IN THE SUPREME COURT OF THE STATE OF NEVADA

Electronically Filed
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Elizabeth A. Brown
Clerk of Supreme Court

JAMES J. COTTER, JR., derivatively on behalf of Reading International, Inc., Appellant, v. DOUGLAS MCEACHERN, EDWARD KANE, JUDY CODDING, WILLIAM GOULD, MICHAEL WROTNIAK, and nominal defendant READING INTERNATIONAL, INC., A NEVADA CORPORATION Respondents.	Supreme Court Case No. 75053 Consolidated with Case Nos. 76981, 77648 & 77733 District Court Case No. A-15-719860-B Coordinated with: Case No. P-14-0824-42-E

Appeal (77733)
Eighth Judicial District Court, Dept. XI
The honorable Elizabeth G. Gonzalez

RESPONDENT'S APPENDIX TO ANSWERING BRIEF FOR CASE NO. 77733

Volume IV
RA686 – RA900

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Docket 75053 Document 2019-36088

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CERTIFICATE OF SERVICE

I certify that I am an employee of MORRIS LAW GROUP; I am familiar with the firm's practice of collection and processing documents for mailing; that, in accordance therewith, I caused the following document to be e-served via the Supreme Court's electronic service process. I hereby certify that on the 29th day of August, 2019, a true and correct copy of the foregoing **RESPONDENT'S APPENDIX TO ANSWERING BRIEF FOR CASE NO. 77733**, was served by the following method(s):

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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.	.	
	.	**Transcript of**
Defendants	.	**Proceedings**
. . . . .		

BEFORE THE HONORABLE ELIZABETH GONZALEZ, DISTRICT COURT JUDGE

HEARING ON MOTION TO COMPEL AND MOTION TO SEAL

MONDAY, APRIL 30, 2018

COURT RECORDER:

JILL HAWKINS
District Court

TRANSCRIPTION BY:

FLORENCE HOYT
Las Vegas, Nevada 89146

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

APPEARANCES:

FOR THE PLAINTIFF:	MARK G. KRUM, ESQ. STEVE L. MORRIS, ESQ.
FOR THE DEFENDANTS:	SHOSHANA E. BANNETT, ESQ. MARSHALL M. SEARCY, ESQ. CHRISTOPHER TAYBACK, ESQ. JAMES L. EDWARDS, ESQ. MARK E. FERRARIO, ESQ.

1 LAS VEGAS, NEVADA, MONDAY, APRIL 30, 2018, 9:04 A.M.
2 (Court was called to order)
3 THE COURT: Cotter.
4 Mr. Krum, why did you define "meeting" so narrowly?
5 Why did you define "meeting" so narrowly?
6 MR. KRUM: We defined "meeting" because we didn't
7 have the information that there was anything else going on.
8 But it doesn't matter for purposes of the motion today,
9 because we have other requests which the December 21
10 [inaudible] is the ones that are -- created the issue are
11 clearly responsive.
12 THE COURT: Okay. So you relied upon the
13 representation that was made in court about the meetings that
14 were occurring in December?
15 MR. KRUM: Well, no, Your Honor. I mean, the answer
16 is sure, we understood that based on the motion that was made
17 on the 27th the five dismissed directors had supposedly agreed
18 what happened. What we actually know is Mr. Gould's assistant
19 sent an email asking these matters be put on either the next
20 board meeting, which was the 29th, or a special meeting. But
21 we didn't miss it, Your Honor. Request Number 6 actually is
22 exactly what we would have drafted had we known what we did
23 not know.
24 Request Number 6 calls for all documents relating to
25 the decision to call the meeting, which is the December 29

1 meeting, to ratify prior decisions. And the testimony, as we
2 provided to you in the motion, was that the three members of
3 the so-called special independent committee, Gould, Codding,a
4 and McEachern, had a meeting on a day they couldn't identify,
5 and they agreed at the meeting to do that. And the meeting
6 minutes presumably say that, but they're completely redacted.
7 But there are other requests, Your Honor. But I
8 don't need to go through them. So what happened is, as we now
9 know from the opposition papers, that, unlike the minutes of
10 the December 29 meeting which they were able to prepare in
11 about five days and use a draft of the December 29 minutes as
12 the basis for their motion for summary judgment, they didn't
13 bring to bear the same case in preparing the minutes of the
14 special independent committee of December 21. Mr. Bonner's
15 declaration says he was busy and he didn't prepare them until
16 January 24, he provided to Gould on January 30, and then he
17 gets comments and provides them to Codding and McEachern on
18 the 10th.
19 Your Honor, they first produced the document, first
20 produced documents and a privilege log on the 15th of
21 February. There was no basis upon which to withhold the
22 December 21 minutes, except for a claim of privilege. But
23 they didn't log them. They simply withheld them. And all
24 this talk in their opposition about what transpired
25 subsequently doesn't really change the fact that they withheld

1 responsive documents. They didn't produce the document, they
2 didn't log the document until April 12, Your Honor. That's
3 after I requested it -- I didn't request it in McEachern's
4 deposition, because he was unclear about what transpired. But
5 later that day Ms. Codding said, we had a special independent
6 committee meeting a couple days before. And at that
7 deposition I asked the lawyers present, Mr. Tayback and Mr.
8 Ferrario, would you please produce those meeting minutes. And
9 whether it was there -- there was some colloquy there or
10 subsequently were they requested, the answer, sure they are
11 and -- sure they are. And so nobody said to me they're not
12 responsive. Nobody said, we're withholding them.
13 Approximately five or six days later I was in White
14 Plains, New York, deposing Mr. Wrotniak, who's not a member of
15 this committee. But at the end of that deposition I asked the
16 lawyers present, it was Mr. Searcy in person and Ms. Hendricks
17 telephonically, by the way, I asked at the last deposition for
18 the meeting minutes of the special independent committee,
19 would you produce them. Now, I had no idea that it was a
20 meeting about ratification. Ms. Codding said it was just --
21 neither Codding nor McEachern said they took any action. In
22 fact, one of them, I think McEachern, suggested they didn't.
23 So I'm like, well, fine, I'll get these minutes when Mr. Gould
24 makes his production. Because the productions, Your Honor,
25 were fairly consistent. Well, they weren't fairly consistent,

1 they were exactly the same.
2 GT made a production I think it was on the 15th of
3 February, and a week or so later Quinn made a production. The
4 only difference was that the Quinn productions included some
5 nonresponsive documents they apparently want to use in the
6 case. And there was three sets of documents. Nothing in
7 those documents referenced this December 21 meeting. In fact,
8 as you saw in the email correspondence between me and Ms.
9 Hendricks, I understood that it was a December 27 meeting
10 based on Ms. Codding's testimony being more definitive. That
11 is, of course, until I deposed Mr. Gould, who, like Mr.
12 McEachern, placed it somewhere else in December, and, unlike
13 either of them said, no, we formally acted, we formally acted
14 at that special independent committee meeting and by, the way,
15 there are minutes. And they then finalized. Well, apparently
16 they hadn't been approved, but that's a process that they're
17 holding off on for reasons that may or may not have to do with
18 this case.
19 So what happened? I sat there and examined three
20 different committee members, the first two of which don't
21 really tell me what transpired. I asked for the minutes. The
22 minutes are responsive to this and other requests. And
23 nothing happens. I get nothing. And then, of course, we have
24 a different issue with Mr. Gould's production.
25 THE COURT: Okay. I don't know how you accidently

1 delete your entire in box, so let's talk about that.
2 MR. KRUM: We'll get to that. But, to the point,
3 Your Honor, so what transpired on the ratification process was
4 unknown to me until Mr. Gould's testimony April 5th, both in
5 terms of chronology and in terms of what three of the five
6 ratifying directors did. I spent a lot of time going through
7 the privilege log, the only privilege log that was produced by
8 any of the defendants, which was by GT, because there weren't
9 any documents that told me anything about what transpired.
10 Literally. You know, we said three different sets of
11 documents, December 27 and 29, I think it was. So I spent a
12 lot of time. And then I get -- and then I don't get the
13 document.
14 You know, it's not conceivable to me that a lawyer
15 could sit through all these depositions where I'm examining
16 three different committee members giving three varying
17 versions of what transpired when and not say, well, gee,
18 should I double check and see if the minutes that Krum
19 specifically requested are responsive, after they've made that
20 decision to start with, Your Honor. That was the entire
21 choreography. And, by the way, it wasn't --
22 THE COURT: I was never told about a special
23 committee meeting. I was only told that the December 27th
24 meeting occurred at which everybody ratified the actions of
25 the directors who remain parties to this case.

1 MR. KRUM: Right. And, of course, the process is
2 critical. The process is what it's all about, this process
3 where some number of these five ratifiers took the time to
4 make an informed decision and ratify a corporate decision.
5 What did they do? What did they know? Whether or not they
6 can make the case they're trying to make in their summary
7 judgment motion depends on that. That's exactly why you said
8 I needed discovery, figure out what happened.
9 THE COURT: So let me scoot back for a second. One
10 of your motions today asks me to have an evidentiary hearing
11 about what led up to the failure to produce this information
12 and whether sanctions are appropriate as a result of that.
13 Why do you think we should have an evidentiary hearing at this
14 late date?
15 MR. KRUM: Well, I think it's easy, Your Honor. We
16 don't need an evidentiary hearing. We think denying the
17 motion for leave to renew their ratification summary judgment
18 motion, grant the relief we request, which is preclude them
19 from offering that as a defense at trial. Otherwise, what we
20 have, Your Honor, if you don't think we need one and you're
21 prepared to make those decisions, which I think you can and I
22 think are appropriate, that's fine. I suggested to have an
23 evidentiary hearing because sometimes that's what you seek to
24 do to find out what happened in circumstances like this where
25 the lawyers seem to have not have done what they are supposed

1 to have done.
2 The timing, Your Honor, is entirely their doing. We
3 were here on January 8th. Mr. Ferrario made comments to the
4 effect that he was going to be cooperative, they're going to
5 be forthcoming, and he said, I don't speak for Mr. Tayback or
6 Mr. Searcy, but they can say if they disagree. And he even in
7 those comments talked about having the draft December 29 board
8 minutes that were the basis for the motion approved and
9 finalized.
10 So they were going to make this all happen, we're
11 going to do it on an expedited basis. And not only did they
12 not do that, they didn't produce one of the critical documents
13 that we need to have and possess and know to obtain the
14 discovery that you told them they had to provide before they
15 could renew -- ask to renew their motion.
16 So do we need an evidentiary hearing? If we can't
17 get ratification out of the case, Your Honor, we don't need
18 one. But I know even, by the way, even it was an honest
19 mistake and somehow the left hand didn't know what the right
20 hand was doing, the lawyers weren't listening to me, what I
21 said at the depositions, can you please produce those minutes.
22 I've still been hamstrung. Three of the five ratifiers made a
23 decision at a meeting that I didn't even know happened.
24 THE COURT: Me, either.
25 MR. KRUM: So --

1 THE COURT: And it was a week before trial -- two
2 weeks before trial.
3 MR. KRUM: Well, as it turned out, Your Honor, the
4 chronology of the directors was that the three, Gould,
5 Codding, and McEachern as members of the special independent
6 committee, we now know had a meeting on December 21st of that
7 committee.
8 THE COURT: I know that from the brief. Thank you.
9 All right. Guys, somebody want to say anything?
10 First, how do you accidently delete your entire in
11 box, and why on earth wasn't anyone informed about this
12 meeting when Mr. Ferrario came in and said, hey, Judge, I win?
13 He said that the first day when we getting ready to pick the
14 jury.
15 MR. FERRARIO: We should have won. And we should
16 win again. And this is a farce. And we'll explain why.
17 MS. BANNETT: Your Honor, I can't address that. I'm
18 going to leave that to Mr. Ferrario, because we weren't even
19 present for that -- or at least I wasn't present. So I don't
20 know what happened in terms of any representations on that
21 date.
22 But I can address Mr. Gould. And I want to start
23 with Your Honor's question about how do you delete an in box.
24 THE COURT: No. How do you accidently delete an in
25 box.

1 MS. BANNETT: Accidently delete an in box.
2 THE COURT: An entire in box. But not your out --
3 but not your out box.
4 MS. BANNETT: Right. My client is not of a
5 generation that is super accustomed to dealing with email,
6 although he does use it in the course of his job. His in box
7 generally consists of not very many emails. He says maybe
8 about 10 or so emails were in his in box in total when he
9 accidently deleted it. So he regularly moves things out and
10 files things. He had about 10 emails. He thinks about three
11 of them were Reading related at that time. Beyond that he
12 doesn't know.
13 THE COURT: He knows how to move them -- he knows
14 how to move them into subfolders; right?
15 MS. BANNETT: He does, yes.
16 THE COURT: Okay. All right. So that's a little
17 more adeptness with email than a lot of other people of that
18 generation, and "of that generation" I'm going one generation
19 above me.
20 MS. BANNETT: Yes. At least one generation.
21 THE COURT: Mr. Morris is very adept at email, too,
22 and he's in that generation.
23 MS. BANNETT: I don't know whether he moves -- I
24 have to say I don't know whether he moves them directly or
25 sends them to his -- forwards them to his assistant to move.

1 THE COURT: But he knows how to do that. He knows
2 how to preserve his emails.
3 MS. BANNETT: He at least forwards his email. Yes.
4 And, like I said, this was not -- this was something that's
5 inadvertent. He doesn't know what he did. So other than
6 saying he went to delete one email and then he deleted the
7 rest, he doesn't actually know what he did.
8 And I don't know if you've ever misfiled an email
9 and not known where it's gone to, but I'm of a generation that
10 grew up using email, and I did that just two days ago when I
11 tried to forward an airline reservation to my assistant from
12 my phone, pressed some button to -- I have no idea where that
13 email is. Can't figure it out. I think that that's what
14 happens.
15 But I think that the important thing to remember is
16 that we're talking about what is likely three emails, maybe
17 four emails total that --
18 THE COURT: About this meeting that I didn't know
19 anything about right before our trial.
20 MS. BANNETT: No, I don't know that they were about
21 the December 21st meeting. They may -- they could be about
22 the December 27th meeting. Or I think it was the December
23 29th meeting, actually. The email setting the meeting went
24 out on December 27th.
25 So -- but we're talking about an extremely limited

1 number of emails in his in box. Everything that he sent
2 relating to the topic of ratification was sent to either a
3 party or --
4 THE COURT: No. Those would be things in his out
5 box. See, when you send them they're in your out box. Your
6 in box are things you receive from other people.
7 MS. BANNETT: Yes. Everything that was either sent
8 or received relating to ratification came from or was copied
9 to a party in the case and so should have been produced or can
10 be pursued from a party. This isn't a case where this was the
11 only copy of the email in existence or that it was purely
12 internal communications with someone else at his firm. That's
13 not the kind of communications that were talking about here.
14 THE COURT: Okay. Anything else you want to tell
15 me?
16 MS. BANNETT: I think that the last point that I
17 want to make is that I think that Mr. Krum has a very clear
18 picture of what happened through the document discovery that
19 he's conducted from my client and from the other directors and
20 from the company and also from the depositions that he took
21 where he asked whatever questions he wanted to ask. And he
22 has a clear picture of what happened, when it happened, and
23 the reasons that the directors voted for ratification. And
24 it's not clear what additional information he's seeking at
25 this point.

1 THE COURT: Okay.
2 MS. BANNETT: Do you have any further questions?
3 THE COURT: Not really.
4 Mr. Ferrario.
5 MR. FERRARIO: What do you want to talk about?
6 THE COURT: How come it takes so long to produce the
7 minutes that you told me the day you came in and said, hey,
8 Judge, it's all over, we win?
9 MR. FERRARIO: We have two separate committees,
10 Judge. And you know what -- and Mr. Krum -- this is a farce.
11 You want to what else you didn't know about going to trial?
12 THE COURT: What else don't I know about?
13 MR. FERRARIO: You want to know what else? They
14 didn't pay their experts. I've got collection agents up --
15 bugging one of my client's subsidiary's employees because they
16 didn't pay their experts before trial. We're going to have to
17 get into that little bit.
18 THE COURT: That's not fun.
19 MR. FERRARIO: Oh, that's not fun, is it, when we
20 all of a sudden had to continue the trial. Just learned --
21 but let's just -- let's put this back in perspective. The
22 issue --
23 THE COURT: So are you saying Mr. Cotter really
24 wasn't sick?
25 MR. FERRARIO: I don't know if Mr. Cotter was sick.

1 THE COURT: Because that would be bad if he wasn't
2 really sick and I dismissed the jury based on an illness.
3 MR. FERRARIO: I don't know, okay. We were
4 suspicious, but Your Honor took their affidavit at face value,
5 that's it.
6 THE COURT: I had an affidavit from a doctor.
7 MR. FERRARIO: The next thing I know I've got a lot
8 of weird stuff going on about not paying their experts, okay.
9 So we could throw that out there.
10 But let's just get to this issue, because there's a
11 special litigation committee. I have the minutes right here
12 that Mr. Bonner -- I'm prepared to show these to Your Honor
13 and you can see what we talked about at the committee.
14 THE COURT: If you want to submit them in an in-
15 camera submission --
16 MR. FERRARIO: Absolutely.
17 THE COURT: -- that would be part of my record, I
18 will. I'm not looking at it on your tablet, Mr. Ferrario.
19 MR. FERRARIO: Okay. Well, I would have had that,
20 but I --
21 THE COURT: You've been through this before with
22 other cases.
23 MR. FERRARIO: I have. I had kid duty this morning
24 and I took the wrong car. My pleadings are in another car.
25 THE COURT: I left my phone at home and had to go

1 back home.
2 MR. FERRARIO: All right. I didn't want to go back
3 home and be late. But that's neither here nor there.
4 So here's the issue. There's a special litigation
5 committee, okay, that considers all sorts of things having to
6 do with this case, an arbitration matter, and other related
7 matters, okay. That's the committee we're talking about.
8 That committee cannot bind the company. That committee cannot
9 ratify. The board ratifies, okay. The ratification took
10 place at the board meeting. Mr. Krum has set out in his
11 pleadings a rather detailed history of what occurred here,
12 okay. He knows exactly what occurred here. He knows the that
13 issue came up in a form at the special litigation committee
14 meeting. He knows when the ratification meeting took place.
15 He knows what materials were considered at that meeting. He
16 has deposed all these people. He has seen the documents.
17 And the other thing when he talks about process that
18 is just glaringly omitted from his pleadings is every one of
19 these people that are on the board were once sued by Mr. Krum
20 and his client. Every one of these people lived the case.
21 Every one of these people were deposed. Every one of these
22 people knows what happened, knows the chronology, knows the
23 facts, knows all of that, okay. So all this is at this point
24 is an attempt by Mr. Krum to deprive my client and the board
25 members of an opportunity that they have available under the

1 Nevada statute, to ratify an action even if --
2 THE COURT: The week before trial.
3 MR. FERRARIO: But, Your Honor, you and I talked --
4 THE COURT: I'm just sayin'.
5 MR. FERRARIO: We talked about that. That -- this
6 was all occasioned as a result of your ruling.
7 THE COURT: Which means I may never grant summary
8 judgment to anyone again ever.
9 MR. FERRARIO: Well, I don't think that's the case.
10 I think -- you know, if Your Honor makes a ruling, it
11 obviously impacts trial. It impacts all sorts of things.
12 THE COURT: This was a new one on me, though, Mr.
13 Ferrario. I've done a lot of trials in my career, and this
14 one was new. Very creative, but new.
15 MR. FERRARIO: But, Your Honor --
16 THE COURT: I'm not saying it's wrong, because I
17 haven't heard the evidence yet.
18 MR. FERRARIO: That's all I wanted to hear is you
19 not saying it's wrong.
20 THE COURT: How on earth -- so is the secret minutes
21 of the December 21 --
22 MR. FERRARIO: They're not secret.
23 THE COURT: Wait. They're redacted.
24 MR. FERRARIO: They're right here.
25 THE COURT: I can't look at your tablet. Are the

1 redacted minutes of the December 21, 2017, special independent
2 committee meeting solely about this case?
3 MR. FERRARIO: Let me read them.
4 No. There's -- and I have to be clear. Without a
5 waiver, there's a discussion in here about possible
6 resolution, but it involves more than this case.
7 THE COURT: So the probate case, the one in
8 California?
9 MR. FERRARIO: It's more than that, Your Honor.
10 There's all sorts of prongs to this, okay.
11 THE COURT: Okay. Well, but that's really all about
12 this case for discovery purposes.
13 MR. FERRARIO: No.
14 THE COURT: When you guys asked me to take time off
15 so you can go to California to try and settle this case and
16 you're unsuccessful I know that they're related.
17 MR. FERRARIO: There were a lot of actions and there
18 were discussions about let's call it a global settlement --
19 THE COURT: Okay.
20 MR. FERRARIO: -- an omnibus settlement.
21 THE COURT: So -- that's fine. So one of the
22 requests is that I review those documents in camera. I am
23 happy to review them in camera, but you have to submit them to
24 me camera so I can then make a review.
25 MR. FERRARIO: I will.

1 THE COURT: I am inclined to set an evidentiary
2 hearing related to the delay in the production of those
3 minutes. Whether that hearing is one at which we will take
4 witness testimony or not is one that I won't know until I see
5 the minutes to see what they talk about. Since I've never
6 seen them, I'm in a bit of a quandary.
7 I am declining to order Gould, Codding, and
8 McEachern to appear for further deposition, but reserve the
9 right to have them physically appear for the evidentiary
10 hearing.
11 MR. FERRARIO: That's fine, Your Honor. There's
12 no --
13 THE COURT: Okay. So when do you want to do it?
14 MR. FERRARIO: There's no mystery here.
15 THE COURT: When do you want to do it?
16 MR. FERRARIO: I'll do it tomorrow. I'll do it --
17 THE COURT: Okay.
18 MR. FERRARIO: -- this afternoon. I could care
19 less.
20 THE COURT: All righty. What time do you want to
21 start?
22 Ms. Brown, how long are we going to be with your
23 settlement conference today?
24 MS. BROWN: Hopefully all day, Your Honor.
25 THE COURT: So we can't do it today.

1 MR. FERRARIO: Do you want me to bring Mr. Bonner
2 over? Do you want to talk to Mike?
3 THE COURT: You want to do it later in the week?
4 MR. FERRARIO: No. If he's here, I'll bring him
5 over this afternoon.
6 THE COURT: No. I'm doing a settlement conference
7 this afternoon.
8 MR. FERRARIO: Oh. Give us a date. But let's get
9 this done, because it's much ado about nothing. And all this
10 is they want to avoid what the Nevada statute mandates this
11 Court to do. And this is a half-baked attempt to create a
12 discovery dispute where none exists.
13 THE COURT: And it may be that none exists.
14 MR. FERRARIO: That's all this is.
15 THE COURT: But the fact that I never heard about
16 this special committee meeting prior to this motion practice
17 is of concern to me.
18 MR. FERRARIO: Why? It was a special litigation
19 committee that considers all sorts of things, as you will see
20 when I give you the minutes.
21 THE COURT: Okay.
22 MR. KRUM: Well, Your Honor, I don't know how he --
23 THE COURT: So I'm scheduling an evidentiary
24 hearing.
25 MR. KRUM: Yes. I'm sorry, Your Honor.

1 THE COURT: So I have a case called Nuveda that has
2 an evidentiary hearing Wednesday, Thursday, and Friday, but
3 the following week I have time.
4 MR. KRUM: Next week, Your Honor.
5 THE COURT: Next week?
6 MR. FERRARIO: Oh. We can't do it this week?
7 THE COURT: I could, but I have another evidentiary
8 hearing on enforcement of a settlement on Wednesday, Thursday,
9 and Friday.
10 MR. FERRARIO: All right. What days next week, Your
11 Honor?
12 THE COURT: I think any day.
13 Right, Dulce? Except Tuesday afternoon when I have
14 to do my Mental Health Court duty.
15 MR. FERRARIO: We'll only need I would say an hour
16 or so.
17 THE COURT: Huh-uh. Never happen.
18 MR. FERRARIO: Two hours?
19 MR. KRUM: My suggestion is Wednesday, Your Honor.
20 THE COURT: In the afternoon.
21 MR. FERRARIO: Wednesday of the 9th?
22 THE COURT: Everybody okay on Wednesday, the 9th?
23 Starting at what time?
24 MR. FERRARIO: Your Honor, that day is horrible.
25 THE COURT: Okay. Thought you said you wanted to do

1 this.
2 MR. FERRARIO: I did. I wanted to do it today.
3 THE COURT: Well, I can't. I'm doing a settlement
4 conference that's apparently all day.
5 MR. FERRARIO: Can we do Tuesday?
6 THE COURT: In the morning.
7 MR. FERRARIO: Tuesday in the morning. That'll
8 work.
9 MR. KRUM: Your Honor, Tuesday's fine. I'd like to
10 start and finish, because I'm travelling in for that.
11 THE COURT: I have to take a break to do my Mental
12 Health Court duties. They don't always take a long time; it
13 depends on how many people need to be terminated from Mental
14 Health Court.
15 THE CLERK: Mental Health is dark.
16 THE COURT: Mental Health is dark that day.
17 Apparently I have all day on May 8th for you.
18 MR. KRUM: Well, then we'll take May 8th. But, Your
19 Honor, if you would, please. I don't understand who you have
20 -- who you expect to have testify and that sort of thing.
21 THE COURT: Well, if somebody thinks it would be
22 important for me to hear from Gould, Codding, and McEachern
23 about why the minutes weren't produced in a timely fashion --
24 I'm not sure they're really the people who answer those
25 questions -- then they will need to come. I'm not going to

let you take their deposition again. I assume that Mr. Bonner will be here to explain to me what the hell happened.

MR. KRUM: Mr. Bonner and Mr. Ferrario were both at the December 11 meeting, I believe.

THE COURT: Well, and Mr. Ferrario's going to be here. I'm not sure I'm going to make him testify to explain what happened, but he's going to be here to argue why he did it as fast as humanly possible.

MR. FERRARIO: I don't prepare minutes.

THE COURT: I'm aware of that. I don't know that you even prepare orders.

MR. FERRARIO: I have done that.

THE COURT: Have you done that in your history?

So I am going to reserve ruling -- or I'm going to continue all of the motions that are on today to May 8th, and I will see you starting at -- how about 9:00? Can we do 9:00 o'clock?

MR. KRUM: Yes.

MR. FERRARIO: That'll work.

MR. KRUM: Thank you.

MR. FERRARIO: Thank you, Your Honor.

THE COURT: We won't know what courtroom we'll be in until I see you.

MR. FERRARIO: And I'll submit the email prior to the hearing; right?

1 THE COURT: It comes in a sealed envelope --
2 MR. FERRARIO: Yeah.
3 THE COURT: -- and it needs to be marked "For In-
4 Camera Submission." The face sheet of what you're giving me
5 needs to be served on all parties, and then I will look at it.
6 MR. FERRARIO: Okay.
7 THE PROCEEDINGS CONCLUDED AT 9:30 A.M.
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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

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4/30/18

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CLERK OF THE COURT

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.	.	
	.	**Transcript of**
Defendants	.	**Proceedings**
. . . . .		

BEFORE THE HONORABLE ELIZABETH GONZALEZ, DISTRICT COURT JUDGE

EVIDENTIARY HEARING

WEDNESDAY, MAY 2, 2018

COURT RECORDER:

JILL HAWKINS
District Court

TRANSCRIPTION BY:

FLORENCE HOYT
Las Vegas, Nevada 89146

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

APPEARANCES:

FOR THE PLAINTIFF:	MARK G. KRUM, ESQ. STEVE L. MORRIS, ESQ. AKKE LEVIN, ESQ.
FOR THE DEFENDANTS:	SHOSHANA E. BANNETT, ESQ. MARSHALL SEARCY, ESQ. KEVIN M. JOHNSON, ESQ. MARK E. FERRARIO, ESQ. KARA B. HENDRICKS, ESQ.

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

(Court was called to order)

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

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

THE COURT: Do you have the exhibits?

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

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

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

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

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

THE COURT: You've got it covered?

MR. SEARCY: I've got it covered.

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

MR. FERRARIO: And, Your Honor --

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

MR. SEARCY: I tried to tell him that.

1 MR. FERRARIO: This will come up, and I'll let Ms.
2 Bannett speak to this further, but following your questioning
3 and some of the surprise you expressed on --
4 THE COURT: About which subject?
5 MR. FERRARIO: Monday about --
6 THE COURT: Deleting in boxes?
7 MR. FERRARIO: -- deleting an in box and not being
8 able to retrieve it. Renewed efforts were undertaken, perhaps
9 more pointed questions asked, and Mr. Gould was able to
10 retrieve some material. And --
11 THE COURT: Amazing.
12 MR. FERRARIO: -- Ms. Bannett will get to -- look,
13 it happens. And you will see Mr. Gould is of that generation
14 that's older than you and I, and -- at any rate, what we --
15 we've been going through it, and I feel comfortable in telling
16 the Court based on what I've seen now, and I don't think
17 anything will surprise us, all the material that we recovered
18 was produced by either the company or it's on a company
19 privilege log or by one of the other parties. I don't think
20 there's anything new that was retrieved. But we were able to
21 retrieve it, okay. I wasn't, but Ms. Bannett was. And I'll
22 let her speak to that, Your Honor.
23 THE COURT: Okay. Ms. Levin.
24 MS. LEVIN: Yeah. We just want to raise our
25 objection on this. We received an email from Ms. Bannett at

1 11:18, late morning, about further production. The documents
2 that we received were ones already produced. But, more
3 importantly, we were told that they were going to provide us
4 with a supplemental privilege log but not today, not until
5 after the hearing. And our problem is that we won't be able
6 to test Mr. Gould's testimony as against those privilege log
7 entries that we haven't seen. So we are taking the position
8 that this -- we don't believe we can make a determination
9 today as to what he will testify to, because we haven't had an
10 opportunity to see those privilege log entries. And we would
11 say that, you know, we would reserve the right to depose him
12 further on those entries.
13 THE COURT: Well, that's something you've asked for
14 in your motion, and I haven't made a determination on what
15 relief I'm going to give you in your motion yet other than
16 scheduling this evidentiary hearing.
17 MR. FERRARIO: Your Honor, we are in no way, shape,
18 or form trying to impede, you know, a full examination of Mr.
19 Gould. This happened. We responded as quickly as we could.
20 He stayed up till 3:00 in the morning get all this together.
21 I think -- we haven't gone through all of the privileged
22 documents and all the privilege logs, but I suspect that most
23 everything will have been on the company privilege log. There
24 may be one or two additional documents. I can tell the Court
25 from my brief review of these materials -- and I think Ms.

1 Levin indicated that most of them have already been -- I think
2 all of them have been produced -- a lot of them are like
3 calendar entry things that you get that says, we're going to
4 have a meeting or a call at some point in time, those kind of
5 things. Now, that probably won't appear on a privilege log,
6 but there's some other stuff.
7 But the bottom line is what we suspected. There
8 will be no prejudice. But, again, if the Court determines
9 that Mr. Gould needs to be redeposed, then, you know, we
10 understand that. The other thing I would point out is they
11 haven't challenged any of the privilege logs to this point, so
12 I don't know that that's really much of an issue. And Your
13 Honor looked at the meeting minutes this morning and
14 determined that was a proper --
15 THE COURT: Two pages of documents. I sustained the
16 redactions.
17 MR. FERRARIO: Exactly. So with that, I'll let Ms.
18 Bannett go, and we'll call Mr. Gould.
19 THE COURT: Ms. Levin, did you have anything else
20 you wanted to add before I go to the witness?
21 MS. LEVIN: I just wanted to raise one point, is
22 that the -- it still doesn't resolve the issue that some of
23 these emails that Mr. Gould disclosed on his first
24 supplemental privilege log were not logged by GT on its RDI
25 log. So we still haven't resolved that issue.

1 And so we want to preserve all rights, because it
2 seems that the story also with respect to what was able to be
3 retrieved keeps changing, and we just want to make sure that
4 we get all the documents --
5 THE COURT: You got that.
6 MS. LEVIN: Okay.
7 THE COURT: If you couldn't find documents on Monday
8 because they were so unavailable and then I expressed
9 disbelief and they amazingly appear, that is suspicious.
10 MR. KRUM: One other thing, Your Honor, just to be
11 -- to correct the record. We did challenge the adequacy of
12 the privilege logs, both the original and the supplemental log
13 provided by Mr. Gould.
14 THE COURT: Okay. Ms. Hendricks.
15 MS. HENDRICKS: I wanted to address the issue that
16 Ms. Levin raised regarding GT's log and the log that Mr. Gould
17 produced last week. We did cross-reference it. There's
18 really two reasons that there are some discrepancies, one
19 being for RDI's privilege log if things were nonresponsive to
20 the requests propounded on RDI, those emails are not on our
21 privilege log. And some of those -- the communication that
22 Mr. Gould identified was not on there because it wasn't
23 relevant to the [inaudible] RDI's privilege.
24 The second issue is everything appeared to be on
25 email chains, except maybe one or two documents that had

1 already been produced. So the email chain where the
2 communication started between the parties is on RDI's
3 privilege log. When Mr. Krum asked us to de-dupe the
4 privilege log about 150 entries were removed. And I believe
5 some of that got caught up when that happened. But the email
6 chain itself has been identified previously.
7 THE COURT: Okay. Are we ready to go to the
8 witness?
9 MS. BANNETT: It depends however Your Honor wants to
10 do it. I would like at some point to explain what we did to
11 get the documents --
12 THE COURT: Miraculously the documents are no longer
13 lost between Monday and Wednesday?
14 MS. BANNETT: Yes. And Mr. Gould will address to
15 the extent that he can. But obviously I also had a role. So
16 I don't know if you want me to talk about my role to start.
17 THE COURT: Why would I want to ask you that now
18 when I have a witness who's waiting for us to ask questions?
19 MS. BANNETT: Then, Your Honor --
20 THE COURT: Let me go back to my question. Do you
21 have exhibits? Where are they?
22 MR. FERRARIO: Yes. We've given them to Dulce.
23 THE COURT: I'm looking for the ones that Mr. Gould
24 has.
25 MS. BANNETT: I believe he has them -- I believe he

1 has them all.
2 THE COURT: What did you send him?
3 MR. FERRARIO: What you have in your hand --
4 THE COURT: Who sent him the documents?
5 Ms. Hendricks, what did you send him?
6 MS. HENDRICKS: [Inaudible].
7 MR. FERRARIO: What do you mean? Don't trust me?
8 THE COURT: No.
9 MS. HENDRICKS: Sent him the notes. You've got --
10 the two sets you have in front of you are what were sent to
11 Mr. Gould. So we forwarded it to the Court, and then
12 forwarded it to --
13 THE COURT: So I have two sets of documents, one
14 called Plaintiff's Proposed Exhibits for Evidentiary Hearing,
15 which appear to have -- are they sequential Bates numbers, Mr.
16 Krum?
17 MR. KRUM: No.
18 THE COURT: No, they're not sequential. So those
19 would be P-1 through P-5. And then I have those that are
20 Defendants' Proposed Exhibits for Evidentiary Hearing, and
21 these are A through D, and they appear to be sequentially
22 numbered.
23 MS. HENDRICKS: Correct, Your Honor. The only thing
24 I would bring to your attention is they were not marked with
25 exhibit numbers before they were sent to Mr. Gould, so --

1 THE COURT: And that's why I said Bates numbers.
2 MS. HENDRICKS: We do have somebody with Mr. Gould
3 that is going to help him find the right documents and get the
4 exhibits in front of him, so they'll --
5 MR. FERRARIO: And, Your Honor, you will see I've
6 got, for example, Mr. Bonner's declaration which is already
7 part of the record. But having been in front of you on other
8 hearings like this, you I think want us to reintroduce it
9 here. So that's what we're --
10 THE COURT: I want you to introduce it here, because
11 it's not introduced when it's filed with a brief.
12 MR. FERRARIO: Thank you.
13 THE COURT: Okay. Did you want to ask Mr. Gould
14 some questions?
15 MS. BANNETT: I do.
16 THE COURT: How do I get Mr. Gould on the camera,
17 Jill?
18 MR. KRUM: There he is.
19 THE COURT: Mr. Gould, how are you?
20 MR. GOULD: I'm fine, thank you.
21 THE COURT: Can you hear me okay?
22 MR. GOULD: Yes, I can.
23 THE COURT: The lawyers have microphones in front of
24 them, but sometimes you won't be able to hear them. I'm going
25 to ask them to stand near a microphone and keep their voice

1 up. Our cameras do automatically go to folks when they speak,
2 so if someone makes an objection, please remember I need you
3 to pause for a minute before you answer so I can rule on their
4 objection. Okay? Is that okay, sir? Sir, can you hear me?
5 MR. GOULD: Oh. You were talking to me? I --
6 THE COURT: Yes.
7 MR. GOULD: Oh. Yes, that's fine.
8 THE COURT: Okay. Can you raise your right hand so
9 I can swear you in, please. Sir, are you agreeing to be sworn
10 by my clerk over the video line?
11 MR. GOULD: Yes.
12 THE COURT: Okay.
13 WILLIAM GOULD, A DEFENDANT HEREIN, SWORN
14 THE CLERK: Thank you. Please state and spell your
15 name for the record.
16 THE WITNESS: My name is William Gould, G-O-U-L-D.
17 THE COURT: You may proceed, Counsel. Please
18 remember to keep your voice up.
19 MS. BANNETT: Thank you for the reminder, Your
20 Honor.
21 DIRECT EXAMINATION
22 BY MS. BANNETT:
23 Q Mr. Gould, good afternoon.
24 A Good afternoon to you.
25 Q Did you receive a subpoena duces tecum from the

1 plaintiff in January of this year?
2 A Yes, I did.
3 Q And what did you do to collect documents when you
4 received the subpoena?
5 A I asked my secretary to collect all the documents
6 that were responsive to the subpoena.
7 Q And were you able to collect at that time all of the
8 documents that you sent or received relating to ratification?
9 MR. KRUM: Objection. Foundation.
10 THE COURT: Overruled. You can answer.
11 THE WITNESS: Okay. Well, I was concerned about one
12 thing, and that is about a few months ago I was trying to mess
13 around with my computer and delete a few things, and I must
14 have pressed a button that completely eliminated my in box.
15 And I tried to get it back. I couldn't do it. And then I
16 asked my secretary, who's more well versed in these kinds of
17 things than I am, to help me, and she couldn't do it.
18 So I called in the IT Department. They came in,
19 they fiddled with my computer for about 20 minutes, and
20 finally they said, no, you can't get those back, we cannot get
21 you those emails back.
22 So I think there may have been some -- probably were
23 some Reading emails on that in box.
24 BY MS. BANNETT:
25 Q Mr. Gould, how did you accidently delete your in

box?

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

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

A Yes, I do.

Q And what did you do after that phone call?

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

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

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

MS. BANNETT: No further questions at this time.

THE COURT: Mr. Krum, cross-examination?

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//

1 CROSS-EXAMINATION
2 BY MR. KRUM:
3 Q Good afternoon, Mr. Gould.
4 A Good afternoon, you.
5 Q When did you lose your emails, meaning when did you
6 delete your in box?
7 A You know, I don't -- I don't actually remember the
8 exact time, but I think it was -- must have been, oh, maybe
9 two or three months ago.
10 Q Is there some means by which you could determine the
11 exact time?
12 A I don't know. I'll ask if there's a way -- probably
13 there would be. I don't know.
14 Q Was it also in the same time range, two or three
15 months ago, that your IT Department first told you that the
16 emails could not be retrieved?
17 A Yes, it was.
18 Q Is there any reason a person from your IT Department
19 could not testify in this proceeding?
20 A No. They're standing by, ready to testify if you
21 would like to hear them.
22 Q Do you have any documents that reflect your request
23 to them and their efforts to retrieve your emails?
24 A No. This was all done orally. I mean, we had this
25 conversation and, you know, I grilled them, and they said they

1 just couldn't do it. And I'm not -- I don't know enough about
2 technology and modern developments, but I take them at their
3 word.
4 Q Do you recall that the subpoena directed to you was
5 served on or about January 12, 2018?
6 A Yes.
7 Q Were your emails -- was your in box deleted before
8 or after that?
9 A After that, I would think. My recollection, after
10 that.
11 Q When did you first communicate with your secretary
12 about retrieving documents responsive to that subpoena?
13 A Shortly after I discovered that my email for that
14 particular day had gone away I call to tell her that, because
15 I knew that there might be some Reading emails on there and
16 that she should know that.
17 Q So your testimony, Mr. Gould, is that you had asked
18 her to retrieve documents responsive to the subpoena you
19 received on or about January 12 prior to when you deleted your
20 in box?
21 A I'm not sure about the sequence of timing, but I'm
22 -- I really don't know. I'm not sure about that.
23 Q Do you know when she began looking for documents
24 responsive to that subpoena?
25 A When you say she you mean my secretary?

1 Q Well, that's who did it; right?
2 A Right. I just wanted to make sure that's what you
3 were referring to.
4 Q Yes.
5 A Would you repeat that question.
6 Q Of course. When did your secretary begin looking
7 for documents responsive to the subpoena you received on or
8 about January 12th?
9 A I believe it was shortly after I received the
10 subpoena.
11 Q So your best understanding is that she began the
12 search for documents responsive to that subpoena before you
13 deleted your in box?
14 A Not sure.
15 Q Do you have any understanding, Mr. Gould, as to why
16 it was nobody searched your sent email box prior to the
17 hearing in this case?
18 A Yes, I do.
19 Q What happened?
20 A What happened was the question posed to the IT
21 people was, can you recover those emails. And they focused on
22 that particular thing and they said, no, we can't recover
23 them. Later it turned out that they could recover both my in
24 box and my outgoing emails, and at that point what had
25 happened was just a misunderstanding on the scope of what they

1 were looking at.
2 Q Is it your testimony that the misunderstanding was
3 on the part of your secretary?
4 A Not necessarily. I would blame it more -- the
5 misunderstanding on both my secretary and I and the IT
6 Department. You know, we weren't asking them -- you know,
7 they knew we wanted these memos -- or these emails back, and,
8 in fairness, we just asked them, is there any way to retrieve
9 these emails. What happened here is it turns out there's
10 another way to retrieve them other than going back and trying
11 to get the actual deleted emails.
12 Q When did you first tell your lawyers at Bird Marella
13 about the deleted in box?
14 A It was not too long after the deletion occurred.
15 Q So you would put that in the two to three months ago
16 time frame?
17 A Yes. Or maybe -- yeah, that's about right.
18 Q At any point in time after you deleted your in box,
19 Mr. Gould, did you have any discussions about engaging an
20 outside IT person to do what your law firm IT Department had
21 initially told you could not be done, which is to recover
22 those deleted emails?
23 A No. We hadn't considered that.
24 MR. KRUM: I have no further questions, Your Honor.
25 THE COURT: Thank you.

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

1 DIRECT EXAMINATION
2 BY MR. FERRARIO:
3 Q Mr. Bonner, you currently work at Greenberg Traurig;
4 correct?
5 A Yes.
6 Q And is a company called Reading International a
7 client?
8 A Yes. It's a client of our firm.
9 Q Okay. And are you the principal contact for that
10 client?
11 A Yes.
12 Q Okay. And in your capacity as a lawyer for that
13 client do you get involved with something called the special
14 independent committee of the board of directors of Reading
15 International, Inc.?
16 A Yes.
17 Q Okay. Can you tell the Court a little bit about
18 that committee, how it came into existence and what its
19 purpose is.
20 A Yes. Board of directors of Reading formed the
21 special independent committee in August of 2017. It was
22 formed to consist of independent directors only to allow an
23 independent committee separate from the Cotter directors to
24 overview, oversee, and take a supervisory position, if you
25 will, with respect to the various litigation involving the

1 Cotter's, including the derivative litigation, the James
2 Cotter, Jr., employment litigation, the Trust, the Cotter
3 Family Trust litigation in California, and related similar
4 matters.
5 THE COURT: And the probate case here in Nevada.
6 THE WITNESS: Yes, Your Honor.
7 MR. FERRARIO: That's true.
8 BY MR. FERRARIO:
9 Q And who are the members of that committee?
10 A Member of the committee are William Gould, who's the
11 chairman; Judy Codding; and Douglas McEachern.
12 MR. FERRARIO: Your Honor, I'd like to show the
13 witness Exhibit B. May I approach?
14 THE COURT: Yes.
15 Sir, this is not our usual organized set of binders.
16 Mr. Ferrario's hopefully going to get you to the right
17 document. I think it's your declaration.
18 MR. FERRARIO: We're going to pass the dec. We're
19 going to go back to [inaudible].
20 THE COURT: All right. So we're going to do
21 minutes. The redacted version?
22 MR. FERRARIO: We're going to go to the charter.
23 THE COURT: The charter.
24 BY MR. FERRARIO:
25 Q Do you recognize what I've put in front of you as

1 Exhibit B?
2 A Yes.
3 Q And what is that?
4 A It's a copy of the charter of the special
5 independent committee of the board of directors of Reading
6 International, Inc.
7 MR. KRUM: I apologize for interrupting. We don't
8 have that set.
9 MS. HENDRICKS: Here you go.
10 THE COURT: You do now.
11 Thank you, Ms. Hendricks.
12 MR. KRUM: Thank you, Ms. Hendricks.
13 THE COURT: And at the time they offer it if you
14 have an objection, let me know. I'm going to let him try and
15 lay some foundation first.
16 BY MR. FERRARIO:
17 Q All right. And this charter sets forth the purpose
18 and duties of the committee; correct?
19 A Yes.
20 Q Okay. And were you involved in preparing this
21 charter?
22 A Yes.
23 MR. FERRARIO: Your Honor, I would offer Exhibit B
24 into evidence.
25 THE COURT: Any objection to B, the charter?

1 MR. KRUM: No objection, Your Honor. We still have
2 an issue, though. Excuse me.
3 (Pause in the proceedings)
4 THE COURT: So the charter will be admitted, but
5 we're in the process of making sure that Mr. Krum has a copy
6 of A through D.
7 Hold on, sir.
8 MS. HENDRICKS: They were all sent via email. I
9 apologize, Your Honor.
10 THE COURT: Even my copy?
11 Are you okay now, Mr. Krum?
12 MR. KRUM: We are.
13 THE COURT: Okay.
14 MR. KRUM: Thank you.
15 THE COURT: B has been admitted.
16 (Defendants' Exhibit B admitted)
17 BY MR. FERRARIO:
18 Q Okay. Mr. Bonner, now, you've explained to the
19 Court the purposes of the committee. How are meetings called,
20 and how does the committee generally operate?
21 A The meeting -- I'm sorry. The committee thus far
22 since its formation in August has basically started out in a
23 somewhat planning mode for the first several meetings. As the
24 months have gone by the committee has scheduled meetings for
25 updates relative principally to the status of the derivative

1 case as it proceeded toward trial, and also some events that
2 were occurring with respect to the Trust case. And so
3 typically the chairman of the committee, Mr. Gould, will call
4 a meeting of the committee. They're almost always held by
5 telephone, and they're typically done in that fashion.
6 Q And are you the person that is charged with
7 preparing minutes regarding committee meetings?
8 A Yes.
9 Q Okay. And what is your typical practice in regard
10 to preparing minutes?
11 A I participate in the meeting, I'm in the room or on
12 the telephone, as the case may be, I have a legal tablet, and
13 I write down summaries to myself in my own handwriting and I
14 -- you know, they're done contemporaneously. And at some
15 point I will transfer those typically by dictation. I dictate
16 often -- when I get to actually turn them into a document I
17 typically dictate those through our firm's dictation system
18 and oftentimes through our document center, which is located
19 in another state, and they're returned to me.
20 Q There's been an issue raised in -- that brings us
21 here today regarding kind of the timeliness of the preparation
22 of minutes. Is it your practice to prepare minutes, you know,
23 a day after the meeting, a week after the meeting? Or what is
24 your practice I guess would be a better way to ask the
25 question.

1 A All of the above. I mean, if I have the time, I
2 would prefer to do it sooner. But it's not uncommon due tot
3 press of business I may do them weeks later at times. It
4 would also depend on if the meeting -- if there's any
5 important action taken in the meeting where the existence of
6 the minutes may have some import.
7 Q Okay. And once you prepare the minutes what do you
8 typically do with them?
9 A In the case of the special independent committee my
10 practice was to prepare them and then send them to Chair Gould
11 for his review. And then ultimately we sent them on to the
12 other members for their review.
13 Q If you'll look at the packet in front of you and
14 turn to Exhibit A, which is the declaration. Go the other
15 way. There you go. Take a look at that for a minute? You
16 recognize that document?
17 A Yes.
18 Q Okay. And does that declaration set forth what
19 occurred with regard to the preparation of minutes for the
20 meetings that are reflected on page 2 of the declaration?
21 A Yes.
22 Q And as you said in the declaration, you essentially
23 prepared minutes for all of these meetings, starting with the
24 meeting in November, on November 28, 2017, sometime in late
25 January 2018?

1 A Yes.
2 Q Okay. And as you said in your declaration, the only
3 reason that it took so long -- if you want to say it that way
4 -- to prepare these minutes was because you were busy doing
5 other things?
6 A Yes.
7 Q I know you can't tell the Court -- or can't tell the
8 parties here what companies were involved in a transaction,
9 but were you involved in a rather time-pressing transaction
10 through the month of January?
11 A Yes. We were retained just before Christmas on a
12 significant transaction in which I was lead merger counsel.
13 It had a very short fuse, and so I was very busy in that
14 particular transaction from just before Christmas into January
15 and beyond. As a postscript, that deal was cancelled, so much
16 of the work was for naught, but it took up a lot of time.
17 In addition, I'm co-managing shareholder of the Las
18 Vegas office. We have significant duties with respect to
19 year-end collections, and that took up much of the time toward
20 the end of the year, amongst other demands on my time.
21 MR. FERRARIO: Nothing further, Your Honor.
22 THE COURT: Cross-examination.
23 CROSS-EXAMINATION
24 BY MR. KRUM:
25 Q Good afternoon, Mr. Bonner.

1 A Good afternoon.
2 Q You attended an RDI board meeting on December 29,
3 2017; correct?
4 A Yes. By telephone, as I recall.
5 Q You prepared minutes for that meeting; correct?
6 A Yes.
7 MR. FERRARIO: Your Honor, I'm going to object.
8 This is beyond the scope of this hearing.
9 THE COURT: Overruled.
10 MR. FERRARIO: We're talking now about the board
11 meeting, not the special committee.
12 THE COURT: I know. The one I was told about, as
13 opposed to the one I wasn't told about. Remember we had this
14 discussion on Monday?
15 MR. FERRARIO: Well, you know why you weren't told.
16 THE COURT: No, I still don't know why I wasn't
17 told.
18 MR. FERRARIO: Yes, you do.
19 THE COURT: But okay.
20 MR. FERRARIO: You read the minutes.
21 THE COURT: I have now read the minutes.
22 Mr. Krum, you may continue.
23 MR. KRUM: Thank you, Your Honor.
24 BY MR. KRUM:
25 Q You prepared those minutes for the December 29 board

1 meeting within days of the meeting; correct?
2 A I participated in them. I would have to double
3 check and see if I was the sole preparer. But I did
4 participate in it.
5 Q Who else participated?
6 A I don't know. I'd need to check.
7 Q Those minutes were prepared on an expedited basis;
8 right?
9 A Yes.
10 Q For use in litigation; correct?
11 A No. They were prepared because an action was taken
12 by the board.
13 Q Well, they weren't approved -- in fact, they weren't
14 submitted to the board for approval until much later; correct?
15 A They were -- the minutes themselves were approved at
16 a subsequent meeting of the board.
17 Q So the only use to which those minutes were put
18 within a week or so of the meeting was to be an exhibit in a
19 motion filed in this case; correct?
20 A I don't know if that was the only use. They were
21 prepared in the normal course of business of maintaining
22 records of the company.
23 Q Is it your testimony, Mr. Bonner, that minutes of
24 RDI board meetings are ordinarily prepared within days of the
25 meetings?

1 A That's not my testimony. What I said is they were
2 -- minutes were maintained in the normal course of the
3 business of the company.
4 Q Directing your attention to the December 29 board
5 meeting, there were matters characterized as ratification that
6 were raised; correct?
7 A Yes.
8 Q And in your own terms, if you would, succinctly, if
9 you can, just describe what those matters were so that I can
10 use some of your words to refer to them.
11 A There was a matter put on the agenda of the board of
12 directors. The issue was with respect to the fact that due
13 to, as I understand it, recent rulings of this Court, certain
14 members of the board were dismissed. And these are my words,
15 not legal words, so you can correct me if I misstate this;
16 but, as a result, the conclusion was that there were a number
17 of directors who would be deemed independent for certain
18 purposes. As a result, a matter was put on the agenda to
19 determine whether it was appropriate to ratify certain actions
20 of the board pursuant to Nevada statute.
21 Q The actions in question were two different sets of
22 actions that were taken in 2015; right?
23 A I don't remember the exact dates, but, yes, they
24 were prior actions taken by the board.
25 MR. KRUM: Your Honor, may I approach?

1 THE COURT: You may.
2 Somebody's cell phone is too close to the
3 microphones.
4 MR. FERRARIO: What document are you looking at?
5 MS. LEVIN: P-1.
6 MR. FERRARIO: Okay.
7 MR. KRUM: Plaintiff's Exhibit 1, Counsel.
8 THE COURT: Dulce, do you have their stack? I'll
9 hand it to Mr. Bonner.
10 Mr. Bonner, here's their stack of exhibits. Counsel
11 says this is P-1.
12 BY MR. KRUM:
13 Q Mr. Bonner, do you recognize that document?
14 A What you handed me, or what the Judge handed me? I
15 just want to get to the right page.
16 Should I be referring, Your Honor, to the one handed
17 me, or the one Mr. Krum handed me?
18 THE COURT: If they're the same, it doesn't matter.
19 If they're not, then I need to know that.
20 THE WITNESS: It looks like they have the same
21 numbering at the bottom --
22 THE COURT: Okay.
23 THE WITNESS: -- this 918, the last three digits.
24 THE COURT: You can look at whichever is easier for
25 you.

1 THE WITNESS: Okay. Great.
2 BY MR. KRUM:
3 Q Mr. Bonner, do you recognize that document?
4 A Yes.
5 Q What is it?
6 A It's -- well, it's an email addressed to Ellen
7 Cotter from Marsha Weitsman, who I believe is William Gould's
8 secretary. And it is a letter addressed to Ms. Cotter, and
9 it's I guess typed signatures by Judy Codding, William Gould,
10 Edward Kane, Douglas McEachern, Michael Wrotniak.
11 Q Did you prepare this document?
12 A I question whether any of this privileged or work
13 product.
14 THE COURT: So I'm assuming not, since we're talking
15 about it now and it's in your hand in my evidentiary hearing.
16 So I'm assuming nobody's expressed a privilege related to it.
17 THE WITNESS: I don't know if I prepared it. I
18 definitely saw it and may have had input in it.
19 BY MR. KRUM:
20 Q Well, directing your attention in particular, Mr.
21 Bonner, to a paragraph numbered 1 and 2, did you prepare those
22 or were you a participant in the preparation of those two
23 paragraphs?
24 A I don't recall if I prepared them. I definitely
25 saw them. I may have participated in the preparation. I just

1 don't recall.
2 MR. FERRARIO: Your Honor, can I renew an objection.
3 This is beyond the scope of this hearing. The scope of this
4 hearing I thought was going to be whether Mr. Gould produced
5 documents and whether Mr. -- it had to do with the timeliness
6 of Mr. Bonner's minutes. If you want to get into a full
7 evidentiary hearing regarding --
8 THE COURT: Oh, no. No.
9 MR. FERRARIO: -- what happened on December 29th,
10 I'm more than comfortable doing that. But I think we should
11 have notice of that.
12 THE COURT: I don't know that we have -- y'all told
13 me we're going to do two hours, so I don't think you can do
14 all of that in two hours. But as there is a difference in the
15 handling of the minutes from the meeting I was told about and
16 the minutes of the meeting I didn't know about it, I think
17 it's relevant for that purpose. I have no idea what P-1 is,
18 because I'm not looking at it because it's not admitted. So I
19 can't give you any more information than that, Mr. Ferrario.
20 If there's something more specific you want to tell me, let me
21 know.
22 MR. FERRARIO: This has nothing to do with minutes.
23 This is going into the substance of the December 27th meeting.
24 And you know what --
25 THE COURT: December 27th, or December 29th?

1 MR. FERRARIO: December 29th. I'm sorry.
2 THE COURT: Okay. The meeting I knew about.
3 MR. FERRARIO: The meeting you knew about. Why
4 would you want to know about the other meeting? Do you want
5 me to -- you want to know about every meeting they have?
6 THE COURT: Only if it's --
7 MR. FERRARIO: Do you want to know about the ones
8 that happened in January when Mr. Bonner and I got undressed
9 for two hours by -- because the trial got continued and I had
10 to explain that to a group of people?
11 THE COURT: I wasn't real happy with it, either,
12 remember?
13 MR. FERRARIO: Yeah. I could tell you it wasn't
14 fun. That's why you've got two meetings in January.
15 THE COURT: Okay.
16 MR. FERRARIO: Having said that --
17 THE COURT: Let me ask Mr. Krum a question.
18 MR. FERRARIO: -- I have no -- okay. Go ahead.
19 THE COURT: Mr. Krum, why are we talking about this
20 now?
21 MR. KRUM: For the same reason, Your Honor, they
22 included information relating to this in their supplemental
23 opposition filed this morning. What happened and what I want
24 to walk through with Mr. Bonner because he was a participant
25 in all of it is that at the December 21 special independent

1 committee meeting the three members of that committee --
2 THE COURT: The December 27th one?
3 MR. KRUM: No. The December 21 one that -- a
4 meeting which you and I did not know until I learned on
5 April 12 when they produced the document for the first time.
6 The three committee members authorized the preparation of
7 Plaintiff's Exhibit 1. So it all ties together. This is
8 working backwards to the meeting --
9 THE COURT: So you're going to establish this
10 relates to the first meeting?
11 MR. KRUM: Yes. That's exactly right.
12 THE COURT: Well, then, could you do that.
13 MR. KRUM: Of course.
14 THE COURT: Thanks.
15 BY MR. KRUM:
16 Q Who else participated in the preparation of
17 Plaintiff's Exhibit 1?
18 A The best of my recollection, Mr. Gould and probably
19 general counsel, Mr. Tompkins.
20 Q Craig Tompkins?
21 A Yes, sir.
22 Q And how did it come to pass that Plaintiff's
23 Exhibit 1 was prepared to begin with?
24 MR. FERRARIO: Can I renew my objection? I don't
25 see any relevance to this hearing on this.

1 THE COURT: Sir, is this --
2 Wait.
3 Was this prepared as a result of what happened at
4 the special investigation committee -- special independent
5 committee's meeting in December?
6 THE WITNESS: No.
7 THE COURT: Thank you.
8 Mr. Krum, it doesn't sound like it's related to that
9 meeting.
10 MR. KRUM: Well, according to all the committee
11 members it is. We'll argue that.
12 THE COURT: I guess.
13 MR. KRUM: Including the testimony in their
14 supplement today.
15 All right. Well, I move to admit this. He's
16 authenticated it.
17 THE COURT: Any objection to P-1? P-1's okay.
18 (Plaintiff's Exhibit 1 admitted)
19 THE COURT: What else have you got, Mr. Krum, with
20 Mr. Bonner?
21 BY MR. KRUM:
22 Q Why was Mr. Tompkins involved in the preparation of
23 the document purportedly sent on behalf of the five directors
24 named at the bottom of Plaintiff's P-1?
25 MR. FERRARIO: Object. Attorney-client privilege,

1 Your Honor.
2 THE COURT: Sustained.
3 BY MR. KRUM:
4 Q You attended the telephonic meeting of the special
5 independent committee on December 21, 2017; right?
6 A Yes.
7 Q How did that meeting come to be scheduled?
8 A It was scheduled by Chairman Gould to receive an
9 update on certain developments.
10 Q How?
11 A How physically? Mechanically?
12 Q Did he send an email?
13 A I don't recall. Typically either he or his office
14 would send out a dial-in. Sometimes I believe our office
15 would send out a dial-in.
16 Q How were the dates and times picked, including in
17 particular for the December 21 meeting?
18 A The December 21 meeting was a further updated
19 briefing for certain events that the committee was monitoring.
20 If you like, I can sort of summarize what those were, but --
21 Q Well, was the subject of ratification discussed at
22 that meeting?
23 MR. FERRARIO: I'm going to object, Your Honor.
24 Attorney-client privilege.
25 THE COURT: Overruled. It's a yes or no.

1 THE WITNESS: Yes.
2 BY MR. KRUM:
3 Q You took notes on your legal pad for the purpose of
4 preparing minutes of that meeting?
5 A Yes.
6 Q Do those notes contain references to the discussion
7 of ratification?
8 A No.
9 Q Why not?
10 A Because there was a attorney-client privilege
11 strategy discussion. I did not maintain minutes of that
12 session.
13 Q At some point, whether at the end of the
14 December 21 special independent committee meeting or at
15 another point in the meeting did one or more of the committee
16 members say in words or substance that they agreed with or
17 approved pursuing the subject of ratification with the full
18 board of directors?
19 MR. FERRARIO: Objection, Your Honor. Attorney-
20 client privilege.
21 THE COURT: Sustained.
22 BY MR. KRUM:
23 Q How did it come to pass, Mr. Bonner, that the
24 subject of ratification was raised with the full board of
25 directors pursuant to Plaintiff's Exhibit 1?

1 MR. FERRARIO: Same objection, Your Honor.
2 THE COURT: How did it come to be raised at the full
3 board meeting, Mr. Krum?
4 MR. KRUM: Yes.
5 THE COURT: Overruled.
6 THE WITNESS: The letter you had me refer to is a
7 request by those directors that it be placed on the agenda.
8 BY MR. KRUM:
9 Q When did --
10 MR. FERRARIO: For the record, Your Honor, that's?
11 THE COURT: P-1.
12 MR. FERRARIO: P-1.
13 THE COURT: I saw him hold it up. But, for the
14 record, it's P-1. Good catch, Mr. Ferrario.
15 MR. FERRARIO: It's taking me a long time, but I'm
16 getting there.
17 BY MR. KRUM:
18 Q When did Mr. Gould determine to make that request?
19 A I don't -- I don't know the exact time. Sometime
20 between December 21 and December 27.
21 Q When did Ms. Codding determine to make that request?
22 A I don't know.
23 Q Did she indicate at the December 21 meeting that she
24 was agreeable to making a request of the nature made in
25 Plaintiffs' Exhibit 1?

1 MR. FERRARIO: Objection. Attorney-client
2 privilege.
3 THE COURT: Sustained.
4 Mr. Krum, please be careful of the mike.
5 BY MR. KRUM:
6 Q When did Mr. McEachern determine to make the request
7 that's reflected in Plaintiffs' Exhibit 1?
8 MR. FERRARIO: Same objection, Your Honor.
9 MR. KRUM: This is the same question about it raised
10 pursuant to Plaintiffs' Exhibit 1 at the December 29th board
11 meeting.
12 MR. FERRARIO: Outside of the December 21st meeting?
13 You changed your question there.
14 THE COURT: Mr. Krum, can you rephrase your
15 question, please.
16 BY MR. KRUM:
17 Q When did Mr. McEachern agree to raise at the
18 December 29 board meeting or special meeting to be called for
19 the purpose of the matters set out in Plaintiffs' Exhibit 1?
20 MR. FERRARIO: Objection. Attorney-client, Your
21 Honor.
22 THE COURT: Sustained.
23 BY MR. KRUM:
24 Q What communications did you have with Judy Codding,
25 if any, between December 21 and December 29 with respect to

1 the subject --
2 MR. FERRARIO: The number of communications, not
3 substance; right?
4 MR. KRUM: Yeah.
5 MR. FERRARIO: Oh. You're laying a foundation.
6 MR. KRUM: Foundation.
7 MR. FERRARIO: Okay.
8 THE COURT: How many?
9 THE WITNESS: I apologize. Could you repeat the
10 question.
11 BY MR. KRUM:
12 Q How many communications did you have with Judy
13 Codding following the December 21 special independent
14 committee meeting and prior to the December 29 board meeting,
15 if any?
16 A I don't recall. And the answer could be none. I
17 just don't recall.
18 Q Same question with respect to Mr. Gould.
19 A I would say I had at least one communication with
20 Mr. Gould during that period of time.
21 Q Do you recall what that was, meaning what the
22 subject matter was?
23 THE COURT: And this is do you recall, yes or no.
24 THE WITNESS: Generally, yes.
25 //

1 BY MR. KRUM:
2 Q Without disclosing the substance of the
3 communication, what was the subject matter or what were the
4 subject matters?
5 A The scheduling of the request that this be placed on
6 the agenda.
7 Q You're referring to the request embodied in
8 Plaintiffs' Exhibit 1?
9 A Yes.
10 Q Are you aware of any communications between or among
11 any of the five directors listed at the bottom of Plaintiffs'
12 Exhibit 1 regarding the subject of ratification, other than at
13 the December 21 special independent committee meeting and the
14 December 29 board meeting?
15 A I have no recollection at the moment. I don't know
16 if I ever would have had any knowledge of that.
17 Q If you look at the exhibit binder that Mr. Ferrario
18 used -- no, I'm sorry. He didn't bring your attention to
19 that.
20 THE COURT: So, sir, while he's looking let me ask
21 the elephant-in-the-room question for me. Why was one set of
22 minutes prepared so quickly, and the other set of minutes was
23 delayed by the press of business?
24 THE WITNESS: Great question. I'm happy to answer
25 it, actually. The action of the board on December 29 was

1 actually a decision of the board that had -- it was a decision
2 of the board that had some consequence. The committee
3 meeting, the special independent committee meetings, there
4 were several of them, were basically updates. There's a
5 series of updates of special committee where the special
6 committee was getting updates on status of some potential
7 settlements of this either this action or related actions.
8 There were significant concerns about the timing of the trial,
9 directors were trying to make plans. So there were several
10 update special independent committee meetings. The
11 independent committee is charged with overseeing the company's
12 role, you know, with respect to the derivative litigation. So
13 these were basically updates. They were typically 20, 30, 40
14 minutes long. And there was no formal action taken in any of
15 these, so they didn't have any particular consequence. I just
16 simply had a big stack of materials. I knew I'd get to them,
17 and that's absolutely the only reason they didn't get prepared
18 sooner.
19 THE COURT: But the board meeting, because, in your
20 words, had consequences to it, that was put on the front
21 burner to make sure that they were typed and distributed?
22 THE WITNESS: There's a formal action of the board
23 taken, and so there's a legal consequence to what that board
24 did. The special independent committee meetings were merely
25 update status calls, if you will.

1 THE COURT: Okay. Thank you.
2 Mr. Krum.
3 BY MR. KRUM:
4 Q What was the consequence of the actions taken at the
5 December 29 board meeting?
6 A A ratification of the acts that were considered at
7 that time.
8 Q And the minutes were needed to do what?
9 A Memorialize the action taken.
10 Q Why?
11 A Good corporate practice.
12 Q So they were prepared on a expedited basis for the
13 purpose of putting them in the minute book?
14 A They were prepared on an expedited basis to
15 memorialize the action taken by the board of directors, as
16 opposed to a status conference call that had no legal
17 consequence.
18 Q The action needed to be memorialized on an expedited
19 basis why?
20 A Because there was a particular import to that
21 action.
22 Q When did RDI start preparing minutes on an expedited
23 basis because the minutes memorialized an action?
24 A You mischaracterize what I said, and you
25 mischaracterize the policy of Reading. There is no such

1 policy. The intent is to prepare the minutes when you can.
2 import, whether it's a loan closing, a transactional approval,
3 something that has some legal consequence, you typically
4 prepare those resolutions quite quickly.
5 Q What was the particular legal import in this
6 instance?
7 A The ratification of the matters that were considered
8 at the December 29 meeting.
9 Q And is it your testimony, Mr. Bonner, that the
10 existence of minutes had some legal import?
11 A Well, no. I think as you probably know, the board's
12 vote constitutes the action of the board. The minutes are
13 merely a memorialization of that. But where there's something
14 that had some significance you typically prepare the
15 resolutions quite quickly.
16 Q To what use have those minutes been put since they
17 were drafted?
18 MR. FERRARIO: We used them in the motion.
19 THE COURT: Yeah. We all know that. But Mr. Bonner
20 has to now say that.
21 MR. FERRARIO: He's the minute guy. I'm the
22 litigator.
23 THE COURT: He may not -- he may not know that,
24 because he's a transactional guy.
25 MR. FERRARIO: You're right.

1 THE COURT: He does business stuff.
2 MR. FERRARIO: Okay.
3 THE COURT: He may not know that. All the rest of
4 us know.
5 MR. FERRARIO: We all know what happened.
6 THE COURT: That was why you required them so
7 quickly, Mr. Ferrario.
8 MR. FERRARIO: Who cares?
9 THE COURT: So you could come and wave it and say,
10 hey, Judge, I win now.
11 MR. FERRARIO: That's exactly what I did. Thank
12 you. Okay. This is fascinating, but --
13 BY MR. KRUM:
14 Q Do you have the question in mind, Mr. Bonner, or do
15 you want me to repeat it?
16 THE COURT: You guys are killing me.
17 THE WITNESS: If you don't mind, would you repeat
18 the question?
19 BY MR. KRUM:
20 Q To what use were the minutes of the December 29
21 board meeting put?
22 A Number one, they memorialized the ratification of
23 the board of directors of two events. Number two, I
24 understand they were in fact the subject of a motion filed in
25 this case.

1 Q Thank you, Mr. Bonner. Directing your attention,
2 Mr. Bonner, back to the December 21 meeting of the special
3 independent committee, which, if any, of those three committee
4 members had been told beforehand that the subject of
5 ratification would be discussed at that meeting?
6 MR. FERRARIO: Objection. Attorney-client, Your
7 Honor.
8 THE COURT: We're only identifying individuals with
9 whom he had a communication, not the nature of the
10 communication?
11 MR. FERRARIO: Before the meeting.
12 MR. KRUM: Only the subject matter.
13 THE COURT: Before the meeting.
14 MR. FERRARIO: Okay. All right.
15 THE COURT: So, sir, you could answer it or just
16 give me names if you remember.
17 THE WITNESS: There's a -- I don't know if I'm
18 permitted to ask Mr. Ferrario a question. There's an issue
19 relative to the way the question --
20 THE COURT: If you think there is a privilege
21 related to it, you are absolutely entitled to -- under the
22 Harvey Whittemore decision to ask Mr. Ferrario questions about
23 the extent and claim of the privilege. And I will take a
24 break for you to do so. And you will not be subject to
25 interrogation about that subject.

1 Did I summarize it correctly?
2 MR. FERRARIO: That's pretty good.
3 THE COURT: Okay. You know, I can take direction
4 from the Nevada Supreme Court.
5 MR. FERRARIO: I'm glad you started laughing.
6 THE WITNESS: So may I ask Mr. --
7 THE COURT: Do you need to talk to Mr. Ferrario?
8 THE WITNESS: For one minute.
9 THE COURT: We're going to take a short break --
10 THE WITNESS: One minute.
11 THE COURT: -- for you to consult with Mr. Ferrario
12 on a privilege issue.
13 (Court recessed at 3:10 p.m., until 3:13 p.m.)
14 THE COURT: Mr. Bonner, have you had an opportunity
15 to discuss with Mr. Ferrario whether you need to assert any
16 privileges?
17 THE WITNESS: Yes, Your Honor.
18 THE COURT: Okay.
19 BY MR. KRUM:
20 Q So the question --
21 MR. KRUM: Can I ask that it be read back?
22 THE COURT: Nope.
23 MR. KRUM: That's right.
24 BY MR. KRUM:
25 Q Can you answer the question, Mr. Bonner, without

disclosing privilege?

MR. FERRARIO: On topic, Mark -- on the topic of ratification, yes, he can. Just that.

THE WITNESS: And I'm sorry. Could you now ask the question again or have it read back?

THE COURT: I think we were on the names of the people who may have been talked to about ratification before the meeting.

MR. KRUM: Thank you.

MR. FERRARIO: December 21st meeting, yes.

MR. KRUM: Right.

THE COURT: The 12/21 meeting.

BY MR. KRUM:

Q So with --

THE COURT: Did I do good?

BY MR. KRUM:

Q Did you or anyone else at Greenberg Traurig, including Mr. Ferrario, have communications with any of the special independent committee members prior to the December 21, 2017, meeting about the subject of ratification?

THE COURT: And this is a yes or a no.

THE WITNESS: Yes as to me. I can't speak as to other GT lawyers.

BY MR. KRUM:

Q With whom did you have such communications?

1 THE COURT: And that's just identification of the
2 individuals.
3 THE WITNESS: The best of my recollection, we may
4 have had a conversation -- I may have had a conversation with
5 Mr. Gould. That's all I recall.
6 BY MR. KRUM:
7 Q One conversation, or multiple conversations with Mr.
8 Gould?
9 A Don't recall.
10 Q Over what period of time did you have those
11 conversations?
12 A Days, one or two days.
13 Q Okay. And what time frame? Was it December, was it
14 November, was it earlier?
15 A Oh. No. It would have been just prior to the
16 December 21 meeting.
17 Q Not speaking to the substance, did either of those
18 communications speak to a topic of a formal request such as
19 Plaintiffs' Exhibit 1?
20 MR. FERRARIO: Objection. Attorney-client.
21 THE COURT: Sustained.
22 BY MR. KRUM:
23 Q Each of Gould, Codding, and McEachern at the
24 December 21 special independent committee meeting agreed that
25 ratification would be formally pursued with the full RDI

1 board; correct?
2 MR. FERRARIO: Same objection, Your Honor.
3 THE COURT: Sustained.
4 MR. KRUM: I'm not asking if they gave him a
5 direction. I'm asking merely if they took a position.
6 THE COURT: I understand what you're asking, Mr.
7 Krum. I've sustained the objection on the privilege issue.
8 BY MR. KRUM:
9 Q Did you have any discussions prior to the
10 December 29 board meeting about the subject of ratification
11 with Mr. Wrotniak?
12 A I've no recollection of any.
13 Q With Mr. Ferrario?
14 A I do not know.
15 Q Do you recall having a telephone call with Mr.
16 Ferrario and Mr. Wrotniak and Ms. Codding in December shortly
17 before the December 29 board meeting at which the subject of
18 ratification was discussed?
19 THE COURT: And that's a yes or no.
20 THE WITNESS: I don't have any particular -- no.
21 BY MR. KRUM:
22 Q Were any documents provided to the committee members
23 either in anticipation of or as a result of the December 21,
24 2017, special independent committee meeting?
25 THE COURT: Did you give them any documents? Is

1 that the question?
2 MR. FERRARIO: And you're talking about the special
3 independent committee?
4 THE COURT: The 12/21 meeting.
5 MR. KRUM: Right.
6 MR. FERRARIO: Prior to that meeting, or --
7 THE COURT: He said prior to or as a result of. Do
8 you want him to break it up?
9 MR. FERRARIO: Yeah.
10 THE COURT: Or is the answer just no?
11 MR. FERRARIO: I think the answer's no, but go
12 ahead.
13 THE WITNESS: No.
14 BY MR. KRUM:
15 Q Are you excluding Plaintiffs' Exhibit 1?
16 A Yes.
17 THE COURT: And that's the December 27th email.
18 THE WITNESS: No, I'm not excluding it.
19 BY MR. KRUM:
20 Q So is it your testimony, Mr. Bonner, that
21 Plaintiffs' Exhibit 1 is unrelated to the conversations
22 concerning ratification at the December 21, 2017, special
23 independent committee meeting?
24 MR. FERRARIO: Objection. Attorney-client, Your
25 Honor. He's trying to back door into this.

1 THE COURT: Sustained.
2 BY MR. KRUM:
3 Q Were any documents, other than your handwritten
4 notes about what you've already testified, used at or created
5 in connection with -- strike that.
6 Did you have discussions with McEachern, Doug
7 McEachern in the fall of 2017 about the subject of
8 ratification?
9 A Not that I recall.
10 Q Direct your attention, Mr. Bonner, to Plaintiffs'
11 Exhibit 3.
12 MS. HENDRICKS: Mark, our exhibits aren't marked.
13 Can you tell us what you're referring to?
14 MR. FERRARIO: Do you have a Bates number?
15 THE COURT: Sir, I'm going to hand you mine, because
16 mine is tabbed and I'm not writing on it.
17 MR. FERRARIO: Oh. The redacted minutes?
18 MR. KRUM: Yes.
19 MR. FERRARIO: Thank you.
20 THE COURT: I've given him my copy to speed up the
21 process, guys.
22 MS. HENDRICKS: Thank you.
23 BY MR. KRUM:
24 Q Mr. Bonner, do you recognize the page of redacted
25 minutes -- page and a half, I guess, on the second and third

1 pages of Plaintiffs' Exhibit 3?
2 A Yes.
3 Q You prepared those; correct?
4 A Yes.
5 Q These are the very minutes about which you testified
6 in response to some questions from Mr. Ferrario; correct?
7 A Yes.
8 MR. KRUM: Move to admit.
9 THE COURT: Any objection to P-3?
10 MR. FERRARIO: No objection.
11 THE COURT: Admitted.
12 (Plaintiffs' Exhibit 3 admitted)
13 BY MR. KRUM:
14 Q Okay. And you provided these minutes to Mr. Gould
15 on or about January 30, 2018; is that correct?
16 A Yes.
17 Q How?
18 A Email.
19 Q Was anyone copied on that email?
20 A I have to look at the email. May I?
21 Q Of course.
22 A Is there a copy? I think it's --
23 THE COURT: And if you find it, sir, if you'd tell
24 us the Bates numbers on the bottom.
25 THE WITNESS: What I'm looking at doesn't have a

1 Bates number. It's --
2 THE COURT: Is it under a tab?
3 MS. HENDRICKS: If I can help, it would be
4 Defendant's Exhibit 1.
5 THE COURT: So --
6 MS. HENDRICKS: Or Exhibit A. Excuse me.
7 THE COURT: Defendant's A. It's attached to the
8 declaration?
9 MS. HENDRICKS: Correct.
10 THE COURT: Okay. Sir, after you've refreshed your
11 recollection, let us know.
12 THE WITNESS: This does not appear that there's a
13 cc. I don't have any recollection that I would have sent it
14 to anybody else.
15 BY MR. KRUM:
16 Q And you heard back from Mr. Gould within a week
17 or so with -- in response to your sending him Plaintiffs'
18 Exhibit 3?
19 A Yes.
20 Q And you sent it on to Ms. Codding and Mr. McEachern?
21 A Yes.
22 Q You did that on or about February 10; is that right?
23 A Yes.
24 Q How did you transmit it to them? Was that by email,
25 as well?

1 A Do you need me to indicate how I'm refreshing my
2 recollection?
3 Q Please.
4 A I'm looking at the email that's attached to my
5 declaration. It says at the bottom "Opposition Exhibit Page
6 077." And I see it's an email from me to William Gould,
7 Douglas McEachern, and Judy Codding. And it doesn't indicate
8 any cc.
9 Q Directing your attention back, Mr. Bonner, to your
10 prior testimony about people with whom you shared either
11 Plaintiffs' Exhibit 1 or a draft of it, Tompkins was one of
12 those people; correct?
13 A Yes.
14 Q Did you send him a draft, the final version, or
15 both?
16 A I don't recall if I reviewed a draft, if I prepared
17 a draft. I just don't know. So I don't know if I prepared
18 it, somebody else prepared it. I just don't recall.
19 Q Did you also share Plaintiffs' Exhibit 1 or a draft
20 of it with Ellen Cotter?
21 A I don't recall. She was the ultimate recipient, I
22 guess, but --
23 Q Mr. Bonner, I'd ask you to take a look at
24 Plaintiffs' Exhibit 2, please.
25 MR. KRUM: Counsel, that's your February 22

1 privilege log.
2 THE COURT: It should be on the tab that says P-2.
3 MR. KRUM: I'd move to admit this.
4 THE COURT: Any objection to P-2, the privilege log?
5 MR. FERRARIO: Your Honor, it's authentic and
6 obviously it's our privilege log. I don't know what relevance
7 it has to this --
8 THE COURT: That's a different issue. We'll find
9 out in a minute.
10 So it's admitted.
11 (Plaintiffs' Exhibit 2 admitted)
12 THE COURT: What page do you want to send him to, or
13 what entry?
14 BY MR. KRUM:
15 Q Mr. Bonner, I direct your attention to page 32,
16 using the numbers at the bottom of the document where -- so
17 I'd be page 32 of 37. Let me know when you have that.
18 Do you have it, sir?
19 A Yes.
20 Q Okay. If you would, please, I direct your attention
21 to the fourth entry. Moving top to bottom on the left-hand
22 side, it ends with the number 60780. Do you have that?
23 A Yes.
24 Q This lists a document from you to Mr. Tompkins with
25 a copy to Ellen Cotter and others, including Mr. Gould and Mr.

1 Ferrario. You see that?
2 A I do.
3 Q You see that the date is December 26?
4 A I do.
5 Q See that the re line, apparently, on the email said,
6 "Draft for your review"?
7 A I do see that, yes.
8 Q See the description of it -- for the privilege log
9 purposes is "Communication regarding notice and agenda for
10 upcoming board meeting? See that?
11 A I do.
12 Q You recall you were involved in the preparation of
13 the notice and agenda for the board meeting; right? The
14 December 29 board meeting.
15 A I was involved in the -- in that meeting. I don't
16 recall if I prepared the notice, but --
17 Q To what use, if any, was Plaintiffs' Exhibit 1 put
18 in the preparation of any of the board materials, including in
19 particular the agenda?
20 MR. FERRARIO: Could you flip that around and just
21 ask, was it put to any use, so I can see if there's any --
22 MR. KRUM: Of course.
23 MR. FERRARIO: -- attorney-client.
24 BY MR. KRUM:
25 Q Was Plaintiffs' Exhibit 1, the December 27 Gould

1 email, put to any use in preparation of the board package,
2 including in particular the agenda?
3 THE COURT: And that's a yes or no. Was it put to a
4 use?
5 THE WITNESS: Presumably, yes.
6 BY MR. KRUM:
7 Q I direct your attention, Mr. Bonner, to page 1 of
8 this document. Page 1 of 37.
9 THE COURT: You're back on the privilege log?
10 MR. KRUM: Yes, back on the privilege log.
11 THE COURT: That's P-2.
12 MR. KRUM: Thank you.
13 BY MR. KRUM:
14 Q Do you have that?
15 A 1 of 37?
16 Q That's correct.
17 A Yes.
18 Q I direct your attention, Mr. Bonner, to the next-to-
19 last entry on the left-hand side. It ends in 59792, I think.
20 Do you have that?
21 A Yes.
22 Q Do you see that's an email from you to Mr. Gould
23 with copies to others?
24 A I see that, yes.
25 Q You see the description is "Fwd: For Bill Gould to

1 sign"? That apparently is the re line; is that right?
2 A I assume it is just by looking at the top column.
3 Q Okay. And do you see on the right-hand side the
4 description for privilege log purposes is "Communication
5 regarding draft letter re special board meeting"?
6 A I see that, yes.
7 Q Okay. So did you on or -- on December 27th send Mr.
8 Gould an email concerning a draft letter for a special board
9 meeting?
10 A Based on this description, yes.
11 Q Does that comport with your independent
12 recollection?
13 A I don't know if I remember this specific email, but
14 generally I do. Generally the whole --
15 Q That's what I'm asking. So I direct your attention
16 on the same page, Mr. Bonner, two entries left of the entry
17 ending in 68, I believe the numbers are. Do you have that?
18 A I do.
19 Q Do you see that has the -- apparently the re line is
20 "For Bill Gould to sign." Do you see that?
21 A I do.
22 Q And the description is the same as the last one at
23 which we looked, "Communication regarding draft letter re
24 special board meeting"; right?
25 A I see that, yes.

1 Q You see this is an email from you to Craig Tompkins
2 and others?
3 A I see that, yes, indicated in the box.
4 Q So did you -- did you have email communications with
5 Mr. Tompkins on or about the 27th of December with respect to
6 the matters reflected in the re line of the privilege
7 description?
8 A Based on this document I guess I did, yes.
9 Q Did you disclose to Mr. Gould that you had had
10 communications with Mr. Tompkins about a draft letter
11 regarding a special board meeting?
12 MR. FERRARIO: Objection. Attorney-client, Your
13 Honor.
14 MR. KRUM: Yes or no, Your Honor.
15 THE COURT: Sustained.
16 BY MR. KRUM:
17 Q Did you have any communications -- strike that.
18 Did you ever have any discussions with any or all of
19 the members of the special independent committee about the
20 subject matter of Greenberg Traurig jointly representing the
21 company and the special independent committee?
22 MR. FERRARIO: Objection, Your Honor. That's beyond
23 the scope of this hearing, calls the attorney-client --
24 THE COURT: Sustained.
25 MR. KRUM: Your Honor, it actually goes to exactly

1 what's transpired here.
2 THE COURT: No.
3 BY MR. KRUM:
4 Q Was there a point in time, Mr. Bonner, when you
5 learned or were told that documents in your possession needed
6 to be reviewed for purposes of possible production in this
7 litigation?
8 A Yes.
9 Q When was that?
10 A Sometime in -- sometime, as I recall, in January,
11 February.
12 Q What did you do, if anything, after you were told
13 that to comply with whatever you were told?
14 A I think we had people in the department look for
15 some documents.
16 Q And when you say the department to what are you
17 referring?
18 A I'm sorry. The legal -- corporate -- our corporate
19 group in the firm.
20 THE COURT: The not litigators part?
21 THE WITNESS: Yes, Your Honor.
22 THE COURT: Those of you who aren't actually
23 litigating all the time?
24 THE WITNESS: Yes.
25 THE COURT: Okay.

1 BY MR. KRUM:
2 Q What did you do, if anything, to make your
3 electronically stored information, meaning emails and draft
4 documents, available to be searched for the purposes of
5 possible production in this case?
6 A My recollection is that the IT people were given
7 access electronically so they could conduct whatever search
8 they --
9 Q Did you give them directions as to what it was for
10 which they should search?
11 A I think they were given a broad search, you know,
12 scope. I didn't establish the scope. Others did.
13 Q What's the basis for the testimony you just gave?
14 A Just recollection.
15 Q How did you learn that if you didn't establish the
16 scope?
17 MR. FERRARIO: What do you mean? He didn't
18 establish the scope.
19 THE COURT: How does he remember who set the ESI
20 search terms and the scope of custodians; right? How does he
21 know that? He says he recalls generally. He just ran into
22 somebody in the hallway, somebody told him, he got an email.
23 Those are all kinds of options for the answer. Or, I don't
24 remember, which is also an option.
25 THE WITNESS: My recollection is either I was asked

1 for permission or it was indicated to me that there was going
2 to be a scope, some kind of search electronically. And I
3 can't remember if I had to consent or not. But if I was asked
4 for consent, I did. I may have just been told it was going to
5 happen.
6 BY MR. KRUM:
7 Q Do you know, Mr. Bonner, whether that search --
8 strike that.
9 THE COURT: There's now a Greenberg Traurig Privacy
10 Act.
11 MR. KRUM: I'm not going there. I am not going
12 there.
13 THE COURT: We're not going to talk about data
14 privacy?
15 MR. KRUM: Oh, no.
16 THE COURT: Oh, no. Okay. Come on.
17 MR. KRUM: I didn't then, either, you'll recall.
18 BY MR. KRUM:
19 Q Were your handwritten notes from special independent
20 committee board meeting minutes made available to the people
21 conducting the search?
22 A They were not -- they were not electronically
23 stored, so no.
24 Q What about drafts of documents, such as drafts --
25 strike that.

1 Were the drafts -- was the draft you prepared of the
2 December 21, 2017, special independent committee meeting
3 minutes made available to the people who were searching for
4 documents for production in this case?
5 A Again, as I recall, they had carte blanche
6 electronic access to anything in the system. So they would
7 have had access to anything I have.
8 Q And the same would be true for the file version of
9 those minutes that you sent to Ms. Codding and Mr. McEachern
10 in early February; correct?
11 A I suppose so. Again, I don't know what the various
12 time frames of the searches were. But if the searches were
13 done at a time those documents existed, then they would have
14 picked them up.
15 Q Do you have any understanding as to when the
16 searches were conducted?
17 A I don't.
18 Q Do you have any understanding as to what the time
19 frame of your documents was that -- which documents were
20 searched?
21 A I really don't. I just recall generally it
22 happening.
23 Q Did you have any discussions with anybody who
24 conducted the search and review of your hard-copy documents or
25 your electronically stored information?

1 A Again, I recall the inquiry, I recall being asked to
2 be sure that if there's anything -- you know, that these
3 searches were coming, and we gave permission to access
4 whatever they needed to.
5 MR. KRUM: Your Honor, if I may have a moment.
6 THE COURT: You may.
7 (Pause in the proceedings)
8 MR. KRUM: I have nothing further, Your Honor.
9 THE COURT: Thank you.
10 Mr. Ferrario, did you have any more?
11 MR. FERRARIO: Just one.
12 THE COURT: You know now dangerous that is.
13 MR. FERRARIO: This is off the wall.
14 REDIRECT EXAMINATION
15 BY MR. FERRARIO:
16 Q During the break it was brought to my attention that
17 a tax issue reared its head toward the end of 2017. Do you
18 recall that?
19 A Yes.
20 Q Now, I think we're all aware that President Trump
21 passed the tax bill; right?
22 MR. KRUM: Objection. Beyond the scope.
23 THE COURT: Overruled.
24 BY MR. FERRARIO:
25 Q Right?

1 A Yes.
2 Q And Mr. Krum asked you a number of questions
3 regarding why these meetings were prepared, you know,
4 regarding the 29th meeting, you know, within a week or so. Do
5 you remember the tax issue coming up?
6 A Yes.
7 Q And is that what prompted the immediate -- primarily
8 what prompted the immediate preparation of these meeting
9 minutes?
10 A That was the biggest driver of the urgency.
11 Q Was it the biggest driver of the meeting itself?
12 A I believe it was the principal purpose for which the
13 meeting was called.
14 Q And there were certain actions that need to be taken
15 in order for the company to avail itself of certain tax
16 benefits; correct?
17 A Absolutely. Yes.
18 MR. FERRARIO: Thank you. Nothing further.
19 THE COURT: Anything else, Mr. Krum?
20 MR. KRUM: Yes, Your Honor.
21 RECROSS-EXAMINATION
22 BY MR. KRUM:
23 Q The December 29 board meeting previously had been
24 scheduled for the purpose of the compensation, or, as Mr.
25 Ferrario says, tax issues being taken up; correct?

1 A Yes.
2 Q And what happened is the matters we referred to as
3 ratification were added to the agenda a day or two before the
4 meeting; correct?
5 A They were added to the agenda. Whether it was a day
6 or two, that sounds about right.
7 MR. KRUM: Okay. Thank you, Your Honor.
8 THE COURT: Anything else?
9 MR. KRUM: Nope.
10 THE COURT: Thank you, Mr. Bonner. Have a nice day.
11 Leave before they change their mind.
12 THE WITNESS: Thank you, Your Honor.
13 THE COURT: Have a nice day. Travel safely.
14 Mr. Ferrario, next witness.
15 MR. FERRARIO: That's it.
16 THE COURT: Mr. Krum, do you have any additional
17 witnesses that you'd like to call at this time?
18 MR. KRUM: Well, Your Honor, the answer is it
19 depends how you want to handle this. The testimony offered
20 today is, as I think I suggested previously, in at least one
21 respect inconsistent with deposition testimony we've taken
22 before.
23 THE COURT: Happens all the time. Witnesses testify
24 differently about recollections all the time. And that goes
25 to their credibility.

1 MR. KRUM: Well, to answer your question, though, I
2 don't think it's necessary to take the time of everyone here
3 to ask Mr. McEachern and Ms. Codding to come testify, but
4 we'll need an opportunity to bring to your attention their
5 deposition testimony, as well as that of Mr. Gould, that's
6 inconsistent with what we heard today.
7 THE COURT: I anticipate we will have that
8 opportunity before long.
9 All right. So that concludes the evidence that I am
10 hearing at this evidentiary hearing. I have had -- before we
11 close the hearing, Exhibit B was admitted, and Exhibit P-1,
12 P-3, and P-2 were admitted.
13 MR. FERRARIO: I would ask for A, as well, Your
14 Honor. It's Mr. Bonner's declaration.
15 THE COURT: Any objection to the declaration being
16 admitted, since he was subject to cross-examination?
17 MR. KRUM: No objection, Your Honor.
18 THE COURT: A will be admitted, as well.
19 (Defendants' Exhibit A admitted)
20 THE COURT: Any additional exhibits anyone wants to
21 offer before I let you argue?
22 All right. Since all of the motions except one were
23 yours, Mr. Krum, I'm going to let you have the first bite at
24 any additional argument, remembering it's only Wednesday and I
25 remember what you said on Monday.

1 MR. KRUM: Well, Your Honor, let me ask about the
2 process.
3 THE COURT: I've already written down what I'm going
4 to do. You may be able to change my mind, but I've written
5 down what I'm going to do.
6 Mr. Ferrario is unlikely to be able to change my
7 mind on what I'm going to do.
8 MR. KRUM: Well, two things, Your Honor. First of
9 all --
10 MR. FERRARIO: That must mean I'm winning.
11 THE COURT: Not necessarily.
12 MR. KRUM: First of all, Your Honor, the point Ms.
13 Levin made at the outset is meaningful here. It is not only
14 the motion directed at Mr. Gould that may be impacted by the
15 supplemental log that Mr. Gould's going to provide, there's
16 also the motion directed I would say at McEachern and Codding,
17 but it's also I guess RDI, because Greenberg Traurig prepared
18 the privilege log, withheld the document, and belatedly
19 produced it and so forth. And I say that, Your Honor, not to
20 speak in an open-ended hypothetical way --
21 THE COURT: And that's part of Mr. Cotter's, your
22 client's, motion for omnibus relief, which is also being
23 argued at the same time. So I've got you arguing two motions
24 right now, the motion to compel that we've heard testimony
25 about, and your motion for omnibus relief, which is what

1 resulted in the scheduling of this hearing.
2 I'm also going to then talk to Mr. Ferrario about a
3 motion that he wants to file. But you've got two issues that
4 are interrelated that we're talking about here that you've
5 asked me for some relief related to. I am prepared to give
6 you some relief related to it in addition to what I've already
7 done today, but I am waiting for you and Mr. Ferrario to
8 finish arguing before I tell you what I'm going to do.
9 MR. KRUM: Right. The point I'm attempting to make
10 and I didn't conclude, Your Honor, is, as we pointed out in
11 our reply, I think it was, in support of the motion directed
12 at Mr. Gould, his privilege log listed 11 documents that had
13 not been listed on the February 22 privilege log produced by
14 Greenberg Traurig, nine of which were email communications to
15 or from Greenberg Traurig lawyers.
16 Now, today for the first time there was -- Ms.
17 Hendricks addressed that point, and she made comments that
18 were difficult to follow about de-duplication and email chains
19 and so forth.
20 THE COURT: I followed it perfectly.
21 MR. KRUM: Well, the point -- my point, Your Honor,
22 is we can't respond to that. They've offered nothing in
23 writing, they've made no reference to privilege log.
24 THE COURT: You're going to have an opportunity to.
25 MR. KRUM: Okay.

1 THE COURT: But you've got to let me get to my part
2 about the ruling.
3 MR. KRUM: Yes. Okay.
4 THE COURT: Is there anything else you want to tell
5 me?
6 MR. KRUM: Well, that's the procedural stuff.
7 THE COURT: Okay.
8 MR. KRUM: And so you'd like me to speak to the
9 motions directed at Gould in the omnibus motion?
10 THE COURT: If you have anything else you'd like to
11 add.
12 MR. KRUM: I do.
13 THE COURT: Okay.
14 MR. KRUM: Very briefly on the Gould motion. The
15 production today, on the 2nd of May, of documents and the
16 promise today, on the 2nd of May, of a second supplemental
17 privilege log obviously is woefully untimely. According to
18 Mr. Gould, it was two or three months ago, and he was unclear
19 about that, and it could have been more, because, after all,
20 it was January when our subpoena to him was served that the
21 issue of lost emails arose. He said it was after the
22 subpoena. So probably February.
23 As you saw from the email exchanges, there was no
24 indication by his counsel of any issue of the nature that they
25 disclosed for the first time at his April 5 deposition. I

1 would have expected and I'm flabbergasted we didn't receive
2 what was given today and more, including a declaration or
3 something from the IT people in March, if not February.
4 So the relief we request on that is all
5 appropriately sought.
6 And now to speak to the other motion. As I said
7 already, the uncertainty occasioned by the debacle with the
8 Gould documents, it also adds uncertainty as to the omnibus
9 motion. The testimony today as I understood it said, we
10 didn't put anything in the minutes -- which haven't been put
11 on a privilege log, so we don't know, Your Honor, what the
12 wholly redacted December 11, 2017, minutes reference in terms
13 of subjects, including whether they reference the subject of
14 ratification. Presumably there's a line to the effect that
15 the minutes are complete, there was a privileged discussion on
16 the subject of ratification. And if there is no such line and
17 ratification is not mentioned in the minutes, we do not have
18 the issue we thought we had, which is improper withholding of
19 minutes that are responsive, we have that and the issue of
20 what amounts to manipulating the contrived evidence for the
21 purpose of use in litigation.
22 We all do minutes. We all see minutes. Because the
23 subject is privileged doesn't mean the subject isn't
24 identified as one that was discussed. And while Mr. Bonner
25 couldn't speak to that because his comments were privileged,

1 the testimony of each of Gould, Codding, and McEachern was
2 that the subject of ratification was discussed and they agreed
3 that the matter would be -- the proposed ratifications would
4 be pursued and taken up with the full board. That is in --
5 the Codding and McEachern testimony to that effect is in the
6 supplemental brief they filed this morning. The Gould
7 testimony was in our motion. And there are emails about this.
8 Well, do the emails mention ratification? Presumably not,
9 because they just say, let's have a meeting. Although was the
10 meeting about ratification? If you listen to Mr. Bonner,
11 either no or he can't speak to it. If you listen to the three
12 committee members, it was.
13 One of the issues, if not the issue, raised in the
14 motion -- in their motion seeking leave to renew their so-
15 called ratification motion for summary judgment is whether
16 there was a good-faith process, whether the directors made an
17 informed decision.
18 THE COURT: Whether they're entitled to protection
19 under the business judgment rule, those kind of things.
20 MR. KRUM: Right. And so what we eventually learned
21 on April 5th because of Mr. Gould's testimony, but not from
22 McEachern or Codding, is that those three decided on
23 December 11th. But we had no way to ask them the questions
24 about on what basis did they do so because we didn't know
25 about December 11th, that they decided, until Mr. Gould's

1 testimony.
2 THE COURT: You mean December 21st?
3 MR. KRUM: No. I mean December 11th, when the
4 special independent committee meeting met.
5 THE COURT: I thought it met on December 21st.
6 MR. KRUM: I misspoke. You're right. I apologize.
7 THE COURT: Okay.
8 MR. KRUM: So on December 21st they all made that
9 decision. But McEachern was -- anyway, I [unintelligible].
10 So the point, Your Honor, is we have a document that
11 they claim wasn't responsive. I don't know whether it is or
12 not, because we don't have it listed on a privilege log. And
13 we're asking that you order them to do so and that they
14 properly log it and identify the subject matters. It either
15 says ratification and should have been logged, because you
16 already determined it's properly withheld as privileged, so
17 I've got to abide by that, talk about the log, or it omits
18 information.
19 THE COURT: I ruled that after doing an in-camera
20 review of it.
21 MR. KRUM: Right. What we asked, though, Your
22 Honor, that you did not address in your minute order is that
23 they log it. And now, if it doesn't say anything about
24 ratification, then I guess you would deny that request. If it
25 has the sentence it ought to have, which is there was a

1 privileged conversation about the subject of ratification,
2 then it should be logged.
3 THE COURT: It could have a privileged conversation
4 about something else, too.
5 MR. KRUM: I understand that, Your Honor. The
6 question is whether the document as prepared is responsive. I
7 don't know.
8 THE COURT: I understand. Is there anything else
9 you want to tell me?
10 MR. KRUM: So -- I'm sorry, Your Honor. I lost my
11 train of thought.
12 THE COURT: Sorry.
13 MR. KRUM: I'll let Mr. Ferrario speak, and
14 perhaps --
15 THE COURT: Mr. Ferrario.
16 MR. FERRARIO: Well, having listened to you before,
17 you've already made up your mind before I start rambling.
18 THE COURT: Well, I haven't made up my mind, but --
19 MR. FERRARIO: Why don't you tell me what you're
20 inclined to do.
21 THE COURT: -- I have outlined the relief that I
22 intend to grant to Mr. Krum, which may result in other things
23 eventually happening. But I have outlined based on Mr.
24 Bonner's testimony and the testimony of Mr. Gould what it
25 appears now that we have found some information what we need

1 to do.
2 MR. FERRARIO: Why don't you tell me what you need
3 to do, and then maybe I'll respond accordingly.
4 THE COURT: Not me. You guys.
5 MR. FERRARIO: Well, tell me what we need to do, and
6 then -- because I have -- I have a lot to say here, but I
7 might be able to refrain from saying it.
8 THE COURT: All right. I am inclined to order
9 Codding, McEachern, Gould, Kane, Wrotniak, and RDI to produce
10 all documents which mention the scheduling or the holding or
11 the minutes related to the December 21st special independent
12 committee or relate to the subject matter contained in P-1 or
13 any draft of P-1 or the preparation of P-1 or discuss the
14 subject of ratification, understanding that there may be
15 assertions of privilege that occur.
16 In addition, I will consider whether additional
17 depositions need to be taken after the production of that
18 information once I've seen the volume of the information.
19 MR. FERRARIO: Your Honor, we're comfortable doing
20 that. We're not here to hide anything, okay. And you saw Mr.
21 Gould come and testify, and it's unfortunate he couldn't be
22 here today, but he's sick.
23 THE COURT: It's okay. He was by video.
24 MR. FERRARIO: And we'll be happy to do that. We're
25 not hiding anything.

1 THE COURT: Now that his in box has been located and
2 the --
3 MR. FERRARIO: It hasn't been located.
4 THE COURT: Okay. Now that the historical backups
5 of his in box material have been located --
6 MR. FERRARIO: Mr. Gould learned something new.
7 It's called The Cloud, okay. So we didn't drag you through
8 that, because that would have been like a 45-minute
9 exposition.
10 THE COURT: Yeah. I don't need to know.
11 MR. FERRARIO: Yeah. We're happy to do that, and
12 we're happy to do it on a relatively short time frame.
13 One thing I did want to talk about today is
14 scheduling.
15 THE COURT: I'm not there yet. Let me hear from Mr.
16 Krum so I can --
17 MR. FERRARIO: I'm comfortable with that relief, and
18 I'll just save --
19 THE COURT: Once I say the order then we can talk
20 about scheduling.
21 MR. FERRARIO: -- save my breath on the merits of
22 the motion.
23 THE COURT: You then have a -- you have a motion you
24 need to argue.
25 Mr. Krum.

1 MR. KRUM: Your Honor, that's all appropriate, and I
2 concur with your assessment that we need to see what the
3 result is to see what, if anything else, we need to do.
4 THE COURT: Okay. So the motion for omnibus relief
5 is granted in part. The individuals I outlined will produce
6 the information that I outlined. If there is an issue related
7 to the logging of any of that information on a privilege log,
8 given the definition of the scope of the relevant information
9 I have ordered produced, I would appreciate you addressing
10 those among yourselves if there's an issue, and then I will be
11 happy to rule on it if you need me to.
12 With respect to Cotter's motion to compel production
13 of documents and for privilege, that has been covered under
14 the ruling that I've made today. Part of the alternative
15 relief was that I require additional information to be
16 provided.
17 And with respect to the motion for leave to file
18 summary judgment motion --
19 MR. FERRARIO: Yes, Your Honor.
20 THE COURT: -- I want you to wait to file such a
21 motion until Mr. Krum has had an opportunity to review the
22 information that I've just ordered.
23 How long is it going to take you to produce that
24 information?
25 MR. FERRARIO: I was just going to speak to Mr.

1 Krum. I think the original date range we used was, what, the
2 -- was after Your Honor's order, and I don't remember what
3 that date was, forward. Then we moved it back.
4 THE COURT: Remember how I tried to set you for
5 trial last week and you didn't like it?
6 MR. FERRARIO: No. I want to get to that.
7 So we'll start -- we'll back it up -- you want back
8 to September 1st of 2017?
9 MR. KRUM: Well, you're asking about when is the
10 beginning date for the search for responsive documents?
11 MR. FERRARIO: Yeah. That'll give us -- that gives
12 us --
13 MR. KRUM: My answer is that would be the day I
14 picked based on the information I have.
15 MR. FERRARIO: That's fine.
16 MR. KRUM: But if you know better, then back it up
17 further.
18 MR. FERRARIO: I will check. But we'll start with
19 September --
20 MS. HENDRICKS: Your Honor, could you read the scope
21 one more time? Because I thought we were talking just about
22 the December special independent committee minutes. If it's
23 broader than that --
24 MR. FERRARIO: No. It's ratification.
25 THE COURT: No, you were not -- you were not talking

1 about just the December special committee --
2 MS. HENDRICKS: This --
3 MR. FERRARIO: No, it's not. It's prior to --
4 MS. HENDRICKS: -- and the ratification, as well.
5 MR. FERRARIO: Right.
6 THE COURT: And the P-1 and the preparation of P-1
7 and the drafts of P-1 and all that stuff. So three
8 categories, the 12/21 special committee meeting, whether it's
9 scheduling, content, scope, minutes, whatever, related to that
10 meeting; P-1, whether it's subject matter, preparation,
11 drafting, circulation, how we're going to get it on the agenda
12 for the 12/29 meeting; and then the third issue is any
13 discussion of ratification, not limited by time.
14 MR. FERRARIO: We'll work -- we're going to work the
15 date out.
16 THE COURT: So -- well, but I need to know. How
17 long do you think? Best guess.
18 MR. FERRARIO: We'll do it within a week.
19 THE COURT: No, you can't do it in a week.
20 MR. FERRARIO: Why not?
21 THE COURT: Because it's going to take you longer.
22 MR. FERRARIO: It's not going to take --
23 THE COURT: You're going to need to give a privilege
24 log when you do it, because I anticipate some of the
25 information is going to be a claim of privilege.

1 MR. FERRARIO: Your Honor, right now we're going to
2 proceed on the assumption we're going to start in September.
3 I need to talk to my folks.
4 MS. HENDRICKS: We already have pulled all the data.
5 MR. FERRARIO: I know. So we've got to just verify.
6 MS. HENDRICKS: So I would say even if we did it, if
7 you'd give us till May 11th, which is a couple extra days, but
8 by a week from Friday we should be able to get it in.
9 MR. FERRARIO: If we start from that date, we're
10 fine. I will talk to Mr. Krum more. I'm going to talk to my
11 team. I can't sit here and tell you that at some point in
12 2015 or 2016 in one of the many discussions we may have had
13 where we talked about Nevada statute that that topic didn't
14 come up. I can't tell you that. Do I -- as I stand in front
15 of Your Honor do I believe there's any written document that
16 mentions that? I don't believe there is, okay.
17 THE COURT: You will notice that my order does not
18 have a time limitation.
19 MR. FERRARIO: If you want us to go back to 2015,
20 then we'll have to work on search terms, and we can pump those
21 through the system. But I suspect it's going to come up with
22 nothing. And it might take a little longer.
23 THE COURT: That may be. So you've asked for
24 permission, you've asked for permission --
25 MR. SEARCY: I did ask.

1 THE COURT: -- to file a new motion for summary
2 judgment --
3 MR. KRUM: We have.
4 THE COURT: -- on the, I win, Judge, thing.
5 MR. FERRARIO: The, I win, Judge, thing, yeah.
6 THE COURT: Yeah. So I want Mr. Krum, instead of me
7 facing a 56(f) issue at the time you file that motion, he's
8 ready to file his opposition, I want him to have the
9 opportunity to get these documents with the privilege logs,
10 look at them, and then have a period of time he can decide
11 whether he needs to take additional depositions and, if you
12 fight about it, for me to rule on it.
13 So I'm going to grant your request even though I am
14 hesitant to do so under the circumstances, but I don't want to
15 be in a position where you guys slow play them and then I'm
16 sitting back here again that he didn't get the stuff.
17 MR. FERRARIO: We're not going to do that, Your
18 Honor.
19 MR. KRUM: Well, Your Honor --
20 THE COURT: It's called sandbagging.
21 MR. FERRARIO: You don't do that.
22 MR. KRUM: My suggestion -- and this is not for any
23 purpose other than what you just articulated -- is that,
24 rather than granting the motion today, it be continued for
25 whatever time they predict, two weeks, four weeks --

1 THE COURT: No. I granted it today.
2 MR. KRUM: -- and in chambers, because --
3 THE COURT: No. I granted it --
4 MR. KRUM: -- I don't want to be back fighting about
5 whether they've prematurely filed the motion when we haven't
6 finished this process.
7 MR. FERRARIO: Mark, I'm going to get you the
8 documents, and the Judge has already indicated you're going to
9 have a chance to depose people if you want. We're going to
10 make them available. We want this heard. We're not going to
11 screw around, we're not going to have a 56(f) problem.
12 And can we now pick a trial date?
13 MR. KRUM: I was told that in January, by the way.
14 MR. SEARCY: Before we pick the trial date --
15 THE COURT: I've been trying to keep you guys under
16 control for four years.
17 MR. SEARCY: Your Honor, I have one logistical
18 question about the summary judgment motion. We attached our
19 motion with the motion for leave to file.
20 THE COURT: You don't want to file that motion. You
21 want to file a new motion that includes the issues that we
22 talked about today.
23 MR. SEARCY: Thank you, Your Honor. That's --
24 MR. KRUM: And, Your Honor --
25 Thank you, Mr. Searcy.

1 -- they included in their proposed summary judgment
2 motion two arguments that were not ratification arguments, and
3 we objected to that in the last section of our opposition.
4 THE COURT: They can include whatever they want, and
5 I'm going to rule on it. Because otherwise the Supreme Court
6 will send it back and say, gosh, Judge Gonzalez, they had
7 plenty of time since you vacated the trial because Mr. Cotter
8 said he was sick. And so, instead of getting missive, I'd
9 rather just do it.
10 All right. But I'm not giving everybody new time.
11 What?
12 MR. FERRARIO: Trial date.
13 THE COURT: Yes. I don't have a courtroom. I don't
14 even know what my assignment is going to be.
15 MR. FERRARIO: I gotta say, you know, I've been now
16 on the seventeenth floor with you, now we're on the sixteenth
17 floor, we've been on 10, we've been on 14.
18 THE COURT: We've been on 3.
19 MR. FERRARIO: We've been on 3, that's true.
20 THE COURT: So I don't know when I'll have a
21 courtroom. I am hopeful that Judge Bell is going to move
22 quickly. I told her today I was ready to move overnight if
23 she was ready to become chief judge tomorrow, and she said,
24 don't count on it. So I am hopeful we will have a courtroom
25 by the time of your trial, because you want to go when?

1 MR. FERRARIO: We had originally suggested June 4th.
2 That's a lot of work we're going to have to do before then.
3 THE COURT: I don't think you're going to make it.
4 MR. FERRARIO: Okay. My understanding is you're
5 starting that receiver trial --
6 THE COURT: Yes.
7 MR. FERRARIO: -- the end of July; right?
8 THE COURT: Yes.
9 MR. FERRARIO: If we could get in before that, then
10 we can -- I know we can make that.
11 THE COURT: How long is it going to take you to try
12 this case, understanding I might have a regular assignment
13 back and have to hear motion practice every day?
14 MR. FERRARIO: Yeah. I just don't see it being more
15 than three weeks. I mean, we're going to have a jury probably
16 in two days, I would imagine.
17 MR. KRUM: I think three weeks is --
18 THE COURT: Three to four weeks?
19 MR. KRUM: I think three weeks is probably doable,
20 but --
21 THE COURT: And you told me that you couldn't start
22 until when because of travel and witnesses?
23 MR. KRUM: The week following Fourth of July
24 weekend.
25 THE COURT: When did I set NCIC to start?

1 THE CLERK: [Inaudible].
2 THE COURT: Okay.
3 MR. FERRARIO: That's close. So we could start --
4 what week is that, Mark?
5 MS. HENDRICKS: That is July 9th.
6 MR. FERRARIO: July 9th? Okay.
7 That doesn't work for you?
8 MR. SEARCY: I'm not here on July [inaudible].
9 MR. FERRARIO: Let us talk about that, Your Honor,
10 when we get out of here, okay.
11 THE COURT: So if you go after the NCIC people --
12 MR. FERRARIO: That'll be late August; right?
13 THE COURT: It's going to take them four weeks.
14 MR. FERRARIO: I talked to those guys the other day.
15 I'm not going to speak for them, but --
16 THE COURT: They're trying a malpractice case on the
17 CD, which means I have to try the underlying CD case related
18 to Chateau Versailles and the default judgments that were --
19 MR. FERRARIO: That's what that case is about?
20 THE COURT: That's part of what that case is about.
21 MR. FERRARIO: Forget about it.
22 THE COURT: And so that's going to make my life a
23 bit miserable.
24 MR. FERRARIO: Okay. That's all I need now.
25 THE COURT: If I have to do that.

1 MR. FERRARIO: I'll talk to Mr. Whitmire.
2 MR. KRUM: I'm sorry, Your Honor. They're
3 anticipated to go all of August; is that correct?
4 MR. FERRARIO: That's what --
5 THE COURT: I'm thinking four weeks.
6 MR. FERRARIO: See, that's why we've got to this
7 done.
8 MR. KRUM: Well, what's -- I'm sorry. I don't
9 recall what the discussion was, if anything, about what
10 follows them.
11 THE COURT: I have no idea.
12 MR. FERRARIO: She's -- that's --
13 THE COURT: I'm going to be a regular judge. I
14 don't even know what kind of regular judge. I just asked not
15 to be sent back to Family Court, because I did my part and did
16 guardianship for eight months. And I'm not doing it again.
17 MR. KRUM: Okay. Thank you, Your Honor.
18 MR. FERRARIO: Thank you, Your Honor.
19 THE COURT: Other than that, I have no idea what
20 Judge Bell will assign me.
21 I'm going to set you for a status check on whether
22 the documents got exchanged three weeks from Friday. All I
23 want, Mr. Krum, is a status report saying, we got them and
24 everything is perfect, or, gosh, Judge, we have problems, it
25 would be nice if you would schedule a conference call to talk

1 about how we're going to handle them.
2 MR. KRUM: This is in chambers? You just need a
3 status report?
4 THE CLERK: May 25.
5 THE COURT: Okay.
6 MR. KRUM: Got it. Thank you, Your Honor.
7 MR. FERRARIO: Thank you, Your Honor.
8 THE COURT: Have a lovely afternoon. You were
9 pretty close to your estimate of two hours. I'm impressed.
10 THE PROCEEDINGS CONCLUDED AT 4:05 P.M.
11 * * * * *
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INDEX

NAME	DIRECT	CROSS	REDIRECT	RECROSS
DEFENDANTS' WITNESSES				
William Gould	11	14		
Michael J. Bonner	19	25	64	65

* * *

EXHIBITS

DESCRIPTION	ADMITTED
PLAINTIFF'S EXHIBIT NO.	
1	34
2	55
3	52

* * *

DEFENDANTS' EXHIBIT NO.	
A	67
B	22

* * *

CERTIFICATION

I CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT FROM THE AUDIO-VISUAL RECORDING OF THE PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

AFFIRMATION

I AFFIRM THAT THIS TRANSCRIPT DOES NOT CONTAIN THE SOCIAL SECURITY OR TAX IDENTIFICATION NUMBER OF ANY PERSON OR ENTITY.

FLORENCE HOYT
Las Vegas, Nevada 89146

Florence M. Hoyt

FLORENCE M. HOYT, TRANSCRIBER

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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.	.	
	.	**Transcript of**
Defendants	.	**Proceedings**
. . . . .	.	

BEFORE THE HONORABLE ELIZABETH GONZALEZ, DISTRICT COURT JUDGE

HEARING ON MOTION TO DISMISS, MOTION TO COMPEL, MOTIONS TO SEAL, MOTION FOR RELIEF RE NONCOMPLIANCE AND MOTION FOR SUMMARY JUDGMENT

TUESDAY, JUNE 19, 2018

COURT RECORDER:

JILL HAWKINS
District Court

TRANSCRIPTION BY:

FLORENCE HOYT
Las Vegas, Nevada 89146

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APPEARANCES:

FOR THE PLAINTIFF:	MARK G. KRUM, ESQ. AKKE LEVIN, ESQ.
FOR THE DEFENDANTS:	MARK E. FERRARIO, ESQ. KARA B. HENDRICKS, ESQ. MARSHALL M. SEARCY, ESQ. CHRISTOPHER TAYBACK, ESQ. KEVIN M. JOHNSON, ESQ. SHOSHANA E. BANNETT, ESQ. CAROLYN K. RENNER, ESQ.

1 LAS VEGAS, NEVADA, TUESDAY, JUNE 19, 2018, 8:39 A.M.
2 (Court was called to order)
3 THE COURT: Good morning. Does anyone have any
4 electronic drives they would like Mr. Doan and his team to
5 look at?
6 MR. JOHNSON: Yes, Your Honor, we do.
7 THE COURT: Team 1. Good morning. How have you
8 been. Thanks. Let me know when you're done.
9 In the meantime, I received late last night, I guess
10 early this morning plaintiff's reply on the motion related to
11 the May 2 rulings and a motion to seal those. Does anyone
12 object to me signing the order shortening time on the motion
13 to seal and advancing it to this morning?
14 MR. KRUM: No.
15 THE COURT: I'm going to wait for a minute before we
16 start the motions. The order I'm going to go is I am going to
17 handle the motion first for relief based on noncompliance with
18 the Court's May 2, 2018, ruling before I go to any other
19 motions. And then, according to the notes I wrote last night,
20 my plan is to do the motion to compel and then to go to the
21 motion for summary judgment and then to the motion to dismiss,
22 if you need to order your stacks.
23 (Pause in the proceedings)
24 MR. DOAN: Okay. So these are good.
25 THE COURT: You need to get near the mike, Mike.

1 MR. DOAN: Sorry.
2 THE COURT: You know better than that.
3 MR. DOAN: Okay. Yeah. I think there's some
4 standard exhibits and videos on one. Is that true?
5 MR. JOHNSON: Yes.
6 MR. DOAN: Okay. So those are traditional, so those
7 won't be part of this.
8 THE COURT: Okay.
9 MR. DOAN: The other set's good. The blank jury
10 drive isn't labeled, but it should be good. It'll still be in
11 the box. So that's your call how you want to handle that.
12 THE COURT: Okay.
13 MR. DOAN: The other set, we a bad file name on it,
14 just the naming, so --
15 THE COURT: Okay.
16 MR. DOAN: -- if we could fix that real quick.
17 THE COURT: Whose drive is it?
18 UNIDENTIFIED SPEAKER: Is that the orange one?
19 MR. DOAN: Yeah, the orange one.
20 THE COURT: What do you want -- come name the file.
21 Come help rename the file.
22 UNIDENTIFIED SPEAKER: Sure.
23 THE COURT: It's easier if we all sit here and do it
24 now.
25 MR. KRUM: So, Your Honor, may we interject an

1 observation and a question?
2 THE COURT: No, not yet.
3 MR. KRUM: Well, it's with respect to this.
4 THE COURT: Hold on.
5 MR. KRUM: Okay.
6 THE COURT: Are we reading the file in an
7 appropriate format?
8 Okay. Mr. Krum, you wanted to make an observation.
9 MR. KRUM: Well, the observation, Your Honor, is
10 that we've not had an opportunity to complete processing the
11 documents that have been produced in the approximate last
12 week.
13 THE COURT: I'm not there yet. I'm not there yet,
14 Mr. Krum. That's the first motion this morning.
15 MR. KRUM: Well, no. But for the purposes of our
16 drive I just wanted to apprise the Court that our view is that
17 it's incomplete. We'll --
18 THE COURT: That's the first two motions this
19 morning, Mr. Krum.
20 MR. KRUM: Okay. I wanted to make sure he knew if
21 he need to. That's all.
22 THE COURT: He doesn't need to know that. He just
23 needs to know when he needs to come and check it and tell us
24 it's okay, start the next process.
25 MR. KRUM: Thank you, Your Honor.

1 THE COURT: So make him do substantive stuff. Make
2 him do process stuff.
3 All right. Mike, are we good on everything else?
4 MR. DOAN: Yeah, we're good.
5 THE COURT: Okay. So if you'd deliver the drives
6 back to Dulce and we'll do what we need to.
7 Thank you, gentlemen, for coming. I appreciate your
8 time.
9 THE LAW CLERK: Are we doing time?
10 THE COURT: Yes, they are on timers.
11 How much time do you think you need?
12 MR. FERRARIO: For what?
13 THE COURT: I'm going to put you on a timer, but
14 you're going to tell me how much time you need, and then I'm
15 going to hold you to it.
16 MR. FERRARIO: Per motion?
17 THE COURT: How much time do we need this morning,
18 Mr. Ferrario?
19 MR. FERRARIO: I'm running a calculation in my head.
20 THE COURT: I'm watching your numbers run. There's
21 steam coming out of your ears.
22 MR. FERRARIO: I would think no more than 20 minutes
23 per motion combined for both sides.
24 THE COURT: How much do you think you need, Mr.
25 Krum?

1 MR. KRUM: I think, Your Honor, 15 minutes per
2 motion is sufficient.
3 THE COURT: And I'd said you had not to exceed an
4 hour this morning not counting the stuff for the drives. So
5 I'm going to allocate a total of 30 minutes to each side for
6 you to split however you want among your motions, okay.
7 So, Cassandra, please keep track -- she left. Hold
8 on.
9 MR. KRUM: We had strict time limits in the
10 depositions in the Daimler v. Chrysler case, the securities
11 case, and the Daimler folks all spoke better English than most
12 of us, but they insisted on a translator.
13 THE COURT: Yeah. It doubles the time.
14 MR. KRUM: Well, so literally we had a clock person
15 starting and stopping when the lawyer's question ended and the
16 translation began.
17 THE COURT: Thirty minutes each, please.
18 Cassandra, if you could track them.
19 THE LAW CLERK: Got it.
20 THE COURT: All right. I said I wanted to start
21 with the motion related to the compliance with the May 2
22 order.
23 MR. KRUM: Thank you, Your Honor. May I sit for
24 this? My notes are on my computer.
25 THE COURT: Sure.

1 MR. KRUM: Thank you.
2 THE COURT: Just make sure you keep your voice up.
3 MR. KRUM: So first by way of hopefully a timely
4 abbreviated background, recall that the original summary
5 judgment attached only the December 29 minutes. There was no
6 mention of even the December 27 Gould email, much less the
7 December 21 special committee meeting. So when the documents
8 were produced in February, of course, there was nothing about
9 the December 21 special committee meeting, but there was the
10 December 27 Gould email, as if the five had contemporaneously
11 shared and epiphany and somehow someone -- Gould had dictated
12 that.
13 But, of course, we learned from prior motion
14 practice that what in fact happened supposedly as among the
15 five is the first event was the December 21 special
16 independent committee meeting. So I've done M&A work for
17 decades, and one of the things I've enjoyed about that is
18 being able to provide advice about business matters, not just
19 litigation. But I understand that in those circumstances
20 sometimes that entails molding what comes to be the evidence.
21 I've never seen anything like this. The GT lawyers, as we
22 know from the May 2 hearing, did not prepare the minutes of
23 the December 21 SIC meeting, special independent committee,
24 until after the motion had been heard, after we'd propounded
25 discovery, and then, as we heard from Mr. Bonner, well, no,

1 the discussion of ratification was privileged and so it didn't
2 appear in the minutes, or words to that effect. I'm not going
3 to go over all that again. That's just context. They clearly
4 sought to conceal the December 21 special committee meeting.
5 And we never received an explanation. Now, counsel for Mr.
6 Gould said, we didn't think it was responsive. And we spoke
7 to that in our papers. I'll just reiterate that's
8 unbelievable.
9 GT lawyers participated in the entire ratification
10 process, and I put "ratification" in quotes and "process" in
11 quotes, Your Honor. That includes December 21 SIC meeting.
12 That includes the litigators present in the room today. So
13 May 2 you made an order that was clear and precise,
14 ratification, matters relating to the December 21 SIC meeting,
15 matters relating to the December 27 Gould email.
16 I understood counsel for defendants, GT counsel, to
17 indicate that in connection with the February 2018 production
18 they had previously collected all emails for GT attorney
19 Bonner and I assume Ferrario for Ellen Cotter, for Craig
20 Tompkins, for all the SIC members dating back to September of
21 '17. So in view of that, in view of the specificity of the
22 Court's May 2 order, and in view of the fact the GT lawyers
23 had participated in these events they knew exactly what they
24 had and they knew exactly what they needed to do on May 2.
25 And what they could have done and should have done, Your

1 Honor, is a manual review of the emails they'd previously
2 collected, which presumably they could have done in a week or
3 two to produce the documents you ordered produced on May 2.
4 They didn't do that. Those documents weren't produced until
5 approximately -- not approximately, starting for all intents
6 and purposes on June 9.
7 The whole schedule is in Exhibit A to our reply.
8 Did Your Honor have a chance to look at that?
9 THE COURT: I did.
10 MR. KRUM: Thank you. So I'm going to --
11 THE COURT: I took the opportunity while we were
12 looking at the drives.
13 MR. KRUM: I understand, Your Honor. I apologize it
14 wasn't to the Court earlier.
15 I'd like to talk a minute about Exhibit 4 to the
16 reply. It's a brief email chain dated December 20 concerning
17 the scheduling of the December 21 SIC meeting. The document
18 was not produced and not logged until May 31. And on May 31
19 it was logged. The email was devoid of substance. There's
20 nothing privileged about it. You can see, Your Honor, it's
21 about scheduling the December 21 SIC meeting. Except, except
22 that you can also see that the meeting was scheduled at the
23 request of GT lawyers, not SIC members, and that at least one
24 of them on December 20 didn't know why they were going to have
25 a special meeting on December 21. Respectfully, Your Honor, I

1 think it was logged on May 31st as part of an effort, a
2 successful effort, to slow play plaintiff, exactly what you
3 directed counsel for defendants not to do on May 2.
4 There are other documents, Your Honor, that show
5 that what transpired is that prior to the December 21 SIC
6 meeting GT counsel conferred with Craig Tompkins and Ellen
7 Cotter. The other documents and privilege log entries -- and
8 I'm inferring from the privilege log entry, I don't have
9 testimony about it and if I get to trial then I'm out of luck,
10 because they'll object, but I infer from these privilege log
11 entries that following December 21 GT lawyers worked with
12 Craig Tompkins and Ellen Cotter to draft the December 27 Gould
13 email. Now, of course, the language in that email was used in
14 the agenda, it was used in the minutes. It's the legally
15 operative language. "Legally operative" is not my word. It's
16 language of legal consequence, according to Mr. Bonner.
17 So where does leave us, the result of this slow play
18 today? I've been unable to examine witnesses because I didn't
19 have documents, I had privilege logs. I got the privilege
20 logs, Your Honor, the ones on which I'm now supposed to rely,
21 on June 15. Defendants have since May 2 engaged in what
22 amounts to wilful noncompliance, delaying, logging documents
23 that aren't privileged and so forth. So plaintiff has been
24 unable to respond to the summary judgment motions, he is
25 unable to complete discovery in advance of trial, he is unable

1 to use the evidence at trial for any purpose, whether to
2 respond to a ratification defense or otherwise. As we say in
3 other motions, there are other uses to which we can put it.
4 Thank you, Your Honor.
5 THE COURT: Thank you.
6 Mr. Ferrario.
7 MR. FERRARIO: Your Honor --
8 MR. KRUM: Sorry, Mark.
9 How much time did I use?
10 THE LAW CLERK: You have 23 minutes left.
11 MR. KRUM: Thanks very much.
12 MR. FERRARIO: I'm going to primarily address any
13 questions you have.
14 THE COURT: I don't have any questions, Mr.
15 Ferrario.
16 MR. FERRARIO: I do -- I do --
17 THE COURT: I made an order. It was pretty clear.
18 MR. FERRARIO: And we complied.
19 THE COURT: Okay.
20 MR. FERRARIO: Okay? And, as a matter of fact,
21 Judge, I went to the unprecedented step of producing otherwise
22 privileged documents provided I could get Mr. Krum to agree
23 there was no waiver. What this is, quite frankly, is just an
24 effort to take away from my client something Nevada law
25 provides, which is to ratify a prior decision. This whole

1 thing has been turned on its head, okay. Ratification is
2 provided for under our statute, okay. This notion that
3 there's a ratification process or anything, it just -- it's a
4 farce, okay. And this is the problem I have with what Mr.
5 Krum is doing here. He doesn't want to address the merits,
6 because he knows if he addresses the merits, it's over. So
7 the only thing I would agree with Mr. Krum on is I've never
8 seen anything like this. I've never seen a derivative case
9 like this, you haven't, and he hasn't. You can't cite one
10 case around the country that even approximates this. I've
11 never seen a case where they abandon their damage expert yet
12 it's still the derivative case for the company. What's the
13 company going to get? They have no damage expert. I've never
14 seen a case where we show up for trial and on a Friday he says
15 he's ready to go, but over the weekend emergency health issue,
16 boom, gone. I haven't seen that before. I've never seen a
17 case where we're here in Nevada talking about Nevada law and
18 they hire an expert from Delaware to talk about Delaware law.
19 You're right. I've never seen a case like this.
20 THE COURT: He was a very bright man.
21 MR. FERRARIO: So if -- I don't care how bright he
22 is. He doesn't know anything about Nevada law, apparently,
23 because he didn't cite one Nevada case. So do I agree with
24 Mr. Krum that I've never seen anything like this, you bet I
25 haven't. Because, you know what, it's so confounding that I

1 went back to basics over the weekend with Ms. Cowden after we
2 argued over what to put in our pleading, and I said, what is a
3 derivative case, a derivative case is supposed to bestow
4 benefit on the company, right?
5 THE COURT: The shareholders.
6 MR. FERRARIO: The shareholders, right, through the
7 company. So you tell me -- and I defy Mr. Krum to stand up
8 today given the case that he has with no damage expert, what
9 benefit is going to result to the company or the shareholders
10 from prosecuting this action. It doesn't exist.
11 So let's go back to where we are. This Court gave
12 Mr. Krum the benefit of the doubt and said, now go out and do
13 this and broad discovery. I have a little cheat sheet here,
14 I'll be happy to give it to. This shows you all the operative
15 dates on what we did and when we provided information. He
16 goes to this document that he says -- this email chain that
17 set up a meeting. Wow. That's an earth-shattering event.
18 You know what the problem is? He already knows about the
19 meeting. He asked people questions about the meeting. Does
20 the email tell him anything he doesn't already know? The
21 answer to that is unequivocally no, okay. He's deposed
22 everybody. Has he come to you and said that any document that
23 we've produced, any document, would spawn additional
24 questions? Any document disclosed to him, anything material
25 that he didn't know, has he told you that? Absolutely not.

1 And the reason is it doesn't impact what he already knows. It
2 doesn't impact what happened here. He cites in his pleading
3 the outrageous proposition that I would give advice to my
4 client. How foolish of me to tell the client that under
5 Nevada law there's a ratification option as a result of the
6 decision Your Honor made. That's just ridiculous that I would
7 do that. But I guess under Mr. Krum's world my client would
8 have had to hire a separate lawyer to tell them what's in
9 Nevada law. Farcical. The whole thing is farcical, because
10 he knows that under Nevada law the legislature has provided
11 that my client could go back, okay -- not go back, today look
12 back and say, based on what I know and all the facts today,
13 okay, the directors, the independent directors could ratify
14 those decisions. That's just the harsh reality of Nevada law.
15 And unless he can point to some prejudice that's resulted to
16 him, which he can't and which he hasn't, all he's done is talk
17 about this should have come that day, that privilege log
18 adjusted -- and Ms. Hendricks can address all the evolutions
19 of the privilege log and after we had the meet and confer and
20 what we gave him and even to the point, Your Honor, of giving
21 him privileged information provided he said it wouldn't be a
22 waiver, okay. But at the end of the day you have to be able
23 to say that this has impacted me adversely. It's not enough
24 to say, well, I got this email that talked about scheduling
25 the meeting that I already knew and I should have had it

1 earlier. What the heck does that have to do with the price of
2 beans? Nothing. That's what's missing here.
3 So it's nothing more than a smoke screen to avoid
4 the inevitable that results under Nevada law. Now, we have,
5 and Ms. Hendricks can address this, some documents that we're
6 prepared to give to Your Honor in camera that you can review.
7 But I would submit it's not going to change anything that
8 happened here; because, as I told you from the beginning,
9 okay, and has been evident through all the depositions -- and
10 I must point out that Mr. Krum's desperation to avoid the
11 application of this law is best displayed in Ellen Cotter's --
12 no, in his motion, his opposition to the directors' motion
13 where he deliberately misstates the testimony of the various
14 directors. And I read that this morning. That's on page 6 of
15 the directors' reply.
16 So this isn't about looking at the record, this
17 isn't about facts. This is about Mr. Krum and his client
18 deliberately misleading this Court and deliberately misstating
19 the evidence because they want to avoid the inevitable under
20 Nevada law. So before he stands up and says, oh, Ferrario's
21 crazy 'cause he gave advice to his client, before I stands up
22 and says he doesn't have any information or something he has
23 to tie that out to an issue that's relevant to the case. And
24 he hasn't done that. Not once in these pleadings does he
25 demonstrate any prejudice as it relates to this issue;

1 because, as I told Your Honor when I first raised this issue
2 after your decision in December, okay, we had a situation --
3 we had a sea change in the case. We had now directors that
4 had been declared independent by this Court, and that then
5 gave rise to the ratification option under Nevada law. There
6 was a meeting held, a board meeting duly noticed that his
7 client attended where these directors ratified the decisions
8 that were the subject of the agenda, which is the option
9 decision and the termination of Mr. Cotter. That is nothing
10 earth shattering, that is nothing nefarious. There's nothing
11 wrong with that. And he hasn't cited to you a case, a
12 statute, nothing to support any of the claims he makes. And
13 he comes to this Court -- he hasn't said, I need to reexamine
14 Mr. McEachern because I got this email, he hasn't come -- and
15 I've been through that with Your Honor hundreds of times
16 because you say you get 10 minutes to ask that question. He
17 hasn't come to you with any of that stuff.
18 THE COURT: It's only because you take longer.
19 Other people would get 15.
20 MR. FERRARIO: And that's because I'm quick.
21 Anyhow, so that's what's at -- that's the problem I
22 have with this motion, Your Honor. Now I guess the most
23 bizarre thing is at the end he says now he has too many
24 documents. It's pretty clear what's going on. In December
25 something -- in December, late January leading up to the trial

1 obviously, since he'd pulled his experts, there must have been
2 an issue with the experts. And that's going to be the subject
3 of another motion that's going to be filed regarding why we
4 ended up continuing this trial in the first place in January,
5 okay. Now here we are a few months later, he withdraws his
6 two experts, his main experts in the case. And what's he
7 doing now? He wants another continuance on the ratification
8 issue, which didn't even come about until Your Honor's
9 decision.
10 So you want to go back to the beginning? I've never
11 seen anything like this. And that much we agree on. And he
12 can't cite you a case to support anything he's talking about
13 here regarding ratification, not one. Matter of fact, he goes
14 so far as to contort what the committee that consists of Mr.
15 Gould, Ms. Codding, and Mr. Wrotniak, he keeps calling it a
16 special litigation committee, like it's a DISH committee and
17 things like that, and he cites cases that deal with those
18 types of committees. And he keep conflating what this
19 committee does. All he has to do is read the charter. So
20 instead of coming forward with something clear and concise,
21 it's just a bunch of crap thrown in the air, and he's hoping
22 that this Court bites on it.
23 So at the end of the day we've done what we had to
24 do, he's failed to show any prejudice, and if he can present
25 you with a document or something and say, hey, I need to go

1 ask more questions, then Your Honor could say, like she has to
2 me many times, then you get another 10 minutes or 20 minutes
3 or an hour with this witness and have at it. But he hasn't
4 even done that. It's pretty obvious what's going on here.
5 They don't have a case, they don't want to try the case, and
6 they're using any means available to them to delay this
7 proceeding and continue to cost the shareholders millions of
8 dollars. That's what's going on here.
9 THE COURT: Thank you.
10 MR. KRUM: Okay. Thank you. Well, most of that's
11 -- I don't know whether it's from college debate or whether
12 it's Trump politics. It's irrelevant fiction intended to
13 deflect and distract.
14 THE COURT: I think it's Wynn experience.
15 MR. KRUM: Pardon me?
16 THE COURT: Wynn experience.
17 MR. KRUM: Well, I'm not speaking to that. I have
18 plenty of secondhand Wynn experience.
19 Okay, Your Honor. First of all, I've had it with
20 this, these repeated innuendos, emergency health issue and so
21 forth. Mr. Cotter's -- one of his physicians provided an
22 affidavit or declaration. I thought that was good enough, but
23 apparently that person is presumed to be a liar and I'm
24 presumed to be a liar.
25 THE COURT: Mr. Krum, please direct your comments to

1 me.
2 MR. KRUM: And, Your Honor, I appreciate that Mr.
3 Ferrario's under pressure from clients and that the clients
4 dislike my client. I wish we were above that, okay. The
5 physician in question is somebody with whom I've had a
6 professional relationship for 20 years. I know the person to
7 be of integrity. But I knew I was going to get more of this
8 innuendo today, and I was concerned about something that was
9 said yesterday, so I circled back and confirmed with the
10 physician that Mr. Cotter had the procedure that was described
11 to you in the declaration. So can we stop that, I hope?
12 Now, on to --
13 THE COURT: I think there's a motion next week on
14 it.
15 MR. KRUM: Well, I haven't seen that.
16 MR. FERRARIO: There will be coming. And it has
17 nothing to do --
18 THE COURT: Mr. Searcy, did you serve your motion?
19 MR. FERRARIO: It will probably be served today.
20 And it has nothing to do with whether he had the procedure.
21 THE COURT: Wait, Mr. Ferrario. It's Mr. Searcy's
22 motion.
23 MR. FERRARIO: Huh? We're going to join.
24 MR. SEARCY: That's being served today, Your Honor.
25 MR. KRUM: Okay. Now, so, Your Honor, the next

1 thing is who's deliberately misleading the Court. Look,
2 they're the ones that came and told you, they showed up on
3 December 29, they looked at the package. Well, we know that
4 that's inaccurate. There's a whole history here. Then he
5 says, well, I knew that the December 21 meeting occurred, what
6 more do I need. Well, how'd it occur? I didn't get that from
7 any of them.
8 MR. FERRARIO: We called it.
9 THE COURT: Mr. Ferrario.
10 MR. KRUM: And, so, for example, Your Honor, Exhibit
11 3 to our reply tells me something I didn't know, that Craig
12 Tompkins precipitated the meeting. I now know that I need to
13 depose him about the whole ratification process. He was a
14 critical participant from before it went to independent
15 directors to drafting the operative document.
16 And Exhibit 4, Your Honor, the email, it doesn't
17 tell me anything I knew? Excuse me? None of these directors
18 testified that the December 21 special independent committee
19 meeting had been called by GT lawyers. None of them testified
20 -- Mr. McEachern didn't testify that he even knew why it was
21 called until he showed up. So, yes, it's news, Your Honor.
22 So I need to find out from Tompkins and Ellen Cotter
23 what exactly they communicated to somebody else. It may only
24 be the subject matter, Your Honor, depending on how these
25 privilege issues play out, but I'm entitled to that, because a

1 privilege log doesn't substitute for testimony. And I'm
2 entitled to hear from Margaret Cotter why she gave me a sworn
3 interrogatory response that excludes written communications
4 about ratification. And what else did she not tell me? And
5 then, of course, Mr. Gould, you know, he was the only
6 "independent," I put that in quotes, director involved. So,
7 Your Honor, yes, the whole process, the ratification process
8 has been concealed, the discovery process has been undermined,
9 and what you ordered on May 2 hasn't been provided. Thank
10 you.
11 THE COURT: Thank you.
12 If we could go to the motion to compel, please. Mr.
13 Krum, we're on your next motion.
14 MR. KRUM: Yes. Thank you, Your Honor.
15 First, Your Honor, the SIC charter provides it with,
16 quote, "authority to enter and bind the company in connection
17 with Cotter-related proceeding." That includes this case.
18 The charter itself, Your Honor, makes clear that the committee
19 is empowered and as such is what is typically called a special
20 litigation committee.
21 Point two. GT lawyers made no effort to maintain
22 any confidence or privilege of SIC members, the SIC itself, or
23 any independent director vis-a-vis anyone, not Craig Tompkins,
24 not even Ellen Cotter and Margaret Cotter, defendants in this
25 case, who stand to benefit from a supposed independent

1 business judgment of SIC members or the five, depending upon
2 how you view it. The independent committees do not share
3 privilege or common interest with a full board where, as here,
4 their work entails assessing the conduct of other members of
5 the board. Talk about nonsensical. That's as if the members
6 of the jury and the litigants can have a relationship of that
7 nature. Where a special committee doesn't maintain its
8 information as privileged and confidential vis-a-vis
9 potentially adverse board members -- that's the key, are they
10 potentially adverse -- such information isn't privileged and
11 confidential, is not privileged and confidential.
12 Well, they say, well, none of that happened here
13 because it was five who voted at the December 29 meeting.
14 Well, the meeting effectively was called for the purposes of a
15 ratification summary judgment motion by the three. The email
16 says the five, but there's no evidence that Kane or Wrotniak
17 knew about it beforehand. In fact, the evidence by privilege
18 log entries from which we infer, because Wrotniak couldn't
19 specify the day, whether it was December 26, 27, or 28, but
20 the privilege log entries indicate that Wrotniak first learned
21 about ratification on December 28th, the day after the Gould
22 email.
23 So what happened here is the same thing that
24 happened in two of the cases we cited, Kline versus FPL and In
25 Re Parr Pharmaceuticals. The independent committee takes some

1 action to bring a matter before the full board for a vote of
2 all the supposedly independent members of that full board.
3 And FPL it was an evaluation committee, in Parr it was a
4 committee that conducted and investigation and recommended
5 dismissal of the derivative suit. But the same thing happened
6 as here. "Independent directors," and I put that in quotes
7 all the time, caused a matter to be taken up before the full
8 board, all independent directors, including those who caused
9 it and those who didn't vote it, and the cases find that the
10 information, because it was disclosed to board members who
11 were not part of the independent group who voted, either
12 wasn't privileged or privilege was waived.
13 The same kind of thing happened in Wardleigh, Your
14 Honor, where it was a homeowners association and owners. And
15 the question was, you know, what was the lineup. So the law
16 isn't not Nevada law, it's consistent with Nevada law.
17 Attorney work product. If it's prepared in
18 anticipation of litigation, it's not what they claim it is in
19 the ratification summary judgment motion, independent business
20 judgment on RDI business matters.
21 So the opposition was great, Your Honor, because
22 it's a perfect exercise in question begging. It says, "RDI's
23 committee does not have different objectives from the rest of
24 the board." Well, that says everything and nothing. They
25 say, "There's no separation between Mr. Tompkins's interests

1 and the interests of the SIC," which is in effect because he
2 reports to Ellen Cotter, says, the SIC and defendant Ellen
3 Cotter have the same interests. The best part is that the
4 opposition to search that GT, quote, "may have discussed in
5 confidence certain ratification-related with Ellen and
6 Margaret Cotter," quote, "in no way constitutes waiver of the
7 attorney-client privilege," close quote.
8 Why is that? And the answer is, quote, "Unity of
9 interest between RDI and Ellen and Margaret Cotter, who share
10 a common interest in responding to plaintiff." Excuse me.
11 These are supposed to be independent directors who engaged in
12 a good-faith process resulting in an informed decision to,
13 quote, "ratify" prior conduct of directors, including Ellen
14 and Margaret Cotter. Either they were that, which is what the
15 motion claims they were, or they were at SLC that said, we
16 don't want this case around anymore. But they can't have it
17 both ways. They cannot be both. They cannot share supposedly
18 privileged information used by supposedly independent
19 directors to make a supposedly good-faith, informed decision
20 independent of the people who were the subject of the
21 decision, defendants Ellen and Margaret Cotter and Craig
22 Tompkins, who reports to them and works for ostensibly an
23 [unintelligible] RDI. They can't share that information and
24 claim that it's privileged and confidential. They can't both
25 be -- they can't share that information and be independent

1 directors, which is why all this caselaw says independent
2 committees and independent directors should not use company
3 counsel. This isn't extraordinary stuff, Your Honor. This is
4 something we took for granted back in the '80s when I was a
5 takeover lawyer in New York. Somebody makes an offer for the
6 company, you get a committee of independent directors to
7 evaluate the offer, they hire independent advisors,
8 independent lawyers, independent bankers and so forth.
9 Nobody, nobody, except someone who didn't know what they were
10 doing or didn't think they could control the independent
11 people uses company counsel. Why did they do it here? You
12 know, there were a couple times early in the case I thought,
13 they're not paying attention, not sweating the details. But
14 what this whole ratification exercise shows is that it is
15 Craig Tompkins and more particularly outside counsel, GT is
16 the means by which Tompkins and Ellen Cotter control the
17 independent directors. GT advised the ratification people,
18 the independents, all of them. Not only the SIC, they had
19 phone calls on the 28th, if that's what the logs fairly
20 indicate, which we can surmise, with Wrotniak, Kane, who
21 didn't recall having it, and got everybody lined up the day
22 before. But they didn't -- and now we look back and we go,
23 oh, my goodness, GT advises the compensation committee, they
24 advised in all matters.
25 So, Your Honor, they can't have it both ways, and

1 they can't argue with the evidence. You know, I understand
2 the argument about the quote on McEachern. McEachern wasn't
3 on the compensation committee. He was on the SIC. And he
4 testified that what the SIC did was to act to resolve these
5 issues. And Mr. Gould wasn't confused about the SIC making
6 the request. He was clear about that. That's what
7 transpired.
8 So, Your Honor, the bottom line is this isn't simply
9 an issue about privilege. This is an issue about privilege
10 related to whether these directors are independent, which goes
11 go both summary judgment motions. Thank you.
12 THE COURT: Thank you.
13 Mr. Ferrario.
14 MR. FERRARIO: Your Honor, I stand guilty as charged
15 for advising my client as to what NRS 78. I think 140 says.
16 And he hasn't cited one case anywhere, okay, that says a
17 lawyer can't talk to members of a board about Nevada law. He
18 says that this is something orchestrated by Craig Tompkins or
19 Ellen Cotter or Margaret Cotter. What he's missing and what
20 he's distorting is this wasn't orchestrated by anybody other
21 than the Nevada Legislature when they passed the law.
22 THE COURT: So, Mr. Ferrario, let me stop you. This
23 doesn't really relate to this motion, but since you've brought
24 it up, NRS 78.140(4) says, "The fact that the vote or votes of
25 the common or interested director or directors are not counted

1 for purposes of subsection 2 does not prohibit any
2 authorization, approval, or ratification of a contract or
3 transaction to be given by written consent pursuant to
4 subsection of NRS 78.35 [sic] regardless of whether the common
5 or interested director signs written consent or abstains in
6 writing from providing consent."
7 That seems to limit the type of items which
8 ratification can be used for. Can you discuss that issue with
9 me.
10 MR. FERRARIO: Well, actually this is something
11 we've debated in this case from the beginning as to why you
12 were saying these directors weren't independent, because under
13 Nevada law you have a much broader protection for directors
14 than you do under Delaware and elsewhere. And so this whole
15 thing started off by a way for Mr. Krum to say these were
16 interested directors. And the only way you could say that is
17 were they interested in this transaction or occurrence. And
18 he said they were, that they were doing that to -- and the
19 transaction or occurrence is the termination of Jim Cotter,
20 Jr., and --
21 THE COURT: And I made a determination on summary
22 judgment. What I'm trying to get from you is is the
23 ratification process that the Nevada Legislature has
24 authorized in NRS 78.140(3) and (4) limited to a contract or
25 transaction, as opposed to other kinds of actions that

officers and directors of a company take. That's what I'm trying to focus on.

MR. FERRARIO: I don't believe it is. You have to talk about what "transaction" means, okay. And the transaction at issue, for example, in the 100,000 -- you know, exercise of the 100,000-share option, that's a transaction, okay. Now, again, if you take it out of that, then the board can ratify any decision. That's just general corporate law. So either way he's out, okay. There's nothing that prevents a board from being fully informed and going back and saying, you know what, I'm going to ratify that decision. It happens all the time, okay. And under that statute the Nevada -- under our corporate statute, under our corporate governance, okay, you can clearly do that. That's what our legislature has said. Even in a situation where you have an interested director involved in the transaction and the other board members know it, somebody may benefit from the transaction or the contract, our legislature says you can ratify that, independent directors, you can do that. That's what happened here under Nevada law.

THE COURT: What I'm trying to get from you, Mr. Ferrario, and you're circling around for me, is there are other kinds of activities that are the subject of this litigation that do not clearly fall within the words in my mind "transaction" or "contract."

1 MR. FERRARIO: I understand what you're saying.
2 THE COURT: I'm trying to find out from you the
3 basis on which you think ratification under that statute can
4 be expanded to cover what have been alleged as what I'll call
5 business torts for lack of a better term.
6 MR. FERRARIO: What was the -- no. The transaction
7 here was the termination of Mr. Cotter, Jr.
8 THE COURT: The termination of Mr. Cotter.
9 THE COURT: Yeah. The transaction here was the
10 company, okay, allowing the exercise of the option, okay.
11 Those are the events that were at issue. Terminating his
12 contract, okay. That's what was involved here. And now if
13 you get outside of that, then where are we? What's our
14 doctrinal framework for this case, then? Because I've said
15 this to you and you've acknowledged there's no other case in
16 America that approximates this. This is nothing more than a
17 personal case by James Cotter, Jr., to get his job back. And
18 we're at the most bizarre point --
19 THE COURT: You and I see lots of personal cases in
20 Business Court, Mr. Ferrario.
21 MR. FERRARIO: Exactly. But, you know what, they're
22 called breach of contract cases. They're not called
23 derivative cases. And this is a derivative case, okay, by Mr.
24 Cotter, Jr., where we're now at the bizarre point after
25 spending millions of dollars in defense costs, blowing through

1 the policy where they're not even seeking damages, nor can
2 they articulate to you a damage theory that would benefit the
3 shareholders. We're down to this. Because of their
4 withdrawal of their experts, we're down to can this Court
5 reinstate Mr. Cotter. And how is that going to benefit the
6 shareholders? There's not one case in America that authorizes
7 that type of relief. That's what's happening here.
8 So, you know what, I agree with Mr. Krum. This is
9 like politics today where one side just throws out anything
10 they can, creates a big kerfuffle, and then people think that
11 there's something there. There's nothing here. And so, yes,
12 I think we fall within the confines of that statute. And if
13 we don't, then it's incumbent upon him to come to this Court
14 and say why a board cannot go back and ratify prior decisions,
15 an independent board. This board -- if we ended up in the
16 bizarre situation where somehow Mr. Cotter was reinstated,
17 again, something not seen anywhere in the United States under
18 any caselaw, this independent board could fire him the next
19 day under our law, under our business judgment rule. Because
20 what's happening here is Mr. Cotter is asking this Court to do
21 violence to some of the statements made by our Supreme Court
22 in the recent Wynn case because he wants this Court to manage
23 this company when this Court has said there's independent
24 directors out there who can manage the company. So we end up
25 in this bizarre dialogue, okay.

1 But I can tell you we've tried to figure out why it
2 is, why would the independence be an issue at the beginning.
3 Well, under Nevada law if you're involved in a transaction or
4 occurrence and you stand to benefit, which is what they
5 argued, right, at the beginning, Mr. Guy Adams stands to
6 benefit financially from this -- first they said all the
7 directors stand to benefit because they stay on the board.
8 Now, that's the claims the made. It seems to fall within NRS
9 78.140, and that's why we utilize that. Did we advise the
10 board? Absolutely. Did we say, now that the Court has said
11 that you're independent, independent directors whether there's
12 that statute or whether it's under general corporate law can
13 always ratify. And that decision, Your Honor, that decision
14 is protected by Nevada's business judgment rule.
15 So if you order us to produce something, we'll do
16 it. We've slogged through everything. I would apologize to
17 the Court and to Counsel we ran into issues previously not
18 encountered with our vendor, we lost our earlier contact and
19 we ended up with somebody new, and it was a nightmare.
20 THE COURT: I'm sorry to hear that.
21 MR. FERRARIO: Well, it was not fun for anybody.
22 THE COURT: It's better than when the storage
23 company decided to destroy the documents in CityCenter.
24 MR. FERRARIO: That is true. It is better than
25 that. But it wasn't much better than that, because --

1 THE COURT: Ms. Hendricks remembers having to deal
2 with that, so --
3 MS. HENDRICKS: Yes.
4 MR. FERRARIO: So anyhow, if you want us to produce
5 anything, that's fine. Again, we've given them everything.
6 There's no mystery here. I've been candid with the Court from
7 the beginning as to how this happened, that it was -- and they
8 somehow think, oh, it's a litigation strategy. Him filing the
9 complaint is a litigation strategy whether he -- whether he --
10 what claims he puts in is a litigation strategy, okay. This
11 is something available under Nevada law. My client took
12 advantage of it, the decisions were ratified. And if you want
13 more discovery from us, we'll be happy to comply.
14 THE COURT: Is there anyone else who wants to speak
15 against the motion to compel?
16 MR. SEARCY: I think Mr. Ferrario has covered it.
17 THE COURT: Thank you.
18 Mr. Krum.
19 MR. KRUM: How much time?
20 THE LAW CLERK: You have 11 minutes.
21 MR. KRUM: Thanks very much.
22 THE COURT: For the rest of the motions.
23 MR. KRUM: Understood, Your Honor.
24 Your Honor, the December 29 minutes say that the so-
25 called ratification was based on NRS 78.140. The ratification

1 summary judgment is based on that statute, nothing else. So
2 the question you asked is the question that needs to be
3 answered. And the answer is no. 78.140 by its plain terms
4 applies only to contracts or transactions between the
5 corporation and a director or officer of the corporation. We
6 had lots of interesting discussions internally about the
7 history of this, because, of course, in Nevada there isn't
8 much history, whether it's this particular statute or any
9 other. But the reality is it's a means by which so-called
10 interested director transactions can avoid being voided or
11 voidable. Well, neither the, quote, "ratification" of the
12 terminate of plaintiff nor the, quote, "ratification" of the
13 compensation committee approval of the acceptance of Class A
14 nonvoting stock is consideration for the so-called 100,000-
15 share option are interested director transactions. And
16 there's certainly no transaction, nothing on the first one.
17 And the second one, it's an approval of a process, it's not
18 the, for example, issuance of a contract, it's not the
19 issuance of an option. It's just the approval. So, no. By
20 it's plain terms NRS 78.140 does not apply to the matters that
21 were purported ratified. If it did, which it doesn't, a
22 decision must be made -- pursuant to the statute it must be
23 made by independent directors acting in good faith. And the
24 evidence shows neither here. The evidence shows there are
25 material questions about their independence starting with the

1 use of company counsel to advise them to make a decision about
2 the directors whose conducts were ratified.
3 But beyond that, I mean, I was candidly, Your Honor
4 -- one of the other factors we cite in the brief is conflating
5 the company and the independent directors. And both Mr.
6 Bonner and Mr. Wrotniak did that.
7 So, now, let me be clear. Director independence is
8 relevant to whether they can invoke the business judgment
9 rule. The claims in this case are for breaches of fiduciary
10 duty, they're not for lacking independence. And the
11 independence is I think put at issue, and I'm going to repeat
12 myself and waste my precious time, so I won't do that, Your
13 Honor.
14 THE COURT: Thank you.
15 Do you have anything else?
16 So the motion for relief and the motion to compel
17 are both granted in part. The Court will conduct an in-camera
18 review after receiving updated Excel electronic privilege logs
19 to be delivered, both the documents and the electronic Excel
20 spreadsheet, Friday by 8:30 a.m.
21 For purposes of the pretrial motions as an
22 evidentiary sanction the Court will infer and make a
23 rebuttable presumption that the docs, if timely produced,
24 would support the plaintiff's position that the ratification
25 was a sham or fraudulent exercise.

1 If there are remaining issues after the pretrial
2 motions, Gould, Codding, McEachern, Ellen Cotter, Margaret
3 Cotter, and Tompkins will appear for depositions not to exceed
4 an hour next week.
5 Okay. So we're going to take a short break before
6 we go to motion for summary judgment, which is the next item
7 on my agenda.
8 MS. HENDRICKS: Your Honor, can I get the specifics
9 on what you want on a privilege log again? I wasn't writing
10 fast enough. I want to make sure we get --
11 THE COURT: Do you want my little blurb that I send
12 out on every case?
13 MS. HENDRICKS: That would be great.
14 THE COURT: I sent it out in your case about three
15 years ago. I'll go get it now.
16 (Court recessed at 9:33 a.m., until 9:42 a.m.)
17 THE COURT: Ms. Hendricks, if you'd approach. I
18 printed this off an old CMO because I couldn't find the
19 CityCenter one. The CityCenter one I put it in a footnote,
20 but this one was on a whole page.
21 MR. FERRARIO: Your Honor, you were talking really
22 fast, and none of us know what you said, okay.
23 THE COURT: You want to hear the really important
24 part? Wait. Wait.
25 MR. FERRARIO: Yes.

1 THE COURT: Can I say that part that matters for the
2 rest of the morning?
3 MR. FERRARIO: Yes.
4 THE COURT: I'll say it slow. For purposes of
5 pretrial motions, i.e., what we're going to do now, as an
6 evidentiary sanction the Court will infer and make a
7 rebuttable presumption that the documents if timely produced
8 would support the plaintiff's position that the ratification
9 was a sham or fraudulent exercise.
10 MR. FERRARIO: So that would seem to at least -- it
11 impacts the motion filed by the directors --
12 THE COURT: It impacts the rest of what we're doing
13 this morning.
14 MR. FERRARIO: And I'll deal with that in our
15 motion, because I beg to differ. I don't think it impacts the
16 motion we filed at all. But if that's the case, then --
17 THE COURT: That's why I took a break, so you could
18 digest it. Do you need me to take another break so you can
19 digest it since I read it again?
20 MR. FERRARIO: I think I get it now. But you were
21 speaking really fast on who wanted deposed. So --
22 THE COURT: If remaining issues after the pretrial
23 motions, i.e., what we do today, Gould, Codding, McEachern,
24 Ellen Cotter, Margaret Cotter, and Mr. Tompkins not to exceed
25 one hour.

1 MR. FERRARIO: Okay. That was what we didn't --
2 THE COURT: Isn't it nice I wrote it down so I would
3 be able to remember it.
4 MR. FERRARIO: And then -- all right. So we'll get
5 on scheduling that.
6 MS. HENDRICKS: And then, Your Honor, if I may, this
7 is helpful --
8 THE COURT: I said if issues remain after the
9 pretrial motions, because you may rebut the presumption and I
10 may grant your motion. So I'm not saying you can't.
11 MR. FERRARIO: That's pretty hard to when we have a
12 rebuttable presumption.
13 THE COURT: Do you want me to take a break for you
14 guys to communicate among yourselves, or are we ready?
15 MR. FERRARIO: No, I get where we're at. I mean,
16 I'm happy to go forward. I think I get where we're at.
17 THE COURT: All right.
18 MS. HENDRICKS: I do have a question on the
19 privilege log you want produced on Friday. I want to make
20 sure I understand correctly.
21 THE COURT: Every category that is identified on a
22 privilege log to be prepared, which is listed on the handout I
23 gave you, is required to be included.
24 MS. HENDRICKS: There have been multiple privilege
25 logs. So my understanding was the privilege logs related to

1 these specific issues. So we have --
2 THE COURT: That is correct.
3 MS. HENDRICKS: -- after May 2nd, and then there was
4 an earlier privilege log I think in February.
5 THE COURT: That related to these two meetings and
6 the ratification process.
7 MS. HENDRICKS: Okay. And we've produced most -- or
8 a good deal of those documents already to Mr. Krum in the last
9 couple weeks, so I'm just producing to you the documents that
10 remain on the privilege log that have not already been
11 provided to Mr. Krum.
12 THE COURT: Correct. For my in-camera review.
13 MR. KRUM: Well --
14 THE COURT: I need a hard copy of the document --
15 Mr. Krum, please be quiet.
16 I need a hard copy of the documents, I need an
17 electronic version of the privilege logs.
18 MS. HENDRICKS: Of the privilege logs.
19 THE COURT: I'm happy to take -- because, as you may
20 know from other cases, I will then mark and seal certain
21 documents that I've reviewed as part of my in-camera review so
22 you have a record in case you need to seek appellate review.
23 And Dulce will seal portions of that. Like the privilege log
24 won't be sealed, but the documents I review will be.
25 MS. HENDRICKS: Okay. I understand. We'll get on

1 it.
2 THE COURT: Mr. Searcy.
3 MR. SEARCY: Your Honor, I apologize. I have one
4 logistical question, as well. Will the Court be reviewing the
5 documents in camera and then the depositions will proceed
6 after the Court --
7 THE COURT: I have asked for the documents to be
8 delivered at 8:30 so I can get them done on Friday.
9 MR. SEARCY: Thank you, Your Honor.
10 THE COURT: Because I can't imagine it's more than I
11 reviewed last week. Or was it the week before?
12 MR. SEARCY: I believe it was the week before, Your
13 Honor.
14 THE COURT: Okay.
15 MR. KRUM: Your Honor, my question for the benefit
16 of everyone. Some documents have been produced, but they've
17 been redacted. I would assume that you wish to have them
18 provided to you in unredacted form.
19 THE COURT: The redacted version and the unredacted
20 version need to be provided to me. The redactions, if they
21 are redacted for something other than personal identifiers or
22 medical issues, I need to have the unredacted version. If
23 it's about someone besides Mr. Cotter's medical condition, I
24 don't really need to know about it. But otherwise I need the
25 redacted and unredacted document.

1 MS. HENDRICKS: Okay.
2 THE COURT: And Ms. Hendricks knows that, because
3 she's had to go through this a lot.
4 MS. HENDRICKS: I have. We'll get it to you on
5 Friday.
6 THE COURT: More than other people.
7 Okay. Anything else before I go to the motion for
8 summary judgment, which is my next agenda item up?
9 MR. KRUM: No, Your Honor.
10 THE COURT: Okay. Mr. Tayback.
11 MR. TAYBACK: Your Honor, in light of the last
12 order, and I know that allocation of time, I'm going to be
13 fairly concise.
14 THE COURT: Okay.
15 MR. TAYBACK: There are two points that I want to
16 make. The first one is revisit something that has been
17 discussed in the context of the other motions, which is the
18 idea that whether ratification under NRS 78.140 applies. That
19 whole proposition started because the plaintiff has pled his
20 case and alleged that the transactions as he described them
21 were in fact voidable or void because they were conducted by
22 interested directors. If that's the case and we are moving
23 that the claims that the plaintiff has asserted, if that's the
24 case, then ratification under this statute applies.
25 If that's not the case, then the question of the

1 disinterestedness of the directors of the three remaining
2 defendant directors really doesn't matter. But however you
3 slice it, the fact is the claims, such as they are, of his
4 termination, the estate's redemption of Class A stock for
5 Class B stock options, and the kind of related issues of the
6 hiring of Ellen Cotter, those have all been approved by
7 indisputedly [sic] a majority of independent directors.
8 Now, you've raised the issue of this rebuttable
9 presumption. And I certainly think --
10 THE COURT: It's an evidentiary sanction.
11 MR. TAYBACK: I understand. The evidence that we
12 have submitted is undisputed. The evidentiary sanction that
13 you're inferring or imposing from -- that indicates, I think
14 you said, that it would be a sham transaction --
15 THE COURT: His allegation in his pleading is sham
16 or fraudulent exercise.
17 MR. TAYBACK: -- is rebutted by the context of this
18 meeting, and the record is all in front of you, which is that
19 the board was provided with a board package in advance of the
20 meeting, each of the directors undisputedly testified that
21 they reviewed that, that they took advice of counsel, that
22 they based their decision upon their history and interactions
23 with the plaintiff over the course of their time on the board,
24 his temperament was ill suited, and, tellingly, by the fact
25 that the entire board was there, including the plaintiff, and

1 when the plaintiff was offered an opportunity to speak to each
2 of the two issues the plaintiff refused to say anything with
3 respect to either of the issues, with respect to any aspect of
4 them. He raised no issues, and in fact cast the only vote
5 against both of those ratification votes.
6 You can call it a sham, and if the evidentiary
7 sanction is to say that his allegation of it being a sham
8 would be true, there is no evidence that supports that. That
9 is to say, all the evidence rebuts that. And that is the
10 definition of a rebuttable presumption. If it's presumed it's
11 a sham, you have to look at the evidence. And the evident
12 undisputedly shows that this was an informed board, a majority
13 of whom have been determined to be disinterested, and in fact
14 they exercised their power under Nevada law to ratify these
15 two decisions. There is no contrary evidence. So the
16 presumption is rebutted.
17 THE COURT: Anything else?
18 MR. TAYBACK: Any questions?
19 THE COURT: Anybody else want to speak on favor of
20 this motion?
21 MR. FERRARIO: We're joining.
22 THE COURT: All right. Mr. Krum.
23 MR. KRUM: I'm sorry. How much time?
24 THE LAW CLERK: You have 8 minutes.
25 THE COURT: And you need to save some for the last

1 motion, which is the demand futility issue.
2 MR. KRUM: Understood, Your Honor. So I'll be
3 brief. Thanks.
4 So the moving party bears the burden with respect to
5 independence, and they've failed to do that.
6 The other point I haven't made yet is no one
7 purported to ratify the decision of the compensation committee
8 that the estate owned the 100,000-share option. And we
9 submitted evidence, all the Kane emails you've seen before
10 where he raised that as an issue at the time. So, as I said,
11 the independence is an issue raised by the motion. It doesn't
12 matter whether they acted as a special committee or not. And
13 I've already spoken to that issue. Thank you.
14 THE COURT: Okay. Anything else?
15 MR. TAYBACK: I would only say in support of my
16 argument that in fact the whole concept of the application of
17 the law of this case being governed by the idea that this was
18 a transaction governed by NRS such that it's susceptible to
19 ratification specifically under that code comes from his
20 second amended complaint at paragraph 53 where he seeks to
21 void it and claims that it's void precisely because it was an
22 interested transaction. If interestedness does not matter,
23 then, frankly, the stock option issue shouldn't be at issue in
24 this case, because Mr. -- Adam's independence is the only
25 basis upon which there was a material fact that prevented

1 summary judgment previously. If it doesn't matter that he was
2 interested because it wasn't a company transaction, the same
3 is true with the termination; it was approved by a majority of
4 independent directors at the time. And we're entitled to
5 summary judgment that way.
6 MR. FERRARIO: Your Honor, on --
7 THE COURT: Did anybody else want to say something
8 on this motion?
9 MR. TAYBACK: Page 53, not paragraph 53 of his
10 second complaint.
11 MR. FERRARIO: I would just ask the Court --
12 THE COURT: Did you have something you want to say?
13 MR. FERRARIO: Real quick, ask the Court how this is
14 a derivative claim on the 100,000-share option. Because --
15 and on the issue of whether it's the estate or the trust, what
16 we pointed out is Your Honor in the early parts of these
17 proceedings --
18 THE COURT: When we were doing injunctive relief
19 issues.
20 MR. FERRARIO: -- indicated that if it's in the
21 estate, that the executors control it. This option
22 indisputably was granted to Jim Cotter, Sr., and never put in
23 the trust. And do under the Court's directive that came down
24 in I think --
25 THE COURT: Three years ago.

1 MR. FERRARIO: -- yeah, August or September, the
2 executors went forward and exercised -- the only -- the only
3 possible harm that could result would be harm to the company
4 for the exchange of the A shares and B shares. He's provided
5 no evidence that that wasn't equivalent value. You could have
6 paid it with cash, or you could have paid it with stock. So
7 there's -- it's not a derivative claim, period. The option
8 either existed if -- taking his thing at the trust level or at
9 the estate level, either way it could be exercised. It's not
10 harm to the company. The company got value. That's what
11 missing here. And the fact that Mr. Kane may have raised a
12 question, who cares? He denies -- is he now saying Mr. Kane
13 shouldn't have raised the question? What's his complaint now?
14 Because originally it was the exchange of A shares for B
15 shares. It now has morphed in desperation to try to keep this
16 faux issue alive, when just go back, ask him what the harm is
17 to the company. See if he can articulate it.
18 THE COURT: Okay. Anything else, Mr. Krum?
19 MR. KRUM: Your Honor, I just want to reiterate this
20 ratification motion is predicated on NRS 78.140. So
21 everything we discussed before also is dispositive.
22 MR. FERRARIO: That's the transaction.
23 THE COURT: I know. I've been asking questions.
24 MR. KRUM: It's not. That's my point.
25 THE COURT: Wait. Don't fight with each other.

1 You're directing your arguments to me. I'm the one you've got
2 to convince.
3 Here the Court has taken into consideration the
4 inferences, the rebuttable presumption, as well as the
5 evidence that has been submitted along with the motions. The
6 typical practice is to have independent advisers provide
7 information to the board and/or special committees under NRS
8 78.138. While that is certainly a cleaner practice, it is
9 uncontested here that Greenberg Traurig, qualified and
10 experienced counsel, under 78.138(2)(b) gave legal advice to
11 the -- related to the ratification to the directors that the
12 Court had previously determined to be independent. The advice
13 given was protected by the attorney-client privilege based
14 upon the Wynn case -- it's the Wynn case, right -- the Wynn
15 case, and the Court must honor the ratification by those
16 independent directors and respect their business judgment
17 after their reliance upon Greenberg Traurig under NRS
18 78.138(2)(b).
19 As a result, that motion is granted.
20 Next? Is there anything left? Do I need to go to
21 demand futility?
22 MR. KRUM: Your Honor, our answer is yes. The Court
23 denied summary judgment motions, partial summary judgment
24 motions with respect to a host of subjects. The ratification
25 motion was directed at two. The Court also didn't rule on

1 motions that weren't brought with respect to matters such as
2 what I'll for shorthand call the attempted extortion of Mr.
3 Cotter to get him to settle personal issues with his sisters.
4 THE COURT: Those aren't derivative claims, though.
5 Those are direct claims.
6 MR. KRUM: Well, I don't know that that's correct,
7 Your Honor. But to the point for answering the question you
8 asked, I'm speaking of what hasn't been disposed of in the
9 case.
10 THE COURT: Right.
11 MR. KRUM: We filed a motion on that, Honor. And I
12 don't think any of us understood that to be the ruling on
13 December --
14 THE COURT: So I'm going to go away, and I want you
15 guys to look at your versions of the pleadings. And I'm going
16 to come back in a few minutes, and you're going to tell me
17 what remains.
18 MR. FERRARIO: Whether I even have to argue this
19 motion.
20 THE COURT: That is correct.
21 MR. FERRARIO: All right. Good.
22 THE COURT: Because I don't think that anything else
23 is left.
24 MR. FERRARIO: I don't think anything else is left.
25 THE COURT: But I've been wrong a lot lately.

1 (Court recessed at 9:57 a.m., until 10:20 a.m.)
2 THE COURT: Counsel, after you've had a chance to
3 check your pleadings, discuss it with your teams, what do you
4 believe is left?
5 MR. FERRARIO: Your Honor, first point, we would
6 submit the motion that the company filed regarding standing to
7 Your Honor for decision. I won't argue it.
8 THE COURT: It's moot. Unless there's something
9 left, it's moot.
10 MR. FERRARIO: Okay. That's going to be the Court's
11 ruling, fine. Then there is nothing --
12 THE COURT: Unless there's something left.
13 MR. FERRARIO: There's nothing left from Mr.
14 Tayback's perspective, my perspective, or the directors of the
15 company. There's nothing left.
16 THE COURT: Mr. Krum, do you think there's anything
17 left?
18 MR. KRUM: Your Honor, we think the same thing about
19 today's ruling as we thought about the rulings that you made
20 on December 11th. And there's no reason for us to take the
21 time of the parties and the time of the Court to do anything
22 other than pursue those on appeal, as we already have.
23 THE COURT: So at this point, Mr. Krum, if you would
24 prepare an order related to the motion for relief and motion
25 to compel.

1 And, Mr. Ferrario, if you will prepare -- and Mr.
2 Tayback, if you will prepare findings of fact and conclusions
3 of law related to your motions, I'll get them signed.
4 Does anybody want me to go ahead and do the in-
5 camera review related to the motion for relief and motion to
6 compel?
7 MR. KRUM: Well, the answer, I think it's -- Your
8 Honor, I think it's moot given what you're ruling.
9 THE COURT: Well, it is. But, you know.
10 MR. KRUM: I'm not going to ask -- the answer is,
11 sure I do. But I'm not going to ask Your Honor to do that.
12 THE COURT: Okay.
13 MR. KRUM: Nothing will come of it.
14 THE COURT: So I'll do a review, I'll do a note, but
15 it won't have any impact on any future events unless the case
16 returns.
17 MR. KRUM: Right. That's what I understood the
18 circumstances would be, and for that reason I'm not going to
19 ask you to do that.
20 THE COURT: Okay. So, Ms. Hendricks, you're off the
21 hook.
22 MS. HENDRICKS: Thank you, Your Honor.
23 THE COURT: But please keep that list.
24 MS. HENDRICKS: I might keep that in a very safe
25 place for next time.

1 THE COURT: Well, I try to put it in a footnote in
2 all the case management orders because people --
3 MS. HENDRICKS: I remember it in the CityCenter
4 case, but it's just been a little while.
5 THE COURT: Okay.
6 MR. FERRARIO: Thank you, Your Honor.
7 MR. TAYBACK: Thank you.
8 MR. KRUM: Thank you.
9 THE COURT: The trial date's vacated.
10 MR. FERRARIO: Thank you.
11 THE COURT: All future dates are vacated, and the
12 sealing motions are granted.
13 Don't yell at me anymore, Mr. Ferrario.
14 MR. FERRARIO: I didn't yell at you a lot. How
15 quickly -- you're now Judge Ochoa.
16 THE PROCEEDINGS CONCLUDED AT 10:22 A.M.
17 * * * * *
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25

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

FLORENCE M. HOYT, TRANSCRIBER

6/19/18

DATE

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DISTRICT COURT
CLARK COUNTY, NEVADA

JAMES J. COTTER, JR., derivatively on behalf of Reading International, Inc., Plaintiff,	) Case No. A-15-719860-B) Dept. No. XI)) Coordinated with:
v.	)
MARGARET COTTER, ELLEN COTTER, GUY ADAMS, EDWARD KANE, DOUGLAS McEACHERN, WILLIAM GOULD, JUDY CODDING, MICHAEL WROTNIAK, Defendants.	) Case No. P-14-0824-42-E) Dept. No. XI)) Jointly Administered)) **ORDER GRANTING IN PART MOTION TO COMPEL AND MOTION FOR RELIEF**
And READING INTERNATIONAL, INC., a Nevada corporation, Nominal Defendant.	)) **Date of Hearing: June 19, 2017**) **Time of Hearing: 8:30 a.m.**

07-10-18P03:23 RCVD

This matter came before the Court on June 19, 2016 for hearing on plaintiff's (i) Motion for Relief Based on Noncompliance with the Court's May 2, 2018 Rulings (the "Motion for Relief") and (ii) Motion to Compel (the "Motion to Compel"). Mark G. Krum and Akke Levin appeared for plaintiff James J. Cotter Jr.; Christopher Tayback, Marshall M. Searcy and Kevin M. Johnson appeared for defendants Ellen Cotter, Margaret Cotter and Guy Adams, and for former defendants Doug McEachern, Judy Codding, Michael Wrotniak and Edward Kane; Mark E. Ferrario and Kara B. Hendricks appeared for nominal defendant Reading International, Inc. ("RDI"); Shoshana E. Bannett and Carolyn K. Renner appeared for former defendant William Gould.

The Court, having considered the papers filed in support of and in opposition to both the Motion for Relief and the Motion to Compel, having heard oral argument with respect to both, and for good cause appearing:

IT IS HEREBY ORDERED the Motion for Relief and the Motion to Compel each are GRANTED IN PART. In particular, the Court will conduct an *in camera* review of documents withheld based on claims of attorney-client privilege, the attorney work product or both. Updated privilege logs in electronic, Excel format as well as the documents to be reviewed, in hard copy, are to be delivered to Chambers within five business days of entry of this order. For the purposes of the pretrial motions, as an evidentiary sanction, the Court will infer and make a rebuttable presumption that the documents if timely produced would support plaintiff's position that the ratification was a sham or fraudulent exercise. If there are remaining issues after the pretrial motions, Mr. Gould, Ms. Codding, Mr. McEachern, Ellen Cotter, Margaret Cotter and

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RDI employee Mr. Craig Tompkins will appear for depositions for a period not to exceed one hour each, next week.

DATED this 11 day of July, 2018.

THE HONORABLE ELIZABETH GONZALEZ
DISTRICT COURT JUDGE

Submitted by:

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DISTRICT COURT
CLARK COUNTY, NEVADA

JAMES J. COTTER, JR., derivatively on behalf of Reading International, Inc.,	Case No. A-15-719860-B Dept. No. XI
Plaintiff,	Coordinated with:
v.	Case No. P-14-0824-42-E Dept. No. XI
MARGARET COTTER, ELLEN COTTER, GUY ADAMS, EDWARD KANE, DOUGLAS McEACHERN, WILLIAM GOULD, JUDY CODDING, MICHAEL WROTNIAK,	Jointly Administered
Defendants.	**ORDER GRANTING IN PART PLAINTIFF'S MOTION FOR OMNIBUS RELIEF AND MOTION TO COMPEL PRODUCTION OF DOCUMENTS AND PRIVILEGE LOG**
And	
READING INTERNATIONAL, INC., a Nevada corporation,	
Nominal Defendant.	

THIS MATTER CAME BEFORE THE COURT on the Motion for Omnibus Relief and the Motion to Compel Production of Documents and Privilege Log of plaintiff James J. Cotter, Jr. ("Plaintiff").

The Court, having considered the papers filed in support and in opposition to both the Motion for Omnibus Relief and Motion to Compel, and having heard oral argument with respect to both on April 30, 2018, and having conducted an evidentiary hearing on May 2, 2018 with respect to both:

IT IS HEREBY ORDERED that the Motion for Omnibus Relief and the Motion to Compel are each GRANTED IN PART. In particular, Judy Codding, Douglas McEachern, William Gould, Ed Kane, Michael Wrotniak, and nominal defendant Reading International, Inc. each are ordered to produce all documents which relate to (i) the December 21,2017 meeting of the "Special Independent Committee" of the Reading International, Inc. board of directors, whether the scheduling, holding or content of that meeting or the minutes of that meeting; (ii) exhibit P-1 from the May 2, 2018 evidentiary hearing (a December 27, 2017 email), whether its subject matter, preparation, drafting, circulation and/or how it would be added to or included in the agenda for the December 29, 2017 meeting of the board of directors of Reading International, Inc., and (iii) any discussion of the subject of ratification, not limited by time. Any responsive documents for which a privilege is asserted are to be logged in a privilege log.

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Following review of that information, the Court will determine if additional depositions are necessary.

DATED this 11 day of July, 2018

THE HONORABLE ELIZABETH GONZALES
DISTRICT COURT JUDGE

Submitted by:

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DISTRICT COURT

CLARK COUNTY, NEVADA

JAMES J. COTTER, JR., individually and derivatively on behalf of Reading International, Inc., Plaintiff, v. MARGARET COTTER, et al, Defendants.	**Case No. A-15-719860-B** Dept. No. XI **NOTICE OF ENTRY OF STIPULATION AND ORDER**

TO: All parties and their counsel of record:

YOU AND EACH OF YOU will please take notice that the ***Stipulation and Order Relating to Process for Filing Motion for Attorneys' Fees*** was entered on September 4, 2018. A copy of said order is attached hereto.

Dated: this 5th day of September 2018.

GREENBERG TRAURIG, LLP

/s/ Kara B. Hendricks
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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 on this day, I caused a true and correct copy of the forgoing ***Notice of Entry of Stipulation and Order*** be filed and served via the Court's Odyssey E-Filing system. 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 5th day of September 2018.

/s/ Andrea Lee Rosehill
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DISTRICT COURT

CLARK COUNTY, NEVADA

JAMES J. COTTER, JR., individually and derivatively on behalf of Reading International, Inc., Plaintiff, v. MARGARET COTTER, et al, Defendants.	**Case No. A-15-719860-B** Dept. No. XI **STIPULATION AND ORDER RELATING TO PROCESS FOR FILING MOTION FOR ATTORNEY FEES**

Plaintiff JAMES J. COTTER, Defendants MARGARET COTTER, ELLEN COTTER, GUY ADAMS, EDWARD KANE, DOUGLAS McEACHERN, WILLIAM GOULD, JUDY CODDING, MICHAEL WROTNIAK, and Nominal Defendant READING INTERNATIONAL, INC., hereby agree on the following process pertinent to any Motion for Fees filed in this matter. Specifically the parties agree that any Motion for Fees will include an affidavit or declaration supporting: (1) the total amount of fees billed over the life of the case for any firm requesting fees; (2) the firm's fees billed in each month since being retained; and (3) the name and number of timekeepers (attorneys and paralegals) who worked in each firm on this case and their hourly rates.

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In so doing, it is agreed that full billing statements are not required to be submitted to the Court unless and until the Court has ruled that it will entertain a Motion for Fees by the defendants and nominal defendant under NRS 18.010.2(b).

Dated this ____ day of August, 2018.

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Dated this 31st day of August, 2018.

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In so doing, it is agreed that full billing statements are not required to be submitted to the Court unless and until the Court has ruled that it will entertain a Motion for Fees by the defendants and nominal defendant under NRS 18.010.2(b).

Dated this ____ day of August, 2018.

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In so doing, it is agreed that full billing statements are not required to be submitted to the Court unless and until the Court has ruled that it will entertain a Motion for Fees by the defendants and nominal defendant under NRS 18.010.2(b).

Dated this 31 day of August, 2018.

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Dated this ____ day of August, 2018.

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ORDER

IT IS HEREBY ORDERED that any Motion for Fees will include an affidavit or declaration supporting: (1) the total amount of fees billed over the life of the case for any firm requesting fees; (2) the firm's fees billed in each month since being retained; and (3) the name and number of timekeepers (attorneys and paralegals) who worked in each firm on this case and their hourly rates. In so doing, it is agreed that full billing statements are not required to be submitted to the Court unless ~~and until~~ Further ordered by the Court ~~has ruled that it will entertain a Motion for Fees by the defendants and nominal defendant under NRS 18.010.2(b)~~. BG

DATED this 4 day of ~~August~~ September 2018.

DISTRICT COURT JUDGE

Submitted by:

GREENBERG TRAURIG, LLP

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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 on this day, I caused a true and correct copy of the forgoing **STIPULATION AND ORDER RELATING TO PROCESS FOR FILING MOTION FOR FEES** to be filed and served via the Court's Wiznet E-Filing system. 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 4th day of *September* 2018.

/s/ Andrea Lee Rosehill
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DISTRICT COURT
CLARK COUNTY, NEVADA

JAMES J. COTTER, JR., derivatively on behalf of Reading International, Inc.,	Case No. A-15-719860-B Dept. No. XI
Plaintiff,	Coordinated with:
v.	Case No. P-14-0824-42-E Dept. No. XI
MARGARET COTTER, ELLEN COTTER, GUY ADAMS, EDWARD KANE, DOUGLAS McEACHERN, WILLIAM GOULD, JUDY CODDING, MICHAEL WROTNIAK,	Jointly Administered
Defendants.	**SUGGESTION OF DEATH OF DEFENDANT WILLIAM GOULD UPON THE RECORD UNDER NRCP 25(a)(2)**
And	
READING INTERNATIONAL, INC., a Nevada corporation,	
Nominal Defendant.	

Pursuant to Nev. R. Civ. P. 25(a)(2), plaintiff James J. Cotter, Jr. hereby suggests upon the record the death of defendant William Gould on or about August 6, 2018, during the pendency of this action.

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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: **SUGGESTION OF DEATH OF DEFENDANT WILLIAM GOULD UPON THE RECORD UNDER NRCP 25(a)(2),** to be served on all interested parties, as registered with the Court's E-Filing and E-Service System. The date and time of the electronic proof of service is in place of the date and place of deposit in the mail.

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DATED this 14th day of September, 2018.

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DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

JAMES COTTER, JR.	
Plaintiff	CASE NO. A-15-719860-B A-16-735305-B P-14-082942-E
vs.	
	DEPT. NO. XI
MARGARET COTTER, et al.	
Defendants	**Transcript of Proceedings**

BEFORE THE HONORABLE ELIZABETH GONZALEZ, DISTRICT COURT JUDGE

HEARING ON PLAINTIFF'S MOTION TO RETAX COSTS

MONDAY, OCTOBER 1, 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:	AKKE LEVIN, ESQ.
FOR THE DEFENDANTS:	MARSHALL M. SEARCY, ESQ. KEVIN M. JOHNSON, ESQ. MARK E. FERRARIO, ESQ.

1 LAS VEGAS, NEVADA, MONDAY, OCTOBER 1, 2018, 9:20 A.M.
2 (Court was called to order)
3 THE COURT: That takes me to Cotter.
4 So, Ms. Levin, it's your motion.
5 MS. LEVIN: Good morning, Your Honor.
6 THE COURT: Hang up on whoever it is, please.
7 MS. LEVIN: I came with some documents. I'm sorry.
8 (Pause in the proceedings)
9 MS. LEVIN: Just a minute.
10 THE COURT: Just put him on hold.
11 Ms. Levin, I'm sorry for the interruption. Would
12 you like to proceed?
13 MS. LEVIN: Yes. Thank you, Your Honor.
14 Your Honor, this is our motion to retax costs. The
15 defendants have asked for 2.9 million in costs. They now have
16 had two opportunities to meet their burden of proof that their
17 extraordinary $2.9 million cost bills were not only actually
18 incurred -- only also incurred for this case, but they were
19 necessary and reasonable. Now, they failed twice in that
20 obligation. The first time they mainly gave us spreadsheets
21 for the majority of the costs sought. The second time they
22 gave us on the eve of the hearing an 8-volume, 3,500-page
23 document dump essentially saying, here's the backup for our
24 outrageous expenses and you figure it out.
25 They have an obligation to in good faith only seek

1 those costs that met all those three criteria. They still did
2 not check for reasonableness even after we gave them very
3 specific examples for each category with citations to the
4 exhibit pages that appeared either unnecessary, unreasonable,
5 or unsupported or all of the above. So they only responded in
6 their opposition brief to examples we had given them, if that.
7 So although they say they omitted costs related
8 solely to the T-2 plaintiffs, they did not. Those costs
9 permeate all categories from filing fees to research to travel
10 costs to ediscovery. We should not have been put in this
11 position to do their work, Your Honor, given the outrageous
12 amount of costs they seek, the sloppy and untimely piecemeal
13 production of documents, and the absence of declarations
14 showing, rather than just saying, that these costs were
15 actually incurred, necessarily incurred, and reasonable.
16 The Court should use its discretion to drastically
17 reduce those costs, if not allow them at all.
18 THE COURT: Okay. So I have the memo of costs and
19 disbursements in front of me.
20 MS. LEVIN: Okay.
21 THE COURT: And I went through your charts and your
22 comparisons. Your number that you would urge me to give for
23 Category Number 1, which is all filing fees is what?
24 MS. LEVIN: Well, it's RDI's filing fees especially.
25 The fact that RDI was a nominal defendant, they should have

1 kept a wholly neutral position in this case, they were not
2 even the prevailing party. And that's our main argument with
3 respect to RDI. It is not a prevailing party. There's no
4 judgment entered in its favor. So they shouldn't be entitled
5 to any of their $1.2 million costs. So that's our main
6 argument.
7 But with respect even -- even the filing fees, even
8 assuming the Court would allow them fees, we gave them --
9 again, we -- I think they should be disallowed at least 3,000
10 of their $3,700 filing fees, because all of those filings were
11 related to a motion to compel arbitration, that was 1.5.
12 There were six joinders in dispositive motions of the
13 corporate defendants, so they joined essentially in the
14 defense of directors who were alleged to have breached the
15 duty to the company. So those filing fees should be
16 disallowed. And there's numerous T-2 filings.
17 So, again, we did the work for them because they
18 didn't want to do their job. But there are many other filing
19 fees, and their free dollars, whatever. But, again, so our
20 main argument is none of them should be allowed. But if the
21 Court's going to allow anything, they shouldn't -- at least
22 $3,000 should be deducted.
23 THE COURT: Do you want to go through any of the
24 other categories for me? I understand your issue on the
25 expert witnesses. I'm going to deal with that separately, Mr.

1 Ferrario, given the statutory limitation.
2 Anything else?
3 MS. LEVIN: Well, I can go category by category,
4 Your Honor. Now, first --
5 THE COURT: You did in your briefing. So I'm asking
6 you if there's anything else you want to tell me that wasn't
7 in the briefing.
8 MS. LEVIN: I would like to actually -- what we did
9 is in the reply brief we cited -- we meant to give more cites
10 to the appendix, and what we did is instead we cited back to
11 the original motion appendix. So I have some examples.
12 Because, again, they gave us a backup, but the backup --
13 THE COURT: I'd be happy to take your examples.
14 MS. LEVIN: Okay. Great. And I'll share with the
15 other side, too.
16 THE COURT: Great. We'll mark it as Court's
17 Exhibit 1.
18 MS. LEVIN: So Court Exhibit 1 would be supplemental
19 examples for the Byrd & Morella [phonetic] costs, and the
20 other one would be supplemental examples of the backup for
21 Quinn Emanuel, which further supports the unreasonableness --
22 THE COURT: So I'm going to mark them collectively
23 as Court's Exhibit 1.
24 MS. LEVIN: Thank you, Your Honor.
25 THE COURT: All right. Anything else you'd like to

1 add, Ms. Levin?
2 MS. LEVIN: If I can just look -- because I think
3 you understand our arguments and --
4 THE COURT: I do.
5 MS. LEVIN: Oh. One thing, also. The Cotter
6 defendants and the copy costs, Mr. Searcy's declaration says
7 we gave the costs per copy. But their backups do not support
8 that. You have to kind of figure it out yourself by deducting
9 -- they're giving the number, and then you have to go and look
10 through a line that says US Dollar. It says 2, but that's
11 actually the quantity. So it turned out they billed 24 cents
12 per page, which is excessive. So we would submit that -- you
13 can see that, by the way, on exhibit page 2926. So that
14 should be cut in half.
15 I mean, I can go through each categories, Your
16 Honor. If you have questions --
17 THE COURT: You don't need to. I read your brief.
18 MS. LEVIN: Okay.
19 THE COURT: What I'm trying to find out is there
20 anything else you want to tell me that wasn't in the brief or
21 you want focus on.
22 MS. LEVIN: Okay. Can I just go through my --
23 THE COURT: Because you did a really good job on the
24 reply before, and Mr. Ferrario did a pretty good job on the
25 opposition brief.

1 MS. LEVIN: I'll take that as a compliment.
2 Well, the whole necessity of the -- well, I think we
3 put that in the reply brief, too.
4 THE COURT: All right.
5 MS. LEVIN: I'll stop right here.
6 THE COURT: Thank you.
7 Mr. Ferrario.
8 MR. FERRARIO: Good morning, Your Honor.
9 THE COURT: Good morning.
10 MR. FERRARIO: I really don't quite know where to
11 begin. I know Ms. Levin's only been in this case for a few
12 months. And it's unfortunate Mr. Krum's not here to kind of
13 -- we could go back to the beginning. But Your Honor will
14 remember that this case started back in the summer of 2015.
15 And it started when Mr. Cotter was terminated from his
16 position as the CEO of Reading. And Your Honor will remember
17 that the company contested whether -- and that's who I
18 represent, I represent the company -- contested whether Mr.
19 Cotter was an appropriate derivative plaintiff. And then we
20 contested his position as a derivative plaintiff. We said
21 this was a matter that should be covered in arbitration which
22 was pending in California. And Your Honor denied our requests
23 to put an end to this case. And Your Honor gave Mr. Cotter
24 throughout the course of these proceeding every opportunity to
25 try to manufacture a claim that Your Honor characterized at

1 one hearing as truly unique. There was no other case in the
2 country that we could find -- a derivative case --
3 THE COURT: The story of my life.
4 MR. FERRARIO: -- that approximated this. And what
5 I find strange is now we stand here in front of this Court
6 with the Court having given Mr. Cotter every opportunity --
7 THE COURT: A million two in expert expenses, Mr.
8 Ferrario?
9 MR. FERRARIO: Well, Your Honor, let -- and, you
10 know, I represent the company, again. We had an indemnity
11 obligation. But you know what I'll tell Your Honor, and you
12 know this. When you have big cases sometimes you have big
13 expert fees. What is missing --
14 THE COURT: There was nothing I saw in the experts
15 that were presented to me or provided information in this case
16 that would put us in the realm of a million two.
17 MR. FERRARIO: Well, let me tell you how it
18 happened, Your Honor. I'd be happy to do that, okay.
19 THE COURT: That'd be great.
20 MR. FERRARIO: Because what's missing here is the
21 claim that they brought, okay. They brought a claim against
22 the directors for one hundred to $150 million, okay.
23 THE COURT: Is that why they stayed at The Four
24 Seasons in the chairman suites?
25 MR. FERRARIO: I don't -- you know what, I hate

1 arguing costs motions. You want to say, stay at the Golden
2 Nugget, I could care less about that.
3 THE COURT: Well, they should have.
4 MR. FERRARIO: This case is about -- no, there's
5 other things there. But I don't even -- you do what you want
6 on that. I could care less, okay. The big categories here
7 are expert fees and ediscovery, okay.
8 THE COURT: Yes. And I have questions on
9 ediscovery. But right now I'm asking you questions on
10 experts.
11 MR. FERRARIO: And on experts what's lost in their
12 pleading, and they don't deal with that, it was a hundred to
13 $150 million claim. Now, the point I want to make here is
14 this. I have to go back to the beginning. Mr. Cotter was not
15 an outsider. He was an insider. He intentionally pled claims
16 against the directors to avoid having to make a demand on the
17 board. He said the directors were all interested. After this
18 Court gave him every opportunity to prove those claims, the
19 Court found on summary judgment that he didn't have any
20 evidence to support that.
21 Now, during the course of the case --
22 THE COURT: For some of the directors.
23 MR. FERRARIO: Yeah. For five independent
24 directors.
25 THE COURT: For some of the directors.

1 MR. FERRARIO: Exactly. There was an issue of fact
2 with the others, okay.
3 THE COURT: Yes.
4 MR. FERRARIO: Three. But the point here is you
5 gave him every opportunity to do that.
6 Now, let's look at how the case evolved. Hundred to
7 $150 million in damages. What happens as we're running up to
8 trial in January, okay, all of a sudden we're here, not in
9 this courtroom, upstairs --
10 THE COURT: I had a jury.
11 MR. FERRARIO: We had a jury outside.
12 THE COURT: We were next door.
13 MR. FERRARIO: Mr. Cotter suddenly taken ill two
14 days after we're in court, right. What do we find out about
15 this illness? Well, the illness kind of coincides with him
16 not paying his experts. What happens after that? Your Honor,
17 says, you know what, if you're going to call an expert at
18 trial on your hundred to $150 million damage claim then what
19 you have to do is you have to present to the other side all of
20 the billing records so we can see if there was some
21 shenanigans with regard to the continuance in January.
22 What happens? They abandon the hundred to
23 $150 million damage claim on the eve of the June trial. What
24 does that tell you about their case? Was Mr. Cotter acting in
25 his fiduciary capacity as a derivative plaintiff when he

1 abandoned that claim? We were going to trial in the summer,
2 just a couple months ago, on claims -- I don't even know what
3 we were fighting over. And I'm not sure Mr. Krum did at the
4 time Your Honor granted the final relief that brings us here.
5 So when we go back and we look at the evolution of
6 this case I submit that the fees are reasonable. And you know
7 how you can test that? Where are their bills?
8 THE COURT: Other than Chief Justice [inaudible].
9 MR. FERRARIO: I am willing to bet you, okay, that
10 the bills they didn't pay -- because we believe they stiffed
11 their experts, which is why they wouldn't show up -- that the
12 bills they didn't pay approximate the charges that were
13 incurred by the experts who were hired by the directors.
14 Now, having said that, we dealt with some very novel
15 claims regarding the value of stock tied to certain actions of
16 the company. They put this forth this fella Duarte Silva, who
17 came up with these wild calculations. Well, you know what,
18 when you put forth somebody that comes up with wild
19 calculations then the other side apparently, under their
20 scenario, shouldn't defend against that. Which is farcical.
21 You'd have to call your malpractice carrier. Even though you
22 think their claim is ridiculous, you still have to go out and
23 find an expert to counter that.
24 Experts that deal in these types of cases, deal with
25 these economic theories, are far and few between. And so when

1 you look at this in light of the claims that were made you're
2 talking about expert fees that are less -- well, 1 percent of
3 the claim that was being made. I don't see how you can say
4 that's unreasonable, especially without calling them on the
5 carpet and finding out what their expert charged to
6 manufacture the claim that they abandoned.
7 THE COURT: Other than Chief Justice Steel, who they
8 told me how much he charged.
9 MR. FERRARIO: And that's a good one, too. Because
10 I stood in front of you a couple -- probably a year and a half
11 ago and I said, why have they called Justice Steel. Justice
12 Steel's report -- and he might be a nice fella. I've never
13 met the guy.
14 THE COURT: He is a nice fellow.
15 MR. FERRARIO: But this guy writes a report and he
16 says, this is what would happen in Delaware. And I stood in
17 front of Your Honor and I said, we're not in Delaware, so why
18 is Justice Steel testifying. And Your Honor said, we'll deal
19 with this at trial.
20 THE COURT: Well, because the Nevada Supreme Court
21 sometimes looks to Delaware in making decisions about things.
22 MR. FERRARIO: But Your Honor is --
23 THE COURT: I know.
24 MR. FERRARIO: -- the arbiter of the law here, not
25 Justice Steel.

1 THE COURT: Well, no. The Nevada Supreme Court is.
2 MR. FERRARIO: What he -- well, finally.
3 THE COURT: Yeah.
4 MR. FERRARIO: Well, if we get past you. But the --
5 THE COURT: Or file a writ.
6 MR. FERRARIO: Or file a writ. But Justice Steel's
7 report was, quite frankly, nothing more than a memo on
8 Delaware law that any of us could have commissioned one of our
9 associates, quite frankly, to prepare. And so we argued
10 against that. But they wanted that.
11 And the point here I'm making, Your Honor, you gave
12 them every opportunity. They ran the costs up.
13 THE COURT: A million two in experts, Mr. Ferrario.
14 MR. FERRARIO: Absolutely. That's what it cost.
15 THE COURT: Okay.
16 MR. FERRARIO: We've given you the bill.
17 THE COURT: So let's go to my other issue.
18 MS. LEVIN: Your Honor, can I respond?
19 THE COURT: No. I'm not done.
20 MS. LEVIN: Okay.
21 THE COURT: The ediscovery. There have been issues
22 raised about the lack of pro ration among various other
23 litigation and claims that are -- these parties are continuing
24 to be in, including the litigation in California and the
25 arbitration matter, as well as the probate matter here. Can

1 you tell me why haven't pro rated the expenses for the
2 ediscovery and the hosting?
3 MR. FERRARIO: Well, we actually have.
4 THE COURT: How do I tell that?
5 MR. FERRARIO: I can tell you right now that there
6 are -- well, actually, it's kind of interesting, because the
7 parties -- for example, the Cotter sisters, okay --
8 THE COURT: Yes.
9 MR. FERRARIO: -- they're involved in the litigation
10 in California, the trust litigation and all that.
11 THE COURT: And here in the probate case now.
12 MR. FERRARIO: And here in the probate case.
13 THE COURT: Since you let Mr. Peek be involved.
14 MR. FERRARIO: And Mr. Peek is involved, yes. And
15 so are hosting this information, okay. And it was done
16 because of what happened in this case. That's what started
17 this.
18 THE COURT: So did you pro rate it among the other
19 cases?
20 MR. FERRARIO: You know, I would have to ask Ms.
21 Hendricks that question. But I'm sure it was pro rated.
22 THE COURT: How can I tell?
23 MR. FERRARIO: And the reason that I know that is
24 because I'm getting phone calls from the lawyer in California
25 on the trust case asking why he's still having to pay

1 Navigant. That's -- and I just had those calls last week. So
2 they are paying that.
3 THE COURT: Okay.
4 MR. FERRARIO: All right.
5 THE COURT: So then let me ask you the other
6 question related to the ediscovery. Typically when there are
7 consulting expenses related to the ediscovery those either
8 show up in the expert category or in some category other than
9 just the straight ediscovery hosting. Because it's
10 consulting. Can you tell me why you didn't show it someplace
11 else and put an ediscovery category?
12 MR. FERRARIO: I can't, Your Honor. I mean, that
13 was --
14 THE COURT: How much of it is consulting? Is it a
15 quarter?
16 MR. FERRARIO: Oh --
17 THE COURT: Seems like a lot in looking at it.
18 MR. FERRARIO: I don't think it was that much in
19 consulting with them. I mean, the fact of the matter is the
20 biggest fight we had here on ediscovery was with then Mr. Krum
21 before Ms. Levin got into the case. And I made some notes.
22 We had 12 custodians that we had to go through. And remember,
23 Your Honor, how this case unfolded. At the very --
24 THE COURT: You mean that you guys wanted a
25 preliminary injunction --

1 MR. FERRARIO: You're going --
2 THE COURT: -- I set a hearing, and you never showed
3 up?
4 MR. FERRARIO: You're going right where I'm going.
5 THE COURT: Okay.
6 MR. FERRARIO: Right at the beginning fire drill,
7 injection, he shouldn't have been discharged. Then all of a
8 sudden he abandons that. Then we get into -- and he wanted,
9 you know, expedited discovery, which was a fire drill on our
10 part, which is why some of these costs are up. Then he
11 abandons that. Then we get into regular discovery. But what
12 happened, and Your Honor will recall this, Mr. Cotter sought
13 to amend his complaint and basically challenged almost every
14 major decision made by the board of the course of this
15 litigation without really any merit to that. So we had -- we
16 would continually go back and have to look for data and
17 harvest data because he would amend his complaint or he'd
18 bring something else in and say, wait a while, you know, you
19 didn't entertain this offer from Patten Vision [phonetic] and
20 that was a breach of your fiduciary duty. There we go again
21 on another discover goose chase, all because of the plaintiff.
22 It's not like I sat around one day in the midst of all the
23 other cases I had and I said to Ms. Hendricks and Ms. Cowden,
24 hey, let's just do some discovery in Cotter. That's not why
25 this happened. It happened because of the plaintiff. And the

1 plaintiff was never interested in benefitting the company.
2 And that became clear at the end of this case when he
3 abandoned his damage claims and we were going to trial
4 challenging essentially two decisions that I think monetarily
5 to the company might have come in at about 125,000 bucks,
6 something like that.
7 So I now go all the way back to the beginning. We
8 stood in front of you three years ago and we said this was a
9 personal dispute by Mr. Cotter, he wasn't an appropriate
10 derivative plaintiff, he was trying to vindicate his rights
11 personally, not to benefit the company. And that's exactly
12 what the conduct in this case showed. You can stand here now
13 and say all sorts of things, oh, this is ridiculous, oh, they
14 should have stayed at The Four Seasons or they shouldn't have
15 stayed here. You can talk all you want. Look at how the case
16 unfolded.
17 And the final point I'll make is this. It all
18 starts, all of this starts -- and Your Honor will see this
19 probably in your other case -- with Mr. Cotter preying on his
20 father while he's on his death bed.
21 THE COURT: That's my probate case, not today.
22 MR. FERRARIO: But that's where this --
23 THE COURT: But that's not today.
24 MR. FERRARIO: -- all starts.
25 THE COURT: But, Mr. Ferrario, that's not this case

1 today.
2 MR. FERRARIO: I understand. So here, Judge, we've
3 given you the declarations. You've got tons of receipts. You
4 want to cut down The Four Seasons, I don't care, okay. You
5 want to noodle the filing fees -- I guess I wasn't supposed to
6 file anything even though it was a novel case and Your Honor
7 said we could file and participate, I guess we couldn't file.
8 THE COURT: I didn't say that. No, I didn't.
9 MR. FERRARIO: I didn't understand that part of
10 their opposition. You want to do all that, I'm fine with the
11 Court's discretion on those things. But on experts and on the
12 ediscovery, all of that was necessitated by the conduct of the
13 plaintiff to meet, A, the claims that were being made, which
14 they pooh-pooh now, oh, well, wait a while, why did you do
15 that. Hundred to $150 million. I don't think there's a
16 lawyer in this room that would stand up and say those are not
17 significant claims. We couldn't knock that expert out. You
18 let him in. They only abandoned him. So we're not supposed
19 to defend against that, they're not supposed to defend against
20 that? And then I have to -- the company has to indemnify
21 them. What happened in this is case is you gave him a chance
22 and he lost.
23 And what happened? In a case where he should have
24 been trying to benefit the company he cost the company dearly.
25 And at the end of the day he couldn't prove his claim, and he

1 lost. And you know what, sometimes you have to pay.
2 THE COURT: Okay. Mr. Searcy, is there anything you
3 want to add?
4 MR. SEARCY: Nothing for me, Your Honor. Thank you.
5 THE COURT: Thank you.
6 Ms. Levin.
7 MS. LEVIN: Your Honor, if I can --
8 THE COURT: Mr. Johnson, you don't want anything, do
9 you, since you're Mr. Searcy's local counsel?
10 MR. JOHNSON: I'm okay, Your Honor.
11 THE COURT: Okay.
12 MS. LEVIN: To start with the last point, Mr.
13 Ferrario's argument that we are now saying that the claims
14 were frivolous, that's not right. That's their argument.
15 That's what they've been saying the whole case, this is such a
16 frivolous case, there's no evidence, we always knew there was
17 no evidence. So, nevertheless, without any evidence and by
18 calling the claims speculative they went out and incurred
19 $45,000 in Westlaw research, or claiming that only Nevada law
20 applied. Then they went out and hired a damage expert,
21 initial damage expert, who charged a half million dollars to
22 look at whether the stock went up or down.
23 Now, the claim that they're saying that the
24 complaint sought 100 million damages, they don't cite to the
25 complaint. And there's a reason for that. Because it's not

1 in the complaint. Where that comes out of is Duarte Silva,
2 the expert Duarte Silva, who put in his expert report that --
3 in a footnote, that he believed that there could be a
4 potential damage of 100 million. So every time they say, this
5 is what the plaintiff cost us to do, the plaintiff cost; no,
6 the plaintiff did not seek those damages. They had already
7 hired an expert who charged a half a million dollars. So for
8 them to say, you know, this is all caused by the plaintiff is
9 not true.
10 The point about the ediscovery, you understand
11 ediscovery, Your Honor. We gave you a chart. This is not a
12 document-intensive case. And they say it's the plaintiff,
13 it's the plaintiff. We gave you the requests for productions.
14 There were six very distinct categories in the plaintiff's
15 first request for production. And you know what RDI did?
16 They put the entire company server, the entire company server
17 on a database, almost 2 terabytes. The allegations pertaining
18 to Mr. Cotter's termination only went back one year.
19 Nevertheless, they put the entire server on there. So for
20 them to say, this is all caused by Cotter, no, it's caused by
21 their mismanagement of this case. They just had a party with
22 this case.
23 They only produced 71,000 pages of documents, not
24 documents, pages of documents. And it was in rolling
25 productions. They're saying now it was all because of us. It

1 was -- they took forever to get RDI to produce anything.
2 Your Honor asked about how the consulting fees, if
3 it was a quarter. We gave you a chart and we added up all the
4 consulting fees that they charged as, quote, "ediscovery
5 costs." They came to about half, $455,000 in consulting fees.
6 And we showed Your Honor the way that these consultants at the
7 Navigant database vendor, how they billed their entries.
8 "Client communication term reporting, client conference calls.
9 Client conference calls, communication, assignment. Client
10 conference calls," and hours and hours that were billed at
11 attorney rates, at 350 per hour. They did searches, they did
12 typical paralegal work. We shouldn't have to pay for that.
13 And, Your Honor, you have an example of a case where
14 you didn't allow even close to the amount that they're
15 seeking. And that's the In re DISH Network case. Now, in
16 that case there are many more custodians. They have to --
17 THE COURT: But we were in a very short time frame
18 in the DISH Network case, because the SLC did their
19 investigation and we had a summary judgment motion. We were
20 on that case, what, less than a year.
21 MS. LEVIN: Right. But those documents went back to
22 2008.
23 THE COURT: [Unintelligible].
24 MS. LEVIN: Here the plaintiff filed -- in 2015 he
25 specifically limited his document requests to documents

1 starting in January '14. It was year earlier. And in the
2 DISH Network case they have to search three different servers.
3 So what I'm saying, Your Honor, to get to the bottom
4 of this, the consulting fees are outrageous. The sheer amount
5 of ediscovery costs are outrageous given the relatively few
6 documents that they produced. It just doesn't warrant even
7 close to this.
8 So -- and the rest is in our briefs.
9 THE COURT: All right. Thank you.
10 The categories in the memorandum of costs and
11 disbursement are retaxed for Number 3. The expert witnesses
12 are reduced to a total of 250,000 for Mr. Clausner, 250,000
13 for Mr. Roll. Mr. Chavem's amount of one fifty-two is
14 compensated. Mr. Foster, his amount of 201,000 is
15 compensated. (Transcriber's note: All names above phonetic)
16 With respect to the statutory limitation the Court
17 finds that, given the nature of this particular case, is it
18 appropriate to exceed the statutory limitation, that the
19 amounts that have been requested in large part by the
20 defendants are excessive.
21 With respect to any costs by Mr. Gould, those costs
22 are too late. Mr. Gould was successful on a motion for
23 summary judgment almost a year ago at this point, so
24 regardless of Reading's position in the case with
25 indemnification, the motion is late.

1 With respect to Category Number 12, given the
2 consulting that is included which may be more appropriate as a
3 request for attorneys' fees or should have been included as
4 expert expenses, depending upon how you categorize it, the
5 amount is reduced to $450,000.
6 With respect to Category 13 the motion to retax is
7 granted.
8 With respect to Category 14 the motion to retax is
9 granted.
10 With respect to Category 15 the motion to retax is
11 granted.
12 With respect to Category 16 the motion to retax is
13 granted.
14 And with respect to Category 17 the motion to retax
15 is granted.
16 Anything else?
17 MR. FERRARIO: Thank you, Your Honor.
18 THE COURT: 'Bye.
19 THE PROCEEDINGS CONCLUDED AT 9:49 A.M.
20 * * * * *
21
22
23
24
25

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

FLORENCE M. HOYT, TRANSCRIBER

10/1/18

DATE

Electronically Filed
12/7/2018 10:04 AM
Steven D. Grierson
CLERK OF THE COURT

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DISTRICT COURT

CLARK COUNTY, NEVADA

JAMES J. COTTER, JR., individually and derivatively on behalf of Reading International, Inc., Plaintiff, v. MARGARET COTTER, et al, Defendants.	**Case No. A-15-719860-B** Dept. No. XI **NOTICE OF ENTRY OF ORDER**

TO: All parties and their counsel of record:

YOU AND EACH OF YOU will please take notice that the *Order Denying in Part and Granting in Part Plaintiff's Motion for Reconsideration and Amendment of Judgment for Costs and for Limited Stat of Execution on Order Shortening Time* was entered on December 6, 2018. A

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copy of said order is attached hereto.

DATED: this 7th day of December, 2018.

GREENBERG TRAURIG, LLP

/s/ Kara B. Hendricks

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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 on this day, I caused a true and correct copy of the forgoing ***Notice of Entry of Order*** be filed and served via the Court's Odyssey E-Filing system. 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 7th day of December, 2018

/s/ Andrea Lee Rosehill
AN EMPLOYEE OF GREENBERG TRAURIG, LLP

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12/6/2018 12:46 PM
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ORD
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DISTRICT COURT

CLARK COUNTY, NEVADA

JAMES J. COTTER, JR., individually and derivatively on behalf of Reading International, Inc. Plaintiff, v. MARGARET COTTER, ELLEN COTTER, GUY ADAMS, EDWARD KANE, DOUGLAS McEACHERN, TIMOTHY STOREY, WILLIAM GOULD, and DOES 1 through 100, inclusive, Defendants.	Case No. A-15-719860-B Dept. No. XI **ORDER DENYING IN PART AND GRANTING IN PART PLAINTIFF'S MOTION FOR RECONSIDERATION AND AMENDMENT OF JUDGMENT FOR COSTS AND FOR LIMITED STAY OF EXECUTION ON ORDER SHORTENING TIME** **Date of Hearing: December 3, 2018** **Time of Hearing: 9:00 a.m.**

This Matter came before the Court on December 3, 2018 on Plaintiff's *Motion for Reconsideration and Amendment of Judgment for Costs and For Limited Stay of Execution on Order Shortening Time ("Motion for Reconsideration").* Plaintiff James J. Cotter, Jr. appeared by and through his counsel, Akke Levin, Esq. Reading International, Inc. ("Reading") appeared by and

through its counsel Kara B. Hendricks, Esq. The Individual Defendants appeared by and through their counsel, Marshall M. Searcy, Esq. and Kevin M. Johnson, Esq.

The Court, having considered the Motion and attendant briefing; and having heard the arguments of counsel, for good cause, finds that Plaintiff has failed to show sufficient cause to warrant reconsideration or amendment of the Judgment on Costs entered in favor of Reading and the Individual Defendants, and further finds that a stay of enforcement of such Judgment shall be entered, and that Plaintiff shall have seven calendar days from the date of the December 3, 2018 hearing in which to procure a bond equal to the amount of the judgment plus one year of interest at the statutory rate.

ACCORDINGLY, IT IS ORDERED, ADJUDGED AND DECREED THAT:

1. Plaintiffs' Motion for Reconsideration is DENIED.
2. Plaintiff's request for a limited stay of execution on the Judgment for Costs is GRANTED.
3. Plaintiff shall have until and including Monday December 10, 2018 to post a supersedeas bond in the amount of **$1,663, 122.11** and provide notice that a bond has been posted.
4. Upon posting of the bond, enforcement of the Judgment for Costs in favor of Reading and the Individual Defendants shall be stayed pending the resolution of the appeal.

DATED this 6 day of December, 2018

Hon. Elizabeth Gonzales, District Court Judge

Respectfully submitted:

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APPROVED AS TO FORM AND CONTENT:

Dated this 4th day of December 2018.

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