

HOFER, ET AL v. THE GAP, INC., ET AL  
DENROY SCARLETT

August 21, 2006

*Prepared for you by*



**Bingham Farms** | Ann Arbor | Detroit | Flint | Grand Rapids | Jackson | Lansing | Mt. Clemens

PHONE: 248.644.8888 FAX: 248.644.1120

[www.bienenstock.com](http://www.bienenstock.com)

DENROY SCARLETT  
August 21, 2006

1                   IN THE DISTRICT COURT OF THE UNITED STATES  
2                                 FOR THE DISTRICT OF MASSACHUSETTS  
3  
4     STEPHANIE HOFER and DOUGLAS HOFER,  
5                                 Plaintiffs,  
6                 vs.                                 Case No. 05-40170  
7     THE GAP, INC., EXPEDIA, INC.,  
8     and TURTLE BEACH TOWERS,  
9                                 Defendants.

---

10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

The Videotaped Deposition of DENROY SCARLETT,  
Taken at Turtle Beach Towers, Main Street,  
Ocho Rios, St. Ann, Jamaica, W.I.,  
Commencing at 11:46 a.m.,  
Monday, August 21, 2006,  
Before Rebecca J. Callow, CSR-5228, RPR.

DENROY SCARLETT  
August 21, 2006

1 APPEARANCES:

2

3 STEPHEN J. KUZMA

4 Stephen Kuzma Law Office

5 75 Federal Street

6 Suite 17

7 Boston, Massachusetts 02110

8 (617) 338-3020

9 Appearing on behalf of the Plaintiffs.

10

11 INDIA L. MINCHOFF

12 Russo & Minchoff

13 123 Boston Street

14 Boston, Massachusetts 02125

15 (617) 740-7340

16 Appearing on behalf of the Plaintiffs.

17

18 SCOTT D. FERINGA

19 Sullivan, Ward, Asher & Patton, P.C.

20 25800 Northwestern Highway

21 Suite 1000

22 Southfield, Michigan 48037

23 (248) 746-0700

24 Appearing on behalf of the Gap, Inc.

25

DENROY SCARLETT  
August 21, 2006

1 THOMAS T. REITH  
2 Burns & Levinson, L.L.P.  
3 125 Summer Street  
4 Boston, Massachusetts 02110  
5 (617) 345-3000

6 Appearing on behalf of Expedia, Inc.

7

8 ALSO PRESENT:

9 Lynsey Williams - Video Technician

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

DENROY SCARLETT  
August 21, 2006

1 Ocho Rios, St. Ann, Jamaica, W.I.,  
2 Monday, August 21, 2006  
3 11:46 a.m.

4  
5 VIDEO TECHNICIAN: We are now on the record.  
6 This is the videotape deposition of Denroy Scarlett  
7 being taken on Monday, August 21st, 2006. The time is  
8 now 11:46 and 40 seconds a.m. We are located at the  
9 Turtle Beach Towers in Ocho Rios, Jamaica. This  
10 deposition is being taken on behalf of the defendants  
11 in the matter of Stephanie Hofer and Douglas Hofer  
12 versus The Gap, Incorporated; Expedia, Incorporated;  
13 and Turtle Beach Towers. This is case number 05-40170  
14 FDS. This matter is being held in the United States  
15 District Court for the District of Massachusetts.

16 My name is Lynsey Williams, video  
17 technician. Will the court reporter swear in the  
18 witness and the attorneys briefly identify themselves  
19 for the record, please.

20 DENROY SCARLETT,  
21 was thereupon called as a witness herein, and after  
22 having first been duly sworn to testify to the truth,  
23 the whole truth and nothing but the truth, was  
24 examined and testified as follows:

25 MR. FERINGA: I'm Scott Feringa. I

DENROY SCARLETT  
August 21, 2006

1 represent Gap.

2 MR. REITH: Thomas Reith. I represent  
3 Expedia, Inc.

4 MS. MINCHOFF: India Minchoff, for the  
5 plaintiff, Stephanie Hofer and Douglas Hofer.

6 MR. KUZMA: Good morning, sir. My name is  
7 Stephen Kuzma. I represent Stephanie Hofer.

8 A. Good morning.

9 MR. KUZMA: And note my -- again, the  
10 objection -- the continuing objection to the authority  
11 granted or not granted for the deposition to go  
12 forward today.

13 EXAMINATION

14 BY MR. FERINGA:

15 Q. Can you give me your full name, please?

16 A. Denroy Scarlett.

17 Q. Mr. Scarlett, we introduced before. My name is Scott  
18 Feringa. I represent Gap. I'm going to be asking you  
19 some questions today. This is an artificial way of  
20 talking, and thus I would ask that before you answer  
21 you wait until any one of the lawyers is finished  
22 asking the question, then you can answer the question.  
23 We'll wait until after you're finished. We do that  
24 because our court reporter needs to get everything  
25 down accurately that is said, and if we talk over each

DENROY SCARLETT  
August 21, 2006

1 other, it's very difficult.

2 Additionally, sir, while we all understand  
3 nods of the head or "um-hmm"s or something like that,  
4 we would ask that your responses be all verbal,  
5 whatever they are.

6 A. Okay.

7 Q. It has to be verbal.

8 A. Okay.

9 Q. Okay. Finally, if you have any -- if you don't  
10 understand my question, if I'm unclear or if you're  
11 unclear with any of lawyers' questions, please tell  
12 them, I'm sure they'd be more than happy to rephrase  
13 questions for you. Is that fair, sir?

14 A. Okay. No problem.

15 Q. Okay. Mr. Scarlett, we are here today at a place  
16 called Turtle Beach Towers on Main Street in Ocho Rios  
17 Jamaica. Is that correct?

18 A. Yes, sir.

19 Q. And are you a citizen of Jamaica?

20 A. Yes, sir, I'm a citizen.

21 Q. How old are you, sir?

22 A. 24.

23 Q. Are you presently employed at Turtle Beach Towers?

24 A. Yes, sir, I'm presently employed here.

25 Q. And what is your position at Turtle Beach Towers, sir?

DENROY SCARLETT  
August 21, 2006

1 A. Night auditor/reception.

2 Q. And in March of 2004, were you also so employed?

3 A. Yes, sir.

4 Q. How long have you been employed at Turtle Beach  
5 Towers?

6 A. It's going forward to five years now.

7 Q. So does that mean that you would have been employed in  
8 either 2001, 2002?

9 A. Yes, sir.

10 Q. And has it always been as the night auditor or  
11 receptionist?

12 A. From ever since I've been here.

13 Q. And on March 18, 2004, do you know whether you were  
14 presently working at Turtle Beach Towers?

15 A. Yes, I was here, sir.

16 Q. How many days a week do you work?

17 A. Five days per week.

18 Q. And does that rotate Monday through Friday or is it  
19 times Tuesday through Sunday?

20 A. It's from -- it's normally -- it's from Thursday to  
21 Monday.

22 Q. Okay. In front of you, or to your left, sir, is a  
23 photograph that has been marked as Deposition Exhibit  
24 Number 1 for Mrs. Miller. Will you look at that,  
25 Exhibit Number 1? Is the reception area at which you

DENROY SCARLETT  
August 21, 2006

1 worked in March 18, 2004, located behind the glass  
2 doors that is shown on Exhibit Number 1?

3 A. Yes, sir. That's the reception area behind the glass  
4 there.

5 Q. And would you mind turning that around and showing  
6 that to the camera so we can see that? Thank you,  
7 sir.

8 And is there a sign on there that says  
9 "Tower Number 4"?

10 A. Yes, sir.

11 Q. And is this the tower in which -- or in front of which  
12 is -- the turtle pond is located?

13 A. Yes, sir. That's it.

14 Q. And are there any other turtle ponds on the property  
15 of Turtle Beach Towers?

16 A. Not that I have know of or have ever seen. That's the  
17 only one.

18 Q. Okay. Now, in terms of the glass doors that are shown  
19 on that picture, are those open or locked at various  
20 times during the day?

21 A. They're not locked with keys, but they're always like  
22 shut that way. They're not locked, but they're shut  
23 that way.

24 Q. If a guest comes in and at any time during the day or  
25 night, can the guest go through those doors?

DENROY SCARLETT  
August 21, 2006

1 A. Yes. They would have access to it 24 hours.

2 Q. And is the desk in which you sat behind those glass  
3 doors to the left?

4 A. Yes, sir. That's the desk.

5 Q. And thus if somebody came up and knocked on the doors  
6 you would hear them to let them in. Correct?

7 A. Yes. That would be correct; because I would be there  
8 24 hours for the eight hours working.

9 Q. What was your shift?

10 A. 11:30 to 7:30.

11 Q. 11:30 p.m. --

12 A. -- p.m. to 7:30 a.m.

13 Q. Now, do you have a memory of a guest, Ms. Stephanie  
14 Hofer, having an accident on March 18, 2004, in which  
15 she injured her leg?

16 A. Yes, sir.

17 Q. And you were on duty that evening?

18 A. Yes. I was the one on duty. I'm the night person.

19 Q. From the desk or from the lobby area, can you actually  
20 see the turtle pond?

21 A. Not from the -- not from behind the desk, but if  
22 you're in the lobby area outside, you could see the  
23 turtle pond.

24 Q. Where do you normally sit when you're on duty?

25 A. I'm behind the desk. I couldn't see the turtle pond.

DENROY SCARLETT  
August 21, 2006

1 Q. Is there a way from the desk area to see whether  
2 guests are approaching the glass doors?

3 A. You could see when they're approaching the glass  
4 doors.

5 Q. How?

6 A. When they're on the -- like the landing here stepping  
7 up, you could -- if you're looking out, if you're at  
8 the desk like, not sitting. If you're sitting, you  
9 couldn't see. But if you're like standing and maybe  
10 at the desk, you could see when they're coming in.

11 Q. When you're talking about the landing, sir, you're  
12 talking about the area in front on top of the stairs,  
13 if you'll show the camera. Is the landing where that  
14 mat is located?

15 A. Yes, sir.

16 MR. KUZMA: Objection.

17 BY MR. FERINGA:

18 Q. What -- I want to ask you what first drew your  
19 attention to something happening on that shift -- on  
20 your shift that day?

21 MR. KUZMA: Objection.

22 BY MR. FERINGA:

23 Q. Go ahead.

24 A. Someone screaming for help.

25 Q. And do you remember what that individual said?

DENROY SCARLETT  
August 21, 2006

1 A. I don't remember the exact words, but I think she was  
2 saying like, "somebody help me, somebody help me."  
3 Something of this sort.

4 Q. And the glass doors were shut?

5 A. Yes, sir.

6 Q. And so you could hear this lady screaming from the  
7 outside through the glass doors?

8 A. That's right.

9 Q. What did you do response to that, Mr. Scarlett?

10 A. Well, I went out immediately and I assisted her by  
11 getting her out of the pond.

12 Q. Okay. Now, we're talking about "her." Who is it that  
13 you assisted?

14 A. Well, it's a white female. Her -- I think her name  
15 was Stephanie, and she was like a thick-built person,  
16 you know. So she was in the pond.

17 Q. All right. I want to ask you, if you could go to the  
18 photograph and perhaps the -- if I might, sir, with  
19 respect to Exhibit Number 1, when you saw  
20 Ms. Stephanie, as you've described it, where  
21 specifically was she located in the pond? And if  
22 you'll show the members of jury.

23 A. She was -- her legs was in the pond down here and she  
24 was like hanging out of the pond, and her head was out  
25 like this.

DENROY SCARLETT  
August 21, 2006

1 Q. Which was -- when you say her legs were in the pond,  
2 there's a dark section on that photograph. Can you  
3 indicate where her legs were inference to that dark  
4 section?

5 A. It was down here.

6 Q. Do you want to use this to point, sir?

7 A. Like down here. This section. This area.

8 Q. Okay. And when you said she was spread out and her  
9 legs -- and her head was in a location, where was her  
10 head?

11 A. She was more like -- she was more resting on the bench  
12 here, leaning on the edge of the pond and the bench.

13 Q. So was she in the pond or outside the pond at this  
14 point?

15 MR. KUZMA: Objection.

16 A. She was part -- partly in the pond and partly out.

17 BY MR. FERINGA:

18 Q. What part of her was out?

19 A. The upper body.

20 Q. Where was -- where was her buttocks?

21 A. It was more in the pond.

22 Q. Okay. And in terms of where her legs were facing,  
23 where were her legs -- or were her feet facing toward  
24 the green shrubbery in the back of the pond where it  
25 says "Tower Number 4"?

DENROY SCARLETT  
August 21, 2006

1 MR. KUZMA: Objection.

2 A. They were facing that way.

3 BY MR. FERINGA:

4 Q. They were facing toward the tower?

5 A. She was here.

6 Q. Okay. Were her legs and feet still in the pond?

7 A. Yes, sir.

8 Q. You have to speak --

9 A. Yes. Yes, sir. I'm sorry.

10 Q. And her buttocks were in the pond?

11 A. Yes, sir.

12 Q. And her upper back was on the edge of the pond?

13 A. Yes, sir.

14 Q. When you first got to her, what did she say to you,  
15 what did you say to her?

16 A. Not exact words, but she said she was looking at the  
17 turtles. She was looking at the turtles and, you  
18 know, she was like crying and all of that, and she was  
19 just -- she was like repeating, saying that she was  
20 just admiring the turtles, and she thinks she slipped  
21 on something, you know. But when I went there, it was  
22 like -- she was -- she was actually too close to the  
23 edge of the pond.

24 Q. When you said she was too close to the edge of the  
25 pond, what do you mean by that, sir?

DENROY SCARLETT  
August 21, 2006

1 A. She was up on the edge here. She had to be up on the  
2 edge here to slip in the pond.

3 Q. Okay. Let me show you another exhibit. And this is  
4 an exhibit that has been marked as Exhibit Number 5,  
5 and this is a side view.

6 When you say she was close -- she was close  
7 to the edge of the pond, what -- you showed that,  
8 would you hold that up? When you said she was close  
9 to the edge of pond, where was she?

10 A. She would have to be here.

11 Q. So are you pointing to the section -- is that section  
12 close to the bench?

13 A. Yes. That's the section close to the bench.

14 Q. All right. And did she tell you specifically where  
15 she was standing before she fell into the pond?

16 A. No, she didn't; but, you know --

17 MR. KUZMA: Objection.

18 A. -- just looking at what happened, she must have been  
19 close to the edge of the pond to fall into it.

20 MR. KUZMA: Objection. Move to strike.

21 BY MR. FERINGA:

22 Q. Let me ask this question. Did she tell you, sir --  
23 first of all, did she tell you that she was attempting  
24 to look at the turtles?

25 MR. KUZMA: Objection.

DENROY SCARLETT  
August 21, 2006

1 A. Yes, sir.

2 BY MR. FERINGA:

3 Q. Okay. What specifically did she tell you?

4 MR. KUZMA: Objection. Asked and answered.

5 A. She told me that she was admiring the turtles. You  
6 know, she was just admiring the turtles.

7 BY MR. FERINGA:

8 Q. Did she how it was that when she was admiring the  
9 turtles that she ended up in the pond?

10 A. She said that she was just admiring the turtles and  
11 she slipped -- you know, just slipped in the pond. I  
12 don't know how, but she just slipped in the pond.

13 Q. Okay. Did she say -- when you asked her how did this  
14 happen, did she say anything about the fact that a  
15 flip-flop or her slipper broke which caused her to  
16 fall in the pond?

17 MR. KUZMA: Objection, that he even asked  
18 her that.

19 A. Well, I saw the flip-flop --

20 BY MR. FERINGA:

21 Q. No. My question was --

22 MR. KUZMA: No, if he could finish the --

23 MR. FERINGA: No. Move to strike.

24 MR. KUZMA: If the witness can finish the  
25 answer before interrupting.

DENROY SCARLETT  
August 21, 2006

1 MR. FERINGA: Mr. Kuzma, you have been  
2 interrupting --

3 MR. KUZMA: He's in middle of an answer.  
4 I'd like his full answer.

5 MR. FERINGA: I'm going to ask my question.

6 BY VIDEO TECHNICIAN:

7 Q. My question specifically is, did she tell you that  
8 the -- that she slipped because there was a broken  
9 flip-flop?

10 A. No, sir.

11 Q. All right. Did you see the flip-flop?

12 A. Yes, sir.

13 Q. Where did you see the flip-flop?

14 A. It was there.

15 Q. Okay. Where?

16 A. In the pond.

17 Q. All right. So show me where you saw the flip-flop.

18 A. I couldn't remember and tell you exactly where we took  
19 the flip-flop, but we took the flip-flop from out of  
20 the pond.

21 Q. So when you first saw the flip-flop it was in the  
22 pond?

23 A. Yes, sir.

24 Q. Was -- and was there any flip-flop on the staircase or  
25 the landing?

DENROY SCARLETT  
August 21, 2006

1 A. No, sir.

2 Q. All right. And so the flip-flop -- who was the one  
3 that took the flip-flop from the pond?

4 A. Well, I can't remember that. It was either me or  
5 Mr. MacKenzie.

6 Q. All right. And Mr. MacKenzie is who?

7 A. He's ones of the security who was on duty.

8 Q. All right. And we've heard his name before. Did he  
9 somehow assist Ms. Hofer to go to -- Stephanie Hofer  
10 to go to the hospital?

11 A. Yes, sir.

12 Q. Was it -- was it a taxi that drove or was it  
13 Mr. MacKenzie?

14 A. Mr. MacKenzie.

15 Q. Okay.

16 A. In his personal car.

17 Q. All right. So let me go back what you saw and what  
18 you did when you first spoke to Ms. Hofer.

19 When you asked her what she -- what  
20 happened, you said she was crying. Correct?

21 A. Yes, sir.

22 Q. Was she upset?

23 A. No, sir. Not from what I see. She was more in the  
24 crying mode. More crying.

25 Q. When you asked her a question, did she respond to you?

DENROY SCARLETT  
August 21, 2006

1 A. Yes. She did respond.

2 Q. And did you -- did you have any sense of whether she  
3 was coherent or incoherent when you talked to her?

4 MR. KUZMA: Objection.

5 A. She was responding.

6 BY MR. FERINGA:

7 Q. When you say she was responding, what do you mean by  
8 that, sir?

9 A. She was like, you know, replying to me.

10 Q. Okay. And when she was relying to you, did you get  
11 the sense that you two were communicating?

12 A. Yes, sir.

13 Q. Okay. So when you saw her in the pond, and the legs  
14 in the pond, did you see whether she was injured or  
15 not?

16 A. Yes. She was injured.

17 Q. And what drew you to the attention that she was  
18 injured, sir?

19 A. There was blood, and her legs were tearing.

20 Q. And so when you saw that, what did you attempt -- what  
21 did you do? What did you do next?

22 A. Well, immediately I couldn't just take her out by  
23 myself, so I called for the assistance of the  
24 security. And we took her out and put her on the  
25 bench --

DENROY SCARLETT  
August 21, 2006

1 Q. Can I stop you? The security that you called for  
2 assistance, was that Mr. MacKenzie?

3 A. Yes, sir.

4 Q. Okay. So you can't -- you couldn't lift her out of  
5 the pond, you needed some help, and Mr. MacKenzie came  
6 after responding to your calls. Is that right?

7 A. Yes.

8 Q. Then what did you do, sir?

9 A. We put her on the bench and we got some towels and so  
10 forth and then we -- I called my manager. And we  
11 tried to get in touch with a doctor, but there was no  
12 one there, so we shipped her off. Just put her in a  
13 car immediately, me and Mr. MacKenzie, and take her to  
14 the hospital.

15 Q. Let me ask you a couple of questions, if I might, to  
16 follow up with that, Mr. Scarlett.

17 You said that you called -- after you got  
18 Ms. Hofer out of the pond, you put her on the bench.  
19 Is that the bench that's shown in Exhibit Number 5?

20 A. Yes, sir. That's the bench.

21 Q. Okay. And, sir, then you made -- then you got some  
22 towels?

23 A. Yes.

24 Q. Was -- at this point in time, was there any other  
25 individual nearby or close by that identified herself

DENROY SCARLETT  
August 21, 2006

1 as a friend of Mrs. Hofer?

2 A. To my memory, not that I remember.

3 Q. Okay. So you got the towels and attempted to wrap the  
4 leg?

5 A. Yes, sir.

6 Q. Then you said that you called your manager. Is that  
7 Mrs. Miller?

8 A. Yes, sir.

9 Q. And what did you tell Mrs. Miller?

10 A. That there was this guest that had an accident and she  
11 fell in the pond. You know, asking her what to do,  
12 and she said call the doctor. And not getting through  
13 to the doctor, I think we went ahead and -- you know,  
14 Mr. MacKenzie had a car there, so she just asked him  
15 to assist by taking her to the hospital.

16 Q. Was there a -- was there any point in time at which  
17 somebody attempted to contact Mrs. Hofer's roommate?

18 A. I don't remember a roommate. I'm not remembering her  
19 roommate.

20 Q. So how long was it -- strike that.

21 You get on duty at 11:30?

22 A. Yes, sir.

23 Q. About how long into your shift did this take place?

24 A. Maybe about an hour.

25 Q. Okay.

DENROY SCARLETT  
August 21, 2006

1 A. Thereabouts.

2 Q. So -- and then from the time that you first noticed  
3 Mrs. Hofer to the time she left in Mr. MacKenzie's  
4 car, how long was -- was she there?

5 A. That's about -- from about 10 to 15 minutes,  
6 thereabouts.

7 Q. Okay. So during that 10 to 15 minutes, did Mrs. Hofer  
8 say anything more about how this accident occurred?

9 A. The only thing she said is that she was there admiring  
10 the turtles and she fell in the pond and --

11 Q. Okay. I'm sorry, sir.

12 A. Go ahead.

13 Q. At what point in time did -- was the flip-flop taken  
14 out of the pond?

15 A. I don't have any exact memory of that one.

16 Q. Was it after Mrs. Hofer left?

17 A. I couldn't tell. I couldn't tell.

18 Q. Okay. Who was it that cleaned up the pond?

19 A. There's a ground person who cleans up the pond.

20 Q. Okay. But in terms of -- in terms of the flip-flop,  
21 it was -- it was in the pond, it was either you or  
22 Mr. MacKenzie that would have taken it out, or someone  
23 else?

24 MR. KUZMA: Objection.

25 A. Could be someone else.

DENROY SCARLETT  
August 21, 2006

1 BY MR. FERINGA:

2 Q. Okay. Did you look at the condition of the flip-flop?

3 A. I'm not remembering.

4 Q. Did you see anything wrong with the flip-flop that  
5 came from the pond?

6 A. Flip-flop, flip-flop. I not remembering about a  
7 flip-flop. I wasn't -- that day I wasn't focusing on  
8 the flip-flop. You know, I was more focusing on the  
9 guest and her damage.

10 Q. Do you know what happened to the flip-flop that you  
11 removed from the pond?

12 A. I don't know of it.

13 Q. Okay.

14 A. I don't know where it is.

15 Q. After this 10 to 15 minutes where you were with  
16 Mrs. Hofer, and after she left for the hospital with  
17 Mr. MacKenzie, did you have any further contact with  
18 her at all?

19 A. No, sir.

20 Q. Did you --

21 A. Only with Mr. MacKenzie.

22 Q. Only with Mr. MacKenzie. Did you have any contact  
23 with the -- a lady by the name of Ms. Carrie LaBelle,  
24 who was purported to be the roommate with Ms. Hofer?

25 A. I don't remember any roommate.

DENROY SCARLETT  
August 21, 2006

1 Q. After that next morning when Mrs. Miller came in and  
2 came on duty, did you have a conversation with  
3 Mrs. Miller?

4 A. Yes. I spoke to Ms. Miller. I had to like, you know,  
5 talk to her, because she's my manager, before I go.

6 Q. And did you have any conversations with her about the  
7 accident that had occurred the night before with  
8 Mrs. Hofer?

9 A. Yes, sir.

10 Q. All right. And what essentially did you tell her?

11 A. Basically what I told Ms. Miller is that -- I told her  
12 what happened the night before and what did I do after  
13 and how everything run. And after Mr. MacKenzie  
14 reported that she was okay and everything was all  
15 right with her at the hospital and all of that, that  
16 was basically my report to Ms. Miller.

17 Q. Okay. Did you fill out anything in writing,  
18 Mr. Scarlett?

19 A. No, sir.

20 Q. After that conversation that you had with Mrs. Miller  
21 on the morning of now the 19th of March, did you ever  
22 have any further discussions with Mrs. Miller about  
23 this incident?

24 A. No, sir.

25 Q. You and I have spoken. Is that right?

DENROY SCARLETT  
August 21, 2006

1 A. Yes, sir. Yes.

2 Q. All right. And was that in person or by telephone?

3 A. By telephone.

4 Q. And do you remember what I asked you?

5 A. Some stuff. Not everything.

6 Q. Do you remember, did I go over questions that I would  
7 purport to ask with you at the deposition?

8 A. No.

9 Q. Did you agree in that telephone conversation to  
10 voluntarily appear to give a deposition in this  
11 matter?

12 A. Yes, sir.

13 Q. And our office and you have communicated by e-mail.  
14 Is that right?

15 A. Yes, sir.

16 Q. And you received a copy of the Notice of Deposition?

17 A. Yes, sir.

18 Q. Did you and I talk today before the deposition?

19 A. No. Only from like maybe a month or so ago, yes.

20 Q. Okay.

21 A. But not before today.

22 Q. Have you talked with any of the other lawyers, either  
23 Ms. Minchoff or Mr. Kuzma or Mr. Reith?

24 A. No, sir.

25 MR. FERINGA: I don't have any other

DENROY SCARLETT  
August 21, 2006

1 questions. Thank you, sir.

2 MR. REITH: I'll just state for the record,  
3 Thomas Reith for Expedia. At this point, I don't have  
4 any questions. I'll reserve my right to inquire to  
5 the extent Mr. Kuzma flushes something out that I have  
6 to inquire about.

7 MR. KUZMA: Thank you.

8 EXAMINATION

9 BY MR. KUZMA:

10 Q. Good morning, Mr. Scarlett.

11 A. Good morning.

12 Q. My name it is Stephen Kuzma. I'm here with India  
13 Minchoff, and we represent Stephanie Hofer, the one  
14 that got hurt on the day and night in question.

15 Sir, have you ever spoken with me before?

16 A. No, sir.

17 Q. Have you ever spoken with Attorney Minchoff before?

18 A. No, sir.

19 Q. Have we ever sent you any e-mails, as far as you know?

20 A. No, sir.

21 Q. Did you ever take any photographs or know whether  
22 anyone has taken any photographs of the accident  
23 scene?

24 A. No, sir.

25 Q. You stated a couple minutes ago that you had a

DENROY SCARLETT  
August 21, 2006

1 conversation with, Ms. Miller, your supervisor, the  
2 day after the accident or the morning of the accident?

3 A. Yes, sir.

4 Q. What time of day was that? About.

5 A. That would be like after nine, thereabouts, because  
6 Ms. Miller gets in the office like nine o'clock. So  
7 any time after that. That would be after nine  
8 thereabouts.

9 Q. And you testified that you told her everything about  
10 what had happened after the accident occurred. Right?

11 A. Yes, sir.

12 Q. Did you tell her anything about what you were told or  
13 what you observed before the accident occurred?

14 A. No, sir.

15 Q. That was a "no." Right?

16 A. No.

17 Q. The flip-flop that you saw in the turtle pond, what  
18 color was it? Do you recall?

19 A. No. I don't recall the color of the flip-flop.

20 Q. Was there one flip-flop in the turtle pond or two?

21 A. Don't recall how much was there.

22 Q. But you know there was at least one?

23 A. I'm not sure if it was one or two in the pond, or one  
24 was on her feet and the other one was in the pond.

25 I'm not sure.

DENROY SCARLETT

August 21, 2006

1 Q. All right. Okay, sir. And it is fair to say that you  
2 didn't see how this accident happened.

3 A. Yes, sir there that's fair to say.

4 Q. You did not?

5 A. No.

6 Q. Okay.

7 A. Because I was in the office, so I couldn't see.

8 Q. And when you say were in the office, is that an office  
9 that's behind the reception desk?

10 A. Yes, sir.

11 Q. Is it fair to say that you have music piped in into  
12 the lobby area?

13 MR. REITH: Objection.

14 A. I would have music, but it wouldn't be music that I  
15 couldn't hear what's going on outside, it would be  
16 very low.

17 BY MR. KUZMA:

18 Q. Okay. And is because it was at night?

19 A. Yeah.

20 Q. After the accident occurred -- I just want to be clear  
21 about this, sir. You were able to communicate with  
22 Ms. Hofer?

23 A. Yes, sir.

24 Q. She was responsive to your questions?

25 A. Yes, sir.

DENROY SCARLETT

August 21, 2006

1 Q. It was clear to you that she was badly injured at that  
2 time?

3 A. She was.

4 Q. Is it clear to you that she was badly injured?

5 A. Yes, sir, she was.

6 Q. And did you see the cut on her leg?

7 A. Yes, sir, I did.

8 Q. Was it fair to say that it was a deep cut that you  
9 saw?

10 A. It was a really bad cut.

11 Q. Was there blood all over the turtle pond?

12 A. Yes, sir. There was blood all over the turtle pond.

13 Q. Did it turn the turtle pond water red?

14 A. It did. It did. It did.

15 Q. When you saw at least one of the flip-flops, was it  
16 floating on top of the water?

17 A. I can't recall remembering seeing a flip-flop, sir.  
18 I'm trying to remember if there was a flip-flop in the  
19 pond or whatnot. I didn't see a flip-flop afterwards,  
20 so I'm trying to remember.

21 Q. Okay. I believe you said -- you already testified  
22 that you did see at least one flip-flop in the turtle  
23 pond. Right? You did say that earlier?

24 A. No. I don't remember saying that.

25 Q. You don't remember saying that?

DENROY SCARLETT  
August 21, 2006

1                                   What is Mr. MacKenzie's first name?

2    A.    I don't know his first name, because he doesn't work  
3           with my company, so -- he's just a security company.  
4           They change them pretty often.

5    Q.    Okay.  And the security company is hired by Turtle  
6           Beach Towers?

7    A.    Yes, sir.

8    Q.    And was he working at the front gate at the time of  
9           the accident or in the lobby?

10   A.    He was -- I think he was a person doing the patrol for  
11          the night, so he was the one moving around.

12   Q.    Has he seen -- strike that.

13                                Have you seen Mr. MacKenzie recently?

14   A.    No, sir.

15   Q.    Do you know what happened to Mr. MacKenzie?

16   A.    No, sir.

17   Q.    Do you know whether he is alive?

18   A.    No.  I don't know if he's alive.

19   Q.    Is the reason why you used Mr. MacKenzie's vehicle to  
20          transport Stephanie Hofer to the hospital because you  
21          didn't want to wait for a taxi to take her?

22   A.    Well, it was an emergency, and that was the quickest  
23          vehicle I could get access to, so I used  
24          Mr. MacKenzie's car.

25   Q.    I'm not sure if you were asked this earlier, but do

DENROY SCARLETT  
August 21, 2006

1           you know what happened to the flip-flops at the scene  
2           of the accident?

3    A.    No, sir.

4    Q.    But there is a maintenance crew employed by Turtle  
5           Beach Towers to clean up the premises?

6    A.    Yes, sir.

7    Q.    Is it fair to say that you utilized -- when I say  
8           "you," I mean Turtle Beach Towers, used their services  
9           to clean out the turtle pond?

10   A.    Yes, sir.

11   Q.    How -- and, again, I believe you said it was about 10  
12           or 15 minutes from the time that you saw her in the  
13           turtle pond from the time that she was taken away by  
14           Mr. MacKenzie?

15   A.    Yes, sir.

16   Q.    Did you see Ms. Hofer carrying anything into the car?

17   A.    No, sir.

18   Q.    Now, you testified that she also said to you when you  
19           arrived at the scene of the accident that she slipped  
20           on something. Do you remember testifying to that?

21                   MR. REITH: Objection.

22   A.    Not slipping on something. She slipped. Not on  
23           something. She slipped when she -- she must -- would  
24           have been at the edge of pond to slip.

25   BY MR. KUZMA:

DENROY SCARLETT  
August 21, 2006

1 Q. Okay. Now, I'm not going to ask you to guess. Okay?

2 Do you understand that, sir?

3 A. That's okay.

4 Q. I'm simply asking you did she say that she slipped?

5 A. Yes, she said that she slipped.

6 Q. So that was her words. Correct? "Yes"?

7 A. Yes, sir.

8 Q. And then you said that you believed that she was too

9 close to the edge? Did you say that?

10 A. Yes.

11 Q. But you now you didn't see how it happened. Right?

12 A. No, sir.

13 Q. So that's a guess on your part. Right?

14 A. Yes.

15 Q. When you spoke with Ms. Miller the next day about what

16 had happened, how long was that conversation? About.

17 A. Maybe about 15 minutes. I don't remember.

18 Q. And everything that you said in response to

19 Mr. Feringa's questions about what you said to her in

20 that conversation or what she said you, you've told us

21 the whole conversation -- right? -- as you remember

22 it?

23 A. Well, I am not remembering the whole conversation that

24 I had with Ms. Miller on that day.

25 Q. All right. But that's as best you can recall as to

DENROY SCARLETT

August 21, 2006

1 what you said to Attorney Feringa?

2 A. Yeah. We went through what happened the night before  
3 and, you know, if she has been stabilized and  
4 everything's okay, and all of that.

5 Q. Now, what shift were you working that night into the  
6 day?

7 A. 11:30 p.m. to 7:30 p.m. -- a.m. A.m. Sorry.

8 Q. So you stayed after your tour of duty until Ms. Miller  
9 showed up. Correct? "Yes"?

10 A. Yes.

11 Q. Did you ever fill out an accident report?

12 A. No, sir.

13 Q. Do you know what the accident reporting procedure is  
14 at Turtle Beach Towers when a guest gets injured?

15 A. Well, normally we would make a report, like write it  
16 down, and we would normally get in touch with  
17 Ms. Miller because she's the person of authority. So  
18 once report it to she, and she would be the one who  
19 takes it from there.

20 Q. Sir, how long have you worked for Turtle Beach Towers?

21 A. It has been going four to five years.

22 Q. Have you ever made out an accident report?

23 A. No, sir.

24 Q. Did you make out an accident report in the case?

25 A. No, sir.

DENROY SCARLETT  
August 21, 2006

1 Q. Why not?

2 A. I made a report to Ms. Miller by the phone, but I  
3 didn't make a written down. I made a report to  
4 Ms. Miller.

5 Q. And why didn't you?

6 A. Well, I think reporting it to Ms. Miller by the phone,  
7 she would take everything from there. She's where the  
8 buck stops, so, you know...

9 Q. Mr. Scarlett, Ms. Miller just testified Expedia  
10 representatives would inspect the hotel premises.  
11 Have you ever seen anyone from Expedia inspecting the  
12 hotel premises during the time that you've been an  
13 employee here?

14 MR. REITH: Objection.

15 You can answer.

16 A. I couldn't tell you, because I'm a night person. So  
17 if an Expedia persons come in to inspect the property,  
18 that would have been in the day. So I don't work day  
19 shifts. I work nights only.

20 BY MR. KUZMA:

21 Q. All right. But were you aware that Expedia did that?  
22 Whether you saw him here physically or not, where you  
23 aware that Expedia inspects the premises --

24 MR. REITH: Objection.

25 BY MR. KUZMA:

DENROY SCARLETT  
August 21, 2006

1 Q. -- when you're not here.

2 A. I'm not sure of that. I wasn't sure of that.

3 Q. You're not aware of that?

4 A. No. I'm not.

5 Q. Is it fair to say that Ms. Miller would be in a better  
6 position to know that fact than you would be?

7 A. Yes, sir.

8 Q. Because she --

9 A. She's the manager.

10 Q. She's the one that's in charge. Right?

11 A. Yes, sir.

12 Q. If you can, sir, would you look at that photograph  
13 that my brother counsel showed you? I think you  
14 pointed to what you described to be a dark area as to  
15 where you saw Stephanie Hofer. Can you take that  
16 photograph and hold it up to the jurors?

17 All right. And you pointed to the dark  
18 area. That's where you saw Stephanie Hofer. Right?

19 A. Right.

20 Q. Now, that dark area, what is located at that dark  
21 area?

22 A. There is like some -- what do you call it, like some  
23 blocks, or -- blocks or concrete slabs, something of  
24 the sort, in the pond that the turtle would normally  
25 go on and like get sunlight and so forth.

DENROY SCARLETT  
August 21, 2006

1 Q. And part of that area is covered with algae, the  
2 water -- that is the part of the blocks that are  
3 covered by water?

4 MR. REITH: Objection.

5 A. Not to the top.

6 BY MR. KUZMA:

7 Q. Not the top?

8 A. The top is out --

9 Q. Right.

10 A. -- because that's where the turtle and go and get  
11 sunlight.

12 Q. Yeah; but the part that is underneath the water is  
13 covered with algae. Correct?

14 A. I'm not sure. Because if we cleaned it like almost  
15 every day or every other day, they're supposed to  
16 clean the algae out.

17 Q. All right. You can put that photograph down.

18 Mr. Scarlett, how many times in the time  
19 period that you've worked at Turtle Beach Towers have  
20 you walked up and down those stairs?

21 A. That's maybe about a thousand times or so forth.

22 Q. All right. And --

23 A. Or more.

24 Q. All right. Without looking at the photograph, how  
25 many steps are there leading from the walkway into the

DENROY SCARLETT  
August 21, 2006

1 lobby?

2 A. There is a landing coming from the road down the  
3 bottom.

4 Q. And how many steps?

5 A. And that would be like one, two steps. For the  
6 landing where the mat is, that would be just one step  
7 up.

8 Q. One step up. And then -- what? -- one step into the  
9 lobby?

10 A. Yes, sir.

11 Q. So how many altogether?

12 A. One step into the lobby. No? That would be one step  
13 up to the landing, and then into the lobby would be  
14 the same flat area going into the front desk.

15 Q. Mr. Scarlett, when you are working the night shift,  
16 are you the person in charge of the hole hotel at  
17 least during the night shift?

18 A. I'm in charge of the front desk with three other  
19 security who patrol the property.

20 Q. And when you arrive to work, are you made aware of how  
21 many guests you have on the premises?

22 A. Yeah. Because -- well, I do -- I'm doing the night  
23 auditing, so I know the house count of the guests who  
24 is staying in house.

25 Q. All right. Can you tell me percentage-wise how much

DENROY SCARLETT  
August 21, 2006

1 of Turtle Beach Towers was booked with guests that  
2 night? Approximately.

3 A. I cannot recall that, sir. That cannot be recalled.

4 Q. You can't recall?

5 A. No, sir.

6 Q. Where was the bathroom in the reception area?

7 A. Where was the bathroom?

8 Q. Yeah. Was there a bathroom in the reception area?

9 A. It was to your right. It was to your right as you  
10 enter in.

11 Q. When you saw the flip-flop that you testified to  
12 earlier, did you happen to see whether it was damaged  
13 at all?

14 A. I can't recall seeing the flip-flop damaged or  
15 something of the sort. This flip-flop -- I don't  
16 recall seeing the flip-flop. I'm not remembering  
17 that.

18 Q. Was the first time you became aware that Stephanie  
19 Hofer was at the resort at the time that you  
20 discovered her after she called for help?

21 A. Could you rephrase that?

22 Q. Yeah. The first time you became aware that Stephanie  
23 Hofer was here, was that when you realized that she  
24 was hurt?

25 A. Yes, sir.

DENROY SCARLETT  
August 21, 2006

1 Q. Can you tell me approximately how many people were  
2 around the lobby area at the time of the accident?

3 A. I was the --

4 MR. REITH: Objection.

5 A. -- only person in the lobby at work, but there were  
6 security on duty, and they weren't in the lobby area.  
7 They were at their posts and one was patrolling.

8 BY MR. KUZMA:

9 Q. Was there a crowd outside when you arrived --

10 A. No, sir.

11 Q. -- to see Stephanie Hofer?

12 A. No, sir.

13 Q. So it's just you and her?

14 A. Say again?

15 Q. When you saw her in the turtle pond, or at least  
16 partially in the turtle pond, it was just you and her?

17 A. Yes, sir.

18 MR. KUZMA: I have no further questions.

19 Thank you.

20 A. You're welcome.

21 MR. FERINGA: No questions.

22 EXAMINATION

23 BY MR. REITH:

24 Q. Mr. Scarlett, I have just two quick questions. I want  
25 to direct your attention to when you came out upon

DENROY SCARLETT  
August 21, 2006

1 Mrs. Hofer. Okay?

2 A. Pardon me?

3 Q. I want to direct your attention to the time when you  
4 came out of the lobby and saw Ms. Hofer. Okay?

5 I believe you testified earlier that you and  
6 Ms. Hofer spoke when you came out and found her.

7 Correct?

8 A. Yes, sir.

9 Q. All right. And when you spoke to Ms. Hofer, did she  
10 tell you she fell in pond because it was dimly lit?

11 MR. KUZMA: Objection.

12 A. No, sir.

13 BY MR. REITH:

14 Q. When you spoke to Ms. Hofer, did she tell you she fell  
15 in the pond because there was no railing?

16 A. No, sir.

17 MR. REITH: I have no further questions.

18 MR. FERINGA: No questions.

19 MR. KUZMA: Okay. We're done. Thank you,  
20 sir.

21 VIDEO TECHNICIAN: We are concluding this  
22 deposition. The time is 12:29 and 31 seconds p.m.

23 (The deposition was concluded at 12:29 p.m.

24 Signature of the witness was not requested by

25 counsel for the respective parties hereto.)

DENROY SCARLETT  
August 21, 2006

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

CERTIFICATE OF NOTARY

STATE OF MICHIGAN )  
 ) SS  
COUNTY OF LIVINGSTON )

I, Rebecca J. Callow, a Notary Public in and for the above county and state, do hereby certify that the above deposition was taken before me at the time and place hereinbefore set forth; that the witness was by me first duly sworn to testify to the truth, and nothing but the truth; that the foregoing questions asked and answers made by the witness were duly recorded by me stenographically and reduced to computer transcription; that this is a true, full and correct transcript of my stenographic notes so taken; and that I am not related to, nor of counsel to either party nor interested in the event of this cause.

\_\_\_\_\_  
Rebecca J. Callow, CSR-5228  
Notary Public,  
Livingston County, Michigan

My Commission expires: January 13, 2011

DENROY SCARLETT  
August 21, 2006

1	INDEX TO EXAMINATIONS	
2		
3	Witness	Page
4	DENROY SCARLETT	
5		
6	EXAMINATION	
7	BY MR. FERINGA:.....	5
8	EXAMINATION	
9	BY MR. KUZMA:.....	25
10	EXAMINATION	
11	BY MR. REITH:.....	38

12		
13	INDEX TO EXHIBITS	
14		
15	Exhibit	Page
16	(Exhibits not offered.)	

17  
18  
19  
20  
21  
22  
23  
24  
25