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UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND  
SOUTHERN DIVISION

P.T. KARANG MAS SEJAHTERA, a )  
Republic of Indonesia limited ) Case No.  
liability company, ) 8:05-CV-00787-PJM  
Plaintiff, )  
vs. )  
MARRIOTT INTERNATIONAL, INC., ) Pages 1-199  
a Delaware corporation, et )  
al., )  
Defendants. )

DEPOSITION OF:

JEFFREY ALAN DUBIN, Ph.D.  
FRIDAY, FEBRUARY 24, 2006  
8:58 A.M.

REPORTED BY:

JARDENE L. PLATT,  
RPR, CSR No. 3724

**ORIGINAL**

011110

1 Deposition of JEFFREY ALAN DUBIN, Ph.D., taken  
2 on behalf of the Plaintiff at 633 West Fifth Street,  
3 Los Angeles, California, on FRIDAY, FEBRUARY 24,  
4 2006, at 8:58 a.m., before JARDENE L. PLATT, RPR,  
5 CSR No. 3724.

6  
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1 APPEARANCES CONTINUED:

2

3 ALSO PRESENT:

4

5 JEMAL JUDKINS, VIDEOGRAPHER

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## I N D E X

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(Afternoon session)	124

## E X H I B I T S

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No. 2	Expert report of Jeffrey Alan Dubin, Ph.D.	27
No. 3	Second Expert Report of Henry F. Owsley.	102

1 LOS ANGELES, CALIFORNIA

2 FRIDAY, FEBRUARY 24, 2006; 8:58 A.M.

3  
4 VIDEOGRAPHER: Here begins Volume No. I,  
5 Videotape No. 1 in the deposition of Jeffrey Alan  
6 Dubin in the matter of P. T. Karang versus Marriott  
7 International, Incorporated, in the United States  
8 District Court for the District of Maryland. The  
9 case number is 8:05-CV-00787.

10 Today's date is February 24, 2005. The  
11 time on the -- excuse me. 2006. My apologies. The  
12 time on the video monitor is 8:58.

13 The video operator today is Jemal Judkins,  
14 a notary public contracted by LegaLink - Los Angeles  
15 at 20750 Ventura Boulevard, Suite 205, Woodland  
16 Hills, California.

17 This video deposition is taking place at  
18 633 West Fifth Street in Los Angeles and was noticed  
19 by Michael Collins of Bickel and Brewer.

20 Counsel, please voice identify yourselves  
21 and state whom you represent.

22 MR. COLLINS: Michael Collins for the  
23 plaintiff.

24 MR. SMURZYNSKI: Kenneth Smurzynski for  
25 defendants.

1 VIDEOPHOTOGRAPHER: The court reporter today is  
2 Jardene Platt of LegaLink - Los Angeles.

3 Would the reporter please swear in the  
4 witness.

5  
6 JEFFREY ALAN DUBIN, Ph.D.,  
7 having been first duly sworn, was  
8 examined and testified as follows:

9  
10 VIDEOPHOTOGRAPHER: Please begin.

11  
12 EXAMINATION

13  
14 BY MR. COLLINS:

15 Q. Mr. Dubin, could you state your full name.

16 A. Jeffrey Alan Dubin.

17 Q. And where are you employed?

18 A. I am employed at the California Institute  
19 of Technology, University of California, Santa  
20 Barbara and Pacific Economics Group.

21 Q. And where is Pacific Economics Group  
22 located, its offices?

23 A. Pacific Economics Group is located in  
24 Pasadena, California and Madison, Wisconsin.

25 Q. Are you one of the owners of Pacific

1 Economics Group?

2 A. Yes. I'm a partner in the firm.

3 Q. How many partners are there?

4 A. I think six.

5 Q. And were you a founder of Pacific  
6 Economics Group?

7 A. Yes.

8 Q. Were the other five founders also or did  
9 they join afterwards?

10 A. Three -- three partners founded Pacific  
11 Economics Group and then we were joined later by one  
12 other and then another other, another one.

13 Q. With offices here in L.A., Los Angeles,  
14 and Madison, Wisconsin?

15 A. Pasadena is the -- is my office and  
16 Madison, Wisconsin.

17 Q. What is the physical address in Pasadena?

18 A. 301 North Lake Avenue. 91101 is the zip  
19 code.

20 Q. Where do you reside?

21 A. I reside in Pasadena.

22 Q. What's that address?

23 A. 1510 Ontario Avenue.

24 Q. Could you just briefly describe to me the  
25 business of Pacific Economics Group.

1           A. Pacific Economics Group is a litigation  
2 consulting practice that's mostly defined by the  
3 particular strengths of the partners, meaning that  
4 Pacific Economics Group will do a variety of  
5 different types of work, depending on the nature of  
6 the work and the partner involved.

7           Q. I think you said there are six partners?

8           A. Five.

9           Q. Excuse me. Five partners. Excuse me.

10           How many employees approximately?

11           A. Just estimating, maybe 15 all together.

12           Q. Very briefly, when you say the expertise  
13 of the five partners, how would you describe your  
14 expertise?

15           A. My expertise is generally in matters of  
16 litigation. It's application of econometric  
17 methods, statistics applied to economic problems.  
18 Market studies. Antitrust, patent infringement.  
19 That sort of thing. I also do a fair amount of  
20 energy consulting for utilities with respect to  
21 rates and mergers or other issues that an electric  
22 utility or gas utility might have.

23           Q. With respect to this litigation, you are  
24 an expert on behalf of the defendants?

25           A. Yes.

1 Q. Is this the first time you have done any  
2 work on behalf of Marriott or any of its affiliates?

3 A. Yes.

4 Q. Have you done any work with the law firm  
5 of Williams & Connolly prior to this matter?

6 A. Yes.

7 Q. What are those other matters?

8 A. I'm not sure if there was one or more than  
9 one. I would have to really check my CV to be sure  
10 and I'm not even sure that will refresh me, but the  
11 one that comes to mind was a case involving corn  
12 syrup, it was an antitrust case, and I worked for  
13 Williams & Connolly on the defense side of the case  
14 involving corn syrup.

15 Q. And who did you work with from Williams &  
16 Connolly?

17 A. I worked with Mr. Smurzynski in that case.

18 Q. Do you remember when that was?

19 A. Perhaps five, six years ago.

20 Q. If I showed you a copy of your CV, would  
21 that help?

22 A. It might but I don't think I have dates on  
23 the cases. But I will take a look.

24 MR. COLLINS: We will mark this as 1.

25 ///

1 (Deposition Exhibit 1 was marked for  
2 identification and is attached hereto.)

3 THE WITNESS: Well, I filed an expert report  
4 in 1999 in that case.

5 BY MR. COLLINS:

6 Q. What page are you looking at?

7 A. I am looking at Page 13.

8 Q. And Exhibit 1 is a copy of your CV?

9 A. Correct. It is. I'm not a hundred  
10 percent sure it's the most current copy.

11 Q. When you referred to Page 13, what entry  
12 are you referring to?

13 A. The third entry down from the top of  
14 Page 13 says, "Before the United States District  
15 Court, Central District of Illinois," et cetera.  
16 And this was the case I was talking about was a case  
17 in 1999. At least the report was 1999. But I think  
18 I said five or six years ago.

19 Q. Okay. Were you deposed in connection with  
20 that matter?

21 A. Yes, I was.

22 Q. Did you testify at any hearings before the  
23 court in that matter?

24 A. No, I did not.

25 Q. What was the nature of your work in that

1 matter?

2 A. I don't know that I remember all the  
3 specifics, but in the main there was an opposing  
4 expert that had filed an econometric study about the  
5 pricing of corn syrup and whether or not there was a  
6 price fixing agreement among a set of defendants,  
7 and I believe the expert's report was quantifying  
8 the extent of that price fixing, the nature of what  
9 prices -- nature of how much prices had risen as a  
10 result of the price fixing and I believe ultimately  
11 the damage consequence to his client.

12 Q. I think you said a little bit earlier -- I  
13 don't want to misstate it -- that is one matter you  
14 worked with with Williams & Connolly. Were there  
15 other matters or other related matters?

16 A. I just don't completely remember and I  
17 will do the best I can. There may have been a case  
18 about silage bags and it's possible that was a  
19 Williams & Connolly case. But I could also be wrong  
20 about that.

21 Q. When you are referring to silage bags,  
22 could you state what that is?

23 A. As I recall, silage bags are very large  
24 baggies, so to speak, enormous baggies, that farmers  
25 use to hold grain. It's an alternative technology

1 to putting grain inside of a -- I don't know, I  
2 can't remember -- silo, a silo for holding grain.

3 Q. When I asked you whether that was your CV,  
4 you said there may be a more current version. Do  
5 you know if there is or not?

6 A. Well, I don't know where this document  
7 comes from, if this is the one I filed with my  
8 report.

9 Q. I think it is.

10 A. Okay. If it is, then it's fairly current.  
11 I know, for instance, that I have worked on a more  
12 recent copy to update some deposition testimony I  
13 have given in the last month or so. And so there is  
14 at least that change.

15 Q. What would that matter have involved?

16 A. That matter involves a -- I am trying to  
17 remember the one I just gave the deposition in, too.  
18 It involves a device manufactured, invented by a  
19 doctor that is used for treating spider veins. It's  
20 a medical instrument.

21 And the contention is that -- that a  
22 business opportunity connected with this device had  
23 gone -- had gone badly as a result of the doctor not  
24 providing what he had contracted to provide, which  
25 is some expertise related to the device in question.

1 And it's a device that is used as an alternative  
2 technology for treating spider veins. And there is  
3 also a component of that case involving a safety  
4 syringe, a hypodermic syringe.

5 Q. Who retained you in that matter?

6 A. I am retained by the defendants. And I  
7 don't know the names of the law firms off the top of  
8 my head. I can tell you the names of the lawyers as  
9 best I can remember.

10 Q. Sure.

11 A. Charles Schufreider, who I believe  
12 practices in downtown Los Angeles. And a fellow  
13 named Paul Jacobs and he's in Orange County  
14 somewhere.

15 Q. Any other updates to your CV for the last  
16 couple months?

17 A. Yeah. I'm not sure actually looking at  
18 this how current this one actually is, because at  
19 Page 16 I notice that there is an article that's  
20 listed as forthcoming in Statistics of Income and  
21 that forthcame a long time ago and it's actually now  
22 forthcoming or some version of it in another  
23 journal, Public Finance Review. So it's possible  
24 that this is slightly out of date with respect to a  
25 couple of my publications as well.

1 Q. Okay.

2 A. Let me just check something else, too. At  
3 Page 10 I guess I have -- sorry, I didn't mean to  
4 say "I guess." I have filed -- I have some prefiled  
5 direct testimony in a -- in another matter that  
6 doesn't appear here, which I think is on my current  
7 CV. Maybe not yet.

8 Q. What matter is that?

9 A. That's a case before the Washington  
10 Utility and Transportation Commission on behalf of  
11 Puget Sound. It's another matter for Puget Sound in  
12 connection with a rate case that's going on right  
13 now.

14 Q. What is prefiled testimony?

15 A. Prefiled testimony is a form of testimony  
16 that experts write. It's almost in the form of an  
17 expert report, but it's oddly enough in  
18 question-and-answer format. So that a question --  
19 you write your own questions and then you give your  
20 own answers, sign it under oath and then there is no  
21 direct testimony at trial, just cross.

22 Q. When you say you write your own questions,  
23 the attorneys give you the questions for the client  
24 you are working for or do you?

25 A. No. Typically -- typically when I am

1 writing a report, like I would write an expert  
2 report like I wrote an expert report in this matter,  
3 I would sit down and ask myself the question like,  
4 where are you employed? And I would answer that  
5 question.

6 Q. Okay.

7 MR. SMURZYNSKI: It cuts out the middleman.  
8 It's much easier.

9 BY MR. COLLINS:

10 Q. Just sitting here, any other updates you  
11 can think of?

12 A. I think we made an update -- I should say  
13 my CV is always sort of a working -- you know,  
14 working -- a work of art. You know, it changes.

15 I notice, for example, under "Other  
16 Reports," that the first item about an expert report  
17 on behalf of Agron, should have been listed in the  
18 section above, so I have -- I told someone to move  
19 it and I think that's been done. So I think those  
20 are the changes primarily.

21 Q. What is the difference between expert  
22 reports on Page 12 and other reports on Page 13?

23 A. The only distinction I am drawing there is  
24 an expert report would be -- I mean, they are all  
25 expert reports to some degree, but by "expert

1 report" I mean a report that -- either a federal  
2 rule or an attorney asks me to prepare in connection  
3 with a matter. So under the Federal Rules of  
4 Evidence I would have to supply a report, for  
5 instance.

6 "Other reports" would be reports that I  
7 have written in a management consulting context or  
8 for clients that are not necessarily related to  
9 litigation.

10 Q. What prior work have you done in the  
11 hospitality industry? When I say "prior work,"  
12 prior to this matter.

13 A. I think that one of my first cases or my  
14 first consulting projects was a project, as I think  
15 back, about tourism. It was a project that was  
16 working for -- I was employed by Bank of America and  
17 they specifically were asking about what the future  
18 demand for travelers checks would be.

19 And they wanted to know what the worldwide  
20 demand for one of their products would be, which was  
21 travelers checks. And that got me into  
22 international tourism and looking at statistics  
23 about stays at hotels and other factors that led  
24 people to purchase travelers checks for travel. And  
25 I remember building some econometric or statistical

1 models based on data I collected about hotels and  
2 about tourism connected with that.

3           So that would probably be the first of the  
4 cases I can think of here.

5           Q. Let me get a list of them first and we can  
6 go back.

7           A. Sure. Well, to continue, then, at some  
8 point sort of mid career, when I was at Arthur  
9 Andersen Economic Consulting, I worked on at least  
10 two projects for one of the partners that did hotel  
11 work, and I was working for a hotel in Kauai and I  
12 can't remember specifically which hotel it was at  
13 this point.

14           But the case was about business  
15 interruption and a storm that had come through the  
16 island and knocked out quite a bit of the  
17 infrastructure to the hotel. And I was asked to  
18 consider the -- the effect of the storm on the lost  
19 business interruption and in particular to forecast  
20 but for the storm, so to speak, what would the  
21 occupancy and revpars and revenues been at these  
22 particular hotels. So I built -- collected data and  
23 built econometric models about these hotels in  
24 Hawaii.

25           Q. Okay.

1           A. The third area that I can think of is I  
2 have done a fair amount of work in -- on  
3 environmental damages and from time to time that  
4 work gets me into lost property values as well as  
5 other lost consumer benefits when a environmental  
6 amenity is dispoiled, for instance.

7           And there was one case in particular where  
8 I was studying the effects of mine tailings  
9 dispoiling the Eagle River near Vail, Colorado and I  
10 was looking at property diminutions and that those  
11 property diminutions included residential properties  
12 and hotel properties in Eagle and Beaver Creek and  
13 Avon. So I think that would be the third area that  
14 was sort of hospitality related, if you will.

15           Q. Okay. Anything else that comes to mind  
16 sitting here today?

17           A. Nothing else comes to mind, actually. I  
18 mean, I could probably go through my CV and think  
19 that -- think a little harder about that, but  
20 nothing comes to mind.

21           Q. With respect to Bank of America, that  
22 wasn't a matter of litigation. Right? That was  
23 more of a business consulting arrangement?

24           A. Yes. It was a project where Bank of  
25 America wanted me to help them understand their

1 market.

2 Q. Do you remember approximately when you  
3 conducted that work?

4 A. I remember that it was probably between  
5 1982 and 1983.

6 Q. Where were you working at the time?

7 A. I was a recently minted Ph.D. and I had  
8 just taken a job as an assistant professor at the  
9 California Institute of Technology in Pasadena.

10 Q. Could you just generally describe what you  
11 did in connection with that engagement.

12 A. We are talking about 23 years ago --

13 Q. Exactly.

14 A. -- so I'm not sure how good my  
15 recollection is on this, but I started from the  
16 premise that travelers checks were a product that  
17 were -- were -- had a derived demand, we call it, an  
18 economist would call it, and a derived demand  
19 product is a product that doesn't have, say, utility  
20 in and of itself. It's a product that you purchase  
21 because you are going to use it as an input into  
22 something else. So a travelers check is an input  
23 into the ability to travel and do commerce when you  
24 are away.

25 Sort of worth mentioning that these were

1 the days before the existence of the new-fangled  
2 concept called the ATM.

3           And I collected a lot of information about  
4 historical use around the world from all the  
5 channels of distribution of travelers checks, Bank  
6 of America travelers checks and other travelers  
7 checks from Bank of America. I collected a variety  
8 of information about tourism statistics. United  
9 States visitors abroad and in different countries.  
10 The number of days stayed at hotels, that sort of  
11 thing.

12           I also tried to capture the -- this new  
13 product called the ATM machine and I built an  
14 econometric model that forecasted the current usage  
15 of travelers checks and told the Bank of America  
16 about the -- what I believed the penetration of this  
17 new-fangled ATM would -- would be and what it would  
18 consequently do to their business. And I believe my  
19 conclusion there was that travelers checks were  
20 about to take a big nose dive.

21           Q. Have they done so?

22           A. Well, I think they probably have done a  
23 big nose dive, yeah. But surprisingly they are not  
24 nonexistent, which always surprises me. And I think  
25 back on that case and kind of wonder how well I

1 predicted, but I think I got it mostly right.

2 Q. Did that involve looking at any aspects of  
3 hotels at all? Just trying to be as broad as  
4 possible.

5 A. I can't really remember all the details  
6 there. I remember collecting statistics about  
7 average lengths of stay and some of the channels of  
8 distributions of travelers checks. In other words,  
9 who was taking travelers checks, where you could use  
10 a travelers check, where you could buy them. But I  
11 don't quite remember all the details about -- about  
12 that and what the exact data sources were about  
13 tourism that I was employing.

14 Q. When you say "average length of stay," do  
15 you mean average length of stay at a destination  
16 versus at a hotel?

17 A. Yes. It would be average length of stay  
18 at a destination.

19 Q. So it would be, for example, how many days  
20 someone spent in Los Angeles versus how much they  
21 spent at any particular hotel?

22 A. That's correct. I recall that hotels had  
23 something to do with it. I just can't remember all  
24 the details of what I collected.

25 Q. And then you said you worked for a

1 partner -- excuse me -- at Arthur Andersen, you  
2 worked with a partner about a hotel in Kauai?

3 A. Yes.

4 Q. Who was that partner?

5 A. I have no idea.

6 Q. Approximately when was this?

7 A. Do you mind if I look at the CV again?

8 Q. Sure.

9 A. It would be between 1992 and 1996, because  
10 those were the years that I had some connection with  
11 Arthur Andersen Economic Consulting and Arthur  
12 Andersen. So my best estimate would be somewhere in  
13 the middle, 1994.

14 Q. Was that a matter that was actually in  
15 litigation or --

16 A. That was a matter, as I recall, that was  
17 headed for litigation that was before an arbitration  
18 hearing.

19 Q. So it was -- your memory is it was  
20 actually in arbitration at the time?

21 A. Yes.

22 Q. Was that involving the hotel owner against  
23 the insurance company, if you remember?

24 A. That's what I recall, yes.

25 Q. Was a report actually prepared?

1           A. There wasn't a formal report. There was a  
2 report and there were -- there was output, but  
3 there's not a formal report in the sense of an  
4 expert report that I have written or a report that I  
5 retained or anything of that kind. I recall at the  
6 time that the study I did was reduced to tables and  
7 regression analyses and that sort of thing and I  
8 definitely wrote up my work and presented it. But I  
9 don't have any report per se any longer.

10           And I don't list it on my CV as an expert  
11 report or other report because it -- it never really  
12 rose to the level of a document with an introduction  
13 and a conclusion and all that sort of thing. It was  
14 more tables and explanations of how I thought the  
15 market worked.

16           Q. Did you actually visit that hotel in  
17 connection with that assignment?

18           A. Not in connection with that assignment,  
19 no.

20           Q. And then you said there was a third matter  
21 involving environmental damage. You used the word  
22 "mine tailing"?

23           A. Mine tailings, yes.

24           Q. What does that refer to?

25           A. When a mining company digs up the earth to

1 get to minerals, it's a destructive process and  
2 while they are after certain minerals like gold or  
3 silver, there is related heavy metals, and if they  
4 use water as part of the process of unearthing the  
5 minerals, as a consequence they will release the  
6 heavy metals into the water table and those are  
7 called mine tailings. The heavy metal by-products  
8 of the mining process.

9 Q. I think you said you did some work on lost  
10 property values.

11 A. Yes.

12 Q. When did you do this work?

13 A. The best that I can remember, that would  
14 have been done somewhere between 1989 and 1992.  
15 Maybe 19- -- maybe 1992 best estimate.

16 Q. Do you know who retained you?

17 A. You mean which law firm are you asking  
18 or --

19 Q. Were you on behalf of property owners --  
20 working on behalf of property owners?

21 A. No. I actually was working for ARCO and  
22 ARCO -- it was either ARCO or Gulf Western. I can't  
23 remember which, and they had sort of, I think,  
24 inherited the property, so to speak. I don't know  
25 why they came to own that property, but they did and

1 it became their problem. They weren't the miner.

2 Q. If you remember, what law firm were you  
3 working with?

4 A. I don't -- I just don't recall.

5 Q. Was this a matter in litigation or --

6 A. I believe that case was a Superfund case,  
7 so it was a case brought by the government. Could  
8 have been the state, but I believe it was a federal  
9 case. So I'm not sure if you say that's in  
10 litigation or not. I mean, it was a case brought  
11 under the CERCLA act. It was probably some ca- --  
12 some type of thing that was headed towards  
13 litigation of some form or another.

14 Q. And you said it also involved looking at  
15 some hotels. Is that correct?

16 A. Yes.

17 Q. What did you do in connection with that  
18 process of looking at hotels?

19 A. I looked at some statistics on property  
20 values generally, residential property values and  
21 also collected information about hotel property  
22 values. And what I was looking for was changes in  
23 property value that might have been connected with  
24 the mining activity or the tailings from that  
25 activity.

1           And I was also looking for proximity  
2 effects. In other words, if a hotel was closer to  
3 the, quote, bad area, was that hotel's property  
4 affected by the mine tailings or were there other  
5 factors that caused that hotel to lose value. And I  
6 was doing a similar analysis for residential  
7 property. And actually some commercial property  
8 other than hotels as well.

9           Q. And this was an area in Colorado?

10          A. Yes.

11          Q. You said Eagle --

12          A. It's the Eagle River. It's near Beaver  
13 Creek. The towns are Avon, Mintern, Red Stone, and  
14 Vail.

15          Q. Do you remember what hotels you were  
16 looking at in connection with this assignment?

17          A. No. Not specifically. It would have been  
18 the hotels that were around at the time in the  
19 Beaver Creek and in the Vail area.

20          Q. When you say you were looking at property  
21 values for hotels, what did you do to determine  
22 those?

23          A. I can't recall that.

24          Q. Talking about these three, does it refresh  
25 your memory about any other assignments involving

1 the hospitality industry?

2 A. I -- you know, without thinking harder  
3 about it, I think that sort of exhausts it for right  
4 now.

5 Q. Okay. Now, I think you say in your report  
6 you were first contacted in this matter around  
7 February of 2005. Is that correct?

8 A. Do I say that?

9 Q. Well, we will show you a copy.

10 Exhibit 2.

11 (Deposition Exhibit 2 was marked for  
12 identification and is attached hereto.)

13 BY MR. COLLINS:

14 Q. I will ask you if Exhibit 2 is your expert  
15 report after you have had time to look at it and  
16 then I will refer you to Page 12.

17 A. Yeah. This is my expert report and the  
18 answer to your question -- do you want me to answer  
19 your question?

20 Q. Sure.

21 A. It says I was retained by Williams &  
22 Connolly in February. I believe your question was  
23 was I contacted in February. My recollection is I  
24 was contacted in January.

25 Q. Thank you. Who contacted you in January?

1 A. Mr. Smurzynski.

2 Q. And when you are referring to January,  
3 that's January 2005?

4 A. Correct.

5 Q. When you were contacted in January 2005, I  
6 assume that was a phone call?

7 A. Yes.

8 Q. What did you discuss during that phone  
9 call?

10 A. I don't specifically recall all the  
11 details. My best recollection is that  
12 Mr. Smurzynski described a little bit about the  
13 case. Told me it involved a Ritz-Carlton in Bali  
14 and the entry of a new possible competitor, a  
15 Bvlgari Hotel. And I'm not sure we got into a whole  
16 lot more detail other than would I be interested in  
17 working on that.

18 I think he might have described it as this  
19 would be a case that had aspects of demand analysis  
20 and choice patterns of preference, the sort of  
21 things that fit my background and experience. And I  
22 probably said yeah, I am interested.

23 Q. Would you have taken notes of that  
24 conversation or --

25 A. No. I didn't take any notes. I

1 specifically remember being on a cell phone walking  
2 down a street in a place where I couldn't possibly  
3 take any notes.

4 Q. Was that the only conversation before you  
5 were retained in February of 2005 or were there  
6 additional conversations?

7 A. We might have had an additional  
8 conversation.

9 Q. Do you remember that one at all?

10 A. I think best that I can remember I was  
11 contacted again by Mr. Smurzynski, maybe a couple of  
12 weeks later, and the general -- one of the general  
13 counsels for Marriott was on the telephone as well.  
14 And at that point I think I was given a little bit  
15 more detail about the case.

16 I may have looked a little bit myself into  
17 boutique hotels and the Bvlgari Hotel. And -- it  
18 was more of a conversation where they shared a  
19 little bit more information with me and I had a  
20 chance to share some thoughts or to tell them a  
21 little bit about what I was thinking about.

22 Q. Do you know who that was, the possible  
23 assistant or one of the general counsels of  
24 Marriott?

25 A. Jim Akers.

1 Q. Is this the first time you had talked with  
2 Mr. Akers?

3 A. No.

4 Q. When had you talked to him before then?

5 A. I had worked for Mr. Akers in connection  
6 with another case, before he was the general counsel  
7 or assistant general counsel at Marriott.

8 Q. What case was that?

9 A. This was a patent case where Polaroid  
10 Corporation had sued Kodak about instant  
11 photography.

12 Q. Was Mr. Akers a lawyer in a law firm at  
13 that time or --

14 A. Yes, he was.

15 Q. What law firm?

16 A. He was a lawyer at Sullivan & Cromwell.

17 Q. Did you do an expert report in connection  
18 with that matter?

19 A. Yes, I did.

20 Q. Is that one of them listed on your CV?

21 A. Interestingly, it's an expert report, but  
22 it's not listed under the expert report section  
23 because while I was the author of it, I wasn't the  
24 expert, so to speak. I wasn't the testifying  
25 expert. And so I list that report under the other

1 report section.

2 Q. Which one is that?

3 A. It's Page 14. It says "Analysis of market  
4 Expansion and Business Diversion in Instant  
5 Photography Attributable to the Entry of Eastman  
6 Kodak from 1976-1985."

7 Q. Who was the testifying expert in that  
8 matter?

9 A. I believe the economics testifying expert  
10 was William Baumol.

11 Q. Were you working with Mr. Baumol at the  
12 time or in the same employer?

13 A. No. Professor Baumol was -- was either at  
14 NYU or at Princeton at the time and he had a support  
15 group that he worked with that was largely Princeton  
16 people.

17 I was an economist that worked on the  
18 econometric aspects of this case in conjunction with  
19 another professor from Stanford. So there were  
20 actually a small group of economists that were  
21 supporting Baumol who ultimately testified to the  
22 work that was done.

23 Q. During this second phone call, can you  
24 just tell me what was discussed during the phone  
25 call to the best of your recollection.

1           A. I can't recall what either Mr. Akers or  
2 Mr. Smurzynski said. I mean, some of it was  
3 pleasantries, because I hadn't talked to Mr. Akers  
4 in a long time. Said I looked forward to working  
5 with him again, that sort of thing.

6           I also said that -- that this case struck  
7 me as one where the pattern of preference would be  
8 important to understand, and that I had some  
9 thoughts about models called nested logit and other  
10 types of models that might be brought to bear to  
11 understand the Bali market a bit, if the data  
12 existed that could be used to calibrate such models.

13           I also I think talked at that time about  
14 comparables and the -- I think I even mentioned the  
15 Bvlgari in Milan as being a comparable we might want  
16 to study.

17           That's about all I can recall about the  
18 conversation.

19           Q. When you used the phrase "pattern of  
20 preference," what are you referring to?

21           A. Pattern of preference is a term of art in  
22 economics and it refers to how consumers sort  
23 various alternatives in terms of their preference.  
24 Whether a consumer, for example, finds one good to  
25 be their most preferred or their second most

1 preferred, how a consumer chooses to go to one hotel  
2 versus another or chooses to pick one mode of  
3 transportation to get to work in the morning versus  
4 another. Those are patterns of preference.

5 Q. And then you used the phrase "nest of  
6 logit"?

7 A. Nested logit, L-O-G-I-T.

8 Q. What is the first word?

9 A. Nested. Nested.

10 Q. What is that referring to?

11 A. Nested logit is a -- is a model, a  
12 statistical econometric model, that assumes or  
13 doesn't assume a particular pattern of preference,  
14 but allows one to estimate a pattern of preference  
15 from market data.

16 The nesting refers to the idea that  
17 consumers compartmentalize their decision process.  
18 They sometimes will make a threshold decision to say  
19 to take a trip, a vacation or not to take a vacation  
20 in a given year. Followed by the decision to take  
21 that vacation in Europe versus in Hawaii, if they  
22 are United States citizens, for example. And then a  
23 further step of that nesting would be to determine  
24 where in Hawaii or where in Europe they would go,  
25 and then a further step would be to determine which

1 hotel that they would choose to stay at and how long  
2 they would stay there.

3 That sort of nested process is amenable to  
4 an econometric technique called nested logit  
5 analysis. It was a technique that I had used in the  
6 Kodak and Polaroid case. I brought it up because I  
7 assumed Mr. Akers would recall the technique. I  
8 wasn't sure whether Mr. Smurzynski would know the  
9 technique, but I think I explained it a bit.

10 Q. Then you were retained in February of  
11 2005. Correct?

12 A. Yes.

13 Q. Who else have you talked to from Marriott  
14 about the facts of this case or anything about this  
15 case?

16 A. I'm not exactly sure how to answer that  
17 because I'm pausing on whether the general manager  
18 of the Ritz-Carlton in Bali is considered an  
19 employee of Marriott in some sense.

20 Q. We can isolate him out and put him if you  
21 want just in the category of you talked to him. Who  
22 is -- what is his name?

23 A. Mr. David Wilson. But I think I have not  
24 talked to any other employees of Marriott that I can  
25 recall.

1 Q. So you talked to Mr. Akers, talked to  
2 Mr. David Wilson, whoever he works for.

3 A. Yes.

4 Q. And anyone else come to mind?

5 A. An employee of Marriott?

6 Q. Yes.

7 A. I don't think so. Well, yeah, I don't --  
8 well, I am only hesitating because there were also  
9 some -- there were some Bvlgari employees that I  
10 spoke to and again, I don't know if -- if in some  
11 sense they are ultimately paid by Marriott in part  
12 or in whole. I don't -- I just don't know.

13 Q. Okay.

14 A. Or at all. I just don't know.

15 Q. Sure. Okay. When you spoke to people  
16 from let's use generically Bvlgari, who did you  
17 speak to?

18 A. There was a fellow named Attilio Marro in  
19 Milan who was the general manager of the Bvlgari  
20 Hotel in Milan. I also spoke to a Silvio Ursini.  
21 Now, he was a Bvlgari employee straight out so he  
22 has no connection with Marriott.

23 I spoke to the person who is going to be  
24 the general manager at the Bvlgari in Bali and his  
25 name is Robert Lagerfeld. So again, I'm not sure

1 whether he's -- who employs him or pays him.

2           And there was another woman at the  
3 meeting, Cora something.

4           Q. Cora, did you say?

5           A. Cora, I think. I can't remember her last  
6 name.

7           Q. Do you know who she worked for?

8           A. I don't. She worked with Mr. Lagerfeld  
9 and was working for that Bvlgari -- going to work at  
10 that Bvlgari property.

11          Q. And when that -- when you are referring to  
12 "that Bvlgari property," you are referring to in  
13 Bali.

14          A. In Bali, yes.

15          Q. And when you spoke to Mr. David Wilson,  
16 when did you speak to him to the best of your  
17 memory? Actually, how many times did you talk to  
18 Mr. Wilson?

19          A. I think that we -- when I say "we," I  
20 think I had two meetings with Mr. Wilson while I was  
21 visiting the Island of Bali. And the time frame for  
22 that, I am forgetting already, but it might have  
23 been August of this year, possibly July.

24          Q. So you actually went to Bali at one point  
25 in time. Correct?

1 A. Yes. I went to Bali.

2 Q. That would have been August 2006 about?

3 A. 2005.

4 Q. I'm sorry. 2005. Yes.

5 A. August or July. It was either -- I just  
6 don't remember. Late July or early August,  
7 something like that.

8 Q. Was it your first trip to Bali in  
9 connection with this matter?

10 A. Yes.

11 Q. Had you been to Bali before this matter?

12 A. No.

13 Q. You did visit the -- visit Milan also.  
14 Correct?

15 A. Yes.

16 Q. When was that?

17 A. I -- it was either very late September or  
18 sometime in early October. I think it was right  
19 before this report was filed, and the report is  
20 dated October 6, so my recollection would be late  
21 September -- late September or early October.

22 Q. Had you been to Milan before?

23 A. Yes.

24 Q. When was the time before that?

25 A. Oh, there was probably a trip in -- around

1 1982. And then I think I'm pretty sure in the early  
2 1990s again I was in Milan.

3 Q. That trip in late September-October was  
4 your first trip to Milan in connection with this  
5 matter.

6 A. Correct.

7 Q. Who went with you to Milan, if anyone?

8 A. Well, actually I brought my wife so she  
9 went with me. Mr. Smurzynski went to Milan as well.  
10 I'm not sure that's with me.

11 Q. Were you attempting to coordinate your  
12 trips?

13 A. Yes. Mr. Smurzynski was in Europe on  
14 business and so we coordinated and met in Milan.

15 Q. How long did you spend in Milan?

16 A. Four days, maybe five.

17 Q. Where did you stay?

18 A. Well, I spent some time at the Marriott.  
19 And -- I would say actually it was a four-day trip,  
20 three nights. One night was at the Marriott and two  
21 nights, I think, were at the Bvlgari Hotel in Milan.

22 Q. How long did you spend in Bali?

23 A. The Bali trip was close to a week, I  
24 think. So it could have been six days or seven, I  
25 don't remember. Maybe it was five.

1 Q. Did anyone accompany you?

2 A. I will answer the same way. You know, in  
3 the sense of accompany me, my wife didn't come along  
4 on that one. So I guess I went unaccompanied.

5 Q. Did anyone meet up with you there besides  
6 Mr. Wilson?

7 A. Yes.

8 Q. Who was that?

9 A. Well, Mr. Smurzynski was there. His  
10 partner, Mr. Cox. And one of the defense experts,  
11 Mr. Cline, was at the meeting as well.

12 Q. When you referred to "at the meeting,"  
13 what meeting are you referring to?

14 A. Oh, I just mean the general -- I didn't  
15 really mean a specific meeting. I meant just the  
16 general trip.

17 Q. Did you take any notes from your trip to  
18 Bali?

19 A. I did take some notes.

20 Q. Did you provide those notes to  
21 Mr. Smurzynski?

22 A. I provided Mr. Smurzynski with a copy of  
23 my file and if I had any markings on any documents  
24 that were left in the sense of notes or something  
25 like that, he would have them.

1 Q. Had you talked to Mr. Wilson before this  
2 trip?

3 A. No.

4 Q. Give me just a broad kind of overview.  
5 What did you do during your time at Bali?

6 A. Well, a broad overview was -- would be  
7 that we -- this group had a variety of meetings.  
8 Some parts of the group did other things that didn't  
9 involve me. The parts that involved me were  
10 meetings with some of the people I have mentioned,  
11 Mr. Wilson, Mr. Lagerfeld -- Lagerway, I mean.  
12 There was -- there was a meeting with the general  
13 manager at the Conrad Hotel where we were staying.

14 Mr. Cline and I had a meeting with  
15 somebody else whose name is mentioned in his report,  
16 his expert report, but I can't recall the name. If  
17 I looked at his report I would remember.

18 But generally there were meetings -- those  
19 specific meetings and visits to hotel properties,  
20 and those visits sometimes would be informal in the  
21 sense that I would visit a property and ask to speak  
22 to a general manager, assistant general manager and  
23 have a tour of the property. Or they were more  
24 formalized. They had been set up ahead of time by  
25 Mr. Cline or somebody so that there was sort of a

1 more formal tour of a property.

2 Q. What properties did you visit?

3 A. I'm not sure I am going to be able to name  
4 them all. I tried to visit -- I definitely did  
5 visit the Conrad where we stayed. I visited the  
6 Ritz-Carlton. I visited the Bvlgari Hotel under  
7 construction. I'm sure I visited several of the  
8 Aman properties. The Amanusa and maybe the  
9 Amandari.

10 I visited the Oberoi Hotel, if that's the  
11 hotel in Kuta. I visited some other -- the Legian,  
12 which were villa properties out that direction. I  
13 visited the Four Seasons in Sayan. Four Seasons  
14 Sayan in Ubud.

15 Informally I visited properties that were  
16 near our hotel as well. There was a whole stretch  
17 of hotels that were close to our hotel.

18 And I visited the Begawan Giri.

19 And that may be all that I can remember  
20 off the top of my head.

21 Q. You were staying at the Conrad during this  
22 trip. Correct?

23 A. Correct.

24 Q. Can you tell me the best of your  
25 recollection of your conversations with Mr. Wilson.

1           A. I really don't have a lot to recall  
2 specifically about that. My -- my -- you know, I  
3 was participating in that meeting but I was focused  
4 on some particular things and so I was not paying  
5 attention to sort of Mr. Cline's line of questioning  
6 of Mr. Wilson, to be honest.

7           The things that I was focusing on were  
8 what he viewed the competitive set to be or I  
9 specifically remember some questions I asked about  
10 the nature of data that he had and where he got it  
11 and how he got it. I recall some questions I put to  
12 him about the retention of information about  
13 customers at his property. But those were the --  
14 the pieces that I recall best. I'm sure if someone  
15 prompted me with was this said or was that said, I  
16 would come -- I would be able to say yes or no, but  
17 I just don't remember any more than that.

18           Q. What did he tell you about the competitive  
19 set?

20           A. I think he -- I think the specific  
21 question was did -- do you consider these hotels and  
22 this marketing plan to be in your competitive set.  
23 He said yeah, these are the hotels we track. I may  
24 have asked him a question.

25           I am certainly sure I asked him a question

1 about has the -- his competitive set definition  
2 changed over time and he said somewhat. I may have  
3 asked him a question or somebody might have asked  
4 him a question about whether he thought the  
5 Bvlgari -- actually, I'm not sure anybody asked him  
6 that question. Someone might have asked a question  
7 about the Bvlgari and its potential competition. I  
8 just don't remember for sure.

9 Q. You don't know if the question was asked,  
10 but did he tell you anything about his views of  
11 whether there would be competition between the  
12 Bvlgari and the Ritz-Carlton?

13 A. I can't recall what he said about that.  
14 He might -- you know, I would have to guess to tell  
15 you. I just don't remember.

16 Q. What hotels did he have in his competitive  
17 set as you remember?

18 A. These would be the hotels that would be  
19 listed in the -- that are mentioned in the marketing  
20 plan, and so off the top of my head, they would  
21 include the Oberoi, the Four Seasons -- this is for  
22 villas now.

23 Q. Right.

24 A. There is a slightly different -- actually  
25 not slightly different, but a different definition

1 of competitive set for non-villa rooms at the  
2 hotels.

3 I think -- I mean, I think he actually  
4 mentioned, you know, other hotels that he viewed as  
5 providing competition, that weren't in his -- in the  
6 competitive set of that document. I recall that he  
7 said, you know, we view all these villa properties  
8 to some degree as competitors. So he actually  
9 pointed to there is this development going on or  
10 there is that development going on and these will be  
11 competition. That's the best I remember it.

12 Q. Do you remember what developments he was  
13 telling you when he said they would be competition?

14 A. Not specifically.

15 Q. When you said different definitions for  
16 villas versus non-villas, why is that?

17 A. Why does the hotel have different  
18 definitions for competitive set?

19 Q. Right.

20 A. I'm not sure why they have a different  
21 definition. I presume it's because they want to  
22 track or benchmark their rooms differently than  
23 their villas against a set of hotels and properties  
24 that they think are most similar to the -- to their  
25 property. So in other words, they would -- they

1 would pick a set of hotels that are providing villa  
2 product when they want to benchmark or compare  
3 against their villas, and presumably they pick a set  
4 of hotels that provide rooms when they are trying to  
5 benchmark or compare against their room properties.  
6 That's a presumption on my part.

7 Q. And is Robert Lagerway -- is that correct?

8 A. Yes.

9 Q. Do you know what he's doing today?

10 A. Right as we speak?

11 Q. No. As far as like in this time period.  
12 Because the Bvlgari Bali is not in operation yet.  
13 Correct?

14 A. I don't think it is.

15 Q. Do you know what he's doing -- what he was  
16 doing when you visited Bali back in whatever it was?

17 A. I have some general idea of what he's  
18 doing. He's getting ready to run a hotel. At the  
19 time he was actively involved in monitoring the  
20 construction and aspects of the construction. And  
21 as I say, getting ready to run a hotel, what all  
22 that entails.

23 Q. So you had conversations with Mr. Wilson,  
24 conversations with Mr. Lagerway. Mr. Cline,  
25 Mr. Smurzynski may have been part of one or more of

1 those. Any other -- the names of any other  
2 individuals you remember that you had meetings with  
3 while in Bali?

4 A. Well, yes. There was Mr. Ursini, who was  
5 a Bvlgari person, and I mentioned the Cora something  
6 who was working with Mr. Lagerway. And there was  
7 also a person who I met with with Mr. Cline, who  
8 again is -- whose name is in his report. I can't  
9 think of the name off the top of my head. And then  
10 there were less formal meetings with others. But I  
11 don't recall any names.

12 Q. Okay.

13 A. For instance, the general manager of the  
14 Conrad, I can't think of his name right now.

15 Q. What did you discuss with Mr. Ursini?

16 A. We talked a lot about the Bvlgari brand.  
17 He's involved in -- in the design aspects of the  
18 hotel properties. I can't recall exactly where he  
19 is in the infrastructure of the Bvlgari chain. I  
20 think he's a fairly high up individual. But at this  
21 point he's involved in a lot of the design aspects  
22 of the Bvlgari hotels.

23 And the meeting was about, you know, a  
24 little history about Bvlgari. A little history  
25 about the hotel project a little bit. How the hotel

1 was being marketed, how it was going to be marketed.  
2 Whether or not it was a Ritz-Carlton. You know,  
3 that sort of thing. I think was the general nature  
4 of the meeting.

5 Q. Was it just the one meeting with him?

6 A. Yes.

7 Q. Do you remember how much time you spent  
8 together? Again, just approximately.

9 A. That time, that meeting could have been  
10 two hours, maybe three. 2-1/2.

11 Q. You said he gave you some background on  
12 the hotel project. Are you referring in particular  
13 to the Bvlgari Bali or the Bvlgari Hotel chain  
14 itself?

15 A. A little of each.

16 Q. What did he tell you about the Bvlgari  
17 Hotel chain that you remember?

18 A. I remember not -- not a whole lot about  
19 it. I remember part of that conversation was about  
20 their decision to enter into the hotel business a  
21 little bit and how they were going to choose a  
22 partner and some of the interview process they went  
23 through to look at different companies that they  
24 would partner with to help manage their hotel.

25 Q. Did he say whether he was part of that

1 interview process?

2 A. I don't remember that.

3 Q. Did he tell you what role he had in that  
4 process of deciding who to partner with?

5 A. I don't think that came up.

6 Q. Did he explain to you why Bvlgari was  
7 looking to partner with someone for their hotels  
8 versus just doing the hotels themselves?

9 A. I think that may have come up and I -- and  
10 I -- you know, again this is my best recollection.  
11 There were others at the meeting so you will have a  
12 chance to ask others, but I am just fuzzy about  
13 this. I think they felt like they needed -- this  
14 was a new line of business for them and they had  
15 some very strong ideas about the design and what the  
16 hotel was going to be and just kind of statement  
17 that it would make and that sort of thing. But that  
18 they definitely I think felt that they needed a -- a  
19 partner to help them in the kind of nitty-gritty of  
20 running a hotel.

21 Q. What did he tell you about the ideas  
22 behind the Bvlgari Hotel chain they were building,  
23 the concept?

24 A. Oh, I think the -- what I remember was  
25 what a statement the hotels would be. And that --

1 that they thought it was a way to both enhance their  
2 image and maybe bring more people to their brand  
3 generally so that they could sort of advertise or  
4 penetrate a larger market than they currently have  
5 by people wandering into the jewelry stores or not,  
6 as the case may be. It was a splashy way to go into  
7 an extension of themselves that would open up maybe  
8 new markets for them while emphasizing the design  
9 and elegance, which is Bvlgari. That's the best I  
10 can remember it.

11 Q. We have the Bvlgary Milan. We have the  
12 Bvlgari Bali. Did he tell you about any other hotel  
13 sites for Bvlgari hotels?

14 A. I think he did.

15 Q. Which other sites did he mention to you?

16 A. I'm not sure I am talking out of turn  
17 here, he -- it was highly confidential. Lacking  
18 instruction not to answer, I will tell you.

19 Q. Sure.

20 A. I recall him saying that a property was  
21 being considered in London. And he mentioned  
22 specifically what site they were examining. I think  
23 it was London. It -- and I think they were thinking  
24 a little bit about a site in Paris. Although in my  
25 mind the Paris site could have -- the Paris site

1 could have been the London site. I just don't  
2 remember.

3 I remember him specifically saying  
4 something about it wasn't going to happen in Las  
5 Vegas. That wasn't a play they were going to do. I  
6 just don't remember beyond that. Those are sort of  
7 the ones that ring bells for me.

8 Q. Did he tell you why not Las Vegas?

9 A. No. I mean, it was -- it was one of those  
10 kind of comments like it was just kind of, I guess,  
11 obvious from the context that, you know, they --  
12 maybe they just felt like -- I don't know that  
13 anyone asked. It was just sort of -- my impression  
14 was we are just kind of above that or that's not us  
15 kind of thing.

16 Q. Did he mention Los Angeles, for example?

17 A. He may have. But I -- I was kind of  
18 wondering about that or I might have asked about Los  
19 Angeles and -- because I am from Los Angeles and --  
20 and I don't remember what the answer was. I'm not  
21 even sure I asked the question.

22 Q. And these people you were meeting with in  
23 Bali, did they all speak English or did you need an  
24 interpreter at all?

25 A. Everyone I came in contact with spoke

1 English.

2 VIDEOGRAPHER: Mr. Dubin, I'm sorry, could you  
3 adjust -- slide it higher. Yeah. That's good.

4 BY MR. COLLINS:

5 Q. Did you have any discussions with  
6 Mr. Ursini of -- generally about why do you need a  
7 partner, why not just hire people from the industry  
8 to make them Bvlgari employees and do the hotels  
9 yourself?

10 A. I'm not sure I understand the question.

11 Q. Okay. I'm sorry.

12 A. That's okay.

13 Q. He -- I think you said that you had some  
14 discussions with Mr. Ursini about Bvlgari partnering  
15 with an established hotel entity. Did he mention to  
16 you about did they consider the alternative of  
17 instead of partnering, to just hire people from  
18 other hotels, chains to become Bvlgari employees and  
19 do it all themselves?

20 A. No. I'm not sure that came up.

21 Q. Did he tell you who else they were  
22 thinking about partnering with?

23 A. That did come up and I don't know that I  
24 remember who. My impression was there was a short  
25 list, maybe he went through about three or -- three

1 or four examples, maybe three. And I don't remember  
2 who they were off the top of my head.

3 Q. Did he tell you how Bvlgari chose  
4 Ritz-Carlton?

5 A. That did come up, but I don't really  
6 remember exactly what he said about it, except that  
7 it was a good fit and it was a much better fit in  
8 some ways than some of the others that they were  
9 looking at.

10 I think -- and again I -- my recollection  
11 is fuzzy on this, but he may have said that Marriott  
12 had -- had done a very good job of managing brands  
13 and separating and keeping separate the brands. And  
14 they were definitely -- I think it may have been  
15 said that they were looking for someone that had  
16 that potential to keep the brands distinct and  
17 separate. And I think there were some other aspects  
18 of why he thought it was a good fit.

19 But, you know, I think he might have  
20 talked a little bit about the Ritz-Carlton was also  
21 sort of at the luxury end of the business, but he  
22 had some -- definitely some notion about why it was  
23 a good fit and I just don't remember all the  
24 details.

25 Q. Anything else you remember, though,

1 sitting here today about why it was a good fit?

2 A. No. I can't think of anything.

3 Q. You said that he thought that Marriott had  
4 done a good job of managing brands. Did you have an  
5 understanding of what he meant by that?

6 A. I -- it -- again, this is just my fuzzy  
7 recollection from late September -- sorry, July or  
8 August, but -- I guess I just -- starting to forget  
9 a lot, but my impression was that he talked about  
10 Marriott having several extensions, subbrands that  
11 were kept distinct. The JW Marriott distinct from a  
12 Ritz-Carlton, for example, or the other components  
13 of the chain of the Fairchild or -- I'm not even  
14 sure what all they are.

15 But, you know, it's not even clear in my  
16 mind that they all belong to a Marriott, for  
17 instance, so -- and I think that there is a  
18 conscious level decision to keep those items  
19 separate and I think he was talking to that a little  
20 bit.

21 Q. What did you talk to Cora about?

22 A. Nothing I can remember. She was a  
23 participant in the meeting and I just don't remember  
24 anything from that.

25 Q. Then you visited Milan. Who did you speak

1 to about the Bvlgari Milan while in Milan?

2 A. The general manager, Mr. Marro.

3 Q. Anyone else?

4 A. At the Bvlgari?

5 Q. Yes.

6 A. No. I think that was the only formal  
7 meeting I had at the Bvlgari Hotel in Milan.

8 Q. Did you meet any other Bvlgari  
9 representatives while in Milan?

10 A. Well, I met, you know, people at the front  
11 desk kind of stuff that were quite helpful, but no  
12 one -- nobody else in management.

13 Q. No executives from Bvlgari.

14 A. No.

15 Q. What did you speak to Mr. Marro about?

16 A. That conversation was a little bit about  
17 how he regarded the competitive set in Milan. What  
18 hotels he tracked and looked at. What the Milan  
19 market was like. The activity, the styling of the  
20 Bvlgari, would be some of the things that came up.  
21 I'm sure there was more.

22 I mean, we talked a little bit about -- I  
23 asked him some specific questions about the Principe  
24 di Savoia Hotel, which I talk about in my report a  
25 little bit, because they have a large number of

1 rooms as well as more elegant larger suites.

2           And I specifically asked him whether he  
3 thought that when they think about that hotel as  
4 part of their competitive set, are they thinking  
5 about the rooms there or thinking about the suites  
6 and he said definitely we think about the suites.

7           He told me a little bit about -- I asked  
8 him a little bit about sort of what the consequences  
9 were when they entered, what experience the market  
10 had. Who he thought he took business from. If he  
11 took any business. Whether or not the market had  
12 expanded a little bit. I think those would be  
13 generally the areas we talked about.

14           Q. Was this one meeting with him or a couple  
15 meetings?

16           A. One formal meeting.

17           Q. How long did that last about?

18           A. Less than an hour. I think.

19           Q. And does he speak English?

20           A. Yes.

21           Q. I think you said you talked to him about  
22 who he took business from. What did he tell you  
23 about that?

24           A. I think my recollection was that he felt  
25 that they had taken some business from the Four

1 Seasons. And he may have mentioned that they had  
2 taken some business from the -- the suites at I  
3 think it was the Principe di Savoia.

4 Q. From anyone else or any other hotel there?

5 A. I think those were the two that he  
6 mentioned.

7 Q. When you said you asked him about whether  
8 the -- the name of the hotel you just gave me?

9 A. Principe di Savoia.

10 Q. -- for that hotel, whether he competed  
11 with the rooms or the suites, and you said it was  
12 the suites?

13 A. Yes.

14 Q. Did he explain to you why he had that  
15 belief?

16 A. Yes.

17 Q. What did he tell you about that?

18 A. He said that -- that the rooms were just  
19 not a comparable product to their hotel product.  
20 That they were in a different price space, a  
21 different price point in space. They were pitching  
22 at a different end of the market for a different  
23 type of customer. And that customer would be not  
24 the kind of customer that would typically stay at a  
25 room at that hotel, but might on occasion come in

1 and book a suite or a suite of suites or a suite of  
2 rooms for as much of a week and he thought -- I  
3 think he said that they may have attracted some of  
4 that business or taken some of that business away.  
5 But I think his belief was the principal competition  
6 was from the Four Seasons.

7 Q. Did he explain why he thought it was --  
8 why the Four Seasons was the principal competition?

9 A. I'm not sure he did explain why. I mean,  
10 I -- I mean, I think he was almost implicit that it  
11 was a hotel at a very similar price point, even at a  
12 higher price point that provided a very luxurious  
13 product with a terrific location. All the sort of  
14 things they were providing as well, and that some of  
15 the other high-quality suite product in Milan were  
16 really just a notch below or several notches below.  
17 They weren't quite of the same quality. They didn't  
18 quite have the same design features. They may have  
19 been dated, more staid or older. But in any case,  
20 that was the principal source of competition.

21 Q. At the Bvlgari Milan, do you know how many  
22 rooms are suites versus regular rooms?

23 A. I would call them all suites. Somebody  
24 else might call them rooms.

25 Q. I think you also said you asked him about

1 whether he thought the market had expanded. What  
2 did you guys discuss about that?

3 A. Oh, I asked him if -- if he thought that  
4 there was -- in a business market like Milan,  
5 whether there was new business that had come in as a  
6 result of -- of the hotel. And, you know, he agreed  
7 that that was a -- definitely a possibility at the  
8 margin, meaning that there was a marginal effect  
9 there that some customers would definitely come try  
10 it out and, you know, might spend nights there that  
11 otherwise wouldn't have. I don't think he believed  
12 that was a large effect in Milan.

13 Q. Did he give you any numbers like  
14 percentages, how much market may have expanded?

15 A. No.

16 Q. Having discussed a little bit about your  
17 conversations with Mr. Marro, does anything else  
18 come to mind about what you discussed with him?

19 A. I asked him a little bit about where he  
20 got his data and did he have more of it. Because it  
21 was data that he had that I was relying on. So I  
22 was interested in custody of the data. In other  
23 words, where it came from, how it was maintained,  
24 how he acquired it, that sort of thing.

25 Q. What did he tell you about that?

1           A. You know, I'm not exactly sure. And I get  
2 that a little confused with -- with Bali. But --  
3 and I understand a little bit better about how it's  
4 done in Bali and I'm not quite sure how it's done in  
5 Milan.

6           I think that it's not -- I think his  
7 attitude was it wasn't regarded as a secret, that  
8 they basically pick up a telephone and make a phone  
9 call to their counterpart in another hotel and share  
10 information. And again, I get this a little  
11 confused with Bali. But I asked some questions  
12 about how do you know the data is correct? Your,  
13 you know, occupancy and average daily rates and that  
14 sort of thing. And he gave me some answers to those  
15 questions.

16          Q. What did he tell you about that, what they  
17 did to ensure accuracy or --

18          A. It's sort of a reputational effect. In  
19 other words, these guys in some sense are  
20 cooperating and they get a sense -- they have had a  
21 sense of whether or not a figure would be out of  
22 whack and that sort of thing. There's sort of  
23 reputation effects. It was sort of -- it seemed  
24 very clubby to me, like, you know, we are in this  
25 market together. We are going to share some

1 information about how we are doing. And I think you  
2 could detect deviation from the behavior in club and  
3 no one seemed to be doing it.

4 Q. When you say "a reputational effect," what  
5 do you mean by that term?

6 A. Oh, just that you are doing repeat  
7 business with somebody else, like the general  
8 manager. Not repeat business, but you are going to  
9 be interacting with the same people. You are going  
10 to -- it's a small club of people. You are going to  
11 be doing business with or meeting the general  
12 manager of the Four Seasons on another occasion and  
13 it's probably best not to misstate the truth.

14 Additionally, there is other ways of  
15 checking, including the Star reports by Smith Travel  
16 Research. And they all -- I think they -- they  
17 report that information up to Smith Travel who then  
18 produces an aggregate and they share that aggregate  
19 back to the hotels. So there is another sort of  
20 mechanism to check and see if somebody is out of  
21 whack.

22 MR. SMURZYNSKI: When we were at an  
23 appropriate breaking point.

24 MR. COLLINS: Sure. Any time.

25 VIDEOGRAPHER: Okay. Let's go off the record.

1 The time is 10:24.

2 (Recess taken.)

3 VIDEOGRAPHER: Let's go back on the record at  
4 10:30.

5 BY MR. COLLINS:

6 Q. Mr. Dubin, we were talking about Milan and  
7 how information was gathered concerning the  
8 competitive set.

9 In your discussions with Mr. Wilson, did  
10 he explain how information was gathered in Bali  
11 about the competitive set?

12 A. Yes.

13 Q. Can you tell me about that.

14 A. It was, I think as I remember it, pretty  
15 similar in the sense that phone calls would be made  
16 and the information would be shared among -- among  
17 the hotels. It was not regarded as a trade secret.  
18 The information was out there. All you had to do  
19 was make a telephone call to get it. And the  
20 various people at the hotels made those calls and  
21 shared that information.

22 Q. Other than discussions we have -- we have  
23 talked about that you had while in Milan, while in  
24 Bali, your discussions with Mr. -- was it Akers?

25 Anyone else from Marriott that you have

1 talked to about the facts of this case?

2 A. No. Not that I remember.

3 Q. Any discussions with anyone from Marriott,  
4 I mean Marriott globally as Ritz-Carlton, the  
5 various Marriott entities?

6 A. No.

7 Q. Any discussions with anyone from Marriott  
8 about why they decided to do this deal with Bvlgari?

9 A. No.

10 Q. Any discussions with Marriott about -- I  
11 guess you said just now that there were no  
12 discussions with Marriott about why they did this  
13 deal. Any discussions with Marriott about  
14 Marriott -- excuse me -- any discussions with anyone  
15 from Marriott other than discussions we just talked  
16 about, about anything about their decision to enter  
17 into an agreement with Bvlgari?

18 A. No.

19 Q. Any discussions from -- with anyone from  
20 Bvlgari other than the people we have talked about  
21 about why they did a deal with Ritz-Carlton?

22 A. No.

23 Q. I think we marked as Exhibit 2 your expert  
24 report. Correct, sir?

25 A. Correct.

1 Q. Did you actually draft that report?

2 A. Yes.

3 Q. Did you have any assistance in the  
4 drafting of that report?

5 A. Yes.

6 Q. From whom?

7 A. Well, I have a secretary at Pacific  
8 Economics Group that might have done some typing for  
9 me. Made some edits, that sort of thing. Nothing  
10 of substance.

11 With respect to drafting, if by drafting  
12 we mean the writing of the language as opposed to  
13 the mechanics, I would say no. I'm the sole author.

14 Q. Did you have anyone assisting you in  
15 preparing the underlying information that you used  
16 for your report?

17 A. Yes.

18 Q. Who was that?

19 A. One research assistant, maybe the  
20 principal one, was a woman named Kristine Bucar.

21 Q. Anyone else?

22 A. I believe she was the only one that  
23 assisted me in collecting information, that sort of  
24 thing.

25 Q. Did anyone other than Ms. Bucar or your

1 secretary assist you in connection with the work you  
2 did to prepare your report?

3 A. I had one of my partners -- I guess the  
4 answer is yes. I'm sorry. The answer is yes.

5 Q. Who was that?

6 A. I had my partner, Mr. Collin Long, read a  
7 draft of the report and make comments on language.

8 Q. Who does Ms. Bucar work for?

9 A. She works for Pacific Economics Group.

10 Q. How many research assistants are there? I  
11 guess you said there were five partners. How many  
12 other professional employees are there at Pacific  
13 Group?

14 A. Research assistants might be collectively  
15 eight to 10.

16 Q. Are they full-time employees or --

17 A. Yes. Although we have interns from time  
18 to time as well.

19 Q. What is Ms. Bucar's background?

20 A. She's a -- I believe a Bachelor's degree  
21 in economics from Occidental College. Spent some  
22 time in industry doing computer software development  
23 and had some specialty skills in database management  
24 and spreadsheet work.

25 Q. What did she do to assist you in

1 connection with this project?

2 A. What she would do was -- would help me --  
3 she would help me with Internet searches. She might  
4 look for data for me. If I found data in documents  
5 or that sort of thing, I would give it to her and  
6 have her do the data entry of that information, put  
7 it into a spreadsheet for me. She might at my  
8 direction draw a graph. She in fact drew the graphs  
9 from the data that are in my report. So I would say  
10 I would like a picture of this versus that and she  
11 would do what you do in Excel to make that picture  
12 appear.

13 Q. Prior to issuing your report, how much  
14 time, again ballparking, had Pacific Group spent on  
15 this matter?

16 A. You know, I hesitate to answer because we  
17 have got my billing records and I can only give you  
18 an estimate subject to check or review of those  
19 billing records. If that's what you would like, I  
20 will do it.

21 Q. Sure. Just an estimate. Do you know how  
22 much you have charged prior to issuing your report  
23 to Marriott? In dollar amounts.

24 A. A wild -- I don't want to say a wild  
25 guess. There may have been a hundred thousand

1 dollars in fees. Maybe 150,000. And again, I mean,  
2 the facts are the facts. I just don't remember.

3 Q. Sure.

4 THE WITNESS: Higher, would you like it?

5 VIDEOGRAPHER: Yes. It was actually rubbing  
6 on your -- thank you.

7 BY MR. COLLINS:

8 Q. Did you actually -- I know you testified  
9 that you drafted reports. Did you actually input it  
10 onto a computer system?

11 A. You mean did I do the typing?

12 Q. Right.

13 A. Yes.

14 Q. So, for example, you didn't dictate the  
15 report, you actually typed it on the system  
16 yourself?

17 A. No. This one I actually typed.

18 Q. Is that your standard practice, sir?

19 A. Sometimes I dictate them, but we are sort  
20 of shy on people right now that do dictation, so I  
21 am typing these days.

22 Q. Then you would give it to your secretary  
23 to clean up. Is that correct?

24 A. Actually, I give it to Mr. Long to clean  
25 up.

1 Q. Mr. Long was your partner?

2 A. He's a partner, yes.

3 Q. Did you keep any drafts of your report?

4 A. No.

5 Q. Were there drafts of your report prior to  
6 this final version here?

7 A. Oh, we need to define "drafts." I mean,  
8 certainly there were intermediate versions, you  
9 know, as you change or if you go through and you  
10 find a spelling error and you change that and you  
11 save the document, you know, you have created a new  
12 version of -- and another one is overwritten. So is  
13 that what you mean by a draft?

14 Q. For example, are there any -- were there  
15 any hard copy drafts that you printed out a copy?

16 A. Yes, there was.

17 Q. And did you keep those?

18 A. No.

19 Q. And why didn't you keep those?

20 A. I don't retain my old drafts. It's --  
21 they sort of serve their purpose and then I let go.

22 Q. Is that a standard practice you have or --

23 A. It's a standard practice I have, yes.

24 Q. Did you give hard copies of drafts to  
25 anyone else?

1 A. Yes. I did.

2 Q. And to who?

3 A. I provided a copy to Mr. Smurzynsky when  
4 we met in Milan.

5 Q. Had you brought a hard copy with you from  
6 California or did you print it out while there?

7 A. No. I brought one with me.

8 Q. That would have been on a laptop?

9 A. No. No. I brought a hard copy with me.

10 Q. Okay. Just the one hard copy for  
11 Mr. Smurzynsky or did you have other copies?

12 A. I think I kept -- I think I brought two  
13 copies on that trip and one I gave to  
14 Mr. Smurzynsky. And so I brought two and I guess I  
15 left with two but I gave one to Mr. Smurzynsky and I  
16 guess I kept my copy at that time.

17 Q. When you say you came back with two, that  
18 Mr. Smurzynsky gave you back the copy that you had  
19 given to him.

20 A. Oh, yeah, I'm sorry. He did do that.

21 Q. Had he made comments on that draft?

22 A. Yes.

23 Q. Did you keep those -- that draft with his  
24 comments on it?

25 A. No. That was a -- that draft was exactly

1 like the same one that I had brought. In other  
2 words, it was unmarked.

3 Q. Okay. So Mr. Smurzynsky hadn't made any  
4 marks on the copy or draft that you had given to  
5 him.

6 A. Correct.

7 Q. Did you talk to him about comments he made  
8 to that draft?

9 A. Yes.

10 Q. While -- was that while in Milan?

11 A. Yes.

12 Q. Do you remember what you talked about?

13 A. There were -- there were -- well, vaguely  
14 I remember, so I guess the answer is yes. The  
15 answer is yes.

16 Q. Okay. And was that the first draft hard  
17 copy that you had shared with anyone?

18 A. Yes.

19 Q. Do you remember about when you first  
20 started drafting the actual physical report?

21 A. I'm -- I want to say about a month before  
22 it was due. And I -- and I recall that because I  
23 thought that the -- the dates in this case were such  
24 that plaintiff's experts filed their reports and  
25 then I believe there was 30 days for defendants'

1 experts to provide their reports. And I think I  
2 began -- I remember beginning after I had seen the  
3 plaintiff reports. But I could have those dates  
4 wrong. It's been a while now.

5 Q. Sure. Any other hard copy drafts that you  
6 provided to anyone else?

7 A. No.

8 Q. So when Mr. Long reviewed a draft, did  
9 he -- what did he review?

10 A. He would have reviewed an electronic copy.

11 Q. Would you have sent it by email to him?

12 A. Typically, yes.

13 Q. Do you know if he kept his copy?

14 A. Well, I would think not. It's -- because  
15 his copy is -- would sort of become my copy at that  
16 point. In other words, he would have the pen and he  
17 would red line in a grammar change here or there or  
18 something like that.

19 Q. Whatever changes he made, did he make them  
20 on the actual physical copy or on the one on the  
21 computer system?

22 A. He would do it on the computer system.

23 Q. This would have been the computer system  
24 at Pacific Group?

25 A. Yes.

1 Q. Did Ms. -- excuse me -- Ms. Bucar review  
2 any drafts?

3 A. No.

4 Q. So we have the one set of hard copy drafts  
5 that you took to Milan with you. Were there any  
6 other hard copy drafts prior to you going final on  
7 your report?

8 A. There -- I would say yes. I mean, I'm  
9 sure I printed out some for my own editing purposes  
10 and I might take one to school with me or that sort  
11 of thing and make some edits on it and then go back  
12 to the computer and type those edits in. I kind of  
13 like reading the paper version rather than the  
14 screen version. And then when I would do that, I  
15 would be done with the paper version. I would toss  
16 it.

17 Q. Did you share any drafts other than the  
18 one you told me about in Milan with Mr. Smurzynski  
19 or anyone else from Williams & Connolly?

20 A. I'm sorry, could I have the question  
21 again?

22 Q. Other than the draft that you shared with  
23 Mr. Smurzynski when you went to Milan, did you share  
24 any other drafts with him?

25 A. I'm -- I'm pretty sure that before the

1 testimony was filed I -- I sent him an electronic  
2 copy.

3 Q. Did he send you comments back, either  
4 electronically or hard copy?

5 A. No.

6 Q. Did you talk to him about the report?

7 A. Yes.

8 Q. Number of conversations, one, about that  
9 draft you would have sent electronically?

10 A. We might have had one or two additional  
11 conversations before the report was finalized.

12 Q. Did he offer suggestions about your  
13 report?

14 A. He -- he may have, yes.

15 Q. Any suggestions you remember sitting here  
16 today?

17 A. Yes.

18 Q. What suggestions were those?

19 A. I think I had an example of Starbucks and  
20 Peets Coffee. And he said, "You know, I sort of  
21 know the West Coast and so I know what Peets is, but  
22 this is an East Coast case and I'm not sure what you  
23 are trying to explain is going to work with an East  
24 Coast jury." So he says, "You might want to think  
25 about an example, if there is one, of some other

1 product that people on the East Coast might know."

2 So he dissuaded me from talking about  
3 coffee and I ended up with donuts.

4 Q. Anything else you remember?

5 A. Mind if I page through?

6 Q. Sure. That's fine.

7 A. Yeah. There was something I recall  
8 about -- I think I said something about that -- at  
9 some point I threw in something kind of gratuitous  
10 about whether the Aman properties in Bali could  
11 price even higher than they currently are pricing.  
12 And I -- and I said something like, you know, it  
13 didn't seem likely to me, because these things are  
14 pretty expensive. And he said -- he said to me  
15 something like, "Well, how do you know that? You  
16 know, if you know that, that's fine. But do you  
17 really know that?"

18 And I thought about it and I said well, I  
19 guess he's right, I don't really know. It was a  
20 gratuitous kind of remark anyway, so it was one I  
21 took out.

22 If I page through it something else might  
23 come.

24 Q. Sure. That's fine. Just quickly, that  
25 would be fine.

1           A. Okay. I think I remember him suggesting  
2 that -- that I drop a footnote about my source of  
3 the top 100 hotels that I -- I hadn't identified  
4 that had come from Travel & Leisure. So I think his  
5 observation was it's important to recognize that  
6 it's their opinion about the top 100 and there are  
7 other opinions about that.

8           Truthfully, I think that's about it.  
9 Sorry about the word "truthfully."

10          Q. Any conversations with anyone else from --  
11 with Williams & Connolly other than Mr. Smurzynski?

12          A. Are you talking about now comments about  
13 my report?

14          Q. Yes.

15          A. No.

16          Q. Any comments from anyone from Marriott  
17 about your report, the drafts of your reports?

18          A. Yes.

19          Q. Who would that have been?

20          A. Mr. Akers.

21          Q. Did you send a copy to Mr. Akers?

22          A. No.

23          Q. Do you know how he -- did he actually  
24 obtain a copy of your -- the draft of your report?

25          A. I don't know what happened. I mean, I

1 don't know how he got to see a copy of it.

2 Q. Okay. Do you know if he actually had a  
3 physical hard copy of a draft of your report?

4 A. I have no idea.

5 Q. Do you know if he had a computerized  
6 version?

7 A. I don't know either way.

8 Q. Okay. What discussions did you have with  
9 him about your report?

10 A. We did have a phone conversation about it  
11 and I think the one thing that sticks in my mind is  
12 he -- he said that I had used the term "zero sum  
13 game" at one point, maybe defining it once and that  
14 he thought it would be helpful to remind the reader  
15 of what exactly I meant by that. And that -- that  
16 may be all I remember about what he had to say to me  
17 about the report.

18 Q. Any discussions with anyone else from  
19 Marriott about your report?

20 A. No.

21 Q. Anyone -- any discussions with anyone from  
22 Bvlgari about your report?

23 A. Just a drop.

24 Q. What do you mean by that?

25 A. Well, I think when I met with Mr. Marro I

1 had told him a little bit about that I was writing a  
2 report and that I had studied the Milan market and  
3 that sort of thing. And he said it was -- sounded  
4 very interesting and be something he would like to  
5 see. And I might have said something like, "Well,  
6 maybe sometime you will get a chance to see it."

7 Q. To study the Milan market you traveled to  
8 Milan. Correct?

9 A. Yes.

10 Q. You talked to Mr. Marro.

11 A. Yes.

12 Q. What else did you do to study the market?

13 A. Well, I collected information about the  
14 hotels there.

15 Q. When you say "collected information," what  
16 did you collect?

17 A. I collected information about the average  
18 daily rates, the revenue per room sold, revpars.  
19 I -- and revenue per available room.

20 I collected information about occupancy  
21 and these were from documents largely that I have  
22 supplied. I collected a variety of information  
23 about purchasing power parity, indices, exchange  
24 rates, consumer price levels, gross domestic  
25 product.

1 I collected information about tourism  
2 statistics, visitors to Italy and to Europe. I  
3 think that's about a large amount of what I  
4 collected.

5 Q. When you say you collected documents  
6 concerning purchasing power parity, what are you  
7 referring to?

8 A. Purchasing power parity is the -- is the  
9 concept of how far your dollar goes after you  
10 exchange it from one currency to another. So, for  
11 example, The Economist magazine will have the -- I  
12 think it's like the McDonald's or the Burger King  
13 index which is a purchasing power parity. It's if  
14 you take your dollar and convert it into Euros, how  
15 many McDonald's hamburgers could you buy if you were  
16 over in Paris as opposed to how many you could buy  
17 with that same dollar in the United States. It's  
18 how far your dollar goes.

19 Q. And what did you do to collect information  
20 from Bali besides going to Bali and talking to  
21 Mr. Wilson, talking to Mr. Lagerway?

22 A. Well, I collected similar information  
23 about Bali. Average daily rates, revpars, occupancy  
24 rates. I collected information actually in both  
25 places about the number of rooms. I collected

1 information about when the hotels added rooms or  
2 villa products or what the timing of these things  
3 was over time.

4 I collected information about tourism to  
5 the Island of Bali and where that tourism  
6 originated. I collected information again about  
7 exchange rates, price levels, inflation rates. I  
8 think that's pretty much it about Bali.

9 Q. What did you do to collect that  
10 information?

11 A. Oh, I would work with my research  
12 assistant and I would say I'm looking for the  
13 exchange rate between the Rupia and the dollar. And  
14 she would go off and look for a source for that.

15 Or in the case of tourism statistics, she  
16 might help me by looking at the web, on the web, for  
17 different data sources and would bring back  
18 candidates to me. Sort of almost a shotgun  
19 approach. And here is something, here is something  
20 else, that sort of thing.

21 VIDEOGRAPHER: Counsel, we have five minutes  
22 left on the tape.

23 MR. COLLINS: We can switch it.

24 VIDEOGRAPHER: Right now?

25 MR. COLLINS: Yes.

1 VIDEOGRAPHER: This marks the end of Videotape  
2 No. 1 in the deposition of Jeffrey Alan Dubin. Time  
3 on the video monitor is 10:57.

4 (Recess taken.)

5 VIDEOGRAPHER: This marks the beginning of  
6 Videotape No. 2 in the deposition of Jeffrey Alan  
7 Dubin. Time on the video monitor is 11:01.

8 BY MR. COLLINS:

9 Q. Mr. Dubin, I think your report, Exhibit 2,  
10 is dated October 6, 2005. Correct?

11 A. Correct.

12 Q. Have you done any additional work on this  
13 case after April -- excuse me -- October 6, 2005?

14 A. Yes.

15 Q. What else have you done?

16 A. I have done a lot.

17 Q. Okay.

18 A. Well, I am pretty sure, for instance, that  
19 the rebuttal reports of plaintiff's experts came in  
20 after these -- logically they must have come in  
21 after we wrote -- defendants wrote their reports and  
22 I spent a fair amount of time analyzing the  
23 rebuttals. And -- and I prepared for this  
24 deposition. So those would be generally the areas I  
25 have spent time since the filing of the report.

1 Q. And your time sheets would reflect how  
2 much time you spent since October 6?

3 A. The time sheets that you have, yes.

4 Q. When you say you have analyzed the  
5 rebuttal reports, what have you done other than  
6 actually read the rebuttal reports, if anything, to  
7 analyze them?

8 A. Oh, in the case of Mr. Owsley, for  
9 instance, I had a chance to reexamine some of the  
10 things that Mr. Owsley said. I can get specific, if  
11 you like.

12 Q. Sure.

13 A. For instance, there was the issue of  
14 exchange rates and I had a chance to revisit that  
15 concept in my report. Mr. Owsley had some responses  
16 about the calculation of discount rates and what's  
17 appropriate in terms of the nature of which  
18 risk-free rate to use, the duration of period that  
19 you use a risk-free rate, the calculation of the  
20 so-called beta. Whether or not one should use one  
21 formula versus another.

22 Just about every opinion in Mr. Owsley's  
23 report I have had a chance to think about and  
24 examine and work on. I mean, I don't have his  
25 report in front of me, but -- his rebuttal report,

1 but I have had a chance to think about basically all  
2 those issues.

3 Q. Anything else you have done since  
4 preparing this report?

5 A. Well, again, in reply to or in thinking  
6 about replying to Mr. Owsley, I have collected some  
7 additional data. I have run some new regression  
8 models. Respecified some of my existing models for  
9 Bali.

10 I have also -- these are -- when I say  
11 "models" I mean econometric models. I have also had  
12 a chance to go back to some of the source material  
13 that Mr. Owsley mentioned, some of the textbooks,  
14 and cites that -- that he had. I collected the  
15 different books that he referenced.

16 I looked at some of the source materials  
17 that -- that he employed. I mean, there is really a  
18 lot, so --

19 Q. Sure.

20 A. Yeah.

21 Q. Have any of your opinions -- on Page 65  
22 and 66 we have a summary of your conclusions. Have  
23 any of those conclusions changed after October 6?

24 A. I think the big picture hasn't changed,  
25 but there are some details that I would say have

1 changed. But those conclusions on those pages are  
2 still my opinion.

3 Q. So there is no new opinions that -- you  
4 may have rethought some of these and -- but there is  
5 no new opinions. Correct? Other than the ones on  
6 Page 65-66?

7 MR. SMURZYNSKI: Objection.

8 Go ahead.

9 THE WITNESS: Well, I would say I do have new  
10 opinions generally.

11 BY MR. COLLINS:

12 Q. What new opinions do you have that are not  
13 contained on Pages 65 and 66?

14 A. Well, opinions related to all the work I  
15 did analyzing the data I collected and the source  
16 materials I reviewed and the expert reports that  
17 were provided to me in rebuttal. I have made a  
18 number of new opinions about that.

19 Q. Have you prepared a supplemental report  
20 reflecting those new opinions?

21 A. No.

22 Q. Have you started drafting a supplemental  
23 report?

24 A. I haven't been asked to.

25 Q. Do these new opinions you have, do you

1 intend to offer them at trial?

2 A. If asked questions about them, sure.

3 Q. What are those new opinions?

4 A. Again, it's hard for me to be systematic  
5 without having the opposing experts reports in front  
6 of me. If I had those in front of me, I might be  
7 able to march right through. But we can sort of  
8 tick off some of the items I mentioned and kind of  
9 proceed the best I can.

10 Q. Sure. That's fine.

11 A. For instance, Mr. Owsley brought up the  
12 issue of exchange rates and raised an issue about  
13 how my analysis of the Milan market was based in  
14 dollars versus Euros. And that as a result of that,  
15 I had mischaracterized -- or my impressions were  
16 incorrect and my analysis was incorrect. And I have  
17 had a chance to collect some additional data and to  
18 reexamine those pieces and to reformulate new models  
19 as a result. And I can tell you more about that if  
20 you choose.

21 Q. Certainly.

22 A. I had a chance to go back and rerun my  
23 models in Euros as opposed to dollars for the Milan  
24 market and while I was at it, to collect some  
25 additional -- an additional couple of months of

1 information about Milan. So the fact that the  
2 timing of this case and things dragging out as they  
3 do, I had a chance to collect some additional data  
4 points and more data, more time series or more  
5 monthly data about what's happening in Milan. And I  
6 was able to check some of the calculations that  
7 Mr. Owsley had done.

8           With respect to the exchange rate, for  
9 instance, Mr. Owsley was correct, in the sense that  
10 one can look at these calculations from the  
11 perspective of dollars or Euros and I presented a  
12 series of correct calculation in dollars, but I had  
13 not presented or done calculations in Euros and his  
14 criticism there is valid.

15           So I had a chance to go back and redo  
16 that. And while I don't come up with exactly the  
17 numbers that he came up with because he was working  
18 more back of the envelope on his criticism of me  
19 than rerunning my regressions and doing the exact  
20 statistical analysis, I found that for revpar and  
21 average daily rates, he was correct. In the sense  
22 that the Euro change had -- Euro change had been  
23 present which led me to think that there was a minor  
24 change in the dollar value of the ADR and revpar,  
25 but that in Euros there was actually a decline.

1           However, while I was reexamining the  
2 models and plotting the graphs and so forth, and  
3 having collected some additional history, I noticed  
4 that the dollar effect in time was not constant.

5           So my first observation, going back a  
6 little bit, was that nothing I had said about  
7 occupancy rates or Herfindahl indices or anything  
8 relying on market shares was affected by the  
9 exchange rate issue.

10           When I did redo the models in Euros, I  
11 noticed that there were directional effects in the  
12 direction that he observed, that in fact the  
13 dollar -- the Euro changes were larger and in the  
14 opposite direction than what I had said was the case  
15 with dollars.

16           However, I noticed that the timing of the  
17 effects was different than I had first appreciated  
18 and I specified some new econometric models and  
19 discovered that while there were declines in revpar  
20 and declines in ADR as measured in Euros, those  
21 declines were actually transient. That according to  
22 the econometric analysis I did and provided to  
23 counsel to provide to you, the models indicate that  
24 there is a temporary, on the order of six-month  
25 effect on ADR and revpar, but that after that point

1 in time the revpars and the ADRs bounce back up.

2           So my opinion about it is that while  
3 the -- while there are effects in the direction that  
4 Mr. Owsley identified, those effects are transient  
5 and not long lasting. So that was one area that I  
6 explored based on his criticism.

7           Q. Sure. What else did you look at?

8           A. Well, I got into the whole issue or a  
9 little debate on how to do an appropriate rate for  
10 capitalization, and that's a long story.

11           It begins with the -- the evidence he puts  
12 in about using a 10-year versus a 30-year as the  
13 appropriate risk free. I kind of agree with him  
14 based on his recent deposition that there is really  
15 not much difference between the two in the  
16 current -- at current rates, but I believe his logic  
17 as stated in his report is faulty about the use of a  
18 so-called duration measure to substantiate which  
19 time period, 30 years or 10 years, one should use  
20 for picking appropriate discount rate.

21           And I had a chance to review both the  
22 literature and the textbooks. I collected articles  
23 about that. I reviewed the mathematics. I  
24 generated some numerical examples and I came to the  
25 conclusion that while Mr. Owsley might be misled

1 from some source to believe that the duration  
2 calculation is an appropriate one to substantiate  
3 the choice of a 10-year versus a 30-year long bond  
4 rate, there is no scientific, mathematical or  
5 literature-based substantiation that's correct.  
6 That would lead you to such a calculation. The  
7 concept is completely misapplied in my opinion and  
8 his statements about it are incorrect. So that's  
9 one area that I had a chance to do some research in.

10 Another area I took a look at was the use  
11 of levered versus unlevered betas, another arcane  
12 area of finance, and Mr. Owsley uses an unlevered  
13 beta and was speculating about the beta that I used.

14 I had a chance to go back and review his  
15 calculations of the levered beta from the --  
16 sorry -- of the unlevered beta from the levered beta  
17 and while I could verify the arithmetic that he did  
18 from his source materials, I came to the conclusion  
19 that he had made a pretty fundamental error in the  
20 application of the formula to go from the levered  
21 beta to the unlevered beta.

22 And the specifics of that are that there  
23 is a well-known formula that gets applied that he  
24 applied that's written in textbooks, but if you go  
25 to the sources of that formula, a paper by Hamata in

1 the early '70s and other more advanced textbooks,  
2 and you read through the proofs, the mathematical  
3 proofs, you realize that the formula he's applying  
4 is derived under a simplifying condition, which is  
5 unlikely to hold in the -- in the case he's looking  
6 at. And that the leverage adjustment he makes is  
7 too large. So I worked on that aspect of it.

8 I looked at the whole issue of risk  
9 premium. And with respect to risk premium, I  
10 considered his arguments in favor of the small risk  
11 premium that he uses and I reconsidered my arguments  
12 for the risk premium that I say is workable. And in  
13 that respect, I have had -- I have done some new  
14 research, including having access to a very recent  
15 presentation made at the University of California  
16 Santa Barbara by Roger Ibbotson that now looks at  
17 over 200 years of data, and I believe Mr. Owsley's  
18 sources or Mr. Owsley agrees that the longer time  
19 frame for calculating risk premium the better.

20 This new information that Ibbotson brought  
21 using historical information is substantiating risk  
22 premiums that are over 7 percent. Mr. Owsley still  
23 picks a number at a very low end of the range.  
24 There is a very recent paper, 2003 paper, by Harris  
25 and Marston that also is substantiating risk premium

1 at the order of 7-1/2 percent.

2 But in one dimension, I thought I was  
3 being a little aggressive. Among the different risk  
4 premium that I calculated I did calculate one that  
5 was based on Standard & Poor's returns over a short  
6 period of time, a 10-year period. And some  
7 textbooks recommend that in some cases short  
8 intervals are relevant. But in looking at the sort  
9 of range of risk premium that I had calculated, I  
10 regarded this one as a -- as an outlier and I  
11 believe that thinking about it a little bit more, I  
12 would actually take that one back because it's just  
13 not consistent with everything else I have seen in  
14 the literature.

15 So I think I am slightly aggressive about  
16 the risk premium. If you take that one out, it  
17 lowers the average by a little bit and narrows the  
18 distance between Owsley and myself on the matter.  
19 You know, if this were the kind of thing we are  
20 bargaining on, I think maybe I could get him to meet  
21 in the middle, but I guess we are not in that kind  
22 of situation.

23 I have had a chance to review some recent  
24 testimony by a professor from Georgia in finance  
25 that's working on a case for Puget Sound Electric,

1 offering testimony about appropriate risk premium  
2 and risk-free rates, and I have had a chance to sort  
3 of review his testimony which came to me just about  
4 a week ago. And this professor is saying some  
5 things that make a lot of sense to me about why the  
6 risk premium should be at least 7-1/2 percent. He's  
7 got some references there that I haven't even had a  
8 chance to track down that seem to all be pointing in  
9 that direction.

10 He also believes that 30-year rates are  
11 appropriate and that risk-free rates should be based  
12 on expectations and should be at least 5 percent.

13 So all of what this Dr. Murrin has had to  
14 say, I think is his name, is consistent with what I  
15 have put in. If not, moving it even in a higher  
16 direction than what I have got.

17 Finally, I took a look at Mr. Owsley's  
18 work papers on the calculation of country risk and I  
19 notice some very interesting things. I think that  
20 Mr. Owsley sort of reversed ground tremendously in  
21 the area of the country risk calculation. His staff  
22 had gone in with two formulas that produced some  
23 rather crazy results that he, I think, spotted when  
24 he reviewed their work. And he switched to a  
25 technology of calculating the difference between the

1 risk-free rate in Bali denominated in U. S. dollars  
2 and the risk-free rate in the United States. I  
3 believe that that's a poor method, if it's a method  
4 at all, for measuring country risk.

5 I have had a chance to review that  
6 literature as well as my own work in the area for  
7 clients. I have looked at, you know, different  
8 calculations of that country risk and I believe that  
9 Mr. Owsley's calculation is much too low for country  
10 risk.

11 Let's see. What else is there? I  
12 examined his opinion a little bit about why he used  
13 the formula that he did and I find that kind of  
14 amazing, too. He chose to -- to assume that this  
15 hotel that he was valuing and the marginal impact on  
16 this hotel was a hundred percent financed by equity.  
17 An assumption he called conservative. But his work  
18 papers and the email trail suggest that the real  
19 reason that the formula that he put in was adopted  
20 was that they didn't have the information that they  
21 needed to do the -- the correct weighted average  
22 cost of capital calculation. And I don't believe  
23 that his calculation is conservative because he  
24 doesn't have all the components to know whether the  
25 calculation is conservative or not.

1           In any case, I made adjustments in my  
2 report to his calculation as he put it in and I  
3 looked at the various criticisms and I believe that  
4 while the number I suggested, 18 percent, should be  
5 perhaps a little lower, maybe 16 or 17, I -- I can't  
6 possibly get anywhere near where Mr. Owsley is on  
7 that calculation.

8           So I think with that, that's probably  
9 enough of a summary. I am getting tired of talking.  
10 On that piece of Mr. Owsley. There is obviously  
11 much more.

12           Q. What else is there? We can break this up.  
13 I don't mean to --

14           A. Well, oh, I think Mr. Owsley doesn't  
15 understand the nature of the assumptions that he's  
16 made in his dilution model. I have had a chance to  
17 review what he said about it, both in deposition and  
18 his report, and to think through a little bit why  
19 his dilution method is crazy as I think it is.

20           But, for instance, he refers to it as, I  
21 think in deposition or in his rebuttal report, as I  
22 adopted the standard dilution method. I remember  
23 those words. There is no such thing as the standard  
24 dilution method. This is something he made up that  
25 no one's ever seen.

1           The last time people were thinking about  
2 demand in this way, in this simplistic way, was in  
3 the 1950s and 1960s when articles were published in  
4 the literature that deprecated the simple notion of  
5 equal substitutable logistic preferences. In other  
6 words, a world where the loss of one alternative --  
7 or the gain of one alternative must be shared in  
8 proportion to the loss of other alternatives.

9           There were a Nobel Prize-winning  
10 economist, Debreu, wrote a famous paper criticizing  
11 that assumption as just crazy. It then reappeared  
12 in one form or another in the -- as I recall the  
13 Bell Journal of Economics by another economist named  
14 Ong who also said this is a very poor model for  
15 thinking about the pattern of demand.

16           It harkens back to the -- the work that  
17 was done in the 1960s about the entry of the Bay  
18 Area Rapid Transit work that later won the Nobel  
19 Prize in economics where it was observed that a  
20 model that made assumptions like Owsley's making,  
21 Mr. Owsley's making, bear no relationship to  
22 reality. That that market share-type assumption has  
23 no basis in reality and a more complicated structure  
24 of preferences has to be examined. So I thought  
25 about that as well. In great detail.

1           Let's see. I have talked a little bit  
2 about the country risk stuff. I'm sure again there  
3 is much more. We have this debate about whether or  
4 not some of his techniques are in fact surplusage or  
5 not. And he takes the line that these other  
6 methodology -- methodologies he provides are checks  
7 on his present discounted value calculation. And in  
8 some cases he's just flat out wrong about that.

9           For example, he offers up something called  
10 the Gordon growth model which in the context of his  
11 report is mathematically equivalent to the present  
12 discounted value calculation he's doing under the  
13 assumptions of constant growth and a perpetuity  
14 adjustment. I mean, it goes on and on.

15           But again, without his report here, I  
16 can't really tell you all the things that I thought  
17 about and done. But I have examined each of his  
18 criticisms in great detail.

19           Q. So sitting here, anything else that comes  
20 to mind?

21           A. While having his report would really  
22 refresh me, maybe if I look at my report something  
23 else will come to mind.

24           Q. Sure.

25           A. Oh, yeah. I did -- I did a variety of

1 work on -- I did some work on -- oh, on his analysis  
2 of the marketing report. The 2005 marketing report.  
3 And the 2005 Ritz-Carlton marketing report is a  
4 document he references. He takes from it a  
5 calculation of -- of his base case occupancy of  
6 65 percent and he also takes from that document the  
7 number of rooms that -- under that scenario would be  
8 occupied at the hotel, which is a main ingredient in  
9 his damage calculation.

10 And I went back to the marketing report  
11 and discovered that first of all, it was different,  
12 it was a different 2005 marketing report than I had  
13 been provided with. And I had a chance to sort of  
14 look at his, which I think was dated later than mine  
15 in a little bit more detail, and discovered, for  
16 instance, that he had made, I think, another error  
17 connected with the -- with the basis for the number  
18 of rooms.

19 The marketing report is quite clear, for  
20 instance, that the number of rooms in 2007 that are  
21 expected to be occupied is based on 86 villas as  
22 opposed to 84 villas that Mr. Owsley is assuming.

23 And Mr. Owsley, I think, misses this and  
24 takes the number that's a number based on 86 versus  
25 a number that's based on 84 as the basis for his

1 calculation. I ran a spreadsheet around that  
2 correction, which I think with documents in front of  
3 me will be easier to explain to somebody else, but  
4 the consequence of that is an inflation in damages  
5 by a factor of 86 divided by 84 which is roughly  
6 \$200,000 in present discounted value terms.

7 I also had a chance to look at the  
8 marketing report and consider the -- the comparison  
9 of that marketing report versus the 2005 -- 2004  
10 marketing report. And I read both of them quite  
11 closely, one in conjunction with the other.

12 And the picture that emerges there is a  
13 rather interesting one about a 2004 marketing report  
14 by the Ritz-Carlton written in 2003 before the  
15 Bvlgari is even a glimmer on the horizon is  
16 postulating a certain occupancy rate which is later  
17 achieved.

18 Once the additional marketing report comes  
19 out, which Mr. Owsley points out recognizes the  
20 Bvlgari Hotel, it's interesting to look at what --  
21 the changes that they made to their forecast for  
22 2007 and beyond versus 2004 when they hadn't  
23 anticipated the Bvlgari.

24 When you do that analysis, you discover  
25 that management, while perhaps recognizing that the

1 Bvlgari or actually recognizing the Bvlgari was  
2 imminent, they claim it was going to be a --  
3 operating in 2005, made no adjustment whatsoever to  
4 the occupancy rate, meaning that they implicitly  
5 thought that the effect was tantamount to zero.

6 Or reading it slightly differently, the  
7 most I can see them changing is a 65 percent figure  
8 down to a 61 percent figure, which is a change in  
9 occupancy on the order of 5 or 6 percent, which is  
10 not dissimilar from the dilutions that I came up  
11 with for the Milan market. So I looked at some of  
12 that.

13 I thought about in connection with these  
14 reports another phenomena that I had written about  
15 in my report, but I hadn't fully explored, which was  
16 the entry or the creation of the additional 38  
17 villas at the Ritz-Carlton.

18 The addition of the 38 villas provides  
19 another natural experiment in the Bali market that  
20 allows one to test whether Mr. Owsley's theory that  
21 a simple dilution leads to a simple change in  
22 occupancy is correct. And I did that analysis as  
23 well and discovered that the comparison of the 2004  
24 and 2005 marketing reports, and in particular what  
25 management thought the extra effect on their

1 occupancy would be as a result of their new  
2 buildout, is completely inconsistent with  
3 Mr. Owsley's simple-minded theory of how occupancy  
4 is affected by changes in market share.

5 I had a chance to in connection with that,  
6 go back to repeat my regression analysis that I had  
7 done for Milan in the Bali market and ask the  
8 question were there discernible effects on the  
9 competition to the Ritz-Carlton when -- in Bali,  
10 when it introduced its new villas.

11 According to the Owsley theory, the  
12 situation's almost exactly parallel. The addition  
13 of new villa product to the Ritz-Carlton should  
14 cause existing participants to suffer a diminution  
15 in market share, and I checked to see whether in  
16 fact anybody else suffered a consequence and there  
17 is no statistically significant effect. In fact,  
18 controlling for the number of people visiting the  
19 island, other occupancies went up, not down.

20 So I view the theory that Mr. Owsley is  
21 articulating, the assumption he's made as being  
22 fallacious. It's one that's subject to empirical  
23 check and when I do those empirical checks in the  
24 Milan market and the Bali market using management's  
25 documents, I find that his theory or assumption that

1 he made that's the cornerstone of his analysis is  
2 falsified by empirical example.

3 Q. Okay.

4 A. Let's see if there is more.

5 I recall that Mr. Owsley took me for -- to  
6 task about I think how I had strenuously argued that  
7 the Bvlgari and Ritz-Carlton would not be a very  
8 close substitute on the Island of Bali, but that I  
9 thought that any old top 100 resort in Asia would be  
10 a better substitute and that's not my opinion.

11 That's not really what I meant and he's  
12 mischaracterizing what I was intending to do there.

13 He also misinterprets some statements I  
14 make about -- about market share and how market  
15 share affects or reveals a pattern of preference and  
16 he says some things that I say are illogical on  
17 their face and he's misunderstood what I said. I  
18 probably can find those statements and elaborate on  
19 them if I -- if I need to.

20 But again, I have had a chance to sort of  
21 review all the points in his analysis and I have  
22 very strong opinions in rebuttal to those points,  
23 naturally.

24 Q. Going way back when, I think on levered,  
25 unlevered --

1 A. Yes.

2 Q. -- you said there was a simplifying  
3 condition that he didn't realize he was making.

4 A. Yes.

5 Q. What was that?

6 A. The mathematics of the formula, of the  
7 derivation of that formula, for example, mathematics  
8 that can be followed in Chapter 13 of Copeland  
9 Weston's book on the theory of finance, I think it  
10 is. At some point in the mathematical derivation,  
11 the authors say something like we will make the  
12 simplifying assumption that the debt rate for the  
13 firm that's going to be unlevered, so to speak, has  
14 a borrowing rate which is the same as the risk-free  
15 rate of the economy. And most firms don't get to  
16 borrow at the risk-free rate.

17 Now, this is -- I have unlevered betas in  
18 my life and relevered them. This is normally not a  
19 problem because typically the situation is to -- is  
20 to change the beta in a way that changes the capital  
21 structure slightly and that component for that -- a  
22 particular firm is maintained.

23 However, in this instance, Mr. Owsley's  
24 attempting not to relever the same firm. He's  
25 trying to unlever the firm completely and that

1 factor, that simplifying assumption that's made by  
2 authors in the derivation of the formula, leads to a  
3 correction. And that correction narrows the  
4 distance between the levered and the unlevered beta.

5 In fact, some of the textbooks that even  
6 Mr. Owsley refers to that are written at a more  
7 elementary level, refer to the existence of  
8 alternative formulas for leverage. That's what they  
9 are talking about. They are not completely  
10 characterizing the fact that these alternatives are  
11 actually the correct formula. They are calling them  
12 alternatives. But after you -- actually, if you  
13 understand the math, these really aren't  
14 alternatives. They are correct.

15 Again, in some circumstances this doesn't  
16 make any difference, but in this circumstance it is  
17 my opinion that it would.

18 Q. And why does it?

19 A. Because I see no reason to believe that  
20 for the firms that Mr. Owsley examined and he was  
21 unlevering which are major hotel chains -- chains in  
22 the United States, that the borrowing rate for these  
23 firms is equal to the risk-free rate of the economy.  
24 It doesn't strike me that that's plausible. Debt's  
25 a risky proposition and firms have to borrow at

1 rates that are -- that reflect that risk and achieve  
2 a premium relative to it.

3 Q. What I am going to do is show you a copy  
4 of Mr. Owsley's rebuttal report and not go through  
5 it in any detail, but just see if it sparks your  
6 memory about anything else that you disagree with.

7 A. Oh, now you are going to show it to me.

8 MR. COLLINS: We will mark it as Exhibit 3.

9 I apologize, Ken, I don't have a copy but  
10 I'm not going to ask him questions on it.

11 (Deposition Exhibit 3 was marked for  
12 identification and is attached hereto.)

13 (Discussion off the written record.)

14 THE WITNESS: You don't want me to react to  
15 this or --

16 BY MR. COLLINS:

17 Q. Well, I say going through it, is there any  
18 other grounds that you haven't told me about so far  
19 come up?

20 A. Oh, I see.

21 Q. I just want to give you that opportunity.  
22 You said if you looked at it.

23 A. Right. Right. Right. Thank you.

24 MR. COLLINS: Do you want to take two minutes  
25 while he looks at it?

1 THE WITNESS: I will be --

2 MR. SMURZYNSKI: Either way.

3 THE WITNESS: Oh, well, I mean, I could go  
4 through it sentence by sentence. And I don't mean  
5 to limit my opinions about this report by not taking  
6 the opportunity to go into another long speech, but  
7 you are asking for I think major --

8 BY MR. COLLINS:

9 Q. Yes.

10 A. Other major things.

11 I looked into this GDP business that he  
12 talks about in here, which is that nominal GDP for  
13 the European unit -- union in Italy both increased  
14 by over 8 percent. All else equal, Mr. Owsley says,  
15 with this increase in nominal GDP one would expect  
16 to see an increase in revpar over the period.

17 He's wrong in several dimensions there. I  
18 have collected data on the EU. The period of time  
19 in my regression analysis is 2003 forward. Even  
20 cumulatively, Europe didn't experience an 8 percent  
21 growth in GDP even in nominal terms and in  
22 particular Italy in real terms has been flat as a  
23 pancake and when you look at the actual data 2003  
24 forward, it would be hard -- you would be hard  
25 pressed to come up with anything over 3 percent.

1           So I think Mr. Owsley's wrong about his  
2 facts. I know this data is difficult to get and he  
3 relies on good sources, I think, Bloomberg and so  
4 forth. I had to ask my Italian visiting students in  
5 one of my courses to go talk to their friends back  
6 in Italy and get me some data, but I believe he's  
7 wrong.

8           Moreover, I had included real and nominal  
9 GDP and specifications that I had examined and had  
10 no consequence to the results I had achieved.

11           Also, the fact that Europe is growing  
12 faster than Italy in terms of growth and GDP  
13 suggests that in fact it's Italy that's the  
14 relatively moribund state and that if anything, one  
15 would expect to have the economic activity sort of  
16 flow the other direction rather than towards Italy.  
17 And so I see no reason why even on a theoretical  
18 basis that revpar should be increasing.

19           So there was that point. Oh, we -- I  
20 mean, it's worth saying something quick about the  
21 whole business about how he looked at the financial  
22 markets and notice that after the bombings that his  
23 fallacious measure of country risk hadn't moved at  
24 all, and I think that that's evidence that this is a  
25 big mistake in his analysis looking at Indonesia as

1 a whole to establish a country risk.

2           It's counterintuitive that the bombing  
3 that has had such a dramatic effect on the Island of  
4 Bali, it may not have had an effect on the  
5 difference in long-term ten-year Indonesian bond  
6 rates between those and the United States. But we  
7 are not really talking about an investment in all of  
8 Indonesia. We are talking about the Island of Bali  
9 where they are bombing.

10           So I find his argument that the method --  
11 the calculation that I used to measure country risk  
12 didn't change to be a specious argument. In fact, I  
13 think it proved the opposite.

14           And again, I mean, there's a lot I could  
15 do with it point by point, but those are the big  
16 points.

17           Q. Okay.

18           A. And again, I don't mean to limit myself to  
19 opinions about that rebuttal report.

20           Q. Sure. I am just trying to get anything  
21 that comes to you today.

22           A. Okay. Those are the big points that came  
23 to me today.

24           Q. Okay. As far as little points could we --  
25 I don't mean to extend this discussion, but like

1 little points, which ones occur to you today?

2 A. Okay. I mean, truthfully I would have to  
3 go through it almost line by line to give you every  
4 opinion I have about this report. But -- and I'm  
5 not sure that's what you want to do. But I  
6 essentially disagree -- I told you the areas where I  
7 find -- where I am in agreement.

8 Q. Right.

9 A. Those are that he makes a valid point but  
10 doesn't completely analyze the consequence of doing  
11 these calculations in Euros versus dollars. He  
12 misses the timing of the effects and the duration of  
13 those effects. That's something I hadn't fully  
14 appreciated until I collected more data and studied  
15 it, too.

16 The other areas that I am willing to give  
17 some ground on is this Standard & Poor's estimate of  
18 the risk premium, which some textbooks advocate as  
19 being plausible. I don't think I should have given  
20 it equal weight.

21 In the same way that I don't think that he  
22 should be giving equal weight to all the firms in  
23 his beta calculation, some of which have extremely  
24 low betas. So when one gets into the world of  
25 trying to be conservative by trimming out outliers,

1 I think there is room to give ground at both ends  
2 here a little bit.

3 This whole business he goes into about I  
4 am exacerbating erroneous assumptions about drops in  
5 market share being the upper limit of competitive  
6 harm and my own reasoning and all this sort of stuff  
7 is -- he just doesn't in this case understand  
8 exactly my point.

9 My point was that market share, and I say  
10 this quite clearly in the report, has a -- does not  
11 completely reflect the pattern of preference. And  
12 that in particular looking at market shares doesn't  
13 tell -- tell us precisely which consumers will find  
14 which hotels to be close substitutes to one another.  
15 So I -- and these -- the fact that market shares  
16 don't tell the complete story is sort of a  
17 well-known fact and it's all over the Department of  
18 Justice merger guidelines with respect to market  
19 shares and the pattern of preference and what you  
20 need to look at. So he just completely  
21 misunderstands my point there.

22 He says I go on to give examples of  
23 innovative products and unique product offerings  
24 that expand market demand, but he says I don't tell  
25 how these examples are applicable in Bali. My point

1 there was to observe that the simplistic zero sum  
2 game in which a market is static in size, is refuted  
3 by a variety of theoretical and empirical examples  
4 and therefore one shouldn't make any assumption  
5 about how a change in market share will have an  
6 effect on a change in occupancy.

7           You can't simply make that assumption.  
8 You have to actually go to the real world and test  
9 it, and that's what I have done in -- with three  
10 different methodologies. And Mr. Owsley, on the  
11 other hand, has made the assumption about the world  
12 that a loss in market share will be tantamount to a  
13 loss in occupancy. And he says surely he's right at  
14 the margin.

15           But I don't even think he understands what  
16 "at the margin" means. Because I'm not sure he's  
17 confusing their at the margin with the short run  
18 versus the long run, but surely someone thinking  
19 about where to take a trip, that marginal consumer  
20 may be influenced by other available alternatives  
21 besides the Island of Bali.

22           I don't know. I think that's -- that's  
23 probably enough on this.

24           Q. Sure. Okay. Did you share any drafts of  
25 your report with any of the other experts for

1 Marriott?

2 A. No. I didn't.

3 Q. Did they share drafts of their reports  
4 with you?

5 A. Well, I -- you know, let me go back a  
6 step. We need -- I find the question vague. Over  
7 what time period? Any time?

8 Q. Right. Before you went final, did they  
9 share --

10 A. Before I went final.

11 Q. Yes.

12 A. No.

13 Q. Did they share any of the drafts of their  
14 reports before they went final?

15 A. With me.

16 Q. Yes.

17 A. No.

18 Q. I think you said you read Mr. Owsley's  
19 deposition. What other depositions have you read?

20 A. I read all the plaintiff experts'  
21 depositions.

22 Q. In your report you do make certain  
23 comments about the expert report of Mr. Owsley.  
24 Correct?

25 A. Correct.

1 Q. And then also Dr. Dev, Mr. Bedsole,  
2 Mr. Lattin and Mr. Lane?

3 A. Yes.

4 Q. How did you decide that you should comment  
5 on those reports besides Mr. Owsley, the other ones  
6 I mentioned.

7 A. I thought those were the sum total of the  
8 plaintiff's experts. And I was provided with their  
9 reports and given an opportunity to think about what  
10 they had to say. If there is more plaintiff experts  
11 out there, I have been sandbagged.

12 Q. For example, the areas that Dr. Dev  
13 discussed in his reports, do you consider yourself  
14 an expert in those areas?

15 MR. SMURZYNSKI: Objection.

16 You can go ahead.

17 THE WITNESS: Well, I don't want to -- I  
18 almost view that as a trick question. But --

19 BY MR. COLLINS:

20 Q. It's not meant to be.

21 A. Okay. Well, I have to sort of tell you  
22 what I think about my expertise and how it applies.

23 Q. Sure.

24 A. I guess my answer -- my simple answer  
25 would be yes, but the -- in that area, the answer

1 would be yes. I have done a lot of work in my  
2 career on brand value about the valuation of  
3 trademarks. About how trademarks and brands  
4 influence consumer behavior. I have published  
5 papers about this. I have published papers about  
6 brand loyalty. These are all areas I have published  
7 papers in marketing journals. I have trained  
8 students who became marketing professors. I view  
9 this as an area that I have done considerable  
10 research in.

11 So to the extent that that's what we are  
12 talking about, I definitely consider myself an  
13 expert in trademark and brand matters, both in terms  
14 of valuation and in how they influence consumer  
15 behavior. But beyond that, I mean, the test I would  
16 apply to myself would be maybe somebody else would  
17 apply a different test. But the test I would apply  
18 to myself would be could I help a court or a jury  
19 understand economics or marketing or the science  
20 related to brands and brand valuation and how brands  
21 influence consumers. And I would not hesitate to  
22 answer yes to that.

23 Q. Okay. So you have in the past worked on  
24 valuation of brands.

25 A. Yes.

1 Q. What did that work entail?

2 A. Do you mind if I look at the CV?

3 Q. No. Certainly.

4 A. I mean, the one that jumps to mind was a  
5 case that I worked on and testified in U.S. Tax  
6 court on. And that case was about the acquisition  
7 of Carnation by Nestle. And I was asked to think  
8 about what the Carnation brands were worth. These  
9 brands included Coffee Mate, Evaporated Milk, Mighty  
10 Dog food, Fancy Feast cat food, and Carnation  
11 Instant Breakfast.

12 And I was asked again as an economist how  
13 would an economist, how would you come up with a  
14 value for these brands, and I worked and wrote an  
15 expert report about an econometric approach to brand  
16 valuation that relied on market data to estimate  
17 demand and to -- from that come up with a brand  
18 value. And I testified to that in tax court and  
19 wrote an expert report about it.

20 That's just one case. I mean, I think  
21 there is -- there are several.

22 Q. Which other ones were you referring to?  
23 So I make sure we are on the same page.

24 A. Which other cases?

25 Q. Let me step back a second. Which -- on

1 your CV, when you refer to the Carnation one, make  
2 sure I'm on the same page.

3 A. Page -- Exhibit 1, Page 2, I don't know  
4 why it starts at Page 2, but that particular case is  
5 the one that says -- it's about four down under  
6 "intellectual property":

7 "For a large U.S. food and beverage  
8 company, Dr. Dubin has developed  
9 econometric theory and models to assign  
10 values to several intangible assets."

11 Q. Okay. Is that also listed as an expert  
12 report when you flip pages?

13 A. It might be. Yes. The report on Page 13  
14 from 1994.

15 Q. Then you also testified in that matter?

16 A. Yes.

17 Q. In court or at a deposition?

18 A. In court. And at a deposition. Actually,  
19 there was no deposition in that case. Just in  
20 court.

21 Q. Okay.

22 A. What's the question?

23 Q. The question was just was it a deposition,  
24 was it --

25 A. No, no. I'm sorry. I apologize.

1 Q. Sure.

2 A. I wanted to know what your next question  
3 was.

4 Q. I'm sorry.

5 A. I wanted to know if I was supposed to  
6 identify more of these cases for you.

7 Q. Yes. Was there another one involving  
8 brand work that you have done, work on brands. We  
9 can move that.

10 A. Well, the Kodak/Polaroid case I talked  
11 about was -- was all about, as I gave you the title  
12 of that report, I mean, it was all about market  
13 expansion and the effect of brands on consumer  
14 behavior and brand loyalty and whether or not --  
15 whether or not Kodak in fact had expanded the market  
16 in its entry by bringing some new customers to the  
17 table, so to speak. Or if Kodak had not infringed  
18 the patent, would all sales of instant cameras that  
19 Kodak had made, would all those had been made by  
20 Polaroid. So it was a case to look at individual  
21 level data to try to understand how consumers were  
22 forming their choices about which cameras they were  
23 buying and to what degree brand had a role in that.

24 Q. You did an expert report in that matter  
25 or --

1           A. Yeah. We talked about that. It's under  
2 my other reports section because I wasn't the  
3 testifying expert.

4           Q. Okay. Got you. Okay.

5           A. I think the case about Chef Paul  
6 Prudhomme, which was on Page 3, the federal court  
7 litigation in New Orleans, it talks about me  
8 assisting in the developing celebrity goodwill  
9 value. This was a case about somebody knocking off  
10 a likeness of a fat guy on a bottle of spicy seafood  
11 spices or whatever and the guy had a likeness, and  
12 the question was, you know, trademark confusion.  
13 What was the consequence on consumers of having that  
14 competing product out there that was a knock-off and  
15 that was a patent attempt to sort of knock off the  
16 trademark or the likeness of the person.

17           But there are others. I am just not  
18 finding them all. Let me just look through the  
19 cases for a second.

20           Q. Certainly.

21           A. I am looking for one that I am not  
22 finding, so maybe this is a problem on my CV. It  
23 was a case, and it's probably here somewhere, but it  
24 was a case about -- about a computer chip upgrade  
25 that involved a computer company called Acer and

1 their use of a particular upgrade technology called  
2 the chip-up technology and there were questions  
3 about the use of that trademark chip-up and its  
4 technology in terms of patent infringement. So I  
5 think that was related.

6           There is this case I mentioned also under  
7 "intellectual property" about branded car wax. At  
8 one point in my life I was looking at I think  
9 Miracle 2000 versus some other, you know, some other  
10 knock-off product, Miracle 2001 let's call it, and I  
11 was asked to render an opinion about, you know, the  
12 sort of trademark confusion there and I did some  
13 work on that case as well.

14           Q. What did you do in connection with that  
15 case?

16           A. I'm not really sure. I think I attempted  
17 to collect some market data and maybe did some  
18 analysis of it, but I don't really remember the  
19 specifics of that.

20           Q. Okay. And as far as the Paul Prudhomme  
21 litigation, what did you do?

22           A. What did I do?

23           Q. Yes. As far as what analysis did you  
24 conduct.

25           A. That one, my approach in that case was to

1 look, I think, at actual market data on the sales of  
2 Paul Prudhomme's product versus the penetration of  
3 the competing product and also advertising,  
4 television and otherwise of the competing product to  
5 see how that penetration affected Paul Prudhomme  
6 sales.

7 Q. Did you do an expert report in that matter  
8 or --

9 A. No.

10 Q. Did you testify?

11 A. No. I think that was one that just sort  
12 of went on for a while and then stopped. And I have  
13 also published some papers about trademark  
14 valuation.

15 Q. We will get to those next. And then on  
16 the Acer, what was the -- what kind of work did you  
17 do?

18 A. Well, I collected a lot of information by  
19 combing through old magazines about computers, old  
20 Byte magazines, PC magazines, and I collected  
21 information about the pricing of various PCs that --  
22 this was actually a case about -- it was a case  
23 involving -- at its heart a malpractice of an  
24 attorney about missing a filing deadline or  
25 something like that connected with a patent. But

1 the damages were all about the actual technology  
2 involved and how it influenced the consumer  
3 behavior.

4           And I wrote a -- and published a paper  
5 about this, but I don't remember completely the  
6 specifics of what I did. I collected information  
7 from these magazines. I built models of how a  
8 consumer would regard the -- the added speed of a  
9 chip-up technology and what the cost of that to the  
10 consumer would be. And I compared that to the  
11 pricing differential of buying just a brand-new PC.  
12 So I wrote about the value of this upgrade  
13 technology and I approached it several different  
14 ways, as I recall. But it's a published paper.

15           Q. Okay. Is that Acer one -- one of the  
16 litigations listed or --

17           A. That's the one I was having trouble  
18 finding.

19           Q. Okay. Got you.

20           A. I mean, it may be lurking in here  
21 somewhere --

22           Q. Okay.

23           A. But -- so there is my automatic teller  
24 machine case. That gets listed and travelers  
25 checks.

1 I mean, I could throw this one in, too, in  
2 a sense. The -- actually, two come to mind. There  
3 was a -- some work I did under this strategic and  
4 management consulting category about -- I did for a  
5 company called Fingerhut in Minnesota and they had  
6 collected years and years of data from their  
7 customer catalogues and resulting sales and they  
8 asked me to come in and try to apply econometric  
9 methods to help them better understand who they  
10 would promote and how that would affect demand.

11 Then this one at the bottom about the  
12 American Gaming Association was -- actually, it's  
13 not that one. Sorry.

14 There was a case, I don't know where it is  
15 here, maybe I don't list it because I only worked on  
16 it, these are meant to be nonexhaustive, but  
17 selective of my experience. But there was a case  
18 about the Hard Rock Hotel that I was involved in and  
19 the issue was between the Hard Rock and the -- and  
20 Planet Hollywood. And it was Mayer, Brown was the  
21 law firm in that case. And it was a case my  
22 partner, Dr. Cicchetti, was the testifying expert  
23 in.

24 But I was studying the effect of the entry  
25 of Planet Hollywood in Las Vegas on the hotel

1 business at the -- that the Hard Rock Hotel -- or  
2 the Planet Hollywood restaurant or whatever it was.  
3 I don't think they had a hotel. But Planet  
4 Hollywood restaurant on the hotel and restaurant  
5 business of the Hard Rock Cafe.

6 Q. Was that a matter in litigation or --

7 A. Yeah. Yes. But it's not my -- it wasn't  
8 specifically my case. It was just one I did a lot  
9 of analysis on. So I guess that's why I forget  
10 about it or I don't list it.

11 Q. As far as articles that you list in your  
12 CV or otherwise authored, involved issues of  
13 branding?

14 VIDEOGRAPHER: Mr. Dubin --

15 THE WITNESS: Yes.

16 VIDEOGRAPHER: -- I'm sorry, could you just  
17 slide the mic -- I mean the document right just  
18 closer to you because it's actually -- you are going  
19 off the frame.

20 THE WITNESS: Oh. Is this okay?

21 VIDEOGRAPHER: Actually you were fine. Just  
22 the document when you were looking at --

23 THE WITNESS: I am good and the document is  
24 now good. Okay. Thank you.

25 Okay. Well, in the book listed on

1 Page 15, Chapter 4 on valuation of a technology  
2 patent, scope duration and royalty, is partly  
3 related to patents and to trademarks. That's the  
4 one I was talking about with Acer.

5 BY MR. COLLINS:

6 Q. Okay.

7 A. The -- on Page 16, Chapter 4 of that book,  
8 the demand for branded and unbranded products and  
9 econometric method for valuing intangible assets  
10 grew out of my work in Nestle.

11 Chapter 7, the demand for cameras by a  
12 consumer model of purchase type choice and brand  
13 choice, is the work that grew out of Kodak which we  
14 talked about.

15 Q. Um-hum.

16 A. There are -- there is an article  
17 forthcoming in the Journal of Econometrics, although  
18 I don't know when it's going to forthcome. It's  
19 been forthcoming for a while. It's a volume of  
20 papers valuing intangible assets with a nested logit  
21 market share model which is a forthcoming paper.  
22 That's about valuing brands and trademarks,  
23 especially recognizing that the standard dilution  
24 model as Mr. Owsley calls it, this deprecated  
25 technology market share stuff from 1950 or 1960s, is

1 again, unlikely to give you good valuations as part  
2 of this article.

3           Let's see. There are two papers that are  
4 not listed here at all that are forthcoming, both on  
5 brand valuation, that are forthcoming in a book in  
6 an edited volume. My current CV, which actually  
7 should be on the Pacific Economics Group website,  
8 would have the titles, if not copies of the  
9 articles.

10           Q. Okay. Do those deal with just generally  
11 those two articles?

12           A. There -- as I recall, they are sort of  
13 related -- related to the -- empirically to that  
14 chip-up technology paper in the one case and maybe  
15 related to the camera case in the other.

16           In other words, I did something new  
17 with -- with the theory as I recall. But my  
18 empirical examples were the same.

19           Q. Okay. Any other articles that you  
20 referred to?

21           A. Not offhand, no.

22           Q. Okay.

23           VIDEOGRAPHER: Let's go off the record at  
24 12:09.

25                           (Discussion off the record.)

1 (Whereupon, a luncheon recess was taken  
2 at 12:09 P.M.)  
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Jeffrey Alan Dubin, Ph.D. - 2/24/2006

1

LOS ANGELES, CALIFORNIA

2

FRIDAY, FEBRUARY 24, 2006; 1:00 P.M.

3

4

VIDEOGRAPHER: We are back for the afternoon.

5

The time on the video monitor is one o'clock.

6

7

EXAMINATION (Continued)

8

9

BY MR. COLLINS:

10

Q. Mr. Dubin, I refer you to Page 47 of your report.

11

12

A. Okay.

13

Q. You state in the first full paragraph that as a threshold matter, it seems unlikely that any agreement made between Ritz-Carlton and the owner of the Ritz-Carlton Bali limits the ability of the -- of Marriott and Bvlgari to develop their joint venture in markets other than Bali. I am just paraphrasing.

14

15

16

17

18

19

20

That's not an opinion you are offering, is it, sir? Or is that an actual opinion you are offering or --

21

22

23

A. It -- it -- well, I don't know. I mean, it's -- it's a statement I made. It was just an observation I had. But it's not a legal opinion.

24

25

1 Q. Exactly. Exactly. And I think you state  
2 somewhere you are not a lawyer, are you, sir?

3 A. No. Correct. I'm not.

4 Q. Are you offering any opinions about the  
5 terms of any agreements between the owner of the  
6 Ritz-Carlton Bali and Ritz-Carlton and its  
7 affiliates?

8 A. I am not offering any legal opinions, no.

9 Q. What opinions are you offering about any  
10 actual written agreements between the owner of  
11 Ritz-Carlton Bali and any Ritz-Carlton entity?

12 A. Well, I think I do discuss a little bit  
13 about my impression about the so-called Ritz-Carlton  
14 rights. I make mention of that in the report.

15 Q. Do you remember where that's at?

16 A. Yeah. Approximately 53. I think it's 53.  
17 Let's see. Sorry. I'm sorry. It's Page 56.

18 Q. Okay.

19 A. Where I say that the definition of the  
20 Ritz-Carlton rights appears to me to be -- it  
21 appears to encompass the trademarks, tradenames,  
22 logos, symbols and the like.

23 Q. Okay. That's just an observation you are  
24 making?

25 A. Yes.

1 Q. Okay. On Page 47 you go down -- on the  
2 second full paragraph, you state that you disagree  
3 with Dr. Dev's assessment.

4 "First, I don't agree that public  
5 statements made regarding relationship  
6 of the Bvlgari and Ritz-Carlton or the  
7 Bvlgari and Marriott have been  
8 numerous."

9 A. Right.

10 Q. Again, that's just a personal observation  
11 you are making. Right?

12 A. When you say "personal," do you  
13 distinguish that from expert opinion or --

14 Q. Yes.

15 A. Well, it's both personal and an expert  
16 opinion.

17 Q. What expertise would you have to bring to  
18 whether there's been numerous public statements or  
19 not? Do you have any more expertise than I -- than  
20 me, for example?

21 A. No. It's not an opinion that requires, I  
22 think, a lot of expertise. It's my -- it's -- it's  
23 the following idea that if you look at the Internet,  
24 if you look at the statements that have been brought  
25 forth and you compare the dates when they were made

1 and so forth, they seem to be lumped together and  
2 all centered around specific activity. So in answer  
3 to your question, I think you would come to the same  
4 observation I would. I don't think it requires  
5 expertise to come to that conclusion.

6 Q. Have you talked to anyone from  
7 Ritz-Carlton and Marriott about why certain public  
8 statements were made?

9 A. No.

10 Q. Have you had any discussions with anyone  
11 about why certain public statements were made about  
12 the Bvlgari/Ritz-Carlton relationship?

13 A. Yes.

14 Q. Who would that be?

15 A. I think I have talked to Mr. Smurzynski  
16 about that in passing.

17 Q. What do you remember discussing about  
18 that?

19 A. Oh, I remember, I think, asking about a  
20 statement that Mr. Cooper made and was that sort of  
21 consistent with, you know, the Ritz-Carlton thought  
22 process or whatever. I don't remember what the  
23 response was to my query.

24 Q. When you are referring to Mr. Cooper who  
25 are you referring to?

1 A. Simon Cooper.

2 Q. What statements are you referring to by  
3 Mr. Simon Cooper?

4 A. That, I don't recall.

5 Q. Anything else you remember about your  
6 conversation with Mr. Smurzynski about the issue we  
7 are talking about?

8 A. No.

9 Q. Then you go on from -- next sentence:

10 "Certainly, there have been a few  
11 articles and press releases, but there  
12 were often -- but these were often of a  
13 financial nature and not geared to the  
14 public."

15 Again, that's an observation you are  
16 making, that doesn't require any particular  
17 expertise, does it?

18 A. I don't think it requires particular  
19 expertise necessarily, no.

20 Q. It also says:

21 "It also seems unlikely to  
22 me that these statements have caused any  
23 competitive effect because I doubt  
24 whether they have been seen by many  
25 potential visitors to Bali."

1           And that's not something that you  
2 conducted any empirical analysis or anything.  
3 Correct?

4           A. That's correct.

5           Q. Did you interview anyone, any Bali  
6 tourists about whether this would be a correct  
7 statement?

8           A. No.

9           Q. Again, that's your personal observation  
10 versus a -- does that require any particular  
11 expertise to make that statement?

12           A. Well, the competitive effect part of that  
13 statement is -- part of that statement is the  
14 statement of an economist that would put two facts  
15 together. One, if the statements are not numerous,  
16 then they couldn't have influenced very many people.

17           Q. Although, for example, if it's shown once  
18 on national TV, it could influence a lot of people.  
19 Correct?

20           A. You are correct in that regard. But  
21 that's not how I interpreted these type of  
22 statements.

23           Q. So what -- what influence or what factors  
24 did you consider when you made that statement on  
25 that last full sentence of the follow-over paragraph

1 on Page 47 and 48?

2 A. When I say that there -- sorry -- the  
3 sentence on 47 going into 48?

4 Q. No. From the follow-over paragraph. That  
5 last sentence we just talked about. It also seems  
6 unlikely --

7 A. Right. What I am thinking of there again  
8 is the financial nature of the statements. In other  
9 words, this -- some of these statements were about  
10 an announcement that -- the financial partnership  
11 between Ritz-Carlton and the Bvlgari. And that may  
12 not be -- may be the kind of thing I might see as a  
13 diligent reader of the Wall Street Journal, but I'm  
14 not sure it's the kind of thing that would raise to  
15 the level of marketing effort, for instance. In  
16 fact, I find it contrary to that idea. So the lay  
17 public I'm thinking would not necessarily have been  
18 exposed to such statements.

19 Q. Would the lay public include business  
20 executives who read such publications as the Wall  
21 Street Journal?

22 A. Some, yes.

23 Q. Would it also include people who are  
24 thinking about going to Bali to get on the Internet  
25 and look up articles about Bali and the various

1 hotels at Bali?

2 MR. SMURZYNSKI: Objection.

3 THE WITNESS: I can't really speculate about  
4 how those messages might -- who -- who would be --  
5 who would have seen those messages we are talking  
6 about. It might include them, it might not.

7 BY MR. COLLINS:

8 Q. But you haven't conducted any empirical  
9 analysis of what visitors to Bali look -- what  
10 information they look to before they make a decision  
11 whether to visit Bali or one of its hotels.

12 Correct?

13 A. Yes. I haven't done that.

14 Q. Then you say:

15 "Second, I don't find it credible  
16 that Bvlgari and Ritz-Carlton are  
17 engaged in a co-branding exercise."

18 What expertise do you have that allows you  
19 to make an opinion, if that's an opinion, that they  
20 are not engaged in a co-branding exercise?

21 A. Well, we discussed before lunch my  
22 research in publications and trademark and brands  
23 and I have done extensive reading. I have lectured  
24 about it. I have published about it. I have talked  
25 about brand name. I am familiar with the concept of

1 co-branding and brand extensions and so forth.

2 Q. Have you ever done any professional work  
3 on issues involving co-branding?

4 A. Not that I recall.

5 Q. Have you written any articles on  
6 co-branding?

7 A. No.

8 Q. Have you taught any courses on  
9 co-branding?

10 A. No.

11 Q. Courses, I mean whether lectures to  
12 business groups, courses that you teach in school?

13 A. No. I haven't taught about co-branding.

14 Q. Have you yourself taken any courses on  
15 co-branding? That involved issues of co-branding.

16 A. No. I'm a student of the literature  
17 myself, but I haven't taken any courses. I have  
18 trained marketing scientists, but I haven't taken  
19 any courses per se.

20 Q. Then you say:

21 "Instead, my interviews with the --  
22 with key Bvlgari personnel indicate that  
23 the notion is not to co-develop the  
24 brands."

25 Who are you referring to there?

1 A. Well, that would be both the two  
2 individuals we discussed earlier, Attilio Marro in  
3 Milan and Ursini.

4 Q. How do you say Mr. Ursini? Is that how  
5 you say it? Ursini?

6 A. I think it's in here.

7 Q. Okay. I am just bad with pronouncing  
8 names.

9 A. It's Ursini, I think. I am drawing a  
10 blank myself right now.

11 Q. Okay. We can agree on Ursini, that's fine  
12 with me.

13 A. Okay.

14 Q. No disrespect meant to him if I have it  
15 wrong.

16 A. Silvio Ursini. Ursini, U-R-S-I-N-I. So I  
17 may be mispronouncing it as I well.

18 Q. Why don't we go with Ursini and say no  
19 disrespect to him.

20 A. Okay.

21 Q. What did they tell you, Mr. Marro tell you  
22 about co-branding between Bvlgari and Ritz-Carlton?

23 A. Well, both of these individuals separated  
24 by half the planet were really of a like mind on  
25 this. There was -- they specifically blanched at

1 the idea that you would see any indicia of  
2 Ritz-Carlton on the property. You wouldn't see the  
3 name Ritz-Carlton. This is at a Bvlgari property  
4 per se. And it would be -- my impression was  
5 staying at a Bvlgari that there was actually no way  
6 to detect anything about Ritz-Carlton, being a guest  
7 there. And that's what these guys were talking  
8 about.

9 Q. Do you remember specifically what you  
10 talked to them about that? Did they tell you that  
11 was part of their strategy, that you would not be  
12 able to see any indicia of Ritz-Carlton on the  
13 property?

14 A. Yes, that was part of it. They wanted to  
15 keep the Bvlgari brand completely separate from the  
16 Ritz-Carlton brand. They didn't want one to have  
17 anything to do with the other. That was my  
18 impression.

19 Q. But do you remember -- was that a  
20 conclusion you made from your conversations with  
21 them or is that a specific issue they addressed with  
22 you?

23 A. No. I think that was a specific issue.  
24 This was a conscious effort to keep -- to keep the  
25 Bvlgari brand. The Bvlgari brand, this is a

1 completely different style and luxurious property  
2 that is not meant to mix up the whatever  
3 Ritz-Carlton is bringing to the party in terms of  
4 branding.

5 Q. Did you discuss with Mr. Marro the fact  
6 that the Bvlgari Milan appears on the Ritz-Carlton  
7 website?

8 A. No.

9 Q. Did he raise that with you? As part of  
10 this discussion.

11 A. Not that I recall.

12 Q. What was Mr. Marro's position with  
13 Bvlgari?

14 A. The general manager of that Marro --  
15 Mr. Marro?

16 Q. Marro. Excuse me.

17 A. The general manager of the Bvlgari Hotel  
18 in Milan.

19 Q. What did Mr. Ursini tell you about this  
20 issue?

21 A. Well, I think it was, like I said, the  
22 same. There was no -- there was not going to be any  
23 attempt to promote or advertise any aspect of  
24 Ritz-Carlton. The idea was to have their own  
25 product, their own brand, their own style and that's

1 the way the hotel was going to be developed. You  
2 wouldn't see trademarks, logos, any connection at  
3 all. And that's how it is when you go there. All  
4 you have to do is visit and you will see what I am  
5 talking about.

6 Q. Then in particular did he mention to you  
7 or did you have any discussion with him about the  
8 Bvlgari Milan appearing on the Ritz-Carlton website?

9 A. No. I don't think that came up.

10 Q. Anyone else from Bvlgari that you  
11 discussed this issue of whether they were trying to  
12 develop a co-brand or not?

13 A. Well, Lagerfeld who's going to be the  
14 general manager of the Bvlgari property in Bali, we  
15 talked to -- I talked to separately about this  
16 issue.

17 Q. What did he tell you about it?

18 A. Same thing. That the idea was to, I  
19 think, emphasize a completely different style. A  
20 style which was Bvlgari's and not to confuse a style  
21 which is Ritz-Carlton.

22 Q. From your understanding, your discussions  
23 with them, the emphasis was on the Bvlgari style.  
24 What did Ritz-Carlton bring to the table to them --  
25 for them?

1 A. I believe the Ritz-Carlton was bringing  
2 infrastructure and knowledgeable infrastructure  
3 about operating, managing hotels.

4 Q. Other than Mr. Marro, Mr. Ursini and  
5 Mr. Lager- --

6 A. Lagerway?

7 Q. -- Lagerway, anyone else from Bvlgari that  
8 you discussed these issues with?

9 A. There was Cora. Cora something or other.  
10 I don't recall if she -- what she said. I told you  
11 that before, but --

12 Q. Right.

13 A. The topic certainly came up in our meeting  
14 with these people.

15 Q. Anyone else besides the people you just  
16 mentioned?

17 A. No.

18 Q. Have you had that discussion with any  
19 representatives of Marriott or Ritz-Carlton?

20 A. No.

21 Q. You then state in the next paragraph:

22 "Additionally, I think Bvlgari and  
23 Ritz-Carlton have and will go out of  
24 their way to avoid co-branding these  
25 products."

1           What's the basis for that statement?

2           A. Well, that's just my opinion about first  
3 of all -- I think Marriott's desire to manage its  
4 brands and to keep them -- keep brand identity  
5 separate and also Bvlgari's overt statements that  
6 they don't really want -- they want their own brand.  
7 They want their own style. They don't want anything  
8 to do with the Ritz-Carlton styling. I think they  
9 are very explicit about Ritz-Carlton as a provider  
10 of the infrastructure as opposed to provider of  
11 anything which is stylistic.

12           Q. When you say infrastructure versus  
13 stylistic, how are you differentiating between those  
14 two terms?

15           A. I think of the infrastructure as what is  
16 going on inside. Behind the scenes, if you will.  
17 The operation of the hotel. The part that maybe  
18 consumers are not coming in contact with except, you  
19 know, with respect to how a hotel operates. So how  
20 many people you have employed and how often the beds  
21 are made and how the computer system works that  
22 rings up your bill and that sort of thing.

23           Q. At the time you did your report, what was  
24 your understanding about whether Bvlgari uses or  
25 doesn't use the Ritz-Carlton reservation system?

1           A. I believe that my understanding is that  
2 Bvlgari uses a Marriott reservation system.

3           Q. Did that affect one way or another the  
4 opinions you are offering on -- about co-branding  
5 and --

6           A. I think it's like that movie that's out  
7 about comedy in the -- Islamic world or something  
8 where -- I have only seen the trailer so far, but  
9 the person in India or Pakistan is answering for the  
10 White House. I think the idea was that the Marriott  
11 call center can pick up a phone call and field a  
12 Bvlgari phone call and answer "Bvlgari, good  
13 afternoon" without causing any kind of confusion or  
14 anything else.

15           Q. Does having the Bvlgari Milan Hotel listed  
16 on the web- -- Ritz-Carlton website cause any  
17 confusion?

18           A. I don't think so.

19           Q. Why not?

20           A. Well, as I said in the report, I'm not  
21 sure that, first of all, that many consumers come  
22 into contact with that part of the website. So you  
23 would have to really search around to find the  
24 picture that Mr. Dev, for example, shows at the  
25 handshake and so forth. And I'm not sure consumers'

1 actually interested in the website from that  
2 perspective.

3           Secondly, it's advertising. If it's doing  
4 anything, it's demonstrating a financial partnership  
5 so it's not really clear to me that -- what the  
6 consumer is getting from that.

7           And the third thing is, I have actually  
8 collected some published research about what  
9 consumers actually perceive to be important when  
10 looking at hotel websites. And that literature  
11 suggests that -- of almost least importance is  
12 business relationships that are mentioned on these  
13 websites.

14           Q. Have you provided that research to  
15 Mr. Smurzynski?

16           A. I did.

17           Q. Do you remember any particular articles  
18 you are referring to or just are we going to go  
19 through those and find them?

20           A. There was a -- I don't recall the author  
21 or the publication.

22           Q. Was it one publication or more than one,  
23 do you remember?

24           A. I think on that particular -- I mean, this  
25 is kind of a rarefied analysis, but there was one

1 paper I found that seemed to be on point in this  
2 respect. A survey of individuals and asking them  
3 questions about specifically what they are looking  
4 at on Internet websites when they are making hotel  
5 reservations.

6 Q. Did that article make a distinction  
7 between what kind of hotels we were -- it was  
8 referencing, all hotels, high-end hotels?

9 A. No, it did not.

10 Q. Do you think there could possibly be a  
11 difference between people looking for higher end  
12 hotels about their preferences when they look at  
13 websites versus people looking at the other ends of  
14 the spectrum?

15 A. I think there could be, yes.

16 Q. And did you conduct any empirical research  
17 about whether -- what does affect people when they  
18 go to the website, you yourself?

19 A. No.

20 Q. Have you talked to anyone from Marriott of  
21 why they have a reference on their website to the  
22 Bvlgari Milan Hotel?

23 A. No.

24 Q. Going to Page 49, second full paragraph:  
25 "Third, I don't find it particularly

1 surprising or alarming that Ritz-Carlton  
2 mentions its relation to Bvlgari on its  
3 reservation website."

4 Why do you believe it refer -- refers to  
5 it?

6 A. Oh. Well, this is my impression, but I  
7 think they were advertising their financial  
8 partnership.

9 Q. For what purpose?

10 A. Well, their business -- the business  
11 community may be interested in knowing that they  
12 have a financial partnership and investors are  
13 interested in investing in the Bvlgari and investing  
14 in the Ritz-Carlton. Some investors might find this  
15 a positive thing. I think this is something they  
16 are bragging about. But I believe they are bragging  
17 about their financial relationship. And it's really  
18 not much of a brag. It's one photo, I think, buried  
19 in a website.

20 Q. You state:

21 "I think that relatively few  
22 customers make reservations for either  
23 of these hotels through this website or  
24 have seen or registered this information  
25 by browsing these websites."

1           What's your basis for that?

2           A. That's just a matter of my opinion about  
3 my own experience. It's sort of intraspective in  
4 that respect, how many times I have looked at  
5 high-end hotels when I am doing searches and what I  
6 see. But beyond that it's been my experience that  
7 when a hotel is selling its own product at this high  
8 end, they usually are advertising their rooms at the  
9 rack rate, which is the published high-end rate.  
10 And I think most people can avoid paying rack by  
11 going through either travel agents or discounters or  
12 through other sources.

13           So it's not clear to me that many  
14 reservations for this high-end product are going to  
15 be made off of the hotel -- hotel website. And in  
16 particular it may be true at some high-end hotels,  
17 but it wasn't my impression for the Ritz-Carlton in  
18 Bali that this is the way it happens because of the  
19 spreadsheets that they supplied that showed how few  
20 reservations were actually being made at rack rates.

21           So I am putting two facts together. One  
22 is some data that they provided on how few  
23 reservations are being made at rack and the fact  
24 that I believe that the hotel when it's advertising  
25 its product is advertising rack. Now, that's not an

1 absolute. I have seen hotels offer specials, for  
2 instance, which are discounts. But that was the  
3 basis for this opinion.

4 Q. Any other basis besides what you just told  
5 me?

6 A. Not at present, no.

7 Q. What -- in making this statement, what  
8 particular expertise did you think you brought to  
9 the table?

10 A. Just the ability to think with my training  
11 and experience logically about what I saw in the  
12 Ritz-Carlton documents and my understanding of the  
13 types of rates that are being advertised. I mean, I  
14 think someone else, if you are asking, could come to  
15 the same conclusion if the facts are substantiated  
16 and it doesn't require a Ph.D. to get there.

17 Q. Is there anything about your expertise  
18 that allows you to make that statement that others  
19 would not have that expertise?

20 A. No, I don't think so.

21 Q. And then you did not conduct any empirical  
22 analysis of how many customers make reservations  
23 through the website. Correct?

24 A. Are we referring to a particular sentence  
25 or just --

1 Q. Going back to this sentence. Did you  
2 conduct any empirical analysis to support this  
3 statement?

4 A. Are you referring me to I find it telling  
5 that Dr. Dev has conducted?

6 Q. No. "I think that relatively few  
7 customers make reservations."

8 A. Oh. Oh. I'm sorry. No. I haven't --

9 Q. My fault.

10 A. No, it's not your fault. I am -- no, I  
11 haven't done that. I have actually tried to do  
12 that.

13 Q. What have you done to try to do that?

14 A. I have requested some access to some  
15 people knowledgeable within Marriott about the  
16 Ritz-Carlton reservation centers.

17 Q. Or -- I'm sorry.

18 A. I'm sorry.

19 Q. When did you make that request?

20 A. It's an open request at this point. I  
21 think I last made it maybe in December.

22 Q. When you say made that request, who did  
23 you make that request to?

24 A. I talked to Mr. Smurzynski about it from  
25 time to time and said I would like to interview

1 someone about it. I'm sure it will happen. We just  
2 haven't gotten around to it.

3 Q. Anyone else that you made this request to  
4 besides Mr. Smurzynski?

5 A. I think I suggested it to Mr. Akers as  
6 something I would like to do as well.

7 Q. Has he gotten back to you on that or --

8 A. He said, "Yeah. We will do that. I am in  
9 favor of that." What we ran into was holidays and  
10 depos getting scheduled and then postponed and it  
11 just hasn't happened yet.

12 Q. When you say that:

13 "I expect that no information has  
14 been offered here because" -- I am in  
15 the same paragraph -- "(i) few consumers  
16 would have learned anything from these  
17 websites and even fewer would have ever  
18 visited these websites."

19 And did you conduct any empirical research  
20 to support that statement?

21 A. No.

22 Q. Have you talked to anyone from Marriott or  
23 Bvlgari about this statement -- or to support the  
24 statement?

25 A. No.

1 Q. When you say:

2 "Few customers are likely to have a  
3 favorable opinion of the Bvlgari Hotel  
4 and Resort solely because of its  
5 association with Ritz-Carlton."

6 What's the basis for that?

7 A. Well, it's -- these are not conclusions.

8 The sentence reads, I suspect that Dr. Dev hasn't  
9 done this because it will get him nowhere. I  
10 suspect that no information has been offered, i.e.,  
11 by Dr. Dev because of these properties. These are  
12 what I expect are the conundrums that Dr. Dev, who  
13 is basically an empirical researcher, someone who in  
14 his published work often uses data and examines  
15 data, eschews in this particular case for -- for it  
16 seems to me uncharacteristically his analysis.

17 Q. You do make the statement a few customers  
18 are likely to have a favorable opinion solely  
19 because, and I am just asking what you base that on.  
20 Because that's an observation you make. Correct?

21 A. Right. I -- it harkens back to what I  
22 expect from what I have heard and from what I have  
23 heard from management about how the products are  
24 different. The stories I have heard that the  
25 newspaper articles that I have cited and read, my

1 own experience in visiting Milan about the  
2 likelihood that a consumer has any idea that  
3 Ritz-Carlton is involved in the Bvlgari Milan Hotel.  
4 So my own experience talking with the management who  
5 said that they were keeping these brands separate,  
6 and purposely keeping them separate, the fact that I  
7 visited the Milan hotel and saw no indicia of the  
8 Ritz-Carlton leads me to believe that other  
9 consumers would see it the same way.

10 Q. Like I said, maybe I am misreading the  
11 statement.

12 "Few customers are likely to have a  
13 favorable opinion of the Bvlgari Hotel  
14 and Resort solely because of its  
15 association with the Ritz-Carlton."

16 That seems to be a little bit different  
17 than what you just explained and I am trying to  
18 understand --

19 A. Let me try again. What I am trying to say  
20 is if they don't know that there is an association  
21 with Ritz-Carlton, they can't know -- they can't  
22 have a favorable opinion of the Bvlgari Hotel  
23 because of the association that they are not aware  
24 of.

25 Q. Oh, okay. So this is -- okay. I read

1 this sentence differently that --

2 A. I could have said few customers are likely  
3 to have a favorable or unfavorable opinion of the  
4 Bvlgari Hotel solely because of its association with  
5 Ritz-Carlton because I am -- you know, the "because"  
6 here is that I think few customers know that there  
7 is an association.

8 Q. Okay. Okay. I had -- when I read this  
9 statement thought you were getting to that -- even  
10 if you knew it was a Ritz -- Ritz-Carlton was  
11 involved, that wouldn't -- that would not cause you  
12 to have a favorable opinion. If that's a misreading  
13 of it that's fine.

14 A. Oh, you know, I might have meant a little  
15 of that, to be honest. Sorry. Strike "to be  
16 honest." I am under oath. That's just a --

17 Q. That's fine.

18 A. -- you know, a phrase we throw out there.  
19 I did mean a little of that and that's  
20 fair. I did mean a little of that. Because what I  
21 guess I am after, few customers are likely to --  
22 solely because it was associated with Ritz-Carlton.  
23 Tell me again what I meant by that? Because I  
24 almost got it when you said it.

25 Q. I guess one way of taking that is even if

1 a customer knows that it's -- Ritz-Carlton's  
2 involved in it, that fact doesn't lead them to have  
3 a favorable opinion of the hotel.

4 A. Yeah. I -- there is something more there.  
5 Thank you for saying that again. And I guess the  
6 part I am trying to pick up there is that -- is that  
7 while a consumer that might be aware that there is a  
8 Ritz-Carlton connection might therefore have an  
9 expectation of good service and so forth. That  
10 consumer -- I think most of them are going to be  
11 choosing the Bvlgari Hotel for completely different  
12 reasons. They are going to be choosing it for the  
13 style, for the other people that are going to be  
14 there, for the price point it's at. For the  
15 exclusivity.

16 And so what I am trying to say there is  
17 that even somebody that might have an awareness of  
18 the Ritz-Carlton aspect of it, that hypothetical  
19 person, is probably not in -- on the scale of  
20 things, having positive preference for the Bvlgari  
21 because of the Ritz-Carlton component. I give the  
22 Ritz-Carlton component a very small weight for such  
23 an individual.

24 Q. What is the Ritz-Carlton component as you  
25 see it?

1           A. Well, in -- this is almost -- we are  
2 posing almost a hypothetical here about a consumer  
3 that knows something about it that Ritz-Carlton is  
4 connected. So what in principle would that consumer  
5 know? You know, or what would they surmise? If  
6 they knew it was Ritz-Carlton maybe they know  
7 something -- I haven't really thought this through,  
8 to be honest. There we go again. But -- and so I  
9 don't -- I don't want to give you an answer off the  
10 cuff about it. I haven't studied this.

11           This Ritz-Carlton person, if they knew it  
12 was Ritz-Carlton, would probably have all the things  
13 that the trademark represents in their eyes of a  
14 Ritz-Carlton. But I don't think that's the typical  
15 Bvlgari customer.

16           Q. Why is that?

17           A. Because I think the Bvlgari is -- is  
18 pitched at a completely different kind of customer,  
19 a person of a different socioeconomic bracket at a  
20 higher price point. I think the styling of the  
21 places is different. The kind of consumer that  
22 would choose to stay at one versus the other is  
23 different. So I think that somebody that's at a  
24 Bvlgari is probably there because there is something  
25 more compatible with their -- with their -- with the

1 styling of the hotel and how it fits with them.  
2 It's like picking clothing or something. Something  
3 stylistic about it that -- that they are going to.  
4 That's what's driving the choice.

5 Q. Did you consider that same person,  
6 however, is assuming that the hotel -- that person  
7 may be attracted to the styling of the hotel but  
8 it's also assuming that a hotel of that type of  
9 price as having a certain quality of service?

10 A. Yes, I did -- I do assume that -- I say in  
11 this report that I would expect a hotel, quality  
12 hotel like the Bvlgari to produce a very  
13 high-quality product. And I think consumers of  
14 Bvlgari products would expect and do expect and are  
15 used to high-quality service and high-quality  
16 products and therefore would say I wouldn't expect  
17 anything different at the Bvlgari hotel.

18 Q. Doesn't the Ritz-Carlton brand give them  
19 assurance that's going to happen?

20 A. On the service point, I don't think it  
21 does because -- I mean, I don't think it adds much  
22 there. Even if someone knew. If -- well, it just  
23 doesn't seem to be -- to add a lot extra to me. The  
24 Bvlgari in this case has a very significant brand  
25 all to itself and people expect very high quality

1 from that brand.

2 Q. Right. But Bvlgari prior to getting into  
3 hotels was jewelry. Correct?

4 A. Correct.

5 Q. I don't know if it does clothing. I don't  
6 know.

7 A. Perfume.

8 Q. Perfume. Fine. Hadn't done hotels  
9 before. Right?

10 A. Some accessories. No. They have not done  
11 hotels.

12 Q. Isn't there value in bringing the  
13 Ritz-Carlton name to the hotel concept for Bvlgari?

14 A. There might be. And I think if they  
15 thought it was significant enough they would  
16 probably have put Ritz in the lion -- the lions out  
17 front and Ritz up on their building. But I don't  
18 think that's the direction they are going.

19 Q. Then you say at Page 50:

20 "Fifth, I don't find it credible to  
21 think that Ritz-Carlton legitimizes the  
22 Bvlgari brand extension to hotels."

23 Why is that?

24 A. Well, I think I explain that as I go on.  
25 I say if that legitimate -- legitimization were

1 necessary, would have expected a great deal of  
2 marketing and advertising. In other words, if the  
3 question is is the Bvlgari a -- off on the deep end  
4 here in the hotel business, and that's really  
5 something that -- that they are worried about and  
6 offering an inferior product and so forth, then I  
7 would expect that they would be advertising and  
8 marketing their -- their involvement with  
9 Ritz-Carlton in a really serious way. I mean, not  
10 just a picture buried deep in a website, but the --  
11 your example of TV and all sorts of television spots  
12 and perhaps even putting the Ritz-Carlton name  
13 somewhere on their product.

14           So I don't think this is a question of  
15 Ritz-Carlton legitimizing the Bvlgari brand. In  
16 fact, the management was, I think, trying to keep  
17 the Bvlgari brand separate in a hard way from the  
18 Ritz-Carlton brand.

19           Q. And it's based on the conversations you  
20 had with the individuals we talked about a little  
21 bit earlier. Correct?

22           A. Yes.

23           Q. Any documents that you have seen that help  
24 you get to that conclusion?

25           A. Well, yeah. There was -- I cited a

1 newspaper article about -- or cited by Christine  
2 Brinkley, I think it was, where she observes that if  
3 you go to the Milan hotel you won't see the  
4 Ritz-Carlton name or styling anywhere. You  
5 wouldn't -- you just wouldn't see it. You wouldn't  
6 even be able to detect it. She comes to the same  
7 observation that I had when I was there.

8 I think you could -- this is what I was  
9 talking about with doing empirical research. I  
10 think if you dropped -- if you actually did the  
11 survey of customers even at that hotel, my suspicion  
12 is you would learn that very few of them know a  
13 whole lot about any connection with Ritz-Carlton.

14 Q. Just to make sure we are on the same page,  
15 that's not something you have done as far as  
16 empirical research.

17 A. No.

18 Q. Going back towards the top of Page 50, you  
19 say that -- the first full paragraph:

20 "Moreover, Dr. Dev appears to  
21 completely discount the brand value and  
22 trademark value of the Bvlgari brand."

23 Did you have the opportunity to read  
24 Mr. Dev's -- Dr. Dev's deposition?

25 A. Yes, I did.

1 Q. Is that an observation you still have  
2 after reading his deposition, that he's -- appears  
3 to completely discount the brand value and trademark  
4 value of the Bvlgari brand?

5 A. I don't recall -- I mean, as I sit here  
6 today, I can't -- it's been a while since I have  
7 read it, but I don't recall reading anything in that  
8 deposition that would make me want to change this  
9 statement. If you show me something, maybe we can  
10 talk, but I don't remember anything that -- where I  
11 said oh, jeez, now I get it, but nothing -- there's  
12 been no revelations in reading Dr. Dev's deposition.

13 Q. Are you saying by that sentence that you  
14 don't believe Dr. Dev believes or gives any value to  
15 the Bvlgari brand in the hotel context?

16 A. No. I don't -- I would assume that he  
17 perhaps thinks that as a co-branding exercise, which  
18 is I think what he thinks this is, that Bvlgari is  
19 going to bring something to the table, sure. But I  
20 think he makes -- he -- when I say he completely  
21 discounts the brand value, maybe that's a little  
22 strong, but my idea here is that he's not giving it  
23 all the credit that it's due.

24 Q. Right. That was my question when you used  
25 the phrase "completely discount."

1 A. Yeah. You are right.

2 Q. Okay.

3 A. I would agree with you. It's perhaps a  
4 little strong.

5 VIDEOGRAPHER: Five minutes left, Counsel.

6 MR. COLLINS: Sure. We can switch over.

7 VIDEOGRAPHER: This marks the end of Videotape  
8 No. 2 in the deposition of Jeffrey Dubin. Time on  
9 the video monitor is 1:43.

10 (Recess taken.)

11 VIDEOGRAPHER: This marks the beginning of  
12 Videotape No. 3 in the deposition of Jeffrey Alan  
13 Dubin. Time on the video monitor is 1:50.

14 BY MR. COLLINS:

15 Q. You state on Page 53, last full paragraph:

16 "I have already given the basis for  
17 my opinion that the joint venture  
18 between Bvlgari and Ritz-Carlton is not  
19 an attempt to co-brand these products or  
20 to create a child brand from the parent  
21 brands."

22 What do you mean by child brand and parent  
23 brands?

24 A. Well, a child brand would be a brand that  
25 derives from the two parents. It's another way of

1 phrasing the concept of co-brand.

2 Q. Is it one form of co-branding or --

3 A. I have -- I am aware of some form -- there  
4 is some definitions of co-branding in the literature  
5 that don't involve as much of the use of one partner  
6 as the other.

7 Q. In the literature you just referred to in  
8 co-branding, did you have an occasion to review any  
9 of that literature before this litigation?

10 A. Yes.

11 Q. In connection with what matter?

12 A. Just my professional experience. My  
13 academic experience.

14 Q. Prior to this litigation, have you ever  
15 offered any opinions about whether something was a  
16 co-branding exercise or not?

17 A. No.

18 Q. Had you ever looked at that in your  
19 professional capacity before as to whether something  
20 was a co-branding exercise or not?

21 A. In my professional capacity.

22 Q. If you hadn't been asked to opine on it,  
23 have you done any work in that area?

24 A. Not -- when you say -- if it's  
25 professional work, you are talking about work

1 through Pacific Economics Group or another  
2 consulting firm, anything involving money, I would  
3 say no. But as an academic it's something I have  
4 considered.

5 Q. In what context have you considered it  
6 prior to this litigation?

7 A. I have -- I have done research in  
8 marketing, marketing science. I have trained  
9 marketing students. I have read marketing  
10 textbooks. I have read scores and scores of  
11 articles in marketing science. And those articles  
12 in -- in particular about brands and trademarks, and  
13 when you read articles about brands and trademarks,  
14 you will come across brand extension, co-brand and  
15 the like. These are articles that I have come  
16 across in my academic work.

17 Q. But did you have any occasion as you read  
18 those articles on branding and marketing to stop and  
19 spend any time analyzing issues of co-branding brand  
20 extension?

21 A. No. Not that I recall.

22 Q. Just to make sure I am on the same page,  
23 as far as your statement that it's -- the joint  
24 venture between Bvlgari and Ritz-Carlton is not an  
25 attempt to co-brand, you haven't talked to anyone

1 from Ritz-Carlton or Marriott about that issue.

2 Correct?

3 A. Not that I can think of, no.

4 Q. Going to Page 2 --

5 A. Page 2?

6 Q. Yes.

7 A. Back the other way.

8 Q. First full paragraph you say:

9 "In this report, I consider the  
10 potential economic effects that the  
11 Ritz-Carlton Bali might experience with  
12 Bali Bvlgari's entry into the market."

13 Correct?

14 A. Correct.

15 Q. Is it your opinion that there will be no  
16 competitive effect on the Ritz-Carlton Bali by the  
17 Bali Bvlgari entering the market?

18 A. It's my opinion that the effect will be  
19 small or I can't determine a statistically  
20 significant one based on the comparable analysis I  
21 did in Milan. So my ultimate opinion here is that  
22 based on the comparable I have studied, I don't  
23 expect a statistically significant effect, and based  
24 on the analysis I have done of management's  
25 forecast, I don't believe management thinks that

1 there is going to be a large impact and my overall  
2 opinion is that the impact might be close to zero.

3 Q. When you say "statistically significant,"  
4 what do you mean by that term?

5 A. Statistically significant is a term that I  
6 am using to -- to ascribe whether or not the effect  
7 I measured in the regression analysis in Milan was  
8 an effect which a statistician would call different  
9 from zero as opposed to could be zero just by chance  
10 alone.

11 So in other words, I may have observed a  
12 decline in the Four Seasons for a short period of  
13 time which I conclude was statistically significant,  
14 meaning that I don't think it's due to chance that  
15 that happened, but after a short period of time like  
16 six months, the further effect that I witnessed in  
17 the statistical analysis could not be distinguished  
18 from no effect at all. In other words, what I am  
19 seeing could have been by chance just as easily zero  
20 as it was not.

21 Q. Are there differences between the Milan  
22 market and the Bali market that you considered when  
23 you took your results from the Milan market and  
24 applied it to the Bali market?

25 A. Yes.

1 Q. What differences are there?

2 A. Well, there are -- there are obvious  
3 differences. One, there is a -- more of a -- as I  
4 talk about in the report, a fixed size market where  
5 mostly people are visiting for business, although  
6 that's not completely the case. But the Bali market  
7 is more of a -- obviously more of a resort  
8 destination market for vacation purposes, so that's  
9 an important difference between the two.

10 Q. How did you account for that in your  
11 analysis?

12 A. I noted it and I said that given that the  
13 market in Milan is of a fixed size where I wouldn't  
14 have expected market expansion to be a possibility,  
15 applying my results to Bali, I would anticipate that  
16 my Milan experience would be an upper bound to what  
17 I would experience -- what I think might happen in  
18 the Bali market.

19 Q. When you say it was upper bound to what  
20 may happen in Bali, what do you mean by that?

21 A. I mean that if I were to apply the results  
22 of Milan to Bali, I'm not accounting for the fact or  
23 the possibility that the -- the -- that the Bali  
24 market might expand as a result of the entry of the  
25 Bvlgari and that new customers might decide to visit

1 the Bvlgari Hotel in Bali just because it's a new  
2 hotel on that property -- on that island. I think  
3 such -- such generation of new demand in Milan is  
4 much less likely.

5 Q. Why is that?

6 A. Because the Milan market is a market that  
7 seems to be mostly driven by fashion shows and  
8 business trade and car and auto with much less  
9 tourism. So the decision to go to Milan -- to go  
10 out of your way to go to Milan just because the  
11 hotel is there seems less likely than the decision  
12 to make your vacation plans in Bali because a  
13 Bvlgari is present that might actually sway some  
14 people.

15 Q. Did you -- did you attempt to quantify  
16 what that difference may be?

17 A. I couldn't quantify it, no.

18 Q. So it is something -- when you say you  
19 noted it, what do you mean you noted it?

20 A. I wrote a footnote about it. That's what  
21 it meant by "noted."

22 Q. But you otherwise didn't try to calculate  
23 a number difference between the two.

24 A. No. I wasn't able to.

25 Q. Did you try or --

1           A. I couldn't really conceive of a way to  
2 adjust the Milan data. I just took the comparable  
3 for what it was, a counterfactual to the theory of  
4 Mr. Owsley that -- that a competing hotel will lose  
5 occupancy in direct proportion to its loss of market  
6 share.

7           Q. I think you reference the bombings in Bali  
8 in October 2005 in your report somewhere. Correct?

9           A. Yes.

10          Q. Have you gone forward and tried to analyze  
11 what effect that bombing has had on the market?

12          A. I have tried.

13          Q. What did you do to try that?

14          A. Well, I have noted in my mind, at least,  
15 that Mr. Owsley's damage estimates may need to be  
16 readjusted downward if the -- if the occupancy rate  
17 at the Ritz-Carlton in the base case is lower. And  
18 so as a result of the bombings, it may not be the  
19 case that 76 percent base case or 65 percent base  
20 case occupancy is realistic, and I have inquired of  
21 Mr. Smurzynsky whether there is additional data from  
22 Bali from the Ritz-Carlton and I haven't seen any  
23 new data about the Ritz-Carlton. That's one thing I  
24 have done.

25                 But I think it should be done and the

1 longer we wait the more my hope is that it will be  
2 done and that we will have some additional data  
3 points about the Bali market.

4           The second thing I did is I looked at the  
5 Internet and tourism statistics for the Island of  
6 Bali to try to tell whether the bombings had had an  
7 effect and unfortunately, the standard Bali tourism  
8 sources seem to be reporting tourism statistics  
9 through mid-2005 and haven't updated their  
10 spreadsheets that I have access to. So I am still  
11 waiting for some additional data there.

12           But in the process of looking for that, I  
13 have noted that there is some attempts to put a  
14 positive spin on what's happening in Bali, including  
15 one article I read about the installation of  
16 security cameras. Another article I read about a  
17 \$7-1/2 million payment by the U.S. Government to  
18 Indonesia or to Bali to help in an advertising  
19 campaign about I guess why Bali is safe after all.  
20 There have been some things. I have read about some  
21 changes at the airport and that sort of thing, so  
22 that's about all I have come across about the post  
23 bombing effect so far.

24           Q. When analyzing the Bali hotel market, did  
25 you take into fact consideration, such -- are there

1 any unique considerations to Bali such as religion,  
2 anything like that, that went into your analysis?

3 A. That's kind of vague, Counsel.

4 Q. I apologize. When you are looking at the  
5 Bali market what -- is it unique from -- I think you  
6 say that it's comparable to other Asian resort  
7 areas? Is that correct?

8 A. I think it's comparable in the sense that  
9 a consumer in Asia or -- in East Asia would consider  
10 Bali as well as other properties in the top 100 Asia  
11 hotels simultaneously, including Phuket. I talk  
12 about that in my report as well.

13 Q. Okay. Is there anything that makes Bali  
14 unique from those other areas?

15 A. Well, Bali does, I think, have some unique  
16 aspects. You mentioned religion. The cultural  
17 aspect of the Hindu religion in Bali makes it  
18 somewhat unique and some people visit for that  
19 reason. I mean, it's certainly unique in the sense  
20 that it's a -- what is it -- a Hindu religion in a  
21 Muslim country, that's sort of unique in that  
22 respect and sort of a positive in a negative way, I  
23 suppose, because it's a -- it's subject to the  
24 terrorism that's going on for the last 20 or 30  
25 years in cycles.

1 Q. Did those differences weigh into your  
2 analysis of how comparable Bali is to other Asian  
3 markets?

4 A. No. Not really. I mean, it's -- these  
5 are just differences. There is both good and bad.

6 Q. So there is no quantitative difference  
7 that you saw?

8 A. The quantitative difference I saw in this  
9 respect, if we are on the same page here, was that  
10 after the 2002 bombings, if I have the date right,  
11 the Bali market took a extreme hit in tourism, which  
12 is well known. Occupancy rates went down  
13 tremendously. Some of the people there that I  
14 talked to were out of work for an entire year. It  
15 was a bad, bad situation. But people didn't stop  
16 going on vacations who lived in the -- in East Asia.  
17 The Japanese, for example, continued apace to go on  
18 vacations and Phuket in particular picked up quite a  
19 bit of tourism. There was a reasonable substitute  
20 available to consumers. A good substitute.

21 Q. Back on Page 2, second full paragraph:

22 "As my analysis demonstrates, it is  
23 likely that the entry of the Bali  
24 Bvlgari will actually expand the market,  
25 bringing in new tourists and customers

1 to the market."

2 Did you attempt to quantify what you meant  
3 by "likely"?

4 A. No.

5 Q. What is your definition of "likely"?

6 A. I think just based on my professional --  
7 in my professional experience and opinion, that it's  
8 more -- it's more probable than not that the Bali  
9 Bvlgari will expand the market, by which I mean it  
10 will bring new customers as it did to some degree in  
11 Milan. And additionally, I think that the press  
12 that will come out when the hotel opens will  
13 stimulate business for the property itself and for  
14 the -- for the island. I mean, this is a positive  
15 thing in an otherwise negative situation.

16 Q. When you say in a "negative situation,"  
17 are you referring to the bombings?

18 A. Yes.

19 Q. Anything else?

20 A. Well, even absent the bombings. Let's  
21 pretend the bombings hadn't occurred. It still is a  
22 positive thing. It's a big brand laying down some  
23 big bucks to enter into the island. And I think  
24 that it's something new and everybody benefits from  
25 hearing about it. By "everyone" I mean the press

1 should be significant enough that people, absent  
2 these bombings, would have, I think, continued the  
3 trend to return to Bali. Even Americans would start  
4 thinking about it again. Or Europeans. Italians.

5 Q. When you use the phrase "more likely than  
6 not," that in my mind means 51/49, for example.

7 A. Yeah. I don't -- I don't quantify this.  
8 I just think it is -- I think it's a significant  
9 possibility. It could be 51/49. I don't --

10 Q. And is it a significant possibility that  
11 it won't actually expand the market?

12 A. It's possible.

13 Q. Is there other information you would want  
14 to look at to further refine the actual numeric  
15 possibility?

16 A. Well, I did that to a degree when I looked  
17 at the Milan market, and there I was interested in  
18 particular, whether we call it market expansion or  
19 pricing effects or the degree of substitution or  
20 whatever we call it, I was looking at how did -- how  
21 did the Four Seasons fair when the Bvlgari entered  
22 into that market. And it did show a loss in  
23 occupancy and I note that. But I also noted that  
24 the effects appeared to me to be transient. They  
25 don't last 20 years. They -- they are absorbed

1 eventually by the marketplace.

2 Q. Then you go on to state:

3 "Further, the higher prices charged  
4 by the Bvlgari Bali might allow other  
5 resorts to increase their own prices."

6 When you -- again "might," did you attempt  
7 to quantify how likely that possibility is?

8 A. No.

9 Q. And what is your definition of "might"?

10 A. Well, I had in mind that in part a  
11 conversation on this -- in this regard I had with  
12 Wilson, Mr. David Wilson, and the price point,  
13 proposed price point of the Bali Bvlgari was  
14 discussed at \$600 a night for an average daily rate.  
15 I think I specifically asked Wilson, "Do you think  
16 that there is some room now that there is another  
17 hotel out there at a higher price point for you to  
18 increase your own prices?" And I think he said yes  
19 and I asked him how much. This is the best I can  
20 recall it, and I think the answer was possibly \$50 a  
21 night. But I got the impression that there might be  
22 some room according to him, the general manager, for  
23 rates to go up.

24 Q. Is that something -- did he tell you  
25 that's something he actually had considered or spent

1 any time thinking about or is that --

2 A. It sounds -- he didn't say. I mean, he --  
3 it was my impression, though, that this was  
4 something that was not completely off the cuff.

5 Q. Otherwise he didn't give you one  
6 indication of what he is basing it on. Correct?

7 A. No.

8 Q. Okay. So when you say it might, isn't it  
9 also possible that the other properties will not be  
10 able to charge a higher price? Correct?

11 A. It's possible.

12 Q. Do you know the Bali Bvlgari as far as its  
13 business plan, whether it intends to discount rooms  
14 for the rack rate or to stick with the rack rate?

15 A. I think the -- I'm not sure I know for  
16 sure. I know that -- that the Aman properties are  
17 ones who don't tend to discount. The Bali -- I'm  
18 sorry, the Bvlgari in Milan has discounted some  
19 prices off rack as evidenced by the -- I know when I  
20 was looking for a room there, I got on the web and  
21 found prices lower than the rack prices. So I know  
22 that they do it to some degree. So if it's a sort  
23 of management decision, they might do it in Bali as  
24 well.

25 Q. When you went to the web to see what

1 prices they are charging, what did you go to?

2 A. Oh, I think I typed in, if that's the  
3 question, I typed in --

4 Q. Right.

5 A. -- something like Bvlgari Milan.

6 Q. Okay.

7 A. And I didn't go to their website. I went  
8 to places like Expedia or what's it called, Orbitz  
9 or -- or other companies that would tend to resell  
10 hotel rooms. So I was searching around on the  
11 Internet to see what was available. Sometimes a  
12 hotel will earmark a certain number of its rooms for  
13 sale that way and give up that space and so even if  
14 the hotel doesn't seem to have room, it's because  
15 I -- I think, I could have this wrong, but I think  
16 it's because they have committed some of that  
17 capacity to others. It might not be that way so I  
18 would have to check that.

19 Q. Sure. Okay. Going to Page 3, you say:

20 "As I explained, it is likely that  
21 other small, upscale resorts are better  
22 substitutes for the Bali Bvlgari."

23 You don't dispute that they --

24 Ritz-Carlton Bali and the Bvlgari Bali will compete.

25 Correct?

1           A. I think they will compete to a degree,  
2 yes.

3           Q. And to what degree is that do you believe?

4           A. To a limited degree.

5           Q. Why do you say that?

6           A. Because I think it's a different product.  
7 I think that the Bali Bvlgari is after a different  
8 clientele and at a different price point and they  
9 are going to be hitting a different type of market  
10 and I think that in my mind those customers that  
11 are -- that would naturally think Bvlgari would be  
12 thinking something like an Aman instead and not a  
13 Ritz-Carlton.

14           The Ritz-Carlton has the defect that --  
15 and it doesn't have very many defects, but it does  
16 have the defect that its villas are located in a  
17 very large complex with a lot of sort of normal  
18 rooms and families and all that sort of stuff that  
19 you see in Hawaii. And the exclusivity factor  
20 doesn't just -- doesn't jump out at you there.

21           Q. Any other differences that you think why  
22 it doesn't -- may not be as much of a competitor as  
23 some of the Aman properties and such?

24           A. As some of the other Bali properties?

25           Q. Right.

1           A. Well, just my -- my impression of actually  
2 looking at these things and visiting each of these  
3 hotels and thinking about from the perspective of a  
4 consumer, you know, is a 23-room villa property  
5 with -- with exclusivity, without a lot of  
6 advertising going on, very low key, private and all  
7 the rest of it. Is that really like a Ritz-Carlton  
8 large resort or is it like a small boutiquey Milan  
9 property that someone off the deep beaten track and  
10 exclusive? It struck me that the price point it's  
11 after, the nature of the clientele that it's after  
12 and the styling and so forth, make it more similar  
13 to the Aman properties than they are to the  
14 Ritz-Carlton.

15           Q. To make sure I am on the same page, you,  
16 though, didn't conduct any consumer studies or any  
17 empirical analysis of that. Correct?

18           A. Just my own study. I mean, my own visit  
19 to the island and looking at that.

20           Q. But you didn't talk to any potential  
21 customers of any of them. Correct? Of if you did,  
22 I'd like to know about it.

23           A. Yeah. Sure.

24           Q. Besides yourself.

25           A. No, I didn't.

1 Q. Have you seen any studies?

2 A. No.

3 Q. Did you attempt to conduct such studies  
4 and just didn't get around to it or didn't finish it  
5 or --

6 A. Did I attempt to conduct such studies. I  
7 attempted to find out if such studies existed. I  
8 had asked about that many times. But I did not  
9 attempt to conduct such a study myself. I did say  
10 in this report that I thought it would be the kind  
11 of study that the plaintiff's expert should be  
12 doing.

13 Q. Why should the plaintiff's expert be doing  
14 it versus defendants' expert?

15 A. Oh, I'm not a lawyer again, but I think  
16 that the plaintiff has the burden to sort of prove  
17 what's going on here. And I am just reacting to the  
18 fact that the plaintiff expert eschewed all  
19 empirical analysis and resorted to this is, you  
20 know -- what I would call more speculative kind of  
21 work than actual empirical work. It's either  
22 assumption based in the case of Mr. Owsley with an  
23 assumption that turns out to be false, or it's the  
24 lack of empirical work that strikes me about Dr. Dev  
25 from a person who makes his living as an academic

1 doing empirical work.

2 Q. Did you consider at some point in time  
3 doing your own empirical work on that issue?

4 A. I might have said something to  
5 Mr. Smurzynsky about -- about the idea that  
6 something like that could be done.

7 Q. Do you remember any conversations about  
8 that and where they ended up?

9 A. No. Not really. I don't think it went  
10 very far.

11 Q. Page 4.

12 "The presence of the Bali Bvlgari is  
13 not likely to reduce the demand for  
14 villas at the Ritz-Carlton Bali by more  
15 than a modest amount."

16 A. Page 4.

17 Q. Yes. First full paragraph. Starts off  
18 with "market expansion," the last full sentence.

19 A. I see it now. "The presence of the  
20 Bali" -- okay. I got you.

21 Q. What do you mean by "modest amount"?

22 A. I had in mind a number on the order of  
23 4.6 percent which was not statistically significant.  
24 So it could be zero. I had in mind the marketing  
25 plans that seemed to, when read, indicate that the

1 number was truly zero. I had in mind a table, an  
2 attachment to a 2005 marketing plan that mentions  
3 one tiny, tiny way the fact that the Bvlgari is on  
4 the horizon and then quantifies a competitive effect  
5 from it based on my reading of it that's about  
6 3 percent by comparing it to existing room capacity  
7 in the market.

8           So all these things together lead me to  
9 think that the effect will be modest. And by  
10 "modest" I mean small.

11           Q. But it could still have an effect.

12           A. It certainly could.

13           Q. Right.

14           A. Right.

15           Q. Then from Page 4 you summarize somewhere  
16 on Page 5 about your Milan analysis.

17           A. Yes.

18           Q. We talked a little bit earlier about this  
19 issue of Euros versus dollars.

20           A. Yes.

21           Q. Does that impact anything you say on  
22 Pages 4 or 5 or in the body of your report about  
23 Milan?

24           A. There's a couple places where you could --  
25 you could find such places that you would want to

1 change. We could do it for this paragraph, for  
2 instance.

3 Q. Sure.

4 A. "After the entry of the Milan Bvlgari,  
5 the Four Seasons market share dropped  
6 from 46.2 percent to 37.2 percent, a  
7 drop of 19 percent," no changes. "Under  
8 the plaintiff's zero sum game theory,  
9 where total demand is fixed and a new  
10 entry -- a new entry will take demand  
11 away from existing firms, occupancy  
12 rates and revenues should have dropped  
13 by an equal amount."

14 Okay. Well, at least occupancy rate  
15 should drop. And I guess revenue should drop by an  
16 equal amount as well. Under Mr. Owsley's assumption  
17 there would be no pricing effects and then I say,  
18 "They did not. The actual drop in occupancy rate  
19 was less than 6 percent," another number that's  
20 unchanged because it's a market share -- it's a  
21 percentage based on occupancy. No Euro effect.

22 "Also, the Four Seasons was able  
23 to increase its average daily rates from  
24 \$859 to \$890 following the entry of the  
25 Milan Bvlgari," that's true in dollars.

1 It's not true in Euros.

2 And in Euros, the numbers there as I  
3 recall represent about an 8 percent change -- I'm  
4 sorry. For average daily rates I think the change  
5 was down by about 3 percent and revpar might have  
6 fallen by something like 8 percent. So these are --  
7 these are just numbers I am remembering off the top  
8 of my head.

9 Q. Sure.

10 A. The combination of market expansion and  
11 the ability to increase average daily rates means  
12 that the actual competitive effect from the Milan  
13 Bvlgari's entry into the Milan market was limited.  
14 That statement would change as well because the  
15 average daily rate didn't increase in Euros. It  
16 actually decreases. But it decreases by, as I  
17 mentioned before, a small amount for approximately a  
18 six-month period and then it becomes  
19 nondistinguishable from any change in that rate.

20 Q. Next full paragraph towards the end you  
21 say:

22 "To the contrary, I would expect the  
23 competitive effects to be smaller for  
24 Bali than Milan."

25 Have we discussed the reasons why you

1 believe that or --

2 A. Yes. It was the topic we had about -- I  
3 told you about on the fact that -- if the market is  
4 going to expand it's more likely to expand in Bali  
5 than it was in Milan and the effects in Milan were  
6 already not consistent with a loss in market share  
7 equating to a proportionate loss in occupancy. So  
8 by definition for the Four Seasons, at least, there  
9 was an expansion effect by which I define that to be  
10 that the equal loss in market share and the equal  
11 change in occupancy are not equated. So we did  
12 discuss that.

13 Q. Okay. Going to Page 7, where you talk  
14 about Mr. Lane, last full paragraph, you say:

15 "Mr. Lane, however, ignores current  
16 work by economists and marketing  
17 scientists that has been -- that has  
18 expanded the theory."

19 What do you mean by that?

20 A. Well, it's probably better to -- to sort  
21 of go to the section that deals with Mr. Lane --

22 Q. Certainly.

23 A. -- if you choose to.

24 Q. Absolutely.

25 A. Okay.

1 Q. Page 51 again?

2 A. Okay. So I talk about Page 51. I talk  
3 about the so-called product adoption curves and Bass  
4 diffusion models and I say that the principal  
5 developments in this area have been empirical. And  
6 what I mean by that is that there have been  
7 countless studies that have attempted to actually  
8 fit a -- fit product life cycles to actual  
9 historical information, rather than simply say  
10 that -- that different consumers, that there will be  
11 a fixed percentage of consumers according to a bell  
12 shape curve that fall into the different segments of  
13 a product adoption cycle.

14 So in other words, the theory that  
15 Mr. Lane is looking at is a theory that says that  
16 the adoption of a product is normally distributed  
17 and there will be a small number of people that  
18 would be called early adopters and then another  
19 segment of people that would be -- and there is  
20 another name for those. And then the bulk of the  
21 people and then the laggards and so forth.

22 None of that, none of those rates are  
23 really accepted any longer because empirical work  
24 allows you to actually analyze markets and know what  
25 the true penetration rates are. And for hotel

1 products, they can be very different than normally  
2 distributed or anything else.

3 Q. And you -- I forget, did you reference any  
4 of those studies here or -- that you are talking  
5 about, the empirical research being done?

6 A. Well, I mentioned the Bass -- the Bass  
7 paper --

8 Q. Right.

9 A. -- but that's the tip of the iceberg.  
10 There are thousands of these kind of studies.

11 Q. Okay. Going back to Page 7, you say with  
12 respect to the first full paragraph:

13 "I do not find it credible that  
14 Bvlgari and Ritz-Carlton are engaging in  
15 a co-branding exercise."

16 A. Where are we again?

17 Q. Page 7, first full paragraph.

18 A. I see. Okay.

19 Q. Would it not make sense to have a  
20 co-branding exercise here?

21 MR. SMURZYNSKI: Objection. Go ahead.

22 THE WITNESS: Okay. Well, to the -- you know,  
23 if I understand the question --

24 BY MR. COLLINS:

25 Q. Let me rephrase. It's a bad question.

1           You say you don't find it credible that  
2 they are engaging in. So you are saying as a  
3 statement that -- that you believe as a factual  
4 matter that that's not what they are doing.

5           A. Correct.

6           Q. Disregarding whether they actually are  
7 trying to do it or not, would it be a bad idea?

8           A. That, I don't know.

9           Q. It's not something you looked at.

10          A. No.

11          Q. Putting it the other way around, you  
12 haven't analyzed whether it would actually be a  
13 smart thing for Bvlgari and Ritz-Carlton to engage  
14 in a co-branding exercise as the Bvlgari hotels.

15          A. I don't know either way.

16          Q. When you say it's not -- you do not find  
17 it credible that they are, you are saying based on  
18 what you have been told by people from Bvlgari and  
19 the documents you reviewed that you don't believe  
20 that's what they are doing.

21          A. And actually visiting the hotels and -- I  
22 mean, I think I included a document, a recent  
23 dissertation where a fellow goes through the  
24 definitions of co-branding and all the rest of it.  
25 And one of the things about co-branding, and this is

1 true of the textbook that Dr. Dev cites and so  
2 forth, is every example you will see is both the  
3 names are on the product. You know, Intel inside.  
4 Dell computer, Intel inside.

5 But I visited the Milan Bvlgari Hotel and  
6 you don't see any "Ritz-Carlton inside" marked on  
7 the outside door. There is no way, there is nothing  
8 that I can pick up that I see that allows me to  
9 think that this is a co-brand.

10 Q. Have you yourself stayed at Ritz-Carlton  
11 hotels?

12 A. Yes.

13 Q. Which ones?

14 A. Oh. Well, I used to stay frequently at  
15 the older one in Washington, D.C. that's now gone.  
16 I have stayed at the one that replaced it in  
17 Washington, D.C. I have stayed at the one in  
18 Laguna. I have stayed at one in San Francisco. I  
19 have stayed for sure at the one in Chicago zillions  
20 of times. I probably have stayed at others as well  
21 that I can't remember.

22 Q. Sure. But sitting here today, those are  
23 the ones you remember.

24 A. Yes.

25 Q. Page 8, first full paragraph, my

1 understanding is you are saying basically  
2 Mr. Bedsole is not an attorney. He shouldn't be  
3 reviewing the contract and you are not an attorney  
4 so you are not reviewing the contract.

5 A. Correct.

6 Q. At the bottom of Page 12 -- excuse me  
7 let's go towards the top -- towards the top of  
8 Page 12. You say:

9 "To accomplish this assessment, I  
10 collected and reviewed various documents  
11 with respect to the Bali and Milan  
12 markets and documents pertaining to the  
13 Ritz-Carlton and Bvlgari hotels in both  
14 Bali and Milan."

15 Have you provided all those documents to  
16 Mr. Smurzynski?

17 A. Yes.

18 Q. Is there any documents that you have not  
19 provided to Mr. Smurzynski that would be encompassed  
20 in this statement?

21 A. I may have some additional documents that  
22 I have collected that I haven't provided to  
23 Mr. Smurzynski, a short stack. Also, I don't really  
24 like the way the sentence reads since there isn't a  
25 Ritz-Carlton in Milan. But I think we all know what

1 I meant when by the sentence.

2 Q. Sure. In those short stack of documents,  
3 would those have been documents after October 6?

4 A. Yes. And after a more recent production  
5 that we gave in January prior to when the last  
6 deposition was scheduled.

7 Q. When you say "short stack," are we  
8 talking --

9 A. 3/8 of an inch maybe. Whatever that works  
10 out in pages, I don't know.

11 Q. Okay. Then you say:

12 "I have requested additional  
13 information and, if and when such  
14 information is made available, I may  
15 revise my opinions and calculations  
16 accordingly."

17 What additional information have you  
18 requested?

19 A. Well, I think I mentioned to you that in  
20 conjunction with writing this report I wanted to  
21 research the reservation call center of the  
22 Ritz-Carlton, Marriott system. And that didn't  
23 happen. That's still a pending request.

24 I have asked for additional data about the  
25 Ritz-Carlton Bali hotel if we can get it. I have

1 asked to -- I have asked whether there are any Stars  
2 reports, which is Smith Travel Research, for Milan,  
3 and I'm not sure that there are any in existence but  
4 I asked if there were. They may not track Milan.

5 I asked about, for example, a -- I had  
6 seen a screen shot, meaning a printout of a computer  
7 screen that contains some data about Bali, and it  
8 was one of the sources of information I used to  
9 assemble my database about Bali ADRs and revpars and  
10 so forth. And I asked if there was more -- I sort  
11 of asked what -- what's behind that screen shot. In  
12 other words, where -- what's the database and is  
13 there more data about Bali and where is it.

14 Q. Where did you get that screen shot from  
15 that you are talking about?

16 A. I believe it came from Mr. Smurzynski.  
17 It's a Ritz-Carlton document, I think.

18 Q. Then you have asked for whether there is  
19 backup to that screen shot.

20 A. I had asked a question about is there more  
21 there, yes.

22 Q. Okay. And they haven't gotten back to you  
23 on that.

24 A. I'm not sure they know.

25 Q. Anything else that you have requested to

1 see?

2 A. Not that I can think of right now.

3 Q. Sitting here today, is there any  
4 additional information that you -- now comes to mind  
5 that you would like to request that you believe --  
6 for your analysis?

7 A. No.

8 Q. Page 16, you refer to -- going to the  
9 first full paragraph towards the middle:

10 "Consumer marketing theory revealed  
11 the importance of price points for  
12 consumer decision making."

13 What theory are you referring to?

14 A. Consumer theory. I mean the -- for  
15 example, when I was working in the Kodak and  
16 Polaroid case, marketing -- there were marketing  
17 documents and analysis by the companies of camera  
18 price points. They explicitly looked at cameras in  
19 different ranges in different price points. And  
20 marketing people in particular think that consumers  
21 base their decision on price points. They think in  
22 terms of cameras that are -- that go from zero to  
23 \$50 and then 50 to a hundred dollars or cars at the  
24 high end, the BMWs and Mercedes, et cetera.  
25 Economists think about it more continuously in terms

1 of how prices affect behavior. But marketing people  
2 think in terms of price points.

3 So if you read marketing literature,  
4 Journal of Marketing Science, Marketing Science  
5 Review, all these different -- Marketing Science,  
6 the different journals, you will see articles that  
7 discuss reference pricing and price points and  
8 various theories about it.

9 Q. Page 23 at the bottom.

10 A. All right.

11 Q. The last full sentence:

12 "It is my view that entry of the  
13 Bali Bvlgari will bring forth new demand  
14 which will be created through  
15 conspicuous consumption, snob and  
16 bandwagon effects."

17 Is that new demand for the Bali Bvlgari or  
18 new demand for hotels generally in Bali?

19 A. I think what I am talking here about  
20 conspicuous consumption, snob and bandwagon effects,  
21 I am thinking more in terms of reasons that people  
22 might go to the Bvlgari.

23 Q. To the Bvlgari versus somewhere else  
24 outside Bali or to the Bvlgari versus other Bali  
25 hotels?

1           A. Well, I am thinking of new demand that  
2 would go to a Bvlgari in Bali. Because it's a  
3 Bvlgari. Because it's snobby to do so. I mean, no  
4 offense to anyone here. Conspicuous consumption is  
5 a related concept of you are doing it because people  
6 in your peer group do it. And so I think word will  
7 spread to some degree.

8           People come back and they are hobnobbing  
9 at the jewelry store. "Oh, I was just at the  
10 Bvlgari in Milan." "I was just in the Bvlgari in  
11 Bali." And that's their peer group. And that's who  
12 they are going to be telling about it. I don't  
13 think anybody comes back and brags about their time  
14 at the Ritz-Carlton. No offense to a Ritz-Carlton.

15           Q. Is that because it's possibly because  
16 people -- your friends know what kind of experience  
17 you are going to have unless you tell them you are  
18 going to have a bad experience?

19           A. Maybe. It may be part of that. But it  
20 also may be that the Bvlgari is somewhat unique.  
21 It's at that different price point. It's a way --  
22 it's almost like dropping a very expensive piece of  
23 jewelry around your wrist or your arm. It's a way  
24 of being flashy. It's going to exist at a price  
25 point where you want to sort of brag to your fellow

1 people at that price point that you can afford it  
2 and you were there.

3 I mean, I ran this experiment. I walked  
4 into a Bvlgari jewelry store and started talking  
5 about my visit to a -- to the Bvlgari in Milan and  
6 just to see what the sales girl would have to say  
7 and what the customers would say. And there was a  
8 lot of buzz. "You went there? Are you kidding?  
9 What was it like? Oh, man." It was very exciting.  
10 That was my survey.

11 Q. Very scientific.

12 Then on Page 24 you say:

13 "Demand for high-end properties in  
14 services they provide can easily be  
15 synergistic."

16 What do you mean by "synergistic" there in  
17 that context?

18 A. What I mean is that it can be sympathetic  
19 or that the sum of the parts can be greater than --  
20 the whole can be greater than the sum of the parts.  
21 In other words, that these things will feed off of  
22 each other. It's possible that a visitor to the  
23 Bvlgari will bring in other sympathetic demand with  
24 it. They will bring other people that will want to  
25 be there and that sort of thing. That's what I

1 meant by "synergistic."

2           What I am trying to say is it's not a zero  
3 sum game. It's not that -- the demand at that hotel  
4 will have to occur at the expense of someone else.  
5 It's quite possible that in that market the demand  
6 at that hotel will exist without a diminished demand  
7 from anybody else.

8           Q. Have you quantified that?

9           A. No.

10          Q. Okay.

11          A. Except to the extent that I have looked in  
12 Milan and that I have looked at the marketing  
13 documents that have been prepared by Ritz-Carlton  
14 and their assessment of the matter.

15          MR. COLLINS: Take a couple minutes? May be  
16 pretty much there.

17          VIDEOGRAPHER: Let's go off the record at  
18 2:40.

19                   (Recess taken.)

20          VIDEOGRAPHER: Let's go back on the record at  
21 2:47.

22 BY MR. COLLINS:

23          Q. Mr. Dubin, going to Page 65 of your  
24 report, the first bullet point.

25          A. Okay.

1 Q. "Plaintiff's experts' assertions  
2 with respect to whether the operating  
3 agreement has been breached is based  
4 entirely on speculation, is unsupported  
5 by any empirical evidence or analysis,  
6 and should be given no weight."

7 What empirical evidence or analysis would  
8 have been relevant to whether the contract was  
9 breached?

10 A. I don't think I mean a whole lot there  
11 beyond maybe something on brand confusion or the  
12 idea that you might look at -- might talk to  
13 consumers about what they think. But as a practical  
14 matter, I'm not -- as I look at that sentence and I  
15 looked at it before, I'm not really sure I like the  
16 sentence. I don't mean very much by it.

17 Q. Okay. In reviewing Mr. Owsley's damage  
18 calculations, he talks about damages to the food and  
19 spa services at the Ritz-Carlton Bali. Correct?

20 A. Yes.

21 Q. And is part of your analysis that you  
22 think that people at the Bvlgari may use the  
23 Ritz-Carlton spa and therefore mitigate some damage,  
24 if any, that would occur?

25 A. I said that, yes.

1 Q. How does that square with your position  
2 that the competitive effects are not that  
3 significant between the two hotels?

4 A. I don't think it's necessarily  
5 inconsistent. I'm not sure I understand what you  
6 are getting at.

7 Q. I think you say they are not close  
8 comparisons, the two hotels?

9 A. Okay.

10 Q. Is that correct or is --

11 A. I thought I said that there were other  
12 hotels that I thought would be closer substitutes.

13 Q. Okay. What's the basis for your opinion  
14 that people at the Bvlgari may use the services at  
15 the Ritz-Carlton?

16 A. I think that the Ritz-Carlton is a --  
17 because it's more of a resort operation, it has the  
18 ability to offer some amenities that even someone  
19 seeking exclusivity might like. For example, the  
20 spa facilities, and it's not going to be possible  
21 for the property with 58 villas at the Bvlgari to  
22 sort of -- they will have a spa, but I don't think  
23 it will be possible to duplicate that experience  
24 that the Ritz-Carlton provides.

25 Additionally, people like variety in terms

1 of where they eat and so forth, as great a  
2 restaurant as I am sure the Bvlgari will put on,  
3 maybe even an Italian restaurant which will be  
4 something new for that area, eventually customers at  
5 the Bvlgari will get bored and want something else  
6 to eat and they will go visit the Ritz-Carlton.

7 Q. Have you attempted to quantify that --  
8 that dollar impact at all?

9 A. All I did in my report was to sort of  
10 knock down Mr. Owsley's number in that respect.

11 Q. But you haven't attempted to come up with  
12 your own number?

13 A. No.

14 Q. I think I know the answer, but you didn't  
15 conduct any customer surveys or empirical study  
16 about whether people who use the Bvlgari -- who go  
17 to the Bvlgari Hotel will use the spa services or  
18 restaurants at the Ritz-Carlton, have you?

19 A. Well, I did talk to the GM at the  
20 Ritz-Carlton about how the customers there use the  
21 property, how many of them stay within the property  
22 and how many visitors he gets from outside. I think  
23 that, you know, only part of their business is  
24 isolated to their own -- their own guests. And they  
25 do get a significant piece of their business from

1 outsiders. I'm not sure they quantify that  
2 statistic.

3 Q. Do you know who's going to operate the spa  
4 at the Bvlgari?

5 A. No.

6 Q. Have you talked to anyone from Bvlgari  
7 about what they think the impact will be on the  
8 Ritz-Carlton of the Bali -- Bvlgari Bali being  
9 there?

10 A. I'm sorry, can you say that one --

11 Q. Sure. As far as have you talked to anyone  
12 from Bvlgari about the impact they think their hotel  
13 will have on their guests using services at the  
14 Ritz-Carlton Bali?

15 A. No.

16 MR. COLLINS: I think that's all I have.

17 MR. SMURZYNSKI: We will save our questions  
18 for trial. Read and sign. Thank you.

19 MR. COLLINS: Thank you.

20 VIDEOGRAPHER: This concludes the deposition  
21 of Jeffrey Alan Dubin, Volume No. I. The number of  
22 tapes used was three. The original videotapes will  
23 be retained by LegaLink - Los Angeles at 20750  
24 Ventura Boulevard, Suite 205, Woodland Hills,  
25 California. Going off the record. The time on the

1 video monitor is 2:53.

2 (At the hour of 2:53 P.M., the  
3 deposition was adjourned.)  
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DECLARATION

I, JEFFREY ALAN DUBIN, Ph.D., hereby declare under the penalties of perjury of the State of California that the foregoing is true and correct.

Executed this \_\_\_\_\_ day of \_\_\_\_\_, 2006, at \_\_\_\_\_, California.

\_\_\_\_\_  
JEFFREY ALAN DUBIN, Ph.D.



1 I, JARDENE L. PLATT, RPR, CSR No. 3724 in and  
2 for the State of California, do hereby certify:

3 That prior to being examined, the witness named  
4 in the foregoing deposition was by me duly sworn to  
5 testify as to the truth, the whole truth, and nothing  
6 but the truth;

7 That said deposition was taken before me at the  
8 time and place therein set forth and was taken down by  
9 me stenographically and thereafter transcribed via  
10 computer-aided transcription under my direction;

11 Before completion of the deposition, review of  
12 the transcript [XX] was [ ] was not requested. If  
13 requested, any changes made by the deponent (and  
14 provided to the reporter) during the period allowed  
15 are appended hereto;

16 I further certify that I am neither counsel for,  
17 nor related to, any party to said action, nor  
18 interested in the outcome thereof.

19 IN WITNESS WHEREOF, I have hereunto subscribed  
20 my name this 6th day of March, 2006.

21  
22 

23 \_\_\_\_\_  
24 JARDENE L. PLATT, RPR, CSR No. 3724

25

