ESQ.  
9 Nevada Bar No. 00265  
10 sjohnson@cohenjohnson.com  
11 255 East Warm Springs Road, Suite 100  
12 Las Vegas, Nevada 89119  
13 Telephone: (702) 823-3500  
14 Facsimile: (702) 823-3400

15 **QUINN EMANUEL URQUHART &  
16 SULLIVAN, LLP**  
17 CHRISTOPHER TAYBACK, ESQ.  
18 California Bar No. 145532, *pro hac vice*  
19 christayback@quinnemanuel.com  
20 MARSHALL M. SEARCY, ESQ.  
21 California Bar No. 169269, *pro hac vice*  
22 marshallsearcy@quinnemanuel.com  
23 865 South Figueroa Street, 10<sup>th</sup> Floor  
24 Los Angeles, CA 90017  
25 Telephone: (213) 443-3000

26 *Attorneys for Defendants Margaret Cotter,  
27 Ellen Cotter, Douglas McEachern, Guy Adams,  
28 Edward Kane, Judy Coddling, and Michael  
Wrotniak*

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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 hereby certify that on this day, I caused a true and correct copy of the foregoing **Notice of Taking Depositions – Duces Tecum** to be served via the Court’s Wiznet E-Filing system on all registered and active parties.

Dated: October 12, 2016

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

1 **CODE CC03**

2 **COHEN|JOHNSON|PARKER|EDWARDS**

3 H. Stan Johnson, ESQ.  
4 Nevada Bar No. 00265  
5 sjohnson@cohenjohnson.com  
6 255 East Warm Springs Road, Suite 100  
7 Las Vegas, Nevada 89119  
8 Telephone: (702) 823-3500  
9 Facsimile: (702) 823-3400

6 **QUINN EMANUEL URQUHART & SULLIVAN, LLP**

7 **CHRISTOPHER TAYBACK, ESQ.**  
8 California Bar No. 145532, *pro hac vice*  
9 christayback@quinnemanuel.com  
10 **MARSHALL M. SEARCY, ESQ.**  
11 California Bar No. 169269, *pro hac vice*  
12 marshallsearcy@quinnemanuel.com  
13 865 South Figueroa Street, 10<sup>th</sup> Floor  
14 Los Angeles, CA 90017  
15 Telephone: (213) 443-3000

11 Attorneys for Defendants Margaret Cotter,  
12 Ellen Cotter, Douglas McEachern, Guy Adams,  
13 Edward Kane, Judy Coddling, and Michael Wrotniak

14 **EIGHTH JUDICIAL DISTRICT COURT**

15 **CLARK COUNTY, NEVADA**

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

18 Plaintiff,

19 v.

20 MARGARET COTTER, ELLEN COTTER, GUY  
21 ADAMS, EDWARD KANE, DOUGLAS  
22 McEACHERN, WILLIAM GOULD, JUDY  
23 CODDING, MICHAEL WROTNIAK, and DOES  
24 1 through 100, inclusive,

24 Defendants,

25 and

26 READING INTERNATIONAL, INC., a Nevada  
27 corporation;

28 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**

**DEPOSITION SUBPOENA**  
**(DUCES TECUM)**

(For Personal Appearance and Production of  
Documents and Things at Deposition)

1 **THE STATE OF NEVADA TO:**

2 John Finnerty  
3 c/o Lewis Roca Rothgerber Christie LLP  
4 3993 Howard Hughes Parkway, Suite 600  
Las Vegas, Nevada 89169  
Telephone: (702) 949-8200

5 **YOU ARE ORDERED TO APPEAR AS A WITNESS** and give testimony at the  
6 following date, time, and place pursuant to NRS 50.165 and NRCP 30 and 45, UNLESS you  
7 make an agreement with the attorney or party submitting this subpoena:  
8

9 Date: October 17, 2016  
10 Time: 9:00 a.m.  
11 Place: Quinn Emanuel Urquhart & Sullivan, LLP  
51 Madison Avenue, 22nd Floor,  
New York, New York 10010

12 If you are a public or private corporation, partnership, association, or governmental  
13 agency, you are ordered to designate one or more officers, directors, managing agents, or other  
14 persons who consent to testify on your behalf. The persons you designate will be examined, and  
15 are ordered to testify, on the matters set forth below that are known or reasonably available to the  
16 organization. NRCP 30(b)(6).

17 **YOU ARE FURTHER ORDERED** to bring with you at the time of your appearance the  
18 books, documents, or tangible things set forth below that are in your possession, custody, or  
19 control. All documents shall be produced as they are kept in the usual course of business or shall  
20 be organized and labeled to correspond with the categories listed. NRCP 45(d)(1).

21 **WITNESS FEES:** You are entitled to witness fees and mileage traveled, as provided by  
22 NRS 50.225. This Subpoena must be accompanied by the fees for one day's attendance and  
23 mileage, unless issued on behalf of the State or a State agency. NRCP 45(b).

24 **CONTEMPT:** Failure by any person without adequate excuse to obey a subpoena  
25 served upon that person may be deemed a contempt of the court, NRCP 45(e), punishable by a  
26 fine not exceeding \$500 and imprisonment not exceeding 25 days, NRS 22.100(2). Additionally,  
27 a witness disobeying a subpoena shall forfeit to the aggrieved party \$100 and all damages  
28 sustained as a result of the failure to attend, and a warrant may issue for the witness' arrest. NRS



1 50.195, 50.205, and 22.100(3).

2 Please see the attached Exhibit "A" for information regarding your rights and  
3 responsibilities relating to this Subpoena. Please see the attached Exhibit B for a full list of  
4 counsel in this matter.

5 Dated: October 12, 2016.

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7

By: /s/ H. Stan Johnson

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H. Stan Johnson, Esq.  
Nevada Bar No. 00265

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**MATTERS ON WHICH TESTIMONY WILL BE TAKEN**  
(for witnesses designated pursuant to NRC 30(b)(6) only)

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**ITEMS TO BE PRODUCED**

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**DEFINITIONS**

1. COMMUNICATION or COMMUNICATIONS means and includes any disclosure, transfer, or exchange of information between two or more persons, whether orally or in writing, including, without limitation, any conversation or discussion by means of meeting, letter, telephone, note, memorandum, telegraph, telex, telecopier, electronic mail, or any other electronic or other medium, including, without limitation, in written, audio or video form.

2. "DOCUMENT" or "DOCUMENTS" means all materials within the full scope of Nev. R. Civ. P. 34, including but not limited to all writings and recordings, including the originals and all non-identical copies, whether different from the original by reason of any notation made on such copies or otherwise, handwriting, typewriting, printing, image, photograph, photocopy, digital file of any kind, transmittal by (or as an attachment to) electronic mail (including instant messages and text messages) or facsimile, video and audio recordings, and every other means of recording upon any tangible thing, any form of COMMUNICATION or representation, and any record thereby created, regardless of the manner in which the record has been stored, and all non-identical copies of such DOCUMENTS, in the possession, custody, or control of YOU or any other PERSON acting on YOUR behalf.

3. The term PLAINTIFF shall refer to James J. Cotter, Jr.

4. RELATES TO, RELATING TO, or RELATED TO means to refer to, reflect, concern, pertain to or in any manner be connected with the matter discussed.

5. "YOU" or "YOUR" shall mean John Finnerty and any of YOUR present and former attorneys, investigators, agents, and any other individual acting for or on YOUR behalf.

6. "FINNERTY REPORT" refers to the report that YOU submitted on September 28, 2016, including all exhibits, as well as any of Your other reports and exhibits that have been submitted to the court during the course of this litigation.

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**ITEMS TO BE PRODUCED**

1. All DOCUMENTS, data, and analysis, including but not limited to all facts and data provided by PLAINTIFF or PLAINTIFF's counsel, that YOU considered in forming YOUR opinions directly or indirectly referenced in the FINNERTY REPORT.

2. All COMMUNICATIONS between YOU and PLAINTIFF, PLAINTIFF'S counsel, or anyone acting on their behalf, RELATING TO this litigation.

3. All draft versions of the FINNERTY REPORT, as well as any draft versions of exhibits to the FINNERTY REPORT.

4. All DOCUMENTS prepared or created by YOU or anyone acting on YOUR behalf in forming your opinions directly or indirectly referenced in the FINNERTY REPORT, including but not limited to any notes.

5. DOCUMENTS sufficient to identify all matters in the last two years in which YOU have prepared reports or testified.

6. DOCUMENTS sufficient to identify the total fees paid to YOU for any work YOU performed on behalf of PLAINTIFF or PLAINTIFF's counsel during the course of this litigation.

7. DOCUMENTS sufficient to identify all persons and entities who assisted YOU in this matter.

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**AFFIDAVIT/DECLARATION OF SERVICE**

STATE OF NEVADA )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

I, *(insert name of person making service)* \_\_\_\_\_, being duly sworn, or under penalty of perjury, state that at all times herein I was and am over 18 years of age and not a party to or interested in the proceedings in which this Affidavit/Declaration is made; that I received a copy of the **DEPOSITION SUBPOENA (DUCES TECUM)** on *(insert date person making service received Subpoena)* \_\_\_\_\_; and that I served the same on *(insert date person making service served Subpoena)* \_\_\_\_\_, by delivering and leaving a copy with *(insert name of witness)* \_\_\_\_\_ *(insert address where witness was served)* at \_\_\_\_\_.

Executed on: \_\_\_\_\_  
*(Date)* *(Signature of Person Making Service)*

**SUBSCRIBED AND SWORN** to before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

**NOTARY PUBLIC** in and for the County of \_\_\_\_\_, State of \_\_\_\_\_.

**OR ONE OF THE FOLLOWING: Per NRS 53.045**

(a) If executed in the State of Nevada: "I declare under penalty of perjury that the foregoing is true and correct."

Executed on: \_\_\_\_\_  
*(Date)* *(Signature of Person Making Service)*

(b) If executed outside of the State of Nevada: "I declare under penalty of perjury under the law of the State of Nevada that the foregoing is true and correct."

Executed on: \_\_\_\_\_  
*(Date)* *(Signature of Person Making Service)*

**EXHIBIT "A"**  
**NEVADA RULES OF CIVIL PROCEDURE**

**Rule 45**

**(c) *Protection of persons subject to subpoena.***

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2) (A) A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

(B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3) (A) On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it

(i) fails to allow reasonable time for compliance;

(ii) requires a person who is not a party or an officer of a party to travel to a place more than 100 miles from the place where that person resides, is employed or regularly transacts business in person, except that such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held, or

(iii) requires disclosure of privileged or other protected matter and no exception or waiver applies, or

(iv) subjects a person to undue burden.

(B) If a subpoena

(i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or

(ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party,

the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

**(d) *Duties in responding to subpoena.***

(1) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(2) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

**Exhibit B**

**COHEN|JOHNSON|PARKER|EDWARDS**

H. STAN JOHNSON, ESQ.  
Nevada Bar No. 00265  
sjohnson@cohenjohnson.com  
255 East Warm Springs Road, Suite 100  
Las Vegas, Nevada 89119  
Telephone: (702) 823-3500  
Facsimile: (702) 823-3400

**QUINN EMANUEL URQUHART & SULLIVAN, LLP**

CHRISTOPHER TAYBACK, ESQ.  
California Bar No. 145532, *pro hac vice*  
christayback@quinnemanuel.com  
MARSHALL M. SEARCY, ESQ.  
California Bar No. 169269, *pro hac vice*  
marshallsearcy@quinnemanuel.com  
865 South Figueroa Street, 10<sup>th</sup> Floor  
Los Angeles, CA 90017  
Telephone: (213) 443-3000

*Attorneys for Defendants Margaret Cotter,  
Ellen Cotter, Douglas McEachern, Guy Adams,  
Edward Kane, Judy Codding, and Michael Wrotniak*

**MAUPIN, COX & LeGOY**

DONALD A. LATTIN  
Nevada Bar No. 0693  
dlattin@mclrenolaw.com  
CAROLYN K. RENNER  
Nevada Bar No. 9164  
crenner@mclrenolaw.com  
CHRISTOPHER M. STANKO  
Nevada Bar No. 13591  
cstanko@mclrenolaw.com  
4785 Caughlin Parkway  
Reno, NV 89519

**BIRD, MARELLA, BOXER, WOLPERT,  
NESSIM, DROOKS, LINCENBERG & RHOW**

EKWAN E. RHOW  
California Bar No. 174604  
eer@birdmarella.com  
1875 Century Park East, 23<sup>rd</sup> Floor  
Los Angeles, CA 90067-2561

*Attorneys for Defendants William Gould and  
Timothy Storey*

1 **GREENBERG TRAUIG, LLP**

2 MARK E. FERRARIO, ESQ.

3 Nevada Bar No. 1625

4 ferrariom@gtlaw.com

5 KARA B. HENDRICKS, ESQ.

6 Nevada Bar No. 7743

7 hendricksk@gtlaw.com

8 3773 Howard Hughes Parkway

9 Suite 400 North

10 Las Vegas, Nevada 89169

11 Telephone: (702) 792-3773

12 Facsimile: (702) 792-9002

13 *Attorneys for Nominal Defendant Reading  
14 International, Inc.*

15 **LEWIS ROCA ROTHGERBER LLP**

16 MARK G. KRUM

17 Nevada Bar No. 10913

18 MKrum@LRRLaw.com

19 3993 Howard Hughes Parkway, Suite 600

20 Las Vegas, Nevada 89169

21 Telephone: (702) 949-8200

22 Facsimile: (702) 949-8398

23 *Attorneys for Plaintiff James J. Cotter, Jr.*

24 **ROBERTSON & ASSOCIATES, LLP**

25 ALEXANDER ROBERTSON, IV

26 Nevada Bar No. 8642

27 arobertson@arobertsonlaw.com

28 32121 Lindero Canyon Road, Suite 200

Westlake Village, California 91361

Telephone: (818) 851-3850

Facsimile: (818) 851-3851

**PATTI, SGRO, LEWIS & ROGER**

ADAM C. ANDERSON

Nevada Bar No. 13062

aanderson@pslrfirm.com

720 S. 7th Street, 3rd Floor

Las Vegas, NV 89101

Telephone: (702) 385-9595

Facsimile: (702) 386-2737

*Attorneys for Plaintiffs and Intervenors,  
T2 Partners Management, LP dba Kase  
Capital Management; T2 Accredited Fund,  
LP dba Kase Fund; T2 Qualified Fund,  
LP dba Kase Qualified Fund; Tilson Offshore  
Fund, LTD; T2 Partners Management I, LLC  
dba Kase Management; T2 Partners  
Management Group, LLC dba Kase Group;  
JMG Capital Management, LLC; Pacific  
Capital Management, LLC*



1 **CODE CC03**

2 **COHEN|JOHNSON|PARKER|EDWARDS**

3 H. Stan Johnson, ESQ.  
4 Nevada Bar No. 00265  
5 sjohnson@cohenjohnson.com  
6 255 East Warm Springs Road, Suite 100  
7 Las Vegas, Nevada 89119  
8 Telephone: (702) 823-3500  
9 Facsimile: (702) 823-3400

6 **QUINN EMANUEL URQUHART & SULLIVAN, LLP**

7 **CHRISTOPHER TAYBACK, ESQ.**  
8 California Bar No. 145532, *pro hac vice*  
9 christayback@quinnemanuel.com  
10 **MARSHALL M. SEARCY, ESQ.**  
11 California Bar No. 169269, *pro hac vice*  
12 marshallsearcy@quinnemanuel.com  
13 865 South Figueroa Street, 10<sup>th</sup> Floor  
14 Los Angeles, CA 90017  
15 Telephone: (213) 443-3000

11 Attorneys for Defendants Margaret Cotter,  
12 Ellen Cotter, Douglas McEachern, Guy Adams,  
13 Edward Kane, Judy Coddling, and Michael Wrotniak

14 **EIGHTH JUDICIAL DISTRICT COURT**

15 **CLARK COUNTY, NEVADA**

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

18 Plaintiff,

19 v.

20 MARGARET COTTER, ELLEN COTTER, GUY  
21 ADAMS, EDWARD KANE, DOUGLAS  
22 McEACHERN, WILLIAM GOULD, JUDY  
23 CODDING, MICHAEL WROTONIAK, and DOES  
24 1 through 100, inclusive,

24 Defendants,

25 and

26 READING INTERNATIONAL, INC., a Nevada  
27 corporation;

28 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**

**DEPOSITION SUBPOENA**  
**(DUCES TECUM)**

(For Personal Appearance and Production of  
Documents and Things at Deposition)

1 **THE STATE OF NEVADA TO:**

2 Myron Steele  
3 c/o Lewis Roca Rothgerber Christie LLP  
4 3993 Howard Hughes Parkway, Suite 600  
5 Las Vegas, Nevada 89169  
6 Telephone: (702) 949-8200

7 **YOU ARE ORDERED TO APPEAR AS A WITNESS** and give testimony at the  
8 following date, time, and place pursuant to NRS 50.165 and NRCP 30 and 45, UNLESS you  
9 make an agreement with the attorney or party submitting this subpoena:

10 Date: October 19, 2016  
11 Time: 9:00 a.m.  
12 Place: Greenberg Traurig, LLP  
13 2700 Two Commerce Square  
14 2001 Market Street  
15 Philadelphia, PA 19103

16 If you are a public or private corporation, partnership, association, or governmental  
17 agency, you are ordered to designate one or more officers, directors, managing agents, or other  
18 persons who consent to testify on your behalf. The persons you designate will be examined, and  
19 are ordered to testify, on the matters set forth below that are known or reasonably available to the  
20 organization. NRCP 30(b)(6).

21 **YOU ARE FURTHER ORDERED** to bring with you at the time of your appearance the  
22 books, documents, or tangible things set forth below that are in your possession, custody, or  
23 control. All documents shall be produced as they are kept in the usual course of business or shall  
24 be organized and labeled to correspond with the categories listed. NRCP 45(d)(1).

25 **WITNESS FEES:** You are entitled to witness fees and mileage traveled, as provided by  
26 NRS 50.225. This Subpoena must be accompanied by the fees for one day's attendance and  
27 mileage, unless issued on behalf of the State or a State agency. NRCP 45(b).

28 **CONTEMPT:** Failure by any person without adequate excuse to obey a subpoena  
served upon that person may be deemed a contempt of the court, NRCP 45(e), punishable by a  
fine not exceeding \$500 and imprisonment not exceeding 25 days, NRS 22.100(2). Additionally,  
a witness disobeying a subpoena shall forfeit to the aggrieved party \$100 and all damages  
sustained as a result of the failure to attend, and a warrant may issue for the witness' arrest. NRS

1 50.195, 50.205, and 22.100(3).

2 Please see the attached Exhibit "A" for information regarding your rights and  
3 responsibilities relating to this Subpoena. Please see the attached Exhibit B for a full list of  
4 counsel in this matter.

5

6 Dated: October 12, 2016.

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8

By: /s/ H. Stan Johnson  
H. Stan Johnson, Esq.  
Nevada Bar No. 00265

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**MATTERS ON WHICH TESTIMONY WILL BE TAKEN**  
(for witnesses designated pursuant to NRC 30(b)(6) only)

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**ITEMS TO BE PRODUCED**

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**DEFINITIONS**

1. COMMUNICATION or COMMUNICATIONS means and includes any disclosure, transfer, or exchange of information between two or more persons, whether orally or in writing, including, without limitation, any conversation or discussion by means of meeting, letter, telephone, note, memorandum, telegraph, telex, telecopier, electronic mail, or any other electronic or other medium, including, without limitation, in written, audio or video form.

2. "DOCUMENT" or "DOCUMENTS" means all materials within the full scope of Nev. R. Civ. P. 34, including but not limited to all writings and recordings, including the originals and all non-identical copies, whether different from the original by reason of any notation made on such copies or otherwise, handwriting, typewriting, printing, image, photograph, photocopy, digital file of any kind, transmittal by (or as an attachment to) electronic mail (including instant messages and text messages) or facsimile, video and audio recordings, and every other means of recording upon any tangible thing, any form of COMMUNICATION or representation, and any record thereby created, regardless of the manner in which the record has been stored, and all non-identical copies of such DOCUMENTS, in the possession, custody, or control of YOU or any other PERSON acting on YOUR behalf.

3. The term PLAINTIFF shall refer to James J. Cotter, Jr.

4. RELATES TO, RELATING TO, or RELATED TO means to refer to, reflect, concern, pertain to or in any manner be connected with the matter discussed.

5. "YOU" or "YOUR" shall mean Myron Steele and any of YOUR present and former attorneys, investigators, agents, and any other individual acting for or on YOUR behalf.

6. "STEELE REPORT" refers to the report that YOU submitted on August 25, 2016, including all exhibits, as well as any of Your other reports and exhibits that have been submitted to the court during the course of this litigation.

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**ITEMS TO BE PRODUCED**

1. All DOCUMENTS, data, and analysis, including but not limited to all facts and data provided by PLAINTIFF or PLAINTIFF's counsel, that YOU considered in forming YOUR opinions directly or indirectly referenced in the STEELE REPORT.

2. All COMMUNICATIONS between YOU and PLAINTIFF, PLAINTIFF'S counsel, or anyone acting on their behalf, RELATING TO this litigation.

3. All draft versions of the STEELE REPORT, as well as any draft versions of exhibits to the STEELE REPORT.

4. All DOCUMENTS prepared or created by YOU or anyone acting on YOUR behalf in forming your opinions directly or indirectly referenced in the STEELE REPORT, including but not limited to any notes.

5. DOCUMENTS sufficient to identify all matters in the last two years in which YOU have prepared reports or testified.

6. DOCUMENTS sufficient to identify the total fees paid to YOU for any work YOU performed on behalf of PLAINTIFF or PLAINTIFF's counsel during the course of this litigation.

7. DOCUMENTS sufficient to identify all persons and entities who assisted YOU in this matter.

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**AFFIDAVIT/DECLARATION OF SERVICE**

STATE OF NEVADA )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

I, *(insert name of person making service)* \_\_\_\_\_, being duly sworn, or under penalty of perjury, state that at all times herein I was and am over 18 years of age and not a party to or interested in the proceedings in which this Affidavit/Declaration is made; that I received a copy of the **DEPOSITION SUBPOENA (DUCES TECUM)** on *(insert date person making service received Subpoena)* \_\_\_\_\_; and that I served the same on *(insert date person making service served Subpoena)* \_\_\_\_\_, by delivering and leaving a copy with *(insert name of witness)* \_\_\_\_\_ *(insert address where witness was served)* at \_\_\_\_\_.

Executed on: \_\_\_\_\_  
*(Date)* *(Signature of Person Making Service)*

**SUBSCRIBED AND SWORN** to before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

**NOTARY PUBLIC** in and for the County of \_\_\_\_\_, State of \_\_\_\_\_.

**OR ONE OF THE FOLLOWING: Per NRS 53.045**

(a) If executed in the State of Nevada: "I declare under penalty of perjury that the foregoing is true and correct."

Executed on: \_\_\_\_\_  
*(Date)* *(Signature of Person Making Service)*

(b) If executed outside of the State of Nevada: "I declare under penalty of perjury under the law of the State of Nevada that the foregoing is true and correct."

Executed on: \_\_\_\_\_  
*(Date)* *(Signature of Person Making Service)*

**EXHIBIT "A"**  
**NEVADA RULES OF CIVIL PROCEDURE**

**Rule 45**

**(c) Protection of persons subject to subpoena.**

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2) (A) A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

(B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3) (A) On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it

(i) fails to allow reasonable time for compliance;

(ii) requires a person who is not a party or an officer of a party to travel to a place more than 100 miles from the place where that person resides, is employed or regularly transacts business in person, except that such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held, or

(iii) requires disclosure of privileged or other protected matter and no exception or waiver applies, or

(iv) subjects a person to undue burden.

(B) If a subpoena

(i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or

(ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party,

the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

**(d) Duties in responding to subpoena.**

(1) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(2) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.



**Exhibit B**

**COHEN|JOHNSON|PARKER|EDWARDS**

H. STAN JOHNSON, ESQ.  
Nevada Bar No. 00265  
sjohnson@cohenjohnson.com  
255 East Warm Springs Road, Suite 100  
Las Vegas, Nevada 89119  
Telephone: (702) 823-3500  
Facsimile: (702) 823-3400

**QUINN EMANUEL URQUHART & SULLIVAN, LLP**

CHRISTOPHER TAYBACK, ESQ.  
California Bar No. 145532, *pro hac vice*  
christayback@quinnemanuel.com  
MARSHALL M. SEARCY, ESQ.  
California Bar No. 169269, *pro hac vice*  
marshallsearcy@quinnemanuel.com  
865 South Figueroa Street, 10<sup>th</sup> Floor  
Los Angeles, CA 90017  
Telephone: (213) 443-3000

*Attorneys for Defendants Margaret Cotter,  
Ellen Cotter, Douglas McEachern, Guy Adams,  
Edward Kane, Judy Coddling, and Michael Wrotniak*

**MAUPIN, COX & LeGOY**

DONALD A. LATTIN  
Nevada Bar No. 0693  
dlattin@mclrenolaw.com  
CAROLYN K. RENNER  
Nevada Bar No. 9164  
crenner@mclrenolaw.com  
CHRISTOPHER M. STANKO  
Nevada Bar No. 13591  
cstanko@mclrenolaw.com  
4785 Caughlin Parkway  
Reno, NV 89519

**BIRD, MARELLA, BOXER, WOLPERT,  
NESSIM, DROOKS, LINCENBERG & RHOW**

EKWAN E. RHOW  
California Bar No. 174604  
eer@birdmarella.com  
1875 Century Park East, 23<sup>rd</sup> Floor  
Los Angeles, CA 90067-2561

*Attorneys for Defendants William Gould and  
Timothy Storey*

1 **GREENBERG TRAUIG, LLP**

MARK E. FERRARIO, ESQ.

Nevada Bar No. 1625

2 ferrariom@gtlaw.com

KARA B. HENDRICKS, ESQ.

3 Nevada Bar No. 7743

hendricksk@gtlaw.com

4 3773 Howard Hughes Parkway

Suite 400 North

5 Las Vegas, Nevada 89169

Telephone: (702) 792-3773

6 Facsimile: (702) 792-9002

7 *Attorneys for Nominal Defendant Reading*  
8 *International, Inc.*

9 **LEWIS ROCA ROTHGERBER LLP**

MARK G. KRUM

Nevada Bar No. 10913

10 MKrum@LRRLaw.com

3993 Howard Hughes Parkway, Suite 600

11 Las Vegas, Nevada 89169

Telephone: (702) 949-8200

12 Facsimile: (702) 949-8398

13 *Attorneys for Plaintiff James J. Cotter, Jr.*

14 **ROBERTSON & ASSOCIATES, LLP**

ALEXANDER ROBERTSON, IV

15 Nevada Bar No. 8642

arobertson@arobertsonlaw.com

16 32121 Lindero Canyon Road, Suite 200

Westlake Village, California 91361

17 Telephone: (818) 851-3850

18 Facsimile: (818) 851-3851

19 **PATTI, SGRO, LEWIS & ROGER**

ADAM C. ANDERSON

Nevada Bar No. 13062

20 aanderson@pslrfirm.com

720 S. 7th Street, 3rd Floor

21 Las Vegas, NV 89101

Telephone: (702) 385-9595

22 Facsimile: (702) 386-2737

23 *Attorneys for Plaintiffs and Intervenors,*  
24 *T2 Partners Management, LP dba Kase*  
*Capital Management; T2 Accredited Fund,*  
25 *LP dba Kase Fund; T2 Qualified Fund,*  
*LP dba Kase Qualified Fund; Tilson Offshore*  
26 *Fund, LTD; T2 Partners Management I, LLC*  
*dba Kase Management; T2 Partners*  
27 *Management Group, LLC dba Kase Group;*  
*JMG Capital Management, LLC; Pacific*  
28 *Capital Management, LLC*

1 **CODE CC03**

2 **COHEN|JOHNSON|PARKER|EDWARDS**

3 H. Stan Johnson, ESQ.  
4 Nevada Bar No. 00265  
5 sjohnson@cohenjohnson.com  
6 255 East Warm Springs Road, Suite 100  
7 Las Vegas, Nevada 89119  
8 Telephone: (702) 823-3500  
9 Facsimile: (702) 823-3400

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8 California Bar No. 145532, *pro hac vice*  
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10 **MARSHALL M. SEARCY, ESQ.**  
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12 marshallsearcy@quinnemanuel.com  
13 865 South Figueroa Street, 10<sup>th</sup> Floor  
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11 Attorneys for Defendants Margaret Cotter,  
12 Ellen Cotter, Douglas McEachern, Guy Adams,  
13 Edward Kane, Judy Coddling, and Michael Wrotniak

14 **EIGHTH JUDICIAL DISTRICT COURT**

15 **CLARK COUNTY, NEVADA**

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

18 Plaintiff,

19 v.

20 MARGARET COTTER, ELLEN COTTER, GUY  
21 ADAMS, EDWARD KANE, DOUGLAS  
22 McEACHERN, WILLIAM GOULD, JUDY  
23 CODDING, MICHAEL WROTNIAK, and DOES  
24 1 through 100, inclusive,

24 Defendants,

25 and

26 READING INTERNATIONAL, INC., a Nevada  
27 corporation;

28 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**

**DEPOSITION SUBPOENA**  
**(DUCES TECUM)**

(For Personal Appearance and Production of  
Documents and Things at Deposition)

1 **THE STATE OF NEVADA TO:**

2 Tiago Duarte-Silva  
3 c/o Lewis Roca Rothgerber Christie LLP  
4 3993 Howard Hughes Parkway, Suite 600  
Las Vegas, Nevada 89169  
Telephone: (702) 949-8200

5 **YOU ARE ORDERED TO APPEAR AS A WITNESS** and give testimony at the  
6 following date, time, and place pursuant to NRS 50.165 and NRCP 30 and 45, UNLESS you  
7 make an agreement with the attorney or party submitting this subpoena:  
8

9 Date: October 18, 2016  
Time: 9:00 a.m.  
10 Place: Greenberg Traurig, LLP  
One International Place  
11 Suite 2000  
Boston, MA 02110

12 If you are a public or private corporation, partnership, association, or governmental  
13 agency, you are ordered to designate one or more officers, directors, managing agents, or other  
14 persons who consent to testify on your behalf. The persons you designate will be examined, and  
15 are ordered to testify, on the matters set forth below that are known or reasonably available to the  
16 organization. NRCP 30(b)(6).

17 **YOU ARE FURTHER ORDERED** to bring with you at the time of your appearance the  
18 books, documents, or tangible things set forth below that are in your possession, custody, or  
19 control. All documents shall be produced as they are kept in the usual course of business or shall  
20 be organized and labeled to correspond with the categories listed. NRCP 45(d)(1).

21 **WITNESS FEES:** You are entitled to witness fees and mileage traveled, as provided by  
22 NRS 50.225. This Subpoena must be accompanied by the fees for one day's attendance and  
23 mileage, unless issued on behalf of the State or a State agency. NRCP 45(b).

24 **CONTEMPT:** Failure by any person without adequate excuse to obey a subpoena  
25 served upon that person may be deemed a contempt of the court, NRCP 45(e), punishable by a  
26 fine not exceeding \$500 and imprisonment not exceeding 25 days, NRS 22.100(2). Additionally,  
27 a witness disobeying a subpoena shall forfeit to the aggrieved party \$100 and all damages  
28 sustained as a result of the failure to attend, and a warrant may issue for the witness' arrest. NRS

1 50.195, 50.205, and 22.100(3).

2 Please see the attached Exhibit "A" for information regarding your rights and  
3 responsibilities relating to this Subpoena. Please see the attached Exhibit B for a full list of  
4 counsel in this matter.

5 Dated: October 12, 2016.

6

7

By:           /s/ H. Stan Johnson            
H. Stan Johnson, Esq.  
Nevada Bar No. 00265

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**MATTERS ON WHICH TESTIMONY WILL BE TAKEN**  
(for witnesses designated pursuant to NRC 30(b)(6) only)

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**ITEMS TO BE PRODUCED**

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**DEFINITIONS**

1. COMMUNICATION or COMMUNICATIONS means and includes any disclosure, transfer, or exchange of information between two or more persons, whether orally or in writing, including, without limitation, any conversation or discussion by means of meeting, letter, telephone, note, memorandum, telegraph, telex, telecopier, electronic mail, or any other electronic or other medium, including, without limitation, in written, audio or video form.

2. "DOCUMENT" or "DOCUMENTS" means all materials within the full scope of Nev. R. Civ. P. 34, including but not limited to all writings and recordings, including the originals and all non-identical copies, whether different from the original by reason of any notation made on such copies or otherwise, handwriting, typewriting, printing, image, photograph, photocopy, digital file of any kind, transmittal by (or as an attachment to) electronic mail (including instant messages and text messages) or facsimile, video and audio recordings, and every other means of recording upon any tangible thing, any form of COMMUNICATION or representation, and any record thereby created, regardless of the manner in which the record has been stored, and all non-identical copies of such DOCUMENTS, in the possession, custody, or control of YOU or any other PERSON acting on YOUR behalf.

3. The term PLAINTIFF shall refer to James J. Cotter, Jr.

4. RELATES TO, RELATING TO, or RELATED TO means to refer to, reflect, concern, pertain to or in any manner be connected with the matter discussed.

5. "YOU" or "YOUR" shall mean Tiago Duarte-Silva and any of YOUR present and former attorneys, investigators, agents, and any other individual acting for or on YOUR behalf.

6. "DUARTE-SILVA REPORT" refers to the report that YOU submitted on August 25, 2016, including all exhibits, as well as any of Your other reports and exhibits that have been submitted to the court during the course of this litigation.

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**ITEMS TO BE PRODUCED**

1. All DOCUMENTS, data, and analysis, including but not limited to all facts and data provided by PLAINTIFF or PLAINTIFF's counsel, that YOU considered in forming YOUR opinions directly or indirectly referenced in the DUARTE-SILVA REPORT.

2. All COMMUNICATIONS between YOU and PLAINTIFF, PLAINTIFF'S counsel, or anyone acting on their behalf, RELATING TO this litigation.

3. All draft versions of the DUARTE-SILVA REPORT, as well as any draft versions of exhibits to the DUARTE-SILVA REPORT.

4. All DOCUMENTS prepared or created by YOU or anyone acting on YOUR behalf in forming your opinions directly or indirectly referenced in the DUARTE-SILVA REPORT, including but not limited to any notes.

5. DOCUMENTS sufficient to identify all matters in the last two years in which YOU have prepared reports or testified.

6. DOCUMENTS sufficient to identify the total fees paid to YOU for any work YOU performed on behalf of PLAINTIFF or PLAINTIFF's counsel during the course of this litigation.

7. DOCUMENTS sufficient to identify all persons and entities who assisted YOU in this matter.



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**AFFIDAVIT/DECLARATION OF SERVICE**

STATE OF NEVADA )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

I, *(insert name of person making service)* \_\_\_\_\_, being duly sworn, or under penalty of perjury, state that at all times herein I was and am over 18 years of age and not a party to or interested in the proceedings in which this Affidavit/Declaration is made; that I received a copy of the **DEPOSITION SUBPOENA (DUCES TECUM)** on *(insert date person making service received Subpoena)* \_\_\_\_\_; and that I served the same on *(insert date person making service served Subpoena)* \_\_\_\_\_ by delivering and leaving a copy with *(insert name of witness)* \_\_\_\_\_ *(insert address where witness was served)* at \_\_\_\_\_.

Executed on: \_\_\_\_\_  
*(Date)* *(Signature of Person Making Service)*

**SUBSCRIBED AND SWORN** to before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

**NOTARY PUBLIC** in and for the County of \_\_\_\_\_, State of \_\_\_\_\_.

**OR ONE OF THE FOLLOWING: Per NRS 53.045**

(a) If executed in the State of Nevada: "I declare under penalty of perjury that the foregoing is true and correct."

Executed on: \_\_\_\_\_  
*(Date)* *(Signature of Person Making Service)*

(b) If executed outside of the State of Nevada: "I declare under penalty of perjury under the law of the State of Nevada that the foregoing is true and correct."

Executed on: \_\_\_\_\_  
*(Date)* *(Signature of Person Making Service)*

**EXHIBIT "A"**  
**NEVADA RULES OF CIVIL PROCEDURE**

**Rule 45**

**(c) *Protection of persons subject to subpoena.***

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2) (A) A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

(B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3) (A) On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it

(i) fails to allow reasonable time for compliance;

(ii) requires a person who is not a party or an officer of a party to travel to a place more than 100 miles from the place where that person resides, is employed or regularly transacts business in person, except that such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held, or

(iii) requires disclosure of privileged or other protected matter and no exception or waiver applies, or

(iv) subjects a person to undue burden.

(B) If a subpoena

(i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or

(ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party,

the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

**(d) *Duties in responding to subpoena.***

(1) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(2) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

Exhibit B

**COHEN|JOHNSON|PARKER|EDWARDS**

H. STAN JOHNSON, ESQ.  
Nevada Bar No. 00265  
sjohnson@cohenjohnson.com  
255 East Warm Springs Road, Suite 100  
Las Vegas, Nevada 89119  
Telephone: (702) 823-3500  
Facsimile: (702) 823-3400

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CHRISTOPHER TAYBACK, ESQ.  
California Bar No. 145532, *pro hac vice*  
christayback@quinnemanuel.com  
MARSHALL M. SEARCY, ESQ.  
California Bar No. 169269, *pro hac vice*  
marshallsearcy@quinnemanuel.com  
865 South Figueroa Street, 10<sup>th</sup> Floor  
Los Angeles, CA 90017  
Telephone: (213) 443-3000

*Attorneys for Defendants Margaret Cotter,  
Ellen Cotter, Douglas McEachern, Guy Adams,  
Edward Kane, Judy Coddling, and Michael Wrotniak*

**MAUPIN, COX & LeGOY**

DONALD A. LATTIN  
Nevada Bar No. 0693  
dlattin@mclrenolaw.com  
CAROLYN K. RENNER  
Nevada Bar No. 9164  
crenner@mclrenolaw.com  
CHRISTOPHER M. STANKO  
Nevada Bar No. 13591  
cstanko@mclrenolaw.com  
4785 Caughlin Parkway  
Reno, NV 89519

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EKWAN E. RHOW  
California Bar No. 174604  
eer@birdmarella.com  
1875 Century Park East, 23<sup>rd</sup> Floor  
Los Angeles, CA 90067-2561

*Attorneys for Defendants William Gould and  
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1 **GREENBERG TRAUIG, LLP**

MARK E. FERRARIO, ESQ.

Nevada Bar No. 1625

2 ferrariom@gtlaw.com

KARA B. HENDRICKS, ESQ.

3 Nevada Bar No. 7743

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Telephone: (702) 792-3773

6 Facsimile: (702) 792-9002

7 *Attorneys for Nominal Defendant Reading*  
8 *International, Inc.*

9 **LEWIS ROCA ROTHGERBER LLP**

MARK G. KRUM

Nevada Bar No. 10913

10 MKrum@LRRLaw.com

3993 Howard Hughes Parkway, Suite 600

11 Las Vegas, Nevada 89169

Telephone: (702) 949-8200

12 Facsimile: (702) 949-8398

13 *Attorneys for Plaintiff James J. Cotter, Jr.*

14 **ROBERTSON & ASSOCIATES, LLP**

ALEXANDER ROBERTSON, IV

15 Nevada Bar No. 8642

arobertson@arobertsonlaw.com

16 32121 Lindero Canyon Road, Suite 200

Westlake Village, California 91361

17 Telephone: (818) 851-3850

18 Facsimile: (818) 851-3851

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Nevada Bar No. 13062

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*LP dba Kase Qualified Fund; Tilson Offshore*  
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*dba Kase Management; T2 Partners*  
27 *Management Group, LLC dba Kase Group;*  
*JMG Capital Management, LLC; Pacific*  
28 *Capital Management, LLC*

## **EXHIBIT 2**

**NOTC**

**COHEN|JOHNSON|PARKER|EDWARDS**

H. Stan Johnson, ESQ.  
Nevada Bar No. 00265  
sjohnson@cohenjohnson.com  
255 East Warm Springs Road, Suite 100  
Las Vegas, Nevada 89119  
Telephone: (702) 823-3500  
Facsimile: (702) 823-3400

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CHRISTOPHER TAYBACK, ESQ.  
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MARSHALL M. SEARCY, ESQ.  
California Bar No. 169269, *pro hac vice*  
marshallsearcy@quinnemanuel.com  
865 South Figueroa Street, 10<sup>th</sup> Floor  
Los Angeles, CA 90017  
Telephone: (213) 443-3000

Attorneys for Defendants Margaret Cotter,  
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Edward Kane, Judy Coddling, and Michael Wrotniak

**EIGHTH JUDICIAL DISTRICT COURT**

**CLARK COUNTY, NEVADA**

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

Plaintiff,

v.

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

Defendants,

and

READING INTERNATIONAL, INC., a Nevada  
corporation;

Nominal Defendant.

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

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

Related and Coordinated Cases

**BUSINESS COURT**

**NOTICE OF TAKING DEPOSITION**  
**- DUCES TECUM**



1 The deposition will be upon oral examination before a Notary Public, or before some  
2 other officer authorized by law to administer oaths. Said deposition may be videotaped. A copy  
3 of the related subpoena is attached hereto.

4  
5 Dated: November 23, 2016.

6 **COHEN|JOHNSON|PARKER|EDWARDS**

7  
8 By: /s/ H. Stan Johnson  
9 H. STAN JOHNSON, ESQ.  
10 Nevada Bar No. 00265  
11 sjohnson@cohenjohnson.com  
12 255 East Warm Springs Road, Suite 100  
13 Las Vegas, Nevada 89119  
14 Telephone: (702) 823-3500  
15 Facsimile: (702) 823-3400

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17 SULLIVAN, LLP**  
18 CHRISTOPHER TAYBACK, ESQ.  
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20 christayback@quinnemanuel.com  
21 MARSHALL M. SEARCY, ESQ.  
22 California Bar No. 169269, *pro hac vice*  
23 marshallsearcy@quinnemanuel.com  
24 865 South Figueroa Street, 10<sup>th</sup> Floor  
25 Los Angeles, CA 90017  
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27 *Attorneys for Defendants Margaret Cotter,  
28 Ellen Cotter, Douglas McEachern, Guy Adams,  
Edward Kane, Judy Coddling, and Michael  
Wrotniak*



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**CERTIFICATE OF SERVICE**

I hereby certify that, on November 23, 2016, I caused a true and correct copy of the foregoing **NOTICE OF TAKING DEPOSITION – DUCES TECUM** 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

1 **CC03**

2 **COHEN|JOHNSON|PARKER|EDWARDS**

3 H. Stan Johnson, ESQ.

4 Nevada Bar No. 00265

5 sjohnson@cohenjohnson.com

6 255 East Warm Springs Road, Suite 100

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14 **MARSHALL M. SEARCY, ESQ.**

15 California Bar No. 169269, *pro hac vice*

16 marshallsearcy@quinnemanuel.com

17 865 South Figueroa Street, 10<sup>th</sup> Floor

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22 Edward Kane, Judy Coddling, and Michael Wrotniak

23 **EIGHTH JUDICIAL DISTRICT COURT**

24 **CLARK COUNTY, NEVADA**

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

28 Plaintiff,

v.

29 MARGARET COTTER, ELLEN COTTER, GUY  
30 ADAMS, EDWARD KANE, DOUGLAS  
31 McEACHERN, WILLIAM GOULD, JUDY  
32 CODDLING, MICHAEL WROTNIAK, and DOES  
33 1 through 100, inclusive,

34 Defendants,

35 and

36 READING INTERNATIONAL, INC., a Nevada  
37 corporation;

38 Nominal Defendant.

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

Case No.: P-14-082942-E  
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Related and Coordinated Cases

**BUSINESS COURT**

**DEPOSITION SUBPOENA**  
**(DUCES TECUM)**

(For Personal Appearance and Production of  
Documents and Things at Deposition)

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5 Las Vegas, Nevada 89169  
6 Telephone: (702) 949-8200

7 **YOU ARE ORDERED TO APPEAR AS A WITNESS** and give testimony at the  
8 following date, time, and place pursuant to NRS 50.165 and NRCP 30 and 45, UNLESS you  
9 make an agreement with the attorney or party submitting this subpoena:

10 Date: November 29, 2016  
11 Time: 9:30 a.m.  
12 Place: Veritext  
13 20 Corporate Park, Suite 350  
14 Irvine, CA 92606

15 If you are a public or private corporation, partnership, association, or governmental  
16 agency, you are ordered to designate one or more officers, directors, managing agents, or other  
17 persons who consent to testify on your behalf. The persons you designate will be examined, and  
18 are ordered to testify, on the matters set forth below that are known or reasonably available to the  
19 organization. NRCP 30(b)(6).

20 **YOU ARE FURTHER ORDERED** to bring with you at the time of your appearance the  
21 books, documents, or tangible things set forth below that are in your possession, custody, or  
22 control. All documents shall be produced as they are kept in the usual course of business or shall  
23 be organized and labeled to correspond with the categories listed. NRCP 45(d)(1).

24 **WITNESS FEES:** You are entitled to witness fees and mileage traveled, as provided by  
25 NRS 50.225. This Subpoena must be accompanied by the fees for one day's attendance and  
26 mileage, unless issued on behalf of the State or a State agency. NRCP 45(b).

27 **CONTEMPT:** Failure by any person without adequate excuse to obey a subpoena  
28 served upon that person may be deemed a contempt of the court, NRCP 45(e), punishable by a  
fine not exceeding \$500 and imprisonment not exceeding 25 days, NRS 22.100(2). Additionally,  
a witness disobeying a subpoena shall forfeit to the aggrieved party \$100 and all damages  
sustained as a result of the failure to attend, and a warrant may issue for the witness' arrest. NRS

1 50.195, 50.205, and 22.100(3).

2 Please see the attached Exhibit "A" for information regarding your rights and  
3 responsibilities relating to this Subpoena. Please see the attached Exhibit B for a full list of  
4 counsel in this matter.

5 Dated: November 23, 2016.

6

7

By: /s/ H. Stan Johnson  
H. Stan Johnson, Esq.  
Nevada Bar No. 00265

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**MATTERS ON WHICH TESTIMONY WILL BE TAKEN**  
(for witnesses designated pursuant to NRC 30(b)(6) only)

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**ITEMS TO BE PRODUCED**

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**DEFINITIONS**

1. COMMUNICATION or COMMUNICATIONS means and includes any disclosure, transfer, or exchange of information between two or more persons, whether orally or in writing, including, without limitation, any conversation or discussion by means of meeting, letter, telephone, note, memorandum, telegraph, telex, telecopier, electronic mail, or any other electronic or other medium, including, without limitation, in written, audio or video form.

2. "DOCUMENT" or "DOCUMENTS" means all materials within the full scope of Nev. R. Civ. P. 34, including but not limited to all writings and recordings, including the originals and all non-identical copies, whether different from the original by reason of any notation made on such copies or otherwise, handwriting, typewriting, printing, image, photograph, photocopy, digital file of any kind, transmittal by (or as an attachment to) electronic mail (including instant messages and text messages) or facsimile, video and audio recordings, and every other means of recording upon any tangible thing, any form of COMMUNICATION or representation, and any record thereby created, regardless of the manner in which the record has been stored, and all non-identical copies of such DOCUMENTS, in the possession, custody, or control of YOU or any other PERSON acting on YOUR behalf.

3. The term PLAINTIFF shall refer to James J. Cotter, Jr.

4. RELATES TO, RELATING TO, or RELATED TO means to refer to, reflect, concern, pertain to or in any manner be connected with the matter discussed.

5. "YOU" or "YOUR" shall mean Albert Nagy and any of YOUR present and former attorneys, investigators, agents, and any other individual acting for or on YOUR behalf.

6. "NAGY REPORT" refers to the report that YOU submitted on September 28, 2016, including all exhibits, as well as any of Your other reports and exhibits that have been submitted to the court during the course of this litigation.

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**ITEMS TO BE PRODUCED**

1. All DOCUMENTS, data, and analysis, including but not limited to all facts and data provided by PLAINTIFF or PLAINTIFF's counsel, that YOU considered in forming YOUR opinions directly or indirectly referenced in the NAGY REPORT.

2. All COMMUNICATIONS between YOU and PLAINTIFF, PLAINTIFF'S counsel, or anyone acting on their behalf, RELATING TO this litigation.

3. All draft versions of the NAGY REPORT, as well as any draft versions of exhibits to the NAGY REPORT.

4. All DOCUMENTS prepared or created by YOU or anyone acting on YOUR behalf in forming your opinions directly or indirectly referenced in the NAGY REPORT, including but not limited to any notes.

5. DOCUMENTS sufficient to identify all matters in the last two years in which YOU have prepared reports or testified.

6. DOCUMENTS sufficient to identify the total fees paid to YOU for any work YOU performed on behalf of PLAINTIFF or PLAINTIFF's counsel during the course of this litigation.

7. DOCUMENTS sufficient to identify all persons and entities who assisted YOU in this matter.

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**AFFIDAVIT/DECLARATION OF SERVICE**

STATE OF NEVADA )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

I, *(insert name of person making service)* \_\_\_\_\_, being duly sworn, or under penalty of perjury, state that at all times herein I was and am over 18 years of age and not a party to or interested in the proceedings in which this Affidavit/Declaration is made; that I received a copy of the **DEPOSITION SUBPOENA (DUCES TECUM)** on *(insert date person making service received Subpoena)* \_\_\_\_\_; and that I served the same on *(insert date person making service served Subpoena)* \_\_\_\_\_, by delivering and leaving a copy with *(insert name of witness)* \_\_\_\_\_ *(insert address where witness was served)* at \_\_\_\_\_.

Executed on: \_\_\_\_\_  
*(Date)* *(Signature of Person Making Service)*

**SUBSCRIBED AND SWORN** to before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

**NOTARY PUBLIC** in and for the County of \_\_\_\_\_, State of \_\_\_\_\_.

**OR ONE OF THE FOLLOWING: Per NRS 53.045**

(a) If executed in the State of Nevada: "I declare under penalty of perjury that the foregoing is true and correct."

Executed on: \_\_\_\_\_  
*(Date)* *(Signature of Person Making Service)*

(b) If executed outside of the State of Nevada: "I declare under penalty of perjury under the law of the State of Nevada that the foregoing is true and correct."

Executed on: \_\_\_\_\_  
*(Date)* *(Signature of Person Making Service)*



**EXHIBIT "A"**  
**NEVADA RULES OF CIVIL PROCEDURE**

**Rule 45**

**(c) *Protection of persons subject to subpoena.***

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2) (A) A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

(B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3) (A) On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it

(i) fails to allow reasonable time for compliance;

(ii) requires a person who is not a party or an officer of a party to travel to a place more than 100 miles from the place where that person resides, is employed or regularly transacts business in person, except that such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held, or

(iii) requires disclosure of privileged or other protected matter and no exception or waiver applies, or

(iv) subjects a person to undue burden.

(B) If a subpoena

(i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or

(ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party,

the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

**(d) *Duties in responding to subpoena.***

(1) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(2) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

**Exhibit B**

**COHEN|JOHNSON|PARKER|EDWARDS**

H. STAN JOHNSON, ESQ.  
Nevada Bar No. 00265  
sjohnson@cohenjohnson.com  
255 East Warm Springs Road, Suite 100  
Las Vegas, Nevada 89119  
Telephone: (702) 823-3500  
Facsimile: (702) 823-3400

**QUINN EMANUEL URQUHART & SULLIVAN, LLP**

CHRISTOPHER TAYBACK, ESQ.  
California Bar No. 145532, *pro hac vice*  
christayback@quinnemanuel.com  
MARSHALL M. SEARCY, ESQ.  
California Bar No. 169269, *pro hac vice*  
marshallsearcy@quinnemanuel.com  
865 South Figueroa Street, 10<sup>th</sup> Floor  
Los Angeles, CA 90017  
Telephone: (213) 443-3000

*Attorneys for Defendants Margaret Cotter,  
Ellen Cotter, Douglas McEachern, Guy Adams,  
Edward Kane, Judy Codding, and Michael Wrotniak*

**MAUPIN, COX & LeGOY**

DONALD A. LATTIN  
Nevada Bar No. 0693  
dlattin@mclrenolaw.com  
CAROLYN K. RENNER  
Nevada Bar No. 9164  
crenner@mclrenolaw.com  
CHRISTOPHER M. STANKO  
Nevada Bar No. 13591  
cstanko@mclrenolaw.com  
4785 Caughlin Parkway  
Reno, NV 89519

**BIRD, MARELLA, BOXER, WOLPERT,  
NESSIM, DROOKS, LINCENBERG & RHOW**

EKWAN E. RHOW  
California Bar No. 174604  
eer@birdmarella.com  
1875 Century Park East, 23<sup>rd</sup> Floor  
Los Angeles, CA 90067-2561

*Attorneys for Defendants William Gould*

1 **GREENBERG TRAUIG, LLP**  
MARK E. FERRARIO, ESQ.  
Nevada Bar No. 1625  
2 ferrariom@gtlaw.com  
KARA B. HENDRICKS, ESQ.  
3 Nevada Bar No. 7743  
hendricksk@gtlaw.com  
4 3773 Howard Hughes Parkway  
Suite 400 North  
5 Las Vegas, Nevada 89169  
Telephone: (702) 792-3773  
6 Facsimile: (702) 792-9002  
7 *Attorneys for Nominal Defendant Reading*  
*International, Inc.*  
8  
9 **LEWIS ROCA ROTHGERBER LLP**  
MARK G. KRUM  
Nevada Bar No. 10913  
10 MKrum@LRRLaw.com  
3993 Howard Hughes Parkway, Suite 600  
11 Las Vegas, Nevada 89169  
Telephone: (702) 949-8200  
12 Facsimile: (702) 949-8398  
13 *Attorneys for Plaintiff James J. Cotter, Jr.*

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# **EXHIBIT 3**

1 **NOTC**  
2 **COHEN|JOHNSON|PARKER|EDWARDS**  
3 H. Stan Johnson, ESQ.  
4 Nevada Bar No. 00265  
5 sjohnson@cohenjohnson.com  
6 255 East Warm Springs Road, Suite 100  
7 Las Vegas, Nevada 89119  
8 Telephone: (702) 823-3500  
9 Facsimile: (702) 823-3400

6 **QUINN EMANUEL URQUHART & SULLIVAN, LLP**  
7 **CHRISTOPHER TAYBACK, ESQ.**  
8 California Bar No. 145532, *pro hac vice*  
9 christayback@quinnemanuel.com  
10 **MARSHALL M. SEARCY, ESQ.**  
11 California Bar No. 169269, *pro hac vice*  
12 marshallsearcy@quinnemanuel.com  
13 865 South Figueroa Street, 10<sup>th</sup> Floor  
14 Los Angeles, CA 90017  
15 Telephone: (213) 443-3000

12 Attorneys for Defendants Margaret Cotter,  
13 Ellen Cotter, Douglas McEachern, Guy Adams,  
14 Edward Kane, Judy Coddling, and Michael Wrotniak

14 **EIGHTH JUDICIAL DISTRICT COURT**

15 **CLARK COUNTY, NEVADA**

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

18 Plaintiff,

19 v.

20 MARGARET COTTER, ELLEN COTTER, GUY  
21 ADAMS, EDWARD KANE, DOUGLAS  
22 McEACHERN, WILLIAM GOULD, JUDY  
23 CODDLING, MICHAEL WROTNIAK, and DOES  
24 1 through 100, inclusive,

24 Defendants,

25 and

26 READING INTERNATIONAL, INC., a Nevada  
27 corporation;

28 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**

**NOTICE OF TAKING DEPOSITION**  
**- DUCES TECUM**

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**NOTICE OF TAKING DEPOSITION – DUCES TECUM**

TO: ALL PARTIES; and  
TO: THEIR RESPECTIVE COUNSEL

PLEASE TAKE NOTICE that Defendants Margaret Cotter, Ellen Cotter, Douglas McEachem, Guy Adams, Edward Kane, Judy Coddling, and Michael Wrotniak (“Defendants”) will take the following deposition in the above-captioned action on the date and at the time and location indicated below.

<b>Deponent</b>	<b>Date</b>	<b>Time</b>	<b>Location</b>
Richard Spitz	December 7, 2016	10:00 A.M.	Quinn Emanuel Urquhart & Sullivan, LLP 865 S. Figueroa Street, 10th Floor Los Angeles, CA 90017

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The deposition will be upon oral examination before a Notary Public, or before some other officer authorized by law to administer oaths. Said deposition may be videotaped. A copy of the related subpoena is attached hereto.

Dated: December 2, 2016.

**COHEN|JOHNSON|PARKER|EDWARDS**

By: /s/ H. Stan Johnson  
H. STAN JOHNSON, ESQ.  
Nevada Bar No. 00265  
sjohnson@cohenjohnson.com  
255 East Warm Springs Road, Suite 100  
Las Vegas, Nevada 89119  
Telephone: (702) 823-3500  
Facsimile: (702) 823-3400

**QUINN EMANUEL URQUHART &  
SULLIVAN, LLP**  
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christayback@quinnemanuel.com  
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California Bar No. 169269, *pro hac vice*  
marshallsearcy@quinnemanuel.com  
865 South Figueroa Street, 10<sup>th</sup> Floor  
Los Angeles, CA 90017  
Telephone: (213) 443-3000

*Attorneys for Defendants Margaret Cotter,  
Ellen Cotter, Douglas McEachern, Guy Adams,  
Edward Kane, Judy Coddling, and Michael  
Wrotniak*

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**CERTIFICATE OF SERVICE**

I hereby certify that, on December 2, 2016, I caused a true and correct copy of the foregoing **NOTICE OF TAKING DEPOSITION – DUCES TECUM** 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



1 **CC03**

2 **COHEN|JOHNSON|PARKER|EDWARDS**

3 H. Stan Johnson, ESQ.  
4 Nevada Bar No. 00265  
5 sjohnson@cohenjohnson.com  
6 255 East Warm Springs Road, Suite 100  
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10 **QUINN EMANUEL URQUHART & SULLIVAN, LLP**

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19 Telephone: (213) 443-3000

20 Attorneys for Defendants Margaret Cotter,  
21 Ellen Cotter, Douglas McEachern, Guy Adams,  
22 Edward Kane, Judy Coddling, and Michael Wrotniak

23 **EIGHTH JUDICIAL DISTRICT COURT**

24 **CLARK COUNTY, NEVADA**

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

28 Plaintiff,

v.

29 MARGARET COTTER, ELLEN COTTER, GUY  
30 ADAMS, EDWARD KANE, DOUGLAS  
31 McEACHERN, WILLIAM GOULD, JUDY  
32 CODDING, MICHAEL WROTNIAK, and DOES  
33 1 through 100, inclusive,

34 Defendants,

35 and

36 READING INTERNATIONAL, INC., a Nevada  
37 corporation;

38 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**

**DEPOSITION SUBPOENA**  
**(DUCES TECUM)**

(For Personal Appearance and Production of  
Documents and Things at Deposition)

1 **THE STATE OF NEVADA TO:**

2 Richard Spitz  
3 c/o Lewis Roca Rothgerber Christie LLP  
4 3993 Howard Hughes Parkway, Suite 600  
5 Las Vegas, Nevada 89169  
6 Telephone: (702) 949-8200

7 **YOU ARE ORDERED TO APPEAR AS A WITNESS** and give testimony at the  
8 following date, time, and place pursuant to NRS 50.165 and NRCP 30 and 45, UNLESS you  
9 make an agreement with the attorney or party submitting this subpoena:

10 Date: December 7, 2016  
11 Time: 10:00 a.m.  
12 Place: Quinn Emanuel Urquhart & Sullivan, LLP  
13 865 S. Figueroa Street, 10th Floor  
14 Los Angeles, CA 90017

15 If you are a public or private corporation, partnership, association, or governmental  
16 agency, you are ordered to designate one or more officers, directors, managing agents, or other  
17 persons who consent to testify on your behalf. The persons you designate will be examined, and  
18 are ordered to testify, on the matters set forth below that are known or reasonably available to the  
19 organization. NRCP 30(b)(6).

20 **YOU ARE FURTHER ORDERED** to bring with you at the time of your appearance the  
21 books, documents, or tangible things set forth below that are in your possession, custody, or  
22 control. All documents shall be produced as they are kept in the usual course of business or shall  
23 be organized and labeled to correspond with the categories listed. NRCP 45(d)(1).

24 **WITNESS FEES:** You are entitled to witness fees and mileage traveled, as provided by  
25 NRS 50.225. This Subpoena must be accompanied by the fees for one day's attendance and  
26 mileage, unless issued on behalf of the State or a State agency. NRCP 45(b).

27 **CONTEMPT:** Failure by any person without adequate excuse to obey a subpoena  
28 served upon that person may be deemed a contempt of the court, NRCP 45(e), punishable by a  
fine not exceeding \$500 and imprisonment not exceeding 25 days, NRS 22.100(2). Additionally,  
a witness disobeying a subpoena shall forfeit to the aggrieved party \$100 and all damages  
sustained as a result of the failure to attend, and a warrant may issue for the witness' arrest. NRS

1 50.195, 50.205, and 22.100(3).

2 Please see the attached Exhibit "A" for information regarding your rights and  
3 responsibilities relating to this Subpoena. Please see the attached Exhibit B for a full list of  
4 counsel in this matter.

5 Dated: December 2, 2016.

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By: /s/ H. Stan Johnson  
H. Stan Johnson, Esq.  
Nevada Bar No. 00265

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**MATTERS ON WHICH TESTIMONY WILL BE TAKEN**  
(for witnesses designated pursuant to NRCP 30(b)(6) only)

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**ITEMS TO BE PRODUCED**

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**DEFINITIONS**

1. COMMUNICATION or COMMUNICATIONS means and includes any disclosure, transfer, or exchange of information between two or more persons, whether orally or in writing, including, without limitation, any conversation or discussion by means of meeting, letter, telephone, note, memorandum, telegraph, telex, telecopier, electronic mail, or any other electronic or other medium, including, without limitation, in written, audio or video form.

2. "DOCUMENT" or "DOCUMENTS" means all materials within the full scope of Nev. R. Civ. P. 34, including but not limited to all writings and recordings, including the originals and all non-identical copies, whether different from the original by reason of any notation made on such copies or otherwise, handwriting, typewriting, printing, image, photograph, photocopy, digital file of any kind, transmittal by (or as an attachment to) electronic mail (including instant messages and text messages) or facsimile, video and audio recordings, and every other means of recording upon any tangible thing, any form of COMMUNICATION or representation, and any record thereby created, regardless of the manner in which the record has been stored, and all non-identical copies of such DOCUMENTS, in the possession, custody, or control of YOU or any other PERSON acting on YOUR behalf.

3. The term PLAINTIFF shall refer to James J. Cotter, Jr.

4. RELATES TO, RELATING TO, or RELATED TO means to refer to, reflect, concern, pertain to or in any manner be connected with the matter discussed.

5. "YOU" or "YOUR" shall mean Richard Spitz and any of YOUR present and former attorneys, investigators, agents, and any other individual acting for or on YOUR behalf.

6. "SPITZ REPORT" refers to the report that YOU submitted on August 25, 2016, including all exhibits, as well as any of Your other reports and exhibits that have been submitted to the court during the course of this litigation.

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**ITEMS TO BE PRODUCED**

1. All DOCUMENTS, data, and analysis, including but not limited to all facts and data provided by PLAINTIFF or PLAINTIFF's counsel, that YOU considered in forming YOUR opinions directly or indirectly referenced in the SPITZ REPORT.

2. All COMMUNICATIONS between YOU and PLAINTIFF, PLAINTIFF'S counsel, or anyone acting on their behalf, RELATING TO this litigation.

3. All draft versions of the SPITZ REPORT, as well as any draft versions of exhibits to the SPITZ REPORT.

4. All DOCUMENTS prepared or created by YOU or anyone acting on YOUR behalf in forming your opinions directly or indirectly referenced in the SPITZ REPORT, including but not limited to any notes.

5. DOCUMENTS sufficient to identify all matters in the last two years in which YOU have prepared reports or testified.

6. DOCUMENTS sufficient to identify the total fees paid to YOU for any work YOU performed on behalf of PLAINTIFF or PLAINTIFF's counsel during the course of this litigation.

7. DOCUMENTS sufficient to identify all persons and entities who assisted YOU in this matter.

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**AFFIDAVIT/DECLARATION OF SERVICE**

STATE OF NEVADA )  
 ) SS.  
COUNTY OF \_\_\_\_\_ )

I, *(insert name of person making service)* \_\_\_\_\_, being duly sworn, or under penalty of perjury, state that at all times herein I was and am over 18 years of age and not a party to or interested in the proceedings in which this Affidavit/Declaration is made; that I received a copy of the **DEPOSITION SUBPOENA (DUCES TECUM)** on *(insert date person making service received Subpoena)* \_\_\_\_\_; and that I served the same on *(insert date person making service served Subpoena)* \_\_\_\_\_ by delivering and leaving a copy with *(insert name of witness)* \_\_\_\_\_ *(insert address where witness was served)* at \_\_\_\_\_.

Executed on: \_\_\_\_\_  
*(Date)* *(Signature of Person Making Service)*

**SUBSCRIBED AND SWORN** to before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

**NOTARY PUBLIC** in and for the County of \_\_\_\_\_, State of \_\_\_\_\_.

**OR ONE OF THE FOLLOWING: Per NRS 53.045**

(a) If executed in the State of Nevada: "I declare under penalty of perjury that the foregoing is true and correct."

Executed on: \_\_\_\_\_  
*(Date)* *(Signature of Person Making Service)*

(b) If executed outside of the State of Nevada: "I declare under penalty of perjury under the law of the State of Nevada that the foregoing is true and correct."

Executed on: \_\_\_\_\_  
*(Date)* *(Signature of Person Making Service)*

**EXHIBIT "A"**  
**NEVADA RULES OF CIVIL PROCEDURE**

**Rule 45**

**(c) *Protection of persons subject to subpoena.***

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2) (A) A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

(B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3) (A) On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it

- (i) fails to allow reasonable time for compliance;
- (ii) requires a person who is not a party or an officer of a party to travel to a place more than 100 miles from the place where that person resides, is employed or regularly transacts business in person, except that such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held, or
- (iii) requires disclosure of privileged or other protected matter and no exception or waiver applies, or
- (iv) subjects a person to undue burden.

(B) If a subpoena

- (i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or
- (ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party,

the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

**(d) *Duties in responding to subpoena.***

(1) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(2) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.



Exhibit B

1 **COHEN|JOHNSON|PARKER|EDWARDS**

2 H. STAN JOHNSON, ESQ.  
3 Nevada Bar No. 00265  
4 sjohnson@cohenjohnson.com  
5 255 East Warm Springs Road, Suite 100  
6 Las Vegas, Nevada 89119  
7 Telephone: (702) 823-3500  
8 Facsimile: (702) 823-3400

6 **QUINN EMANUEL URQUHART & SULLIVAN, LLP**

7 **CHRISTOPHER TAYBACK, ESQ.**  
8 California Bar No. 145532, *pro hac vice*  
9 christayback@quinnemanuel.com  
10 **MARSHALL M. SEARCY, ESQ.**  
11 California Bar No. 169269, *pro hac vice*  
12 marshallsearcy@quinnemanuel.com  
13 865 South Figueroa Street, 10<sup>th</sup> Floor  
14 Los Angeles, CA 90017  
15 Telephone: (213) 443-3000

16 *Attorneys for Defendants Margaret Cotter,*  
17 *Ellen Cotter, Douglas McEachern, Guy Adams,*  
18 *Edward Kane, Judy Coddling, and Michael Wrotniak*

14 **MAUPIN, COX & LeGOY**

15 **DONALD A. LATTIN**  
16 Nevada Bar No. 0693  
17 dlattin@mclrenolaw.com  
18 **CAROLYN K. RENNER**  
19 Nevada Bar No. 9164  
20 crenner@mclrenolaw.com  
21 **CHRISTOPHER M. STANKO**  
22 Nevada Bar No. 13591  
23 cstanko@mclrenolaw.com  
24 4785 Caughlin Parkway  
25 Reno, NV 89519

21 **BIRD, MARELLA, BOXER, WOLPERT,**  
22 **NESSIM, DROOKS, LINCENBERG & RHOW**

23 **EKWAN E. RHOW**  
24 California Bar No. 174604  
25 eer@birdmarella.com  
26 1875 Century Park East, 23<sup>rd</sup> Floor  
27 Los Angeles, CA 90067-2561

28 *Attorneys for Defendants William Gould*

1 **GREENBERG TRAUIG, LLP**  
MARK E. FERRARIO, ESQ.  
Nevada Bar No. 1625  
2 ferrariom@gtlaw.com  
KARA B. HENDRICKS, ESQ.  
3 Nevada Bar No. 7743  
hendricksk@gtlaw.com  
4 3773 Howard Hughes Parkway  
Suite 400 North  
5 Las Vegas, Nevada 89169  
Telephone: (702) 792-3773  
6 Facsimile: (702) 792-9002  
7 *Attorneys for Nominal Defendant Reading*  
8 *International, Inc.*

9 **LEWIS ROCA ROTHGERBER LLP**  
MARK G. KRUM  
10 Nevada Bar No. 10913  
MKrum@LRRLaw.com  
11 3993 Howard Hughes Parkway, Suite 600  
Las Vegas, Nevada 89169  
12 Telephone: (702) 949-8200  
Facsimile: (702) 949-8398  
13  
14 *Attorneys for Plaintiff James J. Cotter, Jr.*

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# **EXHIBIT 4**

**AlixPartners**  
when it really  
matters

September 14, 2016

Mark G. Krum, Esq.  
Partner  
Lewis Roca Rothgerber Christie LLP  
3993 Howard Hughes Parkway, Suite 600  
Las Vegas, NV 89169

Inv. No.: 2082943  
Re: Cotter v. Cotter, et al.  
Client: 010562

Federal Tax ID 38-3637158

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Retainer	<u>25,000.00</u>
<b>Total Amount Due</b>	<b><u>USD 25,000.00</u></b>



Please reference the invoice number noted above on any payment remittance. Thank You.

**Send check remittance to:**

AlixPartners LLP  
P.O. Box 5838  
Carol Stream, IL 60197-5838

**If Remitting in USD:**

Account Name: AlixPartners LLP  
Account Number: 003-58897  
Bank Name: Deutsche Bank  
ABA: 021-001-033  
SWIFT: BKTRUS33XXX

**If Remitting in any other Currency:**

Account Name: AlixPartners LLP  
IBAN: GB27 DEUT 4050 8189 039614  
Account Number: 89039614  
Bank Name: Deutsche Bank AG London  
SWIFT: DEUTGB2LXXX

909 Third Avenue  
New York, NY 10022

T 212.490.2500  
F 212.490.1344  
alixpartners.com

FINNERTY000029

RDI-A09715

# **EXHIBIT 5**

# REALTY CAPITAL SOLUTIONS

September 30, 2016

Mark G. Krum, Esquire  
Lewis Roca Rothgerber Christie LLP  
3993 Howard Hughes Parkway  
Suite 600  
Las Vegas, Nevada 89169

**Re: Real Estate Development Litigation Consulting**  
James J. Cotter, Jr. / Reading International, Inc. Matter,  
Case No. P-14-082942-E, Dept. No. XI ~ District Court, Clark County, Nevada

*Privileged and Confidential Attorney Work Product*

This invoice is for Realty Capital Solutions' professional services from engagement start through and including September 30, 2016 associated with the above referenced consulting engagement. The work during this time period was primarily review of case documents, analysis, research and production of a rebuttal report by Albert Nagy.

Please note that all outstanding invoices must be paid prior to testimony at deposition or in court.

Nagy, Testifying Expert	13.3 hours @ \$650 per hour	\$8,645.00
Ferrell, RCS Principal	38.0 hours @ \$550 per hour	20,900.00
Hawkins, RCS Principal	16.5 hours @ \$550 per hour	9,075.00
Senior Consultants	3.6 hours @ \$350 per hour	1,260.00
Research Assistant	38.0 hours @ \$250 per hour	9,500.00
Clerical	2.5 hours @ \$100 per hour	250.00
	<b>Total Professional Services</b>	<b>\$49,630.00</b>
	Expenses	-0-
	<b>TOTAL DUE</b>	<b>\$49,630.00</b>

Please remit to: Realty Capital Solutions, LLC  
3100 East Warren Avenue  
Denver, CO 80220

Or via wire: Account Name: Realty Capital Solutions, LLC  
Bank: Wells Fargo N.A.  
Account Number: 321-5938774  
ABA Routing Number: 121000248  
Tax I.D. # 26-3612513

EXHIBIT: 467  
WITNESS: [Signature]  
DATE: 11/24/16  
SHERRY CASE, CSR

[www.realcapitalsolutions.com](http://www.realcapitalsolutions.com)  
415.751.588 (Office) 303.758.0511 (Fax)

NAGY004390

RDI-A09717

Albert Nagy – RCS Principal / Litigation Consultant & Testifying Expert

2016	Hours	Tasks
9/13	.3	Call with RF
9/14	.3	RCS group call
9/17	.5	Document review
9/24	2	Document review
9/25	1	Report outline
9/25	.25	Conference with RF
9/26	.7	Call with RF
9/27	1.5	Report
9/28	1.25	Report review and final edits
9/30	1	Document review
	13.3	<b>TOTAL HOURS during the billing period, Nagy</b>

R. Ferrell – RCS Principal / Engagement Manager

2016	Hours	Tasks
9/13	1.5	Initial review of some case docs, call w. Nagy, call w. Krum
9/14	2.2	RCS phone group meeting, organization, methods. Doc review
9/16	4.0	Doc review, internet research, draft report outline, call w. Hawkins
9/17	0.7	Assist with Nagy expert disclosure
9/18	1.6	Prepare Nagy disclosure, call w. Fitzpatrick re: docs, M. Cotter depo
9/19	4.5	Doc review, report drafting
9/20	2.7	Doc review, report drafting
9/25	2.1	Conference with Nagy, report drafting, study Union Sq & Cinemas 123
9/26	5.6	Report editing and drafting, 10-k & 8-k review, calls Krum, Fitzpatrick, call w. Nagy
9/27	5.5	Report review and final edits, calls w. Fitzpatrick, Nagy, Krum, Hawkins
9/28	2.1	Call w. Hawkins, edits, report production
9/29	2.5	Report production and edits
9/30	3.0	Final report review, editing, exhibit production, supervise clerical
	38.0	<b>TOTAL HOURS during the billing period, Ferrell</b>

J. Hawkins ~ RCS Principal		Tasks
Date	Hours	Tasks
9/12/2016	0.60	telephone call Richard Ferrell, internet research
9/14/2016	0.90	telephone call Richard Ferrell, internet research, review documents
9/16/2016	5.20	telephone call Richard Ferrell, review documents, draft/edit declaration
9/18/2016	1.30	telephone call Richard Ferrell/Mike Fitzpatrick, edit declaration
9/26/2016	0.50	review documents
9/27/2016	6.90	telephone call Richard Ferrell, review documents, draft/edit declaration and exhibits
9/28/2016	1.10	Draft/edit declaration, telephone calls Richard Ferrell
	<b>16.5</b>	<b>TOTAL HOURS during the billing period, Hawkins</b>

B. Goodheim ~ Sr. Consultant / IT Tech / Discovery database professional		Tasks
Date	Hours	Tasks
2/1/2016	80	t/c RWF, download & decompress RDI rar, explore contents
9/7/2016	.50	t/c Stephanie re discovery doc softwares; email RWF with options
	1.3	<b>TOTAL HOURS during the billing period, Goodheim</b>

S. Jennings ~ Sr. Consultant / RCS - NYC		Tasks
Date	Hours	Tasks
9/19	0.5	Research Edifice, development agreement
9/21	1.0	Research NYC development fee market
9/22	0.8	Emails and calls - Edifice reputation research
	2.3	<b>TOTAL HOURS during the billing period, Goodheim</b>

M. Fitzpatrick ~ RCS Research Assistant		Tasks
Date	Hours	Tasks
9/15/16	5.8	Depos, Docs and Fonecons
9/16/16	3.2	Depos, Docs Fonecons
9/17/16	1.8	Depos, Docs and Fonecon
9/18/16	2.6	Research, Conference Call, Fonecon
9/19/16	3.1	Depos and Misc, Dropbox Docs, Fonecon
9/22/16	2.3	Depos and Dropbox Docs, Fonecon
9/24/16	1.8	Docs and Review Draft, Fonecon
9/25/16	5.3	Depos, Docs, Review Draft, Fonecon
9/26/16	5.7	Depos, Docs, Review Draft, Fonecon
9/27/16	2.2	Depos, Review Draft, Fonecon.



9/28/16	0.8	Review Draft, Fonecon
9/29/16	0.4	Review Draft, Fonecon
9/30/16	1.3	Review Osbourne Rebutrals and Fonecon
	<b>36.3</b>	<b>TOTAL HOURS during the billing period, M. Fitzpatrick</b>

RCS Clerical		
2016	Hours	Tasks
9/28	2.5	Report formatting and find clerical editing
	<b>2.5</b>	<b>TOTAL HOURS during the billing period, Clerical</b>

# **EXHIBIT 6**



S4S INVOICE - Lewis Roca Rothgerber Christie

Invoice No. S4S81616  
August 16, 2016

In reference to: James C. Cotter, Jr.

Date	Description	Amount
8/16/16	Retainer/Fee Deposit	\$15,000
	<b>TOTAL AMOUNT DUE</b>	<b>\$15,000</b>

Wire Transfer to:  
First Republic Bank  
111 Pine St  
San Francisco, CA 94111  
ABA No.: 321081669  
Credit Account No.: 80001827089  
Account Name: S4S, LLC



SPITZ003215

RDI-A09722

**IN THE SUPREME COURT OF THE STATE OF NEVADA**

JAMES J. COTTER, JR.,  
DERIVATIVELY ON BEHALF OF  
READING INTERNATIONAL, INC.,

Appellant,

v.

EDWARD KANE, DOUGLAS  
McEACHERN, WILLIAM GOULD,  
JUDY CODDING, AND MICHAEL  
WROTONIAK, READING  
INTERNATIONAL, INC., A NEVADA  
CORPORATION,

Respondents

Electronically Filed  
May 31 2019 07:27 p.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

Supreme Court Case No.: 75053

Dist. Court Case No.: A-15-719860-B

Related to Cases: 72261, 72356,  
74759, 76981, 77648, 77333

VOLUME VII

**APPELLANT READING INTERNATIONAL, INC.'S  
APPENDIX VOLUME VII of VIII FOR CASE 77733  
(PAGES RDI-A09529 to RDI-A10552)**

Tami D. Cowden, Esq.

Nevada Bar No. 8994

Mark E. Ferrario, Esq.

Nevada bar No. 1625

Kara B. Hendricks, Esq.

Nevada Bar No. 7743

**GREENBERG TRAUIG, LLP**

10845 Griffith Peaks Dr. Suite 600

Las Vegas, Nevada 89135

Telephone No. (702) 792-3773

E-mail: [cowdent@gtlaw.com](mailto:cowdent@gtlaw.com)

[ferrariom@gtlaw.com](mailto:ferrariom@gtlaw.com)

[hendricksk@gtlaw.com](mailto:hendricksk@gtlaw.com)

*Attorneys for Appellants*

<b>VOL.</b>	<b>PAGES</b>	<b>DATE</b>	<b>DOCUMENT</b>	<b>FILED UNDER SEAL</b>
I	RDI-A00001-32	6/12/2015	Complaint (Business Court)	
I	RDI-A00033-64	8/3/2015	Plaintiff's Motion to Expedite Discovery and Set a Hearing on Motion for Preliminary Injunction on Order Shortening Time	
I	RDI-A00065-68	8/20/2015	Order Granting Plaintiffs-In-Intervention Motion to Intervene	
I	RDI-A00069-86	8/28/2015	Verified Shareholder Derivative Complaint	
I	RDI-A00087-136	10/22/2015	Plaintiff James J. Cotter, Jr.'s First Amended Verified Complaint	
I	RDI-A00137-153	10/23/2015	Stipulated Confidentiality and Protective Order	
I	RDI-A00154-182	11/6/2015	Transcript of Proceedings: Mandatory Rule 16 Conference and Hearing on Motions October 29, 2015	
I	RDI-A00183-204	3/14/2016	Cotter Defendants answer to JJC First Amended Complaint	
I	RDI-A00205-226	3/29/2016	Reading International, Inc.'s Answer to James Cotter, Jr.'s First Amended Complaint	
I	RDI-A00227-250	4/5/2016	Judy Codding and Michael Wrotniak's Answer to First Amended Complaint	
I	RDI-A00251-278	6/3/2016	Transcript of Hearing on May 26, 2016 re T2's Motion for Preliminary Injunction	
I	RDI-A00279-371	7/12/2016	Joint Motion for Preliminary Approval of Settlement, Notice to Stockholders and Scheduling of Settlement Hearing on Order Shortening Time	
I	RDI-A00372-401	8/3/2016	Transcript of Proceedings: Hearing on July 28, 2016 re Motion for Preliminary Approval of Settlement and Plaintiff's Motion to Compel (filed 8/3/2016)	
I	RDI-A00402-405	8/4/2016	Order Granting Preliminary Approval of Derivative Claim Settlement	
I	RDI-A00406-436	8/8/2016	James J. Cotter, Jr.'s Motion to Vacate and Reset Pending Dates and to Reopen Discovery on Order Shortening Time	
I	RDI-A00437-450	8/17/2016	Transcript of Proceedings: Hearing on Plaintiff's Motion to Vacate Pending Dates/Reopen Discovery August 12, 2016	
I	RDI-A00451-473	8/24/2016	James J. Cotter, Jr.'s Motion to Permit Certain Discovery Concerning the Recent "Offer" on Order Shortening Time	
I	RDI-A00474-477	8/29/2016	Declaration of Whitney Tilson	
I	RDI-A00478-481	8/29/2016	Declaration of Jon Glaser	
I	RDI-A00482-538	9/2/2016	Second Amended Complaint	
I & II	RDI-A00539-1211	9/23/2016	Individual Defendants' Motion for Summary Judgment (No. 1) Re: Plaintiff's Termination and Reinstatement Claims	
II	RDI-A01212-2024	9/23/2016	Individual Defendants' Motion for Summary Judgment (No. 1) Re: Plaintiff's Termination and Reinstatement Claims (Non- Public)	Filed Under Seal
II	RDI-A02025-2297	9/23/2016	Individual Defendants' Motion for Partial Summary Judgment (No. 2) Re: The Issue of Director Independence	
II	RDI-A02298-2707	9/23/2016	Individual Defendants' Motion for Partial Summary Judgment (No. 2) Re: The Issue of Director Independence (Non-Public)	Filed Under Seal
II	RDI-A02708-2801	9/23/2016	Individual Defendants' Motion for Partial Summary Judgment (No. 3) on Plaintiff's Claims Related to the Purported Unsolicited Offer	

II	RDI-A02802-3039	9/23/2016	Individual Defendants' Motion for Partial Summary Judgment (No. 3) on Plaintiff's Claims Related to the Purported Unsolicited Offer (Non-Public)	Filed Under Seal
II	RDI-A03040-3070	9/23/2016	Declaration of Ellen Cotter in Support of the Individual Defendants' Motion for Partial Summary Judgment (No. 3) on Plaintiff's Claims Related to the Purported Unsolicited Offer	
II	RDI-A3071-3134	9/23/2016	Declaration of Ellen Cotter in Support of the Individual Defendants' Motion for Partial Summary Judgment (No. 3) on Plaintiff's Claims Related to the Purported Unsolicited Offer (Non-Public)	Filed Under Seal
II	RDI-A03135-3240	9/23/2016	Individual Defendants' Motion for Partial Summary Judgment (No. 4) on Plaintiff's Claims Related to the Executive Committee	
II	RDI-A03241-3351	9/23/2016	Individual Defendants' Motion for Partial Summary Judgment (No. 4) on Plaintiff's Claims Related to the Executive Committee (Non-Public)	Filed Under Seal
II	RDI-A03352-3522	9/23/2016	Individual Defendants Motion For Partial Summary Judgment (No. 5) On Plaintiffs Claims Related To The Appointment Of Ellen Cotter As CEO	
II	RDI-A03523-3785	9/23/2016	Individual Defendants Motion For Partial Summary Judgment (No. 5) On Plaintiffs Claims Related To The Appointment Of Ellen Cotter As CEO (Non-Public)	Filed Under Seal
II	RDI-A03786-4261	9/23/2016	Individual Defendants' Motion for Partial Summary Judgment (No. 6) Re Plaintiff's Claims Related to the Estate's Option Exercise. the Appointment of Margaret Cotter, the Compensation Packages of Ellen Cotter and Margaret Cotter, and the Additional Compensation to Margaret Cotter and Guy Adams	
II	RDI-A04262-4792	9/23/2016	Individual Defendants' Motion for Partial Summary Judgment (No. 6) Re Plaintiff's Claims Related to the Estate's Option Exercise. the Appointment of Margaret Cotter, the Compensation Packages of Ellen Cotter and Margaret Cotter, and the Additional Compensation to Margaret Cotter and Guy Adams (Non-Public)	Filed Under Seal
II & III	RDI-A04793-5617	9/23/2016	Defendant William Gould's Motion for Summary Judgment	
III	RDI-A05618-5978	9/23/2016	Plaintiff James Cotter, Jr.'s Motion for Partial Summary Judgment	
IV	RDI-A05979-6036	9/27/2016	Sealed Exhibits 15, 17, 18, 21, 22, 23, 24, 25, 26, 29, 30 to Plaintiff James Cotter, Jr.'s Motion for Partial Summary Judgment	Filed Under Seal
IV	RDI-A06037-6047	10/3/2016	Reading International, Inc.'s Joinder to the Individual Defendants' Motion for Summary Judgment No. 1 Re Plaintiff's Termination and Reinstatement Claims	
IV	RDI-A06048-6069	10/3/2016	Reading International, Inc.'s Joinder to the Individual Defendants' Motion for Summary Judgment No. 2 on the Issue of Director Independence	
IV	RDI-A06070-6076	10/3/2016	Reading International, Inc.'s Joinder to the Individual Defendants' Motion for Partial Summary Judgment No. 3 Re the Purported Unsolicited Offer	
IV	RDI-A06077-6129	10/3/2016	Reading International, Inc.'s Joinder to the Individual Defendants' Motion for Summary Judgment No. 4 Re Plaintiff's Claims Related to The Executive Committee	
IV	RDI-A06130-6135	10/3/2016	Reading International, Inc.'s Joinder to the Individual Defendants' Motion for Summary Judgment No. 5 Re Plaintiff's Claims Related to the Appointment of Ellen Cotter as CEO	

IV	RDI-A06136-6144	10/3/2016	Reading International, Inc.'s Joinder to the Individual Defendants' Motion for Partial Summary Judgment No. 6, Re Plaintiff's Claims Related to the Estate's Option Exercise, the Appointment of Margaret Cotter, the Compensation Packages of Ellen Cotter and Margaret Cotter, and the Additional Compensation to Margaret Cotter and Guy Adams	
IV	RDI-A06145-6165	10/10/2016	Cotter, Jr.'s Motion to Vacate and Reset Pending Dates and to Reopen Discovery on Shortened Time (Fourth Request)	
IV	RDI-A06166-6197	10/13/2016	Cotter, Jr.'s Opposition to Individual Defendants' Motion for Partial Summary Judgment (No. 1) Re Plaintiff's Termination and Reinstatement Claims	
IV	RDI-A06197-6366	10/13/2016	Appendix Of Exhibits In Support Of Plaintiff James J. Cotter, Jr.'S Opposition To Individual Defendants' Motion For Partial Summary Judgment (No. 1)	
IV	RDI-A06367-6554	10/13/2016	Appendix Of Exhibits In Support Of Plaintiff James J. Cotter, Jr.'S Opposition To Individual Defendants' Motion For Partial Summary Judgment (No. 1) Re: Plaintiff's Termination and Reinstatement Claims (Exs. 3, 5, 6, 9, 19, 24, 25 and 29 Filed Under Seal)	Filed Under Seal
IV	RDI-A06555-6582	10/13/2016	Cotter, Jr.'s Opposition to Individual Defendants' Motion for Partial Summary Judgment (No. 2) Re: The Issue of Director Independence	
IV	RDI-A06583-6728	10/13/2016	Appendix Of Exhibits In Support Of Plaintiff James J. Cotter, Jr.'S Opposition To Individual Defendants' Motion For Partial Summary Judgment (No. 2)	
IV	RDI-A06729-6907	10/13/2016	Appendix Of Exhibits In Support Of Plaintiff James J. Cotter, Jr.'S Opposition To Individual Defendants' Motion For Partial Summary Judgment (No. 2) Re: The Issue Of Director Independence (Exhibits 4 And 19 Filed Under Seal)	Filed Under Seal
IV	RDI-A06908-6939	10/13/2016	Cotter, Jr.'s Opposition to Individual Defendants' Motion for Partial Summary Judgment (No. 3) on Plaintiff's Claims Related to the Purported Unsolicited Offer (and Gould Joinder)	
IV	RDI-A06940-6988	10/13/2016	Appendix Of Exhibits In Support Of Plaintiff James J. Cotter, Jr.'S Opposition To Individual Defendants' Motion For Partial Summary Judgment (No. 3)	
IV	RDI-A06989-7236	10/13/2016	Appendix Of Exhibits In Support Of Plaintiff James J. Cotter, Jr.'S Opposition To Individual Defendants' Motion For Partial Summary Judgment (No. 3) On Plaintiff's Claims Related To The Purported Unsolicited Off (And Gould Joinder) (Exhibits 3, 4, 5, 8, 10, 12, 13, and 14 filed under seal)	Filed Under Seal
IV	RDI-A07237-7270	10/13/2016	Cotter, Jr.'s Opposition to Individual Defendants' Motion for Partial Summary Judgment (No. 4) on Plaintiff's Claims Related to the Executive Committee	
IV & V	RDI-A07271-7502	10/13/2016	Appendix Of Exhibits In Support Of Plaintiff James J. Cotter, Jr.'S Opposition To Individual Defendants' Motion For Partial Summary Judgment (No. 4)	
V	RDI-A07503-7761	10/13/2016	Appendix Of Exhibits In Support Of Plaintiff James J. Cotter, Jr.'S Opposition To Individual Defendants' Motion For Partial Summary Judgment (No. 4) On Plaintiff's Claims Related To The Executive Committee (Exhibits 7, 17 and 18 filed under seal)	Filed Under Seal

V	RDI-A07762-7798	10/13/2016	Cotter, Jr.'s Opposition to Individual Defendants' Motion for Partial Summary Judgment (No. 5) on Plaintiff's Claims Related to the Appointment of Ellen Cotter as CEO	
V	RDI-A07799-7928	10/13/2016	Appendix of Exhibits In Support of Plaintiff James J. Cotter, Jr.'s Opposition To Individual Defendants' Motion For Partial Summary Judgment (No. 5)	
V	RDI-A07929-8126	10/13/2016	Appendix of Exhibits In Support of Plaintiff James J. Cotter, Jr.'s Opposition To Individual Defendants' Motion For Partial Summary Judgment (No. 5) On Plaintiff's Claims Related To The Appointment Of Ellen Cotter As CEO (Exhibits 3, 4, 7, 8, 10, 12, 13, 14, 16 and 19 filed under seal)	Filed Under Seal
V	RDI-A08127-8163	10/13/2016	Cotter, Jr.'s Opposition to William Gould's Motion for Partial Summary Judgment	
V	RDI-A08164-8223	10/13/2016	Appendix of Exhibits In Support of Cotter, Jr.'s Opposition To Defendant Gould's Motion For Summary Judgment	
V	RDI-A08224-8308	10/13/2016	Appendix of Exhibits In Support of Cotter, Jr.'s Opposition To Defendant Gould's Motion For Summary Judgment (Exhibits 2, 7, 9 and 12 filed under seal)	Filed Under Seal
V	RDI-A08309-8323	10/21/2016	Order Granting Settlement with T2 Plaintiffs and Final Judgment with Exhibit 1 attached	
V	RDI-A08324-8332	10/24/2016	Transcript of Proceedings: Pretrial and Scheduling conference October 21, 2016 (filed 10/24/2016)	
V	RDI-A08333-8378	10/25/2016	Cotter, Jr.'s Reply in Support of Motion for Partial Summary Judgment	
V	RDI-A08379-8390	10/26/2016	Individual Defendant's Objections to the declaration of James J. Cotter, Jr. Submitted in Opposition to all individual defendant's motions for partial summary judgment	
V	RDI-A08391-8545	11/1/2016	Transcript of Proceedings: Hearing on Motions October 27, 2016	
V	RDI-A08546-8557	11/4/2016	Plaintiff James J. Cotter, Jr.'s Motion to Reconsider the Court's Order Approving the Settlement and Dismissal of the T2 Complaint	
V	RDI-A08558-8562	11/23/2016	Reading International, Inc.'s Status Report Re: Discovery	
V	RDI-A08563-8592	11/23/2016	Cotter RDI November 2016 Status Report	
VI	RDI-A08593-8603	12/7/2016	Transcript of Proceedings: Status Check Re Resetting of Trial Date December 1, 2016	
VI	RDI-A08604-8629	12/20/2016	Reading International, Inc.'s Answer to Second Amended Complaint	
VI	RDI-A08630-8633	12/21/2016	Order Regarding Defendants' Motions for Partial Summary Judgment Nos. 1-6 and Motion in Limine to Exclude Expert Testimony	
VI	RDI-A08634-8652	1/6/2017	Transcript of Proceedings - Status Check on 12.22.16	
VI	RDI-A08653-8663	6/14/2017	Transcript of Proceedings: Status Check June 5 2017	
VI	RDI-A08664-8667	10/4/2017	First Amended Order Setting Civil Jury Trial, Pre-Trial Conference And Calendar Call	
VI	RDI-A08668-8729	10/27/2017	Opposition of Plaintiff James J. Cotter, Jr. to Motion for Evidentiary Hearing Regarding James Cotter, Jr.'s Adequacy as Derivative Plaintiff	



VI	RDI-A08730-8773	11/9/2017	Defendants Margaret Cotter Ellen Cotter, Guy Adams, Edward Kane, Douglas McEachern, William Gould, Judy Coddling, Michael Wrotniak's Supplement to Motions for Partial Summary Judgment Nos. 1, 2, 3, 5 and 6	
VI	RDI-A08774-8796	11/9/2017	Cotter, Jr.'s Motion in Limine No. 2 Regarding the Submission of Merits-Related Evidence by Nominal Defendant Reading International, Inc.	
VI	RDI-A08797-8799	11/21/2017	Reading International, Inc.'s Joinder to Margaret Cotter, Ellen Cotter, Douglas McEachern, Guy Adams, Edward Kane, Judy Coddings & Michael Wrotniak's Supplement to Motions for Partial Summary Judgment Nos. 1, 2, 3, 5 & 6	
VI	RDI-A08800-8829	11/28/2017	Defendants Margaret Cotter, Ellen Cotter, Guy Adams, Edward Kane, Douglas McEachern, William Gould, Judy Coddling, Michael Wrotniak's Answer to Plaintiffs Second Amended Complaint	
VI	RDI-A08830-8843	12/1/2017	Supplemental Opposition to Motion for Summary Judgment Nos. 1 and 2 and Gould Motion for Summary Judgment	
VI	RDI-A08844-8854	12/1/2017	Declaration of Akke Levin in Support of Supplemental Opposition to Motions for Summary Judgment Nos. 1 and 2 and Gould Summary Judgment Motion	
VI	RDI-A08855-8875	12/1/2017	Plaintiff James J. Cotter Jr.'s Supplemental Opposition to So Called Summary Judgment Motion Nos. 2 & 3 and Gould Summary Judgment Motion	
VI	RDI-A08876-8897	12//17	Plaintiff James J. Cotter Jr.'s Supplemental Opposition to So Called Summary Judgment Motion Nos. 2 & 3 and Gould Summary Judgment Motion (Non-Public	Filed Under Seal
VI	RDI-A08898-9086	12/1/2017	Declaration of Akke Levin In Support of Plaintiff James J. Cotter Jr.'s Supplemental Opposition to So-Called Summary Judgment Motion Nos. 2 & 3 and Gould Summary Judgment Motion	
VI	RDI-A09087-9221	12/1/2017	Exhibits 3 through 6, 8, 9, 11 and 12 to Plaintiff James J. Cotter Jr.'s Supplemental Opposition to So-Called Summary Judgment Motion Nos. 2 & 3 and Gould Summary Judgment Motion	Filed Under Seal
VI	RDI-A09222-9237	12/1/2017	Plaintiff James J. Cotter Jr.'s Supplemental Opposition to Summary Judgment Motion Nos. 2 and 5 and Gould Summary Judgement Motion	
VI	RDI-A09238-9356	12/1/2017	Declaration of Akke Levin In Support of Plaintiff James J. Cotter Jr.'s Supplemental Opposition to Summary Judgment Motion Nos. 2 and 5 and Gould Summary Judgement Motion	
VI	RDI-A09356-9421	12/1/2017	Exhibits 7-11, 15-17 to Appendix to Plaitniff's Supplemental Opposition to Summary Judgment Nos. 2 and 5 and Gould Summary Judgment Motion	Filed Under Seal
VI	RDI-A09422-9433	12/1/2017	Plaintiff James J. Cotter Jr.'s Supplemental Opposition to Summary Judgment Motion Nos. 2 and 6 and Gould Summary Judgment Motion	
VI	RDI-A09433-9468	12/1/2017	Declaration of Akke Levin in Support of Plaintiff James J. Cotter Jr.'s Supplemental Opposition to Summary Judgment Motion Nos. 2 and 6 and Gould Summary Judgment Motion	
VI	RDI-A09469-9500	12/1/2017	Exhibits 4-11 to Appendix to Plaintiff James J. Cotter Jr.'s Supplemental Opposition to Summary Judgment Motion Nos. 2 and 6 and Gould Summary Judgment Motion	Filed Under Seal

VI	RDI-A09501-9528	12/4/2017	Reply in Support of the Individual Defendants' Renewed Motions for Partial Summary Judgment Nos. 1 and 2 - Public	
VII	RDI-A09529-9537	12/4/2017	Reply in Support of Supplemental Motions for Summary Judgment Nos. 2 and 3	
VII	RDI-A09538-9546	12/4/2017	Reply in Support of the Individual Defendants Renewed Motions for Partial Summary Judgment Nos. 2 and 5	
VII	RDI-A09545-9554	12/4/2017	Reply in Support of Supplemental Motions for Summary Judgment Nos. 2 and 6	
VII	RDI-A09555-9562	12/4/2017	Reply in Support of the Individual Defendants' Motion in Limine to Exclude Evidence that is more prejudicial than probative	
VII	RDI-A09563-9594	12/8/2017	Joint Pretrial Memorandum	
VII	RDI-A09595-9601	12/28/2017	Order Regarding Defendants' Motions for Partial Summary Judgment and Plaintiff's and Defendants' Motions in Limine	
VII	RDI-A09602-9609	1/2/2018	The Individual Defendants' Opposition to Plaintiff's Motion for Rule 54(b) Certification and Stay	
VII	RDI-A09610-9612	1/4/2018	Order Denying Plaintiff's Motion to Stay and Motion for Reconsideration	
VII	RDI-A09611-9615	1/4/2018	Order Granting Plaintiffs Motion for Rule 54(b) Certification and Stay	
VII	RDI-A09616-9632; RDI-A0932A-9632K	1/10/2018	Sealed Transcript of Proceedings: Jury Trial Day One - 1.8.18	Filed Under Seal
VII	RDI-A09633-9773	5/15/2018	Defendant's Motion to Compel Plaintiff to Produce Communications Relating to Expert Fee Payments	
VII	RDI-A09774-9795	5/18/2018	Plaintiff's Pre-Trial Memorandum	
VII	RDI-A09796-9843	5/18/2018	Defendant's Pre-Trial Memorandum	
VII	RDI-A09844-9858	5/24/2018	Transcript of Proceedings: Hearing on Defendants' Motion to Compel May 21, 2018	
VII	RDI-A09859-9907	6/1/2018	Ellen Cotter, Margaret Cotter, and Guy Adams Motion For Summary Judgment	
VII	RDI-A9908-9968	6/1/2018	Sealed Exhibits to Ellen Cotter, Margaret Cotter, and Guy Adams Motion For Summary Judgment (Exhibits B, C, D, E, H, I)	Filed Under Seal
VII	RDI-A09969-10158	6/13/2018	Plaintiff's Opposition to Ellen Cotter, Margaret Cotter, and Guy Adams' Motion for Summary Judgment on Ratification	
VII	RDI-A10159-10365	6/13/2018	Plaintiff's Opposition to Ellen Cotter, Margaret Cotter, and Guy Adams' Motion for Summary Judgment on Ratification (Non-Public)	Filed Under Seal
VII	RDI-A10366-10408	6/13/2018	Plaintiff's Opposition to Ellen Cotter, Margaret Cotter, and Guy Adams' Motion for Summary Judgment on Demand Futility	
VII	RDI-A10409-10464	6/13/2018	Plaintiff's Opposition to Ellen Cotter, Margaret Cotter, and Guy Adams' Motion for Summary Judgment on Demand Futility (Non-Public)	Filed Under Seal
VII	RDI-A10465-10507	6/13/2018	Sealed Exhibits 1 & 3 to Plaintiff's Opposition to Motion to Dismiss and Exhibits 15, 17-19 and 21 to Defendant's Motion for Summary Judgment (Demand Futility & Ratification Oppositions)	Filed Under Seal
VII	RDI-A10508-10541	6/15/2018	Ellen Cotter, Margaret Cotter, and Guy Adams' Reply in Support of Motion for Summary Judgment	
VII	RDI-A10542-10552	8/14/2018	Findings of Fact and Conclusions of Law	
VII	RDI-A10552A-10552N	8/16/2018	NOE Findings of Fact and Conclusions of Law	

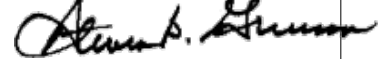
VIII	RDI-A10553-10558	9/4/2018	Stipulation and Order Relating to Process for Filing Motion for Attorneys' Fees	
VIII	RDI-A10559-10641	9/7/2018	Reading International, Inc.'s Motion for Attorneys' Fees	
VIII	RDI-A10642-10647	9/12/2018	Reading s International, Inc.'s Motion for Judgment in its Favor	
VIII	RDI-A10647A-10647C	9/17/2018	Defendants' Joinder to Reading International, Inc.'s Motion for Attorneys Fees	
VIII	RDI-A10648-10707	9/27/2018	Plaintiff's Opposition to Motion for Attorneys Fees	
VIII	RDI-A10708-10720	10/1/2018	Cotter Jr.'s Opposition to Reading International, Inc's Motion for Judgment in Its Favor	
VIII	RDI-A10721-10751	10/16/2018	Reading International, Inc.'s Reply in Support of Motion for Attorneys' Fees	
VIII	RDI-A10752-10757	10/15/2018	Reading International, Inc.'s Reply in Support of Motion for Judgment in Its Favor	
VIII	RDI-A10758-10774	10/24/2018	Transcript of Proceedings: Hearing on Motions for Attorneys' Fees	
VIII	RDI-A10774A-10774E	11/6/2018	Order Granting in Part and Denying in Part Motion to Retax and Settle Costs, and Entering Judgment for Costs	
VIII	RDI-A10775-10778	11/16/2018	Order Denying Reading International, Inc.'s Motion for Attorneys' Fees	
VIII	RDI-A10779-10782	11/16/2018	Order Denying Reading International, Inc.'s Motion for Judgment in its Favor	
VIII	RDI-A10783-10790	11/20/2018	Notice of Entry of Order Denying Reading International, Inc.'s Motion for Attorneys' Fees	
VIII	RDI-A10791-10798	11/20/2018	Notice of entry of Order Denying Reading International, Inc.'s Motion for Judgment in its Favor	
VIII	RDI-A10799-10801	12/14/2018	Notice of Appeal	

**CERTIFICATE OF SERVICE**

This is to certify that on May 31, 2019, a true and correct copy of the foregoing document, **APPELLANT READING INTERNATIONAL, INC.’S APPENDIX VOLUME I of VIII FOR CASE 77733**, was served by via this Court’s e-filing system, on counsel of record for all parties to the action below in this matter, as follows:

*/s/ Andrea Lee Rosehill*  
\_\_\_\_\_

An employee of Greenberg Traurig, LLP



1 **RIS**  
2 **COHENJOHNSONPARKEREDWARDS**

3 H. STAN JOHNSON, ESQ.  
4 Nevada Bar No. 00265  
5 sjohnson@cohenjohnson.com  
6 375 East Warm Springs Road, Suite 104  
7 Las Vegas, Nevada 89119  
8 Telephone: (702) 823-3500  
9 Facsimile: (702) 823-3400

7 **QUINN EMANUEL URQUHART & SULLIVAN, LLP**

8 **CHRISTOPHER TAYBACK, ESQ.**  
9 California Bar No. 145532, *pro hac vice*  
10 christayback@quinnemanuel.com  
11 **MARSHALL M. SEARCY, ESQ.**  
12 California Bar No. 169269, *pro hac vice*  
13 marshallsearcy@quinnemanuel.com  
14 865 South Figueroa Street, 10<sup>th</sup> Floor  
15 Los Angeles, CA 90017  
16 Telephone: (213) 443-3000

13 Attorneys for Defendants Margaret Cotter,  
14 Ellen Cotter, Douglas McEachern, Guy Adams,  
15 Edward Kane, Judy Coddling, and Michael Wrotniak

15 **EIGHTH JUDICIAL DISTRICT COURT**

16 **CLARK COUNTY, NEVADA**

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

19 Plaintiff,

20 v.

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

26 Defendants.

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

**REPLY IN SUPPORT OF  
SUPPLEMENTAL MOTIONS FOR  
SUMMARY JUDGMENT NOS. 2 AND 3**

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff's Supplemental Opposition to Motion for Summary Judgment Nos. 2 and 3  
4 ignores the evidence gathered since the last summary judgment hearing—namely, Plaintiff's own  
5 admission that Patton Vision's overtures towards purchasing RDI stock were non-binding—and  
6 instead focuses on a red herring "business plan" issue. This is nothing but an attempt at distraction;  
7 summary judgment is appropriate on this claim because, as a matter of law, Plaintiff has not (and  
8 cannot) demonstrate any injury from the Board's decision not to pursue the **nonbinding** indication  
9 of interest. While Plaintiff has now had multiple opportunities to identify some type of harm  
10 resulting from the Board's decision, he has failed to do so.

11 Additionally, Plaintiff's conclusory statements that the business judgment rule does not  
12 apply because, in his view, the Board must have been acting with improper motives when it  
13 inquired about the views of RDI's controlling shareholders is unfounded. Plaintiff's accusations  
14 about the thought processes and motivations of RDI's directors are not evidence. Plaintiff has  
15 failed to identify any genuine disputed material fact regarding any purported breach of fiduciary  
16 duty. Defendants' Motion for Summary Judgment No. 3 should therefore be granted.

17 **II. ARGUMENT**

18 **A. THERE ARE NO DAMAGES, AS A MATTER OF LAW, FROM A**  
19 **DECISION NOT TO PURSUE A NONBINDING EXPRESSION OF**  
20 **INTEREST**

21 Summary judgment is appropriate on this claim because, as a matter of law, Plaintiff  
22 cannot demonstrate any injury from the Board's decision not to pursue Patton Vision's  
23 nonbinding indication of interest. Plaintiff has not produced any cognizable evidence showing  
24 damages, an essential element of a breach of fiduciary duty claim. *See Brown v. Kinross Gold*  
25 *U.S.A., Inc.*, 531 F. Supp. 2d 1234, 1245 (D. Nev. 2008) (A claim for breach of fiduciary duty  
26 requires a plaintiff to demonstrate "the existence of a fiduciary duty, the breach of that duty, and  
27 that the breach proximately caused the damages.") (applying Nevada law).  
28

1 Plaintiff incorrectly asserts that Defendants' citation of *Cooke v. Oolie*, No. CIV. A. 11134,  
2 2000 WL 710199 (Del. Ch. May 24, 2000) stands for "more or less the opposite proposition than  
3 the one for which it is cited." (Opp. at 15.) Plaintiff's attempts at distinguishing this case are  
4 unavailing. In *Cooke*, the shareholder plaintiffs contended that two directors breached their  
5 fiduciary duties by voting to pursue one particular acquisition proposal, the "USA Proposal," over  
6 other proposals the board was considering. *Id.* at \*1. After the board voted to pursue the USA  
7 Proposal, USA backed out of the deal and the remaining proposals had lapsed. *Id.* at \*7. The court  
8 found that the shareholder plaintiffs failed to demonstrate an actual interest in the other proposals  
9 since they could not prove that they suffered an injury:

10 To show that pursuit of the USA proposal injured the plaintiffs, they would have to  
11 demonstrate that pursuit of the USA deal prevented TNN shareholders from  
12 obtaining superior value by consummating a deal with one of the other three  
13 companies submitting acquisition proposals. The plaintiffs, however, could not  
14 demonstrate that TNN would have closed a superior deal with one of the other  
15 bidding companies because ***none of the proposals which the board considered in  
December 1989 constituted offers the acceptance of which would bind the offeror  
to acquire TNN. Rather, the proposals represented non-binding offers subject to  
a number of conditions.***

15 *Id.* at \*13, n. 38 (emphasis added).

16 Here, like in *Cooke*, Plaintiff has failed to demonstrate an actual interest in the Patton  
17 Vision indication of interest since the *proposal* was **nonbinding and subject to a number of**  
18 **conditions** (e.g., (1) negotiation and execution of a definitive merger agreement and (2) due  
19 diligence). Indeed, Plaintiff has conceded that Patton Vision's indication of interest was  
20 nonbinding and that Patton Vision could walk away from the deal short of there being a definitive  
21 agreement. (See Mot. at 7.) Accordingly, Plaintiff cannot demonstrate injury—a deficiency fatal  
22 to all claims based on Patton Vision's unsolicited indication of interest.

1           **B.     THE BOARD PROPERLY CONSIDERED AND ULTIMATELY**  
2           **REJECTED THE INDICATION OF INTEREST**

3           1.     **Directors Are Entitled to Rely on Management’s Report, and RDI’s**  
4           **Directors Were Well-Versed in RDI’s Strategic Plan to Maximize**  
5           **Stockholder Value**

6           Even putting aside that he cannot show any damages from failure to pursue a non-binding  
7           expression of interest, Plaintiff’s entire claim boils down to the assertion that RDI’s Board of  
8           directors was required to obtain the advice of an investment banker or other outside advisers  
9           when considering the Patton Vision indication of interest. But the Board acted well within its  
10          discretion when by considering the opinions of management. Nevada Revised Statute  
11          78.138(2)(a) provides:

12           In performing their respective duties, directors and officers are entitled to rely on  
13           information, opinions, reports, books of account or statements, including financial  
14           statements and other financial data, that are prepared or presented by:

15           (a) One or more directors, officers or employees of the corporation reasonably  
16           believed to be reliable and competent in the matters prepared or presented[.]

17          No authority exists for Plaintiff’s contention that the Board was required to retain outside  
18          financial advisors, investment bankers, or real estate professionals. Notably, Plaintiff himself—a  
19          member of RDI’s board of directors—did not do so. Indeed, no case or statute requires corporate  
20          directors to hire such consultants (and incur the resulting costs) to evaluate an unsolicited  
21          indication of interest. *See Estate of Detwiler v. Offenbecher*, 728 F. Supp. 103, 152 (S.D.N.Y.  
22          1989) (“[D]irectors knowledgeable about the corporation have no legal obligation to obtain  
23          fairness opinions by independent bankers.”). Instead, Nevada law explicitly permits corporate  
24          directors to rely on information provided by company management. *See Nev. Rev. Stat. §*  
25          78.138(2).

26          In addition, Plaintiff has failed to establish that the RDI Board, or any board, is obligated  
27          to have a “business plan” to make a decision such as those at issue here. Plaintiff makes much of  
28          the presence or absence of a physical document with the title “Reading International Business  
Plan.” This is nothing but misdirection; whether or not there was a paper document stamped



1 “business plan” is irrelevant to whether RDI’s Board and management had a plan and strategy to  
2 grow the Company and maximize stockholder value. There is of course no legal requirement  
3 that a company have a document called “business plan” for the Board to make decisions and, in  
4 any event, RDI *did have* a plan and strategy, which Ellen Cotter had presented to the Board in  
5 February 2016 and that had been the subject of numerous meetings and discussions by Board  
6 members and management. The unrebutted testimony of Defendants’ expert Jonathan Foster is  
7 that the Mission, Vision & Strategy presentation Ellen Cotter gave at the February 18, 2016 was  
8 in fact a “strategic plan” which “was meant to be the plan for 2016.” (Foster at 72:6 -73:6.)

9 **2. Directors Are Allowed to Consult with Controlling Stockholders**

10 Plaintiff also criticizes the Board’s inquiry to controlling stockholders Ellen and Margaret  
11 Cotter regarding their views about the indication of interest. However, despite Plaintiffs’  
12 attempts to case this inquiry in a negative light, members of the Board are obligated to consider  
13 the interests of stockholders—large and small, majority and minority—when assessing the  
14 possibility of a sale. Where, like at RDI, the controlling stockholders are also directors and  
15 officers of the company, it defies logic to suggest that the Board should not consult with them  
16 about a possible sale of the Company. That the Board was interested in what Ellen and Margaret  
17 Cotter thought about the potential sale is not remotely evidence that those are the *only*  
18 stockholder interests that were being considered. Indeed, **Plaintiff concedes the Board**  
19 **inquired into his view as well.** (Opp. at 6.) Simply put, in Plaintiff’s view, if an RDI Director  
20 aligns with Ellen or Margaret Cotter on an issue, the only possible explanation is a breach of the  
21 duty of loyalty (though Plaintiff does not identify any benefit received by any Director by  
22 choosing not to pursue the indication of interest, which is fatal to his claim of a breach of the  
23 duty of loyalty). Plaintiff fails to even consider the possibility that RDI’s directors align with  
24 Ellen and Margaret on this (or any) issue because they actually agree on what is best for all of  
25 RDI’s stockholders. But that is what Nevada law presumes, and it is the essence of the business  
26 judgment rule that Plaintiff contends (without support) should not apply here.

27 Nevada Revised Statute 78.139(4) allows a director to “resist a change or potential change  
28 in control of the corporation if the board of directors determines that the change or potential change

1 is opposed to or not in the best interest of the corporation upon consideration of any relevant facts,  
2 circumstances, contingencies or constituencies pursuant to subsection 4 of NRS 78.128,” which  
3 considers the long-term or short-term interest of the corporation. As Plaintiff concedes, the  
4 decision explicitly contemplated by the Board at the June 23 board meeting was whether “to  
5 continue to pursue [RDI’s] current [long-term] strategy as an independent company,” and whether  
6 that decision was “in the best interest of the company and its stockholders.” (*See Opp.* at 4-5.) In  
7 reaching its ultimate decision to pursue the Company’s long-term strategy, the Defendants  
8 considered a detailed presentation by management, which contemplated all the Company’s  
9 outstanding plans for growth and the redevelopment of its existing properties. (*Id.* at 4-8.) This  
10 is exactly what Nevada law requires and precisely what the Defendants did.

11 **C. PLAINTIFF HAS NOT PROPERLY ALLEGED ANY INTENTIONAL**  
12 **MISCONDUCT, FRAUD OR KNOWING VIOLATION OF LAW**

13 Finally, Plaintiff’s conclusory allegations of “intentional misconduct”—with nothing  
14 more—have no support or basis in fact. (*See Opp.* at 14, 16, 18.) As Plaintiff admits, “a director  
15 of a Nevada corporation cannot be liable to the corporation for money damages ‘unless...[t]he trier  
16 of fact determines that the presumption established by subsection 3 has been rebutted.’” (*Opp.* at  
17 14 quoting NRS 78.138(7).) However, despite this clear legislative intent to protect Nevada  
18 directors, and the Supreme Court’s recognition of the “legislat[ure’s] rejection of a substantive  
19 evaluation of director conduct,” *Wynn Resorts*, 399 P.3d at 343, Plaintiff still urges this Court to  
20 consider piecemeal facts he hopes will somehow create a triable issue.

21 Plaintiff’s citation to the Delaware exculpatory provisions from *In re Walt Disney Co.*  
22 *Derivative Litig.*, 906 A.2d 27, 67 (Del. 2006) is inapposite in light of Nevada’s more protective  
23 provisions under NRS 78.138(7) and the legislature’s clear intent that conflicting law not be  
24 considered. *See* Section 4, SB 203 (“[D]irectors . . . may be informed by the laws and judicial  
25 decisions of other jurisdictions . . . , but the failure or refusal of a director or officer to consider, or  
26 to conform the exercise of his or her powers to, the laws, judicial decisions or practices of another  
27 jurisdiction does not constitute or indicate a breach of a fiduciary duty.”). But even under  
28 Delaware’s stricter standard, Plaintiff still fails to establish that any Director acted with a purpose

1 other than that of advancing the best interest of the corporation. Indeed, Ellen and Margaret Cotter  
2 (as collective owners of over 1.6 million RDI shares) stood to make approximately \$30 million  
3 from any sale, assuming that Patton Vision’s non-binding indication of interest resulted in a sale  
4 of all RDI shares at \$17 (or \$18.50) per share. As a matter of law, by casting votes of confidence  
5 in RDI’s long-term strategy, rather than seeking to cash in on a short-term windfall, Ellen and  
6 Margaret Cotter, along with the non-Cotter Defendants who voted with them, demonstrated a *lack*  
7 of self-interest and instead clearly acted in the best interest of the Company’s stockholder. *See*  
8 *Kahn v. MSB Bancorp, Inc.*, 21 No. CIV. A. 14712-NC, 1998 WL 409355, at \*3 (Del. Ch. July 16,  
9 1998), *affd*, 734 A.2d 158 (Del. 1999) (“The choice to remain with a long-term strategy at the  
10 expense of short-term personal gain indicates, if anything, a lack of self-interest on the part of the  
11 directors.”).

12           Accordingly, because Plaintiff has not even attempted to (and cannot) meet the showing  
13 required under NRS 78.138(7) to establish individual liability, no triable issue remains and  
14 summary judgment on the indication of interest claims is appropriate.

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1 **III. CONCLUSION**

2 Plaintiff's conclusory allegations are not admissible evidence showing a genuine issue for  
3 trial. While Plaintiff haphazardly alleges that members of the Board breached their fiduciary  
4 duties for anything and everything, he cannot identify a single disputed material fact—beyond  
5 his own speculation—that would allow him to take these misguided claims to trial. For all the  
6 foregoing reasons, Defendants' Motion for Partial Summary Judgment No. 3 should be granted  
7 in its entirety.

8  
9 DATED THIS 4TH DAY OF DECEMBER, 2017.

10 **COHENJOHNSONPARKEREDWARDS**

11  
12 By: /s/ H. Stan Johnson

13 H. STAN JOHNSON, ESQ.

14 Nevada Bar No. 00265

15 sjohnson@cohenjohnson.com

16 375 East Warm Springs Road, Suite 104

17 Las Vegas, Nevada 89119

18 Telephone: (702) 823-3500

19 Facsimile: (702) 823-3400

20 **QUINN EMANUEL URQUHART &**

21 **SULLIVAN, LLP**

22 CHRISTOPHER TAYBACK, ESQ.

23 California Bar No. 145532, *pro hac vice*

24 christayback@quinnemanuel.com

25 MARSHALL M. SEARCY, ESQ.

26 California Bar No. 169269, *pro hac vice*

27 marshallsearcy@quinnemanuel.com

28 865 South Figueroa Street, 10<sup>th</sup> Floor

Los Angeles, CA 90017

Telephone: (213) 443-3000

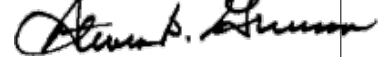
*Attorneys for Defendants Margaret Cotter,  
Ellen Cotter, Douglas McEachern, Guy Adams,  
Edward Kane, Judy Coddling, and Michael  
Wrotniak*

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**CERTIFICATE OF SERVICE**

I hereby certify that, on December 4, 2017, I caused a true and correct copy of the foregoing **REPLY IN SUPPORT OF SUPPLEMENTAL MOTIONS FOR SUMMARY JUDGMENT NOS. 2 AND 3** 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



1 **RIS**  
2 **COHEN|JOHNSON|PARKER|EDWARDS**  
3 H. STAN JOHNSON, ESQ.  
4 Nevada Bar No. 00265  
5 sjohnson@cohenjohnson.com  
6 375 East Warm Springs Road, Suite 104  
7 Las Vegas, Nevada 89119  
8 Telephone: (702) 823-3500  
9 Facsimile: (702) 823-3400

6 **QUINN EMANUEL URQUHART & SULLIVAN, LLP**  
7 **CHRISTOPHER TAYBACK, ESQ.**  
8 California Bar No. 145532, *pro hac vice*  
9 christayback@quinnemanuel.com  
10 **MARSHALL M. SEARCY, ESQ.**  
11 California Bar No. 169269, *pro hac vice*  
12 marshallsearcy@quinnemanuel.com  
13 865 South Figueroa Street, 10<sup>th</sup> Floor  
14 Los Angeles, CA 90017  
15 Telephone: (213) 443-3000

12 Attorneys for Defendants Margaret Cotter,  
13 Ellen Cotter, Douglas McEachern, Guy Adams,  
14 Edward Kane, Judy Coddling, and Michael Wrotniak

14 **EIGHTH JUDICIAL DISTRICT COURT**

15 **CLARK COUNTY, NEVADA**

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

18 Plaintiffs,

19 v.

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

23 Defendants.

24 READING INTERNATIONAL, INC., a Nevada  
25 corporation,

26 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**

**REPLY IN SUPPORT OF THE  
INDIVIDUAL DEFENDANTS' RENEWED  
MOTIONS FOR PARTIAL SUMMARY  
JUDGMENT NOS. 2 AND 5**

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**MEMORANDUM OF POINTS AND AUTHORITIES**

**I. INTRODUCTION**

After undertaking a CEO search process, engaging an outside search firm, and observing Ellen Cotter’s performance as interim CEO for more than six months, RDI’s CEO search committee recommended to the Board that Ellen Cotter be named RDI’s permanent President and CEO, and the Board discussed and approved her selection. Because Plaintiff disagrees with the merits of the Board’s decision—and believes that *he* should be RDI’s CEO—he seeks to second-guess the Board’s determination and take over the position that Ellen Cotter has now held for nearly two-and-a-half years.

To do so, Plaintiff relies on a fundamental misunderstanding of Nevada law. He misreads the recent amendments to Nevada statutes and ignores binding Supreme Court authority holding that a court, when determining whether directors acted in good faith, may inquire only into the process by which a board of directors made a decision and not the substance of that decision. Disregarding the application of Nevada’s business judgment rule, Plaintiff hypothesizes about the directors’ motives and turns a blind eye to the process that actually took place when Ellen Cotter was selected as CEO. None of this is proper, and Plaintiff’s attempt to replace the Board’s considered decision with the result he prefers should be rejected. Simply put, Plaintiff fails to overcome the presumption established by the Nevada business judgment rule.

**II. ARGUMENT**

**A. Plaintiff Misapprehends Nevada Law Regarding the Business Judgment Rule and Determinations of Good Faith**

Plaintiff’s speculation about the Directors’ motives in choosing Ellen Cotter as RDI’s permanent President and CEO cannot change the fact that the business judgment rule protects their decision. Choosing a CEO for the company is a quintessential matter of business judgment for the Board. *See Carlson v. Hallinan*, 925 A.2d 506, 527 (Del. Ch. 2006) (“[I]n corporate law, the election of officers is generally left to the board of directors.”). As discussed more fully in

1 the Individual Defendants Reply in Support of Motions for Partial Summary Judgment 1 and 2,  
2 Nevada law establishes a policy of judicial noninterference with business decisions and rejects a  
3 substantive evaluation of director conduct.

4 A recent clarification to Nevada law, which includes (i) the legislative declaration set  
5 forth in N.R.S. SB 203, § 2, and resulting amendments to NRS 78.138 and NRS 78.139, as well  
6 as (ii) the Nevada Supreme Court’s recent decision in *Wynn Resorts, Ltd. v. Eighth Jud. Dist. Ct.*  
7 *In & For Cnty. of Clark*, 399 P.3d 334 (Nev. 2017), are all relevant to the business judgment  
8 analysis in this case. Although Plaintiff argues that this intervening authority has no impact on  
9 his breach of fiduciary duty claims (*see* Plaintiff’s Supplemental Opposition to Motions for  
10 Summary Judgment Nos. 2 and 5 and Gould Summary Judgment Motion (“Opp.”) at 10-11),  
11 Plaintiff fundamentally misapprehends Nevada law.

12 Nevada’s business judgment rule, codified by statute, provides that “[d]irectors and  
13 officers, in deciding upon *matters of business*, are presumed to act in good faith, on an informed  
14 basis and with a view to the interests of the corporation.” NRS 78.138(3) (emphasis added). To  
15 the extent that other states (such as Delaware) have a different business judgment rule, the  
16 Nevada Legislature has now made clear that such foreign law must not be allowed to “supplant”  
17 or “modify” Nevada’s home statute, and failure of a Nevada director to “consider” or “conform  
18 the exercise of his or her powers” to such foreign law “does not constitute or indicate a breach of  
19 a fiduciary duty.” N.R.S. SB 203, §§ 2(3)-(4). Irrespective of whatever foreign law may be,  
20 Nevada’s corporate law identifies only two situations where the business judgment presumption  
21 may be disturbed: (1) where directors take certain actions to resist “a change or potential change  
22 in control of the corporation,” NRS 78.139(1)(b), 2-4; and (2) in an “interested director  
23 transaction,” involving “self-dealing” between a director and a corporation, NRS 78.140.

24 Neither of these situations is implicated by the Board’s selection of Ellen Cotter as CEO.  
25 Like the termination of a CEO, the hiring of a CEO is a purely operational decision that is one of  
26 those “matters of business” always entitled to the Nevada statutory presumption of reasonable  
27 business judgment under NRS 78.138(3). In Nevada, there is a marked contrast between  
28



1 “operational decisions,” such as removing an officer or changing a marketing strategy, and  
2 “transactional decisions,” such as where a director is on both sides of a particular transaction.

3 Even if Plaintiff could overcome the hurdle of the business judgment rule, in Nevada, a  
4 director cannot be held personally liable for damages based on a business decision “unless it can  
5 be shown that the director breached his fiduciary duties and that such breach involved intentional  
6 misconduct, fraud, or a knowing violation of law.” *Wynn*, 399 P.3d at 342; NRS 78.138(7).  
7 Citing Delaware law, Plaintiff argues that the Directors engaged in “intentional misconduct” by  
8 failing to act in good faith in connection with the CEO search, since they chose Ellen Cotter  
9 despite her lack of real estate experience and supposedly “aborted” the search process. *Opp.* at  
10 11-12. But nowhere does Plaintiff discuss Nevada’s standard for determining whether directors  
11 have acted in good faith. Nevada has adopted factors for making this determination, which  
12 include

13 inquiry into the identity and qualifications of any sources of information or advice  
14 sought which bear on the decision reached, the circumstances surrounding  
15 selection of these sources, the general topics (but not the substance) of the  
16 information sought or imparted, whether advice was actually given, whether it  
17 was followed, and if not, what sources of information and advice *were* consulted  
18 to reach the decision in issue.

19 *Wynn*, 399 P.3d at 343 (citation omitted).

20 Nevada has specifically rejected a “reasonableness review” or “substantive evaluation” of  
21 a director’s actions to determine whether he or she was acting in good faith. *Id.* The Supreme  
22 Court has stated that “a court can address whether a director has acted in good faith without  
23 seeking substantive information.” *Id.* Plaintiff’s suggestion that Nevada courts should involve  
24 themselves in the minutiae of corporate decision-making with respect to the selection of  
25 corporate officers is directly contrary to the strict “policy of judicial noninterference”  
26 emphasized in *Wynn*; not only would it lead to an explosion of litigation in Nevada, in which  
27 plaintiffs would use hindsight and manufactured independence issues to second-guess any  
28 termination decision by a corporate board, it “would accomplish by the back door that which is  
29 forbidden by the front”—a substantive evaluation of directorial judgment on the most intimate of  
30 corporate concerns, officer performance. *Wynn*, 399 P.3d at 343.

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**B. The CEO Search Process Proceeded in Good Faith**

As noted in Individual Defendants’ Supplement to Motions for Partial Summary Judgment Nos. 1, 2, 3, 5, and 6 (“Supp. Motion”), Plaintiff conceded at deposition that [REDACTED] Plaintiff now calls this a “gross mischaracterization” of his deposition testimony (Opp. at 13), but does not actually describe the testimony or explain how it has supposedly been mischaracterized. To be clear, Plaintiff was asked, [REDACTED] (Helpern Decl. to Supp. Motion, Ex. C at 877:22-878:1). Plaintiff responded, [REDACTED] (*Id.* at 878:4-9). The follow-up question asked, [REDACTED] (*Id.* at 878:11-13). Plaintiff’s response [REDACTED] (*Id.* at 878:14). And when asked, [REDACTED] (*Id.* at 878:17-20).

Thus, although Plaintiff places much emphasis in his briefing on the criterion of real estate experience, his own testimony shows that [REDACTED]. These kinds of judgment calls are made every time any employee anywhere is hired. The point of the business judgment rule is that it “prevents a court from replac[ing] a well-meaning decision by a corporate board with its own decision.” *Wynn*, 399 P.3d at 342 (Nev. 2017) (quotations and citation omitted; brackets in original). Moreover, it is ironic that Plaintiff would seek to pillory the Individual Defendants and to have himself reinstated as President and CEO for the failure of the Board to retain a candidate who satisfied criteria that Plaintiff himself did not and could not satisfy.

1 Plaintiff postulates that the Directors, and particularly two of the members of the CEO  
2 search committee, Mr. Gould and Mr. McEachern, “act[ed] to further the wishes of the  
3 controlling shareholder.” (Opp. at 12). But as noted in Individual Defendants’ MSJ No. 5,  
4 “[t]he business judgment rule postulates that if directors’ actions can arguably be taken to have  
5 been done for the benefit of the corporation, then the directors are presumed to have been  
6 exercising their sound business judgment rather than to have been responding to self-interest  
7 motivation.” *Horwitz v. Sw. Forest Indus., Inc.*, 604 F. Supp. 1130, 1135 (D. Nev. 1985). It is  
8 Plaintiff’s burden to rebut this presumption. *Unitrin, Inc. v. Am. Gen. Corp.*, 651 A.2d 1361,  
9 1373 (Del. 1995).

10 Plaintiff has not offered evidence to overcome the presumption that the Directors acted in  
11 good faith during the CEO search. Plaintiff concedes that the search committee worked with  
12 Korn Ferry, a preeminent search firm, to find external candidates for the CEO position. Korn  
13 Ferry “researched over 200 prospective candidates, had contact with approximately 60,  
14 interviewed 11, and ultimately presented six external candidates to [RDI’s Search] Committee.”  
15 (Helpern Decl. to MSJ No. 5, Ex. 3 (Dec. 31, 2015 CEO Search Committee Report) at  
16 JCOTTER008292). When Ellen Cotter decided that she wanted to be considered for the  
17 position, she resigned from the search committee and took no part in the interviews of the other  
18 candidates or the search committee’s deliberations. (*Id.*, Ex. 5 (June 29, 2016 William Gould  
19 Dep.) at 356:6-19). During the meeting of the Board of Directors where Ellen Cotter was chosen  
20 as CEO, at least two of the Directors noted that they had previously participated in CEO searches  
21 for other companies, and that the process used by RDI for its CEO search was consistent with or  
22 compared favorably with their prior experiences. (*Id.*, Ex. 11 (Jan. 8, 2016 Board Meeting  
23 Minutes) at EK00001372).

24 Plaintiff suggests that the Directors simply acquiesced to Ellen Cotter’s wish to be CEO,  
25 but that is not the case. After Ellen Cotter announced her candidacy, the search committee  
26 interviewed five external candidates identified by Korn Ferry before it interviewed her. (*Id.*).  
27 When Korn Ferry identified an additional candidate, the search committee later interviewed him

1 as well. (*Id.*, Ex. 3 (Dec. 31, 2015 CEO Search Committee Report) at JCOTTER008292 &  
2 JCOTTER008294). Following the interviews, the search committee discussed many  
3 considerations and ultimately determined that Ellen Cotter was the best candidate for the job.  
4 (*Id.*, Ex. 3 (Dec. 31, 2015 CEO Search Committee Report) at JCOTTER008294-97).

5 Plaintiff makes much of the fact that the search committee chose not to proceed with  
6 Korn Ferry’s “assessment” process, but this is irrelevant. The “assessment” process was an  
7 additional service offered by Korn Ferry outside of its regular search process. (Levin Decl. ISO  
8 Opp., Ex. 9 (Aug. 2, 2015 Memo to Board) at WG\_0000114). The “assessment” process cost an  
9 additional [REDACTED] on top of Korn Ferry’s regular search fee. (*Id.*). At the beginning of the  
10 search process, when the Board believed that RDI would be hiring an entirely new CEO, it had  
11 elected to include this “assessment” function in the search. (*Id.*). However, the search  
12 committee later came to believe that if Ellen Cotter was its preferred candidate after the  
13 interviews, this further “assessment” process would be a waste of money and time, both for the  
14 Company and for the candidates. (Helpert Decl. to MSJ No. 5, Ex. 3 (Dec. 31, 2015 CEO  
15 Search Committee Report) at JCOTTER008293-94). The search committee rationally felt that it  
16 could not justify this additional “assessment” process when the Board had already observed  
17 Ellen Cotter’s actual performance of the CEO’s duties for more than six months during her  
18 tenure as interim CEO. (*Id.*, Ex. 3 (Dec. 31, 2015 CEO Search Committee Report) at  
19 JCOTTER008293). Bringing the search process to a conclusion, the search committee believed,  
20 would be favorable for the stability of the Company. (*Id.*, Ex. 3 (Dec. 31, 2015 CEO Search  
21 Committee Report) at JCOTTER008296).

22 Plaintiff’s attempt to second-guess these business decisions should be rejected. It is  
23 plain that Plaintiff’s real problem with the selection of Ellen Cotter as CEO is not the process the  
24 Board followed in choosing her, but rather that he disagrees with the substance of the Board’s  
25 decision. Plaintiff believes—as is evident from his request for reinstatement—that he should be  
26 CEO of RDI instead of his sister. No amount of process will satisfy him when he does not like  
27

1 the result, but Plaintiff's vendetta is not an adequate reason to ignore Nevada's "sensible policy  
2 of judicial noninterference with business decisions." *Wynn*, 399 P.3d at 342.

3 **III. CONCLUSION**

4 For the foregoing reasons, the Individual Defendants respectfully request that the Court  
5 grant summary judgment as to the First, Second, Third, and Fourth Causes of Action set forth in  
6 Plaintiff's Second Amended Complaint, to the extent that they assert claims and damages related  
7 to the appointment of Ellen Cotter as CEO.

8  
9 Dated: December 4, 2017

10 **COHEN|JOHNSON|PARKER|EDWARDS**

11 By: \_\_\_\_\_  
12 H. STAN JOHNSON, ESQ.  
13 Nevada Bar No. 00265  
14 sjohnson@cohenjohnson.com  
15 375 East Warm Springs Road, Suite 104  
16 Las Vegas, Nevada 89119  
17 Telephone: (702) 823-3500  
18 Facsimile: (702) 823-3400

19 **QUINN EMANUEL URQUHART &  
20 SULLIVAN, LLP**

21 CHRISTOPHER TAYBACK, ESQ.  
22 California Bar No. 145532, *pro hac vice*  
23 christayback@quinnemanuel.com  
24 MARSHALL M. SEARCY, ESQ.  
25 California Bar No. 169269, *pro hac vice*  
26 marshallsearcy@quinnemanuel.com  
27 865 South Figueroa Street, 10<sup>th</sup> Floor  
28 Los Angeles, CA 90017  
29 Telephone: (213) 443-3000

30 *Attorneys for Defendants Margaret Cotter, Ellen  
31 Cotter, Douglas McEachern, Guy Adams, Edward  
32 Kane, Judy Coddling, and Michael Wrotniak*

**CERTIFICATE OF SERVICE**

I hereby certify that, on December 4, 2017, I caused a true and correct copy of the foregoing **REPLY IN SUPPORT OF THE INDIVIDUAL DEFENDANTS' RENEWED MOTIONS FOR PARTIAL SUMMARY JUDGMENT NOS. 2 AND 5** 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



1 **RIS**  
2 **COHENJOHNSONPARKEREDWARDS**

3 H. STAN JOHNSON, ESQ.  
4 Nevada Bar No. 00265  
5 sjohnson@cohenjohnson.com  
6 375 East Warm Springs Road, Suite 104  
7 Las Vegas, Nevada 89119  
8 Telephone: (702) 823-3500  
9 Facsimile: (702) 823-3400

7 **QUINN EMANUEL URQUHART & SULLIVAN, LLP**  
8 **CHRISTOPHER TAYBACK, ESQ.**

9 California Bar No. 145532, *pro hac vice*  
10 christayback@quinnemanuel.com  
11 **MARSHALL M. SEARCY, ESQ.**  
12 California Bar No. 169269, *pro hac vice*  
13 marshallsearcy@quinnemanuel.com  
14 865 South Figueroa Street, 10<sup>th</sup> Floor  
15 Los Angeles, CA 90017  
16 Telephone: (213) 443-3000

17 Attorneys for Defendants Margaret Cotter,  
18 Ellen Cotter, Douglas McEachern, Guy Adams,  
19 Edward Kane, Judy Coddling, and Michael Wrotniak

15 **EIGHTH JUDICIAL DISTRICT COURT**

16 **CLARK COUNTY, NEVADA**

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

19 Plaintiff,

20 v.

21 **MARGARET COTTER, ELLEN COTTER,**  
22 **GUY ADAMS, EDWARD KANE, DOUGLAS**  
23 **McEACHERN, WILLIAM GOULD, JUDY**  
24 **CODDING, MICHAEL WROTNIAK, and**  
25 **DOES 1 through 100, inclusive,**

26 Defendants.

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

**REPLY IN SUPPORT OF**  
**SUPPLEMENTAL MOTIONS FOR**  
**SUMMARY JUDGMENT NOS. 2 AND 6**

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff's Supplemental Opposition to Motion for Summary Judgment Nos. 2 and 6 is  
4 notable for what it concedes. *First*, Plaintiff finally admits that none of the following constitutes  
5 a breach of fiduciary duty he can prove at trial: the Board's decision regarding Ellen Cotter's  
6 CEO compensation; the Board's decision regarding Margaret Cotter's compensation as EVP for  
7 New York real estate; and the Board's decision to compensate Guy Adams \$50,000 for services  
8 provided beyond those normally expected of a Board member. (Opp. at 8:16-24). *Second*,  
9 Plaintiff concedes—as he must—that the Board exercised due care with respect to the Estate's  
10 exercise of the 100,000 share option, the hiring of Margaret Cotter as an EVP and her  
11 compensation, and the \$50,000 payment to Guy Adams. (Opp. at 7:1-20). Plaintiff's *only*  
12 remaining allegation with respect to the subject matter of Motion for Summary Judgment No. 6  
13 is that certain directors supposedly breached their duty of loyalty when they approved the  
14 100,000 share option exercise and when they approved the hiring of Margaret Cotter. The  
15 "evidence" Plaintiff proffers to support these allegations is his own personal view that the Board  
16 must have been acting with improper motives because Plaintiff does not agree with the result.  
17 But Plaintiff's baseless conclusions about the thought processes and motivations of RDI's  
18 directors are not evidence. Plaintiff has failed to identify any genuine disputed material fact  
19 regarding any purported breach of the duty of loyalty; Defendants' Motion for Summary  
20 Judgment No. 6 should therefore be granted.

21 **II. ARGUMENT**

22 **A. PLAINTIFF FAILS TO DISPUTE—WITH ANYTHING BUT HIS OWN**  
23 **SPECULATION—THE UNDISPUTED FACTS THAT KANE AND**  
24 **ADAMS ACTED PROPERLY IN APPROVING THE ESTATE'S**  
25 **EXERCISE OF A 100,000 SHARE OPTION**

26 Nevada's business judgment rule, codified by statute, provides that "[d]irectors and  
27 officers, in deciding upon *matters of business*, are presumed to act in good faith, on an informed  
28 basis and with a view to the interests of the corporation." NRS 78.138(3) (emphasis added).  
Plaintiff does not and cannot identify any evidence showing or even suggesting that Kane and



1 Adams acted in bad faith in considering and approving the Estate’s use of Class A stock to  
2 acquire 100,000 shares of Class B stock. This is amply demonstrated by the fact that Plaintiff’s  
3 entire discussion of this issue lacks a *single* factual citation or reference. (Opp. at 3:18-4:17).  
4 Plaintiff admits that Kane and Adams exercised their duty of care in making this evaluation.  
5 (Opp. at 7:1-7). Undeterred by a complete lack of supporting evidence, Plaintiff explains in his  
6 opposition that he still “contends” that “Adams and Kane authorized the exercise of the 100,00  
7 share option for the purpose of assisting EC and MC in perpetuating their control of RDI.”  
8 Plaintiff’s “contentions” may have been relevant at the pleading stage, but they are of no moment  
9 in opposing summary judgment after years of discovery. At the summary judgment stage, the  
10 nonmoving party “is not entitled to build a case on the gossamer threads of whimsy, speculation,  
11 and conjecture,” *Wood v. Safeway, Inc.*, 121 Nev. 724 731 (2005), but instead must identify  
12 “admissible evidence” showing “a genuine issue for trial.” *Posadas v. City of Reno*, 109 Nev.  
13 448, 452 (1993); *Shuck v. Signature Flight Support of Nev., Inc.*, 126 Nev. 434, 436 (2010)  
14 (“bald allegations without supporting facts” are insufficient); *LaMantia v. Redisi*, 118 Nev. 27,  
15 29 (2002) (nonmovant must “show specific facts, rather than general allegations and  
16 conclusions”).

17 Indeed, Plaintiff’s “contentions” are rebutted by uncontroverted evidence showing that:

- 18 • Well before the Estate sought to exercise the option at issue, RDI had  
19 implemented a Stock Option Plan allowing exercise of options using Class A  
20 shares and a Company policy of repurchasing Class A shares when they were  
21 available. *See* 9/23/16 Declaration of Noah Helpern In Support of Individual  
22 Defendants’ Motion for Partial Summary Judgment No. 6 (“Helpern Decl.”),  
23 Exhs. 3 (1999 Stock Option Plan) and 14 (Minutes of 5/15/14 Board Meeting).
- 24 • The Board’s Compensation Committee, through Kane and Adams, was acting in  
25 conformance with and with knowledge of the terms of the Stock Option Plan  
26 when evaluating the Estate’s option exercise. *See* Helpern Decl. Exhs. 2 (Minutes  
27 of 9/21/15 Minutes of Compensation Committee Meeting), 3 (1999 Stock Option  
28 Plan), and 14 (Minutes of 5/15/14 Board Meeting).

- 1           • Every director elected to the Board at the 2015 Annual Stockholders' Meeting  
2           received approximately 1.3 million votes, *i.e.*, the votes of more than 75% of the  
3           Class B stockholders. *See* Helpern Decl. Exh. 16 (RDI 11/13/15 Form 8-K). The  
4           100,000 shares obtained by the Estate through exercising the option did not make,  
5           and could not have made, any difference to the outcome of the vote, rendering  
6           nonsensical Plaintiff's unsupported "contention" about the Compensation  
7           Committee helping Ellen and Margaret Cotter supposedly perpetuate control.

8           Here, as elsewhere, Plaintiff's claim for supposed breach of the duty of loyalty is based on his  
9           own dissatisfaction with a Board decision and resulting assumption that Defendants' motivations  
10          must have been impure because they did not do what Plaintiff wanted. Simply put, that is not  
11          how a claim for breach of fiduciary duty works, and Plaintiff does not cite any authority that  
12          would allow this claim to survive Defendants' Motion for Partial Summary Judgment No. 6. He  
13          does not explain or identify any way in which Kane or Adams placed their own interests above  
14          those of RDI or its stockholders in connection with the option exercise, let along any resulting  
15          damage or injury to RDI, which is fatal to his claim. *See generally Schoen v. SAC Holding*  
16          *Corp.*, 122 Nev. 621, 632 (2006) ("[T]he duty of loyalty requires the board and its directors to  
17          maintain, in good faith, the corporation's and its shareholders' best interests over anyone else's  
18          interests."). In point of fact, the Class A stock used to pay the exercise price of the options was  
19          valued at approximately \$1,257,000. The closing price on Friday, December 1, 2017, of those  
20          100,000 shares was \$1,611,000, reflecting a significant *increase* in value to RDI.

21           **B.     PLAINTIFF HAS NOT IDENTIFIED ANY DISPUTED MATERIAL FACT**  
22           **REGARDING A SUPPOSED BREACH OF THE DUTY OF LOYALTY IN**  
23           **CONNECTION WITH MARGARET COTTER'S HIRING**

24           Plaintiff alleges that some or all members of the Board breached their duty of loyalty by  
25           approving the hiring Margaret Cotter as EVP for New York real estate. Yet the only evidence  
26           Plaintiff cites for the factual contention that Margaret Cotter "had no prior experience and is  
27           unqualified" for her position is Plaintiff's own declaration. (Opp. at 5:20-23). Plaintiff  
28           concedes that the Board exercised due care in hiring Margaret Cotter for this position. That after

1 years of litigation Plaintiff has not been able to develop any evidence whatsoever regarding his  
2 allegations about Margaret Cotter’s hiring is dispositive; summary judgment should be granted.  
3 Moreover, despite his concession that the only purported breach of fiduciary at issue here is the  
4 duty of loyalty, Plaintiff does not explain how *any* non-Cotter director supposedly benefitted  
5 from Margaret Cotter’s shift from being a consultant to being a full-time employee, let alone  
6 identify any conflicts that would render these directors improperly interested such that they could  
7 not properly evaluate the employment decision. If Plaintiff’s theory of the case is accepted,  
8 every single hiring and firing decision made by the Board would constitute a breach of fiduciary  
9 duty simply because Plaintiff thinks that the Board is supposedly disloyal to the Company and its  
10 stockholders.

11 **C. TO THE EXTENT PLAINTIFF CONTENDS THESE ISSUES EVEN**  
12 **REMAIN AN ISSUE IN THIS CASE, PLAINTIFF HAS NOT IDENTIFIED**  
13 **ANY DISPUTED MATERIAL FACTS REGARDING A SUPPOSED**  
14 **BREACH OF THE DUTY OF LOYALTY WITH RESPECT TO**  
15 **MARGARET COTTER OR GUY ADAMS’ COMPENSATION**

16 Plaintiff states in his opposition that he “does not contend that the compensation  
17 packages of Ellen and Margaret Cotter as such give rise to or constitute breaches of fiduciary  
18 duty, nor does Plaintiff contend that additional compensation to MC and Guy Adams give rise to  
19 or constitute independent breaches of fiduciary duty.” (Opp. at 8:19-24) (internal quotation  
20 marks and formatting omitted). However, Plaintiff elsewhere states in the opposition that “the  
21 payment of \$200,000 to [MC] . . . and the \$5000 [sic] payment to Adams are issues arising from  
22 the duty of loyalty.” (Opp. at 7:1-7). To the extent Plaintiff intends to raise these supposed  
23 “issues arising from the duty of loyalty” at trial, he should not be allowed to do so.

24 The only evidence Plaintiff cites for the factual contention that Margaret Cotter or Guy  
25 Adams’ compensation is or was improper is *his own Declaration*. (Opp. at 5:23-26, 6:1-18).  
26 Plaintiff should not be permitted to avoid summary judgment on this issue where he concedes  
27 that the Board’s decisions did not constitute breaches of fiduciary duty but then calls the Board’s  
28 decisions “issues arising from the duty of loyalty” (whatever that means) and manufactures  
supposed “evidence” based entirely on his own speculation. Indeed, Plaintiff cannot even decide

1 what he thinks was wrongful about the payment to Guy Adams, claiming (without any support in  
2 the record) that it was “*either* a payment for loyalty or a payment for services Adams did not  
3 provide as a director, and thereby another category of waste and/or damages.” (Opp. at 9:25-28).  
4 That Plaintiff cannot identify a single shred of evidence beyond his own imagination to suggest  
5 that any payment to Margaret Cotter or Guy Adams was improper compels summary  
6 adjudication of this issue (to the extent Plaintiff has not rendered discussion of these issues at  
7 trial moot, since he concedes he cannot prove a breach of fiduciary duty regarding these  
8 compensation decisions). Although Plaintiff would apparently like to separate the duty of care  
9 from the duty of loyalty in this circumstance, it is impossible to comprehend how, if the directors  
10 (as admitted by Plaintiff) acted with due care in determining to pay such compensation, they  
11 violated their duty of loyalty or that RDI suffered damage as a result of such determination.  
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1 **III. CONCLUSION**

2 Defendants' Motion for Partial Summary Judgment No. 6 should be granted in its  
3 entirety. After years of discovery, Plaintiff now concedes that much of the subject matter of the  
4 Motion cannot actually constitute a claim for breach of fiduciary duty and that Defendants  
5 satisfied their duty of care. Plaintiff still alleges that members of the Board breached their duty  
6 of loyalty, because Plaintiff believes that virtually every decision made by the Board in the two-  
7 and-a-half years since his termination constitutes a breach of the duty of loyalty. Yet Plaintiff  
8 cannot identify a single disputed material fact—beyond his own speculation—that would allow  
9 him to take these misguided claims to trial.

10 DATED THIS 4TH DAY OF DECEMBER, 2017.

11 **COHEN|JOHNSON|PARKER|EDWARDS**

12  
13 By: /s/ H. Stan Johnson

14 H. STAN JOHNSON, ESQ.

15 Nevada Bar No. 00265

16 sjohnson@cohenjohnson.com

17 375 East Warm Springs Road, Suite 104

18 Las Vegas, Nevada 89119

19 Telephone: (702) 823-3500

20 Facsimile: (702) 823-3400

21 **QUINN EMANUEL URQUHART &  
22 SULLIVAN, LLP**

23 CHRISTOPHER TAYBACK, ESQ.

24 California Bar No. 145532, *pro hac vice*

25 christayback@quinnemanuel.com

26 MARSHALL M. SEARCY, ESQ.

27 California Bar No. 169269, *pro hac vice*

28 marshallsearcy@quinnemanuel.com

865 South Figueroa Street, 10<sup>th</sup> Floor

Los Angeles, CA 90017

Telephone: (213) 443-3000

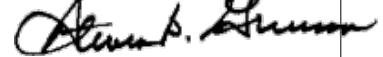
*Attorneys for Defendants Margaret Cotter,  
Ellen Cotter, Douglas McEachern, Guy Adams,  
Edward Kane, Judy Coddling, and Michael  
Wrotniak*

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**CERTIFICATE OF SERVICE**

I hereby certify that, on December 4, 2017, I caused a true and correct copy of the foregoing **REPLY IN SUPPORT OF SUPPLEMENTAL MOTIONS FOR SUMMARY JUDGMENT NOS. 2 AND 6** 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



1 **RIS**  
2 **COHEN|JOHNSON|PARKER|EDWARDS**  
3 H. STAN JOHNSON, ESQ.  
4 Nevada Bar No. 00265  
5 sjohnson@cohenjohnson.com  
6 375 E. Warm Springs Rd., Suite 104  
7 Las Vegas, Nevada 89119  
8 Telephone: (702) 823-3500  
9 Facsimile: (702) 823-3400

6 **QUINN EMANUEL URQUHART & SULLIVAN, LLP**  
7 **CHRISTOPHER TAYBACK, ESQ.**  
8 California Bar No. 145532, *pro hac vice*  
9 christayback@quinnemanuel.com  
10 **MARSHALL M. SEARCY, ESQ.**  
11 California Bar No. 169269, *pro hac vice*  
12 marshallsearcy@quinnemanuel.com  
13 865 South Figueroa Street, 10<sup>th</sup> Floor  
14 Los Angeles, CA 90017  
15 Telephone: (213) 443-3000

11 Attorneys for Defendants Margaret Cotter,  
12 Ellen Cotter, Douglas McEachern, Guy Adams, Edward Kane  
13 Judy Codding, and Michael Wrotniak

14 **EIGHTH JUDICIAL DISTRICT COURT**

15 **CLARK COUNTY, NEVADA**

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

19 Plaintiffs,

20 v.

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

21 AND

22 READING INTERNATIONAL, INC., a Nevada  
23 corporation,

24 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**

**REPLY IN SUPPORT OF THE  
INDIVIDUAL DEFENDANTS' MOTION  
IN LIMINE TO EXCLUDE EVIDENCE  
THAT IS MORE PREJUDICIAL THAN  
PROBATIVE**

Judge: Hon. Elizabeth Gonzalez  
Date of Hearing: December 11, 2017  
Time of Hearing: 8:30 a.m.

1 **INTRODUCTION**

2 Plaintiff's Opposition brief confirms his plan to turn the jury against the Individual  
3 Defendants by introducing two categories of evidence that are unfairly prejudicial and of little, if  
4 any relevance. Pursuant to NRS 48.035, the Court should exclude such evidence to preserve the  
5 fundamental fairness of the upcoming trial.

6 First, Plaintiff seeks to introduce documents and elicit testimony regarding a criminal  
7 investigation into the bidding process for the Los Angeles Unified School District's ("LAUSD")  
8 contract with Apple for the provision of iPads with content provided by a subcontractor for  
9 whom Defendant Judy Coddling worked. Such evidence should be excluded on multiple  
10 grounds. Given that Plaintiff has confirmed that he is not actually pursuing a breach of fiduciary  
11 duty claim relating to Director Coddling's nomination and confirmation *and* has admitted that her  
12 independence "is of little or no import" to this case, the evidence is entirely irrelevant. Even if  
13 he was pursuing such a claim, recent Nevada law provides that the fact-finder can consider only  
14 what *sources* the RDI Board utilized when evaluating Dr. Coddling's candidacy for a Board  
15 position, not the Board's *substantive analysis* of the information (or lack thereof) provided by  
16 those sources. And, of course, Plaintiff does not dispute that the evidence he seeks to introduce  
17 is hearsay, often multiple times over. Not only is hearsay unreliable *per se*, here the news  
18 articles and email Plaintiff seeks to admit get the story wrong. To correct the record and  
19 rehabilitate Dr. Coddling before a jury, a time-wasting mini-trial would be required. Given the  
20 minimal probative value of this unduly prejudicial evidence, it should be excluded.

21 Second, Plaintiff seeks to introduce a four-year-old divorce pleadings involving Director  
22 Guy Adams, which show his financial condition, under the mistaken view that Adams'  
23 independence or finances are relevant to the legal merits of Plaintiff's breach of fiduciary duty  
24 claims. While they are not, the Individual Defendants only seek to preclude the affirmative use  
25 of Adams' divorce declarations at trial. The facts that Plaintiff purportedly seeks to prove with  
26 these papers (Adams' income, assets, and expenses) are undisputed, and can easily established  
27 through other evidence that has far less prejudicial impact. Indeed, Director Adams will appear  
28 at trial and will testify in a manner consistent with this divorce declarations; if he does not,



1 Plaintiff can use those declarations as impeachment. However, given the duplicative and  
2 inflammatory nature of documents from Director Adams contentious divorce proceedings, the  
3 Court should exercise its considerable discretion and preclude Plaintiff's ability to affirmatively  
4 use those materials.

### 5 ARGUMENT

#### 6 **I. EVIDENCE OF THE LAUSD IPAD INVESTIGATION RELATING TO** 7 **DIRECTOR CODDING SHOULD BE EXCLUDED FROM TRIAL**

8 Three factors strongly support the exclusion of evidence at trial relating to the LAUSD  
9 iPad investigation—a matter that tangentially involved Dr. Coddling's work at another company  
10 before she joined the RDI Board.

11 First, as established in the Individual Defendants' opening brief, the (inaccurate) news  
12 articles and email from an outside investor in RDI (Andrew Shapiro) relating to the LAUSD iPad  
13 investigation are “completely irrelevant to this breach of fiduciary case.” (Ind. Defs.' Prejudice  
14 MIL at 7.) Plaintiff's opposition papers confirm this critical defect. For instance, when—as  
15 directed by the Court—Plaintiff listed the purportedly actionable breaches of fiduciary duty that  
16 he seeks to proceed to trial on, he did not include the nomination and confirmation of Dr.  
17 Coddling as an RDI Director. (*See* Pl.'s Supp. Opp'n to MSJ Nos. 1 & 2 at 5-6.) As Plaintiff  
18 further conceded, because Directors Coddling and Wrotniak “do not constitute a majority of  
19 directors or committee members voting with respect to a single matter . . . their independence  
20 and/or disinterest is of little or no import” to this case. (*Id.* at 10.) Given the admitted  
21 irrelevance of the LAUSD investigation to the actual claims at issue,<sup>1</sup> the minimal probative  
22 value of this evidence is clearly outweighed by the prejudicial effect it would have in poisoning  
23 the jury against Dr. Coddling.

24 Second, even assuming *arguendo* that Plaintiff had asserted a cause of action relating to  
25 Dr. Coddling's nomination and confirmation as an RDI Director, the actual evidence of the

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26 <sup>1</sup> While Plaintiff, in his Opposition to the Individual Defendants' Motion *in Limine*,  
27 asserts that Dr. Coddling underwent a “reckless,” “pro forma approval” in which no “meaningful  
28 due diligence” occurred (Pl.'s Prejudicial MIL Opp'n at 10-13), if the ultimate decision by the  
RDI Board—the confirmation of Dr. Coddling—is not at issue, the Board's process is irrelevant.

1 LAUSD investigation—and the RDI Board’s consideration of it—would still not be admissible.  
2 As the Nevada Supreme Court recently emphasized in *Wynn Resorts, Ltd. v. Eighth Jud. Dist. Ct.*  
3 *In and For Cnty. of Clark*, 399 P.3d 334 (Nev. 2017), the Nevada Legislature, through the state’s  
4 business judgment rule, has “signal[ed] a rejection of a substantive evaluation of director  
5 conduct.” *Id.* at 343 (citation omitted). While Nevada courts are prevented from “substitut[ing]  
6 [their] own notions of what is or is not sound business judgment,” *id.* at 344 (citation omitted), in  
7 determining good faith, they may still make a limited

8 inquiry into the identity and qualifications of any sources of information or advice  
9 sought which bear on the decision reached, the circumstances surrounding  
10 selection of these sources, the general topics (but not the substance) of the  
11 information sought or imparted, whether advice was actually given, whether it  
12 was followed, and if not, what sources of information and advice *were* consulted  
13 to reach the decision in issue.

14 *Id.* at 343 (citation omitted).

15 In short, the Court (and fact-finder) would be able to consider *what sources* the RDI  
16 Board employed in making the decision to nominate and confirm Dr. Codding as a Director, but  
17 could not question *the substance of the information imparted* from those sources. With respect  
18 to Dr. Codding’s nomination, the undisputed evidence is that corporate counsel, at the behest of  
19 the RDI Board, engaged an outside firm to undertake a background check on her. (*See* Helpern  
20 Decl., Ex. D (7/7/16 McEachern Dep.) at 357:14-22, 359:22-360:6.)<sup>2</sup> This is a “source” that  
21 would be properly considered. While that background-check firm performed in a substandard  
22 manner, missing a clear potential issue relating to Dr. Codding (that was ultimately caught and  
23 considered), the content of the information the outside firm provided—and the Board’s  
24 substantive evaluation of it—would not be a proper consider under *Wynn*. Accordingly, given  
25 that Plaintiff could not have the substance of the LAUSD iPad investigation admitted if he was

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26 <sup>2</sup> The evidence claimed by Plaintiff to show that “the supposed nominating committee  
27 apparently chose not to perform any search or any other basic diligence prior to voting to  
28 approve Codding as a director” does nothing of the sort. (*See* Pl.’s Prejudicial MIL Opp’n at 12  
citing 4/29/16 Adams Dep. at 289:10-293:12, 6/8/16 Gould Dep. at 177:13-178:9.) Rather, the  
cited testimony from Directors Adams and Gould simply indicates that the LAUSD iPad issue  
was not uncovered before the committee’s first recommendation that Dr. Codding be approved.

1 actually bringing a claim relating to the consideration of Dr. Codding, the fact that he is not  
2 pursuing such a claim further supports its exclusion from evidence at the upcoming trial.

3 Third, Plaintiff, in his Opposition brief, fails to address the fact that “Mr. Shapiro’s email  
4 regarding the allegations against Ms. Codding, and any news articles on that topic, constitute  
5 hearsay and are inadmissible under N.R.S. 51.035 (definition of hearsay), 51.065 (hearsay  
6 generally inadmissible), and 51.067 (hearsay within hearsay not excluded from hearsay rule).”  
7 (Ind. Defs.’ Prejudicial MIL at 7-8.) This is a separate and independently-fatal reason to reject  
8 Plaintiff’s attempted admission of the LAUSD iPad evidence. In Nevada, hearsay is  
9 “presumptively unreliable.” *Ramirez v. State*, 114 Nev. 550, 558, 958 P.2d 724, 729 (1998).  
10 There is good reason for this rule; as established by the Individual Defendants in their opening  
11 brief and not contested by Plaintiff, the issues reported in the press surrounding the LAUSD iPad  
12 bidding process were “reported inaccurately” and the Los Angeles District Attorney’s office  
13 concluded that “there was no criminal wrongdoing” by Dr. Codding or anyone else. (Ind. Defs.’  
14 Prejudicial MIL at 4-5.) If Plaintiff were able to admit the “unreliable” evidence he seeks, the  
15 Individual Defendants would have to waste valuable time to correct the record and rehabilitate  
16 Dr. Codding—creating a time-wasting “trial within a trial” that would unduly prejudice the  
17 Individual Defendants. *See* NRS 48.035(2). To prevent this baseless hearsay from infecting the  
18 trial, the Court should exclude the evidence in its entirety.

19 **II. EVIDENCE FROM DIRECTOR ADAMS’ CONTENTIOUS DIVORCE**  
20 **PROCEEDINGS SHOULD BE EXCLUDED FROM TRIAL**

21 For the reasons set forth in the Individual Defendants’ summary judgment briefing,  
22 neither the “independence” of Director Guy Adams nor his financial circumstances should be  
23 relevant to the claims and defenses at issue in this litigation. (*See, e.g.*, Ind. Defs.’ Renewed  
24 MSJ Nos. 1 & 2 Reply at 2-8.) Notwithstanding the legal irrelevance of Adams’ finances, the  
25 Individual Defendants have not made a blanket objection to this evidence at trial. Instead, the  
26 Individual Defendants have made a carefully circumscribed objection, which would allow  
27 admission of all relevant evidence regarding Director Adams’ finances except the pleadings from  
28 his contentious divorce. (Ind. Defs.’ Prejudicial MIL at 5-6.)

1 Under NRS 48.035(1), relevant evidence is inadmissible “if its probative value is  
2 substantially outweighed by the danger of unfair prejudice.” The Nevada Supreme Court has  
3 defined “unfair prejudice” under NRS 48.035 as an appeal to “the emotional and sympathetic  
4 tendencies of a jury, rather than the jury’s intellectual ability to evaluate evidence.” *Krause Inc.*  
5 *v. Little*, 117 Nev. 929, 935, 34 P.3d 566, 570 (2001); *Schlotfeldt v. Charter Hosp. of Las Vegas*,  
6 112 Nev. 42, 46, 910 P.2d 271, 273 (1996). Here, there is no need for the jury to learn of  
7 Director Adams’ difficult divorce, which has no bearing on the claims at issue; as the Individual  
8 Defendants’ established in their opening brief, courts have recognized that divorce proceedings  
9 are inflammatory and should be excluded from later proceedings where possible. (Ind. Defs.’  
10 Prejudicial MIL at 5-6 (collecting cases).)

11 There is simply no need for Plaintiff to affirmatively introduce Director Adams’ divorce  
12 declarations. Adams will be appearing at trial and will testify in person; he is aware of his prior  
13 declarations and deposition testimony, and will be prepared to testify fully, accurately, and  
14 consistently as to his financial status. Plaintiff will be obtain the information he believes he  
15 needs from Director Adams directly, obviating the need to rely on documents prepared in a  
16 litigation over four years ago. Of course, should Director Adams materially deviate from the  
17 information provided on his divorce declarations while on the stand (which he will not), the  
18 Individual Defendants do not contest that Plaintiff would then be able to impeach him using the  
19 divorce declarations. *See McEachern v. McEachern*, 260 Ga. 320, 322, 394 S.E.2d 92, 94 (1990)  
20 (providing that “[e]vidence of post-separation payments is not admissible unless the court  
21 determined that the evidence should be admitted to prevent a party’s perpetuating a fraud upon  
22 the court”). However, given the duplicative and highly prejudicial nature of the divorce  
23 declarations, the Court should exclude them *unless* Director Adams’ trial testimony triggers a  
24 basis for impeachment.

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**CONCLUSION**

For the reasons set forth above, the Individual Defendants respectfully request that the Court grant this motion *in limine* in its entirety and exclude any argument or evidence relating to the aforementioned issues.

Dated: December 4, 2017

**COHEN|JOHNSON|PARKER|EDWARDS**

By: /s/ H. Stan Johnson  
H. STAN JOHNSON, ESQ.  
Nevada Bar No. 00265  
sjohnson@cohenjohnson.com  
375 East Warm Springs Road, Suite 104  
Las Vegas, Nevada 89119  
Telephone: (702) 823-3500  
Facsimile: (702) 823-3400

**QUINN EMANUEL URQUHART & SULLIVAN, LLP**

CHRISTOPHER TAYBACK, ESQ.  
California Bar No. 145532, *pro hac vice*  
christayback@quinnemanuel.com  
MARSHALL M. SEARCY, ESQ.  
California Bar No. 169269, *pro hac vice*  
marshallsearcy@quinnemanuel.com  
865 South Figueroa Street, 10<sup>th</sup> Floor  
Los Angeles, CA 90017  
Telephone: (213) 443-3000

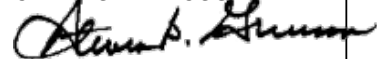
*Attorneys for Defendants Margaret Cotter, Ellen Cotter, Douglas McEachern, Guy Adams, Edward Kane, Judy Coddling, and Michael Wrotniak*

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**CERTIFICATE OF SERVICE**

I hereby certify that, on December 4, 2017, I caused a true and correct copy of the foregoing **REPLY IN SUPPORT OF THE INDIVIDUAL DEFENDANTS’ MOTION IN LIMINE TO EXCLUDE EVIDENCE THAT IS MORE PREJUDICIAL THAN PROBATIVE** 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



**MORRIS LAW GROUP**

411 E. BONNEVILLE AVE., STE. 360 · LAS VEGAS, NEVADA 89101  
702/474-9400 · FAX 702/474-9422

1 **JPTM**  
2 MORRIS LAW GROUP  
3 Steve Morris, Bar No. 1543  
4 Akke Levin, Bar No. 9102  
5 411 E. Bonneville Ave., Ste. 360  
6 Las Vegas, Nevada 89101  
7 Telephone: (702) 474-9400  
8 Facsimile: (702) 474-9422  
9 Email: sm@morrislawgroup.com  
10 Email: al@morrislawgroup.com

11 Mark G. Krum, Bar No. 10913  
12 Yurko, Salvesen & Remz, P.C.  
13 1 Washington Mall, 11th Floor  
14 Boston, MA 02108  
15 Telephone: (617) 723-6900  
16 Facsimile: (617) 723-6905  
17 Email: mkrum@bizlit.com

18 Attorneys for Plaintiff  
19 James J. Cotter, Jr.

20 **(See signature page for additional counsel.)**

DISTRICT COURT  
CLARK COUNTY, NEVADA

21 JAMES J. COTTER, JR., ) Case No. A-15-719860-B  
22 derivatively on behalf of Reading ) Dept. No. XI  
23 International, Inc., )  
24 Plaintiff, ) Coordinated with:  
25 )

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

27 MARGARET COTTER, ELLEN ) Dept. No. XI  
28 COTTER, GUY ADAMS, )  
EDWARD KANE, DOUGLAS ) Jointly Administered  
McEACHERN, WILLIAM )  
GOULD, JUDY CODDING, ) **JOINT PRETRIAL**  
MICHAEL WROTNIAK, ) **MEMORANDUM**  
)

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

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

31 READING INTERNATIONAL, )  
32 INC., a Nevada corporation, )  
33 )  
34 Nominal Defendant. )  
35 )

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

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

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

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

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



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

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

**II. OTHER PRETRIAL MATTER**

**A. Statement of Facts**

**Plaintiff's Statement:**

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

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

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

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

11 **Director Defendants' Statement:**

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

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

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

4 **RDI's Statement:**

5 RDI joins in the Director Defendants' Statement above.

6 **B. List of Claims**

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

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

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

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

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

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

- Threat to terminate insurance if JJC, Jr. does not resign as a director (SAC 4, 38) (EC, WG)
  - use of executive committee (SAC 8, 99) (EC, MC, Kane, Adams, WG)
  - manipulating board materials (SAC 9, 72, 100) (EC)
  - involuntary retirement of Storey (SAC 12, 127-130) (EC, MC, DM, GA, EK)
  - Board stacking/adding Coddington and Wrotniak (SAC 11, 121-134) (nominating committee) (Board - all others)
  - \$50,000 to Adams (SAC 153, 166) (EC) (all)
  - SEC filings (SAC 13, 101a.-i., 109 – 119, 135a.-k., 136a.-i., 147) (all)
8. **Damages/injury (SAC 163 – 168)**
- a. diminution in value of RDI (163)
  - b. injury to reputation and goodwill (164)
  - c. impairment of shareholder rights due to SEC filings (165)
  - d. other monetary damages (166)
    - i. \$200,000 and job to MC
    - ii. \$50,000 to Adams
    - iii. duplicate cost of paying consultants to perform MC's position's responsibilities
    - iv. class A nonvoting stock accepted *in lieu* of cash consideration for exercise of 100,000 share option

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

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

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

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

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

**C. List of Affirmative Defenses**

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

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

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



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

**D. Claims or Defenses to be Abandoned**

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

**E. List of Exhibits**

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

**F. Agreements to Limit or Exclude Evidence**

None presently.

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**G. Witness List**

**1. Nonexpert Witnesses**

For Plaintiff:

1. James Cotter, Jr. (*plaintiff expects to present this witness*)  
c/o Mark Krum  
Yurko, Salvesen & Remz. P.C.  
One Washington Mall, 11<sup>th</sup> Floor  
Boston, MA 02108  
617.723.6900
  
2. Person Most Knowledgeable, Reading International, Inc. (*plaintiff may call this witness if the need arises*)  
c/o Mark E. Ferrario, Esq.  
Leslie S. Godfrey, Esq.  
Greenberg Traurig LLP  
3773 Howard Hughes Parkway, Suite 400 North  
Las Vegas, Nevada 89169  
702-792-3773
  
3. Margaret Cotter (*plaintiff expects to present this witness*)  
c/o Stan Johnson  
COHEN | JOHNSON | PARKER | EDWARDS  
375 E. Warm Springs Road, Ste. 104  
Las Vegas, NV 89119  
702-823-3500
  
4. Ellen Cotter (*plaintiff expects to present this witness*)  
c/o Stan Johnson  
COHEN | JOHNSON | PARKER | EDWARDS  
375 E. Warm Springs Road, Ste. 104  
Las Vegas, Nevada 89119  
702-823-3500
  
5. Douglas McEachern (*plaintiff expects to present this witness*)  
c/o Stan Johnson  
Cohen-Johnson, LLC  
255 East Warm Springs Road, Suite 100  
Las Vegas, Nevada 89119  
702-823-3500

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

- 1 12. Eric Barr (*plaintiff may call this witness if the need arises*)  
2 9 Park Street, Brighton, VIC 3186  
3 Southern Melbourne, Australia  
4 011-61-488-096-616  
5 [ebarr@optushome.com.au](mailto:ebarr@optushome.com.au)
- 6 13. Al Villasenor (*plaintiff may call this witness if the need arises*)  
7 116 – 19th Street  
8 Manhattan Beach, California 90266  
9 Home- 310-546-5193  
10 Mobile- 310-897-0407
- 11 14. Lois Marie Kwasigroch (*plaintiff may call this witness if the need*  
12 *arises*)  
13 20100 Wells Drive  
14 Woodland Hills, California 91364  
15 (805) 447-6265
- 16 15. Harry P. Susman (*plaintiff may call this witness if the need arises*)  
17 Susman Godfrey, LLP  
18 1000 Louisiana, Suite 5100  
19 Houston, Texas 77002  
20 713-653-7875 (w)  
21 [hsusman@susmangodfrey.com](mailto:hsusman@susmangodfrey.com)
- 22 16. Fehmi Karahan (*plaintiff may call this witness if the need arises*)  
23 The Karahan Companies  
24 7200 Bishop Road, Suite 250  
25 Plano, Texas 75024  
26 214-473-9700 (w)  
27 [fehmi@karahaninc.com](mailto:fehmi@karahaninc.com)
- 28 17. Judy Coddling (*plaintiff expects to present this witness*)  
2266 Canyon Back Road  
Los Angeles, California 90049
18. Michael J. Wrotniak (*plaintiff expects to present this witness*)  
Aminco Resources USA  
World Headquarters  
81 Main Street Suite 110

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White Plains, NY 10601  
914 949 4400  
[M.Wrotniak@Aminco.biz](mailto:M.Wrotniak@Aminco.biz)

19. Gil Borok (*plaintiff may call this witness if the need arises*)  
3835 Hayvenhurst Avenue  
Encino, California 91436  
Mobile- 818-0528-3689  
Email- [gborok@me.com](mailto:gborok@me.com)

20. Robert Wagner (*plaintiff may call this witness if the need arises*)  
Korn Ferry  
1900 Avenue of the Stars Suite 2600  
Los Angeles, CA 90067  
310-226-2672 (w)  
[Robert.wagner@kornferry.com](mailto:Robert.wagner@kornferry.com)

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

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

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

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

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29. Whitney Tilson (*plaintiff expects to present this witness's testimony by means of a deposition*)  
c/o Alexander Robertson, IV  
Robertson & Associates, LLP  
32121 Lindero Canyon Road, Suite 200  
Westlake Village, CA 91361  
818.851.3850

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

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

For the Director Defendants:

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

And

Quinn Emanuel Urquhart & Sullivan, LLP  
865 S. Figueroa St., 10<sup>th</sup> Floor  
Los Angeles, 90017  
213-443-3000

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

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And  
Quinn Emanuel Urquhart & Sullivan, LLP  
865 S. Figueroa St., 10<sup>th</sup> Floor  
Los Angeles, 90017  
213-443-3000

- 3. James Cotter, Jr. (*the director defendants expect to present this witness*)  
c/o Mark Krum  
Yurko, Salvesen & Remz. P.C.  
One Washington Mall, 11<sup>th</sup> Floor  
Boston, MA 02108  
617-723-6900
  
- 4. Guy Adams (*the director defendants expect to present this witness*)  
c/o COHEN | JOHNSON | PARKER | EDWARDS  
375 E. Warm Springs Road, Ste. 104  
Las Vegas, NV 89119  
702-823-3500

And  
Quinn Emanuel Urquhart & Sullivan, LLP  
865 S. Figueroa St., 10<sup>th</sup> Floor  
Los Angeles, 90017  
213-443-3000

- 5. Edward Kane (*the director defendants expect to present this witness*)  
c/o COHEN | JOHNSON | PARKER | EDWARDS  
375 E. Warm Springs Road, Ste. 104  
Las Vegas, NV 89119  
702-823-3500
- And  
Quinn Emanuel Urquhart & Sullivan, LLP  
865 S. Figueroa St., 10<sup>th</sup> Floor  
Los Angeles, 90017  
213-443-3000



- 1                   6. Douglas McEachern (*the director defendants expect to present this*  
2                   *witness*)  
3                   c/o COHEN | JOHNSON | PARKER | EDWARDS  
4                   375 E. Warm Springs Road, Ste. 104  
5                   Las Vegas, NV 89119  
6                   702-823-3500  
7                   And  
8                   Quinn Emanuel Urquhart & Sullivan, LLP  
9                   865 S. Figueroa St., 10<sup>th</sup> Floor  
10                  Los Angeles, 90017  
11                  213-443-3000  
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13                  7. Michael Wrotniak (*the director defendants expect to present this*  
14                  *witness*)  
15                  c/o COHEN | JOHNSON | PARKER | EDWARDS  
16                  375 E. Warm Springs Road, Ste. 104  
17                  Las Vegas, NV 89119  
18                  702-823-3500  
19                  And  
20                  Quinn Emanuel Urquhart & Sullivan, LLP  
21                  865 S. Figueroa St., 10<sup>th</sup> Floor  
22                  Los Angeles, 90017  
23                  213-443-3000  
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25                  8. Judy Coddling (*the director defendants expect to present this*  
26                  *witness*)  
27                  c/o COHEN | JOHNSON | PARKER | EDWARDS  
28                  375 E. Warm Springs Road, Ste. 104  
                    Las Vegas, NV 89119  
                    702-823-3500  
                    And  
                    Quinn Emanuel Urquhart & Sullivan, LLP  
                    865 S. Figueroa St., 10<sup>th</sup> Floor  
                    Los Angeles, 90017  
                    213-443-3000  
                    9. Bill Gould (*the director defendants expect to present this witness*)  
                    c/o Maupin Cox & LeGoy  
                    4785 Caughlin Parkway  
                    Reno, NV 89519  
                    775-827-2000

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

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

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

11. Craig Tompkins (*the director defendants expect to present this witness*)  
c/o Greenberg Traurig, LLP  
3773 Howard Hughes Pkwy., Ste. 400N  
Las Vegas, NV 89169  
702-792-3773

12. Bob Smerling (*the director defendants expect to present this witness*)  
c/o Greenberg Traurig, LLP  
3773 Howard Hughes Pkwy., Ste. 400N  
Las Vegas, NV 89169  
702-792-3773

13. Terri Moore (*the director defendants expect to present this witness*)  
c/o Greenberg Traurig, LLP  
3773 Howard Hughes Pkwy., Ste. 400N  
Las Vegas, NV 89169  
702-792-3773

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

- 1           20. Derek Alderton (*the director defendants expect to present this*  
2                    *witness*)  
3                    Highpoint Associates  
4                    100 N Sepulveda Blvd.  
5                    El Segundo, CA 90245  
6                    310-616-0100
  
- 6           21. Mary Cotter (*the director defendants expect to present this witness*)  
7                    2818 Dumfries Road  
8                    Los Angeles, CA 90064  
9                    310-559-0581
  
- 10          22. Jill Van (*the director defendants expect to present this witness*)  
11                    Grant Thornton  
12                    515 S. Flower St., 7th Floor  
13                    Los Angeles, CA 90071  
14                    213-627-1717
  
- 14          23. Whitney Tilson (*the director defendants may call this witness if the*  
15                    *need arises*)  
16                    c/o Alexander Robertson, IV  
17                    Robertson & Associates, LLP  
18                    32121 Lindero Canyon Road, Suite 200  
19                    Westlake Village, CA 91361  
20                    818-851-3850
  
- 20          24. Jon Glaser (*the director defendants may call this witness if the need*  
21                    *arises*)  
22                    c/o Alexander Robertson, IV  
23                    Robertson & Associates, LLP  
24                    32121 Lindero Canyon Road, Suite 200  
25                    Westlake Village, CA 91361  
26                    818-851-3850

For Reading International, Ind.:

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

1                   **2.     Expert Witnesses and Summaries of Opinions**

2                   For Plaintiff:

3                   1. Former Chief Justice Myron Steele will offer opinion testimony  
4                   relating to matters of corporate governance, including regarding  
5                   proper exercise of directors' fiduciary duties. Among other  
6                   things, he will offer opinion testimony regarding appropriate  
7                   corporate governance practices and activities where a board of  
8                   directors is faced with circumstances in which directors lack or  
9                   may lack independence and/or disinterestedness, including the  
10                  appropriate practices and activities to address such  
11                  circumstances, and to evaluate the success of such practices and  
12                  activities, including with respect to the following matters (i) the  
13                  process used to terminate James J. Cotter, Jr. as President and  
14                  Chief Executive Officer of Reading International, Inc. ("RDI").,  
15                  (ii) the use of the Executive Committee of RDI's Board of  
16                  Directors, (iii) the appointment of EC and MC to their respective  
17                  current positions and the revised compensation and bonuses  
18                  that they and Adams were given and (iv) the rejection of the  
19                  Offer.<sup>3</sup> Former Chief Justice Steele also will offer opinion  
20

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21  
22 <sup>3</sup> As stated in the Steele Report, it is Justice Steele's understanding that  
23 Nevada courts look to Delaware case law when there is no Nevada statutory  
24 or case law on point for an issue of corporate law. See, e.g. *Brown v. Kinross*  
25 *Gold U.S.A., Inc.*, 531 F. Supp. 2d 1234, 1245 (D. Nev. 2008) ("Because the  
26 Nevada Supreme Court frequently looks to the Delaware Supreme Court  
27 and the Delaware Courts of Chancery as persuasive authorities on questions  
28 of corporation law, this Court often looks to those sources to predict how the  
Nevada Supreme Court would decide the question."); *Hilton Hotels Corp. v.*  
*ITT Corp.*, 978 F. Supp. 1342, 1346 (D. Nev. 1997) ("Where, as here, there is no  
Nevada statutory or case law on point or an issue of corporate law, this  
Court finds persuasive authority in Delaware case law."); *Cohen v. Mirage*  
*Resorts, Inc.*, 62 P.3d 720, 727 n.10 (Nev. 2003) ("Because the Legislature  
relied upon the Model Act and the Model Act relies heavily on New York

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

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

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

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

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

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

For the Director Defendants:

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

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

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

**H. Issues of Law**

**Plaintiff's Position:**

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

**Director Defendants' Position:**

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



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

14 **RDI's Position:**

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

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

- 19 a. Defendants' Motion In Limine to Exclude Expert  
20 Testimony of Myron Steele, Tiago Duarte-Silva, Richard  
21 Spitz, Albert Nagy, and John Finnerty
- 22 i. Granted in Part. With respect to Chief Justice  
23 Steele, he may testify only for the limited purpose  
24 of identifying what appropriate corporate  
25 governance activities would have been, including  
26 activities where directors are interested, including  
27 how to evaluate if directors are interested.  
28 Withdrawn as to Dr. Finnerty. Denied as to all

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

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

- a. Individual Defendants' Motion for Summary Judgment (No. 1.) Re: Plaintiff's Termination and Reinstatement Claims
  - i. Denied. See December 21, 2016 Order.
- b. Individual Defendants' Motion for Partial Summary Judgment (No. 2) Re: The Issue of Director Independence
  - i. Continued. See December 21, 2016 Order.
- c. Individual Defendants' Motion for Partial Summary Judgment (No. 3) On Plaintiff's Claims Related to the Purported Unsolicited Offer
  - i. Continued. See December 21, 2016 Order.
- d. Individual Defendants' Motion for Partial Summary Judgment (No. 4) On Plaintiff's Claims Related to the Executive Committee
  - i. Granted in Part. Granted as to the formation and revitalization (activation) of the Executive Committee; Denied as to the utilization of the committee. See December 21, 2016 Order.
- e. Individual Defendant's Motion for Partial Summary Judgment (No. 5) On Plaintiff's Claims Related to the Appointment of Ellen Cotter as CEO

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

**K. Estimated Length of Trial**

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

**L. Other Issues**

**Plaintiff's Statement:**

Plaintiff is unable to locate an answer from defendant Gould to the Second Amended Complaint, which the individual defendants should have answered long ago.

**Director Defendants' Statement:**

Plaintiff's list of claims above neither complies with the rules for pre-trial disclosures nor provides *any* clarity about what claims Plaintiff

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

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

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

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

10 **RDI's Position:**

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

15 MORRIS LAW GROUP

16  
17 By: /s/ AKKE LEVIN

18 Steve Morris, Bar No. 1543  
19 Akke Levin, Bar No. 9102  
20 411 E. Bonneville Ave., Ste. 360  
Las Vegas, Nevada 89101

21 Mark G. Krum, Bar No. 10913  
22 YURKO, SALVESEN & REMZ, P.C.  
23 1 Washington Mall, 11th Floor  
Boston, MA 02108

24 Attorneys for Plaintiff  
25 James J. Cotter, Jr.

26 H. Stan Johnson (00265)  
27 Cohen | Johnson | Parker | Edwards  
28 375 East Warm Springs Road, Suite 104  
Las Vegas, NV 89119  
702.823.3500

MORRIS LAW GROUP

411 E. BONNEVILLE AVE., STE. 360 · LAS VEGAS, NEVADA 89101  
702/474-9400 · FAX 702/474-9422

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Christopher Tayback (pro hac vice)  
Marshall Searcy (pro hac vice)  
Quinn Emanuel Urquhart & Sullivan LLP  
865 South Figueroa Street, 10th Floor  
Los Angeles, CA 90017  
213.443.3000

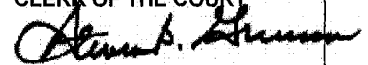
Attorneys for Defendants Margaret  
Cotter, Ellen Cotter, Douglas McEachern,  
Guy Adams, Edward Kane, Judy  
Coddington, and Michael Wrotniak

Mark Ferrario (No. 1625)  
Kara Hendricks (No. 7743)  
Tami Cowden (No. 8994)  
Greenberg Traurig, LLP  
3773 Howard Hughes Parkway  
Suite 400 North  
Las Vegas, NV 89169  
702.792.3773

Attorneys for Reading International, Inc.

Donald A. Lattin (NV SBN. 693)  
Carolyn K. Renner (NV SBN. 9164)  
Maupin, Cox & Legoy  
4785 Caughlin Parkway  
Reno, Nevada 89519  
775.827.2000

Ekwan E. Rhow (*admitted pro hac vice*)  
Shoshana E. Bannett (*admitted pro hac vice*)  
Bird, Marella, Boxer, Wolpert, Nessim,  
Drooks, Lincenberg & Rhow, P.C.  
1875 Century Park East, 23rd Floor  
Los Angeles, California 90067-2561  
310.201.2100



1 **ORDER**  
2 **COHEN|JOHNSON|PARKER|EDWARDS**  
3 H. STAN JOHNSON, ESQ.  
4 Nevada Bar No. 00265  
5 sjohnson@cohenjohnson.com  
6 375 E. Warm Springs Rd., Suite 104  
7 Las Vegas, Nevada 89119  
8 Telephone: (702) 823-3500  
9 Facsimile: (702) 823-3400

10 **QUINN EMANUEL URQUHART & SULLIVAN, LLP**  
11 **CHRISTOPHER TAYBACK, ESQ.**  
12 California Bar No. 145532, *pro hac vice*  
13 christayback@quinnemanuel.com  
14 **MARSHALL M. SEARCY, ESQ.**  
15 California Bar No. 169269, *pro hac vice*  
16 marshallsearcy@quinnemanuel.com  
17 865 South Figueroa Street, 10<sup>th</sup> Floor  
18 Los Angeles, CA 90017  
19 Telephone: (213) 443-3000

20 Attorneys for Defendants Margaret Cotter,  
21 Ellen Cotter, Douglas McEachern, Guy Adams, Edward Kane  
22 Judy Coddig, and Michael Wrotniak

23 **EIGHTH JUDICIAL DISTRICT COURT**  
24 **CLARK COUNTY, NEVADA**

25 **JAMES J. COTTER, JR.** individually and  
26 derivatively on behalf of Reading  
27 International, Inc.,  
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29 Plaintiffs,  
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31 v.  
32 **MARGARET COTTER, et al.,**  
33 Defendants.  
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35 AND  
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37 **READING INTERNATIONAL, INC.,** a Nevada  
38 corporation,  
39  
40 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**

**ORDER REGARDING DEFENDANTS'  
MOTIONS FOR PARTIAL SUMMARY  
JUDGMENT AND PLAINTIFF'S AND  
DEFENDANTS' MOTIONS *IN LIMINE***

Judge: Hon. Elizabeth Gonzalez

Date of Hearing: December 11, 2017  
Time of Hearing: 8:30 a.m.

1                   THIS MATTER HAVING COME TO BE HEARD BEFORE the  
2 Court on December 11, 2017, Mark G. Krum, Steve Morris, and Akke Levin  
3 appearing for plaintiff James J. Cotter, Jr. ("Plaintiff"); James L. Edwards,  
4 Christopher Tayback, and Marshall M. Searcy III appearing for defendants  
5 Margaret Cotter, Ellen Cotter, Douglas McEachern, Guy Adams, Edward  
6 Kane, Judy Coddling, and Michael Wrotniak (collectively, the "Individual  
7 Defendants"); Mark E. Ferrario and Kara B. Hendricks appearing for  
8 nominal defendant Reading International, Inc. ("RDI"); and Ekwan Rhow  
9 appearing for defendant William Gould ("Gould," together, with the  
10 Individual Defendants and RDI, "Defendants"), on the following motions:

- 11           • Individual Defendants' Motion for Partial Summary Judgment  
12           (No. 1) re: Plaintiff's Termination and Reinstatement Claims,  
13           and supplement thereto;
- 14           • Individual Defendants' Motion for Partial Summary Judgment  
15           (No. 2) re: The Issue of Director Independence, and supplement  
16           thereto;
- 17           • Individual Defendants' Motion for Partial Summary Judgment  
18           (No. 3) on Plaintiff's Claims Relating to the Purported  
19           Unsolicited Offer, and supplement thereto;
- 20           • Individual Defendants' Motion for Partial Summary Judgment  
21           (No. 5) on Plaintiff's Claims Related to the Appointment of  
22           Ellen Cotter as CEO, and supplement thereto;
- 23           • Individual Defendants' Motion for Partial Summary Judgment  
24           (No. 6) re: Plaintiff's Claims Related to the Estate's Option  
25           Exercise, the Appointment of Margaret Cotter, the  
26           Compensation Packages of Ellen Cotter and Margaret Cotter,



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and the Additional Compensation to Margaret Cotter and Guy Adams, and supplement thereto;

- Defendant Gould's Motion for Summary Judgment;
- Individual Defendants' Renewed Motion *in Limine* to Exclude Expert Testimony of Myron Steele Based on Supplemental Authority;
- Individual Defendants' Motion *in Limine* to Exclude Evidence That Is More Prejudicial Than Probative;
- Defendant Gould's Motion *in Limine* to Exclude Irrelevant Speculative Evidence;
- RDI's Motion to Redact Opposition to Plaintiff James J. Cotter, Jr.'s Motion *in Limine* No. 1 re: Advice of Counsel and File Exhibit "E" Under Seal;
- Plaintiff's Motion *in Limine* No. 1 re: Advice of Counsel;
- Plaintiff's Motion *in Limine* No. 2 re: the Submission of Merits-Related Evidence by Nominal Defendant Reading International, Inc.;
- Plaintiff's Motion *in Limine* No. 3 re: After-Acquired Evidence;
- Plaintiff's Motion to Seal Exhibit 2 to Plaintiff James J. Cotter's Opposition to Motion *in Limine* to Exclude Evidence That Is More Prejudicial Than Probative;
- Plaintiff's Motion to Seal Exhibits 3-6, 8-9, 11-2 and to Redact Portions of Plaintiff's Supplemental Opposition to Motion for Summary Judgment Nos. 2 and 3 and Gould Summary Judgment Motion;

- 1 • Plaintiff's Motion to Seal Exhibits 7-11, and 15-17 to Plaintiff's  
2 Supplemental Opposition to Motion for Summary Judgment  
3 Nos. 2 and 5 and Gould Summary Judgment Motion; and  
4 • Plaintiff's Motion to Seal Exhibits 4 Through 11 to Plaintiff's  
5 Supplemental Opposition to Motion for Summary Judgment  
6 Nos. 2 and 6 and Gould Summary Judgment Motion.

7 IT IS HEREBY ORDERED THAT the Individual Defendants'  
8 Motion for Partial Summary Judgment (No. 1) re: Plaintiff's Termination  
9 and Reinstatement Claims is GRANTED with respect to Defendants  
10 Edward Kane, Douglas McEachern, William Gould, Judy Coddling, and  
11 Michael Wrotniak because there are no genuine issues of material fact  
12 related to the disinterestedness and/or independence of those directors,  
13 and is DENIED with respect to Defendants Margaret Cotter, Ellen Cotter,  
14 and Guy Adams because there are genuine issues of material fact related to  
15 the disinterestedness and/or independence of those directors.

16 IT IS FURTHER ORDERED THAT the Individual Defendants'  
17 Motion for Partial Summary Judgment (No. 2) re: The Issue of Director  
18 Independence is GRANTED with respect to Defendants Edward Kane,  
19 Douglas McEachern, William Gould, Judy Coddling, and Michael Wrotniak  
20 because there are no genuine issues of material fact related to the  
21 disinterestedness and/or independence of those directors, and is DENIED  
22 with respect to Defendants Margaret Cotter, Ellen Cotter, and Guy Adams  
23 because there are genuine issues of material fact related to the  
24 disinterestedness and/or independence of those directors.

25 IT IS FURTHER ORDERED THAT the Individual Defendants'  
26 Motion for Partial Summary Judgment (No. 3) on Plaintiff's Claims  
27 Relating to the Purported Unsolicited Offer is GRANTED because of  
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1 Plaintiff's failure to show damages related to an unenforceable, unsolicited,  
2 nonbinding offer. While Plaintiff at trial cannot claim any damages arising  
3 from Defendants' actions with respect to the Patton Vision indications of  
4 interest, Plaintiff may still attempt to use evidence regarding the Patton  
5 Vision indications to show a breach of fiduciary duty.

6 IT IS FURTHER ORDERED THAT the Individual Defendants'  
7 Motion for Partial Summary Judgment (No. 5) on Plaintiff's Claims Related  
8 to the Appointment of Ellen Cotter as CEO is DENIED.

9 IT IS FURTHER ORDERED THAT the Individual Defendants'  
10 Motion for Partial Summary Judgment (No. 6) re: Plaintiff's Claims Related  
11 to the Estate's Option Exercise, the Appointment of Margaret Cotter, the  
12 Compensation Packages of Ellen Cotter and Margaret Cotter, and the  
13 Additional Compensation to Margaret Cotter and Guy Adams is DENIED.

14 IT IS FURTHER ORDERED THAT Defendant Gould's Motion  
15 for Summary Judgment is GRANTED.

16 IT IS FURTHER ORDERED THAT judgment in favor of  
17 Defendants Edward Kane, Douglas McEachern, William Gould, Judy  
18 Coddling, and Michael Wrotniak is GRANTED on all claims asserted by  
19 Plaintiff.

20 IT IS FURTHER ORDERED THAT the Individual Defendants'  
21 Renewed Motion *in Limine* to Exclude Expert Testimony of Myron Steele  
22 Based on Supplemental Authority is DENIED.

23 IT IS FURTHER ORDERED THAT the Individual Defendants'  
24 Motion *in Limine* to Exclude Evidence That Is More Prejudicial Than  
25 Probative is DENIED.

26 IT IS FURTHER ORDERED THAT Defendant Gould's  
27 Motion *in Limine* to Exclude Irrelevant Speculative Evidence is DENIED as

1 premature, with the issues raised in the motion to be addressed at trial  
2 based upon the relevant foundation laid.

3 IT IS FURTHER ORDERED THAT Plaintiff's Motion *in Limine*  
4 No. 1 re: Advice of Counsel is DENIED.

5 IT IS FURTHER ORDERED THAT Plaintiff's Motion *in Limine*  
6 No. 2 re: the Submission of Merits-Related Evidence by Nominal  
7 Defendant Reading International, Inc. is DENIED.

8 IT IS FURTHER ORDERED THAT Plaintiff's Motion *in Limine*  
9 No. 3 re: After-Acquired Evidence is DENIED. However, to the extent that  
10 Plaintiff's retention and use of Highpoint Associates and Derek Alderton is  
11 admitted at trial, it will be admitted with an instruction limiting the  
12 evidence solely to the issue of Plaintiff's suitability as President and CEO of  
13 RDI.

14 IT IS FURTHER ORDERED THAT RDI's Motion to Redact  
15 Opposition to Plaintiff James J. Cotter, Jr.'s Motion *in Limine* No. 1 re:  
16 Advice of Counsel and File Exhibit "E" Under Seal is GRANTED.

17 IT IS FURTHER ORDERED THAT Plaintiff's Motions to Seal  
18 and/or Redact are GRANTED.

19  
20 DATED this 28<sup>th</sup> day of December, 2017.

21   
22 \_\_\_\_\_  
23 DISTRICT COURT JUDGE

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PREPARED AND SUBMITTED BY:

**COHEN|JOHNSON|PARKER|EDWARDS**

By: /s/ H. Stan Johnson

H. STAN JOHNSON, ESQ.  
Nevada Bar No. 00265  
sjohnson@cohenjohnson.com  
375 E. Warm Springs Rd., Suite 104  
Las Vegas, Nevada 89119  
Telephone: (702) 823-3500  
Facsimile: (702) 823-3400

**QUINN EMANUEL URQUHART &  
SULLIVAN, LLP**

CHRISTOPHER TAYBACK, ESQ.  
California Bar No. 145532, *pro hac vice*  
christayback@quinnemanuel.com  
MARSHALL M. SEARCY, ESQ.  
California Bar No. 169269, *pro hac vice*  
marshallsearcy@quinnemanuel.com  
865 South Figueroa Street, 10<sup>th</sup> Floor  
Los Angeles, CA 90017  
Telephone: (213) 443-3000

*Attorneys for Defendants Margaret Cotter,  
Ellen Cotter, Douglas McEachern, Guy Adams,  
Edward Kane, Judy Coddling, and Michael  
Wrotniak*



1 **OPPM**  
2 **COHENJOHNSONPARKEREDWARDS**

3 H. STAN JOHNSON, ESQ.  
4 Nevada Bar No. 00265  
5 sjohnson@cohenjohnson.com  
6 375 E. Warm Springs Rd., Suite 104  
7 Las Vegas, Nevada 89119  
8 Telephone: (702) 823-3500  
9 Facsimile: (702) 823-3400

6 **QUINN EMANUEL URQUHART & SULLIVAN, LLP**  
7 **CHRISTOPHER TAYBACK, ESQ.**

8 California Bar No. 145532, *pro hac vice*  
9 christayback@quinnemanuel.com  
10 **MARSHALL M. SEARCY, ESQ.**  
11 California Bar No. 169269, *pro hac vice*  
12 marshallsearcy@quinnemanuel.com  
13 865 South Figueroa Street, 10<sup>th</sup> Floor  
14 Los Angeles, CA 90017  
15 Telephone: (213) 443-3000

16 Attorneys for Defendants Margaret Cotter,  
17 Ellen Cotter, Douglas McEachern, Guy Adams, Edward Kane  
18 Judy Codding, and Michael Wrotniak

14 **EIGHTH JUDICIAL DISTRICT COURT**

15 **CLARK COUNTY, NEVADA**

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

19 Plaintiff,

20 v.

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

23 AND

24 READING INTERNATIONAL, INC., a Nevada  
25 corporation,

26 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**

**THE INDIVIDUAL DEFENDANTS'  
OPPOSITION TO PLAINTIFF'S  
MOTION FOR RULE 54(b)  
CERTIFICATION AND STAY**

Judge: Hon. Elizabeth Gonzalez  
Date of Hearing: January 4, 2018  
Time of Hearing: 8:30 a.m.

1 **INTRODUCTION**

2 At the hearing held on December 11, 2017, the Court determined that Plaintiff James J.  
3 Cotter, Jr. failed to raise a genuine issue of triable fact as to the disinterestedness and/or  
4 independence of five of his fellow Reading International, Inc. (“RDI”) directors: Michael  
5 Wrotniak, Judy Coddling, Douglas McEachern, Edward Kane, and William Gould. Shortly  
6 thereafter, Plaintiff moved for reconsideration of the Court’s ruling, which the Individual  
7 Defendants opposed. At a hearing held on December 29, 2017, the Court denied Plaintiff’s  
8 motion for reconsideration and indicated that it would enter a written order later that day  
9 granting summary judgment in favor of Directors Wrotniak, Coddling, McEachern, Kane, and  
10 Gould on all claims—which it subsequently did.

11 Immediately following the Court’s denial of his motion for reconsideration, Plaintiff  
12 made an oral request for a stay pending his planned appeal of the Court’s summary judgment  
13 order. Plaintiff argued that if a trial was held in the interim, the parties could face the prospect of  
14 multiple, conflicting appeals and “a do over” trial; Plaintiff also claimed that he would be  
15 prejudiced by certain legal and factual arguments that RDI and the Individual Defendants would  
16 make at trial in light of the Court’s ruling. (*See* 12/29/17 Tr. at 18:23-20:17.) The Court denied  
17 Plaintiff’s oral motion, noting that such risks occur any time a court grants partial summary  
18 judgment. (*Id.* at 19:18-19.) Instead, the Court emphasized its willingness to proceed with the  
19 scheduled trial starting on Monday, January 8, 2018, and to leave it to the Nevada Supreme  
20 Court to decide whether to stay the case pending Plaintiff’s planned appeal. (*Id.* at 24:11-18.)

21 Following the conclusion of the December 29, 2017 hearing, Plaintiff filed a Motion for  
22 Rule 54(b) Certification and Stay. The Individual Defendants take no position as to the merits of  
23 Plaintiff’s motion to the extent that he seeks certification pursuant to Nevada Rule of Civil  
24 Procedure 54(b) that the Court’s judgment is final as to Directors Wrotniak, Coddling,  
25 McEachern, Kane, and Gould. To the extent that Plaintiff again seeks a stay, he does nothing  
26 more than repeat the same arguments he already has raised and the Court has rejected. Plaintiff’s  
27 motion provides no valid reason to reconsider the Court’s decision. Indeed, due to his myopic  
28 focus on the Rule 54(b) certification issue, Plaintiff does not address, let alone satisfy, the four-

1 factor test governing stays pending appeal in Nevada. As set forth below, Plaintiff cannot meet  
2 any—let alone all—of the elements required for such a stay. There is no basis for the Court to  
3 revisit its earlier ruling. Plaintiff’s motion for a stay should be denied.

4 **ARGUMENT**

5 In Nevada, courts are to consider four factors when evaluating a request to stay trial  
6 pending an appeal: (1) whether the object of the appeal or writ petition will be defeated if the  
7 stay is denied; (2) whether appellant/petitioner will suffer irreparable or serious injury if the stay  
8 is denied; (3) whether respondent/real party in interest will suffer irreparable or serious injury if  
9 the stay is granted; and (4) whether appellant/petitioner is likely to prevail on the merits in the  
10 appeal or writ petition. *See Hansen v. Eighth Judicial Dist. Ct. In and For the Cnty. of Clark*,  
11 116 Nev. 650, 657, 6 P.3d 982, 986 (2000); NRAP 8(c). As demonstrated below, Plaintiff  
12 cannot meet any of these requirements.

13 **I. THE OBJECT OF PLAINTIFF’S APPEAL WILL NOT BE DEFEATED IF A**  
14 **STAY IS DENIED**

15 The object of Plaintiff’s appeal is to seek the view of another court as to whether  
16 Directors Wrotniak, Coddling, McEachern, Kane, and Gould are disinterested and independent as  
17 a matter of law with respect to a series of RDI Board decisions that he has challenged. Plaintiff  
18 has not waived his claims against these Individual Defendants, nor will he do so if this case  
19 proceeds to trial in the near future. Indeed, after trial, Plaintiff will be able to combine his appeal  
20 as to the Court’s independence ruling with any other issues that he may seek to contest. Absent  
21 the “waiver” of an entire issue or defense, courts in Nevada do not consider the object of an  
22 appeal to be defeated. *See Hansen*, 116 Nev. at 657-58, 6 P.3d at 986 (because party’s  
23 jurisdictional challenge, rejected by the district court, was preserved and could eventually be  
24 heard on appeal, no waiver existed and thus the object of appeal was not defeated); *cf. Mikohn*  
25 *Gaming Corp. v. McCrea*, 120 Nev. 248, 253, 89 P.3d 36, 39 (2004) (granting stay because  
26 allowing case to proceed in district court rather than in an arbitration would defeat the object of  
27 appeal). Because the object of Plaintiff’s appeal will be preserved even if the parties proceed to  
28 trial on January 8, 2018, the first factor suggests that a stay is not warranted.



1 **II. PLAINTIFF WILL NOT SUFFER IRREPARABLE OR SERIOUS INJURY IF**  
2 **THE STAY IS DENIED**

3 In his motion, Plaintiff asserts that he will be “severely prejudiced” absent a stay pending  
4 appeal because RDI and the Individual Defendants will likely use the Court’s summary judgment  
5 ruling to make arguments at trial that are not favorable to his case, including that the business  
6 judgment rule applies to certain transactions approved or ratified by a majority of disinterested,  
7 independent directors or that the behavior of purportedly interested directors (such as Guy  
8 Adams) was consistent with the behavior of other, legally-independent directors. (*See* Mot. at 7-  
9 9.) Plaintiff further contends that costs and efficiency weighs in favor of a stay, as the possibility  
10 of a second trial will be avoided. (*Id.*)

11 Neither argument has merit. As the Court recognized at the December 29, 2017 hearing,  
12 Plaintiff’s substantive objections to proceeding to trial are no different from any plaintiff who  
13 has lost on a partial summary judgment motion. Nevada does not provide disgruntled plaintiffs  
14 with an automatic stay and right of immediate appeal simply because some of the original claims  
15 or defendants are no longer in the case. That the Individual Defendants may take advantage of a  
16 favorable summary judgment ruling to make arguments at trial plainly available based on the  
17 record and under governing law is a fact of litigation, not irreparable or serious injury to  
18 Plaintiff. *See Hansen*, 116 Nev. at 658, 6 P.3d at 987 (noting that “irreparable harm is harm for  
19 which compensatory damages would be inadequate, such as the sale of a home at trustee’s sale,  
20 because real property is unique”). For instance, while Plaintiff complains about the RDI Board’s  
21 votes on December 29, 2017 to ratify both Plaintiff’s termination and the exercise of a share  
22 purchase option held by the Estate of James J. Cotter, Sr. (*see* Mot. at 7), this is simply evidence  
23 that the RDI Board and its directors continue to take action; indeed, the Board has held scores of  
24 meetings and voted on numerous matters since the filing of Plaintiff’s lawsuit. That the Board  
25 continues to move forward is not grounds for delay, rather it is a reason for moving on to trial.  
26 The legal effect of the Board’s ratification decision, which is now accomplished, is clear under  
27 NRS 78.140 and the Nevada Supreme Court’s decision in *Shoen v. SAC Holding Corp.*, 122 Nev.  
28 621, 636, 137 P.3d 1171, 1181 (2006). Of course, there are other grounds for a defense verdict

1 separate and apart from independence and/or ratification, and the fact that the Court's  
2 independence decision made Plaintiff's factually unsupportable case more difficult legally for  
3 him is not the kind of irreparable or undue injury that supports delay.

4 Plaintiff's related contention that a second trial will be avoided is mere "speculation," and  
5 courts have rejected the possibility that a "do over" may result following an appeal as a valid  
6 basis to stay a case. *See Busey v. Richland Sch. Dist.*, No. 2:13-CV-5022-TOR, 2016 WL  
7 8938423, at \*4 (E.D. Wash. Apr. 13, 2016) (denying certification and stay pending appeal  
8 because plaintiff's argument that a second trial would be avoided was "speculative"); *Hansen*,  
9 116 Nev. at 658, 6 P.3d at 986-87 (noting that appellant's argument that, absent a stay, it would  
10 be "required to participate 'needlessly' in the expense of . . . trial" is "neither irreparable nor  
11 serious" injury). Indeed, *every appeal*, whether before or after trial, raises the specter of a  
12 potential second trial. Accordingly, Plaintiff cannot satisfy the second factor required for a stay  
13 pending appeal.

14 **III. THE INDIVIDUAL DEFENDANTS WILL SUFFER SERIOUS INJURY IF A**  
15 **STAY IS GRANTED**

16 Admittedly, "a mere delay in pursuing . . . litigation" does not normally constitute  
17 irreparable injury or serious harm. *Mikohn*, 120 Nev. at 253, 89 P.3d at 39. However, the  
18 Nevada Supreme Court has recognized that, "in certain cases," it may, and that possibility  
19 "should be considered in the stay analysis." *Id.* In this case, where the parties are two-and-a-half  
20 years removed from Plaintiff's termination that started it all, the Individual Defendants are  
21 rightfully concerned that they may suffer irreparable or serious injury if a stay is granted and the  
22 case stalls on the very eve of trial.

23 Since June 2015, the Individual Defendants have been repeatedly smeared in the press by  
24 a serious of wild, unsupportable accusations made entirely out of vindictiveness by a divisive,  
25 poorly-performing CEO who threatened to "ruin them financially" even before they terminated  
26 him. Others (such as the T2 plaintiffs) have brought follow-on suits against the Individual  
27 Defendants based solely on Plaintiff's claims only to discover that they are without merit, and  
28 have exited the litigation by settling on favorable terms. Not only have Plaintiff's baseless

1 allegations threatened the professional reputations and livelihood of the Individual Defendants,  
2 they have seriously affected the business operations of RDI as it seeks to move beyond the  
3 turmoil fostered by Plaintiff. Indeed, given Plaintiff's (untenable) reinstatement demand, RDI  
4 continues to face great uncertainty regarding its permanent leadership.

5 In any lengthy litigation where delays have occurred, important witnesses may forget  
6 relevant facts or become unavailable. However, here, where the business operations of a  
7 company and the lives of its directors continue to be harmed because the board made an  
8 informed business judgment to do what it thought was best for the company and its stockholders,  
9 it makes sense to avoid further injury and proceed to the planned trial. This is also true because  
10 there are dispositive issues—other than directorial independence—to be tried that may moot any  
11 appeal by Plaintiff. For example, if Plaintiff cannot prove at trial that he would be a suitable  
12 CEO, then the injunctive relief he seeks is moot; if Plaintiff cannot establish damages to RDI at  
13 trial, then his entire case fails. There is no valid reason to delay resolution of these issues just to  
14 allow Plaintiff another chance to revisit the Court's independence determination, which may be  
15 mooted by what happens at trial.

16 **IV. PLAINTIFF IS UNLIKELY TO PREVAIL ON THE MERITS OF HIS APPEAL**

17 In his motion, Plaintiff has not argued, let alone established, that he is likely to prevail on  
18 the merits of his appeal. The Court's decision to award summary judgment in favor of Directors  
19 Wrotniak, Coddling, McEachern, Kane, and Gould followed multiple rounds of summary  
20 judgment briefing and a year of additional discovery pursuant to Nevada Rule of Civil Procedure  
21 56(f), which the Court allowed to ensure that Plaintiff had been given a full and fair opportunity  
22 to try to prove his claims. The Court held multiple oral arguments on Plaintiff's claims prior to  
23 its decision, and repeatedly asked whether there were any additional facts that Plaintiff wanted  
24 the Court to consider in determining the independence/disinterestedness issue. Moreover, the  
25 Court considered—and rejected—Plaintiff's Motion for Reconsideration in which he attempted  
26 to reargue the issues on which he lost. Absent any indication that Plaintiff is likely to prevail on  
27 his appeal of the Court's considered ruling (which he is not), a stay pending appeal is entirely  
28 unwarranted.

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**CONCLUSION**

For the reasons set forth above, the Individual Defendants respectfully request that the Court deny Plaintiff's Motion to Stay this case pending appeal. The Individual Defendants take no position on Plaintiff's request for certification under Nevada Rule of Civil Procedure 54(b).

Dated: January 2, 2018

**COHENJOHNSONPARKEREDWARDS**

By: /s/ H. Stan Johnson

H. STAN JOHNSON, ESQ.  
Nevada Bar No. 00265  
sjohnson@cohenjohnson.com  
255 East Warm Springs Road, Suite 100  
Las Vegas, Nevada 89119  
Telephone: (702) 823-3500  
Facsimile: (702) 823-3400

**QUINN EMANUEL URQUHART & SULLIVAN, LLP**

CHRISTOPHER TAYBACK, ESQ.  
California Bar No. 145532, *pro hac vice*  
christayback@quinnemanuel.com  
MARSHALL M. SEARCY, ESQ.  
California Bar No. 169269, *pro hac vice*  
marshallsearcy@quinnemanuel.com  
865 South Figueroa Street, 10<sup>th</sup> Floor  
Los Angeles, CA 90017  
Telephone: (213) 443-3000

*Attorneys for Defendants Margaret Cotter, Ellen Cotter, Douglas McEachern, Guy Adams, Edward Kane, Judy Coddling, and Michael Wrotniak*

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**CERTIFICATE OF SERVICE**

I hereby certify that, on January 2, 2018, I caused a true and correct copy of the foregoing  
**THE INDIVIDUAL DEFENDANTS’ OPPOSITION TO PLAINTIFF’S MOTION FOR  
RULE 54(b) CERTIFICATION AND STAY** 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

**MORRIS LAW GROUP**

411 E. BONNEVILLE AVE., STE. 360 · LAS VEGAS, NEVADA 89101  
702/474-9400 · FAX 702/474-9422

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**ORDR**  
MORRIS LAW GROUP  
Steve Morris, Bar No. 1543  
Akke Levin, Bar No. 9102  
411 E. Bonneville Ave., Ste. 360  
Las Vegas, Nevada 89101  
Telephone: (702) 474-9400  
Facsimile: (702) 474-9422  
Email: sm@morrislawgroup.com  
Email: al@morrislawgroup.com

Mark G. Krum, Bar No. 10913  
Yurko, Salvesen & Remz, P.C.  
1 Washington Mall, 11th Floor  
Boston, MA 02108  
Telephone: (617) 723-6900  
Facsimile: (617) 723-6905  
Email: mkrum@bizlit.com

Attorneys for Plaintiff  
James J. Cotter, Jr.

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

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

Plaintiff,

v.

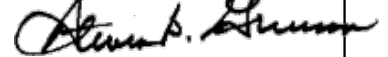
MARGARET COTTER, ELLEN  
COTTER, GUY ADAMS,  
EDWARD KANE, DOUGLAS  
McEACHERN, WILLIAM  
GOULD, JUDY CODDING,  
MICHAEL WROTONIAK,

Defendants.

And

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

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) Case No. A-15-719860-B  
) Dept. No. XI  
)  
) Coordinated with:  
)  
) Case No. P-14-0824-42-E  
) Dept. No. XI  
)  
) Jointly Administered  
)  
) **ORDER DENYING PLAINTIFF'S**  
) **MOTION TO STAY AND MOTION**  
) **FOR RECONSIDERATION**  
)  
) **Date of Hearing: December 28, 2017**  
) **Time of Hearing: 9:00 a.m.**

**MORRIS LAW GROUP**

411 E. BONNEVILLE AVE., STE. 360 · LAS VEGAS, NEVADA 89101  
702/474-9400 · FAX 702/474-9422

1 This matter came before the Court on December 28, 2017 for  
2 hearing on plaintiff James J. Cotter, Jr.'s Motion to Stay and Motion for  
3 Reconsideration or Clarification of Ruling on Motions for [Partial] Summary  
4 judgment Nos. 1, 2, and 3 and Gould's Summary Judgment Motion ("Motion  
5 for Reconsideration"). Mark G. Krum and Akke Levin appeared for plaintiff  
6 James J. Cotter, Jr. ("Plaintiff"); Marshall M. Searcy III appeared for  
7 defendants Margaret Cotter, Ellen Cotter, Douglas McEachern, Guy Adams,  
8 Edward Kane, Judy Coddling, and Michael Wrotniak; Mark E. Ferrario  
9 appeared for nominal defendant Reading International, Inc.; and Shoshana  
10 Bannett appeared for defendant William Gould ("Gould").

11 The Court, having considered the papers filed in support of and  
12 in opposition to the Motion for Reconsideration and Motion to Stay, having  
13 heard oral argument of the parties, having considered (sealed) Court Exhibit  
14 1, and for good cause appearing:

15 IT IS HEREBY ORDERED that Plaintiff's Motion for  
16 Reconsideration is DENIED. Although the Court reviewed Court Exhibit 1,  
17 the Court finds it was not provided with new factual information or new  
18 legal analysis that would cause the Court to change its decision on Motions  
19 for Partial Summary Judgment Nos. 1, 2, and Gould's Motion for Summary  
20 Judgment.

21 IT IS FURTHER ORDERED that Plaintiff's Motion to Stay is  
22 DENIED.

23 DATED this 4 day of Jan, 2018.

24  
25   
26 THE HONORABLE ELIZABETH  
27 GONZALEZ,  
28 DISTRICT COURT JUDGE

**MORRIS LAW GROUP**

411 E. BONNEVILLE AVE., STE. 360 · LAS VEGAS, NEVADA 89101  
702/474-9400 · FAX 702/474-9422

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Submitted by:

MORRIS LAW GROUP

By: /s/ Akke Levin

Steve Morris, Bar No. 1543  
Akke Levin, Bar No. 9102  
411 E. Bonneville Ave., Ste. 360  
Las Vegas, Nevada 89101

Mark G. Krum, Bar No. 10913  
YURKO, SALVESEN & REMZ, P.C.  
1 Washington Mall, 11th Floor  
Boston, MA 02108

Attorneys for Plaintiff  
James J. Cotter, Jr.



**MORRIS LAW GROUP**

411 E. BONNEVILLE AVE., STE. 360 · LAS VEGAS, NEVADA 89101  
702/474-9400 · FAX 702/474-9422

1 **ORDR**  
2 **MORRIS LAW GROUP**  
3 Steve Morris, Bar No. 1543  
4 Akke Levin, Bar No. 9102  
5 411 E. Bonneville Ave., Ste. 360  
6 Las Vegas, Nevada 89101  
7 Telephone: (702) 474-9400  
8 Facsimile: (702) 474-9422  
9 Email: sm@morrislawgroup.com  
10 Email: al@morrislawgroup.com

11 Mark G. Krum, Bar No. 10913  
12 Yurko, Salvesen & Remz, P.C.  
13 1 Washington Mall, 11th Floor  
14 Boston, MA 02108  
15 Telephone: (617) 723-6900  
16 Facsimile: (617) 723-6905  
17 Email: mkrum@bizlit.com

18 **Attorneys for Plaintiff**  
19 James J. Cotter, Jr.

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

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

23 **Plaintiff,**

24 **v.**

25 **MARGARET COTTER, ELLEN**  
26 **COTTER, GUY ADAMS,**  
27 **EDWARD KANE, DOUGLAS**  
28 **McEACHERN, WILLIAM**  
**GOULD, JUDY CODDING,**  
**MICHAEL WROTNIAK,**

**Defendants.**

**And**

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

**Nominal Defendant.**

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

) **Dept. No. XI**

) **Coordinated with:**

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

) **Dept. No. XI**

) **Jointly Administered**

) **ORDER GRANTING PLAINTIFF'S**

) **MOTION FOR RULE 54(b)**

) **CERTIFICATION AND STAY**

) **Date of Hearing: January 4, 2017**

) **Time of Hearing: 8:30 a.m.**

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THIS MATTER CAME BEFORE THE COURT on the Motion for Rule 54(b) Certification and Stay of plaintiff James J. Cotter, Jr. ("Plaintiff"). The Court, having considered any papers filed and arguments made in support of and in opposition to the Motion, and for good cause appearing,

IT IS HEREBY ORDERED THAT Plaintiff's Motion for Rule 54(b) Certification is GRANTED because Plaintiff will be severely prejudiced if required to wait to appeal and the remaining defendants will not be prejudiced if the Court's December 28, 2017 order dismissing defendants Edward Kane, Douglas McEachern, William Gould, Judy Coddling, and Michael Wrotniak is certified.

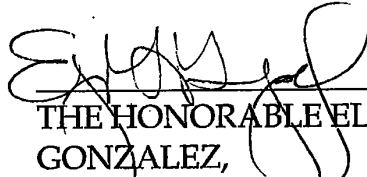
The Court therefore finds and determines, under Nev. R. Civ. P. 54(b), that there is no just reason for delay and hereby directs entry of judgment as to defendants Edward Kane, Douglas McEachern, William Gould, Judy Coddling, and Michael Wrotniak on all of Plaintiff's claims against them.

**MORRIS LAW GROUP**  
411 E. BONNEVILLE AVE., STE. 360 • LAS VEGAS, NEVADA 89101  
702/474-9400 • FAX 702/474-9422

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IT IS FURTHER ORDERED THAT the case is  
 stayed;  
 not stayed pending Plaintiff's appeal.

DATED this \_\_\_ day of January, 2018.

  
\_\_\_\_\_  
THE HONORABLE ELIZABETH  
GONZALEZ,  
DISTRICT COURT JUDGE

Submitted by:

MORRIS LAW GROUP

By: /s/ Akke Levin  
Steve Morris, Bar No. 1543  
Akke Levin, Bar No. 9102  
411 E. Bonneville Ave., Ste. 360  
Las Vegas, Nevada 89101

Mark G. Krum, Bar No. 10913  
YURKO, SALVESEN & REMZ, P.C.  
1 Washington Mall, 11th Floor  
Boston, MA 02108

Attorneys for Plaintiff  
James J. Cotter, Jr.

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