

EXHIBIT 2

FAYLIN MILLER
August 21, 2006

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

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The Videotaped Deposition of FAYLIN MILLER,
Taken at Turtle Beach Towers, Main Street,
Ocho Rios, St. Ann, Jamaica, W.I.,
Commencing at 10:02 a.m.,
Monday, August 21, 2006,
Before Rebecca J. Callow, CSR-5228, RPR.

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1 Q. I'm sorry?

2 A. Which of them?

3 Q. The photographs that you have in your left hand, do
4 you still have those that he showed you? You still
5 have them?

6 A. Yes. Yes, I do.

7 Q. Okay. How long have you worked here?

8 A. For 30 years.

9 Q. 30 years. And fair to say that you've walked up and
10 down those stairs that we see in those photographs --

11 A. Every day.

12 Q. -- thousands of times?

13 A. Every day of the week. I'm here seven days of the
14 week.

15 Q. So you've walked up and down those --

16 A. Yes.

17 Q. -- and you're very familiar with those stairs and the
18 entryway?

19 A. Yes, I am.

20 Q. When Mr. Feringa asked you how many steps lead up to
21 the landing, you first said three steps. Correct?

22 A. Yes, but I have -- yes, but --

23 Q. You did say three. Right?

24 A. Yes, I did say three.

25 Q. Okay. And then you changed your answer to two.

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1 Correct?

2 A. I know it's two, but, you know, walking up, three.

3 Yes.

4 Q. So you changed your answer from three steps to two.

5 Correct?

6 A. Uh-huh. Yes.

7 Q. And, again, it's fair to say that you're very familiar

8 with --

9 A. Yes, I am.

10 Q. -- those stairs?

11 A. Yes, I am.

12 Q. All right. And you're very familiar with the

13 reception --

14 A. Yes, I am.

15 Q. -- area beyond those stairs?

16 A. Yes.

17 Q. And as to enter the lobby, there's a reception desk on

18 the left-hand side of the lobby. Correct?

19 A. Yes.

20 Q. And on the right-hand side of the lobby there's seats?

21 A. Yes.

22 Q. From the vantage point behind the reception desk, is

23 it fair to say that you can't see the turtle pond

24 which is shown in those photographs?

25 A. No. But there's a glass with the mirror there, or

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1 picture on the wall. You can stand at that desk and
2 you see anybody coming from that angle.

3 Q. All right. My question is not whether you can see
4 anyone coming from that angle, but can you see the
5 turtle pond from behind the reception desk through
6 that mirror down below. Can you see it?

7 A. No. No.

8 Q. Thank you. Is it fair to say, Ms. Miller, that you
9 try to maintain a safe resort?

10 A. Yes, I do.

11 Q. And you feel that you do maintain a safe resort?

12 A. Yes, I do.

13 Q. So if any stairs were chipped, that would not be a
14 safe condition. Correct?

15 A. Right.

16 Q. You would agree with that?

17 A. I would.

18 Q. You've stated to counsel that you conducted an
19 investigation. Correct?

20 A. Yes, I did.

21 Q. How many times over the course of your employment
22 history here have you conducted an investigation
23 regarding an accident which occurred here?

24 A. We've not had an accident. This is the first major
25 report we have.

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1 A. No, I haven't.

2 Q. Have you ever seen anyone from Expedia -- or who works
3 for Expedia at Turtle Beach Towers?

4 A. Yes. They will come and do checks now and again, room
5 checks.

6 Q. They would come and do checks?

7 A. Inspections.

8 Q. Inspections. Okay. And how often would they perform
9 their inspection? About.

10 A. It's maybe about two times a year they would.

11 Q. And they could come -- all right.

12 And they would come here, and is it not fair
13 to say that they would do that in 2004, 2005, 2006?

14 A. Yes.

15 Q. And would those be inspection -- what would those
16 inspections of the premises consist?

17 A. Grounds and rooms.

18 Q. Grounds and rooms?

19 A. Yes.

20 Q. And would they point out things to you at times that
21 need --

22 A. Yes.

23 Q. If I could just finish, Ms. Miller.

24 A. Okay.

25 Q. Would they point out things on occasion to you as the

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1 manager here which need to be fixed?

2 A. Yes. If there is...

3 Q. That would be true of items within a hotel room?

4 A. Right.

5 Q. As well as what needs to be fixed on the grounds?

6 A. Yes.

7 Q. Would they take photographs also upon their
8 inspections?

9 A. Yes. If they see anything wrong, they would do a
10 checklist.

11 Q. And if they saw anything wrong, would they give a list
12 of things which needed correcting or would they just
13 tell you?

14 A. They would e-mail it.

15 Q. They would e-mail it to you?

16 A. Yes.

17 Q. Do you keep a separate file of the correspondence with
18 Expedia?

19 A. I do have, but I don't have it in my possession here.

20 Q. Okay. You didn't bring that with you to the
21 deposition. Is that fair to say?

22 A. Right.

23 Q. All right. And in 2004, is it fair to say that you
24 had a separate file for Expedia's, let's say,
25 inspection reports of your facility?

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1 A. Yes.

2 Q. And that would be true also of 2005 and 2006?

3 A. Yes.

4 Q. How long -- as far as you know, how long have you --
5 and by "you" I mean Turtle Beach Towers been doing
6 business with Expedia? Approximately.

7 A. It about three years. Three or four years. Time goes
8 so quickly, about five years, I think.

9 Q. So let's say from 2001 through the present?

10 A. Um-hmm.

11 Q. "Yes"?

12 A. Right.

13 Q. Have you ever seen a contract between Expedia And
14 Turtle Beach Towers?

15 A. It is there, Mr. Dane Thomas. Yes.

16 Q. I'm sorry?

17 A. Yes. There is one with Mr. Dane Thomas, yes.

18 Q. Okay. And when was the last time you saw that?

19 A. It's in the office, I know, with Mr. Thomas. I have
20 not seen it this year, but I know there is.

21 Q. And Mr. Thomas is who?

22 A. He is like the apartment owner. He is apartment owner
23 for 10E.

24 Q. For 10E?

25 A. Right.

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1 Q. And he has a contract with Expedia to rent out his
2 apartment?

3 A. Yes.

4 Q. The inspection reports that Expedia does that you've
5 seen and maintained in a file folder, are they
6 handwritten or are they on a form?

7 A. I think they would be typed or by e-mail, but on a
8 form.

9 Q. So they would send you the e-mail after their visit.
10 Right?

11 A. Yes.

12 Q. And you would try and correct those things which
13 needed correcting?

14 A. Sure.

15 Q. Yes. Okay. After you received that correspondence
16 from Expedia, and you attempted to correct the
17 situation, how did you notify Expedia that the
18 situation that was listed on their inspection report
19 was corrected?

20 A. We would fill the checklist and send it back to them.

21 Q. Okay. Would anyone from Expedia then come to the
22 premises to make sure that it was, in fact, corrected?

23 A. No. No.

24 Q. Thank you. The turtle pond that we see in those
25 photographs that Mr. Feringa showed you, is it fair to

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1 Q. I mean, on 6C. I'm sorry. Reservation card. Is that
2 correct?

3 A. Um-hmm. Yes, I do.

4 Q. And that is in your own hand?

5 A. Right.

6 MR. FERINGA: Thank you. I have no other
7 questions.

8 EXAMINATION

9 BY MR. REITH:

10 Q. Good afternoon.

11 A. Good afternoon.

12 Q. Or actually it's not afternoon, it's still morning.
13 My name is Thomas Reith. I represent Expedia, Inc.
14 Thank you very much for your time. Just a few
15 follow-up questions for you.

16 Do you recall if Expedia conducted an
17 investigation of the premises in 2003?

18 A. I would have to check my records.

19 MR. KUZMA: Objection.

20 BY MR. REITH:

21 Q. And where are these records?

22 A. They're in the office of Mr. Dane Thomas, who signs
23 the contract with Expedia?

24 Q. And who is Dane Thomas?

25 A. Dane Thomas is owner who owns 20 -- almost 20

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1 apartments at Turtle Beach.

2 Q. Okay. So is it fair to say that Mr. Thomas is the one
3 who contracted with Expedia?

4 A. Right.

5 Q. And he contracted with Expedia to advertise his
6 specific units?

7 A. Yes. Yes.

8 MR. KUZMA: Objection.

9 BY MR. REITH:

10 Q. Mr. Dane Thomas did not contract with Expedia to
11 advertise the entirety of Turtle Beach Towers, did he?

12 A. No.

13 MR. KUZMA: Objection.

14 BY MR. REITH:

15 Q. And I believe you testified that Expedia personnel
16 have inspected the premises from 2004 --

17 A. Yes.

18 Q. I'm sorry. It's tough, because of the way we discuss
19 things, but let me just get the conversation out and
20 I'll let you get your answer back to me. Okay?

21 A. Um-hmm.

22 Q. I believe you testified that there have been
23 inspections of the premises from 2004, 2005, 2006. Is
24 that correct?

25 A. Right.

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1 Q. And do you recall specifically who did the
2 investigation in 2004?

3 A. No. I don't.

4 Q. Do you recall specifically who did the investigation
5 in 2005?

6 A. No.

7 Q. Do you recall specifically who did the investigation
8 in 2006?

9 A. No.

10 Q. How many times per year do they inspect?

11 A. About two times.

12 Q. And I believe you testified, correct me if I'm wrong,
13 that when they investigate, they sometimes submit to
14 you reports on the investigation?

15 A. Right.

16 Q. Now, when the individuals come to investigate, do they
17 investigate the entire resort or just those 20 units
18 that Mr. Dane Thomas owns?

19 A. Those rooms that Mr. Dane Thomas...

20 Q. When was the last time that Expedia or a person --
21 strike that.

22 How do you know these individuals who
23 investigate Mr. Dane Thomas's 20 units are from
24 Expedia?

25 A. They would come --

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1 MR. KUZMA: Objection.

2 A. He could call us to say that they're coming over, to
3 expect Mr. So-and-so, and someone would take them to
4 the rooms for inspection.

5 BY MR. REITH:

6 Q. Okay. So is it fair to say, Mr. Thomas or someone on
7 his behalf would contact you?

8 A. Yes.

9 Q. Okay. And that Mr. Thomas or you would say -- or that
10 person would say to you, X individual from Expedia is
11 coming to investigate my 20 units?

12 A. Right.

13 MR. KUZMA: Objection.

14 BY MR. REITH:

15 Q. Or they would say they're coming to investigate my
16 units?

17 A. Yes.

18 MR. KUZMA: Objection.

19 BY MR. REITH:

20 Q. You understand I mean Mr. Thomas when I say "my"
21 there, don't you?

22 A. Pardon me?

23 Q. You understand when I say "my units," I'm referring to
24 Mr. Thomas's?

25 A. Thomas. Right.

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1 Q. Forgive me. How many years have you worked here?

2 A. About 28, 30 years.

3 Q. I know you answered it a couple times. I just want to
4 make sure I got it right. 28 or 30 years?

5 A. Yes.

6 Q. And in those 28 or 30 years, how many times has there
7 then an incident such as the one that Ms. Hofer argues
8 happened in the Turtle pond?

9 MR. KUZMA: Objection.

10 A. That the first one.

11 BY MR. REITH:

12 Q. That's the first one?

13 A. First one.

14 Q. That's the first time someone alleged that they fell
15 into a turtle pond was this past -- this case?

16 A. Yes.

17 MR. KUZMA: Objection.

18 Q. Is it fair to say that Expedia -- strike that.

19 Is it fair to say that no one from Expedia
20 has issued an inspection report about the turtle pond?

21 A. No.

22 Q. No one has?

23 A. No one has.

24 Q. Is it fair to say that no one from Expedia has asked
25 you or anyone from your resort to fix anything with