

HOFER v. THE GAP, INC., ET AL

STEPHANIE HOFER

October 13, 2006

Prepared for you by



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STEPHANIE HOFER
October 13, 2006

1 VOLUME: III
PAGES: 355 to 458
2 EXHIBITS: 12 to 26
3

4 UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS
5

6 Civil Action No. 05-40170 FDS
7

STEPHANIE HOFER and DOUGLAS)
8 HOFER,)
Plaintiffs,)
9)
v.)
10)
THE GAP, INC., EXPEDIA,)
11 INC., and TURTLE BEACH)
TOWERS,)
12 Defendants.)
13

14 CONTINUED VIDEOTAPED DEPOSITION OF
15 STEPHANIE HOFER, called as a witness on
16 behalf of the Defendant, The Gap, Inc.,
17 pursuant to the applicable provisions of the
18 Federal Rules of Civil Procedure, before
19 Jeanette N. Maracas, Registered Professional
20 Reporter and Notary Public in and for the
21 Commonwealth of Massachusetts, at the Offices
22 of Morrison Mahoney, LLP, 250 Summer Street,
23 Boston, Massachusetts, on Friday, October 13,
24 2006, commencing at 1:10 p.m.
25

STEPHANIE HOFER
October 13, 2006

1 APPEARANCES:

2

3

LAW OFFICES OF RUSSO & MINCHOFF

4 By: India Minchoff, Esq.

123 Boston Street

5 Boston, Mass. 02125

For the Plaintiffs.

6 E-mail: India@russominchofflaw.com

7

MORRISON MAHONEY, LLP

8 By: Meredith M. Lasna, Esq.

250 Summer Street

9 Boston, Mass. 02210

For The Gap, Inc.

10 E-mail: Mlasna@morrisonmahoney.com

11

BURNS & LEVINSON, LLP

12 By: Thomas T. Reith, Esq.

125 Summer Street

13 Boston, Mass. 02110

For Expedia, Inc.

14 E-mail: Treith@burnslev.com

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Ralph Scopa, Videographer

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STEPHANIE HOFER
October 13, 2006

1 I N D E X

2

Testimony of: Page

3

Stephanie Hofer

4 (Resumed)

5 (by Mr. Reith) 359,445,451

(by Ms. Minchoff) 440,450

6

7

8 E X H I B I T S

9

No. Page

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STEPHANIE HOFER
October 13, 2006

1 P R O C E E D I N G S

2 VIDEOGRAPHER: Good afternoon. We

3 are now on the record. This is the

4 videotaped deposition of Stephanie Hofer

5 being taken October 13, 2006. The time is

6 1:10 p.m. We are located at Morrison

7 Mahoney, 250 Summer Street, Boston, Mass.

8 This deposition is being taken on behalf of

9 the defendant in the matter of Hofer versus

10 The Gap, Case No. 05-40170 FDS, U.S. District

11 Court of Massachusetts. My name is Ralph

12 Scopa, videotape operator.

13 Will the court reporter swear in the

14 witness and the attorneys briefly identify

15 themselves for the record, please.

16 MS. MINCHOFF: Attorney India

17 Minchoff for Stephanie Hofer.

18 MS. LASNA: Meredith Lasner for The

19 Gap, Inc.

20 MR. REITH: Thomas Reith on behalf

21 of Expedia, Inc.

22 STEPHANIE HOFER, Resumed

23 A witness called for examination

24 by counsel for the Defendant, The Gap, Inc.,

25 having been first duly sworn, was examined

STEPHANIE HOFER
October 13, 2006

1 and testified as follows:

2 EXAMINATION, Continued

3 BY MR. REITH:

4 Q. Ms. Hofer, I introduced myself again, Thomas
5 Reith. We've met before. We started my
6 examination of you on your second day of
7 deposition going back a little while now, if
8 you recall.

9 A. Yes, I do.

10 Q. And just to go over the groundrules again
11 so we can get back up to speed, today I'm
12 going to be asking you some questions and,
13 unfortunately, because I've gone second in
14 questioning, things may seem a little bit
15 broken up, but I'll do my best to keep things
16 in a logical flow so we stay with each other,
17 okay?

18 A. Yes.

19 Q. Another reminder, that you and I need speak
20 in terms of verbal responses and to allow
21 each other to finish my question and then
22 allow you to finish your answer, okay?

23 A. Okay.

24 MR. REITH: Can you mark that as 12.

25

STEPHANIE HOFER
October 13, 2006

1 (Exhibit 12 marked for
2 identification.)

3 Q. I'm just going to put before you a document
4 that's been marked as Exhibit 12 for
5 identification today. It's entitled Notice
6 of Continued Videotaped Deposition Duces
7 Tecum directed to Plaintiff Stephanie Hofer.
8 Do you see that document before you?

9 A. Do I? Yes.

10 Q. Do you recognize that document?

11 A. Yes.

12 Q. And are you appearing here today pursuant to
13 that notice of deposition?

14 A. Yes.

15 MS. MINCHOFF: Objection.

16 Q. Do you see where it starts down the bottom
17 of the page, plaintiff's counsel and
18 plaintiff are required to bring the
19 following --

20 MS. MINCHOFF: I'm just going to
21 take a look at it since you didn't provide me
22 a copy, if you don't mind.

23 MR. REITH: Not at all.

24 (Pause)

25 MR. REITH: I'd just state for the

STEPHANIE HOFER
October 13, 2006

1 record it's the same one that's been issued,
2 just a repeat.

3 Q. Do you see down the bottom of that page, Ms.
4 Hofer, it says, "plaintiff's counsel and
5 plaintiff are required to bring the following
6 documents, records and things to said
7 deposition"?

8 A. Yes, I do.

9 Q. You see how it continues on from Page 1 to 2
10 and then to 3?

11 A. Yes.

12 Q. Did you bring any documents here with you
13 today?

14 A. No, I did not.

15 Q. And why not?

16 MS. MINCHOFF: Objection. I've made
17 a formal objection to the document request
18 maintained in the notice of deposition.

19 Q. Shifting our focus now on -- you can put that
20 document aside -- to the booking of the trip
21 through Expedia, did you give Carrie
22 permission to book the trip for you via
23 Expedia.com?

24 A. Yes, I did.

25 Q. Who chose to go to Jamaica for the trip?

STEPHANIE HOFER
October 13, 2006

1 MS. MINCHOFF: Objection. Asked and
2 answered.

3 A. Mutual decision.

4 Q. Who chose to go to Turtle Beach Towers?

5 MS. MINCHOFF: Objection. Asked and
6 answered. You can answer.

7 A. Carrie.

8 Q. Do you know if anyone at Expedia recommended
9 Turtle Beach Towers to Carrie?

10 MS. MINCHOFF: Objection.

11 A. No, I do not know.

12 Q. Do you know if anyone at Expedia recommended
13 Turtle Beach Towers to you?

14 A. No.

15 Q. Before Carrie booked the trip, did you and
16 she discuss using Expedia.com versus another
17 online booking site?

18 A. I didn't discuss that with Carrie.

19 MS. MINCHOFF: If you can remember
20 to pause to give me a second to object before
21 you answer the question so the court reporter
22 is not typing over both of our responses at
23 the same time.

24 A. Yes. I'm sorry.

25 MS. MINCHOFF: If I'm going to

STEPHANIE HOFER
October 13, 2006

1 object.

2 A. Okay.

3 Q. I should have reminded you of that one, too.

4 When did you understand that Carrie booked
5 the trip using Expedia.com?

6 A. After she booked it.

7 Q. Did you make any direct payment to Expedia in
8 connection with the trip?

9 MS. MINCHOFF: Objection.

10 A. No, I did not.

11 Q. Did you directly communicate with anyone at
12 Expedia prior to the booking the trip?

13 A. No.

14 MS. MINCHOFF: Objection.

15 Q. Did you directly communicate with anyone at
16 Expedia after booking the trip?

17 MS. MINCHOFF: Objection.

18 A. No.

19 Q. Did you directly communicate with anyone at
20 Expedia after Carrie booked the trip?

21 A. No.

22 Q. Did you directly communicate with anyone
23 at Expedia after you hurt yourself in
24 Jamaica?

25 MS. MINCHOFF: Objection.

STEPHANIE HOFER
October 13, 2006

1 A. No.

2 Q. So as between you and Carrie, is Carrie the
3 only person who spoke with, communicated,
4 excuse me, with Expedia in connection with
5 the trip?

6 MS. MINCHOFF: Objection.

7 A. Yes. Excuse me. Could you say that one more
8 time?

9 MR. REITH: Do you mind repeating it
10 back because I know I had a pause in between
11 there.

12 (Question read)

13 A. She did not speak with anybody from Expedia,
14 as far as I know. She communicated via the
15 Expedia website.

16 Q. Okay. During the process where you and
17 Carrie discussed the possibility of booking
18 a trip, did you visit Expedia.com at all?

19 A. No.

20 Q. Did you visit Expedia.com after the booking
21 of the trip?

22 MS. MINCHOFF: Objection.

23 A. I can't recall.

24 Q. Did you visit Expedia.com at any point after
25 you hurt yourself in Jamaica?

STEPHANIE HOFER
October 13, 2006

1 A. Yes.

2 Q. When?

3 A. I can't recall.

4 Q. Was it in connection with the trip to
5 Jamaica?

6 A. It was out of curiosity to check the website.

7 Q. To check the website for what?

8 A. Turtle Beach Towers.

9 Q. What did you find?

10 A. Not much. It's a very limited website.

11 Turtle Beach Towers does not have its own and
12 you have to go through Expedia to get any
13 information, and that's what I did.

14 Q. Did you try to go through any other websites
15 to get any information on Turtle Beach
16 Towers?

17 A. No.

18 Q. Did you try to Google Turtle Beach Towers?

19 A. Yes.

20 Q. What did you find?

21 A. Nothing.

22 Q. After you hurt yourself in Jamaica, did you
23 file any police reports in Jamaica?

24 MS. MINCHOFF: Objection.

25 A. No.

STEPHANIE HOFER
October 13, 2006

1 Q. After you hurt yourself in Jamaica, did you
2 file any incident reports with the hotel?

3 MS. MINCHOFF: Objection.

4 A. I did not myself.

5 Q. Did anyone else file any incident reports
6 with the hotel?

7 A. I do not know.

8 Q. After you hurt yourself in Jamaica, did you
9 make any reports to anyone about the
10 incident?

11 MS. MINCHOFF: Objection. Including
12 medical personnel, anybody?

13 Q. Anybody.

14 MS. MINCHOFF: Objection.

15 A. Could you make that more specific?

16 Q. I will. Did you make any report to anyone
17 at Expedia about hurting yourself in Jamaica?

18 MS. MINCHOFF: Objection.

19 A. No, I did not.

20 Q. What did you do to prepare for today?

21 A. I reviewed my prior testimony, briefly
22 skimmed through and just double-checked my
23 documents that I have at home, my copies of
24 the prior deposition.

25 Q. What documents did you check at home?

STEPHANIE HOFER
October 13, 2006

1 A. The copy of the first and second sessions.

2 Q. And the exhibits to those sessions?

3 A. I have a file that I perused.

4 Q. Does that file contain the exhibits to your
5 first two days of deposition?

6 MS. MINCHOFF: Objection. Define
7 "exhibits."

8 Q. During your first few days of deposition,
9 do you recall Attorney Feringa and myself
10 putting documents before you for you to take
11 a look at?

12 A. Yes, I do.

13 Q. And to testify on?

14 A. Yes, I did.

15 Q. In that file at home, are any of the
16 documents that Attorney Feringa and I put
17 in front of you in that?

18 A. I don't believe so.

19 Q. Did you review any other deposition
20 transcripts besides your own prior to coming
21 in today?

22 A. Excuse me?

23 Q. Prior to coming here today?

24 A. No, I did not.

25 Q. Did you and your mother ever discuss how the

STEPHANIE HOFER
October 13, 2006

1 trip was booked?

2 A. No.

3 Q. Drawing your attention back to the discussion
4 for the first two days about disability
5 payments, I believe as of the last time we
6 were here, you had not started to receive
7 payments, is that correct?

8 A. I can't recall what the date was.

9 Q. As of today, as you sit here today, have you
10 started to receive those payments?

11 A. Yes, I have.

12 Q. And how much are those payments?

13 A. They're approximately 800 or \$900 a month.

14 Q. Does it vary per month?

15 A. No.

16 Q. And are they sent to you in check form?

17 A. They are directly deposited into my private
18 account.

19 Q. Where is that private account?

20 A. At my bank.

21 Q. What's your bank?

22 A. IC Credit Union.

23 Q. Where is IC Credit Union?

24 A. In Leominster.

25 Q. Again, forgive me for jumping around. This

STEPHANIE HOFER
October 13, 2006

1 really is, for a lack of a better term, a
2 kind of cleanup session where I go through
3 issues that were raised the first couple of
4 days that I think need to be followed up on,
5 okay? So I'm going to shift gears a little
6 bit. I'm going to go to your physical state
7 after the accident, all right? Is there
8 anything that you could do before the
9 accident that you can no longer do today?

10 A. Yes, there is.

11 Q. And what are those things?

12 MS. MINCHOFF: Objection. Asked and
13 answered. You can answer.

14 A. There are many things that I cannot do that
15 I could do before I became disabled. Would
16 you like me to --

17 Q. If you could list them, please.

18 A. It's probably too long of a list to remember
19 all of them, but there are many that I
20 will start with, exercise being one, routine
21 daily activities, outdoor activities,
22 traveling, hiking, walking dogs, playing with
23 the dogs, running, golfing, water-skiing,
24 walking for long periods of time, skating,
25 sledding, apple-picking, working, laundry,

STEPHANIE HOFER
October 13, 2006

1 cooking, playing softball. There are so
2 many, there's so much.

3 Q. If that's all you have for now, that's fine.

4 A. I could go on and on and on. I mean, I could
5 fill up pages of things, you know, but I
6 would have to think. There are things that
7 you don't necessarily do every day, you know,
8 and those things, there are many things I
9 can't do out of a normal routine day, but
10 then there are also many activities that I
11 can't participate in, you know, like during
12 certain times of year, you know.

13 Apple-picking is a big thing right now,
14 you know. Work is my biggest issue, I can't
15 work, but, you know, summer activities,
16 dancing, enjoying, enjoying things that I
17 used to enjoy. It's very difficult. Put me
18 at a wedding and it's not enjoyable because
19 I can't participate so much, so the list
20 could go on and on and on.

21 Q. As for those things you just listed, I'm
22 going to ask a couple follow-up questions,
23 all right? How often did you exercise per
24 week before you were injured?

25 A. Daily.

STEPHANIE HOFER
October 13, 2006

1 Q. What did you do daily?

2 A. I went to a gym and I walked every day with
3 my dogs.

4 Q. When you say outdoor activities, what type
5 of outdoor activities were you referring to?

6 A. Walking outside, going to the beach and
7 walking through the sand, climbing trees
8 for apple-picking, running in the yard with
9 the dogs and the kids, up and down the stairs
10 to the decks. Swimming is very difficult on
11 my leg. Outdoor activities, just being
12 outdoors.

13 Q. I'm staying silent because I just want to
14 make sure you're finished so let me know
15 when you're done.

16 A. No, no, I understand. There are so many.
17 I think that's all I have right now that
18 comes to mind.

19 Q. When was the last time you traveled before
20 your accident?

21 A. Probably a year before my accident.

22 Q. How often did you travel before your
23 accident?

24 MS. MINCHOFF: Objection.

25 A. Relatively often.

STEPHANIE HOFER
October 13, 2006

1 Q. What do you mean by "relatively often"?

2 A. Once every six months or so.

3 Q. How many times have you traveled since your
4 accident?

5 A. None.

6 MS. MINCHOFF: Objection.

7 Q. Prior to your accident, when was the last
8 time you golfed?

9 A. The fall prior.

10 Q. How many times per year did you golf prior
11 to your accident?

12 A. I couldn't count.

13 Q. More than five?

14 A. Yes.

15 Q. More than ten?

16 A. Yes.

17 Q. More than 12?

18 A. Yes.

19 Q. Where did you golf?

20 A. All over.

21 Q. All over Massachusetts?

22 A. Yes.

23 Q. All over New England?

24 A. A few other places in New England, a couple
25 of times in Florida.

STEPHANIE HOFER
October 13, 2006

1 Q. Prior to your accident, when was the last
2 time you water-skied?

3 A. The summer before.

4 Q. How often did you water-ski the summer before
5 your accident?

6 A. Once or twice.

7 Q. When was the last time you skated prior to
8 your accident?

9 A. The winter before.

10 Q. How often did you skate?

11 A. Every weekend.

12 Q. That's prior to your accident?

13 A. Yes.

14 Q. Have you skated since your accident?

15 A. No, I have not.

16 Q. Have you water-skied since your accident?

17 A. No.

18 Q. Have you golfed since your accident?

19 A. No.

20 Q. Have you tried to golf since your accident?

21 A. No.

22 Q. Have you tried to water-ski since your
23 accident?

24 A. No.

25 Q. Have you tried to skate since your accident?

STEPHANIE HOFER
October 13, 2006

1 A. No.

2 Q. Prior to your accident, when was the last
3 time you went sledding?

4 A. Probably it could have been a few weeks.

5 Q. Do you know for sure?

6 A. No, I don't know for sure.

7 Q. How many times did you go sledding prior to
8 your accident?

9 A. Many times. We live on a hill.

10 Q. Have you gone sledding since your accident?

11 A. No, I have not.

12 Q. Have you tried?

13 A. No.

14 Q. When was the last time you played softball
15 prior to your accident?

16 A. The year before my accident, the summer
17 before.

18 Q. And how often per year did you play softball
19 prior to your accident?

20 MS. MINCHOFF: Objection.

21 A. Twice a week.

22 Q. Was it seasonal?

23 A. Yes.

24 Q. During the spring and summer?

25 A. Yes.

STEPHANIE HOFER
October 13, 2006

1 Q. Have you played softball since your accident?

2 A. No.

3 Q. Have you tried?

4 A. No.

5 Q. Prior to your accident, when was the last
6 time you went dancing?

7 A. Very relatively close.

8 Q. I'm sorry?

9 A. Relatively close to the time of my accident.
10 I couldn't give you an exact.

11 Q. Was this going out for a night or at some
12 sort of function?

13 A. At a function, yeah.

14 Q. How often did you dance prior to your
15 accident on average per year?

16 A. On average per year, depends on how many
17 weddings I went to.

18 MS. MINCHOFF: Objection.

19 Q. Were weddings the only place you --

20 A. Weddings or company functions, yeah.

21 Q. But aside from weddings and company
22 functions, did you dance anywhere?

23 A. No.

24 Q. Have you danced since your accident?

25 A. No.

STEPHANIE HOFER
October 13, 2006

1 Q. Have you tried?

2 A. Yes.

3 Q. When was the last time you tried?

4 A. At my mother's wedding this summer.

5 Q. I'm not sure how to ask this so I'll just
6 ask this straight away. Does it hurt to
7 drive?

8 MS. MINCHOFF: Objection.

9 A. I drive an automatic, and since my leg hurts
10 all day, it's uncomfortable, but I rest it
11 to the side on the rest block so as far as
12 making it any worse, no. It's just
13 uncomfortable.

14 Q. I believe you've testified that it's also
15 uncomfortable, sometimes painful to walk,
16 correct?

17 A. Yes.

18 Q. And do you walk with the assistance of a
19 cane?

20 A. Yes, I do, and a brace.

21 Q. I believe we talked about that the first
22 day, correct?

23 A. I believe so.

24 Q. Have you looked into motorized assistance
25 with your mobility?

STEPHANIE HOFER
October 13, 2006

1 A. No.

2 Q. Why not?

3 MS. MINCHOFF: Objection. Calls for
4 medical conclusion. You can answer.

5 A. I don't think I have an answer for that. I
6 don't think I require it.

7 Q. Have you consulted with anybody about
8 motorized assistance to get around?

9 MS. MINCHOFF: Objection. I'm just
10 going to state for the record that a lot of
11 your questions seem to be questions that
12 were previously asked and actually testified
13 to through the first two days. I think
14 there's over 500 pages of deposition
15 transcript already.

16 MR. REITH: There's only 354,
17 actually, prior to today, and the questions
18 I ask may sound familiar because a lot of
19 them came from Mr. Hofer's deposition. These
20 questions have not been asked by my office
21 to Ms. Hofer. I will try to limit the
22 duplication over anything that Mr. Feringa
23 asked, though. Fair enough?

24 MS. MINCHOFF: Fair enough.

25 Q. And this is one of those topics that Mr.

STEPHANIE HOFER
October 13, 2006

1 Feringa did touch upon. The concept of the
2 vocational counseling, do you recall -- just
3 for the record I'd state that the microphones
4 do cause much problems during these things,
5 but that's fine?

6 Back to the things at hand, do you
7 recall Mr. Feringa asking you about seeking
8 out a vocational counselor?

9 A. I recall him mentioning it, yeah.

10 Q. And if I recall correctly, you corrected him
11 and said that it wasn't a vocational
12 counselor that you met with, correct?

13 MS. MINCHOFF: Objection.

14 A. Correct.

15 Q. Have you spoken to someone who could assist
16 you with determining what type of job you
17 may be able to do since our last discussion,
18 our last day of deposition? Excuse me.

19 A. Could you repeat that?

20 Q. Sure. I'll rephrase it. It was a little
21 bit of a tough question. Since our last time
22 that we met for deposition, have you met
23 with any sort of counselor as to possible
24 occupations?

25 A. No.

STEPHANIE HOFER
October 13, 2006

1 Q. Now, directing your attention to the accident
2 itself, okay, when the flip-flop allegedly
3 gave way, what foot was that flip-flop on?

4 MS. MINCHOFF: Objection. Asked and
5 answered. You can answer.

6 Q. I just don't recall --

7 MS. MINCHOFF: Attorney Reith, I'm
8 going to allow her to answer to a certain
9 extent, but this was definitely covered more
10 than once in the 350 or so pages of her prior
11 deposition testimony.

12 A. The flip-flop that broke was on my right
13 foot.

14 Q. Here we go again with jumping around a little
15 bit, okay? There was a line of questioning
16 from your first day of deposition on Page
17 193, and I can show it to counsel to the
18 extent they request, where Attorney Feringa
19 asked his question, not mine, you were not
20 supposed to be drinking alcohol while you
21 were on Prozac, correct? Ms. Minchoff
22 objected, and then the answer was, "you know
23 what? It's not written in law and my doctor
24 says you can have a couple of drinks, just
25 don't overdo it." Do you remember that line

STEPHANIE HOFER
October 13, 2006

1 of questioning?

2 MS. MINCHOFF: Objection.

3 A. I would have to look through it to
4 actually...

5 Q. Do you mind if I present it to you --

6 A. No.

7 Q. -- just to give you the context.

8 A. I do recall this line of questioning.

9 Q. Which doctor said that to you?

10 A. Probably, and this would just be a good
11 guess, it would be the doctor that prescribed
12 that medication.

13 Q. Which doctor was that?

14 A. I believe that was Dr. Frazier.

15 Q. Again, is Dr. Frazier your primary?

16 A. My primary care.

17 Q. That's all I have for that. Thank you. Are
18 you still in therapy?

19 MS. MINCHOFF: Objection.

20 Q. Let me ask it again. Are you still in
21 physical therapy?

22 A. Yes.

23 Q. How often do you go to physical therapy?

24 A. It's just been revised and I'll be going two
25 days a week.

STEPHANIE HOFER
October 13, 2006

1 Q. At any point did you have a break in the
2 physical therapy, stop going?

3 A. Yes, I did have a break.

4 Q. When was that break?

5 A. Probably -- I couldn't put a time frame on
6 it. There was a time, I think it was a
7 four-month break where they discharge you
8 because you've reached a certain point, and
9 then your next appointment your doctor
10 re-evaluates you and decides whether or not
11 you need to be back in physical therapy, and
12 I just got that decision this past week.

13 Q. Who made that decision?

14 A. My neurologist.

15 Q. Just remind me the name, please.

16 A. Dr. Stojanovic, S T O J A N O V I C.

17 Q. Have you discussed this lawsuit with your
18 mother since her deposition?

19 A. No.

20 Q. Have you discussed the lawsuit with Carrie
21 since Carrie's deposition?

22 A. No.

23 Q. I'm not sure if we discussed this during
24 the first few days, and if we did, forgive
25 me. Did you speak with your husband on the

STEPHANIE HOFER
October 13, 2006

1 phone after your injury while you were in
2 the hospital?

3 MS. MINCHOFF: Objection.

4 A. I believe I did.

5 Q. Do you recall what was said during that
6 discussion?

7 MS. MINCHOFF: Objection.

8 A. I don't recall. Sorry.

9 MS. MINCHOFF: Don't answer.

10 MR. REITH: Basis?

11 MS. MINCHOFF: I'll withdraw the
12 objection as to whether you can recall
13 whether you remember what you said during a
14 conversation that you're not sure you had.
15 You can answer that question.

16 A. I was very out of it. I don't recall what
17 was said.

18 Q. Do you remember the general substance of it?

19 A. No.

20 Q. Prior to injuring your foot in Jamaica,
21 did you have any injuries that would have
22 impaired your mobility?

23 A. No.

24 Q. This is a good thing. I'm flipping through
25 as quickly as possible here. We're going to

STEPHANIE HOFER
October 13, 2006

1 go through some documents now, okay?

2 MR. REITH: India and Meredith, just
3 for purposes of procedure, the complaint to
4 this action was marked as Exhibit 11 last
5 time. The original complaint, I believe it
6 was with Scott because he retained the
7 originals, so my thought was today, for
8 examination purposes, I was just going to
9 mark a copy of that as Exhibit 11A. Does
10 anybody have any objection to that?

11 MS. MINCHOFF: I don't even think
12 you need to mark it, Tom. I think you can
13 just show her a copy of it.

14 MR. REITH: It just doesn't have an
15 exhibit marker on it.

16 MS. MINCHOFF: Let me just take a
17 look at it.

18 (Pause)

19 MR. REITH: The only issue is I
20 think this copy that I'm presenting here has
21 a copy of the civil action cover sheet.
22 Okay. It had everything?

23 MS. MINCHOFF: It was stapled,
24 the copy provided to me as Exhibit 11 from
25 Attorney Feringa has attached to the

STEPHANIE HOFER
October 13, 2006

1 complaint, which is eight pages, two
2 additional pages, one being the civil cover
3 sheet and the second or the last page, being
4 the second page of the civil cover sheet.

5 MR. REITH: Right. If you don't
6 mind, just pass that copy to her.

7 MS. MINCHOFF: And I'll hold on to
8 this for now.

9 MR. REITH: Absolutely.

10 Q. Ms. Hofer, the document that's been put
11 before you was originally marked as
12 Exhibit 11 to, I believe, the second day of
13 your deposition. This is a copy of that
14 document, okay?

15 A. Okay.

16 Q. Just directing your attention to Page 2 of
17 the complaint, you see the seventh paragraph
18 there?

19 A. Yes.

20 Q. Actually, strike that because I asked you a
21 question about Paragraph 7 last time.
22 Turning your attention to Paragraph 8, do
23 you see that paragraph?

24 A. Yes, I do.

25 Q. Do you see where it says, "all access to its

STEPHANIE HOFER
October 13, 2006

1 information on the Internet is via Hyperlinks
2 such as the one provided through Expedia"?

3 MS. MINCHOFF: Objection.

4 A. Yes.

5 MS. MINCHOFF: Hypertextlinks.

6 MR. REITH: The term used in the
7 complaint?

8 MS. MINCHOFF: You said Hyperlinks.
9 The term used in the complaint is that
10 Hypertextlinks.

11 MR. REITH: Thank you.

12 Q. Do you know if any other websites use
13 Hypertextlinks to access Turtle Beach Towers?

14 A. Not that I know of, no. I don't know.

15 Q. Paragraph 9 refers to a shuttle to the
16 resort. Do you see that?

17 A. Yes, I see it.

18 Q. Who provided the shuttle to the resort, what
19 company?

20 A. I don't remember.

21 Q. Does Jamaica Tours remind you?

22 A. It does ring a bell, but I'm not sure. I
23 know there may be a couple, but that could
24 be it.

25 Q. Was the shuttle that took you to the resort

STEPHANIE HOFER
October 13, 2006

1 hired by the resort?

2 MS. MINCHOFF: Objection.

3 A. I have no idea.

4 Q. How did you know to get on that shuttle to
5 the resort?

6 A. When we got off the plane, you carry, had
7 some vouchers and you bring them to a desk
8 and they assign you to wherever it is you're
9 supposed to go. Somebody brings you to a
10 certain area and they say this is how you'll
11 be getting to your hotel.

12 Q. Do you recall what company that person was
13 who said this is how you'll get to your
14 hotel?

15 A. No, I don't.

16 Q. Was that person from Expedia?

17 A. I don't recall.

18 Q. Did that person identify themselves as being
19 from Expedia?

20 A. I don't recall.

21 Q. Did that person have a name badge on that
22 says they were an Expedia employee?

23 A. I can't recall that.

24 Q. Was it a man or woman?

25 A. I can't recall that.

STEPHANIE HOFER
October 13, 2006

1 Q. Turning your attention to Paragraph 11 on
2 Page 3, do you see where it says, "stairway
3 was very dimly lit and did not contain
4 guardrails"?

5 A. Yes.

6 Q. How dimly lit was the staircase?

7 A. I can't recall.

8 Q. Could you see the stairs going up to the
9 lobby?

10 A. Yes.

11 Q. Could you see the lobby door?

12 A. Yes.

13 Q. Could you see the turtle pond?

14 A. I knew it was there.

15 Q. How did you know it was there?

16 A. When we arrived, it was light out.

17 Q. Aside from when you arrived, do you recall
18 seeing it on your way up the stairs to the
19 lobby that evening?

20 A. Yes.

21 Q. And when you turned to go back down the
22 stairs, could you see the staircase on the
23 way down?

24 MS. MINCHOFF: Objection.

25 A. Yes.

STEPHANIE HOFER
October 13, 2006

1 Q. Could you see your foot, your right foot?

2 MS. MINCHOFF: Objection.

3 A. At what point?

4 Q. As you were walking down the stairs.

5 A. I wasn't exactly looking at me feet when I
6 was going down until something happened, till
7 I had the accident. When I looked at my
8 feet, yes, I saw them.

9 Q. Were there any lights out around the lobby
10 entrance?

11 A. I can't recall that.

12 Q. You state that the staircase did not contain
13 guardrails, correct?

14 A. Correct.

15 Q. What is the importance of there being a
16 guardrail by the turtle pond?

17 MS. MINCHOFF: Objection.

18 A. Could you repeat that, please?

19 Q. Sure. What difference does it make that
20 there were no guardrails next to the turtle
21 pond on the staircase?

22 MS. MINCHOFF: Objection.

23 A. It's my opinion that if there's not a
24 guardrail and somebody stumbles, they've got
25 nowhere to go but down, nothing to hang on

STEPHANIE HOFER
October 13, 2006

1 to as they fall or nothing to block them from
2 falling into the turtle pond.

3 Q. Can you state with certainty if there was a
4 guardrail there, you wouldn't have fallen
5 into the turtle pond?

6 MS. MINCHOFF: Objection.

7 A. I can't say with certainty, but it's a
8 probability that I wouldn't have fallen.

9 Q. You base that opinion on what?

10 MS. MINCHOFF: Objection.

11 A. That opinion is just my opinion. It's common
12 sense.

13 Q. Paragraph 19, draw your attention to that,
14 please.

15 A. Yes.

16 Q. "In the future, Stephanie will require
17 reconstructive and plastic surgery in her
18 left leg." Do you see where it states that?

19 A. Yes, I do.

20 Q. Have you undergone any reconstructive and
21 plastic surgery?

22 A. Not yet.

23 Q. Do you have any plans to in the future?

24 A. Yes.

25 Q. When in the future?

STEPHANIE HOFER
October 13, 2006

1 A. When my doctors and I are absolutely positive
2 that my healing from the actual accident is
3 done so that when you go for plastic surgery,
4 you're not, you know that everything is
5 healed and you can do that now.

6 Q. Have you discussed the timetable with your
7 doctors for that?

8 A. They can't give me a timetable.

9 Q. Turning your attention to Count 5, which is
10 entitled Negligent Failure to Warn Expedia,
11 on Page 7, just let me know when you're
12 there.

13 A. Negligent Failure to Warn Expedia?

14 Q. Yes. Do you see that?

15 A. Yes.

16 Q. Do you see where it says Expedia is an agent
17 for the resort, No. 46?

18 A. Yes, I see that.

19 Q. What facts do you personally have that
20 Expedia is an agent for the resort?

21 MS. MINCHOFF: Objection.

22 A. Can I answer?

23 Q. Yes.

24 MS. MINCHOFF: Yes.

25 A. Since Expedia is the sole entity that

STEPHANIE HOFER
October 13, 2006

1 conducts business, you know, therefore, they
2 act as a -- Expedia acts as a booking agent
3 for the hotel, but it also acts as a booking
4 agent for the clients, and as far as that
5 goes -- we're in 46, you said?

6 Q. Or just in general I'm asking. What
7 information do you have that Expedia is an
8 agent for the resort?

9 A. I don't have any specific information aside
10 of, you know, that they conduct business
11 with the resort.

12 Q. Do you know if Expedia has a contract with
13 the resort?

14 MS. MINCHOFF: Objection.

15 A. I do not know that.

16 Q. Do you know if the contract between Expedia
17 and the resort states specifically that
18 Expedia is not an agent for the resort?

19 MS. MINCHOFF: Objection.

20 A. I'm unaware of any of that.

21 Q. Do you see where it says, "Expedia breached
22 its duty to Stephanie in failing to warn
23 her" --

24 MS. MINCHOFF: Where are you, Tom?

25 MR. REITH: I was going to get

STEPHANIE HOFER
October 13, 2006

1 there.

2 Q. Do you see where it says, "Expedia breached
3 its duties to Stephanie in failing to warn
4 her of the stairway's dangerous condition" in
5 Paragraph 49?

6 A. Yes, I see that.

7 Q. How would Expedia have warned you, Stephanie
8 Hofer, of the stairway's alleged dangerous
9 condition?

10 MS. MINCHOFF: Objection.

11 A. I believe that Expedia does inspections for
12 the hotels that they represent and there were
13 obviously dangerous situations that weren't
14 mentioned through Expedia for this hotel.
15 Therefore, if Expedia is acting as my travel
16 agent and their booking agency, then I
17 believe that there is a breach. Either
18 Expedia should have been able to warn
19 potential customers that there is potentially
20 unsafe situations through their inspectors.

21 Q. What are the alleged dangerous conditions
22 you're talking about here?

23 A. I'm talking about the railings not
24 surrounding the turtle pool, for one, for
25 actually the most important. As far as other

STEPHANIE HOFER
October 13, 2006

1 dangerous situations around the hotel, I'm
2 sure there are more, but this one is the
3 only one I'm aware of.

4 Q. What is the only one that affected you
5 personally, though?

6 MS. MINCHOFF: Objection.

7 A. The only -- I'm sorry.

8 Q. You can answer.

9 A. The only one I'm aware of is --

10 MS. MINCHOFF: Objection.

11 Q. You can answer.

12 A. Can you repeat it now, please?

13 MR. REITH: Can you please repeat
14 the question to the witness?

15 (Question read)

16 A. What is the only one what?

17 Q. Well, I understand from your complaint --
18 correct me if I'm wrong -- that you
19 complained that dangerous conditions were
20 the dimly-lit staircase and a lack of
21 railings, is that correct?

22 A. That is correct.

23 Q. Those are the only two conditions that you
24 presently complain of that affected you and
25 allegedly caused your injury?

STEPHANIE HOFER
October 13, 2006

1 A. They are the only situations that affected
2 me.

3 Q. Do you know when the hotel was built?

4 A. No, I do not.

5 Q. Would you be surprised to hear the hotel is
6 approximately 40 years old?

7 MS. MINCHOFF: Objection.

8 A. I would have no way to even guess. I'm not
9 a contractor.

10 Q. Would you be surprised to understand that
11 in the 30 years that Ms. Faline Miller has
12 been general manager of that hotel, no one
13 else has ever hurt themselves in the turtle
14 pond?

15 MS. MINCHOFF: Objection.

16 A. Excuse me?

17 Q. Would you be surprised to find out that in
18 the 30 years that Ms. Faline Miller was the
19 general manager of that hotel, that no one
20 else besides yourself hurt themselves in
21 that turtle pond?

22 MS. MINCHOFF: Objection.

23 A. Would I be surprised?

24 Q. Yes.

25 MS. MINCHOFF: Objection.

STEPHANIE HOFER
October 13, 2006

1 A. That's irrelevant to me.

2 Q. I'm just wondering how you determined what
3 is dangerous and what is not.

4 MS. MINCHOFF: Objection. Asked and
5 answered.

6 Q. You can answer.

7 MS. MINCHOFF: Actually, Stephanie,
8 you've already answered it.

9 MR. REITH: I don't think she has.

10 MS. MINCHOFF: I believe she has.

11 MR. REITH: Not that specific
12 question.

13 MS. MINCHOFF: How generally
14 anything is dangerous to her, is that the
15 question now? Because you've asked her what
16 was dangerous about the staircase and lack
17 of railing and she's answered that, so what
18 is the question now, Attorney Reith?

19 MR. REITH: We'll just move on,
20 then.

21 Q. Back to my initial question I asked probably
22 about five minutes ago now, how did Expedia
23 breach its duties to you, Stephanie Hofer,
24 by failing to warn you of the staircase's
25 dangerous condition?

STEPHANIE HOFER
October 13, 2006

1 MS. MINCHOFF: Asked and answered.

2 Objection.

3 MR. REITH: It was not.

4 MS. MINCHOFF: Why don't we check
5 back on the record.

6 MR. REITH: Do you want to waste the
7 time to do that?

8 MS. MINCHOFF: Yes.

9 Q. I'll ask it a different way, all right? And
10 this question has not been answered. How
11 would Expedia have warned you, Stephanie, of
12 the stairway's dangerous condition?

13 MS. MINCHOFF: I believe it was
14 asked and answered, and I will state my
15 objection and allow the deponent to answer.

16 A. How would they have?

17 MS. MINCHOFF: What's the question?

18 MR. REITH: Would you repeat it,
19 please?

20 (Question read)

21 A. I don't know how they would have warned me
22 specifically. However, if there's been an
23 inspection and somebody else didn't notice,
24 then I believe that's negligence.

25 Q. What personal information do you have that

STEPHANIE HOFER
October 13, 2006

1 Expedia conducted inspections of the resort?

2 MS. MINCHOFF: Objection.

3 A. I believe it was said --

4 MS. MINCHOFF: Any information that
5 you have obtained through your counsel, Ms.
6 Hofer, you don't have to disclose.

7 THE WITNESS: Okay.

8 MS. MINCHOFF: And I'm not sure what
9 Attorney Reith meant when he asked you that
10 question.

11 Q. It was not.

12 A. Could you repeat it, then, for me, please?

13 Q. Sure. What personal information do you have
14 that you, Stephanie Hofer, have that Expedia
15 conducted inspections of the resort?

16 A. I don't have any personal knowledge.

17 Q. You can put that exhibit to the side. Thank
18 you.

19 MS. MINCHOFF: I'm going to take it
20 back, if that's okay.

21 MR. REITH: Absolutely. Mark that
22 as the next exhibit.

23 (Exhibit 13 marked for
24 identification.)

25 Q. I'm just going to put a document that's been

STEPHANIE HOFER
October 13, 2006

1 marked Exhibit 13 for identification today
2 before you. It's entitled Stephanie Hofer's
3 First Supplemental Answers to Defendant,
4 Expedia, Inc.'s, First Request for
5 Admissions, okay?

6 A. Yes.

7 Q. Do you recognize that document?

8 A. Yes, I do.

9 Q. Whose signature is that down there above
10 "Stephanie Hofer"?

11 MS. MINCHOFF: Objection.

12 Q. I'll ask it a different way. Is that your
13 signature on the bottom of the page?

14 MS. MINCHOFF: You said above
15 "Stephanie Hofer." You mean the typewritten?

16 Q. Yes.

17 A. Mine.

18 Q. I wasn't trying to trick you.

19 A. You said above, and I...

20 Q. It could have been handwritten or
21 typewritten.

22 A. I understand. Sorry.

23 Q. But that is your signature?

24 A. Yes, it is.

25 Q. You can put that document to the side.

STEPHANIE HOFER
October 13, 2006

1 MR. REITH: I ask you to mark this
2 as the next document, please.

3 (Exhibit 14 marked for
4 identification.)

5 Q. I'm just going to put before you a document
6 that's been marked as Exhibit 14 for
7 identification today. It's entitled
8 Stephanie Hofer's Answers to Defendant,
9 Expedia, Inc.'s, First Request for
10 Admissions. Do you recognize that document?

11 A. Yes, I do.

12 Q. Just directing your attention to the final
13 page, is that your signature above the
14 typewritten font, Stephanie Hofer?

15 A. Yes, it is.

16 Q. You can put that document aside. Thank you.

17 (Exhibit 15 marked for
18 identification.)

19 Q. I'm just going to put a document before
20 you that's been marked as Exhibit 15 for
21 identification today. After you've had a
22 chance to review that document, would you
23 please let me know?

24 MS. MINCHOFF: Are you going to ask
25 her a specific question about the document

STEPHANIE HOFER
October 13, 2006

1 or do you want her to read the document?

2 MR. REITH: I'm going to ask her
3 specific questions about Interrogatory 22.

4 MS. MINCHOFF: Can I make a
5 suggestion for the sake of time that perhaps
6 the deponent could move to Interrogatory No.
7 22.

8 MR. REITH: Sure.

9 Q. I'll first ask it this way. The document
10 that's been put before you that's entitled
11 Plaintiff, Stephanie Hofer's, First
12 Supplemental Answers to Defendant, Expedia
13 Inc.'s, First Set of Interrogatories, do you
14 recognize that document?

15 A. Yes, I do.

16 Q. And what do you recognize that document as?

17 MS. MINCHOFF: Objection.

18 A. I recognize this as the first set of
19 interrogatories second answers.

20 Q. You recognize this to be a document as it's
21 entitled, correct?

22 A. Yes, I do.

23 Q. And the same goes for the two documents I
24 just showed you in connection with the
25 request to admit?

STEPHANIE HOFER
October 13, 2006

1 A. Yes.

2 Q. Now, if I can direct your attention just
3 to the final page, before we get to
4 Interrogatory No. 22, do you recognize the
5 signature above the typed font, Stephanie
6 Hofer?

7 A. Yes.

8 Q. Whose signature is that?

9 A. That's my signature.

10 Q. Just direct your attention to Interrogatory
11 No. 22, if you can review that interrogatory
12 and the answer and the supplemental answer
13 and let me know when you're done.

14 A. Okay. (Witness examines document)

15 MR. REITH: We will take a
16 five-minute break, if no one objects.

17 VIDEOGRAPHER: Off the record at
18 2:08.

19 (Break taken)

20 VIDEOGRAPHER: On the record at 2:16.

21 BY MR. REITH:

22 Q. Just drawing your attention back to
23 Interrogatory No. 22, the original answer and
24 the supplemental answer.

25 A. Yes.

STEPHANIE HOFER
October 13, 2006

1 Q. Are you there with me?

2 A. Yes, I am.

3 Q. Do you see specifically in the supplemental
4 answer No. 22 where it says, "through
5 December 2005, my medical expenses
6 approximated \$129,032.16"?

7 A. Yes, I see that.

8 Q. What is that number made up of?

9 MS. MINCHOFF: Objection.

10 Q. I can ask it a different way. Does that
11 number include amounts you had to pay for
12 co-payments in connection with your husband's
13 insurance?

14 MS. MINCHOFF: Objection.

15 A. This number was derived by different
16 documents that were requested and calculated.

17 Q. Do you recall what documents or what type
18 of documents those were?

19 A. I believe they were requested from the
20 insurance company.

21 Q. Aside from who they were requested by,
22 were they receipts for medications, were
23 they receipts for therapy? What type of
24 documents were they?

25 A. These were receipts for medical expenses,

STEPHANIE HOFER
October 13, 2006

1 medical care.

2 Q. And by "medical care," what do you understand
3 medical care to be?

4 A. Hospitalization, doctors' appointments,
5 follow-ups, surgery, medically related to
6 the accident. I couldn't break it down right
7 now for you as to what, how this was
8 itemized.

9 Q. Do you know if the documents that helped
10 calculate this number, if they were produced
11 in this case?

12 MS. MINCHOFF: Objection.

13 A. I don't. I believe that they were -- my
14 attorney may have had them or made a phone
15 call.

16 Q. Let me ask it this way. Without getting
17 into communications directly between you and
18 your attorney, did you provide the documents
19 to your attorney that were used to calculate
20 this number?

21 A. No, I didn't.

22 Q. Do you still have those documents?

23 A. I don't have those documents.

24 MS. MINCHOFF: Objection.

25 Q. Who has those documents?

STEPHANIE HOFER
October 13, 2006

1 THE WITNESS: You objected.

2 MS. MINCHOFF: Yes.

3 A. Who has those documents?

4 MS. MINCHOFF: The documents that
5 she just identified as her medical expenses
6 and bills and medical records that you have,
7 Attorney Reith? What are you asking her?

8 MR. REITH: Can we just go back to
9 my question to the witness?

10 (Question read)

11 MS. MINCHOFF: Is that the same
12 question that's before the witness?

13 MR. REITH: Yes.

14 MS. MINCHOFF: She already answered
15 that question, so objection.

16 Q. Just turning your attention to the second
17 paragraph of the supplemental answer to
18 No. 22.

19 A. Yes.

20 Q. Do you see where it says, "if not for my
21 injuries, I could have worked a 40-hour work
22 week." Do you see that sentence?

23 A. Yes.

24 Q. Were you working a 40-hour work week prior --

25 A. No.

STEPHANIE HOFER
October 13, 2006

1 Q. -- to your injury?

2 MS. MINCHOFF: Objection.

3 A. Excuse me.

4 MS. MINCHOFF: You can answer.

5 A. Yes.

6 MS. MINCHOFF: No, you can answer
7 the question.

8 A. I'm sorry. Excuse me. Could you repeat the
9 question, please?

10 Q. Absolutely. Prior to your injury, were you
11 working a 40-hour work week?

12 A. Yes.

13 Q. Where were you working that 40-hour work
14 week?

15 A. I was working split between Dr. Meszaros'
16 office and I was also doing nails at my
17 leisure for 20 hours a week or making my own
18 schedule for 20 hours a week.

19 Q. I just want to make sure, did you read these
20 interrogatories before you signed them?

21 A. This very one that we're discussing?

22 Q. Yes.

23 A. Yes, I did.

24 Q. Just back to the document that was marked
25 as Exhibit 14 which was your answers to

STEPHANIE HOFER
October 13, 2006

1 Expedia's first request for admissions --

2 A. Do I have a copy of that?

3 Q. Yes, you do.

4 MS. MINCHOFF: You don't in front of
5 you.

6 A. Thank you.

7 Q. Did you read that before you signed it?

8 A. Yes, I did.

9 Q. And did you read the document that was marked
10 as Exhibit 13 before you signed it?

11 A. Yes, I did.

12 Q. You can put those aside. Thank you.

13 MR. REITH: Mark that as the next
14 exhibit for identification, please.

15 (Exhibit 16 marked for
16 identification.)

17 Q. I'm going to put before you a document
18 that's been marked as Exhibit 16 for
19 identification. It's entitled Plaintiffs',
20 Douglas Hofer and Stephanie Hofer, Answers
21 to Defendant Expedia, Inc.'s, First Set of
22 Interrogatories. I'm just going to ask you
23 if you recognize that document.

24 A. Yes, I do.

25 Q. Do you recognize that as your answers to

STEPHANIE HOFER
October 13, 2006

1 Expedia's first set of interrogatories?

2 A. Yes, I do.

3 Q. And is that your signature on the last page
4 above the typed font, Stephanie Hofer?

5 A. Yes, it is.

6 Q. Did you review this document before you
7 signed it?

8 A. Yes, I did.

9 Q. You can put that document aside. Thank you.

10 MR. REITH: Mark that as the next
11 exhibit, please.

12 (Exhibit 17 marked for
13 identification.)

14 Q. I'm just going to put a document before
15 you that's been marked Exhibit 17 for
16 identification. Just let me know when you've
17 had a chance to review it.

18 A. Okay.

19 Q. Do you recognize it?

20 A. No, I don't recognize it, but I see it.

21 Q. Do you know what it is?

22 A. It's a receipt signed by Carrie LaBelle
23 for Runways Deli & Bar at Sangster
24 International Airport in Montego Bay.

25 Q. Did you visit Runways Deli & Bar when you

STEPHANIE HOFER
October 13, 2006

1 were down in Jamaica?

2 A. I don't recall. It says the date is

3 3/19/04, which was the date we left Jamaica.

4 Q. Okay. You can put the document aside. Thank
5 you.

6 MR. REITH: Mark this as the next
7 exhibit.

8 (Exhibit 18 marked for
9 identification.)

10 Q. I'm just going to put a document before
11 you that's been marked as Exhibit 18 for
12 identification today. Just let me know when
13 you've had a chance to review it.

14 A. Okay.

15 Q. Do you recognize that document?

16 A. No, I don't.

17 Q. Do you know why Ms. LaBelle was paying out
18 \$5,570 as indicated in the amount paid out
19 line?

20 MS. MINCHOFF: Objection.

21 A. No, I don't.

22 MS. MINCHOFF: Are you calling
23 Jamaica money dollars?

24 MR. REITH: I'm also referring to
25 the amount paid out dollar amount.

STEPHANIE HOFER
October 13, 2006

1 MS. MINCHOFF: Which is the same as
2 amount of JAM in the line above?

3 MR. REITH: Yes.

4 A. It's actually 100 American.

5 Q. Do you know why she took out \$100?

6 A. It says March 18, 2004, 2:55 p.m. She
7 exchanged \$100 currency for Jamaican money.

8 Q. Do you know that on your own or do you know
9 that only from reviewing this document?

10 A. I only know that from reading this document.

11 Q. You can put that document aside. Thank you.
12 Were you going through physical therapy in
13 June of 2004?

14 A. Yes.

15 MR. REITH: I ask you to mark that
16 document as the next exhibit, please.

17 (Exhibit 19 marked for
18 identification.)

19 Q. Directing your attention to the document
20 that's been marked as Exhibit 19 for
21 identification today, do you recognize this
22 document?

23 A. No.

24 Q. Just directing your attention down, though,
25 to the fourth entry, see there's a line

STEPHANIE HOFER
October 13, 2006

1 straight across there?

2 A. Yes.

3 Q. I'll represent to you because the page is
4 cut off, the date on the far left side is
5 6/8/04.

6 A. Mm-hmm.

7 MS. MINCHOFF: Objection.

8 Q. Do you see where it says PT cancelled?

9 A. Yes.

10 Q. Do you recall cancelling any physical therapy
11 in 2004?

12 A. I don't recall.

13 Q. Did you?

14 A. I may have.

15 Q. Do you recall why?

16 A. No, I don't.

17 Q. Did you go to all your physical therapies
18 that were assigned during the year 2004?

19 A. I would assume I did. However, if there was
20 something to be cancelled, I'm sure it was
21 made up at some point.

22 MR. REITH: I ask you to mark this
23 as the next document, please, for
24 identification.

25

STEPHANIE HOFER
October 13, 2006

1 (Exhibit 20 marked for
2 identification.)

3 Q. I'm just going to put before you the document
4 that's been marked as Exhibit 20 for
5 identification today. Could you please take
6 a look at that and let me know when you're
7 done. So you don't have to try to read the
8 entire thing. I can direct you to a specific
9 line, if that would be helpful.

10 A. No, I'd like to read the entire thing.
11 (Witness examines document) Okay.

12 Q. What was U. Mass. Memorial Health Alliance?

13 A. What was the U. Mass. Memorial Health
14 Alliance?

15 Q. Yes. I'll ask it a different way. Do you
16 know what U. Mass. Memorial is?

17 A. Yes.

18 Q. What is it?

19 A. It's a hospital.

20 Q. Okay. Did you ever attend U. Mass. Memorial
21 for treatment in connection with your injury?

22 A. Yes.

23 Q. Do you recall attending U. Mass. Memorial in
24 or around September of 2004?

25 A. Yes.

STEPHANIE HOFER
October 13, 2006

1 Q. Do you see where it says six lines down,
2 "improving endurance and function"?

3 A. Yes.

4 Q. Do you recall how well you were progressing
5 in connection with your rehabilitation in or
6 around September of 2004?

7 MS. MINCHOFF: Objection. As to
8 endurance?

9 Q. Just in general.

10 A. As to what? As to zero where I wasn't
11 functioning at all? I was improving.

12 Q. At any point did you reach an optimal level
13 of improvement where the doctors said that
14 you weren't going to improve any further?

15 A. Yes.

16 Q. When was that that you reached that?

17 A. I don't recall.

18 Q. Was it within the last year?

19 A. I believe it may have been in the last year,
20 but there's always something, you know, to
21 keep pushing, keep trying, because maybe you
22 never know. But, yes, they have said to me
23 that it's as good as it's going to get.

24 Q. Between the time that you injured yourself
25 in Jamaica and present day, did you ever

STEPHANIE HOFER
October 13, 2006

1 re-injure your foot, your left foot, that is?

2 A. Have I ever re-injured my left foot?

3 Q. Yes.

4 A. Define "re-injure."

5 Q. Have you ever sprained your left foot since
6 your injury in Jamaica?

7 A. I could have. I don't recall. I don't know.

8 Q. Did the wounds on your -- strike that. It
9 is your left foot that you hurt down in
10 Jamaica?

11 A. Yes, it is.

12 Q. Did your wounds on your left foot ever heal
13 and then did you hurt them again such that
14 they reopened?

15 MS. MINCHOFF: Objection.

16 A. I don't recall.

17 Q. You can put that document aside. Thank you.

18 MR. REITH: Mark that as the next
19 document, please.

20 (Exhibit 21 marked for
21 identification.)

22 Q. I'm just going to put before you a document
23 that has been marked as Exhibit 21 for
24 identification, ask you to take a look at
25 it in as much detail as you like and let me

STEPHANIE HOFER
October 13, 2006

1 know when you're done.

2 A. (Witness examines document)

3 (Exhibit 22 marked for
4 identification.)

5 A. Okay.

6 Q. Just directing your attention to the section
7 that says function.

8 A. Yes.

9 Q. I'm going to have to backtrack a little bit.
10 I want to make sure we're all on the same
11 page. Do you see where it says Health
12 Alliance up top?

13 A. Yes, I do.

14 Q. What is Health Alliance?

15 A. Health Alliance is part of U. Mass. Memorial
16 Health Care.

17 Q. Did you attend Health Alliance at any point
18 for assistance with your injury?

19 A. Yes. This is the physical therapist part
20 of Health Alliance.

21 Q. Thank you. Do you see where it's dated
22 11/29/04 up top?

23 A. Yes.

24 Q. Were you attending Health Alliance as of
25 November '04?

STEPHANIE HOFER
October 13, 2006

1 A. Yes, I was.

2 Q. Now, directing your attention to the section
3 that says function.

4 A. Yes.

5 Q. The second line, do you see where it says,
6 "no foot slap or drop noted"?

7 A. Yes, I do.

8 Q. Do you know what that means?

9 A. It means with AFO, "no notice foot slap or
10 drop noted, good plus balance, left single
11 leg," and then it's cut off.

12 Q. What is with AFO mean?

13 A. With my brace. An AFO is a brace.

14 Q. So with your brace on, you don't have any
15 foot slap or drop?

16 A. Right.

17 Q. And without it, do you?

18 A. Without it, I do.

19 Q. Put that aside. Thank you. I'm going to
20 put a document before you that's marked
21 Exhibit 22 for identification today. Just
22 let me know when you've had a chance to
23 review it in as much detail as you'd like.

24 A. (Witness examines document) Okay.

25 Q. Just directing your attention to the top

STEPHANIE HOFER
October 13, 2006

1 of the page where it says Health Alliance,
2 do you see that?

3 A. Yes.

4 Q. Is that the place you attended physical
5 therapy?

6 A. Yes.

7 Q. Were you attending Health Alliance as of
8 March of '05?

9 A. Yes.

10 Q. Were you attending Health Alliance as of
11 April '05?

12 A. Yes.

13 Q. Directing your attention down to the April,
14 I believe it's 13, '05 entry, which is the
15 second entry on the page.

16 A. Yes.

17 Q. Do you see where it says, "ability for
18 prolonged activity" in the second line?

19 A. Yes.

20 Q. Do you know what that entry is referring to?

21 A. Yes.

22 Q. What is it referring to?

23 A. It means that my ability for prolonged
24 activity during physical therapy has
25 increased.

STEPHANIE HOFER
October 13, 2006

1 Q. So that's only while you're in physical
2 therapy?

3 A. While I have been in physical therapy, my
4 endurance had increased. I was able to,
5 during physical therapy, was able to reach
6 my goal is what that says, is what that
7 means.

8 Q. So am I to understand that it's while you're
9 actually in the physical therapy session
10 you're able to do the things that you had
11 wanted to do during the actual session?

12 A. They set goals for you and each time you
13 reach a goal, you get another goal. So the
14 ability for prolonged activity to reach goals
15 has increased.

16 Q. But do you see there where it says, "ability
17 for prolonged activity," period? It doesn't
18 say anything after that about reaching goals,
19 does it?

20 A. I don't see a period, but I know how Bill
21 wrote, so...

22 Q. Who is Bill?

23 A. He was one of my therapists.

24 Q. What was Bill's last name?

25 A. Chipman, Chapman, Chapman.

STEPHANIE HOFER
October 13, 2006

1 Q. Is that C H A P M A N?

2 A. Yes.

3 Q. Directing your attention down a little bit
4 further where it says, "strength/balance
5 progressing towards goals"?

6 A. Yes.

7 Q. What were the goals as of this point in April
8 of '05?

9 A. I'm not quite sure if I can remember those
10 goals, but I know that they were all
11 surrounding my range of motion and my
12 strength so that I would be more functional
13 so that I could return to as much function
14 as that I would gain back.

15 Q. Since April '05, has your endurance
16 increased?

17 MS. MINCHOFF: Objection.

18 A. With consistent exercise with my leg and
19 physical therapy, I would say that it may
20 have increased some. I actually had
21 discontinued physical therapy for some
22 time so they've re, you know, they want me
23 back in it to re-establish a new baseline
24 and then go from there. So as far as where
25 I was here to where I am now, I have no idea

STEPHANIE HOFER
October 13, 2006

1 because this is based on measurements.

2 Q. Excuse my interruption. Now, when you
3 stopped the physical therapy, at whose
4 direction did you stop it?

5 A. At the therapist.

6 Q. Did you ask to continue it?

7 MS. MINCHOFF: Objection.

8 A. When a therapist dismisses you, you're
9 dismissed.

10 Q. But the answer is you did not ask him to
11 continue it?

12 A. No.

13 Q. Do you recognize the term "biofeedback"?

14 A. Yes, I do.

15 Q. What does that term mean?

16 A. That term means that you get hooked up to
17 different electrodes and leads and there's
18 a software that measures stressors or
19 tension, different reactions of your body
20 in accordance to whether it be pain or --
21 you know, they use it for a multitude of
22 things. But they're using it for me to
23 determine how I can -- it's very difficult
24 to explain. How I can use alternative
25 methods to help control my pain. Go ahead.

STEPHANIE HOFER
October 13, 2006

1 Q. Are you done?

2 A. Yes.

3 Q. Who is "they"?

4 A. Dr. Elaine Borgen.

5 Q. Has Dr. Borgen determined that you can use
6 alternative means to control your pain?

7 MS. MINCHOFF: Objection.

8 A. It's not a determination. It's like a
9 trial thing. It either works for you or it
10 doesn't.

11 Q. I'll ask it this way. Have you and
12 Dr. Borgen discussed alternative means to
13 control your pain?

14 A. Yes.

15 Q. What are those alternative means?

16 A. Visualization, deep breathing, relaxation
17 techniques, things like that.

18 Q. Have you tried those alternative methods?

19 A. I try them every day.

20 Q. How do they help?

21 A. Not very much.

22 Q. Since April 2005, has your range of mobility
23 on your injured foot increased?

24 A. No.

25 MR. REITH: I ask you to mark this

STEPHANIE HOFER
October 13, 2006

1 the next document.

2 (Exhibit 23 marked for
3 identification.)

4 Q. I'm going to put before you a document that's
5 been marked Exhibit 23 for identification,
6 ask you to take a look at that document and
7 let me know when you're done reviewing it to
8 the extent you like. And while you're doing
9 that, if no one objects, can we take a
10 two-minute break?

11 VIDEOGRAPHER: The time is 2:48. We
12 are off the record.

13 (Break taken)

14 VIDEOGRAPHER: The time is 2:51.
15 This is the beginning of Cassette No. 2 in
16 the deposition of Stephanie Hofer. We are
17 on the record.

18 VIDEOGRAPHER: Off the record at
19 2:51.

20 (Discussion off the record)

21 VIDEOGRAPHER: The time is 2:52.
22 This is the beginning of Cassette 2 in the
23 deposition of Stephanie Hofer. We are on
24 the record.

25 BY MR. REITH:

STEPHANIE HOFER
October 13, 2006

1 Q. Just directing your attention to the document
2 that's been marked as Exhibit 23 for
3 identification today, entitled Stephanie
4 Hofer's Second Supplemental Answers to
5 Defendant, Expedia, Inc.'s, First Request for
6 Admissions, do you recognize that document?

7 A. Yes, I do.

8 Q. And are those your answers to Expedia's first
9 request for admissions?

10 A. Yes, they are.

11 MS. MINCHOFF: Objection.

12 Q. Are those your second supplemental answers
13 to Expedia, Inc.'s request for admissions?

14 A. Yes.

15 Q. Directing your attention to the second page
16 just above the typed font, Stephanie Hofer,
17 is that your signature?

18 A. Yes, it is.

19 Q. Did you read this document before you signed
20 it?

21 A. Yes, I did.

22 Q. Now, directing your attention to request to
23 admit No. 9, just ask you to read that to
24 yourself and let me know when you're done,
25 including the answers, please.

STEPHANIE HOFER
October 13, 2006

1 A. (Witness examines document) Okay.

2 Q. Do you see where it says in the request to
3 admit No. 9, "Carrie read the liability
4 disclaimer section of the agreement before
5 reserving the trip"?

6 A. Yes, I see that.

7 Q. Do you see the supplemental response which
8 says, "Stephanie is without personal
9 knowledge to admit or deny, but does state
10 that Carrie testified at her deposition
11 under oath that she did not recall seeing
12 the liability disclaimer section of the
13 agreement before reserving the trip"?

14 A. Yes, I see that.

15 Q. Did you review the deposition transcript
16 before you made this answer?

17 MS. MINCHOFF: Objection.

18 A. I had glanced through the deposition, but
19 so yes, I had -- what do they call that? I
20 flipped through it, but before I supplemented
21 the answer, I don't believe that that was
22 why I supplemented the answer. I was at
23 the deposition.

24 Q. I'm just wondering if the terminology that
25 she did not recall seeing the liability

STEPHANIE HOFER
October 13, 2006

1 disclaimer, was that taken verbatim from the
2 deposition transcript?

3 MS. MINCHOFF: Objection.

4 A. I couldn't take anything verbatim from any
5 of the transcripts.

6 Q. So is it fair to say that we would have
7 to review the deposition transcript of
8 Ms. LaBelle to determine exactly what she
9 said at her deposition?

10 MS. MINCHOFF: Objection.

11 A. Yes.

12 MS. MINCHOFF: Do you mean exactly
13 word for word?

14 MR. REITH: Yes.

15 MS. MINCHOFF: Not the substance of
16 what she said?

17 MR. REITH: Word for word.

18 MS. MINCHOFF: Okay.

19 Q. You understood my question, Ms. Hofer,
20 correct?

21 A. I understood your question to mean that I
22 didn't know verbatim what she said. If we
23 wanted to know verbatim, we would have to
24 go back into the transcript.

25 Q. Thank you. You can put that one aside.

STEPHANIE HOFER
October 13, 2006

1 MR. REITH: I ask you to mark that
2 as the next document.

3 (Exhibit 24 marked for
4 identification.)

5 Q. I ask you to take a look at the document
6 that's been put before you and marked as
7 Exhibit 24 for identification and let me
8 know when you're done reviewing it.

9 A. (Witness examines document)

10 Q. I can maybe save you some time unless you'd
11 like to review the entire thing.

12 A. I'm pretty familiar with this line here,
13 so...

14 Q. Well, do you recognize the document?

15 A. Yes, I do.

16 Q. Do you recognize the document as Plaintiff,
17 Stephanie Hofer's, Second Supplemental
18 Answers to Defendant, Expedia, Inc.'s, First
19 Set of Interrogatories?

20 A. Yes.

21 Q. Turning your attention to the final page,
22 Page 7, just let me know when you're there.

23 A. I'm there.

24 Q. Do you recognize the signature above the
25 typed font, Stephanie Hofer?

STEPHANIE HOFER
October 13, 2006

- 1 A. Yes.
- 2 Q. Whose signature is that?
- 3 A. That's my signature.
- 4 Q. Did you read these second supplemental
- 5 answers before you signed this document?
- 6 A. Yes, I did.
- 7 Q. All right. Just directing your attention
- 8 to supplemental answer No. 6, I would ask
- 9 you to read the supplemental answer to
- 10 No. 6.
- 11 A. Out loud?
- 12 Q. To yourself.
- 13 MS. MINCHOFF: And the question?
- 14 Q. And the question.
- 15 A. And the question?
- 16 Q. Thank you.
- 17 A. So just the question and then the
- 18 supplemental answer?
- 19 Q. Yes.
- 20 A. Okay. "State the basis of" --
- 21 Q. Oh, to yourself.
- 22 A. Oh. I just said out loud?
- 23 Q. Just to familiarize yourself.
- 24 A. And nobody said -- okay. Sorry.
- 25 Q. I'm sorry. Please read the answer as well.

STEPHANIE HOFER
October 13, 2006

1 We'll go through all of it. Read it to
2 yourself.

3 A. (Witness examines document) Okay.

4 Q. We're just going to jump, then, to the
5 supplemental answer No. 6, all right?

6 A. Excuse me. That's what I just read.

7 Q. Yes.

8 MS. MINCHOFF: He also asked you to
9 read the answer.

10 A. I did. I read the question, the original
11 answer and the supplemental answer.

12 MS. MINCHOFF: Okay.

13 Q. I just wanted you to familiarize yourself
14 with all of it.

15 A. Okay.

16 Q. I'm now going to direct your attention to
17 supplemental answer No. 6.

18 A. Okay.

19 Q. More specifically, the sentence that begins,
20 "Expedia does not expect each person
21 traveling in a party to log on to its website
22 separately." Do you see that sentence?

23 A. Yes.

24 MS. MINCHOFF: That portion of the
25 sentence?

STEPHANIE HOFER
October 13, 2006

1 Q. I'll ask it that way. Do you see that
2 portion of the sentence?

3 A. Yes.

4 Q. How do you know that Expedia does not expect
5 each person traveling in party to log on to
6 its website separately?

7 MS. MINCHOFF: Objection. The
8 document speaks for itself, the rest of the
9 sentence.

10 MR. REITH: You're not allowing her
11 to answer?

12 MS. MINCHOFF: I did not instruct
13 her not to answer.

14 A. Oh, I'm sorry. If you look at the rest of
15 the sentence, when the sign-on user books
16 the trip, that person makes the arrangements
17 for the other travelers as well so there
18 is no need for multiple sign-ons, multiple
19 people to sign on for one trip.

20 Q. Have you ever booked a trip via Expedia.com?

21 A. No, I have not.

22 Q. So how do you know what the policy and
23 procedure is?

24 MS. MINCHOFF: Objection.

25 A. I don't.

STEPHANIE HOFER
October 13, 2006

1 Q. Did you provide your name to the Expedia.com
2 in connection with the trip to Jamaica?

3 A. I did not.

4 Q. Do you know if Carrie provided your name to
5 Expedia.com in connection with your trip to
6 Jamaica?

7 A. I can't speak for Carrie, but she must have.

8 Q. Do you know if Carrie provided your contact
9 information to Expedia.com?

10 A. I don't know what type of information she
11 may or may not have provided.

12 Q. So I would have to ask Carrie about that?

13 A. You would have to ask Carrie.

14 Q. Did you provide your contact information
15 to Expedia directly?

16 MS. MINCHOFF: Objection.

17 A. No.

18 MS. MINCHOFF: I'm sorry. What was
19 the question?

20 MR. REITH: I just asked if Ms.
21 Hofer provided her contact information to
22 Expedia directly.

23 MS. MINCHOFF: Directly. I'm sorry.

24 A. No.

25 Q. Do you see the next sentence where it says,

STEPHANIE HOFER
October 13, 2006

1 "per Expedia.com's requirements, all members
2 of the sign-on user's party utilizing the
3 services of Expedia.com are made known to
4 Expedia.com, as all such persons are intended
5 users of Expedia services"?

6 A. I see that.

7 Q. Okay. Do you personally know what the
8 requirements are for signing on in booking a
9 trip using Expedia.com?

10 A. No, I do not.

11 Q. Do you know what services Expedia.com
12 provides?

13 A. It's my understanding that Expedia.com
14 provides the travel packages and
15 recommendations of different resorts and
16 different areas for different travelers
17 acting sort of as a travel agent, an online
18 travel agent.

19 Q. Do you have any personal information as to
20 what Expedia.com offers for services?

21 MS. MINCHOFF: Objection. What does
22 "personal information" mean?

23 MR. REITH: Other than her
24 understanding.

25 MS. MINCHOFF: That's not personal.

STEPHANIE HOFER
October 13, 2006

1 I don't know what you mean. Objection.

2 Q. Do you understand the question?

3 A. I'm sorry, I don't.

4 Q. Is it your understanding that Expedia.com
5 provides an avenue for persons to book
6 travel-related vacations or travel-related
7 services?

8 A. Is it my understanding that that is what
9 Expedia.com does?

10 Q. Yes.

11 A. That is my understanding.

12 Q. Turning your attention to the next sentence,
13 top of the next paragraph in supplemental
14 answer No. 6 where it says, "Expedia inspects
15 the resorts it markets on its website and
16 has implemented procedures to monitor the
17 safety of said resorts marketed on its
18 website." Do you see that sentence?

19 A. Yes, I see that sentence.

20 Q. What are the implemented procedures that
21 you are referring to here?

22 MS. MINCHOFF: Objection just to
23 the extent that any information that you
24 may have obtained through conversations
25 confidentially or communications

STEPHANIE HOFER
October 13, 2006

1 confidentially with counsel.

2 Q. Can you answer that question that I just
3 asked without revealing confidential
4 communications?

5 A. No.

6 Q. Do you personally have any information
7 separate and apart from that which you found
8 out through your counsel about the so-called
9 implemented procedures?

10 MS. MINCHOFF: Objection.

11 A. No.

12 Q. What information do you have separate and
13 apart from what you may have learned through
14 your counsel about Expedia taking an active
15 role and continuing role in inspecting the
16 property?

17 MS. MINCHOFF: Objection.

18 A. Could you repeat that, please?

19 MR. REITH: Can I ask you to read
20 that back?

21 (Question read)

22 MS. MINCHOFF: Objection.

23 A. I can't answer that question. I don't know
24 what Expedia's continuing role is.

25 Q. You see the final sentence where it says,

STEPHANIE HOFER
October 13, 2006

1 "in addition, on Expedia's own website it
2 represents that it researches the resorts
3 advertised by Media Review and visits to the
4 property sites." Do you see that sentence?

5 A. Yes, I do.

6 Q. Have you personally seen those
7 representations on Expedia's website?

8 MS. MINCHOFF: Objection.

9 A. No, I have not.

10 Q. You can put that document aside. Do any
11 of the documents that you've produced to
12 date to your counsel to produce to my office
13 specifically state that Expedia has a duty
14 to warn you or users of its website?

15 MS. MINCHOFF: Objection. If you
16 want to show her every document that I've
17 produced to you, I'd prefer that you do that
18 if you're going to ask her that question.

19 MR. REITH: She can simply state --

20 MS. MINCHOFF: That there's
21 thousands of documents that have been
22 produced?

23 Q. Can you answer the question?

24 A. Could you say it again?

25 MR. REITH: Could you please repeat

STEPHANIE HOFER
October 13, 2006

1 the question?

2 (Question read)

3 MS. MINCHOFF: I maintain my
4 objection that unless you want to produce to
5 the deponent the thousands of pages that I
6 produced to you, she's not going to have that
7 knowledge. But I have no problem with her
8 reviewing every page of documents that I've
9 produced.

10 MR. REITH: You can object.

11 Q. And my question to you is, can you answer
12 the question as phrased?

13 A. No, I'm sorry, I cannot.

14 Q. That's fine. This is going to be one of
15 those sort of jumps to something we haven't
16 talked about before. Were you present for
17 your mother's deposition?

18 A. Yes, I was.

19 Q. Do you recall your mother testifying about
20 receiving a call from you from some beach?

21 MS. MINCHOFF: Objection. You're
22 asking her to comment on someone else's
23 testimony.

24 MR. REITH: I'm not asking her to
25 comment on someone's else testimony. I'm

STEPHANIE HOFER
October 13, 2006

1 asking if she recalls her mother testifying
2 on that subject.

3 MS. MINCHOFF: On that subject or
4 what you just stated, Attorney Reith? Does
5 she recall her mother stating what you just
6 represented at deposition? Is that the
7 question?

8 MR. REITH: Yes.

9 MS. MINCHOFF: Objection. You can
10 answer.

11 A. I don't know if I recall my mother stating
12 that at deposition, but I do recall calling
13 my mother.

14 Q. When did you call your mother when you were
15 in Jamaica?

16 A. At dinner.

17 Q. Where were you at dinner?

18 A. Jimmy Buffet's Margaritaville. It's right
19 on the beach.

20 Q. Was Attorney Minchhoff's office the first
21 office you contacted about possibly bringing
22 a suit against Expedia?

23 A. No.

24 MS. MINCHOFF: Objection. Asked and
25 answered.

STEPHANIE HOFER
October 13, 2006

1 MR. REITH: It wasn't asked and
2 answered of this deponent. It was asked and
3 answered of both her mother and Mr. Hofer,
4 but not Ms. Hofer.

5 Q. Your answer was?

6 A. No.

7 Q. Who else did you speak to?

8 A. Christopher Disesa, D I S E S A.

9 Q. Where is Mr. Disesa's office?

10 A. Leominster, Massachusetts.

11 Q. How did you get put in touch with Mr. Disesa?

12 A. He is a friend of the family. He's handled
13 other legal matters for my mother.

14 Q. You did not retain Mr. Disesa in connection
15 with this case?

16 MS. MINCHOFF: Objection.

17 A. No.

18 MS. MINCHOFF: You can answer.

19 A. No.

20 Q. Did you discuss the sum and substance of
21 your claims with Expedia with Mr. Disesa?

22 MS. MINCHOFF: Objection. Don't
23 answer.

24 MR. REITH: What grounds?

25 MS. MINCHOFF: Whether or not she

STEPHANIE HOFER
October 13, 2006

1 retained him doesn't mean that she didn't
2 speak to him as counsel.

3 Q. Did you speak to Mr. Disesa as your attorney?

4 A. Yes.

5 Q. Did you and he form an attorney-client
6 relationship?

7 MS. MINCHOFF: Objection. That
8 calls for a legal conclusion. All you need
9 to know is she spoke to him as counsel. Do
10 not answer a single question as to your
11 conversations with Mr. Disesa.

12 Q. So you did not retain Mr. Disesa?

13 A. No, I did not.

14 Q. Did Mr. Disesa decline to undertake your
15 representation?

16 MS. MINCHOFF: Objection. Don't
17 answer.

18 MR. REITH: That's not privileged.

19 MS. MINCHOFF: It would be
20 privileged because the only --

21 MR. REITH: It's not privileged.

22 MS. MINCHOFF: Sir, Attorney Reith.

23 Q. I'm asking you to answer the question.

24 MS. MINCHOFF: I'm instructing you
25 not to answer the question and I'm your

STEPHANIE HOFER
October 13, 2006

1 counsel, so I suggest you listen to me and
2 not Mr. Reith.

3 MR. REITH: I'll reserve my right
4 to bring a motion to compel to the extent
5 necessary.

6 MS. MINCHOFF: You may do so.

7 Q. Any other counsel that you met with prior to
8 retaining Attorney Minchhoff's office?

9 A. No.

10 Q. Just directing your attention now to the
11 point at which you were heading from, I
12 believe it was Leominster to the airport to
13 go on the trip to Jamaica, okay?

14 A. I'm sorry?

15 Q. Directing your attention to the point where
16 you were driving to the airport to go to
17 Jamaica.

18 A. Okay.

19 Q. Did anyone from Expedia, Inc. drive you to
20 the airport?

21 A. No.

22 Q. Did anyone from Expedia meet you at Logan?

23 A. No.

24 Q. Did anyone from Expedia help you check in
25 at Logan?

STEPHANIE HOFER
October 13, 2006

1 A. No.

2 Q. Did anyone from Expedia fly with you down
3 from Logan to Philadelphia?

4 A. No.

5 Q. Did anyone from Expedia fly with you from
6 Philadelphia to Jamaica?

7 A. No.

8 Q. Did anyone from Expedia meet you at the
9 airport in Jamaica?

10 A. Not that I know of.

11 Q. No one identified themselves to you as an
12 Expedia, Inc. employee down in Jamaica, did
13 they?

14 MS. MINCHOFF: Objection. Asked and
15 answered. You can answer.

16 A. No.

17 Q. Did anyone from Expedia, Inc. drive you to
18 Turtle Beach Towers?

19 A. No.

20 Q. Did anyone from Expedia, Inc. accompany
21 you on the shuttle bus to Turtle Beach
22 Towers?

23 A. No.

24 Q. Did anyone from Expedia, Inc. meet you at
25 Turtle Beach Towers?

STEPHANIE HOFER
October 13, 2006

1 A. No.

2 Q. During your stay in Jamaica, I realize it
3 was short, but during your stay in Jamaica,
4 did you meet anyone from Expedia, Inc.?

5 A. No.

6 Q. I have no further questions. I thank you
7 for your time.

8 A. Thank you.

9 MS. MINCHOFF: I actually may have
10 a couple of questions. I'd like to just take
11 a one-minute break.

12 VIDEOGRAPHER: Off the record at
13 3:17.

14 (Break taken)

15 VIDEOGRAPHER: On the record at
16 3:26.

17 EXAMINATION

18 BY MS. MINCHOFF:

19 Q. Ms. Hofer, returning your attention to
20 Exhibit No. 24 which you were reviewing with
21 Attorney Reith, entitled Plaintiff, Stephanie
22 Hofer's, Second Supplemental Answers to
23 Defendant, Expedia, Inc.'s First Set of
24 Interrogatories, I direct your attention
25 to supplemental answer No. 6.

STEPHANIE HOFER
October 13, 2006

1 A. Yes.

2 Q. And I believe Attorney Reith asked you some
3 questions regarding the sentence that reads,
4 "Expedia does not expect each person
5 traveling in party to log on to its website
6 separately to book a travel vacation as is
7 evidenced by the fact that in the booking
8 process, Expedia.com requests that the
9 sign-on user provide the names and contact
10 information of the other persons traveling
11 in the sign-on user's party. Do you see that
12 sentence?

13 A. Yes, I do.

14 Q. Have you ever been provided with any
15 documents from Carrie LaBelle regarding the
16 trip you took to Jamaica?

17 A. Yes, I have.

18 Q. Were one of those documents a copy of that
19 itinerary and some documents from the booking
20 process?

21 A. Yes.

22 Q. Were you able to learn any information from
23 reviewing those documents, Ms. Hofer?

24 A. Yes.

25 Q. What information?

STEPHANIE HOFER
October 13, 2006

1 A. The information I learned from reviewing
2 those documents was that, No. 1, being the
3 itinerary of where we were going and the
4 time frame, and the second being that she
5 was the one to provide my information for
6 the booking process, and that's when I
7 learned that I didn't need to be, I didn't
8 need to sign on to give Expedia my own
9 personal information.

10 Q. And sticking with that supplemental answer
11 No. 6 to Exhibit 24, you see in the last
12 sentence that, or do you recall Attorney
13 Reith asking you a question about the last
14 sentence of that answer and asking you
15 whether you knew what it stated or whether
16 you had gone on to Expedia's website to
17 determine whether it represented that it
18 researches the resort?

19 A. Yes.

20 Q. Have you seen any documents from Expedia's
21 website?

22 A. Yes.

23 Q. Have any of the documents that you've seen
24 from Expedia's website allowed you to
25 conclude that on its website it represents

STEPHANIE HOFER
October 13, 2006

1 that it researches the resorts advertised
2 by Media Review and visits to the property
3 sites?

4 A. Yes.

5 MR. REITH: Objection.

6 Q. Did you review that document that allowed
7 you to make that conclusion prior to
8 answering or providing answers to your
9 interrogatories in Exhibit 24?

10 A. Yes.

11 Q. Ms. Hofer, returning to the first paragraph
12 of supplemental answer No. 6, looking at
13 the sentence that says, "per Expedia.com's
14 requirements, all members of the sign-on
15 user's party utilizing the services of
16 Expedia.com are made known to Expedia.com
17 as all such persons are intended users of
18 Expedia services." Do you see that sentence?

19 A. Yes.

20 Q. Just a minute ago we talked about the
21 documents that Carrie LaBelle provided to
22 you with respect to the booking process
23 for your trip to Jamaica?

24 A. Yes.

25 Q. Did those documents allow you to make the

STEPHANIE HOFER
October 13, 2006

1 conclusion that you've stated there in
2 supplemental answer No. 6 that I just read
3 into the record?

4 MR. REITH: Objection.

5 A. Yes.

6 MS. MINCHOFF: I have no further
7 questions.

8 MR. REITH: I have a few follow-up.

9 MS. MINCHOFF: I'm sorry. Do you
10 mind? I'm sorry.

11 BY MS. MINCHOFF:

12 Q. One last question, Ms. Hofer. Do you recall
13 or -- strike that.

14 When you spoke with an attorney
15 prior to speaking with myself at my office,
16 the decision not to retain that attorney,
17 was that based on a confidential, private
18 conversation that you had with him?

19 A. Yes.

20 MS. MINCHOFF: I have no further
21 questions. Mr. Reith?

22 MR. REITH: A few follow-up
23 questions.

24

25

STEPHANIE HOFER
October 13, 2006

1 EXAMINATION

2 BY MR. REITH:

3 Q. You've now expounded about some of the
4 questions and answers that I had asked you
5 before in connection with the supplemental
6 answer No. 6, correct?

7 MS. MINCHOFF: Objection.

8 Expounded? Is that the --

9 MR. REITH: Yes.

10 A. I don't understand what expounded...

11 Q. Your attorney has now asked you certain
12 questions in connection with supplemental
13 answer No. 6 that related to some questions
14 that I asked before, correct?

15 A. Yes.

16 Q. And you have now offered certain answers
17 in connection with your attorney's questions
18 that explain further some of the issues that
19 I asked you about, correct?

20 A. Yes.

21 Q. And you now offered those answers after
22 having a moment to speak to your attorney
23 behind closed doors, correct?

24 MS. MINCHOFF: Objection.

25 A. Yes.

STEPHANIE HOFER
October 13, 2006

1 MR. REITH: You all have to forgive
2 me because I didn't intend on using this.
3 I have two copies of this document. I would
4 just ask if you can take a look at it and
5 pass it down to Attorney Minchoff and then
6 I'm going to have it marked. It's a whole
7 rigmarole, I understand.

8 MS. MINCHOFF: Just for the record,
9 is this --

10 MR. REITH: I was going to say for
11 the record, this was part of defendant --
12 excuse me, the plaintiff's initial document
13 responses, as you can tell from the
14 identification of B1 and B2, et cetera, which
15 was your office's identification.

16 MS. MINCHOFF: So this is part of
17 my first document response and there's been
18 four document responses now?

19 MR. REITH: Yes. Mark this and then
20 I'll take that one back.

21 (Exhibit 25 marked for
22 identification.)

23 Q. I'm just going to put before you a document
24 or series of documents that's been marked
25 as Exhibit 25 for identification.

STEPHANIE HOFER
October 13, 2006

1 MR. REITH: I'll represent to all
2 parties and counsel present that this was
3 taken from the initial document response
4 and production from plaintiffs to Expedia
5 to my office, okay?

6 Q. Do you recall your attorney asking you about
7 reviewing documents provided by Ms. LaBelle?

8 A. I'm sorry?

9 Q. Do you recall recently your attorney was just
10 asking you questions about various documents
11 you reviewed that Ms. LaBelle gave to you?

12 A. Yes.

13 MS. MINCHOFF: Objection.

14 Q. Do you recall testifying as to a certain
15 itinerary that you may have reviewed?

16 A. Mm-hmm.

17 Q. I ask you to take a look at that document
18 series and let me know if you see the
19 itinerary in there.

20 A. Looks like it's right here.

21 Q. Does that itinerary identify your contact
22 information at all?

23 A. Yes.

24 Q. What does it say?

25 A. Travelers, Carrie LaBelle and Stephanie

STEPHANIE HOFER
October 13, 2006

1 Hofer.

2 Q. Does it list your address?

3 A. No.

4 Q. Does it list your website? Strike that.

5 MS. MINCHOFF: Excuse me.

6 Q. Does it list your e-mail address?

7 A. No.

8 Q. Does it list your telephone number?

9 A. Not right here.

10 Q. Does it anywhere?

11 A. I don't know.

12 MS. MINCHOFF: I just suggest that
13 we allow her to take the time to look through
14 the 50 or so documents that have just been
15 put in front of her.

16 MR. REITH: That's fine.

17 A. It does not there.

18 MS. MINCHOFF: Just take the time
19 to go through it.

20 A. Okay. (Witness examines document) Excuse
21 me. Exhibit B3 seems to be for the home
22 trip. Do you want me to go further into
23 that?

24 Q. If the home trip is from Expedia.

25 A. It's not.

STEPHANIE HOFER
October 13, 2006

1 Q. My question specifically was in connection
2 with the itinerary in the documents from
3 Expedia with your contact information was
4 provided.

5 A. All right.

6 MS. MINCHOFF: No, actually, his
7 question specifically was is there an e-mail
8 address.

9 A. Yes, and there is not, through Exhibit B1.

10 Q. And I also asked is your telephone number
11 listed there?

12 A. No, it is not.

13 Q. That's all I have in connection with that.
14 Do you recall what document you reviewed
15 before answering these, this supplemental
16 set of answers that identified Expedia.com's
17 requirements?

18 MS. MINCHOFF: Objection.

19 A. I reviewed documents that Carrie had given
20 to me. Basically, they're copies like this
21 regarding the itinerary and the travel
22 package and things like that. I reviewed
23 those before answering the supplemental.

24 Q. Do you recall what specific documents stated
25 that all persons who may be identified by a

STEPHANIE HOFER
October 13, 2006

1 sign-on user party are intended users of
2 Expedia services?

3 MS. MINCHOFF: Objection.

4 A. I can't exactly say which particular
5 document.

6 Q. So as you sit here today, you don't know
7 which document you reviewed?

8 A. No. I reviewed the documents that Carrie had
9 given to me that the user was one user.

10 MR. REITH: I have no further
11 questions.

12 MS. MINCHOFF: I just have one
13 follow-up question.

14 EXAMINATION

15 BY MS. MINCHOFF:

16 Q. Ms. Hofer, are you aware of approximately
17 how many pages of documents have been
18 produced to Expedia on your behalf in this
19 case?

20 A. I'm not aware. I know thousands.

21 Q. Approximately how many pages are included
22 in Exhibit 25 that Attorney Reith just
23 provided to you to review?

24 A. Approximately how many pages?

25 Q. Correct.

STEPHANIE HOFER
October 13, 2006

1 A. It feels like 50 pages.

2 Q. It's fair to say that that's just a very
3 small portion of the documents?

4 A. This is a very small portion.

5 MR. REITH: Objection.

6 MS. MINCHOFF: No further questions.

7 MR. REITH: A couple of follow-up.

8 I have a couple of follow-up questions. If
9 you can put that document to the side, okay?

10 I ask you to mark this document as
11 the next exhibit, please.

12 (Exhibit 26 marked for
13 identification.)

14 EXAMINATION

15 BY MR. REITH:

16 Q. The document that's put before you has been
17 marked as Exhibit 26 for identification,
18 it's entitled Plaintiffs' Fourth Supplemental
19 Response to Defendant, Expedia, Inc.'s, First
20 Request for Production of Documents. Do you
21 see the title of that document?

22 A. First request, fourth supplemental, yes, I
23 see that.

24 Q. Do you recognize this document?

25 A. Yes.

STEPHANIE HOFER
October 13, 2006

1 Q. Did you review this document before your
2 attorney served it on my office?

3 MS. MINCHOFF: Objection. Attorney
4 Reith, you're actually beyond the scope of
5 the cross-examination from my questions at
6 this point.

7 MR. REITH: I'm not. It's going to
8 leads into it.

9 MS. MINCHOFF: Objection. It
10 has not led into it. My question was
11 approximately does she know how many
12 documents were produced. That was it.

13 MR. REITH: The scope of your
14 cross-examination would lead the individuals
15 who review this transcript to conclude that
16 not all documents from Ms. LaBelle have
17 been provided. I'm about going to try to
18 establish that documents which are germane
19 to whether or not your client was identified
20 as an intended user have, in fact, been
21 provided and are here today for her review.
22 That's where I'm going.

23 MS. MINCHOFF: I would object to
24 that because you are again only producing --
25 I don't know. What's this? 100 pages of

STEPHANIE HOFER
October 13, 2006

1 the approximate thousands of pages and we
2 have 350. It's beyond the scope.

3 MR. REITH: You can object.

4 MS. MINCHOFF: I am objecting, and
5 I'm going to instruct her not to answer
6 because you're beyond the scope of my
7 question.

8 MR. REITH: All right.

9 Q. Just directing your attention to request
10 No. 11, it says, "any and all documents the
11 plaintiffs contend establish or that
12 plaintiffs rely on or will rely on to
13 attempt to prove or establish that," quote,
14 "'Expedia owes a duty to prospective
15 customers of its service to ensure that
16 facilities listed on its website are
17 reasonably safe for consumers who purchase
18 their vacation through its service,'" end
19 quote, "as averred in Section 2A of the
20 parties' Joint Rule 16.1 statement." Do
21 you see that?

22 A. Do I see that sentence? That statement?
23 Yes, I see that.

24 Q. Do you see in the supplemental response it
25 says, "plaintiffs object to request No. 11

STEPHANIE HOFER
October 13, 2006

1 to the extent that it seeks disclosure
2 of documents that are protected by the
3 attorney-client privilege and work product.
4 Subject to and without waiving said
5 objections and to the extent the plaintiffs
6 have responsive non-objectionable documents
7 in their custody, control or possession, they
8 have been attached as 4-S-11. Plaintiffs
9 reserve the right to supplement this
10 response." Do you see that supplemental
11 response?

12 A. Yes.

13 Q. Directing your attention to the documents
14 which are appended as 4-7-11, I would ask you
15 to take a look through those and to see if
16 your contact information is included.

17 MS. MINCHOFF: Beyond the scope.
18 Objection. I'm going to instruct you not
19 to -- it's beyond the scope of my
20 cross-examination question.

21 MR. REITH: So you're instructing
22 your client not to answer that question?

23 MS. MINCHOFF: We can go tit for tat
24 all day long if we want to --

25 MR. REITH: I'm asking you.

STEPHANIE HOFER
October 13, 2006

1 MS. MINCHOFF: Yes, I am.

2 MR. REITH: I reserve my right to
3 move to compel and to seek costs for having
4 to go to the court to get this answer. I
5 have no further questions.

6 VIDEOGRAPHER: The time is 3:44.
7 This deposition is concluded. This is the
8 end of Cassette 2. We are off the record.

9 (Whereupon the deposition was
10 concluded at 3:44 p.m.)
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STEPHANIE HOFER
October 13, 2006

1 DEPONENT'S ERRATA SHEET
2 AND SIGNATURE INSTRUCTIONS
3

4 The original of the Errata Sheet has
5 been delivered to India Minchoff, Esq.

6 When the Errata Sheet has been
7 completed by the deponent and signed, a copy
8 thereof should be delivered to each party of
9 record and the ORIGINAL delivered to Scott D.
10 Feringa, Esq., Sullivan, Ward, Asher &
11 Patton, P.C., 1000 Maccabees Center, 25800
12 Northwestern Highway, Southfield, MI 48075,
13 to whom the original deposition was
14 delivered.

15
16 INSTRUCTIONS TO DEPONENT

After reading this volume of your
17 deposition, indicate any corrections or
changes to your testimony and reason therefor
18 on the Errata Sheet supplied to you and sign
it. DO NOT make marks or notations on the
19 transcript volume itself.

20
REPLACE THIS PAGE OF THE TRANSCRIPT
21 WITH THE COMPLETED AND SIGNED ERRATA
SHEET WHEN RECEIVED.

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23
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25

STEPHANIE HOFER
October 13, 2006

1 ATTACH TO THE DEPOSITION OF: Stephanie Hofer,
Vol. III

2 CASE: Hofer vs. The Gap, et al

3
4 ERRATA SHEET

5 INSTRUCTIONS: After reading the transcript
6 of your deposition, note any changes or
7 corrections to your testimony and the reason
therefor on this sheet. DO NOT make any
8 marks or notations on the transcript volume
itself. Sign and date this Errata Sheet
(before a Notary Public, if required).
9 Refer to Page 3-456 of the transcript for
Errata Sheet distribution instructions.

10
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18
19 I have read the foregoing transcript
of my deposition and except for any
20 corrections or changes noted above, I hereby
subscribe to the transcript as an accurate
21 record of the statements made by me.

22 Date

23
24 Stephanie Hofer

25

STEPHANIE HOFER
October 13, 2006

1 COMMONWEALTH OF MASSACHUSETTS)
2 SUFFOLK, SS.)
3
4

5 I, Jeanette Maracas, Registered
6 Professional Reporter and Notary Public in
7 and for the Commonwealth of Massachusetts, do
8 hereby certify that there came before me on
9 the 13th day of October, 2006, at 1:10 p.m.,
10 the person hereinbefore named, who was by me
11 duly sworn to testify to the truth and
12 nothing but the truth of his knowledge
13 touching and concerning the matters in
14 controversy in this cause; that he was
15 thereupon examined upon his oath, and his
16 examination reduced to typewriting under my
17 direction; and that the deposition is a true
18 record of the testimony given by the witness.
19
20

21 I further certify that I am neither
22 attorney or counsel for, nor related to or
23 employed by, any attorney or counsel employed
24 by the parties hereto or financially
25 interested in the action.

26 In witness whereof, I have hereunto
27 set my hand this 20th day of October, 2006.

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