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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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.	
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 MOTION TO COMPEL AND MOTION TO SEAL

MONDAY, APRIL 30, 2018

COURT RECORDER:	TRANSCRIPTION BY:
JILL HAWKINS District Court	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.

LAS VEGAS, NEVADA, MONDAY, APRIL 30, 2018, 9:04 A.M.

(Court was called to order)

THE COURT: Cotter.

Mr. Krum, why did you define "meeting" so narrowly? Why did you define "meeting" so narrowly?

MR. KRUM: We defined "meeting" because we didn't have the information that there was anything else going on. But it doesn't matter for purposes of the motion today, because we have other requests which the December 21 [inaudible] is the ones that are -- created the issue are clearly responsive.

THE COURT: Okay. So you relied upon the representation that was made in court about the meetings that were occurring in December?

MR. KRUM: Well, no, Your Honor. I mean, the answer is sure, we understood that based on the motion that was made on the 27th the five dismissed directors had supposedly agreed what happened. What we actually know is Mr. Gould's assistant sent an email asking these matters be put on either the next board meeting, which was the 29th, or a special meeting. But we didn't miss it, Your Honor. Request Number 6 actually is exactly what we would have drafted had we known what we did not know.

Request Number 6 calls for all documents relating to the decision to call the meeting, which is the December 29

meeting, to ratify prior decisions. And the testimony, as we provided to you in the motion, was that the three members of the so-called special independent committee, Gould, Codding,a and McEachern, had a meeting on a day they couldn't identify, and they agreed at the meeting to do that. And the meeting minutes presumably say that, but they're completely redacted.

But there are other requests, Your Honor. But I don't need to go through them. So what happened is, as we now know from the opposition papers, that, unlike the minutes of the December 29 meeting which they were able to prepare in about five days and use a draft of the December 29 minutes as the basis for their motion for summary judgment, they didn't bring to bear the same case in preparing the minutes of the special independent committee of December 21. Mr. Bonner's declaration says he was busy and he didn't prepare them until January 24, he provided to Gould on January 30, and then he gets comments and provides them to Codding and McEachern on the 10th.

Your Honor, they first produced the document, first produced documents and a privilege log on the 15th of February. There was no basis upon which to withhold the December 21 minutes, except for a claim of privilege. But they didn't log them. They simply withheld them. And all this talk in their opposition about what transpired subsequently doesn't really change the fact that they withheld

responsive documents. They didn't produce the document, they didn't log the document until April 12, Your Honor. That's after I requested it -- I didn't request it in McEachern's deposition, because he was unclear about what transpired. But later that day Ms. Codding said, we had a special independent committee meeting a couple days before. And at that deposition I asked the lawyers present, Mr. Tayback and Mr. Ferrario, would you please produce those meeting minutes. And whether it was there -- there was some colloquy there or subsequently were they requested, the answer, sure they are and -- sure they are. And so nobody said to me they're not responsive. Nobody said, we're withholding them.

Approximately five or six days later I was in White Plains, New York, deposing Mr. Wrotniak, who's not a member of this committee. But at the end of that deposition I asked the lawyers present, it was Mr. Searcy in person and Ms. Hendricks telephonically, by the way, I asked at the last deposition for the meeting minutes of the special independent committee, would you produce them. Now, I had no idea that it was a meeting about ratification. Ms. Codding said it was just -- neither Codding nor McEachern said they took any action. In fact, one of them, I think McEachern, suggested they didn't. So I'm like, well, fine, I'll get these minutes when Mr. Gould makes his production. Because the productions, Your Honor, were fairly consistent. Well, they weren't fairly consistent,

they were exactly the same.

GT made a production I think it was on the 15th of February, and a week or so later Quinn made a production. The only difference was that the Quinn productions included some nonresponsive documents they apparently want to use in the case. And there was three sets of documents. Nothing in those documents referenced this December 21 meeting. In fact, as you saw in the email correspondence between me and Ms. Hendricks, I understood that it was a December 27 meeting based on Ms. Codding's testimony being more definitive. That is, of course, until I deposed Mr. Gould, who, like Mr. McEachern, placed it somewhere else in December, and, unlike either of them said, no, we formally acted, we formally acted at that special independent committee meeting and by, the way, there are minutes. And they then finalized. Well, apparently they hadn't been approved, but that's a process that they're holding off on for reasons that may or may not have to do with this case.

So what happened? I sat there and examined three different committee members, the first two of which don't really tell me what transpired. I asked for the minutes. The minutes are responsive to this and other requests. And nothing happens. I get nothing. And then, of course, we have a different issue with Mr. Gould's production.

THE COURT: Okay. I don't know how you accidently

delete your entire in box, so let's talk about that.

MR. KRUM: We'll get to that. But, to the point, Your Honor, so what transpired on the ratification process was unknown to me until Mr. Gould's testimony April 5th, both in terms of chronology and in terms of what three of the five ratifying directors did. I spent a lot of time going through the privilege log, the only privilege log that was produced by any of the defendants, which was by GT, because there weren't any documents that told me anything about what transpired. Literally. You know, we said three different sets of documents, December 27 and 29, I think it was. So I spent a lot of time. And then I get -- and then I don't get the document.

You know, it's not conceivable to me that a lawyer could sit through all these depositions where I'm examining three different committee members giving three varying versions of what transpired when and not say, well, gee, should I double check and see if the minutes that Krum specifically requested are responsive, after they've made that decision to start with, Your Honor. That was the entire choreography. And, by the way, it wasn't --

THE COURT: I was never told about a special committee meeting. I was only told that the December 27th meeting occurred at which everybody ratified the actions of the directors who remain parties to this case.

MR. KRUM: Right. And, of course, the process is critical. The process is what it's all about, this process where some number of these five ratifiers took the time to make an informed decision and ratify a corporate decision. What did they do? What did they know? Whether or not they can make the case they're trying to make in their summary judgment motion depends on that. That's exactly why you said I needed discovery, figure out what happened.

THE COURT: So let me scoot back for a second. One of your motions today asks me to have an evidentiary hearing about what led up to the failure to produce this information and whether sanctions are appropriate as a result of that. Why do you think we should have an evidentiary hearing at this late date?

MR. KRUM: Well, I think it's easy, Your Honor. We don't need an evidentiary hearing. We think denying the motion for leave to renew their ratification summary judgment motion, grant the relief we request, which is preclude them from offering that as a defense at trial. Otherwise, what we have, Your Honor, if you don't think we need one and you're prepared to make those decisions, which I think you can and I think are appropriate, that's fine. I suggested to have an evidentiary hearing because sometimes that's what you seek to do to find out what happened in circumstances like this where the lawyers seem to have not have done what they are supposed

to have done.

The timing, Your Honor, is entirely their doing. We were here on January 8th. Mr. Ferrario made comments to the effect that he was going to be cooperative, they're going to be forthcoming, and he said, I don't speak for Mr. Tayback or Mr. Searcy, but they can say if they disagree. And he even in those comments talked about having the draft December 29 board minutes that were the basis for the motion approved and finalized.

So they were going to make this all happen, we're going to do it on an expedited basis. And not only did they not do that, they didn't produce one of the critical documents that we need to have and possess and know to obtain the discovery that you told them they had to provide before they could renew -- ask to renew their motion.

So do we need an evidentiary hearing? If we can't get ratification out of the case, Your Honor, we don't need one. But I know even, by the way, even it was an honest mistake and somehow the left hand didn't know what the right hand was doing, the lawyers weren't listening to me, what I said at the depositions, can you please produce those minutes. I've still been hamstrung. Three of the five ratifiers made a decision at a meeting that I didn't even know happened.

THE COURT: Me, either.

MR. KRUM: So --

THE COURT: And it was a week before trial -- two weeks before trial.

MR. KRUM: Well, as it turned out, Your Honor, the chronology of the directors was that the three, Gould, Codding, and McEachern as members of the special independent committee, we now know had a meeting on December 21st of that committee.

THE COURT: I know that from the brief. Thank you.

All right. Guys, somebody want to say anything?

First, how do you accidently delete your entire in box, and why on earth wasn't anyone informed about this meeting when Mr. Ferrario came in and said, hey, Judge, I win? He said that the first day when we getting ready to pick the jury.

MR. FERRARIO: We should have won. And we should win again. And this is a farce. And we'll explain why.

MS. BANNETT: Your Honor, I can't address that. I'm going to leave that to Mr. Ferrario, because we weren't even present for that -- or at least I wasn't present. So I don't know what happened in terms of any representations on that date.

But I can address Mr. Gould. And I want to start with Your Honor's question about how do you delete an in box.

THE COURT: No. How do you accidently delete an in box.

MS. BANNETT: Accidently delete an in box.

THE COURT: An entire in box. But not your out -- but not your out box.

MS. BANNETT: Right. My client is not of a generation that is super accustomed to dealing with email, although he does use it in the course of his job. His in box generally consists of not very many emails. He says maybe about 10 or so emails were in his in box in total when he accidently deleted it. So he regularly moves things out and files things. He had about 10 emails. He thinks about three of them were Reading related at that time. Beyond that he doesn't know.

THE COURT: He knows how to move them -- he knows how to move them into subfolders; right?

MS. BANNETT: He does, yes.

THE COURT: Okay. All right. So that's a little more adeptness with email than a lot of other people of that generation, and "of that generation" I'm going one generation above me.

MS. BANNETT: Yes. At least one generation.

THE COURT: Mr. Morris is very adept at email, too, and he's in that generation.

MS. BANNETT: I don't know whether he moves -- I have to say I don't know whether he moves them directly or sends them to his -- forwards them to his assistant to move.

THE COURT: But he knows how to do that. He knows how to preserve his emails.

MS. BANNETT: He at least forwards his email. Yes. And, like I said, this was not -- this was something that's inadvertent. He doesn't know what he did. So other than saying he went to delete one email and then he deleted the rest, he doesn't actually know what he did.

And I don't know if you've ever misfiled an email and not known where it's gone to, but I'm of a generation that grew up using email, and I did that just two days ago when I tried to forward an airline reservation to my assistant from my phone, pressed some button to -- I have no idea where that email is. Can't figure it out. I think that that's what happens.

But I think that the important thing to remember is that we're talking about what is likely three emails, maybe four emails total that --

THE COURT: About this meeting that I didn't know anything about right before our trial.

MS. BANNETT: No, I don't know that they were about the December 21st meeting. They may -- they could be about the December 27th meeting. Or I think it was the December 29th meeting, actually. The email setting the meeting went out on December 27th.

So -- but we're talking about an extremely limited

number of emails in his in box. Everything that he sent relating to the topic of ratification was sent to either a party or --

THE COURT: No. Those would be things in his out box. See, when you send them they're in your out box. Your in box are things you receive from other people.

MS. BANNETT: Yes. Everything that was either sent or received relating to ratification came from or was copied to a party in the case and so should have been produced or can be pursued from a party. This isn't a case where this was the only copy of the email in existence or that it was purely internal communications with someone else at his firm. That's not the kind of communications that were talking about here.

THE COURT: Okay. Anything else you want to tell me?

MS. BANNETT: I think that the last point that I want to make is that I think that Mr. Krum has a very clear picture of what happened through the document discovery that he's conducted from my client and from the other directors and from the company and also from the depositions that he took where he asked whatever questions he wanted to ask. And he has a clear picture of what happened, when it happened, and the reasons that the directors voted for ratification. And it's not clear what additional information he's seeking at this point.

THE COURT: Okay.

MS. BANNETT: Do you have any further questions?

THE COURT: Not really.

Mr. Ferrario.

MR. FERRARIO: What do you want to talk about?

THE COURT: How come it takes so long to produce the minutes that you told me the day you came in and said, hey, Judge, it's all over, we win?

MR. FERRARIO: We have two separate committees, Judge. And you know what -- and Mr. Krum -- this is a farce. You want to what else you didn't know about going to trial?

THE COURT: What else don't I know about?

MR. FERRARIO: You want to know what else? They didn't pay their experts. I've got collection agents up -- bugging one of my client's subsidiary's employees because they didn't pay their experts before trial. We're going to have to get into that little bit.

THE COURT: That's not fun.

MR. FERRARIO: Oh, that's not fun, is it, when we all of a sudden had to continue the trial. Just learned -- but let's just -- let's put this back in perspective. The issue --

THE COURT: So are you saying Mr. Cotter really wasn't sick?

MR. FERRARIO: I don't know if Mr. Cotter was sick.

THE COURT: Because that would be bad if he wasn't really sick and I dismissed the jury based on an illness.

MR. FERRARIO: I don't know, okay. We were suspicious, but Your Honor took their affidavit at face value, that's it.

THE COURT: I had an affidavit from a doctor.

MR. FERRARIO: The next thing I know I've got a lot of weird stuff going on about not paying their experts, okay. So we could throw that out there.

But let's just get to this issue, because there's a special litigation committee. I have the minutes right here that Mr. Bonner -- I'm prepared to show these to Your Honor and you can see what we talked about at the committee.

THE COURT: If you want to submit them in an in-camera submission --

MR. FERRARIO: Absolutely.

THE COURT: -- that would be part of my record, I will. I'm not looking at it on your tablet, Mr. Ferrario.

MR. FERRARIO: Okay. Well, I would have had that, but I --

THE COURT: You've been through this before with other cases.

MR. FERRARIO: I have. I had kid duty this morning and I took the wrong car. My pleadings are in another car.

THE COURT: I left my phone at home and had to go

back home.

MR. FERRARIO: All right. I didn't want to go back home and be late. But that's neither here nor there.

So here's the issue. There's a special litigation committee, okay, that considers all sorts of things having to do with this case, an arbitration matter, and other related matters, okay. That's the committee we're talking about. That committee cannot bind the company. That committee cannot ratify. The board ratifies, okay. The ratification took place at the board meeting. Mr. Krum has set out in his pleadings a rather detailed history of what occurred here, okay. He knows exactly what occurred here. He knows the that issue came up in a form at the special litigation committee meeting. He knows when the ratification meeting took place. He knows what materials were considered at that meeting. He has deposed all these people. He has seen the documents.

And the other thing when he talks about process that is just glaringly omitted from his pleadings is every one of these people that are on the board were once sued by Mr. Krum and his client. Every one of these people lived the case. Every one of these people were deposed. Every one of these people knows what happened, knows the chronology, knows the facts, knows all of that, okay. So all this is at this point is an attempt by Mr. Krum to deprive my client and the board members of an opportunity that they have available under the

Nevada statute, to ratify an action even if --

THE COURT: The week before trial.

MR. FERRARIO: But, Your Honor, you and I talked --

THE COURT: I'm just sayin'.

MR. FERRARIO: We talked about that. That -- this was all occasioned as a result of your ruling.

THE COURT: Which means I may never grant summary judgment to anyone again ever.

MR. FERRARIO: Well, I don't think that's the case. I think -- you know, if Your Honor makes a ruling, it obviously impacts trial. It impacts all sorts of things.

THE COURT: This was a new one on me, though, Mr. Ferrario. I've done a lot of trials in my career, and this one was new. Very creative, but new.

MR. FERRARIO: But, Your Honor --

THE COURT: I'm not saying it's wrong, because I haven't heard the evidence yet.

MR. FERRARIO: That's all I wanted to hear is you not saying it's wrong.

THE COURT: How on earth -- so is the secret minutes of the December 21 --

MR. FERRARIO: They're not secret.

THE COURT: Wait. They're redacted.

MR. FERRARIO: They're right here.

THE COURT: I can't look at your tablet. Are the

redacted minutes of the December 21, 2017, special independent committee meeting solely about this case?

MR. FERRARIO: Let me read them.

No. There's -- and I have to be clear. Without a waiver, there's a discussion in here about possible resolution, but it involves more than this case.

THE COURT: So the probate case, the one in California?

MR. FERRARIO: It's more than that, Your Honor. There's all sorts of prongs to this, okay.

THE COURT: Okay. Well, but that's really all about this case for discovery purposes.

MR. FERRARIO: No.

THE COURT: When you guys asked me to take time off so you can go to California to try and settle this case and you're unsuccessful I know that they're related.

MR. FERRARIO: There were a lot of actions and there were discussions about let's call it a global settlement --

THE COURT: Okay.

MR. FERRARIO: -- an omnibus settlement.

THE COURT: So -- that's fine. So one of the requests is that I review those documents in camera. I am happy to review them in camera, but you have to submit them to me camera so I can then make a review.

MR. FERRARIO: I will.

THE COURT: I am inclined to set an evidentiary hearing related to the delay in the production of those minutes. Whether that hearing is one at which we will take witness testimony or not is one that I won't know until I see the minutes to see what they talk about. Since I've never seen them, I'm in a bit of a quandary.

I am declining to order Gould, Codding, and McEachern to appear for further deposition, but reserve the right to have them physically appear for the evidentiary hearing.

MR. FERRARIO: That's fine, Your Honor. There's no --

THE COURT: Okay. So when do you want to do it?

MR. FERRARIO: There's no mystery here.

THE COURT: When do you want to do it?

MR. FERRARIO: I'll do it tomorrow. I'll do it --

THE COURT: Okay.

MR. FERRARIO: -- this afternoon. I could care less.

THE COURT: All righty. What time do you want to start?

Ms. Brown, how long are we going to be with your settlement conference today?

MS. BROWN: Hopefully all day, Your Honor.

THE COURT: So we can't do it today.

MR. FERRARIO: Do you want me to bring Mr. Bonner over? Do you want to talk to Mike?

THE COURT: You want to do it later in the week?

MR. FERRARIO: No. If he's here, I'll bring him over this afternoon.

THE COURT: No. I'm doing a settlement conference this afternoon.

MR. FERRARIO: Oh. Give us a date. But let's get this done, because it's much ado about nothing. And all this is they want to avoid what the Nevada statute mandates this Court to do. And this is a half-baked attempt to create a discovery dispute where none exists.

THE COURT: And it may be that none exists.

MR. FERRARIO: That's all this is.

THE COURT: But the fact that I never heard about this special committee meeting prior to this motion practice is of concern to me.

MR. FERRARIO: Why? It was a special litigation committee that considers all sorts of things, as you will see when I give you the minutes.

THE COURT: Okay.

MR. KRUM: Well, Your Honor, I don't know how he --

THE COURT: So I'm scheduling an evidentiary hearing.

MR. KRUM: Yes. I'm sorry, Your Honor.

THE COURT: So I have a case called Nuveda that has an evidentiary hearing Wednesday, Thursday, and Friday, but the following week I have time.

MR. KRUM: Next week, Your Honor.

THE COURT: Next week?

MR. FERRARIO: Oh. We can't do it this week?

THE COURT: I could, but I have another evidentiary hearing on enforcement of a settlement on Wednesday, Thursday, and Friday.

MR. FERRARIO: All right. What days next week, Your Honor?

THE COURT: I think any day.

Right, Dulce? Except Tuesday afternoon when I have to do my Mental Health Court duty.

MR. FERRARIO: We'll only need I would say an hour or so.

THE COURT: Huh-uh. Never happen.

MR. FERRARIO: Two hours?

MR. KRUM: My suggestion is Wednesday, Your Honor.

THE COURT: In the afternoon.

MR. FERRARIO: Wednesday of the 9th?

THE COURT: Everybody okay on Wednesday, the 9th? Starting at what time?

MR. FERRARIO: Your Honor, that day is horrible.

THE COURT: Okay. Thought you said you wanted to do

this.

MR. FERRARIO: I did. I wanted to do it today.

THE COURT: Well, I can't. I'm doing a settlement conference that's apparently all day.

MR. FERRARIO: Can we do Tuesday?

THE COURT: In the morning.

MR. FERRARIO: Tuesday in the morning. That'll work.

MR. KRUM: Your Honor, Tuesday's fine. I'd like to start and finish, because I'm travelling in for that.

THE COURT: I have to take a break to do my Mental Health Court duties. They don't always take a long time; it depends on how many people need to be terminated from Mental Health Court.

THE CLERK: Mental Health is dark.

THE COURT: Mental Health is dark that day. Apparently I have all day on May 8th for you.

MR. KRUM: Well, then we'll take May 8th. But, Your Honor, if you would, please. I don't understand who you have -- who you expect to have testify and that sort of thing.

THE COURT: Well, if somebody thinks it would be important for me to hear from Gould, Codding, and McEachern about why the minutes weren't produced in a timely fashion -- I'm not sure they're really the people who answer those 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?

THE COURT: It comes in a sealed envelope --

MR. FERRARIO: Yeah.

THE COURT: -- and it needs to be marked "For In-Camera Submission." The face sheet of what you're giving me needs to be served on all parties, and then I will look at it.

MR. FERRARIO: Okay.

THE PROCEEDINGS CONCLUDED AT 9:30 A.M.

* * * * *

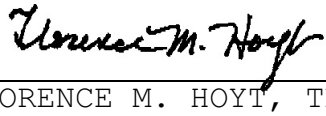
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Steven D. Grierson
CLERK OF THE COURT

TRAN

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

EVIDENTIARY HEARING

WEDNESDAY, MAY 2, 2018

COURT RECORDER:	TRANSCRIPTION BY:
JILL HAWKINS District Court	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.

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

THE COURT: About which subject?

MR. FERRARIO: Monday about --

THE COURT: Deleting in boxes?

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

THE COURT: Amazing.

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

THE COURT: Okay. Ms. Levin.

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

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

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

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

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

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

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

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

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

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

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

THE COURT: You got that.

MS. LEVIN: Okay.

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

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

THE COURT: Okay. Ms. Hendricks.

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

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

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

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

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

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

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

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

MS. BANNETT: Then, Your Honor --

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

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

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

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

has them all.

THE COURT: What did you send him?

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

THE COURT: Who sent him the documents?

Ms. Hendricks, what did you send him?

MS. HENDRICKS: [Inaudible].

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

THE COURT: No.

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

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

MR. KRUM: No.

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

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

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

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

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

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

MR. FERRARIO: Thank you.

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

MS. BANNETT: I do.

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

MR. KRUM: There he is.

THE COURT: Mr. Gould, how are you?

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

THE COURT: Can you hear me okay?

MR. GOULD: Yes, I can.

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

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

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

THE COURT: Yes.

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

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

MR. GOULD: Yes.

THE COURT: Okay.

WILLIAM GOULD, A DEFENDANT HEREIN, SWORN

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

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

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

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

DIRECT EXAMINATION

BY MS. BANNETT:

Q Mr. Gould, good afternoon.

A Good afternoon to you.

Q Did you receive a subpoena duces tecum from the

plaintiff in January of this year?

A Yes, I did.

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

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

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

MR. KRUM: Objection. Foundation.

THE COURT: Overruled. You can answer.

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

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

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

BY MS. BANNETT:

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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CROSS-EXAMINATION

BY MR. KRUM:

Q Good afternoon, Mr. Gould.

A Good afternoon, you.

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

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

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

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

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

A Yes, it was.

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

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

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

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

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

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

A Yes.

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

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

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

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

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

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

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

A When you say she you mean my secretary?

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

were looking at.

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

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

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

A It was not too long after the deletion occurred.

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

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

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

A No. We hadn't considered that.

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

THE COURT: Thank you.

Anyone else have any questions for Mr. Gould?

Hold on, sir. They're consulting.

MS. BANNETT: I don't believe so.

THE COURT: All right. Thank you, sir. We appreciate your time. Have a nice afternoon. We're going to close the video link.

THE WITNESS: Thank you, Your Honor.

THE COURT: Who's your next witness?

MR. FERRARIO: Mike Bonner.

THE COURT: Mr. Bonner, come on up.

MICHAEL J. BONNER, ESQ., DEFENDANTS' WITNESS, SWORN

THE CLERK: Thank you. Please be seated. Please state and spell your name for the record.

THE WITNESS: My name is Michael J. Bonner. Last name is Bonner.

MR. FERRARIO: Can I dispense with background?

THE COURT: Mr. Bonner, you're an attorney; right? Been an attorney for 30 years or so?

THE WITNESS: Yes, Your Honor.

THE COURT: Okay. Keep going.

MR. FERRARIO: I was going to ask him what he got in -- what grades he got in law school, but I won't do that.

THE COURT: Thank you, Mr. Ferrario.

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DIRECT EXAMINATION

BY MR. FERRARIO:

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

A Yes.

Q And is a company called Reading International a client?

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

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

A Yes.

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

A Yes.

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

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

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

THE COURT: And the probate case here in Nevada.

THE WITNESS: Yes, Your Honor.

MR. FERRARIO: That's true.

BY MR. FERRARIO:

Q And who are the members of that committee?

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

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

THE COURT: Yes.

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

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

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

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

THE COURT: The charter.

BY MR. FERRARIO:

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

Exhibit B?

A Yes.

Q And what is that?

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

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

MS. HENDRICKS: Here you go.

THE COURT: You do now.

Thank you, Ms. Hendricks.

MR. KRUM: Thank you, Ms. Hendricks.

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

BY MR. FERRARIO:

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

A Yes.

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

A Yes.

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

THE COURT: Any objection to B, the charter?

MR. KRUM: No objection, Your Honor. We still have an issue, though. Excuse me.

(Pause in the proceedings)

THE COURT: So the charter will be admitted, but we're in the process of making sure that Mr. Krum has a copy of A through D.

Hold on, sir.

MS. HENDRICKS: They were all sent via email. I apologize, Your Honor.

THE COURT: Even my copy?

Are you okay now, Mr. Krum?

MR. KRUM: We are.

THE COURT: Okay.

MR. KRUM: Thank you.

THE COURT: B has been admitted.

(Defendants' Exhibit B admitted)

BY MR. FERRARIO:

Q Okay. Mr. Bonner, now, you've explained to the Court the purposes of the committee. How are meetings called, and how does the committee generally operate?

A The meeting -- I'm sorry. The committee thus far since its formation in August has basically started out in a somewhat planning mode for the first several meetings. As the months have gone by the committee has scheduled meetings for updates relative principally to the status of the derivative

case as it proceeded toward trial, and also some events that were occurring with respect to the Trust case. And so typically the chairman of the committee, Mr. Gould, will call a meeting of the committee. They're almost always held by telephone, and they're typically done in that fashion.

Q And are you the person that is charged with preparing minutes regarding committee meetings?

A Yes.

Q Okay. And what is your typical practice in regard to preparing minutes?

A I participate in the meeting, I'm in the room or on the telephone, as the case may be, I have a legal tablet, and I write down summaries to myself in my own handwriting and I -- you know, they're done contemporaneously. And at some point I will transfer those typically by dictation. I dictate often -- when I get to actually turn them into a document I typically dictate those through our firm's dictation system and oftentimes through our document center, which is located in another state, and they're returned to me.

Q There's been an issue raised in -- that brings us here today regarding kind of the timeliness of the preparation of minutes. Is it your practice to prepare minutes, you know, a day after the meeting, a week after the meeting? Or what is your practice I guess would be a better way to ask the question.

A All of the above. I mean, if I have the time, I would prefer to do it sooner. But it's not uncommon due tot press of business I may do them weeks later at times. It would also depend on if the meeting -- if there's any important action taken in the meeting where the existence of the minutes may have some import.

Q Okay. And once you prepare the minutes what do you typically do with them?

A In the case of the special independent committee my practice was to prepare them and then send them to Chair Gould for his review. And then ultimately we sent them on to the other members for their review.

Q If you'll look at the packet in front of you and turn to Exhibit A, which is the declaration. Go the other way. There you go. Take a look at that for a minute? You recognize that document?

A Yes.

Q Okay. And does that declaration set forth what occurred with regard to the preparation of minutes for the meetings that are reflected on page 2 of the declaration?

A Yes.

Q And as you said in the declaration, you essentially prepared minutes for all of these meetings, starting with the meeting in November, on November 28, 2017, sometime in late January 2018?

A Yes.

Q Okay. And as you said in your declaration, the only reason that it took so long -- if you want to say it that way -- to prepare these minutes was because you were busy doing other things?

A Yes.

Q I know you can't tell the Court -- or can't tell the parties here what companies were involved in a transaction, but were you involved in a rather time-pressing transaction through the month of January?

A Yes. We were retained just before Christmas on a significant transaction in which I was lead merger counsel. It had a very short fuse, and so I was very busy in that particular transaction from just before Christmas into January and beyond. As a postscript, that deal was cancelled, so much of the work was for naught, but it took up a lot of time.

In addition, I'm co-managing shareholder of the Las Vegas office. We have significant duties with respect to year-end collections, and that took up much of the time toward the end of the year, amongst other demands on my time.

MR. FERRARIO: Nothing further, Your Honor.

THE COURT: Cross-examination.

CROSS-EXAMINATION

BY MR. KRUM:

Q Good afternoon, Mr. Bonner.

A Good afternoon.

Q You attended an RDI board meeting on December 29, 2017; correct?

A Yes. By telephone, as I recall.

Q You prepared minutes for that meeting; correct?

A Yes.

MR. FERRARIO: Your Honor, I'm going to object. This is beyond the scope of this hearing.

THE COURT: Overruled.

MR. FERRARIO: We're talking now about the board meeting, not the special committee.

THE COURT: I know. The one I was told about, as opposed to the one I wasn't told about. Remember we had this discussion on Monday?

MR. FERRARIO: Well, you know why you weren't told.

THE COURT: No, I still don't know why I wasn't told.

MR. FERRARIO: Yes, you do.

THE COURT: But okay.

MR. FERRARIO: You read the minutes.

THE COURT: I have now read the minutes.

Mr. Krum, you may continue.

MR. KRUM: Thank you, Your Honor.

BY MR. KRUM:

Q You prepared those minutes for the December 29 board

meeting within days of the meeting; correct?

A I participated in them. I would have to double check and see if I was the sole preparer. But I did participate in it.

Q Who else participated?

A I don't know. I'd need to check.

Q Those minutes were prepared on an expedited basis; right?

A Yes.

Q For use in litigation; correct?

A No. They were prepared because an action was taken by the board.

Q Well, they weren't approved -- in fact, they weren't submitted to the board for approval until much later; correct?

A They were -- the minutes themselves were approved at a subsequent meeting of the board.

Q So the only use to which those minutes were put within a week or so of the meeting was to be an exhibit in a motion filed in this case; correct?

A I don't know if that was the only use. They were prepared in the normal course of business of maintaining records of the company.

Q Is it your testimony, Mr. Bonner, that minutes of RDI board meetings are ordinarily prepared within days of the meetings?

A That's not my testimony. What I said is they were -- minutes were maintained in the normal course of the business of the company.

Q Directing your attention to the December 29 board meeting, there were matters characterized as ratification that were raised; correct?

A Yes.

Q And in your own terms, if you would, succinctly, if you can, just describe what those matters were so that I can use some of your words to refer to them.

A There was a matter put on the agenda of the board of directors. The issue was with respect to the fact that due to, as I understand it, recent rulings of this Court, certain members of the board were dismissed. And these are my words, not legal words, so you can correct me if I misstate this; but, as a result, the conclusion was that there were a number of directors who would be deemed independent for certain purposes. As a result, a matter was put on the agenda to determine whether it was appropriate to ratify certain actions of the board pursuant to Nevada statute.

Q The actions in question were two different sets of actions that were taken in 2015; right?

A I don't remember the exact dates, but, yes, they were prior actions taken by the board.

MR. KRUM: Your Honor, may I approach?

THE COURT: You may.

Somebody's cell phone is too close to the microphones.

MR. FERRARIO: What document are you looking at?

MS. LEVIN: P-1.

MR. FERRARIO: Okay.

MR. KRUM: Plaintiff's Exhibit 1, Counsel.

THE COURT: Dulce, do you have their stack? I'll hand it to Mr. Bonner.

Mr. Bonner, here's their stack of exhibits. Counsel says this is P-1.

BY MR. KRUM:

Q Mr. Bonner, do you recognize that document?

A What you handed me, or what the Judge handed me? I just want to get to the right page.

Should I be referring, Your Honor, to the one handed me, or the one Mr. Krum handed me?

THE COURT: If they're the same, it doesn't matter. If they're not, then I need to know that.

THE WITNESS: It looks like they have the same numbering at the bottom --

THE COURT: Okay.

THE WITNESS: -- this 918, the last three digits.

THE COURT: You can look at whichever is easier for you.

THE WITNESS: Okay. Great.

BY MR. KRUM:

Q Mr. Bonner, do you recognize that document?

A Yes.

Q What is it?

A It's -- well, it's an email addressed to Ellen Cotter from Marsha Weitsman, who I believe is William Gould's secretary. And it is a letter addressed to Ms. Cotter, and it's I guess typed signatures by Judy Codding, William Gould, Edward Kane, Douglas McEachern, Michael Wrotniak.

Q Did you prepare this document?

A I question whether any of this privileged or work product.

THE COURT: So I'm assuming not, since we're talking about it now and it's in your hand in my evidentiary hearing. So I'm assuming nobody's expressed a privilege related to it.

THE WITNESS: I don't know if I prepared it. I definitely saw it and may have had input in it.

BY MR. KRUM:

Q Well, directing your attention in particular, Mr. Bonner, to a paragraph numbered 1 and 2, did you prepare those or were you a participant in the preparation of those two paragraphs?

A I don't recall if I prepared them. I definitely saw them. I may have participated in the preparation. I just

don't recall.

MR. FERRARIO: Your Honor, can I renew an objection. This is beyond the scope of this hearing. The scope of this hearing I thought was going to be whether Mr. Gould produced documents and whether Mr. -- it had to do with the timeliness of Mr. Bonner's minutes. If you want to get into a full evidentiary hearing regarding --

THE COURT: Oh, no. No.

MR. FERRARIO: -- what happened on December 29th, I'm more than comfortable doing that. But I think we should have notice of that.

THE COURT: I don't know that we have -- y'all told me we're going to do two hours, so I don't think you can do all of that in two hours. But as there is a difference in the handling of the minutes from the meeting I was told about and the minutes of the meeting I didn't know about it, I think it's relevant for that purpose. I have no idea what P-1 is, because I'm not looking at it because it's not admitted. So I can't give you any more information than that, Mr. Ferrario. If there's something more specific you want to tell me, let me know.

MR. FERRARIO: This has nothing to do with minutes. This is going into the substance of the December 27th meeting. And you know what --

THE COURT: December 27th, or December 29th?

MR. FERRARIO: December 29th. I'm sorry.

THE COURT: Okay. The meeting I knew about.

MR. FERRARIO: The meeting you knew about. Why would you want to know about the other meeting? Do you want me to -- you want to know about every meeting they have?

THE COURT: Only if it's --

MR. FERRARIO: Do you want to know about the ones that happened in January when Mr. Bonner and I got undressed for two hours by -- because the trial got continued and I had to explain that to a group of people?

THE COURT: I wasn't real happy with it, either, remember?

MR. FERRARIO: Yeah. I could tell you it wasn't fun. That's why you've got two meetings in January.

THE COURT: Okay.

MR. FERRARIO: Having said that --

THE COURT: Let me ask Mr. Krum a question.

MR. FERRARIO: -- I have no -- okay. Go ahead.

THE COURT: Mr. Krum, why are we talking about this now?

MR. KRUM: For the same reason, Your Honor, they included information relating to this in their supplemental opposition filed this morning. What happened and what I want to walk through with Mr. Bonner because he was a participant in all of it is that at the December 21 special independent

committee meeting the three members of that committee --

THE COURT: The December 27th one?

MR. KRUM: No. The December 21 one that -- a meeting which you and I did not know until I learned on April 12 when they produced the document for the first time. The three committee members authorized the preparation of Plaintiff's Exhibit 1. So it all ties together. This is working backwards to the meeting --

THE COURT: So you're going to establish this relates to the first meeting?

MR. KRUM: Yes. That's exactly right.

THE COURT: Well, then, could you do that.

MR. KRUM: Of course.

THE COURT: Thanks.

BY MR. KRUM:

Q Who else participated in the preparation of Plaintiff's Exhibit 1?

A The best of my recollection, Mr. Gould and probably general counsel, Mr. Tompkins.

Q Craig Tompkins?

A Yes, sir.

Q And how did it come to pass that Plaintiff's Exhibit 1 was prepared to begin with?

MR. FERRARIO: Can I renew my objection? I don't see any relevance to this hearing on this.

THE COURT: Sir, is this --

Wait.

Was this prepared as a result of what happened at the special investigation committee -- special independent committee's meeting in December?

THE WITNESS: No.

THE COURT: Thank you.

Mr. Krum, it doesn't sound like it's related to that meeting.

MR. KRUM: Well, according to all the committee members it is. We'll argue that.

THE COURT: I guess.

MR. KRUM: Including the testimony in their supplement today.

All right. Well, I move to admit this. He's authenticated it.

THE COURT: Any objection to P-1? P-1's okay.

(Plaintiff's Exhibit 1 admitted)

THE COURT: What else have you got, Mr. Krum, with Mr. Bonner?

BY MR. KRUM:

Q Why was Mr. Tompkins involved in the preparation of the document purportedly sent on behalf of the five directors named at the bottom of Plaintiff's P-1?

MR. FERRARIO: Object. Attorney-client privilege,

Your Honor.

THE COURT: Sustained.

BY MR. KRUM:

Q You attended the telephonic meeting of the special independent committee on December 21, 2017; right?

A Yes.

Q How did that meeting come to be scheduled?

A It was scheduled by Chairman Gould to receive an update on certain developments.

Q How?

A How physically? Mechanically?

Q Did he send an email?

A I don't recall. Typically either he or his office would send out a dial-in. Sometimes I believe our office would send out a dial-in.

Q How were the dates and times picked, including in particular for the December 21 meeting?

A The December 21 meeting was a further updated briefing for certain events that the committee was monitoring. If you like, I can sort of summarize what those were, but --

Q Well, was the subject of ratification discussed at that meeting?

MR. FERRARIO: I'm going to object, Your Honor. Attorney-client privilege.

THE COURT: Overruled. It's a yes or no.

THE WITNESS: Yes.

BY MR. KRUM:

Q You took notes on your legal pad for the purpose of preparing minutes of that meeting?

A Yes.

Q Do those notes contain references to the discussion of ratification?

A No.

Q Why not?

A Because there was a attorney-client privilege strategy discussion. I did not maintain minutes of that session.

Q At some point, whether at the end of the December 21 special independent committee meeting or at another point in the meeting did one or more of the committee members say in words or substance that they agreed with or approved pursuing the subject of ratification with the full board of directors?

MR. FERRARIO: Objection, Your Honor. Attorney-client privilege.

THE COURT: Sustained.

BY MR. KRUM:

Q How did it come to pass, Mr. Bonner, that the subject of ratification was raised with the full board of directors pursuant to Plaintiff's Exhibit 1?

MR. FERRARIO: Same objection, Your Honor.

THE COURT: How did it come to be raised at the full board meeting, Mr. Krum?

MR. KRUM: Yes.

THE COURT: Overruled.

THE WITNESS: The letter you had me refer to is a request by those directors that it be placed on the agenda.

BY MR. KRUM:

Q When did --

MR. FERRARIO: For the record, Your Honor, that's?

THE COURT: P-1.

MR. FERRARIO: P-1.

THE COURT: I saw him hold it up. But, for the record, it's P-1. Good catch, Mr. Ferrario.

MR. FERRARIO: It's taking me a long time, but I'm getting there.

BY MR. KRUM:

Q When did Mr. Gould determine to make that request?

A I don't -- I don't know the exact time. Sometime between December 21 and December 27.

Q When did Ms. Codding determine to make that request?

A I don't know.

Q Did she indicate at the December 21 meeting that she was agreeable to making a request of the nature made in Plaintiffs' Exhibit 1?

MR. FERRARIO: Objection. Attorney-client privilege.

THE COURT: Sustained.

Mr. Krum, please be careful of the mike.

BY MR. KRUM:

Q When did Mr. McEachern determine to make the request that's reflected in Plaintiffs' Exhibit 1?

MR. FERRARIO: Same objection, Your Honor.

MR. KRUM: This is the same question about it raised pursuant to Plaintiffs' Exhibit 1 at the December 29th board meeting.

MR. FERRARIO: Outside of the December 21st meeting? You changed your question there.

THE COURT: Mr. Krum, can you rephrase your question, please.

BY MR. KRUM:

Q When did Mr. McEachern agree to raise at the December 29 board meeting or special meeting to be called for the purpose of the matters set out in Plaintiffs' Exhibit 1?

MR. FERRARIO: Objection. Attorney-client, Your Honor.

THE COURT: Sustained.

BY MR. KRUM:

Q What communications did you have with Judy Codding, if any, between December 21 and December 29 with respect to

the subject --

MR. FERRARIO: The number of communications, not substance; right?

MR. KRUM: Yeah.

MR. FERRARIO: Oh. You're laying a foundation.

MR. KRUM: Foundation.

MR. FERRARIO: Okay.

THE COURT: How many?

THE WITNESS: I apologize. Could you repeat the question.

BY MR. KRUM:

Q How many communications did you have with Judy Codding following the December 21 special independent committee meeting and prior to the December 29 board meeting, if any?

A I don't recall. And the answer could be none. I just don't recall.

Q Same question with respect to Mr. Gould.

A I would say I had at least one communication with Mr. Gould during that period of time.

Q Do you recall what that was, meaning what the subject matter was?

THE COURT: And this is do you recall, yes or no.

THE WITNESS: Generally, yes.

//

BY MR. KRUM:

Q Without disclosing the substance of the communication, what was the subject matter or what were the subject matters?

A The scheduling of the request that this be placed on the agenda.

Q You're referring to the request embodied in Plaintiffs' Exhibit 1?

A Yes.

Q Are you aware of any communications between or among any of the five directors listed at the bottom of Plaintiffs' Exhibit 1 regarding the subject of ratification, other than at the December 21 special independent committee meeting and the December 29 board meeting?

A I have no recollection at the moment. I don't know if I ever would have had any knowledge of that.

Q If you look at the exhibit binder that Mr. Ferrario used -- no, I'm sorry. He didn't bring your attention to that.

THE COURT: So, sir, while he's looking let me ask the elephant-in-the-room question for me. Why was one set of minutes prepared so quickly, and the other set of minutes was delayed by the press of business?

THE WITNESS: Great question. I'm happy to answer it, actually. The action of the board on December 29 was

actually a decision of the board that had -- it was a decision of the board that had some consequence. The committee meeting, the special independent committee meetings, there were several of them, were basically updates. There's a series of updates of special committee where the special committee was getting updates on status of some potential settlements of this either this action or related actions. There were significant concerns about the timing of the trial, directors were trying to make plans. So there were several update special independent committee meetings. The independent committee is charged with overseeing the company's role, you know, with respect to the derivative litigation. So these were basically updates. They were typically 20, 30, 40 minutes long. And there was no formal action taken in any of these, so they didn't have any particular consequence. I just simply had a big stack of materials. I knew I'd get to them, and that's absolutely the only reason they didn't get prepared sooner.

THE COURT: But the board meeting, because, in your words, had consequences to it, that was put on the front burner to make sure that they were typed and distributed?

THE WITNESS: There's a formal action of the board taken, and so there's a legal consequence to what that board did. The special independent committee meetings were merely update status calls, if you will.

THE COURT: Okay. Thank you.

Mr. Krum.

BY MR. KRUM:

Q What was the consequence of the actions taken at the December 29 board meeting?

A A ratification of the acts that were considered at that time.

Q And the minutes were needed to do what?

A Memorialize the action taken.

Q Why?

A Good corporate practice.

Q So they were prepared on a expedited basis for the purpose of putting them in the minute book?

A They were prepared on an expedited basis to memorialize the action taken by the board of directors, as opposed to a status conference call that had no legal consequence.

Q The action needed to be memorialized on an expedited basis why?

A Because there was a particular import to that action.

Q When did RDI start preparing minutes on an expedited basis because the minutes memorialized an action?

A You mischaracterize what I said, and you mischaracterize the policy of Reading. There is no such

policy. The intent is to prepare the minutes when you can. import, whether it's a loan closing, a transactional approval, something that has some legal consequence, you typically prepare those resolutions quite quickly.

Q What was the particular legal import in this instance?

A The ratification of the matters that were considered at the December 29 meeting.

Q And is it your testimony, Mr. Bonner, that the existence of minutes had some legal import?

A Well, no. I think as you probably know, the board's vote constitutes the action of the board. The minutes are merely a memorialization of that. But where there's something that had some significance you typically prepare the resolutions quite quickly.

Q To what use have those minutes been put since they were drafted?

MR. FERRARIO: We used them in the motion.

THE COURT: Yeah. We all know that. But Mr. Bonner has to now say that.

MR. FERRARIO: He's the minute guy. I'm the litigator.

THE COURT: He may not -- he may not know that, because he's a transactional guy.

MR. FERRARIO: You're right.

THE COURT: He does business stuff.

MR. FERRARIO: Okay.

THE COURT: He may not know that. All the rest of us know.

MR. FERRARIO: We all know what happened.

THE COURT: That was why you required them so quickly, Mr. Ferrario.

MR. FERRARIO: Who cares?

THE COURT: So you could come and wave it and say, hey, Judge, I win now.

MR. FERRARIO: That's exactly what I did. Thank you. Okay. This is fascinating, but --

BY MR. KRUM:

Q Do you have the question in mind, Mr. Bonner, or do you want me to repeat it?

THE COURT: You guys are killing me.

THE WITNESS: If you don't mind, would you repeat the question?

BY MR. KRUM:

Q To what use were the minutes of the December 29 board meeting put?

A Number one, they memorialized the ratification of the board of directors of two events. Number two, I understand they were in fact the subject of a motion filed in this case.

Q Thank you, Mr. Bonner. Directing your attention, Mr. Bonner, back to the December 21 meeting of the special independent committee, which, if any, of those three committee members had been told beforehand that the subject of ratification would be discussed at that meeting?

MR. FERRARIO: Objection. Attorney-client, Your Honor.

THE COURT: We're only identifying individuals with whom he had a communication, not the nature of the communication?

MR. FERRARIO: Before the meeting.

MR. KRUM: Only the subject matter.

THE COURT: Before the meeting.

MR. FERRARIO: Okay. All right.

THE COURT: So, sir, you could answer it or just give me names if you remember.

THE WITNESS: There's a -- I don't know if I'm permitted to ask Mr. Ferrario a question. There's an issue relative to the way the question --

THE COURT: If you think there is a privilege related to it, you are absolutely entitled to -- under the Harvey Whittemore decision to ask Mr. Ferrario questions about the extent and claim of the privilege. And I will take a break for you to do so. And you will not be subject to interrogation about that subject.

Did I summarize it correctly?

MR. FERRARIO: That's pretty good.

THE COURT: Okay. You know, I can take direction from the Nevada Supreme Court.

MR. FERRARIO: I'm glad you started laughing.

THE WITNESS: So may I ask Mr. --

THE COURT: Do you need to talk to Mr. Ferrario?

THE WITNESS: For one minute.

THE COURT: We're going to take a short break --

THE WITNESS: One minute.

THE COURT: -- for you to consult with Mr. Ferrario on a privilege issue.

(Court recessed at 3:10 p.m., until 3:13 p.m.)

THE COURT: Mr. Bonner, have you had an opportunity to discuss with Mr. Ferrario whether you need to assert any privileges?

THE WITNESS: Yes, Your Honor.

THE COURT: Okay.

BY MR. KRUM:

Q So the question --

MR. KRUM: Can I ask that it be read back?

THE COURT: Nope.

MR. KRUM: That's right.

BY MR. KRUM:

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?

THE COURT: And that's just identification of the individuals.

THE WITNESS: The best of my recollection, we may have had a conversation -- I may have had a conversation with Mr. Gould. That's all I recall.

BY MR. KRUM:

Q One conversation, or multiple conversations with Mr. Gould?

A Don't recall.

Q Over what period of time did you have those conversations?

A Days, one or two days.

Q Okay. And what time frame? Was it December, was it November, was it earlier?

A Oh. No. It would have been just prior to the December 21 meeting.

Q Not speaking to the substance, did either of those communications speak to a topic of a formal request such as Plaintiffs' Exhibit 1?

MR. FERRARIO: Objection. Attorney-client.

THE COURT: Sustained.

BY MR. KRUM:

Q Each of Gould, Codding, and McEachern at the December 21 special independent committee meeting agreed that ratification would be formally pursued with the full RDI

board; correct?

MR. FERRARIO: Same objection, Your Honor.

THE COURT: Sustained.

MR. KRUM: I'm not asking if they gave him a direction. I'm asking merely if they took a position.

THE COURT: I understand what you're asking, Mr. Krum. I've sustained the objection on the privilege issue.

BY MR. KRUM:

Q Did you have any discussions prior to the December 29 board meeting about the subject of ratification with Mr. Wrotniak?

A I've no recollection of any.

Q With Mr. Ferrario?

A I do not know.

Q Do you recall having a telephone call with Mr. Ferrario and Mr. Wrotniak and Ms. Codding in December shortly before the December 29 board meeting at which the subject of ratification was discussed?

THE COURT: And that's a yes or no.

THE WITNESS: I don't have any particular -- no.

BY MR. KRUM:

Q Were any documents provided to the committee members either in anticipation of or as a result of the December 21, 2017, special independent committee meeting?

THE COURT: Did you give them any documents? Is

that the question?

MR. FERRARIO: And you're talking about the special independent committee?

THE COURT: The 12/21 meeting.

MR. KRUM: Right.

MR. FERRARIO: Prior to that meeting, or --

THE COURT: He said prior to or as a result of. Do you want him to break it up?

MR. FERRARIO: Yeah.

THE COURT: Or is the answer just no?

MR. FERRARIO: I think the answer's no, but go ahead.

THE WITNESS: No.

BY MR. KRUM:

Q Are you excluding Plaintiffs' Exhibit 1?

A Yes.

THE COURT: And that's the December 27th email.

THE WITNESS: No, I'm not excluding it.

BY MR. KRUM:

Q So is it your testimony, Mr. Bonner, that Plaintiffs' Exhibit 1 is unrelated to the conversations concerning ratification at the December 21, 2017, special independent committee meeting?

MR. FERRARIO: Objection. Attorney-client, Your Honor. He's trying to back door into this.

THE COURT: Sustained.

BY MR. KRUM:

Q Were any documents, other than your handwritten notes about what you've already testified, used at or created in connection with -- strike that.

Did you have discussions with McEachern, Doug McEachern in the fall of 2017 about the subject of ratification?

A Not that I recall.

Q Direct your attention, Mr. Bonner, to Plaintiffs' Exhibit 3.

MS. HENDRICKS: Mark, our exhibits aren't marked. Can you tell us what you're referring to?

MR. FERRARIO: Do you have a Bates number?

THE COURT: Sir, I'm going to hand you mine, because mine is tabbed and I'm not writing on it.

MR. FERRARIO: Oh. The redacted minutes?

MR. KRUM: Yes.

MR. FERRARIO: Thank you.

THE COURT: I've given him my copy to speed up the process, guys.

MS. HENDRICKS: Thank you.

BY MR. KRUM:

Q Mr. Bonner, do you recognize the page of redacted minutes -- page and a half, I guess, on the second and third

pages of Plaintiffs' Exhibit 3?

A Yes.

Q You prepared those; correct?

A Yes.

Q These are the very minutes about which you testified in response to some questions from Mr. Ferrario; correct?

A Yes.

MR. KRUM: Move to admit.

THE COURT: Any objection to P-3?

MR. FERRARIO: No objection.

THE COURT: Admitted.

(Plaintiffs' Exhibit 3 admitted)

BY MR. KRUM:

Q Okay. And you provided these minutes to Mr. Gould on or about January 30, 2018; is that correct?

A Yes.

Q How?

A Email.

Q Was anyone copied on that email?

A I have to look at the email. May I?

Q Of course.

A Is there a copy? I think it's --

THE COURT: And if you find it, sir, if you'd tell us the Bates numbers on the bottom.

THE WITNESS: What I'm looking at doesn't have a

Bates number. It's --

THE COURT: Is it under a tab?

MS. HENDRICKS: If I can help, it would be Defendant's Exhibit 1.

THE COURT: So --

MS. HENDRICKS: Or Exhibit A. Excuse me.

THE COURT: Defendant's A. It's attached to the declaration?

MS. HENDRICKS: Correct.

THE COURT: Okay. Sir, after you've refreshed your recollection, let us know.

THE WITNESS: This does not appear that there's a cc. I don't have any recollection that I would have sent it to anybody else.

BY MR. KRUM:

Q And you heard back from Mr. Gould within a week or so with -- in response to your sending him Plaintiffs' Exhibit 3?

A Yes.

Q And you sent it on to Ms. Codding and Mr. McEachern?

A Yes.

Q You did that on or about February 10; is that right?

A Yes.

Q How did you transmit it to them? Was that by email, as well?

A Do you need me to indicate how I'm refreshing my recollection?

Q Please.

A I'm looking at the email that's attached to my declaration. It says at the bottom "Opposition Exhibit Page 077." And I see it's an email from me to William Gould, Douglas McEachern, and Judy Codding. And it doesn't indicate any cc.

Q Directing your attention back, Mr. Bonner, to your prior testimony about people with whom you shared either Plaintiffs' Exhibit 1 or a draft of it, Tompkins was one of those people; correct?

A Yes.

Q Did you send him a draft, the final version, or both?

A I don't recall if I reviewed a draft, if I prepared a draft. I just don't know. So I don't know if I prepared it, somebody else prepared it. I just don't recall.

Q Did you also share Plaintiffs' Exhibit 1 or a draft of it with Ellen Cotter?

A I don't recall. She was the ultimate recipient, I guess, but --

Q Mr. Bonner, I'd ask you to take a look at Plaintiffs' Exhibit 2, please.

MR. KRUM: Counsel, that's your February 22

privilege log.

THE COURT: It should be on the tab that says P-2.

MR. KRUM: I'd move to admit this.

THE COURT: Any objection to P-2, the privilege log?

MR. FERRARIO: Your Honor, it's authentic and obviously it's our privilege log. I don't know what relevance it has to this --

THE COURT: That's a different issue. We'll find out in a minute.

So it's admitted.

(Plaintiffs' Exhibit 2 admitted)

THE COURT: What page do you want to send him to, or what entry?

BY MR. KRUM:

Q Mr. Bonner, I direct your attention to page 32, using the numbers at the bottom of the document where -- so I'd be page 32 of 37. Let me know when you have that.

Do you have it, sir?

A Yes.

Q Okay. If you would, please, I direct your attention to the fourth entry. Moving top to bottom on the left-hand side, it ends with the number 60780. Do you have that?

A Yes.

Q This lists a document from you to Mr. Tompkins with a copy to Ellen Cotter and others, including Mr. Gould and Mr.

Ferrario. You see that?

A I do.

Q You see that the date is December 26?

A I do.

Q See that the re line, apparently, on the email said, "Draft for your review"?

A I do see that, yes.

Q See the description of it -- for the privilege log purposes is "Communication regarding notice and agenda for upcoming board meeting? See that?

A I do.

Q You recall you were involved in the preparation of the notice and agenda for the board meeting; right? The December 29 board meeting.

A I was involved in the -- in that meeting. I don't recall if I prepared the notice, but --

Q To what use, if any, was Plaintiffs' Exhibit 1 put in the preparation of any of the board materials, including in particular the agenda?

MR. FERRARIO: Could you flip that around and just ask, was it put to any use, so I can see if there's any --

MR. KRUM: Of course.

MR. FERRARIO: -- attorney-client.

BY MR. KRUM:

Q Was Plaintiffs' Exhibit 1, the December 27 Gould

email, put to any use in preparation of the board package, including in particular the agenda?

THE COURT: And that's a yes or no. Was it put to a use?

THE WITNESS: Presumably, yes.

BY MR. KRUM:

Q I direct your attention, Mr. Bonner, to page 1 of this document. Page 1 of 37.

THE COURT: You're back on the privilege log?

MR. KRUM: Yes, back on the privilege log.

THE COURT: That's P-2.

MR. KRUM: Thank you.

BY MR. KRUM:

Q Do you have that?

A 1 of 37?

Q That's correct.

A Yes.

Q I direct your attention, Mr. Bonner, to the next-to-last entry on the left-hand side. It ends in 59792, I think. Do you have that?

A Yes.

Q Do you see that's an email from you to Mr. Gould with copies to others?

A I see that, yes.

Q You see the description is "Fwd: For Bill Gould to

sign"? That apparently is the re line; is that right?

A I assume it is just by looking at the top column.

Q Okay. And do you see on the right-hand side the description for privilege log purposes is "Communication regarding draft letter re special board meeting"?

A I see that, yes.

Q Okay. So did you on or -- on December 27th send Mr. Gould an email concerning a draft letter for a special board meeting?

A Based on this description, yes.

Q Does that comport with your independent recollection?

A I don't know if I remember this specific email, but generally I do. Generally the whole --

Q That's what I'm asking. So I direct your attention on the same page, Mr. Bonner, two entries left of the entry ending in 68, I believe the numbers are. Do you have that?

A I do.

Q Do you see that has the -- apparently the re line is "For Bill Gould to sign." Do you see that?

A I do.

Q And the description is the same as the last one at which we looked, "Communication regarding draft letter re special board meeting"; right?

A I see that, yes.

Q You see this is an email from you to Craig Tompkins and others?

A I see that, yes, indicated in the box.

Q So did you -- did you have email communications with Mr. Tompkins on or about the 27th of December with respect to the matters reflected in the re line of the privilege description?

A Based on this document I guess I did, yes.

Q Did you disclose to Mr. Gould that you had had communications with Mr. Tompkins about a draft letter regarding a special board meeting?

MR. FERRARIO: Objection. Attorney-client, Your Honor.

MR. KRUM: Yes or no, Your Honor.

THE COURT: Sustained.

BY MR. KRUM:

Q Did you have any communications -- strike that.

Did you ever have any discussions with any or all of the members of the special independent committee about the subject matter of Greenberg Traurig jointly representing the company and the special independent committee?

MR. FERRARIO: Objection, Your Honor. That's beyond the scope of this hearing, calls the attorney-client --

THE COURT: Sustained.

MR. KRUM: Your Honor, it actually goes to exactly

what's transpired here.

THE COURT: No.

BY MR. KRUM:

Q Was there a point in time, Mr. Bonner, when you learned or were told that documents in your possession needed to be reviewed for purposes of possible production in this litigation?

A Yes.

Q When was that?

A Sometime in -- sometime, as I recall, in January, February.

Q What did you do, if anything, after you were told that to comply with whatever you were told?

A I think we had people in the department look for some documents.

Q And when you say the department to what are you referring?

A I'm sorry. The legal -- corporate -- our corporate group in the firm.

THE COURT: The not litigators part?

THE WITNESS: Yes, Your Honor.

THE COURT: Those of you who aren't actually litigating all the time?

THE WITNESS: Yes.

THE COURT: Okay.

BY MR. KRUM:

Q What did you do, if anything, to make your electronically stored information, meaning emails and draft documents, available to be searched for the purposes of possible production in this case?

A My recollection is that the IT people were given access electronically so they could conduct whatever search they --

Q Did you give them directions as to what it was for which they should search?

A I think they were given a broad search, you know, scope. I didn't establish the scope. Others did.

Q What's the basis for the testimony you just gave?

A Just recollection.

Q How did you learn that if you didn't establish the scope?

MR. FERRARIO: What do you mean? He didn't establish the scope.

THE COURT: How does he remember who set the ESI search terms and the scope of custodians; right? How does he know that? He says he recalls generally. He just ran into somebody in the hallway, somebody told him, he got an email. Those are all kinds of options for the answer. Or, I don't remember, which is also an option.

THE WITNESS: My recollection is either I was asked

for permission or it was indicated to me that there was going to be a scope, some kind of search electronically. And I can't remember if I had to consent or not. But if I was asked for consent, I did. I may have just been told it was going to happen.

BY MR. KRUM:

Q Do you know, Mr. Bonner, whether that search -- strike that.

THE COURT: There's now a Greenberg Traurig Privacy Act.

MR. KRUM: I'm not going there. I am not going there.

THE COURT: We're not going to talk about data privacy?

MR. KRUM: Oh, no.

THE COURT: Oh, no. Okay. Come on.

MR. KRUM: I didn't then, either, you'll recall.

BY MR. KRUM:

Q Were your handwritten notes from special independent committee board meeting minutes made available to the people conducting the search?

A They were not -- they were not electronically stored, so no.

Q What about drafts of documents, such as drafts -- strike that.

Were the drafts -- was the draft you prepared of the December 21, 2017, special independent committee meeting minutes made available to the people who were searching for documents for production in this case?

A Again, as I recall, they had carte blanche electronic access to anything in the system. So they would have had access to anything I have.

Q And the same would be true for the file version of those minutes that you sent to Ms. Codding and Mr. McEachern in early February; correct?

A I suppose so. Again, I don't know what the various time frames of the searches were. But if the searches were done at a time those documents existed, then they would have picked them up.

Q Do you have any understanding as to when the searches were conducted?

A I don't.

Q Do you have any understanding as to what the time frame of your documents was that -- which documents were searched?

A I really don't. I just recall generally it happening.

Q Did you have any discussions with anybody who conducted the search and review of your hard-copy documents or your electronically stored information?

A Again, I recall the inquiry, I recall being asked to be sure that if there's anything -- you know, that these searches were coming, and we gave permission to access whatever they needed to.

MR. KRUM: Your Honor, if I may have a moment.

THE COURT: You may.

(Pause in the proceedings)

MR. KRUM: I have nothing further, Your Honor.

THE COURT: Thank you.

Mr. Ferrario, did you have any more?

MR. FERRARIO: Just one.

THE COURT: You know now dangerous that is.

MR. FERRARIO: This is off the wall.

REDIRECT EXAMINATION

BY MR. FERRARIO:

Q During the break it was brought to my attention that a tax issue reared its head toward the end of 2017. Do you recall that?

A Yes.

Q Now, I think we're all aware that President Trump passed the tax bill; right?

MR. KRUM: Objection. Beyond the scope.

THE COURT: Overruled.

BY MR. FERRARIO:

Q Right?

A Yes.

Q And Mr. Krum asked you a number of questions regarding why these meetings were prepared, you know, regarding the 29th meeting, you know, within a week or so. Do you remember the tax issue coming up?

A Yes.

Q And is that what prompted the immediate -- primarily what prompted the immediate preparation of these meeting minutes?

A That was the biggest driver of the urgency.

Q Was it the biggest driver of the meeting itself?

A I believe it was the principal purpose for which the meeting was called.

Q And there were certain actions that need to be taken in order for the company to avail itself of certain tax benefits; correct?

A Absolutely. Yes.

MR. FERRARIO: Thank you. Nothing further.

THE COURT: Anything else, Mr. Krum?

MR. KRUM: Yes, Your Honor.

RECROSS-EXAMINATION

BY MR. KRUM:

Q The December 29 board meeting previously had been scheduled for the purpose of the compensation, or, as Mr. Ferrario says, tax issues being taken up; correct?

A Yes.

Q And what happened is the matters we referred to as ratification were added to the agenda a day or two before the meeting; correct?

A They were added to the agenda. Whether it was a day or two, that sounds about right.

MR. KRUM: Okay. Thank you, Your Honor.

THE COURT: Anything else?

MR. KRUM: Nope.

THE COURT: Thank you, Mr. Bonner. Have a nice day. Leave before they change their mind.

THE WITNESS: Thank you, Your Honor.

THE COURT: Have a nice day. Travel safely.

Mr. Ferrario, next witness.

MR. FERRARIO: That's it.

THE COURT: Mr. Krum, do you have any additional witnesses that you'd like to call at this time?

MR. KRUM: Well, Your Honor, the answer is it depends how you want to handle this. The testimony offered today is, as I think I suggested previously, in at least one respect inconsistent with deposition testimony we've taken before.

THE COURT: Happens all the time. Witnesses testify differently about recollections all the time. And that goes to their credibility.

MR. KRUM: Well, to answer your question, though, I don't think it's necessary to take the time of everyone here to ask Mr. McEachern and Ms. Codding to come testify, but we'll need an opportunity to bring to your attention their deposition testimony, as well as that of Mr. Gould, that's inconsistent with what we heard today.

THE COURT: I anticipate we will have that opportunity before long.

All right. So that concludes the evidence that I am hearing at this evidentiary hearing. I have had -- before we close the hearing, Exhibit B was admitted, and Exhibit P-1, P-3, and P-2 were admitted.

MR. FERRARIO: I would ask for A, as well, Your Honor. It's Mr. Bonner's declaration.

THE COURT: Any objection to the declaration being admitted, since he was subject to cross-examination?

MR. KRUM: No objection, Your Honor.

THE COURT: A will be admitted, as well.

(Defendants' Exhibit A admitted)

THE COURT: Any additional exhibits anyone wants to offer before I let you argue?

All right. Since all of the motions except one were yours, Mr. Krum, I'm going to let you have the first bite at any additional argument, remembering it's only Wednesday and I remember what you said on Monday.

MR. KRUM: Well, Your Honor, let me ask about the process.

THE COURT: I've already written down what I'm going to do. You may be able to change my mind, but I've written down what I'm going to do.

Mr. Ferrario is unlikely to be able to change my mind on what I'm going to do.

MR. KRUM: Well, two things, Your Honor. First of all --

MR. FERRARIO: That must mean I'm winning.

THE COURT: Not necessarily.

MR. KRUM: First of all, Your Honor, the point Ms. Levin made at the outset is meaningful here. It is not only the motion directed at Mr. Gould that may be impacted by the supplemental log that Mr. Gould's going to provide, there's also the motion directed I would say at McEachern and Codding, but it's also I guess RDI, because Greenberg Traurig prepared the privilege log, withheld the document, and belatedly produced it and so forth. And I say that, Your Honor, not to speak in an open-ended hypothetical way --

THE COURT: And that's part of Mr. Cotter's, your client's, motion for omnibus relief, which is also being argued at the same time. So I've got you arguing two motions right now, the motion to compel that we've heard testimony about, and your motion for omnibus relief, which is what

resulted in the scheduling of this hearing.

I'm also going to then talk to Mr. Ferrario about a motion that he wants to file. But you've got two issues that are interrelated that we're talking about here that you've asked me for some relief related to. I am prepared to give you some relief related to it in addition to what I've already done today, but I am waiting for you and Mr. Ferrario to finish arguing before I tell you what I'm going to do.

MR. KRUM: Right. The point I'm attempting to make and I didn't conclude, Your Honor, is, as we pointed out in our reply, I think it was, in support of the motion directed at Mr. Gould, his privilege log listed 11 documents that had not been listed on the February 22 privilege log produced by Greenberg Traurig, nine of which were email communications to or from Greenberg Traurig lawyers.

Now, today for the first time there was -- Ms. Hendricks addressed that point, and she made comments that were difficult to follow about de-duplication and email chains and so forth.

THE COURT: I followed it perfectly.

MR. KRUM: Well, the point -- my point, Your Honor, is we can't respond to that. They've offered nothing in writing, they've made no reference to privilege log.

THE COURT: You're going to have an opportunity to.

MR. KRUM: Okay.

THE COURT: But you've got to let me get to my part about the ruling.

MR. KRUM: Yes. Okay.

THE COURT: Is there anything else you want to tell me?

MR. KRUM: Well, that's the procedural stuff.

THE COURT: Okay.

MR. KRUM: And so you'd like me to speak to the motions directed at Gould in the omnibus motion?

THE COURT: If you have anything else you'd like to add.

MR. KRUM: I do.

THE COURT: Okay.

MR. KRUM: Very briefly on the Gould motion. The production today, on the 2nd of May, of documents and the promise today, on the 2nd of May, of a second supplemental privilege log obviously is woefully untimely. According to Mr. Gould, it was two or three months ago, and he was unclear about that, and it could have been more, because, after all, it was January when our subpoena to him was served that the issue of lost emails arose. He said it was after the subpoena. So probably February.

As you saw from the email exchanges, there was no indication by his counsel of any issue of the nature that they disclosed for the first time at his April 5 deposition. I

would have expected and I'm flabbergasted we didn't receive what was given today and more, including a declaration or something from the IT people in March, if not February.

So the relief we request on that is all appropriately sought.

And now to speak to the other motion. As I said already, the uncertainty occasioned by the debacle with the Gould documents, it also adds uncertainty as to the omnibus motion. The testimony today as I understood it said, we didn't put anything in the minutes -- which haven't been put on a privilege log, so we don't know, Your Honor, what the wholly redacted December 11, 2017, minutes reference in terms of subjects, including whether they reference the subject of ratification. Presumably there's a line to the effect that the minutes are complete, there was a privileged discussion on the subject of ratification. And if there is no such line and ratification is not mentioned in the minutes, we do not have the issue we thought we had, which is improper withholding of minutes that are responsive, we have that and the issue of what amounts to manipulating the contrived evidence for the purpose of use in litigation.

We all do minutes. We all see minutes. Because the subject is privileged doesn't mean the subject isn't identified as one that was discussed. And while Mr. Bonner couldn't speak to that because his comments were privileged,

the testimony of each of Gould, Codding, and McEachern was that the subject of ratification was discussed and they agreed that the matter would be -- the proposed ratifications would be pursued and taken up with the full board. That is in -- the Codding and McEachern testimony to that effect is in the supplemental brief they filed this morning. The Gould testimony was in our motion. And there are emails about this. Well, do the emails mention ratification? Presumably not, because they just say, let's have a meeting. Although was the meeting about ratification? If you listen to Mr. Bonner, either no or he can't speak to it. If you listen to the three committee members, it was.

One of the issues, if not the issue, raised in the motion -- in their motion seeking leave to renew their so-called ratification motion for summary judgment is whether there was a good-faith process, whether the directors made an informed decision.

THE COURT: Whether they're entitled to protection under the business judgment rule, those kind of things.

MR. KRUM: Right. And so what we eventually learned on April 5th because of Mr. Gould's testimony, but not from McEachern or Codding, is that those three decided on December 11th. But we had no way to ask them the questions about on what basis did they do so because we didn't know about December 11th, that they decided, until Mr. Gould's

testimony.

THE COURT: You mean December 21st?

MR. KRUM: No. I mean December 11th, when the special independent committee meeting met.

THE COURT: I thought it met on December 21st.

MR. KRUM: I misspoke. You're right. I apologize.

THE COURT: Okay.

MR. KRUM: So on December 21st they all made that decision. But McEachern was -- anyway, I [unintelligible].

So the point, Your Honor, is we have a document that they claim wasn't responsive. I don't know whether it is or not, because we don't have it listed on a privilege log. And we're asking that you order them to do so and that they properly log it and identify the subject matters. It either says ratification and should have been logged, because you already determined it's properly withheld as privileged, so I've got to abide by that, talk about the log, or it omits information.

THE COURT: I ruled that after doing an in-camera review of it.

MR. KRUM: Right. What we asked, though, Your Honor, that you did not address in your minute order is that they log it. And now, if it doesn't say anything about ratification, then I guess you would deny that request. If it has the sentence it ought to have, which is there was a

privileged conversation about the subject of ratification, then it should be logged.

THE COURT: It could have a privileged conversation about something else, too.

MR. KRUM: I understand that, Your Honor. The question is whether the document as prepared is responsive. I don't know.

THE COURT: I understand. Is there anything else you want to tell me?

MR. KRUM: So -- I'm sorry, Your Honor. I lost my train of thought.

THE COURT: Sorry.

MR. KRUM: I'll let Mr. Ferrario speak, and perhaps --

THE COURT: Mr. Ferrario.

MR. FERRARIO: Well, having listened to you before, you've already made up your mind before I start rambling.

THE COURT: Well, I haven't made up my mind, but --

MR. FERRARIO: Why don't you tell me what you're inclined to do.

THE COURT: -- I have outlined the relief that I intend to grant to Mr. Krum, which may result in other things eventually happening. But I have outlined based on Mr. Bonner's testimony and the testimony of Mr. Gould what it appears now that we have found some information what we need

to do.

MR. FERRARIO: Why don't you tell me what you need to do, and then maybe I'll respond accordingly.

THE COURT: Not me. You guys.

MR. FERRARIO: Well, tell me what we need to do, and then -- because I have -- I have a lot to say here, but I might be able to refrain from saying it.

THE COURT: All right. I am inclined to order Codding, McEachern, Gould, Kane, Wrotniak, and RDI to produce all documents which mention the scheduling or the holding or the minutes related to the December 21st special independent committee or relate to the subject matter contained in P-1 or any draft of P-1 or the preparation of P-1 or discuss the subject of ratification, understanding that there may be assertions of privilege that occur.

In addition, I will consider whether additional depositions need to be taken after the production of that information once I've seen the volume of the information.

MR. FERRARIO: Your Honor, we're comfortable doing that. We're not here to hide anything, okay. And you saw Mr. Gould come and testify, and it's unfortunate he couldn't be here today, but he's sick.

THE COURT: It's okay. He was by video.

MR. FERRARIO: And we'll be happy to do that. We're not hiding anything.

THE COURT: Now that his in box has been located and the --

MR. FERRARIO: It hasn't been located.

THE COURT: Okay. Now that the historical backups of his in box material have been located --

MR. FERRARIO: Mr. Gould learned something new. It's called The Cloud, okay. So we didn't drag you through that, because that would have been like a 45-minute exposition.

THE COURT: Yeah. I don't need to know.

MR. FERRARIO: Yeah. We're happy to do that, and we're happy to do it on a relatively short time frame.

One thing I did want to talk about today is scheduling.

THE COURT: I'm not there yet. Let me hear from Mr. Krum so I can --

MR. FERRARIO: I'm comfortable with that relief, and I'll just save --

THE COURT: Once I say the order then we can talk about scheduling.

MR. FERRARIO: -- save my breath on the merits of the motion.

THE COURT: You then have a -- you have a motion you need to argue.

Mr. Krum.

MR. KRUM: Your Honor, that's all appropriate, and I concur with your assessment that we need to see what the result is to see what, if anything else, we need to do.

THE COURT: Okay. So the motion for omnibus relief is granted in part. The individuals I outlined will produce the information that I outlined. If there is an issue related to the logging of any of that information on a privilege log, given the definition of the scope of the relevant information I have ordered produced, I would appreciate you addressing those among yourselves if there's an issue, and then I will be happy to rule on it if you need me to.

With respect to Cotter's motion to compel production of documents and for privilege, that has been covered under the ruling that I've made today. Part of the alternative relief was that I require additional information to be provided.

And with respect to the motion for leave to file summary judgment motion --

MR. FERRARIO: Yes, Your Honor.

THE COURT: -- I want you to wait to file such a motion until Mr. Krum has had an opportunity to review the information that I've just ordered.

How long is it going to take you to produce that information?

MR. FERRARIO: I was just going to speak to Mr.

Krum. I think the original date range we used was, what, the -- was after Your Honor's order, and I don't remember what that date was, forward. Then we moved it back.

THE COURT: Remember how I tried to set you for trial last week and you didn't like it?

MR. FERRARIO: No. I want to get to that.

So we'll start -- we'll back it up -- you want back to September 1st of 2017?

MR. KRUM: Well, you're asking about when is the beginning date for the search for responsive documents?

MR. FERRARIO: Yeah. That'll give us -- that gives us --

MR. KRUM: My answer is that would be the day I picked based on the information I have.

MR. FERRARIO: That's fine.

MR. KRUM: But if you know better, then back it up further.

MR. FERRARIO: I will check. But we'll start with September --

MS. HENDRICKS: Your Honor, could you read the scope one more time? Because I thought we were talking just about the December special independent committee minutes. If it's broader than that --

MR. FERRARIO: No. It's ratification.

THE COURT: No, you were not -- you were not talking

about just the December special committee --

MS. HENDRICKS: This --

MR. FERRARIO: No, it's not. It's prior to --

MS. HENDRICKS: -- and the ratification, as well.

MR. FERRARIO: Right.

THE COURT: And the P-1 and the preparation of P-1 and the drafts of P-1 and all that stuff. So three categories, the 12/21 special committee meeting, whether it's scheduling, content, scope, minutes, whatever, related to that meeting; P-1, whether it's subject matter, preparation, drafting, circulation, how we're going to get it on the agenda for the 12/29 meeting; and then the third issue is any discussion of ratification, not limited by time.

MR. FERRARIO: We'll work -- we're going to work the date out.

THE COURT: So -- well, but I need to know. How long do you think? Best guess.

MR. FERRARIO: We'll do it within a week.

THE COURT: No, you can't do it in a week.

MR. FERRARIO: Why not?

THE COURT: Because it's going to take you longer.

MR. FERRARIO: It's not going to take --

THE COURT: You're going to need to give a privilege log when you do it, because I anticipate some of the information is going to be a claim of privilege.

MR. FERRARIO: Your Honor, right now we're going to proceed on the assumption we're going to start in September. I need to talk to my folks.

MS. HENDRICKS: We already have pulled all the data.

MR. FERRARIO: I know. So we've got to just verify.

MS. HENDRICKS: So I would say even if we did it, if you'd give us till May 11th, which is a couple extra days, but by a week from Friday we should be able to get it in.

MR. FERRARIO: If we start from that date, we're fine. I will talk to Mr. Krum more. I'm going to talk to my team. I can't sit here and tell you that at some point in 2015 or 2016 in one of the many discussions we may have had where we talked about Nevada statute that that topic didn't come up. I can't tell you that. Do I -- as I stand in front of Your Honor do I believe there's any written document that mentions that? I don't believe there is, okay.

THE COURT: You will notice that my order does not have a time limitation.

MR. FERRARIO: If you want us to go back to 2015, then we'll have to work on search terms, and we can pump those through the system. But I suspect it's going to come up with nothing. And it might take a little longer.

THE COURT: That may be. So you've asked for permission, you've asked for permission --

MR. SEARCY: I did ask.

THE COURT: -- to file a new motion for summary judgment --

MR. KRUM: We have.

THE COURT: -- on the, I win, Judge, thing.

MR. FERRARIO: The, I win, Judge, thing, yeah.

THE COURT: Yeah. So I want Mr. Krum, instead of me facing a 56(f) issue at the time you file that motion, he's ready to file his opposition, I want him to have the opportunity to get these documents with the privilege logs, look at them, and then have a period of time he can decide whether he needs to take additional depositions and, if you fight about it, for me to rule on it.

So I'm going to grant your request even though I am hesitant to do so under the circumstances, but I don't want to be in a position where you guys slow play them and then I'm sitting back here again that he didn't get the stuff.

MR. FERRARIO: We're not going to do that, Your Honor.

MR. KRUM: Well, Your Honor --

THE COURT: It's called sandbagging.

MR. FERRARIO: You don't do that.

MR. KRUM: My suggestion -- and this is not for any purpose other than what you just articulated -- is that, rather than granting the motion today, it be continued for whatever time they predict, two weeks, four weeks --

THE COURT: No. I granted it today.

MR. KRUM: -- and in chambers, because --

THE COURT: No. I granted it --

MR. KRUM: -- I don't want to be back fighting about whether they've prematurely filed the motion when we haven't finished this process.

MR. FERRARIO: Mark, I'm going to get you the documents, and the Judge has already indicated you're going to have a chance to depose people if you want. We're going to make them available. We want this heard. We're not going to screw around, we're not going to have a 56(f) problem.

And can we now pick a trial date?

MR. KRUM: I was told that in January, by the way.

MR. SEARCY: Before we pick the trial date --

THE COURT: I've been trying to keep you guys under control for four years.

MR. SEARCY: Your Honor, I have one logistical question about the summary judgment motion. We attached our motion with the motion for leave to file.

THE COURT: You don't want to file that motion. You want to file a new motion that includes the issues that we talked about today.

MR. SEARCY: Thank you, Your Honor. That's --

MR. KRUM: And, Your Honor --

Thank you, Mr. Searcy.

-- they included in their proposed summary judgment motion two arguments that were not ratification arguments, and we objected to that in the last section of our opposition.

THE COURT: They can include whatever they want, and I'm going to rule on it. Because otherwise the Supreme Court will send it back and say, gosh, Judge Gonzalez, they had plenty of time since you vacated the trial because Mr. Cotter said he was sick. And so, instead of getting missive, I'd rather just do it.

All right. But I'm not giving everybody new time.

What?

MR. FERRARIO: Trial date.

THE COURT: Yes. I don't have a courtroom. I don't even know what my assignment is going to be.

MR. FERRARIO: I gotta say, you know, I've been now on the seventeenth floor with you, now we're on the sixteenth floor, we've been on 10, we've been on 14.

THE COURT: We've been on 3.

MR. FERRARIO: We've been on 3, that's true.

THE COURT: So I don't know when I'll have a courtroom. I am hopeful that Judge Bell is going to move quickly. I told her today I was ready to move overnight if she was ready to become chief judge tomorrow, and she said, don't count on it. So I am hopeful we will have a courtroom by the time of your trial, because you want to go when?

MR. FERRARIO: We had originally suggested June 4th. That's a lot of work we're going to have to do before then.

THE COURT: I don't think you're going to make it.

MR. FERRARIO: Okay. My understanding is you're starting that receiver trial --

THE COURT: Yes.

MR. FERRARIO: -- the end of July; right?

THE COURT: Yes.

MR. FERRARIO: If we could get in before that, then we can -- I know we can make that.

THE COURT: How long is it going to take you to try this case, understanding I might have a regular assignment back and have to hear motion practice every day?

MR. FERRARIO: Yeah. I just don't see it being more than three weeks. I mean, we're going to have a jury probably in two days, I would imagine.

MR. KRUM: I think three weeks is --

THE COURT: Three to four weeks?

MR. KRUM: I think three weeks is probably doable, but --

THE COURT: And you told me that you couldn't start until when because of travel and witnesses?

MR. KRUM: The week following Fourth of July weekend.

THE COURT: When did I set NCIC to start?

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

MR. FERRARIO: I'll talk to Mr. Whitmire.

MR. KRUM: I'm sorry, Your Honor. They're anticipated to go all of August; is that correct?

MR. FERRARIO: That's what --

THE COURT: I'm thinking four weeks.

MR. FERRARIO: See, that's why we've got to this done.

MR. KRUM: Well, what's -- I'm sorry. I don't recall what the discussion was, if anything, about what follows them.

THE COURT: I have no idea.

MR. FERRARIO: She's -- that's --

THE COURT: I'm going to be a regular judge. I don't even know what kind of regular judge. I just asked not to be sent back to Family Court, because I did my part and did guardianship for eight months. And I'm not doing it again.

MR. KRUM: Okay. Thank you, Your Honor.

MR. FERRARIO: Thank you, Your Honor.

THE COURT: Other than that, I have no idea what Judge Bell will assign me.

I'm going to set you for a status check on whether the documents got exchanged three weeks from Friday. All I want, Mr. Krum, is a status report saying, we got them and everything is perfect, or, gosh, Judge, we have problems, it would be nice if you would schedule a conference call to talk

about how we're going to handle them.

MR. KRUM: This is in chambers? You just need a status report?

THE CLERK: May 25.

THE COURT: Okay.

MR. KRUM: Got it. Thank you, Your Honor.

MR. FERRARIO: Thank you, Your Honor.

THE COURT: Have a lovely afternoon. You were pretty close to your estimate of two hours. I'm impressed.

THE PROCEEDINGS CONCLUDED AT 4:05 P.M.

* * * * *

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NAME	DIRECT	CROSS	REDIRECT	RECROSS
DEFENDANTS' WITNESSES				
William Gould	11	14		
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EXHIBITS

DESCRIPTION	ADMITTED
PLAINTIFF'S EXHIBIT NO.	
1	34
2	55
3	52
DEFENDANTS' EXHIBIT NO.	
A	67
B	22

* * *

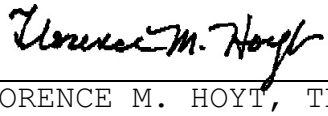
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DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

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

BEFORE THE HONORABLE ELIZABETH GONZALEZ, DISTRICT COURT JUDGE

HEARING ON 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

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

APPEARANCES:

FOR THE PLAINTIFF:	MARK G. KRUM, ESQ. AKKE LEVIN, ESQ.
FOR THE DEFENDANTS:	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.

LAS VEGAS, NEVADA, TUESDAY, JUNE 19, 2018, 8:39 A.M.

(Court was called to order)

THE COURT: Good morning. Does anyone have any electronic drives they would like Mr. Doan and his team to look at?

MR. JOHNSON: Yes, Your Honor, we do.

THE COURT: Team 1. Good morning. How have you been. Thanks. Let me know when you're done.

In the meantime, I received late last night, I guess early this morning plaintiff's reply on the motion related to the May 2 rulings and a motion to seal those. Does anyone object to me signing the order shortening time on the motion to seal and advancing it to this morning?

MR. KRUM: No.

THE COURT: I'm going to wait for a minute before we start the motions. The order I'm going to go is I am going to handle the motion first for relief based on noncompliance with the Court's May 2, 2018, ruling before I go to any other motions. And then, according to the notes I wrote last night, my plan is to do the motion to compel and then to go to the motion for summary judgment and then to the motion to dismiss, if you need to order your stacks.

(Pause in the proceedings)

MR. DOAN: Okay. So these are good.

THE COURT: You need to get near the mike, Mike.

MR. DOAN: Sorry.

THE COURT: You know better than that.

MR. DOAN: Okay. Yeah. I think there's some standard exhibits and videos on one. Is that true?

MR. JOHNSON: Yes.

MR. DOAN: Okay. So those are traditional, so those won't be part of this.

THE COURT: Okay.

MR. DOAN: The other set's good. The blank jury drive isn't labeled, but it should be good. It'll still be in the box. So that's your call how you want to handle that.

THE COURT: Okay.

MR. DOAN: The other set, we a bad file name on it, just the naming, so --

THE COURT: Okay.

MR. DOAN: -- if we could fix that real quick.

THE COURT: Whose drive is it?

UNIDENTIFIED SPEAKER: Is that the orange one?

MR. DOAN: Yeah, the orange one.

THE COURT: What do you want -- come name the file. Come help rename the file.

UNIDENTIFIED SPEAKER: Sure.

THE COURT: It's easier if we all sit here and do it now.

MR. KRUM: So, Your Honor, may we interject an

observation and a question?

THE COURT: No, not yet.

MR. KRUM: Well, it's with respect to this.

THE COURT: Hold on.

MR. KRUM: Okay.

THE COURT: Are we reading the file in an appropriate format?

Okay. Mr. Krum, you wanted to make an observation.

MR. KRUM: Well, the observation, Your Honor, is that we've not had an opportunity to complete processing the documents that have been produced in the approximate last week.

THE COURT: I'm not there yet. I'm not there yet, Mr. Krum. That's the first motion this morning.

MR. KRUM: Well, no. But for the purposes of our drive I just wanted to apprise the Court that our view is that it's incomplete. We'll --

THE COURT: That's the first two motions this morning, Mr. Krum.

MR. KRUM: Okay. I wanted to make sure he knew if he need to. That's all.

THE COURT: He doesn't need to know that. He just needs to know when he needs to come and check it and tell us it's okay, start the next process.

MR. KRUM: Thank you, Your Honor.

THE COURT: So make him do substantive stuff. Make him do process stuff.

All right. Mike, are we good on everything else?

MR. DOAN: Yeah, we're good.

THE COURT: Okay. So if you'd deliver the drives back to Dulce and we'll do what we need to.

Thank you, gentlemen, for coming. I appreciate your time.

THE LAW CLERK: Are we doing time?

THE COURT: Yes, they are on timers.

How much time do you think you need?

MR. FERRARIO: For what?

THE COURT: I'm going to put you on a timer, but you're going to tell me how much time you need, and then I'm going to hold you to it.

MR. FERRARIO: Per motion?

THE COURT: How much time do we need this morning, Mr. Ferrario?

MR. FERRARIO: I'm running a calculation in my head.

THE COURT: I'm watching your numbers run. There's steam coming out of your ears.

MR. FERRARIO: I would think no more than 20 minutes per motion combined for both sides.

THE COURT: How much do you think you need, Mr. Krum?

MR. KRUM: I think, Your Honor, 15 minutes per motion is sufficient.

THE COURT: And I'd said you had not to exceed an hour this morning not counting the stuff for the drives. So I'm going to allocate a total of 30 minutes to each side for you to split however you want among your motions, okay.

So, Cassandra, please keep track -- she left. Hold on.

MR. KRUM: We had strict time limits in the depositions in the Daimler v. Chrysler case, the securities case, and the Daimler folks all spoke better English than most of us, but they insisted on a translator.

THE COURT: Yeah. It doubles the time.

MR. KRUM: Well, so literally we had a clock person starting and stopping when the lawyer's question ended and the translation began.

THE COURT: Thirty minutes each, please.

Cassandra, if you could track them.

THE LAW CLERK: Got it.

THE COURT: All right. I said I wanted to start with the motion related to the compliance with the May 2 order.

MR. KRUM: Thank you, Your Honor. May I sit for this? My notes are on my computer.

THE COURT: Sure.

MR. KRUM: Thank you.

THE COURT: Just make sure you keep your voice up.

MR. KRUM: So first by way of hopefully a timely abbreviated background, recall that the original summary judgment attached only the December 29 minutes. There was no mention of even the December 27 Gould email, much less the December 21 special committee meeting. So when the documents were produced in February, of course, there was nothing about the December 21 special committee meeting, but there was the December 27 Gould email, as if the five had contemporaneously shared and epiphany and somehow someone -- Gould had dictated that.

But, of course, we learned from prior motion practice that what in fact happened supposedly as among the five is the first event was the December 21 special independent committee meeting. So I've done M&A work for decades, and one of the things I've enjoyed about that is being able to provide advice about business matters, not just litigation. But I understand that in those circumstances sometimes that entails molding what comes to be the evidence. I've never seen anything like this. The GT lawyers, as we know from the May 2 hearing, did not prepare the minutes of the December 21 SIC meeting, special independent committee, until after the motion had been heard, after we'd propounded discovery, and then, as we heard from Mr. Bonner, well, no,

the discussion of ratification was privileged and so it didn't appear in the minutes, or words to that effect. I'm not going to go over all that again. That's just context. They clearly sought to conceal the December 21 special committee meeting. And we never received an explanation. Now, counsel for Mr. Gould said, we didn't think it was responsive. And we spoke to that in our papers. I'll just reiterate that's unbelievable.

GT lawyers participated in the entire ratification process, and I put "ratification" in quotes and "process" in quotes, Your Honor. That includes December 21 SIC meeting. That includes the litigators present in the room today. So May 2 you made an order that was clear and precise, ratification, matters relating to the December 21 SIC meeting, matters relating to the December 27 Gould email.

I understood counsel for defendants, GT counsel, to indicate that in connection with the February 2018 production they had previously collected all emails for GT attorney Bonner and I assume Ferrario for Ellen Cotter, for Craig Tompkins, for all the SIC members dating back to September of '17. So in view of that, in view of the specificity of the Court's May 2 order, and in view of the fact the GT lawyers had participated in these events they knew exactly what they had and they knew exactly what they needed to do on May 2. And what they could have done and should have done, Your

Honor, is a manual review of the emails they'd previously collected, which presumably they could have done in a week or two to produce the documents you ordered produced on May 2. They didn't do that. Those documents weren't produced until approximately -- not approximately, starting for all intents and purposes on June 9.

The whole schedule is in Exhibit A to our reply. Did Your Honor have a chance to look at that?

THE COURT: I did.

MR. KRUM: Thank you. So I'm going to --

THE COURT: I took the opportunity while we were looking at the drives.

MR. KRUM: I understand, Your Honor. I apologize it wasn't to the Court earlier.

I'd like to talk a minute about Exhibit 4 to the reply. It's a brief email chain dated December 20 concerning the scheduling of the December 21 SIC meeting. The document was not produced and not logged until May 31. And on May 31 it was logged. The email was devoid of substance. There's nothing privileged about it. You can see, Your Honor, it's about scheduling the December 21 SIC meeting. Except, except that you can also see that the meeting was scheduled at the request of GT lawyers, not SIC members, and that at least one of them on December 20 didn't know why they were going to have a special meeting on December 21. Respectfully, Your Honor, I

think it was logged on May 31st as part of an effort, a successful effort, to slow play plaintiff, exactly what you directed counsel for defendants not to do on May 2.

There are other documents, Your Honor, that show that what transpired is that prior to the December 21 SIC meeting GT counsel conferred with Craig Tompkins and Ellen Cotter. The other documents and privilege log entries -- and I'm inferring from the privilege log entry, I don't have testimony about it and if I get to trial then I'm out of luck, because they'll object, but I infer from these privilege log entries that following December 21 GT lawyers worked with Craig Tompkins and Ellen Cotter to draft the December 27 Gould email. Now, of course, the language in that email was used in the agenda, it was used in the minutes. It's the legally operative language. "Legally operative" is not my word. It's language of legal consequence, according to Mr. Bonner.

So where does leave us, the result of this slow play today? I've been unable to examine witnesses because I didn't have documents, I had privilege logs. I got the privilege logs, Your Honor, the ones on which I'm now supposed to rely, on June 15. Defendants have since May 2 engaged in what amounts to wilful noncompliance, delaying, logging documents that aren't privileged and so forth. So plaintiff has been unable to respond to the summary judgment motions, he is unable to complete discovery in advance of trial, he is unable

to use the evidence at trial for any purpose, whether to respond to a ratification defense or otherwise. As we say in other motions, there are other uses to which we can put it. Thank you, Your Honor.

THE COURT: Thank you.

Mr. Ferrario.

MR. FERRARIO: Your Honor --

MR. KRUM: Sorry, Mark.

How much time did I use?

THE LAW CLERK: You have 23 minutes left.

MR. KRUM: Thanks very much.

MR. FERRARIO: I'm going to primarily address any questions you have.

THE COURT: I don't have any questions, Mr. Ferrario.

MR. FERRARIO: I do -- I do --

THE COURT: I made an order. It was pretty clear.

MR. FERRARIO: And we complied.

THE COURT: Okay.

MR. FERRARIO: Okay? And, as a matter of fact, Judge, I went to the unprecedented step of producing otherwise privileged documents provided I could get Mr. Krum to agree there was no waiver. What this is, quite frankly, is just an effort to take away from my client something Nevada law provides, which is to ratify a prior decision. This whole

thing has been turned on its head, okay. Ratification is provided for under our statute, okay. This notion that there's a ratification process or anything, it just -- it's a farce, okay. And this is the problem I have with what Mr. Krum is doing here. He doesn't want to address the merits, because he knows if he addresses the merits, it's over. So the only thing I would agree with Mr. Krum on is I've never seen anything like this. I've never seen a derivative case like this, you haven't, and he hasn't. You can't cite one case around the country that even approximates this. I've never seen a case where they abandon their damage expert yet it's still the derivative case for the company. What's the company going to get? They have no damage expert. I've never seen a case where we show up for trial and on a Friday he says he's ready to go, but over the weekend emergency health issue, boom, gone. I haven't seen that before. I've never seen a case where we're here in Nevada talking about Nevada law and they hire an expert from Delaware to talk about Delaware law. You're right. I've never seen a case like this.

THE COURT: He was a very bright man.

MR. FERRARIO: So if -- I don't care how bright he is. He doesn't know anything about Nevada law, apparently, because he didn't cite one Nevada case. So do I agree with Mr. Krum that I've never seen anything like this, you bet I haven't. Because, you know what, it's so confounding that I

went back to basics over the weekend with Ms. Cowden after we argued over what to put in our pleading, and I said, what is a derivative case, a derivative case is supposed to bestow benefit on the company, right?

THE COURT: The shareholders.

MR. FERRARIO: The shareholders, right, through the company. So you tell me -- and I defy Mr. Krum to stand up today given the case that he has with no damage expert, what benefit is going to result to the company or the shareholders from prosecuting this action. It doesn't exist.

So let's go back to where we are. This Court gave Mr. Krum the benefit of the doubt and said, now go out and do this and broad discovery. I have a little cheat sheet here, I'll be happy to give it to. This shows you all the operative dates on what we did and when we provided information. He goes to this document that he says -- this email chain that set up a meeting. Wow. That's an earth-shattering event. You know what the problem is? He already knows about the meeting. He asked people questions about the meeting. Does the email tell him anything he doesn't already know? The answer to that is unequivocally no, okay. He's deposed everybody. Has he come to you and said that any document that we've produced, any document, would spawn additional questions? Any document disclosed to him, anything material that he didn't know, has he told you that? Absolutely not.

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

earlier. What the heck does that have to do with the price of beans? Nothing. That's what's missing here.

So it's nothing more than a smoke screen to avoid the inevitable that results under Nevada law. Now, we have, and Ms. Hendricks can address this, some documents that we're prepared to give to Your Honor in camera that you can review. But I would submit it's not going to change anything that happened here; because, as I told you from the beginning, okay, and has been evident through all the depositions -- and I must point out that Mr. Krum's desperation to avoid the application of this law is best displayed in Ellen Cotter's -- no, in his motion, his opposition to the directors' motion where he deliberately misstates the testimony of the various directors. And I read that this morning. That's on page 6 of the directors' reply.

So this isn't about looking at the record, this isn't about facts. This is about Mr. Krum and his client deliberately misleading this Court and deliberately misstating the evidence because they want to avoid the inevitable under Nevada law. So before he stands up and says, oh, Ferrario's crazy 'cause he gave advice to his client, before I stands up and says he doesn't have any information or something he has to tie that out to an issue that's relevant to the case. And he hasn't done that. Not once in these pleadings does he demonstrate any prejudice as it relates to this issue;

because, as I told Your Honor when I first raised this issue after your decision in December, okay, we had a situation -- we had a sea change in the case. We had now directors that had been declared independent by this Court, and that then gave rise to the ratification option under Nevada law. There was a meeting held, a board meeting duly noticed that his client attended where these directors ratified the decisions that were the subject of the agenda, which is the option decision and the termination of Mr. Cotter. That is nothing earth shattering, that is nothing nefarious. There's nothing wrong with that. And he hasn't cited to you a case, a statute, nothing to support any of the claims he makes. And he comes to this Court -- he hasn't said, I need to reexamine Mr. McEachern because I got this email, he hasn't come -- and I've been through that with Your Honor hundreds of times because you say you get 10 minutes to ask that question. He hasn't come to you with any of that stuff.

THE COURT: It's only because you take longer. Other people would get 15.

MR. FERRARIO: And that's because I'm quick.

Anyhow, so that's what's at -- that's the problem I have with this motion, Your Honor. Now I guess the most bizarre thing is at the end he says now he has too many documents. It's pretty clear what's going on. In December something -- in December, late January leading up to the trial

obviously, since he'd pulled his experts, there must have been an issue with the experts. And that's going to be the subject of another motion that's going to be filed regarding why we ended up continuing this trial in the first place in January, okay. Now here we are a few months later, he withdraws his two experts, his main experts in the case. And what's he doing now? He wants another continuance on the ratification issue, which didn't even come about until Your Honor's decision.

So you want to go back to the beginning? I've never seen anything like this. And that much we agree on. And he can't cite you a case to support anything he's talking about here regarding ratification, not one. Matter of fact, he goes so far as to contort what the committee that consists of Mr. Gould, Ms. Codding, and Mr. Wrotniak, he keeps calling it a special litigation committee, like it's a DISH committee and things like that, and he cites cases that deal with those types of committees. And he keep conflating what this committee does. All he has to do is read the charter. So instead of coming forward with something clear and concise, it's just a bunch of crap thrown in the air, and he's hoping that this Court bites on it.

So at the end of the day we've done what we had to do, he's failed to show any prejudice, and if he can present you with a document or something and say, hey, I need to go

ask more questions, then Your Honor could say, like she has to me many times, then you get another 10 minutes or 20 minutes or an hour with this witness and have at it. But he hasn't even done that. It's pretty obvious what's going on here. They don't have a case, they don't want to try the case, and they're using any means available to them to delay this proceeding and continue to cost the shareholders millions of dollars. That's what's going on here.

THE COURT: Thank you.

MR. KRUM: Okay. Thank you. Well, most of that's -- I don't know whether it's from college debate or whether it's Trump politics. It's irrelevant fiction intended to deflect and distract.

THE COURT: I think it's Wynn experience.

MR. KRUM: Pardon me?

THE COURT: Wynn experience.

MR. KRUM: Well, I'm not speaking to that. I have plenty of secondhand Wynn experience.

Okay, Your Honor. First of all, I've had it with this, these repeated innuendos, emergency health issue and so forth. Mr. Cotter's -- one of his physicians provided an affidavit or declaration. I thought that was good enough, but apparently that person is presumed to be a liar and I'm presumed to be a liar.

THE COURT: Mr. Krum, please direct your comments to

me.

MR. KRUM: And, Your Honor, I appreciate that Mr. Ferrario's under pressure from clients and that the clients dislike my client. I wish we were above that, okay. The physician in question is somebody with whom I've had a professional relationship for 20 years. I know the person to be of integrity. But I knew I was going to get more of this innuendo today, and I was concerned about something that was said yesterday, so I circled back and confirmed with the physician that Mr. Cotter had the procedure that was described to you in the declaration. So can we stop that, I hope?

Now, on to --

THE COURT: I think there's a motion next week on it.

MR. KRUM: Well, I haven't seen that.

MR. FERRARIO: There will be coming. And it has nothing to do --

THE COURT: Mr. Searcy, did you serve your motion?

MR. FERRARIO: It will probably be served today. And it has nothing to do with whether he had the procedure.

THE COURT: Wait, Mr. Ferrario. It's Mr. Searcy's motion.

MR. FERRARIO: Huh? We're going to join.

MR. SEARCY: That's being served today, Your Honor.

MR. KRUM: Okay. Now, so, Your Honor, the next

thing is who's deliberately misleading the Court. Look, they're the ones that came and told you, they showed up on December 29, they looked at the package. Well, we know that that's inaccurate. There's a whole history here. Then he says, well, I knew that the December 21 meeting occurred, what more do I need. Well, how'd it occur? I didn't get that from any of them.

MR. FERRARIO: We called it.

THE COURT: Mr. Ferrario.

MR. KRUM: And, so, for example, Your Honor, Exhibit 3 to our reply tells me something I didn't know, that Craig Tompkins precipitated the meeting. I now know that I need to depose him about the whole ratification process. He was a critical participant from before it went to independent directors to drafting the operative document.

And Exhibit 4, Your Honor, the email, it doesn't tell me anything I knew? Excuse me? None of these directors testified that the December 21 special independent committee meeting had been called by GT lawyers. None of them testified -- Mr. McEachern didn't testify that he even knew why it was called until he showed up. So, yes, it's news, Your Honor.

So I need to find out from Tompkins and Ellen Cotter what exactly they communicated to somebody else. It may only be the subject matter, Your Honor, depending on how these privilege issues play out, but I'm entitled to that, because a

privilege log doesn't substitute for testimony. And I'm entitled to hear from Margaret Cotter why she gave me a sworn interrogatory response that excludes written communications about ratification. And what else did she not tell me? And then, of course, Mr. Gould, you know, he was the only "independent," I put that in quotes, director involved. So, Your Honor, yes, the whole process, the ratification process has been concealed, the discovery process has been undermined, and what you ordered on May 2 hasn't been provided. Thank you.

THE COURT: Thank you.

If we could go to the motion to compel, please. Mr. Krum, we're on your next motion.

MR. KRUM: Yes. Thank you, Your Honor.

First, Your Honor, the SIC charter provides it with, quote, "authority to enter and bind the company in connection with Cotter-related proceeding." That includes this case. The charter itself, Your Honor, makes clear that the committee is empowered and as such is what is typically called a special litigation committee.

Point two. GT lawyers made no effort to maintain any confidence or privilege of SIC members, the SIC itself, or any independent director vis-a-vis anyone, not Craig Tompkins, not even Ellen Cotter and Margaret Cotter, defendants in this case, who stand to benefit from a supposed independent

business judgment of SIC members or the five, depending upon how you view it. The independent committees do not share privilege or common interest with a full board where, as here, their work entails assessing the conduct of other members of the board. Talk about nonsensical. That's as if the members of the jury and the litigants can have a relationship of that nature. Where a special committee doesn't maintain its information as privileged and confidential vis-a-vis potentially adverse board members -- that's the key, are they potentially adverse -- such information isn't privileged and confidential, is not privileged and confidential.

Well, they say, well, none of that happened here because it was five who voted at the December 29 meeting. Well, the meeting effectively was called for the purposes of a ratification summary judgment motion by the three. The email says the five, but there's no evidence that Kane or Wrotniak knew about it beforehand. In fact, the evidence by privilege log entries from which we infer, because Wrotniak couldn't specify the day, whether it was December 26, 27, or 28, but the privilege log entries indicate that Wrotniak first learned about ratification on December 28th, the day after the Gould email.

So what happened here is the same thing that happened in two of the cases we cited, Kline versus FPL and In Re Parr Pharmaceuticals. The independent committee takes some

action to bring a matter before the full board for a vote of all the supposedly independent members of that full board. And FPL it was an evaluation committee, in Parr it was a committee that conducted and investigation and recommended dismissal of the derivative suit. But the same thing happened as here. "Independent directors," and I put that in quotes all the time, caused a matter to be taken up before the full board, all independent directors, including those who caused it and those who didn't vote it, and the cases find that the information, because it was disclosed to board members who were not part of the independent group who voted, either wasn't privileged or privilege was waived.

The same kind of thing happened in Wardleigh, Your Honor, where it was a homeowners association and owners. And the question was, you know, what was the lineup. So the law isn't not Nevada law, it's consistent with Nevada law.

Attorney work product. If it's prepared in anticipation of litigation, it's not what they claim it is in the ratification summary judgment motion, independent business judgment on RDI business matters.

So the opposition was great, Your Honor, because it's a perfect exercise in question begging. It says, "RDI's committee does not have different objectives from the rest of the board." Well, that says everything and nothing. They say, "There's no separation between Mr. Tompkins's interests

and the interests of the SIC," which is in effect because he reports to Ellen Cotter, says, the SIC and defendant Ellen Cotter have the same interests. The best part is that the opposition to search that GT, quote, "may have discussed in confidence certain ratification-related with Ellen and Margaret Cotter," quote, "in no way constitutes waiver of the attorney-client privilege," close quote.

Why is that? And the answer is, quote, "Unity of interest between RDI and Ellen and Margaret Cotter, who share a common interest in responding to plaintiff." Excuse me. These are supposed to be independent directors who engaged in a good-faith process resulting in an informed decision to, quote, "ratify" prior conduct of directors, including Ellen and Margaret Cotter. Either they were that, which is what the motion claims they were, or they were at SLC that said, we don't want this case around anymore. But they can't have it both ways. They cannot be both. They cannot share supposedly privileged information used by supposedly independent directors to make a supposedly good-faith, informed decision independent of the people who were the subject of the decision, defendants Ellen and Margaret Cotter and Craig Tompkins, who reports to them and works for ostensibly an [unintelligible] RDI. They can't share that information and claim that it's privileged and confidential. They can't both be -- they can't share that information and be independent

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

So, Your Honor, they can't have it both ways, and

they can't argue with the evidence. You know, I understand the argument about the quote on McEachern. McEachern wasn't on the compensation committee. He was on the SIC. And he testified that what the SIC did was to act to resolve these issues. And Mr. Gould wasn't confused about the SIC making the request. He was clear about that. That's what transpired.

So, Your Honor, the bottom line is this isn't simply an issue about privilege. This is an issue about privilege related to whether these directors are independent, which goes go both summary judgment motions. Thank you.

THE COURT: Thank you.

Mr. Ferrario.

MR. FERRARIO: Your Honor, I stand guilty as charged for advising my client as to what NRS 78. I think 140 says. And he hasn't cited one case anywhere, okay, that says a lawyer can't talk to members of a board about Nevada law. He says that this is something orchestrated by Craig Tompkins or Ellen Cotter or Margaret Cotter. What he's missing and what he's distorting is this wasn't orchestrated by anybody other than the Nevada Legislature when they passed the law.

THE COURT: So, Mr. Ferrario, let me stop you. This doesn't really relate to this motion, but since you've brought it up, NRS 78.140(4) says, "The fact that the vote or votes of the common or interested director or directors are not counted

for purposes of subsection 2 does not prohibit any authorization, approval, or ratification of a contract or transaction to be given by written consent pursuant to subsection of NRS 78.35 [sic] regardless of whether the common or interested director signs written consent or abstains in writing from providing consent."

That seems to limit the type of items which ratification can be used for. Can you discuss that issue with me.

MR. FERRARIO: Well, actually this is something we've debated in this case from the beginning as to why you were saying these directors weren't independent, because under Nevada law you have a much broader protection for directors than you do under Delaware and elsewhere. And so this whole thing started off by a way for Mr. Krum to say these were interested directors. And the only way you could say that is were they interested in this transaction or occurrence. And he said they were, that they were doing that to -- and the transaction or occurrence is the termination of Jim Cotter, Jr., and --

THE COURT: And I made a determination on summary judgment. What I'm trying to get from you is is the ratification process that the Nevada Legislature has authorized in NRS 78.140(3) and (4) limited to a contract or 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."

MR. FERRARIO: I understand what you're saying.

THE COURT: I'm trying to find out from you the basis on which you think ratification under that statute can be expanded to cover what have been alleged as what I'll call business torts for lack of a better term.

MR. FERRARIO: What was the -- no. The transaction here was the termination of Mr. Cotter, Jr.

THE COURT: The termination of Mr. Cotter.

THE COURT: Yeah. The transaction here was the company, okay, allowing the exercise of the option, okay. Those are the events that were at issue. Terminating his contract, okay. That's what was involved here. And now if you get outside of that, then where are we? What's our doctrinal framework for this case, then? Because I've said this to you and you've acknowledged there's no other case in America that approximates this. This is nothing more than a personal case by James Cotter, Jr., to get his job back. And we're at the most bizarre point --

THE COURT: You and I see lots of personal cases in Business Court, Mr. Ferrario.

MR. FERRARIO: Exactly. But, you know what, they're called breach of contract cases. They're not called derivative cases. And this is a derivative case, okay, by Mr. Cotter, Jr., where we're now at the bizarre point after spending millions of dollars in defense costs, blowing through

the policy where they're not even seeking damages, nor can they articulate to you a damage theory that would benefit the shareholders. We're down to this. Because of their withdrawal of their experts, we're down to can this Court reinstate Mr. Cotter. And how is that going to benefit the shareholders? There's not one case in America that authorizes that type of relief. That's what's happening here.

So, you know what, I agree with Mr. Krum. This is like politics today where one side just throws out anything they can, creates a big kerfuffle, and then people think that there's something there. There's nothing here. And so, yes, I think we fall within the confines of that statute. And if we don't, then it's incumbent upon him to come to this Court and say why a board cannot go back and ratify prior decisions, an independent board. This board -- if we ended up in the bizarre situation where somehow Mr. Cotter was reinstated, again, something not seen anywhere in the United States under any caselaw, this independent board could fire him the next day under our law, under our business judgment rule. Because what's happening here is Mr. Cotter is asking this Court to do violence to some of the statements made by our Supreme Court in the recent Wynn case because he wants this Court to manage this company when this Court has said there's independent directors out there who can manage the company. So we end up in this bizarre dialogue, okay.

But I can tell you we've tried to figure out why it is, why would the independence be an issue at the beginning. Well, under Nevada law if you're involved in a transaction or occurrence and you stand to benefit, which is what they argued, right, at the beginning, Mr. Guy Adams stands to benefit financially from this -- first they said all the directors stand to benefit because they stay on the board. Now, that's the claims the made. It seems to fall within NRS 78.140, and that's why we utilize that. Did we advise the board? Absolutely. Did we say, now that the Court has said that you're independent, independent directors whether there's that statute or whether it's under general corporate law can always ratify. And that decision, Your Honor, that decision is protected by Nevada's business judgment rule.

So if you order us to produce something, we'll do it. We've slogged through everything. I would apologize to the Court and to Counsel we ran into issues previously not encountered with our vendor, we lost our earlier contact and we ended up with somebody new, and it was a nightmare.

THE COURT: I'm sorry to hear that.

MR. FERRARIO: Well, it was not fun for anybody.

THE COURT: It's better than when the storage company decided to destroy the documents in CityCenter.

MR. FERRARIO: That is true. It is better than that. But it wasn't much better than that, because --

THE COURT: Ms. Hendricks remembers having to deal with that, so --

MS. HENDRICKS: Yes.

MR. FERRARIO: So anyhow, if you want us to produce anything, that's fine. Again, we've given them everything. There's no mystery here. I've been candid with the Court from the beginning as to how this happened, that it was -- and they somehow think, oh, it's a litigation strategy. Him filing the complaint is a litigation strategy whether he -- whether he -- what claims he puts in is a litigation strategy, okay. This is something available under Nevada law. My client took advantage of it, the decisions were ratified. And if you want more discovery from us, we'll be happy to comply.

THE COURT: Is there anyone else who wants to speak against the motion to compel?

MR. SEARCY: I think Mr. Ferrario has covered it.

THE COURT: Thank you.

Mr. Krum.

MR. KRUM: How much time?

THE LAW CLERK: You have 11 minutes.

MR. KRUM: Thanks very much.

THE COURT: For the rest of the motions.

MR. KRUM: Understood, Your Honor.

Your Honor, the December 29 minutes say that the so-called ratification was based on NRS 78.140. The ratification

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

use of company counsel to advise them to make a decision about the directors whose conducts were ratified.

But beyond that, I mean, I was candidly, Your Honor -- one of the other factors we cite in the brief is conflating the company and the independent directors. And both Mr. Bonner and Mr. Wrotniak did that.

So, now, let me be clear. Director independence is relevant to whether they can invoke the business judgment rule. The claims in this case are for breaches of fiduciary duty, they're not for lacking independence. And the independence is I think put at issue, and I'm going to repeat myself and waste my precious time, so I won't do that, Your Honor.

THE COURT: Thank you.

Do you have anything else?

So the motion for relief and the motion to compel are both granted in part. The Court will conduct an in-camera review after receiving updated Excel electronic privilege logs to be delivered, both the documents and the electronic Excel spreadsheet, Friday by 8:30 a.m.

For purposes of the pretrial motions as an evidentiary sanction the Court will infer and make a rebuttable presumption that the docs, if timely produced, would support the plaintiff's position that the ratification was a sham or fraudulent exercise.

If there are remaining issues after the pretrial motions, Gould, Codding, McEachern, Ellen Cotter, Margaret Cotter, and Tompkins will appear for depositions not to exceed an hour next week.

Okay. So we're going to take a short break before we go to motion for summary judgment, which is the next item on my agenda.

MS. HENDRICKS: Your Honor, can I get the specifics on what you want on a privilege log again? I wasn't writing fast enough. I want to make sure we get --

THE COURT: Do you want my little blurb that I send out on every case?

MS. HENDRICKS: That would be great.

THE COURT: I sent it out in your case about three years ago. I'll go get it now.

(Court recessed at 9:33 a.m., until 9:42 a.m.)

THE COURT: Ms. Hendricks, if you'd approach. I printed this off an old CMO because I couldn't find the CityCenter one. The CityCenter one I put it in a footnote, but this one was on a whole page.

MR. FERRARIO: Your Honor, you were talking really fast, and none of us know what you said, okay.

THE COURT: You want to hear the really important part? Wait. Wait.

MR. FERRARIO: Yes.

THE COURT: Can I say that part that matters for the rest of the morning?

MR. FERRARIO: Yes.

THE COURT: I'll say it slow. For purposes of pretrial motions, i.e., what we're going to do now, as an evidentiary sanction the Court will infer and make a rebuttable presumption that the documents if timely produced would support the plaintiff's position that the ratification was a sham or fraudulent exercise.

MR. FERRARIO: So that would seem to at least -- it impacts the motion filed by the directors --

THE COURT: It impacts the rest of what we're doing this morning.

MR. FERRARIO: And I'll deal with that in our motion, because I beg to differ. I don't think it impacts the motion we filed at all. But if that's the case, then --

THE COURT: That's why I took a break, so you could digest it. Do you need me to take another break so you can digest it since I read it again?

MR. FERRARIO: I think I get it now. But you were speaking really fast on who wanted deposed. So --

THE COURT: If remaining issues after the pretrial motions, i.e., what we do today, Gould, Codding, McEachern, Ellen Cotter, Margaret Cotter, and Mr. Tompkins not to exceed one hour.

MR. FERRARIO: Okay. That was what we didn't --

THE COURT: Isn't it nice I wrote it down so I would be able to remember it.

MR. FERRARIO: And then -- all right. So we'll get on scheduling that.

MS. HENDRICKS: And then, Your Honor, if I may, this is helpful --

THE COURT: I said if issues remain after the pretrial motions, because you may rebut the presumption and I may grant your motion. So I'm not saying you can't.

MR. FERRARIO: That's pretty hard to when we have a rebuttable presumption.

THE COURT: Do you want me to take a break for you guys to communicate among yourselves, or are we ready?

MR. FERRARIO: No, I get where we're at. I mean, I'm happy to go forward. I think I get where we're at.

THE COURT: All right.

MS. HENDRICKS: I do have a question on the privilege log you want produced on Friday. I want to make sure I understand correctly.

THE COURT: Every category that is identified on a privilege log to be prepared, which is listed on the handout I gave you, is required to be included.

MS. HENDRICKS: There have been multiple privilege logs. So my understanding was the privilege logs related to

these specific issues. So we have --

THE COURT: That is correct.

MS. HENDRICKS: -- after May 2nd, and then there was an earlier privilege log I think in February.

THE COURT: That related to these two meetings and the ratification process.

MS. HENDRICKS: Okay. And we've produced most -- or a good deal of those documents already to Mr. Krum in the last couple weeks, so I'm just producing to you the documents that remain on the privilege log that have not already been provided to Mr. Krum.

THE COURT: Correct. For my in-camera review.

MR. KRUM: Well --

THE COURT: I need a hard copy of the document --

Mr. Krum, please be quiet.

I need a hard copy of the documents, I need an electronic version of the privilege logs.

MS. HENDRICKS: Of the privilege logs.

THE COURT: I'm happy to take -- because, as you may know from other cases, I will then mark and seal certain documents that I've reviewed as part of my in-camera review so you have a record in case you need to seek appellate review. And Dulce will seal portions of that. Like the privilege log won't be sealed, but the documents I review will be.

MS. HENDRICKS: Okay. I understand. We'll get on

it.

THE COURT: Mr. Searcy.

MR. SEARCY: Your Honor, I apologize. I have one logistical question, as well. Will the Court be reviewing the documents in camera and then the depositions will proceed after the Court --

THE COURT: I have asked for the documents to be delivered at 8:30 so I can get them done on Friday.

MR. SEARCY: Thank you, Your Honor.

THE COURT: Because I can't imagine it's more than I reviewed last week. Or was it the week before?

MR. SEARCY: I believe it was the week before, Your Honor.

THE COURT: Okay.

MR. KRUM: Your Honor, my question for the benefit of everyone. Some documents have been produced, but they've been redacted. I would assume that you wish to have them provided to you in unredacted form.

THE COURT: The redacted version and the unredacted version need to be provided to me. The redactions, if they are redacted for something other than personal identifiers or medical issues, I need to have the unredacted version. If it's about someone besides Mr. Cotter's medical condition, I don't really need to know about it. But otherwise I need the redacted and unredacted document.

MS. HENDRICKS: Okay.

THE COURT: And Ms. Hendricks knows that, because she's had to go through this a lot.

MS. HENDRICKS: I have. We'll get it to you on Friday.

THE COURT: More than other people.

Okay. Anything else before I go to the motion for summary judgment, which is my next agenda item up?

MR. KRUM: No, Your Honor.

THE COURT: Okay. Mr. Tayback.

MR. TAYBACK: Your Honor, in light of the last order, and I know that allocation of time, I'm going to be fairly concise.

THE COURT: Okay.

MR. TAYBACK: There are two points that I want to make. The first one is revisit something that has been discussed in the context of the other motions, which is the idea that whether ratification under NRS 78.140 applies. That whole proposition started because the plaintiff has pled his case and alleged that the transactions as he described them were in fact voidable or void because they were conducted by interested directors. If that's the case and we are moving that the claims that the plaintiff has asserted, if that's the case, then ratification under this statute applies.

If that's not the case, then the question of the

disinterestedness of the directors of the three remaining defendant directors really doesn't matter. But however you slice it, the fact is the claims, such as they are, of his termination, the estate's redemption of Class A stock for Class B stock options, and the kind of related issues of the hiring of Ellen Cotter, those have all been approved by indisputedly [sic] a majority of independent directors.

Now, you've raised the issue of this rebuttable presumption. And I certainly think --

THE COURT: It's an evidentiary sanction.

MR. TAYBACK: I understand. The evidence that we have submitted is undisputed. The evidentiary sanction that you're inferring or imposing from -- that indicates, I think you said, that it would be a sham transaction --

THE COURT: His allegation in his pleading is sham or fraudulent exercise.

MR. TAYBACK: -- is rebutted by the context of this meeting, and the record is all in front of you, which is that the board was provided with a board package in advance of the meeting, each of the directors undisputedly testified that they reviewed that, that they took advice of counsel, that they based their decision upon their history and interactions with the plaintiff over the course of their time on the board, his temperament was ill suited, and, tellingly, by the fact that the entire board was there, including the plaintiff, and

when the plaintiff was offered an opportunity to speak to each of the two issues the plaintiff refused to say anything with respect to either of the issues, with respect to any aspect of them. He raised no issues, and in fact cast the only vote against both of those ratification votes.

You can call it a sham, and if the evidentiary sanction is to say that his allegation of it being a sham would be true, there is no evidence that supports that. That is to say, all the evidence rebuts that. And that is the definition of a rebuttable presumption. If it's presumed it's a sham, you have to look at the evidence. And the evident undisputedly shows that this was an informed board, a majority of whom have been determined to be disinterested, and in fact they exercised their power under Nevada law to ratify these two decisions. There is no contrary evidence. So the presumption is rebutted.

THE COURT: Anything else?

MR. TAYBACK: Any questions?

THE COURT: Anybody else want to speak on favor of this motion?

MR. FERRARIO: We're joining.

THE COURT: All right. Mr. Krum.

MR. KRUM: I'm sorry. How much time?

THE LAW CLERK: You have 8 minutes.

THE COURT: And you need to save some for the last

motion, which is the demand futility issue.

MR. KRUM: Understood, Your Honor. So I'll be brief. Thanks.

So the moving party bears the burden with respect to independence, and they've failed to do that.

The other point I haven't made yet is no one purported to ratify the decision of the compensation committee that the estate owned the 100,000-share option. And we submitted evidence, all the Kane emails you've seen before where he raised that as an issue at the time. So, as I said, the independence is an issue raised by the motion. It doesn't matter whether they acted as a special committee or not. And I've already spoken to that issue. Thank you.

THE COURT: Okay. Anything else?

MR. TAYBACK: I would only say in support of my argument that in fact the whole concept of the application of the law of this case being governed by the idea that this was a transaction governed by NRS such that it's susceptible to ratification specifically under that code comes from his second amended complaint at paragraph 53 where he seeks to void it and claims that it's void precisely because it was an interested transaction. If interestedness does not matter, then, frankly, the stock option issue shouldn't be at issue in this case, because Mr. -- Adam's independence is the only basis upon which there was a material fact that prevented

summary judgment previously. If it doesn't matter that he was interested because it wasn't a company transaction, the same is true with the termination; it was approved by a majority of independent directors at the time. And we're entitled to summary judgment that way.

MR. FERRARIO: Your Honor, on --

THE COURT: Did anybody else want to say something on this motion?

MR. TAYBACK: Page 53, not paragraph 53 of his second complaint.

MR. FERRARIO: I would just ask the Court --

THE COURT: Did you have something you want to say?

MR. FERRARIO: Real quick, ask the Court how this is a derivative claim on the 100,000-share option. Because -- and on the issue of whether it's the estate or the trust, what we pointed out is Your Honor in the early parts of these proceedings --

THE COURT: When we were doing injunctive relief issues.

MR. FERRARIO: -- indicated that if it's in the estate, that the executors control it. This option indisputably was granted to Jim Cotter, Sr., and never put in the trust. And do under the Court's directive that came down in I think --

THE COURT: Three years ago.

MR. FERRARIO: -- yeah, August or September, the executors went forward and exercised -- the only -- the only possible harm that could result would be harm to the company for the exchange of the A shares and B shares. He's provided no evidence that that wasn't equivalent value. You could have paid it with cash, or you could have paid it with stock. So there's -- it's not a derivative claim, period. The option either existed if -- taking his thing at the trust level or at the estate level, either way it could be exercised. It's not harm to the company. The company got value. That's what missing here. And the fact that Mr. Kane may have raised a question, who cares? He denies -- is he now saying Mr. Kane shouldn't have raised the question? What's his complaint now? Because originally it was the exchange of A shares for B shares. It now has morphed in desperation to try to keep this faux issue alive, when just go back, ask him what the harm is to the company. See if he can articulate it.

THE COURT: Okay. Anything else, Mr. Krum?

MR. KRUM: Your Honor, I just want to reiterate this ratification motion is predicated on NRS 78.140. So everything we discussed before also is dispositive.

MR. FERRARIO: That's the transaction.

THE COURT: I know. I've been asking questions.

MR. KRUM: It's not. That's my point.

THE COURT: Wait. Don't fight with each other.

You're directing your arguments to me. I'm the one you've got to convince.

Here the Court has taken into consideration the inferences, the rebuttable presumption, as well as the evidence that has been submitted along with the motions. The typical practice is to have independent advisers provide information to the board and/or special committees under NRS 78.138. While that is certainly a cleaner practice, it is uncontested here that Greenberg Traurig, qualified and experienced counsel, under 78.138(2)(b) gave legal advice to the -- related to the ratification to the directors that the Court had previously determined to be independent. The advice given was protected by the attorney-client privilege based upon the Wynn case -- it's the Wynn case, right -- the Wynn case, and the Court must honor the ratification by those independent directors and respect their business judgment after their reliance upon Greenberg Traurig under NRS 78.138(2)(b).

As a result, that motion is granted.

Next? Is there anything left? Do I need to go to demand futility?

MR. KRUM: Your Honor, our answer is yes. The Court denied summary judgment motions, partial summary judgment motions with respect to a host of subjects. The ratification motion was directed at two. The Court also didn't rule on

motions that weren't brought with respect to matters such as what I'll for shorthand call the attempted extortion of Mr. Cotter to get him to settle personal issues with his sisters.

THE COURT: Those aren't derivative claims, though. Those are direct claims.

MR. KRUM: Well, I don't know that that's correct, Your Honor. But to the point for answering the question you asked, I'm speaking of what hasn't been disposed of in the case.

THE COURT: Right.

MR. KRUM: We filed a motion on that, Honor. And I don't think any of us understood that to be the ruling on December --

THE COURT: So I'm going to go away, and I want you guys to look at your versions of the pleadings. And I'm going to come back in a few minutes, and you're going to tell me what remains.

MR. FERRARIO: Whether I even have to argue this motion.

THE COURT: That is correct.

MR. FERRARIO: All right. Good.

THE COURT: Because I don't think that anything else is left.

MR. FERRARIO: I don't think anything else is left.

THE COURT: But I've been wrong a lot lately.

(Court recessed at 9:57 a.m., until 10:20 a.m.)

THE COURT: Counsel, after you've had a chance to check your pleadings, discuss it with your teams, what do you believe is left?

MR. FERRARIO: Your Honor, first point, we would submit the motion that the company filed regarding standing to Your Honor for decision. I won't argue it.

THE COURT: It's moot. Unless there's something left, it's moot.

MR. FERRARIO: Okay. That's going to be the Court's ruling, fine. Then there is nothing --

THE COURT: Unless there's something left.

MR. FERRARIO: There's nothing left from Mr. Tayback's perspective, my perspective, or the directors of the company. There's nothing left.

THE COURT: Mr. Krum, do you think there's anything left?

MR. KRUM: Your Honor, we think the same thing about today's ruling as we thought about the rulings that you made on December 11th. And there's no reason for us to take the time of the parties and the time of the Court to do anything other than pursue those on appeal, as we already have.

THE COURT: So at this point, Mr. Krum, if you would prepare an order related to the motion for relief and motion to compel.

And, Mr. Ferrario, if you will prepare -- and Mr. Tayback, if you will prepare findings of fact and conclusions of law related to your motions, I'll get them signed.

Does anybody want me to go ahead and do the in-camera review related to the motion for relief and motion to compel?

MR. KRUM: Well, the answer, I think it's -- Your Honor, I think it's moot given what you're ruling.

THE COURT: Well, it is. But, you know.

MR. KRUM: I'm not going to ask -- the answer is, sure I do. But I'm not going to ask Your Honor to do that.

THE COURT: Okay.

MR. KRUM: Nothing will come of it.

THE COURT: So I'll do a review, I'll do a note, but it won't have any impact on any future events unless the case returns.

MR. KRUM: Right. That's what I understood the circumstances would be, and for that reason I'm not going to ask you to do that.

THE COURT: Okay. So, Ms. Hendricks, you're off the hook.

MS. HENDRICKS: Thank you, Your Honor.

THE COURT: But please keep that list.

MS. HENDRICKS: I might keep that in a very safe place for next time.

THE COURT: Well, I try to put it in a footnote in all the case management orders because people --

MS. HENDRICKS: I remember it in the CityCenter case, but it's just been a little while.

THE COURT: Okay.

MR. FERRARIO: Thank you, Your Honor.

MR. TAYBACK: Thank you.

MR. KRUM: Thank you.

THE COURT: The trial date's vacated.

MR. FERRARIO: Thank you.

THE COURT: All future dates are vacated, and the sealing motions are granted.

Don't yell at me anymore, Mr. Ferrario.

MR. FERRARIO: I didn't yell at you a lot. How quickly -- you're now Judge Ochoa.

THE PROCEEDINGS CONCLUDED AT 10:22 A.M.

* * * * *

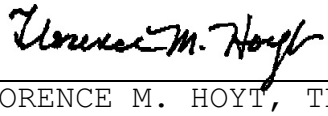
CERTIFICATION

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

AFFIRMATION

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

FLORENCE HOYT
Las Vegas, Nevada 89146



FLORENCE M. HOYT, TRANSCRIBER

6/19/18

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DISTRICT COURT
CLARK COUNTY, NEVADA

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

07-10-18P03:23 RCVD

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Case Number: A-15-719860-B

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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

///

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

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Case Number: A-15-719860-B

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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TAMI D. COWDEN (NV Bar No. 8994)
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Case Number: A-15-719860-B

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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
AN EMPLOYEE OF GREENBERG TRAURIG, LLP

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DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiff,

v.

MARGARET COTTER, 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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18-04-10A 8:35 RCVD

Case Number: A-15-719860-B

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 ____ 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.

GREENBERG TRAURIG, LLP

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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~~ the Court ~~has ruled that it will entertain a Motion for Fees by the defendants and nominal defendant under NRS 18.010.2(b).~~ Further ordered by BLG.

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
AN EMPLOYEE OF GREENBERG TRAURIG, LLP

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DISTRICT COURT
CLARK COUNTY, NEVADA

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

Case Number: A-15-719860-B

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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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 PLAINTIFF'S MOTION TO RETAX COSTS

MONDAY, OCTOBER 1, 2018

COURT RECORDER:	TRANSCRIPTION BY:
JILL HAWKINS District Court	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.

LAS VEGAS, NEVADA, MONDAY, OCTOBER 1, 2018, 9:20 A.M.

(Court was called to order)

THE COURT: That takes me to Cotter.

So, Ms. Levin, it's your motion.

MS. LEVIN: Good morning, Your Honor.

THE COURT: Hang up on whoever it is, please.

MS. LEVIN: I came with some documents. I'm sorry.

(Pause in the proceedings)

MS. LEVIN: Just a minute.

THE COURT: Just put him on hold.

Ms. Levin, I'm sorry for the interruption. Would you like to proceed?

MS. LEVIN: Yes. Thank you, Your Honor.

Your Honor, this is our motion to retax costs. The defendants have asked for 2.9 million in costs. They now have had two opportunities to meet their burden of proof that their extraordinary $2.9 million cost bills were not only actually incurred -- only also incurred for this case, but they were necessary and reasonable. Now, they failed twice in that obligation. The first time they mainly gave us spreadsheets for the majority of the costs sought. The second time they gave us on the eve of the hearing an 8-volume, 3,500-page document dump essentially saying, here's the backup for our outrageous expenses and you figure it out.

They have an obligation to in good faith only seek

those costs that met all those three criteria. They still did not check for reasonableness even after we gave them very specific examples for each category with citations to the exhibit pages that appeared either unnecessary, unreasonable, or unsupported or all of the above. So they only responded in their opposition brief to examples we had given them, if that.

So although they say they omitted costs related solely to the T-2 plaintiffs, they did not. Those costs permeate all categories from filing fees to research to travel costs to ediscovery. We should not have been put in this position to do their work, Your Honor, given the outrageous amount of costs they seek, the sloppy and untimely piecemeal production of documents, and the absence of declarations showing, rather than just saying, that these costs were actually incurred, necessarily incurred, and reasonable.

The Court should use its discretion to drastically reduce those costs, if not allow them at all.

THE COURT: Okay. So I have the memo of costs and disbursements in front of me.

MS. LEVIN: Okay.

THE COURT: And I went through your charts and your comparisons. Your number that you would urge me to give for Category Number 1, which is all filing fees is what?

MS. LEVIN: Well, it's RDI's filing fees especially. The fact that RDI was a nominal defendant, they should have

kept a wholly neutral position in this case, they were not even the prevailing party. And that's our main argument with respect to RDI. It is not a prevailing party. There's no judgment entered in its favor. So they shouldn't be entitled to any of their $1.2 million costs. So that's our main argument.

But with respect even -- even the filing fees, even assuming the Court would allow them fees, we gave them -- again, we -- I think they should be disallowed at least 3,000 of their $3,700 filing fees, because all of those filings were related to a motion to compel arbitration, that was 1.5. There were six joinders in dispositive motions of the corporate defendants, so they joined essentially in the defense of directors who were alleged to have breached the duty to the company. So those filing fees should be disallowed. And there's numerous T-2 filings.

So, again, we did the work for them because they didn't want to do their job. But there are many other filing fees, and their free dollars, whatever. But, again, so our main argument is none of them should be allowed. But if the Court's going to allow anything, they shouldn't -- at least $3,000 should be deducted.

THE COURT: Do you want to go through any of the other categories for me? I understand your issue on the expert witnesses. I'm going to deal with that separately, Mr.

Ferrario, given the statutory limitation.

Anything else?

MS. LEVIN: Well, I can go category by category, Your Honor. Now, first --

THE COURT: You did in your briefing. So I'm asking you if there's anything else you want to tell me that wasn't in the briefing.

MS. LEVIN: I would like to actually -- what we did is in the reply brief we cited -- we meant to give more cites to the appendix, and what we did is instead we cited back to the original motion appendix. So I have some examples. Because, again, they gave us a backup, but the backup --

THE COURT: I'd be happy to take your examples.

MS. LEVIN: Okay. Great. And I'll share with the other side, too.

THE COURT: Great. We'll mark it as Court's Exhibit 1.

MS. LEVIN: So Court Exhibit 1 would be supplemental examples for the Byrd & Morella [phonetic] costs, and the other one would be supplemental examples of the backup for Quinn Emanuel, which further supports the unreasonableness --

THE COURT: So I'm going to mark them collectively as Court's Exhibit 1.

MS. LEVIN: Thank you, Your Honor.

THE COURT: All right. Anything else you'd like to

add, Ms. Levin?

MS. LEVIN: If I can just look -- because I think you understand our arguments and --

THE COURT: I do.

MS. LEVIN: Oh. One thing, also. The Cotter defendants and the copy costs, Mr. Searcy's declaration says we gave the costs per copy. But their backups do not support that. You have to kind of figure it out yourself by deducting -- they're giving the number, and then you have to go and look through a line that says US Dollar. It says 2, but that's actually the quantity. So it turned out they billed 24 cents per page, which is excessive. So we would submit that -- you can see that, by the way, on exhibit page 2926. So that should be cut in half.

I mean, I can go through each categories, Your Honor. If you have questions --

THE COURT: You don't need to. I read your brief.

MS. LEVIN: Okay.

THE COURT: What I'm trying to find out is there anything else you want to tell me that wasn't in the brief or you want focus on.

MS. LEVIN: Okay. Can I just go through my --

THE COURT: Because you did a really good job on the reply before, and Mr. Ferrario did a pretty good job on the opposition brief.

MS. LEVIN: I'll take that as a compliment.

Well, the whole necessity of the -- well, I think we put that in the reply brief, too.

THE COURT: All right.

MS. LEVIN: I'll stop right here.

THE COURT: Thank you.

Mr. Ferrario.

MR. FERRARIO: Good morning, Your Honor.

THE COURT: Good morning.

MR. FERRARIO: I really don't quite know where to begin. I know Ms. Levin's only been in this case for a few months. And it's unfortunate Mr. Krum's not here to kind of -- we could go back to the beginning. But Your Honor will remember that this case started back in the summer of 2015. And it started when Mr. Cotter was terminated from his position as the CEO of Reading. And Your Honor will remember that the company contested whether -- and that's who I represent, I represent the company -- contested whether Mr. Cotter was an appropriate derivative plaintiff. And then we contested his position as a derivative plaintiff. We said this was a matter that should be covered in arbitration which was pending in California. And Your Honor denied our requests to put an end to this case. And Your Honor gave Mr. Cotter throughout the course of these proceeding every opportunity to try to manufacture a claim that Your Honor characterized at

one hearing as truly unique. There was no other case in the country that we could find -- a derivative case --

THE COURT: The story of my life.

MR. FERRARIO: -- that approximated this. And what I find strange is now we stand here in front of this Court with the Court having given Mr. Cotter every opportunity --

THE COURT: A million two in expert expenses, Mr. Ferrario?

MR. FERRARIO: Well, Your Honor, let -- and, you know, I represent the company, again. We had an indemnity obligation. But you know what I'll tell Your Honor, and you know this. When you have big cases sometimes you have big expert fees. What is missing --

THE COURT: There was nothing I saw in the experts that were presented to me or provided information in this case that would put us in the realm of a million two.

MR. FERRARIO: Well, let me tell you how it happened, Your Honor. I'd be happy to do that, okay.

THE COURT: That'd be great.

MR. FERRARIO: Because what's missing here is the claim that they brought, okay. They brought a claim against the directors for one hundred to $150 million, okay.

THE COURT: Is that why they stayed at The Four Seasons in the chairman suites?

MR. FERRARIO: I don't -- you know what, I hate

arguing costs motions. You want to say, stay at the Golden Nugget, I could care less about that.

THE COURT: Well, they should have.

MR. FERRARIO: This case is about -- no, there's other things there. But I don't even -- you do what you want on that. I could care less, okay. The big categories here are expert fees and ediscovery, okay.

THE COURT: Yes. And I have questions on ediscovery. But right now I'm asking you questions on experts.

MR. FERRARIO: And on experts what's lost in their pleading, and they don't deal with that, it was a hundred to $150 million claim. Now, the point I want to make here is this. I have to go back to the beginning. Mr. Cotter was not an outsider. He was an insider. He intentionally pled claims against the directors to avoid having to make a demand on the board. He said the directors were all interested. After this Court gave him every opportunity to prove those claims, the Court found on summary judgment that he didn't have any evidence to support that.

Now, during the course of the case --

THE COURT: For some of the directors.

MR. FERRARIO: Yeah. For five independent directors.

THE COURT: For some of the directors.

MR. FERRARIO: Exactly. There was an issue of fact with the others, okay.

THE COURT: Yes.

MR. FERRARIO: Three. But the point here is you gave him every opportunity to do that.

Now, let's look at how the case evolved. Hundred to $150 million in damages. What happens as we're running up to trial in January, okay, all of a sudden we're here, not in this courtroom, upstairs --

THE COURT: I had a jury.

MR. FERRARIO: We had a jury outside.

THE COURT: We were next door.

MR. FERRARIO: Mr. Cotter suddenly taken ill two days after we're in court, right. What do we find out about this illness? Well, the illness kind of coincides with him not paying his experts. What happens after that? Your Honor, says, you know what, if you're going to call an expert at trial on your hundred to $150 million damage claim then what you have to do is you have to present to the other side all of the billing records so we can see if there was some shenanigans with regard to the continuance in January.

What happens? They abandon the hundred to $150 million damage claim on the eve of the June trial. What does that tell you about their case? Was Mr. Cotter acting in his fiduciary capacity as a derivative plaintiff when he

abandoned that claim? We were going to trial in the summer, just a couple months ago, on claims -- I don't even know what we were fighting over. And I'm not sure Mr. Krum did at the time Your Honor granted the final relief that brings us here.

So when we go back and we look at the evolution of this case I submit that the fees are reasonable. And you know how you can test that? Where are their bills?

THE COURT: Other than Chief Justice [inaudible].

MR. FERRARIO: I am willing to bet you, okay, that the bills they didn't pay -- because we believe they stiffed their experts, which is why they wouldn't show up -- that the bills they didn't pay approximate the charges that were incurred by the experts who were hired by the directors.

Now, having said that, we dealt with some very novel claims regarding the value of stock tied to certain actions of the company. They put this forth this fella Duarte Silva, who came up with these wild calculations. Well, you know what, when you put forth somebody that comes up with wild calculations then the other side apparently, under their scenario, shouldn't defend against that. Which is farcical. You'd have to call your malpractice carrier. Even though you think their claim is ridiculous, you still have to go out and find an expert to counter that.

Experts that deal in these types of cases, deal with these economic theories, are far and few between. And so when

you look at this in light of the claims that were made you're talking about expert fees that are less -- well, 1 percent of the claim that was being made. I don't see how you can say that's unreasonable, especially without calling them on the carpet and finding out what their expert charged to manufacture the claim that they abandoned.

THE COURT: Other than Chief Justice Steel, who they told me how much he charged.

MR. FERRARIO: And that's a good one, too. Because I stood in front of you a couple -- probably a year and a half ago and I said, why have they called Justice Steel. Justice Steel's report -- and he might be a nice fella. I've never met the guy.

THE COURT: He is a nice fellow.

MR. FERRARIO: But this guy writes a report and he says, this is what would happen in Delaware. And I stood in front of Your Honor and I said, we're not in Delaware, so why is Justice Steel testifying. And Your Honor said, we'll deal with this at trial.

THE COURT: Well, because the Nevada Supreme Court sometimes looks to Delaware in making decisions about things.

MR. FERRARIO: But Your Honor is --

THE COURT: I know.

MR. FERRARIO: -- the arbiter of the law here, not Justice Steel.

THE COURT: Well, no. The Nevada Supreme Court is.

MR. FERRARIO: What he -- well, finally.

THE COURT: Yeah.

MR. FERRARIO: Well, if we get past you. But the --

THE COURT: Or file a writ.

MR. FERRARIO: Or file a writ. But Justice Steel's report was, quite frankly, nothing more than a memo on Delaware law that any of us could have commissioned one of our associates, quite frankly, to prepare. And so we argued against that. But they wanted that.

And the point here I'm making, Your Honor, you gave them every opportunity. They ran the costs up.

THE COURT: A million two in experts, Mr. Ferrario.

MR. FERRARIO: Absolutely. That's what it cost.

THE COURT: Okay.

MR. FERRARIO: We've given you the bill.

THE COURT: So let's go to my other issue.

MS. LEVIN: Your Honor, can I respond?

THE COURT: No. I'm not done.

MS. LEVIN: Okay.

THE COURT: The ediscovery. There have been issues raised about the lack of pro ration among various other litigation and claims that are -- these parties are continuing to be in, including the litigation in California and the arbitration matter, as well as the probate matter here. Can

you tell me why haven't pro rated the expenses for the ediscovery and the hosting?

MR. FERRARIO: Well, we actually have.

THE COURT: How do I tell that?

MR. FERRARIO: I can tell you right now that there are -- well, actually, it's kind of interesting, because the parties -- for example, the Cotter sisters, okay --

THE COURT: Yes.

MR. FERRARIO: -- they're involved in the litigation in California, the trust litigation and all that.

THE COURT: And here in the probate case now.

MR. FERRARIO: And here in the probate case.

THE COURT: Since you let Mr. Peek be involved.

MR. FERRARIO: And Mr. Peek is involved, yes. And so are hosting this information, okay. And it was done because of what happened in this case. That's what started this.

THE COURT: So did you pro rate it among the other cases?

MR. FERRARIO: You know, I would have to ask Ms. Hendricks that question. But I'm sure it was pro rated.

THE COURT: How can I tell?

MR. FERRARIO: And the reason that I know that is because I'm getting phone calls from the lawyer in California on the trust case asking why he's still having to pay

Navigant. That's -- and I just had those calls last week. So they are paying that.

THE COURT: Okay.

MR. FERRARIO: All right.

THE COURT: So then let me ask you the other question related to the ediscovery. Typically when there are consulting expenses related to the ediscovery those either show up in the expert category or in some category other than just the straight ediscovery hosting. Because it's consulting. Can you tell me why you didn't show it someplace else and put an ediscovery category?

MR. FERRARIO: I can't, Your Honor. I mean, that was --

THE COURT: How much of it is consulting? Is it a quarter?

MR. FERRARIO: Oh --

THE COURT: Seems like a lot in looking at it.

MR. FERRARIO: I don't think it was that much in consulting with them. I mean, the fact of the matter is the biggest fight we had here on ediscovery was with then Mr. Krum before Ms. Levin got into the case. And I made some notes. We had 12 custodians that we had to go through. And remember, Your Honor, how this case unfolded. At the very --

THE COURT: You mean that you guys wanted a preliminary injunction --

MR. FERRARIO: You're going --

THE COURT: -- I set a hearing, and you never showed up?

MR. FERRARIO: You're going right where I'm going.

THE COURT: Okay.

MR. FERRARIO: Right at the beginning fire drill, injection, he shouldn't have been discharged. Then all of a sudden he abandons that. Then we get into -- and he wanted, you know, expedited discovery, which was a fire drill on our part, which is why some of these costs are up. Then he abandons that. Then we get into regular discovery. But what happened, and Your Honor will recall this, Mr. Cotter sought to amend his complaint and basically challenged almost every major decision made by the board of the course of this litigation without really any merit to that. So we had -- we would continually go back and have to look for data and harvest data because he would amend his complaint or he'd bring something else in and say, wait a while, you know, you didn't entertain this offer from Patten Vision [phonetic] and that was a breach of your fiduciary duty. There we go again on another discover goose chase, all because of the plaintiff. It's not like I sat around one day in the midst of all the other cases I had and I said to Ms. Hendricks and Ms. Cowden, hey, let's just do some discovery in Cotter. That's not why this happened. It happened because of the plaintiff. And the

plaintiff was never interested in benefitting the company. And that became clear at the end of this case when he abandoned his damage claims and we were going to trial challenging essentially two decisions that I think monetarily to the company might have come in at about 125,000 bucks, something like that.

So I now go all the way back to the beginning. We stood in front of you three years ago and we said this was a personal dispute by Mr. Cotter, he wasn't an appropriate derivative plaintiff, he was trying to vindicate his rights personally, not to benefit the company. And that's exactly what the conduct in this case showed. You can stand here now and say all sorts of things, oh, this is ridiculous, oh, they should have stayed at The Four Seasons or they shouldn't have stayed here. You can talk all you want. Look at how the case unfolded.

And the final point I'll make is this. It all starts, all of this starts -- and Your Honor will see this probably in your other case -- with Mr. Cotter preying on his father while he's on his death bed.

THE COURT: That's my probate case, not today.

MR. FERRARIO: But that's where this --

THE COURT: But that's not today.

MR. FERRARIO: -- all starts.

THE COURT: But, Mr. Ferrario, that's not this case

today.

MR. FERRARIO: I understand. So here, Judge, we've given you the declarations. You've got tons of receipts. You want to cut down The Four Seasons, I don't care, okay. You want to noodle the filing fees -- I guess I wasn't supposed to file anything even though it was a novel case and Your Honor said we could file and participate, I guess we couldn't file.

THE COURT: I didn't say that. No, I didn't.

MR. FERRARIO: I didn't understand that part of their opposition. You want to do all that, I'm fine with the Court's discretion on those things. But on experts and on the ediscovery, all of that was necessitated by the conduct of the plaintiff to meet, A, the claims that were being made, which they pooh-pooh now, oh, well, wait a while, why did you do that. Hundred to $150 million. I don't think there's a lawyer in this room that would stand up and say those are not significant claims. We couldn't knock that expert out. You let him in. They only abandoned him. So we're not supposed to defend against that, they're not supposed to defend against that? And then I have to -- the company has to indemnify them. What happened in this is case is you gave him a chance and he lost.

And what happened? In a case where he should have been trying to benefit the company he cost the company dearly. And at the end of the day he couldn't prove his claim, and he

lost. And you know what, sometimes you have to pay.

THE COURT: Okay. Mr. Searcy, is there anything you want to add?

MR. SEARCY: Nothing for me, Your Honor. Thank you.

THE COURT: Thank you.

Ms. Levin.

MS. LEVIN: Your Honor, if I can --

THE COURT: Mr. Johnson, you don't want anything, do you, since you're Mr. Searcy's local counsel?

MR. JOHNSON: I'm okay, Your Honor.

THE COURT: Okay.

MS. LEVIN: To start with the last point, Mr. Ferrario's argument that we are now saying that the claims were frivolous, that's not right. That's their argument. That's what they've been saying the whole case, this is such a frivolous case, there's no evidence, we always knew there was no evidence. So, nevertheless, without any evidence and by calling the claims speculative they went out and incurred $45,000 in Westlaw research, or claiming that only Nevada law applied. Then they went out and hired a damage expert, initial damage expert, who charged a half million dollars to look at whether the stock went up or down.

Now, the claim that they're saying that the complaint sought 100 million damages, they don't cite to the complaint. And there's a reason for that. Because it's not

in the complaint. Where that comes out of is Duarte Silva, the expert Duarte Silva, who put in his expert report that -- in a footnote, that he believed that there could be a potential damage of 100 million. So every time they say, this is what the plaintiff cost us to do, the plaintiff cost; no, the plaintiff did not seek those damages. They had already hired an expert who charged a half a million dollars. So for them to say, you know, this is all caused by the plaintiff is not true.

The point about the ediscovery, you understand ediscovery, Your Honor. We gave you a chart. This is not a document-intensive case. And they say it's the plaintiff, it's the plaintiff. We gave you the requests for productions. There were six very distinct categories in the plaintiff's first request for production. And you know what RDI did? They put the entire company server, the entire company server on a database, almost 2 terabytes. The allegations pertaining to Mr. Cotter's termination only went back one year. Nevertheless, they put the entire server on there. So for them to say, this is all caused by Cotter, no, it's caused by their mismanagement of this case. They just had a party with this case.

They only produced 71,000 pages of documents, not documents, pages of documents. And it was in rolling productions. They're saying now it was all because of us. It

was -- they took forever to get RDI to produce anything.

Your Honor asked about how the consulting fees, if it was a quarter. We gave you a chart and we added up all the consulting fees that they charged as, quote, "ediscovery costs." They came to about half, $455,000 in consulting fees. And we showed Your Honor the way that these consultants at the Navigant database vendor, how they billed their entries. "Client communication term reporting, client conference calls. Client conference calls, communication, assignment. Client conference calls," and hours and hours that were billed at attorney rates, at 350 per hour. They did searches, they did typical paralegal work. We shouldn't have to pay for that.

And, Your Honor, you have an example of a case where you didn't allow even close to the amount that they're seeking. And that's the In re DISH Network case. Now, in that case there are many more custodians. They have to --

THE COURT: But we were in a very short time frame in the DISH Network case, because the SLC did their investigation and we had a summary judgment motion. We were on that case, what, less than a year.

MS. LEVIN: Right. But those documents went back to 2008.

THE COURT: [Unintelligible].

MS. LEVIN: Here the plaintiff filed -- in 2015 he specifically limited his document requests to documents

starting in January '14. It was year earlier. And in the DISH Network case they have to search three different servers.

So what I'm saying, Your Honor, to get to the bottom of this, the consulting fees are outrageous. The sheer amount of ediscovery costs are outrageous given the relatively few documents that they produced. It just doesn't warrant even close to this.

So -- and the rest is in our briefs.

THE COURT: All right. Thank you.

The categories in the memorandum of costs and disbursement are retaxed for Number 3. The expert witnesses are reduced to a total of 250,000 for Mr. Clausner, 250,000 for Mr. Roll. Mr. Chavem's amount of one fifty-two is compensated. Mr. Foster, his amount of 201,000 is compensated. (Transcriber's note: All names above phonetic)

With respect to the statutory limitation the Court finds that, given the nature of this particular case, is it appropriate to exceed the statutory limitation, that the amounts that have been requested in large part by the defendants are excessive.

With respect to any costs by Mr. Gould, those costs are too late. Mr. Gould was successful on a motion for summary judgment almost a year ago at this point, so regardless of Reading's position in the case with indemnification, the motion is late.

With respect to Category Number 12, given the consulting that is included which may be more appropriate as a request for attorneys' fees or should have been included as expert expenses, depending upon how you categorize it, the amount is reduced to $450,000.

With respect to Category 13 the motion to retax is granted.

With respect to Category 14 the motion to retax is granted.

With respect to Category 15 the motion to retax is granted.

With respect to Category 16 the motion to retax is granted.

And with respect to Category 17 the motion to retax is granted.

Anything else?

MR. FERRARIO: Thank you, Your Honor.

THE COURT: 'Bye.

THE PROCEEDINGS CONCLUDED AT 9:49 A.M.

* * * * *

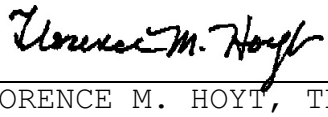
CERTIFICATION

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

AFFIRMATION

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

FLORENCE HOYT
Las Vegas, Nevada 89146



FLORENCE M. HOYT, TRANSCRIBER

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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Electronically Filed
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

Case Number: A-15-719860-B

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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Attorneys for Plaintiff, James J. Cotter, Jr.

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