

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, DC 20549

FORM 8-K

CURRENT REPORT

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

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

Reading International, Inc.

(Exact Name of Registrant as Specified in its Charter)

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

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

N/A

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

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

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

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

Emerging growth company

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

Item 8.01 Other Events.

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

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

Item 9.01 Financial Statements and Exhibits.

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

SIGNATURES

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

READING INTERNATIONAL, INC.

Date: February 23, 2018

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

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

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

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

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

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

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

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

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

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

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

About Reading International, Inc.

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

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

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

Forward-Looking Statements

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

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

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

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

The above list is not necessarily exhaustive.

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

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

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

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

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

I. PURPOSE

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

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

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

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

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

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

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

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

¹ Based on 696,080 shares of Class B Common Stock held by the Voting Trust, 427,808 shares of Class B Common Stock held by the Estate, and 21,497,717 shares of Class A Common Stock and 1,680,590 shares of Class B Common Stock outstanding on December 31, 2016.

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

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

II. COMPOSITION

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

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

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

III. MEETINGS

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

IV. RESPONSIBILITIES AND DUTIES

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

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

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

in connection with any Potential Change of Control Transaction;

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

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

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

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

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

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

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

Probate Division

Stanley Mosk Dept. - 9, Stanley Mosk Dept. - 9

BP159755

In re: COTTER, JAMES J. LIVING TRUST DTD 8/1/2000

**February 14, 2018
1:30 PM**

Honorable Clifford Klein, Judge

Joan Choi, Judicial Assistant
Terrilynn Edwards, Court Services
Assistant

Not Reported, Court Reporter
Luis A Flores, Deputy Sheriff

NATURE OF PROCEEDINGS: Ruling on Submitted Matter;

The following parties are present for the aforementioned proceeding:

No appearances.

Out of the presence of the court reporter, the Court makes the following findings and orders:

The Court having taken the above captioned matter under submission on Tuesday, January 16, 2018 hereby rules as follows:

The Court having taken the above captioned matter under submission on Wednesday, August 02, 2017 hereby rules as fully reflected in the Tentative Statement of Decision issued this date. A copy of the Tentative Statement of Decision is sent to the parties this date as indicated below.

The Court orders the Clerk to give notice.

**CLERK'S CERTIFICATE OF MAILING/
NOTICE OF ENTRY OF ORDER**

I, SHERRI R. CARTER, Executive Officer/Clerk of the above-entitled court, do hereby certify that I am not a party to the cause herein, and that on this date I served the Notice of Entry of the above minute order of February 14, 2018 upon each party or counsel named below by placing the document for collection and mailing so as to cause it to be deposited in the United States Mail at the courthouse in Los Angeles, California, one copy of the original filed/entered herein in a separate sealed envelope to each address as shown below with the postage thereon fully prepaid, in accordance with standard court practices.

Dated: February 14, 2018 _____

By: /s/ Joan Choi _____

Joan Choi, Deputy Clerk

Eric V. Rowen
Greenberg Traurig
1840 Century Park East
Suite 1900

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

Probate Division

Stanley Mosk Dept. - 9, Stanley Mosk Dept. - 9

BP159755

In re: COTTER, JAMES J. LIVING TRUST DTD 8/1/2000

**February 14, 2018
1:30 PM**

Los Angeles, CA 90067

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FILED
Superior Court of California
County of Los Angeles
FEB 14 2018
Sherri R. Carter, Deputy Clerk
By Joan Choi, Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

In Re: JAMES J. COTTER LIVING TRUST) Case No.: BP159755
)
ELLEN MARIE COTTER)
MARGARET COTTER) STATEMENT OF DECISION
Petitioners,)
)
vs.)
JAMES J. COTTER Jr.,)
Respondent.)

James Jr. (Jr.) filed an ex parte application for the appointment of a temporary trustee ad litem, based on the evidence introduced at the trial of the testamentary documents related to RDI. Although not required, this court chooses to issue a written statement of decision due to the complexity of the issues and the lengthy litigation. The court recognizes that an order was issued during the trial, at the request of the two daughters and the management of RDO, to seal documents relating to an assessment of RDI's financial stability. This order severely restricted all counsels' opportunity to cross examine expert witnesses, specifically Ron Miller, who was appointed to prepare such a report. The sealing order was issued at the request of the objectors to the ex parte application. This sealing order was later vacated after the conclusion of the evidentiary hearing with the consent of all the parties. A number of declarations were filed in lieu of witness testimony. The court considers the James Cotter Jr., as the party who filed the ex parte application, to have the burden of proof.

The court makes the following findings in this case:

Although James Cotter, Sr. (Sr.) intended for the voting stock and other assets of his trust to remain with the family, there is no explicit prohibition on their sale, as circumstances have changed, both as to the ability of his children to work cooperatively as executives in his company RDI, the extensive and protracted litigation between James Cotter Jr. and his two sisters Ellen Marie Cotter and Margaret Cotter (Ellen) (Margaret), the potential conflict of interest with any of these three children as to the grandchildren, and the lack of diversification with the extensive holdings in the cinema industry.

The court exercises its power pursuant to Probate Code section 15642 to appoint a temporary trustee ad litem, with the narrow and specific authority to obtain offers to purchase the RDI stock in the voting trust, but not to exercise any other powers without court approval, specifically the sale of the company or any other powers possessed by the permanent trustees. The trustees are not suspended or removed, pending future hearings if necessary. The court has previously ruled that the "hospital amendment" signed by James Cotter Sr. 2014. is invalid due to lack of capacity and undue influence.

The significant asset of Sr.'s estate at issue in this case is the company Sr. owned and managed, RDI, and specifically the company voting stock. RDI was his family business. RDI has a dual-class stock structure with non-voting (Class A) and voting (Class B) stock. At his death, Sr. owned roughly 1.2 million voting shares (70% of the voting stock), which are not actively traded, and about 2.2 million non-voting shares.

His assets also included citrus farms in Tulare and Fresno counties, consisting of over 2000 acres of orchards and a packaging house, Cecelia Packing, that processed citrus both from the its own orchards and other farms. The court does not sense that Sr.'s children have a sentimental attachment to these Central Valley orange groves as with a traditional family farm or ranch. These farms are not the subject of this decision.

Sr. owned numerous private investments and real estate, often as partnership shares of real-estate ventures. These investments include, among others, the properties known as Sutton Hill, Shadow View, Sorento, and Panorama, and a Laguna Beach condominium. Sr. owned an interest in the

120 Central Park South Cooperative Apartment that his daughter Margaret has lived in for over 20 years. Sr.'s Supplemental Executive Retirement Plan ("SERP") from RDI is worth approximately \$7.5 million.

TRUSTEE AD LITEM

Pursuant to Probate Code section 15642 the court is appointing a temporary trustee ad litem, with the narrow and specific authority to obtain offers to purchase the RDI stock in the voting trust. There is substantial discussion by the guardian ad litem for the grandchildren, in documents originally sealed, about the need for diversification in a company with principal holdings in the fluid cinema industry. The court also recognizes that it has not heard evidence at a trial on whether Jr. is qualified to serve in management in RDI, and whether his allegations against his sisters' mismanagement are supported by the evidence. Regardless of the trust's terms, it is illogical to construe that it guarantees Jr. a lifetime appointment as president or CEO of RDI, nor the same guarantees to his sisters.

Nevertheless, Jr.'s concerns are appropriate that due to the hostile relationship with his sisters, they should not be the trustees of his children's substantial interest in the stock and future of RDI. The court cannot make any definitive findings as to 1) whether Margaret and Ellen are properly exercising their fiduciary responsibilities to the beneficiaries, 2) if they were the most qualified persons to be appointed for the top executive positions at RDI, considering that Sr. apparently did not foresee such promotions, 3) whether the board is beholden to them for their own status on the board, 4) whether they could favor Margaret's children as opposed to Jr.'s by rejecting favorable offers to sell the company or award themselves lucrative salaries, 5) whether Margaret disbursed funds for her child's kindergarten and denied Jr.'s identical request, 6) whether they see any risk in the lack of RDI's diversification, and 7) whether they would remain as executives regardless of the company's performance. Even though the court has not made findings that the sisters legally engaged in fraud, they have confessed to serious errors in judgment when having Sr. sign documents, "ludicrous and sad" to use their own words, which raises questions as to whether Jr.'s children's large inheritance should be subject to someone with whom he will have no communication. Whether Margaret and Ellen should be removed from their fiduciary positions is very premature; the court lacks an evidentiary basis for such a decision at this time. But the

guardian ad litem entrusted with the interests of the grandchildren has petitioned for a temporary trustee ad litem to entertain offers to sell RDI, which the court is granting.

The court has carefully reviewed the testamentary documents to determine if the voting stock can be legally sold.

Sr.' intention and hopes that RDI remain in the family is obvious and undisputed, incorporating the phrase "for as long as possible" in the trust. He also refers to a possibility that the stock could be sold. He did not ask his lawyers to draft language to explicitly prohibit any such sale, even though his intentions to keep RDI in the family were discussed. As discussed previously, circumstances have changed, and one would assume that a businessman of Sr.'s described brilliance would not want RDI management to refuse to adjust business strategies to a rapidly changing world. The entertainment business is obviously undergoing technological changes, such as the growth of streaming and home video systems. The Cotter family is in disarray.

The court gives some weight to the trial testimony of Margaret's and Ellen's lawyers that the voting stock could be legally sold, but this was not conclusive. There was extensive discussion on this subject with two of the attorneys in court, including the sisters' expert witness. However, under the circumstances at a hearing, asking them these unanticipated questions at a trial, their opinions, even if deemed party admissions, are not conclusive. For example, Scot Kirkpatrick did not remember the exact language in Sr.'s trust. But there are also statements in public filings by Margaret and Ellen that the executors of Sr.'s will and the trustees of the voting trust have this authority to sell shares, which could be "monetized" if necessary.

Sr. used the word "hope". He absolved the trustees from any duty to diversify and directed that they should not do so (possibly to avoid the prudent investor rule.) Absolving someone from liability is not synonymous with forbidding the person from performing an act. These are words properly characterized as "precatory" rather than constituting a command. (*In re Estate of Marti* (1901) 132 Ca. 666, 671)

Respondent counsel for Jr. appropriately references the important distinction between permissive and mandatory provisions, citing the explanation in the Restatement 3d. of Trusts:

A trustee is not under a duty to make or retain investments that are made merely permissive by trust provision. Less clear is the degree to which the trustee may have to give special consideration to specially authorized investments, as against simply omitting them from serious consideration ...[T]he fact that an investment is permitted does not relieve the trustee of the fundamental duty to act with prudence ...Whether and to What extent a specific investment authorization may affect the normal duty to diversify the trust portfolio can be a difficult question of interpretation. Because permissive provisions do not abrogate the trustee's duty to act prudently and because diversification is fundamental to prudent risk management, trust provisions are strictly construed against dispensing with that requirement altogether.

The court is familiar with *Copley V. Copley* 126 Cal.App.3d 248, 288, which reversed a trial court appointment of an independent fiduciary, based on hostility alone between the trustees. The court did not believe that these conflicts and the risk of future litigation were proper grounds where there was insufficient evidence that the proper administration of the trust was not impaired. However, in this case there are additional factors, including the admissions of signing documents or having Sr. sign documents when he obviously lacked capacity, the concerns of the grandchildren's attorney about the security of the assets due to the lack of diversification in a rapidly changing industry, the sisters' appointment to the highest management positions at RDI, and the prompt rejection of an offer with minimal explanation to the shareholders or Jr., also a trustee, that could be beneficial to Jr.'s children. These children historically have only benefited from the stock price rather than any payment of dividends. Margaret herself testified that neither she nor Jr. wanted the other sibling to be a sole trustee over their children.

Perhaps the most important distinction with *Copley* is explained in *Getty v. Getty* (1988) 205 Cal.App.3d 134. "Appellants argue that whether or not there was a conflict of interest, where the trustor is fully aware of possible conflicts inherent in the appointment, the court will remove the trustee only for extreme grounds and not where there is a potential conflict of interest, citing *Copley v. Copley* (1981) 126 Cal. App.3d 248|. While this is a correct statement of the law, there is no showing here that the trustor knew of any potential conflict of interest. Cases stating the *Copley* rule rely on the conflict of interest being fully known to the appointing party. (*Estate of Gilliland* (1977) 73 Cal. App.3d 515, 528.)"

It is inconceivable to this writer, as stated in court, that Sr. ever foresaw this extensive and expensive litigation. We see siblings refusing to speak for years, with a son uttering a stream of obscenities to his mother, with his mother in turn disowning her son, and the hectic and pressured attempts with the lawyer de jour for an advantageous trust in Sr.'s final days. (In one response, Ellen and Margaret point out that the mother's estate was not a subject of the trial, and thus Jr. was not "disowned." The court is well aware of this fact, and obviously did not use "disown" as a legal term.)

The *Getty* court held, which is applicable to this case,

"The appointment of a trustee ad litem was a proper exercise of the court's general equity jurisdiction. Since the court has the power to remove a trustee entirely in the exercise of its general equity jurisdiction (Prob. Code, §§ 15642, 16420, 17000, former Civ. Code § 2283; *Estate of Schloss*, supra, 56 Cal.2d at pp. 254-255; *Fatjo v. Swasey* (1896) 111 Cal. 628, 635-636]; *Estate of Gilmaker* (1962) 57 Cal.2d 627, 630 the removal from the existing trustee of his power to conduct certain lawsuits and appointment of a trustee ad litem, where there is a conflict of interest, are also an exercise of that general equity jurisdiction. As courts may entirely remove a trustee and appoint a replacement (see *Bowles v. Superior Court* (1955) 44 Cal.2d 574, 584 appointment of a trustee ad litem with limited powers to conduct certain litigation is an intrinsically included exercise of the court's inherent equity power within its greater power to remove and replace the trustee."

The court-appointed expert Ron Miller has raised some important questions about the stability of RDI, specifically for interests of the beneficiaries, the grandchildren. As the shares have a low trading volume, only one reputable analyst has covered the stock. A strategy of diversification of the holdings would reduce the "downside risk of loss inherent in holding a highly-concentrated asset such as a stock, and creating liquidity and flexibility for the trustees allowing them to make adjustments to the portfolio as circumstances and economic conditions dictate (Ron Miller's report). As RDI does not pay dividends, the grandchildren's interest is completely dependent on the RDI's appreciation. As such, Mr. Miller expresses "grave concerns about the prudence of exposing the beneficiaries to such high risk." Other than selling stock, there are no other apparent ways to provide greater liquidity for the company. Prudence is best accomplished for an investment portfolio by some diversification of assets.

With respect to general economic conditions, there is no reason to anticipate that a change in economic conditions resulting from normal business cycles would dramatically impact the beneficiaries any more or less than the market in general,

assuming the proceeds of a sale would be invested in a diversified portfolio of equities and fixed income investments. However, retention of the RDI stock would subject the trust to potentially greater industry related and operating risk than might be expected in a diversified portfolio of investments across a variety of industries both foreign and domestic. (Ron Miller report)

Therefore were the beneficiaries to be in need of funds for their health, education, maintenance or support, the trustee would have no source of income or liquid assets from which to provide such distributions and would be forced to sell the stock to raise the liquidity necessary to meet the distribution requirements. With all or the trust assets concentrated in a single stock, this is potentially a risky strategy..." (Ron Miller report)

In their Request for Statement or Decision and Proposed Additional Findings filed September 18, 2017, counsel for Ellen and Margaret Cotter have raised many excellent questions with the 61 they proffered, some of which are premature because the actual sale of RDI stock is not before the court. As counsel correctly stated in a later response, "A statement of decision need not detail every piece of evidence considered and how the court was persuaded or not persuaded by each piece or evidence and the interplay of the evidence."

Although not required for the appointment of a temporary trustee, in this case a trustee with minimal powers, the court will address some of the questions. For example, Ellen and Margaret ask in question number 1 about the potential business disruptions RDI will suffer with the appointment of a trustee ad litem to solicit purchase offers for the RDI stock. The court has tried and will continue to try to minimize any such disruptions, but also recognizes that any future uncertainty with the appointment of a trustee ad litem pales in comparison to the original conduct of the three children. These questions would be of greater relevance if the Cotter family resembled Ozzie and Harriet. This is Nero fiddling while Rome is burning. Their actions have resulted in drastically different trust documents, one of which literally changed control of RDI as often as every January 1st, all signed by Sr., followed by this extensive hostile litigation, and the filing of the ex parte itself. Disruptions have not appeared to be a major concern of Sr.'s children. Whether the potential sale of the stock of RDI, or any company for that matter, would adversely impact the grandchildren cannot be determined before any offers have been tendered. The court emphasizes

in response to these questions that the trustee ad litem is not authorized to accept any offers. If necessary, the parties still have the right to a full trial on the merits.

Question 14 raises the issue of a present need for liquidity for the trust, which is addressed in Ron Miller's report, who though concerned about the lack of liquidity, is more concerned about the lack of diversification. Regarding question 15, the temporary trustee is not being appointed to alter or preserve the status quo, but to evaluate offers to buy the voting stock. However, there are many historical and well known examples of companies who chose to preserve the status quo to their ultimate detriment. But this discussion is better left for another day.

The court candidly does not understand question 21 regarding the "rate" of change in the cinema exhibition industry or national economy. The questions of potential changes in the cinema exhibition industry, the different assets of RDI, RDI's business plan, beginning with question 22 through 38 should be reflected in the share price of any offers to buy the voting stock, as they relate to the present and future value of the company and market conditions, and could be relevant should the court consider a sale following the temporary trustee's appointment. Ultimately, it is more likely that the market will better answer these excellent and relevant questions, rather than a parade of experts in a courtroom.

Regarding questions 39 and 40 about ways to mitigate risks, the court has not heard any proposals from any parties, nor any indication of plans to pay dividends. Questions 51 and 52 pertaining to Jim Jr.'s motivation are irrelevant as the court has clearly stated, as has the 730 expert and Ron Miller, that the concern is for the beneficiaries, the grandchildren. Questions about potential buyers can best be answered by a trustee ad litem soliciting buyers and a price for the voting shares, not by expert testimony.

A possible buyer has expressed interest in purchasing controlling shares of RDI in the voting trust. In these uncertain economic times, both with the national economy and the cinema industry, the court believes it is most prudent for the trustee ad litem to immediately research a possible sales price. A delay due to an appeal could make the court's ruling regarding a trustee ad litem in effect

moot. Losing a buyer is an imminent loss that comes within the ruling in *Sterling v. Sterling* (2015) 242 Ca4th 185, 199. The court has not authorized an actual sale. There is a necessity for immediate but limited action to determine if there are other prospective buyers, as well as the price the current interested buyer is prepared to pay, and also the parties to this litigation. The court finds Probate Code section 1310(b) to apply to these facts, which limits any stay due to an appeal.

CONCLUSION

The court has "lived" with this case over a year, and has often thought with much disappointment about the disintegration of what on the surface appeared to be at one point a united, successful and caring family. All three children were dedicated to the health and comfort of their father during his final clays. At times, this court has expressed some harsh words in their presence about each of them, but the court recognizes that the immense stresses of this litigation may not be indicative of their true character. A potential sale of stock in the voting trust of RDI is not the preferred outcome for any of the parties, nor for the court. The sisters ask the court in question 60 whether there is a more preferable outcome. Yes. Reconciliation. Family over money. As for other suggestions, at this point, the court looks to the three siblings.

Unfortunately, the court sees no evidence of any progress. The alternative of a sale should be explored for the benefit of the grandchildren, and perhaps this next generation can best carry out the hopes of James Cotter Sr.

BASED UPON THE FOREGOING, THE COURT RULES AS FOLLOWS:

1. A temporary trustee ad litem, with the narrow and specific authority to obtain offers to purchase the RDI stock in the voting trust, but not to exercise any other powers without court approval, specifically the sale of the company or any other powers possessed by the trustees. The parties shall agree on a trustee or submit three acceptable names to this court.
 2. Pursuant to Probate Code section 1310(b), the appointment of a trustee ad litem shall exercise the powers granted as if no appeal were pending and shall not be stayed.
 3. Each party shall bear their own costs.
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4. James Cotter Jr. shall prepare a judgment and order consistent with this statement of decision.
IT IS SO ORDERED.

Dated 2/14/18

A handwritten signature in cursive script, appearing to read "Clifford L. Klein", written over a horizontal line.

Clifford L. Klein
Judge of the Los Angeles Superior Court
