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IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

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EXPEDIA, INC., et al.,

Plaintiffs/Petitioners

v.

STEADFAST INSURANCE COMPANY, et al.,

Defendants/Respondents.

**DEFENDANTS'/RESPONDENTS' ANSWER TO
PLAINTIFFS'/PETITIONERS'
MOTION FOR DISCRETIONARY REVIEW**

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TABLE OF CONTENTS

	<u>Page</u>
I. INTRODUCTION	1
II. STATEMENT OF THE CASE.....	1
A. Expedia’s “Merchant Model” Dictates Its Occupancy Tax Collection and Remittance Practices	1
B. Tax Authorities Challenge the “Merchant Model”	2
C. Expedia Obtains The Zurich Insurance Policies.....	3
D. Expedia Notifies Zurich of the Tax Authorities’ Claims, and Zurich Responds	4
E. Expedia Moves For Summary Judgment And, Subsequently, For a Blanket Protective Order.....	5
F. The Court of Appeals Denies Discretionary Review.....	7
III. REASONS FOR DENYING THE MOTION.....	8
A. Expedia Has Failed To Show That Discretionary Review Is Warranted Under RAP 13.5(b)	8
1. The Court of Appeals Did Not Commit Obvious Error That Significantly Departs from the Required Course of Proceedings	9
2. The Court of Appeals Did Not Commit Probable Error By Denying Review, Either	13
3. The Appeals Court’s Order Does Not Limit Expedia’s Freedom to Act In Any Meaningful Way, If At All.....	16
B. Delaying Appeal Until After a Final Determination of the Merits is an Adequate Remedy and Satisfies Judicial Economy Concerns.....	18
IV. CONCLUSION.....	20

TABLE OF AUTHORITIES

	<u>Page(s)</u>
<u>CASES</u>	
<i>Campbell v. Ticor Title Ins. Co.</i> , 166 Wn.2d 466, 209 P.3d 859 (2009).....	12
<i>Coggle v. Snow</i> , 56 Wn. App. 499, 784 P.2d 554 (1990).....	14
<i>Hartford Fire Ins. Co. v. Leahy</i> , 774 F. Supp. 2d 1104 (W.D. Wash. 2011).....	12
<i>In re Grove</i> , 127 Wn.2d 221, 897 P.2d 1252 (1995).....	9
<i>Maybury v. City of Seattle</i> , 53 Wn.2d 716, 336 P.2d 878 (1959)	8
<i>Minehart v. Morning Star Boys Ranch, Inc.</i> , 156 Wn. App. 457, 232 P.3d 591 (2010).....	8, 14, 16
<i>Montrose Chem. Corp. v. Superior Court</i> , 6 Cal. 4th 287, 861 P.2d 1153 (1993).....	16
<i>Mut. of Enumclaw Ins. Co. v. USF Ins. Co.</i> , 137 Wn. App. 352, 153 P.3d 877 (2007)	11
<i>Nat'l Sur. Co. v. Immunex Corp.</i> , 297 P.3d 688 (Wash. 2013).....	11
<i>Oliver v. American Motors Corp.</i> , 70 Wn.2d 875, 425 P.2d 647 (1967)	19
<i>Overton v. Consol. Ins. Co.</i> , 145 Wn.2d 417, 38 P.3d 322 (2002).....	12
<i>Rhinehart v. Seattle Times Co.</i> , 98 Wn.2d 226, 654 P.2d 673 (1982)	14, 15

<i>Travelers Indem. Co. v. Realvest Corp.</i> , No. 3:09-cv-05369 RBL, 2012 WL 5410048 (W.D. Wash. Nov. 6, 2012)	12
<i>Trinity Universal Ins. Co. v. Northland Ins. Co.</i> , No. C07-0884-JCC, 2008 WL 4386760 (W.D. Wash. Sept. 23, 2008)	12
<i>Unigard Ins. Co. v. Leven</i> , 97 Wn. App. 417, 983 P.2d 1155 (1999)	12

RULES AND REGULATIONS

Rules of Appellate Procedure	
Rule 2.3(b)	13
Rule 2.3(b)(2)	16, 18
Rule 56(f)	5, 8
Rule 13.5(b)	1, 8, 15, 20
Rule 13.5(b)(1)	9, 10, 14
Rule 13.5(b)(2)	9, 14, 16, 18
Rule 13.5(b)(3)	9, 12, 14

OTHER AUTHORITIES

Geoffrey Crooks, <i>Discretionary Review of Trial Court Decisions Under the Washington Rules of Appellate Procedure</i> , 61 Wash. L. Rev. 1541, 1546-47 (Oct. 1986)	16, 18
2A Karl B. Tegland, <i>Washington Practice: Rules Practice</i> , at 6 (7th ed. 2011)	14

I. INTRODUCTION

Petitioner Expedia's Motion for Discretionary Review ("Motion" or "Mot.") begins by referencing the public interest in liability insurance and continues with a lengthy recitation of the standards for determining an insurer's duty to defend. But these are not the issues before this Court. The sole question here is whether Expedia has satisfied the requirements of RAP 13.5(b), which delineates the circumstances in which this Court may grant review of the Court of Appeals' decision not to grant discretionary review of an interlocutory Superior Court decision. As demonstrated below, Expedia plainly fails to meet the requirements of that Rule. Accordingly, Expedia's Motion should be denied.

II. STATEMENT OF THE CASE

A. Expedia's "Merchant Model" Dictates Its Occupancy Tax Collection and Remittance Practices

Under Expedia's "merchant model," Expedia negotiates with hotels to obtain access to rooms at a net rate and then makes those rooms available to online customers for a total retail price consisting of: (i) the net rate charged by the hotel, (ii) an amount retained by Expedia as a "facilitation fee" for its online services, and (iii) an amount for "tax recovery charges and other service fees," with the unitemized "tax

recovery charge” portion based on the net rate. (A.25-27.)¹ Thus, if Expedia were to sell a Los Angeles hotel room with a \$70 net rate for a total retail price of \$100, Expedia would remit to the hotel \$79.80 (i.e., \$70 net rate + 14% of \$70 in occupancy taxes, or \$9.80) and retain the remaining \$20.20 as compensation for the transaction. (*Id.*; A.56.)

B. Tax Authorities Challenge the “Merchant Model”

In 2002 and 2003, some tax authorities began to question the “merchant model,” suggesting that Expedia should be collecting and remitting tax amounts based on the total price charged to customers instead of the net room price charged by the hotel. By the end of 2003, Expedia had publicly disclosed this issue to shareholders, engaged in discussions with tax authorities in various jurisdictions to try to resolve it, and established a reserve for potential payment of contingent occupancy tax liabilities in the amount of \$13.2 million. (S.A.68-70.)

Numerous tax authorities subsequently sued Expedia for allegedly failing to remit, as a result of the operation of the “merchant model,” the full amount of occupancy taxes owed. The City of Los Angeles filed the first such suit in December 2004. (A.30-53.) Other tax authorities filed about 25 additional suits against Expedia during 2005-2006. (S.A.1-7.)

¹ “A.____” denotes citation to the Appendix to Petitioners’ Motion for Discretionary Review. “SA.____” denotes citation to the Supplemental Appendix filed along with this Answer to Petitioners’ Motion for Discretionary Review.

All told, Expedia is litigating or has defended approximately 80 tax-related lawsuits across the United States. (A.28.)

Most of the lawsuits seek to recover the difference between amounts collected by Expedia sufficient to pay occupancy taxes on the total price charged to customers and the amount of taxes remitted based on the net price. (*E.g.*, A.43, S.A.8-43.) Some lawsuits seek only declaratory relief. (*E.g.*, S.A.44-52.) Expedia initiated several lawsuits, seeking to abate tax assessments against it. (*E.g.*, S.A.53-67.)

C. **Expedia Obtains The Zurich Insurance Policies**

During May 2004 – October 2009, Expedia procured six Travel Agents Professional Liability Insurance policies from Zurich. The policies generally cover liability for “damages” arising out negligent acts or omissions committed during the policy period in the course of travel agency operations. (A.65-93.) The policies require the insurer to defend any suit against Expedia seeking such “damages.” Covered “damages” do not include: punitive, exemplary, or multiple damages; fines, penalties, fees, or sanctions; matters deemed uninsurable; any form of non-monetary, equitable, or injunctive relief; or restitution, return, or disgorgement of any fees, funds, or profits. (A.87.) The policies require the insured to notify the insurer of any negligent act or omission “as soon as practicable” and of any claim or suit “immediately.” (A.91.)

D. Expedia Notifies Zurich of the Tax Authorities' Claims and Zurich Responds

Expedia tendered the *City of Los Angeles* complaint to Zurich on June 10, 2005. Zurich's June 27, 2005 response discussed various policy provisions, including an exclusion precluding coverage for liability arising from "the failure or inability to pay or collect money" for any reason, in advising Expedia that "there is no coverage for this claim under [the applicable policy]" (A.96-98.) Zurich's response also invited Expedia to forward any additional information related to the claim that Expedia believed should be reviewed. (*Id.*)

Zurich heard nothing further from Expedia regarding *City of Los Angeles* or any other tax-related lawsuit until November 2010, when Expedia simultaneously filed this coverage action and purported to tender 56 additional lawsuits initiated during 2005-2010. (A.99-106.) By that time, many of the underlying lawsuits had been pending for years, and more than two dozen had been fully adjudicated, settled, or substantially litigated through the trial level. (S.A.71-84.) Zurich answered the complaint and asserted various defenses.

In September 2011, Expedia purported to tender six additional tax related lawsuits. (A.107-108.) After Zurich denied coverage, Expedia amended its complaint to add one of those six suits to the coverage action

and assert new bad faith, CPA, and coverage by estoppel claims. In response, Zurich again asserted various defenses, including late notice and resulting prejudice to Zurich, the known loss/loss in progress doctrines, and material misrepresentations in applications/policy negotiations.

In January 2012, the trial court granted Zurich's motion for summary judgment as to four of the six Zurich policies based on the "failure or inability to collect or pay money" exclusion. The trial court denied Zurich's motion for summary judgment as to the remaining two policies but declined to find that Zurich owed a duty to defend as a matter of law under those policies. (A117-121.)

E. Expedia Moves For Summary Judgment and, Subsequently, For a Blanket Protective Order

On March 30, 2012, Expedia filed a Motion for Summary Judgment regarding its remaining coverage, bad faith, and CPA claims. Expedia did so without having responded fully to Zurich's discovery requests or produced a knowledgeable witness for deposition.²

On April 26, 2012, the trial court granted Zurich's motion for a Rule 56(f) continuance to permit Zurich to complete certain discovery and present a complete factual record to the Court. (A.136-138.) Expedia subsequently provided some additional discovery to Zurich but declined to provide other discovery on grounds that the requested information is

² The trial court granted Zurich's motion to compel on Mar. 22, 2012. (S.A.85-87.)

potentially prejudicial to Expedia's interests in the underlying actions. Expedia then moved for a protective order to stop Zurich from pursuing any additional discovery until the underlying lawsuits are resolved, while allowing Expedia's motion for summary judgment to proceed.

The trial court agreed that certain discovery could potentially prejudice Expedia's interests in the underlying cases if allowed to proceed at this time. (A.15.) The trial court did not agree, however, that all of Zurich's discovery was potentially prejudicial or that the requested protective order was the appropriate remedy to address the overlap issues. Instead, the trial court ruled "if there are problems with the discovery that we cannot sort out and Expedia feels that there is too much of an overlap [] Expedia's remedy should be a stay of this action." (A.20.)

The trial court never concluded as a matter of law that extrinsic evidence is relevant to a coverage determination; that issue was not before it. (A.16.) Rather, the trial court based its ruling on the particular factual circumstances presented, including Expedia's failure in many cases to tender the underlying lawsuits to Zurich "for years," during which time Expedia elected to handle its own defense. (A.19.) It struck the trial court as "fundamentally unfair and inconsistent with our system of trying to resolve cases on the merits" to preclude Zurich from obtaining any additional discovery, which the trial court deemed "appropriate for

[Zurich's] defenses.” (A.19, 21.) Staying the case until the underlying actions are resolved would strike the right balance without resulting in any “real prejudice” to Expedia because Expedia would be continuing its longstanding defense strategy and would retain the ability to seek both defense and indemnity from Zurich at a later time. (A.19-21.)

As an alternative to a complete stay, the trial court invited the parties to try to establish a prospective discovery protocol, identifying issues that may proceed without possible prejudice to Expedia at this time and those issues that may not (with any impasse submitted to the trial court). (A.22.) Expedia rejected this approach and sought discretionary review of the trial court's August 22, 2012 order. (S.A.95-97.)

F. The Court of Appeals Denies Discretionary Review

On March 11, 2013, the Court of Appeals found that Expedia failed to carry the “heavy burden” of obtaining discretionary review. (A.2.) Like the trial court, the Court of Appeals determined that the blanket protective order and other relief sought by Expedia were not warranted under the “unique circumstances” presented, “including Expedia's long-delayed tender.” (A.6.) In particular, the Court of Appeals noted that “Washington does recognize a late tender rule if the insurer can demonstrate the insured's delay in tendering the defense caused the insurer ‘actual and substantial’ prejudice” and that “[d]iscovery

related to such a showing of prejudice can be appropriate to the duty to defend.” (*Id.*) The Court of Appeals also concluded that “Expedia overstates the scope and impact of the trial court ruling.” Specifically, the trial court’s order did not force Expedia to choose “between forgoing a prompt determination of the duty to defend and giving up information that necessarily will prejudice its underlying . . . litigation.” Rather, “the trial court’s comments clearly invite[d] other efforts by the parties to refine and narrow the scope of a protective order” and to “define what discovery should be allowed in this pending litigation,” options deemed more conducive to judicial economy. (A.6-8.)

III. REASONS FOR DENYING THE MOTION

A. Expedia Has Failed To Show That Discretionary Review Is Warranted Under RAP 13.5(b)

In Washington, “[i]nterlocutory review is disfavored.” *Minehart v. Morning Star Boys Ranch, Inc.*, 156 Wn. App. 457, 462, 232 P.3d 591 (2010) (citing *Maybury v. City of Seattle*, 53 Wn.2d 716, 721, 336 P.2d 878 (1959)). This Court will grant discretionary review of an interlocutory decision of the Court of Appeals only in the very limited circumstances delineated in RAP 13.5(b). Expedia claims it is entitled to discretionary review because the courts below obviously or probably erred, so far departed from the usual course of proceedings in insurance coverage cases as to call for the Supreme Court’s review, and/or substantially limited

Expedia's freedom to act. *See* RAP 13.5(b)(1)-(3); Pet'rs' Mot. for Discretionary Review ("Mot.") at 9-10. Expedia is wrong on all counts.

The Court of Appeals did not commit error (let alone "obvious" or even "probable error") that significantly departs from the required course of proceedings, as the trial court order at issue was within the lower court's discretion and is supported both by the law and the specific factual circumstances present here. But even assuming *arguendo* the Appeals Court acted in error, its denial of discretionary review does not substantially limit Expedia's freedom to act in any pertinent respect. The Court of Appeals discusses various options for proceeding (as originally identified by the trial court) that are reasonable under the circumstances and specifically designed to avoid potential prejudice to Expedia in the underlying actions. Because Expedia cannot meet the "heavy burden" of obtaining discretionary review, its motion should be denied. *See In re Grove*, 127 Wn.2d 221, 235, 897 P.2d 1252 (1995).

1. The Court of Appeals Did Not Commit Obvious Error That Significantly Departs from the Required Course of Proceedings

Expedia's efforts to establish discretionary review as required under RAP 13.5(b)(1) and/or RAP 13.5(b)(3) fail in several key respects.

First, in asserting that the Court of Appeals committed "obvious error" necessitating this Court's review under RAP 13.5(b)(1), Expedia

omits a critical part of the test – namely, whether the supposedly obvious error “would render further proceedings useless.” RAP 13.5(b)(1). The reason for this omission is clear, as Expedia cannot make any such showing.

As the Court of Appeals noted, the trial court’s order “expressly suggested alternatives” to the blanket protective order sought by Expedia and “clearly invite[d] other efforts by the parties to refine and narrow the scope of the protective order.” (A.6-7.) Further proceedings might well have proven useful (and might still), with the parties potentially agreeing on a narrowed scope of discovery and/or the trial judge revisiting her prior rulings. Stated another way (as the Court of Appeals did), “[t]he issues may continue to evolve in the trial court.” (A.8.) The only reason the issues have not continued to evolve so far is Expedia’s unilateral refusal to engage in the process outlined by the trial court. Having deliberately manufactured these conditions, Expedia cannot now point to them as a basis for suggesting that further proceedings would be useless.

Second, the Court of Appeals did not commit “obvious error” as required under RAP 13.5(b)(1). A significant portion of Expedia’s Motion consists of boilerplate Washington law concerning the duty to defend. (Mot. at 1-2, 11-13.) As Expedia acknowledges, the Court of Appeals correctly cited to this same body of law in its order denying discretionary

review. (Mot. at 9; *see also* A.5-6.) The Court of Appeals did not improperly conflate the duty to defend and the duty to indemnify as Expedia erroneously suggests (Mot. at 10) but stated only, unremarkably, that (i) Washington recognizes “a late tender rule if the insurer can demonstrate the insured’s delay in tendering the defense caused the insurer ‘actual and substantial prejudice’” and (ii) “[d]iscovery related to such a showing of prejudice can be appropriate to the duty to defend.” (A.6.) (citing *Mut. of Enumclaw Ins. Co. v. USF Ins. Co.*, 137 Wn. App. 352, 361, 153 P.3d 877 (2007)). Indeed, since the Court of Appeals issued its order denying discretionary review, this Court expressly has reaffirmed as much. *Nat’l Sur. Co. v. Immunex Corp.*, 297 P.3d 688, 697 (Wash. 2013).

According to Expedia, the Court of Appeals disregarded Washington law in deciding the issues of when the duty to defend arises, when it may be adjudicated, and whether its adjudication may be delayed by discovery. (Mot. at 13-14.) This is simply not the case. The Appeals Court properly focused on whether the trial court committed reviewable error. As the trial court expressly noted, Expedia requested an order “providing that no further discovery or litigation be permitted, concerning issues that overlap or are logically related to the matters and issues of the underlying actions” (A.14.) The trial court was neither asked to decide nor decided, as a matter of law, whether extrinsic evidence is

relevant to a determination of coverage (A.16), and the Court of Appeals did not take it upon itself *sua sponte* to answer these questions either.³

Third, there is nothing to suggest that the Court of Appeals “has so far departed from the accepted and usual course of judicial proceedings . . . as to call for the exercise of [this Court’s] jurisdiction” under RAP 13.5(b)(3). As noted, discovery concerning bad faith (one subject of Expedia’s motion for summary judgment) and late notice issues (which Zurich raised as a defense) is common in coverage cases.⁴

Fourth, and finally, Expedia maintains that the Court of Appeals

³ Expedia cites exclusively to boilerplate concerning the “eight corners” rule and ignores those cases in which Washington courts, based on the particular factual circumstances presented, considered limited evidence outside the policies and the pleadings in determining coverage. *See, e.g., Overton v. Consol. Ins. Co.*, 145 Wn.2d 417, 38 P.3d 322 (2002) (upholding insurer’s refusal to defend insured based on extrinsic evidence showing insured knew of soil contamination before purchasing insurance); *Campbell v. Ticor Title Ins. Co.*, 166 Wn.2d 466, 475, 209 P.3d 859 (2009) (title insurer had no duty to defend policyholder where policy excluded coverage for easements not disclosed by public record or arising after issuance of policy); *Unigard Ins. Co. v. Leven*, 97 Wn. App. 417, 428-32, 983 P.2d 1155 (1999) (upholding denial of duty to defend based on late notice defense based on extrinsic evidence); *Hartford Fire Ins. Co. v. Leahy*, 774 F. Supp. 2d 1104, 1111-12 (W.D. Wash. 2011) (finding insurer could consider putative insured’s deposition testimony in underlying tort litigation to determine whether insurer had duty to defend; “[b]efore the general principle regarding the duty to defend applies, it must be shown that the person claiming coverage is, in fact, an insured.”); *Trinity Universal Ins. Co. v. Northland Ins. Co.*, No. C07-0884-JCC, 2008 WL 4386760 (W.D. Wash. Sept. 23, 2008) (denying duty to defend based on insured’s knowledge of property damage prior to policy inception, shown by statements outside relevant pleading); *Travelers Indem. Co. v. Realvest Corp.*, No. 3:09-cv-05369 RBL, 2012 WL 5410048, at *3 (W.D. Wash. Nov. 6, 2012) (granting summary judgment that insurer had no duty to defend because it insured defendant only with respect to a business he solely owned and “the evidence is undisputed that [defendant] was not at any time the sole owner of [pertinent] businesses . . .”). As the trial judge indicated, however, she was not asked to rule on the merits of this issue and did not do so. (A.16.)

⁴ *See, e.g., Overton*, 145 Wn.2d 417, 38 P.3d 322 (2002) (insured’s deposition testimony was insufficient to create genuine issue of material fact concerning when insured received notice of soil contamination that ultimately resulted in a claim).

denied discretionary review based on a finding that there is something “unique about a late notice defense.” (Mot. at 15-16 (internal quotation marks omitted).) It was not the inherent uniqueness of a late notice defense, however, that swayed the reviewing panel. The Court of Appeals found that it was within the trial court’s discretion to rule as it did based on the unique factual circumstances presented in *this case*, which the appellate court absolutely was permitted to do.

Although the Court of Appeals may not grant discretionary review unless one of the four subparts of RAP 2.3(b) is satisfied, that court is under no obligation to grant review even if one of those tests is met. *See* RAP 2.3(b) (“discretionary review *may* be accepted only in the following circumstances”) (emphasis added). Rather, the Court of Appeals is free to exercise its “discretion[]” to decide, in any given case, that it is appropriate to await final judgment even if interlocutory review might have been permissible under RAP 2.3(b).⁵

2. The Court of Appeals Did Not Commit Probable Error By Denying Review, Either

Having failed to establish that the Court of Appeals either committed “obvious error” or impermissibly departed from the accepted and usual course of judicial proceedings (RAP 13.5(b)(1), (b)(3)), Expedia

⁵ As for the suggestion that Expedia’s tender was *not* “long delayed” (Mot. at 16), the record plainly and in great detail indicates otherwise. *See* §II.D., *infra*.

next turns to RAP 13.5(b)(2) and asserts the Court of Appeals committed “probable error.” Expedia’s argument in this regard is equally unavailing.

Trial court rulings like the one at issue here are firmly committed to the trial court’s discretion. *See, e.g., Rhinehart v. Seattle Times Co.*, 98 Wn.2d 226, 232, 654 P.2d 673 (1982) (under CR 26(c), providing for protective orders, “the trial court exercises a broad discretion to manage the discovery process in a fashion that will implement the goal of full disclosure of relevant information and at the same time afford the participants protection against harmful side effects”); *Coggle v. Snow*, 56 Wn. App. 499, 504, 784 P.2d 554 (1990) (ruling on a motion for continuance is within the discretion of the trial court and reversible only for a manifest abuse of discretion).⁶ A trial court abuses its discretion by exercising it on untenable grounds or for untenable reasons. *Minehart*, 156 Wn. App. at 463 (internal citation omitted). “[E]ven where an appellate court disagrees with a trial court, it may not substitute its judgment for that of the trial court unless the basis for the trial court’s ruling is untenable.” *Id.*

Applying these principles here, it is plain the Court of Appeals did not commit probable error in denying discretionary review. The appellate court properly refused to second guess the trial court, which at the time of

⁶ *See also* 2A Karl B. Tegland, Washington Practice: Rules Practice, at 6 (7th ed. 2011) (“Discovery orders are seldom reviewed by way of discretionary review.”)

its ruling had sifted through literally thousands of pages of briefing and record materials and held numerous hearings related to the parties' respective positions in this case. Based on all of the information before it, the trial court determined Zurich should be allowed to proceed with discovery deemed necessary and appropriate to facilitating a decision on the merits, but it also expressly addressed Expedia's concerns about potential prejudice by suggesting various options (including a complete stay of the case until the underlying actions are complete or working to fashion a mutually agreeable protective order). (A.13-22.) Making these kinds of calls is a trial judge's job. *See, e.g., Rhinehart*, 98 Wn.2d at 256.

Contrary to Expedia's assertion, moreover, the Court of Appeals correctly noted (more than once) that Expedia's concerns regarding overlapping discovery were "overstated." (A.6,7.) Expedia complains that it is being forced to select between two unpalatable alternatives: "forego[ing] the duty to defend while the underlying cases are ongoing . . . or expos[ing] itself to potential prejudice in those cases." (Mot. at 19.) RAP 13.5(b) contains no language, however, suggesting a party's mere litigation preference is sufficient to meet the strict criteria for discretionary review. Further, Expedia has not presented any Washington or other authority finding the options for proceeding with discovery outlined by the trial court are harmful to insureds. To the contrary, one of Expedia's

principal out-of-state authorities describes the option of staying a coverage action while underlying lawsuits are pending as an appropriate way to “eliminate the risk of inconsistent factual determinations that could prejudice the insured” *Montrose Chem. Corp. v. Superior Court*, 6 Cal. 4th 287, 301, 861 P.2d 1153 (1993).

Expedia obviously disagrees with the rulings below. But discretionary review anticipates there is something more than simply that the trial judge got it wrong. Geoffrey Crooks, *Discretionary Review of Trial Court Decisions Under the Washington Rules of Appellate Procedure*, 61 Wash. L. Rev. 1541, 1546-47 (Oct. 1986). Expedia has not shown that the trial court’s ruling was based on untenable grounds, as it must to demonstrate “probable error” by the Court of Appeals. *See Minehart*, 156 Wn. App. at 463-64; RAP 2.3(b)(2). In light of Expedia’s failure in this regard, its motion for discretionary review should be denied.

3. The Appeals Court’s Order Does Not Limit Expedia’s Freedom to Act In Any Meaningful Way, If At All

Leaving aside the probable error standard, Expedia fails to establish that the Court of Appeals’ order substantially limits its freedom to act as required by RAP 13.5(b)(2). According to Expedia, the challenged order does so by “forcing” Expedia to proceed with overlapping and prejudicial discovery. (Mot. at 18 (emphasis added).)

This is not even an accurate description of what the order requires, however, let alone evidence that Expedia's freedom to act has been curtailed in a manner warranting discretionary review.

As an initial matter, as the Appeals Court acknowledged, the trial court "recognized the potential for prejudice to Expedia in the underlying litigation, but was not convinced that all proposed discovery should be restricted." (A.6.) To solve these issues while affording appropriate protection to Expedia, the trial court suggested the parties confer regarding a prospective discovery protocol, with the trial court resolving any remaining disputes. (A.21-22.) Expedia conveniently glosses over these facts and fails to address why a ruling offering options for non-overlapping, non-prejudicial discovery to proceed demands immediate appellate attention, either by the Court of Appeals or this Court.

More significantly, the record makes abundantly clear that no one is "forcing" Expedia to do anything. Certainly no one "forced" Expedia to wait five years before providing notice to Zurich and filing this coverage lawsuit at a time when the dozens of underlying cases it was litigating remained active and ongoing. That timing was Expedia's choice alone. In addition, proceeding with the option of staying the underlying case (one of the alternatives discussed in the trial court's ruling) would ensure that Expedia is not "forced" to respond to any of Zurich's discovery, whether

potentially overlapping or not. Expedia's rejection of this option is its prerogative, but it does not somehow transform the rulings below into ones that "force" Expedia to proceed with certain discovery or otherwise materially limit Expedia's freedom to act.⁷

Even assuming that the Court of Appeals erred (which, as discussed above, it did not), a decision that affects at most only the internal workings of the lawsuit does not qualify for review under RAP 13(b)(2). *See Crooks, supra*, at 1546 (discussing RAP 2.3(b)(2)). Such is the case here.

B. Delaying Appeal Until After a Final Determination of the Merits is an Adequate Remedy and Satisfies Judicial Economy Concerns

In a last ditch effort to demonstrate the extraordinary remedy of interlocutory review is warranted here, Expedia asserts that "[o]nly review at this stage of the case can provide Expedia with a full and adequate remedy." (Mot at 20.) Expedia's failure to provide colorable legal or factual support for its position dooms this argument as well.

⁷ Expedia's contention that it "is further prejudiced by the prospect that it could be forced to take contradictory positions in this case and in the underlying lawsuits" (Mot. at 19 n.3) is unsupported. Expedia complains that "Zurich seeks to compel Expedia to identify potentially negligent acts that caused the damages the underlying plaintiffs are pursuing." (*Id.*) In an effort to show how there could be a potential for coverage under the policies, Expedia itself voluntarily advised the trial court of various ways that it might have committed a negligent act. (S.A.91-94.) Zurich's related discovery seeks to explore Expedia's allegation of its own negligence (which is required for coverage). Expedia cannot now accuse Zurich or the Court of Appeals of forcing it to take any contradictory positions in the underlying lawsuits.

For one thing, Expedia's singular reliance on *Oliver v. American Motors Corp.* is misplaced. In *Oliver*, this Court considered whether appeal was an adequate remedy to review an order dismissing one of two products liability defendants on jurisdictional grounds, where the plaintiff would have to try the case on the merits as to the remaining defendant before he could appeal and then, if successful, pursue a second trial on the merits against the previously dismissed defendant. 70 Wn.2d 875, 878-79, 425 P.2d 647 (1967). Central to the Court's decision was that the "right" at issue (i.e., jurisdiction) was granted by statute and "independent of the merit of the case," such that "a litigant should not be put to the hazard, delay, and expense of a trial upon the merits as a prerequisite to the assertion of the right." *Id.* (internal citation and quotation marks omitted). Unlike in *Oliver*, the "rights" claimed by Expedia here are not independent from, but go directly to, the heart of this insurance coverage case.

For another, the facts do not support Expedia's assertion that discretionary review is necessary to preserve its supposedly "guaranteed rights" to a prompt resolution on its terms or its preferred form of a protective order precluding further discovery. (Mot. at 20.) Given that Expedia waited years before simultaneously tendering the bulk of the underlying actions and initiating this lawsuit – at which time Expedia had either settled or litigated to the dispositive motion stage or beyond more

than two dozen of the underlying cases – its professed concern about delay simply does not ring true. Nor has the Court of Appeals’ denial of discretionary review denied Expedia any needed “protection.” To the contrary, in accordance with the trial court’s order, Expedia may seek to stay the entire case until any potential risk of prejudice has passed, or the parties can fashion a discovery protocol to allow non-prejudicial discovery and other proceedings to proceed in the interim.

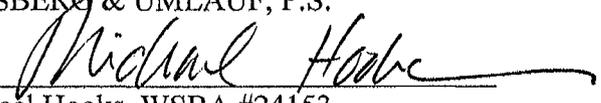
Either way, Expedia may continue with the defense strategy it unilaterally has controlled for years and may seek to recover defense (and indemnity) from Zurich at a later time. Because there is no risk of undue prejudice or unfair deprivation to Expedia, judicial economy is served by “avoidance of a piecemeal appeal in this setting.” (A.8.)

IV. CONCLUSION

Because Expedia has failed to satisfy the strict criteria for discretionary review under RAP 13.5(b), its motion should be denied.

Respectfully submitted this 9th day of May, 2013.

FORSBERG & UMLAUF, P.S.

By: 

Michael Hooks, WSBA #24153

Attorneys for Defendants/Respondents

Steadfast Insurance Co. and

Zurich American Insurance Co.

CERTIFICATE OF SERVICE

The undersigned certifies under the penalty of perjury under the laws of the State of Washington that I am now and at all times herein mentioned, a citizen of the United States, a resident of the State of Washington, over the age of eighteen years, not a party to or interested in the above-entitled action, and competent to be a witness herein.

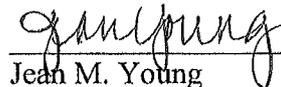
On the date given below I caused to be served by hand-delivery the foregoing **ANSWER TO PLAINTIFFS/PETITIONERS' MOTION FOR DISCRETIONARY REVIEW** on the following individuals:

Mark S. Parris
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SIGNED this 9th day of May, 2013, at Seattle, Washington.



Jean M. Young

OFFICE RECEPTIONIST, CLERK

To: Jean M. Young
Subject: RE: Supreme Court Cause No. 88673-3

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Please note that any pleading filed as an attachment to e-mail will be treated as the original. Therefore, if a filing is by e-mail attachment, it is not necessary to mail to the court the original of the document.

From: Jean M. Young [<mailto:JYoung@forsberg-umlauf.com>]
Sent: Thursday, May 09, 2013 1:13 PM
To: OFFICE RECEPTIONIST, CLERK
Cc: Michael P. Hooks; revans@mckennalong.com; jzimolzak@mckennalong.com; [mswiren@mckennalong.com](mailto:mswire@mckennalong.com); cwagner@mckennalong.com; pkelshaw@mckennalong.com
Subject: Supreme Court Cause No. 88673-3

Re: Expedia, Inc., et al. v. Steadfast Insurance, et al.
Supreme Court Cause No. 88673-3

Please see attached for filing: Defendants'/Respondents' Answer to Plaintiffs'/Petitioners' Motion for Discretionary Review.

NOTE: Respondents' Appendix (100 pgs.) is being hand-delivery tomorrow.

Thank you.

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CLERK *h/h* IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

EXPEDIA, INC., et al.,

Plaintiffs/Petitioners

v.

STEADFAST INSURANCE COMPANY, et al.,

Defendants/Respondents.

**DEFENDANTS'/RESPONDENTS' APPENDIX TO ITS
ANSWER TO PLAINTIFFS'/PETITIONERS'
MOTION FOR DISCRETIONARY REVIEW**

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SUPPLEMENTAL APPENDIX – INDEX

Excerpt, Expedia, Inc. Form 10-K for Year Ending
December 31, 2006 Filed with the U.S. Securities and
Exchange Commission.....1

Columbus, GA v. Expedia, Inc., No. SU-06-CV-1794-7
(Super. Ct. Muscogee County May 30, 2006).....8

Orange County, FL, et al. v. Expedia, Inc., et al., No. 06-
CA-2104 (Cir. Ct. 9th Judicial Dist. Orange County Mar.
13, 2006).....44

Expedia, Inc. et al. v. Broward County, FL, et. al., Case
Nos., 37 2009 CA 000131, 37 2009 CA 000129, and 37
2009 000128 (2d Judicial Cir. Ct., State of Florida, Leon
County Jan. 12, 2009).....53

Excerpt, InterActiveCorp Form 10-K for Year Ending
December 31, 2003 Filed with the U.S. Securities and
Exchange Commission.....68

Excerpt, Expedia, Inc. Form 10-K for Year Ending
December 31, 2010 Filed with the U.S. Securities and
Exchange Commission.....71

Expedia, Inc., et al. v. Steadfast Insurance Co., et al., King
County Superior Court, Order Granting Defendants
Steadfast Insurance Company and Zurich American
Insurance Company’s Motion to Compel, dated March 22,
2012.....85

Letter dated July 12, 2012 from Joanne Zimolzak to Mark
Parris re deposition of Melissa Maher.....88

Excerpt, Expedia, Inc., et al. v. Steadfast Insurance Co., et
al., King County Superior Court, Transcript of January 13,
2012 Hearing and Oral Ruling on Motion for Summary
Judgment.....91

Expedia, Inc., et al. v. Steadfast Insurance Co., et al., King
County Superior Court, Order Denying Plaintiffs' Motion
for Certification and Stay Pending Discretionary Review,
dated September 28, 2012.....95

UNITED STATES SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549
Form 10-K

ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934
 For the fiscal year ended December 31, 2006

OR

TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934
 For the transition period from _____ to _____

Commission file number: 000-51447

EXPEDIA, INC.

(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction of incorporation or organization)

20-2705720
(L.R.S. Employer Identification No.)

3150 139th Avenue SE
Bellevue, WA 98005
(Address of principal executive office) (Zip Code)

Registrant's telephone number, including area code:
(425) 679-7200

Securities registered pursuant to Section 12(b) of the Act:
 Common stock, \$0.001 par value

Warrants to acquire one-half of one share of common stock, \$0.001 par value
Warrants to acquire 0.969375 shares of common stock, \$0.001 par value

Indicate by check mark whether the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act. Yes No

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Act. Yes No

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes No

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K is not contained herein, and will not be contained, to the best of registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K.

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, or a non-accelerated filer (as defined in Rule 12b-2 of the Exchange Act).

Large accelerated filer Accelerated filer Non-accelerated filer

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act). Yes No

As of June 30, 2006, the aggregate market value of the registrant's voting and non-voting common equity held by non-affiliates was \$4,087,526,000. For the purpose of the foregoing calculation only, all directors and executive officers of the registrant are assumed to be affiliates of the registrant.

Class	Outstanding Shares at February 15, 2007 were approximately:
Common stock, \$0.001 par value per share	276,640,572 shares
Class B common stock, \$0.001 par value per share	25,599,998 shares

Documents Incorporated by Reference

Document	Parts Into Which Incorporated
Proxy Statement for the 2007 Annual Meeting of Stockholders (Proxy Statement)	Part III

Table of Contents

charging customers for taxes and fees. The complaint seeks certification of a statewide class of all California residents who were assessed a charge for "taxes/fees" when booking rooms through the defendants and alleges violation of Section 17200 of the California Business and Professions Code and common-law conversion. The complaint seeks the imposition of a constructive trust on monies received from the plaintiff class, as well as damages in an unspecified amount, disgorgement, restitution and injunctive relief. On July 1, 2005, plaintiffs filed an amended complaint, adding claims pursuant to California's Consumer Legal Remedies Act, Civil Code Section 1750 *et seq.*, and claims for breach of contract and the implied duty of good faith and fair dealing. On December 2, 2005, the Court ordered limited discovery and ordered that motions challenging the amended complaint would be coordinated with any similar motions filed in the *City of Los Angeles* action.

City of Los Angeles Litigation. On December 30, 2004, the city of Los Angeles filed a purported class action in California state court against a number of internet travel companies, including Hotels.com, Expedia Washington and Hotwire. *City of Los Angeles, California, on Behalf of Itself and All Others Similarly Situated v. Hotels.com, L.P. et al.*, No. BC326693 (Superior Court, Los Angeles County). The complaint alleges that the defendants are improperly charging and/or failing to pay hotel occupancy taxes. The complaint seeks certification of a statewide class of all California cities and counties that have enacted uniform transient occupancy-tax ordinances effective on or after December 30, 1990. The complaint alleges violation of those ordinances, violation of section 17200 of the California Business and Professions Code, and common-law conversion. The complaint seeks a declaratory judgment that the defendants are subject to hotel occupancy taxes on the hotel rate charged to consumers and imposition of a constructive trust on all monies owed by the defendants to the government, as well as disgorgement, restitution, interest and penalties. On September 26, 2005, the court sustained a demurrer on the basis of misjoinder and granted plaintiff leave to amend its complaint. On February 8, 2006, the city of Los Angeles filed a second amended complaint. On July 12, 2006, the lawsuit filed by the city of San Diego was coordinated with this lawsuit. A demurrer seeking to dismiss the second amended complaint is set for hearing on March 1, 2007. On January 17, 2007, the defendants filed additional demurrers and a motion to strike class allegations.

City of Fairview Heights, Illinois Litigation. On October 5, 2005, the city of Fairview Heights, Illinois filed a purported state wide class action in state court against a number of internet travel companies, including Hotels.com, Hotwire and Expedia Washington. *City of Fairview Heights, individually and on behalf of all others similarly situated v. Orbitz, Inc., et al.*, No. 05L0576 (Circuit Court for the Twentieth Judicial Circuit, St. Clair County). The complaint alleges that the defendants have failed to pay to the city hotel occupancy taxes as required by municipal ordinance. The complaint purports to assert claims for violation of that ordinance, violation of the consumer protection act, conversion and unjust enrichment. The complaint seeks damages and other relief in an unspecified amount. On November 28, 2005, defendants removed this action to the United States District Court for the Southern District of Illinois. On January 17, 2006, the defendants moved to dismiss the complaint. On July 12, 2006, the Court granted in part and denied in part defendants' motion to dismiss. Certification discovery is ongoing.

City of Findlay, Ohio Litigation. On October 25, 2005, the city of Findlay, Ohio filed a purported state wide class action in state court against a number of internet travel companies, including Hotels.com, Hotwire and Expedia Washington. *City of Findlay v. Hotels.com, L.P., et al.*, No. 2005-CV-673 (Court of Common Pleas of Hancock County, Ohio). The complaint alleges that the defendants have failed to pay to the city hotel occupancy taxes as required by municipal ordinance. The complaint purports to assert claims for violation of that ordinance, violation of the consumer protection act, conversion imposition of a constructive trust and declaratory relief. The complaint seeks damages and other relief in an unspecified amount. On November 22, 2005, defendants removed the case to the United States District Court for the Northern District of Ohio. On January 30, 2006, the defendants moved to dismiss the case. On July 26, 2006, the Court granted in part and denied in part defendants' motion to dismiss. Discovery is ongoing.

City of Chicago Litigation. On November 1, 2005, the city of Chicago, Illinois filed an action in state court against a number of internet travel companies, including Hotels.com, Hotwire and Expedia Washington. *City of Chicago, Illinois v. Hotels.com, L.P., et al.*, No. 2005 L051003 (Circuit Court of Cook County). The complaint alleges that the defendants have failed to pay to the city the hotel accommodations taxes as required by municipal ordinance. The complaint purports to assert claims for violation of that ordinance, conversion,

Table of Contents

imposition of a constructive trust and demand for a legal accounting. The complaint seeks damages, restitution, disgorgement, fines, penalties and other relief in an unspecified amount. On January 31, 2006, the defendants moved to dismiss the complaint. A hearing on defendants' motion to dismiss was held on January 16, 2007. The Court anticipates issuing a ruling on that motion on or about April 5, 2007.

City of Rome, Georgia Litigation. On November 18, 2005, the city of Rome, Georgia, Hart County, Georgia, and the city of Cartersville, Georgia filed a purported state wide class action in the United States District Court for the Northern District of Georgia against a number of internet travel companies, including Hotels.com, Hotwire and Expedia Washington. *City of Rome, Georgia, et al. v. Hotels.com, L.P., et al.*, No. 4:05-CV-249 (U.S. District Court, Northern District of Georgia, Rome Division). The complaint alleges that the defendants have failed to pay to the county and cities the hotel accommodations taxes as required by municipal ordinances. The complaint purports to assert claims for violation of excise and sales and use tax ordinances, conversion, unjust enrichment, imposition of a constructive trust, declaratory relief and injunctive relief. The complaint seeks damages and other relief in an unspecified amount. On February 6, 2006, the defendants moved to dismiss the complaint. On May 9, 2006, the Court granted in part and denied in part defendants' motion to dismiss. On June 8, 2006, plaintiffs filed an amended complaint adding 16 more municipalities and political subdivisions as named plaintiffs. Certification discovery is ongoing.

Pitt County, North Carolina Litigation. On December 1, 2005, Pitt County, North Carolina filed a purported state wide class action in state court against a number of internet travel companies, including Hotels.com, Hotwire and Expedia Washington. *Pitt County, et al. v. Hotels.com, L.P. et al.*, No. 05-CVS-3017 (State of North Carolina, Pitt County, General Court of Justice, Superior Court Division). The complaint alleges that the defendants have failed to pay to the city hotel accommodations taxes as required by municipal ordinance. The complaint purports to assert claims for violation of that ordinance, violation of the deceptive trade practices act, conversion, imposition of a constructive trust and a declaratory judgment that defendants have engaged in unlawful business practices. The complaint seeks damages and other relief in an unspecified amount. On February 13, 2006, the defendants removed the action to the United States District Court for the Eastern District of North Carolina. On March 14, 2006, the defendants filed a motion to dismiss the complaint. Defendants removed the case to federal court on February 13, 2006. A hearing on defendants' motion to dismiss was held on October 17, 2006. The Court has not yet issued a ruling on that motion.

City of San Diego, California Litigation. On February 9, 2006, the city of San Diego, California filed an action in state court against a number of internet travel companies, including Hotels.com, Hotwire and Expedia Washington. *City of San Diego v. Hotels.com, L.P. et al.*, (Superior Court for the County of San Diego). The complaint alleges that the defendants have failed to pay to the city hotel accommodations taxes as required by municipal ordinance. The complaint purports to assert claims for violation of that ordinance, for violation of Section 17200 of the California Business and Professions Code, conversion, imposition of a constructive trust and declaratory judgment. The complaint seeks damages and other relief in an unspecified amount. On July 12, 2006, this lawsuit was coordinated with the City of Los Angeles lawsuit (No. DC326693, Superior Court of the State of California, Los Angeles County, Central District).

Orange County, Florida Litigation. On March 13, 2006, Orange County, Florida filed an action in state court against a number of internet travel companies, including Hotels.com, Hotwire and Expedia Washington. See *Orange County et al v. Expedia, Inc., et al.*, 2006-CA-2104 Div. 39 (Circuit Court Ninth Judicial District, Orange County, FL). The complaint alleges that the defendants have failed to pay the county hotel accommodations taxes as required by municipal ordinance. The complaint seeks a declaratory judgment regarding the county's right to audit and collect tax on certain of the defendants' hotel room transactions. The case was removed to federal court on April 13, 2006. The federal court remanded the case to state court on August 2, 2006. On February 2, 2007, the Court granted defendants' motion to dismiss. On February 9, 2007, the County filed a motion for rehearing, which is pending.

City of Atlanta, Georgia Litigation. On March 29, 2006, the city of Atlanta, Georgia filed suit against a number of internet travel companies, including Hotels.com, Hotwire and Expedia Washington. See *City of Atlanta, Georgia v. Hotels.com, L.P., et al.*, 2006-CV-114732 (Superior Court of Fulton County, Georgia). The complaint alleges that the defendants have failed to pay to the city hotel accommodations taxes as required by

Table of Contents

municipal ordinances. The complaint purports to assert claims for violation of the ordinance, conversion, unjust enrichment, imposition of a constructive trust, declaratory judgment and an equitable accounting. The complaint seeks damages and other relief in an unspecified amount. The defendants answered on June 5, 2006. On December 11, 2006, the Court dismissed the lawsuit. The city of Atlanta filed a notice of appeal on January 10, 2007.

City of Charleston, South Carolina Litigation. On April 26, 2006, the city of Charleston, South Carolina filed suit in state court against a number of internet travel companies, including Hotels.com, Hotwire and Expedia Washington. See *City of Charleston, South Carolina v. Hotels.com, et al.*, 2:06-CV-01646-PMD (United States District Court, District of South Carolina, Charleston Division). The case was removed to federal court on May 31, 2006. The complaint alleges that the defendants have failed to pay the city hotel accommodations taxes as required by municipal ordinance. The complaint purports to assert claims for violation of that ordinance, conversion, constructive trust and legal accounting. The complaint seeks damages in an unspecified amount. The defendants answered on July 7, 2006. On August 22, 2006, Hotels.com GP, LLC was voluntarily dismissed. The Court entered a scheduling order on August 25, 2006, providing for a trial in August 2007. Discovery is ongoing.

City of San Antonio, Texas Litigation. On May 8, 2006, the city of San Antonio filed a putative statewide class action in federal court against a number of internet travel companies, including Hotels.com, Hotwire, and Expedia Washington. See *City of San Antonio, et al. v. Hotels.com, L.P., et al.*, SA06CA0381 (United States District Court, Western District of Texas, San Antonio Division). The complaint alleges that the defendants have failed to pay to the city hotel accommodations taxes as required by municipal ordinance. The complaint purports to assert claims for violation of that ordinance, common-law conversion, and declaratory judgment. The complaint seeks damages in an unspecified amount, restitution and disgorgement. The defendants filed a motion to dismiss on June 30, 2006. On August 28, 2006, the plaintiffs filed a motion for class certification. Both the motion to dismiss and motion for class certification are pending.

City of Gallup, New Mexico Litigation. On May 17, 2006, the city of Gallup, New Mexico filed a putative statewide class action in state court against a number of internet travel companies, including Hotels.com, Hotwire and Expedia Washington. See *City of Gallup, New Mexico, et al. v. Hotels.com, L.P., et al.*, CIV-06-0549 JC/RLP (United States District Court, District of New Mexico). The case was removed to federal court on June 23, 2006. The complaint alleges that the defendants have failed to pay to the city hotel accommodations taxes as required by municipal ordinances. The complaint purports to assert claims for violation of those ordinances, conversion, and declaratory judgment. The complaint seeks damages in an unspecified amount, restitution and disgorgement. On July 31, 2006, the defendants filed a motion to dismiss. On January 30, 2007, the Court granted in part and denied in part defendants' motion to dismiss. Certification discovery is underway.

Town of Mt. Pleasant, South Carolina Litigation. On May 23, 2006, the Town of Mount Pleasant, South Carolina filed suit in state court against a number of internet travel companies, including Hotels.com, Hotwire and Expedia Washington. See *Town of Mount Pleasant, South Carolina v. Hotel.com, et al.*, 2-06-CV-020987-PMD (United States District Court, District of South Carolina, Charleston Division). The case was removed to federal court on July 21, 2006. The complaint alleges that the defendants have failed to pay to the city hotel accommodations taxes as required by municipal ordinance. The complaint purports to assert claims for violation of that ordinance, conversion, constructive trust and legal accounting. The complaint seeks damages in an unspecified amount. The defendants answered the complaint on September 15, 2006. On August 22, 2006, Hotels.com GP, LLC was voluntarily dismissed. Discovery is ongoing.

Columbus, Georgia Litigation. On May 30, 2006, the city of Columbus, Georgia filed suit against Expedia, Inc. and on June 7, 2006 filed suit against Hotels.com — both in state court. See *Columbus, Georgia v. Hotels.com, Inc., et al.*, 4:06-CV-80; *Columbus, Georgia v. Expedia, Inc.*, 4:06-CV-79 (United States District Court, Middle District of Georgia, Columbus Division). The cases were removed to federal court on July 12, 2006. During this same time period, the city of Columbus filed similar lawsuits against other internet travel companies. The complaints allege that the defendants have failed to pay the city hotel accommodations taxes as required by municipal ordinance. The complaints purport to assert claims for

Table of Contents

violation of that ordinance, unjust enrichment, imposition of a constructive trust, equitable accounting, and declaratory judgment. The complaint seeks damages in an unspecified amount, restitution and disgorgement. The lawsuits were removed to federal court on July 12, 2006. Defendants filed answers on July 26, 2006. Motions to remand are pending.

Lake County, Indiana Convention and Visitors Bureau Litigation. On June 12, 2006, the Lake County Convention and Visitors Bureau, Inc. and Marshall County filed a putative statewide class action in federal court on behalf of themselves and all other similarly situated political subdivisions in the state of Indiana against a number of internet travel companies, including Hotels.com, Hotwire and Expedia Washington. See *Lake County Convention and Visitors Bureau, Inc., et al. v. Hotels.com, LP*, 2:06-CV-207 (United States District Court for the Northern District of Indiana, Hammond Division). The complaint alleges that the defendants have failed to pay to municipalities hotel accommodations taxes as required by municipal ordinances. The complaint purports to assert claims for violation of those ordinances, conversion, unjust enrichment, imposition of a constructive trust, and declaratory judgment. The complaint seeks damages in an unspecified amount. On August 17, 2006, the plaintiffs filed an amended complaint. The defendants filed a motion to dismiss, which is pending.

City of Orange, Texas Litigation. On July 18, 2006, the city of Orange, Texas filed a putative statewide class action in federal court against a number of internet travel companies, including Hotels.com, Hotwire and Expedia Washington. See *City of Orange, Texas, et al. v. Hotels.com, L.P., et al.*, 1:06-CV-0413-RHG-KFG (United States District Court, Eastern District of Texas, Beaumont Division). The complaint alleges that the defendants have failed to pay to municipalities hotel accommodations taxes as required by municipal ordinances. The complaint purports to assert claims for violation of those ordinances, conversion, civil conspiracy, and declaratory judgment. The complaint seeks damages in an unspecified amount. Defendants filed a motion to dismiss on September 12, 2006, which is pending.

City of Jacksonville, Florida Litigation. In July 2006, the city of Jacksonville, Florida filed a putative statewide class action in state court against a number of internet travel companies, including Hotels.com, Hotwire and Expedia Washington. See *City of Jacksonville, Florida, et al. v. Hotels.com, LP, et al.*, 2006-CA-005392-XXXX-MA (Circuit Court, Fourth Judicial Circuit, In and For Duval County, Florida). The complaint alleges that the defendants have failed to pay to municipalities hotel accommodations taxes as required by municipal ordinances. The complaint purports to assert claims for violation of those ordinances, conversion, unjust enrichment, imposition of a constructive trust, and declaratory judgment. The complaint seeks damages in an unspecified amount. On September 22, 2006, the defendants filed a motion to stay the case in deference to the Leon County lawsuit. That motion is pending.

Leon County, Florida Litigation. On July 27, 2006, Leon County, Florida filed a putative statewide class action in federal court against a number of internet travel companies, including Hotels.com, Hotwire and Expedia Washington. See *Leon County, et al. v. Hotels.com, et al.*, 06-CV-21878 (United States District Court, Southern District of Florida). The complaint alleges that the defendants have failed to pay to the municipalities hotel accommodation taxes as required by municipal ordinances. The complaint purports to assert claims for violation of those ordinances. The complaint seeks damages in an unspecified amount. On February 7, 2007, the Court held a hearing on defendants' motion to dismiss. On February 20, 2007, the County informed the defendants that it will be filing a notice to voluntarily dismiss the lawsuit.

Cities of Columbus and Dayton, Ohio Litigation. On August 8, 2006, the city of Columbus, Ohio and the city of Dayton, Ohio, filed a putative statewide class action in federal court against a number of internet travel companies, including Hotels.com, Hotwire and Expedia Washington. See *City of Columbus, et al. v. Hotels.com, L.P., et al.*, 2:06-cv-00677 (United States District Court, Southern District of Ohio). The complaint alleges that the defendants have failed to pay to counties and cities in Ohio hotel accommodation taxes as required by local ordinances. The complaint purports to assert claims for violation of those ordinances, unjust enrichment, violation of the doctrine of money had and received, conversion, declaratory judgment, and seeks imposition of a constructive trust. The complaint seeks damages in an unspecified amount. Defendants filed a motion to dismiss on September 25, 2006 and a motion to transfer venue to the Northern District of Ohio on

Table of Contents

September 27, 2006. The motion to dismiss is pending. On January 8, 2007, the magistrate judge recommended that the case be transferred to the Northern District of Ohio.

North Myrtle Beach Litigation. On August 28, 2006, the city of North Myrtle Beach, South Carolina filed a lawsuit in state court against a number of internet travel companies, including Hotels.com, Hotwire, and Expedia Washington. See *City of North Myrtle Beach v. Hotels.com, et al.*, 4:06-cv-03063-RBH (United States District Court, District of South Carolina, Florence Division). The complaint alleges that the defendants have failed to pay the hotel accommodation taxes as required by local ordinances. The complaint purports to assert claims for violation of those ordinances, as well as a claim for conversion, imposition of a constructive trust, and demand for an accounting. On October 27, 2006, the case was removed to federal court. On December 1, 2006, the defendants filed a motion to dismiss, which is pending.

Miami-Dade County, Florida Litigation. On September 21, 2006, Miami-Dade County, filed a lawsuit in state court against a number of internet travel companies, including Hotels.com, Hotwire, and Expedia Washington. See *Miami-Dade County v. Internetnetwork Publishing Corp., et al.*, 06-19187 CA 05 (Circuit Court of the 11th Judicial Circuit in and for Miami-Dade County, Florida). The complaint alleges that the defendants have failed to pay the county hotel accommodation taxes as required by local ordinance. The complaint purports to assert claims for violation of that ordinance, violations of Florida's deceptive and unfair trade practices act, breach of fiduciary and agency duty, unjust enrichment, equitable accounting, injunctive relief, and declaratory judgment. The complaint seeks damages in an unspecified amount. The defendants filed a motion to dismiss. The Court held a hearing on defendants' motion on January 17, 2007, during which the Court indicated that it was going to enter an order dismissing six of the seven claims brought by the County. On January 18, 2007, the County filed a notice of voluntary dismissal of the lawsuit.

Louisville/Jefferson County Metro Government, Kentucky Litigation. On September 21, 2006, the Louisville/Jefferson County Metro Government filed a putative statewide class action in federal court against a number of internet travel companies, including Hotels.com, Hotwire, and Expedia Washington. See *Louisville/Jefferson County Metro Government v. Hotels.com, L.P., et al.*, 3:06CV-480-R (United States District Court for the Western District of Kentucky, Louisville Division). The complaint alleges that the defendants have failed to pay the counties and cities in Kentucky hotel accommodation taxes as required by local ordinances. The complaint purports to assert claims for violation of those ordinances, unjust enrichment, money had and received, conversion, imposition of a constructive trust, and declaratory judgment. The complaint seeks damages in an unspecified amount. On December 22, 2006, the defendants filed a motion to dismiss, which is pending.

Nassau County, New York Litigation. On October 24, 2006, the County of Nassau, New York filed a putative statewide class action in federal court against a number of internet travel companies, including Hotels.com, Hotwire, and Expedia Washington. See *Nassau County, New York, et al. v. Hotels.com, L.P., et al.*, (United States District Court, Eastern District of New York). The complaint alleges that the defendants have failed to pay cities, counties and local governments in New York hotel accommodation taxes as required by local ordinances. The complaint purports to assert claims for violations of those ordinances, as well as claims for conversion, unjust enrichment, and imposition of a constructive trust. The defendants filed a motion to dismiss on January 31, 2007. The County's deadline to respond to the motion is April 2, 2007.

Cumberland County, North Carolina Litigation. On December 4, 2006, the County of Cumberland, North Carolina filed a lawsuit in state court against a number of internet travel companies, including Hotels.com, Hotwire, and Expedia Washington. See *Cumberland County v. Hotels.com, L.P., et al.*, 06 CVS 10630 (General Court of Justice, Superior Court Division, Cumberland County). The complaint alleges that the defendants have failed to pay the County hotel accommodation taxes as required by local ordinance. The complaint purports to assert claims for violation of the local ordinance, as well as claims for declaratory judgment or injunction, conversion, imposition of a constructive trust, demand for an accounting, unfair and deceptive trade practices, and agency. The defendants filed a motion to dismiss on February 12, 2007.

Branson, Missouri Litigation. On December 28, 2006, the city of Branson, Missouri filed a lawsuit in state court against a number of internet travel companies, including Hotels.com, Hotwire, and Expedia Washington. See *City of Branson, MO v. Hotels.com, L.P., et al.*, 106CC5164 (Circuit Court of Greene County, Missouri). The complaint alleges that the defendants have failed to pay the city hotel accommodation taxes as

Table of Contents

required by local ordinance. The complaint purports to assert claims for violation of the local ordinance, as well as claims for declaratory judgment, conversion, and demand for an accounting. The deadline for defendants to respond to the lawsuit has not yet been established.

Buncombe County Litigation. On February 1, 2007, Buncombe County, North Carolina filed a lawsuit in state court against a number of internet travel companies, including Hotels.com, Hotwire, and Expedia Washington. See *Buncombe County v. Hotels.com, et al.*, 7 CV 00585 (General Court of Justice, Superior Court Division, Buncombe County, North Carolina). The complaint alleges that the defendants have failed to pay the county hotel accommodation taxes as required by local ordinance. The complaint purports to assert claims for violation of the local ordinance, as well as claims for declaratory judgment. The deadline for defendants to respond to the lawsuit has not yet been established.

Dare County, North Carolina Litigation. On January 26, 2007, Dare County, North Carolina filed a lawsuit in state court against a number of internet travel companies, including Hotels.com, Hotwire, and Expedia Washington. See *Dare County v. Hotels.com, L.P., et al.*, 07 CVS 56 (General Court of Justice, Superior Court Division, Dare County, North Carolina). The complaint alleges that the defendants have failed to pay the county hotel accommodation taxes as required by local ordinance. The complaint purports to assert claims for violation of the local ordinance, as well as claims for declaratory judgment, injunction, conversion, constructive trust, accounting, unfair and deceptive trade practices and agency. The deadline for defendants to respond to the lawsuit has not yet been established.

The Company believes that the claims in all of the lawsuits relating to hotel occupancy taxes lack merit and will continue to defend vigorously against them.

Worldspan Litigation. On July 26, 2006, Expedia filed a lawsuit against Worldspan, L.P. in state court in Washington seeking a declaratory judgment, and other relief, regarding the rights and obligations of Expedia and Worldspan under the parties' June 2001 Amended and Restated Development Agreement and the parties' CRS Marketing, Services and Development Agreement and all amendments thereto. See *Expedia, Inc. v. Worldspan, L.P.*, (King County Superior Court). Worldspan answered the lawsuit on August 15, 2006, denying the allegations. Discovery is ongoing.

Part I. Item 4. *Submission of Matters to a Vote of Security Holders*

There were no matters submitted to a vote of our security holders during the fourth quarter of 2006.

Part II. Item 5. *Market for Registrant's Common Equity, Related Stockholder Matters and Issuer Purchases of Equity Securities*

Market Information

Our common stock has been quoted on NASDAQ under the ticker symbol "EXPE" since August 9, 2005. Prior to that time, there was no public market for our common stock. Our Class B common stock is not listed and there is no established public trading market. As of February 15, 2007, there were approximately 5,591 holders of record of our common stock and the closing price of our common stock was \$22.30 on NASDAQ. As of February 15, 2007, there were six holders of record of our Class B common stock, each of which is an affiliate of Liberty.

The following table sets forth the intra-day high and low prices per share for our common stock during the periods indicated:

	<u>High</u>	<u>Low</u>
Year ended December 31, 2006		
Fourth Quarter	\$21.29	\$15.55
Third Quarter	17.28	12.87
Second Quarter	20.55	13.36
First Quarter	27.55	17.42

IN THE SUPERIOR COURT OF MUSCOGEE COUNTY, GEORGIA

FILED

COLUMBUS, GEORGIA,)
)
 Plaintiff,)
)
 v.)
)
 EXPEDIA, INC.)
)
 Defendant.)

2006 MAY 30 P 1:23

CIVIL ACTION NO. 5406-W-1794-7

**VERIFIED COMPLAINT SEEKING DECLARATORY JUDGMENT,
INJUNCTIVE RELIEF, AND OTHER EQUITABLE REMEDIES**

COMES NOW Plaintiff, Columbus, Georgia (hereinafter sometimes referred to as "Columbus"), and files this its Complaint seeking Declaratory Judgment, Injunctive Relief and Other Equitable Remedies against Defendant Expedia, Inc. (hereinafter referred to as "Defendant"), and shows as follows:

PRELIMINARY STATEMENT

Defendant is an online seller and/or reseller of hotel rooms to the general public, and Defendant collected but failed to remit taxes due and owed to Plaintiff and the appropriate governmental authorities on such transactions.

Defendant is in the business of furnishing, renting, selling, and/or reselling, to the public, hotel rooms, lodgings, or accommodations within the territorial limits of Columbus, Muscogee County, Georgia, and within the taxing authority of the Consolidated City-County Government of Columbus, Georgia. Defendant contracts with franchise hoteliers (operators) and independent local hoteliers to

purchase room inventory, and/or sell, rent, and/or act as an agent for operators in the advertising, promotion and booking of hotel/motel rooms, lodgings, or accommodations.

The Plaintiff is a consolidated city-county government formed under the laws of the State of Georgia operating as the Consolidated City-County Government of Columbus, Georgia. Plaintiff, Columbus, is authorized to levy and collect a hotel/motel occupancy excise tax upon the furnishing for value to the public of any local room or rooms, lodgings, or accommodations within the territorial limits of Columbus, Georgia, pursuant to O.C.G.A. § 48-13-50, which authority was implemented through Columbus Code of Ordinances §§ 19-102, *et seq.* (attached hereto as Exhibit "A"). Pursuant to the aforesaid authority, Columbus "imposed an excise tax in the amount of seven percent of the charge to the public upon the furnishing for value any room or rooms or lodging or accommodations. . . ." Columbus Code of Ordinances §§ 19-112. Hotel operators are required to collect the aforesaid excise tax from the public/occupant at time of sale or occupancy. Columbus Code of Ordinances §§ 19-112. Defendant herein has the duty to collect the subject excise tax by statute, ordinance, contract, and/or undertaking. At all times material hereto, the Defendant collected hotel/motel taxes as a percentage of what the Defendant charged the public for local hotel/motel rooms. At all times material hereto, Defendant failed to remit the full amount of hotel/motel taxes collected and owed to the Plaintiff. Wherefore,

Plaintiff seeks Declaratory Judgment, Injunctive Relief, and Other Equitable Remedies against Defendant.

PARTIES, JURISDICTION, AND VENUE

1.

Columbus is a consolidated city-county government organized under the laws of the State of Georgia and whose principal business offices are located at 100 10th Street, Columbus, Georgia 31901.

2.

Defendant Expedia, Inc. is a Washington corporation with principal business offices located at 13810 SE Eastgate Way, Suite 400, Bellevue, WA, 98005. Defendant is registered to do business in the State of Georgia and does substantial business in the State of Georgia. Defendant may be properly served with process through its registered agent for service of process, to wit: National Registered Agents, Inc., 3761 Venture Drive, Duluth, GA 30096.

3.

Defendant is in the business of furnishing, renting, selling, and/or reselling to the public, hotel rooms, lodgings, or accommodations within the territorial limits of Columbus, Muscogee County, Georgia, and within the taxing authority of the Consolidated City-County Government of Columbus, Georgia. Defendant contracts with franchise hoteliers (operators) and independent local hoteliers to purchase room inventory located within the city limits and taxing authority of the

City of Columbus, and/or sell, rent, and/or act as agent for operators in the advertising, promotion and booking of hotel/motel rooms, lodgings, or accommodations. Defendant advertises for rent and does in fact rent hotel rooms which are subject to the excise tax at issue herein, undertake and have the duty to collect the total tax due, and collect or should collect the full amount of the excise tax due. Defendant generates revenues from the renting, charging of service fees, collection of taxes, and failure to remit the total tax due associated with the hotel rooms located within Columbus at issue in this lawsuit. Defendant performs services for hotels/motels within Columbus and derives revenues therefrom. By virtue of these facts, and the additional facts alleged herein, Defendant is subject to the jurisdiction of this Court.

4.

The levy of the excise tax, use, possession and/or occupancy of hotel rooms, and other acts, omissions, wrongs, and injuries at issue in this case occurred in Muscogee County, Georgia. Accordingly, venue is proper pursuant to O.C.G.A. § 14-2-510(b)(3) and O.C.G.A. § 14-2-510(b)(4).

FACTS

5.

O.C.G.A. § 48-13-50, "Excise Tax on rooms, lodgings, and accommodations," authorizes each county and municipality in Georgia to levy excise taxes for the purposes of promoting, attracting, stimulating, and developing

4

conventions and tourism in counties and municipalities. Municipalities may levy and collect an excise tax upon the furnishing for value to the public of any room or rooms furnished by any person or legal entity licensed by, or required to pay business or occupation taxes to, the municipality for operating a hotel or similar facility. O.C.G.A. § 48-13-51(a)(1)(A).

6.

Every person or entity subject to a tax levied as provided above shall be liable for the tax at the applicable rate on the lodging charges actually collected or, “if the amount of taxes collected from the hotel or motel guest is in excess of the total amount that should have been collected, the total amount actually collected must be remitted.” O.C.G.A. § 48-13-51(a)(1)(B)(i) (emphasis added).

7.

At all times material hereto, Columbus, pursuant to the authority of O.C.G.A. § 48-13-51, as implemented by the Columbus Code of Ordinances, §§ 19-110, *et seq.*, levied an excise tax of seven percent of the value of hotel/motel rooms on the occupants of said hotel/motel rooms located within its tax district (See Exhibit “A”, Columbus Code of Ordinances §§ 19-110, *et seq.*). The amount of this transient occupancy and/or excise tax, which is the amount Defendant is required to remit, is calculated as a percentage of the price each consumer occupant pays Defendant for a hotel room. O.C.G.A. §§ 4-13-51, *et seq.*

5

Section 19-111, captioned Imposition and Rate of Tax, of the Columbus

Code of Ordinances states in part:

There is hereby imposed an excise tax in the amount of seven (7) percent of the charge to the public upon the furnishing for value of any room or rooms or lodging or accommodations furnished by any person licensed by or required to pay business or occupation taxes to Columbus for operating a hotel within the meaning of this article.¹

¹ Salient definitions contained in the Columbus Code of Ordinances are as follows:

....

(b) *Operator.* Any person operating a hotel in Columbus, including, but not limited to, the owner or proprietor of such premises, lessee, sublessee, lender in possession, licensee or any other person otherwise operating such hotel.

(c) *Occupant.* Any person who, for a consideration, uses, possesses, or has the right to use or possess any room in a hotel under any lease, concession, permit, right of access, license to use or other agreement, or otherwise.

....;

(e) *Hotel.* Any structure or any portion of a structure, including any lodging house, roominghouse, dormitory, Turkish bath, bachelor hotel, studio hotel, motel, motor hotel, auto court, inn, public club, or private club, containing guest rooms and which is occupied, or is intended or designed for occupancy, by guests, whether rent is paid in money, goods, labor, or otherwise. It does not include any jail, hospital, asylum, sanitarium, orphanage, prison, detention, or other buildings in which human beings are housed and detained under legal restraint.

9.

At all times material hereto, Columbus, pursuant to the authority of O.C.G.A. § 48-13-51, as implemented by the Columbus Code of Ordinances, §§ 19-110, *et seq.*, requires every operator renting hotel/motel rooms to register with the director of the department of finance of Columbus (hereinafter "Director").

10.

At all times material hereto, Columbus, pursuant to the authority of O.C.G.A. § 48-13-51, as implemented by the Columbus Code of Ordinances, §§ 19-110, *et seq.*, requires every operator renting hotel/motel rooms to collect the hotel/motel tax from the occupant and remit said tax to the Director on or before the twentieth day of the month following the month the tax was collected.

(f) *Guest Room.* A room occupied, or intended, arranged, or designed for occupancy, by one or more occupants for the purpose of living quarters or residential use.

(g) *Rent.* The consideration received for occupancy valued in money, whether received in money or otherwise, including all receipts, cash, credits, and property or services of any kind or nature, and also the amount for which credit is allowed by the operator to the occupant, without any deduction therefrom whatsoever.

.....

(j) *Columbus.* The consolidated city-county government of Columbus, Georgia.

(k) *Tax.* The tax imposed by this article.

11.

At all times material hereto, Columbus, pursuant to the authority of O.C.G.A. § 48-13-51, as implemented by the Columbus Code of Ordinances, §§ 19-112 and 19-115, requires every operator renting hotel/motel rooms to file with the Director a return setting out the amount of gross rent collected and the amount of tax collected or due.

12.

Defendant is an owner and/or operator of a business that furnishes, rents, sells or resells hotel/motel rooms to occupants through an internet website. Defendant owns and/or operates a proprietary website, www.Expedia.com.

every 15.

Defendant obtains its supply of hotel rooms utilizing three methods. The first method involves the Defendant contracting with "brick and mortar" hotels for an allotment of rooms with guaranteed availability that may be purchased for a predetermined wholesale rate; but unsold rooms may be returned to the "brick and mortar" hotel within a contracted specified period of time. The second method is where the Defendant purchases the hotel/motel rooms outright in bulk from "brick and mortar" hoteliers. And the third method is where the Defendant sells hotel/motel rooms that are available to them through an electronic distribution management system without a previously negotiated contract with the "brick and mortar" hotels.

14.

Regardless of the manner by which the Defendant obtains its inventory, the business model employed by Defendant is the same. Defendant sells the hotel/motel room to the occupant at a markup from the wholesale price paid to the hotel operator and adds a "taxes and fees" bundle to the marked-up rental rate to cover all applicable taxes.

15.

Customers who use Defendant's website are invited to search for hotel/motel rooms by location, date, price, amenities and other variables. The result of the search is a menu of available hotel/motel rooms at specific quoted rental rates.

16.

In addition to the rental quotes, Defendant's website provides detailed information about the hotel, as well as directions to the hotel, lists of nearby attractions, reviews and customer comments.

17.

Once a customer selects the hotel/motel room that he or she desires, the customer is taken to a booking screen where the quoted room rate is presented and the customer is informed that an additional charge for "taxes and fees" is required.

18.

In order for the customer to purchase the room, he or she must provide valid credit card information, whereby the Defendant immediately charges to that card the rental rate for the room plus the amount for "taxes and fees."

19.

Defendant collects all applicable taxes from their customers as a percentage of the value (price) paid by the customer at the time the credit card is charged for the rental of the hotel/motel room.

20.

Defendant's website does not, at any point, itemize the components of "taxes and fees" for the customer, nor does it identify the applicable taxes that are actually remitted to the taxing authority or inform the customer of the applicable tax rate.

21.

At check-in, the occupant presents a credit card to the "brick and mortar" hotel/motel for incidental costs only, *i.e.*, mini-bar, long distance phone calls, movies, etc., which the occupant may incur that were not a part of the contracted rental price the occupant paid to the Defendant.

22.

At a predetermined and/or contracted period of time after the occupant has checked-out of the hotel/motel room, Defendant pays the "brick and mortar" hotels

the wholesale price of the room and remits taxes only as a percentage of the wholesale room price.

23.

Defendant retains the unremitted amount of taxes collected from the occupant.

24.

By way of example, Defendant contracts with a Columbus hotel to purchase rooms and/or sell rooms for the hotel at a price of \$50.00. A customer using Defendant's website pays Defendant \$100.00 for the room. Defendant charges the customer's credit card \$100.00 plus an amount for "taxes and fees". The approximate charge the Defendant adds as "taxes and fees" to cover all applicable taxes for a room in a Columbus hotel is approximately 17% of the Defendant's rental rate. For this example, Defendant would charge the customer's credit card \$117.00 for the room rental. At some point after the customer checks out of the room, the Defendant would remit back to the hotel the \$50.00 for the wholesale price of the room plus \$3.50 for the hotel/motel tax. The \$3.50 being the 7% hotel/motel tax applied to the \$50.00 wholesale price of the room. Defendant retains the additional taxes collected based on the \$100.00 room rate.

25.

Defendant has publicly admitted that it does not pay taxes on the full rental rate it charges occupants. In public filings made by the Defendant, it

acknowledges that it only remits taxes back to the "brick and mortar" hotels for the amount of the wholesale price of the room.

26.

Defendant Expedia, Inc., in its Form 10-Q filed with the Securities and Exchange Commission covering the quarterly period ended March 31, 2003, stated:

We are currently conducting an on-going review and interpretation of the laws in various states and jurisdictions relating state and local sales and hotel occupancy taxes... The current business practice is that the hotels collect and remit these taxes to the various tax authorities based on the amounts collected by the hotels. Consistent with this practice, we recover the taxes from customers and remit the taxes to the hotel operators for payment to the appropriate tax authorities. Several jurisdictions have stated that they may take the position that the tax is also applicable to our gross profit on merchant hotel transactions. We have not paid nor agree to pay such taxes...

27.

Based on the foregoing, Defendant did, at all times material hereto, and continues to intentionally violate O.C.G.A. § 48-13-51, and Columbus Code of Ordinances §§ 19-1-02, *et seq.*

28.

Defendant is an entity that collects and continues to collect the subject excise tax and accordingly is charged with the legal duty to remit the tax to the governing authority imposing the tax (Columbus) pursuant to O.C.G.A. § 48-13-51(a)(1)(B)(ii). Defendant is further charged with the duty to remit "the tax at the

12

applicable rate [7%] on the lodging charges actually collected or, if the amount of taxes collected from the hotel or motel guest is in excess of the total amount that should have been collected, the total amount actually collected must be remitted.”

O.C.G.A. § 48-13-51(a)(1)(B).

29.

Defendant does not advise Columbus or hotel customers as to the amount of hotel/motel excise tax that is actually collected. In addition, Defendant retains a portion of the tax collected as revenue.

30.

Further, Defendant is in violation of Columbus Code of Ordinance §§ 19-110, *et seq.*, as follows:

(a) At all times material hereto, Defendant collected hotel/motel taxes from occupants of hotel/motel rooms located in Columbus' tax district based on the total value of the room, but failed to remit the full amount of taxes collected.

(b) At all times material hereto, Defendant failed to register as an operator with the Director as required by § 19-114 of the Columbus Code of Ordinances; and

(c) Defendant failed to make returns as required by § 19-115 of the Columbus Code of Ordinances.

DECLARATORY JUDGMENT

31.

Defendant's denial of the applicability of O.C.G.A. §§ 48-13-51, *et seq.*, and Columbus Code of Ordinances §§ 19-102, *et seq.*, its conduct of providing, renting, using, possessing or furnishing hotel rooms and collecting applicable hotel/motel occupancy excise tax associated therewith, failure to remit hotel/motel taxes already owed to Columbus, continued failure to remit the full amount of applicable taxes owed, failure to register and make filing pursuant to §§ 19-110 and 10-115 of the Columbus Code of Ordinances, failure to make financial records available to Plaintiff pursuant to § 118(c) of the Columbus Code of Ordinances, and failure to remit the full amount of hotel/motel excise tax charged to consumers have created an actual justiciable controversy between Defendant and Columbus.

Moreover, Defendant through its aforesaid conduct has attempted to create a situation of uncertainty and insecurity with respect to the rights, status, and legal relationships of the parties regarding the hotel/motel excise tax at issue herein that should be resolved through declaratory judgment.

This Court has the authority, upon petition, to declare the rights and other legal relations of interested parties in cases of actual controversy and in any civil case in which it appears to the Court that the ends of justice require and that such declaration should be made for the guidance and protection of the petitioners.

Accordingly, Columbus seeks a declaratory judgment pursuant to O.C.G.A. §§ 9-4-1, *et seq.*, declaring that:

(a) Defendant's conduct, as described herein, relating to the business of furnishing, renting, selling, using, possessing and/or reselling, to the public, hotel rooms, lodgings, or accommodations within the territorial limits of Columbus, Muscogee County, Georgia, and within the taxing authority of the Consolidated City-County Government of Columbus, Georgia, and the collection of hotel/motel excise tax associated therewith is subject to:

(1) O.C.G.A. § 48-13-51; and

(2) Columbus Code of Ordinances, §§ 19-102 through 19-109;

(b) Defendant is an online seller and/or reseller of hotel rooms to the general public;

(c) Defendant charges and collects hotel/motel excise tax from members of the public, who rent the hotel rooms from Defendant based on the full marked-up room charge;

(d) Defendant, as the entity collecting the hotel/motel excise tax levied pursuant to O.C.G.A. §§ 48-13-51, *et seq.*, violated and continues to violate O.C.G.A. § 48-13-51(a)(i)(B)(i), by failing to properly identify, categorize, collect, and remit the tax collected to the Plaintiff, Columbus, which is the governing authority which imposed the subject tax;

(e) Defendant is an operator of hotels and motels as defined in the Columbus Code of Ordinances;

(f) Defendant is an operator that furnishes hotel/motel rooms in accordance with §§ 19-110, *et seq.*, of the Columbus Code of Ordinances;

(g) Defendant violated and continues to violate Columbus Code of Ordinances §§ 19-110, *et seq.*, by failing to remit to Plaintiff the full amount of exise tax payable pursuant to said ordinance;

(h) Defendant violated and continues to violate §§ 19-114 and 19-115 of the Columbus Code of Ordinances by failing to register and make filings; and

(i) Defendant violated and continues to violate § 19-118(c) of the Columbus Code of Ordinances by failing to make available for examination its books, papers, records, financial reports, equipment and other facilities to the Director, or to a person authorized by the Director.

PRELIMINARY AND PERMANENT INJUNCTION

33.

Defendant has deprived and is continuing to deprive Columbus the hotel/motel tax revenues that are statutorily allocated to tourism-related attractions and projects that serve a vital public purpose. Defendant's failure to pay hotel/motel taxes threatens to erode Columbus' tax base, as tourism development funds are necessary to attract new visitors and conventions, which in turn provide multiple sources of new revenue and funding for public projects. Defendant has

also violated and continues to violate reporting requirements in an attempt to conceal from both Columbus and the public its misappropriation of tax funds.

34.

Columbus is likely to prevail on the merits in this case. Defendant's conduct violates O.C.G.A. §§ 48-13-51, *et seq.*, and the applicable city ordinance, Columbus Code Ordinance §§ 19-110, *et seq.*, because it is required to collect the full amount of hotel/motel taxes due from their customers, and actually does collect an amount in "taxes and fees" sufficient to cover the proper amount of tax, but does not remit, either directly or indirectly, the proper amount of occupancy tax to Columbus.

35.

Columbus will be substantially and irreparably harmed if a preliminary and permanent injunction is not issued requiring Defendant to register and make filings as required by Code §§ 19-114 and 19-115, respectively, and to remit hotel/motel taxes based on the full consideration paid by customers to Defendant for the right to occupy hotel/motel rooms in Columbus. The funds misappropriated and held by Defendant are public funds that are designated for use to finance existing tourist and trade attractions, and to promote and develop new opportunities for tourism and trade. Funds collected pursuant to the hotel/motel tax are specifically tied to certain tourism-related expenditures, all of which are intended to further the public interest. Any harm caused by a shortfall of such tax funds, and by the Defendant's

ongoing and open failure to remit taxes as they come due, cannot be sufficiently cured by a later money award.

36.

Columbus has no adequate remedy at law for Defendant's failure to remit the full amount of applicable taxes owed and their concealment of the same. Columbus has and will continue to lose opportunity that is/may be created from the use of this tax revenue.

37.

The threatened injury to Columbus, along with the substantial injury suffered by Columbus' taxpayers and the public at large due to Defendant's misappropriation of public funds and their concealment of its tax collection practices from their customers, substantially outweighs any threatened harm that a preliminary and permanent injunction could conceivably do to Defendant.

38.

Accordingly, Columbus seeks a preliminary and permanent injunction requiring Defendant to: (1) remit hotel/motel taxes to the Director based on the full value paid by customers for the rental of hotel/motel rooms in Columbus; (2) requiring Defendant to immediately register as an operator of hotels/motels with the Director as required by the Columbus Code of Ordinances; and (3) requiring Defendant to immediately file monthly reports regarding hotel/motel taxes with the Director as required by the Columbus Code of Ordinances.

VIOLATIONS OF OCCUPANCY TAX LAWS AND ORDINANCES

39.

Defendant is in violation of O.C.G.A. §§ 48-13-50, *et seq.*, and Columbus Code of Ordinances §§ 19-110, *et seq.*

40.

Columbus is authorized under O.C.G.A. § 48-13-51 *et seq.* to levy and collect, and pursuant to this authority levies and collects a tax on the furnishing for value to the public rooms furnished by hotels, motels and/or other proprietors of lodging establishments as enumerated in said statute. Columbus levies and collects a tax of seven (7%) percent of the total rental rate paid by the hotel occupant. Columbus Code of Ordinances §§ 19-110, *et seq.*

41.

Pursuant to the aforesaid authority, Defendant is required, either as an operator of hotels, motels and other lodging establishments in Columbus for purposes of administering the hotel/motel tax, or as an agent of operators, to collect and remit taxes in the amount of seven (7%) percent of the total rental rate paid by the hotel occupant in order to secure the right to occupy the hotel/motel room.

42.

Alternatively, even if the Defendant is not deemed an operator and therefore not required to collect tax, the fact that it undertakes to, and does in fact collect all of the applicable taxes owed, and yet does not remit the appropriate amount of tax

19

constitutes an independent violation of the statutes and ordinances, and the amounts actually collected are owed to Columbus.

43.

Defendant has violated the above statutes and ordinances by failing to remit to Columbus the full amount due and owed to it. Defendant's underpayment of tax constitutes a debt owed by Defendant to Plaintiff. Columbus is entitled to collect from Defendant the deficiency between the total amount of tax applicable to all of Defendant's sales and rentals of hotel/motel rooms located in Columbus and the amount of tax actually remitted in connection with Defendant's sales and rentals of such hotel/motel rooms.

44.

In addition, Defendant is liable for interest at a rate of three-fourths of one percent per month as provided in Columbus Code of Ordinances § 19-117(b), as well as attorney fees, and costs.

UNJUST ENRICHMENT/MONEY HAD AND RECEIVED

45.

As a result of Defendant's acts and omissions alleged herein, Defendant has unjustly received and retained a benefit to the detriment of Columbus and its residents, and Defendant's retention of this benefit violates fundamental principles of justice, equity and good conscience. The specific sum of money by which

20

Defendant has been unjustly enriched can only be identified from information and records in Defendant's possession and control.

46.

Columbus is entitled to the return of all amounts owed to it, as determined through an accounting of the amounts by which the Defendant unjustly enriched itself.

Defendant concealed the amount of hotel/motel taxes actually collected but not remitted to Columbus by failing to file required returns. Accordingly, the exact amount of recoverable taxes, penalties and interest cannot be determined without an equitable accounting as demanded by Plaintiff herein.

IMPOSITION OF CONSTRUCTIVE TRUST

47.

At all times material hereto, Columbus' tax revenues were/are in the possession and under the control of Defendant. Defendant has taken this property for its own use and benefit, thereby depriving Columbus of the use and benefit thereof. Columbus and its residents have been deprived of monies as the result of Defendant's unlawful control over said monies.

48.

Through its 10-Q filing with the Securities and Exchange Commission for the quarter ended March 31, 2003, Expedia, Inc., disclosed that it was maintaining a reserve for liability for unpaid hotel/motel taxes:

21

Several jurisdictions have stated that they may take the position that the tax is also applicable to our gross profit on merchant hotel transactions. We have not paid nor agree to pay such taxes but have a reserve for potential payment. We evaluate our risk on a quarterly basis and, based on our assessment, we adjust the reserve and revenue accordingly.

49.

By virtue of Defendant's wrongful and inequitable actions, Defendant holds unpaid taxes as constructive trustee for the benefit of the Plaintiff. Columbus requests that this Court impose and/or construct a trust of the taxes collected (or which should have been collected) and not remitted and further order Defendant to transfer possession of said monies to Plaintiff, along with statutory interest on said funds from the date on which Columbus obtained the right to payment.

DEMAND FOR EQUITABLE ACCOUNTING

50.

Defendant was under a legal obligation, pursuant to O.C.G.A. § 48-13-51 and §§ 19-110, *et seq.*, of the Columbus Code of Ordinances, to collect and remit taxes to Columbus on the full amount of value received by them in exchange for the right to furnish hotel/motel rooms in Columbus.

51.

Defendant has failed to remit to Columbus the full amounts of tax due and owed.

52.

Furthermore, as an operator for purposes of Columbus' hotel/motel tax, Defendant was and is obligated to register with the Director, to maintain books, records, receipts and other papers relating to its collection of tax, and to file monthly tax returns indicating, among other things, the gross rent, taxable rent, and tax actually collected or due for hotel/motel rooms rented during the monthly period. Defendant has failed to register and to submit the monthly tax returns described above.

53.

The amounts collected by Defendant, or which should have been collected on behalf of Columbus, but not remitted are and should be held in constructive trust for the benefit of Columbus. Defendant has commingled these amounts with its own funds, thus rendering an equitable accounting necessary to determine the correct amount that is owed. Furthermore, the determination of the amount of taxes owed to Columbus is frustrated by Defendant's concealment of data from numerous transactions between Defendant and hotels, as well as concealment of records of Defendant's rental transactions with occupants involving hotel/motel rooms located in Columbus.

54.

For these reasons, Columbus is entitled to an equitable accounting of Defendant regarding the number of hotel/motel rooms it has rented in Columbus,

the total value received by Defendant for such rentals, the amount of taxes actually collected, the amount of taxes actually remitted either directly or indirectly to Columbus, and the amount received by the hotel in connection with each hotel/motel room rental. This accounting should encompass the entire time period during which Defendant has failed to remit taxes on the full rental rate and value it received for the sale of hotel/motel rooms as described in this Complaint.

WHEREFORE, based on the aforesaid, Columbus, Georgia demands judgment against Defendant and prays as follows:

a. That summons issue and service be perfected upon Defendant Expedia, Inc., via its registered agent, requiring said Defendant to appear before the Court within the time required by law and to answer this Complaint;

b. That Plaintiff have judgment in its favor and against Defendant, the total on all counts, including statutory penalties and interest, not to exceed Seventy Four Thousand Five Hundred and 00/100 (\$74,500.00) Dollars;

c. That Plaintiff have judgment against Defendant declaring that Defendant is an operator of hotels/motels as defined by the Columbus Code of Ordinances;

d. That Plaintiff have judgment against Defendant declaring that Defendant furnishes hotel/motel rooms for value in Columbus, Georgia in accordance with the Columbus Code of Ordinances;

e. That Plaintiff have judgment against Defendant directing Defendant to register and make filings in accordance with the Columbus Code of Ordinances;

f. That Plaintiff have judgment against Defendant directing that Defendant make available for examination its books, papers, records, financial reports, equipment and other facilities in accordance with the Columbus Code of Ordinances;

g. That Plaintiff have judgment against Defendant declaring that Defendant is liable for unpaid hotel/motel taxes based on the full value that is paid by customers to Defendant for the rental of hotel/motel rooms in Columbus;

h. That Plaintiff have judgment against Defendant directing Defendant, going forward from the time of such judgment, to remit hotel/motel/ taxes based on the full value paid by customers to Defendant for the rental of hotel/motel rooms in Columbus;

i. That this Court enter a preliminary and permanent injunction requiring Defendant to remit hotel/motel taxes to the Director as the tax applies to the full value received by Defendant for the rental rate paid by its customers;

j. That this Court enter a preliminary and permanent injunction requiring Defendant to immediately register as an operator of hotels/motels with the Director as required by the Columbus Code of Ordinances;

k. That this Court enter a preliminary and permanent injunction requiring Defendant to immediately file monthly reports regarding hotel/motel taxes with the Director as required by the Columbus Code of Ordinances;

l. That this Court order Defendant to conduct an accounting to determine the appropriate amount of taxes due and owed to Plaintiff;

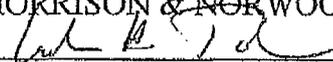
m. That this Court enter judgment for Plaintiff and against Defendant finding that Defendant is holding in trust taxes due and owed to Plaintiff;

n. That this Court order Defendant to disgorge all monies held in trust by Defendant; and

o. That this Court grant Columbus such other and further relief as this Court may deem just and proper.

Respectfully submitted, this 30th day of May, 2006.

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Secs. 19-102—19-109. Reserved.

**ARTICLE VIII. HOTEL-MOTEL OCCUPANCY
EXCISE TAX***

Sec. 19-110. Definitions.

The following words, terms and phrases shall, for the purposes of this article and except where the context clearly indicates a different meaning, be defined as follows:

- (a) *Person.* An individual, firm, partnership, joint adventure, association, social club, fraternal organization, joint stock company, corporation, nonprofit corporation or cooperative nonprofit membership, estate, trust, business trust, receiver, trustee, syndicate, or any other group or combination acting as a unit, the plural as well as the singular number, excepting the United States of America, the State of Georgia, and any political subdivision of either thereof upon which Columbus is without power to impose the tax herein provided.
- (b) *Operator.* Any person operating a hotel in Columbus, including, but not limited to, the owner or proprietor of such premises, lessee, sublessee, lender in possession, licensee or any other person otherwise operating such hotel.
- (c) *Occupant.* Any person who, for a consideration, uses, possesses, or has the right to use or possess any room in a hotel under any lease, concession, permit, right of access, license to use or other agreement, or otherwise.
- (d) *Occupancy.* The use or possession, or the right to the use or possession of any room or apartment in a hotel or the right to the use or possession of the furnishings or to the services and accommodations accompanying the use and possession of the room.

*Editor's note—Ord. No. 75-125, § 1, adopted Nov. 25, 1975, amended Ch. 19 by adding provisions designated as Art. VII, §§ 19-100—19-111. The editors redesignated such provisions as Art. VIII, §§ 19-110—19-120, in view of the fact that an Art. VII had previously been added to Ch. 19 by Ord. No. 75-95, enacted Oct. 14, 1975.

- (e) *Hotel.* Any structure or any portion of a structure, including any lodging house, roominghouse, dormitory, Turkish bath, bachelor hotel, studio hotel, motel, motor hotel, auto court, inn, public club, or private club, containing guest rooms and which is occupied, or is intended or designed for occupancy, by guests, whether rent is paid in money, goods, labor, or otherwise. It does not include any jail, hospital, asylum, sanitarium, orphanage, prison, detention, or other buildings in which human beings are housed and detained under legal restraint.
- (f) *Guest room.* A room occupied, or intended, arranged, or designed for occupancy, by one or more occupants for the purpose of living quarters or residential use.
- (g) *Rent.* The consideration received for occupancy valued in money, whether received in money or otherwise, including all receipts, cash, credits, and property or services of any kind or nature, and also the amount for which credit is allowed by the operator to the occupant, without any deduction therefrom whatsoever.
- (h) *Permanent resident.* Any occupant as of a given date who has or shall have occupied or has or shall have the right of occupancy of any guest room in a hotel for at least ten (10) consecutive days next preceding such date.
- (i) *Return.* Any return filed or required to be filed as herein provided.
- (j) *Columbus.* The consolidated city-county government of Columbus, Georgia.
- (k) *Tax.* The tax imposed by this article.
- (l) *Monthly period.* Any one (1) of the twelve (12) calendar months.
- (m) *Due date.* From the twentieth day after the close of the monthly period for which tax is to be computed.

(Ord. No. 75-126, § 1, 11-25-75; Ord. No. 75-145, § 1, 12-23-75; Ord. No. 96-5, § 1, 1-16-96)

Sec. 18-111. Imposition and rate of tax.

There is hereby imposed an excise tax in the amount of seven (7) percent of the charge to the public upon the furnishing for

value of any room or rooms or lodging or accommodations furnished by any person licensed by or required to pay business or occupation taxes to Columbus for operating a hotel within the meaning of this article. In accordance with the provisions of O.C.G.A. § 48-18-51, this tax shall become effective on July 1, 1997; and, prior to that time and prior to each fiscal year thereafter, the Columbus Council shall adopt a budget plan specifying how the expenditure requirements of O.C.G.A. § 48-18-51 will be met. Prior to July 1, 1997, the excise tax imposed by this section will continue to be imposed at a rate of six (6) percent. (Ord. No. 75-126, § 1, 11-25-75; Ord. No. 91-66, 7-9-91; Ord. No. 91-78, 8-6-91; Ord. No. 96-34, 5-7-96; Ord. No. 97-48, 5-18-97)

Sec. 19-112. Collection of tax by operator; receipt to occupant; rules for collection schedules.

Every operator maintaining a place of business in Columbus, as provided in the next preceding section, and renting guest rooms in Columbus, not exempted under section 19-118 of this article shall collect a tax of three (3) per centum on the amount of rent from the occupant.
(Ord. No. 75-126, § 1, 11-25-75)

Sec. 19-113. Exemptions.

No tax shall be imposed hereunder:

- (a) Upon a permanent resident.
(Ord. No. 75-126, § 1, 11-25-75)

Sec. 19-114. Registration of operator; form and contents; certificate of authority.

Every person engaging or about to engage in business as an operator of a hotel in Columbus shall immediately register with the director of the department of finance of Columbus (hereinafter referred to as the "director"), on a form provided by said director. Persons engaged in such business must so register not later than thirty (30) days after the date this article becomes effective and the tax is imposed as set forth in section 19-111, but such privilege of registration after the imposition of such tax shall not relieve any person from the obligation of payment or collec-

tion of tax on and after the date of imposition thereof, regardless of registration. Such registration shall set forth the name under which such person transacts business or intends to transact business, the location of his place or places of business and such other information which would facilitate the collection of the tax as the director may require. The registration shall be signed by the owner if a natural person; in case of ownership by an association or partnership, by a member or partner; in the case of ownership by a corporation, by an officer. The director shall, after such registration, issue without charge a certificate of authority to each operator to collect the tax from the occupant. A separate registration shall be required for each place of business of an operator. Each certificate shall state the name and location of the business to which it is applicable.

(Ord. No. 75-126, § 1, 11-25-75)

Sec. 19-115. Determination, returns and payments.

(a) *Due date of taxes.* All amount of such taxes shall be due and payable to the director monthly on or before the twentieth day of the next month following each respective monthly period.

(b) *Returns; time of filing; persons required to file; contents.* On or before the twentieth day of the month following each monthly period, a return for the preceding monthly period shall be filed with the director showing the gross rent, rent from permanent residents; taxable rent, amount of tax collected or otherwise due for the related period, and such other information as may be required by the director.

(c) *Collection fee allowed operators.* Operators collecting the tax shall be allowed a percentage of the tax due and paid and shall be reimbursed in the form of a deduction from the amount paid to the director, if said tax is not delinquent at the time of payment. The rate of the deduction shall be the same rate authorized for deductions from state tax under the Georgia Retailers' and Consumers' Sales and Use Tax Act, approved February 20, 1951 (Ga. Laws, 1951, p. 360), as now or hereafter amended.

(Ord. No. 75-126, § 1, 11-25-75; Ord. No. 75-145, § 2, 12-22-75; Ord. No. 86-6, § 2, 1-16-86)

Sec. 19-116. Deficiency determinations.

(a) *Recomputation of tax; authority to make; basis of recomputation.* If the director is not satisfied with the return or returns of the tax or the amount of the tax required to be paid to Columbus by any person, he may compute and determine the amount required to be paid upon the basis of any information within his possession or that may come into his possession. One (1) or more deficiency determinations may be made of the amount due for one (1) or more monthly period.

(b) *Interest on deficiency.* The amount of the determination shall bear interest at the rate of three-fourths of one percent ($\frac{3}{4}$ of 1%) per month, or fraction thereof from the due date of taxes.

(c) *Notice of determination; service of.* The director or his designated representatives shall give to the operator written notice of his determination. The notice may be served personally or by mail; if by mail such service shall be addressed to the operator at his address as it appears in the records of the director. Service by mail is complete when delivered by certified mail with a receipt signed by addressee.

(d) *Time within which notice of deficiency determination to be mailed.* Except in the case of failure to make a return, every notice of a deficiency determination shall be mailed within three (3) years after the twentieth day of the calendar month following the quarterly period for which the amount is proposed to be determined, or within three (3) years after the return is filed, whichever period should last expire. (Ord. No. 75-126, § 1, 11-25-75; Ord. No. 75-145, § 3, 12-23-75)

Sec. 19-117. Determination if no return made.

(a) *Estimate of gross receipts.* If any person fails to make a return, the director shall make an estimate of the amount of the gross receipts of the person, or as the case may be, of the amount of the total rentals in Columbus which are subject to tax. The estimate shall be made for the period or periods in respect to which the person failed to make the return and shall be based upon any information which is or may come into the possession of the director. Written notice shall be given in the manner prescribed in section 19-116 (c).

(b) *Interest on amount found due.* The amount of the determination shall bear interest at the rate of three-fourths of one per cent ($\frac{3}{4}$ of 1%) per month, or fraction thereof, from the twentieth day of the month following the quarterly period, for which the amount or any portion thereof should have been returned, until the date of payment. (Ord. No. 75-126, § 1, 11-25-75; Ord. No. 75-145, § 3, 12-23-75)

Sec. 19-118. Administration of article.

(a) *Authority of director.* The director shall administer and enforce the provisions of this article for the collection of of the tax imposed by this article.

(b) *Records required from operators, etc.; form.* Every operator renting guest rooms in Columbus to a person shall keep such records, receipts, invoices, and other pertinent papers in such form as the director may require.

(a) *Examination of records; audits.* The director or any person authorized in writing by the director may examine the books, papers, records, financial reports, equipment and other facilities of any operator renting guest rooms to a person and any operator liable for the tax, in order to verify the accuracy of any return made, or if no return is made by the operator, to ascertain and determine the amount required to be paid.

(d) *Authority to require reports; contents.* In administration of the provisions of this article, the director may require the filing of reports by any persons or class of persons having in such person's or persons' possession or custody information relating to rentals of guest rooms which are subject to the tax. The reports shall be filed with the director when required by the director and shall set forth the rental charged for each occupancy, the date or dates of occupancy, and such other information as the director may require. (Ord. No. 75-126, § 1, 11-25-75)

Sec. 19-119. Violations.

Any person violating any of the provisions of this article shall be deemed guilty of an offense and upon conviction thereof shall be punished as provided in section 1-8 of the Code of Ordinances of Columbus. Each such person shall be guilty of a separate offense for each and every day during any portion of which any violation of any provision of the article is committed, continued, or permitted by such person, and shall be punished accordingly. Any operator or any other person who fails to register as required herein, or to furnish any return required to be made, or who fails or refuses to furnish a supplemental return or other data required by the director or who renders a false or fraudulent return shall be deemed guilty of an offense and upon conviction thereof shall be punished as aforesaid. (Ord. No. 75-126, § 1, 11-25-75)

Sec. 19-120. Collection of tax.

(a) *Action for tax; time for.* At any time within three (3) years after any tax or any amount of tax required to be

collected becomes due and payable and at any time within three (3) years after the delinquency of any tax or any amount of tax required to be collected, the director may bring an action in a court of competent jurisdiction in the name of Columbus to collect the amount delinquent together with interest, court fees, filing fees, attorney's fees and other legal fees incident thereto.

(b) *Duty of successors or assignees of operator to withhold tax from purchase money.* If any operator liable for any amount under this article sells out his business or quits the business, his successors or assigns shall withhold sufficient of the purchase price to cover such amount until the former owner produces a receipt from the director showing that he has been paid or a certificate stating that no amount is due.

(c) *Liability for failure to withhold; certificate of notice of amount due; time to enforce successor's liability.* If the purchaser of a business fails to withhold purchase price as required, he shall be personally liable for the payment of the amount required to be withheld by him to the extent of the purchase price.

(d) *Tax credit, or interest paid more than once or erroneously or illegally collected.* Whenever the amount of any tax or interest has been paid more than once, or has been erroneously or illegally collected or received by Columbus under this article, it may be offset by the director. If the operator or person determines that he has overpaid or paid more than once, which fact has not been determined by the director, he will have three (3) years from date of payment to file a claim in writing stating the specific ground upon which claim is founded. The claim shall be audited. If the claim is approved by the director, the excess amount paid Columbus may be credited on any amounts then due and payable from the person by whom it was paid, or his administrators or executors. (Ord. No. 75-126, § 1, 11-25-75)

SECS. 19-121—19-130. Reserved.

IN THE SUPERIOR COURT OF MUSCOGEE COUNTY, GEORGIA

COLUMBUS, GEORGIA,)
)
Plaintiff,)
)
v.)
)
EXPEDIA, INC.,)
)
Defendant.)

CIVIL ACTION NO. SUBG-CV-1794-7

VERIFICATION

Before an officer authorized by law to administer oaths appeared Isaiah Hugley, who on oath, states that he is the City Manager for Columbus, Georgia, that he is authorized to verify the facts contained in the foregoing Verified Complaint Seeking Declaratory Judgment, Injunctive Relief, and Other Equitable Remedies, and that the facts contained therein are true and correct to the best of his knowledge and belief.

This 30th day of May, 2006.

Isaiah Hugley
Isaiah Hugley
City Manager

Sworn to and subscribed before me,
this 30th day of May, 2006.

Esther Radcliff
NOTARY PUBLIC
My Commission Expires: MY COMMISSION EXPIRES NOV. 17, 2006

[NOTARIAL SEAL]

COPY

IN THE NINTH JUDICIAL CIRCUIT IN
THE NINTH JUDICIAL CIRCUIT, IN AND
FOR ORANGE COUNTY, FLORIDA

CASE NO.: 06-CA-2104

ORANGE COUNTY and
MARTHA O. HAYNIE, ORANGE
COUNTY COMPTROLLER,

Plaintiffs,

v.

EXPEDIA, INC., ORBITZ, LLC and
ORBITZ, INC.,

Defendants.

AMENDED COMPLAINT

Plaintiffs sue the Defendants in this Amended Complaint as follows:

1. This is an action for a declaratory judgment, brought pursuant to Chapter 86, Florida Statutes.
2. This Court has subject matter jurisdiction of this action pursuant to §86.011, Florida Statutes. *See, e.g., Reid v. Kirk*, 257 So. 2d 3 (Fla. 1972) (Local government had standing to seek a decree resolving the appropriate range of tax assessments for grazing land in Palm Beach County); *Riviere v. Orlando Parking Commission*, 74 So. 2d 694 (Fla. 1954) (City may seek declaratory judgment concerning whether state statutes limited its authority to acquire land); *State Dept. Of Revenue v. Ray Construction*, 667 So. 2d 859, 862-3 (Fla. 1st DCA 1996) (Declaratory action permitted to resolve question of tax law with respect to land sales not yet subjected to audit and assessment by the DOR).

3. The purpose of a declaratory action is to "render practical help in ending controversies which have not yet reached the stage where other legal help is immediately available." See, *State Dept. Of Education v. Glasser*, 622 So. 2d 1003, 1006 (Fla. 2d DCA 1992), reversed on other grounds 622 So. 2d 944 (Fla. 1993); *Jackson v. Federal Insurance Co.*, 643 So. 2d 56 (Fla. 4th DCA 1994).

4. The Plaintiffs seek a declaratory judgment regarding whether the difference between the amount charged to the Defendants at wholesale, and the price charged by the Defendants to their customers, at retail, is subject to the Tourist Development Tax ("TDT") levied in Orange County under the authority of §125.0104, Florida Statutes.

PARTIES

5. Plaintiff, ORANGE COUNTY, is a body corporate and a political subdivision established by and authorized to bring this suit under §125.15, Florida Statutes, and Article I, §101, and Article VII, §706, Orange County Charter.

6. Plaintiff, MARTHA O. HAYNIE, is the COMPTROLLER of ORANGE COUNTY (hereinafter "COMPTROLLER"), and is an elected constitutional officer empowered to audit, enforce, assess and collect the local option TDT in Orange County, Florida. The position of COMPTROLLER was established by special act of the Florida Legislature in Chapter 72-461, Laws of Florida.

7. Defendant, EXPEDIA, INC. (hereinafter "EXPEDIA"), is a foreign corporation authorized to transact business in Florida, and transacting business in Orange County, Florida.

8. Defendants, ORBITZ, INC. and ORBITZ, LLC, (collectively "ORBITZ"), are foreign corporations transacting business in Orange County, Florida.

THE TOURIST DEVELOPMENT TAX

9. By ordinance, ORANGE COUNTY has enacted the local option TDT pursuant to §125.0104, Florida Statutes.

10. In its ordinance, ORANGE COUNTY has appointed the COMPTROLLER as the official responsible to audit, enforce, assess and collect the TDT.

11. TDT is levied at the rates set out in §§25-136 and 25-136.1, Orange County Code of Ordinances, on the total amount of the consideration received by a "dealer", (as this term is defined in law, including in §212.06(2)(j), Florida Statutes, and Rule 12A-1.060(3), Florida Administrative Code), for the letting of hotel accommodations in Orange County, Florida.

12. It is the intent of the Florida Legislature to tax each and every rental unless the transaction is made specifically exempt in Chapter 212. See, §§125.0104(3)(a) and 212.21(2), Florida Statutes.

13. The TDT is due from and payable by every person who lets for consideration accommodations in a hotel for a term of six months or less. Section 125.0104(3)(a), Florida Statutes.

14. The provisions of Chapter 212, including the legal principles governing the transient rental tax under §212.03, Florida Statutes are applicable and binding upon the Plaintiffs in the administration and enforcement of this tax. Section 125.0104(3)(g), Florida Statutes.

15. Section 212.03(1), Florida Statutes provides that tax is levied on "the total rental charged for ... living quarters or sleeping or housekeeping accommodations by the person charging or collecting the rental".

16. The TDT is levied for the benefit of Orange County.

17. The COMPTROLLER has a legal duty to faithfully and fairly administer the TDT in accordance with legal requirements, and can find no exemption that would exempt from the levy of TDT any part of the total consideration charged at retail by the Defendants for the letting of accommodations in Orange County, Florida.

THE DEFENDANTS' BUSINESS METHODOLOGY

18. The Defendants negotiate with hotels in Orange County, Florida a discounted or "wholesale" price for which the Defendants purchase room nights at such hotels.

19. Defendants resell the rooms they have contracted to acquire at wholesale rates to end-use guests at a marked up rate or "retail" charge.

20. The Defendants pay the TDT only on the discounted or wholesale price for the room, and do not remit the TDT on the difference between the wholesale price and the retail price.

21. The Defendants are "letting for consideration" hotel accommodations and, alternatively, grant licenses for the right to use hotel accommodations.

22. The Defendants are "dealers" for the TDT under Florida law, and receive the consideration paid by the hotel guest for the right to use hotel or transient rental accommodations.

AN ACTUAL DISPUTE OR CONTROVERSY EXISTS

23. The Defendants are industry leaders in what is referred to as the "dot.com" hospitality industry, whereby hotel rooms are let via Internet transactions.

24. The Plaintiffs are charged with the responsibility to determine whether particular business transactions are subject to the TDT.

25. Under the Plaintiffs' interpretation of Florida law, the Defendants should collect and remit the TDT on the total consideration paid. The Defendants, however, disagree with the Plaintiffs' interpretation of the law, and do not collect and remit the TDT on the difference between the wholesale price they pay for hotel rooms and the retail price they charge to guests for the right to use such accommodations.

26. Defendants interpret the relevant tax law to the effect that the TDT is not due on this difference between the wholesale and the retail prices.

27. Defendants have not registered as dealers for the TDT, and accordingly, there is no statute of limitation for their liability for past taxes due the Plaintiffs.

28. An audit of the books and records of the Defendants will be time consuming and burdensome for all parties, and will substantially impact the limited resources of the Plaintiffs, particularly given the absence of a statute of limitation.

29. Plaintiffs have a right to seek a declaratory judgment from this Court regarding the respective rights, duties and obligations of the parties under the subject tax laws, because there is an actual present dispute among the parties regarding whether or not the TDT is due on the difference between the wholesale and retail prices.

30. As a result of the Defendants' vigorous objections to the application of the tax to the subject transactions, the Plaintiffs are in doubt concerning whether, under the

applicable tax laws, the difference between the wholesale and retail prices is or is not subject to the TDT.

31. In 10Q statements filed with the Securities and Exchange Commission, the Defendants have acknowledged this dispute exists concerning whether or not the TDT is due on this difference between the wholesale and retail prices.

32. EXPEDIA'S Form 10Q filed with the SEC on or about May 15, 2003, states in pertinent part as follows:

"Several jurisdictions have stated that they may take the position that the tax is also applicable to [Expedia's] gross profit on merchant hotel transactions and one of them has contacted [Expedia] regarding whether hotel occupancy taxes should be remitted on [Expedia's] revenues from its merchant hotel transactions. [Expedia] has not paid nor agreed to pay such taxes but has a reserve for potential payment."

33. ORBITZ's form 10Q filed with the SEC on or about August 11, 2004, states in pertinent part as follows:

"Some state and local jurisdictions could rule that we are subject to hotel occupancy taxes on the gross profit and could seek to collect such taxes, either retroactively or prospectively or both."

34. There is a *bona fide* dispute among the parties concerning the applicability of the TDT, the parties are in doubt regarding the question of whether TDT is due on the difference between the wholesale and retail prices, and there is a practical need for the declaratory relief sought in this action.

35. It is the intention of the Plaintiffs, if the questions presented in this action are answered in the affirmative, to notice the Defendants for audit and to afford the Defendants all of their rights as auditees under Florida law, including the protest and appeal

procedures culminating in a final assessment subject to the procedural rights afforded the Defendants under §72.011, Florida Statutes.

36. The public interest will be served by the issuance of the declaratory relief sought in this action.

37. Plaintiffs do not seek a mere advisory ruling nor are they asking this Court to merely affirm their conclusion that the TDT is due on the subject transaction, because the Defendants vigorously dispute their liability for the TDT under the applicable tax laws, and the Plaintiffs assume the Defendants maintain their position in good faith. See, e.g., *Price v. Tyler*, 890 So. 2d 246 (Fla. 2004) (Permitting declaration of rights related to an easement notwithstanding the plaintiff had an interpretation regarding such rights); *Hrynkiw v. Allstate Floridian Ins. Co.*, 844 So. 2d 739 (Fla. 5th DCA 2003) (Declaratory relief regarding rights under insurance policy allowed, notwithstanding the plaintiff's interpretation of the policy).

38. Accordingly, the Plaintiffs have a *bona fide* doubt regarding the applicability of the tax laws to the transaction in question, notwithstanding that the Plaintiffs have concluded that the proper interpretation of the tax laws is that the TDT is due on the difference between the wholesale and retail prices.

39. Plaintiffs have a real need for the declaratory relief sought and will be injured if the relief is not afforded. The injury to be avoided is both the waste of public funds and the potential of causing financial harm to the Defendants that would result from an audit of the Defendants, should the questions presented in this action be deferred, and later answered in favor of the Defendants following a full audit, protest and proceedings under §72.011, Florida Statutes.

DECLARATORY RELIEF SOUGHT BY THE PLAINTIFFS

40. Plaintiffs request a declaratory judgment as follows:
- a. Whether, under the applicable statutes, the Defendants are dealers for the TDT for the consideration they receive for the rental or letting of the right to use hotel accommodations in Orange County, Florida.
 - b. Whether the difference between the wholesale prices the Defendants pay to the hotels and the retail prices the Defendants charge the guests is subject to the TDT levied in and by Orange County, Florida.
 - c. Whether the Defendants should collect and remit to the COMPTROLLER the TDT due on the total consideration paid for hotel rentals at retail.

41. An expedited declaratory judgment is requested as permitted by §86.111, Florida Statutes.

WHEREFORE, Plaintiffs pray for a declaratory judgment with respect to the questions set out in paragraph 40 of this Amended Complaint, for all other relief this Court determines is appropriate, including supplemental relief as allowed by Chapter 86, Florida Statutes, and for an expedited determination of these questions.



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Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail this 12th day of March, 2007 to: David Cannella, Esq., P.O. Box 1171, Orlando, FL 32802-1171; James P. Karen, Esq. and Deborah S. Sloan, Esq., Jones Day, 2727 N. Harwood, Dallas, TX 75201; and Paul E. Chronis, Esq. and Elizabeth B. Herrington, Esq., McDermott, Will & Emery, LLP, 227 West Monroe St., Chicago, IL 60606.



USHER L. BROWN, ESQUIRE

G:\Docs\Orange County Comptroller\Expedfa.com\Pleadings\amended complaint 03_12_07.wpd

COPY

IN THE CIRCUIT COURT OF THE
SECOND JUDICIAL CIRCUIT, IN
AND FOR LEON COUNTY, FLORIDA

EXPEDIA, INC.,

Plaintiff,

v.

BROWARD COUNTY, FLORIDA and
FLORIDA DEPARTMENT OF REVENUE,
a state agency,

Defendants.

CASE NO. _____

FILED
CLERK OF DISTRICT
LEON COUNTY, FLORIDA

09 JUN 25 PM 3:29

FILED

COMPLAINT

Pursuant to Chapter 72, Florida Statutes, Plaintiff Expedia, Inc. ("Expedia") hereby asserts its Complaint against Defendants Broward County, Florida ("Broward County") and the Department of Revenue of the State of Florida (the "Department") (collectively, the "Defendants"), and shows the Court as follows:

IDENTITY OF THE PARTIES

1. Expedia is a corporation organized under Washington law with its principal place of business in Bellevue, Washington.

2. Broward County is a county existing under the laws of the State of Florida. Broward County imposes and administers the Broward County Tourist Development Tax (the "Tourist Development Tax" or "TDT") authorized by section 125.0104 of the Florida Statutes.

3. The Department is an agency of the State of Florida lawfully created and organized pursuant to section 20.21 of the Florida Statutes. This action is brought under section 72.011(1) of the Florida Statutes to contest Broward County's assessment of its TDT, which was

enacted under Florida Statutes section 125.0104. Broward County has elected under Florida Statutes section 125.0104(10) to administer the TDT locally. Florida Statutes section 72.031(1) therefore requires that this action name the Department as a defendant together with the County.

JURISDICTION AND VENUE

4. This Court has jurisdiction over this action, and venue is proper in this Court. FLA. STAT. § 72.011(1)(a), (4)(a).
5. Expedia contests the validity of the Notice of Audit Assessment Tourist Development Tax (the "Assessment") issued on March 31, 2009 by Broward County for the period of January 1, 2000 through December 31, 2001 and September 1, 2007 through June 30, 2008. A true and correct copy of the Assessment is attached hereto as Exhibit A.
6. This Court has jurisdiction under section 72.011(1)(a) of the Florida Statutes because Expedia is contesting the legality of the assessment of TDT by Broward County imposed under the authority granted by Florida Statutes section 125.0104.
7. Broward County Ordinance section 31 1/2-20(5) provides for an informal dispute resolution proceeding to attempt to resolve challenges to assessments of the TDT.
8. On April 29, 2009, Expedia filed a Notice of Dispute with the Manager of the Tourist Development Tax Section of the Broward County Finance and Administrative Services Department, which invoked the informal dispute resolution process.
9. On June 26, 2009, the Manager of the Tourist Development Tax Section of the Broward County Finance and Administrative Services Department issued a Notice of Decision overruling Expedia's objections to the Assessment made in the Notice of Dispute. A true and correct copy of the Notice of Decision for Expedia is attached as Exhibit B.
10. The Assessment became final under Broward County Ordinance section 31 1/2-20(4)(a)2 when the Notice of Decision was mailed on June 26, 2009.

11. Expedia is informed that Broward County engaged outside counsel on a contingency fee basis to assist in the audit and assessment of the TDT against Expedia. Expedia is informed that Broward County disclosed to outside counsel the information Expedia provided to Broward County during the audit process. Outside counsel are not employees of Broward County or the Florida Department of Revenue.

12. Under Florida Statutes section 72.011(2)(a), this action is timely filed.

13. As required by Florida Statutes section 72.011(1)(b), prior to filing this Complaint, Expedia complied with the registration requirements contained in Florida Statutes section 125.0104 by submitting registration applications to Broward County pursuant to Broward County Ordinance section 31 1/2-16(10) and Florida Statutes section 212.18. Because the gravamen of this action is Expedia's contention that it is not subject to the TDT and that the imposition of the TDT on Expedia violates Florida and federal law, the registration applications were submitted to Broward County under protest. Expedia did not thereby and does not now admit that it is subject to the TDT.

14. Expedia contests the entire amount of the Assessment.

15. As financial security for this action, Expedia attaches hereto a surety bond for the amount of its Assessment endorsed by a surety company authorized to do business in Florida and conditioned upon payment in full of any judgment in favor of the County, including taxes, costs, penalties, and interest. The original surety bond for Expedia is attached as Exhibit C.

16. Expedia has complied with the bond requirement for nonresident plaintiffs set forth in Florida Statutes section 57.011.

17. Expedia has exhausted all required administrative remedies and has otherwise satisfied all prerequisites necessary for the filing of this action.

BACKGROUND

18. Expedia is an Internet travel company that provides customers with the ability to search for and reserve air travel, hotel accommodations, car rentals, cruises, tours, and other travel-related services via the Internet.

19. Expedia contracts with hotels for the ability to make room reservations available to customers through its website. Using Expedia's online services, customers are able to locate and identify room availability at numerous hotels, compare the rates and amenities of those hotels, and ultimately make a reservation at the customer's chosen hotel. Before Internet travel companies made their services available on the Internet, a customer wishing to make a hotel room reservation in a particular area either had to enlist the help of a travel agent or had to use a map and/or telephone book to determine which hotels were located in the area, contact the hotels to compare rates, amenities, and availability, and make a room reservation. Expedia's services provide an alternative and more convenient way to research and reserve hotel accommodations.

Merchant Model

20. Expedia facilitates hotel room reservations under what is commonly referred to as the "merchant model," a model that has been used by travel agents, tour operators and other travel facilitators for decades. Under the merchant model, a customer uses Expedia's website to search for hotel rooms based on criteria such as date, location, and amenities. On its website, Expedia provides the customer with a list of available rooms by specific hotels that meet the customer's stated criteria, and the customer selects his or her desired hotel accommodations and provides Expedia with identification and payment information. Expedia then charges the customer's credit card the amount that will be paid to the hotel after the stay is concluded, plus compensation for Expedia's costs, fees, and services.

21. The amount that is charged to the customer's credit card consists of: (a) the room rate set by the hotel pursuant to a contract with Expedia (the "Net Rate"); (b) an amount of mark-up for Expedia on the Net Rate to compensate Expedia for its services, including supplying extensive content on its website; (c) a "service fee" as partial compensation for Expedia's booking services; and (d) an "anticipated tax recovery amount," which is an estimated amount of hotel occupancy taxes that the customer will owe when he takes possession of the hotel room that is calculated by multiplying the Net Rate by the tax rate that the hotel provides to Expedia.

22. When the customer's credit card is charged, Expedia transmits the customer's request for hotel accommodations to the operator of the hotel, and the hotel reserves a room in the name of the guest. The operator of the hotel does not book rooms in Expedia's name.

23. Expedia does not have any possessory or ownership interest in any hotel rooms and does not bear any inventory risk for rooms that are not reserved by customers.

24. Expedia does not buy or rent rooms for resale or re-rental.

25. Upon arrival at the hotel for check-in, the customer provides the hotel with identification. The hotel conducts its security and check-in procedures and then assigns the customer a specific room and access to that room.

26. The hotel provides the guest with accommodations, and the guest pays the hotel directly for any incidental services consumed (e.g., telephone charges, movie rentals, mini-bar usage, etc.) when the guest checks out.

27. When the guest checks out, the hotel invoices Expedia for the Net Rate and the taxes applicable to the Net Rate, as calculated by the hotel. The hotel's invoice or charge to Expedia typically includes separately itemized state and local sales or occupancy tax based upon the Net Rate.

28. Expedia then pays the hotel's invoice, including the amount invoiced for state and local taxes. Expedia retains the remainder as compensation for its services in facilitating the room reservation.

29. The hotel collects and remits the hotel occupancy taxes to the appropriate taxing jurisdiction.

**THE TOURIST DEVELOPMENT TAX AND RELATED FLORIDA STATUTES
AND ADMINISTRATIVE REGULATIONS**

30. Broward County imposes the TDT under § 31 1/2-16 of the Broward County Code.

31. The TDT is authorized by the "Local Option Tourist Development Act" (the "Enabling Act") provided in Florida Statutes section 125.0104.

32. The Enabling Act permits a county to impose the TDT on the privilege of renting, leasing or letting for consideration any living quarters or accommodations in any hotel, apartment hotel, motel, resort motel, apartment, apartment motel, roominghouse, mobile home park, recreational vehicle park, or condominium for a term of six months or less. FLA. STAT. § 125.0104(3)(a).

33. The Enabling Act permits counties levying the TDT to adopt an ordinance providing for collection and administration of the TDT. FLA. STAT. § 125.0104(10).

34. Broward County has adopted an ordinance providing for local collection and administration of the TDT. BROWARD COUNTY CODE § 31 1/2-16(7)-(14).

35. Broward County has elected to undertake the responsibility of auditing the records and accounts of dealers under the TDT. BROWARD COUNTY CODE § 31 1/2-16(16).

36. Because Broward County has provided for local collection and administration of the TDT and because it has elected to audit and enforce the TDT, Broward County is bound by

the administrative rules promulgated by the Department under Florida Statutes sections 125.0104(3)(k) and 212.03. FLA. STAT. § 125.0104(10)(c).

37. The TDT is a privilege tax imposed on persons engaged in the business of renting, leasing or letting for consideration any living quarters in a hotel, apartment hotel, motel, resort motel, apartment, apartment motel, roominghouse, mobile home park, recreational vehicle park, tourist or trailer camp, or condominium for a term of six months or less. BROWARD COUNTY CODE § 31 1/2-16(1).

38. The TDT is to be paid by the lessee, tenant or customer and is to be charged by "the person receiving the consideration for the lease or rental." BROWARD COUNTY CODE § 31 1/2-16 (6). The TDT is imposed on the "total rental charged every person who rents, leases or lets for consideration." BROWARD COUNTY CODE § 31 1/2-16(1).

COUNT I
EXPEDIA IS NOT SUBJECT TO THE TOURIST DEVELOPMENT TAX

39. The allegations contained in paragraphs 1-38 are hereby incorporated by reference.

40. Expedia does not and has not engaged in the business of renting, leasing, or letting accommodations within Broward County. Expedia does not own, operate, manage, or control any hotels or hotel rooms within Broward County or anywhere else. Expedia does not bear any inventory risk for hotel rooms that are not reserved by customers.

41. Expedia does not buy or rent rooms for resale or re-rental.

42. Upon arrival at the hotel for check-in, the customer provides the hotel with identification. The hotel conducts its security and check-in procedures and then assigns the customer a specific room and access to that room.

43. The hotel provides the guest with accommodations, and the guest pays the hotel directly for any incidental services consumed (e.g., telephone charges, movie rentals, mini-bar usage, etc.) when the guest checks out.

44. Because Expedia has not engaged in the business of renting, leasing, or letting accommodations in Broward County, it is not subject to the TDT.

45. The Enabling Act and the regulations issued pursuant to the Enabling Act are clear that only the hotels or motels providing accommodations must collect and remit the TDT because they are the ones who receive the consideration for leases or rentals.

46. Because each hotel has charged the amount each hotel has demanded as consideration for the hotel's rental of the room to the guest who books through Expedia's websites, plus the amount of the TDT due on the amount charged by the hotel, the full amount of TDT owed with respect to accommodations reserved through Expedia's website has already been remitted to Broward County by the hotels.

47. The Assessment is unlawful and contrary to the Broward County Code and to the Enabling Act and to the regulations promulgated thereunder. The Assessment is therefore invalid.

COUNT II
COMMERCE CLAUSE VIOLATION

48. The allegations of paragraphs 1-38 are hereby incorporated by reference.

49. Expedia's provision of online hotel reservation services involves an interstate transaction. Expedia has no facilities of any kind in Broward County or the State of Florida. The people who book and reserve hotel rooms using Expedia's website are located all over the world. The hotels receive the reservations at their headquarters which are located either in Florida or other states.

50. The United States Constitution provides Congress with the power to “regulate Commerce with Foreign Nations, and among the several States.” U.S. CONST. art. I, § 8, cl. 3. In addition to being an affirmative grant of power, the Commerce Clause also has a “negative sweep” (the “Dormant Commerce Clause”):

51. The Commerce Clause prevents interstate commerce from being subjected to more burdensome state regulation or taxation than commerce that does not cross state boundaries. The Commerce Clause prohibits certain state actions that interfere with interstate commerce.

52. A tax violates the Commerce Clause unless it “is applied to an activity with a substantial nexus” with the taxing jurisdiction. For local taxes, the relevant inquiry is whether the taxpayer has a substantial physical presence within the locality, not the state. *Quill Corp. v. North Dakota*, 504 U.S. 298, 309 (1992).

53. Expedia lacks substantial nexus with Broward County sufficient to impose the TDT or to impose an obligation to collect the TDT.

54. Expedia’s provision of hotel reservation services are completed outside of Broward County and outside of the State of Florida. Broward County lacks substantial nexus with Expedia’s services and does not have the power to tax the transaction.

55. A state or local tax complies with the Dormant Commerce Clause only if the “tax (1) is applied to an activity with substantial nexus with the taxing State, (2) is fairly apportioned, (3) does not discriminate against interstate commerce, and (4) is fairly related to the services provided by the State.” *Complete Auto Transit, Inc. v. Brady*, 430 U.S. 274, 285 (1977); *Quill*, 504 U.S. at 309. For any tax to withstand constitutional scrutiny, it must satisfy all four prongs of the *Complete Auto* test.

56. A jurisdiction may tax only that portion of the revenues from the interstate activity which reasonably reflects the in-state component of the activity being taxed.

57. Because Expedia's services are performed, and the transactions with its customers are consummated, outside of Broward County, the County's attempt to impose the TDT upon the amounts Expedia retains is unconstitutional. The Assessment attempts to tax the value of activity occurring outside the County and thus violates the Commerce Clause.

58. The Assessment is unlawful and contrary to the Commerce Clause of the United States Constitution and is therefore invalid.

COUNT III
DUE PROCESS VIOLATION

59. The allegations of paragraphs 1-38 are hereby incorporated by reference.

60. The Due Process Clause of the United States Constitution requires that a legislative body provide meaningful standards to guide the application of its laws.

61. The Assessment is an unprecedented application of the TDT to an online travel intermediary. The TDT, by its terms, fails to give Expedia notice of its applicability.

62. The TDT is void for vagueness because it fails to give adequate notice of the asserted TDT. Therefore, the Assessment is invalid.

COUNT IV
BREACH OF CONFIDENTIALITY

63. The allegations of paragraphs 1-38 are hereby incorporated by reference.

64. Florida Statutes section 213.053(2) provides that "[a]ll information contained in returns, reports, accounts, or declarations received by the department, including investigative reports" is confidential taxpayer information. Section 213.053 expressly applies to county governments. FLA. STAT. § 213.053(1)(a).

65. Broward County disclosed Expedia's information obtained during the course of the audit to outside counsel, who were not officers or employees of Broward County.

66. Broward County thus violated the confidentiality provisions of Florida Statutes section 213.053, and the resulting Assessment is therefore invalid.

COUNT V
FUNDAMENTAL BIAS OF THE ASSESSMENT

67. The allegations of paragraphs 1-38 are hereby incorporated by reference.

68. There is a standard of neutrality that must be met by attorneys representing the government in matters that affect public interest.

69. The collection of taxes implicates a public interest against the abuse of such power if carried out under terms that would create a financial interest in any amount assessed or collected for those involved in the enforcement and collection.

70. Expedia is informed and believes that Broward County engaged outside counsel on a contingency fee basis to assist in the audit and assessment of the TDT.

71. The Assessment is fundamentally biased by the financial interest the County's outside counsel had in the assessment and collection of the TDT. The Assessment is consequently invalid.

COUNT VI
INTERNET TAX FREEDOM ACT
AND SUPREMACY CLAUSE VIOLATION

72. The allegations of paragraphs 1-38 are hereby incorporated by reference.

73. The Supremacy Clause of the United States Constitution provides, in pertinent part, that "[t]his Constitution, and the Laws of the United States which shall be made in Pursuance thereof . . . shall be the supreme Law of the Land; and the Judges in every State shall

be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding." U.S. CONST. art VI, cl. 2.

74. In 1998, Congress enacted the Internet Tax Freedom Act (the "ITFA"), Pub. L. No. 105-277, 112 Stat. 2681-716 (1998), which was subsequently amended by Pub. L. No. 107-75, 115 Stat. 703 (2001); Pub. L. No. 108-435, 118 Stat. 2615 (2004); and by Pub. L. No. 110-108, 121 Stat. 1024 (2007).

75. The ITFA prohibits state and local governments from imposing discriminatory taxes on electronic commerce. ITFA § 1101(a)(2). The ITFA's prohibition of discriminatory taxes is intended to prevent transactions carried out on the Internet from being singled out for higher taxes than similar transactions that are carried out with traditional, non-electronic methods.

76. The transactions by which Expedia allows visitors to reserve and pay for hotel accommodations through its website constitute "electronic commerce" under ITFA § 1105(3).

77. Expedia is informed and believes that for many years travel agents, tour operators and other travel intermediaries have engaged in Broward County in the provision of services similar to those provided by Expedia with respect to hotel accommodations but have not used electronic commerce in the provision of that service. Such persons have made agreements with Broward County hotels to facilitate the making of hotel room reservations by guests, with such guests paying a negotiated rate agreed upon with the hotels. Such persons have collected amounts from the guests in excess of such negotiated rate. They have remitted the negotiated rate to the hotel, together with the amount of the TDT due on such rate. They have retained as compensation for their services the amount collected from the guest in excess of the negotiated rate.

78. For example, Expedia is informed and believes that many travel agents have collected payment in advance from hotel guests of amounts in excess of the rate agreed upon between the travel agent and the hotel and have remitted payment of the negotiated rate to the hotel together with the amount of the TDT due on such rate. Such travel agents have retained as compensation for their services the amounts collected in excess of the negotiated rate.

79. Furthermore, Expedia is informed and believes that persons known as "aggregators" have provided packages of travel services including hotel accommodations. Unlike Expedia, an aggregator actually takes the risk that a hotel room will not be sold. The aggregator receives payment from the guest and remits the negotiated rate to the hotel, together with the TDT due on such rate. Such aggregators have retained as compensation for their services the amounts collected in excess of the negotiated rate.

80. Expedia is informed and believes that Broward County has never attempted to require the travel providers referred to in paragraphs 77 through 79 to remit the TDT on the amounts they receive and retain in excess of the negotiated rate remitted to the hotel.

81. Under the merchant model, Expedia receives and retains amounts from guests that exceed the Net Rate. Expedia remits the Net Rate to the hotels, together with the applicable taxes due on the Net Rate. The Assessment imposes the TDT on the amounts that Expedia retained in excess of the sum of the Net Rate plus taxes on the Net Rate. Expedia's business is dependent on electronic commerce. Because Broward County has not attempted to impose the TDT on amounts that exceed the sum of the rate negotiated by other travel providers plus taxes on such rate retained by similar travel providers who do not use electronic commerce, the Assessment represents the imposition of a tax that is not generally imposed and legally

collectible by Broward County on transactions involving similar property, goods, services, or information accomplished through other means, in violation of ITFA § 1105(2)(A)(i).

82. The Assessment also has the effect of imposing the TDT on Expedia at a rate higher than the rate generally imposed and legally collectible by Broward County on transactions involving similar services accomplished through other means, in violation of ITFA § 1105(2)(A)(ii).

83. The Assessment further represents the imposition of an obligation to collect or pay the TDT on a different person or entity than in the case of transactions involving similar property, goods, services, or information accomplished through other means in violation of ITFA § 1105(2)(A)(iii).

84. The Assessment is unlawful and contrary to the ITFA and to the Supremacy Clause of the United States Constitution and is therefore invalid.

COUNT VII
PENALTIES SHOULD BE ABATED

85. The allegations of paragraphs 1-38 are incorporated by reference.

86. Under Florida law, noncompliance penalties may be abated when noncompliance is due to reasonable cause and not to willful negligence, willful neglect, or fraud. FLA. STAT. § 213.21(3).

87. Expedia did not collect and remit the TDT based on the reasonable belief that the company is not subject to the TDT. To the extent Expedia's activities constitute noncompliance with the TDT, any such noncompliance was due to reasonable cause.

88. The imposition of penalties in the Assessment is improper, and the penalties should be abated.

PRAYER FOR RELIEF

WHEREFORE, EXPEDIA respectfully requests that this Court enter an Order:

1. Abating the Assessment in full;
2. Awarding Expedia its costs herein; and
3. Providing such other relief as the Court deems just and proper.

Dated: August 25, 2009

Respectfully submitted,

Mark E. Holcomb, Jr.

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pro hac vice to be filed*)

Texas Bar No. 11098700

David Cowling, Esq. (*motion to be admitted
pro hac vice to be filed*)

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Weston Loegering, Esq. (*motion to be admitted
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Use these links to rapidly review the document
[TABLE OF CONTENTS](#)

As filed with the Securities and Exchange Commission on March 15, 2004

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION**
Washington, D.C. 20549

FORM 10-K

**ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF
THE SECURITIES EXCHANGE ACT OF 1934
For the Fiscal Year Ended December 31, 2003**

INTERACTIVECORP

(Exact name of registrant as specified in its charter)

Commission File No. 0-20570

Delaware

(State or other jurisdiction of
incorporation or organization)

59-2712887

(IRS Employer Identification No.)

152 West 57th Street, New York, New York
(Address of Registrant's principal executive offices)

10019
(Zip Code)

(212) 314-7300

(Registrant's telephone number, including area code)

Securities registered pursuant to Section 12(b) of the Act:

None

Securities registered pursuant to Section 12(g) of the Act:

Common Stock, \$.01 par value
Warrants to Acquire One Share of Common Stock
Warrants to Acquire 1.93875 Shares of Common Stock

Indicate by check mark whether the Registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the Registrant was required to file such reports) and (2) has been subject to such filing requirements for the past 90 days. Yes No

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K is not contained herein, and will not be

increase in the volatility factor, and a one year increase in the weighted average expected life of the options would be \$9.4 million, \$12.3 million, and \$16.2 million, respectively. The Company also issues restricted stock units. For restricted stock units issued, the accounting charge is measured at the grant date and amortized ratably as non-cash compensation over the vesting term.

- The prevailing accounting guidance applied by Hotels.com and Expedia with respect to the presentation of revenue on a gross versus a net basis is contained in Staff Accounting Bulletin No. 101, "Revenue Recognition in Financial Statements", as later clarified by Emerging Issues Task Force No. 99-19, "Reporting Revenue Gross as a Principal versus Net as an Agent (EITF 99-19)." The consensus of this literature is that the presentation of revenue as "the gross amount billed to a customer because it has earned revenue from the sale of goods or services or the net amount retained (that is, the amount billed to a customer less the amount paid to a supplier) because it has earned a commission or fee" is a matter of judgment that depends on the relevant facts and circumstances. If the conclusion drawn is that IACT performs as an agent or a broker without assuming the risks and rewards of ownership of goods, revenue should be reported on a net basis. In making an evaluation of this issue, some of the factors that should be considered are: whether IACT is the primary obligor in the arrangement—strong indicator; whether IACT has general inventory risk (before customer order is placed or upon customer return)—strong indicator; and whether IACT has latitude in establishing price.

EITF 99-19 clearly indicates that the evaluations of these factors, which at times can be contradictory, are subject to significant judgment and subjectivity. The positions taken by Hotels.com and Expedia reflect their interpretation of their respective fact patterns as well as their qualitative weighing of the indicators outlined in EITF 99-19. See Note 2 "Summary of Significant Accounting Policies," Revenue Recognition, in the Notes to Consolidated Financial Statements for discussion of the factors considered by Hotels.com and Expedia in arriving at their conclusions.

For comparison purposes, in order to provide the reader with a more complete discussion on this topic, we present IACT pro forma information under the assumption of both companies presenting revenue on a net basis and both companies presenting revenue on a gross basis.

Assuming that both companies presented merchant revenue on a net basis, IACT's pro forma net revenues for the years ended December 31, 2003 and 2002 would have been \$1.67 billion and \$907.0 million, respectively.

Effective for the first quarter 2004, IAC will begin reporting revenue for Hotels.com business on a net basis rather than on a gross basis due to changes in business practices at Hotels.com that were implemented around the beginning of 2004. The change in business practices conforms Hotels.com with other IACT businesses in regards to its merchant hotel business and thus requires a change in its revenue presentation on a prospective basis.

- Some states and localities impose a transient occupancy or accommodation tax, or a form of sales tax, on the use or occupancy of hotel accommodations. Hotel operators generally collect and remit these taxes to the various tax authorities. Consistent with this practice, when a customer books a room through one of the IACT's travel services, the hotel charges taxes based on the room rate paid to the hotel and IACT recovers an equivalent amount from the customer. IACT does not collect or remit taxes on the portion of the customer payment it retains, and some jurisdictions have questioned IACT's practice in this regard. While the applicable tax provisions vary among the jurisdictions, IACT believes it generally has sound arguments that it is not required to collect and remit such taxes. IACT is engaged in discussions with tax authorities in various jurisdictions to resolve this issue, but the ultimate resolution in any particular jurisdiction cannot be determined at this time. IAC does not believe, however, that the amount of liability of IACT on account of this issue, if any, will have a material adverse effect on its past or future financial results.

IACT has established a reserve with respect to potential occupancy tax liability for prior periods, consistent with applicable accounting principles and in light of all current facts and circumstances. IACT's reserves represent its best estimate of the contingent liability related to occupancy tax in respect of prior periods. A variety of factors could affect the amount of the liability (both past and future), which factors include, but are not limited to, the process of moving Expedia and Hotels.com toward common business practices, increasing cooperation between them as a result of the acquisition by IAC of the publicly-held shares of Expedia and Hotels.com in 2003 (including whether to pursue joint resolutions with one or more jurisdictions), the number of, and amount of revenue represented by, jurisdictions that ultimately assert a claim and prevail in assessing such additional tax or negotiate a settlement, changes in statutes and the timing of all of the foregoing. IAC notes that there are more than 7,000 taxing jurisdictions, and it is not feasible to analyze the statutes, regulations and judicial and administrative rulings in every jurisdiction. Rather, IACT has obtained the advice of state and local tax experts with respect to tax laws of certain states and local jurisdictions

that represent a large portion of IACT's hotel revenue. In addition, IACT continues to engage in a dialog with and receive feedback from certain state and local tax authorities. IAC will continue to monitor the issue closely and provide additional disclosure, as well as adjust the level of reserves, as developments warrant. The reserve balance at December 31, 2003 is \$13.2 million as compared to \$10.4 million at December 31, 2002.

It is possible that some jurisdictions may introduce new legislation regarding the imposition of occupancy taxes on businesses that arrange booking of hotel accommodations, but to date the Company is aware of only one jurisdiction that has introduced such legislation, and its passage faces opposition and uncertainty.

69

Seasonality

IAC's businesses are subject to the effects of seasonality with revenues typically lowest in the first quarter of the year and highest in the fourth quarter, primarily as a result of seasonality at our travel business as well as Entertainment Publications and, to a lesser extent, HSN.

Our travel business experiences seasonal fluctuations, reflecting seasonal trends for the products and services offered. For example, traditional leisure travel supplier and agency bookings typically are highest in the first two calendar quarters of the year as consumers plan and purchase their spring and summer travel and then the number of bookings flattens in the last two calendar quarters of the year. Because revenue in our merchant business is recognized when the travel takes place rather than when it is booked, our revenue growth typically lags our bookings growth by a month or two. As a result, revenue as a percent of gross bookings is typically lowest in the first quarter of the year and highest in the fourth quarter.

Our results may also be affected by seasonal fluctuations in the inventory made available to us by our travel suppliers. For instance, during seasonal periods when demand is high, suppliers may impose blackouts for their inventory that prohibit us from selling their inventory during such periods.

Interval's revenues from existing members are influenced by the seasonal nature of planned family travel with the first quarter generally experiencing the strongest sales and the fourth quarter generally experiencing weaker sales.

Seasonality also impacts IAC's Electronic Retailing segment but not to the same extent it impacts the retail industry in general.

Ticketing operations revenues are impacted by fluctuations in the availability of events for sale to the public, which vary depending upon scheduling by the client. The second quarter of the year generally experiences the most ticket on-sales for events.

Entertainment Publication's revenues are significantly seasonal with the majority of the company's revenues and profitability experienced in the fourth quarter, consistent with school fundraising schedules.

New Accounting Pronouncements

In May 2003, the FASB issued SFAS No. 150, "Accounting for Certain Financial Instruments with Characteristics of Both Liabilities and Equity." This pronouncement establishes standards for how an issuer classifies and measures certain financial instruments with characteristics of both liabilities and equity. It requires that an issuer classify a financial instrument that is within its scope as a liability (or an asset in some circumstances). Many of those instruments were previously classified as equity. This Statement is effective for financial instruments entered into or modified after May 31, 2003. We adopted SFAS 150 effective July 1, 2003 and the adoption did not have an effect on the Company's financial statements.

70

CAUTIONARY STATEMENT REGARDING FORWARD-LOOKING STATEMENTS

In addition to historical information, this Annual Report on Form 10-K contains "forward-looking statements" within the meaning of the

Table of Contents

UNITED STATES SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

Form 10-K

ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934
For the fiscal year ended December 31, 2010

OR

TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

For the transition period from

to

Commission file number: 000-51447

EXPEDIA, INC.

(Exact name of registrant as specified in its charter)

Delaware
*(State or other jurisdiction of
incorporation or organization)*

20-2705720
*(I.R.S. Employer
Identification No.)*

**333 108th Avenue NE
Bellevue, WA 98004**

(Address of principal executive office) (Zip Code)

**Registrant's telephone number, including area code:
(425) 679-7200**

Securities registered pursuant to Section 12(b) of the Act:

<u>Title of each class:</u>	<u>Name of each exchange on which registered:</u>
Common stock, \$0.001 par value	The NASDAQ Global Select Market

Securities registered pursuant to Section 12(g) of the Act: None

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act. Yes No

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Act. Yes No

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes No

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T (§ 232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). Yes No

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K is not contained herein, and will not be contained, to the best of registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K.

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See the definitions of "large accelerated filer," "accelerated filer" and "smaller reporting company" in Rule 12b-2 of the Exchange Act. (Check one):

Large accelerated filer Accelerated filer Non-accelerated filer Smaller reporting company
(Do not check if a smaller reporting company)

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act). Yes No

Table of Contents

approximately \$184 million. On July 8, 2009, Expedia reached an agreement in principle on a proposed settlement of all claims with the plaintiffs. Plaintiffs filed a Motion for Preliminary Approval of the proposed settlement and the settlement was approved on December 1, 2009. The distribution of cash payments and coupons to class members was completed on June 1, 2010. Coupons may continue to be redeemed through June 2011.

Hotwire. On April 19, 2005, three actions filed against Hotwire, Inc. were consolidated and now are pending under the caption *Bruce Deaton v. Hotwire, Inc. et al.*, Case No. CGC-05-437631, in the Superior Court of the State of California, County of San Francisco. The consolidated complaint, which was amended on February 17, 2006, alleges that Hotwire is improperly charging and/or failing to pay hotel occupancy taxes and engaging in other deceptive practices in charging customers for taxes and fees. The complaint seeks certification of a nationwide class of all persons who were assessed a charge for “taxes/fees” when booking rooms through Hotwire. The amended complaint alleges violation of Section 17200 of the California Business and Professions Code, violation of the California Consumer Legal Remedies Act, and breach of contract, and seeks imposition of a constructive trust on monies received from the plaintiff class, as well as damages in an unspecified amount, disgorgement, restitution, interest and penalties. On March 15, 2007, the court certified a class of all residents of the United States to whom Hotwire charged “taxes/fees” for the facilitation of reservations for stand-alone hotel rooms on its website. The court has not yet required that Hotwire provide notice to the potential class members. The parties have reached a settlement that was approved by the court on December 8, 2009. Coupons issued pursuant to the settlement may continue to be redeemed until April 2011.

Consumer Class Action Litigation

Consumer Case against Expedia, Hotels.com and Hotwire. On December 8, 2008, a putative class action was filed in federal court in New York State against Expedia, Hotels.com and Hotwire. Similar lawsuits were filed at or about the same time against Priceline and Travelocity. See *Matthew R. Chiste, et al. v. Hotels.com, L.P., et al.*, No. 08 CV 10676 (United States District Court for the Southern District of New York). The complaint alleges that the defendants are improperly charging and/or failing to pay hotel occupancy taxes and engaging in other deceptive practices in charging customers for taxes and fees. The complaint seeks certification of a nationwide class of all persons who booked a hotel room in New York City through the defendants. The complaint asserts claims for deceptive business practices, conversion, breach of fiduciary duty and breach of contract and seeks a declaratory judgment, injunctive relief and damages in an unspecified amount, but exceeding \$5 million. On November 15, 2010, defendants’ motion to dismiss was granted in part and the bulk of the plaintiff’s claims were dismissed. Expedia filed a Motion for Reconsideration seeking to have the remainder of the case dismissed, which was denied.

Consumer Case against Expedia Canada. On June 26, 2009, a class action suit against Expedia Canada Corporation was filed in Ontario, Canada, alleging that disclosures related to “taxes and service fees” were deceptive. See *Magill v. Expedia Canada Corporation and Expedia.ca*, CV-09-381919-00LP (Ontario Superior Court of Justice). The complaint asserts claims under the Competition Act and Consumer Protection Act as well as claims of unjust enrichment, restitution, constructive trust, accounting and disgorgement and breach of contract. It seeks damages in the amount of CA\$50 million for the class as well as interest, fees and alternate damages measures. On September 24, 2010, the court added Expedia, Inc. as a defendant and dismissed many of the plaintiff’s claims with leave to amend. The class period was also limited. The plaintiff filed an amended statement of claim on January 7, 2011.

Litigation Relating to Hotel Occupancy Taxes

Actions Filed by Individual States, Cities and Counties

City of Los Angeles Litigation. On December 30, 2004, the city of Los Angeles filed a purported class action in California state court against a number of internet travel companies, including Hotels.com, Expedia and Hotwire. *City of Los Angeles, California, on Behalf of Itself and All Others Similarly Situated v. Hotels.com, L.P. et al.*, No. BC326693 (Superior Court, Los Angeles County). The complaint alleges that the defendants are

Table of Contents

improperly charging and/or failing to pay hotel occupancy taxes. The complaint seeks certification of a statewide class of all California cities and counties that have enacted uniform transient occupancy-tax ordinances effective on or after December 30, 1990. The complaint alleges violation of those ordinances, violation of Section 17200 of the California Business and Professions Code, and common-law conversion. The complaint also seeks a declaratory judgment that the defendants are subject to hotel occupancy taxes on the hotel rate charged to consumers and imposition of a constructive trust on all monies owed by the defendants to the government, as well as disgorgement, restitution, interest and penalties. On July 26, 2007, the court signed an order staying the lawsuit until the cities have exhausted their administrative remedies. The case is coordinated with the cases in San Diego, Anaheim, Santa Monica and San Francisco. On September 9, 2009, the City of Los Angeles issued assessments totaling \$29.5 million against Expedia companies (Expedia, Hotels.com and Hotwire). An administrative hearing challenging the assessments was held on December 3, 2009. On September 16, 2010, the assessment review officer approved the assessments. A second level administrative review hearing was held in December 2010.

Columbus-Findlay, Ohio Litigation. On October 25, 2005, the city of Findlay, Ohio filed a purported statewide class action in state court against a number of internet travel companies, including Hotels.com, Hotwire and Expedia. *City of Findlay v. Hotels.com, L.P., et al.*, No. 2005-CV-673 (Court of Common Pleas of Hancock County, Ohio). On August 8, 2006, the city of Columbus, Ohio and the city of Dayton, Ohio, filed a putative statewide class action in federal court against a number of internet travel companies, including Hotels.com, Hotwire and Expedia Washington. *City of Columbus, et al. v. Hotels.com, L.P., et al.*, 2:06-CV-00677 (United States District Court, Southern District of Ohio). The complaints allege that the defendants have failed to pay to the city hotel occupancy taxes as required by municipal ordinance. The complaints include claims for violation of hotel occupancy tax ordinances, violation of the consumer protection act, conversion, imposition of a constructive trust and declaratory relief. The Findlay lawsuit was removed to federal court and consolidated with the case brought by Columbus and Dayton. On July 26, 2006, the court held that defendants were not subject to the payment of taxes under the hotel occupancy tax ordinances and granted in part and denied in part defendants' motion to dismiss. The cities of Toledo, Northwood, Rossford, Maumee, the Franklin County Convention Facilities Authority and the Perrysburg Township and Springfield Township have been added as plaintiffs in the lawsuit. Class certification was never granted. On November 18, 2010, the court ruled on the remaining claim and held that defendants have not collected taxes that have not been remitted and entered judgment in favor of the online travel companies. Plaintiffs have appealed.

City of Chicago Litigation. On November 1, 2005, the city of Chicago, Illinois filed an action in state court against a number of internet travel companies, including Hotels.com, Hotwire and Expedia. *City of Chicago, Illinois v. Hotels.com, L.P., et al.*, No. 2005 L051003 (Circuit Court of Cook County). The complaint alleges that the defendants have failed to pay to the city the hotel accommodations taxes as required by municipal ordinance. The complaint asserts claims for violation of that ordinance, conversion, imposition of a constructive trust and demand for a legal accounting. The complaint seeks damages, restitution, disgorgement, fines, penalties and other relief in an unspecified amount. The parties have filed cross-motions for summary judgment.

City of Rome, Georgia Litigation. On November 18, 2005, the city of Rome, Georgia, Hart County, Georgia, and the city of Cartersville, Georgia filed a purported statewide class action in federal court against a number of internet travel companies, including Hotels.com, Hotwire and Expedia. *City of Rome, Georgia, et al. v. Hotels.com, L.P., et al.*, No. 4:05-CV-249 (U.S. District Court, Northern District of Georgia, Rome Division). The complaint alleges that the defendants have failed to pay to the county and cities the hotel accommodations taxes as required by municipal ordinances. The complaint asserts claims for violation of excise and sales and use tax ordinances, conversion, unjust enrichment, imposition of a constructive trust, declaratory relief and injunctive relief. The complaint seeks damages and other relief in an unspecified amount. On May 9, 2006, the court granted in part and denied in part defendants' motion to dismiss. On June 8, 2006, plaintiffs filed an amended complaint adding sixteen more municipalities and political subdivisions as named plaintiffs. On May 10, 2007, the court stayed the litigation, concluding that the plaintiffs must exhaust their administrative remedies before continuing to litigate their tax claims. On July 10, 2009, the court lifted the stay of the litigation. Plaintiffs have file a motion for class certification.

Table of Contents

City of San Diego, California Litigation. On February 9, 2006, the city of San Diego, California filed an action in state court against a number of internet travel companies, including Hotels.com, Hotwire and Expedia. *City of San Diego v. Hotels.com, L.P. et al.*, Judicial Council Coordination Proceeding No. 4472 (Superior Court for the County of San Diego). The complaint alleges that the defendants have failed to pay to the city hotel accommodations taxes as required by municipal ordinance. The complaint asserts claims for violation of that ordinance, for violation of Section 17200 of the California Business and Professions Code, conversion, imposition of a constructive trust and declaratory judgment. The complaint seeks damages and other relief in an unspecified amount. An amended complaint was filed on March 8, 2007. The case was stayed pending exhaustion of administrative procedures. In November 2008, the city completed its audit and assessed hotel occupancy taxes against each of the named online travel companies. The online travel companies challenged those assessments through an administrative appeals process. The first hearing on those challenges occurred on June 19, 2009. On July 28, 2009, the hearing board affirmed the assessments. The online travel companies appealed, and following further administrative hearings during the week of January 11, 2010, the hearing officer held that the online travel companies are liable for hotel accommodations taxes, including assessments totaling \$16.5 million for the Expedia companies. The online travel companies filed a petition for writ of mandate and cross-complaint in August 2010. This case is coordinated with the Anaheim, San Francisco, Santa Monica and Los Angeles lawsuits.

Orange County, Florida Litigation. On March 13, 2006, Orange County, Florida filed an action in state court against a number of internet travel companies, including Hotels.com, Hotwire and Expedia. *Orange County et al v. Expedia, Inc., et al.*, 2006-CA-2104 Div. 39 (Circuit Court Ninth Judicial District, Orange County, FL). The complaint alleges that the defendants have failed to pay the county hotel accommodations taxes as required by municipal ordinance. The complaint seeks a declaratory judgment regarding the county's right to audit and collect tax on certain of the defendants' hotel room transactions. On March 9, 2007, the plaintiff filed an amended complaint. Plaintiff's motion for summary judgment was denied on January 20, 2011.

City of Atlanta, Georgia Litigation. On March 29, 2006, the city of Atlanta, Georgia filed suit against a number of internet travel companies, including Hotels.com, Hotwire and Expedia. *City of Atlanta, Georgia v. Hotels.com, L.P., et al.*, 2006-CV-114732 (Superior Court of Fulton County, Georgia). The complaint alleges that the defendants have failed to pay to the city hotel accommodations taxes as required by municipal ordinances. The complaint asserts claims for violation of the ordinance, conversion, unjust enrichment, imposition of a constructive trust, declaratory judgment and an equitable accounting. The complaint seeks damages and other relief in an unspecified amount. Plaintiff's first amended complaint was filed on October 23, 2009. On July 22, 2010, the court ruled on the parties' cross-motions for summary judgment and held that online travel companies are not innkeepers required to collect and remit taxes under the Atlanta ordinance. The court also issued an injunction requiring the payment of taxes in the future on the grounds that the online travel companies are third-party tax collectors. Both parties have appealed.

City of Charleston, South Carolina Litigation. On April 26, 2006, the city of Charleston, South Carolina filed suit in state court against a number of internet travel companies, including Hotels.com, Hotwire and Expedia Washington. *City of Charleston, South Carolina v. Hotels.com, et al.*, 2:06-CV-01646-PMD (United States District Court, District of South Carolina, Charleston Division). The case was removed to federal court on May 31, 2006. The complaint alleges that the defendants have failed to pay the city hotel accommodations taxes as required by municipal ordinance. The complaint asserts claims for violation of that ordinance, conversion, constructive trust and legal accounting. The complaint seeks damages in an unspecified amount. On April 26, 2007, the court entered an order consolidating the lawsuits filed by the City of Charleston and the Town of Mt. Pleasant. The parties executed a settlement agreement in October 2010 and the case has been dismissed.

City of San Antonio, Texas Litigation. On May 8, 2006, the city of San Antonio filed a putative statewide class action in federal court against a number of internet travel companies, including Hotels.com, Hotwire, and Expedia. See *City of San Antonio, et al. v. Hotels.com, L.P., et al.*, SA06CA0381 (United States District Court, Western District of Texas, San Antonio Division). The complaint alleges that the defendants have failed to pay to the city hotel accommodations taxes as required by municipal ordinance. The complaint asserts claims for violation of that ordinance, common-law conversion, and declaratory judgment. The complaint seeks damages in

Table of Contents

an unspecified amount, restitution and disgorgement. On October 30, 2009, a jury verdict was entered finding that defendant online travel companies “control hotels,” and awarding approximately \$15 million for historical damages against the Expedia companies. The jury also found that defendants were not liable for conversion or punitive damages. The final amount of the judgment against the Expedia companies has not been determined. In further proceedings, the court will determine, among other things, whether the tax is actually due on the amounts that the online companies retained for their services and the amount, if any, of penalties and interest, which could be significant.

City of Gallup, New Mexico Litigation. On May 17, 2006, the city of Gallup, New Mexico filed a putative statewide class action in state court against a number of internet travel companies, including Hotels.com, Hotwire and Expedia. *City of Gallup, New Mexico, et al. v. Hotels.com, L.P., et al.*, CIV-06-0549 JC/RLP (United States District Court, District of New Mexico). The case was removed to federal court on June 23, 2006. The complaint alleges that the defendants have failed to pay to the city hotel accommodations taxes as required by municipal ordinances. The complaint asserts claims for violation of those ordinances, conversion, and declaratory judgment. The complaint seeks damages in an unspecified amount, restitution and disgorgement. On April 18, 2007, the court granted plaintiffs’ motion to dismiss its own lawsuit. On July 6, 2007, the city of Gallup refiled its lawsuit. Plaintiff filed its first amended complaint on January 16, 2009. The court certified the class on July 7, 2009. On March 1, 2010, the court denied the city’s motion for summary judgment and held that the online travel companies do not have tax obligations under the city’s ordinance and that defendants have not collected taxes that have not been remitted.

Town of Mount Pleasant, South Carolina Litigation. On May 23, 2006, the town of Mount Pleasant, South Carolina filed suit in state court against a number of internet travel companies, including Hotels.com, Hotwire and Expedia. *Town of Mount Pleasant, South Carolina v. Hotels.com, et al.*, 2-06-CV-020987-PMD (United States District Court, District of South Carolina, Charleston Division). The case was removed to federal court on July 21, 2006. The complaint alleges that the defendants have failed to pay to the city hotel accommodations taxes as required by municipal ordinance. The complaint asserts claims for violation of that ordinance, conversion, constructive trust and legal accounting. The complaint seeks damages in an unspecified amount. On April 26, 2007, the court consolidated the lawsuits filed by the city of Charleston and the town of Mt. Pleasant. The parties executed a settlement agreement in October 2010 and the case has been dismissed.

Columbus, Georgia Litigation. On May 30, 2006, the city of Columbus, Georgia filed suit against Expedia, Inc. in state court and on June 7, 2006 filed suit against Hotels.com in state court. *Columbus, Georgia v. Hotels.com, Inc., et al.*, SU-06-CV-1893-8 (Superior Court of Muscogee County); *Columbus, Georgia v. Expedia, Inc.*, SU-06-CV-1794-7 (Superior Court of Muscogee County). The complaints allege that the defendants have failed to pay the city hotel accommodations taxes as required by municipal ordinance. The complaints assert claims for violation of that ordinance, unjust enrichment, imposition of a constructive trust, equitable accounting, and declaratory judgment, and seek damages in an unspecified amount, restitution and disgorgement. On September 22, 2008, the court issued an injunction requiring Expedia and Hotels.com to collect and remit taxes on services on an ongoing basis. Expedia and Hotels.com subsequently paid approximately \$110,000 in outstanding past tax amounts demanded by the city and ceased to list Columbus, Georgia hotels on their websites. In June 2010, the parties filed cross-motions for summary judgment. Plaintiff also filed a motion to require Expedia and Hotels.com to again list Columbus, Georgia hotels on their sites. On January 28, 2011, the court granted the city’s motion for summary judgment and denied Expedia’s motion for summary judgment.

Lake County, Indiana Convention and Visitors Bureau Litigation. On June 12, 2006, the Lake County Convention and Visitors Bureau, Inc. and Marshall County filed a putative statewide class action in federal court on behalf of themselves and all other similarly situated political subdivisions in the state of Indiana against a number of internet travel companies, including Hotels.com, Hotwire and Expedia. *Lake County Convention and Visitors Bureau, Inc., et al. v. Hotels.com, LP*, 2:06-CV-207 (United States District Court for the Northern District of Indiana, Hammond Division). The complaint alleges that the defendants have failed to pay to municipalities hotel accommodations taxes as required by municipal ordinances. The complaint asserts claims for violation of those ordinances, conversion, unjust enrichment, imposition of a constructive trust, and declaratory judgment, and seeks damages in an unspecified amount. On March 3, 2010, defendants’ motion for summary judgment for failure to exhaust administrative remedies was granted.

Table of Contents

North Myrtle Beach Litigation. On August 28, 2006, the city of North Myrtle Beach, South Carolina filed a lawsuit in federal court against a number of internet travel companies, including Hotels.com, Hotwire, and Expedia. *City of North Myrtle Beach v. Hotels.com, et al.*, 4: 06-CV-03063-RBH (United States District Court, District of South Carolina, Florence Division). The complaint alleges that the defendants have failed to pay the hotel accommodation taxes as required by local ordinances. The complaint asserts claims for violation of those ordinances, as well as a claim for conversion, imposition of a constructive trust, and demand for an accounting, and seeks unspecified damages. The parties reached a settlement in October 2010 and the case has been dismissed.

Nassau County, New York Litigation. On October 24, 2006, the county of Nassau, New York filed a putative statewide class action in federal court against a number of internet travel companies, including Hotels.com, Hotwire, and Expedia. *Nassau County, New York, et al. v. Hotels.com, L.P., et al.*, (United States District Court, Eastern District of New York). The complaint alleges that the defendants have failed to pay hotel accommodation taxes as required by local ordinances to certain New York cities, counties and local governments in New York. The complaint asserts claims for violations of those ordinances, as well as claims for conversion, unjust enrichment, and imposition of a constructive trust, and seeks unspecified damages. On August 17, 2007, the court granted defendants' motion dismissing the lawsuit due to the plaintiff's failure to exhaust its administrative remedies. On August 11, 2009, the Second Circuit remanded the case for the district court to determine whether class certification is appropriate. The district court has ordered the parties to proceed with class certification.

Wake County, North Carolina Litigation. On November 3, 2006, Wake County, North Carolina filed a lawsuit in state court against a number of internet travel companies, including Hotels.com, Hotwire, and Expedia. *Wake County v. Hotels.com, L.P., et al.*, 06 CV 016256 (General Court of Justice, Superior Court Division, Wake County). The complaint alleges that the defendants have failed to pay the county hotel accommodation taxes as required by local ordinance. The complaint asserts claims for violation of the local ordinance, as well as claims for declaratory judgment or injunction, conversion, imposition of a constructive trust, demand for an accounting, unfair and deceptive trade practices, and agency. The complaint seeks damages in an unspecified amount. On April 4, 2007, the court consolidated the Wake County, Dare County, Buncombe County, Mecklenburg County and Cumberland County lawsuits. On May 9, 2007, the defendants moved to dismiss the lawsuits. On November 19, 2007, the court granted in part and denied in part defendants' motion to dismiss the Wake County lawsuit. On November 1, 2010, the parties filed cross-motions for summary judgment.

Branson, Missouri Litigation. On December 28, 2006, the city of Branson, Missouri filed a lawsuit in state court against a number of internet travel companies, including Hotels.com, Hotwire, and Expedia. *City of Branson, MO v. Hotels.com, L.P., et al.*, 106CC5164 (Circuit Court of Greene County, Missouri). The complaint alleges that the defendants have failed to pay the city hotel accommodation taxes as required by local ordinance. The complaint asserts claims for violation of the local ordinance, as well as claims for declaratory judgment, conversion, and demand for an accounting, and seeks unspecified damages. On November 26, 2007, the court denied the defendants' motion to dismiss.

Buncombe County Litigation. On February 1, 2007, Buncombe County, North Carolina filed a lawsuit in state court against a number of internet travel companies, including Hotels.com, Hotwire, and Expedia. *Buncombe County v. Hotels.com, et al.*, 7 CV 00585 (General Court of Justice, Superior Court Division, Buncombe County, North Carolina). The complaint alleges that the defendants have failed to pay the county hotel accommodation taxes as required by local ordinance. The complaint asserts claims for violation of the local ordinance, as well as claims for declaratory judgment, and seeks unspecified damages. On April 4, 2007, the court consolidated the Wake County, Dare County, Buncombe County, Mecklenburg County and Cumberland County lawsuits. On May 9, 2007, the defendants moved to dismiss the lawsuits. On November 19, 2007, the court granted in part and denied in part defendants' motion to dismiss the Buncombe County lawsuit. On November 1, 2010, the parties filed cross-motions for summary judgment.

Dare County, North Carolina Litigation. On January 26, 2007, Dare County, North Carolina filed a lawsuit in state court against a number of internet travel companies, including Hotels.com, Hotwire, and Expedia. *Dare County v. Hotels.com, L.P., et al.*, 07 CVS 56 (General Court of Justice, Superior Court Division, Dare

Table of Contents

County, North Carolina). The complaint alleges that the defendants have failed to pay the county hotel accommodation taxes as required by local ordinance. The complaint asserts claims for violation of the local ordinance, as well as claims for declaratory judgment, injunction, conversion, constructive trust, accounting, unfair and deceptive trade practices and agency. The complaint seeks damages in an unspecified amount. On April 4, 2007, the court consolidated the Wake County, Dare County, Buncombe County, Mecklenburg County and Cumberland County lawsuits. On May 9, 2007, the defendants moved to dismiss the lawsuits. On November 19, 2007, the court granted in part and denied in part defendants' motion to dismiss the Dare County lawsuit. On November 1, 2010, the parties filed cross-motions for summary judgment.

Myrtle Beach, South Carolina Litigation. On February 2, 2007, the city of Myrtle Beach, South Carolina filed an individual lawsuit in state court against a number of internet travel companies, including Hotels.com, Hotwire and Expedia. *City of Myrtle Beach v. Hotels.com, LP, et al.*, 2007 CP26-0738 (Court of Common Pleas, Fifteenth Judicial Circuit, County of Horry, South Carolina). The complaint alleges that the defendants have failed to pay to the county hotel accommodations taxes as required by municipal ordinances. The complaint asserts a claim for declaratory judgment that the accommodations tax at issue is owed by the defendants, and seeks damages in an unspecified amount.

Horry County, South Carolina Litigation. On February 2, 2007, Horry County, South Carolina filed an individual lawsuit in state court against a number of internet travel companies, including Hotels.com, Hotwire and Expedia. *Horry County v. Hotels.com, LP, et al.*, 2007 CP26-0737 (Court of Common Pleas, County of Horry, South Carolina). The complaint alleges that the defendants have failed to pay to the county hotel accommodations taxes as required by municipal ordinances. The complaint asserts a claim for declaratory judgment that the accommodations tax at issue is owed by the defendants, and seeks damages in an unspecified amount. Plaintiff has filed a motion for summary judgment, which is scheduled for a hearing on March 8, 2011.

City of Houston, Texas Litigation. On March 5, 2007, the city of Houston filed an individual lawsuit in state court against a number of internet travel companies, including Hotels.com, Hotwire and Expedia. *City of Houston v. Hotels.com, L.P., et al.*, 2007-13227 (District Court of Harris County, 270th Judicial District, Texas). The lawsuit alleges that the defendants have failed to pay to the city hotel accommodations taxes as required by municipal ordinance. The lawsuit asserts claims for violation of that ordinance, conversion, imposition of a constructive trust, civil conspiracy, and demand for accounting. The complaint seeks damages in an unspecified amount. On January 19, 2010, the court ruled in favor of defendants on their motion for summary judgment dismissing plaintiffs' claims with prejudice. The city has appealed.

Mecklenburg County Litigation. On January 10, 2008, the county of Mecklenburg, North Carolina filed an individual lawsuit in state court against a number of internet travel companies, including Expedia, Hotels.com, and Hotwire. *County of Mecklenburg v. Hotels.com L.P., et al.*, (General Court of Justice, Superior Court Division, Mecklenburg County, North Carolina). The complaint alleges that the defendants have failed to pay hotel accommodations taxes as required by municipal ordinance to the county. The complaint asserts claims for violation of the local ordinance, as well as claims for declaratory judgment, injunction, conversion, constructive trust, accounting, unfair and deceptive trade practices and agency. The complaint seeks damages in an unspecified amount. On April 4, 2007, the court consolidated the Wake County, Dare County, Buncombe County, and Cumberland County lawsuits. On May 9, 2007, the defendants moved to dismiss the lawsuits. On November 19, 2007, the court granted in part and denied in part defendants' motion to dismiss the Mecklenburg County lawsuit. On November 1, 2010, the parties filed cross-motions for summary judgment.

Cities of Goodlettsville and Brentwood, Tennessee Litigation. On June 2, 2008, the cities of Goodlettsville and Brentwood, Tennessee filed a putative class action in federal court against a number of internet travel companies, including Expedia, Hotels.com, and Hotwire. *City of Goodlettsville and City of Brentwood v. Priceline.com, Inc., et al.*, 3-08-0561 (United States District Court for the Middle District of Tennessee). The complaint alleges that the defendants have failed to pay to the cities hotel accommodations taxes as required by municipal ordinance. The complaint asserts claims for violation of the local ordinance, as well as claims for unjust enrichment and conversion, and seeks damages in an unspecified amount. Plaintiffs have voluntarily dismissed the City of Brentwood. Class certification has been granted. Trial is scheduled for November 29, 2011.

Table of Contents

County of Monroe, Florida Litigation. On June 3, 2008, the county of Monroe, Florida filed an individual action in federal court against a number of internet travel companies, including hotel accommodations taxes as required by municipal ordinance. *County of Monroe, Florida v. Priceline.com, Inc., et al.*, 08-10044-CIV (United States District Court for the Southern District of Florida). The complaint alleges that the defendants have failed to pay to the county hotel accommodations taxes as required by municipal ordinance. The complaint purports to assert claims for violation of the local ordinance, as well as claims for unjust enrichment and conversion. The complaint seeks damages in an unspecified amount. Plaintiff filed its first amended complaint on May 28, 2010. Defendants' motion to dismiss the first amended complaint was denied in part and granted in part by the court and class certification was granted. Settlement was reached in August 2010 and the court granted final approval of the settlement on January 6, 2011.

Township of Lyndhurst, New Jersey Litigation. On June 18, 2008, the township of Lyndhurst filed a putative class action in federal court against a number of internet travel companies, including Expedia, Hotels.com, and Hotwire. *Township of Lyndhurst v. Priceline.com, Inc., et al.*, 2:08-CV-03033-JLL-CCC (United States District Court for District of New Jersey). The complaint alleges that the defendants have failed to pay to the township hotel accommodations taxes as required by municipal ordinance. The complaint asserts claims for violation of the local ordinance, as well as claims for unjust enrichment and conversion. The complaint seeks damages in an unspecified amount. On March 18, 2009, the court granted defendants' motion to dismiss for lack of standing. Plaintiff's appeal is pending.

City of Baltimore Litigation. On December 10, 2008, the city of Baltimore filed an individual action in federal court against a number of internet travel companies, including Expedia, Hotels.com, and Hotwire. *Mayor and City Council of Baltimore v. Priceline.com, Inc. et al.*, MJG-07-2807 (United States District Court for the District of Maryland). The complaint alleges that the defendants have failed to pay to the city hotel accommodations taxes as required by municipal ordinance. The complaint asserts claims for violation of the local ordinance, as well as claims for conversion, unjust enrichment, assumpsit, declaratory judgment, imposition of a constructive trust, and injunctive relief. The complaint seeks damages in an unspecified amount. On December 30, 2010, the city filed a motion for summary judgment.

Worcester County, Maryland Litigation. On January 6, 2009, the county of Worcester, Maryland filed an individual action in federal court against a number of internet travel companies, including Expedia, Hotels.com, and Hotwire. *County Commissioners of Worcester County, Maryland v. Priceline.com, Inc. et al.*, 09-CV-00013-JFM (United States District Court for the District of Maryland). The complaint alleges that the defendants have failed to pay to the city hotel accommodations taxes as required by municipal ordinance. The complaint asserts claims for violation of the local ordinance, as well as claims for conversion, unjust enrichment, and assumpsit. The complaint seeks damages in an unspecified amount. On June 2, 2009, the court denied defendants' motion to dismiss. In July 2010, settlement was reached and on July 26, 2010, the case was dismissed.

City of Anaheim, California Litigation. On October 10, 2007, the city of Anaheim instituted an audit of a number of internet travel companies, including Expedia, Hotels.com, and Hotwire, for hotel occupancy taxes. On or before May 23, 2008, the city completed its audit and issued assessments against each of those online travel companies. The online travel companies challenged those assessments through an administrative appeals process. On January 28, 2009, the hearing examiner issued his decision, rejecting the online travel companies' challenges to those assessments. On February 6, 2009, the hearing examiner issued a decision setting forth the assessed amounts due by each online travel company, including a total of approximately \$17.7 million for the Expedia companies. On February 11, 2009, the online travel companies filed a petition for writ of mandate in the California superior court seeking to vacate the decision of the hearing examiner and asking for a declaratory judgment that the online travel companies are not subject to Anaheim's hotel occupancy tax. *Expedia, Inc. v. City of Anaheim, et al., Hotels.com L.P. v. City of Anaheim, et al.; Hotwire, Inc. v. City of Anaheim et al.*, (Superior Court of the State of California, County of Orange). On February 17, 2009, the online travel companies filed a motion asking the court to rule that the city is not entitled to require the companies to pay the tax assessment prior to commencing litigation to challenge the applicability of the ordinance, commonly referred to as "pay-to-play." On March 30, 2009, the court overruled the city's demurrer to the companies' "pay-to-play"

Table of Contents

motion. The trial court's ruling that the online travel companies had no obligation to pay the tax assessments before commencing litigation was affirmed on appeal. The lawsuit is coordinated with the San Diego, San Francisco, Santa Monica and Los Angeles matters. On February 1, 2010, the court ruled in defendants' favor that taxes are not due to the city of Anaheim. The city amended its complaint and the court again granted relief in favor of the online travel companies dismissing the city's claims. On December 16, 2010, judgment was entered dismissing the case. The city has appealed.

City of San Francisco, California Litigation. On May 13, 2008, the city of San Francisco instituted an audit of a number of internet travel companies, including Expedia, Hotels.com, and Hotwire, for hotel occupancy taxes. On or before October 31, 2008, the city completed its audit and issued assessments against each of those online travel companies. The online travel companies challenged those assessments through an administrative appeals process and in hearings that took place during January 2009. The hearing examiner upheld the city's assessments. On May 11, 2009, the online travel companies filed a petition for writ of mandate in the California superior court seeking to vacate the decision of the hearing examiner and asking for a declaratory judgment that the online travel companies are not subject to San Francisco's hotel occupancy tax. *Expedia, Inc. v. City and County of San Francisco, et. al.; Hotwire, Inc. v. City and County of San Francisco, et. al.*, (Superior Court of the State of California, County of San Francisco). The case is coordinated with the Los Angeles, Anaheim, Santa Monica and San Diego lawsuits. On June 19, 2009, the court granted the city's demurrer on the "pay first" issue relating to pay-to-play provisions. Expedia and Hotwire's appeal of the "pay first" decision was denied and Expedia and Hotwire paid the assessed amounts on July 13, 2009. A hearing on the Hotels.com assessment appeal was held on August 12, 2009. Hotels.com paid the assessed amount on November 30, 2009. The total assessed amount paid by the Expedia companies was approximately \$48 million. The court has denied the city's demurrer to the defendants' petitions.

City of Jacksonville, Florida Litigation. On July 28, 2006, the city of Jacksonville, Florida filed a putative class action in state court against a number of internet travel companies, including Expedia, Hotels.com, and Hotwire. The lawsuit was dismissed for failure to exhaust administrative remedies. In February 2009, the court gave leave for plaintiffs to refile its complaint. Plaintiffs' amended complaint was filed on March 10, 2009. *City of Jacksonville v. Hotels.com LP, et. al.*, 2006-CA-005393-XXXX-MA, CV-B (Circuit Court, Fourth Judicial Circuit, Duval County, Florida). The complaint alleges that the defendants have failed to pay to the city the tourist and convention development taxes as required by state and municipal ordinance. The complaint seeks damages in an unspecified amount. The city did not opt out of the Monroe County Florida class action and this case was settled on January 6, 2011, as part of the final approval of the settlement of the Monroe County case.

City of Bowling Green, Kentucky Litigation. On March 10, 2009, the city of Bowling Green, Kentucky filed an individual action against a number of internet travel companies, including Expedia, Inc., Hotels.com and Hotwire. *City of Bowling Green, Kentucky v. Hotels.com, L.P., et. al.*, Civil Action 09-CI-409, Commonwealth of Kentucky, Warren Circuit Court. The complaint alleges that the defendants have failed to pay transient room taxes as required by municipal ordinance. On April 8, 2010, defendants' motion to dismiss was granted. The city has appealed.

County of Genesee, County of Calhoun, County of Ingham and County of Saginaw, Michigan Litigation. On February 24, 2009, four Michigan Counties (Genesee, Calhoun, Ingham and Saginaw) filed an individual action against a number of internet travel companies, including Expedia, Inc., Hotels.com and TravelNow.com, Inc. *County of Genesee, Michigan v. Hotels.com, L.P., et. al.*, 09-265-CZ (Circuit Court for the County of Ingham, Michigan). The complaint alleges that the defendants have failed to pay hotel accommodation taxes as required by county ordinance. Defendants filed a motion for summary disposition on June 29, 2009. On August 21, 2009, the court denied defendants' motion for summary disposition. On September 9, 2010, plaintiffs filed a motion for summary judgment.

St. Louis County, Missouri Litigation. On July 6, 2009, St. Louis County, Missouri filed an action against a number of online travel companies, including Expedia, Hotels.com, Hotwire, and TravelNow.com, Inc. *St. Louis County, Missouri v. Prestige Travel, Inc., et. al.*, Case No. 09SL-CC02912 (21st Judicial Circuit Court, St. Louis County, Missouri). The complaint alleges that the defendants have failed to

Table of Contents

collect and/or pay taxes under the county's tourism and hotel tax ordinances. Plaintiff's first amended petition was filed on September 18, 2009. The court granted defendants' motion to dismiss on September 8, 2010. The county has appealed.

Village of Rosemont, Illinois Litigation. On July 23, 2009, Rosemont, Illinois filed an action against a number of online travel companies including Expedia, Inc., Hotels.com and Hotwire. *Village of Rosemont, Illinois v. Priceline.com, Incorporated, et al.* 1:09-cv-04438 (U.S. District Court for the Northern District of Illinois). The complaint alleges that defendants have failed to collect and/or pay taxes under the city's hotel tax ordinances. Defendants' motion to dismiss the village's claims for unjust enrichment and conversion was granted on February 25, 2010.

Palm Beach County, Florida Litigation. On July 30, 2009, Palm Beach County, Florida filed an action against a number of online travel companies including Expedia, TravelNow.com, Hotels.com, IAC/Interactive Corp. and Hotwire. *Anne Gannon, in her capacity as Palm Beach County Tax Collector, on behalf of Palm Beach County v. Hotels.com, L.P., et al.*, 50 2009 CA 025919 MB (Circuit Court of the 15th Judicial Circuit in and for Palm Beach County, Florida). The complaint alleges that defendants have failed to collect and/or pay taxes under the county's tourist development tax ordinances. Plaintiff served an amended complaint on December 1, 2009. Trial is scheduled for October 11, 2011.

Lawrence County, Pennsylvania Litigation. On September 8, 2009, the county of Lawrence, Pennsylvania filed an action against a number of online travel companies including Expedia, Inc., Hotels.com, Hotwire, and Travelnow.com, Inc. *County of Lawrence, Pennsylvania v. Hotels.com, L.P., et al.*, Civil Action No. 2:09-cv-01219-GLL (U.S. District Court for the Western District of Pennsylvania). The complaint alleges that defendants have failed to collect and/or pay taxes under state and municipal hotel occupancy tax codes and alleges conversion and equitable claims. The court granted defendants' motion to dismiss on October 25, 2010 and the county has appealed.

Brevard County, Florida Litigation. On October 2, 2009, Brevard County Florida filed an action against a number of online travel companies, including Expedia, Inc., Hotels.com, and Hotwire. *Brevard County, Florida v. Priceline.com Inc., et. al.* 6:09-CV-1695-ORC-31JGK (U.S. District Court for the Middle District of Florida, Orlando Division). The complaint alleges that defendants have failed to collect and/or pay taxes under the county's tourist development tax ordinances. The parties agreed to a settlement in principle in January 2011 and the case was dismissed on January 12, 2011.

Pine Bluff, Arkansas Litigation. On September 25, 2009, Pine Bluff Advertising and Promotion Commission and Jefferson County filed a class action against a number of online travel companies, including Expedia, Inc., Hotels.com, and Hotwire. *Pine Bluff Advertising and Promotion Commission, Jefferson County, Arkansas, and others similarly situated v. Hotels.com LP, et. al.* CV-2009-946-5 (In the Circuit Court of Jefferson, Arkansas). The complaint alleges that defendants have failed to collect and/or pay taxes under hotel tax occupancy ordinances. The court denied defendants' motion to dismiss.

Leon County, Florida et. al. Litigation. On November 3, 2009, Leon County and a number of other counties in Florida filed an action against a number of online travel companies, including Expedia, Inc., Hotels.com, TravelNow.com and Hotwire. *Leon County, et. al. v. Expedia, Inc., et. al.* Case No: 2009CA4319 (Circuit Court of the Second Judicial Circuit, Leon County, Florida). The complaint alleges that defendants have failed to collect and/or pay taxes under the county's tourist development tax ordinances. Flagler, Alachua, Nassau, Okaloosa, Seminole, Pasco, Pinellas, Hillsborough, Lee, Charlotte, Escambia, Manatee, Saint Johns, Polk, Walton and Wakulla counties have been added as plaintiffs.

Leon County v. Expedia, Inc., Florida Department of Revenue Litigation, et al Litigation. On December 14, 2009, Leon County filed an action against a number of online travel companies and the State of Florida Department of Revenue for recovery of state taxes for hotel occupancy. *Leon County v. Expedia, Inc., et al.*, Case No. 2009CA4882 (Circuit Court of the Second Judicial Circuit, Leon County, Florida). Leon County has sued the online travel companies and the Florida State Department of Revenue for failure to collect state hotel occupancy taxes. This case was originally filed in federal court on July 27, 2006 and voluntarily dismissed on February 23, 2007. The court denied defendants' motion to dismiss.

Table of Contents

City of Birmingham, Alabama Litigation. The city of Birmingham, Alabama and eight other cities in Alabama, along with the Birmingham-Jefferson Civil Center Authority, have brought suit against a number of online travel companies. *City of Birmingham, et al. v. Orbitz, et al.*, Case No. CV200903607 (Circuit Court of Jefferson County, Alabama). The complaint alleges that defendants have failed to collect and/or pay taxes under local lodging tax codes. On April 1, 2010, the court denied defendants' motion to dismiss, but expressed its preliminary conclusion that the city's lodging taxes do not apply to defendants' services.

Florida Attorney General Litigation. On November 3, 2009, the Florida Attorney General announced a suit against Expedia, Inc. and Orbitz, Inc. *State of Florida, Office of the Attorney General, Department of Legal Affairs v. Expedia, Inc., et al.*, Case No. 2009 CA (Circuit Court for the Second Judicial Circuit, Leon County, Florida). The complaint includes one cause of action for hotel occupancy taxes under the Florida Deceptive and Unfair Trade Practices Act. In November 2010, the complaint was amended to include other online travel companies. The complaint has not been served.

City of Philadelphia Litigation. The city of Philadelphia appealed the administrative decision by its Tax Review Board holding that Expedia is not obligated to pay hotel occupancy taxes. *The Appeal of the City of Philadelphia, Pennsylvania v. Tax Review Board*, Case Nos. 00764 and 00363 (Court of Common Pleas of Philadelphia County, First Judicial District). On January 14, 2011, the court of common pleas held in favor of Expedia that taxes are not due on their services, and denied the city's appeal.

City of Santa Monica, California v. Expedia, Inc, et al., Case No. 108568 (Superior Court of the State of California, County of Los Angeles, West District). On June 25, 2010, the city of Santa Monica brought suit against a number of internet travel companies, including Hotels.com, Expedia and Hotwire. The city claims that internet travel companies act as independent, nonexclusive sales agents for hotels and thus are obligated to collect and remit occupancy tax on their services. The complaint includes claims for conversion, declaratory relief, violations of California Civil Code § 2223, violations of California Civil Code § 2224, imposition of a constructive trust, declaratory relief regarding application of the step transaction doctrine, and liability as agents under California Civil Code §§ 2343, 2344. This case is consolidated in the Superior Court of the State of California, Los Angeles with the pending claims by the City of Anaheim, San Francisco, San Diego and Los Angeles. The Expedia companies were required to pay the approximately \$3 million tax assessments to defend against the city's complaint. Defendant's demurrer to the City's complaint is pending before the court.

Town of Hilton Head Island, South Carolina Litigation. On April 2, 2010, the town of Hilton Head filed suit against a number of internet travel companies, including Hotels.com, Expedia and Hotwire. *Town of Hilton Head, South Carolina v. Hotels.com, et al*, Case No. 2010-CP-07-1544 (Court of Common Pleas, County of Beaufort). The Town of Hilton Head claims that defendants have failed to collect, or collected and failed to remit or pay, beach preservation fees and local accommodation taxes. The complaint includes claims for violation of the local accommodations tax ordinance, conversion, imposition of a trust and/or constructive trust, unjust enrichment, demand for legal accounting, unfair trade practices, and civil conspiracy.

Baltimore County, Maryland Litigation. On May 3, 2010, Baltimore County filed suit against a number of internet travel companies, including Hotels.com, Expedia and Hotwire. *Baltimore County v. Priceline.com, Inc., et al.*, Case No. MJG10CV1104 (United States District Court, District of Maryland, Northern Division). The complaint alleges that the defendants have failed to pay county hotel occupancy taxes as required by municipal ordinance. The complaint includes claims for declaratory judgment, violation of the tax code, conversion, injunctive relief, unjust enrichment/assumpsit, imposition of a constructive trust and damages.

Hamilton County, Ohio Litigation. On August 23, 2010, the counties of Hamilton, Cuyahoga, and Erie brought suit against a number of online travel companies, including Hotels.com, Expedia and Hotwire. *Hamilton County v. Hotels.com, et. al*, Case No. A 1007729 (Court of Common Pleas, Hamilton County). The counties claim that the online travel companies have failed to remit occupancy taxes. Plaintiffs assert claims for violation of the counties' transient occupancy taxes, unjust enrichment, money had and received, conversion, constructive trust, breach of contract, declaratory judgment and damages.

State of Oklahoma Litigation. On November 2, 2010, the state of Oklahoma filed suit against a number of online travel companies, including Hotels.com, Expedia and Hotwire. *State of Oklahoma v. Priceline.com, Inc., et al.*,

Table of Contents

Case No. CJ-2010-8952 (In the District Court of Oklahoma, State of Oklahoma). The complaint includes claims for declaratory judgment, right of action for sales tax owed, injunctive relief and damages. The complaint seeks unspecified damages. Defendants have moved to dismiss the complaint.

State of Montana Litigation. On November 8, 2010, the state of Montana filed suit against a number of online travel companies, including Hotels.com, Expedia and Hotwire. *State of Montana Department of Revenue v. Priceline.com, Inc., et al.* Case No. CD-2010-1056 (Montana First Judicial District, Lewis and Clark County). The complaint includes claims for declaratory relief, injunctive relief, violation of the Lodging Facility Use Tax Statute, violation of the Lodging Facility Sales and Use Tax Statute, violation of the Rental Vehicle Sales and Use Tax, conversion, unjust enrichment, imposition of a constructive trust, and damages. The complaint seeks unspecified damages. On January 31, 2011, defendants brought a motion to dismiss.

Montgomery County, Maryland Litigation. On December 21, 2010, Montgomery County filed suit against a number of online travel companies, including Hotels.com, Expedia and Hotwire. *Montgomery County, Maryland v. Priceline.com, Inc., et al.*, Case No. 8:10-cv-03558-AW (United States District Court for the Northern District of Maryland, Northern Division). The complaint includes claims for declaratory judgment, injunctive relief, violation of Montgomery County's Transient Occupancy Tax Code, conversion, unjust enrichment/assumpsit, imposition of a constructive trust, and damages. The complaint seeks recovery of unspecified damages. Defendants have not been served.

Notices of Audit or Tax Assessments

At various times, the Company has also received notices of audit, or tax assessments from municipalities and other taxing jurisdictions concerning our possible obligations with respect to state and local hotel occupancy or related taxes. The states of South Carolina, Texas, Pennsylvania, Florida, Georgia, Indiana, New Mexico, New York, West Virginia, Wisconsin, Kansas, Colorado, Wyoming, Alabama, Montana, Louisiana, Ohio and Hawaii; the counties of Miami-Dade, Broward, Duvall, Palm Beach and Brevard, Florida; the cities of Alpharetta, Atlanta, Augusta, Cartersville, Cedartown, College Park, Columbus, Dalton, East Point, Hartwell, Macon, Richmond, Rockmart, Rome, Tybee Island and Warner Robins, Georgia; the counties of Cobb, DeKalb, Fulton, Clayton, Hart, Chatham and Gwinnett, Georgia; the cities of Los Angeles, San Diego, San Francisco, Anaheim, West Hollywood, South Lake Tahoe, Palm Springs, Monterey, Sacramento, Long Beach, Napa, Newport Beach, Oakland, Irvine, Fresno, La Quinta, Dana Point, Laguna Beach, Riverside, Eureka, La Palma, Twenty-nine Palms, Laguna Hills, Garden Grove, Corte Madera, Santa Rosa, Manhattan Beach, Huntington Beach, Ojai, Orange, Sacramento, Sunnyvale, Truckee, Walnut Creek, Bakersfield, Carlsbad, Carson, Cypress, San Bruno, Lompoc, Mammoth Lake, Palm Springs, San Jose, Santa Barbara, Santa Monica Bishop, Buena Park, Milpitas, Palmdale, Santa Rosa, and Pasadena, California; the county of Monterey, California; the cities of Phoenix, Scottsdale, Tucson, Peoria, Apache Junction, Avondale, Chandler, Glendale, Flagstaff, Mesa, Nogales, Prescott and Tempe, Arizona; Santa Fe, New Mexico; undisclosed cities in Alabama; Jefferson County, Arkansas; the city of North Little Rock, Arkansas; the cities of Chicago and Rosemont, Illinois; the cities of New Orleans and Lafayette Parish, Louisiana; the city of Baltimore, Maryland, the county of Montgomery, Maryland; New York City; Suffolk County, New York; the counties of Mecklenburg, Brunswick and Stanley, North Carolina; Hilton Head, South Carolina, the city of Philadelphia, Pennsylvania; Lawrence County, Pennsylvania; the city of Madison, Wisconsin; the cities of Denver and Colorado Springs Colorado, the counties of Salt Lake, Weber, Davis and Summit, Utah; Osceola, Florida and St. Louis County, Missouri, among others, have begun or attempted to pursue formal or informal audits or administrative procedures, or stated that they may assert claims against us relating to allegedly unpaid state or local hotel occupancy or related taxes.

The Company believes that the claims in all of the above proceedings relating to hotel occupancy taxes lack merit and will continue to defend vigorously against them.

Actions Filed by Expedia

New York City Litigation. On December 21, 2009, Expedia, Hotels.com, Hotwire and other online travel companies brought suit against the city of New York Department of Finance and the city of New York. The

Table of Contents

complaint asserts two claims for declaratory judgment challenging the constitutionality and legality of the law relating to New York City hotel room occupancy taxes passed on June 29, 2009. The City of New York's motion to dismiss the online travel companies' claim that the city's newly-enacted ordinance exceeds the scope of its taxing authority has been granted. Plaintiffs filed a notice of appeal on December 6, 2010.

Broward County, Florida Litigation. On January 12, 2009, Expedia, Hotels.com, and Hotwire filed separate actions against Broward County, Florida and the Florida Department of Revenue. *Expedia, Inc. et al. v. Broward County Florida, et. al.*, Case Nos., 37 2009 CA 000131, 37 2009 CA 000129, and 37 2009 000128 (Second Judicial Circuit Court, State of Florida, Leon County). The complaints contest the assessments against plaintiffs on the grounds that plaintiffs are not subject to the tourist development tax, among other claims. Defendants answered and asserted counterclaims on February 2, 2009. Plaintiffs' motion to dismiss defendants' counterclaims is pending. On May 13, 2009, the court consolidated all cases for all purposes except trial on any of Broward County's counterclaims.

Indiana State Sales Tax and County Innkeeper Tax Assessments. On March 2, 2009, Travelscape, LLC ("Travelscape"), Hotels.com and Hotwire filed petitions in Indiana Tax Court appealing the final determination of the Indiana State Department of Revenue and seeking to enjoin the collection of the tax. *Travelscape, LLC v. Indiana State Department of Revenue, Cause No. 49T10-0903-TA-11; Hotels.com LP v. Indiana State Department of Revenue, Cause No. 49T10-0903-TA-13; Hotwire, Inc. v. Indiana State Department of Revenue, Cause No. 49T10-0903-TA-12.*

Miami-Dade County, Florida Litigation. On December 18, 2009, Expedia, Inc., Hotwire and Hotels.com brought suit against Miami-Dade for refund of hotel occupancy taxes assessed against the companies. *Expedia, Inc. v. Miami-Dade County, Florida and Florida Department of Revenue, Cause No. 09CA4978* (In the Circuit Court of the Second Judicial Circuit in and for Leon County); *Hotwire, Inc. v. Miami-Dade County, Cause No. 09CA4977* (In the Circuit Court of the Second Judicial Circuit in and for Leon County); *Hotels.com, L.P. v. Miami-Dade County, Florida and Florida Department of Revenue, Cause No. 09CA4979* (In the Circuit Court of the Second Judicial Circuit in and for Leon County). The companies moved to dismiss Miami-Dade's counterclaims. These cases have been consolidated with the cases brought by other online travel companies for refund of hotel occupancy taxes. Miami-Dade County's claims were settled as a part of the Monroe class action settlement.

South Carolina Litigation. On March 16, 2009, Travelscape, LLC filed a notice of appeal in the South Carolina Court of Appeals appealing the Administrative Law Court's order of February 13, 2009 relating to the South Carolina Department of Revenue's assessment of sales and accommodations taxes. *Travelscape, LLC v. South Carolina Department of Revenue, 2008-ALJ-17-0076-CC* (State of South Carolina Court of Appeals). The Supreme Court of South Carolina took consideration of this appeal and on January 19, 2011 ruled that taxes are due on Travelscape's revenue.

Pennsylvania Board of Finance and Revenue Litigation. On December 3, 2010, Expedia, Hotels.com and Hotwire filed a petition in the Commonwealth Court of Pennsylvania challenging the Pennsylvania Board of Finance and Revenue's finding that they are liable for state and local hotel taxes. *Hotels.com, L.P. v. Commonwealth of Pennsylvania, Case No. 875 F&R 2010* (In the Commonwealth Court of Pennsylvania); *Travelscape, LLC v. Commonwealth of Pennsylvania, Case No. 874 F&R 2010* (In the Commonwealth Court of Pennsylvania); *Hotwire, Inc. v. Commonwealth of Pennsylvania, Case No. 876 F&R 2010* (In the Commonwealth Court of Pennsylvania).

Osceola, Florida Litigation. On January 24, 2011, Expedia, Hotels.com and Hotwire, along with other online travel companies, filed complaints against Osceola County, Florida and the Florida Department of Revenue challenging the county's assessment of taxes. *Expedia, Inc. v. Osceola, Florida and Florida Department of Revenue, Case No. 2011 CA 000206* (In the Circuit Court of the Second Judicial Circuit, Leon County); *Hotels.com, L.P. v. Osceola, Florida and Florida Department of Revenue, Case No. 2011 CA 000196* (In the Circuit Court of the Second Judicial Circuit, Leon County); *Hotwire, Inc. v. Osceola, Florida and Florida Department of Revenue, Case No. 2011 CA 000202* (In the Circuit Court of the Second Judicial Circuit, Leon County). The online travel companies have asserted claims that they are not subject to the county tax ordinance,

Table of Contents

Commerce Clause violation, due process, breach of confidentiality, fundamental bias of assessment, and Internet Tax Freedom Act and Supremacy Clause violation.

Expedia Insurance Litigation. On November 29, 2010, Expedia, Hotels.com and Hotwire brought suit in state court in Washington against a number of their insurers seeking recovery for occupancy tax cases. *Expedia, Inc. et al. v. Steadfast Insurance Company, et al.* Case No. 10-2-41017-1 (King County Superior Court).

State of North Carolina Litigation. In February 2011, Travelscape, Hotels.com and Hotwire, along with other online travel companies, brought suit in state court in North Carolina challenging the state of North Carolina's amended sales tax statute that seeks to tax the revenue generated from the services provided by the online travel companies. *Orbitz, LLC, et al. v. State of North Carolina*, Case No. 11CV001857 (In the General Court of Justice, Superior Court Division). The complaint includes claims for violation of the Internet Tax Freedom Act, unconstitutional impairment of contracts, violation of the Commerce Clause, violation of state uniformity clause and federal equal protection, and void for vagueness.

Part II. Item 5. Market for Registrant's Common Equity, Related Stockholder Matters and Issuer Purchases of Equity Securities

Market Information

Our common stock is quoted on the NASDAQ Global Select Market under the ticker symbol "EXPE." Our Class B common stock is not listed and there is no established public trading market. As of January 28, 2011, there were approximately 3,943 holders of record of our common stock and the closing price of our common stock was \$24.98 on NASDAQ. As of January 28, 2011, all of our Class B common stock was held by a subsidiary of Liberty.

The following table sets forth the intra-day high and low prices per share for our common stock during the periods indicated:

	<u>High</u>	<u>Low</u>
Year ended December 31, 2010		
Fourth Quarter	\$29.50	\$24.84
Third Quarter	29.85	18.30
Second Quarter	26.09	18.69
First Quarter	26.03	20.17
	<u>High</u>	<u>Low</u>
Year ended December 31, 2009		
Fourth Quarter	\$27.51	\$21.95
Third Quarter	25.62	13.52
Second Quarter	17.65	8.82
First Quarter	10.35	6.31

Dividend Policy

In 2010, the Executive Committee, acting on behalf of the Board of Directors, declared the following dividends:

<u>Declaration Date</u>	<u>Dividend Per Share</u>	<u>Record Date</u>	<u>Total Amount (in thousands)</u>	<u>Payment Date</u>
February 10, 2010	\$ 0.07	March 11, 2010	\$ 20,220	March 31, 2010
April 27, 2010	0.07	May 27, 2010	19,902	June 17, 2010
July 26, 2010	0.07	August 26, 2010	19,703	September 16, 2010
October 25, 2010	0.07	November 18, 2010	19,251	December 9, 2010

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IN THE SUPERIOR COURT FOR THE STATE OF WASHINGTON
IN AND FOR KING COUNTY

EXPEDIA, INC., a Washington corporation;
EXPEDIA, INC., a Delaware corporation;
HOTELS.COM, L.P., a Texas Limited Liability
Partnership; HOTELS.COM, GP, LLC, a Texas
Limited Liability Company; HOTWIRE, INC.,
a Delaware corporation; TRAVELSCAPE, a
Nevada Limited Liability Company,

Plaintiffs,

vs.

STEADFAST INSURANCE COMPANY, a
Delaware corporation, ZURICH AMERICAN
INSURANCE COMPANY, a New York
corporation; ROYAL & SUN ALLIANCE, a
foreign corporation; ARROWPOINT CAPITAL
CORP., a Delaware corporation; ARROWOOD
SURPLUS LINES INSURANCE COMPANY,
a Delaware corporation; ARROWOOD
INDEMNITY COMPANY, a Delaware
corporation,

Defendants.

No. 10-2-41017-1 SEA

~~PROPOSED~~

ORDER GRANTING DEFENDANTS
STEADFAST INSURANCE COMPANY
AND ZURICH AMERICAN INSURANCE
COMPANY'S MOTION TO COMPEL

CLERK'S ACTION REQUIRED

THIS MATTER came before the Court on Defendants Steadfast Insurance Company
and Zurich American Insurance Company's Motion to Compel Discovery. The Court has
considered the pleadings herein, including:

ORDER GRANTING DEFENDANTS STEADFAST INSURANCE COMPANY
AND ZURICH AMERICAN INSURANCE COMPANY'S MOTION TO COMPEL
- PAGE 1

FORSBERG & UMLAUF, P.S.
ATTORNEYS AT LAW
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SEATTLE, WASHINGTON 98164-2050
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ORIGINAL

1 1. Defendants Steadfast Insurance Company and Zurich American Insurance
2 Company's Motion to Compel Discovery, including the Declaration of Joanne L. Zimolzak
3 and attached exhibits;

4 2. Plaintiffs' Response to Motion to Compel Discovery;

5 3. Declaration of Robert Dzielak in Support of Expedia's Response to Motion to
6 Compel Discovery;

7 4. Declaration of Mark S. Parris in Support of Expedia's Response to Motion to
8 Compel Discovery with attached exhibit; and

9 5. Defendants Steadfast Insurance Company's and Zurich American Insurance
10 Company's Reply in Further Support of Motion to Compel, including the Supplemental
11 Declaration of Joanne L. Zimolzak and attached exhibits.

12 NOW THEREFORE it is hereby ORDERED that Defendants Steadfast Insurance
13 Company and Zurich American Insurance Company's Motion to Compel is GRANTED; and

14 IT IS ORDERED that Plaintiffs shall provide Steadfast Insurance Company and
15 Zurich American Insurance Company with complete answers and responses, or a privilege log
16 for any documents claimed to be privileged or subject to the work-product doctrine, to the
17 following discovery requests within ten calendar days of this Order:

- 18 • Interrogatory Nos. 4, 5, ~~6~~, 7, 8, 17, 20 and 21, and 6(a)
19 • Request for Production Nos. 1, 6, 8, 29, 33, 34, 35, 36, 37 and 39.*

20 DONE this 22 day of March 2012.

21 *only as to timing, not amounts,
22 ** Summary of defense expenses by action between May
1, 2011 - Feb 1, 2012
23 (Expedia may demand
Interrog 6(a), 8, 35 + 39 be subject to protective order
reasonable

Judge |

KIMBERLEY PROCHNAU

ORDER GRANTING DEFENDANTS STEADFAST INSURANCE COMPANY
AND ZURICH AMERICAN INSURANCE COMPANY'S MOTION TO COMPEL
- PAGE 2

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PRESENTED BY:
FORSBERG & UMLAUF, P.S.

I certify that I have mailed/e-mailed
a copy of this order to all parties.
Date 3/23/2012
Signature: C. Rankin
- Bauff

By: Michael Hooks
Michael P. Hooks, WSBA #24153
Attorneys for Defendants Steadfast
Insurance Company and Zurich
American Insurance Company

MCKENNA LONG & ALDRIDGE, LLP
By: Michael Hooks for
J. Randolph Evans, Georgia Bar #252336
Joanne L. Zimolzak, DC Bar #452035
(admitted *pro hac vice*)
Attorneys for Defendants
Steadfast Insurance Company and
Zurich American Insurance Company

Approved as to form; presentation waived:

ORRICK & HERRINGTON
By: _____
Mark S. Parris, WSBA #13870
Attorneys for Plaintiffs

THORSRUD CANE & PAULICH
By: _____
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EMAIL ADDRESS
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July 12, 2012

VIA EMAIL

Mark S. Parris
Orrick, Herrington & Sutcliffe LLP
701 Fifth Avenue
Suite 5600
Seattle, WA 98104-7097

Re: Expedia, Inc., et al. v. Steadfast Insurance Co., et al.

Dear Mark:

Consistent with the Court's direction and the parties' recent stipulated order concerning the case schedule, the parties are required to confer and report back to the court within the next two weeks or so with a proposal addressing the prospective case schedule. Zurich's review and analysis of the Court's June 15, 2012 ruling is ongoing, as I expect is the case on Expedia's end. It is clear to Zurich, however, that the parties appropriately may proceed with various activities. Mindful of our timing issues, certain of these are outlined below.

1. *Deposition of Melissa Maher*: Zurich seeks to depose Ms. Maher concerning the contents of her declarations, submitted by Expedia in support of its summary judgment-related briefing in this case. As Expedia affirmatively prepared and submitted Ms. Maher's declarations into the case record, presumably Expedia has no objection to the proposed deposition. Please advise when Ms. Maher will next be available for a deposition and whether Expedia will produce Ms. Maher in Seattle or Las Vegas.

2. *Late Notice*: Issues relating to Zurich's late notice defense, including when Expedia provided notice to Zurich regarding the underlying actions and Expedia's defense of the underlying actions, do not overlap with the issues being pressed by the underlying plaintiffs. Accordingly, it is Zurich's position that discovery regarding these issues may proceed. Depositions regarding these issues previously were noticed by both parties, and complete responses to certain of Zurich's document requests directed to these issues remain outstanding.¹

¹ To date, Expedia has provided a summary of its underlying defense expenses and certain settlement-related information but has not provided more detailed information about its defense of the underlying actions, including,

Mark Parris
July 12, 2012
Page 2

Please let me know when you are available to discuss a schedule for proceeding with this discovery.

3. *Filing Dates / Communications With Taxing Authorities:* The Court ruled that requests for information concerning what Expedia knew about its potential tax liability to the underlying plaintiffs and when Expedia knew it overlaps with the issues in the underlying actions. The dates on which tax-related lawsuits and audits were initiated by underlying plaintiffs against Expedia and Expedia's pre-suit or pre-audit communications with underlying plaintiffs, however, are already known to the underlying plaintiffs. Thus, there would seem to be no problem with Expedia providing such information to Zurich in the coverage action; indeed, Expedia already has done so with respect to many of the 58 underlying actions identified in Expedia's pleadings.

Expedia has taken the position that information about the dates on which tax-related cases and audits were initiated by taxing authorities other than those involved with the 58 underlying actions identified in Expedia's pleadings in this case (as well as Expedia's related pre-suit or pre-audit communications with such authorities) is not discoverable, citing relevance grounds. Zurich disagrees with this position, which is at odds with Washington standards concerning what is considered "relevant" in discovery, and is prepared to move to compel the production of the referenced information. Moving forward in this manner is consistent with the Court's directive that the parties should note any disagreements about the potential "overlap" of discovery for a hearing. Please let me know if Expedia is willing to provide the requested information or if Zurich should proceed with seeking the Court's guidance on this point.

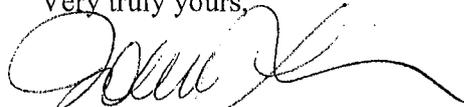
4. *Pending Motions to Seal:* The Court specifically requested that the parties confer about the pending motions to seal and suggest procedures to ensure that the appropriate, redacted versions end up in the clerk's files. Zurich is amenable to the Court's suggestion that representatives from each party work directly with the Court to make this happen (presumably by identifying the documents on site and supervising their further processing).

In light of the upcoming deadline to provide a revised scheduling proposal to the Court, please give me a call to discuss these matters at your earliest convenience. I have some availability on each of the following dates: July 13, 16, 17, 18.

e.g., any offers by taxing authorities to forgive Expedia's past tax obligations in exchange for prospective compliance.

Mark Parris
July 12, 2012
Page 3

Very truly yours,

A handwritten signature in black ink, appearing to read 'Joanne L. Zimolzak', with a long, sweeping flourish extending to the right.

Joanne L. Zimolzak

cc: Michael P. Hooks

1 IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
2 IN AND FOR THE COUNTY OF KING

3 -----
4 EXPEDIA, INC, A WASHINGTON)
5 CORPORATION; EXPEDIA INC., A)
6 DELAWARE CORPORATION; HOTEL.COM,)
7 L.P., A TEXAS LIMITED LIABILITY)
8 PARTNERSHIP; HOTELS.COM, GP, LLC,)
9 A TEXAS LIMITED LIABILITY COMPANY;)
10 HOTWIRE, INC., A DELAWARE)
11 CORPORATION; TRAVELSCAPE, A NEVADA)
12 LIMITED LIABILITY COMPANY,)
13 PLAINTIFFS,) CASE NO.
14)
15 VERSUS) 10-2-41017-1SEA
16 STEADFAST INSURANCE COMPANY, A)
17 DELAWARE CORPORATION; ZURICH)
18 AMERICAN INSURANCE COMPANY, A NEW)
19 YORK CORPORATION; ARROWOOD)
20 INDEMNITY COMPANY, A DELAWARE)
21 CORPORATION,)
22 DEFENDANTS.)
23 -----

13 Proceedings Before Honorable KIMBERELEY PROCHNAU
14 -----
15 KING COUNTY COURTHOUSE
16 SEATTLE, WASHINGTON

17 DATED: JANUARY 13, 2012

18 A P P E A R A N C E S:

19 FOR THE PLAINTIFFS:

20 BY: MARK PARRIS, ESQ.,
21 PAUL RUGANI, ESQ.,

22 FOR THE DEFENDANTS:

23 Zurich American and Steadfast
24 BY: MIKE HOOKS, ESQ.,
25 JOANNE ZIMOLZAK, ESQ.
RANDY EVANS, ESQ., Pro Hace Vice

Arrowood Indemnity Company:
BY: RUSSELL LOVE, ESQ.

13:34:59 22
13:34:57
13:35:07 23
13:35:02
13:19:10 24
13:35:13
13:35:13 25
13:35:13

14:53:18 1 omissions, because the policy doesn't apply to any
14:53:21 2 claim. He makes a claim. There is no defense
14:53:23 3 obligation. That is different than the liability.

14:53:25 4 The same with the pollution exclusion. The
14:53:28 5 policy does not apply to any loss costs or expense
14:53:31 6 arising out of any claim or suit by or on behalf.

14:53:35 7 Again, Your Honor, the policies -- the
14:53:39 8 plain language says that -- even beyond that, Your
14:53:42 9 Honor. I think what is important to keep in mind is
14:53:45 10 our underlying lawsuits are not solely about a willful
14:53:49 11 violation of the statute.

14:53:51 12 Again, no courthouse found that Expedia
14:53:54 13 willfully violates the statute. Each and every one of
14:53:56 14 those cases, the plaintiff can prevail in each and
14:53:59 15 every one of those cases, based on Expedia's negligent
14:54:04 16 act, error or omission. That is the key point, so
14:54:09 17 long as there is any possibility that Expedia can be
14:54:12 18 held liable for its negligent act, error or omission,
14:54:19 19 coverage kicks in.

14:54:20 20 THE COURT: But what is the theory under
14:54:22 21 which the plaintiff would prevail upon a negligent
14:54:27 22 act?

14:54:27 23 You told me before they don't, of course,
14:54:30 24 have to prove the intent of Expedia. But what is a
4:54:33 25 scenario under which one would conclude that it was

14:54:38 1 not purposeful?

14:54:40 2 It was not a conscious business decision of
14:54:44 3 Expedia to not remit the amounts of monies that the
14:54:51 4 municipalities claim that they are owed, but it was
14:54:55 5 rather inadvertent.

14:54:56 6 MR. PARRIS: Any number of ways, Your Honor.
14:54:58 7 First of all, because the plaintiffs don't assert that
14:55:01 8 there is anything like that.

14:55:02 9 We automatically come within that, if there
14:55:04 10 is any possibility any way -- there is a variety of
14:55:06 11 ways, again, Your Honor, in which the activity could
14:55:09 12 be the result of negligent or erroneous conduct.

14:55:12 13 For example, you could have a scenario that
14:55:15 14 the rate that was passed along by the hotel to the
14:55:17 15 Expedia was an incorrect rate. They applied the
14:55:20 16 incorrect rate.

14:55:21 17 It could be a situation where they did --
14:55:25 18 Expedia didn't update its web site properly to track
14:55:30 19 rate changes or otherwise. It could be a situation
14:55:34 20 where they viewed and read the words and
14:55:37 21 misinterpreted what the effect of those words are.

14:55:39 22 Again, there is any number of ways, but the
14:55:41 23 key, Your Honor, is that they are not required to
14:55:45 24 establish what that act is.

14:55:46 25 All that needs happen is that there is a

14:55:48 1 possibility that Expedia can be held liable for
14:55:52 2 something short of an excluded conduct.

14:55:57 3 In this situation, again, Your Honor,
14:56:00 4 setting aside on the liability versus defense
14:56:03 5 exclusion, they are not being assailed for solely
14:56:07 6 willful violation of a statute.

14:56:10 7 THE COURT: How much time does he have?

14:56:12 8 THE CLERK: He has used about 31 minutes.

14:56:15 9 THE COURT: All right.

14:56:18 10 MR. PARRIS: I have a bit to go then, Your
14:56:20 11 Honor.

14:56:20 12 Let me turn to the -- actually, before I go
14:56:27 13 there, I was going to show a couple example complaints
14:56:30 14 and walk through that, Your Honor. But before that,
14:56:38 15 let me talk a little bit about some of the cases.

14:56:42 16 Actually, in my mind the cases that are
14:56:45 17 most relevant, as you know, there are about 200 cases
14:56:49 18 that you have been asked to review. We apologize for
14:56:51 19 that.

14:56:52 20 Of those 200 cases, Your Honor, the cases
14:56:55 21 that are most like us are the RESPA cases, PMI and
14:56:59 22 Burnett, where the entities involved in real estate
14:57:02 23 transactions can be exposed to liability under RESPA
14:57:06 24 for failure to meet RESPA's requirements, even if the
14:57:09 25 failure is negligent or innocent or unintentional.

The Honorable Kimberley Prochnau

received
10/08/12 *RP*

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR KING COUNTY

EXPEDIA, INC., a Washington Corporation; EXPEDIA, INC., a Delaware Corporation; HOTELS.COM, L.P., a Texas Limited Liability Partnership; HOTELS.COM, GP, LLC, a Texas Limited Liability Company; HOTWIRE, INC., a Delaware Corporation; TRAVELSCAPE, a Nevada Limited Liability Company,

Plaintiffs,

v.

STEADFAST INSURANCE COMPANY, a Delaware Corporation; ZURICH AMERICAN INSURANCE COMPANY, a New York Corporation; ROYAL & SUN ALLIANCE, a Foreign Corporation; ARROWPOINT CAPITAL CORP., a Delaware Corporation; ARROWOOD SURPLUS LINES INSURANCE COMPANY, a Delaware Corporation; ARROWOOD INDEMNITY COMPANY, a Delaware Corporation,

Defendants.

Case No. 10-2-41017-1 SEA

DEVIING
[PROPOSED] ORDER ~~GRANTING~~
PLAINTIFFS' MOTION FOR
CERTIFICATION AND STAY PENDING
DISCRETIONARY REVIEW

ORIGINAL

[PROPOSED] ORDER ~~GRANTING~~ MOT. FOR
CERTIFICATION AND STAY: NO. 10-2-41017-1

Orrick Herrington & Sutcliffe LLP
701 5th Avenue, Suite 5600
Seattle, Washington 98104-7097
tel+1-206-839-4300

1 This matter comes before the Court on Plaintiffs' Motion for Certification and Stay
2 Pending Discretionary Review. The Court considered the following:

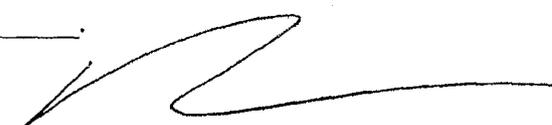
- 3 1. Plaintiffs' Motion for Certification and Stay Pending Discretionary Review;
4 2. Declaration of Mark Parris in Support of Motion for Certification and Stay
5 Pending Discretionary Review;
6 3. Any response filed in opposition to Plaintiffs' Motion for Certification and Stay
7 Pending Discretionary Review and any declarations and exhibits in support of such opposition;
8 4. Any reply in support of Plaintiffs' Motion for Certification and Stay Pending
9 Discretionary Review and any declarations and exhibits in support of such reply.

10 IT IS HEREBY ORDERED that Plaintiffs' Motion for Certification and Stay Pending
11 Discretionary Review is ~~GRANTED~~. DENIED

12 In accordance with RAP 2.3(b)(4), the Court certifies that the Order re Plaintiffs' Motion
13 to Set Summary Judgment Hearing Date and for Protective Order, entered by the Clerk on
14 August 22, 2012, involves a controlling question of law as to which there is substantial ground for
15 a difference of opinion and that immediate review of the Order may materially advance the
16 ultimate termination of the litigation.

17 All further proceedings before this Court are stayed pending a decision by the Court of
18 Appeals whether to grant Plaintiffs' motion for discretionary review, which will be filed in
19 accordance with the deadlines provided by the Civil Rules and the Rules of Appellate Procedure.

20
21 DATED 9-28-12

22
23 
The Honorable Kimberley Prochnau
SUPERIOR COURT JUDGE

24 Presented by:

25 ORRICK, HERRINGTON & SUTCLIFFE LLP

26
27 By: 
28 Mark S. Parris (Bar No. 13870)

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Attorneys for Plaintiffs