

~~**HIGHLY CONFIDENTIAL**~~  
~~**FILED UNDER SEAL**~~

PUBLIC VERSION  
NOT FILED UNDER SEAL

# Exhibit A

**In the Matter Of:**

*USA vs*

*Bertelsmann SE*

---

*JENNIFER WALSH*

*June 29, 2022*

---



1 you relied on in forming your opinions set  
2 forth in Walsh Exhibit 1 in Appendix A?

3 A. Yes.

4 Q. And you identified your report as  
5 a rebuttal to the expert report of U.S.  
6 economist Nicholas Hill; is that right?

7 A. Correct.

8 Q. Let's turn to the materials that  
9 you relied upon. Please turn to Appendix A  
10 of your report.

11 A. Okay. Yes.

12 Q. In Appendix A, you identified  
13 three documents: The complaint filed by  
14 the United States, the corrected expert  
15 report of Nicholas Hill and the responses  
16 of Spiegel & Grau LLC to PRH subpoena; is  
17 that right?

18 A. Correct.

19 Q. Why did you choose to review  
20 those three documents?

21 A. I chose to review the documents  
22 that I felt supported my -- my position,  
23 and that could potentially give me examples  
24 for the points that I was making.

25 Q. Have you reviewed any documents

1 in this case other than the complaint,  
2 Mr. Hill's -- Dr. Hill's expert report and  
3 the Spiegel & Grau subpoena response?

4 A. Yes. I reviewed some of the --

5 Q. Go ahead. What other documents  
6 have you reviewed?

7 A. I apologize.

8 I reviewed some of the  
9 testimonies.

10 Q. Okay. And by testimony, you mean  
11 deposition testimony?

12 A. Correct.

13 Q. Do you know whose deposition  
14 testimony you reviewed?

15 A. I can't remember all of them, but  
16 Chris Parris-Lamb, Joy Harris, Andrew  
17 Wylie. I would need to see a list if you  
18 wanted me to tell you comprehensively. I  
19 think I read four or five of them.

20 Q. Okay. Did you review solely  
21 agent depositions?

22 A. Yes.

23 Q. And do you know if you reviewed  
24 all of the agent depositions that were  
25 taken in the case?

1 A. I did not. Ayesha Pande.

2 Q. How did you decide which agent  
3 depositions to read?

4 A. I planned to read them all, but  
5 they took so much longer than I expected,  
6 that I just didn't get around to it.

7 Q. And at what point did you read  
8 those deposition transcripts?

9 A. It was like two months ago.

10 Q. So it was prior to writing your  
11 report?

12 A. Oh, yeah.

13 Q. Other than agent deposition  
14 transcripts, are there other materials you  
15 reviewed in forming your opinions?

16 A. No. And actually, just to be  
17 clear, I think I was beginning to formulate  
18 my reports, you know, simultaneously as I  
19 was reading the testimonies. It wasn't  
20 that -- then that. It was -- they were.  
21 It was concurrent.

22 Q. Do you know how many depositions  
23 were taken in the case as a whole?

24 A. I don't.

25 Q. Okay. But beyond agent

1 depositions, you didn't look to read any  
2 others; is that fair?

3 A. That's correct.

4 Q. And did you ask for access to any  
5 other documents produced during discovery  
6 in this case?

7 A. I did not.

8 Q. Why not?

9 A. I felt like I had the experience  
10 I needed in order to create an opinion that  
11 I felt was supported. I didn't need any  
12 additional information.

13 Q. You have not worked at a  
14 publisher in your career; is that right?

15 A. I have not.

16 Q. Okay. And do you know whether  
17 there are documents about the inner  
18 workings of publishers that were produced  
19 in this case?

20 A. I'm not aware of that.

21 Q. Are you aware that Defendants  
22 have hired an economist by the name of  
23 Edward Snyder or Ted Snyder?

24 A. I'm aware of that.

25 Q. Have you reviewed any of his

1 Q. Did you reach out to any clients  
2 or former clients to prepare the report?

3 A. I did not.

4 Q. Did you rely on any client files  
5 to write the report?

6 A. I did not.

7 Q. Did you have any conversations  
8 with other market participants to write the  
9 report?

10 A. I -- I spoke with my attorney,  
11 whose name is Eric Zohn, Z-o-h-n. He  
12 worked for me at WME for many years, and  
13 then he left before I left and went on --  
14 went on to be in private practice. And I  
15 spoke with him two times.

16 Q. Okay. And did you speak with him  
17 in his capacity as an attorney for you?

18 A. I mean, he is my attorney. He  
19 helped me with my letter of agreement, but  
20 I spoke to him more in his capacity as  
21 somebody who keeps a lot of my memories,  
22 having worked together for, you know, 25  
23 years.

24 I just wanted to check, for  
25 example, whether I was deposed in -- I just

1 Q. Let's go ahead it your  
2 qualifications, which are on page 4 of your  
3 report.

4 A. Sure. Okay.

5 Q. So in Section 2, qualifications  
6 and professional experience, you describe  
7 different positions you've held; is that  
8 right?

9 A. I do.

10 Q. And did you include in this  
11 section all of the positions you've held  
12 since graduating from college?

13 A. Yes.

14 Q. You graduated from Kenyon College  
15 in 1989; is that right?

16 A. I did.

17 Q. What degree did you obtain?

18 A. A bachelor of art.

19 Q. And what was your major?

20 A. Literature.

21 Q. Do you have any other degrees  
22 other than that bachelor's degree?

23 A. Well, they gave me an honorary  
24 doctorate, if that counts.

25 Q. So that honorary doctorate is

1 WME was salaried; is that right?

2 A. Correct.

3 Q. Do you know whether that's how  
4 most agents in the industry get  
5 compensated?

6 A. I couldn't speak comprehensively,  
7 but anecdotally, it's my understanding.

8 Q. So it's your understanding that a  
9 salary is standard for agents?

10 A. Just my understanding.

11 Q. Okay. And do you know whether  
12 most agents get bonuses?

13 A. I don't.

14 Q. Have you done any research on  
15 agent compensation in the industry?

16 A. I haven't done any formal  
17 research.

18 Q. Have you done any informal  
19 research?

20 A. Running an agency for that long  
21 and hiring people from different -- from  
22 different agencies to come work with us was  
23 sort of a research project in and of  
24 itself, because you get a sense of how  
25 people are being paid. So I feel like I

1           A.     My partner Suzanne Gluck at WME,  
2     my partner Eric Simonoff at WME and my  
3     former partner Jay Mandel at WME.

4           Q.     And what makes those folks  
5     experts in the publishing industry?

6           A.     Time, vision, wisdom and success.

7           Q.     It's fair to say that there are  
8     agents at other agencies who have all four  
9     of those characteristics, right, time in  
10    the field, vision, wisdom and success?

11          A.     I would imagine so.

12          Q.     Do you think the CEO of a  
13    publishing company qualifies as an expert  
14    in the publishing industry?

15                MS. RUDZIN: Object to the form  
16    of the question.

17                THE WITNESS: It would depend  
18    what publishing company.

19    BY MS. CROSS:

20          Q.     Do you think the CEO of one of  
21    the Big Five publishers qualifies as an  
22    expert in the publishing industry?

23          A.     Yes, I would.

24          Q.     Do you have any experience  
25    evaluating the cost publishers incur?

1 they do a projection of what they would  
2 hope to sell.

3 Q. And so that's a projection of  
4 sales of that title; is that right?

5 A. A projection of what they hope to  
6 sell for that title.

7 Q. Are you drawing a distinction  
8 between a projection and hopeful sales?

9 A. Yeah. I am.

10 Q. Okay. What is that distinction?

11 A. Well, I think that the sales  
12 number that they put in there is  
13 aspirational, because they're comparing  
14 this book, which is unique in all the  
15 world, to two other books that are also  
16 unique in all the world, or three other  
17 books, or whatever it is, and trying to  
18 draw a prediction on how this totally  
19 unique book is going to sell in comparison  
20 to these two totally other unique books.  
21 And so that's why I'm adding the hopeful  
22 thing.

23 Q. Do you consider yourself an  
24 expert in antitrust economics?

25 A. Definitely not.

1 Q. Did you take any courses in  
2 economics?

3 A. I didn't.

4 Q. And you've never conducted an  
5 economic analysis in the context of a  
6 merger before; is that fair?

7 A. Correct.

8 Q. Have you reviewed the Horizontal  
9 Merger Guidelines?

10 A. No.

11 Q. Have you ever done a market share  
12 analysis?

13 A. No.

14 Q. Do you have any experience in  
15 defining product markets for antitrust  
16 purposes?

17 A. I don't.

18 Q. Do you have any experience in  
19 analyzing competitive effects?

20 A. Sorry. No.

21 Q. Do you have any experience in  
22 analyzing unilateral effects?

23 A. No.

24 Q. And do you have any experience in  
25 analyzing coordinated effects?

1 A. No.

2 Q. Do you have any experience  
3 analyzing entry into an industry?

4 A. No.

5 Q. Do you know what entry barriers  
6 are in antitrust economics?

7 A. I don't.

8 Q. And you didn't review any  
9 documents from Penguin Random House or  
10 Simon & Schuster discussing entry barriers;  
11 is that fair?

12 A. Correct.

13 Q. In paragraph 112 --

14 A. 112.

15 Q. -- in the final sentence you  
16 wrote, "As the recent entrants to the  
17 industry demonstrate, the barriers to entry  
18 for new publishers are low, and innovative  
19 publishers are emerging to disrupt the  
20 norms."

21 What is the basis for that  
22 statement?

23 A. In the last probably 18 months  
24 alone, we've seen several new entrants  
25 into -- into the publishing industry, and I

1 Q. So specifically with regard to  
2 Section 6, the impact of the merger, what  
3 did -- what did you do to reach opinions  
4 about the impact of the merger?

5 A. I just based it on my 30-plus  
6 years of experience.

7 Q. Okay. Was there any methodology  
8 behind your analysis of the impact of the  
9 merger?

10 A. The methodology is based on my  
11 firsthand lived experience.

12 Q. Okay. And you've never analyzed  
13 the price effect of the merger; is that  
14 right?

15 A. Correct.

16 Q. And you didn't do any  
17 quantitative analysis to inform your  
18 opinion about the impact of the merger on  
19 prices in the industry; is that fair?

20 A. Correct.

21 Q. So you're relying solely on your  
22 experience?

23 A. On my vast and deep experience.

24 Q. In paragraph 7, you wrote, "In my  
25 experience" --

1 of the question.

2 THE WITNESS: I have no idea  
3 about most agents.

4 BY MS. CROSS:

5 Q. Are you familiar with the  
6 methodology an antitrust economist uses to  
7 analyze mergers of differentiated products?

8 A. I'm not.

9 Q. Okay. Have you heard of the  
10 hypothetical monopolist test?

11 A. I have not.

12 Q. Same question for the  
13 hypothetical monopsonist test?

14 A. I just learned that word  
15 yesterday.

16 No, I have not.

17 MS. CROSS: I'd say let's go  
18 ahead and take a break.

19 MS. RUDZIN: Okay.

20 THE WITNESS: Okay.

21 THE VIDEOGRAPHER: The time right  
22 now is 10:35 a.m. We are off the  
23 record.

24 (Whereupon, a recess was taken at  
25 10:35 a.m.)

1           A.    Okay.  Then I would tell the  
2   person what I -- what I felt was fair.

3           Q.    So at that point, you gave a  
4   number?

5           A.    Yeah.  I mean, the way I look at  
6   it is, like, when they say something first,  
7   they're creating the floor.  I'm going to  
8   create the ceiling.

9                   I don't want to -- I want to make  
10   that distance as travelable as possible.  
11   So if I was the first person to speak, then  
12   I've already lowered that distance.

13                  So once I hear their offer, then  
14   I can share my thoughts, and then we -- we  
15   can figure out how to get to a place where  
16   everybody is happy.

17           Q.    Do you know whether other agents  
18   approached -- approach, current, exclusive  
19   submissions in the same way?

20           A.    I can't speak to other agents,  
21   but from the agents that I worked with, we  
22   all -- we all tended to approach them in a  
23   very similar fashion.

24           Q.    You wrote in your report that --  
25   I need to find the paragraph -- that