

EXHIBIT M

From: Greg Lanier [tglanier@JonesDay.com]
Sent: Thursday, March 29, 2012 6:39 AM
To: Howard, Geoff
Cc: Hann, Bree; Pickett, Donn; Fred Norton (fnorton@bsflp.com); Jane L Froyd; Joshua L Fuchs; Jindal, Nitin; sholtzman@bsflp.com; Jason McDonell
Subject: RE: Oracle v. SAP

Thank you for this response. We are available to meet and confer on Friday morning at or after 10amPT; please let us know what time(s) you propose and the dial-in.

To save time on the meet and confer, we provide here our position on two items.

First, we do not agree that Oracle may pursue any remedy at the new trial other than lost profits/infringer's profits. The Court's September 1, 2011 order was clear: ""Should Oracle reject the remittitur, the court will order a new trial as to actual damages in the form of lost profits/infringer's profits only." See DI 1083, p. 20. This order does not require clarification, nor does the same guidance in the Court's order denying Oracle's motion for interlocutory appeal. See DI 1103, p. 4.

Second, we do not agree to additional discovery, for many reasons, including the fact that the discovery sought is foreclosed by the Court's numerous scheduling and other orders on discovery, is on topics not relevant to the issues to be tried at the new trial, and is foreclosed by positions taken by Oracle during the litigation, though discovery responses, stipulations, stipulated exhibits and expert reports and testimony and otherwise.

Greg

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To: "Greg Lanier" <tglanier@JonesDay.com>, "sholtzman@bsflp.com" <sholtzman@bsflp.com>
Cc: "Jane L Froyd" <jfroyd@JonesDay.com>, "Joshua L Fuchs" <jlfuchs@JonesDay.com>, "Hann, Bree" <bree.hann@bingham.com>, "Fred Norton (fnorton@bsflp.com)" <fnorton@bsflp.com>, "Pickett, Donn" <donn.pickett@bingham.com>, "Jindal, Nitin" <nitin.jindal@bingham.com>
Date: 03/28/2012 04:56 PM
Subject: RE: Oracle v. SAP

Greg,
[Please see the attached response to your email.](#)
Thanks,
Geoff

From: Greg Lanier [<mailto:tglanier@JonesDay.com>]
Sent: Sunday, March 25, 2012 1:14 PM
To: sholtzman@bsflp.com; Howard, Geoff
Cc: Jane L Froyd; Joshua L Fuchs
Subject: Oracle v. SAP

We write regarding the upcoming trial in view of the April 26 deadline for various pretrial filings. In this email, we make a few proposals to streamline not only the meet and confer process leading up to those filings but also the trial itself.

First, recognizing that the new trial will address a subset of issues already tried, we propose to use the same jury questionnaire, preliminary and final jury instructions and verdict form from the November 2010 trial, edited only to reflect the narrowed issues to be tried and other more logistical developments, such as names of counsel, dates and the like. We also propose that to the extent the parties offer exhibits marked at the previous trial, the same exhibit numbers be used in the new trial.

Second, both to avoid confusion in view of the number of stipulations and orders, we propose that the parties incorporate all the stipulated facts relevant to the new trial, derived from those various orders or otherwise, into one stipulation that may be included in the joint pretrial conference statement and separately presented to the jury; this is not intended to change any of the previous stipulations or orders, but rather to extract the factual stipulations from all of them so that the jury may have one place to look. Similarly, we propose to add additional factual stipulations regarding foundational matters to avoid taking the jury's time with presentation of evidence designed to establish, eg, who works for whom.

Third, with regard to deposition designations, we propose that the parties stipulate to the same practice that we followed during the first trial, which involved exchanging and submitting objections to deposition designations prior to trial, with the Court ruling on these objections, also prior to trial. For the new trial, we propose submitting a stipulated request to the Court regarding this procedure on April 26. Specifically, the parties would stipulate to the following proposal:

- the parties would exchange objections to deposition designations on May 21
- the parties would meet and confer about the objections on May 25
- the parties would exchange final objections on May 29
- the parties would submit a chart of the designations and objections on June 4 (consistent with the chart we submitted last time)
- the parties would request that the Court rule on the objections prior to the start of playing deposition testimony at the new trial

Fourth, we make a proposal regarding trial exhibits. As was clear at the last trial, much too much time was spent before and during trial managing thousands of exhibits and related objections, especially given that only 191 exhibits were actually admitted at the last trial and the new trial will be shorter and more focused. We propose to follow a procedure much like that we propose for deposition designations:

- each side agrees to limit its respective exhibit list to no more than 200 exhibits that it intends to offer in its case in chief in support of a claim or defense
- the parties submit a stipulated request to the Court (presumably in the joint pretrial conference statement, but perhaps separately) asking that the Court consider and rule on exhibit objections prior to trial. The stipulation would include the following process:
 - the parties exchange agreed admissions and objections to the 200 exhibits on May 3
 - the parties meet and confer regarding objections on May 10 (and thereafter as necessary) including having a decision maker involved in each discussion
 - the parties exchange revised, final objections on May 15

- o the parties would each make a submission to the Court on May 17 consisting of: (1) a chart of those exhibits to which the other side objects that it requests the Court pre-admit, including columns for the exhibit number, exhibit description, the objection, the response, and the summary of the support for admitting the exhibit, (2) the exhibits themselves, and (3) the support for admitting the exhibit
- o if the Court has any questions about the submissions, it could raise them with counsel at the May 24 hearing

There are of course a variety of other topics to discuss during the meet and confer, but promptly reaching agreement, or not, on the proposals above should focus the discussions on what is important. Please let us know this week if you agree with our proposals and when you are available to begin the meet and confer process.

Please also let us know with whom we should coordinate on these matters going forward in addition to or instead of yourselves. Please include Jane Froyd and Josh Fuchs on all pretrial meet and confer communications addressed to us, as well.

Greg

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