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SUPREME COURT
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NO. _____
SUPREME COURT OF THE STATE OF WASHINGTON
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NO. 69341-7-I
COURT OF APPEALS
OF THE STATE OF WASHINGTON

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/Petitioners,

24153 18820 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/Respondents.

PLAINTIFFS/PETITIONERS'
MOTION FOR DISCRETIONARY REVIEW

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I. INTRODUCTION

Liability insurance is a matter of significant public interest in Washington and this Court has consistently crafted rules to further and support that public interest. These rules recognize that liability insurers have two different fundamental duties under the policies they issue—the duty to defend and the duty to indemnify. Those duties play different roles, protect policyholders against different risks, and arise at different times. As a result, this Court has long held that the two duties are governed by different standards and procedures, including as to the sequence of when and how the duties are adjudicated in coverage actions. The lower courts failed to recognize these differences.

The duty to defend arises at the inception of a potentially covered underlying lawsuit. The duty to indemnify arises only at the conclusion of that litigation, if and when there is actual liability to indemnify. The question of whether the duty to defend has arisen is determined solely from the eight corners of the relevant policy and relevant underlying complaint. The duty to defend exists for so long as there is a possibility for coverage because it is designed to protect the policyholder against the costs associated with defending the underlying lawsuit. For these reasons, questions of fact as to the scope of coverage do not defeat the duty to defend; instead, the duty continues in force until the time when those

questions can be resolved.

Under these different standards, the duty to defend determination is designed to and must be made early, so that the policyholder receives the benefit of a defense while the underlying lawsuit is ongoing. Otherwise, the duty to provide a “defense” becomes nothing more than an obligation to reimburse after the fact.

The duty to defend and the Washington policy favoring early determination of that duty is frustrated if a policyholder must wait until trial in a coverage case before it can obtain defense coverage. It is doubly frustrated if the insurer can force its policyholder to engage in discovery that overlaps with matters at issue in the underlying lawsuit, potentially prejudicing the policyholder. To avoid these problems, this Court *requires* insurers to defend so long as any possibility of underlying indemnity coverage exists. This Court also has held that an insurer acts in bad faith if it takes actions contrary to its insured’s interests in the underlying case.

The courts below disregarded these rules. Instead of requiring Zurich to meet its contractual and legal obligation to defend Expedia until it could prove that there was no potential for coverage as a matter of law, the courts below did the exact opposite. By refusing to allow Expedia’s motion seeking to obtain a ruling that the duty to defend had been triggered unless and until Expedia completed discovery overlapping with

the underlying lawsuits, the courts below gave Zurich a free pass to sit on its hands and force Expedia to bear the burden of millions of dollars in defense costs. These courts committed obvious error. This Court should grant discretionary review and uphold the longstanding principles of Washington insurance coverage law that the courts below cast aside.

II. IDENTITY OF PETITIONER

Petitioner Expedia asks this Court to accept review of the decision designated in Part III of this motion.

III. DECISION BELOW

Expedia seeks discretionary review of the Court of Appeals's March 11, 2013 order denying discretionary review of the trial court's August 22, 2012 order permitting Zurich to delay adjudication of Expedia's motion for summary judgment on the duty to defend while Zurich pursued extrinsic evidence through discovery into issues that—as the trial court recognized—create a risk of prejudice to Expedia's interests in the underlying lawsuits (as well as all ancillary orders relating to the August 22, 2012 order). (A.1-8, 9-11, 12-22.)¹

IV. ISSUES PRESENTED FOR REVIEW

1. Did the courts below err in refusing to decide whether Zurich had an obligation to defend Expedia in underlying litigation unless

¹“A. ___” denotes citation to the Appendix to Plaintiffs/Petitioners' Motion for Discretionary Review, filed along with this Motion.

and until Zurich obtains full discovery from Expedia, including as to matters that overlap with the underlying litigation?

V. **STATEMENT OF THE CASE**

A. **Expedia Operates a Merchant Model Business to Assist Consumers with Reserving Rooms from Hotels.**

Expedia makes travel reservations simple. Under its merchant model, Expedia places all relevant information about hotels at a traveler's fingertips through Expedia's website. As travelers readily recognize, Expedia does not provide this valuable service for free. Instead, Expedia charges consumers a total price that includes: (1) the rate charged by the hotel for occupancy of the room (the rent); (2) an amount retained by Expedia for the online services it provides to the customer (the facilitation fee); and (3) an amount for "tax recovery charges and other service fees," which consists of an amount equal to any applicable local occupancy tax on the rent and an additional fee for Expedia's services. (A.25-27.)

An occupancy tax obligates hotel guests to pay a percentage of the rent charged by the hotel as a tax for the privilege of occupancy. (*See, e.g.,* A.56.) Although the tax falls on the guest, municipalities do not collect the tax directly from individual travelers. Instead, hotels include the tax on the guest's bill and collect it along with the rent for the room.

Expedia does not operate hotels or rent rooms, but because its customers pay for their hotel room reservations at the time of booking,

Expedia's policy is to charge them an amount estimated to be sufficient to cover the occupancy tax that the hotels are responsible for remitting. In calculating the estimated tax amounts, Expedia applies the tax rates supplied by hotels to the discounted rate it negotiated with the hotel (i.e., the "rent" charged by the hotel), rather than the total retail price the customer pays to Expedia (rent plus fees). (A.27.)

B. Cash-Strapped Municipalities Sue Expedia to Pursue Additional Revenue.

Though Expedia's practices comport with the relevant ordinances and have long been the industry standard, cash-strapped municipalities have claimed that Expedia should have been charging travelers taxes based on the full retail price of the room. Local governments thus filed lawsuits seeking, among other things, damages due to the alleged shortfall in revenue received from hotel stays booked through Expedia, whatever the reason for the shortfall. Most cases remain pending, but among those that have been fully adjudicated, Expedia has prevailed in all but a few.

The suits generally allege that Expedia breached a duty, whether innocently, negligently, or by some other error or mistake. (A.41.) Each states a primary claim for violation of the relevant tax ordinance. Some lawsuits also seek punitive damages or other penalties, alleging that Expedia acted "willfully, wantonly, and with conscious disregard for the

rights of the [plaintiff],” and thus the plaintiff is entitled to “additional damages in an amount sufficient to punish Defendants.” (A.62.) No court has found that Expedia has intentionally or willfully violated the law.

C. **Expedia’s Liability Insurers Wrongly Denied Coverage.**

Expedia procured liability insurance from three insurers over nine policy periods. Each policy provides Expedia with broad coverage for any liability for damages arising out of a negligent act, error, or omission in the course of its travel agency operations. (A.82.) The policies require the insurers to defend Expedia against any suit seeking such damages. (*Id.*) That obligation requires the insurers to provide a defense on an ongoing basis while a potentially covered lawsuit is pending; it is not merely an obligation to reimburse defense expenses after the lawsuit concludes.

After being served with the complaint in the first lawsuit, Expedia tendered the action to its insurers on June 10, 2005. Less than three weeks later, the insurers denied coverage and refused to provide Expedia with a defense. (A.94-98.) In 2010 and 2011 Expedia tendered 62 additional lawsuits to its insurers, who again summarily refused Expedia’s tender. (A.99-116.) Expedia thus has been defending the underlying lawsuits at its own expense, incurring tens of millions of dollars of attorneys’ fees.

Expedia filed this action in November 2010, seeking declaratory relief and asserting claims for breach of contract and bad faith against each

of its insurers. With respect to two of the policies—issued by respondent Zurich—the trial court denied Zurich’s motion for summary judgment, finding that Zurich had not proven that there was no potential coverage for the underlying claims under those policies. (A.120, 131-32.)

D. The Trial Court Refuses to Hear Expedia’s Motion for Summary Judgment on the Duty to Defend Until Overlapping Discovery Is Completed.

Following the trial court’s determination that Zurich had not proven that there was no potential for coverage, Expedia moved for summary judgment seeking a ruling that Zurich’s duty to defend was triggered by the filing of the underlying actions with respect to the two remaining policies. The underlying complaints sought damages from Expedia based on potentially negligent acts, errors, or omissions, thus giving rise to a possibility of coverage, as confirmed by the trial court’s earlier ruling. Zurich moved for a Rule 56(f) continuance, arguing that it needed to develop evidence outside of the “eight corners” of the underlying complaints and the policies at issue to raise questions of fact concerning its coverage defenses. Departing from longstanding Washington law that extrinsic evidence and questions of fact as to coverage defenses are irrelevant to the question of whether the duty to defend has arisen, the trial court granted Zurich’s motion and took Expedia’s summary judgment motion off calendar. (A.136-37.)

Zurich asserted it was entitled to discovery concerning Expedia's knowledge and intent before Expedia's duty to defend motion could be heard. Much of this discovery overlaps with issues being litigated by the plaintiffs in the underlying lawsuits who are seeking evidence concerning what Expedia knew about potential occupancy tax liability, and when, to try to prove that Expedia acted with intent. (A.139-45.)

In an effort to get its duty to defend motion heard as quickly as possible, Expedia completed as much of the outstanding discovery as it could without exposing itself to the risk of prejudice in the underlying lawsuits. Expedia then filed a motion seeking to have the trial court (a) set a hearing date for Expedia's duty to defend motion while (b) protecting Expedia from overlapping, and thus potentially prejudicial, discovery.

The trial court found that there is a "dangerous overlap" between the coverage case and the underlying cases concerning "the discovery seeking Expedia's knowledge or intent regarding its liability for the payment of the certain occupancy tax amounts." (A.15.) It further found Zurich's pursuit of discovery from Expedia "could be injurious to [Expedia's] interests" in the underlying cases. (*Id.*) Conflating the duty to defend with the duty to indemnify, however, the trial court refused to hear Expedia's duty to defend motion until that dangerous and injurious discovery was complete because it could not "conclude, as a matter of law,

that this discovery is not relevant to the [insurance] company's defenses." (A.15-16.) The trial court entered an order denying Expedia's motion on August 22, 2012. (A.9-11.)

E. The Court of Appeals Denies Discretionary Review.

On March 11, 2013, the Court of Appeals denied discretionary review. While acknowledging that Washington law requires the duty to defend to be resolved only on the allegations in the underlying complaint and the terms of the insurance policy, the Court of Appeals nonetheless found the "unique circumstances" of Expedia's tender permitted Zurich to refuse to defend Expedia until Zurich could obtain discovery related to any prejudice Zurich may have suffered from Expedia's allegedly late tender. (A.6.) The Court of Appeals also found that the trial court's refusal to hear Expedia's summary judgment motion caused no harm because Expedia had not explored unspecified "alternatives" at the trial court level (A.6-7), even though none of those alternatives would permit adjudication of the duty to defend prior to the completion of overlapping, and thus potentially prejudicial, discovery.

VI. ARGUMENT

The courts below held that Expedia must engage in overlapping discovery and continue defending itself at its own expense in the underlying lawsuits before the trial court should consider whether Zurich

has a duty to defend Expedia in those lawsuits. These rulings contradict decades of jurisprudence from this Court detailing the nature of the duty to defend, when and for how long it applies, and what information may be considered in determining whether it has been triggered. By conflating the duty to defend and the duty to indemnify, the rulings depart so far from the ordinary course of proceedings in insurance coverage cases as to call for this Court's review. *See* RAP 13.5(b)(3). The rulings are obvious, or at the very least probable, error. *See* RAP 13.5(b)(1), (b)(2).

The orders below also substantially limit Expedia's freedom to act. *See* RAP 13.5(b)(2). Expedia is forced to choose between two equally unpalatable alternatives: (1) forgo the defense coverage Zurich promised to provide and fund the underlying lawsuits at its own expense until all of them have fully and finally concluded, or (2) proceed with overlapping and potentially prejudicial discovery in order to pursue its bargained-for defense. The "alternatives" supposedly offered by the trial court's order do not cure this problem, because they do not allow any scenario under which Expedia may obtain ongoing defense coverage without engaging in overlapping and potentially prejudicial discovery. Washington law prohibits insurers from forcing insureds into such problematic choices.

A. **Review Is Proper Under RAP 13.5(b).**

1. **Forcing Expedia to Complete Discovery Before Its Duty to Defend Motion Will Be Heard Is Obvious Error That Significantly Departs from the Required Course of Proceedings.**

The procedures governing the duty to defend are simple and straightforward. It arises *at the moment* a potentially covered complaint is filed. *Woo v. Fireman's Fund Ins. Co.*, 161 Wn.2d 43, 52, 164 P.3d 454 (2007). The duty is based on the potential, or possibility, for coverage, and exists any time “a complaint against the insured, construed liberally, alleges facts which could, if proven, impose liability upon the insured within the policy’s coverage.” *Id.* at 52-53 (quoting *Truck Ins. Exch. v. VanPort Homes, Inc.*, 147 Wn.2d 751, 760, 58 P.3d 276 (2002)). Whether a complaint creates a potential for coverage is to be determined exclusively from the eight corners of the relevant policy and the relevant underlying complaint, not from additional evidence sought by the insurer. *Id.* at 53-54; *VanPort Homes*, 147 Wn.2d at 760; *see also Or. Mut. Ins. Co. v. Hartford Fire Ins. Co.*, 170 Wn. App. 666, 675, 285 P.3d 892 (2012) (“[T]he duty to defend must be determined from the complaint.”), *review denied*, — P.3d — (Wash. Mar. 5, 2013). Once a potentially covered complaint is filed, the duty to defend remains in place—that is, the insurer *must* defend—“until it is clear that the claim is not covered.” *Am. Best Food, Inc. v. Alea London, Ltd.*, 168 Wn.2d 398, 405, 229 P.3d

693 (2010). “[I]nsurers may not desert policyholders and allow them to incur substantial legal costs while waiting for an indemnity determination.” *Id.* (quoting *VanPort Homes*, 147 Wn.2d at 761).

These principles and procedures recognize that, to be meaningful, defense coverage must be provided without delay. Indeed, the immediate defense obligation is “one of the main benefits of the insurance contract.” *VanPort Homes*, 147 Wn.2d at 760. Particularly in the modern world of litigation, the cost of defending against potential liability can be just as burdensome as the ultimate liability, if not more so. While that liability may be avoided, particularly where allegations prove to be untrue, the defense costs must be borne regardless of the outcome. For this reason, insurers must defend until it is clear that no possibility for coverage exists.

If an insurer could refuse to defend its policyholders for so long as disputed issues concerning coverage remained, any incentive for an insurer to defend during the pendency of underlying litigation would disappear. Policyholders would be left without the promised security that their insurance was intended to provide. They would be forced to “double down” and fund two parallel lawsuits—one to avoid liability in the underlying case and one to compel the insurer to provide the bargained-for benefits of the insurance policy. If an insurer could also rely on disputed facts to avoid its defense obligation, it could erect a nearly insuperable

barrier of defenses, each of which must be conclusively eliminated by the policyholder before the policyholder receives its promised defense.

Fortunately, the Washington courts do not condone such a perverse result. Instead, they have gone to great lengths to ensure that policyholders are not left to fend for themselves when faced with potentially covered lawsuits. If an insurer disputes coverage, the course of action Washington courts prescribe is to defend under a reservation of rights and then seek to extinguish that defense if *and when* it ultimately develops evidence that conclusively shows that no possibility of coverage exists. *VanPort Homes*, 147 Wn.2d at 761. An insurer who refuses to defend and forces its policyholder to sue to enforce the insurance policy is subject to the same standards, so as to avoid the perverse incentives described above. The insurer can seek to defeat coverage, but it may not delay a ruling on its duty to defend by reciting the need to conduct discovery. For so long as the insurer has not extinguished the possibility of coverage—something the trial court found that Zurich failed to do with respect to the two policies at issue—it must defend. *Am. Best*, 168 Wn.2d at 405.

The California Court of Appeals addressed this precise issue and ruled that the policyholder's right to an adjudication of the duty to defend may not be delayed so that the insurer can conduct discovery into disputed factual issues. In *Haskel, Inc. v. Superior Court*, 33 Cal. App. 4th 963, 39

Cal. Rptr. 2d 520 (1995), answering the very question posed to the trial court here—“To what extent, if at all, is an insurer entitled to delay a summary adjudication of the defense duty issue until discovery has been completed on disputed coverage questions?”—the court held that the insurer *may not* “delay an adjudication of their defense obligation until they develop sufficient evidence to retroactively justify their refusal to provide that defense.” *Id.* at 973, 977. The *Haskel* court held that such a delay was “directly contrary” to duty to defend principles. *Id.*²

By declining to take discretionary review and endorsing the trial court’s refusal to adjudicate Zurich’s duty to defend Expedia, the Court of Appeals disregarded these principles. It allowed Zurich to refuse to provide a defense even though Zurich has not carried its burden of proving that there is no potential for coverage. Its ruling facilitates Zurich’s wrongful refusal to provide a defense based on disputed issues of fact. The Court of Appeals cited the “unique circumstance” of Expedia’s tender as justification for this ruling. This justification fails, for three reasons.

First, asserting a defense of late tender does not allow an insurer to shirk its duty to defend until that defense is resolved. *See Nat’l Sur. Co. v.*

² The duty to defend principles that animated the *Haskel* decision are the same ones that provide the framework for the Washington rules discussed above. *See id.* at 976-77 (insurer must defend “unless and until they . . . *conclusively* establish[] that there is no potential for coverage”); *id.* at 976 (duty to defend arises on tender and lasts “until it has been shown that there is *no* potential for coverage” (internal quotation marks omitted)).

Immunex Corp., — P.3d —, 2013 WL 865459, at *9-10 (Wash. 2013). To the contrary, as the very case cited by the Court of Appeals makes clear, when there has been a late tender, “the insurer must demonstrate actual prejudice before it will be relieved from its duties to its insured.” *Mut. of Enumclaw Ins. Co. v. USF Ins. Co.*, 137 Wn. App. 352, 360-61, 153 P.3d 877 (2007). The “duty to defend remains unless [the insurer] proves actual and substantial prejudice.” *Id.* These rules follow the general principle that an insurer “may not rely on facts extrinsic to the complaint to deny the duty to defend.” *Woo*, 161 Wn.2d at 54; *see also, e.g., SmartReply, Inc. v. Hartford Cas. Ins. Co.*, No. 10-1606, 2011 WL 338797, at *2 (W.D. Wash. Feb. 3, 2011) (case law in Washington and California “clearly holds that extrinsic evidence is not discoverable to defeat [insureds’] summary judgment motions in ‘duty to defend’ cases”). The rulings from the courts below convert a policy’s notice obligation into a condition precedent for the duty to defend, contrary to Washington law.

Second, there is nothing unique about a late notice defense. Notice provisions are a common feature in liability policies and, when coverage disputes arise, insurers frequently assert that their policyholders failed to comply with the notice provisions. *See* 24 Wash. Practice, *Envtl. Law & Practice* § 24.12 (2d ed.). If insurers could avoid the duty to defend merely by asserting a late notice defense, policyholders would be denied

the benefits of prompt defense coverage that Washington law requires.

Third, the Court of Appeals was wrong to conclude that Expedia's tender was "long delayed." The initial tender was made shortly after the first underlying lawsuit was filed. It was summarily denied. Several of the underlying lawsuits were similarly tendered shortly after they were filed. Moreover, the timing of Expedia's tender is irrelevant—even to the duty to indemnify—if Zurich did not suffer prejudice. Given that Zurich summarily denied each of Expedia's tenders, it will be hard pressed to establish that it would have acted differently—let alone suffered actual and substantial prejudice—had Expedia tendered any of the cases sooner.

The Court of Appeals permitted Zurich's assertion that, through discovery extrinsic to the policies and complaints, Zurich may develop potential disputed issues of fact relating to its coverage defenses to excuse Zurich from its obligation to defend Expedia. This is precisely the opposite of what Washington law requires. The insurer bears the burden to prove that there is no potential for coverage; the policyholder is not required to negate all defenses to coverage in order to obtain the duty to defend. This Court should grant review to ensure that Washington's longstanding duty to defend principles are enforced.

2. **The Court of Appeals Committed Probable Error That Limits Expedia's Freedom to Act.**

Washington law is clear that insurers violate their duty of good faith when they take positions in coverage litigation that are contrary to their policyholders' interests in the underlying lawsuits. *Mutual of Enumclaw Ins. Co. v. Dan Paulson Constr., Inc.*, 161 Wn.2d 903, 918, 169 P.3d 1 (2007) (insurer acts in bad faith if it litigates coverage issues that “*might* prejudice its insured’s tort defense” (emphasis added, internal quotation marks omitted)); *W. Nat’l Assur. Co. v. Hecker*, 43 Wn. App. 816, 821 n.1, 719 P.2d 954 (1986) (insurer may not litigate “facts upon which [underlying] liability is based”). Facts that overlap with or are logically related to the issues in the underlying lawsuits are off limits in coverage cases while the underlying lawsuits are ongoing. *See* Thomas V. Harris, *Washington Insurance Law*, § 14.02 (3d ed. 2010). The overlapping facts “can only be decided in the damage action”; it is the job of the underlying court, and not the coverage court, to determine those facts in the first instance. *Holland Am. Ins. Co. v. Nat’l Indem. Co.*, 75 Wn.2d 909, 912, 454 P.2d 383 (1969). These rules derive from the principle that insurers must refrain from conduct that elevates their own interests above those of their policyholders. *Tank v. State Farm Fire & Cas. Co.*, 105 Wn.2d 381, 391, 715 P.2d 1133 (1986).

The discovery that Zurich pursues—and that the trial court held *must* be completed before Expedia’s duty to defend motion could be heard—results in precisely the overlap that Washington courts prohibit. The focus of much of Zurich’s discovery has been on establishing what Expedia knew and when in order to further Zurich’s claims that Expedia acted intentionally or that Expedia’s losses were known in advance. Zurich has sought documents concerning Expedia’s communications with the underlying taxing authorities and other taxing authorities beyond those at issue in the underlying lawsuits. These are precisely the same topics that the underlying plaintiffs are pursuing. (A.139-45.) Zurich’s discovery also extends beyond the complaint and the policies and thus is not relevant to whether the duty to defend has arisen. *See Woo*, 161 Wn.2d at 53-54.

Forcing Expedia to complete this discovery exposes it to the risk that questions concerning its knowledge and intent could be resolved in the coverage case before they are finally adjudicated in the underlying lawsuits. The prejudice caused by such overlapping issues is “obvious.” *Montrose Chem. Corp. v. Superior Court*, 6 Cal. 4th 287, 302, 862 P.2d 1153 (1993). Indeed, a “classic situation” where such prejudice arises is when “the [underlying claimant] seeks damages on account of the insured’s negligence, and the insurer seeks to avoid providing a defense by

arguing that its insured harmed the [underlying claimant] by intentional conduct.” *Montrose Chem. Corp. v. Superior Court*, 25 Cal. App. 4th 902, 907, 31 Cal. Rptr. 2d 38 (1994).³ As *Haskel* and *Montrose* recognize, the proper course in such cases is to adjudicate the duty to defend and then stay overlapping discovery while the underlying litigation is ongoing.

The Court of Appeals found Expedia’s concerns overstated because the trial court’s order left open the possibility of “alternatives” that may be explored other than a complete stay of the litigation. This misses the point. The trial court refused to hear Expedia’s duty to defend motion until discovery, including discovery that is overlapping and potentially prejudicial, concludes. While it invited Expedia to raise *other* unspecified motions that might be resolved without the need to resort to such discovery (i.e., the “alternative”), it offered no alternative by which Expedia’s duty to defend motion could be heard without that discovery. Expedia must either forgo the duty to defend while the underlying cases are ongoing—transforming its right to a prompt defense into a mere right to reimbursement many years after the fact—or expose itself to potential prejudice in those cases. This result is contrary to Washington law and

³ Expedia is further prejudiced by the prospect that it could be forced to take contradictory positions in this case and the underlying lawsuits. Through discovery, Zurich seeks to compel Expedia to identify potentially negligent acts that caused the damages the underlying plaintiffs are pursuing. (A.148, 150.) Proving the occurrence of such negligent acts could result in Expedia proving its own liability in the underlying cases, contrary to Washington law. *See Dan Paulson*, 161 Wn.2d at 918.

fundamentally limits Expedia's freedom to act.

B. Delaying Appeal Until After a Final Determination of the Merits Is an Inadequate Remedy.

A post-trial appeal is an inadequate remedy when the appellate court will not be able to protect appellant's rights or afford adequate redress other than through the exercise of immediate review. *Oliver v. Am. Motors Corp.*, 70 Wn.2d 875, 878-79, 425 P.2d 647 (1967).

Washington insurance law guarantees Expedia the right to: (a) prompt resolution of Zurich's duty to defend; and (b) protection from litigation of and discovery into issues that overlap with or are logically related to the underlying lawsuits. Delaying appeal until after a final determination on the merits has been reached will forever preclude Expedia from enjoying the benefits of one of those two rights. Only review at this stage of the case can provide Expedia with a full and adequate remedy.

VII. CONCLUSION

The Court of Appeals erred by holding Expedia's duty to defend hostage to discovery that overlaps with, and thus potentially prejudices Expedia in, the lawsuits for which Expedia seeks coverage. Expedia is forced to either forgo the defense coverage to which it is entitled or expose itself to a risk of prejudice through the litigation of overlapping issues. This result cannot be squared with this Court's longstanding principles governing the duty to defend. Discretionary review should be granted.

DATED this 9th day of April, 2013.

Respectfully submitted,

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DECLARATION OF SERVICE

I, Heather Bond, declare under penalty of perjury that I am over the age of 18 and competent to testify and that the parties listed below were served in the manner listed below:

On April 9, 2013, I caused a copy of Plaintiffs/Appellants' (1) Plaintiffs/Petitioners' Motion for Discretionary Review; (2) Appendix to Plaintiffs/Petitioners' Motion for Discretionary Review; and (3) this Declaration of Service to be delivered on this date via Legal Messenger to:

Michael Hooks
Matthew Adams
FORSBERG UMLAUF, P.S.
901 Fifth Avenue, Suite 1400
Seattle, WA 98164-2047

On April 9, 2013, I further served via FedEx copies of the above-referenced documents to Defendants/Respondents' out-of-state co-counsel:

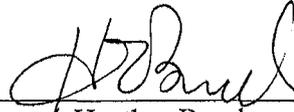
J. Randy Evans
Joanne L. Zimolzak
McKENNA LONG & ALDRIDGE LLP
1900 K Street NW
Washington, D.C. 20006

I hereby declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

 ORIGINAL

FILED AS
ATTACHMENT TO EMAIL

DATED this 9th day of April, 2013, at Seattle, Washington.

A handwritten signature in black ink, appearing to read "H. Bond", written over a horizontal line.

Heather Bond

OFFICE RECEPTIONIST, CLERK

To: Parris, Mark S.
Cc: Mitterndorfer, Ericka
Subject: RE: Motion for Discretionary Review

Rec'd 4-9-13

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: Bond, Heather E. [<mailto:hbond@orrick.com>] **On Behalf Of** Parris, Mark S.
Sent: Tuesday, April 09, 2013 2:58 PM
To: OFFICE RECEPTIONIST, CLERK
Cc: Mitterndorfer, Ericka
Subject: Motion for Discretionary Review

Expedia, Inc., et al. v. Steadfast Insurance Company, et al.
Case No. _____ (Court of Appeals Case No. 69341-7-l)

Mark S. Parris
WSBA #13870
(206)839-4320
mparris@orrick.com

Referenced appendix will be delivered to the court by legal messenger on April 9, 2013.



O R R I C K

HEATHER BOND

Legal Secretary

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NO. _____
SUPREME COURT

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OF THE STATE OF WASHINGTON

RONALD R. CARPENTER

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NO. 69341-7-I

COURT OF APPEALS, DIVISION I
OF THE STATE OF WASHINGTON

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/Petitioners,

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/Respondents.

APPENDIX TO PLAINTIFFS/PETITIONERS'
MOTION FOR DISCRETIONARY REVIEW

Mark S. Parris (WSBA No. 13870)
Paul F. Rugani (WSBA No. 38664)
ORRICK, HERRINGTON & SUTCLIFFE LLP
701 Fifth Avenue, Suite 5600
Seattle, WA 98104-7097
(206) 839-4300

ORIGINAL

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IN THE COURT OF APPEALS FOR THE STATE OF WASHINGTON
DIVISION ONE

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,

Petitioners,

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,

Respondents.

No. 69341-7-1

ORDER DENYING
DISCRETIONARY REVIEW

Petitioners (Expedia) seek discretionary review of the trial court's ruling denying their motion to set a summary judgment for hearing and to impose a blanket protective order on discovery.¹ Expedia contends that its insurers, Steadfast Insurance Company

¹ Expedia has provided some discovery, but requested an immediate hearing on its motion for summary judgment on the duty to defend, together with a bar of any further discovery in this pending coverage/bad faith litigation.

and Zurich American Insurance Company (Zurich) have a duty to defend Expedia in litigation by governmental taxing authorities, and Zurich is not entitled to delay summary judgment to allow them to pursue discovery regarding Zurich's defenses.

Expedia argues the trial court committed probable error that substantially impairs its freedom to act.² But as noted by the trial court, there are unique circumstances, including Expedia's lengthy delay in tendering the defense of substantially all of the underlying litigation. And the trial court suggested other options to the blanket protective order requested by Expedia. Expedia fails to carry the "heavy burden" of obtaining discretionary review.³ Review is denied.

FACTS

Since approximately 2004, various taxing authorities have brought suit against Expedia, alleging it failed to charge occupancy taxes based on the full retail price of the hotel rooms (Expedia's net rate plus fees) rather than the reduced net room rate negotiated by Expedia and passed along to its clients. The taxing authorities seek the difference between the occupancy tax Expedia actually charged and the occupancy tax it should have charged.

Expedia purchased Travel Agents Professional Liability policies from various carriers, including Zurich American Insurance Company. In 2005, Expedia's broker tendered to Zurich the first of the occupancy tax suits, brought by the City of Los Angeles. Zurich denied coverage and requested that Expedia forward more information related to the claim. According to Zurich, Expedia did not respond to its

² RAP 2.3(b)(2).

³ In re Grove, 127 Wn.2d 221, 235, 897 P.2d 1252 (1995) ("A party moving for discretionary review of an interlocutory trial court order bears a heavy burden.").

correspondence until November 2010, when Expedia initiated the instant coverage action (declaratory judgment and breach of contract) and tendered approximately 60 additional lawsuits brought against Expedia from 2005 through 2010.

Zurich answered Expedia's complaint, asserting various defenses including failure to comply with conditions precedent to coverage, and relying on the known loss/loss-in-progress doctrine. Zurich then moved for summary judgment as to four of the six policies it issued to Expedia, relying on an exclusion for the insured's "failure or inability to collect or pay money." The court ruled Zurich did not owe Expedia a defense under these four policies.

Expedia moved for summary judgment on March 30, 2012, asking the court to rule on Zurich's duty to defend under the remaining two policies. Zurich moved for a CR 56(f) continuance, which the trial court granted. Zurich contended it needed to conduct limited discovery to develop defenses on its duty to defend.

According to Expedia, it completed some of the outstanding discovery without exposing itself to a risk of prejudice in the underlying suits. However, Expedia would not answer discovery pertaining to its knowledge of its potential liability for the occupancy tax issue. Expedia was concerned this discovery would overlap with the issues in the underlying liability suits.

Expedia filed a motion for a protective order to prevent further discovery by Zurich. Expedia also moved the court to set a hearing date for Expedia's summary judgment motion. The trial court denied Expedia's motion. The trial court stated in its oral ruling:

But this is a somewhat unique situation where Expedia has adequate funds, obviously, to hire counsel, has made conscious decisions not to bring in an insurance counsel before now, and, in fact, to sit on that right for several years while they made their own decisions and sat in the bus driver's seat.⁴

The trial court concluded Expedia's protective order was not appropriate under the unique circumstances. The court noted that "the discovery the insurers are seeking is appropriate for their defenses."⁵

The trial court did recognize the possibility of prejudice to Expedia in the underlying suits if it allowed Zurich to proceed with discovery. While the court was not willing to grant Expedia's motion for a protective order, the court explained other alternatives available to Expedia, including a stay of the coverage action: "Under these circumstances, this is a problem of Expedia's own making . . . if there are problems with the discovery that we cannot sort out and Expedia feels that there is too much of an overlap that Expedia's remedy should be a stay of this action."⁶ The court suggested the parties consider the alternatives it proposed.

Pursuant to RAP 2.3(b), Expedia now moves this court for discretionary review of the trial court's denial of its motion to set summary judgment hearing date and for protective order.

CRITERIA FOR DISCRETIONARY REVIEW

Discretionary review is available only:

(1) The superior court has committed an obvious error which would render further proceedings useless;

⁴ Motion for Discretionary Review, App. at 12.

⁵ Id. at 13.

⁶ Id. at 12.

(2) The superior court has committed probable error and the decision of the superior court substantially alters the status quo or substantially limits the freedom of a party to act;

(3) The superior court has so far departed from the accepted and usual course of judicial proceedings, or so far sanctioned such a departure by an inferior court or administrative agency, as to call for review by the appellate court; or

(4) The superior court has certified, or that all parties to the litigation have stipulated, that the order involves a controlling question of law as to which there is substantial ground for a difference of opinion and that immediate review of the order may materially advance the ultimate termination of the litigation.^[7]

DECISION

The core issue raised by Expedia is whether the trial court is compelled to grant its request for a blanket protective order and promptly rule whether Zurich has a duty to defend. Generally, the duty to defend is resolved on the allegations in the underlying complaint and the terms of the insurance policy.⁸ There are only limited occasions when other information is germane to the duty to defend. "There are two exceptions to the rule that the duty to defend must be determined only from the complaint, and both the exceptions favor the insured."⁹ First, if coverage is not clear from the face of the complaint but may nonetheless exist, the insurer must investigate the claim and give the insured the benefit of the doubt in determining whether the insurer has a duty to

⁷ RAP 2.3(b).

⁸ An insurer's duty to defend arises when an action is first brought; and it is based on the potential for liability. Truck Ins. Exch. v. VanPort Homes, Inc., 147 Wn.2d 751, 760, 58 P.3d 276 (2002). An insurer has a duty to defend "when a complaint against the insured, construed liberally, alleges facts which could, if proven, impose liability upon the insured within the policy's coverage." Id. (quoting Unigard Ins. Co. v. Leven, 97 Wn. App. 417, 425, 983 P.2d 1155 (1999)). If the complaint is ambiguous, insurers should construe it liberally, in favor of the insured. Id. Conversely, if the alleged claims are clearly outside the policy's coverage, then the insurer has no duty to defend. Id.

⁹ VanPort, 147 Wn.2d at 761.

defend.¹⁰ Second, if the insurer is aware of facts giving rise to covered liability, the insurer must defend even though the complaint does not state covered claims. The insurer must look to facts outside the complaint if “(a) the allegations are in conflict with facts known to or readily ascertainable by the insurer or (b) the allegations of the complaint are ambiguous or inadequate.”¹¹ “Put simply, an insurer may not rely on facts extrinsic to the complaint in order to *deny* its duty to defend where . . . the complaint can be interpreted as triggering the duty to defend.”¹²

But as the trial court pointed out, there are some unique circumstances, including Expedia's long-delayed tender. 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.”¹³ Discovery related to such a showing of prejudice can be appropriate to the duty to defend.¹⁴

Most importantly, Expedia overstates the scope and impact of the trial court ruling. The trial court expressly suggested alternatives to a blanket protective order. The court recognized the potential for prejudice to Expedia in the underlying litigation, but was not convinced all proposed discovery should be restricted. Expedia argues that the suggested alternative of staying the coverage action precludes it from realizing one of the key benefits of the duty to defend. Expedia argues its sole choice is between

¹⁰ Id.

¹¹ Id. (quoting Atl. Mut. Ins. Co. v. Roffe, Inc., 73 Wn. App. 858, 862, 872 P.2d 536 (1994)).

¹² Id.

¹³ Mut. of Enumclaw Ins. Co. v. USF Ins. Co., 137 Wn. App. 352, 361, 153 P.3d 877 (2007).

¹⁴ Id.

forgoing a prompt determination of the duty to defend and giving up information that necessarily will prejudice its underlying occupancy tax litigation. But the trial court's comments clearly invite other efforts by the parties to refine and narrow the scope of a protective order. It appears Expedia has not explored those alternatives.

Further, Expedia argues the trial court order substantially impairs its freedom to act under RAP 2.3(b)(2). The Task Force comment reflects that RAP 2.3(b)(2) narrowly applies "primarily to orders pertaining to injunctions, attachments, receivers, and arbitration."¹⁵ RAP 2.3(b)(2) has a broader reach.

In his authoritative law review article on discretionary review, Supreme Court Commissioner Geoffrey Crooks recognized that Task Force comments can be read as drawing a line between rulings that only impact the internal workings of a lawsuit versus rulings that have an impact external to the litigation:

A trial court action then arguably would not qualify for review under RAP 2.3(b)(2) if it merely altered the status of the litigation itself or limited the freedom of a party to act in the conduct of the lawsuit. An error affecting the internal workings of the lawsuit would be reviewable only if 'obvious' and, as required by RAP 2.3(b)(1), only if it truly rendered further proceedings useless.^[16]

Expedia argues that the trial court rulings substantially limit its freedom to act "by forcing it to either forgo the defense coverage to which it is entitled or expose itself to a risk of prejudice through the litigation of overlapping issues."¹⁷ Again, Expedia overstates the trial court's ruling. The trial court suggested the parties try again to

¹⁵ 2A KARL B. TEGLUND, WASHINGTON PRACTICE: RULES PRACTICE RAP 2.3 task force cmt. at 201 (7th ed. 2011).

¹⁶ Geoffrey Crooks, *Discretionary Review of Trial Court Decisions Under the Washington Rules of Appellate Procedure*, 61 Wash. L. Rev. 1541, 1546 (1986).

¹⁷ Motion for Discretionary Review at 20.

define what discovery should be allowed in this pending litigation. In this setting, Expedia does not establish that the denial of its request for a blanket protective order substantially limits its freedom to act as required for discretionary review under RAP 2.3(b)(2).

Finally, the 2002 amendments to RAP 2.3(b) altered the introductory phrase to read that "discretionary review may be accepted only in the following circumstances."¹⁸ So it is now clear that review under any of the enumerated grounds of RAP 2.3(b) is discretionary. The issues may continue to evolve in the trial court. Judicial economy does not favor going forward with a piecemeal appeal in this setting.

The strict criteria for discretionary review have not been satisfied.

Now, therefore, it is hereby

ORDERED that the motion for discretionary review is denied.

Done this 11th day of March, 2013.

Speerman, A.C.J.

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¹⁸ 2A Tegland, *supra* note 15, Drafters' Comment, 2002 Amendment, at 204 (emphasis added).

The Honorable Kimberley Prochnau

FILED
KING COUNTY, WASHINGTON

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SUPERIOR COURT CLERK
EILEEN L. MCLEOD
DEPUTY

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

~~[PROPOSED]~~ ORDER RE PLAINTIFFS' MOTION TO SET SUMMARY JUDGMENT HEARING DATE AND FOR PROTECTIVE ORDER

ORIGINAL

~~[PROPOSED]~~ ORDER RE MOT. TO SET SUMM. J. HEARING DATE: 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 to Set Summary Judgment
2 Hearing Date and for Protective Order. The Court considered the following:

3 1. Plaintiffs' Motion to Set Summary Judgment Hearing Date and for Protective
4 Order;

5 2. Declaration of Mark Parris in Support of Plaintiffs' Motion to Set Summary
6 Judgment Hearing Date and for Protective Order and the exhibits thereto;

7 3. Declaration of Angela Niemann in Support of Plaintiffs' Motion to Set Summary
8 Judgment Hearing Date and for Protective Order and the exhibits thereto;

9 4. March 30, 2012 Declaration of Mark S. Parris in Support of Plaintiffs Motion for
10 Summary Judgment as to Defendant Zurich American Insurance Company's Duty to Defend,
11 Bad Faith, and CPA Violations Under Zurich American Insurance Policies EOL 5329302-02
12 and EOL 8329302-03 and the exhibits thereto;

13 5. Defendants Steadfast Insurance Co. & Zurich American Insurance Co.'s
14 Response in Opposition to Plaintiffs' Motion to Set Summary Judgment Hearing and for
15 Protective Order;

16 6. Declaration of Joanne L. Zimolzak in Support of Zurich's Response to
17 Plaintiffs' Motion to Set Summary Judgment Hearing and for Protective Order and the exhibits
18 thereto;

19 7. Plaintiffs' Reply in Support of Motion to Set Summary Judgment Hearing and
20 for Protective Order;

21 8. Declaration of Mark S. Parris in Support of Plaintiffs' Reply in Support of
22 Motion to Set Summary Judgment Hearing and for Protective Order and the exhibits thereto;

23 9. Arguments of counsel at the June 15, 2012 hearing, which arguments have been
24 set forth in the transcript of that hearing; and

25 10. Plaintiffs' Exhibits 1 & 2 submitted during oral argument.

26 ///

27 ///

28 ///

~~PROPOSED~~ ORDER RE MOT. TO SET SUMM. J. 1
HEARING DATE: NO. 10-2-41017-1

Orrick Herrington & Sutcliffe LLP
701 5th Avenue, Suite 5800
Seattle, Washington 98104-7097
tel+1-206-839-4300

1 For the reasons stated on the record at the hearing, IT IS HEREBY ORDERED that
2 Plaintiffs' Motion to Set Summary Judgment Hearing and for Protective Order is DENIED.

3 DATED 8/20/12.

4 
5 _____
6 The Honorable Kimberley Prochnau
7 SUPERIOR COURT JUDGE

8 Presented by:

9 ORRICK, HERRINGTON & SUTCLIFFE LLP

10 By: 

11 Mark S. Parris (Bar No. 13870)
12 mparris@orrick.com
13 Paul F. Rugani (Bar No. 38664)
14 prugani@orrick.com
15 701 Fifth Avenue, Suite 5600
16 Seattle, WA 98104
17 Telephone: (206) 839-4300
18 Fax: (206) 839-4301

19 Attorneys for Plaintiffs

20 I certify that I have mailed/e-mailed
21 a copy of this order to all parties.
22 Date: 8/21/2012
23 Signature: C. Robinson
24 Bulliff

25
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[PROPOSED] ORDER RE MOT. TO SET SUMM. J. 2
HEARING DATE: NO. 10-2-41017-1

Orrick Herrington & Sutcliffe LLP
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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING

EXPEDIA INC., et al.,)	
PLAINTIFFS,)	CASE NO.
)
VERSUS) 10-2-41017-1SEA
)
STEADFAST INSURANCE)	
CO., et al.,)	
DEFENDANTS.)	

Proceedings Before Honorable KIMBERLEY PROCHNAU

KING COUNTY COURTHOUSE
SEATTLE, WASHINGTON

DATED: JUNE 15, 2012

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

FOR THE PLAINTIFFS:

BY: DANIEL DUNNE, ESQ.,
 MARK PARRIS, ESQ.,
 PAUL RUGANI, ESQ.

FOR THE DEFENDANTS:

BY: MICHAEL HOOKS, ESQ.,
 JOANNE ZIMOLZAK, ESQ.,
 RUSSELL LOVE, ESQ.

P R O C E E D I N G S

(Afternoon session. Open court.)

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THE BAILIFF: All rise, court is in session.
The Honorable Kimberley Prochnau presiding in the Superior Court in the State of Washington in and for King County.
THE COURT: Thank you. Please be seated. This is the Expedia versus Steadfast Insurance matter, 10-2-41017-1 SEA.
I will have counsel introduce themselves for the purposes of the record, starting with Mr. Parris.
MR. PARRIS: Your Honor, Mark Parris on behalf of Expedia together with Paul Rugani and Dan Dunne.
MS. ZIMOLZAK: Joanne Zimolzak and with me is Michael Hooks.
THE COURT: All right. Thank you.
MR. LOVE: Your Honor, Russell Love on behalf of Arrowood.
THE COURT: Thank you.
THE COURT: All right. I assume that Arrowood was not asking to speak. You are just here to observe.

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THE COURT: All right. Thank you. The court is ready to rule.

Going first to the issue of Expedia's request for 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, including Expedia's knowledge or intent regarding its alleged liability, or the payment of certain occupancy

15:05:49 1 tax amounts and the privilege issue this concerns the
15:05:59 2 three documents attached to the Volusia action,
15:06:13 3 whereby the Volusia plaintiffs attached documents,
15:06:19 4 which Expedia contends are privileged, to their
15:06:24 5 requests for admissions. Then those documents were
15:06:29 6 put into a PDF file by Expedia's registered agent for
15:06:34 7 service of process and then forwarded to in-house
15:06:42 8 counsel, and then forwarded to Orrick, O-r-r-i-c-k,
15:06:48 9 also known as Mr. Parris' law firm.

15:06:52 10 The court agrees with Expedia that there is
15:06:59 11 a dangerous overlap between the discovery seeking
15:07:04 12 Expedia's knowledge or intent regarding its liability
15:07:07 13 for the payment of the certain occupancy tax amounts.
15:07:15 14 While willfulness may not be germane to the issue of
15:07:18 15 coverage, the knowledge of what Expedia knew and when
15:07:26 16 it knew it may be very relevant to the plaintiff's
15:07:30 17 claims.

15:07:32 18 The discovery that Expedia might be forced
15:07:37 19 to give with regards to that issue could be injurious
15:07:40 20 to its interests in the plaintiff's claims.

15:07:43 21 So, I certainly can't conclude that there
15:07:49 22 is no overlap, that there is not a basis for an
15:07:53 23 overlap.

15:07:55 24 On the other hand, I also cannot conclude,
15:07:58 25 as a matter of law, that this discovery is not

15:08:00 1 relevant to the insured's company's defenses.

15:08:08 2 Certainly, I have not been asked to decide,
15:08:13 3 as a matter of law, that extrinsic evidence is not
15:08:16 4 relevant to a determination of coverage and, in fact,
15:08:20 5 the insurance company suggests strong arguments that
15:08:24 6 that would be improper, as a matter of law, to
15:08:26 7 conclude that. But I will guess I will say again, I
15:08:29 8 have not been asked to decide that issue squarely on.

15:08:34 9 The privilege issue is a little bit
15:08:37 10 different, because I see two major aspects of the
15:08:44 11 privilege issue -- at least with respect to the
15:08:46 12 documents we are talking about, which are the Price
15:08:53 13 Waterhouse memo, the Holland and Knight memos, and
15:08:58 14 Mr. Britton's memos.

15:09:04 15 There is the underlying issue of whether
15:09:07 16 these documents are privileged. Only one court
15:09:14 17 heretofore that has considered this issue, I believe,
15:09:19 18 has found them not to be privileged; that, of course,
15:09:24 19 being the Columbia Georgia court. I gather that that
15:09:31 20 issue -- Expedia intends to appeal that issue or has
15:09:36 21 appealed that issue, but it was unsuccessful in
15:09:41 22 seeking interlocutory review, however. Other courts
15:09:47 23 have found those documents privileged and, of course,
15:09:51 24 the issue has not been addressed in all of the courts.
15:09:55 25 Those documents are all in the public domain, of

15:09:58 1 course.

15:09:58 2 I say, "of course," as the parties' know,
15:10:03 3 they somehow made to it a Florida state legislator,
15:10:08 4 who then provided copies of those documents to all of
15:10:10 5 his colleagues and those documents were then made
15:10:14 6 available to the media in Florida. Now, of course,
15:10:17 7 plaintiffs are using those documents to the extent
15:10:20 8 that they can.

15:10:24 9 Expedia has provided the court with a
15:10:27 10 number of opinions, in which the courts indicate that
15:10:30 11 although it is a bit of a legal fiction to say that
15:10:34 12 these documents are confidential, since they are now
15:10:37 13 in the public domain, the purpose of attorney-client
15:10:42 14 privilege and work-product would be thwarted, if we
15:10:45 15 allowed plaintiffs in these lawsuits to use these
15:10:50 16 documents in their cases. So, many courts have
15:10:55 17 indicated that they cannot be used.

15:10:57 18 So, I think that it would be injurious to
15:11:02 19 Expedia's interests to allow the insurer to take the
15:11:06 20 position that those documents are not privileged.
15:11:11 21 That is a serious problem. So, I am not going to
15:11:15 22 visits that issue. I am going to assume for the sake
15:11:19 23 of argument that they are privileged.

15:11:20 24 There is a different issue, which, of
15:11:22 25 course, is whether Expedia waived the privilege by

15:11:26 1 voluntarily providing those documents to their
15:11:32 2 insurer. That is an issue, that I gather, that the
15:11:33 3 parties don't think that I need to address today. So,
15:11:37 4 but all I will say about that issue is that I don't
15:11:40 5 see that as overlapping with the plaintiff's issues.
15:11:43 6 That is a very different thing.

15:11:46 7 In the other cases, we have a situation
15:11:48 8 where Expedia was compelled by the Court Order to turn
15:11:51 9 over these documents to the plaintiffs and was
15:11:57 10 promised, in fact, despite having to be forced to turn
15:12:01 11 those documents over, that the plaintiffs would
15:12:03 12 protect those documents through a protective order.

15:12:08 13 Expedia's arguments, which have been
15:12:13 14 successful so far, are very different than in this
15:12:16 15 case, where Expedia was not compelled by the
15:12:22 16 discovery, or by the Court Order, to turn over these
15:12:25 17 documents and voluntarily turned over these documents.
15:12:29 18 Then there is an argument as to whether that is
15:12:34 19 inadvertent or not, that is a separate issue. I don't
15:12:36 20 see an overlap there.

15:12:37 21 Nevertheless, of course, we have the
15:12:42 22 significant problem with the overlap between the
15:12:55 23 knowledge information that the insurers want and the
15:12:59 24 willfulness information that the plaintiffs want.

15:13:14 25 So it is certainly highly relevant to the

15:13:16 1 plaintiff's concerns and interests to get at when
15:13:21 2 Expedia knew something and what they knew.

15:13:26 3 On the other hand, we have the odd
15:13:28 4 situation where Expedia, in many cases, failed to
15:13:34 5 tender these lawsuits to Zurich for years, was quite
15:13:40 6 happy to litigate these cases, either through in-house
15:13:43 7 counsel or hiring their own selected counsel and then
15:13:51 8 coming before the court and seeking affirmative
15:13:55 9 relief, to force the insurers, after-the-fact, to
15:14:00 10 defend. Expedia has, perhaps, done an excellent job
15:14:04 11 through their counsel of defending these lawsuits, and
15:14:08 12 perhaps have taken strategies and taken actions that
15:14:13 13 the insurers' counsel, would not have taken. They are
15:14:17 14 being put in the position of Expedia having driven the
15:14:21 15 bus all of this time, suddenly getting up from the bus
15:14:28 16 and saying "okay, it is your turn to drive. Never
15:14:33 17 mind that the gas tank may only be half full and never
15:14:36 18 mind that we are on an area that you are not familiar
15:14:39 19 with driving. Second of all, we don't really want to
15:14:43 20 give you all of the information that you need to drive
15:14:46 21 the bus."

15:14:48 22 So, it strikes the court as fundamentally
15:14:54 23 unfair for Expedia to, on the one hand, to say that
15:15:00 24 they want a prompt determination of their summary
15:15:04 25 judgment motion, having sat on this issue for up to

15:15:08 1 five years in some cases, and to also preclude the
15:15:17 2 insureds' insurance companies from developing the
15:15:20 3 evidence that they think that they need to have to
15:15:23 4 address the duty to defend.

15:15:26 5 There are good policy reasons why we
15:15:33 6 ordinarily want insurance companies to step in quickly
15:15:37 7 to defend. We don't want the insured to have to,
15:15:45 8 quote, "fight a two-front war," or have to worry to
15:15:51 9 worry about finding counsel to defend themselves.
15:15:54 10 That is after all of why people get insurance.

15:15:57 11 But this is a somewhat unique situation
15:16:02 12 where Expedia has adequate funds, obviously, to hire
15:16:08 13 counsel, has made conscious decisions not to bring in
15:16:13 14 an insurance counsel before now, and, in fact, to sit
15:16:18 15 on that right for several years while they made their
15:16:22 16 own decisions and sat in the bus driver's seat.

15:16:26 17 Under these circumstances, this is a
15:16:32 18 problem of Expedia's own making, largely, and I think
15:16:36 19 that it is appropriate under these circumstances, if
15:16:40 20 there are problems with the discovery that we cannot
15:16:43 21 sort out and Expedia feels that there is too much of
15:16:46 22 an overlap that Expedia's remedy should be a stay of
15:16:52 23 this action.

15:16:53 24 After all, I have been assured that Expedia
15:16:58 25 is correct and there is a duty to defend and when this

15:17:05 1 all winds up, that they will still have recourse
15:17:10 2 against their insurance company for payment of those
15:17:15 3 fees and then obviously they will also have a right to
15:17:18 4 move on to seek indemnifications as well.

15:17:21 5 But, the discovery the insurers are seeking
15:17:28 6 is appropriate for their defenses. It would simply be
15:17:37 7 fundamentally unfair and inconsistent with our system
15:17:43 8 of trying to resolve cases on the merits to preclude
15:17:47 9 the insurance company from getting this information.

15:17:51 10 Under these circumstances, Expedia has
15:17:54 11 delayed in bringing these actions in seeking to tender
15:17:59 12 these actions. It is not going to suffer any real
15:18:05 13 prejudice by staying the action, since they will have
15:18:08 14 a right to seek indemnification of their costs at a
15:18:13 15 later time.

15:18:27 16 I guess I am not sure whether it is
15:18:29 17 necessary that I go any further with discussing a
15:18:34 18 protocol. I think that it would probably be
15:18:37 19 appropriate to adopt some form of a protocol with
15:18:41 20 regards to discovery issues. Obviously, I am not
15:18:44 21 adopting the protocol that is suggested by Expedia.
15:18:48 22 But I am wondering if, given my ruling, you want to
15:18:54 23 put over these additional issues?

15:18:57 24 MR. PARRIS: Your Honor, I think that we,
15:19:00 25 internally, need to talk about this. As I understand

15:19:03 1 it, what the court is saying, is that the court will
15:19:05 2 either stay the entirety of the action, or if it is
15:19:10 3 not stayed entirely that discovery will go forward,
15:19:14 4 including on to the discovery that is injurious to
15:19:17 5 Expedia in the underlying action.

15:19:19 6 THE COURT: And there is a third approach,
15:19:21 7 of course, if there are motions that Expedia wants to
15:19:25 8 hear, that thinks that they can resolve, that either
15:19:33 9 the insurers agree that they don't need discovery on,
15:19:37 10 or that the Expedia feels that they can provide the
15:19:40 11 discovery, without endangering their positions in the
15:19:44 12 underlying suits, or if you are unable to reach that
15:19:49 13 agreement and you want to set that for a hearing, as
15:19:53 14 to whether there is an overlap, then we can go forward
15:19:56 15 in that way as well. That is the third option as
15:20:04 16 well.

15:20:04 17 MS. ZIMOLZAK: So it sounds like something
15:20:07 18 further needs to happen among the parties before this
15:20:09 19 court can take any action.

15:20:11 20 THE COURT: I think so.

15:20:12 21 MS. ZIMOLZAK: All right.

15:20:13 22 THE COURT: All right. Anything further at
15:20:15 23 this time?

15:20:16 24 MR. PARRIS: No, Your Honor.

15:20:17 25 THE COURT: All right. Thank you.

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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

DECLARATION OF MELISSA MAHER
IN SUPPORT OF PLAINTIFFS'
MOTION FOR SUMMARY
JUDGMENT AS TO DEFENDANT
ZURICH AMERICAN INSURANCE
COMPANY'S DUTY TO DEFEND AND
BAD FAITH UNDER CERTAIN
ZURICH AMERICAN INSURANCE
POLICIES EOL 5329302-02 AND EOL
5329302-03

MAHER DECL. SUPP. PLS.' MOT. FOR SUMMARY
JUDGMENT: NO. 10-2-41017-1

Orrick Herrington & Sutcliffe LLP
701 5th Avenue, Suite 5500
Seattle, Washington 98104-7097
tel+1-206-639-4300

1 I, Melissa Maher, declare under penalty of perjury under the laws of the State of
2 Washington that the following is true and correct:

3 1. My name is Melissa Maher. I am more than 18 years old and am familiar with the
4 Expedia Companies' hotel reservation facilitation business, including Expedia.com, Hotels.com,
5 Hotwire, and Travelscape, Inc. The facts stated in this declaration are based on my personal
6 knowledge. If called upon to testify as a witness in this case, I could and would competently
7 testify as stated below.

8 **Professional Background**

9 2. I am Vice-President, Global Strategic Accounts and Industry Relations for
10 Expedia, Inc. In my positions, I have been closely involved in, among other things, the business
11 practices of facilitating hotel room reservations between hotels and customers.

12 **Company and Industry Background**

13 3. Expedia, Inc., Hotels.com L.P., and Hotwire Inc. are online travel companies that
14 among other services, allow consumers to make travel arrangements through websites and
15 telephone call centers. Expedia (a Washington corporation), Hotels.com, and Hotwire are sister
16 companies ultimately owned by Expedia, Inc., a Delaware corporation. Over the years Expedia,
17 Hotels.com, and Hotwire have merged many of their business operations relating to the hotel
18 merchant model. Travelscape, Inc. d/b/a Expedia Travel is the company through which the
19 Expedia and Hotels.com merchant model reservations are placed. The Expedia Companies,
20 Travelscape, Hotels.com, Expedia and Hotwire, are collectively referred to in my declaration as
21 "Expedia."

22 4. Expedia enables travelers to make all sorts of reservations (such as hotel and
23 airline reservations) with all sorts of travel suppliers (such as hotels and airlines). Expedia's
24 website is a marketplace bringing together travel suppliers on the one hand and travelers on the
25 other hand.

26 5. Expedia makes traveling easier for consumers by doing all of the necessary
27 legwork for them. Expedia's website hosts collected information about various travel options,
28 including hotel choices, availability, rates and amenities, and quality ratings, in one convenient

MAHER DECL. SUPP. PLS.' MOT. FOR SUMMARY 1
JUDGMENT: NO. 10-2-41017-1

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1 place available for customers to view 24 hours a day, 7 days a week. Expedia handles
2 communications with the various travel suppliers and arranges for payments to be made on the
3 customer's behalf. Customers who choose to make their travel plans through Expedia benefit
4 from one-stop shopping in that all of their travel needs and information are conveniently
5 presented in one place.

6 6. Before the emergence of the online travel industry, a customer wishing to place a
7 hotel reservation in a particular area, without using a travel agent, had to use a phone book and a
8 map to determine which hotels were located in the area, contact the hotels to collect information
9 on amenities, availability and room rates, analyze the information and determine which facility
10 was most appropriate. Alternatively, a customer engaged a traditional travel agent for this
11 information or engaged a tour operator, travel consolidator, or the like.

12 7. The value that Expedia provides to travelers is substantial. Through Expedia,
13 travelers can compare competing hotels by price and amenities, review comments and ratings
14 from other travelers, and review independent and objective hotel ratings. Expedia's website
15 offers expanded information about destinations, attractions, and other available travel services
16 and products. Travelers can even customize their own travel packages and secure hotel, flight,
17 and rental car reservations often at prices lower than stand-alone reservations.

18 8. Not only does Expedia provide value to consumers, it also provides value to
19 hotels. Through Expedia, hotels reach a global audience of new customers actively engaged in
20 planning and purchasing travel products and services.

21
22 **Business Model Basics**

23 9. Expedia's business model with respect to making hotel reservations is described as
24 the "merchant model," because, as explained below, Expedia is the entity charging the traveler's
25 credit card. The merchant model has been used by brick-and-mortar travel agencies for decades.
26 Under this model, Expedia negotiates with thousands of hotels to obtain the right to facilitate
27 room reservations at rates lower than what individual customers could obtain on their own. The
28 merchant model works in the following manner.

MAHER DECL. SUPP. PLS.' MOT. FOR SUMMARY 2
JUDGMENT: NO. 10-2-41017-1

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1 10. A customer seeking to make a hotel reservation through Expedia sees a "booking
2 path," a series of web pages the customer views to find and make a reservation at a hotel. After
3 inputting his or her desired destination city and indicating arrival and departure dates, number of
4 rooms, and number of travelers, the customer receives a listing of numerous competing hotel
5 properties located in the destination city.

6 11. After studying the list of potential hotels, a customer obtains more information on
7 any listed hotel by clicking on "more lodging info." The customer receives a detailed report
8 including maps, property details, room details, lists of property and room amenities, photos,
9 promotions, nearby points of interest, details on dining at the hotel, recreation options, additional
10 fees, and any applicable hotel policies.

11 12. One of the many services Expedia provides to its customers includes compiling
12 information on a particular hotel and presenting such information in a format that helps customers
13 make a more informed hotel selection. This information includes, for example, candid reviews
14 from other travelers, ratings from independent ratings systems, and media recognition, which
15 Expedia consolidates to form a "star rating" for each particular hotel. Hotels and agents of hotels
16 do not provide this service.

17 13. If the customer decides to make a reservation at a hotel, the customer continues
18 through the booking path to the stage where he or she chooses among the available room options
19 and rates. Once the customer selects the desired room option, Expedia forwards the customer's
20 information to the selected supplier and requests the reservation. Expedia must determine the
21 availability of the room and the rate because a reservation is within a hotel's control and it
22 generally can at any time change or withdraw the availability and rates that it makes available
23 through Expedia, even seconds after a customer is initially informed that a certain rate is
24 available. Expedia summarizes the room rate that includes tax recovery charges and other service
25 fees. Customers can also review Expedia's terms and conditions, and any rules and restrictions
26 imposed by the hotel.

27 14. After completing the reservation, the customer's credit card is charged and the
28 customer receives a confirmation number. Expedia charges the customer's credit card at the time

1 the reservation is made a single total amount comprised of: (1) the rate that the hotel charges for
2 occupancy of the room, which is passed along to the hotel (i.e. the "rent"); (2) an amount retained
3 by Expedia for the online services it provides to the customer (the "facilitation fee"); and (3) an
4 amount for "tax recovery charges and service fees" that includes (a) a tax recovery charge which
5 Expedia pays to the hotel for the "transient occupancy tax" on the rent invoiced by the hotel; and
6 (b) an additional fee for services provided by Expedia to the customer that is grouped together
7 with the tax recovery charge.

8 15. When the customer later travels to the destination, upon arrival at the selected
9 hotel, he or she presents identification and any other information required by the hotel. Pursuant
10 to each hotel's own check-in and security procedures, the hotel then assigns a specific room to the
11 customer. Only then does the customer become a guest of the hotel with a right to occupy or use
12 a room in the hotel. The hotel determines what services and amenities are provided to the guest,
13 and any changes in the reservation or incidental charges incurred by the guest are solely between
14 the hotel and the hotel's guest, not Expedia.

15 16. Expedia does not operate hotels and does not purchase the rooms. But because its
16 customers pay for their hotel room reservations at the time of the online reservation, Expedia
17 charges its customers an amount sufficient to cover the estimated occupancy tax owed by the
18 hotel in accordance with a tax rate provided by the hotel. In calculating this tax recovery charge,
19 Expedia uses the rate it negotiated with the hotel, that is, "the rent charged by the hotel operator,"
20 rather than the total retail price the customer ultimately pays to Expedia (rent plus fees). The tax
21 recovery charge based on "the rent charged by the hotel operator" is the amount Expedia believes
22 is owed by its customers for the customers' occupancy tax obligation, rather than an amount
23 based on the total retail price, which includes Expedia's facilitation and service fees. Expedia
24 neither charges its customers nor collects from its customers any amounts reflecting a tax on
25 Expedia's facilitation or service fees. Expedia, however, pays any taxes it owes on the
26 facilitation and service fee revenues.

1 17. The merchant model is not unique to Expedia. Indeed, the merchant model is the
2 norm in the travel industry and is used by Expedia's major online competitors, such as Orbitz,
3 Priceline, and Travelocity.

4 **The Hotel Occupancy Tax Cases Filed Against Expedia**

5 18. Expedia is litigating or has defended 80 lawsuits against various states, counties
6 and municipalities across the United States in which these governmental entities allege that
7 Expedia owes taxes on the retail rate charged to customers rather than on the net rate paid to the
8 hotel. The majority of these lawsuits are still pending, but in cases that have been finally
9 adjudicated, Expedia has prevailed in almost all of these; in the small number of cases in which
10 Expedia has been found liable, Expedia has not been found to have intentionally or willfully
11 violated the law.

12 19. The first lawsuit filed against Expedia was brought by City of Los Angeles in
13 2005. Expedia asked its insurance broker to tender this lawsuit to Expedia's insurers for a
14 defense and indemnification. This lawsuit was tendered to Steadfast Insurance Company, Zurich
15 American Insurance Company's predecessor. Steadfast Insurance Company refused to defend
16 Expedia in that case. Expedia subsequently has tendered other underlying cases to its insurers.
17 Zurich American Insurance Company has denied coverage for all of these cases.

18 20. Because Expedia's insurers, including Zurich American Insurance Company, are
19 not providing a defense in any of the occupancy tax lawsuits, Expedia is defending itself at its
20 own expense, at a cost thus far in the millions of dollars.

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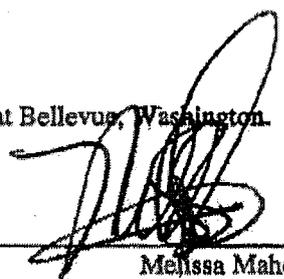
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DATED this 2nd day of March, 2012, at Bellevue, Washington.



Melissa Maher

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10 Attorneys for Plaintiff, the City of Los Angeles, California,
on behalf of itself and all others similarly situated

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 FOR THE COUNTY OF LOS ANGELES, CENTRAL DISTRICT

13 CITY OF LOS ANGELES, CALIFORNIA, on)
behalf of itself and all others similarly situated,

14
15 Plaintiff,

16 v.

17 HOTELS.COM, L.P.; HOTELS.COM GP, LLC;
HOTWIRE, INC.; CHEAP TICKETS, INC.;
18 EXPEDIA, INC.; INTERNETWORK
PUBLISHING CORP. (d/b/a LOGGING.COM);
19 LOWEST FARE.COM, INC.; ORBITZ, INC.;
ORBITZ, LLC; PRICELINE.COM, INC.; SITE
20 59.COM, LLC; TRAVELCITY.COM, INC.;
TRAVELCITY.COM, LP; TRAVELWEB, LLC;
21 TRAVELNOW.COM, INC.; and DOES 1)
through 1000, Inclusive,

22 Defendants.

23
24
25 AND ALL RELATED CASES.
26

LEAD CASE NUMBER: BC 326693

THIRD AMENDED CLASS ACTION
COMPLAINT FOR:

- 16 (1) VIOLATION OF PLAINTIFF AND
CLASS TRANSIENT OCCUPANCY
TAX ORDINANCES BY FAILURE
TO REMIT TRANSIENT
OCCUPANCY TAXES ON THE
RETAIL PRICE;
- 17 (2) VIOLATION OF CALIFORNIA
BUSINESS & PROFESSIONS
CODE, § 17200;
- 18 (3) CONVERSION;
- 19 (4) VIOLATIONS OF CAL. CIV. CODE
§ 2223;
- 20 (5) VIOLATIONS OF CAL. CIV. CODE
§ 2224;
- 21 (6) IMPOSITION OF A
CONSTRUCTIVE TRUST; and
- 22 (7) DECLARATORY JUDGMENT.

Assigned For All Purposes To
Honorable Carolyn B. Kuhl

Original Complaint Filed: 12/30/04

[EXEMPT FROM FILING FEES PURSUANT
TO GOVERNMENT CODE SECTIONS
811.2 AND 6103]

1 Plaintiff City of Los Angeles, California, on behalf of itself and all others similarly
2 situated (*i.e.*, the "Plaintiff Class" or "Class" described and defined, *infra*), complains of
3 Defendants and alleges as follows:

4 **1. PARTIES**

- 5 1. Plaintiff is the City of Los Angeles, California.
- 6 2. Defendant HOTELS.COM, L.P. is a Delaware limited partnership with its
7 principal place of business in Dallas, Texas.
- 8 3. Defendant HOTELS.COM GP, LLC is a Texas corporation with its principal
9 place of business in Dallas, Texas.
- 10 4. Defendant HOTWIRE, INC. is a Delaware corporation with its principal
11 place of business in San Francisco, California.
- 12 5. Defendant CHEAP TICKETS, INC. is a Delaware corporation with its
13 principal place of business in Honolulu, Hawaii.
- 14 6. Defendant EXPEDIA, INC. is a Washington corporation with its principal
15 place of business in Bellevue, Washington.
- 16 7. Defendant INTERNETWORK PUBLISHING CORP. (d/b/a LODGING.COM),
17 is a Florida corporation with its principal place of business in Boca Raton, Florida.
- 18 8. Defendant LOWEST FARE.COM, INC. is a Delaware corporation with
19 its principal place of business in Norwalk, Connecticut.
- 20 9. Defendant ORBITZ, INC. is a Delaware corporation with its principal place of
21 business in Chicago, Illinois.
- 22 10. Defendant ORBITZ, LLC is a Delaware corporation with its principal place of
23 business in Chicago, Illinois.
- 24 11. Defendant PRICELINE.COM, INC. is a Delaware corporation with its
25 principal place of business in Norwalk, Connecticut.
- 26 12. Defendant SITE59.COM, LLC is a Delaware corporation with its
27 principal place of business in New York, New York.
- 28 13. Defendant TRAVELOCITY.COM, INC. is a Delaware corporation with its

1 principal place of business in Southlake, Texas.

2 14. Defendant TRAVELOCITY.COM, LP is a Delaware partnership
3 with its principal place of business in Fort Worth, Texas.

4 15. Defendant TRAVELWEB, LLC is a Delaware corporation with its principal
5 place of business in Dallas, Texas.

6 16. Defendant TRAVELNOW.COM, INC. is a Delaware corporation with its
7 principal place of business in Springfield, Missouri.

8 **2. JURISDICTION AND VENUE**

9 17. This action is brought to remedy violations of law in connection with
10 Defendants' misconduct in failing to remit transient occupancy taxes to Plaintiff and other
11 cities similarly situated. Defendants have failed to remit taxes owed under similar uniform
12 transient occupancy tax schemes to Plaintiff and the Class.

13 18. This Court has jurisdiction over this action pursuant to California Business and
14 Professions Code §§ 17202 and 17203 and California Code of Civil Procedure § 410.10.

15 19. All of Plaintiff's claims and the claims of other members of the Class relate to
16 activities conducted within the state of California, *i.e.*, the collection and remittance of
17 transient occupancy taxes for hotel rooms in the City of Los Angeles in the state of
18 California.

19 20. This Court has personal jurisdiction over these Defendants, including foreign
20 corporate defendants, because each Defendant has established an economic and/or
21 physical presence within the State, and, wherever domiciled, each Defendant engages in
22 the continuous and widespread solicitation of business within the state of California and
23 purposefully avails itself of the economic markets of the state of California.

24 21. Venue is proper in this Court pursuant to California Code of Civil Procedure
25 § 395.5.

26 **3. COMMON ALLEGATIONS**

27 22. Defendants contract with hotels for the right to purchase rooms at discounted,
28 "wholesale" prices. Defendants then sell the rooms to the public through their Internet sites

- 1 d) after selecting their desired hotel accommodations, customers provide
2 Defendants with their personal identification and payment information using
3 Defendants' Internet-based portal;
- 4 e) Defendants charge customers' credit cards the retail prices shown on their
5 websites for the hotel accommodations selected, plus Defendants' "tax
6 recovery charges and fees;"
- 7 f) Defendants set the cancellation policies for the customers' chosen
8 accommodations and provide toll free numbers for customers to call with
9 questions or requests to modify their reservations;
- 10 g) Defendants send customers e-mail confirmations, acknowledging the
11 customers' prepaid reservations for the right to occupy the rooms at the hotels
12 on the dates selected at the retail prices charged by Defendants;
- 13 h) Defendants transmit customers' prepaid reservations for the dates selected
14 to the hotels selected by the customers;
- 15 i) hotels confirm the customers' right to occupy the rooms identified by
16 Defendants;
- 17 j) upon customers' arrival at the hotels for check-in, the hotels confirm their
18 identification and confirm that no further payment is required for the pre-
19 arranged right to occupy the hotel rooms;
- 20 k) at checkout, customers are only charged by the hotels for any incidental
21 services provided by the hotels during their stays in the prepaid rooms;
- 22 l) at no time are the hotels, the customers, Plaintiff or members of the Class
23 aware of the retail price Defendants charged the customers for the hotel
24 accommodations;
- 25 m) Defendants remit payment to the hotel, but remit an insufficient amount of
26 transient occupancy tax calculated by taxing the negotiated wholesale price
27 rather than the retail price, as explained *supra*; and
- 28 n) the hotels report and remit the transient occupancy tax collected from

1 Defendants to the appropriate agencies or authorities for the cities where the
2 hotels are located.

3 25. At all pertinent times alleged in this Complaint, under the appropriate transient
4 occupancy tax schemes and the similarly situated Class members' transient occupancy tax
5 schemes, Defendants have always had a duty to collect and remit transient occupancy
6 taxes based on the retail price the Defendants charged their customers for use and
7 occupancy of hotel rooms.

8 26. Defendants have failed to remit the transient occupancy taxes due and
9 owing to Plaintiff and the Class.

10 **b. In The Alternative, Defendants Engaged In Common Practices And**
11 **Schemes As Agents Of The Hotels.**

12 27. Plaintiff and the Class incorporate each of the above allegations by reference
13 as if set forth herein.

14 28. By controlling all aspects of the provision of hotel accommodations as set forth
15 above, and particularly by charging and collecting amounts sufficient to satisfy transient
16 occupancy taxes on the retail price and remitting transient occupancy tax amounts to the
17 hotels, Defendants act as agents for the hotels relative to the hotels' obligations to collect
18 and remit transient occupancy taxes to Plaintiff and the Class.

19 29. As such, pursuant to California Civil Code § 2344 and otherwise, Defendants
20 have duties to the Plaintiff and the Class to remit the difference between the amounts
21 sufficient to pay transient occupancy taxes on the retail price as collected by Defendants
22 and the amount of the transient occupancy taxes actually remitted by Defendants based on
23 the wholesale price. Despite demand, Defendants have failed to pay this difference to
24 Plaintiff and the Class.

25 **c. Many Defendants Are Affiliated Through A Common Corporate Parent.**

26 30. "Expedia Group" -- Defendants Expedia, Inc. (Washington); Hotels.com;
27 L.P.; Hotels.com GP LLC; Hotwire, Inc.; and Travelnow.com are affiliated business entities,
28 related through the common corporate parent Expedia, Inc., a Delaware corporation.

1 31. "Orbitz Group" – Defendants Orbitz, Inc.; Orbitz LLC; Cheaptickets.com, Inc.;
2 and Internetnetwork Publishing Corp. d/b/a Lodging.com are affiliated business entities, related
3 through the common corporate parent Cendant Corporation, a Delaware corporation.

4 32. "Travelocity Group" – Defendants Site59.com LLC; Travelocity.com, Inc.;
5 and Travelocity.com LP are affiliated business entities, related through the common ultimate
6 corporate parent, Sabre Holdings Corporation, a Delaware corporation.

7 33. "Priceline Group" – Defendants Priceline.com, Inc.; Lowestfare.com, Inc.;
8 and Travelweb, LLC are all affiliated business entities, related through the common
9 corporate parent Priceline.Com, Inc., a Delaware corporation.

10 34. Defendant Lowestfare.com, Inc. is a wholly owned subsidiary of Priceline.com,
11 Inc. In 2002, Priceline.Com, Inc. purchased the Internet URL and Trademarks of
12 Lowestfare.com and formed a subsidiary corporation, Lowestfare.com, Inc. (Delaware).

13 35. Defendants, in public communications, in communications to Plaintiff and
14 members of the Class, and through the media, have taken the position that they are not
15 liable for transient occupancy taxes on the retail price of their sales of hotel rooms to
16 customers for several reasons. There is, therefore, an actual and live controversy between
17 the parties.

18 **d. Defendants Have Entered Into Agreements With Each Other To Market**
19 **And Sell Each Other's Hotel Room Inventory.**

20 36. Defendants, including all DOE defendants, at all times herein mentioned, were
21 acting under common plans, schemes or methodologies, and from time to time entered into
22 agreements and ventures between and among themselves for the common marketing,
23 distribution and sale or resale of hotel rooms throughout the state of California.

24 37. Defendants have shared products and customers and entered into
25 agreements and co-ventures for the sale or resale of hotel room inventory by cross-listing
26 between them available hotel rooms on their respective Internet portals. ***Pursuant to the
27 Protective Order requested by Defendants and ordered by the Court, please see the
28 sealed document attached hereto as Exhibit "A" for subparagraphs 37(a) - 37(r).***

1 38. Given the tangled web of arrangements between Defendants, any room
2 ostensibly purchased by a consumer from one of the Defendants could actually have been
3 purchased from a different defendant. ***Pursuant to the Protective Order requested by
4 Defendants and ordered by the Court, please see the sealed document attached
5 hereto as Exhibit "A" for the text which would otherwise be placed here.*** There are
6 numerous other such marketing and distribution agreements between and among
7 Defendants, and these interdependent relationships are just the tip of the iceberg.

8 **e. Defendants' Conduct Arises Out Of The Same Series Of Transactions Or**
9 **Occurrences And Involves Common Questions Of Law And Fact.**

10 39. Defendants' conduct arises out of the same series of transactions or
11 occurrences and involves common questions of law and fact. The parties are all interested
12 in the principal questions raised by this Complaint. Moreover, Defendants' affiliations with
13 each other and their agreements to market, sell and distribute each other's hotel room
14 inventory logically connect their respective conduct. As detailed above, Defendants have
15 engaged and presently engage in a common practice and scheme of selling hotel rooms
16 to customers at retail prices, but remitting taxes based on their lower, negotiated wholesale
17 prices.

18 **f. The Structuring Of Defendants' Conduct Is Such That There Is Doubt**
19 **About Which Defendant Is Liable.**

20 40. Given the interrelatedness of each Defendant's activities to those of the other
21 Defendants, and the manner in which Defendants have chosen to structure their business
22 relations, there is doubt as to which Defendant or Defendants owes redress and damages
23 to Plaintiff and the Class. Therefore, all Defendants have been joined with the intent that
24 the question as to which of the Defendants is liable, and to what extent, may be determined
25 between the parties.

26 41. Also, Defendants' memberships in Interactive Travel Service Association
27 ("ITSA") further demonstrates the interrelatedness among the Defendants and confirms the
28 common practices of Defendants in booking hotel rooms. According to ITSA's website, the

1 following Defendants are members of the organization: Hotels.com; Hotwire.com; Cheap
2 Tickets, Inc.; Expedia; Orbitz; Priceline.com; Site 59.com; and Travelocity.com. The ITSA
3 website makes numerous representations regarding the manner in which web-based hotel
4 booking companies do business, the manner in which rooms are booked, and the
5 Defendants' occupancy tax liabilities as a whole.

6 **g. Plaintiff and The Class Have Asserted A Claim, Right, Or Interest**
7 **Adverse To Defendants In The Controversy Which Is The Subject Of The**
8 **Action.**

8 42. Each Defendant has an interest adverse to Plaintiff and the Class in the
9 property and controversy that is the subject of this action. Plaintiff has alleged that each
10 Defendant has failed to remit transient occupancy taxes due and owing to Plaintiff and the
11 Class in the same manner. This common conduct raises common factual and legal issues.
12 Moreover, the claims asserted by Plaintiff and the Class against Defendants are identical,
13 and are clearly asserted against all Defendants. The parties are also directly adverse in
14 relation to the controversies about which declaratory relief is sought herein.

15 **4. CLASS ALLEGATIONS**

16 43. Plaintiff requests that the Court certify this case as a class action. Plaintiff
17 seeks to certify a class action against each Defendant under each cause of action stated
18 in this complaint. The class Plaintiff seeks to certify is as follows:

19 All California cities with a transient occupancy tax ordinance in which the
20 Defendants have sold or booked a hotel room located in that city prior to the
21 filing of the complaint in this action.

22 44. Plaintiff brings this action pursuant to California Code of Civil Procedure § 382.
23 The Plaintiff Class meets the prerequisites for the maintenance of a class action in that:

- 24 a) the Class members are so numerous that joinder of all Class members is
25 impracticable. The practices complained of herein damaged numerous cities;
26 b) there are questions of law and fact common to the Class;
27 c) the claims of the Plaintiff are typical of the claims of each member of the
28 Class. Like all other members of the Class, the Plaintiff has sustained

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damages arising from Defendants' violations of law, including (1) violations of California statutes, municipal ordinances, and hotel occupancy tax schemes; and (2) conversion. The Plaintiff and the members of the Class were and are similarly or identically harmed by the same unlawful, unfair, systematic and pervasive pattern of misconduct;

d) the Plaintiff will fairly and adequately represent and protect the interests of the Class. There are no material conflicts between the claims of the Plaintiff and the members of the Class that would make class certification inappropriate; and

e) the counsel selected to represent the Class will fairly and adequately protect the interests of the Class. Class counsel are experienced trial lawyers who have experience in complex litigation and are competent counsel for this class action litigation. Counsel for the Class will vigorously assert the claims of all members of the Class.

45. This action is properly maintained as a class action in that common questions of law and fact exist as to the members of the Class and predominate over any questions affecting only individual members, and a class action is superior to other available methods for the fair and efficient adjudication of the controversy, including consideration of:

- a) the interests of the members of the Class in individually controlling the prosecution or defense of separate actions;
- b) the extent and nature of any other proceedings concerning the controversy already commenced by or against members of the Class;
- c) the desirability or undesirability of concentrating the litigation of the claims in a single forum; and
- d) the difficulties likely to be encountered in the management of a class action.

46. The members of the Class contemplate the eventual issuance to the proposed Class members of notice setting forth the subject and nature of the instant action.

47. Among the numerous questions of law and fact common to the Class are:

- 1 a) whether Defendants were agents of the hotels under California law for
- 2 purposes of the collection and remittance of transient occupancy taxes,
- 3 and/or whether Defendants were "managing agents" under certain transient
- 4 occupancy tax ordinances of the Class members such that Defendants had
- 5 a duty under those ordinances to collect and remit transient occupancy taxes
- 6 on the retail price paid for hotel rooms;
- 7 b) whether Defendants have a legal duty to collect transient occupancy taxes
- 8 from occupants who purchase from Defendants the right to occupy hotel
- 9 rooms in the state of California and whether Defendants have a legal duty to
- 10 remit these taxes to Plaintiff and/or other Class members;
- 11 c) whether, under the appropriate transient occupancy tax ordinance, statute
- 12 and/or rule, the amount of transient occupancy tax due and owing to Plaintiff
- 13 and the Class is to be calculated as a percentage of the total amount charged
- 14 occupants for the right to occupy hotel rooms, without regard to service fees
- 15 and other amounts deducted by Defendants;
- 16 d) whether Defendants have committed acts of conversion;
- 17 e) whether Plaintiff and the Class are entitled to a declaratory judgment; and
- 18 f) whether, and in what amount, the members of the Plaintiff Class are entitled
- 19 to recover court costs, attorneys' fees, penalties and interest.

20 **5. CAUSES OF ACTION**

21 **FIRST CAUSE OF ACTION: VIOLATION OF PLAINTIFF AND CLASS TRANSIENT**
 22 **OCCUPANCY TAX ORDINANCES BY FAILURE TO REMIT TRANSIENT**
 23 **OCCUPANCY TAXES ON THE RETAIL PRICE**
 (As against all Defendants)

24 48. Plaintiff incorporates each of the above allegations by reference as if set
 25 forth herein.

26 49. Plaintiff and each Class member has a transient occupancy tax ordinance.
 27 Under those transient occupancy tax ordinances, the calculation of the amount of transient
 28 occupancy taxes due has always been a stated percentage of the retail price the customer

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operating under the transient occupancy tax ordinances of Plaintiff and the Class;

- b) In the usual case, Plaintiff and members of the Class review the hotels' records for any transient occupancy tax deficiencies and render an insufficiency assessment against specific hotels to cure any deficiencies for underpaid taxes. The hotels in turn can challenge the assessment through the administrative process. Here, however, pursuit of any administrative remedies would be futile in that neither Plaintiff nor the Class has sufficient information to make an insufficiency assessment for the additional transient occupancy taxes due, and thus the administrative process cannot commence. As alleged above, Defendants do not inform the hotels, Plaintiff or the Class members of the retail amounts they charge and collect from customers for hotel rooms;
- c) there is no internal remedy for Plaintiff or Class to employ to resolve the above-stated underlying dispute between the parties.

**SECOND CAUSE OF ACTION: VIOLATION OF CALIFORNIA
BUSINESS & PROFESSIONS CODE § 17200**
(As Against All Defendants)

54. Plaintiff incorporates each of the above allegations by reference as if set forth herein.

55. Defendants have engaged in unfair, unlawful and fraudulent business acts and practices, as follows: Defendants have had a duty to collect and remit transient occupancy taxes based on the retail price the Defendants charged their customers for hotel rooms, but Defendants have only remitted transient occupancy taxes on the wholesale price they pay to hotels for the rooms purchased by customers.

56. By engaging in the above-described acts and practices, Defendants have committed one or more acts of unfair competition within the meaning of California Business and Professions Code § 17200, *et seq.*

57. Plaintiff, individually and on behalf of the Class, seeks restitution and all

1 other relief allowed under California Business and Professions Code § 17200, *et seq.*

2 **THIRD CAUSE OF ACTION: CONVERSION**
3 (As Against All Defendants)

4 58. Plaintiff incorporates each of the above allegations by reference as if set forth
5 herein.

6 59. At all times herein mentioned, Plaintiff and the Class were, and are, the sole
7 rightful owners of the transient occupancy taxes due and owing to them.

8 60. At all times herein mentioned, Plaintiff and the Class were, and are, the sole
9 rightful owners of the difference between the amounts sufficient to pay transient occupancy
10 taxes on the retail price as collected by Defendants and the amount of the transient
11 occupancy taxes remitted by Defendants to the hotels based on the wholesale price. At all
12 times herein mentioned, this difference has remained in the possession and under the
13 control of Defendants. Defendants have taken these monies for their own use and benefit,
14 thereby permanently depriving Plaintiff and the Class of the use and benefit thereof.

15 61. As a direct and proximate result of Defendants' conduct, Plaintiff and the
16 Class have suffered, and will continue to suffer damage in an amount to be determined
17 according to proof at the time of trial.

18 **FOURTH CAUSE OF ACTION: VIOLATIONS OF CAL. CIV. CODE § 2223**
19 (As Against All Defendants)

20 62. Plaintiff incorporates each of the above allegations by reference as if set forth
21 herein.

22 63. Defendants have violated California Civil Code § 2223 by wrongfully detaining
23 funds due and owing to the Plaintiff and the Class. Section 2223 provides in pertinent part
24 that "[o]ne who wrongfully detains a thing is an involuntary trustee thereof for the benefit of
25 the owner." *Id.* At all times mentioned herein, Defendants collected from consumers
26 amounts sufficient to pay transient occupancy taxes on the retail price, but remitted
27 transient occupancy taxes to the hotels based on the wholesale price. Defendants have
28 retained for their own use and benefit the difference between the amounts sufficient to pay

1 transient occupancy taxes on the retail price as collected by them and the amount of the
2 transient occupancy taxes remitted by them to the hotels based on the wholesale price.
3 Plaintiff and the Class are entitled to all such monies because under the appropriate
4 transient occupancy tax schemes and the similarly situated Class members' transient
5 occupancy tax schemes, Defendants had a duty to collect and remit transient occupancy
6 taxes based on the retail price the Defendants charged their customers. Defendants are
7 "involuntary trustees" of the monies wrongfully detained and said monies are held for the
8 benefit of the Plaintiff and the Class.

9 64. Plaintiff and the Class seek appropriate legal or equitable remedies to prevent
10 the unjust enrichment of the Defendants by causing payment to Plaintiff and the Class of
11 all amounts wrongfully maintained in the possession of the Defendants as alleged in this
12 cause of action, with appropriate interest, costs and fees, as allowed by law.

13 **FIFTH CAUSE OF ACTION: VIOLATIONS OF CAL. CIV. CODE § 2224**

14 (As Against All Defendants)

15 65. Plaintiff incorporates each of the above allegations by reference as if set forth
16 herein.

17 66. Defendants have violated California Civil Code § 2224 by wrongfully detaining
18 funds due and owing to the Plaintiff and the Class. Section 2224 provides in pertinent part
19 that "[o]ne who gains a thing by...wrongful act, is...an involuntary trustee of the thing
20 gained, for the benefit of the person who would otherwise have had it." *Id.* At all times
21 mentioned herein, Defendants collected from consumers amounts sufficient to pay transient
22 occupancy taxes on the retail price, but remitted transient occupancy taxes to the hotels
23 based on the wholesale price. Defendants have retained for their own use and benefit the
24 difference between the amounts sufficient to pay transient occupancy taxes on the retail
25 price as collected by them and the amount of the transient occupancy taxes remitted by
26 them to the hotels based on the wholesale price. Plaintiff and the Class are entitled to all
27 such monies because under the appropriate transient occupancy tax schemes and the
28 similarly situated Class members' transient occupancy tax schemes, Defendants had a duty

1 to collect and remit transient occupancy taxes based on the retail price the Defendants
2 charged its customers. Defendants are "involuntary trustees" of the monies wrongfully
3 detained and said monies are held for the benefit of the Plaintiff and the Class.

4 67. Plaintiff and the Class seek appropriate legal or equitable remedies to prevent
5 the unjust enrichment of the Defendants by causing payment to Plaintiff and the Class of
6 all amounts wrongfully maintained in the possession of the Defendants as alleged in this
7 cause of action, with appropriate interest, costs and fees, as allowed by law.

8
9 **SIXTH CAUSE OF ACTION: IMPOSITION OF A CONSTRUCTIVE TRUST**
(As Against All Defendants)

10 68. Plaintiff incorporates each of the above allegations by reference as if set forth
11 herein.

12 69. At all times herein mentioned, funds belonging to Plaintiff and the Class were
13 in the possession and under the control of Defendants, *to wit*—the difference between the
14 amounts sufficient to pay transient occupancy taxes on the retail price as collected by
15 Defendants and the amount of the transient occupancy taxes remitted by Defendants to the
16 hotels based on the wholesale price. Defendants have taken this property for their own use
17 and benefit, thereby depriving Plaintiff and the Class of the use and benefit thereof. Plaintiff
18 and the Class have been damaged by their failure to receive the funds.

19 70. By virtue of their actions, Defendants hold these funds as constructive trustees
20 for the benefit of Plaintiff and the Class.

21 71. Plaintiff and the Class seek appropriate legal or equitable remedies to prevent
22 the unjust enrichment of the Defendants by causing payment to Plaintiff and the Class of
23 all amounts wrongfully maintained in the possession of the Defendants as alleged in this
24 cause of action, with appropriate interest, costs and fees, as allowed by law.

25 **SEVENTH CAUSE OF ACTION: DECLARATORY JUDGMENT**
26 (As Against All Defendants)

27 72. Plaintiff incorporates each of the above allegations by reference as if set forth
28 herein.

1 73. Pursuant to California Code of Civil Procedure § 1060, Plaintiff seeks a
2 declaration of rights and/or duties with respect to all Defendants. An actual case or
3 controversy exists between Plaintiff and the Class and these Defendants as to:

4 a) whether Defendants have a duty to collect and remit transient occupancy
5 taxes based on the retail price the Defendants charge their customers for use
6 and occupancy of hotel rooms;

7 b) whether Defendants have been agents of the hotels under California law for
8 purposes of the collection and remittance of transient occupancy taxes such
9 that Defendants have had a duty under those ordinances to collect and remit
10 transient occupancy taxes on the retail price paid for hotel rooms;

11 c) whether Defendants are "managing agents" under certain transient
12 occupancy tax ordinances of the Class members such that Defendants have
13 had a duty under those ordinances to collect and remit transient occupancy
14 taxes on the retail price paid for hotel rooms;

15 d) whether Defendants have had a legal duty to collect transient occupancy
16 taxes from occupants who purchase from Defendants the right to occupy
17 hotel rooms in the state of California and whether Defendants have had a
18 legal duty to remit these taxes to Plaintiff and/or other Class members;

19 e) whether, under the appropriate transient occupancy tax ordinance, statute
20 and/or rule, the amount of transient occupancy tax due and owing to Plaintiff
21 and the Class is to be calculated as a percentage of the retail room rate plus
22 fees charged occupants by Defendants for the right to occupy hotel rooms.

23 **6. DAMAGES**

24 74. Plaintiff and the Class request that the Court order Defendants to provide
25 restitution to Plaintiff and the Class, fashioning a legal or equitable remedy, to prevent the
26 unjust enrichment of the Defendants by causing payment to the Plaintiff and the Class, who
27 are the rightful owners of the unremitted taxes in Defendants' possession, at the legal rate
28 and/or as established by Plaintiff's and each Class member's respective transient

1 occupancy tax ordinance, statute, or other rule.

2 75. Plaintiff requests on behalf of itself and the Class that Plaintiff and the Class
3 recover all penalties, interest, and reasonable and necessary attorneys' fees they are
4 entitled to recover under the law.

5 76. Plaintiff requests on behalf of itself and the Class pre-judgment and post-
6 judgment interest at the maximum rate allowed by law.

7 **7. PRAYER FOR RELIEF**

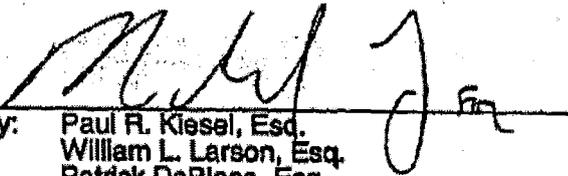
8 WHEREFORE, PREMISES CONSIDERED, Plaintiff and the Class pray for the
9 following judgment in their favor against Defendants:

- 10 a) as to all causes of action, an order certifying this case as a class action
11 against Defendants and appointing Plaintiff and its counsel as Representative
12 of the Plaintiff Class;
- 13 b) for judgment against Defendants and in favor of Plaintiff and the Class on all
14 causes of action asserted in this Complaint;
- 15 c) as to the first and third causes of action, compensatory damages as allowed
16 by law;
- 17 d) as to the third cause of action, punitive damages as allowed by law;
- 18 e) as to the second cause of action, restitution and injunctive relief as allowed
19 by law;
- 20 f) as to the fourth, fifth and sixth causes of action, for a legal or equitable
21 remedy to prevent the unjust enrichment of the Defendants by causing
22 payment to the Plaintiff and the Class, who are the rightful owners of the
23 unremitted taxes in Defendants' possession, at the legal rate and/or as
24 established by Plaintiff's and each Class member's transient occupancy tax
25 ordinance, statute, or other rule;
- 26 g) as to the seventh cause of action, for a declaration and determination by the
27 Court of the rights, duties and remedies for the Defendants' failure to remit
28 sufficient amounts of transient occupancy taxes as alleged in this Complaint;

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- h) for costs of suit incurred herein to the extent allowed by law;
- i) for pre-judgment and post-judgment interest to the extent allowed by law;
- j) for penalties as allowed by law; and
- k) for such other and further relief as this Court may deem just and proper.

DATED: March 2, 2007


By: _____

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Attorneys for the City of Los Angeles and the putative class.

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PROOF OF ELECTRONIC SERVICE

I, CESAR R. GARCIA, declare as follows:

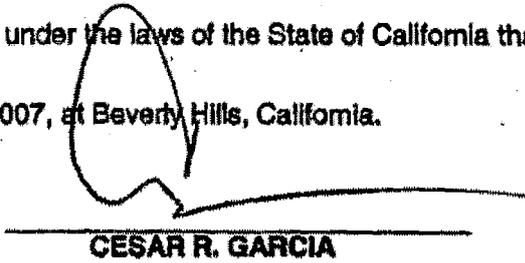
1. I am employed in the County of Los Angeles and am an employee at the law firm of Kiesel, Boucher & Larson LLP, located at 8648 Wilshire Boulevard, Beverly Hills, California 90211-2910.

2. I am over the age of 18 and not a party to the within action.

3. On March 2, 2007, I served the following documents: **THIRD AMENDED CLASS ACTION COMPLAINT (without Exhibit A)** via electronic filing in accordance with the Court's ruling governing the City of Los Angeles, California, et al. v. Hotels Com, L.P., et al. (and Related Cases) matters requiring all documents to be served upon interested parties via Lexis eService System.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this 2nd day of March, 2007, at Beverly Hills, California.



CESAR R. GARCIA

1 **PROOF OF SERVICE**

2 **STATE OF CALIFORNIA**) ss:
3 **COUNTY OF LOS ANGELES** }

4 I am employed in the City and County of Los Angeles, State of California. I am
5 over the age of 18 and not a party to the within action. My business address is 8648
6 Wilshire Boulevard, Beverly Hills, California 90211-2910.

7 On March 2, 2007, I served the foregoing document(s) described as: **THIRD**
8 **AMENDED CLASS ACTION COMPLAINT (WITH EXHIBIT A)** on the interested parties
9 by placing () the original (X) a true and correct copy thereof in a sealed envelope
10 addressed as follows:

11 **PLEASE SEE ATTACHED MAILING LIST**

12

13 **VIA OVERNIGHT MAIL:**

14 VIA : By delivering such documents to an overnight mail service or an
15 authorized courier in an envelope or package designated by the express
16 service courier addressed to the person(s) on whom it is to be served.

17

18 **VIA U.S. MAIL:**

19 I am readily familiar with the firm's practice for collection and processing of
20 correspondence for mailing. Under that practice such envelope(s) would be
21 deposited with the U.S. postal service with postage thereon fully prepaid, at
22 Beverly Hills, California.

23

24 **VIA PERSONAL DELIVERY:**

25 I personally delivered such envelope(s) by hand to the offices of the
26 addressee pursuant to CCP § 1011.

27

28 **VIA ELECTRONIC MAIL:**

I personally served upon all parties the above-reference documents via
electronic mail to the e-mail addresses for those individuals noted to have e-
mail addresses on the attached Proof of Service List.

VIA FACSIMILE:

The interested parties receiving the above-referenced document via
facsimile have agreed to accept same via facsimile transmission, and the
facsimile transmission report indicated that the transmission was complete
and without error. A copy of that report, which was properly issued by the
transmitting machine, is attached hereto.

STATE:

I declare under penalty of perjury under the laws of the State of California
that the foregoing is true and correct.

FEDERAL:

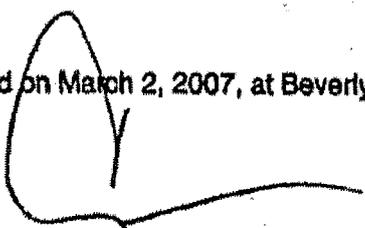
I declare that I am employed in the office of a member of the bar of this
court at whose direction the service was made.

I declare under penalty of perjury under the laws of the state of California that

Proof of Service

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the above is true and correct and was executed on March 2, 2007, at Beverly Hills, California.



CESAR R. GARCIA

Proof of Service

1 City of Los Angeles v. Hotels.Com, LP (and Related Matters)
2 Los Angeles Superior Court, Central Civil West
Lead Case Number: BC326693

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Proof of Service

1 City of Los Angeles v. Hotels.Com, LP (and Related Matters)
2 Los Angeles Superior Court, Central Civil West
3 Lead Case Number: BC326693

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Proof of Service

ARTICLE 1.7 TRANSIENT OCCUPANCY TAX

(Added by Ord. No. 127,757, Eff. 7/31/64, Operative 8/1/64.)

Section

- 21.7.1 Title.
- 21.7.2 Definitions.
- 21.7.3 Tax Imposed.
- 21.7.4 Exemptions.
- 21.7.5 Operator's Duties.
- 21.7.6 Registration.
- 21.7.7 Reporting and Remitting.
- 21.7.8 Penalties and Interest.
- 21.7.9 Additional Powers and Duties of Director of Finance, Etc.
- 21.7.10 Assessment – Administrative Remedy.
- 21.7.11 Records.
- 21.7.12 Refunds.
- 21.7.13 Actions to Collect.

SEC. 21.7.1. TITLE.

This article shall be known as the Uniform Transient Occupancy Tax Ordinance of The City of Los Angeles.

SEC. 21.7.2. DEFINITIONS.

Except where the context otherwise requires, the definitions given in this section govern the construction of this article.

(a) **Person.** "Person" means any individual, firm, partnership, joint venture, association, social club, fraternal organization, joint stock company, corporation, estate, trust, business trust, receiver, trustee, syndicate or any other group or combination acting as a unit.

(b) **Hotel.** "Hotel" means any structure, or any portion of any structure, which is occupied or intended or designed for occupancy by transients for dwelling, lodging or sleeping purposes, and

includes any hotel, inn, tourist home or house, motel, studio, hotel, bachelor hotel, lodging house, rooming house, apartment house, dormitory, public or private club, or other similar structure or portion thereof, and shall further include any trailer court, camp, park or lot where trailer spaces, or combinations of such spaces and trailers, including mobile homes, are occupied or intended or designed for occupancy by transients for dwelling, lodging or sleeping purposes.

(c) **Occupancy.** "Occupancy" means the use or possession, or the right to the use or possession of any room or rooms or space or portion thereof, in any hotel for dwelling, lodging or sleeping purposes. The use or possession or right to use or possess any room or any suite of connecting rooms as office space, banquet or private dining rooms, or exhibit, sample or display space shall not be considered "occupancy" within the meaning of this definition unless the person exercising occupancy uses or possesses, or has the right to use or possess all or any portion of such room or suite of rooms for dwelling, lodging or sleeping purposes.

(d) **Transient.** (Amended by Ord. No. 164,961, Eff. 7/24/89, Oper. 8/1/89.) "Transient" means:

1. Any person, other than an individual, who exercises occupancy or is entitled to occupancy by reason of concession, permit, right of access, license or other agreement, for any period of time, or

2. Any individual who personally exercises occupancy or is entitled to occupancy by reason of concession, permit, right of access, license or other agreement, for a period of 30 consecutive calendar days or less, counting portions of calendar days as full days. Any such individual so occupying space in a hotel shall be deemed to be a transient until the period of 30 days has expired unless there is an agreement in writing between the operator and the occupant providing for a longer period of occupancy.

Nothing in this definition or in this article shall be construed as prohibiting the operator of a hotel from refunding or making an allowance of credit to a person who has paid tax as required by this article where it is established that the person was not a "transient" as defined in this section or was exempt from the tax for any other reason, or had for any reason overpaid the tax.

(e) **Rent.** "Rent" means the consideration charged, whether or not received, for the occupancy of space in a hotel valued in money, whether to be received in money, goods, labor or otherwise, including all receipts, cash, credits and property and services of any kind or nature, without any deduction therefrom whatsoever. Nothing in this definition shall be construed to mean that rent is charged directly or indirectly for the occupancy of space in a hotel when that space is provided to the occupant as a compliment from the operator and where no consideration is charged to or received from any other person.

(f) **Operator.** (Amended by Ord. No. 176,005, Eff. 7/7/04.) "Operator" means the person who is either the proprietor of the hotel or any other person who has the right to rent rooms within the hotel, whether in the capacity of owner, lessee, mortgagee in possession, licensee or any other capacity. The owner or proprietor who is primarily responsible for operation of the hotel shall be deemed to be the principal operator. If the principal operator performs or assigns its functions, in whole or in part, through a managing agent, a booking agent, a room seller or room reseller, or any other agent or contractee, including but not limited to on-line room sellers, on-line room resellers, and on-line travel agents, of any type or character other than an employee, those persons shall be deemed to be secondary operators.

A secondary operator shall be deemed an operator for purposes of this article and shall have the same duties and liabilities as the principal operator, including but not limited to the collection and remittance

of the full amount of the tax owed under the provisions of this article to the City. A secondary operator may satisfy its obligations under the provisions of this article by submitting the full amount of tax due under this article, with credit for any taxes remitted to any other operator, either directly to the Director of Finance or through the principal operator. The principal operator may satisfy any potential liability it may have for taxes owed by a secondary operator by entering into a legally binding agreement with that secondary operator to remit the portion of the tax owed by the secondary operator directly to the City. Upon request, the principal operator shall provide the Director of Finance with copies of any such agreements.

Compliance with the provisions of this article by either the principal operator or the secondary operator shall be deemed compliance by both and no provision of this article shall be deemed to require the payment and/or remittance of any amount other than the full amount of the tax owed by the transient.

SEC. 21.7.3. TAX IMPOSED.

For the privilege of occupancy in any hotel, each transient is subject to and shall pay a tax in the amount of four percent (4%) of the rent charged by the operator on or after August 1, 1964, to and including October 31, 1967; and at the rate of five percent (5%) from that date to and including February 28, 1971; and at the rate of six percent (6%) from that date to and including June 30, 1978; and at the rate of seven and one-half percent (7.5%) from that date to and including June 30, 1983; and at the rate of ten percent (10%) from that date to and including December 31, 1985; and at the rate of eleven percent (11%) from that date to and including December 31, 1987; and at the rate of twelve percent (12%) from that date to and including August 31, 1990; and at the rate of twelve and one-half percent (12.5%) from that date to and including July 31, 1993; and at the rate of fourteen percent (14%) thereafter. (Amended by Ord. No. 168,850, Eff. 8/1/93.) Said tax constitutes a debt owed by the transient to the City which is extinguished by the payment to the operator or to the City. The transient shall pay the tax to the operator of the hotel at the time the rent is paid. If the rent is paid in installments, or if an amount paid is less than the full amount of rent and tax accrued at the time of payment, a proportionate share of the tax shall be deemed to have been paid with each such payment or installment. The unpaid tax shall be due upon the transient's ceasing to occupy space in the hotel. If for any reason the tax is not paid to the operator of the hotel, the Director of Finance may require that such tax shall be paid directly to the City.

SEC. 21.7.4. EXEMPTIONS.

(Amended by Ord. No. 159,773, Eff. 5/25/85.)

No tax shall be imposed upon:

- (a) Any person as to whom, or any occupancy as to which, it is beyond the power of the City to impose the tax herein provided;
- (b) Any Federal or State of California officer or employee, including employees of federal credit unions, who provides proof that he or she is on official Federal or State business. (Amended by Ord. No. 172,773, Eff. 9/25/99.)
- (c) Any officer or employee of a foreign government who is exempt by express provision of federal law or international treaty;
- (d) Any person to whom rent is charged at the rate of \$2.00 per day or less;

(e) Any person as to whom, or any occupancy as to which, rent is paid from funds administered by the Emergency Food and Shelter National Board Program.

No exemption shall be granted under Subsections (a), (b) or (c) except upon a claim therefor made at the time rent is collected and under penalty of perjury upon a form prescribed by the Director of Finance.

It shall be the duty of an operator to keep and maintain for a period of four (4) years written documentation in support of each exemption granted under Subsection (e).

SEC. 21.7.5. OPERATOR'S DUTIES.

Each operator shall collect the tax imposed by this article to the same extent and at the same time as the rent is collected from every transient. The amount of tax shall be separately stated from the amount of the rent charged and each transient shall receive a receipt for payment from the operator. No operator of a hotel shall advertise or state in any manner, whether directly or indirectly, that the tax or any part thereof will be assumed or absorbed by the operator, or that it will not be added to the rent, or that, if added, any part will be refunded except in the manner herein provided.

SEC. 21.7.6. REGISTRATION.

(a) Within 30 days after the operative date of this article, or within 30 days after commencing business, whichever is later, each operator of any hotel renting occupancy to transients shall register said hotel with the Director of Finance and obtain from him a "Transient Occupancy Registration Certificate" to be at all times posted in a conspicuous place on the premises. Said certificate shall, among other things, state the following:

1. The name of the operator;
2. The address of the hotel;
3. The date upon which the certificate was issued;

4. "This Transient Occupancy Registration Certificate signifies that the person named on the face hereof has fulfilled the requirements of the Uniform Transient Occupancy Tax Ordinance by registering with the Director of Finance for the purpose of collecting from transients the Transient Occupancy Tax and remitting said tax to the Director of Finance. This certificate does not authorize any person to conduct any unlawful business or to conduct any lawful business in an unlawful manner, nor to operate a hotel without strictly complying with all local applicable laws, including but not limited to those requiring a permit from any board, commission, department or office of this City. This certificate does not constitute a permit."

SEC. 21.7.7. REPORTING AND REMITTING.

(Amended by Ord. No. 176,003, Eff. 7/7/04, Oper. 1/1/05.)

Each operator shall, on or before the 25th day of each calendar month, make a statement to the Director of Finance of the total rents charged and received, and the amount of tax collected for transient occupancies during the preceding calendar month. At the time the statement is filed, the full amount of the tax collected and tax not collected but required to be collected, shall be remitted to the Director of

Finance. Except as provided in Sec. 21.7.8, an operator shall not be required to remit to the Director of Finance any amount of tax not collected and not required to be collected from a transient. All taxes collected and required to be collected by operators pursuant to this article shall be held in trust for the account of the City until payment thereof is made to the City. The full amount of tax due, whether collected or owed but not collected, under this Article shall be deemed a debt owed to the City by the operator and shall be discharged only upon payment to the City.

Statements and payments are due immediately upon cessation of business for any reason, at which time the operator shall furnish the Director of Finance with the name and address of the successor operator.

Notwithstanding the foregoing, the amount of taxes required to be remitted by an operator to the City pursuant to this Section 21.7.7 shall be automatically offset by the City in an amount equal to special taxes levied, collected and satisfied, by a City Community Tax District, formed pursuant to Division 6, Chapter 10 of the Los Angeles Administrative Code, against the operator's property during the preceding calendar month. The sum of the operator's monthly transient occupancy tax remittance to the City and the operator's monthly special tax payment shall equal the amount of transient occupancy tax required to be collected pursuant to this Article. The City may request from the applicable operator or the legislative body of the Community Taxing District documentation or other information necessary to substantiate the special tax payment. (Added by Ord. No. 177,052, Eff. 11/20/05.)

The automatic tax offset of the transient occupancy taxes due pursuant to this Article shall not exceed the rate of transient occupancy tax levied by the City, and no tax offset shall be provided for the amount of special taxes paid by an operator in excess of the rate of transient occupancy tax levied by the City. (Added by Ord. No. 177,052, Eff. 11/20/05.)

SEC. 21.7.8. PENALTIES AND INTEREST.

(a) Taxes collected by an operator which are not remitted to the Director of Finance on or before the due dates fixed in Sec. 21.7.7, or fixed by the Director of Finance as provided therein, are delinquent.

(b) Interest and penalties for delinquency in remittance of any tax collected or required to be collected, or any deficiency determination, shall attach and be paid by the operator at the rates and in the same manner as is provided in Section 21.05 of this Chapter for delinquency in the payment of Business Tax, except that a month shall commence on the 26th day of each calendar month and terminate on the 25th day of the succeeding calendar month. (Amended by Ord. No. 176,471, Eff. 3/22/05, Oper. 1/1/05.)

(c) The Director of Finance shall have power to impose additional penalties upon an operator for fraud and negligence in reporting and remitting in the same manner and at the same rates as are provided in Sec. 21.05 of this chapter for such penalties upon persons required to pay Business Tax.

(d) For collection purposes only, every penalty imposed and such interest as accrues under the provisions of this section shall become a part of the tax herein required to be remitted. (Amended by Ord. No. 174,085, Eff. 8/19/01.)

SEC. 21.7.9. ADDITIONAL POWERS AND DUTIES OF DIRECTOR OF FINANCE, ETC.

(a) The Director of Finance shall have the power and duty, and is hereby directed to enforce each

and all of the provisions of this article.

(b) In administering and enforcing the provisions of this article, the Director of Finance shall have the same powers and duties with respect to collecting the tax provided herein as he has under Sec. 21.15 of this chapter with respect to collecting the Business Tax.

(c) The provisions of Sections 21.17, 21.20 and 21.21 of this chapter shall apply to the administration and collection of the tax imposed under the provisions of this article in the same manner as they apply to the administration and collection of the Business Tax.

SEC. 21.7.10. ASSESSMENT - ADMINISTRATIVE REMEDY.

The Director of Finance may make an assessment for taxes not remitted by an operator for any reason specified in Sec. 21.16 of this chapter for making an assessment for unpaid Business Tax. The manner of making and providing notice of such assessment; the right to a hearing and the conduct of such hearing; the preparation and service of findings; filing exceptions; and passing upon exceptions shall be the same as provided in Sec. 21.16 of this chapter.

SEC. 21.7.11. RECORDS.

(Amended by Ord. No. 173, 587, Eff. 12/7/00.)

It shall be the duty of every operator liable for the collection and payment to the City of any tax imposed by this article to keep and preserve, for a period of three years, all records as may be necessary to determine the amount of such tax as he may have been liable for the collection of and payment to the City, which records the Office of Finance shall have the right to inspect at all reasonable times.

SEC. 21.7.12. REFUNDS.

(a) Whenever the amount of any tax has been overpaid or paid more than once or has been erroneously or illegally collected or received by the City under this article it may be refunded as provided in this section. Except as otherwise provided in this section, refunds of overpaid taxes shall be made in the same manner as is provided in Sec. 21.07 of this chapter for refunds of overpayments in Business Taxes.

(b) An operator may claim a refund or take as credit against taxes collected and remitted the amount overpaid, paid more than once or erroneously or illegally collected or received when it is established in a manner prescribed by the Director of Finance that the person from whom the tax has been collected was not a transient; provided, however, that neither a refund nor a credit shall be allowed unless the amount of the tax so collected has either been refunded to the transient or credited to rent subsequently payable by the transient to the operator.

(c) A transient may obtain a refund of taxes overpaid or paid more than once or erroneously or illegally collected or received by the City by filing a claim in the manner provided in Sec. 21.07 of this chapter, but only when the tax was paid by the transient directly to the Director of Finance, or when the transient having paid the tax to the operator, establishes to the satisfaction of the Director of Finance that the transient has been unable to obtain a refund from the operator who collected the tax.

(d) No refund shall be paid under the provisions of this section unless the claimant establishes his right thereto by written records showing entitlement thereto.

SEC. 21.7.13. ACTIONS TO COLLECT.

Any tax required to be paid by any transient under the provisions of this article shall be deemed a debt owed by the transient to the City. Any such tax collected by an operator which has not been paid to the City shall be deemed a debt owed by the operator to the City. Any person owing money to the City under the provisions of this article shall be liable to an action brought in the name of the City for the recovery of such amount. Any operator who undertakes legal action to recover unpaid rent due from a transient may include the amount of tax due from the transient in the amount sought to be recovered.

NORTH CAROLINA

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

WAKE COUNTY

NO. 06-3 P 3:58

06 CVS _____

WAKE COUNTY

WAKE COUNTY, CSC

Plaintiff,

v.

HOTELS.COM, LP; HOTWIRE, INC.;
TRIP NETWORK, INC. (d/b/a CHEAP
TICKETS.COM); TRAVELPORT,
INC. (f/k/a CENDANT TRAVEL
DISTRIBUTION SERVICES GROUP,
INC.); EXPEDIA, INC.,
INTERNETWORK PUBLISHING
CORP. (D/B/A LODGING.COM);
LOWESTFARE.COM,
INCORPORATED; MAUFIN-TOUR
HOLDING, LLC; ORBITZ, LLC;
PRICELINE.COM INCORPORATED;
SITES9.COM, LLC;
TRAVELCITY.COM, LP;
TRAVELWEB LLC; AND
TRAVELNOW.COM, INC.,

Defendants.

VERIFIED COMPLAINT AND ACTION
FOR DECLARATORY JUDGMENT

Plaintiff, Wake County, North Carolina (hereinafter "County" or "Wake
County"), by and through its undersigned attorneys, and on information and belief,
alleges and states as follows:

NATURE OF ACTION

This is an action to collect taxes and penalties due Wake County as the result of
gross receipts realized by Defendants and derived from the rental of rooms, lodging and

56. As a direct and proximate result of the conduct of the Defendants, the County has suffered and will continue to suffer damages in an amount in excess of \$10,000.00, the exact amount to be determined at trial.

57. At all times alleged herein, Defendants acted willfully, wantonly, and with conscious disregard for the rights of the County, such that Wake County request that the trier of fact, award the County additional damages in an amount sufficient to punish Defendants for their conduct.

COUNT IV

Imposition of Constructive Trust

58. Wake County alleges the previous allegations as if fully set forth herein.

59. At all times herein mentioned, the County's Tax monies were in the possession and under the control of Defendants. Defendants have taken this money for their own use and benefit thereby depriving the County of the use and benefit thereof.

60. The conduct of Defendants has deprived the County of a beneficial interest in the tax monies,

61. By virtue of their actions, Defendants hold these funds as constructive trustees for the benefit of the County. Wake County requests that Defendants be directed to immediately give possession of the funds to Wake County.

62. As a direct and proximate cause of Defendants' conduct, the County has suffered and will continue to suffer damages in an amount in excess of \$10,000.00, the exact amount to be determined at trial.

COUNT V

Demand for Accounting

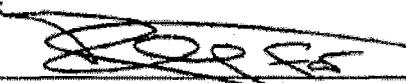
63. Wake County alleges the previous allegations as if fully set forth herein.

14. For such other and further relief as the Court may deem just and proper.

Respectfully submitted this the 3rd day of November, 2006.

SHANAHAN LAW GROUP

BY:



Kieran J. Shanahan, NCSB # 13329
Reef C. Ivey, II, NCSB #05921
207 Fayetteville Street Mall
Raleigh, North Carolina 27601
(919) 856-9494
(919) 856-9499

VERIFICATION

Michael R. Ferrell, being first duly sworn, deposes and says that he is an official of the Plaintiff and executes this Verification on behalf of the Plaintiff. He has read the contents of the foregoing Complaint, knows the contents thereof and that the same are true of his own knowledge, except as to matters stated upon information and belief, and as to those matters, he believes them to be true.

Michael R. Ferrell
Plaintiff

SWORN TO AND SUBSCRIBED BEFORE ME

This the 3rd day of November, 2006.

Cherie W. Lee
Notary Public (Cherie W. Lee)

My Commission Expires:

3/5/10

EXP 0000654

**Declarations
Travel Agents And Tour Operators
Professional Liability Insurance Policy**



This insurance is provided by:

Zurich American Insurance Company

Policy Number: EOL 5329302-02

Item 1. Named Insured: Expedia, Inc., et al.
Address: 13810 SE Eastgate Way
Suite 400
Bellevue, WA 98005

The Named Insured is: Individual Partnership Joint Venture Corporation Organization LLC

Item 2. Policy Period: From: 10/01/2005 To: 10/01/2006
12:01 A.M. Standard Time at the address shown in Item 1.

Item 3. Coverages:		Limits of Liability	Deductible
A. Bodily Injury and Property Damage (except Automobile)	Each Occurrence	\$5,000,000	\$50,000
B. Bodily Injury and Property Damage Automobile (except owned automobile)	Each Occurrence	\$5,000,000	\$50,000
C. Professional Liability	Each Negligent Act or Negligent Omission	\$5,000,000	\$50,000
D. Personal Injury	Each Offense	\$5,000,000	\$50,000
General Aggregate Limit		\$5,000,000	

Item 4. Fire Legal Liability (if applicable) Any One Fire \$50,000 \$50,000

Item 5. Premium: \$355,754.00

Item 6. Endorsements Effective At Inception: See Attached Schedule of Forms and Endorsements

Broker: Aon Financial Services Group, Tech & Prof Risks,
Aon Center
200 East Randolph, Floor 11
Chicago, IL 60601

Signed by: Maureen Kaye
Authorized Representative

Date: November 15, 2005

U-TAP-119-A CW (08/04)
Page 1 of 1



Schedule of Forms and Endorsements

Policy No.	Eff. Date of Pol.	Exp. Date of Pol.	Eff. Date of End.
EOL 5329302-02	10/1/05	10/1/06	10/1/05

Named Insured:

Expedia, Inc., et al.

The following Forms and Endorsements are included on the policy:

<u>Form No.</u>	<u>Edition</u>	<u>Title</u>
U-TAP-120-A-CW	10/04	Travel Agents and Tour Operators Professional Liability Insurance
U-TAP-113-A CW	08/04	Named Insured
U-TAP-116-A CW	08/04	Schedule of Locations
U-TAP-101-A CW	08/04	Advertising Injury
U-TAP-107-A-CW	08/04	Defense Deductible
U-TAP-108-A CW	08/04	Extended General Liability
U-GU-692-A CW	08/04	Disclosure of Premium
U-TAP-187-A WA	10/04	Washington Amendatory



Named Insured

Policy No.	Eff. Date of Pol.	Exp. Date of Pol.	Eff. Date of End.
EOL 5329302-02	10/1/05	10/1/06	10/1/05

Named Insured and Address:

Expedia, Inc., et al.
13810 SE Eastgate Way
Suite 400
Bellevue, WA 98005

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

This endorsement modifies insurance provided under the:

Travel Agents and Tour Operators Professional Liability Policy

It is hereby understood and agreed that Item I of the Declarations, Named Insured, is amended to include the following:

Item I: Named Insured

Activity Information Center, Inc.
d/b/a: Activity World
C.A. ID SA (Anyway.com)
Classic Custom Vacations, LLC
d/b/a: Classic Hawaii
d/b/a: Classic America
d/b/a: Classic Caribbean
d/b/a: Classic Mexico
d/b/a: Classic Europe
d/b/a: Hyatt Vacations
d/b/a: Las Vegas Reservations, Inc.
d/b/a: Professional Travel Services, Inc.
e-Long, Inc. (plus subs)
Expedia, Inc.

ALL OTHER TERMS AND CONDITIONS OF THIS POLICY REMAIN UNCHANGED.



Named Insured

Policy No.	Eff. Date of Pol.	Exp. Date of Pol.	Eff. Date of End.
EOL 5329302-02	10/1/05	10/1/06	10/1/05

Named Insured and Address:

Expedia, Inc., et al.
13810 SE Eastgate Way
Suite 400
Bellevue, WA 98005

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

This endorsement modifies insurance provided under the:

Travel Agents and Tour Operators Professional Liability Policy

It is hereby understood and agreed that Item 1 of the Declarations, **Named Insured**, is amended to include the following:

Item 1: Named Insured

Expedia, Inc. (New Expedia, Inc. post spin)
Expedia Australia Pty, Ltd.
Expedia Canada Corp.
Expedia.com GmbH
Expedia.com Limited
Expedia Corporate Travel, LLC
Expedia Corporate Travel UK Ltd.
Expedia Corporate Travel Europe S.A.
Expedia Corporate Travel France S.A.S.
Expedia Finland OY
Expedia France S.A.S.
Expedia Holdings KK
Expedia Italy SRL
Expedia Mexico S.R.L. de C.V.

ALL OTHER TERMS AND CONDITIONS OF THIS POLICY REMAIN UNCHANGED.

U-TAP-113-A CW (08/04)

Page 2 of 4

CONFIDENTIAL

EXP 0001996



Named Insured

Policy No.	Eff. Date of Pol.	Exp. Date of Pol.	Eff. Date of End.
EOL 5329302-02	10/1/05	10/1/06	10/1/05

Named Insured and Address:

Expedia, Inc., et al.
13810 SE Eastgate Way
Suite 400
Bellevue, WA 98005

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

This endorsement modifies insurance provided under the:

Travel Agents and Tour Operators Professional Liability Policy

It is hereby understood and agreed that Item 1 of the Declarations, **Named Insured**, is amended to include the following:

Item 1: Named Insured

Expedia.nl BV
Expedia S.A.
Expedia Corporate Travel Belgium S.A.
Expedia Services S.A.S.
Expedia Spain, S.L.
Expedia Asia Pacific Limited (after spin-off, entity will be transferred from Hotels.com to Expedia)
GL-Expedia S.A.S.(Joint Venture, 49% ownership)
Greenhouse Media LLC
HRN France SAS
Newtrade Technology Corp.
Premier Getaways, Inc.
Travelscape, LLC
d/b/a: Hyatt Vacations
Websced, LLC

ALL OTHER TERMS AND CONDITIONS OF THIS POLICY REMAIN UNCHANGED.



Named Insured

Policy No.	Eff. Date of Pol.	Exp. Date of Pol.	Eff. Date of End.
EOL 5329302-02	10/1/05	10/1/06	10/1/05

Named Insured and Address:

Expedia, Inc., et al.
13810 SE Eastgate Way
Suite 400
Bellevue, WA 98005

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

This endorsement modifies insurance provided under the:

Travel Agents and Tour Operators Professional Liability Policy

It is hereby understood and agreed that Item 1 of the Declarations, **Named Insured**, is amended to include the following:

Item 1: Named Insured

World Travel Management
WWTE, Inc.
d/b/a: World Wide Travel Exchange (WWTE)
IAC Holdings S.A.S.
IAC Global LLC
IACT US, Inc.
IACT Asia Pacific Ltd.
USA Media Corp.
USA Media, LLC
XEI Sub 1, Inc.
XEI Sub 2, Inc.
XEI Sub 3, Inc.

ALL OTHER TERMS AND CONDITIONS OF THIS POLICY REMAIN UNCHANGED.

U-TAP-113-A CW (08/04)

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CONFIDENTIAL

EXP 0001998

APPENDIX - 70



Schedule of Locations

Policy No.	Eff. Date of Pol.	Exp. Date of Pol.	Eff. Date of End.
EOL 5329302-02	10/1/05	10/1/06	10/1/05

Named Insured and Address:

Expedia, Inc., et al.
13810 SE Eastgate Way
Suite 400
Bellevue, WA 98005

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

This endorsement modifies insurance provided under the:

Travel Agents and Tour Operators Professional Liability Policy

Schedule of Locations:

1. All of the named insured's Travel Agency and/or Tour Operator locations.

ALL OTHER TERMS AND CONDITIONS OF THIS POLICY REMAIN UNCHANGED.

U-TAP-116-A CW (08/04)

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EXP 0001999

APPENDIX - 71

Advertising Injury Liability Coverage Endorsement



Policy No.	Eff. Date of Pol.	Exp. Date of Pol.	Eff. Date of End.
EOL 5329302-02	10/1/03	10/1/06	10/1/05

Named Insured and Address:

Expedia, Inc., et al.
13810 SE Eastgate Way
Suite 400
Bellevue, WA 98005

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

This endorsement modifies insurance provided under the:

Travel Agents and Tour Operators Professional Liability Policy

The policy is hereby amended to include Advertising Injury Liability:

I. It is hereby understood and agreed that Section I - INSURING AGREEMENT, Paragraph A 4, Coverage D is deleted in its entirety and replaced by the following:

4. Coverage D Personal and Advertising Injury Liability

The Company will pay on behalf of the Insured those sums that the Insured becomes legally obligated to pay as Damages because of Personal and Advertising Injury Liability caused by an offense anywhere in the world arising out of Travel Agency Operations of the Named Insured provided such offense is committed during the Policy Period.

II. It is further understood and agreed Section I - INSURING AGREEMENT, Paragraph B, is deleted in its entirety and replaced by the following:

B. Defense

The Company shall have the right and duty to defend any Suit against the Insured seeking Damages on account of such Bodily Injury, Property Damage, negligent act or negligent omission or Personal and Advertising Injury to which this insurance applies, even if any of the allegations of the Suit are groundless, false or fraudulent. The Company shall have the right to conduct such investigation and settlement of any Claim or Suit as it deems expedient. The Company shall not be obligated to pay any Claim or judgment or to defend any Suit after the applicable Limit of Liability has been exhausted by payment of judgments or settlements.

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under Paragraph C below.

III. It is hereby understood and agreed that Section II - EXCLUSIONS, Paragraphs R, S, and Y, are deleted in their entirety and replaced with the following:

R. Under Coverage C, to Bodily Injury, Property Damage or Personal and Advertising Injury;

S. Personal and Advertising Injury:

1. Caused by or at the direction of the Insured with the knowledge that the act would violate the rights of another or would inflict Personal and Advertising Injury;
2. Arising out of oral or written publication or utterance of material, if done by or at the direction of the Insured with knowledge of its falsity;

U-TAP-101-A CW (08/04)

Page 1 of 2

CONFIDENTIAL

EXP 0002000

3-DAY NOTICE TO PAY RENT

TO: The Chef's LLC
d/b/a Pattaya Thai Cuisine & Sushi Bar
a/k/a Pattaya Thai Cuisine 2
a/k/a YumCha Restaurant
9323 Martin Way East
Suite 114-116
Olympia WA 98516

Re: Lease dated April 14, 2010, as amended and assigned (the "Lease")

AS LESSEE AND GUARANTOR UNDER THE LEASE YOU ARE HEREBY NOTIFIED and informed that the rent and other charges for the period below for the premises situated at 9323 Martin Way East, Suite 114-116, Olympia WA, WA (the "Premises") in Thurston County are now DUE AND PAYABLE in the following amounts:

Outstanding Rental Obligations [See attached spreadsheet]: \$23,486.69

YOU ARE NOTIFIED TO PAY THE RENT IN DEFAULT WITHIN THREE (3) DAYS AFTER SERVICE OF THIS NOTICE UPON YOU.

Should you have any questions regarding this Notice, please direct them to the undersigned.

DATED this 9th day of April, 2013.

WILLIAMS, KASTNER & GIBBS PLLC

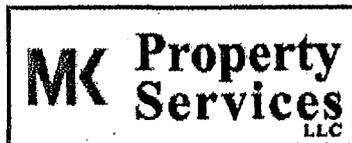
By 

Matthew D. Green
WSBA #18046

Two Union Square
601 Union Street, Suite 4100
PO Box 21926
Seattle WA 98111-3926
(206) 233-2982
mgreen@williamskastner.com

Attorneys for Landlord Arbor Center, LLC

cc: Ronnayuth ("Ron") Boonkue a/k/a Chef Ron
Jaruwon Rasri



Date : 3/27/2013

Lease Ledger

Code pattava Property arb Lease From 4/29/2010
 Name The Chef's, LLC Unit 114-116 Lease To 7/27/2015

Date	Description	Unit	Charge	Payment	Balance	Chg/Rec
7/28/2010	Real Estate Taxes (7/28-7/31)	114-116	43.01		43.01	125428
7/28/2010	Insurance (7/28-7/31)	114-116	5.87		48.88	125429
7/28/2010	Estimated CAM Charges (7/28-7/31)	114-116	79.46		128.34	125430
7/28/2010	Minimum Rent (7/28-7/31)	114-116	387.10		515.44	125431
7/29/2010	TI Allowance per Lease, Exhibit C, Para. A.f.i.	114-116	(7,000.00)		(6,484.56)	125734
8/1/2010	Real Estate Taxes (08/2010)	114-116	333.33		(6,151.23)	125415
8/1/2010	Insurance (08/2010)	114-116	45.50		(6,105.73)	125416
8/1/2010	Estimated CAM Charges (08/2010)	114-116	615.82		(5,489.91)	125417
8/1/2010	Minimum Rent (08/2010)	114-116	3,000.00		(2,489.91)	125418
8/1/2010	Minimum Rent (08/2010)	114-116	720.56		(1,769.35)	125419
8/1/2010	Tenant Improvement Credit (08/2010)	114-116	(1,433.33)		(3,202.68)	125670
9/1/2010	Real Estate Taxes (09/2010)	114-116	333.33		(2,869.35)	126164
9/1/2010	Insurance (09/2010)	114-116	45.50		(2,823.85)	126165
9/1/2010	Estimated CAM Charges (09/2010)	114-116	615.82		(2,208.03)	126166
9/1/2010	Minimum Rent (09/2010)	114-116	3,000.00		791.97	126167
9/1/2010	Minimum Rent (09/2010)	114-116	720.56		1,512.53	126168
9/1/2010	Tenant Improvement Credit (09/2010)	114-116	(1,433.33)		79.20	126169
9/8/2010	Chk# 1064 07/10 thru 09/10 - pd. Reversed by ctrl#33143			79.20	0.00	33025
9/10/2010	Chk# 1064 NSF receipt Ctrl# 33025			(79.20)	79.20	33143
9/15/2010	Late Charges applied, 12% of \$4715.21	114-116	565.83		645.03	129180
9/17/2010	WAIVED: Late Charge (09/15/2010)	114-116	(565.83)		79.20	131546

10/1/2010	Real Estate Taxes (10/2010)	114-116	333.33		412.53	<u>129313</u>	
10/1/2010	Insurance (10/2010)	114-116	45.50		458.03	<u>129314</u>	
10/1/2010	Estimated CAM Charges (10/2010)	114-116	615.82		1,073.85	<u>129315</u>	
10/1/2010	Minimum Rent (10/2010)	114-116	3,000.00		4,073.85	<u>129316</u>	
10/1/2010	Minimum Rent (10/2010)	114-116	720.56		4,794.41	<u>129317</u>	
10/1/2010	Tenant Improvement Credit (10/2010)	114-116	(1,433.33)		3,361.08	<u>129318</u>	
10/15/2010	Chk# 5504 09/10:Pd 10/10:Pd 11/10:Pd				3,361.08	0.00	<u>33981</u>
11/1/2010	Real Estate Taxes (11/2010)	114-116	333.33		333.33	<u>132827</u>	
11/1/2010	Insurance (11/2010)	114-116	45.50		378.83	<u>132828</u>	
11/1/2010	Estimated CAM Charges (11/2010)	114-116	615.82		994.65	<u>132829</u>	
11/1/2010	Minimum Rent (11/2010)	114-116	3,000.00		3,994.65	<u>132830</u>	
11/1/2010	Minimum Rent (11/2010)	114-116	720.56		4,715.21	<u>132831</u>	
11/1/2010	Tenant Improvement Credit (11/2010)	114-116	(1,433.33)		3,281.88	<u>132832</u>	
11/15/2010	Late Charges applied, 12% of \$3281.88	114-116	393.83		3,675.71	<u>138840</u>	
11/17/2010	Chk# 5536 11/10 pd. Reversed by ctrl#34969				3,281.88	393.83	<u>34866</u>
11/22/2010	Chk# 5536 :Prog Gen Reverses receipt Ctrl# 34866				(3,281.88)	3,675.71	<u>34969</u>
11/30/2010	WAIVED: Late Charge (11/15/10)	114-116	(393.83)		3,281.88	<u>141302</u>	
12/1/2010	Real Estate Taxes (12/2010)	114-116	333.33		3,615.21	<u>136601</u>	
12/1/2010	Insurance (12/2010)	114-116	45.50		3,660.71	<u>136602</u>	
12/1/2010	Estimated CAM Charges (12/2010)	114-116	615.82		4,276.53	<u>136603</u>	
12/1/2010	Minimum Rent (12/2010)	114-116	3,000.00		7,276.53	<u>136604</u>	
12/1/2010	Minimum Rent (12/2010)	114-116	720.56		7,997.09	<u>136605</u>	
12/1/2010	Tenant Improvement Credit (12/2010)	114-116	(1,433.33)		6,563.76	<u>136606</u>	
12/2/2010	Chk# 5536 Redeposit NSF 11/10:Pd 12/10:Pd Reversed by ctrl#35417				3,281.88	3,281.88	<u>35217</u>
12/7/2010	Chk# 5536 NSF receipt Ctrl# 35217 2nd NSF on CK				(3,281.88)	6,563.76	<u>35417</u>
12/16/2010	Late Charges applied, 12% of \$4715.21	114-116	565.83		7,129.59	<u>141712</u>	
12/27/2010	WAIVED: Late Charge (12/16/10)	114-116	(565.83)		6,563.76	<u>142259</u>	
12/31/2010	Chk# 791469 11/10:Pd 12/10:Pd				6,563.76	0.00	<u>35839</u>
1/1/2011	Real Estate Taxes (01/2011)	114-116	388.89		388.89	<u>142012</u>	
		114-					

1/1/2011	Insurance (01/2011)	116	45.50		434.39	<u>142013</u>
1/1/2011	Estimated CAM Charges (01/2011)	114-116	687.03		1,121.42	<u>142014</u>
1/1/2011	Minimum Rent (01/2011)	114-116	3,000.00		4,121.42	<u>142015</u>
1/1/2011	Minimum Rent (01/2011)	114-116	622.73		4,744.15	<u>142016</u>
1/1/2011	Tenant Improvement Credit (01/2011)	114-116	(1,433.33)		3,310.82	<u>142017</u>
1/16/2011	Late Charges applied, 12% of \$3310.82	114-116	397.30		3,708.12	<u>145348</u>
1/16/2011	:Prog Gen Reverse for chg# 145348	114-116	(397.30)		3,310.82	<u>145494</u>
1/17/2011	Chk# 5567 01/11:Pd Reversed by ctrl#36504			3,310.82	0.00	<u>36351</u>
1/21/2011	Chk# 5567 NSF receipt Ctrl# 36351			(3,310.82)	3,310.82	<u>36504</u>
2/1/2011	Real Estate Taxes (02/2011)	114-116	388.89		3,699.71	<u>143130</u>
2/1/2011	Insurance (02/2011)	114-116	45.50		3,745.21	<u>143131</u>
2/1/2011	Estimated CAM Charges (02/2011)	114-116	687.03		4,432.24	<u>143132</u>
2/1/2011	Minimum Rent (02/2011)	114-116	3,000.00		7,432.24	<u>143133</u>
2/9/2011	Chk# 5567 Re-Deposit NSF:01/11:Pd Reversed by ctrl#37235			3,310.82	4,121.42	<u>36982</u>
2/14/2011	Chk# 5567 NSF receipt Ctrl# 36982 2nd NSF on this check			(3,310.82)	7,432.24	<u>37235</u>
2/16/2011	Late Charges applied, 12% of \$4121.42	114-116	494.57		7,926.81	<u>148437</u>
2/16/2011	:Prog Gen Reverse for chg# 148437	114-116	(494.57)		7,432.24	<u>148549</u>
3/1/2011	Real Estate Taxes (03/2011)	114-116	388.89		7,821.13	<u>146265</u>
3/1/2011	Insurance (03/2011)	114-116	45.50		7,866.63	<u>146266</u>
3/1/2011	Estimated CAM Charges (03/2011)	114-116	687.03		8,553.66	<u>146267</u>
3/1/2011	Minimum Rent (03/2011)	114-116	3,000.00		11,553.66	<u>146268</u>
3/16/2011	Late Charges applied, 12% of \$4121.42	114-116	494.57		12,048.23	<u>151816</u>
3/16/2011	:Prog Gen Reverse for chg# 151816	114-116	(494.57)		11,553.66	<u>151887</u>
4/1/2011	Real Estate Taxes (04/2011)	114-116	388.89		11,942.55	<u>149278</u>
4/1/2011	Insurance (04/2011)	114-116	45.50		11,988.05	<u>149279</u>
4/1/2011	Estimated CAM Charges (04/2011)	114-116	687.03		12,675.08	<u>149280</u>
4/1/2011	Minimum Rent (04/2011)	114-116	3,000.00		15,675.08	<u>149281</u>
4/1/2011	Chk# 806371 01/11:PARTIAL			2,500.00	13,175.08	<u>38335</u>
4/16/2011	Late Charges applied, 12% of \$4121.42	114-116	494.57		13,669.65	<u>154684</u>
5/1/2011	Real Estate Taxes (05/2011)	114-116	388.89		14,058.54	<u>152529</u>

5/1/2011	Insurance (05/2011)	114-116	45.50		14,104.04	152530
5/1/2011	Estimated CAM Charges (05/2011)	114-116	687.03		14,791.07	152531
5/1/2011	Minimum Rent (05/2011)	114-116	3,000.00		17,791.07	152532
5/6/2011	Chk# 11146 01/11 - pd.; 02/11 - partial pd. Reversed by ctrl#39583			3,000.00	14,791.07	39582
5/11/2011	Chk# 11146 NSF receipt Ctrl# 39582 NSF			(3,000.00)	17,791.07	39583
5/16/2011	Late Charges applied, 12% of \$4121.42	114-116	494.57		18,285.64	157517
5/16/2011	:Prog Gen Reverse for chg# 157517	114-116	(494.57)		17,791.07	157645
5/16/2011	Chk# 11146 REDPT NSF:01/11;Pd 02/11:PARTIAL Reversed by ctrl#39705			3,000.00	14,791.07	39584
5/17/2011	Chk# 13007 02/11 - pd.; 03/11 - partial pd. Reversed by ctrl#39704			2,500.00	12,291.07	39625
5/19/2011	Chk# 13002 NSF receipt Ctrl# 39625			(2,500.00)	14,791.07	39704
5/20/2011	Chk# 11146 NSF receipt Ctrl# 39584			(3,000.00)	17,791.07	39705
6/1/2011	Real Estate Taxes (06/2011)	114-116	388.89		18,179.96	155315
6/1/2011	Insurance (06/2011)	114-116	45.50		18,225.46	155316
6/1/2011	Estimated CAM Charges (06/2011)	114-116	687.03		18,912.49	155317
6/1/2011	Minimum Rent (06/2011)	114-116	3,000.00		21,912.49	155318
6/1/2011	Inv#2974: HVAC Service	114-116	401.44		22,313.93	157384
6/1/2011	2010 CAM Reconciliation	114-116	(2.88)		22,311.05	157481
6/1/2011	Chk# C/C 0378000071 01/11 - pd.; 02/11 - partial pd.			3,500.00	18,811.05	39939
6/16/2011	Late Charges applied, 12% of \$4522.86	114-116	542.74		19,353.79	161205
7/1/2011	Real Estate Taxes (07/2011)	114-116	388.89		19,742.68	159064
7/1/2011	Insurance (07/2011)	114-116	45.50		19,788.18	159065
7/1/2011	Estimated CAM Charges (07/2011)	114-116	687.03		20,475.21	159066
7/1/2011	Minimum Rent (07/2011)	114-116	3,000.00		23,475.21	159067
7/6/2011	Chk# C/C 382711 02/11 - pd.; 03/11 - partial pd.			3,000.00	20,475.21	52158
7/16/2011	Late Charges applied, 12% of \$4121.42	114-116	494.57		20,969.78	164538
8/1/2011	Real Estate Taxes (08/2011)	114-116	388.89		21,358.67	162384
8/1/2011	Insurance (08/2011)	114-116	45.50		21,404.17	162385
8/1/2011	Estimated CAM Charges (08/2011)	114-116	687.03		22,091.20	162386
8/1/2011	Minimum Rent (08/2011)	114-116	3,000.00		25,091.20	162387
		114-				

8/16/2011	Late Charges applied, 12% of \$4121.42	116	494.57		25,585.77	<u>167408</u>
9/1/2011	Real Estate Taxes (09/2011)	114-116	388.89		25,974.66	<u>165355</u>
9/1/2011	Insurance (09/2011)	114-116	45.50		26,020.16	<u>165356</u>
9/1/2011	Estimated CAM Charges (09/2011)	114-116	687.03		26,707.19	<u>165357</u>
9/1/2011	Minimum Rent (09/2011)	114-116	3,000.00		29,707.19	<u>165358</u>
9/1/2011	Chk# C/C 00-0000384617 03/11 - pd.; 04/11 - partial pd.			5,000.00	24,707.19	<u>52159</u>
9/16/2011	Late Charges applied, 12% of \$4121.42	114-116	494.57		25,201.76	<u>170763</u>
10/1/2011	Real Estate Taxes (10/2011)	114-116	388.89		25,590.65	<u>168514</u>
10/1/2011	Insurance (10/2011)	114-116	45.50		25,636.15	<u>168515</u>
10/1/2011	Estimated CAM Charges (10/2011)	114-116	687.03		26,323.18	<u>168516</u>
10/1/2011	Minimum Rent (10/2011)	114-116	3,000.00		29,323.18	<u>168517</u>
10/14/2011	Chk# 000000386306 04/11 - pd.; 05/11 - partial pd.			4,000.00	25,323.18	<u>52160</u>
10/16/2011	Late Charges applied, 12% of \$4121.42	114-116	494.57		25,817.75	<u>173714</u>
11/1/2011	Real Estate Taxes (11/2011)	114-116	388.89		26,206.64	<u>171504</u>
11/1/2011	Insurance (11/2011)	114-116	45.50		26,252.14	<u>171505</u>
11/1/2011	Estimated CAM Charges (11/2011)	114-116	687.03		26,939.17	<u>171506</u>
11/1/2011	Minimum Rent (11/2011)	114-116	3,000.00		29,939.17	<u>171507</u>
11/16/2011	Late Charges applied, 12% of \$4121.42	114-116	494.57		30,433.74	<u>176365</u>
12/1/2011	Real Estate Taxes (12/2011)	114-116	388.89		30,822.63	<u>174473</u>
12/1/2011	Insurance (12/2011)	114-116	45.50		30,868.13	<u>174474</u>
12/1/2011	Estimated CAM Charges (12/2011)	114-116	687.03		31,555.16	<u>174475</u>
12/1/2011	Minimum Rent (12/2011)	114-116	3,000.00		34,555.16	<u>174476</u>
12/16/2011	Late Charges applied, 12% of \$4121.42	114-116	494.57		35,049.73	<u>180231</u>
1/1/2012	Real Estate Taxes (01/2012)	114-116	346.73		35,396.46	<u>179853</u>
1/1/2012	Insurance (01/2012)	114-116	45.38		35,441.84	<u>179854</u>
1/1/2012	Estimated CAM Charges (01/2012)	114-116	634.90		36,076.74	<u>179855</u>
1/1/2012	Minimum Rent (01/2012)	114-116	3,000.00		39,076.74	<u>179856</u>
1/16/2012	Late Charges applied, 12% of \$4027.01	114-116	483.24		39,559.98	<u>183557</u>
2/1/2012	Real Estate Taxes (02/2012)	114-	346.73		39,906.71	<u>181411</u>

		116			
2/1/2012	Insurance (02/2012)	114-116	45.38		39,952.09 <u>181412</u>
2/1/2012	Estimated CAM Charges (02/2012)	114-116	634.90		40,586.99 <u>181413</u>
2/1/2012	Minimum Rent (02/2012)	114-116	3,000.00		43,586.99 <u>181414</u>
2/1/2012	Chk# 00 0000389881 05/11 - pd.; 06/11 - partial pd.			6,000.00	37,586.99 <u>52161</u>
2/16/2012	Late Charges applied, 12% of \$4027.01	114-116	483.24		38,070.23 <u>186704</u>
3/1/2012	Real Estate Taxes (03/2012)	114-116	346.73		38,416.96 <u>184247</u>
3/1/2012	Insurance (03/2012)	114-116	45.38		38,462.34 <u>184248</u>
3/1/2012	Estimated CAM Charges (03/2012)	114-116	634.90		39,097.24 <u>184249</u>
3/1/2012	Minimum Rent (03/2012)	114-116	3,000.00		42,097.24 <u>184250</u>
3/16/2012	Late Charges applied, 12% of \$4027.01	114-116	483.24		42,580.48 <u>190314</u>
3/19/2012	Chk# C/C 00 0000391652 06/11 & 07/11 - pd.; 08/11 - partial pd.			6,000.00	36,580.48 <u>52162</u>
4/1/2012	2011 CAM Reconciliation	114-116	(1,075.22)		35,505.26 <u>187243</u>
4/1/2012	Real Estate Taxes (04/2012)	114-116	346.73		35,851.99 <u>187656</u>
4/1/2012	Insurance (04/2012)	114-116	45.38		35,897.37 <u>187657</u>
4/1/2012	Estimated CAM Charges (04/2012)	114-116	634.90		36,532.27 <u>187658</u>
4/1/2012	Minimum Rent (04/2012)	114-116	3,000.00		39,532.27 <u>187659</u>
4/16/2012	Late Charges applied, 12% of \$4027.01	114-116	483.24		40,015.51 <u>193281</u>
5/1/2012	Real Estate Taxes (05/2012)	114-116	346.73		40,362.24 <u>191173</u>
5/1/2012	Insurance (05/2012)	114-116	45.38		40,407.62 <u>191174</u>
5/1/2012	Estimated CAM Charges (05/2012)	114-116	634.90		41,042.52 <u>191175</u>
5/1/2012	Minimum Rent (05/2012)	114-116	3,000.00		44,042.52 <u>191176</u>
5/16/2012	Late Charges applied, 12% of \$4027.01	114-116	483.24		44,525.76 <u>196777</u>
6/1/2012	Real Estate Taxes (06/2012)	114-116	346.73		44,872.49 <u>194362</u>
6/1/2012	Insurance (06/2012)	114-116	45.38		44,917.87 <u>194363</u>
6/1/2012	Estimated CAM Charges (06/2012)	114-116	634.90		45,552.77 <u>194364</u>
6/1/2012	Minimum Rent (06/2012)	114-116	3,000.00		48,552.77 <u>194365</u>
6/4/2012	Chk# 6269 08/11 - pd.; 09/11 - partial pd. Reversed by ctrl#52167			4,026.79	44,525.98 <u>52163</u>
6/4/2012	Chk# 6268 09/11 - partial pd. Reversed by			500.00	44,025.98 <u>52164</u>

	ctrl#52165					
6/6/2012	Chk# 6268 NSF receipt Ctrl# 52164 NSF check			(500.00)	44,525.98	<u>52165</u>
6/6/2012	Chk# 6269 NSF receipt Ctrl# 52163 NSF check			(4,026.79)	48,552.77	<u>52167</u>
6/11/2012	Chk# 6268 REDPT NSF: 08/11 - partial pd. Reversed by ctrl#52170			500.00	48,052.77	<u>52169</u>
6/11/2012	Chk# 6269 08/11 - pd.; 09/11 - partial pd. Reversed by ctrl#52173			4,026.79	44,025.98	<u>52172</u>
6/14/2012	Chk# 6268 NSF receipt Ctrl# 52169 NSF check			(500.00)	44,525.98	<u>52170</u>
6/14/2012	Chk# 6269 NSF receipt Ctrl# 52172 NSF check			(4,026.79)	48,552.77	<u>52173</u>
6/21/2012	Chk# C/C 025284783 08/11 - pd.; 09/11 - partial pd.			4,526.79	44,025.98	<u>52175</u>
7/1/2012	Real Estate Taxes (07/2012)	114-116	346.73		44,372.71	<u>197440</u>
7/1/2012	Insurance (07/2012)	114-116	45.38		44,418.09	<u>197441</u>
7/1/2012	Estimated CAM Charges (07/2012)	114-116	634.90		45,052.99	<u>197442</u>
7/1/2012	Minimum Rent (7/1-7/27)	114-116	2,612.90		47,665.89	<u>197443</u>
7/1/2012	Minimum Rent (7/28-7/31)	114-116	398.71		48,064.60	<u>197444</u>
7/9/2012	Landlord Credit per Lease Amendment dtd 07/09/2012	114-116	(6,420.93)		41,643.67	<u>205610</u>
7/9/2012	ARREARAGE: Minimum Rent balance	114-116	(28,078.73)		13,564.94	<u>205612</u>
7/9/2012	ARREARAGE: Est. CAM balance	114-116	(5,978.16)		7,586.78	<u>205613</u>
7/9/2012	ARREARAGE: Insurance balance	114-116	(454.16)		7,132.62	<u>205614</u>
7/9/2012	ARREARAGE: R/E Taxes balance	114-116	(3,593.78)		3,538.84	<u>205615</u>
8/1/2012	Real Estate Taxes (08/2012)	114-116	346.73		3,885.57	<u>200312</u>
8/1/2012	Insurance (08/2012)	114-116	45.38		3,930.95	<u>200313</u>
8/1/2012	Estimated CAM Charges (08/2012)	114-116	634.90		4,565.85	<u>200314</u>
8/1/2012	Minimum Rent (08/2012)	114-116	3,090.00		7,655.85	<u>200315</u>
8/16/2012	Late Charges applied, 12% of \$4117.01	114-116	494.04		8,149.89	<u>205607</u>
8/24/2012	WAIVED: Late Charge (08/16/2012)	114-116	(494.04)		7,655.85	<u>205611</u>
9/1/2012	Real Estate Taxes (09/2012)	114-116	346.73		8,002.58	<u>203128</u>
9/1/2012	Insurance (09/2012)	114-116	45.38		8,047.96	<u>203129</u>
9/1/2012	Estimated CAM Charges (09/2012)	114-116	634.90		8,682.86	<u>203130</u>
9/1/2012	Minimum Rent (09/2012)	114-116	3,090.00		11,772.86	<u>203131</u>
9/1/2012	Additional Rent (06/2012)	114-116	1,002.76		12,775.62	<u>205620</u>
9/1/2012	Additional Rent (07/2012)	114-116	1,002.76		13,778.38	<u>205625</u>

9/1/2012	Additional Rent (08/2012)	114-116	1,002.76		14,781.14	<u>205630</u>
9/1/2012	Additional Rent (09/2012)	114-116	1,002.76		15,783.90	<u>205631</u>
9/16/2012	Late Charges applied, 12% of \$8128.05	114-116	975.37		16,759.27	<u>208862</u>
9/16/2012	WAIVED: Late Fee	114-116	(975.37)		15,783.90	<u>214608</u>
10/1/2012	Real Estate Taxes (10/2012)	114-116	346.73		16,130.63	<u>206250</u>
10/1/2012	Insurance (10/2012)	114-116	45.38		16,176.01	<u>206251</u>
10/1/2012	Estimated CAM Charges (10/2012)	114-116	634.90		16,810.91	<u>206252</u>
10/1/2012	Minimum Rent (10/2012)	114-116	3,090.00		19,900.91	<u>206253</u>
10/1/2012	Additional Rent (10/2012)	114-116	1,002.76		20,903.67	<u>206254</u>
10/1/2012	Chk# walk-in deposit 07/12:Pd 08/12:Pd 09/12:Pd			15,783.90	5,119.77	<u>53266</u>
10/16/2012	Late Charges applied, 12% of \$5119.77	114-116	614.37		5,734.14	<u>211475</u>
10/16/2012	WAIVED: Late Fee	114-116	(614.37)		5,119.77	<u>214609</u>
11/1/2012	Real Estate Taxes (11/2012)	114-116	346.73		5,466.50	<u>209381</u>
11/1/2012	Insurance (11/2012)	114-116	45.38		5,511.88	<u>209382</u>
11/1/2012	Estimated CAM Charges (11/2012)	114-116	634.90		6,146.78	<u>209383</u>
11/1/2012	Minimum Rent (11/2012)	114-116	3,090.00		9,236.78	<u>209384</u>
11/1/2012	Additional Rent (11/2012)	114-116	1,002.76		10,239.54	<u>209385</u>
11/16/2012	Late Charges applied, 12% of \$5119.77	114-116	614.37		10,853.91	<u>214451</u>
11/16/2012	WAIVED: Late Fee	114-116	(614.37)		10,239.54	<u>214610</u>
11/29/2012	Chk# 9072 10/12:Pd 11/12:Pd Reversed by ctrl#55015			10,300.00	(60.46)	<u>54654</u>
12/1/2012	Real Estate Taxes (12/2012)	114-116	346.73		286.27	<u>212193</u>
12/1/2012	Insurance (12/2012)	114-116	45.38		331.65	<u>212194</u>
12/1/2012	Estimated CAM Charges (12/2012)	114-116	634.90		966.55	<u>212195</u>
12/1/2012	Minimum Rent (12/2012)	114-116	3,090.00		4,056.55	<u>212196</u>
12/1/2012	Additional Rent (12/2012)	114-116	1,002.76		5,059.31	<u>212197</u>
12/5/2012	Chk# 9072 NSF receipt Ctrl# 54654			(10,300.00)	15,359.31	<u>55015</u>
12/6/2012	Chk# 0000 10/12:Pd 11/12:PARTIAL			7,050.00	8,309.31	<u>55016</u>
12/13/2012	Chk# C/C 7019120 11/12 - pd.; 12/12 - partial pd.			8,039.01	270.30	<u>55192</u>
12/16/2012	Late Charges applied, 12% of \$270.30	114-116	32.44		302.74	<u>216837</u>

1/1/2013	Real Estate Taxes (01/2013)	114-116	361.50	664.24	<u>215074</u>
1/1/2013	Insurance (01/2013)	114-116	47.65	711.89	<u>215075</u>
1/1/2013	Estimated CAM Charges (01/2013)	114-116	815.51	1,527.40	<u>215076</u>
1/1/2013	Minimum Rent (01/2013)	114-116	3,090.00	4,617.40	<u>215077</u>
1/1/2013	Additional Rent (01/2013)	114-116	1,002.76	5,620.16	<u>215078</u>
1/16/2013	Late Charges applied, 12% of \$5317.42	114-116	638.09	6,258.25	<u>220019</u>
2/1/2013	Real Estate Taxes (02/2013)	114-116	361.50	6,619.75	<u>217815</u>
2/1/2013	Insurance (02/2013)	114-116	47.65	6,667.40	<u>217816</u>
2/1/2013	Estimated CAM Charges (02/2013)	114-116	815.51	7,482.91	<u>217817</u>
2/1/2013	Minimum Rent (02/2013)	114-116	3,090.00	10,572.91	<u>217818</u>
2/1/2013	Additional Rent (02/2013)	114-116	1,002.76	11,575.67	<u>217819</u>
2/16/2013	Late Charges applied, 12% of \$5317.42	114-116	638.09	12,213.76	<u>224483</u>
3/1/2013	Real Estate Taxes (03/2013)	114-116	361.50	12,575.26	<u>221184</u>
3/1/2013	Insurance (03/2013)	114-116	47.65	12,622.91	<u>221185</u>
3/1/2013	Estimated CAM Charges (03/2013)	114-116	815.51	13,438.42	<u>221186</u>
3/1/2013	Minimum Rent (03/2013)	114-116	3,090.00	16,528.42	<u>221187</u>
3/1/2013	Additional Rent (03/2013)	114-116	1,002.76	17,531.18	<u>221188</u>
3/16/2013	Late Charges applied, 12% of \$5317.42	114-116	638.09	18,169.27	<u>227402</u>
4/1/2013	Real Estate Taxes (04/2013)	114-116	361.50	18,530.77	<u>225176</u>
4/1/2013	Insurance (04/2013)	114-116	47.65	18,578.42	<u>225177</u>
4/1/2013	Estimated CAM Charges (04/2013)	114-116	815.51	19,393.93	<u>225178</u>
4/1/2013	Minimum Rent (04/2013)	114-116	3,090.00	22,483.93	<u>225179</u>
4/1/2013	Additional Rent (04/2013)	114-116	1,002.76	23,486.69	<u>225180</u>

3. Arising out of oral or written publication of material whose first publication took place before the beginning of the Policy Period;
 4. For which the Insured has assumed liability in a contract or agreement, except an Incidental Contract. This exclusion does not apply to liability for Damages that the Insured would have in the absence of the contract or agreement;
 5. Arising out of an electronic chatroom or bulletin board the Insured hosts, owns or over which the Insured exercises control;
 6. Arising out of a breach of contract, except an implied contract to use another's advertising idea in the Insured's Advertisement;
 7. Arising out of the failure of goods, products or services to conform with any statement of quality or performances made in the Insured's Advertisement;
 8. On the part of the Insured whose business is advertising, broadcasting, publishing, or telecasting;
 9. Arising out of the unauthorized use of another's name or product in the Insured's email address, domain name, megatag, or any other similar tactics to mislead another's potential customer.
- Y. Any Claim or Suit based upon or arising out of any piracy, infringement of a patent, copyright, trademark, servicemark, trade dress, trade name, trade secret or any other intellectual property rights. However, this exclusion does not apply to infringement, in the Insured's Advertisement, of copyright, trade dress or slogan.

IV. It is hereby understood and agreed that the following Definition is added to Section IV - DEFINITIONS:

Advertisement means a notice that is broadcast or published to the general public or specific market segments about the Insured's goods, products or services for the purpose of attracting customers or supporters. For the purpose of this definition:

1. Notices that are published include material placed on the Internet or on similar electronic means of communication; and
2. Regarding web-sites, only that part of a web-site that is about the Insured's goods, products or services for the purposes of attracting customers or supporters is considered an advertisement.

V. It is hereby understood and agreed that Section IV - DEFINITIONS, Paragraph P is deleted in its entirety and replaced by the following:

P. Personal and Advertising Injury means injury including consequential Bodily Injury arising out of one or more of the following offenses:

1. False arrest, detention or imprisonment;
2. Malicious prosecution;
3. The oral or written publication, in any manner, of material that slanders or libels a person or organization or disparages a person's or organization's goods, products, or services.
4. Oral or written publication, in any manner, of material that violates a person's right of privacy;
5. Wrongful eviction from; wrongful entry into, or invasion of the right of private occupancy of a room, dwelling or premises that a person occupies, committed by or on behalf of its owner, landlord or lessor.
6. Infringing upon another's copyright, trade dress or slogan in the Insured's Advertisement; or
7. The use of another's advertising idea in the Insured's Advertisement.

VI. It is hereby understood and agreed that Section V - LIMITS OF LIABILITY, Paragraph F is deleted in its entirety and replaced by the following:

F. Under Coverage D:

1. Subject to B above, the Limit of Liability shown in the Declarations for Coverage D is the most the Company will pay for Damages on account of any offense to which Coverage D applies.
2. All Personal and Advertising Injury arising out of an offense or series of related offenses shall be considered as arising out of a single offense.

ALL OTHER TERMS AND CONDITIONS OF THIS POLICY REMAIN UNCHANGED.

Deductible



Policy No.	Eff. Date of Pol.	Exp. Date of Pol.	Eff. Date of End.
EOL 5329302-02	10/1/05	10/1/06	10/1/05

Named Insured and Address:

Expedia, Inc., et al.
13810 SE Eastgate Way
Suite 400
Bellevue, WA 98005

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

This endorsement modifies insurance provided under the:

Travel Agents and Tour Operators Professional Liability Policy

I. For purposes of this endorsement, the following definition is added to Section IV - DEFINITIONS:

Defense Cost means:

1. Fees, costs and expenses charged by attorneys retained or approved by the Company; and
2. Reasonable and necessary fees, costs and expenses resulting from the investigation, adjustment, defense and appeal of a Claim or Suit.

Defense Cost shall not include:

1. Salaries, loss of earnings, reimbursement for the Insured's time or attendance required in any investigation, defense or appearance otherwise provided under Section I - INSURING AGREEMENT C4;
2. Other remuneration by or to any Insured.

II. For purposes of this endorsement, Section VI - DEDUCTIBLE is deleted in its entirety and replaced by the following:

VI. DEDUCTIBLE

The Deductibles set forth in the Declarations of the policy apply as follows:

- A. Under Coverage A, the each Occurrence Deductible applies to all Damages and Defense Cost because of all Bodily Injury and Property Damage as the result of any one Occurrence, regardless of the number of persons or organizations who sustain Damages because of that Occurrence.
- B. Under Coverage B, the each Occurrence Deductible applies to all Damages and Defense Cost because of all Bodily Injury and Property Damages as the result of any one Occurrence, regardless of the number of persons or organizations who sustain Damages because of that Occurrence.
- C. Under Coverage C, the each negligent act or negligent omission Deductible applies to all Damages and Defense Cost because of any negligent act or negligent omission or series of related negligent acts or negligent omissions, regardless of the number of persons or organizations who sustain Damages because of such negligent act or negligent omission or series of related negligent acts or negligent omissions.
- D. Under Coverage D, the each offense Deductible applies to all Damages and Defense Cost because of any offense or series of related offenses, regardless of the number of persons or organizations who sustain Damages because of such offense or series of related offenses.
- E. The Limits of Liability shall not be reduced by the application of the Deductible.
- F. If more than one coverage part applies to any Occurrence, negligent act or negligent omission, or offense, the Named Insured is required to pay a single Deductible, as determined by the highest applicable Deductible.

ALL OTHER TERMS AND CONDITIONS OF THIS POLICY REMAIN UNCHANGED.

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CONFIDENTIAL

EXP 0002002

Extended General Liability



Policy No.	Eff. Date of Pol.	Exp. Date of Pol.	Eff. Date of End.
EOL 5329302-02	10/1/05	10/1/06	10/1/05

Named Insured and Address:

Expedia, Inc., et al.
13810 SE Eastgate Way
Suite 400
Bellevue, WA 98005

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

This endorsement modifies insurance provided under the:

Travel Agents and Tour Operators Professional Liability Coverage Form

I. The following is added to Item 3 of the Declarations:

Item 3.	Coverages	Limits of Liability
E.	Medical Payments	Each Person \$1,000

II. The following coverage is added to Section I - INSURING AGREEMENT, Paragraph A:

I. INSURING AGREEMENT

A. Coverages

5. Coverages E Medical Payments

- a. The Company will pay medical expenses as described below for **Bodily Injury** caused by an accident:
 - (1) On premises the **Named Insured** owns or rents;
 - (2) On ways next to premises the **Named Insured** owns or rents; or
 - (3) Because of the **Named Insured's Travel Agency Operations**, provided that the following apply to Paragraphs a(1), a(2) and a(3) above:
 - (i) The accident takes place anywhere in the world during the **Policy Period**;
 - (ii) The expenses are incurred and reported to the Company within one (1) year of the date of the accident;
 - (iii) The injured person submits to physical examination, at the Company's expense, by physicians of the Company's choice as often as the Company reasonably required;
 - (iv) The injured person provides the Company with copies of all medical bills, reports, and records requested and shall furnish the Company with such authorizations as may be necessary in that regard;
 - (v) The injured person shall cooperate with the Company in providing information in the form of interviews, statements or testimony relevant to the Company's investigation of **Claim**.
- b. The Company will make these payments regardless of fault. These payments will not exceed the applicable **Limit of Liability**. The Company will pay reasonable expenses for:

U-TAP-108-A.CW (08/04)

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- (1) First aid at the time of an accident;
- (2) Necessary medical, surgical, x-ray and dental services, including prosthetic devices; and
- (3) Necessary ambulance, hospital, professional nursing and funeral services.

III. For purposes of this endorsement, the following exclusions are added to Section V - EXCLUSIONS:

ADDITIONAL EXCLUSIONS

This policy does not apply to:

- A. Any person who has presented a Claim or filed Suit against any Insured seeking Damages for Bodily Injury caused by an Occurrence as described above;
- B. Bodily Injury to any Insured;
- C. Bodily Injury to a person injured in that part of premise the Named Insured owns or rents that the person normally occupies;
- D. Any person hired to do work for or on behalf of any Insured or a tenant of any Insured;
- E. Any person to whom benefits for the Bodily Injury are payable or must be provided under a worker's compensation or disability benefits law or a similar law;
- F. Any person injured while taking part in athletics; or
- G. Any Bodily Injury excluded under Coverage A of the policy.

IV. For purposes of this endorsement, Section V - LIMITS OF LIABILITY, Paragraph B is amended as follows:

- B. The General Aggregate Limit shown in the Declarations is the most the Company will pay for the sum of all Damages under Coverage A, B, C, D and E.

Furthermore, the following is added to Section V - LIMITS OF LIABILITY:

Under Coverage E:

1. The each person Limit of Liability shown in this endorsement is the most the Company will pay for the sum of medical expenses under Coverage E above because of Bodily Injury sustained by any one person arising out of any one Occurrence.
2. All Bodily Injury arising out of continuous or repeated exposure to substantially the same general harmful conditions shall be considered as arising out of one Occurrence.

V. EXPANDED DEFINITION OF INCIDENTAL CONTRACT

For purposes of this endorsement, solely with respect to Coverage A and Coverage D of the policy, it is hereby understood and agreed that Section IV - DEFINITIONS, Paragraph G is deleted in its entirety and replaced with the following:

- G. Incidental Contract means a written hold harmless or indemnification agreement relating to the conduct of Travel Agency Operations by the Named Insured in which the Named Insured has assumed the tort liability of another party, provided such agreement was executed prior to the date of any injury or Damage.

ALL OTHER TERMS AND CONDITIONS OF THIS POLICY REMAIN UNCHANGED.



ZURICH

**THIS ENDORSEMENT IS ATTACHED TO AND MADE PART OF YOUR POLICY.
THIS ENDORSEMENT DOES NOT GRANT ANY COVERAGE OR CHANGE THE TERMS
AND CONDITIONS OF ANY COVERAGE UNDER THE POLICY.**

**DISCLOSURE OF PREMIUM
(RELATING TO DISPOSITION OF TRIA)**

SCHEDULE*

<p>(1) Premium attributable to risk of loss from certified acts of terrorism through the end of the policy period based on the extension of the Terrorism Risk Insurance Act of 2002 ("TRIA"):</p> <p>\$ 0</p> <p>If TRIA terminates, the portion of this premium attributable to the remaining part of the policy period, as modified by any change shown in (2) of this Schedule, applies to the risk of loss from terrorism after the termination of TRIA.</p>
<p>(2) Premium change upon termination of TRIA or upon applicability of a Conditional Endorsement:</p> <p>No change unless one of the following is completed -</p> <p>Return Premium:</p> <p>Additional Premium:</p> <p>If we notify you of an additional premium charge, the additional premium will be due as specified in such notice.</p>

* Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

A. Disclosure of Premium

In accordance with the federal Terrorism Risk Insurance Act of 2002 ("TRIA"), we are required to provide you with a notice disclosing the portion of your premium, if any, attributable to the risk of loss from terrorist acts certified under that Act. That portion of your premium attributable is shown in the Schedule of this endorsement or in the Declarations.

B. Disclosure of Federal Participation in Payment of Terrorism Losses

The United States Government, Department of the Treasury, will pay a share of terrorism losses insured under the federal program. The federal share equals 90% of that portion of the amount of such insured losses that exceeds the applicable insurer retention. The Act currently provides for no insurance industry or United States government participation in terrorism losses that exceed \$100 billion in any one calendar year. The federal program established by the Act is scheduled to terminate at the end of 12/31/05 unless extended by the federal government.

C. Possibility of Additional or Return Premium

The premium attributable to the risk of loss from certified acts of terrorism coverage is calculated based on the coverage (if any) in effect at the beginning of your policy for certified acts of terrorism. If your policy contains a Conditional Endorsement, the termination of TRIA or extension of the federal program with certain modifications (as explained in that endorsement) may modify the extent of coverage (if any) your policy provides for terrorism. If TRIA terminates or the Conditional Endorsement becomes applicable to your policy, the return premium (if any) or additional premium (if any) shown in (2) of the Schedule will apply. If the level or terms of federal participation change, the premium shown in (1) of the schedule attributable to that part of the policy period extending beyond such a change may not be appropriate and we will notify you of any changes in your premium.

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Washington Amendatory



Policy No.	Eff. Date of Pol.	Exp. Date of Pol.	Eff. Date of End.
EOL 5329302-02	10/1/05	10/1/06	10/1/05

Named Insured and Address:

Expedia, Inc., et al.
13810 SE Eastgate Way
Suite 400
Bellevue, WA 98005

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

This endorsement modifies insurance provided under the:

Travel Agents and Tour Operators Professional Liability Policy

The following condition is added to Section VII - CONDITIONS:

Cancellation

1. This policy may be canceled by the first Named Insured shown in Item 1 of the Declarations by surrender of the policy to the Company or by mailing written notice to the Company stating when such cancellation shall take effect. If canceled by the first Named Insured shown in Item 1 of the Declarations, the Company shall retain the customary short-rate proportion of the premium. In no event may the requested date of cancellation be greater than ten (10) days prior to the date the request is received by the Company.
2. The Company may cancel this policy by mailing written notice of cancellation by certified mail or delivered to the first Named Insured at the address shown in Item 1 of the Declarations no fewer than ten (10) days prior to the effective date of cancellation, and mailing within five (5) working days to the producer of record, if any, if cancellation is for nonpayment of premium. The Company may cancel this policy by mailing written notice of cancellation by certified mail or delivered to the first Named Insured at the address shown in Item 1 of the Declarations at least forty-five (45) days prior to the effective date of cancellation and mailing within five (5) working days to the producer of record, if any, if cancellation is for any other reason. Such notice shall state the reason for cancellation and if applicable be accompanied by a refund of unearned premium, except a premium that has been financed. The written notice of cancellation to the producer of record, if any, may be provided electronically.

The Company shall also mail or deliver like notice to any mortgage holder, pledgee, or other person shown in this policy to have an interest in any Claim which may occur under this policy. This notice shall be the same as that mailed or delivered to the first Named Insured. For purpose of this amendatory, "deliver" includes electronic transmittal, facsimile, or personal delivery.
3. The commissioner of insurance has the authority to cancel the policy:
 - a. Under a statutory delinquency proceeding commenced under the provisions of chapter 48.31 RCW; or
 - b. On a showing that the continuation of such coverage can reasonably be expected to create a condition in the Company hazardous to its Insureds, or to its creditors, or to its member subscribers, or stockholders, or to the public.
4. If notice is mailed, proof of mailing will be sufficient proof of notice.

Nonrenewal

1. If the Company elects not to renew this policy, the Company shall mail written notice of nonrenewal by certified mail to the first Named Insured at the address shown in Item 1 of the Declarations, and mail to the producer of record, if any, at least forty-five days prior to the expiration of this policy.

2. If the Company fails to provide timely written notice required by the paragraph above, this policy cannot be extended to meet the notice requirement.
3. If notice is mailed, proof of mailing will be sufficient proof of notice.
4. The transfer of a policy between companies within the same insurance group or changes in Deductible, premium, Limits of Liability or coverage are not refusals to renew.

Conditional Renewal

1. If the Company elects to renew this policy, the Company shall mail written notice of conditional renewal by certified mail to the first Named Insured at the address shown in Item 1 of the Declarations, and mail to the producer of record, if any, at least twenty (20) days prior to the expiration of this policy. The Company must provide the first Named Insured renewal terms including the premium due. If the first Named Insured subsequently fails to pay the premium when due, the coverage is nonrenewed. The written notice of conditional offer to renew must also include an explanation of the premium changes or policy provision changes along with any premium due and the premium due date.
2. If the Company fails to meet the above, a renewal policy must be issued with the same terms and conditions, and rates as the expiring policy. The Company is then permitted to change the terms and conditions, and rates of the renewal policy one time after giving twenty (20) days prior notice to the first Named Insured.

ALL OTHER TERMS AND CONDITIONS OF THIS POLICY REMAIN UNCHANGED.

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CONFIDENTIAL

EXP 0002007



Travel Agents and Tour Operators Professional Liability Policy

Zurich

Insurance is provided by the company designated on the Information Page.
(A stock insurance company, herein called the Company.)

CONFIDENTIAL

EXP 0002008

CONFIDENTIAL

EXP 0002009

TRAVEL AGENTS AND TOUR OPERATORS PROFESSIONAL LIABILITY POLICY



This policy is an Occurrence Policy. Read the entire policy carefully to determine rights, duties and what is and what is not covered. Various provisions in this policy restrict coverage.

This policy has been issued in reliance upon the statements in the Applications submitted for this insurance.

Wherever used in this policy, the words **Named Insured** shall mean any person or organization shown in the Declarations. The word **Insured** means any person or organization qualifying as such under the **PERSONS INSURED** section of this policy. The word "Company" refers to the Company providing this insurance.

Other words and phrases in this policy that appear in bold have special meanings. Refer to Section IV - DEFINITIONS of the policy for any defined terms.

I. INSURING AGREEMENT

A. Coverages

1. Coverage A Bodily Injury and Property Damage Liability

The Company will pay on behalf of the Insured those sums that the Insured becomes legally obligated to pay as Damages because of **Bodily Injury** or **Property Damage** caused by an Occurrence anywhere in the world during the Policy Period arising out of **Travel Agency Operations** of the Named Insured.

2. Coverage B Non-owned and Hired Auto Liability

The Company will pay on behalf of the Insured those sums that the Insured becomes legally obligated to pay as Damages because of **Bodily Injury** or **Property Damage** caused by an Occurrence anywhere in the world during the Policy Period arising out of the operation, maintenance or use, including **Loading** or **Unloading**, of a **Non-Owned Auto** or **Hired Auto** in the **Travel Agency Operations** of the Named Insured.

3. Coverage C Professional Liability

The Company will pay on behalf of the Insured those sums that the Insured becomes legally obligated to pay as Damages arising out of a negligent act or negligent omission anywhere in the world committed by the Insured or any other person for whose acts the Named Insured is legally liable in the conduct of **Travel Agency Operations** by the Named Insured provided such negligent act or negligent omission occurs during the Policy Period.

4. Coverage D Personal Injury Liability

The Company will pay on behalf of the Insured those sums that the Insured becomes legally obligated to pay as Damages because of **Personal Injury** caused by an offense anywhere in the world arising out of **Travel Agency Operations** of the Named Insured provided such offense is committed during the Policy Period.

B. Defense

The Company shall have the right and duty to defend any Suit against the Insured seeking Damages on account of such **Bodily Injury**, **Property Damage**, negligent act or negligent omission or **Personal Injury** to which this insurance applies, even if any of the allegations of the Suit are groundless, false or fraudulent. The Company shall have the right to conduct such investigation and settlement of any Claim or Suit as it deems expedient. The Company shall not be obligated to pay any Claim or judgment or to defend any Suit after the applicable Limit of Liability has been exhausted by payment of judgments or settlements.

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under Paragraph C below.

C. Supplementary Payments

The following payments by the Company will not reduce the Limits of Liability. The Company will pay with respect to any Claim we investigate or settle, or any Suit against the Insured the Company defends:

1. All expenses incurred by the Company.

2. Up to \$250 for cost of bail bonds required because of accidents or traffic law violations arising out of the use of any Auto to which Coverage B applies. The Company does not have to furnish these bonds.
3. The cost of bonds to release attachments, but only for bond amounts within the applicable Limit of Liability. The Company does not have to furnish these bonds.
4. All reasonable expenses incurred by the Insured at the Company's request to assist the Company in the investigation or defense of the Claim or Suit, including actual loss of earnings up to \$250 a day because of time off from work.
5. All costs taxed against the Insured in the Suit.
6. Prejudgment interest awarded against the Insured on that part of the judgment we pay. If the Company makes an offer to pay the applicable Limit of Liability, we will not pay any prejudgment interest based on that period of time after the offer.
7. All interest on the full amount of any judgment that accrues after entry of the judgment and before the Company has paid, offered to pay, or deposited in court the part of the judgment that is within the applicable Limit of Liability.

II. EXCLUSIONS

This policy does not apply to:

- A. Any Claim or Suit based upon or arising out of an Insured's breach of contract or warranty, except Claims for tort liability of another party assumed by the Named Insured under a hold harmless or indemnification agreement contained in an Incidental Contract;
- B. Under Coverage B, any Claim or Suit based upon or arising out of the ownership, operation, maintenance, use, entrustment to others or Loading or Unloading of any Auto other than a Non-Owned Auto or Hired Auto;
- C. Under Coverage A, C and D, any Claim or Suit based upon or arising out of the ownership, operation, maintenance, use, entrustment to others or Loading or Unloading of any Auto;
- D. Any Claim or Suit based upon or arising out of the ownership of any watercraft by any Insured; nor arising out of the operation, maintenance, use, entrustment to others or Loading or Unloading of any watercraft except if the operation, maintenance, use, entrustment to others, Loading or Unloading is performed for the Named Insured by independent contractors;
- E. Any Claim or Suit based upon or arising from the ownership of any aircraft by any Insured; nor arising out of the operation, maintenance, use, entrustment to others or Loading or Unloading of any aircraft. However, this exclusion does not apply if the operation, maintenance, use, entrustment to others or Loading or Unloading is performed for the Named Insured by independent contractors who are:
 1. Scheduled airlines;
 2. Supplemental airlines;
 3. Air taxis; or
 4. Air charters;
- F. Any Claim or Suit, however caused, arising directly or indirectly out of:
 1. War, including undeclared or civil war;
 2. Wartlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or
 3. Insurrection, rebellion, revolution, usurped power, or action taken by governmental authority in hindering or defending against any of these;
- G. Any Claim or Suit for which the Insured or his indemnitee may be held liable by reason of:
 1. Causing or contributing to the intoxication of any person;
 2. The furnishing of alcoholic beverages to a person under the legal drinking age or under the influence of alcohol; or
 3. Any statute, ordinance or regulation relating to the sale, gift, distribution or use of alcoholic beverages.

However, this exclusion applies only if the Insured is in the business of manufacturing, distributing, selling, serving or furnishing alcoholic beverages;

H. Any obligation of the Insured under a workers' compensation, disability benefits or unemployment compensation law or any similar law;

I. Any Claim or Suit by:

1. An employee of the Insured arising out of and in the course of:
 - a. Employment by the Insured; or
 - b. Performing duties related to the conduct of the Insured's business; or
2. The spouse, child, parent, brother or sister of that employee as a consequence of Paragraph 1 above.

This exclusion applies:

- a. Whether the Insured may be liable as an employer or in any other capacity; and
- b. To any obligation to share Damages with or repay someone else who must pay Damages, even if the liability is assumed by the Insured under an Incidental Contract;

J. Property Damage to:

1. Property the Insured owns, rents, or occupies, including any costs or expenses incurred by the Insured, or any other person, organization or entity, for repair, replacement, enhancement, restoration or maintenance of such property for any reason, including prevention of injury to a person or damage to another's property;
2. Premises the Insured sells, gives away or abandons, if the Property Damage arises out of any part of those premises;
3. Property loaned to the Insured;
4. Personal property in the care, custody or control of the Insured;

Paragraphs 1, 3, and 4 of this exclusion do not apply to the Insured's legal liability for Property Damage caused by an Occurrence resulting in fire to any building or structure rented or leased to the Named Insured in connection with Travel Agency Operations, including fixtures permanently attached thereto subject to the Limit of Liability for Fire Legal Liability Coverage set forth in Item 4 of the Declarations, which establishes the maximum amount payable by the Company.

This exclusion does not apply to Property Damage to any hotel rooms and suites, meeting rooms, or other similar premises for the first thirty (30) days that such premises are rented, occupied by, or in the care, custody or control of the Named Insured;

Paragraph 4 of this exclusion does not apply to Lost Property left in the care of the Insured during the course of a tour conducted by such Insured.

- K. Any Claim or Suit based upon or arising out of the Insured's violation of any consumer fraud, consumer protection, consumer privacy, unfair trade or deceptive business practice or statutory or common law unfair competition;
- L. Any Claim or Suit based upon or arising out of any violation by any Insured of federal laws, statutes, regulations, rules or orders restricting foreign trade or travel by United States citizens or the spending of United States funds in foreign countries, including, but not limited to violations of the Trading With The Enemy Act and the rules and regulations of the United States Treasury Department, Office of Foreign Assets Control or any Claim or Suit that another party was caused to violate same due to an act or omission on the part of any Insured;
- M. Any Claim or Suit based upon or arising out of any violation of the Fair Labor Standards Act or any similar federal, state or local law pertaining to working conditions, hours, employee benefits, or wages;
- N. Any Claim or Suit based upon or arising out of any Occurrence, act, or omission, or offense by the Insured which is intentional, dishonest, fraudulent or malicious, or criminal, regardless of whether the resultant Damages were intended;
- O. Any Claim or Suit based upon or arising from any co-mingling of money, or the inability to pay or collect money or other negotiable instruments for any reason, whether on the part of the Insured, or any other party, including but not limited to unauthorized or illegal credit card transactions; debit memos; commissions, profits or refunds; and bankruptcy, insolvency, receivership, liquidation and/or cessation of operations;

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- P. Any Claim or Suit based upon or arising out of any misquotation or misstatement of prices, applicable taxes or costs, cancellation provisions, payment terms, pricing changes, failure to secure promotional offers, or any dispute with respect to fees or charges;
- Q. Any Claim or Suit based upon or arising out of any act or omission relating to the recommendation, sale, maintenance or procurement of any insurance policy or bond or investigation, adjustment or outcome of any insurance claim;
- R. Under Coverage C, Bodily Injury, Property Damage, or Personal Injury;
- S. Personal Injury:
1. Caused by or at the direction of the Insured with the knowledge that the act would violate the rights of another or would inflict Personal Injury;
 2. Arising out of oral or written publication or utterance of material, if done by or at the direction of the Insured with knowledge of its falsity;
 3. Arising out of oral or written publication of material whose first publication took place before the beginning of the Policy Period;
 4. For which the Insured has assumed liability in a contract or agreement, except an Incidental Contract. This exclusion does not apply to liability for Damages that the Insured would have in the absence of the contract or agreement; or
 5. Arising out of an electronic chatroom or bulletin board the Insured hosts, owns or over which the Insured exercises control;
- T. Bodily Injury or Property Damage which arises out of an act that is intended by the Insured or can be expected from the standpoint of a reasonable person to cause Bodily Injury or Property Damage, even if the Bodily Injury or Property Damage is of a different degree or type than actually intended or expected. This exclusion does not apply to Bodily Injury resulting from the use of reasonable force to protect persons or property;
- U. Any Claim or Suit based upon or arising out of the gaining of profit or advantage to which the Insured was not legally entitled;
- V. Any Claim or Suit based upon or arising out of an Insured's acts or omissions in the administration of any employee benefit program or as a fiduciary in connection with any employee insurance, retirement or pension plan, including but not limited to any alleged violation of the Employee Retirement Income Security Act of 1974 and its amendments, or any similar state or local laws, or any regulations or orders issued in connection therewith;
- W. Any Claim or Suit based on, attributable to, related to, or in any manner arising out of any actual or alleged:
1. Failure to employ;
 2. Termination of employment, including actual or alleged constructive dismissal;
 3. Breach of employment contract;
 4. Coercion, demotion, evaluation, reassignment, discipline, defamation, harassment, humiliation, discrimination, employment related misrepresentation, employment related emotional distress, retaliation or other employment related practices, policies, acts or omissions; or
 5. Any consequential liability, Damage, loss, cost or expense as a result of 1, 2, 3, and 4 above;
- X. Any Claim or Suit against an Insured by or on behalf of:
1. Any other Insured;
 2. Any entity:
 - a. Which is owned, operated or controlled by the Insured;
 - b. Which owns, operates or controls the Insured; or
 - c. Which is affiliated with the Insured through any common ownership, operation or control; or
 - d. In which the Insured is a director, officer, partner, trustee, shareholder, member, manager or employee; or
 3. Any business enterprise, charitable organization or pension, welfare, profit sharing, mutual or investment fund or trust owned or sponsored by the Insured;

- Y. Any Claim or Suit based upon or arising out of any piracy, infringement of a patent, copyright, trademark, servicemark, trade dress, trade name, trade secret or any other intellectual property rights;
- Z. Any Claim or Suit based upon or arising out of Internet Technology Services provided by the Insured, including but not limited to the transmission of computer viruses, corruption of databases, misappropriation, alteration or deletion of data or harm to the integrity of a computer system. However, this exclusion does not apply to any negligent act or negligent omission involving researching travel related information, placing reservations, or communicating by electronic mail by the Insured as part of the Insured's Travel Agency Operations;
- AA. Any Claim or Suit based upon or arising out of the rendering or failure to render any first-aid, medical, dental, surgical, nursing or therapeutic service of treatment, or from the furnishing or failure to furnish any drugs, medications, medical or dental supplies or appliances, or to any Claim or Suit that the Insured was alleged to be negligent in its screening, selection, hiring, retention, training, instruction or supervision of any employee, officer or partner of the Insured or any other person or organization engaged in providing or failing to provide such services;
- BB. Any Claim or Suit based upon or arising from the breach of any employment agreement, non-competition agreement, non-solicitation agreement, confidentiality agreement, fiduciary duty or duty of loyalty on the part of the Insured or any past, present or prospective employee, independent contractor, director, officer, partner or shareholder of the Insured;
- CC. Any Claim or Suit based upon or arising out of the booking, leasing, sale, rental or management of any Time-Share properties. This exclusion does not apply with respect to incidental travel arrangements made by the Named Insured on behalf of travelers to or from such Time-Share properties. Incidental travel includes airline ticketing, automobile rental and ground transportation;
- DD. Any Claim or Suit arising from the sale, rental or distribution of any sports or recreational equipment by the Insured, including but not limited to, ski equipment, bicycles, rafts, snowmobiles, and scuba diving and snorkeling equipment;
- EE. Pollution
1. Any injury or Damages which would not have occurred in whole or in part but for the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of Pollutants at any time.
This exclusion does not apply to any injury or Damages arising out of heat, smoke, or fumes from a Hostile Fire unless that Hostile Fire occurred or originated:
 - a. At any premise, site or location which is or was at any time used by or for the Insured, or others for the handling, storage, disposal, processing or treatment or waste; or
 - b. At any premises, site or location on which the Insured or any contractors or subcontractors working directly or indirectly on the Insured's behalf are performing operations to test for, monitor, clean up, remove, contain, treat, detoxify, neutralize or in any way respond to, or assess the effects of, Pollutants;
 2. Any loss, cost or expense arising out of any:
 - a. Request, demand, order or statutory or regulatory requirement that the Insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of Pollutants; or
 - b. Claim or Suit by or on behalf of a governmental authority for Damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of, Pollutants;
- FF. Any Claim or Suit based upon or arising, in whole or in part, out of any:
1. Alleged, actual or threatened Sexual Abuse or Sexual Harassment by anyone of any person;
 2. The negligent employment, investigation, or supervision of any person who causes or commits or is alleged to have caused or committed Sexual Abuse or Sexual Harassment; or
 3. Failure to report Sexual Abuse or Sexual Harassment to the proper authorities;
- GG. Any Claim or Suit arising out of any actual or alleged violation of:
1. The federal Telephone Consumer Protection Act (47 U.S.C. § 227), Drivers Privacy Protection Act (18 U.S.C. § 2721 - 2725) or Controlling the Assault of Non-Solicited Pornography and Marketing Act (15 U.S.C. § 7701, et seq.); or
 2. Any other federal, state or local statute, regulation or ordinance that imposes liability for the:

- a. Unlawful use of telephone, electronic mail, internet, computer, facsimile machine or other communication or transmission device; or
- b. Unlawful use, collection, dissemination, disclosure or re-disclosure of personal information in any manner;

by any Insured or on behalf of any Insured.

III. PERSONS INSURED

Each of the following is an Insured under this policy to the extent set forth below:

- A. The Named Insured shown in Item 1 of the Declarations of this policy;
- B. Any owner, principal, executive officer, director, or stockholder of the Named Insured acting within the scope of their duties for the Named Insured;
- C. Any employees of the Named Insured while acting in the scope of their duties for the Named Insured;
- D. Independent contractors who are individuals working under contract with the Named Insured to sell the Named Insured's travel services, but only when selling the Named Insured's travel services or conducting the Named Insured's Travel Agency Operations; or
- E. Any individual while acting as a tour guide or tour escort working under contract with the Named Insured, but only with respect to liability out of a tour being conducted for the Named Insured.

IV. DEFINITIONS

- A. **Auto** means a land motor vehicle, trailer or semi-trailer designed for travel on public roads, including any attached machinery or equipment.
- B. **Bodily Injury** means physical injury, sickness or disease, including death of a person. Bodily Injury to such person also means mental anguish, mental injury, humiliation, or shock if directly resulting from physical injury, sickness or disease.
- C. **Claim** means a written demand for money or services.
- D. **Damages** means the monetary portion of any judgment, award or settlement provided such settlement is negotiated with the assistance and approval of the Company. Damages do not include:
 - 1. Punitive, exemplary, or multiple damages;
 - 2. Criminal or civil fines, penalties (statutory or otherwise), fees or sanctions;
 - 3. Matters deemed uninsurable;
 - 4. Any form of non-monetary, equitable or injunctive relief; or
 - 5. Restitution, return or disgorgement of any fees, funds or profits.
- E. **Hired Auto** means a **Non-Owned Auto** rented or chartered by the Insured:
 - 1. Without a driver or chauffeur for a period of not more than thirty (30) consecutive days; or
 - 2. With a driver or chauffeur;

provided that the owner of the Hired Auto maintains a policy insuring against liability for Bodily Injury and Property Damage with limits of liability not less than those specified under the applicable financial responsibility or similar laws governing auto insurance.

Hired Auto does not include any auto rented or chartered from the Insured.
- F. **Hostile Fire** means a fire which becomes uncontrollable or breaks out from where it was intended to be.
- G. **Incidental Contract** means any written hold harmless or indemnification agreement relating to the conduct of Travel Agency Operations by the Named Insured in which the Named Insured has assumed the tort liability of another party, which is:
 - 1. Contained within a lease of premises agreement executed prior to the date of any Occurrence or negligent act or negligent omission; or
 - 2. An agreement to indemnify a federal, state, county or municipal government or agency, provided such agreement was executed prior to the date of any Occurrence or negligent act or negligent omission.

- H. Insured means any person or organization qualifying as an Insured in the Persons Insured section of the policy.
- I. Internet Technology Services means any of the following:
1. Advertising, web casting, electronic publishing, transmission, dissemination, distribution, serialization, creation, production, origination, or exhibition of material over the internet;
 2. Designing, constructing or maintaining an internet site;
 3. The integration of electronic information or business processes with an internet site;
 4. Providing access to the internet through a browser that enables others to send and receive electronic information;
 5. Providing access to or dissemination of material, goods or services through the internet;
 6. Providing internet search or navigational tools or internet site tools and/or technology;
 7. Providing others with a unique internet address that can function as the beginning and end point of electronic information transfers;
 8. Providing electronic mail services;
 9. Establishing, operating, maintaining or monitoring chat rooms or bulletin boards;
 10. Creating, manufacturing, developing, distributing, licensing, leasing, selling, operating, repairing or maintaining any computer hardware, software or related electronic product, or training others in the use of such computer hardware, software or related electronic product; or
 11. Systems analysis, systems programming, data processing, systems integration, systems development, system design, system management, or the installation, operation, repair or maintenance of computer products, networks or systems.
- J. Loading or Unloading means the handling of property:
1. After it is moved from the place where it is accepted for movement into or onto an aircraft, watercraft or Auto;
 2. While it is in or on an aircraft, watercraft or Auto; or
 3. While it is being moved from an aircraft, watercraft or Auto to the place where it is finally delivered;
- but Loading or Unloading does not include the movement of property by means of a mechanical device, other than a hand truck, that is not attached to the aircraft, watercraft or Auto.
- K. Long-Term Rental Auto means an Auto rented or leased by the Insured (other than by an employee solely for his or her personal use) for any period or consecutive periods which in total are in excess of thirty (30) days.
- L. Lost Property means baggage, tickets for transportation, passports or visas lost while in the care of the Insured in the course of a tour conducted by the Insured. Lost Property does not include accounts, bills, currency, deeds, evidences of debt, letters of credit, documents, money, notes or securities.
- M. Named Insured means:
1. The person(s) and organization(s) shown in Item 1 of the Declarations of this policy;
 2. Any newly acquired or formed organization, other than a partnership, joint venture or limited liability company, over which the Named Insured maintains majority interest. This policy does not apply to any injury or damage that took place before the Named Insured acquired or formed the organization. Coverage under this provision is afforded only if the newly acquired or formed organization is reported to the Company within sixty (60) days after it has been acquired or formed and the Named Insured pays the additional premium if applicable.
- N. Non-Owned Auto means an Auto which is not owned by or registered to:
1. Any Named Insured;
 2. An officer, director, shareholder, or partner of any Named Insured;
 3. A corporate parent, subsidiary, or affiliate of any Named Insured;
 4. Any member of a joint venture of which any Named Insured is a member; or
 5. A spouse, child, parent, relative or resident of the same household of any person described herein.

Non-Owned auto does not include any Long-Term Rental Auto.

- O. Occurrence means an accident, including continuous or repeated exposure to substantially the same general harmful conditions.
- P. Personal Injury means injury including consequential Bodily Injury arising out of one or more of the following offenses:
1. False arrest, detention or imprisonment;
 2. Malicious prosecution;
 3. The publication or utterance of a libel or slander or of other defamatory or disparaging material;
 4. A publication or utterance in violation of an individual's right of privacy; except publications or utterances in the course of or related to advertising or broadcasting activities conducted by or on behalf of the Named Insured; or
 5. Wrongful eviction from; wrongful entry into, or invasion of the right of private occupancy of a room, dwelling or premises that a person occupies, committed by or on behalf of its owner, landlord or lessor.
- Q. Policy Period means the period of time between the effective date as shown on the Declarations and the date of expiration or cancellation of this policy.
- R. Pollutants means any man-made or naturally occurring solid, liquid, gaseous or thermal irritant or contaminant, including but not limited to: smokes; vapor; soot; fumes; acids; alkalis; chemicals; and waste. Waste includes materials to be recycled, reconditioned or reclaimed.
- S. Property Damage means:
1. Physical injury to tangible property, including all resulting loss of use of that property. All such loss of use shall be deemed to occur at the time of the physical injury that caused it; or
 2. Loss of use of tangible property that is not physically injured. All such loss of use shall be deemed to occur at the time of the Occurrence that caused it.
- For the purposes of this insurance, electronic data is not tangible property. As used in this definition, electronic data means information, facts or programs stored as or on, created or used on, or transmitted to or from computer software, including systems and applications software, hard or floppy disks, CD-ROMS, tapes, drives, cells, data processing devices or any other media which are used with electronically controlled equipment.
- T. Sexual Abuse means actual or alleged physical abuse arising out of a single, continuous or repeated exposure of one or more persons to acts of a sexual nature involving inappropriate physical contact caused by or committed by:
1. One person; or
 2. Two or more persons acting together or in related acts or series of acts.
- All related, interrelated, repeated or continuous episodes of Sexual Abuse involving the same claimant or perpetrator shall be deemed to be a single Occurrence.
- U. Sexual Harassment means inappropriate non-physical actions or verbal comments or suggestions of a sexual nature.
- V. Suit means a civil proceeding in which Damages because of Bodily Injury, Property Damage, negligent acts or negligent omissions or Personal Injury to which this insurance applies are alleged. Suit includes:
1. An arbitration proceeding in which such Damages are claimed and to which the Insured must submit or does submit with the Company's consent; or
 2. Any other alternative dispute resolution proceeding in which such Damages are claimed and to which the Insured submits with the Company's consent.
- W. Time-Share means a system for sharing ownership of any apartment, condominium, villa, or the like as defined in the time-sharing agreement.
- X. Travel Agency Operations means all operations necessary to the conduct of a travel agency, meeting planner, cruise-only agency or tour operator.

V. LIMITS OF LIABILITY

- A. The Limits of Liability shown in Item 3 of the Declarations and the rules below fix the most the Company will pay regardless of the number of:
1. Insureds;
 2. Claims made or Suits brought;
 3. Persons or organizations making Claims or bringing Suits.
- B. The General Aggregate Limit shown in Item 3 of the Declarations is the most the Company will pay for the sum of all Damages under Coverages A, B, C and D.
- C. Under Coverage A:
1. Subject to B above, the Limit of Liability shown in Item 3 of the Declarations for Coverage A is the most the Company will pay for Bodily Injury or Property Damage caused by an Occurrence to which Coverage A applies. However, the most the Company will pay for Property Damage for any article of Lost Property consisting in whole or in part of silver, gold or platinum, or watches, or articles trimmed with, or consisting principally or entirely of furs shall be \$100 for each article.
 2. All Bodily Injury and Property Damage arising out of continuous or repeated exposure to substantially the same general harmful conditions shall be considered as arising out of one Occurrence.
- D. Under Coverage B:
1. Subject to B above, the Limit of Liability shown in Item 3 of the Declarations for Coverage B is the most the Company will pay for Bodily Injury or Property Damage caused by an Occurrence to which Coverage B applies.
 2. All Bodily Injury and Property Damage arising out of continuous or repeated exposure to substantially the same general harmful conditions shall be considered as arising out of one Occurrence.
- E. Under Coverage C:
1. Subject to B above, the Limit of Liability shown in Item 3 of the Declarations for Coverage C is the most the Company will pay for any negligent act or negligent omission to which Coverage C applies.
 2. All related negligent acts or negligent omissions shall be considered a single negligent act or negligent omission.
- F. Under Coverage D:
1. Subject to B above, the Limit of Liability shown in Item 3 of the Declarations for Coverage D is the most the Company will pay for Damages on account of any offense to which Coverage D applies.
 2. All Personal Injury arising out of an offense or series of related offenses shall be considered as arising out of a single offense.
- G. Fire Legal Liability Coverage
- The Fire Legal Liability Limit stated in Item 4 of the Declarations is the most the Company will pay for Damages because of Property Damage to any building or structure rented or leased to the Named Insured to which this insurance applies arising out of any one fire.
- H. If more than one coverage of this policy applies to the same Occurrence, negligent act or negligent omission, or offense, the maximum limit of the Company's liability shall not exceed the highest applicable Limit of Liability under any one coverage of this policy.
- I. The Limits of Liability of this policy apply separately to each consecutive Policy Period. The Policy Period begins with the effective date shown in the Declarations. If the Policy Period is extended after issuance for any additional period, the additional period will be deemed part of the last preceding period for the purpose of determining the Limits of Liability.
- J. If this policy and any other policy issued by the Company provides coverage to the same Claim or Suit against the Insured, the maximum limit of liability under all of the policies shall not exceed the highest remaining limit of liability under any one policy.

VI. DEDUCTIBLE

The Deductibles set forth in Item 3 of the Declarations of the policy apply as follows:

- A. Under Coverage A, the each Occurrence Deductible applies to all Damages because of all Bodily Injury and Property Damage as the result of any one Occurrence, regardless of the number of persons or organizations who sustain Damages because of that Occurrence.
- B. Under Coverage B, the each Occurrence Deductible applies to all Damages because of all Bodily Injury and Property Damage as the result of any one Occurrence, regardless of the number of persons or organizations who sustain Damages because of that Occurrence.
- C. Under Coverage C, the each negligent act or negligent omission Deductible applies to all Damages because of any negligent act or negligent omission or series of related negligent acts or negligent omissions, regardless of the number of persons or organizations who sustain Damages because of such negligent act or negligent omission or series of related negligent acts or negligent omissions.
- D. Under Coverage D, the each offense Deductible applies to all Damages because of any offense or series of related offenses, regardless of the number of persons or organizations who sustain Damages because of such offense or series of related offenses.
- E. The Limits of Liability shall not be reduced by the application of the Deductible.
- F. If more than one coverage of this policy applies to any Occurrence, negligent act or negligent omission or offense, the Named Insured is required to pay a single Deductible, as determined by the highest Deductible for the applicable coverages.

VII. CONDITIONS

A. Premium

All premiums for this policy shall be computed in accordance with the Company's rules, rates, rating plans, premiums and minimum premiums applicable to the insurance afforded herein.

B. Insured's Duties in the Event of Occurrence, Claim or Suit

- 1. As a condition precedent to coverage, the Insured must notify the Company as soon as practicable of an Occurrence, a negligent act or negligent omission or an offense. To the extent possible, notice should include:
 - a. How, when and where the Occurrence, a negligent act or negligent omission or an offense took place;
 - b. The names and addresses of any injured persons and witnesses; and
 - c. The nature and location of any Damage arising out of the Occurrence, a negligent act or negligent omission or an offense.
- 2. If a Claim is made or Suit is brought against the Insured, as a condition precedent to coverage, the Insured must:
 - a. Immediately record the specifics of the Claim or Suit and the date received; and
 - b. Notify the Company as soon as practicable.

The Insured must see to it that the Company receive written notice of the Claim or Suit as soon as practicable.

- 3. The Insured must:
 - a. Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the Claim or Suit; and
 - b. Authorize the Company to obtain records and other information.

C. Assistance and Cooperation of the Insured

- 1. The Insured shall cooperate with the Company and, upon the Company's request, assist in making settlements, in the conduct of Suits and in enforcing any right of contribution or indemnity against any person or organization who may be liable to the Insured because of Bodily Injury, Property Damage, Personal Injury or any Damages arising out of any negligent act or negligent omission, with respect to which insurance is afforded under this policy.
- 2. The Insured shall attend hearings and trials and assist in securing and giving evidence and obtaining the attendance of witnesses.
- 3. The Insured shall not, except at his own cost, voluntarily make any payment, assume any obligation or incur any expense other than for first aid to others at the time of Occurrence without the Company's consent. The Insured shall promptly take at his or her expense all reasonable steps to prevent related Damages from arising out of the same or similar conditions, but such expenses shall not be recoverable under this policy.

4. The Insured shall cooperate with the Company in its investigation of any Claim or Occurrence, negligent act or negligent omission or offense including prompt compliance with all requests for documents and information deemed relevant by the Company and providing interviews, statements and/or examinations under oath as often as the Company shall reasonably require.
5. All coverage under this policy shall be void if the Insured knowingly misrepresents or conceals any material fact in connection with the presentation or submission of any Claim or Suit, or the Company's investigation or defense thereof.

D. Legal Action Against The Company

No person or organization has a right under this policy:

1. To join the Company as a party or otherwise bring the Company into a Suit asking for Damages from an Insured; or
2. To sue the Company on this policy unless all of its terms have been fully complied with.

A person or organization may sue the Company to recover on any settlement by the Company or on a final judgment against the Insured; but the Company will not be liable for Damages that are not payable under the terms of this policy or that are in excess of the applicable Limit of Liability.

E. Bankruptcy

Bankruptcy or insolvency of the Insured or of the Insured's estate will not relieve the Company of its obligations under this policy.

F. Other Insurance

This insurance will apply only as excess insurance over any other valid and collectible insurance.

G. Changes

This policy contains all the agreements between the Insured and the Company concerning the insurance afforded. The first Named Insured shown in the Declarations is authorized to make changes in the terms of this policy with the Company's consent. This policy's terms can be amended or waived only by endorsement issued by the Company and made a part of this policy.

H. Assignment

Assignment of interest under this policy shall not bind the Company until its consent is endorsed hereon; if, however, the Named Insured shall die, such insurance as is afforded by the policy shall apply: (1) to the Named Insured's legal representative, as the Named Insured, but only while acting within the scope of his duties as such; and (2) with respect to the property of the Named Insured, to the person having proper temporary custody thereof, as Insured, but only until the appointment and qualification of the legal representative.

I. Transfer Of Rights Of Recovery Against Others To The Company

If the Insured has rights to recover all or part of any payment the Company has made under this policy, those rights are transferred to the Company. The Insured must do nothing after Damage to impair them. At the Company's request, the Insured will bring Suit or transfer those rights to the Company and help the Company enforce them.

J. Representations and Warranties

By acceptance of this policy, the Named Insured agrees, represents and warrants that the statements in the Declarations are truthful, accurate and complete: that this policy is issued in reliance upon the truth, accuracy and completeness of such representations.

K. Separation of Insureds

Except with respect to the Limits of Liability, and any rights or duties specifically assigned in this policy to the Named Insured, this insurance applies:

1. As if each Named Insured were the only Named Insured; and
2. Separately to each Insured against whom Claim is made or Suit is brought.

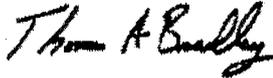
L. Sole Agent

If there is more than one Named Insured in this policy, the first Named Insured shall act on behalf of all Insureds for all purposes, including but not limited to:

1. The payment or return of premium;
2. Receipt and acceptance of any endorsement(s) issued to form a part of this policy;
3. Giving and receiving notice of cancellation, nonrenewal or conditional renewal; and
4. Reimbursement to the Company of any applicable Deductible advanced.

In return for the payment of premium and subject to all the terms of the policy, the Company agrees with the Insured to provide insurance as stated in this policy. This policy shall not be valid unless countersigned by the Company's duly authorized Representative.

In Witness Whereof, the Company has executed and attested these presents and, where required by law, has caused this policy to be countersigned by its duly authorized Representative.



President



Corporate Secretary



Author's Direct Line: 312-381-4101
 Author's Fax: 312-381-6795
 Email: Tanya.Anderson@ars.aon.com

Risk Services
 Financial Services Group

VIA OVERNIGHT DHL: 26622093551

June 10, 2005

Greg Takehara
 Vice President, Claims
 Berkely Agency (Steadfast Insurance Company)
 300 Jericho Quadrangle
 P.O. Box 9022
 Jericho, NY 11753

RE: Insured: Expedia, Inc. et al.
 Policy: Policy Number EOL 5329302-01
 October 1, 2004 - October 1, 2005
 Matter: City of Los Angeles, California et al.

Dear Claims Manager:

On behalf of Expedia, Inc. et al. (the "Insureds"), and in accordance with the reporting provisions of the Policy, we hereby give notice under the Policy, or any other applicable policies, that a claim has been made against certain Insureds in the above-referenced matter. I have enclosed a copy of the Summons and Complaint for the above-referenced matter; the details follow:

Claimant	Court & File Date	Allegations
City of Los Angeles, California et al.	Superior Court of the State of California for the County of Los Angeles, Central District. Case No. BC326693 December 30, 2004	Alleged Violations of Uniform Transient Occupancy Tax Ordinances; Unfair Business Practices; Conversion; Imposition of a Constructive Trust.

At this time, we do not have confirmation as to the Insured's choice of defense counsel in the above-referenced matter. As soon as we receive this information, we will forward it to you.

Please acknowledge receipt of this claim and provide Steadfast Insurance Company/Zurich's consent to the retention of defense counsel, and authorization to incur defense costs. If there are any litigation management guidelines with which you would request the Insureds comply, please provide a copy of those guidelines.

By copy of this letter, we are also providing the Insured's excess E&O carrier with notice of this claim.

In addition to me, courtesy copies of any correspondence should be sent to: Moira Mooney, Expedia Inc., 152 W. 57th Street, 19th Floor, New York, NY 10019, telephone (212) 314-7323, email moira.mooney@iac.com.

Aon Financial Services Group, Inc.
 200 E. Randolph Street • 11th Floor • Chicago, IL 60601
 tel: (312) 381-1000 • fax: (312) 381-0175 • www.aon.com

EXP 0007251

June 10, 2005
Expedia - City of Los Angeles
Page 2 of 2

Aon Financial Services Group

If you need any additional information, or if I can be of further assistance, please do not hesitate to contact me.

Sincerely,

Tanya Anderson

Tanya Anderson
Claims Coordinator

Enclosure

cc: Moira Mooney - Expedia, Inc. w/o enclosure
Kevin Kalinich - Aon w/o enclosure
Aaron Davidson - Aon w/o enclosure
Chubb - w/enclosure
Policy # 7978-42-77 LIO
Claims Manager
15 Mountain View Road
Warren, NJ 07039
Via Overnight DHL: 26622134350



Berkely Agency

Professional Liability Claims

June 27, 2005

Ms. Tanya Anderson
Aon Risk Services
Aon Financial Services Group, Inc.
200 E. Randolph Street
11th Floor
Chicago, IL 60601

Insured: Expedia, Inc.
Claimant: City of Los Angeles
Date of Loss: 5/2/01 (beginning)
Policy No.: EOL 5329302-01
Claim No.: 05ZUR0100

Dear Tanya:

This will acknowledge receipt of the above-captioned class action that was received in our office. Please be advised that we are the Managing General Agent and Claims Administrator for the above-referenced policy with Staadfast Insurance Company/Zurich American Insurance Company of Illinois ("Zurich").

We have established a claim file under the insured's Travel Agents Professional Liability Policy, EOL 5329302-01, effective October 1, 2004 through October 1, 2005. This policy carries limits of liability of \$5,000,000 in the aggregate with a \$50,000 per occurrence indemnity and defense deductible.

A review of the claim documentation indicates that this matter arises from individuals booking hotel accommodations through the insured's Internet site. Apparently, the insured was allegedly overcharging for hotel taxes and remitting only a portion of the taxes to the appropriate authority. At this time, the City of Los Angeles is seeking payment of the entire tax amount charged by the insured to their clients.

We regret to inform you that there is no coverage under the above-referenced policy and accordingly, Zurich will not be providing a defense or indemnity. We would like to draw your attention to the insured's policy, specifically Endorsement No. 12 that states:

NO COVERAGE WITH RESPECT TO PIRACY, PATENT INFRINGEMENT, VIOLATION OF INTELLECTUAL PROPERTY RIGHTS, UNFAIR TRADE PRACTICES, UNFAIR COMPETITION OR "ADVERTISING INJURY"

THIS ENDORSEMENT MODIFIES THE LIABILITY COVERAGE AFFORDED UNDER THE TRAVEL AGENTS' PROFESSIONAL LIABILITY POLICY AS FOLLOWS:

NOTWITHSTANDING ANY POLICY LANGUAGE TO THE CONTRARY, NO LIABILITY COVERAGE IS AFFORDED UNDER COVERAGES A, B, C, OR D OF THIS POLICY WITH RESPECT TO ANY CLAIM FOR "DAMAGES" BECAUSE OF PIRACY, PATENT INFRINGEMENT, VIOLATION OF INTELLECTUAL PROPERTY RIGHTS, STATUTORY OR COMMON LAW UNFAIR TRADE PRACTICES, UNFAIR COMPETITION OR "ADVERTISING INJURY", CAUSED BY AN OFFENSE COMMITTED IN THE COURSE OF ADVERTISING YOUR GOODS, PRODUCTS OR SERVICES, FOR THE PURPOSE OF THIS

IN CALIFORNIA: Berkely Agency is a member of Aon Direct Insurance Agency, Inc., CA License # 0705465.

IN ALL OTHER STATES: Berkely Agency is a division of Affinity Insurance Services, Inc. in all states other than CA, except for its activity through the Agency, Inc. in CA and Aon Affinity Insurance Agency, Inc. in all other states.

300 Jericho Quadrangle • P.O. Box 9022 • Jericho, New York 11753 EXP 0007265
300-803-1213 • 516-294-0220 • Fax 516-294-1038

Ms. Tanya Anderson
Page Two
June 27, 2008

ENDORSEMENT, THE TERM "ADVERTISING INJURY" MEANS INJURY ARISING OUT OF ONE OR MORE OF THE FOLLOWING OFFENSES:

- (A) ORAL, WRITTEN OR ELECTRONIC PUBLICATION OF MATERIAL THAT SLANDERS OR LIBELS A PERSON OR ORGANIZATION OR DISPARAGES A PERSON'S OR ORGANIZATION'S GOODS, PRODUCTS OR SERVICES;
- (B) ORAL, WRITTEN OR ELECTRONIC PUBLICATION OF MATERIAL THAT VIOLATES A PERSON'S RIGHT OR PRIVACY;
- (C) MISAPPROPRIATION OF ADVERTISING IDEAS OR STYLE OF DOING BUSINESS; OR INFRINGEMENT OF COPYRIGHT, TITLE OR SLOGAN.

The insured's policy also contains Exclusion P that states:

THIS POLICY DOES NOT APPLY:

UNDER COVERAGES C AND D, TO LIABILITY ARISING OUT OF ANY ACT, ERROR OR OMISSION WHICH IS WILFULLY DISHONEST, FRAUDULENT OR MALICIOUS, OR IN WILFUL VIOLATION OF ANY PENAL OR CRIMINAL STATUTE OR ORDINANCE, AND IS COMMITTED (OR OMITTED) BY OR WITH THE KNOWLEDGE OR CONSENT OF THE "INSURED"

Endorsement No. 9 of the insured's policy further states:

EXCLUSION (Q) IS DELETED AND REPLACED BY THE FOLLOWING EXCLUSION:

THIS POLICY DOES NOT APPLY:

(Q) UNDER COVERAGE C, TO ANY LIABILITY ARISING OUT OF OR CONTRIBUTED TO BY THE CO-MINGLING OF MONEY OR THE INABILITY OR FAILURE TO PAY OR COLLECT ANY MONEY FOR ANY REASON, INCLUDING THE FOLLOWING:

1. INSOLVENCY;
2. RECEIVERSHIP;
3. BANKRUPTCY;
4. LIQUIDATION; OR
5. UNAUTHORIZED OR ILLEGAL CREDIT CARD TRANSACTIONS;

WHETHER SUCH CO-MINGLING OF MONEY OR FAILURE OR INABILITY TO PAY OR COLLECT MONEY IS ON THE PART OF THE "INSURED" OR ANY OTHER PARTY.

As these matters arise from the insured's alleged failure to either pay the taxing authorities for the taxes collected and their alleged failure to reimburse the clients for overcharging the taxes and alleged unfair trade practices, coverage for this claim would be excluded under the above endorsements and exclusions.

EXP 0007266

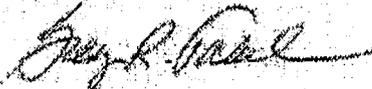
Ms. Tanya Anderson
Page Three
June 27, 2005

This correspondence is not intended to be, nor should it be, construed as an exhaustive listing of policy terms, conditions or exclusions which might preclude coverage for this matter under Steadfast Insurance Company's (Zürich's) policy. Steadfast Insurance Company/Zürich reserves the right to supplement this declination should facts and circumstances indicate the applicability of additional grounds to deny this claim.

We regret that our response cannot be more favorable. If you have any information you feel should be reviewed by our office, please forward it to the attention of the undersigned at Affinity Insurance Services, 300 Jericho Quadrangle, 3rd Floor, Jericho, New York, 11753.

Sincerely,

BERKELY AGENCY
FOR STEADFAST INSURANCE COMPANY/ZURICH



Greg R. Takehara
Vice President, Claims

EXP 0007267



ORRICK, HERBINGTON & SUTCLIFFE LLP
THE ORRICK BUILDING
405 HOWARD STREET
SAN FRANCISCO, CALIFORNIA 94105-2669
tel +1-415-773-5700
fax +1-415-773-5759
WWW.ORRICK.COM

Richard DeNatale
(415) 773-4570
rdenatale@orrick.com

November 24, 2010

VIA FEDERAL EXPRESS

Zurich American Insurance Company
1400 American Lane
Schaumburg, IL 60196-1056

Re: Zurich American Insurance Company Policies EOL 5329302-02, EOL 5329302-03,
EOL 5329302-04, EOL 5329302-05

To the Claims Department:

We have been retained as coverage counsel for Expedia, Inc. (Washington corporation), Expedia, Inc. (Delaware corporation), Hotels.com, L.P., Hotels.com, GP, LLC, Hotwire, Inc., and Travelscape (collectively, "Expedia"). Expedia has been sued in the lawsuits listed in Attachment A (the "Actions"). Copies of the complaints (including the complaint in *City of Los Angeles vs. Hotels.com, et al.*, which was previously tendered) are enclosed. On behalf of Expedia, we hereby tender the Actions to you and ask you to confirm that you will defend and indemnify Expedia pursuant to the insurance policies listed above.

Sincerely,

Richard DeNatale

Enclosures

OHS West261017868.1

EXP 0008304

ATTACHMENT A
LIST OF UNDERLYING LAWSUITS

Case Name	Court	Defendants
1. City of Los Angeles v. Hotels.com, et al.	Superior Court of the State of California, County of Los Angeles	Hotels.com, L.P. Hotels.com, GP, LLC Hotwire, Inc. Expedia, Inc.
2. City of San Diego v. Hotels.com LP, et al.	Superior Court of the State of California, County of Los Angeles	Hotels.com, L.P. Hotels.com, GP, LLC Hotwire, Inc. Expedia, Inc.
3. 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 Los Angeles	Expedia, Inc. Hotels.com, L.P. Hotwire, Inc. (plaintiffs)
4. 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 Los Angeles	Expedia, Inc. Hotwire, Inc. (plaintiffs)
5. City of Santa Monica, California v. Expedia, Inc.	Superior Court of the State of California, County of Los Angeles	Expedia, Inc. Hotels.com, L.P. Hotels.com GP, LLC Hotwire, Inc.
6. City of Chicago, Illinois v. Hotels.com, L.P., et al.	Circuit Court of Cook County, Illinois, County Department, Law Division, Tax & Miscellaneous Remedies Section	Hotels.com, L.P. Hotwire, Inc. Expedia, Inc.
7. Village of Rosemont, Illinois v. Priceline.com Incorporated, et al.	United States District Court for the Northern District of Illinois	Expedia, Inc. Hotels.com, L.P. Hotwire, Inc.

¹ This is a non-exhaustive list that includes only Expedia and corporate affiliates. In certain cases, as noted, the parties listed are plaintiffs in the lawsuit.

Case Name	Court	Defendants
8. City of Columbus, et al. v. Hotels.com, L.P., et al.	United States District Court, Northern District of Ohio, Western Division	Hotels.com, L.P. Hotwire, Inc. Expedia, Inc.
9. Hamilton County, Ohio, et al. v. Hotels.com, L.P., et al.	Court of Common Pleas, Hamilton County, Ohio	Hotels.com, L.P. Hotwire, Inc. Expedia, Inc.
10. City of Rome, Georgia, et al. v. Hotels.com L.P., et al.	United States District Court, Northern District of Georgia, Rome Division	Hotels.com, L.P. Hotels.com GP LLC Hotwire, Inc. Expedia, Inc.
11. City of Atlanta, Georgia v. Hotels.com, LP, et al.	Superior Court of Fulton County, State of Georgia	Hotels.com, L.P. Hotels.com GP LLC Hotwire, Inc. Expedia, Inc.
12. Columbus, Georgia vs. Hotels.com, Inc. et al.; Columbus, Georgia v. Expedia, Inc.; Columbus, Georgia vs. Orbitz, Inc., et al.	Superior Court of Muscogee County, Georgia	Hotels.com, L.P. Expedia, Inc.
13. Wake County v. Hotels.com, LP, et al.	North Carolina Business Court	Hotels.com, LP Hotwire, Inc. Expedia, Inc.
14. Dare County v. Hotels.com, et al.	North Carolina Business Court	Hotels.com, LP Hotwire, Inc. Expedia, Inc.
15. Huncombe County v. Hotels.com, et al.	North Carolina Business Court	Hotels.com, LP Hotwire, Inc. Expedia, Inc.
16. Mecklenburg County v. Hotels.com, LP, et al.	North Carolina Business Court	Hotels.com, LP Hotwire, Inc. Expedia, Inc.

Case Name	Court	Defendants ¹
17. Orange County, et al. v. Expedia, Inc., et al.	Florida Complex Business Litigation Court	Expedia, Inc.
18. City of Jacksonville v. Hotels.com, L.P., et al.	In the Circuit Court, Fourth Judicial Circuit, in and for Duval County, Florida	Hotels.com, L.P. Hotels.com GP, LLC Hotwire, Inc. Expedia, Inc.
19. County of Monroe, Florida v. Priceline.com Incorporated., et al.	United States District Court, Southern District of Florida	Expedia, Inc. Hotels.com, L.P. Hotwire, Inc.
20. Orbitz, LLC, et al. v. Broward County, Florida and Florida Department of Revenue	Second Judicial Circuit Court, State of Florida, Leon County	Hotwire, Inc. Hotels.com, L.P. Expedia, Inc. (plaintiffs)
21. Expedia, Inc. v. Miami-Dade County, Florida & Florida Department of Revenue	In the Circuit Court of the Second Judicial Circuit, In & For Leon County, Florida	Expedia, Inc. Hotwire, Inc. Hotels.com, L.P. (plaintiffs)
22. Anne Gannon, in her capacity as Palm Beach County Tax Collector, on behalf of Palm Beach County v. Hotels.com, L.P., et al.	In the Circuit Court of the 15 th Judicial Circuit in and for Palm Beach County, Florida	Hotels.com, L.P. Hotels.com GP, LLC Hotwire, Inc. Expedia, Inc. (WA)
23. Brevard County, Florida v. Priceline.com, Incorporated, et al.	United States District Court, Middle District of Florida, Orlando Division	Expedia, Inc. Hotels.com, L.P. Hotwire, Inc.
24. Leon County, et al. v. Expedia, Inc., et al. ("Leon County (1)")	In the Circuit Court for the Second Judicial Circuit in and for Leon County, Florida	Expedia, Inc. Hotels.com, L.P. Hotwire, Inc.
25. Leon County v. Expedia, Inc., et al. ("Leon County (2)")	In the Circuit Court for the Second Judicial Circuit in and for Leon County, Florida	Expedia, Inc. Hotels.com, L.P. Hotels.com GP, LLC Hotwire, Inc.

Case Name	Court	Defendants
26. City of Charleston, South Carolina v. Hotels.com, et al.	United States District Court for the District of South Carolina, Charleston Division	Hotels.com, L.P. Hotwire, Inc. Expedia, Inc.
27. Horry County, et al. v. Hotels.com, LP, et al.	Court of Common Pleas, County of Horry, South Carolina	Hotels.com, L.P. Hotwire, Inc. Expedia, Inc.
28. Town of Hilton Head Island, South Carolina v. Hotels.com, L.P. et al.	Court of Common Pleas, County of Beaufort, South Carolina	Hotels.com, L.P. Hotels.com, L.P. Hotwire, Inc. Expedia, Inc. Travelscape
29. City of San Antonio v. Hotels.com, L.P.	United States District Court, Western District of Texas, San Antonio Division	Hotels.com, L.P. Hotels.com, GP, LLC Hotwire, Inc. Expedia, Inc.
30. City of Bowling Green, Ky. v. Hotels.com, L.P., et al.	Commonwealth of Kentucky, Warren Circuit Court, Division 1	Hotels.com, L.P. Hotwire, Inc. Expedia, Inc.
31. County of Nassau, New York v. Hotels.com, LP, et al.	United States District Court, Eastern District of New York	Hotels.com, LP Hotels.com GP, LLC Hotwire, Inc. Expedia, Inc.
32. City of Branson v. Hotels.com, LP, et al.	In the Circuit Court of Greene County, Missouri	Hotels.com, LP Hotwire, Inc. Expedia, Inc.
33. St. Louis County, Missouri v. Prestige Travel, Inc. (d/b/a Tripres.com), et al.	In the Circuit Court of St. Louis County, Missouri	Expedia, Inc. (DE) Expedia, Inc. (WA) Hotels.com Hotels.com, L.P. Hotels.com GP, LLC Hotwire, Inc.
34. City of Gallup, New Mexico v. Hotels.com, L.P., et al.	United States District Court, District of New Mexico	Hotels.com, L.P. Hotwire, Inc. Expedia, Inc.

Case Name	Court	Defendants
35. City of Goodlettsville, Tennessee v. Priceline.com, Inc., et al.	United States District Court, Middle District of Tennessee	Expedia, Inc. Hotels.com, L.P. Hotwire, Inc.
36. Township of Lyndhurst, New Jersey v. Priceline.com, Inc., et al.	United States District Court, District of New Jersey	Expedia, Inc. Hotels.com, L.P. Hotwire, Inc.
37. Mayor & City Council of Baltimore v. Priceline.Com, Inc., et al.	United States District Court, District of Maryland, Baltimore Division	Expedia, Inc. (DE) Expedia, Inc. (WA) Hotels.com Hotels.com, L.P. Hotels.com GP, LLC Hotwire, Inc.
38. County Commissioners of Worcester County, Maryland v. Priceline.Com, Inc., et al.	United States District Court, District of Maryland, Baltimore Division	Expedia, Inc. (DE) Hotels.com, L.P. Hotwire, Inc.
39. Baltimore County, Maryland v. Priceline.com, Inc.	United States District Court, District of Maryland, Baltimore Division	Expedia, Inc. Hotels.com Hotels.com, L.P. Hotels.com GP, LLC Hotwire, Inc.
40. County of Genesee, Michigan, et al. v. Hotels.com, L.P., et al.	State of Michigan, In the Circuit Court for the County of Ingham	Hotels.com, L.P. Hotels.com GP, LLC Expedia, Inc.
41. County of Lawrence, PA v. Hotels.com, L.P., et al.	Court of Common Pleas of Lawrence County, PA	Hotels.com, L.P. Hotels.com GP, LLC Hotwire, Inc. Expedia, Inc.
42. Pine Bluff Advertising & Promotion Commission, Jefferson County, Arkansas, et al. v. Hotels.com, L.P., et al.	In the Circuit Court of Jefferson County, Arkansas	Hotels.com, L.P. Hotwire, Inc. Expedia, Inc.

Case Name	Court	Defendants
43. City of Birmingham, et al. v. Orbitz, Inc., et al.	In the Circuit Court of Jefferson County, Alabama	Expedia, Inc. Hotels.com, L.P. Hotels.com GP, LLC Hotwire, Inc.
44. Lake County Conventions and Visitors Bureau; Marshall County, and All Others Similarly Situated, v. Sabre Holdings Corporation;	United States District Court for the Northern District of Indiana, Hammond Division	Hotels.com, L.P. Expedia, Inc. Hotwire, Inc.
45. Town of Mount Pleasant, South Carolina v. Hotels.com, et al	United States District Court for the District of South Carolina, Charleston Division	Hotels.com, L.P. Hotwire, Inc. Expedia, Inc.
46. City of North Myrtle Beach v. Hotels.com., LP, et al	United States District Court for the District of South Carolina, Charleston Division	Hotels.com, L.P. Hotwire, Inc. Expedia, Inc.
47. Louisville/Jefferson County Metro Government v. Hotels.com et al	United States District Court, Western District of Kentucky, Louisville Division	Hotels.com, L.P. Hotwire, Inc. Expedia, Inc.
48. Marshall County and All Others Similarly Situated, v. Hotels.com, LP et al	United States District Court for the Northern District of Indiana	Hotels.com, LP, Hotels.com GP, LLC Hotwire, Inc.
49. City of Jefferson, Missouri and All Others Similarly Situated, v. Hotels. Com, LP et al	Circuit Court of Cole County, State of Missouri	Hotels.com, LO Hotels.com GP, LLC Hotwire, Inc.
50. State of Florida, Office of the Attorney General, Department of Legal Affairs v. Expedia, Inc. et al	Circuit Court for the Second Judicial Circuit in and for Leon County, Florida	Expedia, Inc.
51. Expedia, Inc. et al v. City of New York Department of Finance, et al.	Supreme Court of the State of New York, County of New York	Expedia, Inc. Hotels.com, L.P. Hotwire, Inc. (plaintiffs)

Case Name	Court	Defendants
52. Travelscape, LLC v. South Carolina Department of Revenue	State of South Carolina, Supreme Court	Travelscape, LLC (plaintiff)
53. The State of Oklahoma ex rel., Oklahoma Tax Commission v. Priceline.com, Inc. et al	District Court of Oklahoma County, State of Oklahoma	Expedia, Inc. Hotels.com, L.P. Hotwire, Inc.
54. Hotels.com, L.P. v. Indiana Department of State Revenue	Indiana Tax Court	Hotels.com, L.P. (plaintiff)
55. City of Myrtle Beach, South Carolina v. Hotels.com, LP, et al.	Court of Common Pleas, 15th Judicial Circuit, Court of Horry, South Carolina	Hotels.com, L.P. Hotwire, Inc. Expedia, Inc.
56. City of Houston, Texas, et al. v. Hotels.com, L.P., et al.	District Court of Harris County, Texas	Hotels.com, L.P. Hotwire, Inc. Expedia, Inc.
57. City of Philadelphia, Pennsylvania v. Hotels.com et al.	Court of Common Pleas of Philadelphia County, Pennsylvania	Expedia, Inc. Hotels.com Hotels.com, GP, LLC Hotwire.com



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Richard DeNatale
(415) 773-4570
rdenatale@orrick.com

September 1, 2011

VIA FEDERAL EXPRESS

Zurich American Insurance Company
1400 American Lane
Schaumburg, IL 60196-1056

Re: Zurich American Insurance Company Policies EOL 5329302-02, EOL 5329302-03,
EOL 5329302-04, EOL 5329302-05

To the Claims Department:

As we stated in our letter of November 24, 2010, we have been retained as coverage counsel for Expedia, Inc. (Washington corporation), Expedia, Inc. (Delaware corporation), Hotels.com, L.P., Hotels.com, GP, LLC, Hotwire, Inc., and Travelscape (collectively, "Expedia"). Since our prior letter, Expedia has been sued in the lawsuits listed in Attachment A (the "Actions"). Copies of the complaints are enclosed. On behalf of Expedia, we hereby tender the Actions to you and ask you to confirm that you will defend and indemnify Expedia pursuant to the insurance policies listed above.

Sincerely,



For
Richard DeNatale

Enclosures

EXP 0009068

EXHIBIT A

SUITS TENDERED ON SEPTEMBER 1, 2011

Case Name	Court	Defendants
Expedia, Inc. v. Osceola County, Florida and Florida Department of Revenue	Second Judicial Circuit Court, State of Florida, Leon County	Plaintiffs: Expedia, Inc.
Montgomery County, Maryland v. priceline.com, Inc., et al.	United States District Court for the District of Maryland, Northern Division	Expedia Inc. (DE) Expedia, inc. (WA) Hotels.com Hotels.com, L.P. Hotels.com GP, LLC Hotwire, Inc. TravelNow.com, Inc.
Montana Department of Revenue v. Priceline.com, Inc., et al.	Montana First Judicial District Court, Lewis and Clark County	Expedia, Inc. Hotels.com Hotels.com, L.P. Hotels.com GP, LLC Hotwire, Inc. TravelNow.com, Inc.
City of Duluth v. Expedia, Inc., et al.	Minnesota Sixth Judicial District Court, St. Louis County	Expedia, Inc.
District of Columbia vs. Expedia, Inc.	Superior Court of The District of Columbia Civil Division	Expedia, Inc. (DE) Expedia, Inc. (WA) Hotels.com, L.P. Hotwire, Inc.
County of Volusia, et al. v. Expedia, Inc., et al.	Seventh Judicial Circuit Court, State of Florida, Volusia County	Expedia, Inc. Hotels.com, L.P. Hotwire, Inc. TravelNow.com, Inc.

Albany
Atlanta
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Denver
Los Angeles

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September 30, 2011

RECEIVED

OCT 03 2011

BY E-MAIL AND U.S. MAIL

Richard DeNatale
Orrick, Herrington & Sutcliffe LLP
701 Fifth Avenue
Suite 5600
Seattle, WA 98104-7097

Re: Insureds: Expedia, Inc. (Washington corporation); Expedia, Inc. (Delaware corporation); Hotels.com, L.P.; Hotels.com, G.P., LLC; Hotwire, Inc.; and Travelscape (collectively, "Expedia" or "the insureds")

Policy Nos.: EOL 5329302-02, EOL 5329302-03, EOL 5329302-04, and EOL 5329302-05

Claimants: District of Columbia; Osceola County, FL; Montana Department of Revenue; Montgomery County, MD; City of Duluth, MN; and County of Volusia, FL

Dear Mr. DeNatale:

On behalf of Zurich American Insurance Company ("ZAIC"), this letter addresses ZAIC's coverage evaluation under the above-referenced insurance policies for the following six lawsuits recently tendered by Expedia to ZAIC: *Expedia, Inc. v. Osceola County, Florida and Florida Department of Revenue*, No. 2011CA0206; *Montgomery County, Maryland v. Priceline.com, et al.*; *Montana Department of Revenue v. Priceline.com, et al.*, No. CDv2010-1056; *City of Duluth v. Expedia, Inc.*, No. ; *District of Columbia v. Expedia, Inc.*, No. 2011 CA 002117; and *County of Volusia, et al. v. Expedia, Inc., et al.*, No. 2011-10834-CIDL. Based on the terms and conditions of the policies as well as the facts and information available to ZAIC, it does not appear that the policies provide a duty to defend or indemnify Expedia in these lawsuits. Accordingly, ZAIC denies coverage for same based upon the terms and conditions of Policy Nos. EOL 5329302-02, EOL 5329302-03, EOL 5329302-04, and EOL 5329302-05 ("the ZAIC Policies") as outlined below.

EXP 0008275

Factual Background

A review of the claim documentation submitted with your September 1, 2011 letter reveals that the insureds are internet-based travel companies that operate websites where customers can research and evaluate hotel rentals and other travel products and services. It is alleged that Expedia negotiates with hotels to obtain access to rooms that Expedia can reserve or book for its customers. Expedia obtains these rooms at a lower wholesale price and makes them available to customers through its website at a higher retail price, plus certain tax recovery charges and fees. Expedia allegedly retains the difference as compensation for the transaction.

The government entities involved in the lawsuits (in five cases as plaintiffs and, in one case instituted by Expedia, as the defendant) (collectively the "Government Entities") levy certain taxes on the sale of hotel rooms, generally referred to as hotel occupancy tax or transient tax. The challenged Expedia model calls for calculation and payment of these taxes on the wholesale price of the room, not the retail price paid by the consumer.

The Government Entities assert that Expedia has remitted hotel occupancy tax based on the discounted wholesale amount that hotels charge Expedia, not the higher retail amount that Expedia charges its customers, in violation of applicable tax ordinances and other laws.

In one of the six lawsuits at issue, *County of Volusia, Florida v. Expedia, et al.*, No. 2011-10834-CIDL, the plaintiff seeks only a declaratory judgment as to Expedia's tax liability and other equitable (non-monetary) relief. Another lawsuit, *Expedia, Inc. v. Osceola County, Florida et al.*, No. 2011 CA 000206, was instituted by Expedia seeking a refund or reversal of taxes assessed. The remaining four lawsuits, *District of Columbia v. Expedia, Inc. et al.*, No. 0002117-11; *Montana Dept. of Revenue v. Priceline.com, et al.*, No. COV 2010-1056; *Montgomery County, Maryland v. Priceline.com, et al.*, No. 8:10-cv-03558-AW; and *City of Duluth v. Expedia, Inc.*, seek unpaid taxes and related relief based on one or more of the following theories of recovery: (1) violation of pertinent hotel tax ordinance(s); (2) conversion; (3) unjust enrichment; (4) constructive trust; (5) legal accounting; and/or (6) restitution or disgorgement.

By letter dated June 10, 2005, Expedia tendered a lawsuit raising many of the same and/or similar allegations, *City of Los Angeles v. Hotels.com LP, et al.*, No. BC 326693, under an insurance policy issued by Steadfast Insurance Company ("Steadfast") to the insureds, No. EOL 5329302-00. Berkely Travel responded on behalf of Steadfast to the referenced tender with a letter of declination dated June 27, 2005.

In November 2010, Expedia tendered fifty-six additional lawsuits raising many of the same and/or similar allegations and simultaneously filed a lawsuit against ZAIC and others in the Superior Court for King County, Washington, seeking a declaration of coverage under the ZAIC Policies and other relief (the "coverage lawsuit"). ZAIC responded to Expedia's coverage claims regarding these lawsuits by filing an Answer and Counterclaim in the coverage lawsuit, which remains ongoing. ZAIC's responsive pleading set forth the company's position that the ZAIC

Policies do not provide a duty to defend or indemnify Expedia in the *City of Los Angeles* suit or any of the fifty-six additional underlying actions at issue in the coverage lawsuit, identifying with specificity the policy provisions, facts, and circumstances relied on as a basis for ZAIC's position.

The ZAIC Policies

ZAIC issued to the Expedia insureds identified on the pertinent Declaration page(s) a Travel Agents' Professional Liability Policy No. EOL5329302-02, with a policy period of October 1, 2005- October 1, 2006. Expedia renewed its coverage with ZAIC annually for the next three years through October 1, 2009 (EOL5329302-03, EOL5329302-04, and EOL5329302-05). Policy No. EOL5329302-02 featured limits of \$5 million per occurrence / \$5 million aggregate and a deductible amount of \$50,000. The remaining ZAIC Policies at issue featured limits of \$1 million per occurrence / \$1 million aggregate and a deductible amount of \$50,000.

The ZAIC Policies provide errors and omissions coverage (Coverage C) as follows:

Coverage C Professional Liability

The Company will pay on behalf of the Insured those sums that the Insured becomes legally obligated to pay as Damages arising out of a negligent act or negligent omission anywhere in the world committed by the Insured or any other person for whose acts the Named Insured is legally liable in the conduct of Travel Agency Operations by the Named Insured provided such negligent act or negligent omission occurs during the Policy Period.

Insuring Agreement, ¶ A.3.

The insurer's defense obligations under the ZAIC Policies are as follows:

The Company shall have the right and duty to defend any Suit against the Insured seeking Damages on account of such . . . negligent act or negligent omission . . . to which this Insurance applies, even if any of the allegations of the Suit are groundless, false or fraudulent. The Company shall have the right to conduct such investigation and settlement of any Claim or Suit as it deems expedient. The Company shall not be obligated to pay any Claim or judgment or to defend any Suit after the applicable Limit of Liability has been exhausted by payment of judgments or settlements.

Insuring Agreement, ¶ B.

The ZAIC Policies limit coverage to claims for "damages." All of the ZAIC Policies define damages to specifically exclude:

- (1) punitive, exemplary, or multiple damages; (2) criminal or civil fines, penalties (statutory or otherwise), fees, or sanctions; (3) matters deemed uninsurable; (4) any form of non-monetary, equitable or injunctive relief; and (5) restitution, return or disgorgement of any fees, funds, or profits.

Policies, DEFINITIONS, § IV.D.

The ZAIC Policies set forth certain coverage conditions, including the following provisions regarding the insured's notice and cooperation obligations:

As a condition precedent to coverage, the Insured must notify the Company as soon as practicable of an Occurrence, a negligent act or negligent omission or an offense.

§ VII. Conditions, ¶ B.1

If a claim is made or a suit is brought against the Insured, as a condition precedent to coverage, the Insured must immediately record the specifics of the Claim or Suit and the date received; and Notify the Company as soon as practicable. The Insured must see to it that the Company receive written notice of the Claim or Suit as soon as practicable.

§ VII. Conditions, ¶ B.2

The -03, -04, and -05 ZAIC Policies also contain the following exclusionary language:¹

This policy does not apply to:

- (O) Any Claim or Suit based upon or arising from any co-mingling of money, or the inability or failure to pay or collect money or the value of mileage points, vouchers, travel credits, or

¹ The -02 Policy contains a similarly worded exclusion that precludes coverage for claims arising out of the inability to pay money but does not reference the failure to pay money (as in the other Policy forms): "This policy does not apply to: . . . (O) Any Claim or Suit based upon or arising from any co-mingling of money, or the inability to pay or collect money or other negotiable instruments for any reason . . ." The word "failure" reappears in the revised version of the form used in connection with the -03, -04, and -05 Policies.

other negotiable instrument, for any reason, whether on the part of the Insured, or any other party, including but not limited to unauthorized or illegal credit card transactions; debit memos; commissions, profits, or refunds; and bankruptcy, insolvency, receivership, liquidation and/or cessation of operations.

Policy, Exclusions, § II.O.

The ZAIC Policies also exclude coverage for claims arising out of unfair trade practices and unfair competition as follows:

This policy does not apply to: Any Claim or Suit based upon or arising out of the Insured's violation of any consumer fraud, consumer protection, consumer privacy, unfair trade or deceptive business practice or statutory or common law unfair competition.

Policy, Exclusions, § II.K.

The ZAIC Policies also exclude coverage for:

Any Claim or Suit based upon or arising out of any Occurrence, act, or omission, or offense by the Insured which is intentional, dishonest, fraudulent or malicious, or criminal, regardless of whether the resultant Damages were intended.

Policy, Exclusions, § II.N.

Discussion

As these matters arise from Expedia's alleged failure to pay the Government Entities the full amount of taxes owed and Expedia's allegedly deceptive tax collection and remittance practices, the claims at issue do not fall within the insuring agreement in the ZAIC Policies. This is true for two principal reasons.

First, there is no coverage for the Government Entities' claims because they do not seek "damages" within the meaning of the ZAIC Policies. All of the ZAIC Policies limit coverage to claims for "damages," which are defined to specifically exclude:

(1) punitive, exemplary, or multiple damages; (2) criminal or civil fines, penalties (statutory or otherwise), fees, or sanctions; (3) matters deemed uninsurable; (4) any form of non-monetary, equitable or injunctive relief; and (5) restitution, return or disgorgement of any fees, funds, or profits.

A review of the claim documentation shows that all of the lawsuits at issue involve claims for this kind of relief. Because the claims at issue seek in various combinations

declaratory, injunctive, or other purely equitable relief; restitution and disgorgement; and penalties or fees, they are not claims for "damages" within the meaning of the insuring agreements in the ZAIC Policies.

Second, the lawsuits at issue do not allege "negligence" within the meaning of the ZAIC Policies. The ZAIC Policies do not cover intentional or willful conduct, which is explicitly excluded from coverage. The Government Entities that have sued Expedia² do not allege that Expedia failed to pay its taxes due to neglect or inadvertence, but allege that Expedia's conduct was premeditated and intentional. A review of the claim documentation submitted for the various claims also reveals numerous allegations of intentional, willful, wanton, fraudulent, and deceptive conduct. Such conduct does not constitute a covered risk (i.e., a negligent error or omission) under the ZAIC Policies.

The ZAIC Policies also contain certain exclusions that preclude coverage for the claims at issue. Exclusion O contained in the -03, -04, and -05 ZAIC Policies, for example, bars coverage for claims against Expedia arising out of or contributed to by Expedia's failure to collect or pay money for any reason. Each of the claims at issue arises out of Expedia's alleged failure to pay taxes, and taxes unquestionably are money. As such, Exclusion O precludes coverage for the Government Entities' claims under these policies.³

In addition, the ZAIC Policies specifically exclude unfair trade practices or unfair competition (Exclusion K). To the extent that certain of the complaints allege unfair practices by Expedia arising from a failure to pay the correct amount of hotel occupancy taxes and/or to fully disclose the nature of the insureds' tax collection and remittance practices, this exclusion applies to preclude coverage for such claims. See *Montana Dept. of Revenue v. Priceline.com, et al.* (discussing insureds' allegedly deceptive tax collection practices) and *Montgomery County, Maryland v. Priceline.com, et al.* (alleging that insureds hid additional and illegal profit streams under the guise of "taxes and fees").

Under Exclusion N, the ZAIC Policies also preclude coverage for liability arising out of any act or omission "which is intentional, dishonest, fraudulent or malicious, or criminal, regardless of whether the resultant Damages were intended." As reflected in the claim documentation, the Government Entities that have sued Expedia assert that Expedia intentionally

² One of the six lawsuits tendered, *Expedia, Inc. v. Osceola County Florida, et al.*, was instituted by Expedia as the plaintiff. This lawsuit falls outside the scope of coverage provided by the ZAIC Policies, which limit the insurer's defense obligation to "any Suit *against* the Insured seeking Damages . . ." (Bold text in original; emphasis added).

³ Exclusion O in the -02 Policy also may preclude coverage for the Government Entities' claims. See footnote 1, *supra*.

Richard DeNatale
September 30, 2011
Page 7

and dishonestly violated the pertinent tax code and statutory provisions. For this and all of the reasons discussed above, the claims at issue are not covered under the ZAIC Policies.⁴

Conclusion

Based on the terms and conditions of the ZAIC Policies, as well as the facts and information available to ZAIC, it does not appear that the ZAIC Policies provide a duty to defend or indemnify Expedia in any of the six lawsuits tendered under cover of your September 1, 2011 letter. Accordingly, ZAIC denies coverage for same based upon the terms and conditions of the ZAIC Policies. If you believe that any of the factual information cited in this letter as a basis for ZAIC's decision is incomplete or inaccurate, or if there is additional information you wish ZAIC to consider, please let me know immediately.

This correspondence is not intended to be, nor should it be construed as, an exhaustive listing of policy terms, conditions, or exclusions which might preclude coverage for the above-referenced lawsuits under the ZAIC Policies. ZAIC expressly reserves the right to amend or supplement this letter based upon any other provisions of the ZAIC Policies, whether or not mentioned herein, and as additional information concerning the ZAIC Policies and/or the claims is provided or obtained. There may be other policy provisions that affect coverage for the claims asserted, and ZAIC's coverage position as set forth in this letter is not a waiver of those provisions. Instead, all of ZAIC's rights under the ZAIC Policies, under applicable law, and under principles of public policy or equity are expressly reserved.

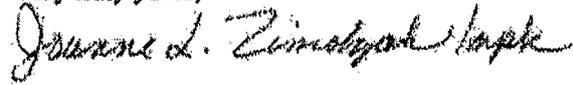
Finally, it appears that the above-referenced lawsuits were sent to a generic address for ZAIC. This is contrary to the instructions that were provided to the insureds at the time the above-referenced policies were issued, which provide for claim submission directly to Berkely Travel, ZAIC's Third Party Administrator for claims under the ZAIC Policies. In the event that Expedia in the future seeks to tender any additional claims under the ZAIC Policies, please direct any and all such correspondence to Greg. R. Takehara at Berkely Travel, 300 Jericho Quadrangle, Jericho, NY 11753.

⁴ It also bears noting that the lawsuits at issue appear to have been filed during the last year, with the earliest filing date being November 2010 and the latest being May 2011. Expedia did not provide notice regarding any of these lawsuits until this month.

EXP 0006281

Richard DeNatale
September 30, 2011
Page 8

Very truly yours,



Joanne L. Zimolzak

cc: Greg R. Takehara, Senior Vice President, Aon Affinity
George Peterson, Claims Counsel, Professional Programs Claims, Zurich American
Insurance Company

EXP 0009282

MAR 02 2012

SUPERIOR COURT CLERK
Honorable ~~KENNETH P. O'NEILL~~
DEPUTY

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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; ARROWOOD INDEMNITY
COMPANY, a Delaware corporation,

Defendants.

No. 10-2-41017-1 SEA

~~PROPOSED~~ ORDER GRANTING
ZURICH'S AND STEADFAST'S MOTION
FOR SUMMARY JUDGMENT
*IN PART AND DENYING
IN PART*

THIS MATTER came before the above-entitled Court upon Defendants Steadfast Insurance Company and Zurich American Insurance Company's Motion For Summary Judgment; and the Court having reviewed the records and files pertaining to this action, and having specifically reviewed the following:

1. Motion for Summary Judgment of Defendants Zurich American Insurance Company and Steadfast Insurance Company;

~~PROPOSED~~ ORDER GRANTING ZURICH AND
STEADFAST'S MOTION FOR SUMMARY JUDGMENT - PAGE 1
608297 / 232.000

FORSBERG & UMLAUF, P.S.
ATTORNEYS AT LAW
901 FIFTH AVENUE • SUITE 1400
SEATTLE, WASHINGTON 98164-2050
(206) 689-8500 • (206) 689-8501 FAX

1 2. Declaration of Michael Hooks in Support of Defendants Zurich American
2 Insurance Company and Steadfast Insurance Company's Motion for Summary Judgment, with
3 attachments thereto;

4 3. Defendant Arrowood Indemnity Company's Motion For Summary Judgment;

5 4. Declaration of Russell C. Love in Support of Defendant Arrowood Indemnity
6 Company's Motion For Summary Judgment, with attachments thereto;

7 5. Plaintiffs' Combined Opposition to Defendants' Motions For Summary
8 Judgment;

9 6. Declaration of Melissa Maher in Support of Plaintiffs' Combined Opposition
10 to Defendants' Motions For Summary Judgment;

11 7. Declaration of Mark S. Parris in Support of Plaintiffs' Combined Opposition to
12 Defendants' Motions For Summary Judgment, with attachments thereto;

13 8. Errata to Plaintiffs' Combined Opposition to Motions For Summary Judgment
14 Filed by Defendants Arrowood Indemnity Company, Steadfast Insurance Company, and
15 Zurich American Insurance Company;

16 9. Defendant Arrowood's Reply on Motion For Summary Judgment;

17 10. Defendants Steadfast Insurance Co. & Zurich American Insurance Co.'s Reply
18 in Support of Motion For Summary Judgment;

19 11. Plaintiffs' Supplemental Brief Re January 13, 2012 Hearing on Motions For
20 Summary Judgment;

21 12. Declaration of Mark S. Parris in Support of Plaintiffs' Supplemental Brief Re
22 January 13, 2012 Hearing on Motions For Summary Judgment, with attachments thereto;

23 13. Defendants Steadfast Insurance Co. & Zurich American Insurance Co.'s
24 Response to Expedia's Supplemental Brief Re January 13, 2012 Hearing on Motions For
25 Summary Judgment;

26
**[PROPOSED] ORDER GRANTING ZURICH AND
STEADFAST'S MOTION FOR SUMMARY JUDGMENT - PAGE 2
608297 / 232.000**

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ATTORNEYS AT LAW
901 FIFTH AVENUE • SUITE 1400
SEATTLE, WASHINGTON 98164-2050
(206) 689-8500 • (206) 689-8501 FAX

1 14. Supplemental Declaration of Michael P. Hooks in Support of Steadfast
2 Insurance Co. & Zurich American Insurance Co.'s Response to Expedia's Supplemental Brief
3 Re January 13, 2012 Hearing on Motions For Summary Judgment, with attachments thereto;

4 15. Arrowood's Response to Expedia's Supplemental Brief on Insurers' Motions
5 For Summary Judgment;

6 16. Declaration of Russell C. Love in Support of Arrowood's Response Expedia's
7 Supplemental Brief Re January 13, 2012 Hearing on Motions For Summary Judgment, with
8 attachments thereto;

9 17. Plaintiffs' Combined Supplemental Reply Brief Re January 13, 2012 Hearing
10 on Motions For Summary Judgment;

11 18. Declaration of Mark S. Parris in Support of Plaintiffs' Combined Supplemental
12 Reply Brief Re January 13, 2012 Hearing on Motions For Summary Judgment, with
13 attachments thereto.

14 And the Court, having heard argument of counsel and otherwise being fully advised,
15 now therefore rules as follows:

16 IT IS HEREBY ORDERED that Defendants Steadfast Insurance Company's and
17 Zurich American Insurance Company's Motion for Summary Judgment is GRANTED in part
18 and denied in part, as follows:

19 (a) The Motion is GRANTED as to Steadfast Insurance Company Policy
20 Nos. EOL 5329302-00 and 5329302-01. Defendant Steadfast Insurance Company does not
21 owe any duty to defend or duty to indemnify plaintiffs for any of the 57 underlying actions
22 listed in Exhibit B to plaintiffs' original Complaint filed in this action under these two
23 insurance policies. This ORDER does not preclude plaintiffs from maintaining their claims
24 that Steadfast Insurance Company and Zurich American Insurance Company have acted in
25 bad faith.

26 (b) The Motion is GRANTED as to Zurich American Insurance Policy
Nos. 5329302-04 and 5329302-05. Zurich American Insurance Company does not owe any

1 duty to defend or duty to indemnify plaintiffs for any of the 57 underlying actions listed in
2 Exhibit B to plaintiffs' original Complaint filed in this action under these two insurance
3 policies. This ORDER does not preclude plaintiffs from maintaining their claims that
4 Steadfast Insurance Company and Zurich American Insurance Company have acted in bad
5 faith.

6 (c) The Motion for Summary Judgment is DENIED as to Zurich American
7 Insurance Policy Nos. 5329302-02 and 5329302-03, ~~without prejudice to the parties'~~ ^{KP}
8 ~~submission of additional evidence bearing on the existence or nonexistence of a duty to~~
9 ~~defend under those policies.~~

10
11 DONE this 2 ^{MARCH} day of February, 2012.

12 
13 Judge KIMBERLEY PROCHNAU

14 PRESENTED BY:

15 FORSBERG & UMLAUF, P.S.

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

I certify that I have mailed/e-mailed
a copy of this order to all parties.
Date: 3/2/2012
Signature: CRobinson-Bailiff

20 MCKENNA LONG & ALDRIDGE, LLP

21 By: 
22 J. Randolph Evans, Georgia Bar #252336
23 Joanne L. Zimolzak, DC Bar #452035
(admitted *pro hac vice*)
24 Attorneys for Defendants
25 Steadfast Insurance Company and
Zurich American Insurance Company

26 Approved as to form; presentation waived:

ORRICK & HERRINGTON

[PRESSED] ORDER GRANTING ZURICH AND
STEADFAST'S MOTION FOR SUMMARY JUDGMENT - PAGE 4
608297 / 232.000

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

THORSRUD CANE & PAULICH

By: _____
Russell C. Love, WSBA #8941
Attorneys for Defendants
Arrowood Indemnity Company

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

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

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

16 DATED: JANUARY 13, 2012

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

18 FOR THE PLAINTIFFS:

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

21 FOR THE DEFENDANTS:

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

24 Arrowood Indemnity Company:
25 BY: RUSSELL LOVE, ESQ.

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P R O C E E D I N G S

(Afternoon session. Open court.)

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THE BAILIFF: All rise. Court is in session, The Honorable Kimberley Prochnau presiding in the Superior Court in the State of Washington in and for King County.

THE COURT: Thank you. Please be seated. This is the matter of Expedia versus Steadfast Insurance, et al., 10-2-41017-1 SEA, I am Judge Prochnau. I will go ahead and have counsel introduce themselves.

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MR. PARRIS: Good afternoon, Mark Parris and Paul Rugani representing Expedia. Today we have two clients representing Expedia, also former refugees of Heller, like Paul and I.

MR. HOOKS: I am Mike Hooks, attorney for Zurich American and Steadfast. And with me is Randy Evans, Pro Hace Vice, who is making the argument today and Joanne Zimolzak.

MR. LOVE: Russell Love on behalf of Arrowood Indemnity Company.

THE COURT: Very nice to meet you all. In terms of logistics, how much time were each of you hoping to use for your total time of argument?

We had discussed, I think that my bailiff

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THE COURT: Thank you.

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So, I thank all counsel for the very able

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oral arguments, as well as the very capable briefs. I

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don't thank you for all of the -- for citing 200

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cases, necessarily, but I do thank you for your

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briefing.

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This action involves 57 lawsuits brought by

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cities and municipalities, alleging that Expedia had a

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duty to collect and remit certain hotel occupancy

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taxes. Some or perhaps all of those lawsuits allege

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unfair business practices, or Consumer Protection

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claims.

15:33:56 1 The City of LA, a class action, was cited
15:34:02 2 as a representative lawsuit, in which they claim
15:34:05 3 Expedia has a duty to collect and remit transient
15:34:08 4 occupancy taxes on the retail price paid by customers
15:34:15 5 for hotel rooms. But Expedia remits an insufficient
15:34:20 6 amount of the occupancy taxes based on the wholesale
15:34:23 7 price of the hotel rooms.

15:34:25 8 Expedia itself has described in its SEC
15:34:31 9 filings that the lawsuits concern Expedia's alleged
15:34:35 10 failure to structure its transactions in a manner that
15:34:48 11 ~~results in the customer paying taxes based on the~~

15:34:51 12 entire amount paid to Expedia, rather than a portion
15:34:53 13 of the price. But Expedia claims it intends to
15:34:56 14 structure its transactions or intended to structure
15:34:59 15 its transactions in a way that captured and remitted
15:35:01 16 all applicable taxes owed by customers.

15:35:06 17 Expedia has a number of policies. It has
15:35:11 18 six policies with the Steadfast Zurich Insurance
15:35:15 19 companies. We may have to go back and sort this out,
15:35:26 20 because in the slides I have been given today by
15:35:32 21 Expedia, they referenced the policies in a different
15:35:38 22 manner.

15:35:41 23 So it is a little hard for me to track
15:35:45 24 which policies we are talking about, but my notes
15:35:47 25 indicate from looking at the policies and the briefing

15:35:52 1 that Steadfast and Zurich issued six policies. The
15:35:56 2 first policy ran for six months period in 2004 and
15:36:02 3 thereafter they were 12-month policies running from
15:36:06 4 October to October of every year.

15:36:10 5 The 2000 and 2001 policies do not define
15:36:15 6 damages.

15:36:16 7 The 2002 through 2005 policies did provide
15:36:21 8 a definition of damages.

15:36:24 9 Coverage C, under all of the Steadfast
15:36:28 10 Zurich policies, was similar in providing coverage for
15:36:39 11 ~~liability arising out of any negligent act, error or~~

15:36:44 12 omission creating a duty to defend any suit seeking
15:36:52 13 damages on account of any act, error, or omission.

15:37:01 14 There are differences in the various policies in terms
15:37:04 15 of the exclusions, which I will get to later.

15:37:08 16 As to the Arrowood policies, there are
15:37:09 17 three policies issued for one-year periods between May
15:37:13 18 2001 and May 2004; some or all of those policies were
15:37:19 19 issued by their predecessor, Connecticut.

15:37:23 20 Again, coverage C, contains similar
15:37:28 21 language providing coverage for any negligent act,
15:37:33 22 error or omission of the insured, creating a duty to
15:37:36 23 defend against any suit seeking damages on account of
15:37:42 24 bodily harm act property damage or negligent act,
15:37:45 25 error, or omission. Damages are not defined.

15:37:48 1 Again, there are some differences in the
15:37:51 2 exclusionary sections, which I will get to later.

15:37:57 3 None of these policies were negotiated
15:38:01 4 between the principals. They were simply policies
15:38:05 5 drafted by the insurer and accepted by the insured.

15:38:11 6 Policy interpretation questions are, of
15:38:16 7 course, a question of law. The insured has the
15:38:22 8 initial burden of showing that the claim that they
15:38:26 9 seek to have defended comes within the insuring
15:38:33 10 agreement. If they meet that burden, it shifts to the
15:38:38 11 insurer to show that the claim is excluded, with

15:38:42 12 ambiguous exclusions to be resolved in the favor of
15:38:45 13 insured.

15:38:45 14 The policy is to be read as a whole.
15:38:52 15 Extrinsic evidence is not available, except with
15:38:56 16 respect to when there has been negotiation, and in
15:39:01 17 some cases where the evidence is ambiguous or -- not
15:39:04 18 the evidence, excuse me -- where the provisions are
15:39:07 19 ambiguous.

15:39:08 20 Although that exception applies only to
15:39:14 21 benefit the insured with respect to exclusionary
15:39:20 22 sections of the policy.

15:39:23 23 The duty to defend of an insured on an
15:39:26 24 action brought against a policyholder arises when the
15:39:28 25 complaint is filed and when the allegations of the

15:39:31 1 complaint could, if proven, impose liability upon the
15:39:34 2 insured within the coverage of the policy.

15:39:40 3 The court has particularly looked at the
15:39:44 4 first question. Are these claims, claims for damages
15:39:49 5 within the meaning of the policy?

15:39:59 6 With respect to those policies that do not
15:40:01 7 have a definition for damages, the court would look to
15:40:08 8 the dictionary definitions, but also looks to the case
15:40:13 9 law.

15:40:17 10 In this case, Expedia, the parties disagree
15:40:40 11 on how this money was not remitted. Expedia argues

15:40:46 12 that it simply wasn't collected. First of all, it
15:40:52 13 wasn't owed under their interpretation; it wasn't owed
15:40:55 14 and it wasn't collected. They don't have it. So
15:40:59 15 there is no basis for disgorgement or restitution.

15:41:05 16 The insurer argues that, in fact, "they did
15:41:09 17 collect it and kept it under the guise of service
15:41:14 18 fees."

15:41:17 19 Given the broad duty to defend, since both
15:41:22 20 of those theories -- either one of those theories
15:41:24 21 could nevertheless lead to the liability, given that
15:41:29 22 the cities do not have to prove intent, one of those
15:41:37 23 theories, at least, would put this more in the
15:41:42 24 category of damages, rather than restitution.

15:41:47 25 The court has been directed to look at

15:41:53 1 Pacific versus Burnett. They did discuss, in passing,
15:42:03 2 whether the complaint sought damages as that term is
15:42:07 3 defined in the policy. But Pacific pointed out that
15:42:13 4 that policy had a specific exclusion for fines,
15:42:16 5 sanctions or penalties against any insured, or the
15:42:19 6 return of reimbursement of fees for professional
15:42:22 7 service.

15:42:23 8 My attention hasn't been brought to such a
15:42:26 9 provision within these policies. So Pacific Insurance
15:42:30 10 does not appear to help the insurers. This is
15:42:36 11 ~~different than as the insurers argue, a tax evasion~~
15:42:42 12 case where someone is not paying their own taxes.

15:42:45 13 This is rather more than of a situation
15:42:48 14 where someone is violating the statutory duty,
15:42:52 15 allegedly, but just as someone running a red light
15:43:02 16 violates a statutory duty and may end up with fines
15:43:07 17 owned to the municipality but also could be result in
15:43:11 18 liability. This is a situation where it is not their
15:43:17 19 own unpaid taxes that are being paid, but a question
15:43:20 20 of whether their conduct leads to a breach in as much
15:43:25 21 as they are not remitting other people's taxes under
15:43:29 22 one theory of the case.

15:43:32 23 As Expedia points out, although willful
15:43:41 24 misconduct may be excluded from coverage under the
15:43:45 25 policy, there is under at least one conceivable theory

15:43:52 1 a situation where Expedia could be found to be liable
15:43:57 2 under the underlying complaints, yet not have engaged
15:44:01 3 in willful misconduct.

15:44:03 4 So, for example, the court could ultimately
15:44:08 5 determine that Expedia's theory of tax law is correct,
15:44:13 6 but nevertheless, there was a miscalculation as to the
15:44:19 7 amounts owed. They could have remitted the wrong
15:44:21 8 amount.

15:44:22 9 Their theory could have been they were only
15:44:26 10 required to remit a percentage based on the wholesale
15:44:30 11 fees, but yet through some software miscalculations,

15:44:34 12 remitted less than that. They would still owe to the
15:44:44 13 city, based on that, and could be subject to liability
15:44:49 14 based on that.

15:44:55 15 The cases from other jurisdictions are
15:45:13 16 interesting, but Washington appears to have
15:45:15 17 extraordinarily vigorous protections for the insured
15:45:21 18 with regards to the duty to defend. I think that Woo
15:45:25 19 is the best example of that.

15:45:31 20 Nor do the arguments on public policy or
15:45:37 21 fortuity avail the insurer. Certainly, they argued
15:45:46 22 that this could be contrary to public policy, because
15:45:49 23 it could lead to delay in forwarding tax receipts --
15:45:55 24 this is not a tax evasion situation, though. It is
15:45:57 25 not Expedia's taxes that they are allegedly failing to

15:46:01 1 remit. It is other people's taxes.

15:46:04 2 So certainly, although there may be public
15:46:08 3 policy reasons to encourage people to remit those
15:46:13 4 taxes on time, there are likewise public policy
15:46:17 5 reasons for people not to be negligent on a score of
15:46:21 6 other situations, to look behind them, when they back
15:46:25 7 out, for example. Yet we don't forbid insurance for
15:46:29 8 those purposes.

15:46:31 9 The Queen City Farms allowed for --
15:46:41 10 although certainly made a distinction between
15:46:44 11 intentional versus negligent pollution, the Queen City
15:46:50 12 Farms still allowed for the possibility of coverage
15:46:57 13 for a negligent pollution, even though that pollution
15:47:00 14 is obviously something against public policy.

15:47:03 15 The next thing that we turned to is whether
15:47:14 16 these underlying lawsuits are nevertheless excluded
15:47:20 17 under the exclusionary language in the insurance
15:47:24 18 policies. There is some variety between the insurance
15:47:29 19 policies.

15:47:55 20 Because I am a little unsure now, based on
15:48:08 21 my notes, as to which policies have which language, I
15:48:12 22 am going to speak more generally.

15:48:14 23 A number of the policies indicates that for
15:48:26 24 the purposes of this endorsement, any claim or suit
15:48:31 25 based upon or arising from any commingling of money,

15:48:35 1 or the inability to pay or collect money, et cetera,
15:48:42 2 for any reason, whether on the part of the insured or
15:48:45 3 any other party, is excluded.

15:48:51 4 In those cases, that is a clear statement
15:48:55 5 that the inability to pay or collect money is excluded
15:48:59 6 from coverage. However, those policies fail to
15:49:08 7 include language with respect to the failure to pay.

15:49:11 8 Of course, one of the theories of --
15:49:14 9 probably the primary theory of the municipalities, is
15:49:17 10 it is not that Expedia didn't have the ability to pay
15:49:21 11 ~~this money. It is that they simply failed to pay this~~

15:49:24 12 money. Whether through negligence or wanton
15:49:27 13 misconduct, it doesn't matter to the cities, because,
15:49:30 14 of course, it is a strict liability situation.

15:49:33 15 So, those policies exclusions would not
15:49:37 16 assist the insurer. Those do not exclude coverage.

15:49:42 17 However, the majority of the policies, I
15:49:48 18 believe, have exclusionary language that states:

15:49:52 19 "Any claim or suit based upon or arising
15:49:55 20 from any commingling of money or the inability or
15:49:59 21 failure to pay or collect money."

15:50:02 22 These do have the operative language:

15:50:06 23 "Inability or failure to pay or collect money."

15:50:10 24 That language is broad. Those exclusions
15:50:14 25 are broad. They are clear and unambiguous.

15:50:18 1 In excluding, "any inability or failure to
15:50:20 2 pay or collect money," they use a number of examples.
15:50:25 3 Those examples are probably considered to be the
15:50:32 4 outliers to make it clear that they are not talking
15:50:34 5 simply about willful failure to pay, but even
15:50:39 6 regardless of the blamelessness of the insured, they
15:50:42 7 are not going to cover.

15:50:43 8 So even if the insured goes into
15:50:46 9 bankruptcy, and has no legal ability to pay those
15:50:49 10 obligations, or receivership, or cease its operations,
15:50:59 11 there is going to be no coverage under that type of

15:51:03 12 policy. The court agrees with the insurer, that the
15:51:06 13 exclusion applies to the entire policy and that it is
15:51:11 14 intended to apply to the duty to defend; that there
15:51:18 15 is, therefore, no coverage under those sections.

15:51:23 16 Then there is another policy version of the
15:51:31 17 exclusions in some of the Arrowood and Steadfast
15:51:36 18 policies, which states:

15:51:39 19 "This policy does not apply under coverage
15:51:44 20 C to any liability arising out of or contributing to
15:51:48 21 by the commingling of money or the inability or
15:51:52 22 failure to pay or collect any money for any reason,
15:51:55 23 including the following."

15:51:58 24 There again, a number of examples are
15:52:00 25 provided, such as bankruptcy. And further, coverage

15:52:06 1 is excluded, regardless of whether such commingling of
15:52:08 2 the money, or failure, or inability to pay or collect
15:52:10 3 money is on the part of the insured or any other
15:52:12 4 party.

15:52:13 5 Again, those exclusions do clearly exclude
15:52:17 6 coverage and the obligation to defend, because it
15:52:22 7 references "the policy." Without a policy, there is
15:52:27 8 no duty to defend. Because, after all, what you are
15:52:33 9 purchasing the policy for, is for both indemnification
15:52:39 10 and defense. If you haven't purchased a policy you,
15:52:43 11 ~~obviously, don't have a right to demand the insurer to~~
15:52:47 12 defend you.

15:52:49 13 Therefore, that provision is clear. It is
15:52:52 14 unambiguous. It is not the product of the
15:52:57 15 negotiations. It covers the gamut of inability or
15:53:06 16 failure to pay, or collect any money for any reason
15:53:12 17 under any conceivable theory that Expedia could be
15:53:15 18 held liable. It all comes around, still, back to "the
15:53:20 19 inability or failure to pay or collect money."

15:53:44 20 I will depend upon you to match up my
15:53:50 21 decision with the particular insurance policies I
15:53:55 22 think that I have clarified. I think that I have
15:53:57 23 identified the language that I am talking about.

15:54:01 24 I believe that since we are not going to
15:54:03 25 address the estoppel argument, that addresses the

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arguments raised by each of you.

Honorable Kimberly Prochnau
NOTED FOR: Friday, April 27, 2012
1:30 p.m.

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' MOTION FOR RULE
56(f) CONTINUANCE

[CLERK'S ACTION REQUIRED]

THIS MATTER came before the above-entitled Court upon Defendants Steadfast
Insurance Company and Zurich American Insurance Company's Motion For Rule 56(f)

ORDER GRANTING DEFENDANTS STEADFAST AND ZURICH'S MOTION
FOR 56(f) CONTINUANCE - PAGE 1

582219/232.0001

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ORIGINAL

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1 Continuance, and the Court having reviewed the records and files pertaining to this action,
2 and having specifically reviewed the following:

3 1. Defendants Steadfast Insurance Insurance Company and Zurich American
4 Insurance Company's Motion For Rule 56(f) Continuance;

5 2. Declaration of Joanne Zimolzak in Support of Defendants Steadfast Insurance
6 Company and Zurich American Insurance Company's Motion For Rule 56(f) Continuance,
7 with attached exhibits;

8 3. RESPONSE _____;

9 4. _____;

10 5. _____; and

11 and the Court, having considered the files and pleadings in the matter, and otherwise being
12 fully advised, now therefore rules as follows:

13 IT IS HEREBY ORDERED that Defendants Steadfast Insurance Company and Zurich
14 American Insurance Company's Motion For 56(f) Continuance is GRANTED. *Parties*
15 *to coordinate ~~and~~ new date for MST with Bailiff*
16 DONE IN OPEN COURT this 26 day of April 2012.

17 
18 Judge **KIMBERLEY PROCHNAU**

19 PRESENTED BY:
20 FORSBERG & UMLAUF, P.S.

I certify that I have mailed/e-mailed
a copy of this order to all parties.
Date: 4/26/2012
Signature: *Kimberley Prochnau*

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

ORDER GRANTING DEFENDANTS STEADFAST AND ZURICH'S MOTION
FOR 56(f) CONTINUANCE - PAGE 2

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582219 / 232.0001

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MCKENNA LONG & ALDRIDGE, LLP

By: _____
J. Randolph Evans, Georgia Bar #252336
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(admitted *pro hac vice*)
Attorneys for Defendants
Steadfast Insurance Company and
Zurich American Insurance Company

Approved as to form; presentation waived;

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Arrowood Indemnity Company; Royal &
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Arrowood Surplus Lines Insurance Co.

ORDER GRANTING DEFENDANTS STEADFAST AND ZURICH'S MOTION
FOR 56(f) CONTINUANCE – PAGE 3

582219 / 232.0001

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DISCOVERY REQUESTS TO EXPEDIA BY UNDERLYING PLAINTIFFS AND ZURICH

Plaintiffs' Request

Rog 1

State when you first discussed whether you and/or other online travel companies were obligated to collect, account for and/or remit hotel occupancy taxes to taxing authorities in the United States, including but not limited to the Brevard Hotel Tax, and describe in detail the nature of, and conclusion derived from, the discussion, and identify participants in the discussion.

Rog 2

State how, when and why and describe under what circumstances you determined that the moneys you receive from consumer customers in your merchant model hotel business (including but not limited to your markup, service fees and the like) are not subject to hotel occupancy taxes such as and including but not limited to the Brevard Hotel Tax.

Zurich's Request

2nd Set – Rog 4

State when YOU first adopted as a business practice or took the position that TAXES do not apply to YOUR revenues from merchant hotel transactions.

Zurich's 30(b)(6) topic

DISCOVERY REQUESTS TO EXPEDIA BY UNDERLYING PLAINTIFFS AND ZURICH

Plaintiffs' Request

Rog 5

Identify all assessment notices, deficiency notices, audit requests, audit findings, demands for payment, certificates of authority, and Complaints ever brought against you by any other taxing authority in connection with your alleged nonpayment or underpayment of hotel occupancy taxes.

Zurich's Request

3rd Set – Rog 1

With regard to any TAX audits initiated by TAXING AUTHORITIES against YOU since 2000, IDENTIFY the Initiating authority; the date of Initiation; and the outcome of the audit.

3rd Set – RFP 3

Produce all DOCUMENTS relating to any COMMUNICATION(S) between you and any TAXING AUTHORITY about the applicability of TAXES to your revenues from merchant hotel transactions.

Zurich's 30(b)(6) topic

Topic 2

Expedia's knowledge and Information regarding administrative or legal proceedings other than the Underlying Actions that involve government authorities and Expedia's hotel occupancy tax practices for "merchant model hotel transactions," including:

- (a) When such administrative or legal proceedings were initiated;
- (b) When and how Expedia received notice regarding any such administrative or legal proceedings; and
- (c) Any communications with the government authorities involved in the referenced administrative or legal proceedings concerning the timing and/or subject matter of such administrative or legal proceedings.

DISCOVERY REQUESTS TO EXPEDIA BY UNDERLYING PLAINTIFFS AND ZURICH

Plaintiffs' Request

Rog 8

For Merchant Hotel Business Transactions, please describe in detail the methodology, practices and procedures by which you have determined the taxes (or "tax recovery charges") charged to Consumer Customers. If the methodology, practices and/or procedures have changed over time and/or based on the nature of the transaction, please describe those changes and the resultant methodology, practices and procedures with specificity.

Rog 10

For Merchant Hotel Business Transactions, please describe in detail how your "service fee" and/or "fee" and/or "surcharge" is calculated. If the methodology for calculating that "service fee" and/or "fee" and/or "surcharge" has changed over time and/or based on the nature of the transaction, please describe with specificity each change and/or difference.

Zurich's Request

2nd Set – Rog 8

DESCRIBE in detail how EXPEDIA calculates, charges, and/or collects TAXES (including "tax recovery charges" as that term is used in the Declaration of Melissa Maher submitted with Expedia's Combined Opposition to the Motions for Summary Judgment filed by Arrowood, Steadfast, and ZAIC) from consumers who reserve hotel rooms through any of EXPEDIA's various websites.

2nd Set – RFP 9

Produce any and all DOCUMENTS relating to or tending to show the nature and amount of "fees" charged by EXPEDIA to consumers who reserve hotel rooms through any of EXPEDIA's various websites including, specifically, how such fees are calculated. "Fees" include, without limitation, "tax recovery charges and fees", "taxes and fees", "taxes and services fees", "service fees", "fees and taxes", or any other similar charge.

Zurich's 30(b)(6) topic

Topic 7

Expedia's adoption, implementation, and/or alteration of the "merchant model" business model described in paragraph 9 of the Maher Declaration.

Topic 7

Expedia's adoption, implementation, and/or alteration of the "merchant model" business model described in paragraph 9 of the Maher Declaration.

DISCOVERY REQUESTS TO EXPEDIA BY UNDERLYING PLAINTIFFS AND ZURICH

Plaintiffs' Request

Rog 16

Describe in detail all efforts that you or any trade organization, lobbyist, or other person or entity working on your behalf have made at either the state or federal level to pass legislation that would grant you immunity from paying Hotel occupancy taxes such as the Brevard Hotel Tax. Include in your response: (i) the identity of all such persons or entities working on your behalf; (ii) the bill number or other information sufficient to identify the proposed legislation; and (iii) the essential substance of any such proposed legislation.

Zurich's Request

2nd Set – RFP 5

Produce all non-privileged DOCUMENTS relating to any and all advice sought by YOU from any consultant (e.g., attorney, accountant, business consultant, public relations firm, lobbying firm, etc.) regarding the risk that EXPEDIA would face litigation by any TAXING AUTHORITY concerning EXPEDIA's liability for TAXES.

Zurich's 30(b)(6) topic

Topic 9

Expedia's retention or engagement of non-attorney consultants, including, but not limited to, accountants, lobbyists, public relations advisors, and/or investor relations advisors, in connection with the hotel occupancy tax issues that are the subject of the Underlying Actions.

OVERLAPPING DISCOVERY REQUESTS TO EXPEDIA BY UNDERLYING PLAINTIFFS AND ZURICH

Topic	Plaintiffs' Request ¹	Zurich's Request ²	Zurich's 30(b)(6) Topic ³
<p>Expedia's knowledge and understanding of occupancy tax statutes and when Expedia had such knowledge</p>	<p>Interrogatories No. 1, 2, and 16</p>	<p>1st Set: Interrogatories No. 4 and 5; Requests for Production No. 4, 6, 36, and 37</p> <p>2nd Set: Interrogatories No. 1, 2, 3, 4, and 5; Requests for Production No. 1, 2, 3, and 5</p> <p>3rd Set: Interrogatory No. 1 and Requests for Production No. 3 and 5</p> <p>4th Set: Requests for Production No. 2, 3, and 4</p>	<p>Topics No. 1, 2, 12, and 13</p>
<p>Communications Expedia had with occupancy tax authorities and when those communications took place</p>	<p>Interrogatories No. 5 and 16</p>	<p>1st Set: Interrogatory No. 5, Requests for Production No. 4, 6, 36, and 37</p> <p>2nd Set: Interrogatories No. 1 and 2, Requests for Production No. 1 and 2</p> <p>3rd Set: Interrogatory No. 1 and Requests for Production No. 3 and 5</p> <p>4th Set: Requests for Production No. 2 and 3</p>	<p>Topics No. 1, 2, 12, and 13</p>

¹ All requests are in Exhibit 1 to the May 31, 2012 Declaration of Angela Niemann.

² All requests are in Exhibits 2 ("1st Set"), 3 ("2nd Set"), 4 ("3rd Set"), and 5 ("4th Set") to the May 31, 2012 Declaration of Mark Parris.

³ All topics are in Exhibit 6 to the May 31, 2012 Declaration of Mark Parris.

OVERLAPPING DISCOVERY REQUESTS TO EXPEDIA BY UNDERLYING PLAINTIFFS AND ZURICH

Topic	Plaintiffs' Request	Zurich's Request	Zurich's 30(b)(6) Topic
Discussions Expedia had internally concerning occupancy taxes and when those discussions took place	Interrogatories No. 1, 2, and 6	2nd Set: Interrogatory No. 1, Request for Production No. 1 4th Set: Request for Production No. 4	Topics No. 1, 2, 12, and 13
External consultants Expedia contacted concerning occupancy taxes	Interrogatory No. 16	2nd Set: Interrogatory No. 5, Request for Production No. 5 4th Set: Request for Production No. 4	Topic 9
Expedia's knowledge and understanding and communications regarding potential exposure in connection with occupancy taxes	Interrogatories No. 1, 2, and 5	1st Set: Interrogatories No. 4 and 5, Requests for Production No. 4, 6, 36, and 37 2nd Set: Interrogatories No. 1, 2, 3, 4, and 5; Requests for Production No. 1, 2, 3, and 5 3rd Set: Interrogatory No. 1 and Requests for Production No. 3 and 5 4th Set: Requests for Production No. 2, 3, and 4	Topics No. 1, 2, 12, and 13

OVERLAPPING DISCOVERY REQUESTS TO EXPEDIA BY UNDERLYING PLAINTIFFS AND ZURICH

Topic	Plaintiffs' Request	Zurich's Request	Zurich's 30(b)(6) Topic
<p>Expedia's receipt of any notices, request, demands, or complaints made against Expedia with respect to occupancy taxes</p>	<p>Interrogatory No. 5</p>	<p>1st Set: Interrogatory No. 5, Requests for Production No. 36 and 37</p> <p>2nd Set: Interrogatories No. 1 and 2, Requests for Production No. 1 and 2</p> <p>3rd Set: Interrogatory No. 1 and Requests for Production No. 3 and 5</p> <p>4th Set: Requests for Production No. 2 and 3</p>	<p>Topics No. 1, 2, 12, and 13</p>
<p>Expedia's merchant hotel business model and any changes over time</p>	<p>Interrogatories No. 3, 8, 9, 10, and 11</p>	<p>2nd Set: Interrogatories No. 8 and 9, Requests for Production No. 7, 8, and 9</p>	<p>Topic 7</p>

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Honorable Kimberley Prochnau

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, and ZURICH
AMERICAN INSURANCE COMPANY, a
New York corporation,

Defendants.

No. 10-2-41017-1 SEA

AMENDED
NOTICE OF DEPOSITION OF EXPEDIA,
INC., HOTELS.COM, L.P., HOTELS.COM,
GP, LLC, HOTWIRE, INC., &
TRAVELSCAPE, LLC

TO: 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

AND TO: Mark Parris, Orrick Herrington & Sutcliffe LLP, Plaintiffs' Attorneys

PLEASE TAKE NOTICE that in accordance with CR 30(b)(6), Steadfast Insurance
Company and Zurich American Insurance Company (collectively "Zurich") will take the

AMENDED NOTICE OF DEPOSITION OF EXPEDIA, INC.,
HOTELS.COM, L.P., HOTELS.COM, GP, LLC, HOTWIRE, INC., &
TRAVELSCAPE, LLC - PAGE 1

FORSBERG & UMLAUF, P.S.
ATTORNEYS AT LAW
901 FIFTH AVENUE • SUITE 1400
SEATTLE, WASHINGTON 98164-2050
(206) 689-8500 • (206) 689-8301 FAX

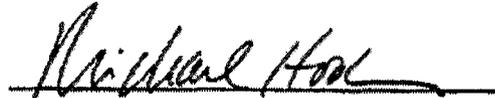
657661 / 232.0001

ORIGINAL

1 deposition of Expedia, Inc., Hotels.com, L.P., Hotels.com, GP, LLC, Hotwire, Inc., and
2 Travelscape (collectively "Expedia") on THURSDAY, MAY 31, 2012 at 10:00 A.M. at the
3 offices of Forsberg & Umlauf, P.S., 901 Fifth Avenue, Suite 1400, Seattle, Washington
4 98164-2050. Expedia must designate one or more officers, directors, or managing agents, or
5 other persons who consent to testify on their behalf, on the matters identified in Attachment A
6 to this notice.

7 DATED this 22nd day of May.

8 FORSBERG & UMLAUF, P.S.

9 

10 Michael P. Hooks, WSBA #24153
11 FORSBERG & UMLAUF, P.S.
12 Attorney for Defendants Steadfast Insurance Co.
13 & Zurich American Insurance Co.
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AMENDED NOTICE OF DEPOSITION OF EXPEDIA, INC.,
HOTELS.COM, L.P., HOTELS.COM, GP, LLC, HOTWIRE, INC., &
TRAVELSCAPE, LLC - PAGE 2

657661 / 232.0001

FORSBERG & UMLAUF, P.S.
ATTORNEYS AT LAW
901 FIFTH AVENUE • SUITE 1400
SEATTLE, WASHINGTON 98164-2050
(206) 689-8500 • (206) 689-8501 FAX

5. Expedia's defense of the Underlying Actions, including:
 - (a) Identities of counsel involved in defense and timing of their retention;
 - (b) The timing, nature, and extent of discovery conducted;
 - (c) Mediations or other alternative dispute resolution proceedings conducted, including the results of such proceedings;
 - (d) Settlement offers made, including the results of such offers; and
 - (e) Defense expenses incurred to date (segregated by underlying action).
6. Expedia's search for and production of documents responsive to Zurich's requests for production.
7. Expedia's adoption, implementation, and/or alteration of the "merchant model" business model described in paragraph 9 of the Maher Declaration, including but not limited to:
 - (a) When Expedia first adopted its "merchant model" business model for hotel transactions;
 - (b) Any changes to Expedia's "merchant model" business model for hotel transactions since the "merchant model" was first adopted, including, but not limited to, any periods of time during which Expedia, in calculating the "tax recovery charge" charged to its customers, used "the total retail price the customer ultimately pays to Expedia" instead of the "rent charged by the hotel operator" (as the terms in quotation marks are used in paragraph 16 of the Maher Declaration)?
 - (c) The persons involved in Expedia's decisions to adopt, implement, and/or alter the "merchant model" business model for hotel transactions since January 1, 2000; and
 - (d) Expedia's investigation or analysis conducted in connection with the adoption, implementation, and alteration of the "merchant model" business model for hotel transactions since January 1, 2000.
8. Whether and to what extent Expedia committed any mistakes, errors, miscalculations, and/or misapplication of rates in calculating "tax recovery charges" charged to customers or remitting amounts recovered as "tax recovery charges" from customers to hotels. The term "tax recovery charges" as used in this topic has the same meaning as used in paragraph 16 of the Maher Declaration.
9. Expedia's retention or engagement of non-attorney consultants, including, but not limited to, accountants, lobbyists, public relations advisors, and/or investor relations advisors, in connection with the hotel occupancy tax issues that are the subject of the Underlying Actions.
10. Expedia's communications with any brokers relating to the Underlying Actions or the hotel occupancy tax issues that are the subject of the Underlying Actions.
11. Expedia's Travel Agent Professional Liability policy renewals for the October 1, 2005 -- October 1, 2006 and October 1, 2006 -- October 1, 2007 policy periods.

MSP

Honorable Kimberley Prochnau

03-17-12PCE:18 RLVJ

03-13-12PCE:18 RLVJ

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

SECOND INTERROGATORIES AND
REQUEST FOR PRODUCTION TO
PLAINTIFFS OF DEFENDANTS
STEADFAST INSURANCE COMPANY
AND ZURICH AMERICAN INSURANCE
COMPANY

COMES NOW Defendants Steadfast Insurance Company ("Steadfast") and Defendant
Zurich American Insurance Company ("ZAIC") (collectively, "Zurich"), by counsel, and
submits the following Interrogatories and Requests for Production to Plaintiffs Expedia, Inc.,
a Washington Corporation, Expedia, Inc., a Delaware Corporation, Hotels.com, L.P.,

SECOND INTERROGATORIES AND REQUEST FOR PRODUCTION TO
PLAINTIFFS OF DEFENDANTS STEADFAST INSURANCE COMPANY AND
ZURICH AMERICAN INSURANCE COMPANY - PAGE 1

FORSBERG & UMLAUF, P.S.
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taxes", or any other similar charge.

RESPONSE:

REQUEST FOR PRODUCTION NO. 10: Produce any and all DOCUMENTS relating to any occasion(s) since 2000 on which EXPEDIA applied the incorrect TAX rate in connection with its remittance of TAXES to any of the TAXING AUTHORITIES involved in the UNDERLYING ACTIONS.

RESPONSE:

DATED this 17th day of February 2012.

FORSBERG & UMLAUF



Michael P. Hooks, WSBA # 24153
Matthew S. Adams, WSBA# 18820
Attorneys for Defendants
Steadfast Insurance Company
Zurich American Insurance Company

SECOND INTERROGATORIES AND REQUEST FOR PRODUCTION TO PLAINTIFFS OF DEFENDANTS STEADFAST INSURANCE COMPANY AND ZURICH AMERICAN INSURANCE COMPANY - PAGE 14

623467 / 232.0001

FORSBERG & UMLAUF, P.S.
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901 FIFTH AVENUE • SUITE 1400
SEATTLE, WASHINGTON 98164-2050
(206) 689-8300 • (206) 689-8501 FAX

SUPREME COURT OF THE STATE OF WASHINGTON

EXPEDIA, INC.; ET AL.

Plaintiff/Petitioner

vs

STEADFAST INS. CO.; ET AL.

Defendant/Respondent

No.
DECLARATION OF
EMAILED DOCUMENT
(DCLR)

Pursuant to the provisions of GR 17, I declare as follows:

1. I am the party who received the foregoing facsimile transmission for filing.
2. My address is: 3400 CAPITOL BLVD S, SUITE 103, TUMWATER, WA 98501
3. My phone number is (360) 754-6595
4. The e-mail address where I received the document is: oly@abclegal.com.
5. I have examined the foregoing document, determined that it consists of 154 pages, including this Declaration page, and that it is complete and legible.

I certify under the penalty of perjury under the laws of the State of Washington that the above is true and correct.

Dated: April 9, 2013, at Olympia, Washington.

Signature: 

Print Name: BECKY GOGAN