

EXHIBIT A

Part 1

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

BEFORE THE HONORABLE PHYLLIS J. HAMILTON, JUDGE

ORACLE CORPORATION, ET AL.)

PLAINTIFFS,)

VS.)

SAP AG, ET AL.,)

DEFENDANTS.)

NO. C 07-01658 PJH

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OAKLAND, CALIFORNIA
MONDAY, NOVEMBER 1, 2010

TRANSCRIPT OF PROCEEDINGS

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(APPEARANCES CONTINUED NEXT PAGE)

REPORTED BY: RAYNEE H. MERCADO, CSR NO. 8258

1 THIS ISSUE?
 2 MR. PICKETT: NO, NO, NO, NO. ON ALL KINDS OF
 3 ISSUES, BUT THERE ARE BOARD MEMBERS WHO WILL TESTIFY ON THIS
 4 TOPIC, AMONG OTHERS. THEY WILL ALSO TESTIFY JUST DIRECTLY TO
 5 WHAT THEY THOUGHT FINANCIALLY THIS WOULD BE WORTH WHEN THEY
 6 TOOK THAT RISK. THEY WILL TESTIFY ABOUT THEIR EXPECTATIONS FOR
 7 THE GOALS OF THE PROJECT, THAT KIND OF THING.
 8 AND THERE ARE ALSO A COUPLE OF SAP, I WOULD SAY MID
 9 TO HIGH MANAGEMENT PEOPLE WHO WORKED WITH THESE BOARD MEMBERS
 10 WHO PASSED ON INFORMATION.
 11 THE COURT: OKAY. WHAT IS YOUR OBJECTION?
 12 MR. LANIER: THREE POINTS, YOUR HONOR, BRIEFLY.
 13 THE FIRST IS THAT YOUR HONOR HAS ACTUALLY ALREADY
 14 RULED ON THIS ISSUE BUT BACK IN DENYING OUR MOTION FOR SUMMARY
 15 JUDGMENT ON THE FAIR MARKET LICENSE. OUR ARGUMENT THEN WAS
 16 THAT THE QUESTION IS -- AND WE STILL MAINTAIN THAT POSITION,
 17 BUT WE UNDERSTAND YOUR HONOR'S RULING -- THAT THE QUESTION
 18 ACTUALLY IS ONE OF CAUSATION, THAT YOU HAVE TO DETERMINE
 19 WHETHER THE PARTIES WOULD HAVE ENTERED INTO A LICENSE FIRST
 20 UNDER THE COPYRIGHT LAW, THEN YOU GET TO WILLING BUYER WILLING
 21 SELLER. YOUR HONOR DISAGREED WITH US AND RULED THE QUESTION
 22 WAS YOU GET THE WILLING BUYER WILLING SELLER. BUT YOU DON'T --
 23 ALL OF THE EVIDENCE THEY ARE ARGUING TO YOU GETS TO THE
 24 QUESTION OF WOULD YOU HAVE EVEN BEEN WILLING TO DO A LICENSE OR
 25 NOT, WHAT YOUR MOTIVE WOULD HAVE BEEN. NONE OF IT TELLS YOU
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1 ONE CONCRETE FACT ABOUT THE VALUE OF IT. YOU DON'T HEAR A
 2 MENTION OF A NUMBER, YOU DON'T HEAR MENTION OF A VALUATION.
 3 THE SECOND POINT IS EXACTLY WHAT YOUR HONOR
 4 FORESHADOWED IN OUR CONFERENCE LAST WEEK, THAT PLAINTIFFS WOULD
 5 TAKE THIS TOO FAR. IT MAY BE THAT YOUR HONOR NEEDS TO SEE THE
 6 OPENING AND SEE WHAT THEY DO TO UNDERSTAND THIS, TO APPRECIATE
 7 IT. OF THESE 81 SLIDES, 79 OF THEM RELATE TO SAP STATE OF
 8 MIND, WHEN SAP STATE OF MIND IS NOT A DISPUTED ISSUE IN THIS
 9 CASE.
 10 SO IT MAY JUST BE THAT WE ARE ALERTING YOUR HONOR TO
 11 A VERY SIGNIFICANT ISSUE HERE BECAUSE THEY WILL BE TAKING THIS
 12 TOO FAR.
 13 THIRDLY, THEIR PRESENTATION OF IT FOR AN OPENING
 14 STATEMENT IS EXTRAORDINARILY ARGUMENTATIVE. THEY ARE GOING TO
 15 SAY THAT SAP'S CHOICE TO STEAL, WHEN WHAT WE HAVE STIPULATED TO
 16 IS COPYRIGHT INFRINGEMENT, AN ACTION THAT HAS NO INTENT ELEMENT
 17 AT ALL REQUIRED, OR IT CAN BE PROVEN WITHOUT PROVING INTENT AS
 18 YOUR HONOR DETERMINED ON SUMMARY JUDGMENT.
 19 SO WHAT SAP STIPULATED TO WAS THAT VICARIOUS
 20 LIABILITY OWNERSHIP CONTROL; NO STATE OF MIND. IT STIPULATED
 21 TO CONTRIBUTORY LIABILITY. UNDER YOUR HONOR'S RULING ON
 22 SUMMARY JUDGMENT, THEY SHOULD HAVE KNOWN, THEY DIDN'T STOP IT.
 23 THIS IS NOT A CASE OF INTENTIONAL CONDUCT AS FAR AS SAP GOES.
 24 THERE'S ACTUALLY NO DISPUTES IN THIS CASE FOR TRIAL ABOUT
 25 INTENT.
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1 THIS ENTIRE PRESENTATION CHARACTERIZING IT AS
 2 STEALING, THE CHOICE TO VIOLATE THE LAW, ALL OF THAT TALKS
 3 ABOUT AN ISSUE THAT IS NO LONGER IN DISPUTE. THAT'S
 4 FUNDAMENTALLY OUR ISSUE. IT DOES IT IN A HIGHLY ARGUABLE WAY.
 5 IT MIGHT BE APPROPRIATE FOR CLOSING IF THERE'S EVIDENCE, IT'S
 6 NOT APPROPRIATE FOR OPENING.
 7 MR. PICKETT: FIRST OF ALL, AS TO INTENT, LET'S GET
 8 THAT ONE TEED UP NOW. YOUR HONOR ISSUED AN ORDER ON THIS. YOU
 9 SAID AN ELEMENT WAS KNOWLEDGE OR HAD REASON TO KNOW. AND THAT
 10 IS THE SCIENTER ELEMENT THAT WE ARE RELYING ON. AND WE, I
 11 THINK, ARE FREE TO --
 12 THE COURT: IS KNOWLEDGE AND HAVING REASON TO KNOW
 13 TANTAMOUNT TO INTENT TO STEAL?
 14 MR. PICKETT: YES. IT'S KNOWING INFRINGEMENT.
 15 THE COURT: IS IT THE SAME AS INTENTIONAL THEFT?
 16 AND HAVE YOU INDEED USED THAT CHARACTERIZATION OF THEFT?
 17 MR. PICKETT: I THINK -- PROBABLY. IT IS CERTAINLY
 18 A WORD I USE WHEN I TALK ABOUT THE CASE BECAUSE IF YOU
 19 KNOWINGLY TAKE SOMEONE'S PROPERTY AND YOU HAVE THE SCIENTER
 20 ELEMENT IN THERE, IT STRIKES ME THAT IT IS NOT ONLY A UNLAWFUL
 21 TAKE, IT'S AN UNLAWFUL KNOWING TAKING WHICH EQUATES TO STEALING
 22 SOMEONE'S PROPERTY, THEFT OF SOMEONE'S PROPERTY.
 23 IT IS, IN A COLLOQUIALLY WAY, I THINK EXACTLY WHAT'S
 24 GOING ON. WHEN THEY SAY THERE IS NO INTENT ELEMENT, YOUR HONOR
 25 HAS ALREADY RULED ON THIS. THERE IS INTENT. THEY WANT TO SAY,
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1 NO, THEY CAME UP WITH A PHRASE -- THEY ATTACHED IT TO THEIR
 2 PURPORTED STIPULATION: REASONABLY SHOULD HAVE KNOWN. THAT'S
 3 NOT YOUR HONOR'S RULING. THAT'S NOT THE NINTH CIRCUIT MODEL
 4 INSTRUCTION.
 5 THE COURT: IT IS KNEW OR SHOULD HAVE KNOWN.
 6 MR. PICKETT: IT'S KNOW OR HAD REASON TO KNOW.
 7 THE COURT: HAD REASON TO KNOW.
 8 MR. LANIER: TO KNOW OF SOMEONE ELSE'S CONDUCT --
 9 THE COURT: LOOK, I AM GOING TO GIVE A LOT OF LEeway
 10 TO BOTH SIDES TO TRY THE CASE AS LONG AS YOU DON'T RUN AFOUL OF
 11 ANY OF MY PRETRIAL RULINGS.
 12 WE TALKED ABOUT THIS LAST WEEK. I THINK THAT ORACLE
 13 IS ENTITLED TO USE SOME OF THIS EVIDENCE IN ARGUMENT FOR
 14 CONTEXT. MOREOVER, I TOTALLY AGREE THAT THERE IS NO PREJUDICE
 15 TO SAP GIVEN THAT SAP HAS NOW STIPULATED TO LIABILITY.
 16 THE JURY HAS ALREADY BEEN TOLD THAT -- I THINK
 17 MR. MITTELSTAEDT USED THE WORD "WRONGFUL CONDUCT". THEY DID
 18 THIS WRONG. WHAT I AM CONCERNED ABOUT, THOUGH, IS THE JURY
 19 BEING CONFUSED ABOUT WHETHER OR NOT THERE WAS CRIMINAL CONDUCT.
 20 I THINK THAT THAT IS VERY IMPORTANT GIVEN WHAT I
 21 KEEP READING IN THE NEWSPAPERS THAT THAT IS CLEAR THROUGHOUT
 22 THE COURSE OF THIS TRIAL. AND I THINK THAT'S PROBABLY WHAT YOU
 23 WERE SPEAKING TO WITH REGARD TO MY USE OF THE WORD "VIOLATION".
 24 AND I THINK FROM SOME OF THE THINGS THAT WE READ AND HEARD FROM
 25 THE JURORS THAT THAT'S SOMETHING WE NEED TO BE CONCERNED ABOUT.
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1 MY ONLY CONCERN IN THIS IS THE USE OF THE WORD
2 "THEFT". THIS IS NOT A THEFT CASE. THIS IS AN INFRINGEMENT
3 CASE. THE WORDS ARE TERMS OF ART. AND I AGREE THAT THAT'S
4 MORE ARGUMENTATIVE THAN ACCURATE.
5 SO, I AM GOING TO -- I DON'T WANT YOU TO USE THE
6 WORD "THEFT" THROUGHOUT THE COURSE OF THE OPENING STATEMENT.
7 BUT OTHERWISE, I AGREE WITH THE THREE CATEGORIES. I THINK YOU
8 CAN PUT ON SOME EVIDENCE AS LONG AS IT GOES TO THE QUESTIONS
9 THAT YOU'VE RAISED WITH RESPECT TO HOW THE DAMAGES ARE TO BE
10 VALUATED AND PROVIDE SOME CONTEXT. AND I THINK THAT THAT'S --
11 SAP'S IN THAT POSITION AND THAT'S HOW IT IS GOING TO HAVE TO
12 BE.

13 MR. LANIER: WE UNDERSTAND, YOUR HONOR.

14 THE COURT: TAKE THE WORD "THEFT" OUT AND I'M FINE
15 WITH WHAT YOU'RE DOING.

16 MR. LANIER: THE SECOND OBJECTION WE HAD TO WHAT
17 THEY PRESENTED, AND AGAIN, IT MIGHT MATTER MORE IF THEY PRESENT
18 WITNESSES SUCH AS THEIR EXPERT PAUL PINTO, ET CETERA. AGAIN,
19 IT SEEMS CLEAR WE HAVEN'T HEARD IT YET, BUT IT SEEMS CLEAR THEY
20 INTEND TO PRESENT EVIDENCE ABOUT DEVELOPMENT COSTS AND COSTS
21 THAT WERE AVOIDED, AN ISSUE THAT WE THINK YOUR HONOR'S RULINGS
22 NOW REPEATEDLY HAVE PRETTY WELL FORECLOSED. WE DON'T THINK WE
23 NEED TO HEAR THE EXPERT ON SAY DEVELOPMENT COSTS OR OUR TWO
24 RESPONSIVE EXPERTS. THEY SHOULDN'T BE IN THIS CASE.

25 THE COURT: IT'S NOT PART OF THE CASE.

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1 CLOSELY TIED TO A POTENTIAL MONETARY REMEDY THAT YOUR HONOR HAS
2 EXCLUDED, BUT THE POTENTIAL FOR CONFUSION IS SO HIGH. THEY
3 HAVE OTHER WAYS, THEY CLAIM, TO PROVE WHAT TWO PARTIES WOULD
4 HAVE AGREED TO DO. YOU DON'T HAVE TO PROVE ACQUISITION COSTS
5 OR DEVELOPMENT COSTS. WE DON'T NEED TO HAVE AN EXPERT ON THOSE
6 TOPICS.

7 THE COURT: I CAN'T IMAGINE YOU'RE GOING TO BE
8 ATTEMPTING TO PROVE ACQUISITION OR DEVELOPMENT COSTS BECAUSE I
9 HAVE ALREADY RULED ON THOSE.

10 IS THAT CORRECT?

11 MR. PICKETT: THAT'S CORRECT.

12 THE COURT: ALL RIGHT. BUT I DON'T SEE WHAT THE
13 PROBLEM IS IN ESTABLISHING WHAT ORACLE -- HOW ORACLE DEVELOPED
14 THE PRODUCT AND HOW MUCH OF ITS RESOURCES IT PUT INTO THE
15 DEVELOPMENT OF THE PRODUCT.

16 IT CANNOT SEEK COMPENSATION FOR THAT, BUT IT CAN
17 CERTAINLY TALK ABOUT HOW IMPORTANT IT IS.

18 MR. PICKETT: WE DON'T USE THOSE WORDS "ACQUISITION
19 COST" ANY AND OF THAT.

20 THE COURT: DEVELOPMENT COSTS.

21 OKAY. THAT TAKES CARE OF NUMBER ONE, WHICH I
22 THOUGHT WOULD BE PRETTY EASY.

23 NUMBER TWO, ADMISSIBILITY OF EXHIBITS EXPECTED TO BE
24 USED WITH ORACLE'S FIRST WITNESSES. WHAT'S THE ISSUE WITH
25 RESPECT TO THAT?

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1 MR. PICKETT: THAT ISN'T, I AGREE. BUT THAT'S NOT
2 WHAT -- I GUESS THERE'S ONE SLIDE HE'S TALKING ABOUT, WHICH
3 TALKS ABOUT THE RESEARCH AND DEVELOPMENT THAT ORACLE PUTS INTO
4 THE SOFTWARE.

5 NOW, IF ORACLE'S COMING TO THE NEGOTIATING TABLE --
6 FOR THAT MATTER, WHEN SAP DOES BECAUSE THEY PUT BILLIONS INTO
7 R&D, TOO. IT'S A DEMONSTRATION THAT IN THEIR MINDSET THIS TYPE
8 OF THING HAS A LOT OF VALUE BECAUSE IT IS BASED ON SOME R&D,
9 NOT WHAT IT WOULD COST OR WHAT SOME EXPERT WILL SAY DOWN THE
10 ROAD. IT HAS NONE OF THAT. IT'S JUST A BACKGROUND PIECE ON
11 ONE SLIDE, I BELIEVE, THERE IS A LOT OF R&D THAT GOES INTO THE
12 STUFF.

13 AND, FRANKLY, IT'S HOW THESE -- AND WITNESSES WILL
14 TESTIFY, IT'S HOW THE COMPANIES WORK. THEY BRING IN A LOT OF
15 REVENUES AND THEY PILE IT BACK INTO R&D BECAUSE THEY WANT TO
16 GET THE NEXT GENERATION OF SOFTWARE.

17 THE COURT: YOU ARE NOT SEEKING DAMAGES FOR IT, YOU
18 ARE SIMPLY SEEKING -- TRYING TO EDUCATE THE JURY ON HOW
19 IMPORTANT IT WAS TO ORACLE BY SHOWING HOW MUCH YOU PUT INTO IT?

20 MR. PICKETT: CORRECT.

21 MR. LANIER: AS PRESENTED BY THEIR EXPERT WHEN HE
22 TESTIFIED AT DEPOSITION AND IN HIS REPORT, IT WAS ONE OF HIS
23 FACTORS IN SUPPORT OF HIS LICENSE THEORY. YOUR HONOR'S RULED
24 IT OUT.

25 IT GOES BEYOND CONTEXT BECAUSE IT CLEARLY IS SO

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1 MR. LANIER: WE HAVE EXCHANGED SOME OBJECTIONS. I
2 DON'T KNOW THAT WE HAVE ACTUALLY HAD A CHANCE TO TALK ABOUT IT
3 BECAUSE WE JUST GOT THEM OVER THE WEEKEND.

4 THE COURT: I WILL HAVE TO TELL YOU ALL THAT I
5 REALLY DO EXPECT WITH ALL OF THE TIME THAT YOU HAVE PUT IN ON
6 THIS CASE, I REALLY DO EXPECT YOU ALL TO BE ABLE TO GET
7 EXHIBITS IN WITHOUT INVOLVING THE COURT.

8 I CANNOT IMAGINE THAT YOU ARE GOING TO WANT ME TO
9 PREVIEW EVERY ONE OF THE THOUSANDS OF EXHIBITS THAT YOU ALL
10 HAVE AGREED UPON. YOU'VE EXCHANGED THESE EXHIBITS IN
11 DISCOVERY, YOU ARE FAMILIAR WITH THEM.

12 WHAT I WOULD LIKE TO SEE, AND THE ONLY THINGS THAT I
13 THINK I SHOULD HAVE TO SEE IS IF THERE'S PARTICULAR CATEGORIES
14 OF EXHIBITS FOR WHICH THERE IS A LEGITIMATE OBJECTION TO THAT
15 PARTICULAR CATEGORY, IF THERE IS A SEMINAL EXHIBIT WITH REGARD
16 TO SOME PARTICULAR ISSUE. BUT I DON'T REALLY THINK THAT YOU
17 SHOULD EXPECT ME TO BE ABLE TO REVIEW ALL OF THE EXHIBITS IN
18 ADVANCE OF THEM BEING USED, AND I WOULD NOT EXPECT THAT YOU
19 WOULD OBJECT TO THE MAJORITY OF THESE EXHIBITS.

20 MR. LANIER: YOUR HONOR, THE PARTIES HAD EXCHANGED
21 LISTS OF 500 EXHIBITS TO TRY TO WORK THROUGH THIS. WE GOT
22 OBJECTIONS TO 430. WHAT'S BECOME CLEAR IS THAT WE'RE GOING TO
23 NEED TO DO THIS EXHIBIT BY EXHIBIT WITH WITNESSES. THERE'S A
24 LOT OF HEARSAY PROBLEMS, ACCORDING TO THEM, AND WE HAVE SOME
25 ISSUES OF OUR OWN.

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

BEFORE THE HONORABLE PHYLLIS J. HAMILTON, JUDGE

ORACLE CORPORATION, ET AL.)	
)	NO. C 07-01658 PJH
PLAINTIFFS,)	
)	JURY TRIAL
VS.)	VOLUME 2
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SAP AG, ET AL.,)	PAGES 297 - 479
)	
DEFENDANTS.)	OAKLAND, CALIFORNIA
)	TUESDAY, NOVEMBER 2, 2010

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REPORTED BY: RAYNEE H. MERCADO, CSR NO. 8258

RAYNEE H. MERCADO, CSR, RMR, CRR, FCRR, CCRR (510) 451-7530

1 THAT IF A WITNESS DOESN'T TOUCH OR MENTION THE EXHIBIT, EVEN IF
 2 IT'S STIPULATED, IT'S NOT IN THE RECORD, IT'S NOT INTO EVIDENCE.
 3 AND SO TWICE MR. AGASSI WAS THE ONLY WITNESS WHO WAS
 4 ASSOCIATED WITH THE DOCUMENT. THEREFORE, WE WANTED TO GET IN
 5 THE UNOPPOSED EXHIBIT THROUGH HIS TESTIMONY. NOW, IF THAT -- IF
 6 THE WITNESS DOESN'T HAVE TO TOUCH IT, IF IT'S JUST IN, I THINK
 7 THAT'S FINE.

8 THE COURT: IS THERE ANY REFERENCE TO IT IN HIS
 9 TESTIMONY THAT WILL REMAIN?

10 MR. PICKETT: WELL, NOT -- NOT IF YOUR HONOR -- NOT
 11 IF YOUR HONOR'S SUSTAINING OF THE OBJECTIONS IN THESE TWO
 12 INSTANCES REMAIN.

13 THE COURT: LET ME LOOK AT MR. AGASSI -- WHAT PAGE
 14 NUMBER IS HE?

15 MR. PICKETT: THE FIRST ONE IS ON PAGE -- THIS IS --
 16 I'M LOOKING OFF THE AGASSI OBJECTION SHEET. IT IS ON --

17 THE COURT: WHAT'S THE PAGE?

18 MR. PICKETT: PAGE 3 AT THE BOTTOM. THERE'S A
 19 REFERENCE TO THE SECOND PAGE OF EXHIBIT 707, WHICH IS
 20 PLAINTIFFS' TRIAL EXHIBIT 112 NOW.

21 THE COURT: OKAY. 707.

22 MR. LANIER: WE DO NOT OBJECT TO THE EXHIBIT. IT'S
 23 GOING TO COME IN THROUGH A VARIETY OF OTHER WITNESSES'
 24 TESTIMONY. I BELIEVE THAT'S -- IN A FEW OTHER WITNESSES'
 25 TESTIMONY. IT JUST MAY NOT HAVE BEEN BY THIS POINT, BUT WE

1 MR. PICKETT: SOMEBODY IN THE VIDEO CAN REFER TO IT.
 2 THE COURT: YES, THAT'S WHAT I'M SAYING. AS LONG AS
 3 THERE'S A WITNESS IN A VIDEO WHO REFERS TO 707, IT CAN STILL BE
 4 ADMITTED.

5 MR. PICKETT: THAT'S MR. AGASSI.

6 THE COURT: IS HE THE ONLY WITNESS THAT REFERS TO IT?

7 MR. LANIER: NO.

8 THE COURT: OKAY.

9 MR. PICKETT: WELL, I --

10 THE COURT: EXCUSE ME. LET ME ASK ANOTHER QUESTION.

11 IS THE EXCERPT THAT WAS BOLDED IN THE OBJECTIONS THE
 12 ONLY EXCERPT THAT REFERS TO 707 DURING MR. AGASSI'S ENTIRE
 13 TESTIMONY?

14 (OFF-THE-RECORD DISCUSSION.)

15 MR. LANIER: I BELIEVE THAT IT IS THE ONLY EXCERPT OF
 16 THOSE THAT PRESENTLY REMAIN. AGAIN, WE HAVEN'T OBJECTED TO THE
 17 EXHIBIT. THE SUBSTANTIVE TESTIMONY WE DID OBJECT TO AND YOUR
 18 HONOR HAS RULED.

19 THE COURT: RIGHT.

20 MR. PICKETT: AND --

21 THE COURT: OKAY.

22 MR. PICKETT: ALL RIGHT. AND SO MR. AGASSI SAYS, WAS
 23 THIS A FACTOR IN FAVORING -- IN FAVOR OF SUPPORTING THE
 24 ACQUISITION, HE'S THE ONE WHO'S DECIDING TO MAKE THE
 25 ACQUISITION.

1 WOULDN'T OBJECT TO IT.

2 THE COURT: YEAH, AS LONG AS SOME WITNESS IS
 3 TESTIFYING AS TO 707, IT CAN COME IN.

4 MR. PICKETT: WE THOUGHT MR. AGASSI WAS THE WITNESS
 5 WHO WAS GOING TO, IN OUR WORDS, SPONSOR, I SUPPOSE, THE EXHIBIT.

6 THE COURT: AND WHO'S -- WHAT WITNESS DO YOU THINK IS
 7 GOING TO SPONSOR THE EXHIBIT?

8 MR. LANIER: THEY'VE ASKED, FOR EXAMPLE, TO SPEAK TO
 9 MR. ZEPECKI, WHO'S COMING UP LATER THIS WEEK, THE AUTHOR TO THE
 10 EXHIBIT. I WOULD ASSUME THAT THEY WOULD BE TALKING TO HIM ABOUT
 11 IT.

12 THE COURT: WOULDN'T HE ACTUALLY BE A BETTER SPONSOR,
 13 THE AUTHOR OF THE EXHIBIT?

14 MR. PICKETT: WELL, THIS IS THE ADDRESSEE.

15 THE COURT: RIGHT.

16 MR. PICKETT: HE'S NOT --

17 THE COURT: WELL, I'M NOT GOING TO CHANGE MY RULING
 18 ON THIS PARTICULAR EXCERPT. SO YOU CAN GET THE EXHIBIT IN
 19 EITHER THROUGH -- AS LONG AS SOME WITNESS REFERS TO IT SO IT'S
 20 IDENTIFIED BY SOMEBODY.

21 WHEN WE HAVE A WITNESS HERE IN COURT, IT'S NOT A
 22 PROBLEM. WHEN THERE'S A DEPOSITION IN LIEU OF THAT, WE STILL
 23 NEED TO HAVE SOMEBODY REFER TO IT.

24 MR. PICKETT: BUT THE WITNESS --

25 (SIMULTANEOUS COLLOQUY.)

1 WELL --
 2 THE COURT: WELL, I'M NOT GOING TO ENTERTAIN
 3 ARGUMENTS ON WHETHER OR NOT -- YOU ALL GAVE ME YOUR ARGUMENTS.
 4 I READ THEM LAST NIGHT. I RULED ON THEM.

5 MR. PICKETT: ALL RIGHT.

6 THE COURT: WE GAVE IT TO YOU. THE RULING STANDS.

7 MR. HOWARD: FINE.

8 THE COURT: YOU CAN GET IT IN IF SOME OTHER WITNESS,
 9 EITHER WHO IS PERSONALLY PRESENT IN COURT OR WHO ON A
 10 DEPOSITION -- DURING THE COURSE OF THE DEPOSITION, REFERS TO
 11 707, IT CAN COME IN.

12 MR. PICKETT: WE'LL TRY TO GET IT IN THROUGH
 13 MR. ZEPECKI.

14 THE COURT: OKAY.

15 MR. PICKETT: IF -- THE NEXT -- THE NEXT DOCUMENT I
 16 TOLD YOU ABOUT, WHICH IS ON PAGE 6 OF THE OBJECTIONS, REFERS TO
 17 PLAINTIFFS' TRIAL EXHIBIT 183. IT'S MR. MACKEY IN AN EMAIL
 18 TALKING OR -- COMMUNICATING TO MR. AGASSI THAT TOMORROWNOW IS A
 19 SEPARATE ENTITY DUE TO THE THREAT OF LITIGATION, AND HE SAYS IN
 20 THIS EMAIL, HE SAYS SO. I DON'T BELIEVE THAT EXHIBIT IS
 21 OBJECTED TO.

22 MR. LANIER: WOULD YOU JUST, MR. PICKETT, REMIND ME,
 23 IS THAT THE BUSINESS CASE DOCUMENT?

24 THE COURT: YEAH.

25 MR. PICKETT: NO, IT'S AN EMAIL FROM MR. MACKEY TO

OPENING STATEMENT - MR. MITTELSTAEDT

1 SAY, OKAY, ORACLE WE WILL GIVE YOU \$10 BILLION ON THE HOPE THAT
 2 THIS WILL REALLY TURN INTO SOMETHING. THAT WOULD NOT HAVE BEEN
 3 A GOOD DEAL. PEOPLE WOULDN'T HAVE DONE THAT.
 4 IF THEY WERE GOING TO DO SOME KIND OF DEAL AT ALL,
 5 IT WOULD HAVE BEEN A RUNNING ROYALTY WHERE WE WOULD SAY, OKAY,
 6 LET'S HAVE SOME AGREEMENT. WE WILL GIVE YOU X PERCENT OF OUR
 7 REVENUES OR OF TOMORROWNOW'S REVENUE FROM USING YOUR IP.
 8 SOMETHING LIKE THIS. IT WOULD BE SORT OF A WIN WIN.
 9 IF TOMORROWNOW REALLY TOOK OFF, WE WOULD PAY MORE
 10 MONEY TO ORACLE ON A YEARLY BASIS. IF TOMORROWNOW DIDN'T DO
 11 WELL, AS IT ACTUALLY TURNED OUT, WE WOULDN'T PAY MUCH.
 12 SO MR. CLARK WILL EXPLAIN IN MORE DETAIL WHY IF THIS
 13 WERE EVER GOING TO HAPPEN, IT WOULD NOT HAVE BEEN BILLIONS OF
 14 DOLLAR UP FRONT. IT WOULD HAVE BEEN A RUNNING ROYALTY. AND
 15 THEN HE WILL ALSO EXPLAIN, IF IT WERE A RUNNING ROYALTY, HOW
 16 WOULD IT TURN OUT. AND GIVEN THE ALMOST COMPLETE LACK OF
 17 SUCCESS OF TOMORROWNOW, THAT AMOUNT OF MONEY, UNDER THE RUNNING
 18 ROYALTY, WOULD NOT BE VERY MUCH.
 19 OKAY. IT'S TIME FOR YOU TO START HEARING THE
 20 EVIDENCE. AND AS YOU HEAR THE WITNESSES, I WANT TO ASK YOU TO
 21 KEEP A COUPLE OF THINGS IN MIND.
 22 AS HER HONOR HAS TOLD YOU AT THE START OF THE CASE,
 23 THIS CASE IS ABOUT COMPENSATION. WHAT COMPENSATION DO WE OWE
 24 ORACLE FOR THE COPYRIGHT INFRINGEMENT? IT IS NOT ABOUT
 25 PUNISHING US. IT'S NOT ABOUT GETTING ALL RILED UP AND INFLAMED
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OPENING STATEMENT - MR. MITTELSTAEDT

1 UP BY EMOTION. IT'S ABOUT FOCUSING ON COMPENSATION. AND WHEN
 2 YOU HEAR EVIDENCE, I THINK YOU ARE ENTITLED TO ASK YOURSELF, IS
 3 THIS REALLY GOING TO DAMAGES AND COMPENSATION OR IS THIS GOING
 4 TO SOMETHING ELSE. AND I ASK YOU TO FOCUS ON THE COMPENSATION
 5 THAT THEY ARE ENTITLED TO. AND, AGAIN, IT'S THE PROFITS ON
 6 THESE TWO CATEGORIES OF COMPANIES THAT WE HAVE TALKED ABOUT.
 7 SO, LET ME END AS I STARTED. WE CONTINUE TO STAND
 8 READY TO COMPENSATE ORACLE TO THE EXTENT IT IS ENTITLED TO
 9 UNDER THE LAW. BUT ORACLE'S NUMBERS ARE NOT JUST HYPOTHETICAL,
 10 AND THEY WOULD ADMIT THAT PART OF IT, BUT I THINK THEY ARE
 11 BASED ON FANTASY. THEY ARE DESIGNED TO GIVE ORACLE A WINDFALL,
 12 A BONANZA THAT IT NEITHER DESERVES NOR IS IT ENTITLED TO.
 13 AND WITH THAT I THANK YOU FOR YOUR ATTENTION AND I
 14 LOOK FORWARD TO TALKING WITH YOU AT THE END OF THE CASE WHEN I
 15 WILL HAVE A CHANCE TO GIVE MY VIEW ON WHAT THE EVIDENCE HAS
 16 SHOWN.
 17 UNTIL THEN, THANK YOU VERY MUCH.
 18 THE COURT: ALL RIGHT. THANK YOU, MR. MITTELSTAEDT.
 19 MR. HOWARD, ARE YOU READY WITH YOUR FIRST WITNESS?
 20 MR. HOWARD: YES, YOUR HONOR.
 21 THE COURT: YOU WANT TO CALL HIM?
 22 MR. HOWARD: PLAINTIFFS CALL BUFFY RANSOM, YOUR
 23 HONOR.
 24 THE CLERK: RAISE YOUR RIGHT HAND.
 25 ///
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RANSOM - DIRECT / MR. HOWARD

1 BUFFY RANSOM,
 2 CALLED AS A WITNESS FOR THE PLAINTIFFS, HAVING BEEN DULY SWORN,
 3 TESTIFIED AS FOLLOWS:
 4 THE WITNESS: I DO.
 5 THE CLERK: PLEASE STATE YOUR FULL NAME AND SPELL
 6 YOUR LAST NAME FOR THE RECORD.
 7 THE WITNESS: BUFFY RANSOM, R-A-N-S-O-M.
 8 MR. LANIER: YOUR HONOR, SCOTT COWAN ON OUR TEAM
 9 WILL BE TALKING WITH MS. RANSOM WHEN IT'S OUR TURN.
 10 THANK YOU.
 11 MR. HOWARD: YOUR HONOR, MAY I APPROACH THE WITNESS
 12 TO PROVIDE HER A WITNESS BINDER?
 13 THE COURT: YES.
 14 DIRECT EXAMINATION
 15 BY MR. HOWARD:
 16 Q. GOOD MORNING, MS. RANSOM.
 17 BY WHOM ARE YOU EMPLOYED?
 18 A. ORACLE.
 19 Q. HOW LONG HAVE YOU BEEN EMPLOYED BY ORACLE?
 20 A. FOR MORE THAN 17 YEARS NOW.
 21 I STARTED AFTER MY MASTER'S DEGREE IN COMPUTER
 22 INFORMATION SYSTEMS, STARTED AT J.D. EDWARDS, WORKED SEVERAL
 23 JOBS IN THE SUPPORT ORGANIZATION WITH J.D. EDWARDS, WAS
 24 ACQUIRED BY PEOPLESOFT IN 2003, AND THEN IN 2005 WAS ACQUIRED
 25 BY ORACLE, AND I HAVE BEEN WITH ORACLE EVER SINCE.
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RANSOM - DIRECT / MR. HOWARD

1 Q. DOES ORACLE LICENSE ITS SOFTWARE?
 2 A. YES, IT DOES.
 3 Q. AND WHEN IT DOES THAT, HOW DOES IT RECEIVE COMPENSATION?
 4 A. WE CHARGE AN UP FRONT LICENSE FEE.
 5 Q. DO YOU EVER GIVE A CUSTOMER SOFTWARE AND THEN WAIT AND SEE
 6 WHAT HAPPENS BEFORE DECIDING WHAT TO CHARGE?
 7 A. NOT TYPICALLY THE STANDARD LINE OF BUSINESS.
 8 Q. WHY IS THAT?
 9 A. PURCHASING SOFTWARE OR ERP OR APPLICATION SOFTWARE IS A
 10 VERY LARGE DECISION. IT TAKES A LOT OF EFFORT TO MAKE THAT
 11 DECISION. SO IT'S NOT SOMETHING THAT YOU WOULD TAKE LIGHTLY
 12 AND DOWNLOAD FROM A WEBSITE TO IMPLEMENT.
 13 Q. ALL RIGHT.
 14 NOW, COULD YOU GIVE US A GENERAL OVERVIEW OF THE
 15 VARIOUS ROLES YOU'VE HAD WITH J.D. EDWARDS, AND THEN WITH
 16 PEOPLESOFT AND THEN WITH ORACLE?
 17 A. SURE.
 18 I WORKED IN THE ENTERPRISE APPLICATION INDUSTRY.
 19 STARTING WITH J.D. EDWARDS, I STARTED AS A SUPPORT CONSULTANT,
 20 WORKED WITH CUSTOMERS OVER THE PHONE. I WAS ON THE TECHNICAL
 21 SIDE OF THE HOUSE, SO I WORKED WITH CUSTOMERS DAYS, NIGHTS AND
 22 WEEKENDS ON THEIR IMPLEMENTATIONS, INSTALLATIONS, CONFIGURING
 23 THEIR SOFTWARE. DID THAT FOR ALMOST 18 MONTHS.
 24 AFTER 18 MONTHS I MOVED INTO MANAGEMENT AND MANAGED
 25 THE DIFFERENT SUPPORT ORGANIZATIONS WITHIN J.D. EDWARDS.
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1 OF DATA THAT HAS ANY SORT OF DATES IN IT WHICH IS PRETTY MUCH
2 ALL OF THE APPLICATIONS THAT WE HAVE WITHIN OUR SOFTWARE.
3 THAT DAYLIGHT SAVINGS DOCUMENT, WE ACTUALLY HAD A
4 TEAM OF PEOPLE THAT -- OF DEVELOPERS AND SUPPORT ENGINEERS. WE
5 WORKED AND EVALUATED ALL OF OUR RELEASES, ALL OF THE SOFTWARE
6 BETWEEN J.D. EDWARDS, PEOPLESOFT AND ACTUALLY ALL OF OUR
7 APPLICATIONS WITHIN ORACLE. AND WE PUT TOGETHER A VERY COMPLEX
8 DOCUMENT SEVERAL-STEP PROCESS. AGAIN, IT WAS FOR ALL OF OUR
9 APPLICATIONS AND ALL OF OUR RELEASES AS WELL. SO IT WAS
10 ACTUALLY QUITE EXPENSIVE.

11 TOMORROWNOW ACTUALLY TOOK THAT DOCUMENT AND PUT IT
12 ON TO THEIR WEBSITE AS WELL.

13 Q. RETURNING TO YOUR LIST, CRITICAL FIXES, PATCHES AND
14 SECURITY ALERTS IS YOUR NEXT ITEM. WHAT'S THAT?

15 A. SO THIS IS A VERY CRITICAL COMPONENT OF HOW WE DELIVER OUR
16 SOFTWARE. THESE ARE VERY SPECIFIC FIXES. THERE ARE TYPICALLY
17 CODE CHANGES, VERY SIMILAR TO THOSE SOFTWARE UPDATES THAT YOU
18 MIGHT GET IN WORD AND ADOBE, THOSE VERY SPECIFIC THINGS WHERE
19 THEY SAY "CAN YOU INSTALL THIS UPDATE?" AND YOU SAY "YES".

20 FOR THE ENTERPRISE APPLICATION SOFTWARE, THESE CAN
21 BE HIGHLY CRITICAL AND ALSO VERY DEPENDENT ON THEIR -- ALL OF
22 THE TECHNOLOGY THAT THEY HAVE WITHIN THE ENVIRONMENT. IF YOU
23 MAKE ONE CHANGE TO ONE COMPONENT OF YOUR ENVIRONMENT, THE
24 APPLICATION CAN REACT TO THAT AND YOU WILL NEED THAT FIX FOR
25 THAT.

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1 SOFTWARE GET ALL OF THESE FORMS OF SUPPORT?
2 A. THEY DO IF THEY PAY THEIR ANNUAL MAINTENANCE PAYMENT.
3 ONCE THEY LICENSE THE SOFTWARE AND THEN THEY PAY THEIR ANNUAL
4 MAINTENANCE, THEY GET THE RIGHTS TO USE ALL OF OUR STUFF THAT
5 WE CREATE.

6 Q. WHY IS IT YOU REQUIRE THE MAINTENANCE PAYMENT IN ORDER TO
7 GET THE SUPPORT?

8 A. AS YOU CAN SEE, SUPPORT IS ACTUALLY VERY COSTLY. WE HAVE
9 THOUSANDS OF SUPPORT EMPLOYEES. WE ALSO HAVE THOUSANDS OF
10 DEVELOPERS AS WELL WORKING TO DEVELOP AND ENHANCE ALL OF THE
11 THINGS THAT YOU SEE HERE.

12 MOST OF OUR CUSTOMERS ACTUALLY CHOOSE TO RENEW THEIR
13 MAINTENANCE ON AN ANNUAL BASIS AS WELL.

14 Q. HOW DOES ORACLE GET THESE VARIOUS SUPPORT PRODUCTS OUT TO
15 ITS CUSTOMERS?

16 A. WE HAVE A SECURED WEBSITE THAT OUR CUSTOMERS GET A USER ID
17 AND A PASSWORD FOR.

18 Q. WAS THAT TRUE IN 2005, 2006 AS WELL?

19 A. IN 2005 WE HAD A WEBSITE THAT WAS CALLED CUSTOMER
20 CONNECTION. AND IT WAS OFF OF THE PEOPLESOFT.COM WEBSITE AND
21 IT WAS, AGAIN, A SECURED WEBSITE FOR OUR LICENSE AND
22 MAINTENANCE PAYING CUSTOMERS TO HAVE A USER ID AND A PASSWORD
23 TO BE ABLE TO DOWNLOAD THOSE FIXES.

24 Q. FOR WHAT TYPES OF SOFTWARE WAS THAT OF THAT PASSWORD SITE
25 AVAILABLE?

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1 IT IS VERY MUCH LIKE AN INSURANCE POLICY, IF YOU
2 WILL, TO MAKE SURE YOU KEEP UP AND RUNNING ON A 24/7 FOR ALL OF
3 YOUR BUSINESS CRITICAL PROCESSES.

4 Q. THE LAST ONE IS TAX, LEGAL, AND REGULATORY UPDATES. CAN
5 YOU TELL US WHAT THOSE ARE?

6 A. SURE.

7 TAX, LEGAL, AND REGULATORY UPDATES. THIS IS A VERY
8 BIG DEAL.

9 IT'S -- SO THINK ABOUT YOUR PAYCHECK, IF YOU WILL.
10 ON YOUR PARTICULAR PAYCHECK, YOU HAVE SEVERAL DIFFERENT
11 CALCULATIONS. ON THOSE CALCULATIONS ARE PART-TIME, FULL-TIME,
12 JURY DUTY, ALL OF THE TAX CALCULATIONS.

13 AND IF YOU KEEP IN MIND OUR SOFTWARE NOT ONLY WORKS
14 WITH IT AT THE LOCAL LEVEL, BUT THE STATE LEVEL, ALSO IN DOZENS
15 OF COUNTRIES AROUND THE WORLD. SO WE ACTUALLY HAVE PEOPLE
16 WORLDWIDE WORKING ON ALL OF THOSE LEGISLATIVE UPDATES. AND
17 THAT IS JUST THE PAYCHECK SIDE OF THE HOUSE.

18 THERE'S ALSO TAX ISSUES, TAX IMPLICATIONS AS WELL AS
19 LEGISLATIVE UPDATES IN ALL OF THOSE COUNTRIES AS WELL.

20 ONE OF OUR LARGEST CUSTOMER, YOU KNOW, DARDEN
21 RESTAURANTS FOR RED LOBSTER AND OLIVE GARDEN IS ONE OF OUR
22 HUGEST PAYROLL CUSTOMERS FOR PEOPLESOFT AND THEY USE THAT SAME
23 SOFTWARE FOR THOUSANDS AND THOUSANDS OF THEIR EMPLOYEES.

24 Q. NOW, TAKING ALL OF THE DIFFERENT KINDS OF SUPPORT YOU JUST
25 DESCRIBED, DO ALL OF ORACLE'S CUSTOMERS WHO LICENSE ORACLE

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RANSOM - DIRECT / MR. HOWARD

1 A. ALL OF THE FIXES THAT YOU SEE HERE, SO ALL OF THE PRODUCT
2 AND TECHNOLOGY ENHANCEMENTS, THE KNOWLEDGE DOCUMENTS, THE
3 FIXES, THE LEGAL AND REGULATORY UPDATES AS WELL.

4 Q. WAS THAT FOR PEOPLESOFT?

5 A. IT WAS FOR PEOPLESOFT AND IT WAS ALSO FOR J.D. EDWARDS.

6 Q. WHO HAD LOGIN CREDENTIALS TO GET INTO THE SITE TO GET
7 THESE SUPPORT PRODUCTS?

8 A. SO WHEN A CUSTOMER RENEWED THEIR MAINTENANCE, THEY WOULD
9 RECEIVE A SPECIFIC ACCOUNT ID OR CUSTOMER ID. AND ATTACHED TO
10 THAT CUSTOMER ID ARE CALLED REPRESENTATIVES.

11 SO, FOR EXAMPLE, LAND O' LAKES, ONE OF OUR LARGE
12 J.D. EDWARDS CUSTOMERS. LAND O' LAKES WOULD HAVE AN ACCOUNT ID
13 AND ATTACHED TO THAT ACCOUNT ID IS -- LET'S SAY THEY CHOSE TO
14 HAVE FIVE REPRESENTATIVES. EACH ONE OF THOSE FIVE
15 REPRESENTATIVES HAS A USER ID AND PASSWORD TO LOG INTO THIS
16 WEBSITE.

17 Q. DID THERE COME A TIME WHEN YOU CAME TO SUSPECT THAT
18 SOMEBODY MIGHT BE TAKING INTELLECTUAL PROPERTY PROVIDED TO
19 CUSTOMERS THROUGH THAT ORACLE WEBSITE?

20 A. YES.

21 Q. TELL US WHAT HAPPENED.

22 A. SO IN NOVEMBER OF 2006, I RAN A PROACTIVE REPORT ON
23 ACTUALLY A CRITICAL FIX THAT WE NEEDED TO FOLLOW UP CONTACT
24 WITH OUR CUSTOMERS.

25 IN THIS REPORT, I EXPECTED A SMALL AMOUNT OF

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1 CUSTOMERS BECAUSE IT WAS A VERY SPECIFIC FIX FOR OUR IBM
 2 OPERATING SYSTEM AS WELL AS A PAYROLL FIX AS WELL.
 3 IN THIS INITIAL REPORT, I SAW FALSE INFORMATION AS
 4 WELL AS IT WAS HUNDREDS OF DOWNLOADS. AND UPON FURTHER
 5 INFORMATION SAW THOUSANDS OF DOWNLOADS BY THESE CREDENTIALS.
 6 IT WAS THINGS LIKE -- THE FALSE INFORMATION WAS THINGS LIKE
 7 FALSE PHONE NUMBERS.
 8 SO IN THIS PROACTIVE OUTREACH, WE WOULD PHONE CALL
 9 OUR CUSTOMERS OR SEND THEM A FOLLOW-UP E-MAIL TO GIVE THEM
 10 FURTHER INFORMATION. SEVENS OVER AND OVER AGAIN. SO 777-7777.
 11 THEIR E-MAIL ADDRESSES WERE INCORRECT SO THEY DIDN'T HAVE THE
 12 DOT COMS OR IT WAS SHORTENED OR ABBREVIATED NAMES. AND THEN
 13 THE USER ID'S WERE VERY SIMILAR. IT SOUNDED LIKE TOMORROWNOW.
 14 SO TOM NOW, TOM NOW TWO.
 15 Q. WHAT DID YOU DO WHEN YOU SAW THAT INFORMATION?
 16 A. WE IMMEDIATELY CONTACTED OUR GLOBAL INFORMATION SECURITY
 17 TEAM. THEY IMMEDIATELY FOLLOWED UP AND LET US KNOW THAT THESE
 18 DOWNLOADS WERE GOING TO A TOMORROWNOW IP ADDRESS IN BRYAN,
 19 TEXAS.
 20 Q. WERE THERE OTHER INDICATIONS BEYOND WHAT YOU HAVE JUST
 21 DESCRIBED THAT TOMORROWNOW WAS DOWNLOADING FROM ORACLE?
 22 A. YES. THERE WAS, I GUESS, SUSPICIOUS BEHAVIOR, IF YOU
 23 WILL, WITH OUR KNOWLEDGE DOCUMENTS AND SOLUTIONS.
 24 Q. LET ME ASK YOU TO LOOK IN YOUR WITNESS BINDER AT TAB 2.
 25 AND THAT'S PLAINTIFFS' TRIAL EXHIBIT 545-4.
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RANSOM - DIRECT / MR. HOWARD

1 WE KNEW THAT THERE WAS OBVIOUSLY SUSPICIOUS BEHAVIOR AND WE
 2 ALSO KNEW THAT THERE WAS SOME SORT OF AUTOMATED TOOL IN PLACE
 3 AS WELL.
 4 Q. WERE YOU ABLE TO DETERMINE WHERE THE AUTOMATED NO CLICKS
 5 WERE COMING FROM?
 6 A. THE SAME INFORMATION WAS SENT TO OUR GLOBAL INFORMATION
 7 SECURITY TEAM AND THEY FOUND THE SAME INFORMATION. ALL OF THE
 8 INFORMATION WAS DOWNLOADED TO THE TOMORROWNOW IP ADDRESS IN
 9 BRYAN, TEXAS.
 10 Q. WAS THE DATA THAT YOU WOULD BE LOOKING AT IN THE -- IN
 11 LOOKING AT THE YESES AND THE NOS, WAS THAT DATA USABLE WHEN
 12 THERE WERE THOUSANDS OF NO CLICKS IN IT?
 13 A. NO. ACTUALLY IT CORRUPTED OUR ABILITY TO ANALYZE THE
 14 BENEFITS OF ANY OF THESE DOCUMENTS.
 15 IF YOU CAN IMAGINE WE WERE USED TO SEEING YES CLICKS
 16 OR, YOU KNOW, AND A FEW NOS. SO FOR THE NOS THAT WE SAW, WE
 17 WOULD MAKE ADJUSTMENTS. BUT WHEN YOU HAVE THOUSANDS OF NO
 18 CLICKS, WE WEREN'T ABLE TO USE THE INFORMATION AT ALL.
 19 Q. WERE YOU THEN INVOLVED IN AN INVESTIGATION TO DETERMINE
 20 THE NATURE AND THE EXTENT OF THE DOWNLOADING BY TOMORROWNOW
 21 FROM ORACLE?
 22 A. YES. I MANAGED A TEAM OF TEN PEOPLE THAT WORKED SEVERAL
 23 WEEKS TO ANALYZE THE THOUSANDS OF DOWNLOADS WITH CUSTOMER
 24 CREDENTIALS.
 25 Q. WHAT HAPPENED AT THE END OF THAT INVESTIGATION?
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RANSOM - DIRECT / MR. HOWARD

1 (EXHIBIT DISPLAYED ON SCREEN.)
 2 DOES THAT -- FIRST OF ALL, TELL US WHAT THAT IS.
 3 A. SURE. THIS IS A SCREEN. ONCE YOU LOG IN TO CUSTOMER
 4 CONNECTION. THIS IS ACTUALLY A SEARCH RESULT SCREEN.
 5 SO IF I SEARCH FOR A SOLUTION THAT I MIGHT NEED,
 6 THIS IS THE RESULT SCREEN THAT SHOWS UP. IT'S KIND OF HARD FOR
 7 YOU ALL TO SEE, BUT IF -- ON THE TOP OF THE SCREEN, YOU WILL
 8 SEE TWO BOXES, A SMALL BOX THAT SAYS "YES", AND A LONGER BOX
 9 THAT SAYS, "NO CONTINUE TO SEARCH."
 10 OH. THANK YOU.
 11 Q. LET ME ASK: IS THAT -- THE "YES" AND THE "NO", IS THAT
 12 THE WAY THAT THE SITE, FAIR AND ACCURATE DEPICTION OF THE WAY
 13 CUSTOMER CONNECTION LOOKED IN ABOUT 2005?
 14 A. YES, IT IS.
 15 Q. WHAT'S THE POINT OF THE YES AND NO?
 16 A. SO THE YES AND NO, WE USE THAT INFORMATION TO UNDERSTAND
 17 IF OUR DOCUMENTS WERE VALUABLE. AND IF OUR -- IF THE DOCUMENT
 18 SOLVED THE CUSTOMER'S QUESTION THAT THEY WERE ASKING OR WHAT
 19 THEIR ISSUE WAS.
 20 SO MOST OF THE TIME WE SEE, "YES" ATTACH TO OUR
 21 RESEARCH WHEN WE DO RESEARCH TO MAKE SURE THAT THIS IS VALID
 22 INFORMATION THAT WE ARE GIVING OUT THERE.
 23 THE SUSPICIOUS BEHAVIOR THAT WE SAW WAS ACTUALLY ALL
 24 NO CLICKS. AND THERE WERE THOUSANDS OF NO CLICKS. AND THE NO
 25 CLICKS WERE SECONDS APART, SUBSECONDS APART IN SOME CASES, SO
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RANSOM - CROSS / MR. COWAN

1 A. ORACLE FILED A LAWSUIT AGAINST SAP.
 2 MR. HOWARD: THANK YOU.
 3 YOUR HONOR, NOTHING FURTHER.
 4 THE COURT: ALL RIGHT. CROSS-EXAMINATION?
 5 CROSS-EXAMINATION
 6 BY MR. COWAN:
 7 Q. GOOD AFTERNOON, MS. RANSOM. I AM SCOTT COWAN FOR THE
 8 DEFENDANTS. I HAVE A FEW THINGS TO FOLLOW UP WITH YOU ON.
 9 ONE OF THE THINGS WE HEARD IN MR. HOWARD'S OPENING
 10 STATEMENT WAS AN ACKNOWLEDGMENT, AND I THINK IMPLICITLY IN YOUR
 11 TESTIMONY AN ACKNOWLEDGMENT THAT CUSTOMERS HAVE A CHOICE WHEN
 12 IT COMES TO OBTAINING MAINTENANCE FOR THEIR ORACLE SOFTWARE.
 13 WOULD YOU AGREE WITH ME?
 14 A. THERE ARE TIMES IN A CUSTOMER'S LIFE CYCLE TO WHERE, YES,
 15 A SMALL PERCENTAGE OF OUR CUSTOMERS CAN HAVE A MAINTENANCE THAT
 16 IS NOT THE OVERALL ORACLE MAINTENANCE.
 17 Q. BECAUSE YOU SAID IN RESPONSE TO MR. HOWARD'S QUESTIONING
 18 THAT MOST OF ORACLE'S CUSTOMERS RENEW, BUT YOU DIDN'T SAY ALL.
 19 SO THAT MEANS THERE ARE SOME THAT DON'T, RIGHT?
 20 A. THAT'S CORRECT. WE HAVE CUSTOMERS THAT GO BANKRUPT OR GET
 21 ACQUIRED, AND THOSE CUSTOMERS TYPICALLY DON'T RENEW.
 22 Q. SO YOU WOULD AGREE WITH ME THAT IN DETERMINING WHY AN
 23 ORACLE CUSTOMER HAS CHOSEN A PARTICULAR SOFTWARE MAINTENANCE
 24 PROVIDER, OR WHETHER THEY HAVE CHOSEN TO SELF-SUPPORT, THAT
 25 THAT DETERMINATION NEEDS TO BE MADE BASED UPON A CUSTOMER
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SCREVEN - DIRECT / MR. HOWARD

1 TRANSACTIONS TRYING TO MATCH POTENTIAL DONORS TO PEOPLE WHO
2 NEED IT.

3 ANOTHER EXAMPLE IS ACTUALLY SAP ITSELF. SO SAP
4 BUILDS A SUITE OF BUSINESS APPLICATIONS. THOSE BUSINESS
5 APPLICATIONS RUN ON TOP OF THE ORACLE DATABASE. ALMOST ALL OF
6 SAP'S LARGE CUSTOMERS ACTUALLY USE THE ORACLE DATABASE
7 UNDERNEATH SAP APPLICATIONS.

8 BY MR. HOWARD:

9 Q. NOW MOVING UP IS THE STACK TO THE APPLICATIONS LAYER.

10 CAN YOU TELL US A LITTLE BIT MORE ABOUT THAT?

11 A. YES. THE ORACLE DATABASE IS VERY CAPABLE, BUT IT'S NOT
12 ACTUALLY DESIGNED TO BE DIRECTLY USED BY A PERSON. AND SO
13 INSTEAD, WHAT HAPPENS IS PEOPLE, COMPANIES BUILD APPLICATIONS
14 THAT ACTUALLY SIT IN BETWEEN PEOPLE AND THE DATABASE.

15 SO, AN APPLICATION ACTUALLY PRESENTS USER INTERFACES
16 ON THE COMPUTER SCREEN TO USERS DOING THEIR JOB. SO THAT WHAT
17 AN APPLICATION DOES IS IT HELPS AUTOMATE BUSINESS TASKS,
18 BUSINESS PROCESSES.

19 SO WE TALKED A LITTLE BIT ABOUT TIME SHEETS ALREADY
20 IN A HUMAN RESOURCES APPLICATION, BUT IF I AM A MANUFACTURER, I
21 CARE A LOT ABOUT MY SUPPLY CHAIN. SO MAKING SURE THAT ALL OF
22 THE COMPONENTS THAT I NEED TO BUY AND HAVE SHIPPED INTO MY
23 FACTORIES TO BE ASSEMBLED, MAKE SURE I KEEP TRACK OF ALL THOSE
24 THINGS. DOING THAT BY HAND, OF COURSE, IS NOT PRACTICAL, SO I
25 USE AN APPLICATION TO ACTUALLY PRESENT USER INTERFACES TO MY
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1 **THERE ARE THREE APPLICATION PRODUCT FAMILIES THAT**
2 **ARE RELEVANT TO THIS CASE. THE FIRST IS PEOPLESOFT, THE SECOND**
3 **IS SIEBEL, AND THE THIRD IS J.D. EDWARDS.**

4 Q. HOW MANY CUSTOMERS DOES ORACLE HAVE FOR ITS PRODUCTS?

5 A. WE HAVE 370,000 CUSTOMERS AROUND THE WORLD.

6 Q. WE HAVE BEEN TALKING ABOUT DIFFERENT TYPES OF SOFTWARE.

7 WHAT KIND OF RESOURCES ARE REQUIRED TO DEVELOP THE

8 ENTERPRISE APPLICATION SOFTWARE SUCH AS PEOPLESOFT OR J.D.?

9 A. VERY SUBSTANTIAL, MASSIVE. ORACLE'S RESEARCH AND
10 DEVELOPMENT BUDGET FOR THIS FISCAL YEAR IS \$4 BILLION. WE ARE
11 SPENDING \$4 BILLION BUILDING NEW PRODUCTS AND MAKING OUR
12 EXISTING PRODUCTS BETTER.

13 Q. IF YOU JUST HAD THAT AMOUNT OF MONEY, COULD YOU JUST, IN A
14 SHORT AMOUNT OF TIME, BUILD AN ENTERPRISE APPLICATION PRODUCT?

15 A. ABSOLUTELY NOT. THE PROCESS OF BUILDING AN ENTERPRISE
16 SUITE OF APPLICATIONS IS LONG AND ARDUOUS. NO MATTER HOW MUCH
17 MONEY YOU TRY TO THROW AT THE PROBLEM, NO MATTER HOW MANY
18 PEOPLE YOU TRY TO HIRE AND BUILD THE APPLICATIONS, YOU COULD
19 NOT DO IT IN A SHORT AMOUNT OF TIME.

20 AND THE REASON IS THAT THERE IS JUST A HUGE AMOUNT
21 OF VERY SPECIALIZED KNOWLEDGE REQUIRED TO UNDERSTAND ALL OF THE
22 REQUIREMENTS FOR THOUSANDS AND THOUSANDS OF CUSTOMERS AROUND
23 THE WORLD OPERATING IN LOTS OF DIFFERENT LEGAL JURISDICTIONS,
24 RIGHT, TO UNDERSTAND ALL OF THOSE REQUIREMENTS AND BUILD A CODE
25 THAT'S -- THAT WILL ACTUALLY MEET THEIR REQUIREMENTS.

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1 EMPLOYEES WHO ACTUALLY MANAGE THAT SUPPLY CHAIN. THE
2 APPLICATIONS THEN ACTUALLY TALK TO THE DATABASE TO STORE THE
3 DATA AND QUERY THE DATA AND PROCESS THE DATA.

4 Q. YOU MENTIONED THAT THE DATABASE WAS ORACLE'S FIRST
5 PRODUCT. WHY DID ORACLE GET INTO THE BUSINESS OF APPLICATION
6 SOFTWARE?

7 A. AS I MENTIONED, ENTERPRISES HAVE VERY COMPLEX DATA
8 MANAGEMENT REQUIREMENTS. SO, THERE'S A LOT OF BUSINESS
9 PROCESSES THAT NEED TO BE AUTOMATED. OF COURSE, PURCHASING AND
10 INVENTORY TRACKING, AND MY RELATIONSHIPS WITH MY CUSTOMERS AND
11 MY RELATIONSHIPS WITH MY EMPLOYEES. THE DATABASE CAN STORE
12 INQUIRY ALL KINDS OF DATA, BUT YOU NEED THAT SPECIALIZED
13 FUNCTIONALITY TO AUTOMATE THOSE TASKS.

14 ADDITIONALLY, BUSINESSES AND GOVERNMENTS AND
15 CHARITIES HAVE A LOT OF COMPLEX COMPLIANCE AND REPORTING
16 REQUIREMENTS. TO THE GOVERNMENT, I HAVE TO REPORT VARIOUS
17 ASPECTS. IF I AM A BANK, EVERYONE HAS TO PAY TAXES. IF I'M
18 FROM A CHARITY, I HAVE TO FILE REPORTS BECAUSE I AM RECEIVING
19 CHARITABLE DONATIONS.

20 SO USING APPLICATIONS HELP ENTERPRISES COMPLY WITH
21 THE LAW AND COMPLY WITH REGULATIONS AROUND THE WORLD.

22 Q. WHAT APPLICATION PRODUCTS DOES ORACLE HAVE THAT ARE
23 RELEVANT TO THIS CASE?

24 A. I THINK ON A SLIDE WE ACTUALLY HAVE THAT SHOWN.
25 (DOCUMENT DISPLAYED ON SCREEN.)

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SCREVEN - DIRECT / MR. HOWARD

1 I MEAN, IT REALLY IS A PROCESS OF TRIAL AND ERROR.
2 YOU TRY A SOLUTION, YOU TRY A CERTAIN SET OF FUNCTIONALITY,
3 RIGHT, YOU GIVE IT TO CUSTOMERS, AND CUSTOMERS GIVE YOU
4 FEEDBACK. SOMETIMES THE FEEDBACK IS GOOD, SOMETIMES THE
5 FEEDBACK IS BAD. THIS DOESN'T WORK FOR ME. THIS DOESN'T
6 SATISFY MY REQUIREMENTS. THEREFORE, YOU NEED TO TRY AGAIN.

7 YOU NEED TO CHANGE THE WAY THE APPLICATION WORKS.
8 YOU NEED TO ADD SOME MORE FUNCTIONALITY. IT TAKES A LONG TIME
9 NO MATTER HOW MUCH MONEY YOU PUT AT IT, IT TAKES A LONG TIME TO
10 BUILD OUT A COMPLETE VIABLE SOLUTION FOR CUSTOMERS IN THE
11 APPLICATION SPACE.

12 Q. YOU KNOW, YOU MENTIONED A \$4 BILLION RESEARCH AND
13 DEVELOPMENT BUDGET. THAT'S A LOT OF MONEY. WHERE DOES ORACLE
14 GET THAT MONEY TO DEVELOP AND CREATE ITS PRODUCTS?

15 A. SO, AS I MENTIONED, WE HAVE 370,000 CUSTOMERS AROUND THE
16 WORLD. NOW, THOSE CUSTOMERS, OF COURSE, HAVE PAID US MONEY TO
17 HAVE THE RIGHT TO USE THAT SOFTWARE, BUT THEY ALSO SUBSCRIBE TO
18 SUPPORT. SO THEY PAY US FOR SUPPORT.

19 THEY PAY US AN ANNUAL FEE IN ORDER TO BE ABLE TO ASK
20 US QUESTIONS, REPORT PROBLEMS, AND MOST IMPORTANTLY GET UPDATES
21 TO THAT SOFTWARE. SO GET FIXES TO BUGS, GET NEW FUNCTIONALITY,
22 YOU KNOW, GET INFORMATION FROM US ABOUT HOW TO USE THE SOFTWARE
23 MORE EFFECTIVELY.

24 Q. DO YOU HAVE PERSONAL EXPERIENCE WITH THE TYPE OF EFFORT
25 REQUIRED TO DEVELOP ENTERPRISE APPLICATION SOFTWARE?

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SCREVEN - DIRECT / MR. HOWARD

1 A. YES. YES. I WAS A FOUNDING MEMBER OF ORACLE'S
 2 APPLICATION'S DIVISION. SO WHILE IT IS NOT DEPICTED ON THIS
 3 SCREEN, WE HAVE ANOTHER FAMILY OF PRODUCTS CALLED THE E
 4 BUSINESS SUITE.
 5 SO I WAS ONE OF THE VERY FIRST EMPLOYEES THAT ORACLE
 6 HIRED TO ACTUALLY BUILD APPLICATIONS. SO WHAT I DID, I BUILT
 7 OUT TECHNOLOGY PIECES WHICH WERE THEN USED BY THE REST OF THE
 8 PROGRAMMERS TO BUILD OUT THE E BUSINESS SUITE.
 9 I CAN TELL YOU, IT'S A VERY -- IT WAS A VERY
 10 DIFFICULT AND CHALLENGING PROCESS. I MEAN, WE HAD FOLKS ON
 11 STAFF WHO UNDERSTOOD THE BUSINESS PROBLEMS. THEY UNDERSTOOD
 12 GENERALLY WHAT THE FUNCTIONALITY NEEDED TO BE, BUT WE WERE
 13 LITERALLY STARTING WITH BLANK PIECES OF PAPER AND EMPTY
 14 SCREENS.
 15 AND IT WAS A LOT OF WORK THAT STARTED OFF WITH TENS
 16 OF PEOPLE, THEN HUNDREDS OF PEOPLE, THEN THOUSANDS OF PEOPLE TO
 17 BE ABLE TO BUILD OUT THE E BUSINESS SUITE.
 18 AND, YOU KNOW, AS I SAID BEFORE, IT WAS VERY
 19 ITERATIVE. I MEAN, IT WAS A PROCESS WHEREBY WE BUILT
 20 FUNCTIONALITY. WE TRIED IT OUT. WE GAVE IT TO CUSTOMERS.
 21 THEY SAID, THIS DOESN'T WORK FOR US. SO THAT MEANT WE HAD TO
 22 THROW SOME CODE AWAY AND START AGAIN.
 23 THE GOOD NEWS IS THROUGH THAT ITERATION, WE WERE
 24 ABLE TO BUILD UP VERY COMPELLING OFFERING FOR CUSTOMERS, YOU
 25 KNOW, SOMETHING THAT HELPED THEM VERY MUCH. BUT THE BAD NEWS
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SCREVEN - DIRECT / MR. HOWARD

1 EMPLOYEES WHOSE JOB IT IS TO TEST AND USE THE SOFTWARE AND MAKE
 2 SURE THAT IT SEEMS TO BE -- THE IMPLEMENTATION THAT WE DID IN
 3 DEVELOPMENT MATCHES THE DESIGN.
 4 AND, FINALLY, WE RELEASE OUR SOFTWARE. SO RELEASING
 5 MEANS THAT WE COLLECT TOGETHER THE CODE THAT WE HAVE WRITTEN,
 6 PUT IT TOGETHER, AND SOMETHING THAT CAN BE INSTALLED BY
 7 CUSTOMERS AND WE GIVE IT TO CUSTOMERS.
 8 NOW, ALL THROUGHOUT THAT CYCLE THERE IS CUSTOMER
 9 FEEDBACK. SO, WE HAVE WHAT WE CALL CUSTOMER ADVISORY BOARDS
 10 WHERE WE TALK TO CUSTOMERS ABOUT WHAT WE INTEND TO BUILD, WHAT
 11 THEIR REQUIREMENTS ARE. WE HAVE CUSTOMERS COME IN AND USE THE
 12 SOFTWARE BEFORE WE RELEASE IT TO TRY TO GET THEIR EARLY
 13 FEEDBACK. OF COURSE, ONCE WE RELEASE IT TO CUSTOMERS, WE GET A
 14 LOT OF FEEDBACK. WHAT'S THEIR IMPRESSION? WHAT ARE THE BUGS
 15 THAT WE MISSED IN TESTING? WHAT IS IT THAT WE SHOULD DO DURING
 16 THE NEXT RELEASE?
 17 TO GIVE YOU SOME IDEA OF THE SCALE OF CUSTOMER
 18 INVOLVEMENT IN ORACLE'S PROCESSES, EVERY YEAR WE RUN A LARGE
 19 CONFERENCE IN SAN FRANCISCO. IT'S CALLED ORACLE OPEN WORLD.
 20 SO AT ORACLE OPEN WORLD THIS YEAR, WE HAD 41,000 CUSTOMERS COME
 21 IN ORDER TO BE ABLE TO LISTEN TO US, TALK ABOUT WHAT WE PLAN TO
 22 DO IN OUR PRODUCTS, AND TELL US WHAT THEY WOULD LIKE TO DO WITH
 23 OUR PRODUCTS, AND MAYBE MOST IMPORTANTLY TALK TO EACH OTHER
 24 ABOUT THEIR EXPERIENCE IN USING OUR SOFTWARE AND HOW TO USE IT
 25 MORE EFFECTIVELY.
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SCREVEN - DIRECT / MR. HOWARD

1 IS IT TOOK A LONG TIME.
 2 Q. IN A NUTSHELL, HOW DOES ORACLE DEVELOP ITS SOFTWARE?
 3 A. I THINK THERE IS THE NEXT SLIDE WILL ACTUALLY SHOW US THE
 4 GENERAL PROCESS THAT WE FOLLOW.
 5 MR. HOWARD: YOUR HONOR, THAT'S PD 3, PLAINTIFFS'
 6 DEMONSTRATIVE 3.
 7 (DOCUMENT DISPLAYED ON SCREEN.)
 8 BY MR. HOWARD:
 9 Q. DOES THAT HELP YOU EXPLAIN THE DEVELOPMENT PROCESS OF THE
 10 ORACLE SOFTWARE?
 11 A. YES, IT DOES.
 12 Q. PLEASE PROCEED.
 13 A. SO, ROUGHLY SPEAKING, IN GENERAL, THERE ARE FOUR PHASES TO
 14 THE WAY WE BUILD OUR SOFTWARE.
 15 IN THE FIRST PHASE IS DESIGN. DESIGN IS WHEN WE
 16 THINK ABOUT WHAT IS THE FUNCTIONALITY WE WANT TO ADD, WHAT ARE
 17 THE REQUIREMENTS THAT WE ARE TRYING TO SATISFY. TECHNICALLY,
 18 HOW IS IT WE ARE ACTUALLY GOING TO ENGINEER IT AND PUT IT
 19 TOGETHER.
 20 THE SECOND PHASE IS DEVELOPMENT. SO THAT'S WHERE WE
 21 TAKE OUR DESIGNS AND WE ACTUALLY CODE THINGS. WE SIT IN FRONT
 22 OF SCREENS AND WRITE COMPUTER PROGRAMS.
 23 THE THIRD PHASE IS TESTING. SO WE HAVE LARGE FARMS,
 24 BASICALLY BIG COLLECTIONS OF COMPUTERS THAT WE USE TO
 25 AUTOMATICALLY RUN OUR SOFTWARE AND TEST OUR SOFTWARE. WE HAVE
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SCREVEN - DIRECT / MR. HOWARD

1 Q. YOU MENTIONED THAT ORACLE HAS 370,000 CUSTOMERS. DOES THE
 2 SIZE OF THE CUSTOMER BASE MATTER FROM A DEVELOPMENT
 3 PERSPECTIVE?
 4 A. IT ABSOLUTELY DOES. I MEAN, IT MEANS THAT WE HAVE A VERY
 5 BROAD SET OF FOLKS TELLING US WHAT THE REQUIREMENTS ARE. I
 6 MEAN, OUR SOFTWARE IS MUCH BETTER BECAUSE WE HAVE ALL OF THOSE
 7 CUSTOMERS TELLING US HOW TO MAKE IT BETTER.
 8 IT'S WHEN YOU START OFF AND YOU HAVE NO CUSTOMERS, I
 9 MEAN, FRANKLY, YOU ARE GUESSING ABOUT WHAT CUSTOMERS WANT AND
 10 WHAT CUSTOMERS NEED. WHEN YOU HAVE A LARGE CUSTOMER BASE, YOU
 11 GET A LOT OF VERY HELPFUL DIRECTION FROM THEM TO TELL YOU WHAT
 12 YOU SHOULD BUILD.
 13 MR. HOWARD: WE CAN TAKE THAT ONE DOWN, PLEASE.
 14 BY MR. HOWARD:
 15 Q. MR. SCREVEN, DOES ORACLE DO ANYTHING TO PROTECT THIS
 16 MULTIBILLION DOLLAR INVESTMENT IN ITS PRODUCTS?
 17 A. YES, WE DO. COMPUTER SOFTWARE IS INTELLECTUAL PROPERTY
 18 AND WE TAKE EVERY STEP AVAILABLE TO US UNDER THE LAW TO PROTECT
 19 OUR INTELLECTUAL PROPERTY.
 20 AND CERTAINLY ONE OF THE MOST IMPORTANT WAYS IS
 21 THROUGH COPYRIGHTS. NOW, COPYRIGHTS ARE SOMETHING THAT WE DO
 22 AS A MATTER OF COURSE IN OUR BUSINESS, AND ADDITIONALLY WE HAVE
 23 A LARGE LEGAL STAFF, AND A GOOD FRACTION OF THEIR TIME IS
 24 ACTUALLY SPENT MAKING SURE THAT OUR SOFTWARE IS COPYRIGHTED.
 25 Q. WHY IS IT IMPORTANT FOR COMPANIES LIKE ORACLE TO PROTECT
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SCREVEN - DIRECT / MR. HOWARD

1 ITS SOFTWARE WITH COPYRIGHTS?
2 A. WELL, WE TALKED A FEW MINUTES AGO ABOUT THE WAY WE FUND
3 OUR DEVELOPMENTS. IT'S BASICALLY PAID FOR BY THE MONEY THAT
4 OUR CUSTOMERS PAY US, ESPECIALLY THE MONEY THAT OUR CUSTOMERS
5 PAY US FOR SUPPORT.

6 NOW, IF OTHER COMPANIES COULD JUST TAKE OUR
7 INTELLECTUAL PROPERTY AND GIVE IT TO OTHER PEOPLE, THEN WE
8 WOULDN'T HAVE THAT SUPPORT REVENUE. WE WOULDN'T HAVE THOSE
9 LICENSE FEES. WE WOULDN'T ACTUALLY BE ABLE TO PAY ALL THOSE
10 PROGRAMMERS THAT WE PAY TO MAKE OUR SOFTWARE BETTER AND TO
11 INNOVATE.

12 WHEN I FIRST JOINED ORACLE IN '86, ORACLE WAS A
13 SMALL COMPANY WITH BASICALLY ONE PRODUCT. RIGHT? TODAY,
14 ORACLE IS A MUCH LARGER COMPANY WITH MANY, MANY PRODUCTS. AND
15 THAT CORE INITIAL DATABASE PRODUCT, ORACLE DATABASE, IS MUCH
16 MORE POWERFUL AND MUCH MORE SOPHISTICATED.

17 IF ORACLE DID NOT HAVE INTELLECTUAL PROPERTY RIGHTS,
18 THEN THERE IS NO WAY THAT ORACLE COULD HAVE PAID FOR THE
19 ENGINEERING TO MAKE THE ORACLE DATABASE WHAT IT IS TODAY TO
20 BUILD THE ADDITIONAL PRODUCTS THAT WE BUILD TODAY.

21 Q. DO YOU RUN ACROSS ORACLE'S COPYRIGHT PROTECTION EFFORTS IN
22 THE COURSE OF YOUR JOB?

23 A. YES, YES, YES. ALL THE TIME. SO INSIDE ORACLE, OF
24 COURSE, EVERY TIME WE PRODUCE A CD OR DVD WITH OUR SOFTWARE IN
25 IT IT'S STAMPED WITH THE COPYRIGHT.

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SCREVEN - DIRECT / MR. HOWARD

1 Q. I THINK WE CAN SHOW THAT ON THE SCREEN.
2 (EXHIBIT DISPLAYED ON SCREEN.)
3 IS THAT AN IMAGE OF THE CD, THE ORIGINAL CD YOU HAVE
4 THERE IN THE PLASTIC SLEEVE?

5 A. YES.

6 Q. ALL RIGHT.

7 DOES THIS CD BEAR THE TYPE OF COPYRIGHT NOTICE THAT
8 YOU WERE DESCRIBING JUST A MOMENT AGO THAT ORACLE PUTS ON ITS
9 PRODUCTS?

10 A. YES, IT DOES. ALONG THE BOTTOM YOU CAN SEE A COPYRIGHT
11 NOTICE WHICH IS VERY SIMILAR TO WHAT APPEARS IN, YOU KNOW, ON
12 OTHER ORACLE CD'S AND OUR DOCUMENTATION AND OUR SOURCE CODE.

13 Q. DOES ORACLE HAVE --

14 MR. HOWARD: THANK YOU. YOU CAN TAKE THAT DOWN.

15 BY MR. HOWARD:

16 Q. DOES ORACLE HAVE OTHER ASSETS THAT ARE VALUABLE BESIDES
17 ITS INTELLECTUAL PROPERTY?

18 A. WELL, WE HAVE BUILDINGS AND WE HAVE COMPUTERS AND TABLES
19 AND CHAIRS, ALL THOSE THINGS, BUT NONE OF THEM ARE -- NONE OF
20 THEM ARE UNIQUE TO ORACLE. I MEAN, EVERYONE HAS THOSE THINGS.
21 AND YOU KNOW THEY ARE VERY DIFFERENT THAN INTELLECTUAL
22 PROPERTY.

23 I MEAN, IF SOMEHOW ALL OF THAT PHYSICAL PROPERTY,
24 LIKE COMPUTERS AND BUILDINGS AND TABLES AND CHAIRS WERE TO GO
25 AWAY, WE COULD REPLACE IT. WE COULD BUY NEW ONES. WE WOULD

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SCREVEN - DIRECT / MR. HOWARD

1 EVERY TIME WE HAVE A DOCUMENT WHICH WE GIVE TO
2 CUSTOMERS, IT HAS A COPYRIGHT NOTICE IN IT. ON OUR WEBSITE ARE
3 OUR COPYRIGHT NOTICES. IN OUR CODE IS COPYRIGHT NOTICES.
4 AS A PROGRAMMER, IF I LOOK AT AN ORACLE SOURCE FILE,
5 I WILL SEE AN ORACLE COPYRIGHT NOTICE. IT'S PART OF WHAT WE DO
6 EVERY SINGLE DAY.

7 Q. MR. SCREVEN, I WOULD LIKE TO SHOW YOU A CD.

8 MR. HOWARD: YOUR HONOR, THIS HAS BEEN -- IS
9 EXHIBIT -- PLAINTIFFS' EXHIBIT 2115-1. IT HAS BEEN STIPULATED
10 INTO EVIDENCE. IT IS AN ORIGINAL CD.

11 MAY I APPROACH THE WITNESS TO HAND IT TO HIM?
12 (EXHIBIT HANDED TO WITNESS.)

13 (PLAINTIFFS' EXHIBIT 2115-1 RECEIVED IN
14 EVIDENCE)

15 THE COURT: MR. SCREVEN, CAN I ASK YOU TO SLOW DOWN
16 JUST A LITTLE BIT.

17 THE WITNESS: I'M SORRY, YOUR HONOR.

18 THIS IS A CD WHICH CONTAINS ORACLE DATABASE 10G.
19 THIS SPECIFIC VERSION OF IT CALLED 102010. IT CAN BE USED TO
20 STORE THE ORACLE DATABASE.

21 BY MR. HOWARD:

22 Q. DOES THAT HAVE ANY RELATION TO THE PRODUCTS WHICH THE
23 DEFENDANTS HAVE STIPULATED TO INFRINGING?

24 A. YES, IT DOES. IT'S ONE OF THE VERSIONS OF THE ORACLE
25 DATABASE THEY HAVE STIPULATED TO INFRINGING.

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SCREVEN - DIRECT / MR. HOWARD

1 STILL BE IN BUSINESS.

2 IF OUR INTELLECTUAL PROPERTY DISAPPEARED? WE WOULD
3 BE OUT OF BUSINESS. IT IS THE SAME FOR US. SAME FOR US AND
4 MANY OTHER IT COMPANIES. OUR BUSINESS IS OUR INTELLECTUAL
5 PROPERTY.

6 Q. DOES ORACLE LICENSE ITS SOFTWARE?

7 A. WE DO LICENSE OUR SOFTWARE.

8 Q. AND HOW DOES THAT -- WHAT FORM DOES THAT LICENSE TAKE?

9 A. IT DEPENDS ON THE PRODUCT.

10 SO, FOR EXAMPLE, A CUSTOMER WHO WISHES TO USE THE
11 ORACLE DATABASE, PURCHASES FROM ORACLE A LICENSE USUALLY TO RUN
12 THE COMPUTER ON SOME NUMBER OF PROCESSORS. SO IF I HAVE GOT 20
13 COMPUTERS IN MY COMPANY AND I WANT TO RUN THE ORACLE DATABASE
14 ON THOSE 20 COMPUTERS, I BUY FROM ORACLE THE RIGHT TO USE THE
15 DATABASE ON THOSE 20 COMPUTERS.

16 Q. HOW IS THE FEE PAID; IS IT UP FRONT OR IS IT OVER TIME?

17 A. IT'S PAID UP FRONT.

18 Q. DO YOU EVER JUST GIVE THE CUSTOMER THE SOFTWARE AND WAIT
19 AND SEE HOW THEY USE IT?

20 A. NO. THE CUSTOMER'S OBLIGATED TO PAY US FOR THE SOFTWARE
21 THAT THEY ARE GOING TO USE. THEY DON'T JUST PAY US FOR THE
22 SOFTWARE THEY FEEL LIKE PAYING US FOR.

23 Q. WHAT HAPPENS IF THEY DON'T USE IT AS MUCH AS THEY ARE
24 EXPECTING TO WHEN YOU ARE ASKING THEM FOR THE LICENSE FEE?

25 A. THEY HAVE ALREADY BOUGHT IT. I MEAN, IF I GO TO THE

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SCREVEN - DIRECT / MR. HOWARD

1 GOVERNMENTS USE CRM, TOO, BECAUSE THEY TREAT THEIR
 2 CONSTITUENTS, THEIR CITIZENS AS THEIR CUSTOMERS.
 3 THE NEXT CATEGORY IS ENTERPRISE PERFORMANCE
 4 MANAGEMENT, EPM. IT'S A WAY TO SET GOALS FOR THEMSELVES AND
 5 THEN TRACK HOW WELL THEY ARE DOING AGAINST THOSE GOALS.
 6 THE NEXT IS STUDENT ADMINISTRATION. STUDENT
 7 ADMINISTRATION IS A KIND OF SPECIALIZED HUMAN RESOURCES
 8 MANAGEMENT. IT'S FOR COLLEGES AND UNIVERSITIES TO MANAGE THEIR
 9 STUDENT ENVIRONMENT.
 10 PEOPLE TOOLS IS ACTUALLY NOT AN APPLICATION ITSELF,
 11 RATHER IT'S A COLLECTION OF TECHNOLOGY THAT'S USED TO RUN,
 12 BUILD AND RUN THE APPLICATIONS THAT ARE RUNNING ON TOP OF IT.
 13 AND, FINALLY, THERE ARE UPDATES AND SUPPORT
 14 MATERIALS. SO, THOSE ARE THINGS LIKE BUG FIXES, OR NOTICES
 15 ABOUT CHANGES THAT ARE GOING TO EFFECT CUSTOMERS OR INFORMATION
 16 ABOUT HOW TO USE THE SOFTWARE MORE EFFECTIVELY.
 17 Q. ARE ALL OF THOSE REFLECTED IN THE LIST OF 120
 18 REGISTRATIONS?
 19 A. YES, THEY ARE ALL REFLECTED WITHIN THE LIST OF 120
 20 REGISTRATIONS.
 21 Q. NOW, IF LOOKING AT THE NEXT SLIDE, IF WE COULD, CAN YOU
 22 TELL US JUST BRIEFLY ABOUT THE J.D. EDWARDS PRODUCTS THAT ARE
 23 THERE?
 24 A. YES. SO, J.D. EDWARDS -- ACTUALLY WITHIN J.D. EDWARDS
 25 THERE ARE ACTUALLY TWO SUBLINES. ONE IS CALLED J.D. EDWARDS
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1 THERE ANYTHING ELSE BESIDES HUMAN RESOURCES THAT WAS
 2 PARTICULARLY DESIRABLE?
 3 A. SIEBEL WAS VERY WELL-KNOWN AND IS STILL VERY WELL-KNOWN
 4 FOR CUSTOMER RELATIONSHIP MANAGEMENT. SO THE WAY THAT
 5 ENTERPRISES DEAL WITH THEIR CUSTOMERS OR CONSTITUENTS.
 6 Q. PUTTING ASIDE SIEBEL AND J.D. EDWARDS, WITHIN PEOPLESOFT,
 7 IS THERE ANYTHING OTHER THAN HUMAN RESOURCES THAT WAS
 8 PARTICULARLY DESIRABLE?
 9 A. YES. ACTUALLY, PEOPLESOFT WAS VERY WELL-KNOWN AND STILL
 10 IS VERY WELL-KNOWN FOR FINANCIALS FOR GOVERNMENTS.
 11 SO, YOU KNOW, GOVERNMENT HAS TO DO ACCOUNTING JUST
 12 LIKE A BUSINESS DOES. THE WAY THEY DO IT IS A LITTLE BIT
 13 DIFFERENT, SO IT REQUIRES SPECIALIZED FUNCTIONALITY --
 14 THE REPORTER: I'M SORRY.
 15 BY MR. HOWARD:
 16 Q. YOU HAVE TO SLOW DOWN. THE COURT REPORTER HAS TO TAKE
 17 DOWN EVERYTHING YOU SAY.
 18 A. GOT IT. SORRY.
 19 SO, YES, GOVERNMENTS -- VERY SORRY. GOVERNMENTS DO
 20 ACCOUNTING A LITTLE DIFFERENTLY THAN BUSINESSES DO AND SO IT
 21 REQUIRES SPECIALIZED APPLICATIONS TO HELP MANAGE THAT
 22 ACCOUNTING. AND PEOPLESOFT IS WELL-KNOWN FOR THAT PARTICULAR
 23 FUNCTIONALITY.
 24 MR. HOWARD: THANK YOU. YOU CAN TAKE THAT ONE DOWN.
 25 ///

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SCREVEN - DIRECT / MR. HOWARD

1 WORLD AND THE OTHER ONE IS CALLED J.D. EDWARDS ENTERPRISE ONE.
 2 NOW YOU'LL NOTICE THE BOXES ARE VERY SIMILAR. THEY
 3 ADDRESS MANY OF THE SAME FUNCTIONAL AREAS THAT THE PEOPLESOFT
 4 PRODUCTS DO. JUST IDENTIFYING A COUPLE OF THEM WHICH ARE
 5 SPECIFIC TO J.D. EDWARDS.
 6 ONE IS ASSET MANAGEMENT. SO ASSET MANAGEMENT IS ALL
 7 ABOUT HOW MANUFACTURER OPTIMIZES THEIR USE OF THEIR PHYSICAL
 8 PLANTS. SO THEIR FACTORIES AND THE MACHINES WITHIN THOSE
 9 FACTORIES.
 10 YOU KNOW ANOTHER ONE IS, WELL, PROJECT MANAGEMENT.
 11 SO PROJECT MANAGEMENT IS AN APPLICATION THAT HELPS
 12 ENTERPRISES -- THEY'RE DOING COMPLEX PROJECTS. SO I HAVE A LOT
 13 OF PEOPLE AND RESOURCES THAT ARE DEDICATED TO ACCOMPLISH SOME
 14 TASK. HOW CAN I MANAGE ALL THOSE RESOURCES AND PEOPLE AND GET
 15 THE JOB DONE.
 16 Q. WITHIN THE PRODUCTS THAT YOU'VE JUST DESCRIBED FOR
 17 PEOPLESOFT AND J.D. EDWARDS, ARE THEIR ONES THAT ARE
 18 PARTICULARLY SIGNIFICANT OR DESIRABLE TO ORACLE AT THE TIME
 19 THAT IT ACQUIRED PEOPLESOFT?
 20 A. YES. DEFINITELY. SO PEOPLESOFT WAS AND IS ACTUALLY STILL
 21 VERY WELL-KNOWN FOR ITS HUMAN RESOURCES MANAGEMENT CAPABILITY.
 22 J.D. EDWARDS IS WELL-KNOWN FOR BEING VERY
 23 APPROPRIATE FOR MID-SIZE COMPANIES AND ALSO ESPECIALLY MID-SIZE
 24 MANUFACTURING COMPANIES.
 25 Q. YOU MENTIONED THE HUMAN RESOURCES FOR PEOPLESOFT. WAS
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SCREVEN - DIRECT / MR. HOWARD

1 BY MR. HOWARD:
 2 Q. MR. SCREVEN, HOW ARE THESE DIFFERENT RELEASES AND SUPPORT
 3 PRODUCTS DELIVERED TO CUSTOMERS?
 4 A. WE DELIVER OUR PRODUCTS TO CUSTOMERS EITHER ON PHYSICAL
 5 MEDIA LIKE A CD OR DVD THAT YOU SAW, AND WE ALSO DELIVER IT ON
 6 LINE SO CUSTOMERS CAN DOWNLOAD IT.
 7 IN EVERY CASE, WHAT YOU DOWNLOAD OR WHAT YOU GET ON
 8 A CD OR DVD IS USED TO CREATE SOMETHING CALLED AN ENVIRONMENT.
 9 NOW AN ENVIRONMENT IS THE ACTUAL INSTALLATION OF THE
 10 PROGRAM, THE DATABASE OR THE APPLICATION THAT LETS YOU RUN THE
 11 DATABASE OR RUN THE APPLICATION. IT IS ALSO ESSENTIAL TO HAVE
 12 THOSE ENVIRONMENTS AROUND IF YOU'RE -- FOR A SUPPORT PROVIDER.
 13 Q. ALL RIGHT. FINALLY, I WANT TO COME BACK TO THE ROLE THAT
 14 YOU WILL MENTIONED RELATED TO SYSTEM SECURITY AT ORACLE.
 15 CAN YOU EXPLAIN WHAT THAT COVERS?
 16 A. YES. SO, I AM ACTUALLY RESPONSIBLE FOR ALL OF ORACLE'S
 17 INTERNAL SECURITY. SO, OUR PHYSICAL SECURITY ORGANIZATION AND
 18 OUR PRODUCT INFORMATION ASSURANCE TEAM WHICH HELPS MAKE SURE
 19 OUR PRODUCTS ARE SECURE, AND OUR INFORMATION SECURITY TEAM ALL
 20 REPORT TO ME.
 21 THE GROUP WHICH I THINK IS MOST RELEVANT FOR THIS
 22 TRIAL IS ACTUALLY THE INFORMATION SECURITY TEAM.
 23 Q. AS THE PERSON IN CHARGE OF ORACLE'S SECURITY, WAS THERE A
 24 TIME AT WHICH WRONGFUL CONDUCT BY SAP OR TOMORROWNOW CAME TO
 25 YOUR ATTENTION?
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1 A. YES. ABSOLUTELY.
 2 SO, I THINK IT WAS NOVEMBER OF 2006, SOMEONE WHO
 3 WORKED FOR ME WHO ACTUALLY REPORTED TO ME IN CHARGE OF THE
 4 INFORMATION SECURITY TEAM TOLD ME THAT WE HAD BEEN EXPERIENCING
 5 A VERY LARGE NUMBER OF DOWNLOADS, EXCESSIVELY LARGE NUMBER OF
 6 DOWNLOADS FROM AN IP ADDRESS. AN IP ADDRESS IS A COMPUTER
 7 INTERNET ADDRESS. THAT COMPUTER INTERNET ADDRESS BELONGED TO A
 8 SUBSIDIARY OF SAP.
 9 Q. WHAT DID YOU DO NEXT?
 10 A. I DID TWO THINGS. FIRST I NOTIFIED OUR CEO LARRY ELLISON.
 11 I ALSO INSTRUCTED THE INFORMATION SECURITY TEAM TO BEGIN
 12 INVESTIGATING.
 13 Q. EXPLAIN WHAT YOU DID AND WHAT YOU CONCLUDED AS A RESULT OF
 14 THAT INVESTIGATION?
 15 A. WELL, WE ANALYZED ALL THE PIECES OF EVIDENCE THAT WE COULD
 16 FIND, THE LOG FILES, ET CETERA THAT OUR SUPPORT SYSTEMS CREATE
 17 AND WHAT WE FOUND WAS THAT, YOU KNOW, SAP SUBSIDIARY HAD
 18 DOWNLOADED JUST MASSIVE AMOUNTS OF SUPPORT MATERIALS IN A WAY
 19 WHICH CLEARLY THEY WERE USING -- THEY WERE USING THINGS LIKE
 20 FAKE NAMES AND FAKE PHONE NUMBERS, THEY WERE USING LOGIN
 21 CREDENTIALS OF CUSTOMERS WHO HAD LEFT OR WERE ABOUT TO LEAVE
 22 ORACLE SUPPORT. THEY WERE, I MEAN, JUST DOWNLOADING SO MUCH
 23 DATA PER CREDENTIAL THAT THERE'S NO WAY IT COULD POSSIBLY
 24 CORRESPOND TO A HUMAN BEING ACTUALLY DOING THE DOWNLOADING. IT
 25 HAD TO BE SOME SORT OF AUTOMATIC SCRAPING TOOL.

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1 MR. SCREVEN, YOU ARE EXCUSED. YOU MAY STEP DOWN.
 2 THE WITNESS: THANK YOU.
 3 THE COURT: MR. HOWARD, NEXT WITNESS?
 4 MR. HOWARD: YES. YOUR HONOR, ARE THE EXHIBITS NOW
 5 ADMITTED INTO EVIDENCE HAVING IDENTIFIED THEM AS STIPULATED?
 6 THE COURT: THE STIPULATED ONES ARE AUTOMATICALLY
 7 ADMITTED.
 8 MR. HOWARD: THANK YOU, YOUR HONOR.
 9 THE COURT: I DON'T KNOW THAT WE HAVE A NUMBER,
 10 THOUGH, FOR THIS ONE. WHAT'S THIS ONE? ARE WE JUST GOING TO
 11 REFER TO IT BY THE NUMBER THAT'S ON THE FRONT?
 12 MR. HOWARD: YES, IF THAT'S ACCEPTABLE TO YOUR
 13 HONOR, EXHIBIT 4813?
 14 THE CLERK: WE HAVE THAT ONE. THERE WAS THIS OTHER
 15 ONE THAT WE CALLED A JOINT EXHIBIT 2?
 16 THE COURT: I THINK THAT WAS JUST A DEMONSTRATIVE.
 17 I THINK ALL THE OTHERS WERE JUST DEMONSTRATIVE.
 18 MR. HOWARD: THE CD IS IN EVIDENCE, 2115-1.
 19 THE CLERK: I HAVE THAT ONE.
 20 MR. HOWARD: THOSE ARE THE ONLY TWO FOR MR. SCREVEN.
 21 THE COURT: RIGHT. NUMBER FOUR WAS THE ATTACHMENT
 22 TO THE STIPULATION, AND THAT DIDN'T HAVE A SEPARATE NUMBER.
 23 MR. HOWARD: NO. THAT IS IN THE RECORD AS THE
 24 STIPULATION.
 25 THE COURT: ALL RIGHT.
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SCREVEN - DIRECT / MR. HOWARD

1 Q. WHAT DID THE USE OF AN AUTOMATED TOOL SUGGEST TO YOU?
 2 A. WELL, IT SUGGESTED TO ME SINCE, YOU KNOW, WE DIDN'T
 3 PRODUCE ONE OURSELVES, IT SUGGESTED TO ME THAT THEY HAD REVERSE
 4 ENGINEERED THE LEGITIMATE WAY THAT WE PROVIDE IT TO OUR
 5 CUSTOMER TO ACTUALLY GET ACCESS TO THE SUPPORT MATERIALS.
 6 Q. OTHER THAN CLICKING FASTER THAN A HUMAN COULD, WAS THERE
 7 ANYTHING ELSE DISTINCTIVE ABOUT THE DOWNLOADING YOU WERE
 8 INVESTIGATING?
 9 A. YES. AS I MENTIONED FOR A GIVEN CREDENTIAL THAT THEY USED
 10 TO LOG INTO OUR SUPPORT SITE, THEY WERE DOWNLOADING DOCUMENTS
 11 THAT THE CUSTOMER WHO ACTUALLY WAS ISSUED THAT CREDENTIAL DID
 12 NOT HAVE THE RIGHT TO GET. THEY WERE DOWNLOADING DOCUMENTS
 13 INDISCRIMINATELY, TRYING TO GRAB EVERY SINGLE THING THEY
 14 COULD.
 15 THEY WERE -- THEY WERE, IN FACT, BECAUSE THEY HAD
 16 BUILT THE SCRAPING TOOL, THEY ACTUALLY WERE GETTING DOCUMENTS
 17 THAT NO CUSTOMER HAD A RIGHT TO GET. THEY WERE DOWNLOADING
 18 DOCUMENTS THAT WERE INTERNAL FOR ORACLE ONLY. RIGHT? AND IT
 19 WAS JUST AN OVERWHELMING LOAD ON OUR SUPPORT SYSTEMS.

20 MR. HOWARD: THANK YOU, YOUR HONOR. I HAVE NOTHING
 21 FURTHER.
 22 THE COURT: ALL RIGHT.
 23 COUNSEL? MR. COWAN?
 24 MR. COWAN: NO QUESTIONS, YOUR HONOR.
 25 THE COURT: ALL RIGHT. THANK YOU.
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1 MR. HOWARD: YOUR HONOR, OUR NEXT WITNESS IS BY
 2 VIDEOTAPE, JOHN RITCHIE. HIS TAPE RUNS ABOUT 49 MINUTES. WE
 3 WOULD PROPOSE TO START HIM IN THE REMAINING TIME AND FINISH HIM
 4 ON THURSDAY AT THE COURT'S PREFERENCE.
 5 THE COURT: SURE. FINE WITH ME.
 6 MR. HOWARD: IN THAT CASE, YOUR HONOR, WE CALL BY
 7 VIDEO DEPOSITION JOHN RITCHIE.
 8 DOES COUNSEL WANT TO BE HEARD?
 9 MR. LANIER: THERE'S AN ISSUE OF THE ADMISSION OF
 10 EXHIBITS AS WELL. OUR UNDERSTANDING IS THAT TWO OF THE
 11 EXHIBITS HAVE BEEN STIPULATED AS ADMITTED, AND THAT THE ONE
 12 EXHIBIT, 1815, A PORTION WILL BE SHOWN JUST FOR DEMONSTRATIVE
 13 PURPOSES.
 14 THE COURT: IS THAT YOUR UNDERSTANDING AS WELL,
 15 COUNSEL?
 16 MR. LANIER: JUST TO CLEAN THAT UP BEFORE WE PLAY
 17 HIM.
 18 1815, THEY WILL SHOW A PORTION OF THAT DURING THE
 19 TESTIMONY FOR DEMONSTRATIVE PURPOSES ONLY.
 20 THE COURT: ALL RIGHT. DOES THAT SOUND RIGHT TO
 21 YOU, MR. HOWARD?
 22 MR. HOWARD: I AM TOLD THAT IT SOUNDS RIGHT TO ME,
 23 YOUR HONOR.
 24 (LAUGHTER).
 25 THE COURT: ALL RIGHT.
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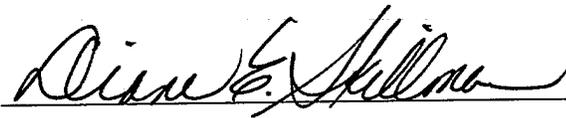
CERTIFICATE OF REPORTER

WE, RAYNEE H. MERCADO AND DIANE E. SKILLMAN, OFFICIAL REPORTERS FOR THE UNITED STATES COURT, NORTHERN DISTRICT OF CALIFORNIA, HEREBY CERTIFY THAT THE FOREGOING PROCEEDINGS IN C07-01658PJH, ORACLE USA, INC., ET AL. V. SAP AG, ET AL., WERE REPORTED BY US ON, TUESDAY, NOVEMBER 2, 2010, CERTIFIED SHORTHAND REPORTERS, AND WERE THEREAFTER TRANSCRIBED UNDER MY DIRECTION INTO TYPEWRITING; THAT THE FOREGOING IS A FULL, COMPLETE AND TRUE RECORD OF SAID PROCEEDINGS AS BOUND BY ME AT THE TIME OF FILING.

THE VALIDITY OF THE REPORTER'S CERTIFICATION OF SAID TRANSCRIPT MAY BE VOID UPON DISASSEMBLY AND/OR REMOVAL FROM THE COURT FILE.



RAYNEE H. MERCADO, CSR, RMR, CRR, FCRR, CCRR



DIANE E. SKILLMAN, CSR, RPR, FCRR

WEDNESDAY, NOVEMBER 3, 2010

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

BEFORE THE HONORABLE PHYLLIS J. HAMILTON, JUDGE

ORACLE CORPORATION, ET AL.)	JURY TRIAL
)	
PLAINTIFFS,)	NO. C 07-01658 PJH
)	
VS.)	
)	
SAP AG, ET AL.,)	PAGES 480 - 640
)	
DEFENDANTS.)	OAKLAND, CALIFORNIA
)	THURSDAY, NOVEMBER 4, 2010

(PAGES 485 THROUGH 491 ARE UNDER SEAL AND BOUND SEPARATELY)

TRANSCRIPT OF PROCEEDINGS

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1 TAPE, MAKING HIM READY.
 2 IT'S POSSIBLE THAT WE WILL NOT BE ABLE TO FILL ALL OF
 3 THE DAY BECAUSE WE'RE TRYING TO SLIDE HIM IN WITH MR. RITCHIE
 4 NOT TESTIFYING. COUNSEL HAVE AGREED IF THE COURT IS WILLING,
 5 THAT IF WE FALL A LITTLE BIT SHORT TODAY, THAT WE WOULD ADJOURN
 6 WITHOUT IT COUNTING AGAINST OUR TIME. WE'LL DO OUR BEST TO FILL
 7 IT, BUT WE'RE TRYING TO GET IT READY TO GO.
 8 I THINK MR. HURST WILL BE READY IT. JUST MAY NOT
 9 EXACTLY FILL OUT THE TRIAL DAY.
 10 THE COURT: I HAVE A PRETTY HARD-AND-FAST RULE, IT
 11 COUNTS AGAINST YOU IF THERE'S DOWN TIME.
 12 IS THERE SOME REASON WHY IT SHOULDN'T? I MEAN, CAN'T
 13 YOU CALL SOMEONE ELSE IF -- IF WE CONCLUDE EARLY WITH HIS
 14 TESTIMONY.
 15 MR. HOWARD: WE'LL DO OUR BEST DURING THE MORNING TO
 16 MAKE SOMETHING AVAILABLE.
 17 (OFF-THE-RECORD DISCUSSION.)
 18 MR. HOWARD: WE CAN START A TAPE.
 19 THE COURT: RIGHT. OF COURSE, I MEAN, THERE'S ALWAYS
 20 SOMETHING THAT YOU CAN DO YOU CAN DO.
 21 MR. HOWARD: WE'LL --
 22 THE COURT: ALL RIGHT. SINCE YOU ANNOUNCED TO THE
 23 JURY THAT MR. RITCHIE'S TESTIMONY WAS ESTIMATED TO BE 40 MINUTES
 24 OR SO --
 25 MR. HOWARD: YES.
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1 FACTORS AS THE REASON WHY IT COMES IN.
 2 IN FACT, LAST NIGHT, THEY WITHDREW THEIR GEORGIA
 3 PACIFIC INSTRUCTION. SO WE REALLY DO THINK WE'RE AT A POINT
 4 WHERE, WHILE SOME EVIDENCE WILL COME IN FOR CONTEXT WHICH IS WHY
 5 WE'RE NOT JUMPING UP AND DOWN RIGHT NOW FOR A HARD-AND-FAST
 6 RULE, THAT WE WOULD LIKE THE COURT TO GIVE SOME THOUGHT TO THAT
 7 AS THE EVIDENCE COMES IN AS TO WHETHER OR NOT WE NEED TO GET
 8 SOME CLEAR GUIDANCE AS TO WHEN WE'RE GOING PAST WHAT'S REALLY
 9 RELEVANT TO DAMAGES.
 10 WE HAVE A BENCH BRIEF ON THAT WE'LL GIVE TO THEM AND
 11 GIVE TO YOUR HONOR. THE RELATED ISSUE ALSO IS THIS ONGOING
 12 ISSUE ABOUT GOOD-WILL EVIDENCE. WE'VE TALKED ABOUT A BACK DOOR.
 13 THERE'S A SIDE DOOR. THERE'S A TRAP DOOR. IT KEEPS TRYING TO
 14 SNEAK ITS WAY IN IN A VARIETY OF WAYS. AND WE'D LIKE TO PRESENT
 15 THAT ISSUE TO YOUR HONOR AS WELL.
 16 AGAIN, WE'LL GIVE YOU BRIEFS NOW, AND YOU CAN LET US
 17 KNOW WHAT YOU THINK WHEN YOU HAVE A MOMENT.
 18 THE COURT: OKAY.
 19 I ASSUME YOU WILL WANT TO RESPOND IN WRITING, SO YOU
 20 CAN SUBMIT A BRIEF, IF YOU CAN, TOMORROW, AND I'LL LOOK AT THEM
 21 OVER THE WEEKEND.
 22 MR. PICKETT: WE WILL.
 23 THE COURT: WITH REGARD TO THE FIRST ISSUE, THOUGH,
 24 IT IS CLEAR FROM THE REVIEW -- MY REVIEW OF THE DEPOSITION
 25 TRANSCRIPTS THAT THE EVIDENCE IS LIKELY TO BE CUMULATIVE ON THAT
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1 THE COURT: -- 49 MINUTES, I THINK IS WHAT YOU SAID,
 2 WE PERHAPS SHOULD TELL THEM THAT YOU'VE CONCLUDED --
 3 MR. HOWARD: YES.
 4 THE COURT: -- WITH HIS TESTIMONY -- AND BECAUSE
 5 THEY'RE PROBABLY GOING TO ANTICIPATE STARTING WITH HIM.
 6 MR. HOWARD: YES.
 7 THE COURT: WOULD YOU LIKE ME TO JUST TELL THEM --
 8 MR. HOWARD: THINK THAT MAKES SENSE, YOUR HONOR.
 9 THE COURT: -- THAT YOU'RE SATISFIED WITH --
 10 MR. HOWARD: WE'VE AGREED THAT WE'VE HEARD THE --
 11 THE COURT: -- AS MUCH AS YOU --
 12 MR. HOWARD: -- THE TESTIMONY THAT NEEDS TO BE PLAYED
 13 AND THAT WE'RE GOING TO MOVE ON TO THE NEXT WITNESS.
 14 THE COURT: OKAY.
 15 MR. LANIER: TWO SMALL ISSUES, YOUR HONOR. AND WE'D
 16 LIKE TO PROCEED, IF IT'S AGREEABLE WITH THE COURT, BY JUST
 17 GIVING YOUR HONOR A BENCH BRIEF ON TWO DIFFERENT ISSUES THAT ARE
 18 RECURRING AND WILL PROBABLY AFFECT THE LENGTH OF TRIAL AS WELL.
 19 YOUR HONOR CAN CONSIDER THEM AT YOUR LEISURE, AND THEY CAN READ
 20 WHAT WE HAVE TO SAY.
 21 JUST TO IDENTIFY THE TWO ISSUES, THEY ARE WE CONTINUE
 22 TO BELIEVE THAT A LOT OF EVIDENCE IS BEING OFFERED THAT'S
 23 ALLEGEDLY FOR DAMAGES THAT REALLY GOES ONLY TO CONTRIBUTORY
 24 INFRINGEMENT. YOU MAY RECALL SOME OF OUR ARGUMENT FROM EARLIER
 25 IN THE WEEK WHERE, IN FACT, THEY POINTED TO THE GEORGIA PACIFIC
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1 QUESTION.
 2 SO -- AND THAT ACCOUNTS FOR SOME OF THE RULINGS ON
 3 SOME OF THE DEPOSITION EXCERPTS. I'VE ALREADY TOLD YOU IT CAN
 4 COME IN FOR CONTEXT. IT CAN COME IN ON THE QUESTION OF WHETHER
 5 OR NOT THEY KNEW IT, THAT THEY WILLINGLY TOOK THE RISK OF A
 6 LAWSUIT, AND THAT THEIR -- THE -- THE STEPS THEY TOOK TO PROTECT
 7 THAT.
 8 MR. PICKETT: I SENSE --
 9 THE COURT: I MEAN, I -- I DON'T MEAN TO SAY I BOUGHT
 10 THE ARGUMENT, BUT I WAS PERSUADED THE -- BY YOUR ARGUMENT THAT,
 11 INDEED, IT'S RELEVANT. BUT AT SOME POINT, IT BECOMES CUMULATIVE
 12 PARTICULARLY GIVEN THAT LIABILITY'S NO LONGER AT ISSUE IN THE
 13 CASE.
 14 SO I'M NOT GOING TO ALLOW YOU TO JUST HAMMER ON IT
 15 OVER AND OVER AGAIN. I UNDERSTAND YOU NEED TO ESTABLISH THE
 16 DATES OF KNOWLEDGE AND THE TIME FRAME. BUT IT DOESN'T SEEM TO
 17 ME LIKE YOU NEED FOUR BOARD MEMBERS, I THINK IS WHAT YOU
 18 REFERRED TO THE OTHER DAY, TO DO THAT.
 19 MR. PICKETT: I UNDERSTOOD SOME OF YOUR HONOR'S
 20 RULING IN THAT REGARD, AND WE'VE BEEN ADJUSTING ACCORDINGLY.
 21 THERE IS -- WE ARE ABOUT -- MR. ZIEMEN, I THINK, IS
 22 THE NEXT WITNESS OF OURS. AND I WOKE UP THIS MORNING TO
 23 DISCOVER THAT AROUND MIDNIGHT LAST NIGHT, AN EXHIBIT -- A KEY
 24 EXHIBIT TO HIS TESTIMONY HAD RECEIVED A LATE OBJECTION FROM
 25 DEFENDANTS. UNTIMELY. BUT IT'S SOMETHING THAT NEEDS TO BE
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1 CHARLES PHILLIPS,
 2 CALLED AS A WITNESS FOR THE PLAINTIFFS, HAVING BEEN DULY SWORN,
 3 TESTIFIED AS FOLLOWS:
 4 THE CLERK: PLEASE STATE YOUR FULL NAME AND SPELL
 5 YOUR LAST NAME FOR THE RECORD. AND PLEASE SPEAK CLEARLY INTO
 6 THE MICROPHONE.
 7 THE WITNESS: NAME IS CHARLES PHILLIPS. LAST NAME IS
 8 P-H-I-L-L-I-P-S.
 9 DIRECT EXAMINATION
 10 BY MR. PICKETT:
 11 Q. GOOD MORNING, MR. PHILLIPS. COULD YOU PLEASE EXPLAIN YOUR
 12 BACKGROUND TO THE JURY.
 13 A. YES. I'VE BEEN WORKING IN THE ENTERPRISE SOFTWARE INDUSTRY
 14 IN SOME CAPACITY FOR THE LAST 25 YEARS, EITHER HELPING MANAGE
 15 COMPANIES, ANALYZING THE INDUSTRY AS A FINANCIAL ANALYST, OR
 16 USING THEIR PRODUCTS FOR MYSELF AS A CUSTOMER.
 17 AND PRIOR TO THAT EXPERIENCE, I WAS ALSO A CAPTAIN IN
 18 THE MARINE CORPS. SO THAT'S KIND OF MY HISTORY.
 19 Q. AND WHAT WAS YOUR POSITION AT ORACLE?
 20 A. I WAS PRESIDENT.
 21 Q. AND HOW LONG WERE YOU PRESIDENT?
 22 A. SEVEN AND A HALF YEARS.
 23 Q. AND WHEN DID THAT END?
 24 A. OCTOBER -- ACTUALLY, SEPTEMBER OF THIS YEAR.
 25 Q. DID YOU GET A NEW JOB?
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PHILLIPS - DIRECT / PICKETT
 1 SALES, MARKETING, ALLIANCES AND CHANNELS.
 2 SO I MANAGED THE WAY WE WOULD SELL OUR PRODUCTS TO
 3 CUSTOMERS, AND THAT WAS MOST OF THE JOB. AND THEN SECONDARILY,
 4 I ALSO HELPED DEVELOP OUR BUSINESS STRATEGY AND HELPED IDENTIFY
 5 ACQUISITIONS.
 6 Q. LET ME TAKE THE SECOND ONE FIRST, THE DEVELOPMENT OF
 7 BUSINESS STRATEGIES FOR ACQUISITIONS.
 8 AT A 40,000-FOOT LEVEL, HOW DID ORACLE'S ACQUISITIONS
 9 OF PEOPLESFT AND SIEBEL IN 2005 AND 2006 -- HOW DID THAT FIT
 10 INTO ORACLE'S ACQUISITION STRATEGY?
 11 A. WELL, THOSE ACQUISITIONS WERE REALLY GAME CHANGERS FOR THE
 12 COMPANY AND, REALLY, FOR THE INDUSTRY.
 13 THE CONCEPT AT THE TIME WAS WE WERE COMPETING WITH A
 14 MUCH LARGER COMPANY IN THE APPLICATIONS SEGMENT, AND THAT'S SAP.
 15 AND THE WAY THE INDUSTRY WORKS IS IT'S VERY HARD TO
 16 COMPETE WITH SOMEONE IF THEY HAVE A LOT MORE CUSTOMERS, BECAUSE
 17 YOU HAVE THIS FIXED COST OF HAVING TO HIRE A BUNCH OF EXPENSIVE
 18 ENGINEERS, YOU HAVE TO HIRE EXPENSIVE SALES FORCE, YOU HAVE TO
 19 PAY FOR THAT.
 20 SO IF YOU HAVE MORE CUSTOMERS, YOU CAN ACTUALLY
 21 SPREAD THAT COST ACROSS MORE CUSTOMERS, AND YOU CAN INVEST MORE.
 22 AND YOU CAN ACTUALLY CHARGE THEM LESS BECAUSE YOU HAVE SO MANY
 23 CUSTOMERS. SO IF SOMEONE ELSE HAS THREE OR FOUR TIMES AS MANY
 24 CUSTOMERS AS YOU CAN (SIC), AND YOU HAVE THE SAME COSTS,
 25 EVENTUALLY THEY CAN SPEND MORE, AND YOU WILL NEVER CATCH UP.
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PHILLIPS - DIRECT / PICKETT
 1 A. YES. I'M CURRENTLY C.E.O. OF A SOFTWARE COMPANY IN ATLANTA
 2 CALLED INFOUR.
 3 Q. HOW LONG HAVE YOU BEEN C.E.O. OF THAT COMPANY?
 4 A. ABOUT TWO WEEKS. I'M SUPPOSED TO BE WORKING THERE NOW.
 5 Q. I KNOW YOU JUST GOT YOUR NEW JOB AND HAD TO FLY IN FROM THE
 6 EAST COAST. COULD YOU PLEASE EXPLAIN TO THE JURY WHY YOU CAME
 7 OUT HERE TO TESTIFY?
 8 A. WELL, THIS -- THIS IS A VERY IMPORTANT CASE AND TOPIC FOR
 9 OUR INDUSTRY BECAUSE OUR ENTIRE INDUSTRY IS BUILT AROUND THE
 10 CONCEPT THAT IF YOU INVEST IN SOMETHING, SPEND BILLIONS OF
 11 DOLLARS BUILDING IT, THAT THAT INTELLECTUAL PROPERTY WILL BE
 12 PROTECTED.
 13 SO IT'S NOT JUST FOR THIS CASE. IT'S FOR MY COMPANY
 14 THAT I'M A PART OF NOW AND THE ENTIRE INDUSTRY. WE'RE TRYING TO
 15 EDUCATE THE REST OF THE WORLD, THAT WE WANT THEM TO RESPECT THE
 16 INTELLECTUAL PROPERTY RIGHTS SO WE CAN SELL SOFTWARE IN MANY
 17 OTHER COUNTRIES, AND SO IT STARTS RIGHT HERE. WE HAVE TO MAKE
 18 SURE THAT AMONGST OURSELVES, WE RESPECT THE IP. SO IT'S SORT OF
 19 A HONOR AMONG WARRIORS HERE THAT WE CAN COMPETE FIERCELY, BUT WE
 20 DON'T TAKE EACH OTHER'S SOFTWARE.
 21 SO THIS IS IMPORTANT FOR ALL OF US.
 22 Q. MR. PHILLIPS, WHAT WERE YOUR RESPONSIBILITIES AS PRESIDENT
 23 OF ORACLE?
 24 A. I REALLY HAD TWO DIFFERENT ASPECTS OF THE JOB. ONE WAS AS
 25 PRESIDENT OF KIND OF FIELD OPERATIONS, AS WE CALLED IT, SO
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PHILLIPS - DIRECT / PICKETT
 1 AND THE REASON IT'S IMPORTANT TO ACQUIRE A COMPANY
 2 LIKE A PEOPLESFT IS THAT CATCHING UP IS IMPOSSIBLE JUST LETTING
 3 TIME GO BY AND INVESTING AND TRYING TO DO IT YOURSELF ON YOUR
 4 OWN, BECAUSE THIS IS VERY HARD TO DO.
 5 BUILDING AN INSTALL BASE OF THOUSANDS OF CUSTOMERS --
 6 AND THEY HAD 10,000 CUSTOMERS, THAT TAKES A DECADE OR MORE. AND
 7 VERY FEW COMPANIES HAVE EVER DONE IT IN OUR INDUSTRY. MOST
 8 COMPANIES, IF THEY'RE LUCKY, A FEW HUNDRED CUSTOMERS, MAYBE OVER
 9 A THOUSAND. BUT WHEN YOU GET 10,000, THAT'S A BIG DEAL. THAT'S
 10 REALLY BEACHFRONT PROPERTY AND A WAY TO REALLY CATCH UP AND
 11 COMPETE WITH THAT BIG COMPETITOR.
 12 AND THEN ONCE YOU HAVE THE -- THAT INSTALL BASE, YOU
 13 CAN SELL THEM A LOT OF OTHER THINGS. SO YOU'VE PROBABLY HEARD
 14 OF THE SOFTWARE STACK, BUT IF YOU BUY THE APPLICATION, THERE ARE
 15 OTHER THINGS YOU NEED TO RUN AN APPLICATIONS, LIKE A DATABASE OR
 16 SECURITY SYSTEM, REPORTING SYSTEMS. AND SO YOU GET TO SELL THEM
 17 A LOT OF OTHER THINGS.
 18 JUST LIKE BUYING A LAPTOP. IF YOU GET SOMEONE TO BUY
 19 YOUR LAPTOP, YOU CAN PROBABLY SELL THEM A PRINTER OR STORAGE
 20 DEVICE OR SOMETHING. BUT IF THEY DON'T BUY YOUR LAPTOP AND THEY
 21 BUY SOMEONE ELSE'S, THEN THE OTHER PERSON GETS TO MAKE THAT
 22 SALE.
 23 MR. LANIER: OBJECTION, YOUR HONOR, THIS IS --
 24 THE COURT: YES. THIS IS UPSSELL/CROSS-SELL
 25 INFORMATION. I ASSUME THAT'S WHAT YOUR OBJECTION IS.
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1 MR. LANIER: ABSOLUTELY, YOUR HONOR. WE DIDN'T WANT
 2 TO ARGUE IT AGAIN.
 3 THE COURT: CERTAINLY. CERTAINLY.
 4 MR. PICKETT: WELL, FROM THE STAND- -- SHOULD WE
 5 ARGUE THIS?
 6 THE COURT: GO AHEAD.
 7 MR. PICKETT: FROM THE STANDPOINT OF WHAT'S IN THE
 8 MIND, WE'RE GOING TO GET VERY QUICKLY, TWO QUESTIONS DOWN, TO
 9 THE NEGOTIATION ROOM WHERE THE PARTIES WOULD HAVE BEEN -- HAD
 10 SAP NEGOTIATED FOR THE LICENSE RATHER THAN TAKING THE SOFTWARE,
 11 WHAT WAS IN THE MIND OF ORACLE WITH RESPECT TO THAT NEGOTIATION.
 12 AND THEY WOULD HAVE UNDERSTOOD THAT THERE WOULD BE --
 13 ACTUALLY, THAT WAS A GENERAL QUESTION. I DON'T EVEN GET INTO
 14 THAT IN THIS NEGOTIATION --
 15 THE COURT: OKAY.
 16 MR. PICKETT: -- TO TELL YOU THE TRUTH.
 17 BUT IT'S A GENERAL QUESTION ABOUT HOW THE BUSINESS
 18 WORKS. IT'S AN IMPORTANT THING TO --
 19 THE COURT: ALL RIGHT. AS LONG AS WE KNOW THAT THIS
 20 WITNESS IS NOT GOING INTO THAT SPECIFIC SUBJECT AREA.
 21 MR. PICKETT: THERE'S -- NOT ON THE SPECIFIC SUBJECT
 22 AREA WE TALKED ABOUT. ABSOLUTELY NOT.
 23 THE COURT: ALL RIGHT. ALL RIGHT.
 24 ALL RIGHT. THANK YOU.

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PHILLIPS - DIRECT / PICKETT

1 REASONS PEOPLE BOUGHT SOFTWARE FROM ORACLE.
 2 SO I WOULD USE THAT ROUTINELY AS SAYING, YEAH, YOU
 3 COULD BUY FROM SOME SMALL, TINY, NO-NAME COMPANY, BUT WHAT
 4 HAPPENS IF YOUR SYSTEM GOES DOWN IN GREECE? THEY'RE NOT THERE.
 5 WE ARE.
 6 SO THE SUPPORT ASPECT WAS A KEY PART OF THE
 7 DIFFERENTIATION.
 8 Q. LET'S TALK ABOUT THE DAMAGES FOR SAP'S INFRINGEMENT OF
 9 PEOPLESOFT SOFTWARE FIRST, AND THEN WE'LL TURN TO SIEBEL.
 10 FIRST, PEOPLESOFT -- AND I WANT YOU TO ASSUME THAT ON
 11 JANUARY 19, 2005, SAP WOULD HAVE TO PAY THE FAIR VALUE FOR WHAT
 12 IT -- WHAT IT TOOK, WHAT IT INFRINGED, AND SO WOULD HAVE
 13 NEGOTIATED A LICENSE WITH ORACLE THAT ALLOWED THEM TO DO WHAT
 14 THEY DID. DO YOU UNDERSTAND THAT ASSUMPTION?
 15 A. I UNDERSTAND.
 16 Q. ALL RIGHT. NOW, HOW WOULD SELLING A LICENSE LIKE THAT TO
 17 ORACLE AFFECT YOU IN YOUR POSITION AS PRESIDENT OF ORACLE BACK
 18 THEN?
 19 MR. LANIER: OBJECTION, YOUR HONOR. CALLS FOR
 20 SPECULATION.
 21 THE COURT: OVERRULED.
 22 BY MR. PICKETT:
 23 Q. GO AHEAD. YOU CAN GO AHEAD, MR. PHILLIPS.
 24 A. OKAY. WELL, AS THE PERSON RESPONSIBLE FOR MAKING SURE WE
 25 HIT A NUMBER EVERY QUARTER, EVERY 90 DAYS, I WOULD HAVE BEEN

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1 BY MR. PICKETT:
 2 Q. ALL RIGHT. NOW THAT WE'RE BACK, LET'S TURN TO YOUR OTHER
 3 POSITION -- MAYBE YOUR MAIN POSITION, SELLING PRODUCT TO THE
 4 CUSTOMER. AS PART OF YOUR JOB AS PRESIDENT WITH RESPECT TO
 5 SALES, DID YOU WORK DIRECTLY WITH CUSTOMERS?
 6 A. SURE. THAT WAS THE MAIN JOB. OBVIOUSLY, WORKING WITH THE
 7 SALES FORCE, BUT ALSO INTERACTING WITH OUR LARGE CUSTOMERS,
 8 THERE'S ALWAYS ISSUES TO RESOLVE, AND THEY WANT A RELATIONSHIP
 9 WITH SOMEONE ON THE SENIOR MANAGEMENT TEAM SINCE THIS IS A
 10 CAREER-MAKING DECISION FOR THEM.
 11 AS THEY BUY A LARGE PIECE OF SOFTWARE AND IMPLEMENT
 12 IT OVER TWO OR THREE YEARS AND SPEND MILLION OF DOLLARS, THEY
 13 WANT TO MAKE SURE THAT THEY HAVE A RELATIONSHIP WITH SOMEONE.
 14 IF SOMETHING SHOULD GO WRONG, THEY WANT TO HAVE A RELATIONSHIP.
 15 Q. WERE YOU GENERALLY SATISFIED WITH THE LEVEL OF SERVICE
 16 ORACLE PROVIDED ITS CUSTOMERS DURING THE SIX OR SEVEN YEARS YOU
 17 WERE PRESIDENT?
 18 A. WELL, I WOULD SAY I WAS MORE THAN SATISFIED. IT WAS A KEY
 19 REASON PEOPLE BOUGHT SOFTWARE FROM ORACLE, IS THAT THEY
 20 RESPECTED ORACLE'S REPUTATION FOR HAVING THE BEST GLOBAL SUPPORT
 21 FOR ENTERPRISE SOFTWARE IN THE INDUSTRY. THESE LARGE COMPANIES.
 22 THEY MAY OPERATE, LET'S SAY, IN A HUNDRED COUNTRIES. VERY FEW
 23 COMPANIES CAN SUPPORT THEM IN ALL THOSE COUNTRIES, ACROSS ALL
 24 THOSE LANGUAGES, 24 BY 7, HAVE PEOPLE ON PLANES IF SOMETHING
 25 HAPPENS. I MEAN, THAT'S ONE OF THE REASONS -- COMFORTING

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1 TERRIFIED IF MY LARGEST COMPETITOR NOW HAD THE EXACT SAME
 2 PRODUCT I HAD AND THIS COMPETITOR IS THREE TIMES MY SIZE AND CAN
 3 GO IN AND SELL THE SAME THING, SUPPORT THE EXACT SAME CUSTOMERS.
 4 WHAT'S MY DIFFERENTIATION?
 5 SO IT WOULD HAVE BEEN -- YEAH, IT WOULD HAVE JUST
 6 BEEN UNTHINKABLE AT THE TIME.
 7 Q. WOULD THE FACT THAT YOU'D BE SELLING A LICENSE TO SAP IN
 8 PARTICULAR MAKE A DIFFERENCE?
 9 A. BECAUSE THEY ARE WHO THEY ARE, IT WOULD BE IMPORTANT. AND
 10 SO -- SAP IS THE LARGEST APPLICATION COMPANY IN THE WORLD. SO
 11 HAVING A LARGE COMPANY THAT COULD SUPPORT YOUR CUSTOMERS WITH
 12 THE EXACT SAME SOFTWARE AND THEY HAVE ALL THESE OTHER PRODUCTS,
 13 SOME OF WHICH WE DIDN'T HAVE, SO THEY COULD SAY, NO MATTER WHAT
 14 YOUR NEED IS OVER TIME, WE CAN MIGRATE YOU OFF OF WHAT YOU'RE
 15 USING TODAY FROM ORACLE AND MOVE YOU TO AN SAP PRODUCT. THEY
 16 JUST HAD ALL THE PRODUCTS.
 17 AND SO THAT WOULD HAVE BEEN MOST EFFECTIVE FOR THEM,
 18 MORE THAN ANY OTHER COMPANY, IF THEY COULD HAVE THAT ACCESS TO
 19 THAT CODE.
 20 Q. NOW, THE -- THE ACQUISITION OF ORACLE'S ACQUISITION OF
 21 PEOPLESOFT, HOW MUCH DID YOU PAY FOR PEOPLESOFT?
 22 A. I PAID JUST OVER 11 BILLION.
 23 Q. AND HOW WOULD ORACLE'S PAYMENT OF \$11 BILLION FOR PEOPLESOFT
 24 FIGURE INTO YOUR THINKING ENTERING INTO A NEGOTIATION FOR THIS
 25 LICENSE, IF YOU'D BEEN APPROACHED FOR A LICENSE?

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1 A. WELL, I GUESS I THINK OF IT IN SIMPLE TERMS. IF I PAID FOR
2 SOMETHING ONE DAY FOR 11 BILLION AND MY COMPETITOR WANTS IT THE
3 NEXT DAY, WHICH -- THEY WOULD HAVE TO PAY CLOSE TO WHAT I PAID
4 FOR IT. I HAD TO PAY FOR IT UP FRONT 11 BILLION. I EXPECT THEM
5 TO PAY BILLIONS TO HAVE ACCESS TO IT AS WELL.

6 SO I'D BE THINKING THAT I HAVE A FIDUCIARY DUTY TO MY
7 SHAREHOLDERS, TO THE BOARD OF DIRECTORS, TO THE EMPLOYEES, TO
8 EVERYONE. I CAN'T SPEND 11 BILLION AND THEN NOT GET ANYTHING
9 BACK FOR THAT THE NEXT DAY. SO I MEAN, I COULD SEE FROM SAP'S
10 STANDPOINT, IF YOU CAN GET ORACLE TO BUY SOMETHING FOR
11 11 BILLION AND GIVE IT TO YOU FOR A LOT LESS THAN THAT, SURE.
12 THAT'D BE A GREAT DEAL, BUT I CAN'T SEE WHY ORACLE WOULD DO
13 THAT.

14 Q. NOW, A LICENSE NEGOTIATOR WOULD NOT INCLUDE EVERY SINGLE
15 ASSET YOU ACQUIRED IN PEOPLESOFT, WOULD IT?

16 A. WELL, IF THEY HAVE ACCESS TO ALL OF THAT CODE, THE -- IT
17 WOULD INCLUDE THE -- THE ASSETS THAT PEOPLESOFT OWNED, THE
18 LICENSE, YES, THE EXACT SOFTWARE. THAT'S WHAT YOU'RE TALKING
19 ABOUT.

20 Q. ALL RIGHT. LET ME TURN TO PLAINTIFFS' EXHIBIT 4811 AS
21 MODIFIED. I BELIEVE THIS IS STIPULATED --

22 MR. LANIER: WITH THE MODIFICATION, YES, YOUR HONOR.
23 (EXHIBIT PUBLISHED TO JURY.)

24 MR. PICKETT: YES, SO THIS IS ADMITTED INTO EVIDENCE.
25 THE COURT: WHAT'S THE NUMBER AGAIN?

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1 THE ACQUISITION. SO THIS WAS A -- A INDUSTRY NEWS-MAKING EVENT
2 AT THE TIME, VERY LARGE ACQUISITION THAT HADN'T BEEN DONE BEFORE
3 ON THIS SCALE. AND PEOPLE WERE CURIOUS AND -- AND WANTED MORE
4 INFORMATION TO UNDERSTAND WHY WE WERE DOING THIS, WHAT THE
5 IMPACT WAS ON OUR FINANCIALS. AND SHAREHOLDERS WANTED TO KNOW
6 WHAT THE STRATEGY WAS, SO WE PUT TOGETHER A PRESENTATION TO GO
7 OUT AND EXPLAIN IT.

8 Q. AND THIS CAME VERY SHORTLY AFTER YOU ACTUALLY ACQUIRED
9 PEOPLESOFT?

10 A. YES, VERY SHORTLY THEREAFTER.

11 Q. NOW, LET'S TURN TO PAGE 27 OF THE DOCUMENT THAT YOU AND
12 MS. CATZ PRESENTED TO THE INVESTORS AND RATING AGENCIES. THIS
13 IS ENTITLED "RATIONALE FOR THE PEOPLESOFT TRANSACTION."

14 JUST GENERALLY, WHAT WAS THE IDEA HERE? AND THEN
15 WE'LL GO THROUGH SOME OF THE SPECIFICS.

16 (EXHIBIT PUBLISHED TO JURY.)

17 THE WITNESS: THE IDEA HERE WAS TO EXPLAIN CLEARLY IN
18 CRISP TERMS KIND OF HOW WE WERE THINKING ABOUT THE DEAL. AND WE
19 WANTED THE RATING AGENCIES TO FEEL COMFORTABLE THAT WE HAD
20 THOUGHT THIS THROUGH.

21 IT WAS VERY CONTROVERSIAL ANNOUNCEMENT AT THE TIME,
22 AND WE WANTED TO EXPLAIN IT, AND SO I CAN GO THROUGH THESE IF
23 YOU WANT KIND OF WHAT WE MEANT AT THE TIME.

24 BY MR. PICKETT:

25 Q. I'LL GET THAT IN JUST A SECOND. HAD ANYONE PAID \$11 BILLION
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1 MR. PICKETT: 4811. STIPULATED INTO EVIDENCE.
2 (PLAINTIFFS' EXHIBIT 4811
3 RECEIVED IN EVIDENCE)

4 THE COURT: ALL RIGHT.

5 MR. PICKETT: LET'S PUT IT UP ON THE BOARD.
6 (EXHIBIT PUBLISHED TO JURY.)

7 MR. PICKETT: LET ME, IF I MAY, APPROACH THE WITNESS
8 AND HAND HIM HIS WITNESS BINDER. THANK YOU.

9 LOOKS LIKE IT'S A MESSY TABLE HERE. LET ME DO SOME
10 CLEANING. THIS IS TUESDAY'S STUFF.
11 (PAUSE IN THE PROCEEDINGS.)

12 BY MR. PICKETT:

13 Q. ALL RIGHT. DO YOU HAVE THAT DOCUMENT, EXHIBIT 4811, BEFORE
14 YOU, MR. PHILLIPS? SHOULD BE UNDER TAB 2, I THINK.

15 LET ME SEE -- LET ME LOOK. THAT'S IT (INDICATING).

16 A. OKAY.

17 Q. SO LET'S GO -- I THINK IT'S PROBABLY EASIER TO GO TO THE
18 FOURTH PAGE OF THIS DOCUMENT. "RATING DISCUSSION JANUARY 2005,"
19 AND THEN THE NEXT PAGE.

20 (EXHIBIT PUBLISHED TO JURY.)

21 BY MR. PICKETT:

22 Q. THERE'S YOUR NAME AND YOUR COPRESIDENT, MS. CATZ. WHAT WAS
23 THE EVENT THAT THIS DOCUMENT RELATES TO?

24 A. THIS DOCUMENT WAS A PRESENTATION WE PUT TOGETHER FOR
25 INVESTORS AND RATING AGENCIES TO EXPLAIN THE RATIONALE AROUND

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1 FOR A SOFTWARE COMPANY BEFORE?

2 A. NO, THIS WAS A BRAND-NEW CONCEPT. THE SOFTWARE INDUSTRY IS
3 STILL FAIRLY YOUNG. I MEAN, IT'S REALLY KIND OF 30 YEARS OF
4 HISTORY. AND FOR MOST OF THAT TIME, COMPANIES WOULD COME UP
5 WITH AN IDEA, FOCUS ON A VERY NARROW NICHE, AND DO THAT ONE
6 THING UNTIL EITHER THE TECHNOLOGY BECAME OBSOLETE OR SOMEONE
7 BOUGHT THEM MANY YEARS LATER. BUT ACQUISITIONS REALLY WEREN'T A
8 BIG DEAL IN THE SOFTWARE INDUSTRY.

9 SO FOR ORACLE TO START AND COME OUT WITH A LARGE
10 ACQUISITION OF \$11 BILLION, THAT SHOCKED EVERYONE, AND PEOPLE
11 WANTED TO UNDERSTAND IT.

12 Q. SO YOU LIST HERE SIX REASONS WHY ORACLE BOUGHT PEOPLESOFT.
13 LET'S GO TO THE FIRST ONE, "EXPANDED CUSTOMER BASE WITH GREATER
14 SCALE." WHAT DID YOU MEAN BY THAT?

15 A. SO THE IDEA ON THAT ONE -- IT'S TOUCHED ON A LITTLE BIT
16 EARLIER WHAT I SAID, IS THAT WE NEEDED MORE CUSTOMERS. SAP WAS
17 MUCH LARGER. EVEN IF WE CAME UP WITH A GREAT PRODUCT, IT
18 WOULDN'T MATTER BECAUSE CUSTOMERS CAN'T SWITCH THAT QUICKLY.
19 THESE ARE VERY COMPLICATED PRODUCTS. IT TAKES THEM YEARS TO
20 INSTALL THEM IN MANY CASES. THEY HAVE THE ENTIRE COMPANY
21 RUNNING ON THESE FINANCIAL ESTIMATES OR MANUFACTURING SYSTEMS.
22 THEY AREN'T GOING TO CHANGE WITHOUT A VERY GOOD REASON.

23 AND SO THE ONLY WAY TO CATCH UP IS TO ACQUIRE A LARGE
24 CUSTOMER BASE. THAT ALLOWS YOU TO HAVE THOSE CUSTOMERS, AND
25 THEN YOU CAN SPREAD YOUR COST ACROSS MORE CUSTOMERS AND THEN

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1 ACTUALLY INVEST MORE.
 2 THEY CAN ALWAYS SPEND MORE ON RESEARCH AND
 3 DEVELOPMENT AND MAKE THEIR PRODUCT BETTER BECAUSE THEY'RE
 4 CHARGING SO MANY CUSTOMERS. YOU'RE ONLY CHARGING A FEW. THEY
 5 WILL ALWAYS HAVE MORE MONEY TO FUND DEVELOPMENT, SO WE NEEDED
 6 SCALE. SCALE IS A KEY PART OF THE BUSINESS STRATEGY IN A
 7 SOFTWARE COMPANY. IF YOU ONLY HAVE A FEW CUSTOMERS, YOU WILL
 8 LOSE.

9 Q. HOW -- WHAT WAS THE SIZE OF THE CUSTOMER BASE AT PEOPLESOFT
 10 THAT YOU ACQUIRED?

11 A. SO I MENTIONED, IT WAS 10,000 CUSTOMERS. AND AT THAT TIME,
 12 THERE VIRTUALLY WAS NOWHERE TO GO TO FIND 10,000 CUSTOMERS TO
 13 BUY TO COMPETE WITH SAP, AND THAT WAS THE OBVIOUS COMPANY TO
 14 BUY. SO 10,000 CUSTOMERS, LIKE I SAID, WAS BEACHFRONT PROPERTY.
 15 SO IT WAS THE PERFECT ACQUISITION IF YOU WANTED TO TRY TO CATCH
 16 UP WITH SAP.

17 Q. AND HOW MANY OF THOSE 10,000 CUSTOMERS DID YOU EXPECT TO
 18 KEEP WHEN YOU ACQUIRED PEOPLESOFT?

19 A. WELL, THE VAST MAJORITY OF THEM, UPPER 90 PERCENT RANGE
 20 NORMALLY SHOULD BE STAYING WITH YOU BECAUSE OF THE -- THE ISSUES
 21 I DESCRIBED EARLIER. IT'S VERY EXPENSIVE TO MOVE. IT DOESN'T
 22 MAKE BUSINESS SENSE TO SWITCH ACCOUNTING SYSTEMS FOR NO REASON.
 23 AS LONG AS YOU'RE STILL IN BUSINESS AND PROVIDING REASONABLY
 24 GOOD SERVICE, THEY STAY WITH YOU.

25 AND SO WE EXPECTED -- OTHER THAN THE ONES THAT GO OUT
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1 SO YOU WANT TO MAKE SURE THAT THEY'RE LARGE; THEY
 2 HAVE A LOT OF CUSTOMERS; FUNDING THE DEVELOPMENT, AS I MENTIONED
 3 BEFORE; THEY'RE GOING TO BE IN THE BUSINESS FOR A VERY LONG TIME
 4 AND NOT THINKING ABOUT GETTING OUT OF IT BECAUSE, YOU KNOW, IT'S
 5 NOT WORKING FOR THEM.

6 SO HAVING MORE CUSTOMERS MAKES YOU ACTUALLY MORE
 7 COMPETITIVE BECAUSE PEOPLE NOW ARE HAVE COMFORT THAT YOU WILL BE
 8 THERE IN 20 YEARS.

9 Q. AND YOUR COMPETITION AT THE TIME?

10 A. WELL, THE COMPETITION WAS MUCH LARGER. THERE WAS NO
 11 QUESTION ABOUT SAP'S STAYING POWER AND COMMITMENT TO THE
 12 BUSINESS. THAT WAS THEIR BUSINESS. AND THEY HAD, YOU KNOW,
 13 THOUSANDS AND THOUSANDS OF CUSTOMERS. SO WE WOULD SOMETIMES
 14 LOSE TO SAP BECAUSE THEY WERE VIEWED AS THE SAFE DECISION
 15 BECAUSE THEY HAVE THE MOST CUSTOMERS. THEY BEEN DOING THIS A
 16 LONG TIME.

17 THERE'S NO ONE JUST GOING TO CATCH THEM. SO IF YOU
 18 WERE A CONSERVATIVE DECISION-MAKER, YOU DIDN'T WANT TO TAKE ANY
 19 RISK, THEY WERE THE SAFE PURCHASE AT THAT TIME.

20 Q. NOW, MR. PHILLIPS, THE FOURTH REASON ON YOUR SLIDE, "MORE
 21 HIGH-MARGIN RECURRING REVENUE." CAN YOU EXPLAIN TO THE JURY
 22 WHAT YOU MEANT BY THAT?

23 A. WELL, THE SUPPORT REVENUE IS PROFITABLE REVENUE, AND YOU
 24 TAKE THAT SUPPORT DOLLARS THAT THEY'RE PAYING EACH YEAR. IT'S
 25 KIND OF LIKE A -- ALMOST LIKE A MAGAZINE SUBSCRIPTION. THAT
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1 OF BUSINESS, THEY STAY WITH YOU.

2 Q. LET'S GO TO THE SECOND REASON THAT YOU LISTED TO THE
 3 INVESTORS AND ANALYSTS, "LARGER APPLICATIONS, R&D BUDGET AND
 4 ACCELERATED INNOVATION." WHAT DID YOU MEAN BY THAT?

5 A. SO THESE CUSTOMERS ARE PAYING YOU EACH YEAR TO MAINTAIN THE
 6 SOFTWARE AND INVEST IN IT. SO LIKE I SAID EARLIER, THE MORE
 7 CUSTOMERS YOU HAVE, THAT MEANS MORE MONEY COMING IN BECAUSE
 8 THEY'RE PAYING ON A EITHER -- YEARLY BASIS.

9 NORMALLY YOU TAKE THAT, AND THAT'S WHAT YOU USE TO
 10 IMPROVE THE PRODUCT. SO THE MORE CUSTOMERS YOU HAVE, THE BIGGER
 11 R & D BUDGET YOU CAN HAVE, THE MORE DEVELOPERS YOU CAN HAVE.
 12 THE MORE DEVELOPERS, THE MORE INNOVATION. SO THAT'S ANOTHER WAY
 13 TO CATCH UP WITH A LARGE COMPETITOR IF YOU HAVE MORE MONEY
 14 COMING IN TO PUT IN RESEARCH AND DEVELOPMENT. BECAUSE OF ALL
 15 THOSE CUSTOMERS, YOU CAN THINK OF THINGS AND FUND DEVELOPMENT IN
 16 A WAY YOU COULDN'T BEFORE.

17 Q. THIRD REASON FOR THE PEOPLESOFT ACQUISITION STRONGER,
 18 "COMPETITIVE POSITIONING." WHAT DID YOU MEAN BY THAT?

19 A. WELL, WHEN THESE CUSTOMERS ARE MAKING A DECISION ON A
 20 SOFTWARE PARTNER TO PUT IN A NEW FINANCIAL ACCOUNTING SYSTEM,
 21 FOR INSTANCE, OR MANUFACTURING SYSTEM, THIS IS A CAREER BET.
 22 YOU DON'T PUT THESE SYSTEMS IN AND CHANGE YOUR MIND SIX MONTHS
 23 LATER. IT MAY TAKE YOU TWO TO THREE YEARS TO GET THEM FULLY
 24 INSTALLED, AND THEN YOU WILL BE LIVING WITH THAT SOFTWARE
 25 PARTNER FOR THE NEXT 15, 20 YEARS.

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1 MONEY IS COMING INTO US EVERY YEAR. AND YOU TAKE THAT MONEY,
 2 AND THAT'S WHAT YOU USE TO PUT IN RESEARCH AND DEVELOPMENT TO
 3 FIGURE OUT WAYS TO MAKE THE PRODUCT BETTER.

4 SO LONG AS THAT'S IMPROVING AND INCREASING, THAT'S
 5 HOW THE PRODUCTS GET BETTER.

6 Q. FIFTH REASON, "ACCRETIVE TRANSACTION FROM OPERATIONS TO
 7 ORACLE'S SHAREHOLDERS." WHAT DOES THAT MEAN?

8 A. SO WHAT THE "ACCRETIVE" MEANS, IN THIS CONTEXT ANYWAY, IS
 9 THAT THERE ARE SOME ACQUISITIONS THAT ON DAY ONE WHEN YOU BUY
 10 THEM, BECAUSE YOU'RE LOSING MONEY, THEY ACTUALLY YOU MAKE LESS
 11 MONEY OVERALL. AND THEY ARE WHAT'S CALL DILUTIVE TO YOUR
 12 EARNINGS.

13 BUT THIS ONE WAS ACCRETIVE, WHICH MEANS BECAUSE IT
 14 PROFITABLE AND BECAUSE IT'S A LARGE CUSTOMER BASE WITH ALL THAT
 15 RECURRING REVENUE, ON DAY ONE, WE ACTUALLY MAKE MONEY WITH THIS
 16 COMPANY. THEY ADD TO OUR EARNINGS. SO THE NUMBER YOU REPORT TO
 17 THE PUBLIC, TO YOUR SHAREHOLDERS, WILL BE HIGHER NOW ON DAY ONE.
 18 SO IT'S ACCRETIVE TO YOUR EARNINGS, ADDS TO YOUR EARNINGS, AND,
 19 YOU KNOW, INVESTORS AND RATING AGENCIES LIKE TO SEE THAT.

20 THEY DON'T LIKE ACQUISITIONS WHERE, OKAY. YOU'RE
 21 BUYING IT, BUT YOU'RE ACTUALLY GOING TO MAKE LESS MONEY FOR THE
 22 FIRST YEAR OR TWO. THEY DON'T LIKE THAT.

23 Q. NOT SO MUCH?

24 A. NOT SO MUCH.

25 Q. THEN FINALLY, "LOW-RISK ACQUISITION BASED ON PLANNED

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1 INTEGRATION." WHAT'S THAT LAST REASON MEAN?
2 A. WELL, WE THOUGHT WE HAD PLANNED THIS OUT VERY WELL. WE
3 UNDERSTOOD THE COMPANY. THEY WERE RIGHT DOWN THE STREET FROM
4 US. WE HAD COMPETED WITH THEM FOR YEARS. WE HIRED MANY
5 EMPLOYEES OVER THE YEARS AND BECAUSE OF ALL THAT RECURRING
6 REVENUE, BECAUSE THEY'VE ALREADY BEEN SUCCESSFUL, THEY WERE
7 ALREADY HAD 10,000 CUSTOMERS, YOU HAD ALL THOSE 10,000 CUSTOMERS
8 PAYING YOU EVERY YEAR, IT'S NOT LIKE BUYING SOMETHING UNKNOWN
9 WITH NO REVENUE COMING IN.

10 SO WE THOUGHT RELATIVE TO OTHER THINGS WE HAD BEEN
11 DOING OR COULD HAVE DONE, RATHER, THIS WAS LOW RISK, AND WE WERE
12 TRYING TO ADDRESS PEOPLE'S CONCERN ABOUT THIS WILD NEW STRATEGY
13 AT THE TIME. IT LOOKED A LITTLE SCARY TO PEOPLE. WE SAID,
14 WELL, LOOK THE REVENUE'S COMING IN ON A ANNUAL BASIS. THESE ARE
15 SUBSCRIPTIONS, SO IT WAS LOWER RISK IN OUR MIND.

16 Q. WHEN YOU AND MS. CATZ MADE THIS PRESENTATION IN
17 JANUARY 2005, DID YOU KNOW THAT SAP AND TOMORROWNOW WERE
18 DOWNLOADING AND INFRINGING AND USING COPIES OF PEOPLESOFT
19 SOFTWARE WITHOUT AUTHORIZATION?

20 A. I DID NOT, NO.

21 Q. NOW, LET ME ASK YOU TO GO BACK TO THE ASSUMPTION. LET'S SAY
22 YOU HAD TO SELL A LICENSE TO SAP IN JANUARY 2005 TO ALLOW THEM
23 ACCESS TO THE PEOPLESOFT SOFTWARE, THE -- FOR MAINTENANCE.

24 HOW WOULD THAT AFFECT THE REASONS THAT YOU'D GIVEN
25 THE FINANCIAL ANALYSTS AND THE INVESTORS? HOW WOULD THAT
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1 FOR THE PEOPLESOFT SOFTWARE, HOW MANY CUSTOMERS, HOW MANY OF
2 THOSE 10,000 CUSTOMERS IN THAT EXPANDED CUSTOMER BASE WOULD YOU
3 EXPECT TO LOSE TO TOMORROWNOW IF YOU GAVE SAP A LICENSE IN
4 JANUARY 2005?

5 A. WELL, I'D PROBABLY LOOK AT THAT IN A COUPLE OF WAYS. FIRST,
6 I'D LOOK AT THEIR MARKETSHARE AT THE TIME. SAP BACK THEN HAD --
7 ABOUT 35 TO 40 PERCENT OF ALL CORPORATIONS RAN THEIR FINANCIALS
8 OR THEIR SYSTEMS, THEIR BACK-OFFICE SYSTEMS ON SAP.

9 SO IF THAT'S KIND OF A PROXY OR AN ESTIMATION OF WHAT
10 THEY WOULD NORMALLY DO ANYWAY UNDER EVERYTHING ELSE BEING EQUAL,
11 THEY'D PROBABLY GET 35 TO 40 PERCENT OF PEOPLESOFT CUSTOMER
12 BECAUSE THEY HAVE A CHOICE NOW. THEY CAN GO WHEREVER THEY WANT
13 TO GO.

14 SECOND WAY I'D PROBABLY LOOK AT IT IS THE PEOPLESOFT
15 CUSTOMERS HAD A LARGE OVERLAP IN THE SAP CUSTOMER BASE. AND
16 WHAT I MEAN BY THAT IS BECAUSE SAP INITIALLY STARTED BILLING
17 ACCOUNTING SYSTEMS, THEY WERE VERY STRONG AT THAT, THEY WEREN'T
18 AS GOOD AT HUMAN RESOURCES AND PAYROLL. PEOPLESOFT, ON THE
19 OTHER HAND, WAS JUST THE OPPOSITE. THEY WERE VERY STRONG AT
20 PAYROLL AND HUMAN RESOURCES AND ONLY LATER BUILT FINANCE.

21 SO A LOT OF LARGE SAP CUSTOMERS ALSO HAD PEOPLESOFT
22 INSTALLED FOR HR BECAUSE THEY WERE GOOD AT DIFFERENT THINGS.
23 AND THEN OVER TIME, THEY GOT INTO EACH OTHER'S BUSINESSES. SO
24 WHAT THAT MEANS IS WE THOUGHT AT THE TIME, ABOUT 40 PERCENT OF
25 PEOPLESOFT CUSTOMERS WERE ALSO RUNNING SAP. THOSE WOULD HAVE

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1 REQUIREMENT TO GIVE A LICENSE TO SAP AFFECT THOSE REASONS?
2 A. WELL, I MEAN, THAT WOULD DESTROY THIS ENTIRE PRESENTATION.
3 IT WOULD MAKE NO SENSE, BECAUSE IF YOU ARE GIVING THE THING YOU
4 JUST BOUGHT FOR \$11 BILLION AWAY TO YOUR LARGEST COMPETITOR,
5 NONE OF THESE THINGS APPLIED ANYMORE. BECAUSE YOUR CUSTOMER
6 BASE IS -- THE SCALE I TALKED ABOUT, YOUR COMPETITOR'S NOW
7 GETTING THOSE CUSTOMERS BECAUSE THEY CAN HAVE ACCESS TO THEM
8 JUST AS EASILY AS YOU CAN.

9 THE LARGER R & D BUDGET, IF YOU DON'T HAVE THE
10 CUSTOMERS, YOU CAN'T FUND THE R & D, 'CAUSE NOW SAP HAS THOSE
11 CUSTOMERS. AND IF SAP GETS THOSE CUSTOMERS, THAT WHOLE IDEA
12 ABOUT HAVING A -- YOU KNOW, STRONGER COMPETITIVE POSITION BEING
13 SAFER, THAT'S OUT OF THE WINDOW BECAUSE ACTUALLY HELPED SAP,
14 THEY GOT MORE CUSTOMERS.

15 AND SO ALL THESE THINGS KIND OF NO LONGER APPLIED.
16 THE HIGH-MARGIN REVENUE, ALL THOSE CUSTOMERS THAT, YOU KNOW, WE
17 ASSUMED THAT WE WOULD BE KEEPING, IF THEY'RE GOING TO SOMEONE
18 ELSE -- NOT JUST SOMEONE ELSE, OUR LARGEST COMPETITOR, IT
19 ACTUALLY MAKES THE SITUATION WORSE. BECAUSE THE THING WE WERE
20 TRYING TO SOLVE FOR WAS THEM HAVING MORE CUSTOMERS THAN US.

21 NOW IF THOSE CUSTOMERS -- IN ADDITION TO THEIR OWN
22 CUSTOMERS, THEY GET PEOPLESOFT CUSTOMERS, WE'RE IN A WORSE
23 POSITION THAN WHEN WE STARTED. SO NONE OF THESE THINGS APPLY
24 ANYMORE.

25 Q. LET ME ASK YOU THIS: IF YOU HAD TO GIVE A LICENSE TO SAP

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1 BEEN OBVIOUS CUSTOMERS TO SAY, OKAY, LET ME -- LET ME HAVE ONE
2 COMPANY SUPPORT BOTH OF THESE PRODUCTS. ONE COMPANY, SAP, HAS
3 ACCESS TO BOTH PRODUCTS, THE CODE FOR BOTH PRODUCTS. THEY CAN
4 SUPPORT IT.

5 I MAY BE ABLE TO NEGOTIATE MAYBE SLIGHTLY LOWER
6 SUPPORT SINCE I'M DOING MORE BUSINESS WITH THEM. AND
7 OPERATIONALLY, IT'S SIMPLER TO HAVE ONE RELATIONSHIP THAN TWO ON
8 THESE COMPLEX PRODUCTS. SO THAT 40 PERCENT, I THINK, WOULD HAVE
9 BEEN AT RISK.

10 Q. WHAT'S THE VALUE TO SAP OF ACCESS TO THE SOFTWARE IN TERMS
11 OF HOW MANY CUSTOMERS IT MIGHT GET?

12 MR. LANIER: OBJECTION, YOUR HONOR. THAT CALLS FOR
13 SPECULATION ABOUT THE VALUE OF SAP.

14 THE COURT: SUSTAINED.

15 MR. PICKETT: VERY GOOD.

16 Q. IS THERE A CONNECTION -- IF YOU'RE NEGOTIATING WITH SAP
17 JANUARY 2005, IS THERE A CONNECTION BETWEEN THE NUMBER OF
18 CUSTOMERS, 40 PERCENT OF THAT 10,000, THAT YOU WOULD EXPECT TO
19 LOSE OVER TO SAP AND THE PRICE OF THE LICENSE THAT YOU'D BE
20 NEGOTIATING WITH SAP?

21 IS THERE A CONNECTION BETWEEN TWO?

22 A. WELL, OF COURSE. YEAH, I GUESS YOU'D HAVE TO HAVE SOME
23 BASIS FOR COMING UP WITH A LICENSE. BUT CERTAINLY THE FACT THAT
24 THAT MANY CUSTOMERS WERE AT RISK AND YOU JUST PAID \$11 BILLION
25 TO GET THOSE CUSTOMERS, YOU'D HAVE TO HAVE A VERY GOOD REASON --

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1 A BIG NUMBER TO GO BACK TO YOUR BOARD OF DIRECTORS AND SAY THE
 2 THING I JUST GOT YOU TO FUND FOR \$11 BILLION, I WANT TO GIVE IT
 3 TO MY LARGEST COMPETITOR FOR "X." IT BETTER BE A BIG NUMBER
 4 CLOSE TO WHAT YOU PAID FOR IT.
 5 Q. AND WOULD YOU -- WHAT WOULD BE THE TIMING OF THE PAYMENT OF
 6 "X" FOR THAT LICENSE BY SAP?
 7 A. THE TIMING? WELL, I'D WANT TO BE PAID ON DAY ONE. I MEAN,
 8 THE \$11 BILLION THAT ORACLE HAD TO PAY HAD TO BE PAID ON DAY
 9 ONE. SO YOU'D EXPECT TO GET PAID BACK. THAT'S JUST KIND OF THE
 10 WAY THE INDUSTRY WORKS.
 11 IF YOU WANT TO OWN A PIECE OF SOFTWARE, YOU BUY IT,
 12 AND THERE'S NO LAYAWAY PLAN. YOU DON'T GET TO SAY I WANT IT
 13 FINANCED OVER 80 YEARS OR WHATEVER. AND, YOU KNOW, THAT'S JUST
 14 THE KIND OF WAY IT'S ALWAYS WORKED. AND THESE ARE VERY
 15 EXPENSIVE PRODUCTS, AND YOU HAVE TO PAY FOR THEM.
 16 Q. DO COMPETITORS -- HOW DO COMPETITORS, WHEN THEY LICENSE EACH
 17 OTHER'S INTELLECTUAL PROPERTY -- HOW DO THEY TYPICALLY PAY
 18 ROYALTIES?
 19 A. WELL, TYPICALLY, IF YOU ARE ACTUALLY LICENSING YOUR PRODUCT
 20 TO A DIRECT COMPETITOR, YOU WOULDN'T SET IT UP AS A ROYALTY
 21 ARRANGEMENT OVER TIME FOR A LOT OF DIFFERENT REASONS. NUMBER
 22 ONE, TRYING TO FIGURE OUT, ALL RIGHT, WHICH THINGS HAVE BEEN
 23 SOLD? HOW MUCH DO YOU OWE ME? YOU'LL JUST END UP IN COURT
 24 FIGHTING EVERY DAY.
 25 SECONDLY, YOU'RE NOT PARTNERING TOGETHER TRYING TO
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1 IS THAT WHAT YOU THINK ORACLE SHOULD HAVE ASKED FOR
 2 IN THAT NEGOTIATION, 2 BILLION?
 3 A. I CAN'T IMAGINE WHY THEY WOULD DO THAT. I MEAN, IF YOU JUST
 4 PAID 11 BILLION FOR ONE OF THEIR LARGEST, MOST VISIBLE
 5 ACQUISITIONS IN THE HISTORY OF THE INDUSTRY, AND EVERYBODY WANTS
 6 TO SEE HOW YOU'RE GOING TO EARN A RETURN ON IT. YOUR
 7 SHAREHOLDERS ARE ASKING THAT QUESTION, WHAT DO WE GET OUT OF
 8 THIS? HOW ARE YOU GOING TO MAKE MONEY? YOU JUST SPENT
 9 \$11 BILLION. YOUR BOARD OF DIRECTORS IS COUNTING ON THAT
 10 HAPPENING. EVERYBODY'S REPUTATION IS AT RISK.
 11 YOU WOULD NOT TURN AROUND AND GO, NO, LET'S JUST GIVE
 12 IT TO MY LARGEST COMPETITOR AND THEY CAN PAY ME WHEN THEY FEEL
 13 LIKE IT. THAT'S JUST -- NO WAY. YOU WOULD ASK FOR 3- OR
 14 4 BILLION, AND YOU'D WANT IT UP FRONT.
 15 Q. 3- OR \$4 BILLION UP FRONT?
 16 A. YEAH, AT LEAST.
 17 Q. NOW, LET ME LET ME SHOW YOU ANOTHER EXHIBIT. IT'S IN THE
 18 NEXT TAB. IT'S EXHIBIT 12, WHICH HAS ALREADY BEEN ADMITTED INTO
 19 EVIDENCE.
 20 (EXHIBIT PUBLISHED TO JURY.)
 21 BY MR. PICKETT:
 22 Q. AND IF YOU -- IF WE CAN GO TO PAGE 27 OF EXHIBIT 12, PLEASE.
 23 (EXHIBIT PUBLISHED TO JURY.)
 24 MR. PICKETT: THIS IS -- YOUR HONOR, THIS IS AN SAP
 25 DOCUMENT THAT MR. ZIEMEN SPOKE ABOUT EARLIER THIS MORNING BY
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1 SELL TOGETHER. YOU'RE STILL COMPETING IN THE MARKET. AND SO
 2 YOU'D WANT YOUR OWN -- GO YOUR OWN DIRECTION, LET THEM GO THEIR
 3 OWN DIRECTION. AND SO TYPICALLY, YOU WOULD ASK FOR THAT MONEY
 4 UPFRONT, CUT OUT ALL THE FIGHTING AND THEN GO BACK TO COMPETING
 5 IN THE MARKET.
 6 Q. LET'S GO TO THE SPECIFIC EXAMPLE OF ORACLE AND SAP
 7 NEGOTIATING A LICENSE FOR SAP TO GAIN ACCESS TO THE PEOPLESOF
 8 SOFTWARE. WOULD A ROYALTY OVER TIME MAKE ANY SENSE IN THAT
 9 CONTEXT?
 10 A. IT WOULDN'T MAKE ANY SENSE. IT WOULD BE ALMOST IMPOSSIBLE
 11 TO AUDIT AND MONITOR AND THE COMPANIES WOULD BE DOING WHAT
 12 THEY'RE DOING NOW IN COURT MOST OF THE TIME.
 13 AND SECONDLY, I THINK -- JUST ON AN ONGOING BASIS OF
 14 THE WAY IT TYPICALLY WORKED, PEOPLE ARE COMFORTABLE SAYING, I
 15 HAVE A COPY OF THE SOFTWARE. I DON'T OWE YOU ANY MONEY LATER.
 16 IT'S GOOD FOR SAP AS WELL TO HAVE A CLEAN LICENSE THEY CAN GO DO
 17 WHAT THEY WANT TO.
 18 THAT'S TYPICALLY THE WAY YOU WOULD DO IT.
 19 Q. NOW, LET'S GET BACK TO "X." YOU WERE TALKING ABOUT WHAT'S
 20 GOING TO BE THE PRICE FOR THIS LICENSE, AND THERE'S A
 21 NEGOTIATION, OF COURSE.
 22 SAP'S LAWYER TOLD THE JURY TUESDAY IN THE --
 23 YESTERDAY IN THE TRIAL SENSE, BUT TUESDAY IN THE REAL SENSE --
 24 IN HIS OPENING STATEMENT THAT THE EVIDENCE WILL SHOW THAT ORACLE
 25 WOULD HAVE ASKED FOR \$2 BILLION IN THE NEGOTIATION.
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1 VIDEO.
 2 (EXHIBIT PUBLISHED TO JURY.)
 3 BY MR. PICKETT:
 4 Q. NOW, THIS IS AN SAP DOCUMENT, NOT AN ORACLE DOCUMENT. BUT
 5 HAVE YOU SEEN SIMILAR DOCUMENTS LIKE THIS IN CONNECTION WITH
 6 ACQUISITIONS?
 7 A. SURE. I MEAN, THEY HAVE VARIOUS FORMATS, BUT THE IDEA HERE
 8 IS IF YOU WANT TO SPONSOR AN ACQUISITION OR ANY PROJECT THAT
 9 REQUIRES THE COMPANY SPENDING MILLIONS OF DOLLARS, YOU'RE GOING
 10 TO HAVE TO PUT TOGETHER A JUSTIFICATION IN SAYING, "IF YOU SPEND
 11 THIS, THIS IS THE AMOUNT OF MONEY WE'RE GOING TO MAKE," AND THE
 12 NUMBERS HAVE TO ADD UP.
 13 IF IT'S ENOUGH MONEY, THEN OKAY. WE MAY APPROVE IT.
 14 IF THE NUMBER'S NOT BIG ENOUGH, THEN YOU PROBABLY WON'T GET IT
 15 APPROVED. BUT TYPICALLY, THIS IS WHAT YOU WOULD PRESENT TO YOUR
 16 MANAGEMENT TEAM AND EVENTUALLY TO YOUR BOARD OF DIRECTORS AS THE
 17 REASON I WANT TO BUY THIS COMPANY OR DO WHATEVER.
 18 Q. I WANT YOU TO ASSUME THAT IN JANUARY 2005 WHEN ORACLE AND
 19 SAP CAME TOGETHER AT THE NEGOTIATION TABLE FOR THIS LICENSE,
 20 ASSUME THAT SAP THOUGHT THAT IN THE FIRST THREE YEARS WITH THIS
 21 TOMORROWNOW BUSINESS OPPORTUNITY, IT WOULD MAKE \$897,693,000,
 22 THAT THAT WAS THEIR PROJECTION.
 23 WHAT IMPACT WOULD THAT HAVE ON THE NEGOTIATION FOR
 24 THE LICENSE?
 25 MR. LANIER: OBJECTION, YOUR HONOR. HE'S ASKING TO
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1 SPECULATE ABOUT SAP'S STATE OF MIND, AND HE'S GETTING TO THE
2 TOPIC WE DISCUSSED.
3 THE COURT: YEAH. AS FRAMED.
4 REFRAME THE QUESTION. ARE YOU ASKING FOR SAP'S STATE
5 OF MIND, OR FOR ORACLE'S?
6 MR. PICKETT: HAD HE KNOWN -- WELL, THERE'S TWO
7 POINTS, YOUR HONOR. FIRST, THERE'S THE OPEN-BOOK CONCEPT IN
8 WHICH UNDER THE HYPOTHETICAL LICENSE, BOTH SIDES ARE ASSUMED TO
9 KNOW EACH OTHER'S INFORMATION. THAT'S FROM GEORGIA PACIFIC
10 ITSELF.
11 SECONDLY, THE QUESTIONS DIRECTED TO SOME -- PUT IT
12 GENERALLY, IF SOMEONE KNEW OR ESTIMATED THEY HADN'T -- WERE
13 GOING TO MAKE 900 MILLION IN THE FIRST THREE YEARS, WHAT IMPACT
14 WOULD IT HAVE ON THE NEGOTIATIONS FROM -- FROM THEIR STANDPOINT,
15 FROM ORACLE'S STANDPOINT?
16 MR. LANIER: THIS IS THE SUBJECT ON WHICH THEY'VE
17 OFFERED EXPERT OPINION ACTUALLY AS WELL, SO IT'S NOT ONLY --
18 (SIMULTANEOUS COLLOQUY.)
19 MR. PICKETT: YOUR HONOR --
20 THE COURT: EXCUSE ME.
21 WE'VE HAD MOTIONS IN LIMINE WITH REGARD TO THIS
22 PARTICULAR WITNESS ABOUT THIS -- ABOUT THIS INTEREST, AND I
23 THINK I OVERRULED YOUR OBJECTION ON THAT. SO I'LL OVERRULE IT.
24 BY MR. PICKETT:
25 Q. ALL RIGHT. SO WHAT IMPACT WOULD IT HAVE, MR. PHILLIPS?
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1 UMBRELLA OF ENTERPRISE APPLICATIONS.
2 AND ONCE AGAIN, THERE, ORACLE'S PRESENCE THERE
3 PRE-SIEBEL WAS PRETTY SMALL. SAP HAD A LARGE PRESENCE THERE.
4 THE ONLY WAY TO CATCH UP, YOU HAVE TO LOOK AROUND AND FIND WHAT
5 CAN I BUY TO HAVE AS MANY CUSTOMERS OR AT LEAST APPROACH THE
6 SAME SIZE THEY HAVE SO I CAN SPEND AS MUCH ON THE PRODUCT.
7 THE ONLY THING AVAILABLE WAS SIEBEL, AND IT WAS THE
8 LEADER IN THAT AREA, SO IT WAS THE OBVIOUS THING TO BUY.
9 Q. HOW MUCH DID ORACLE PAY FOR SIEBEL?
10 A. JUST OVER 6 BILLION.
11 Q. 6 BILLION?
12 A. RIGHT.
13 Q. NOW, I WANT YOU TO ASSUME NOW A SECOND NEGOTIATION, ONLY
14 THIS TIME IT'S FOR SAP AND TOMORROWNOW TO GAIN ACCESS TO THE
15 SIEBEL SOFTWARE STARTING IN SEPTEMBER 2006 WHEN THEY STARTED TO
16 SERVICE SIEBEL CUSTOMERS.
17 HOW WOULD YOU VALUE A LICENSE, HOW WOULD YOU APPROACH
18 THE NEGOTIATIONS FOR A LICENSE FOR THE SIEBEL SOFTWARE?
19 A. WELL, MUCH THE SAME WAY AS -- AS WE DISCUSSED EARLIER WITH
20 PEOPLESOFT. IF I JUST PAID 6 BILLION AND I'M NOW GOING TO GIVE
21 SAP, OF ALL PEOPLE, ACCESS TO THE CODE AND TO THOSE CUSTOMERS
22 AND LOSE THOSE CUSTOMERS, I'D HAVE TO GET PAID A GOOD CHUNK OF
23 THAT UPFRONT TO JUSTIFY DOING THAT TO MY BOARD.
24 Q. WHAT WAS THE --
25 SORRY, GO AHEAD.
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1 A. WELL, IT'S HARD TO FIND, YOU KNOW, NEARLY 900 MILLION OF
2 REVENUE IN THIS INDUSTRY NO MATTER HOW SMART YOU ARE, HOW MANY
3 RESOURCES YOU HAVE. SO THAT'S A BIG NUMBER.
4 SO THE IMPACT WOULD BE, IF THAT'S REALLY WHAT THEY'RE
5 GOING TO GET OUT OF THIS, WHICH IS A HUGE NUMBER, YOU'D PAY
6 MULTIPLES OF THIS TO GET THAT. I MEAN, THAT'S VALUABLE REVENUE.
7 AND IT'S INCREASING, SO IT'S NOT ONLY A BIG NUMBER BUT IT'S
8 GROWING, AND -- WHICH WOULD ALSO IMPACT THE -- THE AMOUNT YOU
9 WOULD PAY FOR IT BECAUSE IT'S GOING TO GROW OVER TIME OVER MANY
10 YEARS.
11 Q. AND WHEN YOU SAY A MULTIPLE, WHAT DO YOU MEAN?
12 A. IN OTHER WORDS, IT'S NOT JUST THE 900 MILLION YOU WOULD PAY
13 BECAUSE THAT'S SO VALUABLE IN TERMS OF REVENUE AND THE
14 PROFITABILITY OF THAT REVENUE. YOU'D PAY MULTIPLE TIMES THAT,
15 NOT JUST EXACTLY THIS REVENUE.
16 Q. ALL RIGHT.
17 LET'S TURN AWAY FROM THE PEOPLESOFT ACQUISITION, AND
18 LET ME TURN TO THE SIEBEL ACQUISITION THE NEXT YEAR. TALK ABOUT
19 DAMAGES FOR SAP'S INFRINGEMENT OF THE SIEBEL SOFTWARE. WHAT IS
20 THE BACKGROUND TO ORACLE'S ACQUISITION OF SIEBEL?
21 A. IT'S ACTUALLY A VERY SIMILAR RATIONALE AND REASONING FOR
22 PEOPLESOFT. WE'RE TRYING TO GET MORE CUSTOMERS AND -- IN
23 ANOTHER AREA. SO PEOPLESOFT HELPED US IN FINANCIALS AND HR,
24 BUT THERE'S ANOTHER AREA CALLED CRM FOR MANAGING CUSTOMERS.
25 THESE ARE ALL KIND OF PRODUCT SEGMENTS WITHIN THE OVERALL
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PHILLIPS - DIRECT / PICKETT

1 A. OTHERWISE, WHY WOULD I DO THAT? IT WOULD JUST -- IT'S
2 ALMOST -- DOESN'T MAKE MUCH SENSE.
3 Q. WHAT WAS THE SIEBEL CUSTOMER BASE THAT YOU ACQUIRED IN THE
4 ACQUISITION?
5 A. IF I REMEMBER RIGHT, IT WAS AROUND 4,000 CUSTOMERS OR SO.
6 Q. AND IN THAT NEGOTIATION, WHAT WOULD YOU RECOMMEND ORACLE'S
7 POSITION BE IN THE NEGOTIATION FOR THE LICENSE FOR SIEBEL?
8 A. THE NUMBER, OPENING NUMBER FOR ME WOULD HAVE A "B" ON IT IN
9 BILLIONS IF I JUST PAID 6 BILLION AND I'M ABOUT TO GIVE THOSE
10 CUSTOMERS AWAY TO MY LARGEST COMPETITOR.
11 I KNOW THERE'S VARIOUS WAYS OF ANALYZING THIS, AND
12 THERE MAY BE OTHER MODELS. BUT FOR ME, IT'S JUST PRETTY SIMPLE.
13 I JUST PAID 6 BILLION, AND MY BIGGEST COMPETITOR WANTS WHAT I
14 JUST BOUGHT. I CAN'T GIVE IT TO HIM FOR NOTHING.
15 MR. PICKETT: THANK YOU. I HAVE NO FURTHER
16 QUESTIONS.
17 THANK YOU, MR. PHILLIPS.
18 THE COURT: ALL RIGHT. CROSS?
19 MR. LANIER: YOUR HONOR, WE HAVE A COUPLE OF
20 DOCUMENTS FOR MR. PHILLIPS AS WELL. CAN I GIVE HIM THAT?
21 THE COURT: SURE. YOU CAN GIVE HIM THOSE.
22 MR. LANIER: THANK YOU.
23 CROSS-EXAMINATION
24 BY MR. LANIER:
25 Q. MORNING, MR. PHILLIPS. GOOD TO SEE YOU AGAIN.
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ZEPECKI - DIRECT / MR. BOIES

1 MR. HOWARD: YOUR HONOR, AS I PROMISED YESTERDAY,
2 MR. BOIES HAS JOINED US, AND HE WILL CALL OUR NEXT WITNESS.
3 THE COURT: ALL RIGHT. MR. BOIES?
4 MR. BOIES: GOOD MORNING, YOUR HONOR.
5 THE COURT: GOOD MORNING.
6 MS. HOUSE: WE ARE GOING TO CALL MR. ZEPECKI AS OUR
7 NEXT WITNESS.
8 THE COURT: BY VIDEO OR IS HE HERE IN PERSON?
9 MR. BOIES: HE IS HERE.
10 MR. LANIER: I THINK HE IS LOITERING OUTSIDE, YOUR
11 HONOR.

12 JOHN ZEPECKI,
13 CALLED AS A WITNESS FOR THE PLAINTIFFS, HAVING BEEN DULY SWORN,
14 TESTIFIED AS FOLLOWS:

15 THE WITNESS: YES, I DO.
16 THE CLERK: PLEASE BE SEATED. PLEASE STATE YOUR
17 FULL NAME AND SPELL YOUR LAST NAME FOR THE RECORD.
18 THE WITNESS: SURE. JOHN ZEPECKI. LAST NAME IS
19 Z-E-P-E-C-K-I.

20 DIRECT EXAMINATION

21 BY MR. BOIES:
22 Q. GOOD MORNING, MR. ZEPECKI. MY NAME IS DAVID BOIES. WE
23 HAVEN'T MET, BUT I REPRESENT ORACLE.
24 DO YOU UNDERSTAND THAT?

25 **A. YES, I DO.**
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ZEPECKI - DIRECT / MR. BOIES

1 MS. HOUSE: AND, YOUR HONOR, I BELIEVE THAT WE HAVE
2 WORKED OUT SO THAT THERE ARE NO OBJECTIONS TO THE OFFERING OF
3 PLAINTIFFS' EXHIBITS 6, 11, 12, 19, 15, 7 AND 14.
4 THE COURT: IS THAT CORRECT?
5 MR. LANIER: SUBJECT TO THE ISSUES WE DISCUSSED THIS
6 MORNING, BUT PROPERLY USED WE HAVE NO OBJECTION.
7 THE COURT: ALL RIGHT.
8 MR. BOIES: THANK YOU, YOUR HONOR.
9 (PLAINTIFFS' EXHIBITS 6, 7, 11, 12, 14, 15
10 AND 19 RECEIVED IN EVIDENCE)
11 THE COURT: YOU CAN PUBLISH THEM AUTOMATICALLY.
12 MR. BOIES: THANK YOU, YOUR HONOR.
13 (EXHIBIT DISPLAYED ON SCREEN.)

14 BY MR. BOIES:
15 Q. NOW, FIRST, EXHIBIT 6, MR. ZEPECKI.
16 IF WE BEGIN ON THE SECOND PAGE, THIS IS AN E-MAIL
17 THAT YOU SENT TO MR. AGASSI ON DECEMBER 15TH, 2004, CORRECT?
18 **A. WHICH PAGE ARE YOU REFERRING TO?**
19 Q. DOWN AT THE BOTTOM. YOU SEE WHERE IT SAYS "FROM: JOHN
20 ZEPECKI. WEDNESDAY, DECEMBER 15, 2004"?
21 **A. I DO.**
22 Q. AND AT THIS TIME, WOULD YOU IDENTIFY FOR THE JURY WHO
23 MR. AGASSI WAS?
24 **A. MR. AGASSI. MR. AGASSI WAS A MEMBER OF SAP'S EXECUTIVE
25 BOARD.**

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ZEPECKI - DIRECT / MR. BOIES

1 Q. YOU WERE A PEOPLESOFT EXECUTIVE BEFORE YOU JOINED SAP,
2 CORRECT?
3 **A. THAT'S CORRECT.**
4 Q. AND WHAT WAS YOUR POSITION AT PEOPLESOFT BEFORE YOU JOINED
5 SAP?
6 **A. I WAS VICE PRESIDENT OF DEVELOPMENT AT PEOPLESOFT IN MY
7 LAST POSITION.**
8 Q. AND WHEN YOU JOINED SAP, WHAT POSITION DID YOU TAKE?
9 **A. VICE PRESIDENT OF PRODUCTS.**

10 Q. NOW, THERE CAME A TIME WHEN YOU MADE A PROPOSAL AS TO A
11 PLAN TO TRY TO CONVERT PEOPLESOFT CUSTOMERS TO SAP, CORRECT?

12 **A. THAT'S GENERALLY CORRECT, YES.**

13 Q. AND I THINK WE HAVE A VOLUME.
14 HAVE WE GIVEN THE VOLUME TO THE WITNESS?

15 MR. BOIES: MAY I APPROACH, YOUR HONOR?
16 THE WITNESS: WOULD YOU LIKE THESE BACK?
17 MR. BOIES: I THINK THESE BELONG TO SOMEBODY.
18 THE WITNESS: I THINK YOU ARE RIGHT.
19 MR. PICKETT: HE HAS IT ALREADY.
20 THE COURT: GO AHEAD.

21 BY MR. BOIES:
22 Q. AND LET ME ASK YOU TO TURN FIRST TO THE TAB BEHIND -- THE
23 DOCUMENT BEHIND TAB 1, WHICH IS PLAINTIFFS' EXHIBIT 6.
24 DO YOU SEE THAT?
25 **A. I HAVE THAT, YES. THERE IS A FEW PAGES HERE.**

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ZEPECKI - DIRECT / MR. BOIES

1 Q. HE WAS YOUR BOSS, CORRECT?
2 **A. HE WAS MY BOSS' BOSS AT THE TIME.**
3 Q. AND ONE OF THE THINGS THAT YOU ARE DOING IS YOU'RE
4 PROPOSING TO TRY TO MOVE THE PEOPLESOFT AND J.D. EDWARDS
5 INSTALLED BASE TO SAP, CORRECT?
6 **A. WITHIN THAT STATEMENT, I DO PROPOSE TO MAKE IT EASIER TO
7 MOVE THOSE CUSTOMERS TO SAP PRODUCTS, CORRECT.**
8 Q. INDEED, YOU DIDN'T SAY "MAKE IT EASIER".
9 YOU SAID: "NOW THAT ORACLE HAS BOUGHT
10 PEOPLESOFT OFFICIALLY, MOVING THE
11 PEOPLESOFT/J.D. EDWARDS INSTALLED BASE TO SAP
12 INSTEAD OF ORACLE EBIZ SUITE IS AN OBVIOUS
13 OPPORTUNITY FOR SAP." CORRECT?

14 **A. THAT'S THE STATEMENT, CORRECT.**
15 Q. SINCE MR. AGASSI WAS YOUR BOSS, YOU WERE CAREFUL WHAT YOU
16 WROTE HIM, RIGHT?
17 **A. I AM GENERALLY CAREFUL WHAT I WRITE, SIR.**
18 Q. NOW, MR. AGASSI HAD A VERY HIGH DEGREE OF INTEREST IN
19 THIS, DIDN'T HE?
20 **A. APPARENTLY.**
21 Q. WELL, YOU KNOW HE DID BECAUSE HE TOLD YOU, RIGHT?
22 **A. MR. AGASSI SENT ME AN E-MAIL EXPRESSING A HIGH DEGREE OF
23 INTEREST.**

24 Q. A VERY HIGH INTEREST, CORRECT?
25 **A. THAT'S HIS WORDS, YES.**

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ZEPECKI - DIRECT / MR. BOIES

1 Q. AND IN RESPONSE TO THAT YOU DEVELOPED WHAT YOU REFERRED TO
 2 AS A THREE-STEP PROCESS, CORRECT?
 3 **A. I DESCRIBED THREE STEPS THAT COULD BE A PROCESS OR**
 4 **INDEPENDENT, AND I SENT THAT TO MR. AGASSI LATER.**
 5 Q. WELL, SIR, IF YOU CAN LOOK AT THE ATTACHMENT STARTING AT
 6 PAGE 693, BATES NUMBER 693, YOU GIVE SOME PEOPLESOFT
 7 BACKGROUND. DO YOU SEE THAT?
 8 **A. I DO.**
 9 Q. THEN STARTING AT PAGE 696, YOU LIST A THREE-STEP PROCESS,
 10 DO YOU NOT, SIR?
 11 IN FACT, YOU CALL THEM STEP ONE, STEP TWO AND STEP
 12 THREE, CORRECT?
 13 **A. I DO DESCRIBE A THREE-STEP PROCESS. I BELIEVE THAT THE**
 14 **STEPS WOULD WORK INDEPENDENTLY AS WELL.**
 15 Q. YOU HAD ACTUALLY SAID THAT IN AN E-MAIL TO MR. AGASSI ON
 16 DECEMBER 20TH, CORRECT?
 17 **A. CAN YOU BE MORE SPECIFIC ON WHAT I SAID ON DECEMBER 20TH?**
 18 Q. SURE. IT'S THE VERY FIRST PAGE OF THIS EXHIBIT WE ARE
 19 LOOKING AT.
 20 **A. RIGHT.**
 21 **I DID PROVIDE A SUMMARY FOR MR. AGASSI ALONG WITH**
 22 **THE DOCUMENT, THE LONGER DOCUMENT WE JUST LOOKED AT THE FIRST**
 23 **PAGE OF, AT THAT TIME.**
 24 Q. AND STEP ONE YOU DESCRIBE AS "OFFERING SUPPORT AND
 25 MAINTENANCE TO PEOPLESOFT CUSTOMERS". DO YOU SEE THAT?
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ZEPECKI - DIRECT / MR. BOIES

1 Q. AND DOWN AT THE BOTTOM, THE FIRST PARAGRAPH DOWN AT THE
 2 BOTTOM, DO YOU SEE --
 3 MR. BOIES: CAN WE PUT THE FIRST PARAGRAPH UP OF THE
 4 E-MAIL?
 5 BY MR. BOIES:
 6 Q. WHAT YOU ARE TALKING ABOUT HERE IS MOVING THE
 7 PEOPLESOFT/J.D. EDWARDS INSTALLED BASE TO SAP INSTEAD OF
 8 ORACLE, CORRECT, SIR?
 9 YOU DIDN'T SAY ANYTHING ABOUT CHOICE THERE, DID YOU?
 10 **A. I DIDN'T SAY ANYTHING ABOUT CHOICE. I ALSO HAD NO**
 11 **KNOWLEDGE OF A SUPPORT MAINTENANCE OFFERING AT THIS POINT IN**
 12 **TIME EITHER.**
 13 Q. YOU CERTAINLY DID LATER, DIDN'T YOU, SIR?
 14 **A. YES.**
 15 Q. HOW MANY DAYS LATER?
 16 **A. SEVERAL DAYS LATER.**
 17 Q. FEW DAYS LATER, STILL IN DECEMBER?
 18 **A. STILL IN DECEMBER YES, SIR.**
 19 Q. THIS IS AN EXCHANGE IN DECEMBER 15TH, AND BEFORE
 20 CHRISTMAS, YOU HAD ALREADY FOUND A POTENTIAL VEHICLE TO DO
 21 THIS, CORRECT?
 22 **A. I DID NOT PERSONALLY. MR. AGASSI OR SOMEONE ELSE IN SAP**
 23 **HAD IDENTIFIED SOMEONE, YES.**
 24 Q. THAT IS, SAP DID. YOU'RE SAYING YOU DIDN'T PERSONALLY DO
 25 IT, BUT YOU KNOW SAP DID, RIGHT?
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ZEPECKI - DIRECT / MR. BOIES

1 **A. YES, I DO.**
 2 Q. YOU WERE TALKING ABOUT SAP OFFERING SUPPORT AND
 3 MAINTENANCE TO PEOPLESOFT CUSTOMERS, CORRECT?
 4 **A. SAP OR ANOTHER PROVIDER, YES.**
 5 Q. WELL, THIS WASN'T A PLAN FOR ANOTHER PROVIDER; THIS WAS A
 6 PLAN FOR SAP, CORRECT?
 7 **A. THIS WAS A PLAN THAT SAP WOULD FACILITATE IT. YES.**
 8 Q. OKAY. AND, INDEED, THE PURPOSE OF THIS WAS TO MOVE THE
 9 PEOPLESOFT AND J.D. EDWARDS INSTALLED BASE TO SAP INSTEAD OF
 10 ORACLE, CORRECT?
 11 THAT'S WHAT YOU -- THAT'S WHY YOU WERE PROPOSING
 12 THIS?
 13 **A. I PROPOSED THAT SAP WOULD BE ABLE TO OFFER CUSTOMERS A**
 14 **DIFFERENT CHOICE FOR MAINTENANCE. THAT'S WHAT I PROPOSED WITH**
 15 **THIS STATEMENT AND THIS STEP.**
 16 Q. THE REASON THAT YOU WERE PROPOSING THIS WAS TO MOVE THE
 17 PEOPLESOFT AND J.D. EDWARDS INSTALLED BASE TO SAP INSTEAD OF
 18 ORACLE, CORRECT, SIR?
 19 **A. NO.**
 20 Q. OKAY.
 21 **A. THE REASON THAT I PROPOSED THIS IS TO OFFER CUSTOMERS**
 22 **ANOTHER CHOICE. PERHAPS SOME CUSTOMERS WOULD ALSO CHOOSE SAP**
 23 **PRODUCTS OVER TIME AS WELL.**
 24 Q. LET'S GO BACK TO THE NEXT PAGE OF THIS EXHIBIT, SIR.
 25 **A. OKAY.**
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1 **A. SAP DID, NOT MYSELF PERSONALLY.**
 2 Q. AND YOU KNEW THAT THE PURPOSE OF THIS WAS TO TRY TO
 3 CAPTURE PEOPLESOFT CUSTOMERS AS SAP CUSTOMERS, DIDN'T YOU, SIR?
 4 **A. THE PURPOSE WAS TO PROVIDE A SERVICE OFFERING FOR**
 5 **PEOPLESOFT CUSTOMERS AND THUS THEY WOULD BECOME SAP CUSTOMERS**
 6 **FOR THAT SERVICE OFFERING.**
 7 Q. LET ME TRY TO ASK A QUESTION AS DIRECTLY AS I CAN.
 8 **A. OKAY.**
 9 Q. THE PURPOSE OF WHAT THIS STEP PROCESS -- THIS STEP ONE,
 10 STEP TWO, STEP THREE WAS TO CAPTURE PEOPLESOFT CUSTOMERS AS SAP
 11 CUSTOMERS, CORRECT, SIR?
 12 **A. YES. THAT'S CORRECT.**
 13 Q. OKAY. AND IT WAS TO DRIVE REVENUE FOR SAP, CORRECT, SIR?
 14 **A. BUSINESS GENERALLY IS INTERESTED IN CAPTURING REVENUE.**
 15 Q. YES. I AM NOT SUGGESTING THE CONTRARY. I AM JUST TRYING
 16 MAYBE TO POINT OUT THE OBVIOUS.
 17 BUT THE PURPOSE OF THIS WAS TO CAPTURE CUSTOMERS FOR
 18 SAP AND TO GET REVENUE FOR SAP. FAIR?
 19 **A. THAT'S FAIR, YES.**
 20 Q. OKAY.
 21 NOW, YOU KNEW THAT THE FIRST STEP OF THIS THREE-STEP
 22 PROCESS WAS TO OFFER SUPPORT AND MAINTENANCE TO PEOPLESOFT
 23 CUSTOMERS, CORRECT?
 24 **A. I DEFINE THE STEP AS YOU DESCRIBE.**
 25 Q. OKAY. AND YOU KNEW THAT TOMORROWNOW WAS THE ONLY
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ZEPECKI - DIRECT / MR. BOIES

1 ACCURATE, WOULD YOU, SIR?

2 **A. I WOULDN'T PUT SOMETHING IN THERE THAT WASN'T ACCURATE TO**

3 **THE BEST OF MY KNOWLEDGE. OF COURSE NOT.**

4 Q. SO THIS IS WHAT YOUR MARKET RESEARCH SHOWED AT THE TIME,

5 RIGHT?

6 **A. IN REGARDS TO THE LIMITED OFFERING TOMORROWNOW HAD THAT**

7 **WE'RE NOT COMPETITORS.**

8 Q. IT DOESN'T SAY "THE LIMITED OFFERING TOMORROWNOW HAS",

9 DOES IT?

10 **A. NO, IT DOES NOT.**

11 Q. WHY DO YOU THINK IT'S IMPORTANT TO SAY THAT HERE IN THIS

12 COURT WHEN YOU DIDN'T THINK IT WAS IMPORTANT TO SAY THAT TO THE

13 TOP MANAGEMENT AND BOARD OF YOUR COMPANY?

14 **A. PERHAPS I MISUNDERSTOOD YOUR ORIGINAL QUESTION.**

15 Q. OKAY.

16 MY ORIGINAL QUESTION IS THAT YOU KNEW IN EARLY

17 JANUARY OF 2007 THAT SAP'S MARKET RESEARCH SHOWED THAT

18 TOMORROWNOW WAS THE ONLY MEANINGFUL NORTH AMERICAN PROVIDER OF

19 THIRD PARTY PEOPLESOFT MAINTENANCE SERVICES. FAIR?

20 **A. AS THEIR SOLE BUSINESS? FAIR.**

21 Q. DOESN'T EVEN SAY "AS THEIR SOLE BUSINESS", DOES IT, SIR?

22 **A. NO, IT DOESN'T.**

23 Q. AND WHY DO YOU THINK IT'S IMPORTANT TO SAY THAT NOW IN

24 THIS COURTROOM TO THIS JURY WHEN YOU DIDN'T THINK IT WAS

25 IMPORTANT TO SAY IT TO THE TOP MANAGEMENT AND BOARD OF YOUR

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1 LET ME DIRECT YOUR ATTENTION BACK TO TAB 1.

2 **A. OKAY.**

3 Q. AND I AM GOING TO ASK YOU TO LOOK NOW AT PAGE 697. AND

4 LET'S GO DOWN TO THE SECTION CALLED OPPORTUNITIES.

5 **A. OKAY. SURE.**

6 **(EXHIBIT DISPLAYED ON SCREEN.)**

7 Q. THIS WAS THE OPPORTUNITIES THAT YOU SAW FOR THE

8 THREE-STEP, ONE, TWO, THREE PROCESS, RIGHT?

9 **A. I DO.**

10 Q. AND YOU SEE THAT ONE OF THOSE OPPORTUNITIES IS WHAT WE

11 JUST TALKED ABOUT, WHICH WAS CAPTURE INCREMENTAL REVENUE STREAM

12 IN THE SHORT TERM AND INCREASE SAP FOOTPRINT OVER TIME.

13 DO YOU SEE THAT?

14 **A. I DO.**

15 Q. ANOTHER ONE OF THE OPPORTUNITIES WAS THAT IT SUPPORTED THE

16 SAFE HARBOR CAMPAIGN. DO YOU SEE THAT?

17 **A. I DO NOW, YES.**

18 Q. WHY WAS IT VALUABLE AND IMPORTANT TO SAP TO SUPPORT THE

19 SAFE HARBOR CAMPAIGN?

20 **A. SAFE HARBOR WAS A MARKETING CAMPAIGN. SO MORE THINGS THAT**

21 **COULD BE OFFERED IN THAT CAMPAIGN WOULD HAVE SOME VALUE.**

22 Q. NOW ANOTHER LEVEL OR ANOTHER TYPE OF VALUE THAT YOU SAW TO

23 SAP IN THIS ONE-, TWO-, THREE-STEP PROCESS WAS TO DISRUPT

24 ORACLE'S SOFTWARE MAINTENANCE BUSINESS, CORRECT, SIR?

25 **A. I BELIEVE SO, YES.**

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1 COMPANY?

2 **A. I DON'T KNOW.**

3 Q. NOW, ONE OF THE ADVANTAGES THAT YOU SAW OF THIS THREE-STEP

4 PROCESS WAS THAT IT WOULD BOTH GENERATE REVENUE FOR SAP AND

5 HELP BUILD A RELATIONSHIP BETWEEN SAP AND THE CUSTOMER,

6 CORRECT?

7 **A. THAT'S GENERALLY CORRECT.**

8 Q. OKAY. AND ONE OF THE OPPORTUNITIES THAT YOU SAW FROM THIS

9 ONE STEP, TWO-STEP THREE-STEP PROCESS WAS TO INCREASE SAP'S

10 FOOTPRINT, CORRECT?

11 **A. GENERALLY SPOKEN, YES.**

12 Q. AND WHY IS IT IMPORTANT AND VALUABLE TO SAP TO INCREASE

13 ITS FOOTPRINT?

14 **A. IT'S VALUABLE FOR SAP TO DO BUSINESS WITH A CUSTOMER. AND**

15 **IF YOU CAN DO MORE BUSINESS WITH A CUSTOMER, GENERALLY THAT'S A**

16 **GOOD BUSINESS.**

17 Q. SO IF YOU START DOING BUSINESS WITH A CUSTOMER, IT'S

18 VALUABLE TO SAP BECAUSE YOU THINK YOU'LL BE ABLE TO DO

19 ADDITIONAL BUSINESS WITH THE CUSTOMER. IS THAT FAIR?

20 **A. THAT WOULD BE YOUR HOPE, YES.**

21 Q. OKAY. AND ONE OF THE OPPORTUNITIES THAT YOU SAW FROM THIS

22 ONE-, TWO-, THREE-STEP PROCESS WAS TO SUPPORT YOUR SAFE HARBOR

23 CAMPAIGN, CORRECT?

24 **A. I DON'T RECALL THAT SPECIFICALLY.**

25 Q. YOU DON'T.

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ZEPECKI - DIRECT / MR. BOIES

1 Q. AND YOU BELIEVED THAT SAP COULD CREATE A GOOD LEVEL OF

2 MARKET DISRUPTION BY THIS PROCESS, CORRECT?

3 **A. I BELIEVE THAT THEY WOULD HAVE AN OPPORTUNITY TO**

4 **POTENTIALLY CREATE SOME DISRUPTION, YES.**

5 Q. NOT JUST SOME DISRUPTION, A GOOD LEVEL OF MARKET

6 DISRUPTION, CORRECT, SIR?

7 **A. I BELIEVE A GOOD LEVEL MAY HAVE BEEN THE EXACT WORDS. I**

8 **AM NOT SURE.**

9 Q. BUT THAT'S WHAT YOU BELIEVED AT THE TIME. FAIR?

10 **A. I BELIEVED IT CREATED SOME DISRUPTION. HOW MUCH IS**

11 **DIFFICULT TO JUDGE.**

12 Q. WELL, IF YOU LOOK AT PLAINTIFFS' EXHIBIT 7, TAB 6.

13 AND THIS IS AN E-MAIL THAT YOU WROTE ON

14 DECEMBER 28TH; IS THAT CORRECT, 2004?

15 **A. IT APPEARS TO BE, YES.**

16 Q. AND LET ME ASK YOU TO LOOK AT THE SECOND PAGE DOWN AT THE

17 BOTTOM, THE THIRD BULLET FROM THE BOTTOM. DO YOU SEE THAT?

18 **A. I DO.**

19 Q. WHERE IT SAYS:

20 "SAP COULD CREATE A GOOD LEVEL OF MARKET

21 DISRUPTION AND FORCE A REACTION BY ORACLE."

22 DO YOU SEE THAT?

23 **A. I DO.**

24 Q. NOW, YOU'RE TALKING ABOUT WHAT SAP COULD DO THROUGH STEP

25 ONE, STEP TWO, STEP THREE, CORRECT?

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1 **A. THAT IS WHAT I AM REFERRING TO IN THIS CONTEXT, YES.**
2 Q. OKAY.
3 NOW, WHY WAS IT IMPORTANT AND VALUABLE FOR SAP TO
4 CREATE A GOOD LEVEL OF MARKET DISRUPTION AND FORCE A REACTION
5 BY ORACLE?
6 **A. SAP WOULD POTENTIALLY HAVE THE OPPORTUNITY TO CREATE MORE**
7 **AWARENESS AROUND SAP. AND IF ORACLE HAD A NEGATIVE REACTION OR**
8 **A BAD REACTION, POTENTIALLY THAT COULD CAUSE ISSUES WITH THEIR**
9 **CUSTOMERS.**
10 Q. THAT IS, IT COULD CAUSE ISSUES BETWEEN ORACLE AND ITS
11 CUSTOMERS, CORRECT?
12 **A. POTENTIALLY, DEPENDING ON THEIR ACTIONS. IT'S HARD TO SAY**
13 **WHAT ORACLE WOULD OR WOULDN'T DO.**
14 Q. IT MAY BE HARD TO SAY, BUT BACK IN LATE 2004, YOU THOUGHT
15 IT WAS AN OPPORTUNITY FOR SAP, CORRECT?
16 **A. IT WAS A POTENTIAL OPPORTUNITY, YES.**
17 Q. YOU DIDN'T SAY "POTENTIAL OPPORTUNITY", DID YOU, SIR?
18 WHAT YOU SAID WAS:
19 "SAP COULD CREATE A GOOD LEVEL OF MARKET
20 DISRUPTION AND FORCE A REACTION BY ORACLE."
21 FAIR?
22 **A. I SAY THAT. I BELIEVE IT'S IN A SECTION CALLED GENERAL**
23 **THOUGHTS AS OPPOSED TO OPPORTUNITIES, BUT SURE.**
24 Q. YOU BELIEVE THAT, RIGHT?
25 **A. I BELIEVE THAT SAP COULD DO --**
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1 Q. NOW, YOU ALSO BELIEVED THAT EVEN IF SAP WAS NOT SUCCESSFUL
2 IN CONVERTING ALL PEOPLESOFT CUSTOMERS, SAP COULD FORCE ORACLE
3 TO CHANGE ITS BEHAVIOR OR PLANS AROUND PRICING OR POSITIONING.
4 CORRECT?
5 **A. I BELIEVE I WROTE THAT, YES.**
6 Q. AND YOU BELIEVED IT WHEN YOU WROTE IT, RIGHT?
7 **A. I BELIEVED THAT SAP HAD AN OPPORTUNITY TO POTENTIALLY DO**
8 **THAT. YES.**
9 Q. NO. WHAT I MEAN IS, WHEN YOU WROTE THAT "EVEN IF SAP DOES
10 NOT CONVERT ALL PEOPLESOFT CUSTOMERS, SAP MAY FORCE ORACLE TO
11 CHANGE ITS BEHAVIOR OR PLANS AROUND PRICING OR POSITIONING,"
12 YOU MEANT THAT; YOU MEANT WHAT YOU WROTE, CORRECT, SIR?
13 **A. I MEANT THAT THEY WOULD HAVE SOME REACTION. WHAT THAT**
14 **REACTION WOULD BE, I COULDN'T SPEAK FOR WHAT THEY MIGHT OR**
15 **MIGHT NOT DO.**
16 Q. WELL, SIR, LET ME ASK YOU TO LOOK AT PLAINTIFFS'
17 EXHIBIT 15 THAT IS BEHIND TAB 5.
18 **A. OKAY.**
19 Q. AND PARTICULARLY GO TO PAGE 998. GO TO THE VERY LAST
20 SENTENCE WHERE YOU WRITE:
21 "EVEN IF SAP DOES NOT CONVERT ALL PEOPLESOFT
22 CUSTOMERS, SAP MAY FORCE ORACLE TO CHANGE ITS
23 BEHAVIOR OR PLANS AROUND PRICING OR
24 POSITIONING."
25 DO YOU SEE THAT?
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1 Q. CREATE A GOOD LEVEL OF MARKET DISRUPTION AND FORCE A
2 REACTION BY ORACLE?
3 **A. SOME REACTION, YES.**
4 Q. YOU DIDN'T SAY "SOME REACTION" HERE, DID YOU?
5 **A. A, SOME. OKAY.**
6 Q. YOU SAID "A GOOD LEVEL" BACK THEN, RIGHT?
7 **A. I THINK THE GOOD LEVEL IS IN REGARDS TO A DISRUPTION OR A**
8 **MARKET CHANGE. I DON'T KNOW THAT I QUALIFY WHAT ORACLE WOULD**
9 **OR WOULDN'T DO, SIR.**
10 Q. LET ME ASK YOU TO LOOK AT THE FIRST PAGE OF THIS.
11 **A. OKAY.**
12 Q. UNDER "STRENGTHS AND OPPORTUNITIES".
13 AND GO DOWN TO THE NEXT TO LAST BULLET UNDER
14 "STRENGTHS AND OPPORTUNITIES", WHERE YOU WRITE:
15 "ORACLE'S DEAL ASSUMPTIONS ARE CHALLENGED BY
16 THIS SUPPORT MODEL. LOSING SUPPORT REVENUE
17 STREAM FORCES ACTIONS OR REACTIONS AND IS A
18 DISTRACTION."
19 DO YOU SEE THAT?
20 **A. I DO.**
21 Q. AND YOU MEANT THAT AT THE TIME, CORRECT?
22 **A. I DID.**
23 Q. THIS WAS ONE OF THE STRENGTHS AND OPPORTUNITIES OF YOUR
24 ONE-STEP, TWO-STEP, THREE-STEP PROCESS, CORRECT, SIR?
25 **A. IT IS, YES.**
DIANE E. SKILLMAN, OFFICIAL COURT REPORTER, USDC (510) 451-2930

1 **A. RIGHT. I DO.**
2 Q. AND YOU MEANT THAT AS YOU WROTE IT, CORRECT, SIR?
3 **A. I DID. THAT THEY MAY BE ABLE DO THAT. MAY BE ABLE TO.**
4 Q. YES. THAT'S WHAT YOU WERE SEEKING TO DO, RIGHT?
5 **A. THAT THEY MAY BE ABLE TO DO THAT.**
6 Q. AND YOU BELIEVED THAT AT THE TIME?
7 **A. YES, I BELIEVED THEY MAY BE ABLE TO DO THAT. CORRECT.**
8 Q. AND WHEN YOU WERE WRITING THAT, LET ME GO BACK NOW -- LET
9 ME STAY WITH THIS FOR A SECOND. LET ME GO TO THE NEXT PAGE
10 UNDER "OPPORTUNITIES".
11 HERE, AGAIN, YOU SAY "THIS SUPPORTS THE SAFE HARBOR
12 CAMPAIGN." DO YOU SEE THAT?
13 **A. I DO. I AM NOT SURE IF THAT'S THE SAME THING WE LOOKED AT**
14 **BEFORE OR NOT.**
15 Q. THIS IS JANUARY 5, 2005. DO YOU SEE THAT?
16 **A. OH, OKAY. THANK YOU.**
17 Q. AND THEN THE NEXT ONE DOWN UNDER "OPPORTUNITIES" IS
18 DISRUPTIVE TO ORACLE. DO YOU SEE THAT?
19 **A. I DO.**
20 Q. NOW, WHY WAS THAT IMPORTANT AND VALUABLE TO SAP?
21 **A. IT POTENTIALLY WOULD BE VALUABLE IF THE DISRUPTION CAUSED**
22 **A BENEFIT FOR SAP. BUT IT'S HARD TO DETERMINE WHAT ORACLE**
23 **WOULD DO OR NOT DO, AND THERE ARE THINGS THAT ARE SOMEWHAT**
24 **DISRUPTIVE IN THE MARKET REGULARLY. SO THIS WOULD BE JUST**
25 **ANOTHER ONE.**
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ZEPECKI - DIRECT / MR. BOIES

1 Q. LET'S START WITH YOUR DEPOSITION. PAGE 164, LINES 15
2 THROUGH 21. AND I HAVE IN MIND THE TWO QUESTIONS THAT ARE
3 THERE. THE FIRST QUESTION IS:

4 "QUESTION: WAS IT YOUR VERY BEST VIEW THAT IT'S
5 VERY LIKELY THAT TOMORROWNOW IS USING THE
6 SOFTWARE OUTSIDE THE CONTRACTUAL USE RIGHTS
7 GRANTED TO THEM?

8 "ANSWER: YES. AT THAT POINT IN TIME."
9 AND THAT POINT IN TIME WAS DECEMBER 21, 2004,
10 CORRECT, SIR?

11 **A. THAT'S CORRECT. SURE.**

12 Q. AND THEN:

13 "QUESTION: AND WAS IT YOUR VERY BEST VIEW THAT
14 THESE USE RIGHTS COULD BE TERMINATED BY ORACLE,
15 CORRECT?"

16 **A. THAT'S CORRECT.**

17 Q. AND YOU SAID: "YES".

18 **A. YES.**

19 Q. THAT WAS YOUR TESTIMONY THEN, CORRECT?

20 **A. CORRECT.**

21 Q. AND YOU WOULD ADHERE TO THAT TESTIMONY NOW?

22 **A. I WOULD. I JUST WANTED TO UNDERSTAND THE CONTEXT.**

23 Q. NOW, YOU MET WITH TOMORROWNOW ON DECEMBER 28TH, RIGHT?

24 **A. I DID. I HAD A SHORT MEETING WITH TOMORROWNOW ON THAT
25 DATE.**

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ZEPECKI - DIRECT / MR. BOIES

1 IN THE MIDDLE, YOU SEE THE BULLET THAT SAYS:
2 "THE ACCESS RIGHTS TO THE PEOPLESFT SOFTWARE IS
3 VERY LIKELY TO BE CHALLENGED BY ORACLE. SAP HAS
4 TO DETERMINE HOW MUCH OF A LIABILITY A LEGAL
5 CHALLENGE WOULD BE AND FACTOR IT INTO THE DEAL."
6 DO YOU SEE THAT?

7 **A. I DO.**

8 Q. AND THAT WAS YOUR VIEW AFTER MEETING WITH THE TOMORROWNOW
9 PEOPLE, CORRECT, SIR?

10 **A. THAT'S CORRECT.**

11 Q. NOW, THE REPORT THAT WENT TO THE BOARD THAT YOU REVIEWED
12 AND PARTICIPATED IN PREPARING ALSO ADDRESSED THIS, CORRECT,
13 SIR?

14 **A. THERE WAS A COUPLE OF DIFFERENT VERSIONS OF THE REPORT OR
15 BUSINESS CASE TO THE BOARD. WHICH ONE ARE YOU REFERRING TO?**

16 Q. I AM REFERRING TO THE ONE THAT YOU LOOKED AT EARLIER.
17 IT'S BEHIND TAB 4.

18 **A. OKAY.**

19 Q. IF YOU LOOK AT THE FIRST PAGE, YOU RECALL THIS IS THE
20 BUSINESS CASE THAT SAID ON THE VERY TOP JANUARY 7, 2005.
21 DO YOU SEE THAT?

22 **A. I DO.**

23 Q. AND IT IS THE ONE THAT YOU SAID WAS SENT TO MR. AGASSI,
24 MR. OSWALD, MR. BRANDT, MR. KAGERMANN.
25 DO YOU RECALL THAT?

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ZEPECKI - DIRECT / MR. BOIES

1 Q. AND DID I HEAR YOU RIGHT A MOMENT OR TWO AGO TO IMPLY THAT
2 YOU CHANGED YOUR MIND AFTER MEETING WITH TOMORROWNOW?

3 **A. CHANGED MY MIND IN REGARDS TO WHAT?**

4 Q. ABOUT THESE LEGAL CHALLENGES, ABOUT HOW TOMORROWNOW WAS
5 VERY LIKELY USING SOFTWARE IN A WAY IT DIDN'T HAVE A RIGHT TO?

6 **A. TOMORROWNOW EXPLAINED THE RIGHTS AND HOW THEY ACHIEVED
7 THEIR RIGHTS, AND IT SEEMED PLAUSIBLE. SO I DID CHANGE MY
8 OPINION ABOUT TOMORROWNOW'S ACCESS RIGHTS AFTER THAT MEETING.**

9 Q. AFTER THAT MEETING YOU WROTE A REPORT, RIGHT, SIR?

10 **A. I CREATED A MEMO, CORRECT.**

11 Q. YES.

12 IF YOU TURN TO TAB 3. IS THIS THE REPORT THAT YOU
13 PREPARED AND SENT TO THE PEOPLE INDICATED?

14 **A. THE BOTTOM PART OF THE PAGE AND PRESUMABLY THE NEXT PAGES,
15 YES.**

16 Q. YES.

17 NOW, PERHAPS WE CAN DISPLAY THAT.
18 (EXHIBIT DISPLAYED ON SCREEN.)

19 AND THIS IS AN E-MAIL FROM YOU DATED DECEMBER 28TH,
20 2004, AT LITTLE BEFORE 7:00 O'CLOCK AT NIGHT; IS THAT RIGHT?

21 **A. APPEARS TO BE, YES.**

22 Q. AND YOU ARE REPORTING ON A MEETING THAT YOU HAD WITH
23 TOMORROWNOW, CORRECT?

24 **A. CORRECT.**

25 Q. AND ON THE SECOND PAGE, UNDER WEAKNESSES AND THREATS RIGHT
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ZEPECKI - DIRECT / MR. BOIES

1 **A. YES.**

2 Q. AND THAT YOU HAD PARTICIPATED IN THE PREPARATION OF. DO
3 YOU RECALL THAT?

4 **A. I PROVIDED INPUT AND SOME COMMENTS IN REGARDS TO THIS
5 DOCUMENT, YES.**

6 Q. YES, INDEED. ONE OF THE COMMENTS YOU PROVIDED WAS A
7 COMMENT THAT YOU DIDN'T THINK THAT THE PRIOR VERSION WAS STRONG
8 ENOUGH IN ADVISING THE BOARD ABOUT THE LEGAL PROBLEMS, CORRECT,
9 SIR?

10 **A. THAT'S CORRECT.**

11 Q. OKAY. AND SO LET ME GO TO PAGE 6 OF THE BUSINESS PLAN,
12 WHICH IS THE SEVENTH PAGE OF THE EXHIBIT.

13 YOU SEE THAT BOX THAT SAYS "THREATS"?

14 **A. I DO.**

15 Q. AND IT SAYS:

16 "THE FIRST THREAT IS THE ACCESS RIGHTS TO THE
17 PEOPLESFT SOFTWARE IS VERY LIKELY TO BE
18 CHALLENGED BY ORACLE AND PAST OPERATING ISSUES
19 MAY BE A SERIOUS LIABILITY IF ORACLE CHALLENGES,
20 I.E., OFFSITE PRODUCTION COPIES AND THE FORM OF
21 DELIVERY OF REGULATORY UPDATES MAY BE SUBJECT TO
22 ORACLE CHALLENGE."
23 DO YOU SEE THAT?

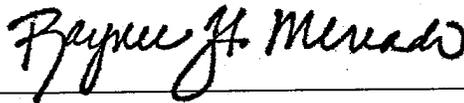
24 **A. I DO.**

25 Q. AND YOU BELIEVE THAT THAT WAS ACCURATE AT THE TIME,
DIANE E. SKILLMAN, OFFICIAL COURT REPORTER, USDC (510) 451-2930

CERTIFICATE OF REPORTER

WE, RAYNEE H. MERCADO AND DIANE E. SKILLMAN, OFFICIAL REPORTERS FOR THE UNITED STATES COURT, NORTHERN DISTRICT OF CALIFORNIA, HEREBY CERTIFY THAT THE FOREGOING PROCEEDINGS IN C07-01658PJH, ORACLE USA, INC., ET AL. V. SAP AG, ET AL., WERE REPORTED BY US ON, THURSDAY, NOVEMBER 4, 2010, CERTIFIED SHORTHAND REPORTERS, AND WERE THEREAFTER TRANSCRIBED UNDER OUR DIRECTION INTO TYPEWRITING; THAT THE FOREGOING IS A FULL, COMPLETE AND TRUE RECORD OF SAID PROCEEDINGS AS BOUND BY US AT THE TIME OF FILING.

THE VALIDITY OF THE REPORTER'S CERTIFICATION OF SAID TRANSCRIPT MAY BE VOID UPON DISASSEMBLY AND/OR REMOVAL FROM THE COURT FILE.



RAYNEE H. MERCADO, CSR, RMR, CRR, FCRR, CCRR



DIANE E. SKILLMAN, CSR, RPR, FCRR

FRIDAY, NOVEMBER 5, 2010

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

BEFORE THE HONORABLE PHYLLIS J. HAMILTON, JUDGE

ORACLE CORPORATION, ET AL.)

JURY TRIAL

PLAINTIFFS,)

NO. C 07-01658 PJH

VS.)

CERTIFIED COPY

SAP AG, ET AL.,)

PAGES 641 - 753

DEFENDANTS.)

OAKLAND, CALIFORNIA

FRIDAY, NOVEMBER 5, 2010

TRANSCRIPT OF PROCEEDINGS

APPEARANCES:

FOR PLAINTIFFS:

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(APPEARANCES CONTINUED NEXT PAGE)

REPORTED BY:

RAYNEE H. MERCADO, CSR NO. 8258

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1 14-MINUTE-AND-20-SECOND TAPE, ABOUT TEN MINUTES OF WHICH ARE
 2 PLAINTIFFS' DESIGNATIONS AND A LITTLE OVER FOUR MINUTES OF WHICH
 3 ARE DEFENDANTS'.
 4 (WHEREUPON, VIDEOTAPE WAS PLAYED.)
 5 THE COURT: IS THAT THE CONCLUSION?
 6 MS. HOUSE: THAT'S IT.
 7 THE COURT: ALL RIGHT. NEXT WITNESS?
 8 MS. HOUSE: YOU'LL BE HAPPY TO HEAR HE'S LIVE.
 9 THE COURT: OH.
 10 MS. HOUSE: RICHARD ALLISON.
 11 (PAUSE IN THE PROCEEDINGS.)
 12 MR. LANIER: YOUR HONOR, OUR PARTNER JASON MCDONELL
 13 WILL BE TALKING TO HIM TO THE EXTENT WE NEED TO.
 14 THE CLERK: RAISE YOUR RIGHT HAND.
 15 RICHARD ALLISON,
 16 CALLED AS A WITNESS FOR THE PLAINTIFFS, HAVING BEEN DULY SWORN,
 17 TESTIFIED AS FOLLOWS:
 18 THE CLERK: PLEASE BE SEATED. PLEASE STATE YOUR FULL
 19 NAME AND SPELL YOUR LAST NAME FOR THE RECORD. AND SPEAK CLEARLY
 20 INTO THE MICROPHONE.
 21 THE WITNESS: RICHARD ALLISON. LAST NAME,
 22 A-L-L-I-S-O-N.
 23 DIRECT EXAMINATION
 24 BY MS. HOUSE:
 25 Q. AND, MR. ALLISON, WHAT IS YOUR CURRENT POSITION AT ORACLE?
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ALLISON - DIRECT / HOUSE

1 ORACLE SOFTWARE IN ORDER TO PROVIDE TECHNICAL SUPPORT TO ORACLE
 2 CUSTOMERS?
 3 **A. NEVER.**
 4 Q. AND HAS ORACLE EVER LICENSED A THIRD-PARTY SUPPORT PROVIDER
 5 TO USE SOFTWARE FOR WHICH ONE CUSTOMER IS LICENSED TO CREATE
 6 TECHNICAL SUPPORT MATERIALS TO SUPPORT OTHER CUSTOMERS?
 7 **A. NO.**
 8 Q. HAS ORACLE EVER ALLOWED A COMPETITOR TO MAKE A COPY OF ONE
 9 CUSTOMER'S SOFTWARE TO CREATE A GENERIC ENVIRONMENT TO USE TO
 10 PROVIDE TECHNICAL SUPPORT TO OTHER CUSTOMERS?
 11 **A. NO, WE'VE NOT.**
 12 Q. HOW DO YOU KNOW THIS?
 13 **A. THAT WOULD BE A PRETTY LARGE EXCEPTION TO OUR STANDARD**
 14 **PRACTICES, AND THAT WOULD BE ESCALATED TO MY OFFICE TO REVIEW.**
 15 **SO IF IT WAS GOING TO HAPPEN, I'D SEE IT.**
 16 Q. WOULD GRANTING A COMPETITOR SUCH A LICENSE MAKE BUSINESS
 17 SENSE?
 18 **A. NO, NOT AT ALL.**
 19 **MR. MCDONELL: OBJECT TO THE LINE.**
 20 THE COURT: EXCUSE ME?
 21 MR. MCDONELL: OBJECTION TO THIS LINE OF QUESTIONING
 22 PER THE DISCUSSION EARLIER.
 23 THE COURT: I DON'T THINK SO. OVERRULED.
 24 THE WITNESS: CAN YOU REPEAT THE QUESTION?
 25
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ALLISON - DIRECT / HOUSE

1 **A. SENIOR VICE-PRESIDENT OF GLOBAL PRACTICES.**
 2 Q. HOW LONG HAVE YOU BEEN WORKING AT ORACLE?
 3 **A. SEVENTEEN YEARS LAST MONTH.**
 4 Q. OVER THE YEARS AT ORACLE, HAVE YOU HAD ANY RESPONSIBILITY
 5 FOR ORACLE'S CUSTOMER LICENSE TERMS?
 6 **A. I HAVE. ACTUALLY, WHEN I STARTED (SIC) THE COMPANY, I WAS**
 7 **ORIGINALLY DRAFTING THE CONTRACTS AND CURRENTLY MANAGE THE GROUP**
 8 **THAT CREATES ALL THE STANDARDS FOR OUR CONTRACTS.**
 9 Q. DO YOU HAVE ANY RESPONSIBILITY FOR APPROVING CUSTOMER
 10 EXCEPTIONS TO STANDARD TERMS?
 11 **A. I DO. ONE OF OUR TEAMS I MANAGE ALSO HANDLES EXCEPTIONS TO**
 12 **STANDARD AGREEMENTS, DISCOUNTS, NON-STANDARD TERMS THAT GO TO**
 13 **THE C.E.O.'S AND PRESIDENT'S OFFICE.**
 14 Q. AND HOW ABOUT PRICING? DO YOU HAVE ANY RESPONSIBILITY FOR
 15 THE PRICING OF ORACLE'S STANDARD LICENSES?
 16 **A. I DO. I HAVE A PRICING ORGANIZATION THAT PRICES ALL THE**
 17 **LINES OF BUSINESS OF SOFTWARE, CONSULTING, EDUCATION, SUPPORT,**
 18 **HOSTING, ET CETERA.**
 19 MS. HOUSE: DO YOU NEED HIM TO SLOW DOWN?
 20 THE REPORTER: (NODS HEAD.)
 21 BY MS. HOUSE:
 22 Q. SLOW DOWN. I KNOW YOU SPEAK QUICKLY.
 23 NOW, LET'S SET THE STAGE FOR THE TYPES OF LICENSES
 24 THAT ORACLE DOESN'T ROUTINELY GRANT. HAS ORACLE EVER PROVIDED A
 25 LICENSE ALLOWING A COMPETITOR TO CREATE A MASTER LIBRARY OF
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1 BY MS. HOUSE:
 2 Q. WOULD GRANTING A COMPETITOR SUCH A LICENSE MAKE BUSINESS
 3 SENSE?
 4 **A. NO.**
 5 Q. WHY NOT?
 6 **A. IT DOESN'T MAKE SENSE TO PROVIDE A LICENSE TO A COMPETITOR**
 7 **TO TRY TO TAKE YOUR CUSTOMERS AWAY FROM YOU -- TO USE YOUR OWN**
 8 **IP TO TAKE YOUR CUSTOMERS.**
 9 Q. NOW, THE JURY HASN'T HEARD YET ABOUT ORACLE'S DAMAGES FROM
 10 DEFENDANTS' INFRINGEMENT OF THE ORACLE DATABASE SOFTWARE. TO
 11 SET THE STAGE, LET ME SHOW YOU THE STIPULATION WHERE DEFENDANTS
 12 ADMIT WHAT DATABASE SOFTWARE THEY INFRINGED.
 13 COULD YOU PUT THAT UP?
 14 (PAUSE IN THE PROCEEDINGS.)
 15 MS. HOUSE: IT'S IN THE JURY'S BINDER. WELL, THERE
 16 WE GO.
 17 (EXHIBIT PUBLISHED TO JURY.)
 18 MS. HOUSE: THIS IS IN YOUR JURY BINDER. IT'S
 19 STIPULATION NO. 2.
 20 Q. AND LET ME SHOW YOU. THIS IS THE -- THE MATERIALS THAT ARE
 21 LISTED THAT WERE INFRINGED.
 22 DO YOU RECOGNIZE THOSE MATERIALS UNDER THE ORACLE
 23 DATABASE REGISTRATIONS PART OF THE ADMISSION?
 24 **A. I DO. THESE ARE DIFFERENT VERSIONS OF THE DATABASE**
 25 **ENTERPRISE EDITION STARTING WITH ORACLE 8I AND THEN UP TO THE**
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1 **RELEASE 10G.**

2 Q. OKAY. YOU CAN PUT THAT DOWN. THANK YOU.

3 LET ME ASK YOU TO ASSUME THAT THE WAY THAT

4 TOMORROWNOW INFRINGED THE ORACLE ENTERPRISE DATABASE SOFTWARE

5 WAS TO USE VARIOUS COPIES ON ITS SERVERS TO ASSIST IN DEVELOPING

6 AND TESTING SUPPORT MATERIALS FOR CUSTOMERS -- FOR ITS

7 CUSTOMERS.

8 THE QUESTION FOR THE JURY IS HOW DO YOU VALUE A

9 LICENSE FOR THAT USE.

10 MR. McDONELL: THE SAME OBJECTION, YOUR HONOR.

11 THE COURT: OVERRULED.

12 BY MS. HOUSE:

13 Q. NOW, SAP'S EXPERT IS VALUING THAT LICENSE AS IF TOMORROWNOW

14 WOULD JUST HAVE TO HAVE -- HAVE TO PURCHASE ONE SINGLE CUSTOMER

15 DATABASE LICENSE? WHAT DO YOU THINK OF THAT APPROACH?

16 **A. WELL, I DON'T THINK IT MAKES SENSE. NUMBER ONE, WE LICENSE**

17 **OUR SOFTWARE FOR A SPECIFIC CUSTOMER FOR THE INTERNAL USE. ALSO**

18 **IF WE ALLOW SINGLE CUSTOMER LICENSE TO SERVICE OR PROVIDE**

19 **BENEFIT TO MULTIPLE CUSTOMERS, WE WOULDN'T HAVE THE ABILITY TO**

20 **SELL SOFTWARE TO THOSE MULTIPLE CUSTOMERS OURSELVES.**

21 Q. IS THERE ANYTHING IN THE ORACLE STANDARD LICENSE AGREEMENT

22 THAT -- THAT WOULD BE RELEVANT TO THIS?

23 **A. THERE IS. AGAIN, IT'S LIMITED TO A CUSTOMER AND LIMITED TO**

24 **INTERNAL USE.**

25 Q. LET'S SHOW --

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1 **YOU HAVE THE LIMITED USE, RIGHT TO --"**

2 Q. SLOW DOWN.

3 **A. "-- LIMITED RIGHT TO USE THE PROGRAMS AND RECEIVE ANY**

4 **SERVICES ORDERED SOLELY FOR YOUR INTERNAL BUSINESS OPERATIONS."**

5 Q. AND COULD YOU GIVE SOME REAL-WORLD EXAMPLES OF WHAT'S

6 ALLOWED INTERNAL USE?

7 **A. SURE. AN EXAMPLE WOULD BE A CUSTOMER'S ACCOUNTING SYSTEM.**

8 **SO YOU RUN GENERAL LEDGER, PAYABLES, AND UNDER THAT APPLICATION,**

9 **YOU'LL HAVE A DATABASE THAT STORES THE INFORMATION. SO IF A**

10 **CUSTOMER'S RUNNING THEIR ACCOUNTING SYSTEM, THAT'D BE THEIR**

11 **INTERNAL USE AND FOR THEIR BENEFIT.**

12 Q. WHY DOES ORACLE HAVE THIS RESTRICTION OF UNUSE (SIC) BEYOND

13 THE COMPANY'S INTERNAL OPERATIONS?

14 **A. WELL, THAT'S HOW WE VALUE AND PRICE OUR SOFTWARE. IT'S**

15 **BASED ON A LICENSE TO AN INDIVIDUAL CUSTOMER AND A LICENSE TO**

16 **THEM FOR THEIR INTERNAL USE.**

17 IF THEY'RE GOING TO BE ABLE TO USE IT TO PROVIDE

18 SERVICES OR BENEFIT TO ANOTHER THIRD PARTY, AGAIN, THAT WOULD

19 TAKE AWAY OUR ABILITY TO BE ABLE TO SELL SOFTWARE TO THOSE OTHER

20 THIRD PARTIES.

21 Q. NOW, IS RESTRICTING AN END-USER TO ONLY INTERNAL USE, IS

22 THAT AN UNUSUAL PROVISION IN YOUR EXPERIENCE?

23 **A. NO, NOT AT ALL. WE'VE BEEN THROUGH MANY ACQUISITIONS IN THE**

24 **LAST FIVE, SIX YEARS, AND THEY'RE SOFTWARE COMPANIES LIKE**

25 **OURSELVES. AND I GET THE OPPORTUNITY TO REVIEW THEIR MASTER**

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1 YOU DON'T HAVE ANY OBJECTION TO THE OSLA, DO YOU?

2 MR. McDONELL: I DO NOT.

3 MS. HOUSE: OKAY.

4 SO CAN WE SHOW MR. ALLISON PLAINTIFFS' EXHIBIT 2841,

5 WHICH IS ADMITTED INTO EVIDENCE?

6 (EXHIBIT PUBLISHED TO JURY.)

7 MS. HOUSE: THANK YOU.

8 Q. CAN YOU TELL THE JURY WHAT THIS IS?

9 **A. YES. THIS IS ORACLE'S LICENSE AND SERVICES AGREEMENT. THIS**

10 **IS WHAT WE USE TO LICENSE OUR SOFTWARE TO AN INDIVIDUAL**

11 **CUSTOMER.**

12 Q. AND CAN YOU TELL THE DATE OF THIS VERSION?

13 **A. YES. IF YOU LOOK AT THE LOWER LEFT-HAND SIDE HAS A VERSION.**

14 **THAT'S 12/23/04. THAT'D BE THE DATE OF THE AGREEMENT, THAT**

15 **VERSION OF THE AGREEMENT.**

16 Q. SO THIS VERSION WOULD BE IN PLACE AT THE TIME OF

17 JANUARY 19TH, 2005, WHEN SAP HAD ACQUIRED TOMORROWNOW; IS THAT

18 RIGHT?

19 **A. CORRECT.**

20 Q. IS THERE ANYTHING SPECIFICALLY IN THE LANGUAGE HERE THAT YOU

21 THINK IS RELEVANT TO WHETHER OR NOT A SINGLE LICENSE TO

22 TOMORROWNOW TO DO WHAT IT DID IS -- IS AVAILABLE UNDER THE

23 STANDARD TERMS?

24 **A. YES. IF YOU LOOK AT THE "RIGHTS GRANTED" SECTION, SECTION**

25 **C, THE HIGHLIGHTED LANGUAGE, "UPON OUR ACCEPTANCE OF THE ORDER,**

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1 **AGREEMENTS AS WE START TO INTEGRATE THEM INTO OUR COMPANY, AND**

2 **ALL OF THEM HAVE INTERNAL-USE RESTRICTIONS IN THEIR AGREEMENT.**

3 **SO IT'S REALLY AN INDUSTRY STANDARD THAT ALL SOFTWARE COMPANIES**

4 **USE.**

5 Q. THANK YOU.

6 NOW, CAN YOU EXPLAIN TO THE JURY HOW USING ORACLE'S

7 DATABASE TO PROVIDE EXTERNAL SUPPORT TO ITS CUSTOMERS GAVE

8 TOMORROWNOW DIFFERENT BENEFITS FROM THE KIND OF TYPICAL BENEFITS

9 OF THE SINGLE END-USER OF YOUR STANDARD LICENSE?

10 **A. SURE. TYPICAL END-USER, AGAIN, GETS THE BENEFIT FROM**

11 **RUNNING THEIR OPERATIONS AND THEIR BUSINESS.**

12 **THIS GAVE TOMORROWNOW THE OPPORTUNITY TO KIND OF**

13 **COMMODITIZE THE USE OF THAT DATABASE AND TO CHARGE PEOPLE FOR**

14 **THE USE, BASICALLY, AND THE SERVICES THEY PROVIDE USING THAT**

15 **SYSTEM, WHICH IS DIFFERENT THAN RUNNING YOUR OWN BUSINESS AND**

16 **HAS GREATER VALUE.**

17 Q. SO IF A SINGLE DATABASE LICENSE DOESN'T COVER TOMORROWNOW'S

18 USE OF ORACLE'S DATABASE TO SUPPORT MULTIPLE CUSTOMERS, WHAT DO

19 YOU BELIEVE IS THE APPROPRIATE LICENSING APPROACH?

20 **A. WELL, AGAIN --**

21 **MR. McDONELL: SAME OBJECTION, YOUR HONOR.**

22 THE COURT: ALL RIGHT. SAME RULING.

23 THE WITNESS: I THINK THE BENEFIT IS, AGAIN, TO THE

24 INDIVIDUAL CUSTOMERS WHO ARE RECEIVING THE VALUE OF THE

25 SERVICES. AND SO, AGAIN, I THINK A LICENSE FOR EACH OF THE

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1 CUSTOMERS THAT RECEIVE THE BENEFIT --
 2 THE COURT: SLOW DOWN.
 3 THE WITNESS: SURE.
 4 BY MS. HOUSE:
 5 Q. TRY AGAIN.
 6 **A. I THINK THE PROPER WAY TO LICENSE A SOFTWARE BE BASED ON THE**
 7 **VALUE, WHO'S RECEIVING VALUE FOR IT, AND THAT WOULD BE THE**
 8 **PEOPLE THEY'RE PROVIDING SERVICES TO. SO IT WOULD BE EACH OF**
 9 **THE INDIVIDUAL CUSTOMERS THAT ARE RECEIVING THE BENEFIT OF THAT**
 10 **SERVICE.**
 11 Q. OKAY. NOW, LET'S TALK ABOUT THE PRICING FOR THESE
 12 INDIVIDUAL DATABASE LICENSES. ASSUMING THE FAIR APPROACH IS TO
 13 CHARGE TOMORROWNOW A DATABASE LICENSE FOR EVERY CUSTOMER IT
 14 SUPPORTED USING THE ORACLE DATABASE SOFTWARE IT INFRINGED THAT'S
 15 ON ITS SERVERS, WHAT WOULD YOU USE TO DETERMINE THE PRICE?
 16 MR. McDONELL: SAME, YOUR HONOR.
 17 THE COURT: ALL RIGHT. SAME RULING.
 18 GO AHEAD.
 19 THE WITNESS: WE HAVE A PUBLICLY AVAILABLE PRICE LIST
 20 FOR OUR DATABASE, AND SO WE'D USE THAT TO DETERMINE THE PRICING.
 21 BY MS. HOUSE:
 22 Q. AND WE SAW FROM THE STIPULATION THAT WAS UP BEFORE THAT
 23 THERE'S PARTICULAR VERSIONS OF THE DATABASE ENTERPRISE --
 24 ENTERPRISE DATABASE SOFTWARE.
 25 IS THERE A STANDARD PRICING FOR THAT SOFTWARE?
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1 THE COURT: ALL RIGHT. CROSS-EXAMINATION?
 2 (PAUSE IN THE PROCEEDINGS.)
 3 MR. McDONELL: MAY I, YOUR HONOR?
 4 (PAUSE IN THE PROCEEDINGS.)
 5 CROSS-EXAMINATION
 6 BY MR. McDONELL:
 7 Q. MORNING, MR. ALLISON.
 8 **A. MORNING.**
 9 Q. I'M JASON MCDONELL. GOOD TO SEE YOU.
 10 MR. ALLISON, I JUST HAVE A FEW FOLLOW-UP QUESTIONS.
 11 THE -- LET ME BE CLEAR ON WHAT THE DATABASE SOFTWARE IS JUST IN
 12 MORE LAY -- LAYMAN'S TERMS. SO DATABASE SOFTWARE IS A SOFTWARE
 13 PRODUCT THAT ORACLE SELLS, CORRECT?
 14 **A. CORRECT.**
 15 Q. AND IT'S SOFTWARE THAT'S USED TO CREATE DATABASES; IS THAT
 16 RIGHT?
 17 **A. IT'S A -- IT'S SOFTWARE THAT'S USED TO STORE INFORMATION.**
 18 Q. STORES INFORMATION?
 19 **A. DATABASE, YES.**
 20 Q. NOW, A SINGLE DATABASE SOFTWARE INSTANCE CAN BE USED TO
 21 CREATE MANY DIFFERENT DATABASES; IS THAT RIGHT?
 22 **A. CORRECT. IT'S -- AGAIN, OUR -- OUR PRICING IS BASED ON THE**
 23 **SIZE OF THE SERVER, NOT THE NUMBER OF DATABASES ON THAT SERVER.**
 24 Q. RIGHT.
 25 AND YOU MADE SOME ASSUMPTIONS ABOUT THE SIZE OF THE
 RAYNEE H. MERCADO, CSR, RMR, CRR, FCRR, CCRR (510) 451-7530

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ALLISON - DIRECT / HOUSE

1 **A. THERE IS. THERE'S A STANDARD PRICE FOR THE DATABASE. IT'S**
 2 **ACTUALLY IRRESPECTIVE OF THE VERSION BEING USED. WE HAVE THE**
 3 **SAME PRICE.**
 4 Q. WE ALSO KNOW FROM INFORMATION THAT WAS PROVIDED BY
 5 DEFENDANTS WHAT SERVERS -- YOU KNOW, THE COMPUTERS -- WHAT
 6 COMPUTERS, THE SERVERS -- NOT THE ONE ON THE DESKTOP, BUT THE
 7 ACTUAL SERVERS -- WHAT SERVERS THE SOFTWARE WAS ON, THE ORACLE
 8 DATABASE SOFTWARE.
 9 HOW IS THAT SERVER INFORMATION RELEVANT TO PRICING?
 10 **A. WELL, OUR PRICING IS BASED ON PROCESSORS WHICH ARE WITHIN**
 11 **THE SERVER, AND SO IT'S RELEVANT HOW LARGE THE SERVER IS, HOW**
 12 **MANY PROCESSORS IT IS THAT'S NEEDED TO RUN THEIR SYSTEM. SO WE**
 13 **USE THAT TO PRICE OUT THE SOFTWARE.**
 14 Q. NOW, DID YOU HAVE ANY OPPORTUNITY TO TALK TO ORACLE'S
 15 DAMAGES EXPERT ABOUT THE DATABASE LICENSE DAMAGES IN THIS CASE?
 16 **A. I DID. TWICE.**
 17 Q. AND WHAT DID YOU SPEAK TO HIM ABOUT?
 18 **A. FIRST TIME WAS GENERALLY ABOUT HOW WE PRICE OUR SOFTWARE AND**
 19 **THE METRICS AND THINGS THAT WE USE TO -- TO PRICE IT OUT. THE**
 20 **SECOND TIME IT WAS TO GO OVER HIS ANALYSIS AND TO VERIFY WHETHER**
 21 **THAT MATCHED HOW WE ACTUALLY PRICE OUR SOFTWARE.**
 22 Q. AND DID YOU HAVE ANY ISSUES WITH HIS APPROACH?
 23 **A. I DID NOT. IT WAS REASONABLE.**
 24 MS. HOUSE: THANK YOU, MR. ALLISON.
 25 THE WITNESS: THANK YOU.
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ALLISON - CROSS / MCDONELL

1 SERVERS THAT TOMORROWNOW WAS USING IN THIS CASE; IS THAT RIGHT?
 2 **A. YEAH, I BELIEVE IT WASN'T AN ASSUMPTION. I BELIEVE THAT**
 3 **THEY PROVIDED THE SERVER INFORMATION WHERE THEY WERE ACTUALLY**
 4 **RUNNING THE SOFTWARE, AND THEY USED AVERAGE CONFIGURATION THAT**
 5 **WAS USED WITHIN THAT ENVIRONMENT.**
 6 Q. AND WHEN YOU SAY THEY USED AN AVERAGE CONFIGURATION, YOU'RE
 7 REFERRING TO YOU USED AN AVERAGE CONFIGURATION; ISN'T THAT
 8 RIGHT?
 9 **A. ALONG WITH THE EXPERT, I THINK WE LOOKED AT THE**
 10 **CONFIGURATION, 'CAUSE THERE WERE MULTIPLE SERVERS WHERE THE**
 11 **SOFTWARE WAS INSTALLED, DIFFERENT SIZES, AND IT LOOKED AT THE**
 12 **AVERAGE CONFIGURATION. DIDN'T TAKE THE LARGEST CONFIGURATION,**
 13 **DIDN'T TAKE THE SMALLEST, LOOKED AT THE AVERAGE.**
 14 Q. AND THERE WERE SOME SMALLER CONFIGURATIONS THAT YOU DIDN'T
 15 USE BECAUSE YOU BAKED THAT INTO THE AVERAGE, RIGHT?
 16 **A. CORRECT.**
 17 Q. NOW, WHAT YOU THEN DID IS YOU MADE THE ASSUMPTION THAT
 18 ORACLE WOULD LIKE TO CHARGE FOR THIS LICENSE ON A PER-CUSTOMER
 19 BASIS; IS THAT RIGHT?
 20 **A. CORRECT.**
 21 Q. AND WHAT YOU DID THERE IS YOU ASSUMED THAT TOMORROWNOW WAS
 22 GOING TO BE USING DATABASE SOFTWARE AND IT WAS GOING TO HAVE A
 23 NUMBER OF CUSTOMERS -- SO EVEN THOUGH TOMORROWNOW COULD -- COULD
 24 DO ALL OF THIS WORK ON A SINGLE DATABASE SOFTWARE INSTANCE, YOU
 25 WERE GOING TO CHARGE THEM MULTIPLE TIMES DEPENDING ON THE NUMBER
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ALLISON - CROSS / MCDONELL

1 YOU TOLD HIM THAT THIS WAS A UNIQUE SITUATION; ISN'T THAT RIGHT?

2 **A. YES, I DID.**

3 Q. OKAY. AND YOU -- YOU KNOW HE'S GIVEN A DEPOSITION IN THIS

4 CASE. ARE YOU AWARE OF THAT?

5 **A. I AM.**

6 Q. AND, YOU KNOW, HE -- HE NEVER GOT FROM YOU ANY REAL-WORLD

7 TRANSACTION WHERE YOU GAVE HIM A LICENSE THAT WAS ACTUALLY

8 SIGNED BY A CUSTOMER AND PAID FOR BY A CUSTOMER THAT YOU SAID

9 WAS A COMPARABLE TRANSACTION FOR THIS PURPOSE; IS THAT RIGHT?

10 **A. AGAIN, IT DOESN'T EXIST OTHER THAN THE EXAMPLE I MENTIONED**

11 **OF OUTSOURCERS OR PEOPLE PROVIDING SERVICES FOR MULTIPLE**

12 **CUSTOMERS.**

13 Q. NOW, COUPLE OTHER THINGS REAL QUICKLY. YOU DO HAVE

14 STANDARD-PRICED PRODUCTS; IS THAT RIGHT?

15 **A. YES, WE DO.**

16 Q. FOR EXAMPLE, THE STANDARD ENTERPRISE EDITION PRODUCT IS

17 SOMETHING ORACLE SELLS ON ITS PRICE LIST; ISN'T THAT RIGHT?

18 **A. CORRECT.**

19 Q. AND YOU ALSO SELL THE STANDARD EDITION ALSO ON YOUR PRICE

20 LIST; IS THAT RIGHT?

21 **A. WE DO.**

22 Q. AND THE ENTERPRISE EDITION WAS 40,000 PER LICENSE BACK IN

23 THE TIME FRAME WE'RE TALKING ABOUT, CORRECT?

24 **A. AT THAT TIME, IT WAS, YES.**

25 Q. AND THE STANDARD EDITION WAS 15,000?

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ALLISON - CROSS / MCDONELL

1 **A. CORRECT.**

2 Q. SO IT'S A -- IT'S YOUR UNDERSTANDING THAT MR. MEYER, IN

3 CONJUNCTION WITH YOU, IS -- IS SAYING THAT ON THE DAY WE'RE

4 TALKING ABOUT HERE, WHICH IS, WHAT, 2005, WHEN YOU WERE LOOKING

5 AT TOMORROWNOW -- IS THAT THE TIME FRAME?

6 **A. CORRECT.**

7 Q. THAT TOMORROWNOW ON THAT DATE WOULD HAVE TO HAVE BOUGHT A

8 LICENSE FOR \$55 MILLION JUST TO HAVE A DATABASE SOFTWARE SO IT

9 COULD DO ITS WORK, RIGHT?

10 **A. WELL, THE INTERESTING PART OF ABOUT IT IS I WOULDN'T HAVE**

11 **GIVEN THEM A LICENSE TO DO WHAT THEY'RE (SIC) DOING, SO THESE**

12 **ARE ALL HYPOTHETICALS. AND IF I WAS TO GIVE THEM ONE, I WOULD**

13 **CHARGE THEM ONE FOR EACH INSTANCE OF THE DATABASE FOR EACH**

14 **CUSTOMER THEY WERE GOING TO SUPPORT, WHICH WOULD HAVE RESULTED**

15 **IN THE \$55 MILLION WE'RE TALKING ABOUT, YES.**

16 Q. \$55 MILLION.

17 AND YOU'RE AWARE THAT AT THAT TIME, TOMORROWNOW HAD

18 JUST BEEN SOLD FOR A TOTAL OF \$10 MILLION.

19 **A. ABSOLUTELY. AND THIS IS THE INTERESTING PART ABOUT IT, AND**

20 **THIS IS -- YOU KNOW, SOMETIMES THINGS ARE TOO GOOD TO BE TRUE,**

21 **AND THIS IS ABSOLUTELY A CASE OF THAT. YOU CAN'T PROVIDE THIS**

22 **SERVICE WITHOUT HAVE -- SPENDING THE TIME AND MONEY TO INVEST**

23 **AND DEVELOP THE PRODUCTS. AND SO HANDING OVER OUR IP, WHICH IS,**

24 **FRANKLY, THE VALUE OF OUR ENTIRE COMPANY -- IN A SOFTWARE**

25 **COMPANY, IT'S AN INTANGIBLE THING; IT'S OUR SOFTWARE; IT'S OUR**

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ALLISON - CROSS / MCDONELL

1 **A. CORRECT.**

2 Q. AND AS FAR AS YOU KNOW, JUST TECHNICALLY SPEAKING, COULD ONE

3 INSTANCE OF THE ENTERPRISE EDITION SOFTWARE BEEN TECHNICALLY

4 SUFFICIENT TO SUPPORT TOMORROWNOW'S NEEDS?

5 **A. ONE INSTANCE?**

6 Q. YES.

7 **A. COULD YOU CLARIFY WHAT YOU MEAN BY AN INSTANCE?**

8 Q. AN INSTANCE OF ORACLE DATABASE SOFTWARE RUNNING ON AN

9 EIGHT-PROCESSOR SERVER.

10 **A. WELL, IT'S A HYPOTHETICAL QUESTION FOR ME. I KNOW THEY WERE**

11 **MULTIPLE VERSIONS IN THE DATABASE, SO I'M NOT SURE IT MAKES**

12 **SENSE TO HAVE A SINGLE INSTANCE WHEN YOU'RE RUNNING VERSIONS OF**

13 **8, 9, 10, AND I THINK THEY WERE DOING TESTING AGAINST ALL THOSE**

14 **VERSIONS. AND SO TYPICALLY YOU WOULDN'T HAVE A SINGLE INSTANCE**

15 **WITH MULTIPLE VERSIONS OF THE DATABASE RUNNING ON IT. SO I'M**

16 **NOT SURE THAT WOULD WORK.**

17 Q. THEN LET ME ASK IT TO YOU THIS WAY: HOW MANY DIFFERENT

18 COPIES OF THE SOFTWARE, JUST TECHNICALLY, WOULD TOMORROWNOW HAVE

19 NEEDED TO RUN THE -- TO STORE THE DATA THAT THEY WERE STORING?

20 **A. TECHNICALLY, I WOULDN'T KNOW WITHOUT KNOWING THEIR**

21 **ENVIRONMENT AND THE AMOUNT OF DATA THEY'RE RUNNING.**

22 Q. NOW, DO YOU KNOW WHAT NUMBER MR. MEYER CAME UP WITH FOR THIS

23 LICENSE FOR THE DATABASE?

24 **A. YES.**

25 Q. AND IT'S ABOUT \$55 MILLION; ISN'T THAT RIGHT?

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ALLISON - CROSS / MCDONELL

1 **INTELLECTUAL PROPERTY -- HAS A VALUE OF BILLIONS OF DOLLARS.**

2 **SO \$50 MILLION TO BE ABLE TO SERVICE OR ACTUALLY TRY**

3 **TO REPLACE OUR CUSTOMER BASE DOESN'T SEEM ANYTHING OTHER THAN**

4 **REASONABLE.**

5 Q. BUT LET ME GO BACK TO MY QUESTION. ARE YOU AWARE THAT WHAT

6 YOU WERE SAYING AT THE TIME WAS THAT TOMORROWNOW WOULD HAVE TO

7 HAVE BOUGHT A LICENSE FOR \$55 MILLION?

8 **A. I DO IF I WAS GOING TO AGREE TO GIVE THEM A LICENSE.**

9 Q. NOW, LET ME SHIFT GEARS SLIGHTLY.

10 QUICK QUESTION: ARE YOU AWARE THAT -- IS IT YOUR

11 UNDERSTANDING THAT CONSULTANTS ARE ENTITLED TO GET ACCESS TO

12 ORACLE SOFTWARE UNDER CERTAIN CIRCUMSTANCES?

13 **A. UNDER SOME LICENSE AGREEMENTS, THEY ARE.**

14 Q. AND -- AND ONE OF THE EXAMPLES OF HOW THEY CAN DO THAT IS IF

15 THEY GO TO THE CUSTOMERS' SITE AND WORK ON THE SOFTWARE THERE.

16 **A. CORRECT.**

17 Q. OKAY. AND -- AND YOU'VE SEEN LICENSES LIKE THAT FOR

18 PEOPLESOFT; IS THAT RIGHT?

19 **A. WELL, AGAIN, WE'RE TALKING ABOUT HUNDREDS OF CUSTOMERS HERE,**

20 **AND OVER A -- LONG TIME PERIODS, THEY ALL HAVE DIFFERENT**

21 **AGREEMENTS. YOU HAVE TO LOOK AT AN INDIVIDUAL AGREEMENT TO SEE**

22 **WHAT RIGHT WAS GRANTED. SOME AGREEMENTS GRANT THE RIGHTS FOR A**

23 **THIRD PARTY OR CONSULTANT TO HAVE ACCESS. SOME MAKE IT VERY**

24 **SPECIFIC THAT THEY CAN ONLY HAVE ACCESS TO INTERFACES. SOME SAY**

25 **THAT THEY CAN'T REMOVE THE SOFTWARE AT (SIC) SITE OR CHANGE IT**

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ALLISON - CROSS / MCDONELL

1 **FROM ONE SERVER TO ANOTHER. SO THERE'S A LOT OF DIFFERENT**
 2 **RESTRICTIONS.**
 3 **YOU HAVE TO LOOK AT AN INDIVIDUAL LICENSE TO REALLY**
 4 **BE ABLE TO DETERMINE WHAT THE RIGHT IS.**
 5 Q. AND FOLLOWING UP ON THAT, IT'S ALSO TRUE, IS IT NOT, THAT
 6 THERE'S A STANDARD PROVISION WHERE TYPICALLY THESE LICENSES ARE
 7 CONFIDENTIAL; ISN'T THAT RIGHT?
 8 **A. THE AGREEMENTS, YES.**
 9 Q. YEAH. OKAY.
 10 LAST QUESTION FOR YOU: THE NUMBER OF CUSTOMERS THAT
 11 YOU AND MR. MEYER ASSUME FOR THIS LICENSE WAS THAT 171?
 12 **A. I KNOW IT WAS 150-PLUS. I CAN'T REMEMBER THE EXACT NUMBER,**
 13 **YES.**
 14 Q. AND, AGAIN, IS IT YOUR UNDERSTANDING THAT THAT'S BECAUSE
 15 THAT WAS THE ACTUAL NUMBER OF CUSTOMERS THAT TOMORROWNOW WAS
 16 SERVICING WITH THAT SOFTWARE?
 17 **A. THEY WERE USING THE ORACLE DATABASE IN THEIR SOFTWARE, YES.**
 18 Q. FOR 171 CUSTOMERS.
 19 **A. AGAIN, I DON'T KNOW THE EXACT NUMBER OFF THE TOP OF MY HEAD.**
 20 Q. AND ARE YOU AWARE THAT TOMORROWNOW EVER ONLY HAD 358
 21 CUSTOMERS?
 22 **A. YES.**
 23 Q. OKAY. SO THE BEST OF YOUR UNDERSTANDING IS THERE WERE A
 24 TOTAL OF 358 TOMORROWNOW CUSTOMERS AND MAYBE ABOUT HALF OF THOSE
 25 WERE SUPPORTED BY ORACLE DATABASE SOFTWARE?
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1 NEXT WITNESS.
 2 MR. HOWARD: THANK YOU, YOUR HONOR. I NEGLECTED TO
 3 GIVE THE EXHIBITS FOR GREG NELSON PREVIOUSLY. THOSE WERE
 4 PLAINTIFFS' EXHIBIT -- TRIAL EXHIBIT 299 AND 353 AND DEFENDANTS'
 5 EXHIBIT 1578.
 6 THE COURT: ALL RIGHT. THOSE WILL ALL BE ADMITTED.
 7 (PLAINTIFFS' EXHIBITS 299, 353
 8 RECEIVED IN EVIDENCE)
 9 (DEFENDANTS' EXHIBIT A1578
 10 RECEIVED IN EVIDENCE)
 11 MR. HOWARD: THANK YOU, YOUR HONOR.
 12 THE WITNESS: NEXT WITNESS WILL BE JOHN BAUGH.
 13 MR. BAUGH WAS THE TOMORROWNOW PEOPLESOFT'S ENVIRONMENTS MANAGER.
 14 THE EXHIBITS FOR MR. BAUGH ARE PLAINTIFFS' TRIAL EXHIBIT 504 AND
 15 475.
 16 AND HIS VIDEO WILL RUN ABOUT 23 MINUTES, JUST UNDER
 17 10 MINUTES FOR THE PLAINTIFFS AND 13 MINUTES FOR THE DEFENDANTS.
 18 (WHEREUPON, VIDEO DEPOSITION OF JOHN BAUGH WAS PLAYED.)
 19 THE COURT: ALL RIGHT. THAT CONCLUDES THIS TAPE,
 20 CORRECT?
 21 MR. HOWARD: YES, YOUR HONOR.
 22 THE COURT: ALL RIGHT. IS THE NEXT WITNESS GOING TO
 23 BE LIVE?
 24 MR. HOWARD: IT WOULD BE BY VIDEOTAPE. I DIDN'T KNOW
 25 YOUR HONOR'S PREFERENCE FOR WHEN YOU WANTED TO TIME THE BREAK.
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ALLISON - CROSS / MCDONELL

1 **A. THAT'S MY UNDERSTANDING, YES.**
 2 Q. AND THAT'S WHAT YOU CHARGE THE LICENSE FOR.
 3 **A. THE HYPOTHETICAL LICENSE THAT I WOULDN'T HAVE GIVEN, YES.**
 4 Q. HYPOTHETICAL, WE ALL UNDERSTAND THAT IT NEVER WOULD HAVE
 5 BEEN GIVEN. AND WHAT YOU'RE TALKING ABOUT HERE IS WHAT YOU
 6 WOULD HAVE CHARGED HAD THERE BEEN AN AGREEMENT, RIGHT?
 7 **A. FOR ACCESS TO OUR INTELLECTUAL PROPERTY, YES.**
 8 **MR. MCDONELL: THAT'S ALL, YOUR HONOR.**
 9 THE COURT: OKAY.
 10 ALL RIGHT. REDIRECT?
 11 MS. HOUSE: JUST ONE QUICK FOLLOW-UP.
 12 REDIRECT EXAMINATION
 13 BY MS. HOUSE:
 14 Q. JUST SO THE JURY'S NOT CONFUSED, THE 55 MILLION THAT YOU'RE
 15 TALKING ABOUT, DOES THAT HAVE ANYTHING TO DO WITH THE LICENSE
 16 THAT WOULD BE REQUIRED FOR THE PEOPLESOFT ACCESS -- THE
 17 PEOPLESOFT INFRINGEMENT OR THE SIEBEL INFRINGEMENT?
 18 **A. NO, THIS IS SOLELY LIMITED TO THE ORACLE DATABASE THAT RUNS**
 19 **UNDER THE APPLICATIONS.**
 20 MS. HOUSE: THANK YOU.
 21 THE WITNESS: THANKS.
 22 MR. MCDONELL: NOTHING FURTHER, YOUR HONOR.
 23 THE COURT: ALL RIGHT. THANK YOU, MR. ALLISON.
 24 THE WITNESS: THANK YOU.
 25 THE COURT: YOU'RE EXCUSED.
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1 THE COURT: WELL, HOW LONG IS THAT --
 2 MR. HOWARD: IT'S QUITE A LONG ONE, ACTUALLY. WE MAY
 3 ASK THE COURT TO INTERRUPT IT TO CALL MR. BRANDT, WHO NEEDS
 4 TO -- WHO'S ONLY HERE TODAY, SO -- THE NEXT ONE IS ANDREW
 5 NELSON, AND THE TOTAL RUNNING TIME, YOUR HONOR, IS ABOUT A
 6 MINUTE -- AN HOUR AND 38 MINUTES.
 7 THE COURT: OH, OKAY. WHY DON'T WE -- CAN WE TAKE
 8 THE WITNESS OUT OF ORDER NEXT AND THEN START WITH THE TAPE?
 9 (OFF-THE-RECORD DISCUSSION.)
 10 MR. HOWARD: WOULD YOU LIKE TO DO THAT?
 11 THE COURT: WE'VE HAD THREE BY TAPE. IT WOULD BE
 12 NICE TO HAVE A LIVE WITNESS IN BETWEEN.
 13 MR. HOWARD: OKAY.
 14 THE COURT: WHY DON'T WE DO THAT?
 15 MR. HOWARD: OKAY.
 16 THE COURT: SO WHY DON'T WE TAKE OUR FIRST 15-MINUTE
 17 BREAK, AND THEN WE'LL COME BACK FOR A LIVE WITNESS.
 18 LADIES AND GENTLEMEN, YOU'RE EXCUSED.
 19 (RECESS TAKEN AT 10:10 A.M.)
 20
 21 (CONTINUED NEXT PAGE; NOTHING OMITTED.)
 22
 23
 24
 25 RAYNEE H. MERCADO, CSR, RMR, CRR, FCRR, CCRR (510) 451-7530

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1 (PROCEEDINGS RESUMED AT 10:34 A.M.)
 2 (PROCEEDINGS HELD IN THE PRESENCE OF THE JURY.)
 3 THE CLERK: PLEASE BE SEATED AND COME TO ORDER.
 4 THE COURT: ALL RIGHT. NEXT WITNESS?
 5 MR. BOIES: WE CALL AS OUR NEXT WITNESS MR. WERNER
 6 BRANDT.
 7 MR. LANIER: AND, YOUR HONOR, THIS WITNESS IS
 8 TESTIFYING IN GERMAN. WE HAVE AGREED ON A TRANSLATOR,
 9 MS. ARIANNA SCHNEIDER-STOCKING. SHE'S ALREADY BEEN SWORN.
 10 THE COURT: THANK YOU.
 11 GOOD MORNING.
 12 THE INTERPRETER: GOOD MORNING.
 13 MR. LANIER: WE HAVE ALSO AGREED TO SAVE SOME TIME,
 14 AS WE HAVE DONE BEFORE, THAT THE TRANSLATOR DOES NOT NEED TO
 15 TRANSLATE PORTIONS OF DOCUMENTS THAT WERE WRITTEN IN ENGLISH
 16 THAT WENT TO THE WITNESS BEFORE TO SAVE A LITTLE TIME.
 17 THE COURT: THANK YOU.
 18 MR. LANIER: THANK YOU.
 19 THE CLERK: PLEASE RAISE YOUR RIGHT HAND.
 20 WERNER BRANDT,
 21 CALLED AS A WITNESS FOR THE PLAINTIFFS, HAVING BEEN DULY SWORN,
 22 TESTIFIED AS FOLLOWS:
 23 (TESTIMONY GIVEN THROUGH GERMAN INTERPRETER.)
 24 THE WITNESS: I SWEAR.
 25 THE CLERK: PLEASE BE SEATED.
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BRANDT - DIRECT / MR. BOIES

1 SAP, CORRECT?
 2 **A. THAT IS CORRECT.**
 3 Q. AND YOU HAVE CONTINUED AS CFO AND AS A MEMBER OF THE
 4 EXECUTIVE BOARD OF SAP TO THE PRESENT TIME, CORRECT?
 5 **A. THAT'S CORRECT.**
 6 Q. YOU ARE ALSO A DIRECTOR OF SAP AMERICA, CORRECT?
 7 **A. I AM DIRECTOR OF SAP AMERICA, THAT IS CORRECT.**
 8 Q. HOW LONG HAVE YOU BEEN DIRECTOR OF SAP AMERICA?
 9 **A. FOR MANY YEARS.**
 10 Q. WERE YOU A DIRECTOR OF SAP AMERICA IN 2004?
 11 **A. I THINK SO, YES.**
 12 Q. WERE YOU A MEMBER OF SAP AMERICA WHEN SAP ACQUIRED
 13 TOMORROWNOW?
 14 **A. I THINK SO, YES.**
 15 Q. YOU LED THE TEAM THAT HANDLED THE TOMORROWNOW ACQUISITION,
 16 CORRECT, SIR?
 17 **A. THAT IS CORRECT.**
 18 Q. AND YOU ARE THE SAP EXECUTIVE BOARD MEMBER PRIMARILY
 19 RESPONSIBLE FOR DIRECTING THIS LAWSUIT AND HOW THIS LAWSUIT IS
 20 HANDLED, CORRECT?
 21 **A. THAT IS CORRECT.**
 22 Q. I WANT TO BEGIN WITH JUST SOME BACKGROUND QUESTIONS.
 23 YOU WOULD AGREE, WOULD YOU NOT, THAT IN THE SOFTWARE
 24 BUSINESS INTELLECTUAL PROPERTY IS VERY IMPORTANT?
 25 **A. THAT IS CORRECT.**
 DIANE E. SKILLMAN, OFFICIAL COURT REPORTER, USDC (510) 451-2930

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BRANDT - DIRECT / MR. BOIES

1 PLEASE STATE YOUR FULL NAME AND SPELL YOUR LAST NAME
 2 FOR THE RECORD.
 3 THE WITNESS: MY NAME IS WERNER BRANDT, B-R-A-N-D-T.
 4 MR. BOIES: YOUR HONOR, WE WOULD OFFER WITHOUT
 5 OBJECTION, PLAINTIFFS' EXHIBITS 1, 2, 5, 20, 27, 36, 44, 53,
 6 112, 121, 139, 154, 156 AND 171.
 7 THE COURT: ALL RIGHT.
 8 MR. LANIER: NO OBJECTION, YOUR HONOR.
 9 THE COURT: ADMITTED.
 10 (PLAINTIFFS' EXHIBITS 1, 2, 5, 20, 27, 36,
 11 44, 53, 112, 121, 139, 154, 156 AND 171
 12 RECEIVED IN EVIDENCE)
 13 DIRECT EXAMINATION
 14 BY MR. BOIES:
 15 Q. GOOD MORNING, MR. BRANDT.
 16 **A. GOOD MORNING, MR. BOIES.**
 17 Q. WE HAVEN'T MET, BUT I REPRESENT ORACLE. AND YOU
 18 UNDERSTAND THAT, RIGHT?
 19 **A. I UNDERSTAND THAT, YES.**
 20 Q. WHEN DID YOU JOIN SAP?
 21 **A. I BECAME AN EMPLOYEE OF SAP ON FEBRUARY 1ST, 2001.**
 22 Q. AND AT THAT TIME YOU BECAME CHIEF FINANCIAL OFFICER OF
 23 SAP, CORRECT?
 24 **A. THAT'S CORRECT.**
 25 Q. AND YOU ALSO BECAME A MEMBER OF THE EXECUTIVE BOARD OF
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BRANDT - DIRECT / MR. BOIES

1 Q. SAP'S BUSINESS AND ORACLE'S BUSINESS DEPENDS ON ITS
 2 INTELLECTUAL PROPERTY, CORRECT, SIR?
 3 **A. THAT IS CORRECT.**
 4 Q. AND SAP TAKES STEPS TO PROTECT ITS INTELLECTUAL PROPERTY
 5 FROM INFRINGEMENT, CORRECT, SIR?
 6 **A. THAT IS CORRECT.**
 7 Q. AND, IN FACT, SAP HAS A DEPARTMENT DEVOTED TO PROTECTING
 8 SAP'S INTELLECTUAL PROPERTY, CORRECT?
 9 **A. THAT IS CORRECT.**
 10 Q. AND WHEN SAP LICENSES ITS INTELLECTUAL PROPERTY, ITS
 11 SOFTWARE, IT TRIES TO GET THE MAXIMUM RETURN POSSIBLE FROM IT,
 12 CORRECT, SIR?
 13 **A. IT'S THE GOAL OF ANY ENTERPRISE.**
 14 Q. I WANT TO TAKE YOU BACK NOW TO DECEMBER OF 2004.
 15 AND AT THAT TIME, SAP WAS CONSIDERING ACQUIRING A
 16 COMPANY CALLED TOMORROWNOW, CORRECT?
 17 **A. THAT IS CORRECT.**
 18 Q. AND THE PURPOSE OF ACQUIRING TOMORROWNOW WAS TO ACQUIRE A
 19 COMPANY THAT COULD HELP SAP PROVIDE MAINTENANCE AND SUPPORT TO
 20 PEOPLESOFT CUSTOMERS, CORRECT, SIR?
 21 **A. THAT IS CORRECT.**
 22 Q. AND THIS WAS PART OF AN OVERALL PLAN OF SAP TO TRY TO
 23 CONVERT PEOPLESOFT CUSTOMERS AND J.D. EDWARDS CUSTOMERS TO SAP
 24 CUSTOMERS, CORRECT, SIR?
 25 **A. THAT IS CORRECT.**
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BRANDT - DIRECT / MR. BOIES

1 Q. I WOULD LIKE TO DIRECT YOUR ATTENTION TO A DOCUMENT THAT
 2 IS NOW IN EVIDENCE WHICH IS PLAINTIFFS' EXHIBIT 24.
 3 IT IS BEHIND TAB 12 OF YOUR BINDER.
 4 (EXHIBIT DISPLAYED ON SCREEN.)
 5 **A. WE HAVE 12 AND 13 AND 14.**
 6 Q. YES, THE TABS GO UP ALL THE WAY TO 28, BUT THE TAB THAT I
 7 AM PARTICULARLY INTERESTED IN IS TAB 12 THAT HAS EXHIBIT 24
 8 BEHIND IT.
 9 (PAUSE IN THE PROCEEDINGS.)
 10 DO YOU HAVE THAT DOCUMENT, SIR?
 11 **A. YES.**
 12 Q. OKAY. NOW, THIS --
 13 **A. (ENGLISH) ONE SECOND. GIVE ME A CHANCE TO PUT IT AROUND.**
 14 Q. SURE.
 15 **A. (ENGLISH) THANK YOU.**
 16 Q. SURE.
 17 THIS DOCUMENT WAS A PRESENTATION ON A PROGRAM CALLED
 18 SAFE PASSAGE, CORRECT, SIR?
 19 **A. IT'S A DOCUMENT ENTITLED SAFE PASSAGE. THAT IS CORRECT.**
 20 Q. AND SAFE PASSAGE WAS A PROGRAM THAT IN EARLY 2005 SAP HAD
 21 TO TRY TO CONVERT PEOPLESOFT AND J.D. EDWARDS CUSTOMERS TO SAP
 22 CUSTOMERS, CORRECT, SIR?
 23 **A. THAT IS CORRECT.**
 24 Q. AND JUST TO AVOID ANY CONFUSION, THIS IS DATED
 25 JANUARY 20TH AND IT SAYS 2004.
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BRANDT - DIRECT / MR. BOIES

1 OF SHARED CUSTOMERS.
 2 DO YOU SEE THAT?
 3 **A. I SEE IT, YES.**
 4 Q. NOW IN ORDER TO DO THIS, IT WAS IMPORTANT TO BE ABLE TO
 5 OFFER MAINTENANCE AND SUPPORT SERVICES TO PEOPLESOFT AND
 6 J.D. EDWARDS CUSTOMERS, CORRECT, SIR?
 7 **A. THAT WAS THE OPINION OF SOME OF OUR EMPLOYEES IN THE**
 8 **MARKETING DEPARTMENT AT THE TIME.**
 9 Q. AND, INDEED, IT WAS MORE THAN JUST THE OPINION OF THE
 10 MARKETING PEOPLE, THAT IS WHAT THE EXECUTIVE BOARD BELIEVED,
 11 CORRECT, SIR?
 12 **A. THIS IS HOW IT HAS BEEN PRESENTED AT THE TIME TO THE**
 13 **BOARD.**
 14 Q. AND WHEN IT WAS PRESENTED THAT WAY TO THE BOARD, NOBODY AT
 15 THE BOARD DISAGREED WITH IT, CORRECT, SIR?
 16 **A. THAT'S CORRECT.**
 17 Q. AND IT WAS SAP'S PLAN TO PROVIDE THAT IMPORTANT
 18 MAINTENANCE AND SUPPORT FOR PEOPLESOFT AND J.D. EDWARDS
 19 CUSTOMERS THROUGH TOMORROWNOW, CORRECT, SIR?
 20 **A. YES, THAT'S CORRECT.**
 21 Q. AND THE ACQUISITION OF TOMORROWNOW WAS IMPORTANT BECAUSE
 22 SAP BELIEVED THAT TOMORROWNOW WAS THE ONLY COMPANY IN NORTH
 23 AMERICA THAT HAD THE CAPACITY TO DO WHAT SAP WANTED DONE,
 24 CORRECT, SIR?
 25 **A. YES. WE PERFORMED A MARKET ANALYSIS AND THE RESULT OF**
 DIANE E. SKILLMAN, OFFICIAL COURT REPORTER, USDC (510) 451-2930

BRANDT - DIRECT / MR. BOIES

1 DO YOU SEE THAT?
 2 **A. I SEE THAT, YES.**
 3 Q. AND THAT IS AN ERROR. IT IS 2005, CORRECT, SIR?
 4 **A. I ASSUME SO, YES.**
 5 Q. BECAUSE YOU REMEMBER THAT THE SAFE PASSAGE PROGRAM
 6 OCCURRED AFTER ORACLE HAD COMPLETED ITS ACQUISITION OF
 7 PEOPLESOFT, CORRECT, SIR?
 8 **A. THAT'S CORRECT.**
 9 Q. NOW, THE GOAL THAT SAP HAD WAS TO CONVERT APPROXIMATELY
 10 50 PERCENT OF THE PEOPLESOFT AND J.D. EDWARD CUSTOMER
 11 INSTALLATIONS TO SAP, CORRECT?
 12 **A. THE GOAL WAS TO REACH OR TO CONVERT AS MANY CUSTOMERS AS**
 13 **POSSIBLE WHO WERE VERY INSECURE DUE TO PEOPLESOFT SITUATION IN**
 14 **THE MARKET AND THE UNCERTAINTIES AROUND IT, AND TO CONVERT**
 15 **THESE CUSTOMERS TO SAP BY SHOWING THEM THAT OUR SOLUTIONS WERE**
 16 **THE BETTER ONES FOR THEIR BUSINESS PRACTICES.**
 17 Q. AND YOUR GOAL WAS TO CONVERT APPROXIMATELY 50 PERCENT OF
 18 THE PEOPLESOFT AND J.D. EDWARDS CUSTOMER INSTALLATIONS TO SAP,
 19 CORRECT, SIR?
 20 **A. THIS IS CORRECT. THIS CAN ALSO BE SEEN IN DOCUMENTS.**
 21 Q. YES.
 22 AND, FOR EXAMPLE, IF WE GO TO THE PAGE THAT ENDS IN
 23 THE NUMBER 500, IN THIS DOCUMENT WE SEE ONE OF THE GOALS TO BE
 24 CONVERT APPROXIMATELY 50 PERCENT OF THE PEOPLESOFT AND
 25 J.D. EDWARDS CUSTOMER INSTALLATIONS TO SAP, A HUNDRED PERCENT
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1 **THIS WAS EXACTLY WHAT YOU JUST DESCRIBED.**
 2 Q. AND EVERY MEMBER OF THE SAP EXECUTIVE BOARD FULLY
 3 SUPPORTED THE ACQUISITION OF TOMORROWNOW, CORRECT, SIR?
 4 **A. THAT IS CORRECT.**
 5 Q. AND THAT INCLUDED MR. OSWALD, CORRECT?
 6 **A. YES, THAT IS CORRECT. THE VOTE WAS UNANIMOUS.**
 7 Q. AND THAT INCLUDED MR. APOTHEKER?
 8 **A. THAT IS CORRECT.**
 9 Q. THE VALUE TO SAP OF THE PROGRAM USING TOMORROWNOW INCLUDED
 10 NOT ONLY JUST THE MAINTENANCE AND SUPPORT REVENUES THAT WERE
 11 EXPECTED TO BE EARNED, BUT ALSO THE CAPACITY TO MOVE CUSTOMERS
 12 FROM PEOPLESOFT AND J.D. EDWARDS TO SAP, CORRECT, SIR?
 13 **A. THE GOAL OF SAFE PASSAGE WAS TO GAIN AS MANY CUSTOMERS AS**
 14 **POSSIBLE. THAT'S WHAT YOU JUST STATED IS CORRECT.**
 15 Q. AND IT WAS PROJECTED THAT YOU WOULD GET ALMOST
 16 \$900 MILLION IN REVENUES OVER THE INITIAL THREE YEARS OF THE
 17 PROGRAM, CORRECT, SIR?
 18 **A. YES, THIS IS CORRECT. THIS IS THE RESULT OF SEVERAL**
 19 **MARKETING PLANS THAT WERE PUT TOGETHER AT THE TIME.**
 20 Q. IN ADDITION TO THE REVENUE THAT SAP EXPECTED TO GET FROM
 21 THIS PROGRAM, SAP ALSO EXPECTED TO BENEFIT FROM THE DISRUPTION
 22 THAT THE PROGRAM WOULD CAUSE ORACLE, CORRECT, SIR?
 23 **A. THAT IS CORRECT.**
 24 Q. WOULD YOU EXPLAIN TO THE JURY WHY IT WAS VALUABLE TO SAP
 25 TO TRY TO DISRUPT ORACLE?
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1 **A. SO, OF COURSE, WE WERE IN A VERY COMPETITIVE MARKET**
 2 **SITUATION AT THE TIME AND THUS ESPECIALLY WITH VIEW TO THE**
 3 **UNCERTAINTIES THAT WERE ON THE MARKET AT THE TIME. AND WE**
 4 **WANTED TO ACHIEVE IN THIS VERY SHORT TIME FRAME, FROM JANUARY**
 5 **TO FEBRUARY OF 2005, TO GAIN THIS COMPETITIVE ADVANTAGE.**

6 Q. ARE YOU SAYING THAT BECAUSE OF THE COMPETITIVE SITUATION,
 7 ANYTHING THAT DISRUPTED ORACLE WOULD BE OF BENEFIT TO SAP?
 8 **A. IT'S A VERY SIMPLE SITUATION. IF ONE COMPETITOR ON THE**
 9 **MARKET GAINS MARKET SHARE, THIS MEANS DISRUPTION OR INSECURITY**
 10 **FOR THE OTHER COMPETITOR IN THE MARKET.**

11 Q. THE GOAL OF DISRUPTING ORACLE WAS NOT MERELY A GOAL OF
 12 TAKING AWAY MARKET SHARE, CORRECT, SIR?
 13 **A. NO, NOT AT ALL. I THINK WE HAD VERY CLEAR GOAL IN MIND**
 14 **AND THAT WAS TO TRANSFER AND CONVERT THE JDE AND PEOPLESOFT**
 15 **CUSTOMERS TO SAP BECAUSE WE HAD A VERY HIGH QUALITY PRODUCT.**

16 Q. LET ME GO TO BACK TO PAGE 50 -- OR 500 OF EXHIBIT 24 THAT
 17 WE WERE LOOKING AT BEFORE. THIS WAS THE STATEMENT OF GOALS WE
 18 LOOKED AT.
 19 (EXHIBIT DISPLAYED ON SCREEN.)
 20 AT THE TOP YOU SEE THE GOAL WE TALKED ABOUT BEFORE,
 21 WHICH WAS TO CONVERT APPROXIMATELY 50 PERCENT OF THE PEOPLESOFT
 22 AND J.D. EDWARDS CUSTOMER INSTALLATIONS TO SAP.
 23 DO YOU SEE THAT?
 24 **A. I SEE THAT, YES.**

25 Q. TWO BULLETS DOWN YOU SEE THE GOAL OF SHRINK THEIR SHARE OF
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1 Q. THE ENTERPRISE APPLICATION SOFTWARE MARKET; THAT IS A
 2 PHRASE THAT YOU ARE FAMILIAR WITH, CORRECT, SIR?
 3 **A. THERE IS A DIFFERENCE BETWEEN THE SOFTWARE MARKET -- THE**
 4 **ENTERPRISE APPLICATION SOFTWARE MARKET ITSELF AND THE SUPPORT**
 5 **SERVICES CONNECTED TO IT. HOWEVER, I DON'T THINK IT IS**
 6 **NECESSARY NOW TO TURN THIS INTO A BIG DISPUTE.**
 7 **AND IN GENERAL TERMS, I AGREE THE MARKET SHARE OF**
 8 **SAP WAS IN GENERAL BIGGER THAN ORACLE'S.**

9 Q. LET ME GO TO THE OTHER GOALS THAT ARE LISTED HERE.
 10 IN ADDITION TO TAKING MARKET SHARE AWAY FROM ORACLE,
 11 ONE OF THE GOALS THAT IS LISTED IS DISRUPT ORACLE'S ABILITY TO
 12 PAY FOR THE ACQUISITION OUT OF CASH FLOW.
 13 DO YOU SEE THAT?
 14 **A. YES.**

15 Q. WHY WAS THAT IMPORTANT AND VALUABLE TO SAP TO DO THAT?
 16 **A. FOR -- IN MY OPINION, IT IS A VERY SIMPLE AND**
 17 **STRAIGHTFORWARD CONSEQUENCE OF TAKING AWAY MARKET SHARE FROM**
 18 **ORACLE. IT MEANS LESS SALES, LESS RETURNS, AND LESS -- AND**
 19 **LESS CASH FLOW.**

20 Q. BUT MY QUESTION, SIR, IS WHY WAS IT VALUABLE AND IMPORTANT
 21 TO DISRUPT ORACLE'S ABILITY TO PAY FOR THE ACQUISITION OUT OF
 22 CASH FLOW? WHY DID SAP WANT TO ACHIEVE THAT?
 23 **A. I CANNOT ANSWER THIS TODAY. IT'S NOT A REALLY VALID**
 24 **FINANCIAL FORMULATION.**

25 Q. AT THE TIME, BACK IN JANUARY OF 2005, WHEN THIS WAS
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1 THE APPLICATION MARKET.
 2 DO YOU SEE THAT?
 3 **A. I SEE THAT.**

4 Q. AND WHEN YOU TALK ABOUT SHRINKING THEIR SHARE, YOU ARE
 5 TALKING ABOUT SHRINKING ORACLE'S SHARE, CORRECT?
 6 **A. YES.**

7 Q. AND IN EARLY 2005, WHAT WAS ORACLE'S SHARE, INCLUDING
 8 PEOPLESOFT AND J.D. EDWARDS, OF THE ENTERPRISE APPLICATIONS
 9 SOFTWARE MARKET?
 10 **A. I DON'T REALLY HAVE THESE FIGURES RIGHT NOW IN MY HEAD,**
 11 **BUT I BELIEVE THAT THE MARKET SHARE OF ORACLE, INCLUDING**
 12 **PEOPLESOFT AND J.D. EDWARDS, WAS SOMEWHAT SMALLER THAN THE SAP**
 13 **MARKET SHARE.**
 14 **AND IN THE OPENING STATEMENTS THAT WERE MADE ON**
 15 **TUESDAY, I BELIEVE THERE WAS A STATEMENT MADE ABOUT THE EXACT**
 16 **MARKET SHARE, HOWEVER, I AM SORRY, I DON'T REMEMBER THESE.**

17 Q. DO YOU REMEMBER THAT THE DESCRIPTION IN THE OPENING
 18 STATEMENTS WAS BASICALLY ACCURATE?
 19 **A. I HAVE NOT CHECKED THESE NUMBERS OR FIGURES MYSELF, BUT I**
 20 **BELIEVE THESE ARE RIGHT.**

21 Q. AND YOU WOULD AGREE WITH ME, WOULD YOU NOT, SIR, THAT SAP
 22 IN 2004 AND 2005 HAD MORE THAN 50 PERCENT OF THE MARKET FOR
 23 ENTERPRISE APPLICATION SOFTWARE?
 24 **A. THIS -- IT'S VERY IMPORTANT HERE TO DIFFERENTIATE EXACTLY**
 25 **WHAT MARKET WE ARE TALKING ABOUT.**
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1 PRESENTED TO YOU AS A MEMBER OF THE EXECUTIVE BOARD, DID YOU
 2 QUESTION THIS GOAL?
 3 **A. I DO NOT RECALL THAT THIS ENTIRE DOCUMENT HAS BEEN**
 4 **PRESENTED TO ALL SAP BOARD MEMBERS.**

5 Q. YOU ARE NOT DENYING THAT YOU SAW THIS DOCUMENT, ARE YOU,
 6 SIR?
 7 **A. I HAVE SEEN THIS DOCUMENT. HOWEVER, I CANNOT TELL YOU IF**
 8 **I HAVE ALREADY SEEN THIS DOCUMENT -- IF I ALREADY SAW THIS**
 9 **DOCUMENT IN JANUARY OF 2005.**

10 Q. LET ME BE SURE I UNDERSTAND WHAT YOU ARE SAYING.
 11 DID YOU SEE THIS DOCUMENT IN 2005?
 12 **A. I CANNOT TELL YOU THIS TODAY ANYMORE.**

13 Q. IS IT YOUR TESTIMONY, IN 2005 NO ONE EVER TOLD YOU THAT
 14 ONE OF THE GOALS OF THE TOMORROWNOW PROGRAM AND SAFE PASSAGE
 15 WAS TO DISRUPT ORACLE'S ABILITY TO PAY FOR THE ACQUISITION OF
 16 PEOPLESOFT OUT OF CASH FLOW? IS THAT YOUR TESTIMONY?
 17 **A. THAT'S NOT WHAT I SAID.**

18 Q. NO, NO. I DON'T MEAN TO SAY THAT THAT IS WHAT YOU SAID.
 19 I AM REALLY JUST TRYING TO GET YOUR TESTIMONY.
 20 MAYBE THE SIMPLEST WAY TO DO IT IS THIS: WHETHER
 21 YOU REMEMBER THIS DOCUMENT OR NOT, WOULD YOU AGREE THAT THE
 22 GOALS THAT ARE STATED HERE ARE GOALS THAT YOU WERE TOLD IN
 23 JANUARY OF 2005 WERE GOALS OF THE TOMORROWNOW AND SAFE PASSAGE
 24 PROGRAMS?
 25 **A. IF YOU ASK THE QUESTION THIS WAY, THEN I CAN ANSWER YES.**
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1 DO YOU UNDERSTAND THAT?

2 **A. I UNDERSTAND THAT.**

3 Q. OKAY. AND YOU UNDERSTAND THAT WHAT SAP WOULD BE PREPARED

4 TO PAY FOR A LICENSE WOULD DEPEND IN PART ON HOW VALUABLE THE

5 PROGRAM WAS THAT SAP NEEDED THE LICENSE TO UNDERTAKE, OR HOW

6 VALUABLE IT WAS EXPECTED TO BE. FAIR?

7 **A. IN THEORY I CAN FOLLOW.**

8 Q. OKAY.

9 NOW, ONE OF THE REASONS WHY SUCH A LICENSE WOULD BE

10 VALUABLE IS BECAUSE IT WOULD ENABLE SAP TO TRY TO CONVERT THE

11 APPROXIMATELY 50 PERCENT OF THE PEOPLESFT AND J.D. EDWARDS

12 CUSTOMER INSTALLATIONS THAT IT WAS SEEKING TO CONVERT, CORRECT

13 SIR?

14 **A. IN THEORY THAT'S CORRECT, YES.**

15 Q. AND ANOTHER REASON IT WOULD BE VALUABLE WOULD BE BECAUSE

16 IT WOULD HELP TO SHRINK ORACLE'S SHARE OF THE APPLICATION

17 MARKET AND INCREASE SAP'S SHARE, CORRECT?

18 **A. THAT'S CORRECT.**

19 Q. NOW I WANT TO FOCUS ON WHY IT WOULD BE VALUABLE IN THIS

20 CONTEXT TO DISRUPT AND DISCREDIT ORACLE.

21 YOU UNDERSTAND?

22 **A. YES.**

23 Q. AND LET ME PUT, SINCE YOU ARE AN ADVERSE WITNESS, LET ME

24 PUT A LEADING QUESTION TO YOU.

25 IS IT THE CASE THAT ONE ADVANTAGE OF REDUCING OR

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1 **A. ABSOLUTELY.**

2 Q. IF SAP IS FOUND TO HAVE INFRINGED COPYRIGHTS, THAT WOULD

3 BE DAMAGING TO ITS REPUTATION, CORRECT?

4 **A. THAT IS CORRECT IN PRINCIPLE, YES.**

5 Q. AND IS IT FAIR TO SAY THAT SAP WOULD NOT LIGHTLY UNDERTAKE

6 A PROGRAM THAT HAD SERIOUS LIABILITY RISKS BECAUSE OF ITS RISK

7 TO SAP'S REPUTATION?

8 **A. THAT'S ABSOLUTELY CORRECT.**

9 Q. AND IF SAP HAD A PROGRAM THAT WAS VERY IMPORTANT TO IT,

10 LIKE THE TOMORROWNOW AND SAFE PASSAGE PROGRAM, AND YOU NEEDED A

11 LICENSE TO DO THAT LAWFULLY, SAP WOULD TRY TO GET THAT LICENSE,

12 CORRECT, SIR?

13 MR. LANIER: OBJECTION, YOUR HONOR, CALLS FOR

14 SPECULATION.

15 THE COURT: OKAY. BEFORE HE ANSWERS, NOW YOU CAN

16 MAKE YOUR OBJECTION.

17 MR. LANIER: IT CALLS FOR SPECULATION, YOUR HONOR.

18 MR. BOIES: I DON'T THINK IT CALLS FOR SPECULATION

19 GIVEN THIS WITNESS' POSITION.

20 THE COURT: I TEND TO AGREE WITH PLAINTIFFS'

21 COUNSEL.

22 OVERRULED. YOU MAY ANSWER.

23 THE WITNESS: CAN YOU PLEASE REPEAT THE QUESTION?

24 MR. BOIES: THAT IS POSSIBLE WITH THE HELP OF

25 TECHNOLOGY.

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1 DISRUPTING ORACLE'S ABILITY TO PAY FOR THE PEOPLESFT

2 ACQUISITION OUT OF CASH FLOW IS THAT ORACLE WOULD BE REQUIRED

3 TO USE CASH FLOW THAT COULD OTHERWISE BE USED FOR RESEARCH AND

4 DEVELOPMENT TO PAY FOR THE PEOPLESFT ACQUISITION?

5 **A. IN THEORY THAT'S CORRECT, YES.**

6 Q. AND FOCUSING ON THE FOURTH GOAL THAT'S HERE, THAT IS

7 DISCREDITING ORACLE, AM I CORRECT THAT IT WOULD BE VALUABLE TO

8 SAP TO DISCREDIT ORACLE BECAUSE ORACLE WAS A MAJOR COMPETITOR

9 AND ANYTHING THAT DISCREDITS YOUR MAJOR COMPETITOR HELPS YOU?

10 **A. IN THEORY THAT IS ALSO CORRECT.**

11 Q. IN JANUARY OF 2005, YOU EXPECTED THAT THE COMBINATION OF

12 SAP AND TOMORROWNOW WOULD BE AN IMMEDIATE AND SERIOUS CHALLENGE

13 TO ORACLE, NOT MERELY A PROPOSED CHALLENGE TO BE FULFILLED AND

14 PROVEN SOME YEARS DOWN THE ROAD. CORRECT, SIR?

15 **A. THAT IS CORRECT.**

16 Q. NOW, YOU WERE AWARE AT THE TIME THAT SAP WAS CONSIDERING

17 ACQUIRING TOMORROWNOW, THAT THERE WERE QUESTIONS CONCERNING THE

18 LEGALITY OF WHAT TOMORROWNOW WAS DOING. FAIR?

19 **A. THERE WERE RISK ASSESSMENTS IN THIS REGARD.**

20 Q. YES. AND THE RISK ASSESSMENTS LED YOU TO BELIEVE THAT

21 THERE WERE SERIOUS LIABILITY ISSUES WITH RESPECT TO THE

22 OPERATION OF TOMORROWNOW, CORRECT, SIR?

23 **A. THAT'S CORRECT.**

24 Q. AND SAP'S REPUTATION FOR INTEGRITY IS VERY IMPORTANT TO

25 SAP, CORRECT?

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1 BY MR. BOIES:

2 Q. IF SAP HAD A PROGRAM THAT WAS VERY IMPORTANT TO IT, LIKE

3 THE TOMORROWNOW AND SAFE PASSAGE PROGRAM, THAT SAP NEEDED A

4 LICENSE TO UNDERTAKE APPROPRIATELY, WITHOUT INFRINGING, THAT IS

5 SOMETHING THAT SAP WOULD PAY TO GET, CORRECT, SIR?

6 **A. I DO NOT AGREE WITH THIS FOR THE FOLLOWING REASON: SAP**

7 **WOULD HAVE, DURING THE COURSE OF THE ACQUISITION, THEY PAY --**

8 **SAP PAID ATTENTION TO THE OPERATIONAL PROCEDURES AT TOMORROWNOW**

9 **AND WOULD HAVE MADE SURE THAT THESE WOULD HAVE BEEN CHANGED SO**

10 **THAT FOR TOMORROWNOW THERE WOULD HAVE BEEN NO COPYRIGHT**

11 **VIOLATIONS.**

12 Q. I WANT TO COME BACK TO THAT ISSUE, BUT MY ISSUE IS A

13 LITTLE BIT DIFFERENT RIGHT NOW.

14 YOU UNDERSTAND THAT SAP HAS ALREADY ADMITTED THAT

15 BOTH IT AND TOMORROWNOW ARE LIABLE FOR COPYRIGHT INFRINGEMENT,

16 CORRECT?

17 **A. I DO NOT SEE IT THIS WAY. TOMORROWNOW HAS ADMITTED TO**

18 **HAVING VIOLATED COPYRIGHTS, BUT NOT SAP.**

19 Q. THAT'S YOUR UNDERSTANDING, SIR?

20 **A. YES. THIS IS CORRECT. WE ACTUALLY ACCEPTED INTERMEDIARY**

21 **RESPONSIBILITY, VICARIOUS RESPONSIBILITY FOR THIS.**

22 Q. YES. LET ME BREAK IT DOWN.

23 THERE CAME A TIME THIS YEAR, THIS FALL, WHEN

24 TOMORROWNOW AGREED THAT IT WAS LIABLE AND SAP AGREED THAT IT

25 WAS VICARIOUSLY LIABLE, THAT IS, IT WOULD PAY FOR WHAT ITS

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1 **AFTER THAT.**
 2 Q. OKAY. IT WAS NOT STATED AT THE BOARD MEETINGS; IS THAT
 3 WHAT YOU ARE SAYING?
 4 **A. I CANNOT TELL YOU EXACTLY WHICH MEETING THIS WAS**
 5 **DISCUSSED.**
 6 Q. WHETHER YOU CAN TELL ME EXACTLY WHICH MEETING IT WAS
 7 DISCUSSED AT, AT ANY TIME IN JANUARY OR FEBRUARY OF 2005, WAS
 8 IT CLEARLY STATED AT A BOARD MEETING OF SAP THAT THE PROCEDURES
 9 AND BUSINESS OPERATIONS OF TOMORROWNOW HAD TO CHANGE?
 10 **A. AS I STATED BEFORE, I DON'T RECALL EXACTLY. I KNOW THERE**
 11 **WERE TALKS ABOUT THAT. THERE WERE DISCUSSIONS ABOUT THAT.**
 12 Q. WERE THERE DISCUSSIONS AT THE BOARD MEETINGS?
 13 **A. I CANNOT TELL YOU THIS TODAY BECAUSE THE MEMBERS OF THE**
 14 **BOARD DON'T ONLY TALK DURING THE BOARD MEETINGS, THEY HAVE ALSO**
 15 **OTHER MEETINGS, OCCASIONS TO TALK.**
 16 Q. I AM SURE THAT IS TRUE. BUT MY QUESTION RIGHT NOW IS
 17 SIMPLY BECAUSE YOU MENTIONED THE BOARD MEETINGS, IS ABOUT THE
 18 BOARD MEETINGS.
 19 CAN YOU TELL ME ONE WAY OR ANOTHER WHETHER AT ANY
 20 BOARD MEETING IN JANUARY OR FEBRUARY OF 2005 ANYONE STATED, AS
 21 YOU PUT IT CLEARLY, THAT THE PROCEDURES AND BUSINESS OPERATIONS
 22 OF TOMORROWNOW HAD TO CHANGE?
 23 **A. I CAN ONLY REPEAT THAT I DON'T REMEMBER EXACTLY AT WHICH**
 24 **MEETING THIS WAS OR DURING WHICH DISCUSSION OR TALK THIS WAS.**
 25 Q. IS IT FAIR TO SAY THAT YOU REMEMBER SOMETIME IN JANUARY OR
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1 Q. INSOFAR AS YOU ARE AWARE, DID ANYBODY DO THAT?
 2 **A. IT WAS THE RESPONSIBILITY OF THE BOARD MEMBER IN CHARGE OF**
 3 **SUPPORT.**
 4 Q. AND WHO IS THAT SIR?
 5 **A. GERHARD OSWALD.**
 6 Q. WHO WAS THE CHIEF EXECUTIVE OFFICER AT THIS TIME?
 7 **A. HENRY KAGERMANN.**
 8 Q. DID HE ALSO HAVE RESPONSIBILITY TO DO THAT, SIR?
 9 **A. WITHIN THE SAP AG, WE HAVE A DIVISION -- DIFFERENT**
 10 **FUNCTIONS. WE HAVE FUNCTIONAL RESPONSIBILITIES WITHIN THE**
 11 **BOARD MEMBERS.**
 12 **AND THE CEO HAS THE OVERALL RESPONSIBILITY.**
 13 Q. SO THAT THE CEO OR CEO'S IF YOU HAVE CO-CEO'S, HAVE
 14 OVERALL RESPONSIBILITY TO MAKE SURE ALL OF THE OPERATIONS ARE
 15 PERFORMING PROPERLY, CORRECT?
 16 **A. YES, THAT'S CORRECT.**
 17 Q. NOW, DID YOU EVER ASK MR. OSWALD WHETHER HE HAD HAD
 18 ANYBODY GO LOOK AT THE TOMORROWNOW COMPUTERS TO SEE WHETHER
 19 THIS SERIOUS RISK THAT YOU'VE IDENTIFIED WAS, IN FACT, AN
 20 ACCOMPLISHED FACT, THAT IS, THERE WAS ACTUAL INFRINGEMENT GOING
 21 ON RIGHT AT THE MOMENT?
 22 **A. NO.**
 23 Q. IT WAS VERY EASY TO CHECK, WAS IT NOT, SIR?
 24 **A. I CANNOT JUDGE THAT.**
 25 Q. WELL, YOU KNEW, SIR, THAT IT WAS INAPPROPRIATE FOR
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1 FEBRUARY OF 2005 SAP BOARD MEMBERS STATING CLEARLY THAT THE
 2 BUSINESS OPERATIONS AND PROCEDURES OF TOMORROWNOW HAD TO
 3 CHANGE, BUT YOU CAN'T REMEMBER WHETHER THAT WAS AT A BOARD
 4 MEETING OR IN DISCUSSIONS OUTSIDE OF BOARD MEETINGS OR PERHAPS
 5 BOTH.
 6 IS THAT FAIR?
 7 **A. THIS IS CORRECT BECAUSE IF THEN RISK IS IDENTIFIED,**
 8 **EVERYTHING POSSIBLE IS DONE TO MITIGATE THE RISK.**
 9 Q. AND A RISK WAS IDENTIFIED, CORRECT?
 10 **A. YES, A POTENTIAL RISK, YES.**
 11 Q. AND THE RISK THAT WAS IDENTIFIED WAS A RISK THAT
 12 TOMORROWNOW WAS INFRINGING ORACLE'S COPYRIGHTS, CORRECT?
 13 **A. THE RISK WAS THAT -- EXACTLY THAT, THAT TOMORROWNOW WOULD**
 14 **POTENTIALLY BE IN VIOLATION OF ORACLE'S COPYRIGHTS.**
 15 Q. OKAY. AND SAP CONSIDERED THAT TO BE A POTENTIAL SERIOUS
 16 LIABILITY, CORRECT, SIR?
 17 **A. THAT'S CORRECT.**
 18 Q. OKAY.
 19 AT ANY TIME IN JANUARY OR FEBRUARY OF 2005, DID
 20 ANYONE GO TO TOMORROWNOW TO SEE WHETHER OR NOT TOMORROWNOW HAD
 21 SOFTWARE ON ITS COMPUTERS THAT IT WAS NOT AUTHORIZED TO HAVE?
 22 **A. THAT'S WHAT I ASSUME.**
 23 Q. WHEN YOU SAY THAT IS WHAT YOU ASSUMED, DID YOU ASK ANYONE
 24 WHETHER THAT HAD BEEN DONE?
 25 **A. NOT PERSONALLY. I DID NOT DO THIS PERSONALLY.**
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1 TOMORROWNOW TO PROVIDE SUPPORT FOR CUSTOMERS ON COMPUTERS OF
 2 TOMORROWNOW AS OPPOSED TO ON THE COMPUTERS OF CUSTOMERS,
 3 CORRECT?
 4 **A. THAT'S CORRECT.**
 5 Q. OKAY.
 6 SO ALL YOU HAD TO DO WAS LOOK AT THE TOMORROWNOW
 7 COMPUTERS AND TO SEE WHETHER THEY HAD ORACLE PROGRAMS ON THEM
 8 OR NOT, CORRECT, SIR?
 9 **A. THAT MAY BE SO.**
 10 Q. WELL, NOT ONLY MAY IT BE SO, BUT YOU KNOW IT'S SO, DO YOU
 11 NOT, SIR?
 12 **A. NO, I DON'T KNOW THAT BECAUSE I DON'T KNOW ABOUT THIS**
 13 **TECHNOLOGY, THIS TECHNOLOGICAL ASPECT.**
 14 Q. WHAT TECHNOLOGICAL ASPECT DO YOU NOT KNOW ABOUT THAT IS
 15 RELEVANT HERE?
 16 **A. I CANNOT DETERMINE MYSELF WHEN I OBSERVE SOMEBODY SITTING**
 17 **AT A COMPUTER WHAT -- HOW HE ACCESSES WHAT SOFTWARE.**
 18 Q. I APPRECIATE THAT. I WASN'T SUGGESTING THAT YOU WOULD
 19 PERSONALLY GO AND LOOK AT THE COMPUTERS.
 20 DO YOU UNDERSTAND THAT NOW?
 21 **A. YES.**
 22 Q. YOU KNEW THAT IT WAS INAPPROPRIATE FOR TOMORROWNOW TO HAVE
 23 THE ORACLE SOFTWARE ON THE TOMORROWNOW COMPUTERS AS OPPOSED TO
 24 THE CUSTOMER COMPUTERS EVEN THOUGH YOU MIGHT NOT PERSONALLY BE
 25 QUALIFIED TO CHECK THE COMPUTERS YOURSELF. FAIR?
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1 **A. I KNEW THAT THE RISK EXISTED.**
 2 Q. WELL, IT WAS MORE THAN THE RISK HERE, WAS IT NOT, SIR?
 3 YOU KNEW THAT IF TOMORROWNOW WAS PROVIDING SUPPORT ON COMPUTERS
 4 OF TOMORROWNOW AS OPPOSED TO THE COMPUTERS OF THE CUSTOMERS,
 5 THAT THAT WAS INAPPROPRIATE; NOT A RISK OF BEING INAPPROPRIATE,
 6 BUT THAT WAS INAPPROPRIATE. YOU KNEW THAT, DID YOU NOT, SIR?
 7 **A. THAT IS CORRECT, BUT WE -- THE IMPORTANT TERM HERE IS IF.**
 8 Q. YES. AND THAT IF, THAT IS, IF IT WAS HAPPENING, THAT IS
 9 SOMETHING THAT SOMEBODY COULD HAVE EASILY CHECKED. MAYBE NOT
 10 YOU, BECAUSE THAT'S NOT YOUR AREA, BUT THAT IS SOMETHING THAT
 11 SAP HAS THOUSANDS OF PEOPLE WHO ARE QUALIFIED TO CHECK,
 12 CORRECT?
 13 **A. I DON'T KNOW IF IT IS THOUSANDS, BUT IN PRINCIPLE, THIS IS**
 14 **CORRECT.**
 15 Q. OKAY.
 16 AND DO YOU KNOW WHETHER ANYONE DID GO TO CHECK, THAT
 17 IS, DID ANYONE BOTHER TO GO TO THE TOMORROWNOW COMPUTERS AND
 18 SEE WHETHER OR NOT THEY HAD THE ORACLE SOFTWARE ON THEM?
 19 **A. IT WAS MY CLEAR ASSUMPTION AT THE TIME THAT THIS WOULD**
 20 **HAPPEN. AND IT WAS MY EXPECTATION.**
 21 Q. NOW, YOU SAID THERE IT WAS YOUR CLEAR EXPECTATION AT THE
 22 TIME. YOU ARE TALKING ABOUT JANUARY, FEBRUARY 2005, CORRECT?
 23 **A. YES.**
 24 Q. NOW, YOU DON'T KNOW WHETHER ANYBODY EVER TOLD TOMORROWNOW
 25 TO TAKE ORACLE SOFTWARE OFF OF ITS COMPUTERS. FAIR?
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1 **A. YES.**
 2 Q. WHEN WAS THAT?
 3 **A. IT WAS AFTER ORACLE FILED THE LAWSUIT AND WE CONCLUDED OUR**
 4 **OWN INVESTIGATION.**
 5 Q. AND WHEN DID YOU CONCLUDE YOUR OWN INVESTIGATION?
 6 **A. THESE INVESTIGATIONS WERE CARRIED OUT OVER SEVERAL MONTHS**
 7 **AND ACTUALLY SEVERAL YEARS, AND I BELIEVE THEY WERE CONCLUDED**
 8 **IN 2008.**
 9 Q. AND THEY STARTED IN 2007; IS THAT WHAT YOU ARE SAYING?
 10 **A. I WOULD LIKE TO ANSWER YOUR PREVIOUS QUESTION AGAIN.**
 11 Q. OKAY.
 12 **A. SO, FIRST WE HAD ORACLE'S LAWSUIT THAT WAS STARTED IN**
 13 **MARCH OF 2007.**
 14 **AFTER THIS, WE STARTED OUR OWN INVESTIGATION --**
 15 **THE WITNESS: (ENGLISH) EXAMINATION --**
 16 **(THROUGH INTERPRETER) -- WHICH TOOK MONTHS, AND**
 17 **DURING THE COURSE OF THESE EXAMINATIONS, WE CONCLUDED AND**
 18 **DETERMINED THAT THERE WERE -- THAT THE OPERATIONAL PROCEDURES**
 19 **HAD NOT BEEN CHANGED.**
 20 **AND THIS WAS AROUND MID-2007.**
 21 Q. MID-2007, OKAY.
 22 NOW, WHEN YOU SAY "THE OPERATIONAL PROCEDURES HAD
 23 NOT BEEN CHANGED," DO YOU MEAN THAT TOMORROWNOW IS CONTINUING
 24 TO USE ORACLE'S SOFTWARE ON ITS COMPUTERS? IS THAT WHAT YOU
 25 MEAN?
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BRANDT - DIRECT / MR. BOIES

1 **A. THIS IS NOT CORRECT. I KNOW THAT THIS COMMUNICATION TOOK**
 2 **PLACE, HOWEVER, I DON'T KNOW WHO IT WAS.**
 3 Q. WHEN YOU SAY "THIS COMMUNICATION", YOU MEAN A
 4 COMMUNICATION TELLING TOMORROWNOW TO STOP INFRINGING ORACLE'S
 5 COPYRIGHTS? IS THAT WHAT YOU MEAN?
 6 **A. I USE THE WORD "COMMUNICATION" AS YOU HAD MENTIONED IT IN**
 7 **YOUR QUESTION.**
 8 Q. WITHOUT STOPPING RIGHT AT THE MOMENT TO PARSE THE WORD
 9 "COMMUNICATION", IS IT YOUR TESTIMONY THAT AT SOME POINT SAP
 10 COMMUNICATED TO TOMORROWNOW TO STOP INFRINGING ORACLE'S
 11 COPYRIGHTS?
 12 **A. THAT IS MY UNDERSTANDING. MY UNDERSTANDING IS THAT THIS**
 13 **WAS A PIECE OF INFORMATION GIVEN TO THE MANAGEMENT OF**
 14 **TOMORROWNOW, THAT THE OPERATING PROCEDURES HAVE TO BE CHANGED.**
 15 Q. I WANT TO JUST BE CLEAR. WHEN DO YOU THINK THAT THIS
 16 COMMUNICATION TOOK PLACE?
 17 **A. IN, AS FAR AS I REMEMBER, AT THE END OF THE FIRST QUARTER**
 18 **2005.**
 19 Q. END OF THE FIRST QUARTER OF 2005.
 20 DOES THAT MEAN THAT AFTER THE FIRST QUARTER OF 2005,
 21 YOU ASSUMED THAT ORACLE SOFTWARE WAS NOT BEING USED ON
 22 TOMORROWNOW COMPUTERS?
 23 **A. YES, THAT WAS MY ASSUMPTION.**
 24 Q. DID THERE COME A TIME WHEN YOU FOUND OUT YOUR ASSUMPTION
 25 WAS FALSE?
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1 THE INTERPRETER: DOES IT MEAN THAT THEY WERE --
 2 BY MR. BOIES:
 3 Q. CONTINUING TO USE ORACLE SOFTWARE ON TOMORROWNOW
 4 COMPUTERS?
 5 **A. UNFORTUNATELY, YES.**
 6 Q. OKAY.
 7 NOW, IN MID-2007, WHEN AFTER THE LAWSUIT WAS FILED
 8 AND AFTER YOU HAD COMPLETED YOUR INVESTIGATION AND AFTER YOU
 9 HAD FOUND OUT THAT TOMORROWNOW HAD CONTINUED TO INFRINGE
 10 ORACLE'S COPYRIGHTS, WHAT DID SAP DO TO MAKE SURE THAT THAT
 11 STOPPED IMMEDIATELY?
 12 **A. FIRST OF ALL, WE TRANSFERRED THE MANAGEMENT OF TOMORROWNOW**
 13 **TO MARK WHITE WITH A CLEAR TASK TO IMMEDIATELY APPLY THE NEW**
 14 **OPERATING PROCEDURES.**
 15 Q. AND THE NEW OPERATING PROCEDURES, YOU KEEP REFERRING TO
 16 OPERATING PROCEDURES. WHAT WE ARE TALKING ABOUT HERE IS
 17 WHETHER TOMORROWNOW IS INFRINGING ORACLE'S COPYRIGHTS, CORRECT,
 18 SIR?
 19 **A. THAT'S CORRECT.**
 20 Q. OKAY.
 21 NOW, MR. WHITE TOLD YOU AS LATE AS 2008 THAT
 22 TOMORROWNOW WAS CONTINUING TO INFRINGE ORACLE'S SOFTWARE,
 23 CORRECT?
 24 **A. THAT IS CORRECT. YES. AND AT THE TIME THERE WAS A VERY**
 25 **CLEAR PLAN THAT WAS DEVELOPED TO TRANSFER ALL CUSTOMERS. AND**
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BRANDT - DIRECT / MR. BOIES

1 **THAT WAS COMPLETED IN APRIL OF 2008.**
 2 Q. NOW, IN APRIL OF 2008, THAT IS OVER A YEAR AFTER
 3 TOMORROWNOW AND SAP HAVE BEEN SUED, CORRECT, SIR?
 4 **A. THAT'S CORRECT.**
 5 Q. AND IT'S ALMOST A YEAR AFTER YOUR INVESTIGATION CONCLUDED
 6 THAT TOMORROWNOW WAS CONTINUING TO INFRINGE ORACLE'S
 7 COPYRIGHTS, CORRECT, SIR?
 8 **A. YES, THAT IS CORRECT.**
 9 **AND IN HINDSIGHT, I WOULD LIKE TO ADD THAT WE SHOULD**
 10 **HAVE DECIDED TO SHUT DOWN TOMORROWNOW IMMEDIATELY. WE DID NOT**
 11 **DO THAT BECAUSE FOR THE CUSTOMERS OF TOMORROWNOW, WE WANTED TO**
 12 **FIND A SOLUTION HOW THEY WOULD BE ABLE TO RECEIVE SUPPORT IN**
 13 **THE FUTURE AS WELL.**
 14 **WE GAVE THESE CUSTOMERS A HIGH PRIORITY LEVEL, AND**
 15 **IN HINDSIGHT, AS I SAID, IT WAS A MISTAKE.**
 16 Q. NOW, SIR, IS THERE ANYTHING THAT YOU KNOW OF IN THE BOARD
 17 MINUTES OF SAP THAT TALKS ABOUT YOUR DOING THIS TO HELP
 18 CUSTOMERS AS OPPOSED TO HELP SAP?
 19 **A. I CANNOT ANSWER THIS QUESTION, BUT THAT WAS THE**
 20 **REASONING --**
 21 Q. WELL, YOU --
 22 **A. -- OF OUR DECISION.**
 23 Q. WHEN YOU SAY THAT WAS YOUR REASONING, SIR, TYPICALLY DO
 24 YOU PUT THE REASONING FOR MAKING DECISIONS INTO BOARD
 25 PRESENTATIONS LIKE WE JUST SAW IN BOARD MINUTES?
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BRANDT - DIRECT / MR. BOIES

1 SOMEBODY ELSE, CORRECT, SIR?
 2 **A. YES. THAT IS CORRECT. WE TRIED TO FIND BUYER FOR**
 3 **TOMORROWNOW.**
 4 Q. AND YOU COULDN'T FIND A BUYER FOR TOMORROWNOW BECAUSE
 5 EVERYBODY FIGURED OUT THAT IT WAS INFRINGING ORACLE'S
 6 COPYRIGHTS AND NOBODY WANTED TO BUY IT AS A RESULT, CORRECT,
 7 SIR?
 8 **A. AT THE TIME THE ISSUE OF LIABILITY WAS THE MOST PRESSING**
 9 **ISSUE.**
 10 Q. THE MOST PRESSING ISSUE AS TO WHY NOBODY WOULD BUY IT; IS
 11 THAT RIGHT?
 12 **A. YES.**
 13 Q. NOW, DO YOU HAVE ANY EXPLANATION FOR THIS JURY WHY IT WAS
 14 SO EASY FOR ALL OF THE POTENTIAL BUYERS TO QUICKLY FIND OUT
 15 THAT TOMORROWNOW IS INFRINGING, BUT IT TOOK SAP, IN YOUR
 16 TESTIMONY, SO LONG TO FIGURE THAT OUT?
 17 MR. LANIER: OBJECTION, YOUR HONOR, IT'S
 18 ARGUMENTATIVE AND CALLS FOR SPECULATION.
 19 THE COURT: SUSTAINED.
 20 MR. BOIES: THE QUESTION IS WITHDRAWN.
 21 BY MR. BOIES:
 22 Q. BACK IN 2005, SAP TOOK STEPS TO TRY TO INSULATE ITSELF
 23 FROM THE LIABILITY THAT IT KNEW TOMORROWNOW REPRESENTED,
 24 CORRECT, SIR?
 25 **A. WE, AT THE TIME, WE CHOSE TO GO THE WAY THAT MANY**
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BRANDT - DIRECT / MR. BOIES

1 **A. NORMALLY, YES.**
 2 Q. OKAY. AND DID YOU THINK THAT IF YOUR CONCERN HAD REALLY
 3 BEEN ABOUT THE CUSTOMERS, THAT MAYBE A WAY TO APPROACH IT WOULD
 4 HAVE BEEN TO GO TO ORACLE AND SAY, "WE HAVE JUST DISCOVERED
 5 THAT WE ARE INFRINGING YOUR COPYRIGHTS AND WE ARE REALLY SORRY
 6 ABOUT THAT, AND WE ARE GOING TO STOP IMMEDIATELY, BUT CAN YOU
 7 HELP US BE SURE THAT THESE CUSTOMERS ARE NOT DISADVANTAGED."
 8 DID ANYBODY THINK OF DOING THAT?
 9 **A. BASED ON MY INFORMATION, THIS WAS DONE IN THE COURSE OF**
 10 **THE WIND DOWN OF TOMORROWNOW FOR SPECIFIC CUSTOMERS, BUT I**
 11 **DON'T HAVE ALL DETAILS ABOUT THIS.**
 12 Q. WHAT PARTICULAR CUSTOMERS ARE YOU THINKING OF WHERE
 13 TOMORROWNOW OR SAP WENT TO ORACLE AND SAID, "WE HAVE BEEN
 14 INFRINGING YOUR COPYRIGHTS AND WE WANT TO STOP IMMEDIATELY BUT
 15 WE DON'T WANT TO DISADVANTAGE THESE CUSTOMERS, SO CAN WE WORK
 16 OUT SOMETHING THAT PROVIDES SUPPORT FOR THESE CUSTOMERS"?
 17 **A. IN ANSWERING THE QUESTION BEFORE, I ALREADY HINTED TO THE**
 18 **FACT THAT I DON'T KNOW THE DETAILS.**
 19 Q. DO YOU KNOW ANY OF THESE SUPPOSED CUSTOMERS WHERE YOU SAY
 20 THAT SAP DID THIS?
 21 **A. NO.**
 22 Q. OKAY.
 23 NOW, IN FACT, WHAT YOU DID IN LATE 2007 AND EARLY
 24 2008, AFTER DISCOVERING THAT TOMORROWNOW WAS INFRINGING
 25 ORACLE'S COPYRIGHTS, IS YOU TRIED TO SELL THAT COMPANY TO
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BRANDT - DIRECT / MR. BOIES

1 **INTERNATIONAL COMPANIES GO WHEN THEY PURCHASE AND ACQUIRE**
 2 **ANOTHER COMPANY, AND SO THIS COMPANY CONTINUED AS AN**
 3 **INDEPENDENT COMPANY.**
 4 Q. ARE YOU SAYING THIS IS BUSINESS AS USUAL AND DIDN'T HAVE
 5 ANYTHING TO DO WITH THE FACT THAT YOU KNEW THAT TOMORROWNOW HAD
 6 SERIOUS LIABILITY RISKS?
 7 **A. THAT IS NOT WHAT I SAID. I'M ONLY SAYING THAT IT IS NOT**
 8 **UNCOMMON.**
 9 Q. THE REASON THAT YOU DID IT HERE WAS BECAUSE YOU WERE
 10 CONCERNED ABOUT LIABILITY, CORRECT, SIR?
 11 **A. THAT'S CORRECT.**
 12 Q. AT ONE POINT YOU HAD CONSIDERED HAVING TWO MEMBERS OF THE
 13 SAP PARENT BOARD, THE SAP AG FROM GERMANY SIT ON THE
 14 TOMORROWNOW BOARD, CORRECT?
 15 **A. YES. THESE WERE PROPOSALS AND SUGGESTIONS THAT WERE**
 16 **DISCUSSED.**
 17 Q. AND INDEED YOU AND MR. OSWALD INITIALLY NOMINATED TWO
 18 PEOPLE FROM SAP MANAGEMENT, ONE FROM SAP AG IN GERMANY AND ONE
 19 SAP AMERICA TO THE TOMORROWNOW BOARD, CORRECT?
 20 **A. I DON'T REMEMBER WHO SUGGESTED IT, BUT THE STATEMENT IS**
 21 **CORRECT.**
 22 Q. AND THEN IT WAS DECIDED TO NOT HAVE ANYBODY FROM GERMANY
 23 ON THE BOARD BECAUSE YOU WERE CONCERNED THAT THEY MIGHT BE
 24 SUBJECT TO A DEPOSITION HERE IN THE UNITED STATES, CORRECT?
 25 **A. THE REASON WAS THE POTENTIAL LIABILITY ISSUE.**
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BRANDT - DIRECT / MR. BOIES

1 Q. THANK YOU.
 2 NOW, LET ME RETURN TO TWO THINGS THAT YOU MENTIONED.
 3 ONE IS THAT YOU SAID THAT YOU BELIEVE THAT AT SOME POINT PEOPLE
 4 AT TOMORROWNOW WERE TOLD TO CHANGE THEIR PROCEDURES AND STOP
 5 INFRINGING ORACLE'S COPYRIGHTS.
 6 DO YOU RECALL THAT GENERALLY?
 7 **A. THAT'S CORRECT.**
 8 Q. NOW, WERE THEY TOLD THAT IN AN E-MAIL OR IN A LETTER?
 9 WHAT WAS THE FORM OF THE COMMUNICATION BY WHICH THEY WERE TOLD
 10 THAT?
 11 **A. I DON'T KNOW THAT.**
 12 Q. HAVE YOU EVER SEEN ANY E-MAIL OR WRITTEN COMMUNICATION OF
 13 ANY KIND TO PEOPLE AT TOMORROWNOW TELLING THAT?
 14 **A. NO.**
 15 Q. YOU WOULD AGREE WITH ME, WOULD YOU NOT, THAT THIS
 16 COMMUNICATION, IF IT WAS MADE, WAS AN IMPORTANT COMMUNICATION?
 17 **A. ABSOLUTELY.**
 18 Q. AND IF YOU MADE AN IMPORTANT COMMUNICATION LIKE THAT, IT
 19 WOULD BE MADE IN WRITING IN SOME WAY, CORRECT, SIR?
 20 **A. THAT'S CORRECT.**
 21 Q. THEN JUST TO FOLLOW UP ON THE HYPOTHETICAL LICENSE POINT.
 22 I UNDERSTAND THAT IT IS YOUR TESTIMONY THAT IN 2005,
 23 YOU DIDN'T KNOW THAT TOMORROWNOW WAS INFRINGING. THAT'S YOUR
 24 TESTIMONY, CORRECT?
 25 **A. AT THE TIME IN 2005, I KNEW ABOUT THE RISK, THE POTENTIAL**
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1 Q. DOES THAT LEAD YOU TO CONCLUDE THAT MAYBE THERE IS NOT A
 2 WRITTEN COMMUNICATION?
 3 **A. WITH ALL DUE RESPECT, NO.**
 4 Q. YOU WOULD AGREE WITH ME THAT IF THERE WAS NOT A WRITTEN
 5 COMMUNICATION, THAT WAS A LAPSE, TO USE AS NEUTRAL A WORD AS I
 6 CAN THINK OF AT THE MOMENT.
 7 **A. THEN THERE WAS A LAPSE?**
 8 THE INTERPRETER: COULD YOU EXPLAIN WHAT YOU MEAN BY
 9 LAPSE? A LAPSE?
 10 BY MR. BARRY:
 11 Q. A FAILURE?
 12 **A. CAN YOU MAYBE REPHRASE YOUR QUESTION AND USE SOME**
 13 **DIFFERENT WORDING?**
 14 Q. I THINK I CAN ACTUALLY MOVE ON PROBABLY.
 15 THE COURT: MR. BOIES, WE ARE GOING TO NEED TO TAKE
 16 A BREAK VERY SHORTLY. LET US KNOW WHEN YOU ARE AT A GOOD
 17 POINT.
 18 MR. BARRY: I AM AT A CONVENIENT POINT, YOUR HONOR.
 19 THE COURT: RIGHT NOW?
 20 LADIES AND GENTLEMEN, YOU ARE EXCUSED FOR 15
 21 MINUTES.
 22 (RECESS TAKEN AT 12:26 P.M.)
 23 (PROCEEDINGS RESUMED AT 12:41 P.M.)
 24 THE CLERK: PLEASE BE SEATED AND COME TO ORDER.
 25 THE COURT: ALL RIGHT. LET'S RESUME.
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1 **RISK THAT TOMORROWNOW MIGHT NOT FOLLOW THE COPYRIGHT LAWS AND**
 2 **THAT THEY WERE NOT DOING THIS IN AN ADEQUATE WAY. AND WE DID**
 3 **EVERYTHING POSSIBLE IN ORDER TO HAVE THEM FOLLOW THE CORRECT**
 4 **PROCEDURE AND THE RESPECT OF THE COPYRIGHT LAWS.**
 5 Q. WELL, SIR, YOU SAID YOU DID EVERYTHING POSSIBLE. NO ONE,
 6 INSOFAR AS YOU ARE AWARE, EVER GAVE THEM ANY WRITTEN
 7 INSTRUCTIONS TO STOP INFRINGING, CORRECT?
 8 **A. NO. ALL I SAID WAS THAT I DIDN'T SEE THIS WRITTEN**
 9 **COMMUNICATION.**
 10 Q. NOT ONLY HAVE YOU NOT SEEN THE WRITTEN COMMUNICATION, BUT
 11 YOU DON'T KNOW ANYBODY WHO HAS EVER SEEN THAT WRITTEN
 12 COMMUNICATION, CORRECT, SIR?
 13 **A. I CANNOT NAME ANYBODY TODAY.**
 14 Q. OKAY. SO INSOFAR AS YOU KNOW, THERE WAS NO WRITTEN
 15 COMMUNICATION, CORRECT?
 16 **A. NO, I DO NOT COME TO THAT CONCLUSION AT ALL.**
 17 Q. WELL, LET'S SEE. YOU'VE NEVER SEEN A WRITTEN
 18 COMMUNICATION, CORRECT?
 19 **A. THAT'S CORRECT.**
 20 Q. YOU DON'T KNOW OF ANYBODY WHO HAS SEEN A WRITTEN
 21 COMMUNICATION, CORRECT?
 22 **A. THAT'S CORRECT.**
 23 Q. NO ONE HAS EVER TOLD YOU THAT THEY SAW A WRITTEN
 24 COMMUNICATION, CORRECT?
 25 **A. CORRECT.**
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BRANDT - DIRECT / MR. BOIES

1 MR. BOIES: THANK YOU, YOUR HONOR.
 2 BY MR. BOIES:
 3 Q. MR. BRANDT, THE SAP BOARD WAS INFORMED THAT THERE WAS
 4 SUBSTANTIAL LEGAL ISSUES WITH RESPECT TO TOMORROWNOW'S SERVICE
 5 DELIVERY PROCESSES, CORRECT?
 6 **A. AT WHAT TIME?**
 7 Q. IN JANUARY OF 2005 WHEN YOU DECIDED TO GO FORWARD.
 8 **A. TO ACQUIRE THE COMPANY?**
 9 Q. YES.
 10 **A. OKAY.**
 11 **WE KNEW THAT A RISK EXISTED AND UNDERTOOK THE**
 12 **NECESSARY STEPS TO MITIGATE THE RISK.**
 13 Q. WELL, SIR, YOU SAY YOU TOOK THE NECESSARY STEPS. WE HAVE
 14 TALKED ABOUT THAT. BUT YOU KNEW THAT THERE WAS A SERIOUS LEGAL
 15 ISSUE GOING FORWARD AND YOU DECIDED TO ACQUIRE THE COMPANY
 16 ANYWAY, CORRECT?
 17 **A. WITH ALL DUE RESPECT, WE DID SEE THE LEGAL ISSUES**
 18 **INVOLVED. AND AT THE TIME OF THE DECISION OF THE ACQUISITION,**
 19 **AT THE TIME OF THE DECISION-MAKING, WE WERE READY TO ACCEPT THE**
 20 **RISK, HOWEVER, WITH THE DETERMINATION TO MITIGATE THE RISK.**
 21 Q. WELL, SIR, LET ME JUST ASK YOU TO LOOK AT TWO THINGS.
 22 FIRST, EXHIBIT 19, WHICH IS THE BUSINESS CASE.
 23 **A. IS IT IN MY BINDER?**
 24 Q. TAB 4.
 25 **A. (ENGLISH) 19?**
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BRANDT - DIRECT / MR. BOIES

1 Q. IT IS EXHIBIT 19, BUT IT IS BEHIND TAB 4.
 2 **A. YES.**
 3 Q. AND THIS IS A DOCUMENT THAT YOU RECEIVED AROUND
 4 JANUARY 7TH OF 2005, CORRECT, SIR?
 5 **A. YES.**
 6 Q. AND IF WE GO TO THE NUMBERED PAGE 6, UNDER THREATS?
 7 **A. (ENGLISH) YES.**
 8 Q. THE FIRST THREAT IS:
 9 "THE ACCESS RIGHTS TO THE PEOPLESFT SOFTWARE IS
 10 VERY LIKELY TO BE CHALLENGED BY ORACLE AND PAST
 11 OPERATING ISSUES MAY BE A SERIOUS LIABILITY IF
 12 ORACLE CHALLENGES."
 13 DO YOU SEE THAT?
 14 **A. (ENGLISH) YES.**
 15 Q. THAT IS WHAT YOU WERE TOLD AT THE TIME, CORRECT?
 16 **A. CORRECT.**
 17 Q. AND YOU BELIEVED THAT AT THE TIME, CORRECT?
 18 **A. YES.**
 19 Q. AND LET ME SHOW YOU YOUR DEPOSITION. AT PAGE 2000 -- 202,
 20 AND AT LINE, STARTING AT LINE 19 AND GOING TO LINE 6 ON THE
 21 NEXT PAGE.
 22 DO YOU HAVE THAT?
 23 **A. (ENGLISH) WHERE IS THIS IN MY BINDER?**
 24 **(WITNESS THROUGH INTERPRETER) WHERE IS IT IN MY**
 25 **BINDER?**
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BRANDT - DIRECT / MR. BOIES

1 TAB 17.
 2 **A. (ENGLISH) TAB 17?**
 3 Q. TAB 17.
 4 (EXHIBIT DISPLAYED ON SCREEN.)
 5 AND THIS IS A PRESENTATION TO A MEETING IN 2005 OF
 6 THE FINANCE AND INVESTMENT COMMITTEE, CORRECT, SIR?
 7 (PLAINTIFFS' EXHIBIT 266 RECEIVED IN
 8 EVIDENCE)
 9 THE WITNESS: YES.
 10 BY MR. BOIES:
 11 Q. AND YOU ATTENDED THIS MEETING, DID YOU NOT, SIR?
 12 **A. YES.**
 13 Q. AND IF YOU TURN TO THE FOURTH PAGE.
 14 (EXHIBIT DISPLAYED ON SCREEN.)
 15 WHERE IT IS LISTING THE ACQUISITIONS IN 2005?
 16 **A. YES, I SEE THE LIST.**
 17 Q. AND YOU SEE THE LIST FOR TOMORROWNOW?
 18 MR. BOIES: MAYBE WE CAN BLOW THAT UP.
 19 BY MR. BOIES:
 20 Q. THIS IS A LIST OF THE EMPLOYEES AT TOMORROWNOW, CORRECT?
 21 **A. I SEE THE LINE TOMORROWNOW.**
 22 Q. AND IT SAYS THAT TOMORROWNOW HAS 30 EMPLOYEES. DO YOU SEE
 23 THAT?
 24 **A. I SEE IT.**
 25 Q. AND YOU KNEW THAT TOMORROWNOW WAS PROVIDING FIXES AND
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BRANDT - DIRECT / MR. BOIES

1 Q. BEHIND THE TAB THAT SAYS "TRANSCRIPT".
 2 **A. (ENGLISH) YES.**
 3 Q. AND YOU SEE WHERE WE SAY THAT --
 4 **A. ON WHAT PAGE?**
 5 Q. PAGE 202, LINE 19. LET ME KNOW WHEN YOU HAVE IT.
 6 (PAUSE IN THE PROCEEDINGS.)
 7 **A. ALL RIGHT.**
 8 Q. (READING)
 9 "QUESTION: IN THE END, SAP WENT FORWARD WITH
 10 THE TOMORROWNOW ACQUISITION UNDERSTANDING THAT
 11 THERE WERE IN FACT POTENTIAL LEGAL ISSUES
 12 CONNECTED WITH TOMORROWNOW'S SERVICE DELIVERY
 13 PROCESS?"
 14 AND YOUR ANSWER IS: "COULD BE, NOT WERE."
 15 "QUESTION: MOVING FORWARD WITH THE
 16 UNDERSTANDING THAT THERE COULD BE SUBSTANTIAL
 17 LEGAL ISSUES WITH TOMORROWNOW'S SERVICE DELIVERY
 18 PROCESSES, CORRECT?
 19 "ANSWER: YES."
 20 AND YOU GAVE THAT TESTIMONY?
 21 **A. (ENGLISH) YEAH.**
 22 Q. AND THE SOLUTION WAS TO LEAVE THE TEXAS CORPORATION IN
 23 EXISTENCE AS A LIABILITY SHIELD, CORRECT?
 24 **A. NO, THAT WAS NOT THE SOLUTION.**
 25 Q. LET ME ASK YOU TO LOOK AT EXHIBIT 266. THAT IS BEHIND
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BRANDT - DIRECT / MR. BOIES

1 PATCHES FOR PEOPLESFT SOFTWARE, CORRECT?
 2 **A. YES.**
 3 Q. AND YOU KNEW THAT THAT COULDN'T HAPPEN WITHOUT PEOPLE
 4 DOING RESEARCH AND DEVELOPMENT WORK, CORRECT, SIR?
 5 **A. I DID NOT KNOW THAT.**
 6 Q. YOU DID NOT KNOW THAT?
 7 **A. (ENGLISH) NO.**
 8 Q. FIRST YOU HAD NO RESEARCH AND DEVELOPMENT PEOPLE, RIGHT?
 9 **A. THAT IS CORRECT, BUT THEY HAVE SERVICE EMPLOYEES.**
 10 Q. AND DID YOU THINK THE SERVICE EMPLOYEES WERE THE PEOPLE
 11 WHO WERE DOING THE SOFTWARE DEVELOPMENT, SIR? IS THAT YOUR
 12 TESTIMONY?
 13 **A. NO, THAT IS NOT WHAT I THOUGHT.**
 14 Q. OKAY. I DIDN'T THINK SO.
 15 YOU KNOW THAT THE KIND OF WORK THAT'S REQUIRED TO
 16 PREPARE THE KIND OF SOFTWARE THAT YOU NEED TO DO MAINTENANCE
 17 AND SUPPORT WORK IS THE KIND OF WORK THAT REQUIRES SOME
 18 RESEARCH AND DEVELOPMENT PEOPLE, CORRECT?
 19 **A. I AM NOT AN EXPERT IN THE FIELD, HOWEVER, I BELIEVE IT IS**
 20 **POSSIBLE THAT THIS CAN ALSO BE DONE BY THE SERVICE EMPLOYEES.**
 21 Q. DID YOU EVER INQUIRE OF ANYBODY AS TO HOW IN THE WORLD
 22 PEOPLESFT SUPPORT WAS BEING PREPARED AND PATCHES AND FIXES FOR
 23 COMPLICATED SOFTWARE WAS BEING PREPARED WITHOUT ANY R&D
 24 EMPLOYEES? DID YOU EVER ASK ANYBODY THAT, SIR?
 25 **A. NO.**
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721

BRANDT - DIRECT / MR. BOIES

1 Q. THERE CAME A POINT WHEN ORACLE ACQUIRED SIEBEL, CORRECT?

2 **A. YES.**

3 Q. AND SAP THEN AUTHORIZED TOMORROWNOW TO SERVICE SIEBEL

4 APPLICATIONS, CORRECT?

5 **A. THAT'S CORRECT.**

6 Q. AND AT THAT TIME, TOMORROWNOW DIDN'T HAVE ANY PEOPLE AT

7 ALL WHO HAD ANY EXPERIENCE WITH SIEBEL SOFTWARE, CORRECT?

8 **A. THIS MAY BE TRUE.**

9 Q. AND DID YOU HAVE ANY UNDERSTANDING AT ALL AS TO HOW

10 TOMORROWNOW COULD SUPPORT SIEBEL CUSTOMERS INSTALLATIONS

11 WITHOUT ANY PEOPLE WHO WERE EXPERT IN SIEBEL SOFTWARE WITHOUT

12 SIMPLY INFRINGING THE COPYRIGHTS?

13 **A. AT THAT TIME I WAS UNDER THE ASSUMPTION THAT THE OPERATION**

14 **PROCEDURES HAD BEEN IMPLEMENTED AT TOMORROWNOW AND THAT WOULD**

15 **HAVE MEANT THAT IT WOULD HAVE BEEN NECESSARY TO EMPLOY PEOPLE**

16 **WHO HAD SIEBEL EXPERTISE.**

17 Q. WERE ANY OF THOSE PEOPLE EVER EMPLOYED, SIR?

18 **A. I DON'T KNOW.**

19 Q. DID YOU EVER CHECK?

20 **A. NO.**

21 Q. DO YOU KNOW IF ANYONE ELSE FROM SAP EVER CHECKED?

22 **A. I COULD NOT ANSWER THAT QUESTION. I DON'T KNOW.**

23 Q. IT WOULD HAVE BEEN VERY EASY TO CHECK, WOULD IT NOT? YOU

24 SIMPLY WOULD HAVE HAD TO CALL UP YOUR WHOLLY-OWNED SUBSIDIARY

25 AND ASK THEM, CORRECT?

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723

BRANDT - CROSS / MR. LANIER

1 MINUTES, SIR. WE'VE SEEN THE BUSINESS CASE, AND I AM GOING TO

2 TALK ABOUT SOME THINGS THAT HAPPENED AFTER THAT.

3 DO YOU RECALL WHETHER YOU RECEIVED ANY MORE

4 INFORMATION ABOUT HOW TOMORROWNOW WORKED AFTER THIS JANUARY 7

5 BUSINESS CASE?

6 THE INTERPRETER: ON THE 5TH OF JANUARY?

7 MR. LANIER: AFTER.

8 THE WITNESS: CAN YOU PLEASE REPEAT THE QUESTION?

9 BY MR. LANIER:

10 Q. YOU RECALL HAVING SEEN THE BUSINESS CASE DOCUMENT, RIGHT?

11 **A. YES.**

12 Q. AFTER THAT DOCUMENT, DID YOU EVER RECEIVE MORE INFORMATION

13 ABOUT HOW TOMORROWNOW WORKED BEFORE CONCLUDING THE ACQUISITION?

14 **A. SEVERAL ADDITIONAL PIECES OF INFORMATION WERE EXCHANGED**

15 **AFTER THAT, BUT I DON'T RECALL ANYTHING SPECIFIC OR IN**

16 **PARTICULAR ABOUT THEIR BUSINESS MODEL.**

17 Q. LET'S LOOK AT ONE OF THOSE PIECES OF INFORMATION.

18 WOULD YOU TURN TO TAB 19 IN THAT SAME BINDER YOU

19 ALREADY HAVE. AND THAT'S DEFENDANTS' EXHIBIT 4027.

20 **A. (ENGLISH) YEAH.**

21 MR. LANIER: YOUR HONOR, THIS HAS NOT YET BEEN

22 STIPULATED IN SO I AM GOING TO ASK A FEW PRELIMINARY QUESTIONS.

23 BY MR. LANIER:

24 Q. MR. BRANDT, DO YOU RECALL SEEING THIS E-MAIL?

25 **A. THIS IS THE E-MAIL BY JIM MACKKEY DATED JANUARY 15TH, 2005.**

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BRANDT - CROSS / MR. LANIER

1 **A. IT'S NOT THE TASK OF THE CFO TO MAKE THAT PHONE CALL.**

2 Q. BUT IS IT THE TASK OF A MEMBER OF THE BOARD TO BE SURE

3 SOMEBODY MAKES THE PHONE CALL?

4 **A. I AGREE WITH THAT.**

5 MR. BOIES: I HAVE NO MORE QUESTIONS.

6 THE COURT: DO YOU WISH TO EXAMINE AT THIS TIME?

7 MR. LANIER: YES, YOUR HONOR.

8 THE COURT: HE'S ON YOUR LIST AS WELL.

9 MR. LANIER: WE MAY WANDER A LITTLE BEYOND, BUT NOT

10 TOO MUCH.

11 THE COURT: OKAY.

12 CROSS-EXAMINATION

13 BY MR. LANIER:

14 Q. GOOD AFTERNOON, MR. BRANDT.

15 **A. (ENGLISH) HELLO.**

16 Q. WE LEARNED A LITTLE ABOUT YOUR BACKGROUND. I JUST WANTED

17 TO LEARN A COUPLE MORE THINGS.

18 WHERE WERE YOU BORN, SIR?

19 **A. IN GERMANY.**

20 Q. WHEN YOU WERE RAISED, WERE YOU RAISED SPEAKING ENGLISH?

21 **A. NO.**

22 Q. ARE YOU PERSONALLY COMFORTABLE WITH AMERICAN LEGAL

23 TERMINOLOGY IN ENGLISH?

24 **A. NO.**

25 Q. LET'S TALK ABOUT THE TOMORROWNOW ACQUISITION FOR A FEW

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724

BRANDT - CROSS / MR. LANIER

1 Q. AND DID YOU READ IT WHEN YOU GOT IT OR SOMEWHERE AROUND

2 THEN?

3 **A. OF COURSE.**

4 Q. AND WAS THE INFORMATION CONTAINED IN THIS E-MAIL PART OF

5 WHAT WAS IN YOUR MIND WHEN YOU MADE THE DECISION TO BUY

6 TOMORROWNOW?

7 **A. MAY I READ THROUGH IT FIRST?**

8 Q. OF COURSE.

9 **A. YES.**

10 Q. AND WAS THIS INFORMATION PART OF WHAT YOU RELIED ON IN

11 YOUR OWN DECISION WHETHER TO APPROVE THE ACQUISITION OF

12 TOMORROWNOW?

13 **A. (ENGLISH) ABSOLUTELY.**

14 MR. LANIER: YOUR HONOR, WE MOVE ADMISSION OF

15 DEFENDANTS' A4027?

16 THE COURT: ANY OBJECTION.

17 MR. BOIES: YES, YOUR HONOR, BOTH HEARSAY AND AN

18 INCOMPLETE DOCUMENT.

19 MR. LANIER: YOUR HONOR, IT WAS REDACTED FOR

20 PRIVILEGE REASONS. AND IT'S ADMISSIBLE UNDER 803(3). IT GOES

21 TO STATE OF MIND. THIS CASE IS APPARENTLY ABOUT THEIR STATE OF

22 MIND WHEN THEY MADE THE DECISION TO PURCHASE TOMORROWNOW.

23 THE COURT: I AM GOING TO ALLOW IT, COUNSEL.

24 MR. BOIES: CAN I HAVE ONE MOMENT? I ACCEPT WHAT

25 THE COURT ALLOWS ON HEARSAY. BUT ON INCOMPLETE DOCUMENT,

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BRANDT - CROSS / MR. LANIER

1 ALTHOUGH WE DON'T OBJECT TO THEM REDACTING FOR PRIVILEGE, THEY
 2 CAN'T AFFIRMATIVELY USE A PARTIAL DOCUMENT, I WOULD SUGGEST TO
 3 THE COURT.
 4 THE COURT: THE REDACTED PORTION IS A SENTENCE OR
 5 TWO AT THE BOTTOM?
 6 MR. LANIER: THAT'S CORRECT, YOUR HONOR.
 7 THE COURT: AND YOU SAY THAT'S BASED ON
 8 ATTORNEY-CLIENT PRIVILEGE?
 9 MR. LANIER: ABSOLUTELY.
 10 THE COURT: I'M GOING TO ALLOW THEM TO USE IT. IT'S
 11 ADMITTED.
 12 MR. LANIER: THANK YOU.
 13 (DEFENDANTS' EXHIBIT A4027 RECEIVED IN
 14 EVIDENCE)
 15 MR. LANIER: PUT UP 4027. CAN WE BLOW UP THE
 16 E-MAIL?
 17 (EXHIBIT DISPLAYED ON SCREEN.)
 18 BY MR. LANIER:
 19 Q. MR. MACKEY, AGAIN, WHO WAS HE?
 20 **A. (ENGLISH) HE WAS A MEMBER OF MY MANAGEMENT TEAM. SORRY.**
 21 **(WITNESS THROUGH INTERPRETER) HE WAS A MEMBER OF MY**
 22 **MANAGEMENT TEAM.**
 23 **HE WAS A MEMBER OF MY MANAGEMENT TEAM AND HIS**
 24 **RESPONSIBILITY WAS M & A AND EXECUTION, M & A EXECUTION.**
 25 Q. SO, MR. BRANDT, I WILL DIVERT FOR A SECOND.
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BRANDT - CROSS / MR. LANIER

1 **A. YES.**
 2 Q. PLEASE DESCRIBE THOSE STEPS.
 3 **A. FOR US, FIRST OF ALL, IT WAS VERY IMPORTANT THAT NO SAP**
 4 **DEVELOPERS OR SUPPORT TEAM MEMBERS OF SAP, THAT THESE SAP**
 5 **DEVELOPERS AND SUPPORT STAFF WOULD NEVER HAVE ACCESS TO**
 6 **INFORMATION WHICH WAS NECESSARY FOR THE EMPLOYEES OF**
 7 **TOMORROWNOW TO PERFORM THEIR SUPPORT AND SERVICE SERVICES.**
 8 Q. ARE YOU DONE, SIR?
 9 **A. IN ADDITION, WE ALSO ISSUED CERTAIN RULES OF ENGAGEMENT,**
 10 **AND THESE REFERRED MAINLY TO THE GO-TO MARKET SIDE.**
 11 Q. MR. BRANDT, I WOULD ASK YOU TO TURN TO TAB 20 IN THE
 12 BINDER THAT IS IN FRONT OF YOU. AGAIN, STAYING WITH THE BINDER
 13 YOU'VE GOT BEFORE.
 14 THAT'S DEFENDANTS' EXHIBIT 19.
 15 (EXHIBIT DISPLAYED ON SCREEN.)
 16 **A. YES, I HAVE THIS IN FRONT OF ME.**
 17 Q. NOW, MR. BRANDT, DO YOU RECOGNIZE THIS DOCUMENT AS THE
 18 RULES OF ENGAGEMENT YOU JUST MENTIONED?
 19 **A. YES, THAT IS CORRECT. AND THESE RULES OF ENGAGEMENT HAVE**
 20 **BEEN COMMUNICATED TO ALL TOMORROWNOW EMPLOYEES IN WRITTEN FORM.**
 21 MR. LANIER: AND THAT'S ACTUALLY THE WRONG DOCUMENT
 22 ON THE SCREEN. DON'T PUT THE NEXT ONE UP YET BECAUSE I DON'T
 23 KNOW IF THIS HAS BEEN DONE.
 24 WE WOULD MOVE ADMISSION OF DEFENDANTS' A19.
 25 THE COURT: WHERE DO I FIND THAT?
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BRANDT - CROSS / MR. LANIER

1 I NOTICE YOU OBVIOUSLY DO SPEAK ENGLISH, CORRECT?
 2 **A. YES, I DO.**
 3 Q. AND OVER THE YEARS YOU AND I HAVE TALKED A LOT OF TIMES,
 4 RIGHT?
 5 **A. CORRECT.**
 6 Q. WITHOUT SAYING ANYTHING THAT WE HAVE TALKED ABOUT, HAVE WE
 7 NOT OURSELVES BETWEEN US NEEDED A TRANSLATION OCCASIONALLY TO
 8 MAKE SURE WE COMMUNICATE?
 9 **A. THAT'S CORRECT. YES. MY BUSINESS ENGLISH I BELIEVE IS**
 10 **OKAY, HOWEVER, MY TERMINOLOGY AND KNOWLEDGE OF ENGLISH IS NOT**
 11 **ENOUGH FOR LEGAL PROCEEDINGS.**
 12 Q. THANK YOU, SIR.
 13 **SO NOW TURNING BACK TO 4027. I WON'T READ THROUGH**
 14 **ALL OF THE SENTENCES NOW. IT'S LATE, IT'S FRIDAY, AND WE CAN**
 15 **TALK ABOUT THIS DOCUMENT LATER, BUT I JUST WANT TO CONFIRM THAT**
 16 **THE -- WAS THE INFORMATION THAT'S IN HERE PART OF WHAT WAS IN**
 17 **YOUR MIND WHEN YOU MADE THE DECISION TO BUY TOMORROWNOW?**
 18 **A. THAT'S CORRECT.**
 19 Q. THANK YOU, SIR. YOU CAN PUT THAT AWAY NOW.
 20 THERE WAS A LOT OF DISCUSSION WITH MR. BOIES ABOUT
 21 MITIGATION. DO YOU RECALL THAT GENERALLY?
 22 **A. YES, OF COURSE.**
 23 Q. WHEN YOU APPROVED, AS A BOARD MEMBER, THE ACQUISITION OF
 24 TOMORROWNOW, WERE YOU AWARE OF ANY STEPS THAT WERE TAKEN TO
 25 MITIGATE RISKS THAT HAD BEEN IDENTIFIED ABOUT TOMORROWNOW?
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BRANDT - CROSS / MR. LANIER

1 MR. LANIER: IT SHOULD BE IN TAB 20 OF HIS BINDER.
 2 I MIGHT HAVE GOT THE WRONG TAB. IT'S AN E-MAIL, YOUR HONOR.
 3 THE COURT: IS IT PLAINTIFFS' DEPOSITION EXHIBIT 19,
 4 THAT HAS BEEN REMARKED --
 5 MR. LANIER: YES. AND IT IS ALSO A0019 WITH THE
 6 TRIAL NUMBER.
 7 THE COURT: OKAY.
 8 MR. LANIER: WE MOVE ADMISSION OF A19.
 9 THE COURT: ALL RIGHT. IS THERE ANY OBJECTION?
 10 MR. BOIES: IS THIS PLAINTIFFS' EXHIBIT 27?
 11 MR. LANIER: THERE'S PROBABLY MORE THAN ONE COPY. I
 12 JUST HAPPEN TO HAVE DEFENDANTS' 19.
 13 MR. MITTELSTAEDT: THE ANSWER IS YES.
 14 MR. BOIES: NO OBJECTION.
 15 THE COURT: IT'S ONE IN THE SAME. WE WILL CALL IT
 16 BOTH A19 AND 27.
 17 (DEFENDANTS' EXHIBIT A19 RECEIVED IN
 18 EVIDENCE)
 19 BY MR. LANIER:
 20 Q. DEFENDANTS' 19.
 21 NOW, AGAIN, WE ARE NOT GOING TO GO THROUGH THIS.
 22 THERE ARE MANY PAGES. THERE WILL BE OTHER WITNESSES WHO CAN
 23 TALK ABOUT IT.
 24 WOULD YOU CONFIRM FOR THE JURY THAT THIS E-MAIL
 25 CONTAINS WHAT YOU REFER TO AS THE RULES OF ENGAGEMENT?
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BRANDT - CROSS / MR. LANIER

1 (EXHIBIT DISPLAYED ON SCREEN.)

2 A. YES.

3 Q. THANK YOU. WE CAN PUT THAT DOWN.
4 THERE WAS ALSO SOME DISCUSSION WITH COUNSEL ABOUT
5 DIRECTIONS GIVEN TO CHANGE TOMORROWNOW'S OPERATING PROCEDURES.
6 DO YOU RECALL THAT?

7 A. YES.

8 Q. AND YOU EVEN RECALL SOME DISCUSSION ABOUT WHETHER IT WAS
9 IN WRITING OR NOT?

10 A. THAT'S CORRECT.

11 Q. WOULD YOU TELL THE JURY WHAT WAS THAT DIRECTION FROM THE
12 BOARD?

13 A. CAN YOU PLEASE BE MORE PRECISE WITH YOUR QUESTION?

14 Q. OF COURSE.

15 YOU HAD A LOT OF CONVERSATION ABOUT WHETHER SOME
16 DIRECTION WAS IN WRITING.

17 A. (ENGLISH) YEAH.

18 Q. THE QUESTION IS, WHETHER IT WAS IN WRITING OR NOT, WHAT
19 WAS THE BOARD'S GUIDANCE YOU HAD BEEN TALKING ABOUT? WHAT WAS
20 THE MESSAGE DELIVERED?

21 A. IN RELATION TO THE OPERATING PROCEDURES.

22 Q. DO YOU RECALL MORE SPECIFICALLY WHAT THE GUIDANCE WAS HOW
23 TO CHANGE THOSE PROCEDURES?

24 A. IN DETAIL WITH REGARDS TO THE SPECIFIC STEPS, NO.

25 Q. DO YOU RECALL WHETHER IN 2005 THE BOARD GAVE SPECIFIC

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BRANDT - CROSS / MR. LANIER

1 Q. WE SPENT A LOT OF TIME AND WE WILL JUST BE BRIEF.
2 DO YOU SEE AT THE TOP WHERE IT SAYS, "CONVERT
3 APPROXIMATELY 50 PERCENT OF THE PEOPLESFT AND J.D. EDWARDS,"
4 AND IT GOES ON?

5 A. (ENGLISH) YES.

6 (WITNESS THROUGH INTERPRETER) YES.

7 Q. AT THE TIME YOU WERE APPROVING THE TOMORROWNOW
8 ACQUISITION, DID YOU ACTUALLY EXPECT TO FULFILL THAT GOAL?

9 A. PERSONALLY, ESPECIALLY BECAUSE OF MY POSITION AS A
10 FINANCE -- CFO, I AM VERY CRITICAL WHEN I SEE PIECES OF
11 INFORMATION LIKE THIS. AND I ALWAYS QUESTION INFORMATION THAT
12 COMES FROM THE MARKETING DEPARTMENT. I THINK THAT THIS GOAL
13 WAS REALLY HARD TO HIDE.

14 AND THE REALITY INDEED PROVED THAT WITH TOMORROWNOW,
15 WE ONLY HAD 386 CUSTOMERS.

16 Q. ALL RIGHT. WE ARE DONE WITH THAT ONE. THANK YOU, SIR.

17 WE'VE ALSO SEEN A LOT DURING THE TRIAL ABOUT A
18 BUSINESS OPPORTUNITY SLIDE. AND I AM GOING TO ASK YOU TO LOOK
19 AT TAB 11 OF YOUR BINDER. IT'S PLAINTIFFS' 12. IT IS ALREADY
20 IN EVIDENCE AND IT IS THE 11TH PAGE OF THE DOCUMENT.

21 MR. LANIER: IF YOU CAN PUT THAT UP. MAYBE BLOW UP
22 THAT TOP PART.

23 (EXHIBIT DISPLAYED ON SCREEN.)

24 THE WITNESS: (ENGLISH) YEAH.

25 ///

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BRANDT - CROSS / MR. LANIER

1 DIRECTION THAT PEOPLESFT SOFTWARE SHOULD NOT BE ON
2 TOMORROWNOW'S COMPUTERS?

3 MR. BOIES: OBJECTION, LEADING, YOUR HONOR.

4 THE COURT: IT IS, BUT I AM GOING TO PERMIT IT
5 ANYWAY.

6 THE WITNESS: ABSOLUTELY.

7 BY MR. LANIER:

8 Q. WAS IT YOUR BELIEF UP UNTIL THE TIME OF THIS LAWSUIT THAT
9 THAT DIRECTION HAD BEEN FOLLOWED?

10 MS. HOUSE: OBJECTION, YOUR HONOR.

11 THE COURT: OVERRULED.

12 THE WITNESS: ABSOLUTELY. AND I THOUGHT I HAD
13 ALREADY ANSWERED IT THIS WAY IN THE PREVIOUS QUESTIONING.

14 BY MR. LANIER:

15 Q. THANK YOU.

16 LET'S TURN TO SOME OTHER TOPICS FOR JUST A FEW
17 MINUTES, SOME NUMBERS AND THINGS.

18 YOU SPENT A LOT OF TIME ON PLAINTIFFS' EXHIBIT 24.
19 THAT IS IN TAB 19 OF YOUR BINDER.

20 MR. LANIER: IF WE CAN PUT UP THE SIXTH PAGE, THE
21 ONE THAT SAYS "THE GOAL".

22 (EXHIBIT DISPLAYED ON SCREEN.)

23 BY MR. LANIER:

24 Q. THERE WE GO.

25 A. (ENGLISH) YEAH.

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BRANDT - CROSS / MR. LANIER

1 BY MR. LANIER:

2 Q. SIR, BEFORE THIS LITIGATION, HAD YOU SEEN THIS SLIDE OR
3 THIS PRESENTATION?

4 A. YES, I HAVE SEEN THIS SLIDE BEFORE THE TRIAL.

5 Q. AND DURING THE TIME YOU WERE MAKING THE DECISION TO BUY
6 TOMORROWNOW, DID YOU BELIEVE THAT IT WOULD CONTRIBUTE
7 \$900 MILLION TO SAP?

8 A. NO.

9 Q. DID YOU RELY IN ANY WAY ON THIS TYPE OF PROJECTION IN THE
10 DECISION TO BUY TOMORROWNOW?

11 A. NOT AT ALL. IN THE BUSINESS CASE, WE ESTABLISHED
12 STAND-ALONE ASSESSMENT OF ABOUT \$10 MILLION. AND THIS -- THE
13 VALUE, AND THIS HAS NOTHING -- IT DOESN'T COMPARE IN ANY WAY.

14 Q. SO LET'S LOOK AT THE BUSINESS CASE. IT'S PLAINTIFFS'
15 EXHIBIT 19, WHICH IS ALSO IN EVIDENCE. IT'S IN TAB 4, AND I
16 THINK IT'S SLIDE FIVE. IT'S THE SLIDE THAT IS TITLED
17 "VALUATION OVERVIEW".

18 A. IS IT TAB 19?

19 Q. IT'S TAB 4.

20 A. (ENGLISH) SORRY.

21 Q. IT'S EXHIBIT NUMBER 19.

22 (EXHIBIT DISPLAYED ON SCREEN.)

23 MR. LANIER: THAT'S IT. THANK YOU.

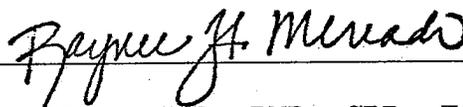
24 THE WITNESS: (ENGLISH) SORRY. I HAVE IT NOW,
25 YEAH.

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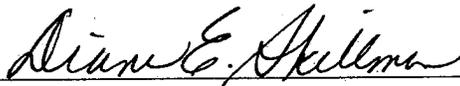
CERTIFICATE OF REPORTER

WE, RAYNEE H. MERCADO AND DIANE E. SKILLMAN, OFFICIAL REPORTERS FOR THE UNITED STATES COURT, NORTHERN DISTRICT OF CALIFORNIA, HEREBY CERTIFY THAT THE FOREGOING PROCEEDINGS IN C07-01658PJH, ORACLE USA, INC., ET AL. V. SAP AG, ET AL., WERE REPORTED BY US ON, FRIDAY, NOVEMBER 5, 2010, CERTIFIED SHORTHAND REPORTERS, AND WERE THEREAFTER TRANSCRIBED UNDER OUR DIRECTION INTO TYPEWRITING; THAT THE FOREGOING IS A FULL, COMPLETE AND TRUE RECORD OF SAID PROCEEDINGS AS BOUND BY US AT THE TIME OF FILING.

THE VALIDITY OF THE REPORTER'S CERTIFICATION OF SAID TRANSCRIPT MAY BE VOID UPON DISASSEMBLY AND/OR REMOVAL FROM THE COURT FILE.



RAYNEE H. MERCADO, CSR, RMR, CRR, FCRR, CCRR



DIANE E. SKILLMAN, CSR, RPR, FCRR

FRIDAY, NOVEMBER 5, 2010

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Certified Copy

BEFORE THE HONORABLE PHYLLIS J. HAMILTON, JUDGE

ORACLE CORPORATION, ET AL.)	JURY TRIAL
))	
PLAINTIFFS,)	NO. C 07-01658 PJH
))	
VS.)	VOLUME 5
))	
SAP AG, ET AL.,)	PAGES 754 - 946
))	
DEFENDANTS.)	OAKLAND, CALIFORNIA
))	MONDAY, NOVEMBER 8, 2010

TRANSCRIPT OF PROCEEDINGS

APPEARANCES:

FOR PLAINTIFFS:

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(APPEARANCES CONTINUED NEXT PAGE)

REPORTED BY:

RAYNEE H. MERCADO, CSR NO. 8258
DIANE E. SKILLMAN, CSR NO. 4909

RAYNEE H. MERCADO, CSR, RMR, CRR, FCRR, CCRR (510) 451-7530

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1 MONDAY, NOVEMBER 8, 2010 8:32 A.M.
 2 PROCEEDINGS
 3 (THE FOLLOWING PROCEEDINGS WERE HEARD IN THE PRESENCE
 4 OF THE JURY:)
 5 THE CLERK: CALLING CIVIL CASE NO. 07-1658, ORACLE
 6 U.S.A., ET AL. VS. SAP AG, ET AL.
 7 THE COURT: ALL RIGHT. GOOD MORNING, COUNSEL.
 8 COUNSEL: GOOD MORNING.
 9 THE COURT: READY FOR PLAINTIFFS' NEXT WITNESS?
 10 MR. PICKETT: YES, YOUR HONOR.
 11 MS. HOUSE: WE ARE GOING TO CALL -- IT'S ACTUALLY --
 12 WE'RE CALLING SAP AND SAP AG THROUGH THEIR CORPORATE
 13 REPRESENTATIVE WHO SPOKE ON THEIR BEHALF IN A DEPOSITION. THE
 14 PERSON'S NAME IS TERRY HURST.
 15 AND THE -- FOR THE COURT REPORTER (SIC), THE EXHIBITS
 16 THAT ARE PREADMITTED THROUGH MR. HURST ARE PLAINTIFFS' EXHIBITS
 17 (SIC) 193 AND PLAINTIFFS' EXHIBIT 958.
 18 THE COURT: THANK YOU.
 19 THIS IS THROUGH DEPOSITION TESTIMONY?
 20 MS. HOUSE: IT IS. THANK YOU.
 21 (WHEREUPON, VIDEO DEPOSITION OF TERRY HURST WAS PLAYED.)
 22 THE COURT: IS THAT THE CONCLUSION?
 23 MR. PICKETT: YES.
 24 THE COURT: ALL RIGHT.
 25 ALL RIGHT. YOU READY FOR YOUR NEXT WITNESS?
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ELLISON - DIRECT / BOIES

1 Q. WHEN DID YOU FOUND ORACLE?
 2 A. IN 1977.
 3 Q. HOW MANY OF YOU WERE THERE THEN?
 4 A. THERE WERE FOUR OF US.
 5 Q. OKAY.
 6 HOW MANY OF YOU ARE THERE NOW?
 7 A. OVER 100,000.
 8 Q. WHAT IS ORACLE'S BASIC BUSINESS?
 9 A. WE DEVELOP COMPUTER SOFTWARE. I MEAN, THAT'S OUR
 10 FUNDAMENTAL BUSINESS, AND RECENTLY, WITH THE ACQUISITION OF SUN
 11 MICROSYSTEMS, WE ALSO DEVELOP COMPUTER HARDWARE, SO COMPUTER
 12 SYSTEMS, BOTH SOFTWARE AND HARDWARE.
 13 Q. COULD YOU GIVE THE JURY A ROUGH IDEA OF HOW MUCH MONEY
 14 ORACLE HAS INVESTED IN DEVELOPING OR ACQUIRING SOFTWARE FOR
 15 COMPUTERS OVER THE LAST TEN YEARS?
 16 A. WELL, THIS YEAR, WE'LL SPEND ABOUT \$4 BILLION IN RESEARCH
 17 AND DEVELOPMENT. WE'VE ACQUIRED A NUMBER OF COMPANIES AND SPENT
 18 IN EXCESS OF \$40 BILLION BUYING THOSE COMPANIES.
 19 I HAVEN'T THOUGHT ABOUT HOW MUCH WE'VE ACTUALLY SPENT
 20 SINCE, YOU KNOW -- FROM THE VERY BEGINNING ON R & D. BUT I
 21 THINK A ROUGH CALCULATION WOULD BE WELL IN EXCESS OF
 22 \$25 BILLION, SO 25 PLUS 40, \$65 BILLION.
 23 Q. UM-HMM.
 24 WHAT WOULD BE THE CONSEQUENCES FOR ORACLE AND THE
 25 SOFTWARE INDUSTRY IN GENERAL IF THIS INVESTMENT IN SOFTWARE
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1 MR. BOIES: YES. WE CALL AS OUR NEXT WITNESS,
 2 MR. LARRY ELLISON.
 3 THE CLERK: MR. ELLISON, PLEASE STEP FORWARD. RAISE
 4 YOUR RIGHT HAND.
 5 LAWRENCE JOSEPH ELLISON,
 6 CALLED AS A WITNESS FOR THE PLAINTIFFS, HAVING BEEN DULY SWORN,
 7 TESTIFIED AS FOLLOWS:
 8 THE CLERK: PLEASE BE SEATED. AND PLEASE STATE YOUR
 9 FULL NAME AND SPELL YOUR LAST NAME FOR THE RECORD. SPEAK
 10 CLEARLY INTO THE MICROPHONE.
 11 THE WITNESS: LAWRENCE JOSEPH ELLISON.
 12 DIRECT EXAMINATION
 13 BY MR. BOIES:
 14 Q. GOOD MORNING, MR. ELLISON.
 15 A. GOOD MORNING.
 16 Q. LET ME BEGIN BY ASKING YOU TO TELL THE JURY A LITTLE BIT
 17 YOUR BACKGROUND. WHEN AND WHERE WERE YOU BORN?
 18 A. ON THE LOWER EAST SIDE OF MANHATTAN.
 19 Q. AND WHEN?
 20 A. 1944.
 21 Q. AND WHEN DID YOU MOVE TO THE BAY AREA?
 22 A. IN 1964.
 23 Q. WHERE'D YOU GO TO SCHOOL?
 24 A. I WENT TO THE UNIVERSITY OF ILLINOIS AND THE UNIVERSITY OF
 25 CHICAGO.
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ELLISON - DIRECT / BOIES

1 COULD NOT BE PROTECTED?
 2 A. I'M NOT SURE WE'D GO OUT OF BUSINESS, BUT WE'D BE PRETTY
 3 CLOSE TO GOING OUT OF BUSINESS. THE -- WE LICENSE OUR SOFTWARE.
 4 WE SELL OUR SOFTWARE TO GOVERNMENT AGENCIES AND PRIVATE
 5 ENTERPRISE TO RUN THEIR BUSINESSES AND RUN THEIR AGENCIES. THEY
 6 PAY US A LICENSE FEE, AND THEY PAY US AN ANNUAL SUPPORT FEE. IF
 7 THEY COULD GET THAT SOFTWARE FOR -- FOR NOTHING, WE'D HAVE A
 8 HARD TIME PAYING A HUNDRED THOUSAND EMPLOYEES.
 9 Q. NOW, YOU MENTIONED SUPPORT. WHY IS MAINTENANCE AND SUPPORT
 10 IMPORTANT TO THE SOFTWARE THAT ORACLE LICENSES?
 11 A. WELL, WE -- WE CHARGE FOR OUR SOFTWARE IN TWO WAYS. WE
 12 CHARGE AN UPFRONT LICENSE FEE. BUT THEN THAT SOFTWARE IS
 13 CONTINUOUSLY IMPROVED. SO IF YOU BUY OUR DATABASE, WHICH IS
 14 OUR -- OUR FLAGSHIP PRODUCT, AND YOU BUY THE CURRENT VERSION OF
 15 THE DATABASE, WHICH MIGHT BE VERSION 10 OR 9 OR 8 OR WHATEVER,
 16 WE'RE -- WE'RE WORKING ON THE NEXT VERSION.
 17 SO LET'S SAY YOU BOUGHT VERSION 8 AND YOU PAID A
 18 HUNDRED THOUSAND DOLLARS FOR IT. WE CHARGE YOU APPROXIMATELY
 19 20 PERCENT EVERY YEAR TO RECEIVE NOT ONLY SUPPORT FOR THE
 20 CURRENT VERSION THAT YOU'RE RUNNING BUT ALSO THE RIGHTS TO
 21 RECEIVE THE NEXT VERSION, VERSION 9 AND VERSION 10 AND VERSION
 22 11.
 23 SO YOU BASICALLY BUY A SUBSCRIPTION THAT GETS YOU THE
 24 RIGHTS TO CALL US AND ASK US QUESTIONS, BUT MORE IMPORTANTLY, TO
 25 RECEIVE SUBSEQUENT VERSIONS OF OUR SOFTWARE.
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ELLISON - DIRECT / BOIES

1 Q. THERE'S BEEN SOME TESTIMONY THAT MAINTENANCE AND SUPPORT
2 SERVICES IS A HIGH-MARGIN BUSINESS. CAN YOU EXPLAIN WHAT IS
3 MEANT BY THAT?
4 A. WELL, NORMALLY WHEN SOMEONE BUYS THE DATABASE OR OUR
5 APPLICATIONS, THEY BUY THE SUBSCRIPTION SERVICE. VIRTUALLY
6 EVERYONE BUYS THE SERVICE TO GET SUPPORT AND RECEIVE THE NEW
7 VERSIONS. IT DEPENDS HOW YOU CALCULATE THE PROFITABILITY OF
8 THAT BUSINESS. IF YOU JUST TAKE THE COST OF ANSWERING PHONE
9 CALLS AND HOW YOU USE THE SYSTEM, IT'S A VERY, VERY HIGH-MARGIN
10 BUSINESS, IN EXCESS OF 90 PERCENT.

11 IF YOU ALSO FACTOR IN THE -- THE COST OF DEVELOPING
12 THE NEW VERSIONS OF SOFTWARE -- AGAIN I MENTIONED WE'RE GOING TO
13 SPEND ABOUT \$4 BILLION THIS YEAR DEVELOPING SYSTEMS -- THEN IT'S
14 NOT AS HIGH MARGIN A BUSINESS BECAUSE WE HAVE TO CONTINUOUSLY
15 IMPROVE OUR SOFTWARE, AND WE HAVE APPROXIMATELY 30,000 ENGINEERS
16 WORKING ON THAT RIGHT NOW.

17 Q. ONCE THE SOFTWARE IS DEVELOPED, IS THE COST OF DEVELOPING
18 THE SOFTWARE OR ACQUIRING IT, IF YOU ACQUIRE IT, LARGER THAN THE
19 COST OF DELIVERING THE SOFTWARE ONCE YOU HAVE IT?

20 MR. LANIER: OBJECTION, YOUR HONOR.

21 THE COURT: OVERRULED.

22 THE WITNESS: THE COST OF DEVELOPING THE SOFTWARE AND
23 CONTINUOUSLY IMPROVING THE SOFTWARE IS VASTLY MORE EXPENSIVE
24 THAN THE COST OF DELIVERING IT.

25

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ELLISON - DIRECT / BOIES

1 **IN CASE OF ACTUALLY PUTTING IN REGULATORY UPDATES OR**
2 **FIXING BUGS OR DELIVERING NEW VERSIONS, THAT'S DONE PRETTY MUCH**
3 **EXCLUSIVELY BY ORACLE.**

4 Q. NOW, YOU'RE AWARE THAT THE DEFENDANTS IN THIS ACTION HAVE
5 ADMITTED INFRINGEMENT OF COPYRIGHT, CORRECT?

6 A. YES.

7 Q. INFRINGEMENT OF ORACLE'S COPYRIGHTS?

8 A. YES.

9 Q. AND I THINK YOU'RE AWARE THAT ONE OF THE ISSUES IN THIS CASE
10 IS WHAT WAS THE VALUE OF THE HYPOTHETICAL LICENSE THAT WOULD
11 HAVE BEEN REQUIRED TO PERMIT THE DEFENDANTS TO LAWFULLY DID
12 (SIC) WHAT THEY ACTUALLY DID.

13 YOU'RE FAMILIAR WITH THAT?

14 A. I AM.

15 Q. AND I'D LIKE TO ASK YOU SOME QUESTIONS ABOUT THAT.
16 IN TERMS OF TRYING TO VALUE THAT LICENSE, IF YOU HAD
17 ENGAGED IN A NEGOTIATION WITH SAP AND TOMORROWNOW BACK IN EARLY
18 2005, WHAT ARE THE CONSIDERATIONS THAT WOULD HAVE BEEN TAKEN
19 INTO ACCOUNT IN THAT NEGOTIATION?

20 MR. LANIER: OBJECTION, YOUR HONOR. AS WE'VE
21 DISCUSSED, WE OBJECT TO THIS LINE OF QUESTIONING.

22 THE COURT: ALL RIGHT. OVERRULED, HOWEVER.

23 THE WITNESS: WELL, I THINK -- I THINK THERE'S ONE
24 OVERWHELMING CONSIDERATION, AND THAT IS HOW MANY PEOPLESOFT AND
25 JD EDWARDS CUSTOMERS WE WOULD HAVE LOST TO SAP IF THEY WERE

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ELLISON - DIRECT / BOIES

1 BY MR. BOIES:

2 Q. NOW, WHY IS IT IMPORTANT TO ORACLE THAT ORACLE BE THE
3 COMPANY THAT SUPPLIES THIS MAINTENANCE AND SUPPORT SERVICES TO
4 CUSTOMERS THAT ARE LICENSING ORACLE SOFTWARE?

5 A. WELL, LET ME SAY AGAIN, I HAVE TO SPLIT THE SUPPORT SERVICES
6 INTO TWO PIECES. THERE ARE THE SUPPORT SERVICES WHERE YOU ASK
7 QUESTIONS ON HOW TO IMPROVE THE SOFTWARE OR YOU ASK QUESTIONS
8 ABOUT HOW TO USE THE SOFTWARE, OR YOU MAKE AN EXTENSION TO THE
9 SOFTWARE.

10 WE HAVE A VARIETY OF COMPANIES THAT WE WORK WITH THAT
11 DO THAT KIND OF SUPPORT. IBM DOES THAT KIND OF SUPPORT,
12 ACCENTURE DOES THAT KIND OF SUPPORT. THERE'S THE OTHER KIND OF
13 SUPPORT, WHICH IS THE CONTINUOUS IMPROVEMENT OF THE SOFTWARE
14 ITSELF, THE NEW VERSIONS OF THE SOFTWARE, WHAT WE WOULD CALL
15 REGULATORY UPDATES TO THE SOFTWARE AND BUG FIXES WHERE WE'RE
16 ACTUALLY FUNDAMENTALLY CHANGING THE SOFTWARE.

17 THERE -- VIRTUALLY ALL OF OUR CUSTOMERS GET THOSE
18 SUPPORT SERVICES FROM US BECAUSE WE HAVE THOUSANDS OF ENGINEERS
19 WORKING ON BUG FIXES AND REGULATORY UPDATES AND CONTINUOUS
20 IMPROVEMENTS OF THE SOFTWARE. SO WE REALLY SPLIT SUPPORT INTO
21 TWO SEPARATE BUSINESSES. THE SERVICE PORTION OF THE BUSINESS
22 WHERE HUMAN BEINGS ASK OTHER HUMAN BEINGS HOW TO USE THE
23 SOFTWARE, WHERE YOU MAKE EXTENSIONS TO THE SOFTWARE, AND IBM
24 EXTENDS OUR SOFTWARE AND ACCENTURE EXTENDS OUR SOFTWARE, AS DO
25 MANY OTHER CUSTOMERS AND THIRD-PARTY SUPPORT COMPANIES.

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1 PROVIDING THESE SERVICES. SO WE HAD PAID A LITTLE IN EXCESS OF
2 \$11 BILLION ACQUIRING PEOPLESOFT, WHICH INCLUDED THE PEOPLESOFT
3 PRODUCT LINE AND THE JD EDWARDS PRODUCT LINE.

4 IF WE HAD LICENSED SAP TO HAVE ACCESS TO ALL OF OUR
5 BUG FIXES, ALL OF OUR REGULATORY UPDATES, AND NEW VERSIONS -- IN
6 OTHER WORDS, IF WE HAD GIVEN THEM THE RIGHT TO ALL OF OUR
7 ENGINEERING OUTPUT FOR THESE TWO PRODUCT LINES, JD EDWARDS
8 AND -- AND PEOPLESOFT, MY ESTIMATE IS THAT THEY WOULD HAVE BEEN
9 ABLE TO GET MORE THAN 20 PERCENT, 30 PERCENT OF THE PEOPLESOFT
10 CUSTOMERS TO MOVE AWAY FROM ORACLE OVER TO SAP.

11 SAP WAS A -- WELL, SAP IS THE NUMBER ONE APPLICATIONS
12 COMPANY IN THE WORLD. WE'RE NUMBER TWO. THEY'RE THE MARKET
13 LEADER. THEY'RE CREDIBLE. THEY'RE HIGHLY RESPECTED. THEY'RE
14 THE LARGEST SOFTWARE COMPANY IN EUROPE.

15 AND IF THEY HAD ACCESS TO ALL OF OUR INTELLECTUAL
16 PROPERTY, IF THEY HAD ACCESS TO ALL OF OUR ENGINEERING,
17 THEY'RE -- THEY COULD MAKE A VERY CREDIBLE OFFER TO ANY OF OUR
18 CUSTOMERS TO GET SERVICES AND -- AND PURSUE A FUTURE WITH SAP
19 RATHER THAN WITH ORACLE.

20 AND, AGAIN, ON -- AGAIN, I THINK A CONSERVATIVE
21 ESTIMATE IS, UNDER THOSE CIRCUMSTANCES, THEY WOULD BE ABLE TO
22 GET AT LEAST 20, AS MUCH AS 30 PERCENT OF OUR CUSTOMERS.

23 BY MR. BOIES:

24 Q. NOW, BEFORE GOING ON TO THE OTHER FACTORS, YOU MENTIONED
25 PEOPLESOFT AND JD EDWARDS. WHAT ABOUT SIEBEL?

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1 A. WELL, SIEBEL -- SIEBEL IS A SLIGHTLY DIFFERENT SITUATION.
 2 WHEN WE ACQUIRED SIEBEL, THEY ALSO ANNOUNCED SUPPORT FOR SIEBEL
 3 IMMEDIATELY, SAP DID. SAP ALREADY HAD A TEAM IN PLACE THAT WAS
 4 SUPPORTING PEOPLESFT APPLICATIONS AND JD EDWARDS APPLICATIONS.
 5 TO THE BEST OF MY KNOWLEDGE, THEY HAD NO -- THEY HAD NO BUSINESS
 6 AT ALL SUPPORTING SIEBEL CUSTOMERS SO THEY HAD A HEAD START, IF
 7 YOU WILL; THEY HAD AN ONGOING BUSINESS.

8 SO WHILE I THINK IT WAS REASONABLE TO ASSUME THAT
 9 THEY COULD GET 20 OR 30 PERCENT OF OUR CUSTOMERS HAD THEY
 10 LICENSED OUR ENGINEERING OUTPUT FOR JD EDWARDS AND PEOPLESFT, I
 11 THINK THEY WOULD HAVE GOTTEN A SMALLER PERCENTAGE OF THE SIEBEL
 12 CUSTOMERS JUST BECAUSE THAT WAS A BUSINESS THEY WERE STARTING
 13 FROM SCRATCH. AND SO MAYBE THEY WOULD HAVE GOTTEN 15,
 14 20 PERCENT OF THE SIEBEL CUSTOMERS.

15 Q. NOW, WHAT FACTORS, OTHER THAN THE POTENTIAL LOSS OF
 16 CUSTOMERS, WOULD YOU TAKE INTO ACCOUNT IN TERMS OF THE RIGHT
 17 PRICE FOR A LICENSE FOR THE KIND OF PERMISSION TO USE YOUR
 18 SOFTWARE THAT SAP AND TOMORROWNOW WOULD HAVE REQUIRED TO DO WHAT
 19 THEY DID?

20 A. WELL, THEY WOULD HAVE -- THEY'D BE ABLE TO ESTABLISH
 21 RELATIONSHIPS WITH THESE CUSTOMERS AND SELL THEM ADDITIONAL
 22 PRODUCTS. SO ONCE YOU HAVE A RELATIONSHIP WITH A CUSTOMER AND
 23 THE CUSTOMER FINDS YOU A GOOD SUPPLIER THAT PROVIDES A GOOD
 24 PRODUCT WITH GOOD SERVICES, THEN YOU CAN USE THAT RELATIONSHIP,
 25 YOU CAN EXPAND UPON THAT RELATIONSHIP AND SELL THEM ADDITIONAL
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1 THAT WE'VE DISCUSSED --

2 THE COURT: I'M GOING TO OVERRULE IT AS TO THIS ONE.

3 THE WITNESS: WELL, I THINK, AGAIN, IT DEPENDS ON THE
 4 DETAILS OF THE LICENSE. FOR EXAMPLE, IF WE GRANTED THE LICENSE
 5 FOR OUR ENGINEERING OUTPUT -- AGAIN, THE LICENSE WOULD BE THAT
 6 SAP GETS THE RIGHT TO OUR REGULATORY UPDATES FOR PEOPLESFT, JD
 7 EDWARDS, AND SIEBEL. THEY GET THE RIGHT TO BUG FIXES FOR
 8 PEOPLESFT, JD EDWARDS, AND SIEBEL, AND THEY GET NEW VERSIONS OF
 9 PEOPLESFT, JD EDWARDS, AND SIEBEL FOR A SPECIFIC PERIOD OF
 10 TIME. NOT FOREVER. BUT FOR A SPECIFIC PERIOD OF TIME.

11 IF -- CONSTRAINED LIKE THAT AND ALSO CONSTRAINED BY
 12 THE FACT THAT SAP COULD NOT ADVERTISE THAT THEY HAD SIGNED THIS
 13 LICENSE, SO UNDER THOSE TWO CONSTRAINTS, I THINK THE LICENSE --
 14 AGAIN, MY -- I'LL GO BACK TO MY EARLIER ESTIMATE THAT THEY WOULD
 15 HAVE PICKED OFF 30 PERCENT OF -- OF THE PEOPLESFT JD EDWARDS
 16 BASE, WHICH IS WORTH ABOUT \$3 BILLION BASED -- NO, \$3.3 BILLION,
 17 WHICH IS BASED ON WHAT WE PAID FOR IT, AND LET'S SAY 10 PERCENT
 18 OF SIEBEL, WHICH IS WORTH ANOTHER \$600 MILLION. THAT WOULD BE A
 19 TOTAL OF \$4 BILLION.

20 BUT, AGAIN, THAT'S ALL CONSTRAINED AS I DESCRIBED IT,
 21 WHERE THE LICENSE COULD NOT BE MADE PUBLIC, THEY COULDN'T USE IT
 22 IN A MARKETING CAMPAIGN, AND THEY WOULDN'T GET OUR NEW VERSIONS
 23 OF THE PRODUCTS. THEY MIGHT NOT GET PEOPLESFT VERSION 9, BUT
 24 THEY'D GET -- THEY'D GET THE RIGHT TO DISTRIBUTE EVERYTHING THAT
 25 WAS THEN CURRENT INDEFINITELY INTO THE CUSTOMER BASE.

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1 PRODUCTS.

2 MR. LANIER: OBJECTION, YOUR HONOR. MOVE TO STRIKE.
 3 THIS IS EXACTLY THE ISSUE YOUR HONOR CAUTIONED THE LAWYERS ABOUT
 4 LAST WEEK.

5 THE COURT: YES. I DON'T -- I THINK THE NEXT
 6 QUESTION WOULD BE -- I'M GOING TO ALLOW THIS ANSWER TO STAND,
 7 BUT THE NEXT QUESTION WOULD PROBABLY BE OBJECTIONABLE.

8 MR. BOIES: YOUR HONOR, THE NEXT QUESTION WOULD HAVE
 9 BEEN WOULD THAT HAVE BEEN A VALUE TO SAP UNDER --

10 THE COURT: AND I WOULD --

11 MR. BOIES: UNDER --

12 (SIMULTANEOUS COLLOQUY.)

13 THE COURT: I WOULD SUSTAIN THE OBJECTION TO THAT.

14 MR. BOIES: OKAY.

15 Q. TAKING INTO ACCOUNT THE FACTORS THAT YOU'VE IDENTIFIED AND
 16 ANY OTHER FACTORS THAT WOULD BE RELEVANT TO THE ADVANTAGE TO SAP
 17 OR THE DISADVANTAGE TO -- OF ORACLE IN TERMS OF NEGOTIATING A
 18 LICENSE, WHAT IS YOUR ESTIMATE, AS THE HEAD OF ORACLE, AS TO
 19 WHAT THAT LICENSE WOULD HAVE BEEN WORTH BACK IN 2005?
 20 AND I'M ASKING YOU TO FOCUS ON THE BEGINNING OF 2005,
 21 NOT WHAT -- NOT WHAT'S HAPPENED SINCE, BUT THE TIME THAT THIS
 22 NEGOTIATION WOULD HAVE BEEN GOING ON.

23 A. OKAY.

24 MR. LANIER: AGAIN, YOUR HONOR, OBJECTION. IT CALLS
 25 FOR SPECULATION. IT'S UNDISCLOSED OPINION AND THE OTHER ISSUES

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1 BY MR. BOIES:

2 Q. NOW, WOULD YOU HAVE AGREED TO A LICENSE THAT ALLOWED THEM TO
 3 PAY A CERTAIN PRICE EVERY YEAR DEPENDING ON HOW MUCH THEY
 4 ACTUALLY USED IT, THAT IS, HOW MANY CUSTOMERS THEY ACTUALLY GOT?

5 A. IN OTHER WORDS, THEY PAY BASED ON HOW SUCCESSFUL THE PROGRAM
 6 WAS?

7 Q. YES.

8 A. WELL, WE WOULD BE -- NO. WE WOULD BE FIGHTING THAT -- YOU
 9 KNOW, WE WOULD BE COMPETING FOR THOSE CUSTOMERS. SO THE MORE
 10 SUCCESSFUL WE WERE TO -- SO THERE'S A COMPETITION FOR THE
 11 CUSTOMERS. WE PAID UPFRONT FOR SIEBEL. WE PAID UPFRONT FOR
 12 PEOPLESFT. SO WE TOOK THE CAPITAL RISK IN BUYING THOSE
 13 TECHNOLOGIES, AND THEN USING THOSE TECHNOLOGIES TO COMPETE IN
 14 THE MARKETPLACE.

15 WE WOULD EXPECT IF -- IF SAP WANTED TO COMPETE IN THE
 16 MARKETPLACE IN A SIMILAR FASHION, THEY WOULD ALSO HAVE TO TAKE
 17 THE UPFRONT CAPITAL RISK AND COMPETE WITH US.

18 SO NO, WE WOULD EXPECT TO BE PAID UPFRONT, JUST AS WE
 19 PAID UPFRONT FOR PEOPLESFT AND SIEBEL.

20 MR. BOIES: THANK YOU. I PASS THE WITNESS.

21 THE COURT: OKAY.

22 ALL RIGHT. CROSS-EXAMINATION?

23 CROSS-EXAMINATION

24 MR. LANIER: MORNING.

25 MORNING.

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CATZ - DIRECT / HOUSE

1 DIRECT EXAMINATION

2 BY MS. HOUSE:

3 Q. MS. CATZ, HOW LONG HAVE YOU BEEN AT ORACLE?

4 **A. SINCE APRIL OF 1999.**

5 Q. AND WHAT IS YOUR CURRENT POSITION?

6 **A. I'M ONE OF TWO PRESIDENTS.**

7 Q. HOW LONG HAVE YOU BEEN ORACLE'S PRESIDENT?

8 **A. SINCE 2004.**

9 Q. WHAT OTHER EXECUTIVE POSITIONS HAVE YOU HELD AT ORACLE?

10 **A. I'VE ALSO BEEN CHIEF FINANCIAL OFFICER TWICE.**

11 Q. ARE YOU A MEMBER OF ORACLE'S BOARD?

12 **A. YES, I HAVE BEEN SINCE 2001.**

13 Q. NOW, WHAT PROFESSIONAL ACTIVITIES DO YOU DO BESIDES YOUR DAY

14 JOB AT ORACLE'S PRESIDENT?

15 **A. WELL, PROBABLY THE MOST RELEVANT IS THAT I TEACH A COURSE AT**

16 **THE GRADUATE SCHOOL OF BUSINESS AT STANFORD TO SECOND-YEAR**

17 **M.B.A. STUDENTS. IT'S ACTUALLY WHY I CAN'T BE HERE ON FRIDAYS.**

18 Q. AND WHAT'S THAT COURSE?

19 **A. MERGERS AND ACQUISITIONS.**

20 Q. IS IT POPULAR?

21 **A. ACTUALLY, IT IS. A THIRD OF THE CLASS -- A THIRD OF THE**

22 **GRADUATING CLASS ACTUALLY TRIED TO GET INTO IT. SO PRETTY**

23 **POPULAR.**

24 Q. OKAY.

25 MS. CATZ, LET'S TALK ABOUT YOUR REACTION TO LEARNING
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1 BY MS. HOUSE:

2 Q. AND THAT'S ALSO IN YOUR BINDER UNDER THAT NUMBER.

3 **A. OKAY. SO WE HAD A FINANCIAL ANALYST DAY ABOUT A WEEK AFTER**

4 **OUR LAUNCH FOR PEOPLESOFT/JD EDWARDS. AND THESE ARE -- THIS IS**

5 **AN EMAIL FROM THE HEAD OF MARKETING, AND THESE ARE ALL THE**

6 **SLIDES FROM THAT DAY.**

7 Q. AND -- AND THEY'RE THE SLIDES THAT WERE PRESENTED BY THE

8 VARIOUS ORACLE EXECUTIVES; IS THAT CORRECT?

9 **A. YES. TO ALL THE FINANCIAL ANALYSTS AND INVESTORS.**

10 Q. OKAY. NOW, THE FIRST SCRIPT IN THE PILE, IF YOU SEE ON

11 THOSE ATTACHMENTS, IS YOURS.

12 SO LET'S GO TO THE FIRST PAGE OF YOUR FIRST SCRIPT.

13 (EXHIBIT PUBLISHED TO JURY.)

14 MS. HOUSE: NEXT PAGE.

15 (EXHIBIT PUBLISHED TO JURY.)

16 BY MS. HOUSE:

17 Q. AND THIS IS TITLED "INTEGRATION GOALS." COULD YOU PLEASE,

18 YOU KNOW, READ TO THE JURY THE FIRST BULLETS THAT'S HIGHLIGHTED

19 AND TELL THEM WHAT YOU -- WHAT THE GOAL WAS WHEN YOU WERE

20 PRESENTING ON THAT.

21 **A. WELL, WHAT WE WERE TALKING ABOUT HERE IS KEEPING ALL THE**

22 **EMPLOYEES THAT WERE IN DEVELOPMENT AND SUPPORT BECAUSE THEY**

23 **WOULD BE VERY, VERY CRITICAL FOR US TO SUPPORT THE PEOPLESOFT**

24 **CUSTOMERS. AND SO WE WANTED TO MAKE SURE -- AND, ACTUALLY, WE**

25 **OFFERED JOBS TO BASICALLY EVERYONE IN DEVELOPMENT AND SUPPORT**
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1 ABOUT TOMORROWNOW DOWNLOADING OFF ORACLE'S SUPPORT WEBSITE.

2 FIRST OF ALL, WHAT DID YOU LEARN, AND WHEN DID YOU

3 LEARN IT?

4 **A. WELL, I LEARNED REALLY SHORTLY BEFORE WE FILED SUIT ACTUALLY**

5 **THAT THERE WAS JUST A MASSIVE DOWNLOADING OFF OF OUR SUPPORT**

6 **WEBSITES, AND I WAS ACTUALLY STUNNED. STUNNED, FRANKLY.**

7 Q. WHY IS THAT?

8 **A. WELL, BECAUSE THE FOLKS THAT WERE DOWNLOADING WERE A**

9 **SOFTWARE COMPANY THEMSELVES, AND YOU JUST WOULDN'T EXPECT**

10 **SOMETHING LIKE THAT. I DON'T KNOW OF -- OF A CASE LIKE THAT**

11 **BEFORE.**

12 Q. GOING BACK TO 2004 AND 2005, WERE YOU INVOLVED IN ORACLE'S

13 ACQUISITION OF PEOPLESOFT?

14 **A. YES, VERY INVOLVED.**

15 Q. AND HOW ABOUT ORACLE'S ACQUISITION OF SIEBEL, WERE YOU ALSO

16 INVOLVED IN THE DECISION-MAKING AROUND THAT?

17 **A. YES, THAT, TOO. VERY INVOLVED.**

18 Q. NOW, GOING BACK TO THE PEOPLESOFT, LET'S TALK ABOUT ONE OF

19 THE FIRST DISCUSSIONS ORACLE HAD WITH ANALYSTS AFTER ORACLE

20 ANNOUNCED ITS ACQUISITION OF PEOPLESOFT AND ALSO SHORTLY AFTER

21 SAP HAD ANNOUNCED THAT IT WAS ACQUIRING TOMORROWNOW.

22 COULD YOU PUT UP ON TO THE BOARD EXHIBIT 4809 AND

23 TELL THE JURY WHAT IT IS.

24 (EXHIBIT PUBLISHED TO JURY.)

25
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1 AND HOPED THEY'D ACCEPT THEM.

2 Q. THE NEXT HIGHLIGHTED BULLET AT THE BOTTOM SAYS, "ACHIEVE

3 HEAD COUNT AND FINANCIAL TARGETS." WHAT WERE YOU CONVEYING WITH

4 THAT GOAL?

5 **A. WELL, CLEARLY WE WANTED TO MAKE SURE THAT WE KEPT THE PEOPLE**

6 **THAT WOULD HELP US RUN PEOPLESOFT, AND ALSO WE HAD TO MEET**

7 **FINANCIAL TARGETS 'CAUSE WE HAD JUST SPENT BASICALLY AN ABSOLUTE**

8 **FORTUNE AND WE NEEDED TO BE ABLE TO JUSTIFY SUCH A LARGE**

9 **EXPENDITURE.**

10 Q. NOW, WE'LL TURN TO THE LAST SLIDE IN YOUR PRESENTATION,

11 WHICH IS TITLED "FOCUS ON CUSTOMER RETENTION."

12 (EXHIBIT PUBLISHED TO JURY.)

13 BY MS. HOUSE:

14 Q. NOW, DID SAP'S ACQUISITION OF TOMORROWNOW HAVE ANY IMPACT ON

15 THE CONTENT OF THIS SLIDE?

16 **A. WELL, IT WAS, YOU KNOW, CLEARLY IN THERE TO MAKE SURE THAT,**

17 **YOU KNOW, WE WERE FOCUSED ON AND THAT WE WERE TRYING TO SORT**

18 **OF -- WELL, FOCUS ON KEEPING THE CUSTOMERS BECAUSE THEY'RE THE**

19 **BASIS FOR JUSTIFYING THIS WHOLE TRANSACTION.**

20 Q. THE FIRST BULLET READS "NO MATERIALS" -- "NO MATERIAL ISSUES

21 ANTICIPATED." WHY DID YOU SAY THAT, GIVEN THAT THERE WAS THIS

22 NEW SAP TOMORROWNOW THREAT?

23 **A. WELL, YOU HAVE TO REMEMBER WE HAD NO IDEA THAT THEY WERE**

24 **TAKING OUR SOFTWARE AT THIS TIME, AND WE THOUGHT THAT IF WE**

25 **COULD SHOW THOSE CUSTOMERS THAT WE WERE VERY GOOD AT SUPPORTING**
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1 **THOSE PRODUCTS, WE THOUGHT WE COULD KEEP THEM AND THAT**
 2 **CUSTOMERS, IF THEY GAVE US SOME TIME, THEY WOULD LEARN TO --**
 3 **THEY WOULD LEARN THAT WE REALLY DO A VERY, VERY GOOD JOB.**
 4 **AND SO AT THAT TIME, YOU KNOW, AGAIN, WE HAD NO IDEA**
 5 **WHAT WAS REALLY GOING ON, BUT WE THOUGHT WE COULD COMPETE AND**
 6 **WIN.**
 7 Q. OKAY.
 8 NOW, THE FOURTH SCRIPT INTO THIS PACKET IS BY JUERGEN
 9 ROTTLER. AND CAN YOU REMIND THE JURY WHO HE IS?
 10 A. HE -- HE WAS, AT THE TIME, THE HEAD OF SUPPORT, GLOBAL
 11 SUPPORT FOR ALL OF ORACLE.
 12 Q. LET'S LOOK AT HIS SLIDE, WHICH IS TITLED, QUOTE, "ORACLE
 13 SUPPORT BUSINESS."
 14 (EXHIBIT PUBLISHED TO JURY.)
 15 BY MS. HOUSE:
 16 Q. THE BOTTOM BULLET READS, "PEOPLESOFT REVENUE 1.2 BILLION
 17 REVENUE IN LAST FOUR QUARTERS."
 18 WHY DID ORACLE WANT TO TELL ANALYSTS ABOUT THAT
 19 NUMBER?
 20 A. WELL, THIS IS REALLY ANNUITY BUSINESS. THESE ARE THE
 21 SUBSCRIBERS. THESE ARE THE EXISTING CUSTOMERS WHO WERE PAYING
 22 FOR SUPPORT OUT OF PEOPLESOFT. THEY WERE VERY IMPORTANT TO
 23 ACTUALLY JUSTIFY BUYING THE COMPANY. AND THIS WAS \$1.2 BILLION
 24 SORT OF RECURRING REVENUE THAT WE WERE EXPECTING. AND,
 25 ACTUALLY, FRANKLY, WE WERE EXPECTING MORE BECAUSE THIS WAS
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1 BY MS. HOUSE:
 2 Q. AND THIS IS, OF COURSE, THE SUPPORT INTEGRATION APPROACH.
 3 AND THE BOTTOM BULLET READS "95 PERCENT RETENTION GOAL."
 4 WHAT DOES THAT REFER TO?
 5 A. THE GOAL -- THE PUBLIC GOAL THAT WE WERE STATING WAS TO
 6 MAINTAIN AT LEAST 95 PERCENT OF THE CUSTOMERS, MEANING THAT THEY
 7 WOULD RENEW SUPPORT, 'CAUSE THE WAY SUPPORT WORKS IS YOU SIGN UP
 8 FOR A YEAR, AND THEN WHEN THE RENEWAL COMES, THE BULK OF THE
 9 CUSTOMERS RENEW, AND THIS WAS A 95 PERCENT RETENTION GOAL.
 10 Q. DOES THE FACT THAT SAP HAD JUST ACQUIRED TOMORROWNOW CHANGE
 11 THAT EXPECTATION?
 12 A. AGAIN, KNOWING THAT WE HAD NO IDEA WHAT SAP WAS DOING WITH
 13 TOMORROWNOW, WE -- WE KEPT THE GOAL AT THE SAME PLACE, 'CAUSE,
 14 AGAIN, WE THOUGHT IF CUSTOMERS WOULD GIVE US A CHANCE TO SHOW
 15 WHAT IT'S LIKE TO GET ORACLE, SLASH, PEOPLESOFT SUPPORT, THAT WE
 16 COULD MAINTAIN THOSE CUSTOMERS.
 17 Q. AT -- ALL RIGHT. I THINK WE'RE DONE WITH THAT. THANK YOU.
 18 LET'S EXPLORE YOUR ROLE IN ANALYZING THE EXPECTED
 19 VALUE TO ORACLE OF THE PEOPLESOFT ACQUISITION. COULD YOU TELL
 20 THE JURY WHAT WAS YOUR ROLE?
 21 A. WELL, I WAS REALLY ONE OF THE KEY PEOPLE VALUING -- VALUING
 22 PEOPLESOFT/JD EDWARDS. I WAS PUTTING IN -- YOU KNOW, WE WERE
 23 DESIGNING THE ORIGINAL MODEL OF WHAT IT IS THE COMPANY WAS --
 24 WAS WORTH BASED ON WHAT WE THOUGHT WOULD HAPPEN IN THE FUTURE,
 25 AND WORKING WITH LARRY ELLISON AND A LOT OF OTHER EXECUTIVES
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1 **HISTORIC.**
 2 Q. NOW, IF F-A -- EXCUSE ME.
 3 IF SAP TOOK AWAY 50 PERCENT OF THAT 1.2 BILLION IN
 4 EXPECTED ANNUAL PEOPLESOFT MAINTENANCE REVENUES, AS WE'VE SEEN
 5 IN SOME OF THE SAP GOLD DOCUMENTS THAT THEY WERE TRYING TO DO,
 6 WHAT WOULD THAT MEAN IN DOLLAR TERMS TO ORACLE?
 7 MR. LANIER: OBJECTION, YOUR HONOR.
 8 THE WITNESS: WELL, IT'S VERY --
 9 THE COURT: EXCUSE ME.
 10 THE WITNESS: OH, I'M SORRY.
 11 MR. LANIER: IT'S LEADING AND -- IT'S LEADING AND IT
 12 CALLS FOR SPECULATION.
 13 THE COURT: I'M GOING TO PERMIT IT.
 14 MS. HOUSE: THANK YOU.
 15 THE WITNESS: WELL, CLEARLY, IF WE WERE TO LOSE HALF
 16 OF 1.2 BILLION, IT'S \$600 MILLION LOST A YEAR. A YEAR. AND IT
 17 WOULD BE, YOU KNOW, 600 MILLION LOST THE FIRST YEAR, AND THEN
 18 THE SAME THE NEXT.
 19 BY MS. HOUSE:
 20 Q. SO IF IT WAS THREE YEARS OUT, HOW MUCH LOSS WOULD YOU BE
 21 FACING?
 22 A. WE WOULD LOSE 1.8 BILLION RIGHT OFF THE TOP THERE.
 23 Q. OKAY. NOW, LET'S LOOK AT THE SLIDE ENTITLED "INTEGRATION
 24 APPROACH," MR. ROTTLER'S SLIDE.
 25 (EXHIBIT PUBLISHED TO JURY.)
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1 FIGURING OUT WHAT WERE THE RIGHT ASSUMPTIONS TO GO INTO THE
 2 MODEL.
 3 'CAUSE YOU BUILD THE MODEL, AND THEN YOU HAVE TO MAKE
 4 SOME ASSUMPTIONS ABOUT WHAT YOU THINK'S GOING TO HAPPEN IN THE
 5 FUTURE. AND THOSE ASSUMPTIONS ARE VERY CRITICAL. AND I WAS
 6 WORKING ON THOSE.
 7 Q. AND DID YOU HAVE THE SAME RESPONSIBILITIES IN CONNECTION
 8 WITH THE SIEBEL ACQUISITION?
 9 A. YES.
 10 Q. EVALUATING IT GOING FORWARD?
 11 A. EXCUSE ME. YES, EXACTLY THE SAME.
 12 Q. NOW, YOU MENTIONED THE FINANCIAL MODELS. COULD YOU TELL THE
 13 JURY EXACTLY WHAT YOUR ROLE WAS IN CONNECTION WITH ORACLE'S
 14 FINANCIAL MODELS AT THAT POINT?
 15 A. WELL, I WORKED WITH THE INVESTMENT BANKERS THAT ACTUALLY RAN
 16 THE PHYSICAL MODELS. THESE WERE GIGANTIC MODELS. IN FACT, THEY
 17 WERE SO LARGE THAT YOU COULDN'T EVEN EMAIL THEM. YOU'D TO HAVE
 18 HAND THEM TO EACH OTHER ON A HARD DISK, ON A MOVABLE DRIVE.
 19 BUT I WORKED WITH THEM AND WORKED ON SETTING THE
 20 RIGHT ASSUMPTIONS.
 21 Q. DID YOU ALSO PRESENT THOSE ASSUMPTIONS TO ORACLE'S BOARD?
 22 A. YES. THAT WAS MY JOB, TO -- NOT ONLY PRESENT IT TO THE
 23 BOARD, BUT TO TAKE ANY QUESTIONS ON THEM.
 24 Q. OKAY.
 25 NOW, DID YOU HAVE ANY PARTICULAR EXPERTISE OR
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1 EXPERIENCE THAT YOU BROUGHT TO THE FINANCIAL MODELING FOR THE
2 PEOPLESOFT ACQUISITION?
3 A. WELL, A FEW THINGS. FIRST OF ALL, I MYSELF HAD BEEN AN
4 INVESTMENT BANKER FOR OVER 13 AND A HALF YEARS BY THEN. AND OF
5 COURSE, I'D BEEN WORKING IN RUNNING ORACLE OPERATIONS BY THEN
6 FOR ABOUT FOUR YEARS. AND SO I REALLY -- YOU KNOW, IT'S
7 ACTUALLY NOW WHAT I TEACH AT SCHOOL, SO THEN I HAD THAT
8 EXPERIENCE ALREADY.

9 Q. AND APPROXIMATELY HOW MANY FINANCIAL MODELS HAVE YOU WORKED
10 ON IN YOUR LONG CAREER?

11 A. HUNDREDS, LITERALLY.

12 Q. ALL RIGHT. LET'S TALK SPECIFICALLY ABOUT ORACLE'S FINANCIAL
13 MODEL FOR THE PEOPLESOFT AND SIEBEL ACQUISITIONS.

14 AGAIN, WHY DID ORACLE HAVE THOSE PROJECTIONS
15 PREPARED? WHAT ARE THEY USED FOR?

16 A. WELL, THESE PROJECTIONS ARE THE BASIS FOR ASKING PERMISSION
17 FROM THE BOARD OF DIRECTORS TO SPEND 11 -- ACTUALLY MORE THAN
18 \$11 BILLION AND TO TAKE ON ALL THE LIABILITIES THAT COME WITH
19 PEOPLESOFT AND THE ASSETS.

20 SO THOSE MODELS ARE LITERALLY THE KEY JUSTIFICATION
21 TO SPEND \$11.1 BILLION.

22 Q. HOW AGGRESSIVE WERE YOUR GOING-FORWARD FINANCIAL
23 EXPECTATIONS IN THE ACQUISITION MODEL FOR PEOPLESOFT?

24 A. WELL, THE FINAL BOARD PRESENTATION THAT WAS GIVEN IN
25 DECEMBER, LITERALLY RIGHT BEFORE WE ACQUIRED PEOPLESOFT, WAS

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1 PEOPLESOFT ACQUISITION HAVE A CODE NAME?

2 A. YEAH. THE -- THE DEAL WAS CALLED SPICE. WE WERE ONION.
3 PEOPLESOFT WAS PEPPER. AND JD EDWARDS, WHICH WAS THEN PART OF
4 PEOPLESOFT, THAT -- THEY WERE JALAPEÑO, WHICH STARTS WITH A "J."
5 SO --

6 Q. AND WHY DO -- WHY DO YOU HAVE THESE KIND OF CODE NAMES IN
7 CONNECTION WITH DEALS?

8 A. WELL, YOU DON'T WANT IT TO LEAK. YOU DON'T WANT IT --
9 SOMEBODY LEAVES A PIECE OF PAPER OR A PRINTER OR LEAVES A LAPTOP
10 SOMEWHERE, THAT ALL OF A SUDDEN, THE WHOLE THING IS KNOWN
11 PUBLICLY.

12 I MEAN, THESE THINGS YOU WANT TO TRY TO -- YOU KNOW,
13 WHEN YOU FIRST DO THEM, YOU WANT TO KEEP THEM CONFIDENTIAL.

14 Q. OKAY.

15 IF WE COULD SHOW ON THE BOARD WHAT'S BEEN MARKED
16 PLAINTIFFS' EXHIBIT 615.

(EXHIBIT PUBLISHED TO JURY.)

18 MS. HOUSE: AND HOPEFULLY PULL IT OUT A LITTLE BIT SO
19 IT'S EASIER TO READ.

20 Q. COULD YOU TELL THE JURY WHAT THIS IS.

21 A. YEAH, THIS IS ACTUALLY THE PEOPLESOFT INCREMENTAL OPERATING
22 MODEL.

23 Q. AND WHEN WAS THIS MODEL PREPARED?

24 A. WELL, THIS ONE IN PARTICULAR -- I THINK THIS IS THE FINAL
25 ONE. I'D NEED TO LOOK AT IT, BUT THIS SHOULD BE THE FINAL ONE

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1 STILL VERY CONSERVATIVE, BECAUSE WE REALLY DIDN'T WANT TO GET IT
2 WRONG. WE WERE GOING TO BE MEASURED AGAINST THIS MODEL GOING
3 FORWARD. AND SINCE THIS WAS, ONE, A VERY LARGE ACQUISITION AND
4 EXTREMELY VISIBLE, BUT ALSO THE VERY FIRST ONE ON WHAT WAS AN
5 ACQUISITION STRATEGY, THAT WE FELT WE HAD TO EXCEED IT BECAUSE
6 OTHERWISE, YOU KNOW, THE BOARD WOULD NEVER HAVE SUPPORTED US
7 DOING ANOTHER DEAL OR ANOTHER DEAL AFTER THAT.

8 SO I THINK IT WAS CONSERVATIVE, AND, YOU KNOW, I
9 WANTED TO MAKE SURE WE MADE IT.

10 Q. NOW, BASED ON YOUR EXPERIENCE WITH ORACLE'S MULTIPLE
11 ACQUISITIONS AND ALSO AS AN INVESTMENT BANKER AND PROFESSOR IN
12 THIS AREA, WHEN FORECASTS ARE PRESENTED TO BOARD MEMBERS ABOUT
13 GOING-FORWARD FINANCIAL EXPECTATIONS AND GOALS, ARE THEY EVER
14 TREATED AS MARKETING HYPE?

15 A. THAT DOESN'T EVEN MAKE ANY KIND OF BUSINESS SENSE. I MEAN,
16 WHEN YOU'RE PRESENTING ON A BUSINESS OPPORTUNITY AND YOU'RE
17 TALKING ABOUT EITHER, YOU KNOW, MOVING INTO SOMETHING OR DOING
18 MORE SOMETHING, YOU WANT TO MAKE SURE THAT IT IS REALLY WHAT YOU
19 THINK OR AT LEAST EVEN CONSERVATIVE ABOUT WHAT YOU THINK BECAUSE
20 ALL THOSE THINGS YOU GET MEASURED AGAINST LATER.

21 SO I MEAN, YOU DON'T WANT TO DRAW SOME PIE-IN-THE-SKY
22 PICTURE BECAUSE THE FUTURE DOES HAPPEN, AND YOU WANT TO MAKE
23 SURE, HOPEFULLY, THAT YOU'VE -- YOU'VE MET YOUR -- YOU'VE SET
24 EXPECTATIONS CORRECTLY AND YOU'VE MET THEM.

25 Q. NOW, GOING BACK TO THE PEOPLESOFT FINANCIAL MODEL, DID THE
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1 THAT WAS DONE FOR DECEMBER.

2 Q. AND IT WAS FINAL BECAUSE IT WAS THE LAST ONE, AND WHAT DID
3 YOU DO WITH IT?

4 A. WELL, THIS IS THE ONE WE ACTUALLY USED FOR THE BOARD
5 PRESENTATION TO GET THE FINAL PERMISSION TO SPEND 11 --
6 \$11.1 BILLION ON PEOPLESOFT.

7 Q. AND WHAT WERE YOU TRYING TO SHOW THE BOARD WITH THIS MODEL?

8 A. WELL, THESE ARE ACTUALLY THE DRIVERS, THE IMPORTANT
9 ASSUMPTIONS THAT UNDERLIE THE PROFITS AND THE REVENUES, AND --
10 AND, REALLY, THE -- THE WHOLE OPERATING STRUCTURE OF PEOPLESOFT.

11 Q. OKAY. COULD YOU DESCRIBE --

12 YOU COULD PULL THAT BACK DOWN AND JUST MAYBE THE LEFT
13 SIDE OF THE PAGE.

(EXHIBIT PUBLISHED TO JURY.)

15 THE WITNESS: OKAY.

16 BY MS. HOUSE:

17 Q. COULD YOU DESCRIBE TO THE JURY WHAT'S ON THE LEFT SIDE OF
18 THE PAGE.

19 A. OKAY. SO FIRST OF ALL, ON THE LEFT SIDE, THE COLUMNS THAT
20 HAVE NUMBERS IN THEM, THOSE ARE ACTUALLY HISTORICAL NUMBERS.
21 THESE ARE PEOPLESOFT ACTUAL NUMBERS THAT WE KNEW FROM PUBLIC
22 RECORDS AND OTHERWISE ABOUT PEOPLESOFT.

23 AND, YOU KNOW, YOU CAN SEE THE VERY FIRST LINE OF
24 THIS IS ABOUT CUSTOMERS. THAT REALLY DRIVES THIS WHOLE MODEL.
25 AND WHAT YOU CAN SEE IS, YOU KNOW, SORT OF THE CUSTOMERS BY THE
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1 **FIRST COLUMN IS SEPTEMBER '03, THEN DECEMBER '03. THIS IS**
 2 **BEFORE WE BOUGHT THE COMPANY.**
 3 Q. OKAY. AND COULD YOU TELL THE JURY WHAT'S ON THE RIGHT-HAND
 4 SIDE OF THE MODEL?
 5 A. WELL --
 6 Q. LET THEM PULL IT UP.
 7 (EXHIBIT PUBLISHED TO JURY.)
 8 THE WITNESS: OKAY.
 9 MS. HOUSE: WHOOPS. WELL --
 10 Q. WELL, YOU CAN JUST TELL THEM, WHAT'S ON THE RIGHT-HAND SIDE
 11 OF THE MODEL --
 12 A. THERE.
 13 Q. -- WHAT'S THAT PART?
 14 (EXHIBIT PUBLISHED TO JURY.)
 15 THE WITNESS: OKAY. THAT'S -- THAT'S ACTUALLY -- THE
 16 RIGHT-HAND SIDE ACTUALLY HAS TWO PARTS TO IT. THIS -- ALL THE
 17 WAY TO THE RIGHT ARE YEARS, LIKE ANNUAL NUMBERS. AND THE ONES
 18 THAT OBVIOUSLY WE REALLY WORKED ON ARE THE ONES SORT OF IN THE
 19 MIDDLE. THEY'RE NOT HIGHLIGHTED RIGHT NOW. THEY'RE -- A
 20 LITTLE -- THERE YOU GO.
 21 (EXHIBIT PUBLISHED TO JURY.)
 22 THE WITNESS: THOSE ARE THE -- THOSE ARE ACTUALLY --
 23 SEE HOW THE DATES HAVE LITTLE "E'S" ON THEM. THAT MEANS
 24 "EXPECTED." SEE WAY IN THE BLUE, SO IT HAS "E." THOSE ARE
 25 CALLED PROJECTIONS. THOSE ARE THE ASSUMPTIONS THAT WE WERE
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1 CUSTOMER BASE AT THAT POINT.
 2 SO LET'S SAY 10,000 ALMOST.
 3 (CONTINUED NEXT PAGE, NOTHING OMITTED.)
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1 MAKING ABOUT, YOU KNOW -- ABOUT ALL SORTS OF THINGS, INCLUDING
 2 OBVIOUSLY, THE TOP LINE IS ALL ABOUT CUSTOMERS. THAT -- THAT'S
 3 WHAT THOSE 9,000-TYPE NUMBERS ARE.
 4 BY MS. HOUSE:
 5 Q. OKAY. AND DID YOU BELIEVE THAT THE ASSUMPTIONS THAT YOU
 6 USED IN THIS MODEL WERE REASONABLE?
 7 A. OH, YEAH. I MEAN, I BELIEVED THEY WERE CONSERVATIVE. WE
 8 WENT REALLY -- WE REALLY TRIED TO MAKE THEM CONSERVATIVE BECAUSE
 9 WE COULD NOT -- I MEAN, WE KNEW WE WERE PAYING 11.1 BILLION.
 10 WE NEEDED TO KNOW WE WERE GOING TO BE ABLE TO PAY FOR
 11 IT, AND WE DIDN'T WANT TO HAVE NUMBERS WHERE THEY WERE HOPEFUL
 12 OR SOMETHING LIKE THAT. THAT WOULDN'T MAKE SENSE BECAUSE THEN
 13 WE MIGHT BE DISAPPOINTED AND PAYING WAY TOO MUCH FOR PEOPLESOFT.
 14 Q. AND HOW MUCH TIME WAS SPENT IN MAKING -- IN TWEAKING THIS
 15 MODEL MAKING SURE THAT IT WAS SOMETHING YOU FELT WAS REASONABLE?
 16 A. I KNOW IT SOUNDS NUTS, BUT I WOULD SAY THOUSANDS OF HOURS.
 17 WHEN YOU ADD UP ALL OF US, LITERALLY THOUSANDS OF HOURS.
 18 Q. NOW, ON THE FIRST PAGE, YOU HAD MENTIONED THE REFERENCE TO
 19 CUSTOMERS. THERE'S A LINE THAT SAYS "INSTALLED CUSTOMER BASE"
 20 AND THEN THERE'S A NUMBER, 9,920.
 21 WHAT IS THAT?
 22 (EXHIBIT PUBLISHED TO JURY.)
 23 THE WITNESS: THAT'S ACTUALLY THE -- THE NUMBER OF
 24 CUSTOMERS. THE "BOP" MEANS "BEGINNING OF PERIOD." SO THAT'S
 25 9,920 CUSTOMERS. THAT'S WHAT WE BELIEVED TO BE THE PEOPLESOFT
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1 BY MS. HOUSE:
 2 Q. NOW, MOVING TO THE NEXT PAGE OF THE MODEL. IT SAYS AT THE
 3 TOP "MAINTENANCE REVENUE BUILDUP."
 4 CAN YOU SHOW -- THERE YOU GO.
 5 (EXHIBIT DISPLAYED ON SCREEN.)
 6 AND CAN YOU EXPLAIN TO THE JURY WHAT THIS SECTION OF
 7 THE MODEL IS DOING?
 8 A. OKAY.
 9 THIS SECTION SORT OF FEEDS OFF THE LINE WE WERE
 10 TALKING ABOUT JUST NOW. AND THIS IS HOW YOU FIGURE OUT HOW
 11 MUCH MAINTENANCE, THIS IS THE SUPPORT, THE RENEWALS, THE
 12 SUBSCRIPTIONS, YOU CAN USE ALL THESE DIFFERENT WORDS, BUT THIS
 13 IS HOW YOU BUILD UP AND FIGURE OUT THE DOLLARS AND CENTS
 14 NUMBERS THAT COME FROM THE CUSTOMER NUMBERS.
 15 Q. NOW, AS YOU WERE DOING THIS MODELING, YOU WERE -- DID YOU
 16 HAVE ANY ASSUMPTIONS ABOUT THE CUSTOMERS STAYING WITH YOU? HOW
 17 LONG THEY WOULD STAY?
 18 A. YEAH. I MEAN, THE MODEL HAS US LOSING LIKE .8 A QUARTER,
 19 SOMETHING LIKE THAT. SO BASICALLY GETTING MOST OF THE
 20 CUSTOMERS. AND, YOU KNOW, WE WANTED TO HAVE A NUMBER IN THERE
 21 THAT WOULD SHOW THAT, YOU KNOW, THAT GAVE US A LOT OF ROOM IF
 22 WE WERE TO LOSE A LITTLE BIT MORE THAN THAT. BUT WE WERE
 23 EXPECTING TO KEEP MOST OF THE CUSTOMERS. I THINK WHAT WE WERE
 24 EXPECTING, I THINK IT MIGHT BE EVEN ON THE PREVIOUS PAGE, IS
 25 LIKE LOSING MAYBE THREE PERCENT, SOMETHING LIKE THAT.
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1 Q. NOW, WHAT IS ORACLE'S EXPERIENCE WITH A LIFETIME OF ITS
2 RELATIONSHIP WITH A CUSTOMER?

3 A. WELL, THE REALITY IS THAT UNLESS A CUSTOMER GOES OUT OF
4 BUSINESS OR MERGES THEIR SYSTEM OUT OF EXISTENCE, OR SOMETHING
5 LIKE THAT, THEY STAY WITH US FOR REALLY ALMOST, I WOULD SAY
6 FOREVER, BUT DOZENS OF YEARS.

7 I MEAN, I BET YOU WE STILL HAVE OUR ORIGINAL
8 CUSTOMERS FROM ORACLE DATABASE VERSION FIVE AND WE ARE ON 11G
9 RIGHT NOW. SO THEY STAY REALLY FOREVER.

10 Q. AND WAS THAT ONE OF THE ATTRACTIONS OF THE DEAL?

11 A. YEAH, OF COURSE. HAVING A CUSTOMER BASE THAT RENEWS
12 SUPPORT AND THAT STAYS WITH YOU OVER TIME IS A HUGE VALUE.

13 Q. WHAT ROLE DO YOU UNDERSTAND SUPPORT PLAYS IN KEEPING A
14 CUSTOMER?

15 A. IF YOU DO A GOOD JOB SUPPORTING A CUSTOMER, YOU HAVE THEM
16 FOREVER. THEY ARE VERY HAPPY. THEY DO A LOT OF THINGS INCLUDE
17 BUY OTHER THINGS.

18 Q. AND GIVEN ORACLE'S REAL WORLD EXPERIENCE WITH CUSTOMER
19 RETENTION, IS A TEN-YEAR RELATIONSHIP WITH A SUPPORT CUSTOMER A
20 REASONABLE ASSUMPTION?

21 A. OH, YEAH. TEN YEARS IS CONSERVATIVE.

22 Q. WE HAVE SEEN FROM SAP BOARD TESTIFY, FOR INSTANCE FROM
23 MR. SHAI AGASSI, THAT SAP THOUGHT THAT THE PEOPLESOFT
24 MAINTENANCE CUSTOMERS WHOSE CONTRACTS ORACLE ACQUIRED, HE
25 THOUGHT THEY WERE IN PLAY DUE TO THIS WHAT THEY CALL FEAR,
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1 **INCREMENTAL CUSTOMER IS CLOSER TO A HUNDRED PERCENT.**

2 Q. WHAT DOES ORACLE THEN DO WITH THOSE MAINTENANCE PROFITS?

3 A. THIS IS WHAT WE SPEND ON EITHER PUTTING THE MONEY INTO R&D
4 OR ACQUIRING R&D. AND THAT'S WHAT OUR ACQUISITIONS ARE FUNDED
5 WITH, QUITE FRANKLY, ADDITIONAL R&D.

6 Q. AND DOES THAT R&D HAVE ANY IMPACT IN TERMS OF JOBS?

7 A. OH, YEAH. I MEAN, WE HAVE, AS YOU HEARD, WE HAVE A
8 HUNDRED THOUSAND EMPLOYEES AT THAT TIME. WE HAD WHAT, 50,000
9 AND SO IT IS A LOT OF JOBS, OF COURSE.

10 Q. IS ORACLE THE ONLY COMPANY IN THE SOFTWARE BUSINESS THAT
11 EARNS HIGH SUPPORT MARGINS AND THEN TURNS AROUND TO FUND R&D
12 WITH THOSE?

13 A. NO, THAT IS ACTUALLY THE MODEL. THAT'S WHAT IBM AND SAP,
14 THAT'S WHAT WE ALL DO. THIS IS HOW YOU DO IT.

15 Q. NOW LOOKING AT THE NEXT PAGE IN THE MODEL, YOU -- IT SAYS
16 IN THE SECOND HALF ON THE BOTTOM IT SAYS, "OPERATING EXPENSE
17 BUILDUP". AND THE FIRST LINE OF DATA SHOWN UNDERNEATH SAYS
18 "R&D COSTS".

19 CAN YOU EXPLAIN TO THE JURY WHAT IS INCLUDED IN THAT
20 LINE ITEM ON THE LEFT-HAND SIDE?

21 A. SO, R&D COSTS ARE THE DEVELOPERS WHO ACTUALLY BUILD THE
22 SOFTWARE AND BUILD ALL THE FIXES AND DO THE SECURITY FIXES AND
23 THE REGULATORY UPDATES. BUT THESE ARE THE GUYS, GUYS AND GALS,
24 ACTUALLY, THAT BUILD THE PRODUCTS. AND AS YOU CAN SEE,
25 PEOPLESOFT WAS SPENDING A LITTLE MORE THAN 500 MILLION A YEAR
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1 UNCERTAINTY AND DOUBT, SOMETIMES CALLED FUD.

2 BECAUSE OF THAT FUD, DID YOU HAVE ANY CONCERNS THAT
3 THE PEOPLESOFT SUPPORT CUSTOMERS WOULD STAY WITH ORACLE?

4 A. WELL, WE KNEW THAT WE REALLY HAD TO EARN THEIR TRUST
5 DURING THIS PERIOD. THE ACQUISITION WENT QUITE AWHILE, 18
6 MONTHS, AND THESE FOLKS DID NOT KNOW US NECESSARILY, SO WE
7 DEFINITELY KNEW THAT WE HAD TO EARN THEIR BUSINESS, BASICALLY,
8 AND EARN THEIR TRUST.

9 Q. OKAY.

10 GOING BACK TO ORACLE'S ACQUISITION MODEL FOR
11 PEOPLESOFT AND THIS PAGE, WHAT WAS THE MAINTENANCE GROSS MARGIN
12 THAT YOU ASSUMED FOR FISCAL YEARS 2005 THROUGH 2008?

13 A. WELL, AGAIN, SHOWING, YOU KNOW, US BEING CONSERVATIVE,
14 FRANKLY, WE ASSUMED AN 80 PERCENT GROSS MARGIN.

15 Q. HOW DOES THAT 80 PERCENT GROSS MARGIN ON SUPPORT COMPARE
16 WITH ORACLE'S ACTUAL EXPERIENCE?

17 A. WELL, THE WAY IT ACTUALLY WORKS IS THE MORE CUSTOMERS YOU
18 HAVE, YOU DON'T NECESSARILY SPEND MORE BECAUSE YOU DON'T
19 NECESSARILY HAVE TO MAKE THE FIXES MORE TIME BECAUSE YOU DID
20 THEM ONCE, YOU DON'T HAVE TO BUILD A NEW CALL CENTER.

21 YES, IF IT TRIPLES, YOU'D HAVE TO SPEND A LOT MORE
22 FOR MAYBE ANOTHER CALL CENTER OR SOMETHING LIKE THAT. BUT IN
23 GENERAL, AN INCREMENTAL CUSTOMER HUNDREDS, THOUSANDS OF
24 CUSTOMERS, AT THAT POINT YOU WOULD NOT -- YOU KNOW, THOSE WOULD
25 BE VERY, VERY PROFITABLE, CLOSER TO A HUNDRED PERCENT. AN
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1 ON IT, A LITTLE LESS THAN 600 MILLION.

2 Q. DID SAP OR TOMORROWNOW MAKE THAT INVESTMENT?

3 A. NOT WHEN THEY TOOK THE PEOPLESOFT/J.D. EDWARDS SOFTWARE,
4 NO.

5 Q. ALL RIGHT.

6 SO WHEN YOU PRESENTED THE RESULTS OF THIS FINANCIAL
7 MODEL TO THE BOARD, DID YOU BELIEVE THEY WERE REASONABLE?

8 A. YES. THEY HAD TO BE REASONABLE. THEY HAD TO ACTUALLY BE
9 CONSERVATIVE BECAUSE WE WERE ASKING TO SPEND JUST AN ABSOLUTELY
10 ENORMOUS, YOU KNOW, \$11 BILLION FOR US AT THE TIME.

11 WE SUBSEQUENTLY, OF COURSE, SPENT SIGNIFICANTLY
12 MORE, BUT AT THE TIME IT WAS OUR FIRST DEAL. THESE HAD TO BE
13 NOT ONLY REASONABLE, BUT VERY MAKEABLE.

14 Q. WE ARE DONE WITH THAT ONE. THANK YOU.

15 LET'S BRIEFLY GO OVER ORACLE'S ACQUISITION OF
16 SIEBEL. WHY DID ORACLE ACQUIRE SIEBEL?

17 A. WELL, FOR A NUMBER OF REASONS. FIRST OF ALL, SIEBEL WAS
18 THE ABSOLUTE LEADER IN WHAT'S CALLED CRM OR CUSTOMER
19 RELATIONSHIP MANAGEMENT.

20 WHAT THAT ACTUALLY IS IS CALLED CENTER SOFTWARE. SO
21 WHEN YOU CALL THE OPERATOR THAT'S HELPING YOU IS PROBABLY USING
22 SIEBEL SOFTWARE. OR THE OTHER ONE WAS SALES FORCE AUTOMATON.

23 SO A LOT OF SALESPEOPLE WOULD USE TO MANAGE
24 PROSPECTS, PROSPECTS AND CLIENTS, AND THINGS LIKE THAT IN
25 SIEBEL SOFTWARE. AND THEY WERE BY FAR THE NUMBER ONE LEADER IN
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1 THIS AREA.

2 THE OTHER THING WE WOULD GET, OF COURSE, IS THEIR

3 4,000 CUSTOMERS, MANY OF WHICH, YOU KNOW, WE DIDN'T HAVE

4 BEFORE.

5 Q. AND HOW DID YOU ANTICIPATE THAT THE ACQUISITION OF SIEBEL

6 WOULD CHANGE THE DYNAMIC IN THE RELATIONSHIP BETWEEN SAP AND

7 ORACLE?

8 A. WELL, IT WAS ACTUALLY VERY IMPORTANT BECAUSE WE WOULD HAVE

9 THE NUMBER ONE PLAYER. THOUGH SAP ACTUALLY HAD CRM SOFTWARE AS

10 DID ORACLE AND PEOPLESOFT, WE DIDN'T HAVE THE NUMBER ONE.

11 SO, FOR THE FIRST TIME WE WOULD ACTUALLY HAVE A

12 PRODUCT LINE THAT WAS, IN FACT, THE BIG GUY, THE LEADER. AND

13 BUYING SIEBEL, YOU KNOW, WE VIEWED IT AS A REAL GAME CHANGER

14 BECAUSE WE COULD OFFER THE NUMBER ONE PRODUCT.

15 Q. AND HOW MUCH DID ORACLE PAY TO ACQUIRE SIEBEL?

16 A. WE SPENT OVER \$6 BILLION FOR IT.

17 Q. NOW, DID THE SIEBEL ACQUISITION ALSO HAVE A CODE NAME?

18 A. ACTUALLY, IT HAD TWO. SO WE HAD -- WE HAD COLORS FOR US.

19 AND THEY WERE INDIGO, I THINK, BECAUSE WE DECIDED TO STOP USING

20 THE FIRST LETTER.

21 Q. TOO OBVIOUS?

22 A. YES, TOO OBVIOUS.

23 THEN, OF COURSE, WE STARTED GETTING CONFUSED. SO

24 THEY HAD NAMES, AND THEIR NAME WAS SIERRA. THEY DID LIKE

25 MOUNTAINS. I DON'T REMEMBER WHAT MOUNTAIN RANGE. STARTS WITH

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1 THE MODEL THAT WE'RE SHOWING?

2 A. THIS IS REALLY VERY SIMILAR, JUST SLIGHTLY CLEANED UP TO

3 WHAT WE SAW WITH THE PEOPLESOFT DEAL.

4 SO THESE ARE THE -- THESE ARE THE MODEL INPUTS

5 AREAS. ON THE LEFT SIDE ARE HISTORICAL. THAT'S WHY THE

6 NUMBERS, THE DATES ALL HAVE A'S. THAT MEANS ACTUAL. AND THEN

7 FURTHER OUT, IT'S PROJECTIONS, FURTHER TO THE RIGHT.

8 Q. AND WERE YOU PERSONALLY INVOLVED IN THE CREATION OF THIS

9 MODEL?

10 A. YES, I WAS VERY INVOLVED, ACTUALLY, IN ALL THE ASSUMPTIONS

11 HERE WITH COLLABORATION WITH OTHERS.

12 Q. AND WHAT WAS THE PURPOSE OF CREATING THIS PROJECT SIERRA

13 FINANCIAL MODEL?

14 A. THIS WAS, AGAIN, EXACTLY THE SAME; TO JUSTIFY OUR BOARD'S

15 DECISION TO SPEND 6 BILLION PLUS DOLLARS ON BUYING SIEBEL.

16 Q. DID YOU ALSO CONSIDER, LIKE YOU HAD THE PROJECT SIERRA

17 MODEL, DID YOU CONSIDER THIS TO BE A REASONABLE MODEL?

18 A. YES. WE CONSIDERED IT TO BE VERY MAKEABLE, VERY

19 REASONABLE, FRANKLY CONSERVATIVE.

20 Q. AND WHY, AGAIN, WOULD YOU -- WHY, AGAIN, DID YOU AIM FOR A

21 CONSERVATIVE MODEL?

22 A. BECAUSE, AGAIN, WE WOULD BE SPENDING A LOT OF MONEY AND

23 PUTTING IN SOMETHING THAT WASN'T ACHIEVABLE DIDN'T MAKE SENSE.

24 WE REALLY WANTED TO BE ABLE TO JUSTIFY PAYING ALL THAT MONEY

25 FOR THE COMPANY, AND WE WANTED TO MAKE SURE WE SET EXPECTATIONS

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1 AN O.

2 BUT THEY WERE INDIGO IN OUR MODELS AND SIERRA IN

3 THEIRS. WE STARTED CALLING IT SIERRA SO WE COULD KEEP IT

4 STRAIGHT.

5 Q. LET ME SHOW YOU A PAGE FROM PLAINTIFFS' EXHIBIT 614. IT'S

6 AT PAGE 31284.

7 CAN YOU PULL THAT UP, PLEASE?

8 (EXHIBIT DISPLAYED ON SCREEN.)

9 CAN YOU TELL THE JURY WHAT THIS IS?

10 IT'S IN YOUR BINDER. WE BLEW IT UP TO MAKE IT

11 EASIER TO READ FOR THE JURY.

12 A. I JUST DON'T SEE IT.

13 Q. 614?

14 A. 614. IT'S IN FRONT HERE. YEP. OH, YEAH. WE WERE OKAY.

15 SO HERE'S -- THIS IS THE MODEL TO SUPPORT THE SIEBEL

16 DEAL. IF YOU LOOK UP ABOVE BEFORE THE BLOWUP, YOU'LL SEE IT

17 SAYS ORACLE, YOU KNOW, ORANGE. AND THAT'S US. AND INDIGO,

18 PROJECT INDIGO, YOU WILL SEE IS SIEBEL. AND THIS IS THE

19 DRIVERS FOR THE MODEL.

20 Q. AND THE PAGE THAT WE ARE ON IS THE ONE THAT'S TABBED IN

21 YOUR BINDER?

22 THAT ONE, THE TITLE PAGE YOU CAN TURN TO OR YOU CAN

23 LOOK ON THE SCREEN, WHICHEVER YOU PREFER.

24 A. YES.

25 Q. IT SAYS "SUMMARY INCREMENTAL CASE". WHAT IS THIS PART OF

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1 CORRECTLY, AND WE MET THEM.

2 Q. CAN YOU GIVE THE JURY AN EXAMPLE OF HOW YOU USED A

3 PARTICULARLY CONSERVATIVE INPUT INTO THIS MODEL?

4 A. ACTUALLY, THE NUMBERS THAT WE USED FOR A LOT OF THE

5 DIFFERENT REVENUE AMOUNTS WERE ACTUALLY LOWER THAN WHAT

6 ANALYSTS WERE EXPECTING. THESE ARE FINANCIAL INDUSTRY

7 ANALYSTS, THE FOLKS THAT WORK FOR THE BIG BROKERAGE FIRMS ALL

8 MAKE THESE ESTIMATES ABOUT HOW A PUBLIC COMPANY WILL PERFORM.

9 AND THE NUMBERS WE USED WERE LOWER THAN WHAT FOLKS

10 THOUGHT SIEBEL WOULD DO ON THEIR OWN. AND SIEBEL, UNDER

11 ORACLE'S BRAND NAME, WOULD DO EVEN BETTER, NOT LESS WELL. SO

12 WE WERE SORT OF DOUBLY CONSERVATIVE. LESS THAN WHAT THEY WERE

13 GOING TO DO ON THEIR OWN, GIVING NO CREDIT TO WHAT THEY WOULD

14 DO WITH US.

15 MS. HOUSE: THANK YOU. IF YOU WOULD PUT THAT ONE

16 DOWN.

17 BY MS. HOUSE:

18 Q. JUST SO THE JURY UNDERSTANDS, AFTER THE ACQUISITIONS OF

19 THESE TWO COMPANIES, DID ORACLE HAVE AN OBLIGATION TO SECURE

20 ANY VALUATION REPORTS FROM THIRD PARTY COMPANIES?

21 AND WHAT WERE THEY USED FOR?

22 A. SO, THE WAY THIS WORKS IS THAT WE PUBLISH THESE FINANCIAL,

23 FINANCIAL RESULTS. AND WHEN YOU BUY A COMPANY, YOU'LL ACTUALLY

24 USUALLY HIRE LIKE AN S & P OR A DUFFENFELT (PHONETIC). THESE

25 ARE THIRD PARTY FOLKS WHO DO WHAT'S CONSIDERED AN OBJECTIVE

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1 **THIRD PARTY VALUATION FOR ACCOUNTING PURPOSES. AND SO THEY TRY**
 2 **TO ALLOCATE PURCHASE PRICE. AND THE PURCHASE PRICE THAT'S IN**
 3 **EXCESS OF WHAT THEY VIEW IS IDENTIFIABLE ASSETS.**

4 Q. AND COULD YOU CONFIRM TO THE JURY AND THE COURT THAT THE
 5 TABS IN YOUR BINDER, WHICH ARE TABS 13 AND 658, ARE THOSE THE
 6 THIRD PARTY VALUATION REPORTS THAT WERE SECURED BY ORACLE IN
 7 CONNECTION WITH THE PEOPLESOFT AND SIEBEL ACQUISITIONS?

8 A. **YES. ONE IS FOR PEOPLESOFT AND THE OTHER ONE IS FOR**
 9 **SIEBEL.**

10 Q. OKAY. THANK YOU.

11 LET'S LEAVE THE FINANCIAL MODELS BEHIND AND TURN TO
 12 SAP'S ACQUISITION OF TOMORROWNOW.

13 WHEN DID SAP ANNOUNCE ITS ACQUISITION AND PLANS FOR
 14 TOMORROWNOW TO YOUR MEMORY?

15 A. **THEY DID IT ONE DAY AFTER OUR, BASICALLY OUR BIG LAUNCH IN**
 16 **JANUARY OF 2005.**

17 Q. DO YOU REMEMBER WHAT ORACLE WAS CALLING THAT JANUARY 18TH,
 18 KICK-OFF EVENT?

19 A. **PEOPLESOFT AND ORACLE BETTER TOGETHER.**

20 Q. AND WHAT WAS ORACLE TRYING TO ACHIEVE WITH THAT
 21 JANUARY 18TH EVENT?

22 A. **WELL, WE WERE REALLY TRYING TO LAY OUT OUR VISION GOING**
 23 **FORWARD FOR THE CUSTOMERS. THERE WERE PARTNERS THERE. THERE**
 24 **WERE CUSTOMERS THERE. THERE WERE USERS, ET CETERA. THE PRESS**
 25 **WAS THERE.**

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1 EVERYWHERE.

2 Q. WHAT DID ORACLE DO IN RESPONSE?

3 A. **WELL, FIRST WE TRIED TO FIGURE OUT WHAT WAS GOING ON A**
 4 **LITTLE BIT. LITTLE DID WE KNOW WE HAD NO ACTUAL IDEA, BUT**
 5 **FIRST WE TRIED TO LEARN WHAT IT WAS. AND THEN WE TRIED TO**
 6 **COMMUNICATE TO THE CUSTOMER BASE, YOU KNOW, WHAT WE OFFERED AND**
 7 **SHOWED THE VALUE OF SUPPORT AS OFFERED BY ORACLE.**

8 Q. GOING FORWARD, IN CONNECTION WITH THE SAFE PASSAGE
 9 PROGRAM, HOW DID ORACLE FIGHT BACK?

10 A. **WELL, WE LITERALLY HAD TO SORT OF OVERCOMMUNICATE AND**
 11 **OVERSUPPORT ALL OF THE CUSTOMERS BECAUSE THE TOMORROWNOW WAS**
 12 **EVERYWHERE. AND WE REALLY TRIED TO BASICALLY DO AN EVEN BETTER**
 13 **JOB. WE EXTENDED SUPPORT DATES, ALL SORTS OF THINGS THAT WERE**
 14 **RATHER EXPENSIVE, AND WE JUST CONSTANTLY TRIED TO PROVE THE**
 15 **VALUE OF SUPPORT TO OUR CUSTOMERS AT THE TIME.**

16 Q. WAS THAT HARD TO DO WHEN SOMEBODY WAS OFFERING SUPPORT AT
 17 HALF PRICE?

18 A. **IT'S HARD TO DO AT HALF PRICE. IT'S REALLY HARD TO DO AT**
 19 **ZERO, AND THAT WAS GOING ON.**

20 Q. ALL RIGHT. LET'S MOVE FROM THE -- MOVE ON TO THE QUESTION
 21 OF THE APPROPRIATE DAMAGES HERE.

22 MS. CATZ, WOULD ORACLE HAVE PAID WHAT IT DID FOR
 23 PEOPLESOFT AND SIEBEL KNOWING THAT ORACLE'S KEY COMPETITOR
 24 WOULD HAVE ACCESS TO THE SOFTWARE AND SUPPORT MATERIALS THAT
 25 ORACLE THOUGHT WERE ITS ALONE?

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CATZ - DIRECT / MS. HOUSE

1 **WE WERE REALLY TRYING TO REALLY LAY OUT OUR PLANS**
 2 **GOING FORWARD FOR THE PRODUCTS, FOR THE VISION OF THE TWO**
 3 **COMPANIES WORKING TOGETHER, AND TO SOME EXTENT WE WANTED TO**
 4 **KIND OF PUT THE DRAMA OF THE PREVIOUS 18 MONTHS BEHIND US.**

5 Q. AND HOW DID YOU LEARN ABOUT SAP'S NEXT DAY ACQUISITION OF
 6 TOMORROWNOW?

7 A. **IT WAS A HUGE, HUGE ANNOUNCEMENT. I MEAN, ALL OF ORACLE**
 8 **LIT UP. IT WAS GIGANTIC. THE PRESS PICKED IT UP. IT WAS, YOU**
 9 **KNOW, ORACLE PAYS 10 BILLION, SAP PAYS 10 MILLION GETS THE SAME**
 10 **THING, TYPE OF THING. IT WAS EVERYWHERE. ALL OF ORACLE WAS**
 11 **TALKING ABOUT IT.**

12 Q. DO YOU RECALL THE NAME OF THE PROGRAM THAT SAP ANNOUNCED
 13 USING TOMORROWNOW AS ITS SUPPORT FIRST STEP?

14 A. **SAFE PASSAGE.**

15 Q. AND WHAT DID YOU UNDERSTAND SAP WAS GOING TO DO WITH
 16 TOMORROWNOW AGAINST ORACLE?

17 A. **WELL, WHAT I UNDERSTOOD WAS WHAT THEY SAID THEY WERE GOING**
 18 **TO TRY TO DO, WHICH WAS TAKE THOSE CUSTOMERS WE HAD JUST**
 19 **ACQUIRED AND OFFER THEM IN COMPETITION WITH US SUPPORT FOR THE**
 20 **PEOPLESOFT AND J.D. EDWARDS PRODUCTS.**

21 Q. DID THE FACT THAT IT WAS SAP WHO HAD ACQUIRED TOMORROWNOW
 22 MAKE A DIFFERENCE TO ORACLE?

23 A. **OH, YEAH, IT MADE A TON OF DIFFERENCE BECAUSE SAP WAS THE**
 24 **NUMBER ONE PLAYER IN THE MARKET. IT GAVE THIS WHOLE OFFERING**
 25 **INCREDIBLE CREDIBILITY, AND THE ANALYSTS WROTE ABOUT IT**

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CATZ - DIRECT / MS. HOUSE

1 A. **NO. WE COULDN'T BECAUSE WE WOULDN'T HAVE THE EXCLUSIVE**
 2 **RIGHTS ANYMORE. SO A LOT OF THESE CUSTOMERS WOULD, IN FACT, BE**
 3 **A JUMP BALL. AND WE COULDN'T COUNT ON THE BILLION TWO, WHICH**
 4 **UNDERLIES THE ENTIRE MODEL, AND SO WE COULDN'T COUNT ON THE**
 5 **BILLION TWO COMING IN MINIMALLY ANNUALLY TO PAY THE**
 6 **\$11 BILLION.**

7 Q. WHAT ADVANTAGES WOULD ORACLE LOSE BY PROVIDING SAP ACCESS
 8 TO ITS SOFTWARE AND SUPPORT MATERIALS AT THAT TIME?

9 A. **IT'S THE SAME ADVANTAGES THAT ALL OF US SOFTWARE COMPANIES**
 10 **HAVE. WHEN YOU HAVE THE RIGHT TO USE YOUR SOFTWARE EXCLUSIVELY**
 11 **AND YOU SELL SUPPORT, AND YOU CAN DO NOT ONLY THE UPDATE**
 12 **WRITES, BUT THE SECURITY FIXES, AND REALLY EVERYTHING, REALLY**
 13 **ALL THE SUPPORT. WHEN YOU ARE THE ONLY ONE WHO HAS MADE THE**
 14 **INVESTMENT IN IT, IT'S A HUGE ADVANTAGE THAN FOR -- OVER**
 15 **ANYBODY ELSE.**

16 Q. NOW, MS. CATZ, YOU'VE HEARD THE TESTIMONY OF YOUR FORMER
 17 CO-PRESIDENT, MR. PHILLIPS, AND THEN MR. ELLISON TODAY ABOUT
 18 THE BILLIONS IN LICENSE FEES THAT THEY BELIEVE ORACLE
 19 REASONABLY WOULD BE SEEKING FROM SAP FOR ACCESS TO THE SOFTWARE
 20 AND SUPPORT MATERIALS THAT SAP TOOK FROM ORACLE IF IT WAS BEING
 21 EVALUATED ON JANUARY 19, 2005.

22 DO YOU AGREE WITH THEM? AND WHY?

23 MR. LANIER: OBJECTION, YOUR HONOR. WE WOULD LIKE A
 24 CONTINUING OBJECTION TO THIS LINE OF QUESTIONING AS A
 25 **NONDISCLOSED EXPERT OPINION, CALLING FOR SPECULATION AND THE**
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CATZ - DIRECT / MS. HOUSE

1 REASONS WE BRIEFED.
 2 THE COURT: ALL RIGHT. OVERRULED.
 3 THE WITNESS: SEE, RIGHT THEN AND THERE, WE HAD JUST
 4 PAID \$11 BILLION, OVER \$11 BILLION FOR THIS ASSET FOR THESE
 5 CUSTOMERS.
 6 IF WE WERE ALL OF A SUDDEN GOING TO GIVE A LICENSE
 7 TO THE NUMBER ONE PLAYER IN THE INDUSTRY TO HAVE THAT SAME
 8 SOFTWARE AND SUCH THAT WE WOULD HAVE TO COMPETE FOR THOSE
 9 EXISTING CUSTOMERS ALL OVER AGAIN, AND, FRANKLY, THEY WOULD
 10 HAVE AS GOOD A CHANCE, IF NOT BETTER, OF WINNING BECAUSE THEY
 11 ARE THE NUMBER ONE PLAYER, IT'S DEFINITELY IN THE BILLIONS.
 12 THERE'S NO QUESTION. WE NEVER WOULD HAVE PAID \$11 BILLION FOR
 13 IT. WE COULDN'T AFFORD IT. AND TO SELL A LICENSE, IT WOULD
 14 HAVE TO MAKE UP FOR THE LOSS THAT WE WOULD GET BY GIVING IT
 15 TO -- SELLING IT TO SAP.
 16 BY MS. HOUSE:
 17 Q. WOULD YOU TAKE PAYMENT FROM SAP FOR ACCESS TO ORACLE'S
 18 SOFTWARE AND SUPPORT MATERIALS OVER TIME?
 19 A. NO, OF COURSE, NOT. WE HAD TO PAY UP FRONT. WE DIDN'T
 20 PAY FOR PEOPLESOFT, YOU KNOW, ON LAYAWAY EITHER. I MEAN, WE
 21 PAID IT ALL UP FRONT.
 22 SAP WOULD HAVE TO PAY IT ALL UP FRONT. BECAUSE
 23 FOR -- NOT ONLY FOR THE FACT THAT WE HAD JUST PAID IT, I CAN
 24 ONLY IMAGINE TELLING MY BOARD, WE WILL GET IT OVER TIME,
 25 DEPENDING ON HOW WELL THEY DO.

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CATZ - CROSS / MR. LANIER

1 VALUE OF WHAT THEY DID AT ALL.
 2 MS. HOUSE: THANK YOU, MS. CATZ.
 3 THE COURT: ALL RIGHT.
 4 CROSS-EXAMINATION?
 5 MR. LANIER: THANK YOU.
 6 CROSS-EXAMINATION
 7 BY MR. LANIER:
 8 Q. GOOD MORNING, MS. CATZ. STILL MORNING? YES.
 9 NICE TO SEE YOU AGAIN.
 10 MS. HOUSE: DO YOU HAVE A BINDER FOR ME?
 11 MR. LANIER: I MIGHT, I MIGHT NOT.
 12 MS. HOUSE: ALL RIGHT.
 13 MR. LANIER: HOW ABOUT THAT?
 14 MS. HOUSE: THAT SOUNDS PROMISING.
 15 MR. LANIER: I'M JUST TRYING TO KEEP IT SHORT.
 16 BY MR. LANIER:
 17 Q. MS. CATZ, YOU TEACH A CLASS I HEAR?
 18 A. YES, I DO.
 19 Q. DO YOU GIVE OUT ANY HOMEWORK?
 20 A. YES, I DO.
 21 Q. DO PEOPLE GET IT RIGHT EVERY TIME THEY GIVE IT BACK TO YOU
 22 THE FIRST TIME?
 23 A. WELL, WE TALK ABOUT IT IN CLASS. THEY ARE BUSINESS
 24 STUDENTS. THEY DON'T -- THEIR HOMEWORK IS NOT SUBMITTED UNTIL
 25 THE EXAMS.

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CATZ - DIRECT / MS. HOUSE

1 BUT, FRANKLY, I DIDN'T EVEN KNOW HOW WE WOULD EVEN
 2 MEASURE IT. BECAUSE WE ARE EVEN IN DISPUTE RIGHT NOW ABOUT
 3 WHICH CUSTOMERS. WE WOULD END UP BACK IN COURT. THE ONLY WAY
 4 TO DO IT IS UP FRONT JUST LIKE WE PAID FOR IT.
 5 Q. NOW SAP'S COUNSEL IN HIS OPENING STATEMENT SAID THAT SAP
 6 STANDS READY TO PAY ORACLE \$40 MILLION AS COMPENSATION FOR THE
 7 INFRINGEMENT IT HAS NOW ADMITTED TO.
 8 WHY HAVEN'T YOU TAKEN THAT OFFER?
 9 A. TAKING \$40 MILLION FROM SAP, SAP PAYING US \$40 MILLION IS
 10 A REWARD FOR THEIR BAD BEHAVIOR, FRANKLY. IT ACTUALLY, FOR
 11 PEOPLE WHO SAY THEY ARE TAKING RESPONSIBILITY FOR EVERYTHING
 12 THEY DID, THIS IS EXACTLY THE OPPOSITE OF THAT.
 13 THIS IS LIKE TAKING SOMEONE'S WATCH AND HOCKING IT.
 14 SAY IT'S A \$2,000 WATCH, AND HOCKING IT FOR \$20, AND THEN
 15 OFFERING TO GIVE US \$20. IT'S CRAZY.
 16 Q. WHAT WOULD ACCEPTING \$40 MILLION AS COMPENSATION FOR SAP'S
 17 ADMITTED EXTENSIVE INFRINGEMENT OF ORACLE'S SOFTWARE AND
 18 SUPPORT MATERIAL SIGNAL?
 19 A. ACTUALLY, IT'S A REWARD FOR BAD BEHAVIOR. AND IT
 20 COMPLETELY UNDERVALUES THE ENTIRE BASIS OF OUR INDUSTRY THAT
 21 ALL OF US PARTICIPATE IN. BECAUSE WE'RE ALL ABOUT INTELLECTUAL
 22 PROPERTY. IF WE DON'T PROTECT IT, THAT MEANS PEOPLE CAN TAKE
 23 THE INTELLECTUAL PROPERTY AND HOPE THEY DON'T GET CAUGHT. IF
 24 THEY GET CAUGHT, MAYBE GIVE BACK THE HARM, YOU KNOW, THAT THEY
 25 THINK THEY CAUSED. WHEN, IN FACT, THAT ISN'T -- THAT ISN'T THE

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CATZ - CROSS / MR. LANIER

1 Q. IN YOUR JOB OVER THE YEARS AT ORACLE, HAVE PEOPLE EVER
 2 PRESENTED YOU WITH PROJECTIONS?
 3 A. YES.
 4 Q. AND THOSE PROJECTIONS AREN'T ALWAYS RIGHT, ARE THEY?
 5 A. NO.
 6 Q. I IMAGINE OVER THE YEARS THAT YOU HAVE SEEN YOUR STAFF
 7 GIVE YOU ONE OR TWO PROJECTIONS AND YOU SAY, I DON'T KNOW, DO
 8 IT AGAIN THIS WAY OR HERE'S WHAT'S MISSING, THINGS LIKE THAT,
 9 RIGHT?
 10 A. SURE.
 11 Q. IF WE WERE TO WANDER AROUND ORACLE AND LOOK AT EVERY
 12 PROJECTION THAT ANYONE HAS EVER DONE, LOOK AT ALL THE POWER
 13 POINTS, WE'D PROBABLY FIND SOME PROJECTIONS THAT YOU'D AT AND
 14 SAY, I DON'T AGREE WITH THAT. IS THAT FAIR?
 15 A. DEFINITELY.
 16 Q. SO EVERYTHING THAT SAYS PROJECTION, EVERYTHING THAT MIGHT
 17 EVEN BE OFFERED TO YOU ISN'T ALWAYS RIGHT, IS IT?
 18 A. NO, IT'S NOT ALWAYS RIGHT. THOUGH, I WILL TELL YOU,
 19 PEOPLE GO OUT OF THEIR WAY, IF THEY ARE OFFERING IT TO ME OR
 20 SENIOR MANAGEMENT OR TO THE BOARD, IT'S -- THEY THINK IT'S
 21 RIGHT. AT THE MOMENT THEY ARE DOING IT, THEY THINK IT'S RIGHT.
 22 Q. I'LL BET THEY DO NOT WANT TO MAKE YOU MAD.
 23 I WONDER IF WE CAN ASK YOUR TEAM TO HELP US OUT WITH
 24 THAT EXHIBIT 4809, THE GIANT FAT ONE. IF WE CAN USE YOU? IT
 25 WAS ALL --

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MEYER - DIRECT / MR. PICKETT
DIRECT EXAMINATION

1 BY MR. PICKETT:
2 Q. GOOD AFTERNOON, MR. MEYER.
3 COULD YOU PLEASE DESCRIBE YOUR BACKGROUND TO THE
4 JURY?
5 A. YES, I CAN.
6 I HAVE TWO MAIN SORT OF PROFESSIONS. RIGHT NOW I
7 RUN A CONSULTANT COMPANY WHERE A BIG PART OF THAT IS ASSISTING
8 COMPANIES WITH LICENSING AND FIGURING OUT THE VALUE OF THEIR
9 INTELLECTUAL PROPERTY.
10 AND LIKE MS. CATZ, I ALSO TEACH AT STANFORD. IT'S
11 NOT AS EXCITING AS AN MA CLASS, BUT I TEACH ACCOUNTING AND
12 FINANCE TO ENGINEERS. I TEACH AT STANFORD AND THEN I HAVE A
13 CONSULTING COMPANY THAT'S CALLED TM FINANCIAL FORENSICS.
14 Q. YOU WORK IN THE FIELD OF ANALYZING DAMAGES?
15 A. YES, I DO.
16 Q. HOW LONG HAVE YOU DONE THAT, MR. MEYER?
17 A. ABOUT 25 YEARS.
18 Q. IN THOSE 25 YEARS OF WORKING WITH DAMAGES, WHAT EXPERIENCE
19 DO YOU HAVE RELATING TO THE VALUATION OF INTELLECTUAL PROPERTY?
20 A. I HAVE A WIDE RANGE OF EXPERIENCE. GOING BACK ABOUT 20
21 YEARS AGO, I BEGAN LOOKING AT LICENSING AND FIGURING OUT THE
22 VALUE OF PATENTS, AND COPYRIGHTS, TRADEMARKS, AND TRADE
23 SECRETS. AND OVER THOSE LAST TWO DECADES, I HAVE PROBABLY
24 ASSISTED A COUPLE HUNDRED COMPANIES, COMPANIES FAR RANGING FROM
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MEYER - DIRECT / MR. PICKETT

1 CALIFORNIA. SO THAT'S WHERE I GO THROUGH MY FINANCIAL
2 ACCOUNTING BACKGROUND. AND THEN THERE'S A GROUP CALLED THE
3 LICENSING EXECUTIVE SOCIETY. AND I AM LICENSED IN -- OR I AM
4 CERTIFIED IN LICENSING THROUGH THAT SOCIETY. THAT HAS BEEN
5 PART OF MY LAST 15 OR 20 YEARS OF REALLY FOCUSED CONSULTING.
6 Q. THANK YOU.
7 MR. PICKETT: YOUR HONOR, WE OFFER MR. MEYER AS AN
8 EXPERT WITNESS IN THIS CASE.
9 THE COURT: ALL RIGHT.
10 MR. MITTELSTAEDT: NO OBJECTION.
11 THE COURT: NO OBJECTION. ALL RIGHT.
12 MR. PICKETT: THANK YOU, YOUR HONOR.
13 AT THIS POINT I BELIEVE IT WOULD BE APPROPRIATE TO
14 ENTER INTO THE RECORD SOME EXHIBITS THAT MR. MEYER WILL BE
15 TALKING ABOUT AND AS TO WHICH THERE IS NO OBJECTION.
16 SO INTO EVIDENCE EXHIBITS, PLAINTIFFS' EXHIBIT 23,
17 37, 97, 269, 583, 602, 653, 680, 958, 960, 984 AND 4814.
18 MR. MITTELSTAEDT: YOUR HONOR, COULD I ADD THAT MY
19 NO OBJECTION IS SUBJECT TO OUR PREVIOUS MOTION ON THIS?
20 THE COURT: CERTAINLY. YOUR PRIOR MOTION AND THE
21 COURT'S RULING OBVIOUSLY. ARE THEIR BINDERS FOR THE COURT AND
22 FOR THE WITNESS WITH THESE EXHIBITS?
23 (PLAINTIFFS' EXHIBITS 23, 37, 97, 269, 583,
24 602, 653, 680, 958, 960, 984 AND 4814
25 RECEIVED IN EVIDENCE)
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MEYER - DIRECT / MR. PICKETT

1 AN IBM OR A SAMSUNG OR HITACHI SOFTWARE AND HARDWARE TECHNOLOGY
2 VALUE TO PATENTS ON TOYS AND LEAPFROG PRODUCTS AND PATENTS ON
3 ATHLETIC SHOES FOR NIKE OR REEBOK.
4 SO A WIDE RANGE OF INTELLECTUAL PROPERTY TRYING TO
5 FIGURE OUT WHAT YOU WOULD PAY FOR A COPYRIGHT OR A PATENT.
6 Q. MR. MEYER --
7 THE COURT: EXCUSE ME. CAN ALL THE MEMBERS OF JURY
8 SEE MR. MEYER? CAN EVERYONE SEE HIM? I THINK THAT --
9 MR. PICKETT: SHALL WE PUSH THAT BACK A LITTLE?
10 THE COURT: ANGLE IT A LITTLE.
11 MR. PICKETT: ALL RIGHT.
12 (PAUSE IN THE PROCEEDINGS.)
13 MR. PICKETT: DOES THAT WORK?
14 BY MR. PICKETT:
15 Q. SO, LET ME ASK YOU THIS: HAVE YOU BEEN ACCEPTED BY COURTS
16 AS AN EXPERT WITNESS AND TESTIFIED ON DAMAGES AT OTHER TRIALS?
17 A. YES. I WAS IN MY FIRST YEAR IN THE LATE 1980'S. I THINK
18 I HAVE BEEN IN ABOUT 70 TRIALS LIKE THIS. FORTY OR 50 IN
19 FEDERAL COURT ACROSS THE COUNTRY.
20 Q. HOW MANY OF THOSE RELATED TO DAMAGES FOR VALUATION OF
21 INTELLECTUAL PROPERTY?
22 A. MORE THAN HALF OF THOSE.
23 Q. DO YOU HOLD ANY CERTIFICATIONS?
24 A. YES. I AM A CPA. I WAS FIRST LICENSED IN VIRGINIA IN
25 1981. AND I MOVED TO CALIFORNIA IN 1985, WAS LICENSED IN
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MEYER - DIRECT / MR. PICKETT

1 MR. PICKETT: THEY ARE ALL ON A WONDERFUL SET OF
2 SLIDES.
3 THE COURT: OKAY.
4 MR. PICKETT: THAT WE HAVE PREPARED AND CAN BE
5 SHOWN. WE CAN CERTAINLY GET YOU A BINDER WITH ALL OF THE
6 EXHIBITS, BUT I THINK IT'S ACTUALLY MORE CONVENIENT FOR YOU TO
7 HAVE, IF YOU WISH, A SET OF THE SLIDES.
8 THE COURT: I PREFER A SET OF THE SLIDES.
9 MR. PICKETT: SURE. WE CAN GET THAT.
10 (PAUSE IN THE PROCEEDINGS.)
11 MR. PICKETT: IT IS EASIER THAN FUMBLING THROUGH THE
12 VARIOUS EXHIBITS. SOME HAVE A LOT OF PAGES, SO WE WILL ONLY
13 REFER TO A PAGE HERE, A PAGE THERE.
14 (PAUSE IN THE PROCEEDINGS.)
15 MR. PICKETT: MAY I APPROACH?
16 THE COURT: I ASSUME THE WITNESS ALREADY HAS ALL THE
17 MATERIALS?
18 MR. PICKETT: YES.
19 THANK YOU, YOUR HONOR.
20 BY MR. PICKETT:
21 Q. ALL RIGHT. MR. MEYER, LET'S GET STARTED.
22 FIRST QUESTION I HAVE, WHAT WERE YOU HIRED TO DO AS
23 AN EXPERT?
24 A. ON THIS ASSIGNMENT, I WAS ENGAGED TO DO TWO THINGS: TO
25 DETERMINE OR FIGURE OUT THE DAMAGES IN THIS SITUATION THAT
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MEYER - DIRECT / MR. PICKETT

1 ORACLE SUFFERED, AND THEN, SECONDLY, THERE'S AN EXPERT THAT HAS
 2 BEEN HIRED BY SAP. AND TO THE EXTENT HE OFFERS OPINIONS AT THE
 3 TRIAL, I HAVE BEEN ASKED TO POTENTIALLY COMMENT ON THOSE
 4 OPINIONS.
 5 Q. YOU ARE HERE TO TESTIFY ABOUT THE DAMAGES SIDE, BUT YOU
 6 KNOW THERE IS A LIABILITY SIDE TO THE CASE, RIGHT?
 7 A. THAT'S CORRECT.
 8 Q. HOW DID YOU INITIALLY APPROACH LIABILITY IN THIS CASE WHEN
 9 YOU FIRST APPROACHED THIS ISSUE?
 10 A. WELL, I FIRST HAD TO -- BECAUSE MY EXPERTISE IS ON THE
 11 NUMBERS, THE DAMAGES, I HAD TO ASSUME LIABILITY. AND SO I
 12 STARTED FROM THE PERSPECTIVE OF MAKING THE ASSUMPTION THAT SAP
 13 WAS LIABLE, AND IF THAT WAS THE CASE, WHAT WERE THE DAMAGES.
 14 Q. SO YOU ASSUMED IT. DO YOU NOW CONTINUE TO ASSUME IT OR
 15 SOME NEW DEVELOPMENT OCCURRED?
 16 A. MY UNDERSTANDING, I AM NOT A LAWYER, JUST BASED ON THE
 17 STIPULATIONS THAT THE TWO COMPANIES ENTERED INTO BEFORE THE
 18 TRIAL STARTED ABOUT LIABILITY, I WAS GIVEN THOSE AND READ
 19 THOSE. I BELIEVE THOSE STIPULATIONS IN THE -- ADMITTING TO
 20 LIABILITY BY SAP AND TOMORROWNOW SUBSTITUTES FOR MY ASSUMPTION.
 21 Q. SO YOU NO LONGER ASSUME LIABILITY, WE KNOW IT?
 22 A. THAT'S CORRECT.
 23 Q. ALL RIGHT. LET'S GO TO THE FIRST SLIDE.
 24 THIS SHOWS TWO OF THE STIPULATIONS. THESE ARE ALSO
 25 IN THE JURY'S BINDERS.
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1 THE JURY, WHICH IS THE DAMAGES THAT ORACLE HAS SUFFERED.
 2 Q. BEFORE WE GET TO YOUR CALCULATIONS, LET ME ASK YOU TO
 3 EXPLAIN TO THE JURY WHAT WORK YOU DID TO REACH THOSE
 4 CALCULATIONS AND OPINIONS.
 5 A. OKAY. I HAVE A SLIDE ON THAT.
 6 (SLIDE DISPLAYED ON SCREEN.)
 7 I WILL TRY TO KEEP THIS BRIEF. BUT IN ASSIGNMENTS
 8 LIKE THIS, THERE'S A PROCESS OR A METHODOLOGY.
 9 ON THE LEFT-HAND SIDE, YOU WILL SEE THE PURPLE BOX.
 10 AND BASICALLY WE WORK FROM THAT ACROSS THE CHART. IT'S REALLY
 11 IMPORTANT FOR US TO GATHER ALL THE INFORMATION THAT WE CAN TO
 12 PROVIDE A FOUNDATION FOR THE WORK WE DO.
 13 IN THIS CASE, SOME OF THE LEGAL FILINGS AND
 14 COMPLAINTS AND PLEADINGS GAVE US BACKGROUND ABOUT WHAT THE TWO
 15 PARTIES WERE IN DISPUTE ABOUT. AND THEN IT WAS REALLY
 16 IMPORTANT TO GO THROUGH ALL THE FINANCIAL INFORMATION AND ALL
 17 THE STRATEGIC DOCUMENTS AND ALL THE PROJECTIONS THAT THE
 18 PARTIES -- THAT WERE PRODUCED. AND THEN THERE'S LOTS OF
 19 DEPOSITIONS ABOUT MANAGEMENT AND THEY TALK ABOUT WHAT THEY KNEW
 20 ABOUT CERTAIN BUSINESS PLANS AND FINANCIAL ISSUES AND
 21 BACKGROUND, AND I HAVE READ THAT.
 22 SO THAT'S ALL THE INFORMATION REVIEWED. THAT IS
 23 GEARED TOWARDS THE SECOND BUCKET WHICH IS ANALYSIS. AND YOU
 24 WILL SEE I HAVE DONE LOTS OF CALCULATIONS, FINANCIAL MODELS TO
 25 DETERMINE THE VALUE OF THE LICENSE. AND IN THAT PROCESS, I
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1 (SLIDE DISPLAYED ON SCREEN.)
 2 THIS IS FIRST THE INITIAL TRIAL STIPULATION THAT HAS
 3 BEEN AMENDED AND THEN A SECOND STIPULATION. WHAT ARE THESE
 4 STIPULATIONS?
 5 A. I BELIEVE THIS IS STIPULATIONS ONE AND TWO. AND THEY JUST
 6 GO TO BACKING UP THE ASSUMPTIONS.
 7 SO THIS IS AN ASSUMPTION I DON'T NEED TO MAKE ANY
 8 MORE. I CAN WORK FROM THE PERSPECTIVE THAT THERE'S LIABILITY
 9 ON THE BEHALF OF SAP AND TOMORROWNOW.
 10 Q. THERE'S A LITTLE CONFUSION PERHAPS ON THE DATES. THESE
 11 BOTH SAY NOVEMBER 2. I THINK THAT'S WHEN SOME FINAL COPIES
 12 WERE PREPARED.
 13 THE INITIAL STIPULATION CAME A COUPLE OF MONTHS AGO
 14 AND THEN THE FINAL STIPULATION ON CONTRIBUTORY INFRINGEMENT
 15 CAME ON OCTOBER 28TH; IS THAT CORRECT?
 16 A. THAT SOUNDS CORRECT.
 17 Q. LET ME ASK YOU THIS: NOW THAT WE KNOW THAT -- ABOUT THE
 18 LIABILITY, WHAT IS YOUR OPINION ON WHETHER OR NOT DEFENDANTS'
 19 INFRINGEMENT HAS CAUSED DAMAGE TO ORACLE?
 20 A. FROM MY PERSPECTIVE, HAVING LOOKED AT MANY RECORDS IN THE
 21 CASE AND READ A LOT OF TESTIMONY, IT IS MY OPINION THE FACT
 22 THAT SAP AND TOMORROWNOW NEEDED THE SOFTWARE, TOOK THE
 23 SOFTWARE, HAD THE SOFTWARE, AND NEEDED IT TO LAUNCH THE SAFE
 24 PASSAGE PROGRAM, TO ME THAT PROVIDES A DIRECT CONNECTION FROM
 25 THE LIABILITY TO ULTIMATELY WHAT I HAVE CALCULATED TODAY FOR
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MEYER - DIRECT / MR. PICKETT

1 HAVE SEEN A LOT OF STRATEGIC DOCUMENTS FROM SAP AND ORACLE AND
 2 MANY OF THESE ARE AROUND THE TIME OF THE DECEMBER 2004 AND
 3 JANUARY 2005.
 4 AND THERE HAS BEEN INFORMATION ABOUT THE ACQUISITION
 5 OF PEOPLESOFT AND ALL THOSE ACQUISITION DOCUMENTS. I HAVE READ
 6 ALL THOSE FROM THE ORACLE SIDE AND ALL THE PRESS RELEASES AND
 7 IMPORTANCE OF THE DOCUMENTS MS. CATZ TALKED ABOUT.
 8 AND THEN WE ARE IN THIS ENTERPRISE MARKET, THE ERP
 9 MARKET. AND SO I DID MARKET DATA TO UNDERSTAND THAT SOFTWARE
 10 MARKET AND THE IMPORTANCE OF THAT TO ORACLE AND SAP. AND THEN
 11 SOME OTHER BACKGROUND INFORMATION THAT WAS USED IN ANALYSIS TO
 12 GET TO THE OPINIONS.
 13 THAT'S THE METHODOLOGY THAT I UNDERTOOK WITH MEMBERS
 14 OF MY FIRM TO HELP ME ON THIS ASSIGNMENT.
 15 Q. MR. MEYER, HOW DID YOU MEASURE THE DAMAGES THAT SAP
 16 INFLECTED ON ORACLE FOR THE COPYRIGHT INFRINGEMENT CLAIMS?
 17 A. THE FORM OF MEASUREMENT IS I DETERMINED THE FAIR MARKET
 18 VALUE OF A LICENSE FOR THOSE SOFTWARE MATERIALS THAT WERE
 19 TAKEN. AND SO I WENT INTO A PROCESS OF DETERMINING THE VALUE
 20 OF THAT LICENSE AND THEN AS A PROCESS THAT I HAVE USED MANY
 21 TIMES TO DO THAT.
 22 Q. AND WAS IT A SINGLE LICENSE THAT YOU MEASURED THE VALUE
 23 OF?
 24 A. NO. THERE'S THREE SEPARATE LICENSES. AND THERE'S ONE
 25 THAT BASICALLY COVERS A LICENSE THAT SAP WOULD HAVE FOR THE USE
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1 OF THE PEOPLESOFT AND JDE SOFTWARE. AND THEN A SEPARATE
 2 LICENSE FOR THE SOFTWARE AND SOFTWARE MATERIALS FOR SIEBEL.
 3 AND THEN LASTLY I WILL TALK ABOUT A LICENSE FOR ORACLE'S
 4 DATABASE THAT WAS ALSO USED BY TOMORROWNOW IN DOING ITS
 5 CUSTOMER SERVICINGS. THERE'S A THIRD LICENSE THAT I WILL SHOW
 6 YOU HOW I VALUE THAT, THE DATABASE LICENSE FOR ORACLE.
 7 Q. WHEN YOU TALK ABOUT THE FAIR MARKET VALUE OF THESE THREE
 8 LICENSES, THE VALUE OF WHAT SAP TOOK, HOW DO YOU MEASURE THAT?
 9 WHAT APPROACH DO YOU TAKE?
 10 A. WELL, THERE IS A NEGOTIATION STRUCTURE. I HAVE A HIGH
 11 LEVEL SLIDE ON THIS, BUT SOME CALL IT THE HYPOTHETICAL
 12 NEGOTIATION. BUT BASICALLY I GO BACK TO A POINT IN TIME AND WE
 13 WILL TALK ABOUT THAT DATE.
 14 YOU WILL SEE ON THE CHART WHAT I FOCUS ON MEASURING
 15 IN THIS SITUATION. ON THE LEFT-HAND SIDE IS IF ORACLE GIVES
 16 THIS LICENSE FOR THE SOFTWARE AND SOFTWARE SUPPORT MATERIALS
 17 THAT ARE ALL PART OF THE COPYRIGHT INFRINGEMENT THAT'S IN THE
 18 STIPULATIONS AND ALL THESE REGISTRATIONS AND ALL THIS PROPERTY
 19 TAKEN, IF THAT LICENSE IS GIVEN TO SAP, ON THE LEFT-HAND SIDE,
 20 WHAT IS ORACLE GIVING UP FINANCIALLY, ECONOMICALLY, WHAT'S THE
 21 IMPACT ON ORACLE?
 22 AND THAT'S BALANCED WITH, ON THE RIGHT-HAND SIDE IN
 23 THE BLUE, SAP'S GOING TO NEGOTIATE AND SAY, "WHAT ARE WE GOING
 24 TO GAIN?" AND THE TWO HAVE TO BALANCE THE RESPECTIVE
 25 POSITIONS, BECAUSE IN THIS HYPOTHETICAL I ASSUME THAT THERE'S A
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1 BACK TO MAKE UP FOR WHAT DID NOT HAPPEN. IT WASN'T A
 2 NEGOTIATION. PROPERTY WAS TAKEN, AND NOW WE HAVE TO GO BACK IN
 3 TIME AND SAY LET'S GO IN THERE AND ASSUME BOTH PARTIES ARE WILL
 4 BE THERE. WE THEN BALANCE WHAT THEY GIVE UP AND WHAT THEY ARE
 5 GETTING.
 6 Q. NOW, WITH RESPECT TO THE BALANCE EXERCISE THAT YOU'VE
 7 DESCRIBED, WE ALL KNOW THIS DIDN'T HAPPEN, BUT WHAT IF WE
 8 TURNED IT AROUND: WHAT IF ORACLE SOMEHOW HAD SOUGHT A LICENSE
 9 FROM SAP THAT WOULD ALLOW IT TO GO TO MARKET WITH A SUPPORT
 10 OFFERING FROM MY SAP GETTING SAP'S COPYRIGHTED SOFTWARE, HOW
 11 WOULD THAT WORK IN TERMS OF AN APPROACH TO A LICENSE?
 12 A. IT WOULD BE REVERSING THE ROLES. YOU WOULD HAVE TO DO THE
 13 SAME TYPE OF THING WITH THE SAME COMPANIES AND HOW THEY COMPETE
 14 AND GO THROUGH ALL THE FACTORS WE ARE GOING TO TALK ABOUT.
 15 YOU CAN FLIP IT AROUND, AND IT HAS TO BE FAIR IN
 16 THAT CASE. IF ORACLE IS TAKING THE LICENSE, THEY HAVE TO PAY A
 17 PROPER AMOUNT TO SAP. AND THEN SAP HAS TO ALSO COME IN AND BE
 18 WILLING TO GIVE THAT LICENSE AT AN APPROPRIATE AMOUNT.
 19 SO IT WORKS EITHER WAY. YOU CAN DO IT WITH
 20 INVENTORS AND BIG COMPANIES. BIG COMPANIES THAT DO NOT
 21 COMPETE, AND IN THIS CASE WE HAVE LARGE COMPANIES THAT ARE
 22 SUCCESSFUL, THAT ARE COMPETING HEAD TO HEAD.
 23 Q. HAVE YOU, MR. MEYER, USED THIS LICENSE NEGOTIATION
 24 APPROACH BEFORE?
 25 A. MANY TIMES BOTH IN SITUATIONS LIKE THIS, BUT ALSO WHEN I
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1 WILLING BUYER AND SELLER.
 2 SO IN THIS CASE, THE WILLING BUYER IS SAP, BECAUSE
 3 THEY ARE TAKING THE LICENSE, AND THE SELLER IS ORACLE, AND THEY
 4 ARE SELLING THE LICENSE. AND THAT'S AN ASSUMPTION I AM ABLE TO
 5 MAKE AND I HAVE MADE HUNDREDS OF TIMES IN DOING THESE KINDS OF
 6 MEASUREMENTS. AND SO THAT'S THE BALANCING IN THIS.
 7 WE CALL IT A NEGOTIATION, LICENSE NEGOTIATION, AND
 8 AT TIMES THEY CALL IT THE HYPOTHETICAL LICENSE NEGOTIATION.
 9 Q. WHAT DOES THE END RESULT, THE -- WHAT THE WILLING BUYER
 10 AND WILLING SELLER WOULD HAVE AGREED TO AS THEY BALANCE THESE
 11 OUT, WHAT DOES THAT REPRESENT?
 12 A. IN THE END, IT'S VALUE. IT'S WHAT YOU PAY FOR SOMETHING.
 13 WE WILL TALK A LOT ABOUT DO WE PAY IT NOW OR LATER. I AM GOING
 14 TO TELL YOU I THINK IT SHOULD BE PAID UP FRONT. IT'S CALLED A
 15 ROYALTY. AND IT'S THE VALUE IN THIS CASE THAT SAP WOULD PAY TO
 16 ORACLE FOR ALL THE MATERIALS FOR ALL THREE; PEOPLESOFT, SIEBEL
 17 AND THE ORACLE DATABASE.
 18 Q. WELL, EVERYONE KNOWS DURING THIS TRIAL THAT WHEN SAP
 19 STARTED INFRINGING, IT DID NOT CALL UP ORACLE AND SAY, "LET'S
 20 NEGOTIATE A LICENSE." DOES THAT MATTER?
 21 A. NO, IT DOES NOT MATTER FOR MY ASSIGNMENT.
 22 I HAVE BEEN DOING THESE KINDS OF ANALYSES FOR 20
 23 YEARS IN COURT CASES. AND THE COURTS ALLOW US TO COME IN HERE
 24 AND ASSUME EVEN THE MOST AGGRESSIVE COMPETITORS CAN SIT DOWN
 25 AND DO THIS LICENSE. BECAUSE WE ARE TRYING TO, ONCE AGAIN, GO
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1 HELP COMPANIES FIGURE OUT WHAT TO CHARGE ANOTHER COMPANY FOR A
 2 PATENT OR A COPYRIGHT WHEN THEY WANT A LICENSE. SO WANT TO
 3 GIVE A COMPANY A LICENSE AND THEY TRY TO BALANCE WHAT THEY ARE
 4 GETTING AND WHAT THEY ARE GIVING UP.
 5 Q. HAS THE LICENSE NEGOTIATION APPROACH BEEN ACCEPTED BY
 6 COURTS?
 7 A. YES.
 8 Q. AND HOW DOES THE -- LET'S GO INTO SOME DETAIL. HOW DOES
 9 THE LICENSE NEGOTIATION APPROACH WORK?
 10 A. WELL, I HAVE A SLIDE THAT GOES THROUGH A SERIES OF FACTORS
 11 THAT I HAVE COMPILED FOR THE JURY.
 12 (SLIDE DISPLAYED ON SCREEN.)
 13 AND I HAVE WORKED OFF THE LAST CHART WHERE I HAD ON
 14 THE LEFT-HAND SIDE, ORACLE IN THE RED, AND FAR RIGHT-HAND SIDE,
 15 SAP IN THE BLUE. AND IN THE MIDDLE I HAVE SORT OF LAID OUT
 16 WHAT I CALL THE NEGOTIATION FACTORS.
 17 AND I HAVE AN ASTERISK THERE, AND I MAKE THE
 18 NOTATION THAT IT IS CONSISTENT WITH GEORGIA-PACIFIC CORPORATION
 19 VERSUS U.S. PLYWOOD. THAT WAS A PATENT CASE FROM THE EARLY
 20 1970'S WHEN THIS FIRST FRAMEWORK WAS PUT TO A JURY TO USE IN
 21 THIS PROCESS. SO I HAVE BEEN CONSISTENT WITH THAT.
 22 IN THIS CASE, I HAVE A SERIES OF FACTORS THAT I AM
 23 GOING TO WALK YOU THROUGH TODAY AND TELL YOU WHAT THEY TOLD ME
 24 ABOUT HOW TO VALUE THIS LICENSE.
 25 THE FIRST ONE IS THE SCOPE AND DURATION OF THE
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1 LICENSE. WE WILL TALK ABOUT THAT, WHAT IT COVERS, AND HOW LONG
2 IT'S GOING TO GO FOR.

3 THE NEED FOR THE COPYRIGHTED WORKS. YOU ALWAYS HAVE
4 TO FIGURE OUT WHAT'S THE DEMAND AND NEED FOR THOSE SOFTWARE
5 MATERIALS, AND ASSESS THAT.

6 WHAT I WILL CALL RISK ACCEPTANCE, AND WAS THERE RISK
7 IN THIS SORT OF FRAMEWORK OF A LICENSE.

8 THE COMPETITIVE RELATIONSHIP OF THE PARTIES. AND
9 THAT REALLY MEANS ARE THEY DIRECT COMPETITORS OR ARE THEY IN
10 SEPARATE MARKETS, YOU LOOK AT THAT ISSUE.

11 AND THEN THE NEXT ONE IS REALLY IMPORTANT, AND THAT
12 IS WHAT I CALL COPYRIGHTED WORKS. THAT'S THE SOFTWARE AND THE
13 SOFTWARE MATERIALS, THE MANUALS AND THINGS.

14 WHAT WERE THE GOALS AND BUSINESS PLANS, IN THIS
15 CASE, FOR SAP AS TO HOW AND WHY THEY WANTED TO USE THOSE AND
16 THEN MATCHED UP AT THE SAME TIME WITH ORACLE'S PLANS WERE.

17 AND THEN THE SECOND TO THE LAST ONES YOU WILL SEE A
18 LOT OF FINANCIAL CALCULATIONS. I HAVE DONE DIFFERENT MODELS TO
19 COME UP WITH WHAT I CALL THE, IN THIS CASE, EXPECTED BENEFITS
20 TO SAP, SAP'S GAINS, IF THEY TAKE THE LICENSE. AND I COMPARE
21 THAT TO WHAT ORACLE IS GIVING UP. I CALL THOSE ORACLE'S
22 IMPACTS OR ORACLE'S FINANCIAL LOSSES, WHEN THEY GIVE THE
23 LICENSE UP THEY LOSE SOMETHING OR IMPACTED.

24 SOMETIMES THINGS CANNOT BE QUANTIFIED, AND I CALL IT
25 VALUES NOT QUANTIFIED. AND WE WILL TALK ABOUT HOW THAT COMES

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1 MAJOR COMPETITOR.

2 Q. JUST TO MAKE SURE I UNDERSTAND, WHEN YOU SAY "EXCLUSIVE
3 RIGHTS," WHAT DO YOU MEAN?

4 A. THAT MEANS THAT BASICALLY ORACLE HAS ALL OF ITS COPYRIGHT
5 REGISTRATIONS. THERE'S ABOUT 120. AND THEY USE IT INSIDE
6 THEIR COMPANY FOR PURPOSES OF THEIR CUSTOMERS, AND THEY GET TO
7 DRIVE ALL THE VALUE FROM THAT. SO ALL THEIR PRODUCTS ARE
8 COVERED BY THOSE COPYRIGHTS, ALL THEIR SOFTWARE, ALL THEIR
9 UPDATES, ALL THE BUG FIXES THAT MR. ELLISON MENTIONED THIS
10 MORNING, ALL THE THINGS THAT HE MENTIONED THIS MORNING THAT
11 WERE IMPORTANT ARE COVERED BY THEIR INTELLECTUAL PROPERTY, THE
12 COPYRIGHTS.

13 AND THEY HAVE THAT FOR THEMSELVES. AND THEY SPENT
14 MONEY TO DEVELOP ALL THAT. AND THEY USE THAT TO HAVE LICENSES
15 AND MAINTENANCE FOR THEIR CUSTOMERS EXCLUSIVE.

16 THAT'S NOW IN CONTRAST TO THE RIGHT-HAND SIDE. SO
17 WE HAVE THE BLACK BAR THERE. AND THEN WHEN WE HYPOTHESIZE THIS
18 LICENSE TO COVER THE PROPERTY THAT WAS TAKEN, WHAT NOW HAS TO
19 HAPPEN IS THAT ORACLE, IN THE RED, HAS TO SHARE THAT VALUE THAT
20 THEY HAD ACQUIRED WITH SAP.

21 AND SAP WOULD BE BASICALLY TAKING THAT LICENSE, IN
22 THE BLUE BOX THERE. SO IF YOU GO BELOW THE RED BOX IN THE
23 MIDDLE, ORACLE LICENSES OUT THAT SOFTWARE, THERE'S A REDUCTION
24 IN CUSTOMER RELATIONSHIPS, THERE'S A REDUCTION IN CUSTOMER
25 REVENUES, THERE'S A REDUCTION IN MARKET SHARE AND THERE'S OTHER

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1 INTO THE TRANSACTION ALSO FOR THIS LICENSE IN THE NEGOTIATION.
2 ULTIMATELY IT RESULTS IN A VALUE, AN AMOUNT TO PAY
3 FOR USE OF, IN THIS CASE, THE SOFTWARE AND THE SOFTWARE
4 MATERIALS.

5 Q. SO YOU'VE STUDIED THESE VARIOUS NEGOTIATION FACTORS FROM
6 THE ORACLE SIDE AND THEN THE SAP SIDE?

7 A. YES, I HAVE.

8 Q. ALL RIGHT.

9 CAN YOU EXPLAIN TO THE JURY WHAT THE LICENSE
10 NEGOTIATION APPROACH VALUES? WHAT ARE WE VALUING?

11 A. IN THE END, IT'S THE --

12 Q. YOU HAVE A SLIDE ON THIS?

13 A. YES, THERE IS A SLIDE.

14 (SLIDE DISPLAYED ON SCREEN.)

15 IT'S A VALUE OF THE PROPERTY, IN THIS CASE, THAT SAP
16 AND TOMORROWNOW TOOK. AND SO WITH THIS SLIDE -- AND IT'S A
17 LITTLE BUSY. ON THE LEFT-HAND SIDE, I HAVE LAID OUT BASICALLY
18 THAT'S THE VALUE OF ALL THE SOFTWARE AND SOFTWARE MATERIALS
19 BEFORE A LICENSE TO SAP.

20 THE RED BAR THERE REPRESENTS THE VALUE BASICALLY OF
21 WHAT THOSE MATERIALS PROVIDE FOR WITH ORACLE HOLDING THEM
22 EXCLUSIVELY WITH NO LICENSE TO SAP IN TERMS OF VALUE FOR
23 CUSTOMER RELATIONSHIPS, CUSTOMER REVENUES, MARKET SHARE AND
24 OTHER THINGS THAT COME TO ORACLE'S VALUE WHEN THEY BUY
25 PEOPLESOFT, GET THE SOFTWARE, AND DO NOT SHARE IT WITH THEIR

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1 IMPACTS THAT OCCUR TO ORACLE.

2 BUT ON THE FLIP SIDE, TO THE BLUE, TO THE BENEFIT
3 THAT LICENSE NOW IS CAPTURED VALUE FOR THE LICENSEE, FOR SAP.
4 AND THEY GET TO HAVE CUSTOMER RELATIONSHIPS THAT THEY WOULDN'T
5 HAVE BUT FOR. THEY NOW HAVE THE SOFTWARE. THEY CAN GO AND
6 GIVE ADDITIONAL SERVICE TO CUSTOMERS. THEY CAN HAVE ENHANCED
7 CUSTOMER RELATIONSHIPS. THEY CAN HAVE HIGHER REVENUES. THEY
8 CAN GAIN SOME ERP MARKET SHARE BACK. AND THAT'S THE VALUE OF
9 THAT BLUE LICENSE.

10 YOU'VE TAKEN THE BIG RED BAR, SPLIT IT IN TWO, AND
11 THEN IN THE NEGOTIATION, WE FIGURE OUT WHAT YOU HAVE TO PAY FOR
12 THAT BLUE BOX. IN THIS CASE, THAT BLUE BOX, WHAT SAP WILL TAKE
13 BACK TO THEIR COMPANY AND THEN THEY WILL HAVE THAT SOFTWARE TO
14 USE WITH THEIR CUSTOMERS BECAUSE THEY PAID A LICENSE FOR IT.

15 Q. SO, ANOTHER WAY TO THINK OF IT, THE BLUE BOX WOULD BE WHAT
16 SAP WOULD GAIN AND, THEREFORE, PAY, AND THE MISSING BOX OVER
17 HERE (INDICATING) IS WHAT ORACLE LOSES BY SHARING THE SOFTWARE
18 THAT SAP TOOK?

19 A. THAT IS CORRECT.

20 Q. AND WHAT ARE THE ARROWS UNDERNEATH, THE RED ARROWS GOING
21 DOWN AND THE GREEN ARROWS GOING UP; WHAT DO THOSE REPRESENT?

22 A. THIS SHOWS BELOW EACH BAR BASICALLY WHAT'S BEING GIVEN UP
23 AND WHAT'S BEING GAINED. SO THE RED BARS GO DOWN. THAT'S THE
24 VALUE TO ORACLE AFTER THE LICENSE IS LOWER.

25 AND THEN ON THE RIGHT-HAND SIDE, THE VALUE TO SAP IS

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1 HIGHER. AND THAT'S WHY THEY WILL PAY THAT LICENSE AMOUNT.
 2 Q. IS THE NEGOTIATED LICENSE APPROACH YOU USE, IS THAT THE
 3 ONLY MEASURE OF DAMAGES THAT COULD BE USED BY SOMEONE?
 4 A. NO.
 5 Q. AND IS IT THE BEST MEASURE OF DAMAGES IN THIS CASE IN YOUR
 6 OPINION?
 7 A. THERE IS NO QUESTION, AND I HAVE BEEN DOING THESE KINDS OF
 8 ASSIGNMENTS FOR OVER TWO DECADES. IT IS CLEARLY THE BEST
 9 METHOD TO USE IN THESE CIRCUMSTANCES, AND WE WILL TALK ABOUT
 10 THAT TODAY.
 11 Q. ALL RIGHT. LET'S GO TO THE NEXT SLIDE.
 12 (SLIDE DISPLAYED ON SCREEN.)
 13 WHAT DOES THIS SHOW?
 14 A. THIS LAYS OUT WHY I BELIEVE THE FAIR MARKET APPROACH,
 15 VALUE APPROACH TO THE LICENSE IS THE BEST METHOD IN THESE, IN
 16 THIS SITUATION, IN THESE CIRCUMSTANCES.
 17 I THINK THEY EACH HAVE THEIR OWN NUANCE, BUT THE
 18 FIRST ONE IS VERY IMPORTANT. WHAT IT DOES IS WE CAN MEASURE
 19 THE FAIR MARKET VALUE. BASICALLY IT MEASURES THE FAIR MARKET
 20 VALUE, WHAT ORACLE WOULD HAVE BEEN PAID, THAT AMOUNT THEY WOULD
 21 HAVE BEEN PAID AT THE TIME -- WE WILL TALK ABOUT THE DATE IN A
 22 MOMENT -- BASED ON THE TOTAL SCOPE OF INFRINGING ACTIVITIES.
 23 SO ALL OF THE PROPERTY TAKEN BY SAP, WE HAVE THAT, AND WE GET
 24 TO MEASURE AT THAT POINT IN TIME WHAT ONE WOULD PAY ORACLE FOR
 25 THAT. AND THIS METHOD CLEARLY DOES THAT THE BEST. THERE'S NO
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1 LICENSE NOW TO USE WHAT YOU TOOK. SO IT'S REALLY A GOOD METHOD
 2 IN THIS CASE TO MEASURE DAMAGES.
 3 Q. NOW, IN MEASURING THE VALUE OF THE LICENSE, THE VALUE OF
 4 WHAT SAP TOOK, WHAT TYPES OF INFORMATION DID YOU RELY ON?
 5 A. I RELIED UPON LOTS OF INFORMATION, MANY, MANY DOCUMENTS
 6 FROM ORACLE AND SAP. BUT WHEN I FOCUS ON THIS FAIR MARKET
 7 VALUE OF THE LICENSE ISSUE, I REALLY FOCUS ON INFORMATION THAT
 8 WAS KNOWN AT THE TIME OF THE NEGOTIATION.
 9 AND I HAVE A SLIDE RIGHT HERE THAT TELLS US WHY, BUT
 10 BASICALLY, WE ARE GOING TO DO A NEGOTIATION AND BOTH SIDES KNOW
 11 EACH OTHER SIDE'S INFORMATION AT THAT TIME.
 12 (SLIDE DISPLAYED ON SCREEN.)
 13 SO WE WILL BE IN JANUARY 2005. AND WE LOOK AT
 14 INFORMATION, WHAT I CALL THE EVENTS AND CIRCUMSTANCES KNOWN AT
 15 THAT DATE. AND SO WE GET TO LOOK AT SAP'S DOCUMENTS THAT
 16 INDICATE THEIR EXPECTATIONS AT THAT POINT AS TO WHAT THEY WERE
 17 GOING TO DO WITH THE SOFTWARE AND HOW THEY WERE GOING TO USE
 18 IT.
 19 AND ALSO IT'S AN IMPORTANT POINT THAT I WILL TALK A
 20 LOT ABOUT, AND THAT IS SAP'S A VERY SOPHISTICATED COMPANY, VERY
 21 EXPERIENCED. IT'S THE MARKET LEADER.
 22 AND IN THIS CASE, SAP WAS VERY EXPERIENCED IN
 23 LAUNCHING BUSINESSES, RUNNING BUSINESSES, BEING PROFITABLE AND
 24 MAKING PROJECTIONS AND RUNNING A VERY EFFICIENT BUSINESS.
 25 THAT'S IMPORTANT TO WHY I USED THEIR PROJECTIONS AT THE TIME.
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1 QUESTION ABOUT THAT.
 2 SECONDLY, IT ALLOWS YOU TO REFLECT ORACLE'S
 3 INVESTMENTS. AND THEY MADE A LARGE INVESTMENT IN PEOPLESOF,
 4 \$11.1 BILLION. MR. ELLISON AND MS. CATZ THIS MORNING TALKED
 5 ABOUT THAT. AND THEY ALSO BOUGHT SIEBEL PAYING MONIES UP
 6 FRONT. THE ORACLE TRANSACTION OF PEOPLESOF WAS A CASH
 7 TRANSACTION, \$11.1 BILLION.
 8 THOSE UPFRONT PAYMENTS CAN BE MEASURED IN THIS
 9 APPROACH BECAUSE YOU GET TO PUT THAT INTO THE NEGOTIATION. AND
 10 IN THOSE TRANSACTIONS, THE SOFTWARE THAT'S IN QUESTION IN THIS
 11 CASE AND THE MATERIALS THAT ARE PART OF THAT SOFTWARE WERE PART
 12 OF THOSE TRANSACTIONS. AND YOU GET TO MEASURE THAT IN THIS
 13 HYPOTHETICAL NEGOTIATION.
 14 THE THIRD POINT, YOU GET TO ALSO MEASURE SAP'S NEED,
 15 WHAT I WILL CALL THEIR DEMAND FOR THEIR SOFTWARE AND MATERIALS.
 16 I UNDERScore THAT WORD "PRIOR". THIS IS PRIOR TO LAUNCHING THE
 17 PEOPLESOF AND SIEBEL MAINTENANCE SERVICES.
 18 SO SAFE PASSAGE FOR PEOPLESOF WAS LAUNCHED
 19 JANUARY 19TH OF 2005. YOU CAN MEASURE IT THEN. THEY WOULD
 20 TAKE A LICENSE AT THAT POINT. AND THEN SIEBEL'S LATER IN TIME,
 21 IN 2006, SEPTEMBER, AND YOU CAN MEASURE BASICALLY WHAT THEY
 22 PAID AT THAT TIME TO USE THOSE MATERIALS WITH THE LICENSE.
 23 THEN ALSO WHAT IT DOES IT ALLOWS YOU TO SUBSTITUTE
 24 THE NEGOTIATION THAT WE ARE GOING TO DO FOR INFRINGEMENT. SO
 25 IF YOU TAKE A LICENSE, YOU DON'T NEED TO INFRINGE; YOU HAVE A
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1 NEXT, THIS IS AN IMPORTANT POINT. THE FAIR MARKET
 2 VALUE LICENSE. YOU DON'T USE HINDSIGHT IN EVALUATING IT. YOU
 3 DON'T GO INTO THE FUTURE AND GO BACK AND SECOND-GUESS
 4 EVERYTHING. AND, BASICALLY, WHAT YOU DO IS YOU FOCUS ON
 5 EVENTS, EVENTS NOT KNOWN AT THE TIME WERE NOT CONSIDERED AND
 6 IT'S NOT DEPENDENT ON WHAT SAP DOES.
 7 THAT'S VERY IMPORTANT BECAUSE A COUPLE OF THINGS
 8 HAPPENED. SAP MAY NOT EXECUTE ON ITS PLAN VERY WELL. IT MAY
 9 CHANGE PLANS FOR SOME OTHER REASON OR, IN THIS CASE HERE, AS OF
 10 MARCH 2007, ORACLE SUES SAP, AND SO ALL THEIR PLANS CHANGE. SO
 11 ONCE YOU GET INTO THIS ACTUAL WORLD, YOU CAN'T GO BACK AND
 12 CHANGE WHAT HAPPENED. SO, IT'S HARD TO USE THOSE ACTUAL
 13 INFORMATIONS BECAUSE THEY DISTORT THE EXPECTATION AT THE TIME.
 14 AND THEN LASTLY, IT IS CONSISTENT WITH WHAT WE CALL
 15 VALUATION THEORY. WHEN YOU GO VALUE A BUSINESS, YOU VALUE IT
 16 AT A POINT IN TIME. AND THEN YOU HAVE TO ACQUIRE A BUSINESS,
 17 ACQUIRE A BUILDING, ACQUIRE -- BUY A HOUSE. AND IF THE MARKET
 18 CHANGES AFTER THAT POINT IN TIME, MARKET GOES UP FOR A BUILDING
 19 OR A HOUSE, OR GOES DOWN, WE DON'T GO BACK IN TIME AND GET A
 20 DO-OVER, WE HAVE TO PAY THE PRICE FOR THAT ASSET.
 21 SO HERE, LIKE A BUSINESS, LIKE A PURCHASE, WE
 22 BASICALLY FOCUS ON WHAT'S KNOWN AT THE TIME.
 23 Q. IN YOUR OPINION, MR. MEYER, WHEN WOULD SAP HAVE PAID FOR
 24 THE LICENSE OR SHOULD HAVE PAID FOR THE LICENSE?
 25 A. WELL, FOR THE PEOPLESOF MATERIALS, THAT WOULD HAVE BEEN
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1 IN JANUARY 2005. AND I PICKED BASICALLY JANUARY 19TH AS THE
2 NEGOTIATION DATE, JANUARY 19TH, JANUARY 20TH. RIGHT THERE,
3 BASICALLY, I SAID IN JANUARY 2005, THEY WOULD PAY AN UPFRONT
4 AMOUNT.

5 Q. WHY WOULD THEY PAY THE LICENSE FEE UP FRONT?

6 A. THERE IS A WIDE VARIETY OF REASONS AND HERE'S A LONG LIST.
7 SOME OF THESE I BELIEVE MR. ELLISON AND MS. CATZ
8 MENTIONED THIS MORNING. FIRST ONE IS VERY IMPORTANT. IF IT'S
9 UP FRONT, IT REALLY BALANCES AN IMPORTANT ISSUE IN THIS CASE.
10 IN THAT -- THE TIMING IN THIS CASE IS MAYBE THE MOST IMPORTANT
11 ISSUE.

12 ORACLE SPENT \$11 BILLION TO ACQUIRE PEOPLESOFT IN
13 JANUARY 2005, AND IT PAID IT UP FRONT. AND THEN IT TOOK ON THE
14 RISK OF EXECUTING ON THAT PLAN. AND IF IT DIDN'T GO WELL,
15 ORACLE COULDN'T GO BACK AND GET THAT \$11 BILLION BACK FROM
16 PEOPLESOFT SHAREHOLDERS. THAT'S JUST THE WAY IT WORKS. SO ALL
17 THE RISKS ON EXECUTING ON THAT PLAN WAS ON ORACLE.

18 SO FROM MY PERSPECTIVE, WE ARE GOING TO HAVE TO
19 BALANCE THAT. WE HAVE A TRANSACTION AT THAT POINT THAT
20 INCLUDES THE FAIR MARKET VALUE OF THE SOFTWARE THAT WAS
21 ACQUIRED THAT'S NOW IN THIS LAWSUIT. SO ORACLE PAID FOR THE
22 SOFTWARE AND WE SHOULD USE THAT TRANSACTION TO ALLOW FOR THIS
23 UPFRONT PAYMENT.

24 SECONDLY, IN THIS CASE, SAP WAS AWARE THAT BASICALLY
25 ORACLE PAID UP FRONT. SAP, FIRST OFF, WOULD KNOW IN THE
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1 BASICALLY, WHEN IT IS PAID UP FRONT, THERE IS NO DOWNSTREAM
2 ARGUMENT OVER DID THAT SALE CONSTITUTE WHAT THEY CALL A ROYALTY
3 BEARING SALE? DID THAT SALE COVER THE TECHNOLOGY? DO YOU PAY
4 A ROYALTY ON THAT OR NOT? YOU PAY IT ONE TIME AND MOVE ON,
5 COMPETE FAIRLY IN THE MARKETPLACE.

6 Q. AND WE HEARD MS. CATZ TALK ABOUT THE POTENTIAL OF DISPUTE
7 BETWEEN ORACLE AND SAP IF THEY DIDN'T AGREE TO AN UP FRONT.
8 DO YOU RECALL THAT?

9 A. YES. IN THIS CASE, I HAVE A DISPUTE WITH SAP'S EXPERT
10 OVER WHAT SALES WERE CAUSED BY TOMORROWNOW AND SAP. SO YOU CAN
11 SEE FIRSTHAND IN THIS CASE WHY THE PARTIES WOULD NEVER AGREE ON
12 ANYTHING BUT AN UPFRONT AMOUNT.

13 Q. WHAT IS A RUNNING ROYALTY? NOT AN UPFRONT PAYMENT, BUT A
14 RUNNING ROYALTY ON A LICENSE? WHAT IS THAT?

15 A. A RUNNING ROYALTY IS JUST THE OPPOSITE. SO, A ROYALTY
16 THAT'S UP FRONT, YOU PAY IT UP FRONT, AND THEN YOU HAVE THE
17 RIGHTS THAT YOU NEGOTIATED.

18 RUNNING ROYALTY BASICALLY SAYS, WE WILL PAY AN
19 AMOUNT, EITHER A PERCENTAGE OR A PER UNIT AMOUNT, BASED ON HOW
20 YOU DO. AND SO IF YOU TAKE A LICENSE FOR, IN THIS CASE, THE
21 SOFTWARE AND YOU MAKE, MAKE SALES TO 5,000 CUSTOMERS, YOU PAY
22 ON THAT, ON THOSE CUSTOMERS. IF YOU SELL TO 200, YOU PAY ON
23 THOSE.

24 IT DOES HAPPEN. THERE ARE RUNNING ROYALTIES, BUT AS
25 I MENTIONED A MOMENT AGO, AMONGST BIG COMPETITORS LIKE THIS,
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1 HYPOTHETICAL, BUT IN THE REAL WORLD THEY KNEW THAT ORACLE MADE
2 THIS ACQUISITION AND PAID THESE AMOUNTS UP FRONT FOR SIEBEL AND
3 FOR PEOPLESOFT.

4 AND THE THIRD POINT IS THE MOST IMPORTANT POINT.
5 THE ONLY WAY TO BALANCE THE RISK BETWEEN WHAT ORACLE PAID FOR
6 THESE COMPANIES, THESE LARGE AMOUNTS OF MONEY, AND SAP'S
7 EXECUTION ON ITS PLANS IS TO HAVE IT UP FRONT.

8 SO, BASICALLY, ORACLE ALREADY WAS COMMITTED, THEY
9 PUT THE MONIES OUT TO PEOPLESOFT AND SIEBEL, AND FROM MY
10 PERSPECTIVE, SAP WOULD HAVE TO COME IN AND BALANCE THAT BY
11 MAKING AN UPFRONT COMMITMENT TO TAKE THE LICENSE TO PAY UP
12 FRONT, THEN THEIR RISK IS TO GO EXECUTE. THAT'S THE RISK ON
13 THEIR MANAGEMENT THAT THEY WOULD TAKE.

14 FOURTH, IT'S A VERY COMMON PAYMENT STRUCTURE WITH
15 HIGH TECHNOLOGY COMPANIES. WHEN COMPANIES COMPETE HEAD TO
16 HEAD, VERY RARELY DO THEY DO ANYTHING OTHER THAN UPFRONT
17 AMOUNTS BECAUSE THEY DON'T WANT TO HAVE TO HAVE ONGOING
18 REPORTING WITH EACH OTHER.

19 THEY WILL SAY, WE WILL DO A DEAL, WE WILL ARRANGE
20 FOR THE LICENSE, AND THEN WE'LL GO BACK TO DOING OUR RESPECTIVE
21 THINGS. THEY DON'T WANT TO HAVE ONGOING AUDITS OVER HOW MUCH
22 WAS SOLD ON A CERTAIN PRODUCT OR NOT. THEY WANT TO PAY AN
23 AMOUNT AND MOVE ON. THAT'S VERY COMMON WITH BIG LARGE HIGH
24 TECHNOLOGY COMPANIES THAT ARE DIRECT COMPETITORS.

25 THAT'S THE LAST POINT I COVERED JUST THEN. YOU,
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1 IT'S NOT VERY LIKELY YOU WOULD HAVE THAT, PARTICULARLY WITH
2 THESE BIG UPFRONT COMMITMENTS FOR PEOPLESOFT AND SIEBEL BECAUSE
3 ORACLE WAS ALREADY COMMITTED TO MAKE THOSE PAYMENTS.

4 Q. DOES A RUNNING ROYALTY IN THIS CASE IN A NEGOTIATION
5 BETWEEN ORACLE AND SAP, WOULD THAT MAKE ANY SENSE AT ALL?

6 A. NO. I HAVE A CHART ON THAT. AND THESE ARE REALLY
7 IMPORTANT REASONS WHY.

8 (SLIDE DISPLAYED ON SCREEN.)

9 IF YOU ACCEPT A RUNNING ROYALTY IN THIS CASE, ALL
10 THE RISK IS ON ORACLE. ALL THE RISK. BECAUSE THEY HAD TO PAY
11 THOSE AMOUNTS UP FRONT AND THEY CAN'T GO BACK AND REDO THOSE
12 DEALS. SO THEY ARE GOING TO HAVE \$17 BILLION SITTING OUT THERE
13 WHERE THEY HAVE TO EXECUTE, AND THE BIGGEST COMPETITOR IN THE
14 WORLD IS GOING TO HAVE A LICENSE TO THEIR VERY IMPORTANT
15 SOFTWARE. AND IT JUST WOULD NOT BE APPROPRIATE.

16 THE OTHER THING THAT'S REALLY IMPORTANT, NUMBER TWO
17 THERE, WHEN IT'S A RUNNING ROYALTY, IT DOES NOT VALUE THE
18 SOFTWARE AND SUPPORT MATERIALS AT THE TIME OF THE INFRINGEMENT.
19 AND SO WE KNOW THE PROPERTY WAS TAKEN. IT'S IN YOUR BINDER.
20 AND FROM MY PERSPECTIVE, I AM GOING TO MEASURE THAT FOR YOU AND
21 EXPLAIN THAT TO YOU, BUT WHEN IT'S A RUNNING ROYALTY, IT DOES
22 NOT MEASURE THAT FAIR MARKET VALUE OF THAT PROPERTY.

23 AND THEN THE THIRD ONE IS REALLY INTERESTING. WITH
24 A RUNNING ROYALTY, THESE ARE DIRECT COMPETITORS, ORACLE AND
25 SAP. SO THE GREATEST SUCCESS OF SAP, WHEN THEY CONVERT
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