

**COURT OF CHANCERY  
OF THE  
STATE OF DELAWARE**

WILLIAM B. CHANDLER III  
CHANCELLOR

COURT OF CHANCERY COURTHOUSE  
34 THE CIRCLE  
GEORGETOWN, DELAWARE 19947

February 4, 2005

Joseph A. Rosenthal  
Rosenthal, Monhait,  
Gross & Goddess, P.A.  
P.O. Box 1070  
Wilmington, DE 19899

Seth D. Rigrudsky  
Milberg Weiss Bershad & Schulman, LLP  
919 North Market Street, Suite 411  
Wilmington, DE 19801

R. Franklin Balotti  
Anne C. Foster  
Lisa Schmidt  
Richards, Layton & Finger  
P.O. Box 551  
Wilmington, DE 19899

Andre G. Bouchard  
Joel Friedlander  
Bouchard, Margules & Friedlander  
222 Delaware Avenue, Suite 1102  
Wilmington, DE 19801

Robert K. Payson  
Stephen C. Norman  
Kevin R. Shannon  
Potter Anderson & Corroon LLP  
P.O. Box 951  
Wilmington, DE 19899

David C. McBride  
Young Conaway Stargatt & Taylor LLP  
P.O. Box 391  
Wilmington, DE 19899

A. Gilchrist Sparks, III  
S. Mark Hurd  
Morris, Nichols, Arsht & Tunnell  
P.O. Box 1347  
Wilmington, DE 19899

Lawrence C. Ashby  
Ashby & Geddes  
P.O. Box 1150  
Wilmington, DE 19899

Re: *In re The Walt Disney Co. Derivative Litig.*  
Civil Action No. 15452

Dear Counsel:

I have received the parties' submissions with respect to evidentiary objections and deposition designations. With the exception of certain objections detailed below, the remaining objections are hereby OVERRULED. The parties should note that many of the hearsay objections were overruled. To the extent, however, that the parties attempt to

use hearsay statements (within documents or testimony that have been admitted) to prove the truth of the matter asserted, the Court will accord no weight to those statements. If that information is to be used for a non-hearsay purpose, the Court will give the evidence the weight and consideration it is due. Furthermore, when certain statements are defined as non-hearsay, such as a statement by a party,<sup>1</sup> the law is clear that those statements are only admissible for the truth of the matter asserted when offered against the party that made that statement. The Court will only consider these statements when offered in accordance with the law.

Similarly, all objections with respect to expert reports have been overruled. Those reports are admissible under the applicable standards, but the Court will give varying weight to the different reports and diverse parts of those reports, as the Court, in its discretion as fact-finder, deems appropriate.

With respect to the exhibits withdrawn by plaintiffs that defendants have requested be reinstated and admitted,<sup>2</sup> those exhibits shall not be admitted into evidence and may not be cited by the parties in their post-trial briefs.

The objections to the following exhibits are hereby SUSTAINED on the following grounds:

- PTE 147—Hearsay; This exhibit may not be used to prove the truth of the matters asserted therein
- PTE 395—Hearsay
- PTE 396—Hearsay
- PTE 397—Hearsay
- PTE 400—Hearsay
- PTE 402—Hearsay

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<sup>1</sup> D.R.E. 801(d)(2).

<sup>2</sup> PTE 15, 71, 73, 171 (DD002568 only), 304, 388, 446, 509, 515, 559, 560 (WD 08778 only), 598, 608 and 700.

- PTE 411—Hearsay as to all defendants but Mr. Eisner
- PTE 469—Hearsay
- PTE 471—Hearsay
- PTE 489—Hearsay
- PTE 490—Hearsay
- PTE 581—Foundation and Relevance
- PTE 642—Foundation and Relevance to the extent that the receipts were not submitted by Mr. Ovitz to Disney for reimbursement or that such expenses were not reimbursed
- DTE 157—Relevance
- DTE 162—No foundation was laid that this document meets the requirements for a present sense impression, and it is therefore hearsay
- DTE 172—Relevance
- DTE 235—This is not evidence
- DTE 236—Relevance; The use of this document is limited to impeachment
- DTE 237—Relevance; The use of this document is limited to impeachment
- DTE 240—Relevance; The use of this document is limited to impeachment

The objections to the following deposition designations are hereby SUSTAINED

on the following grounds:

- Stephen Bollenbach (89:16-90:2)—Hearsay
- Michael Eisner (125:8-125:24; 489:15-490:2; 587:23-590:2; 590:12-591:12)—Hearsay and Foundation
- Robert Girdlestone (37:23-38:9)—Speculation
- Donald Ohlmeyer (27:22-28:17; 29:14-30:13; 33:13-33:25; 34:5-36:15; 38:7-39:14; 43:9-44:19; 45:13-54:3; 58:14-58:25; 64:22-66:8; 67:14-68:19; 69:16-71:12; 82:2-82:21)—Hearsay, Foundation, Speculation and Relevance
- Michael Rubel (152:21-153:18)—Relevance
- Irwin Russell (830:4-830:12; 832:13-833:25; 834:20-835:11; 841:19-21)—Foundation, Speculation and Leading

As a final note, the Court is in receipt of the parties' correspondence with respect to page limits to be placed upon the briefs to be filed in the upcoming months. It is the decision of the Court that plaintiffs' Opening Brief shall not exceed 100 pages, defendant Ovitz's Answering Brief shall not exceed 40 pages, the remaining defendants' Answering Brief shall not exceed 60 pages, and plaintiffs' Reply Brief shall not exceed 50 pages.

*These page limits represent the entire permitted length of the briefs, including facts, law,*

*argument, and footnotes.* In all other aspects, the parties' briefs shall conform to Court of Chancery Rule 171 and the briefing schedule previously established.

IT IS SO ORDERED.

Very truly yours,

*/s/ William B. Chandler III*

William B. Chandler III

WBCIII:amf