

# **EXHIBIT W**

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

ORACLE CORPORATION, a )  
Delaware corporation, ORACLE )  
USA, INC., a Colorado )  
corporation, and ORACLE )  
INTERNATIONAL CORPORATION, a )  
California corporation, )  
 )  
Plaintiffs, )  
 )  
vs. ) No. 07-CV-1658 (PJH)  
 )  
 )  
SAP AG, a German corporation, )  
SAP AMERICA, INC., a Delaware )  
corporation, TOMORROWNOW, )  
INC., a Texas corporation, and )  
DOES 1-50, inclusive, )  
 )  
Defendants. )  
 )

VIDEOTAPED DEPOSITION OF  
SHAI AGASSI

MONDAY, JANUARY 5, 2009

HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY

REPORTED BY: HOLLY THUMAN, CSR No. 6834, RMR, CRR

(1-415445)

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11:53:09	11:56:15
11:53:11	11:56:18
11:53:13	11:56:21
11:53:15	11:56:21 25 Q. You go on to state: The bragging rights

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11:56:23	1 for having more PeopleSoft customers under service	11:58:53	
11:56:27	2 than Oracle may be all we need for a momentum swing,	11:58:55	
11:56:30	3 What did you mean by that?	11:59:03	
11:56:32	4 A. Oracle at that time didn't serve any	11:59:14	
11:56:33	5 PeopleSoft customer. And if TomorrowNow's customers	11:59:18	
11:56:36	6 count, we actually had a -- the experience of	11:59:24	
11:56:39	7 serving PeopleSoft customers, whereas Oracle didn't.	11:59:30	
11:56:42		11:59:31	
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11:58:39		12:01:22	

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16:53:44		16:55:58	1 A. Yes.
16:53:47		16:56:00	2 Q. But as you told me just a few minutes ago,
16:53:50		16:56:03	3 you thought that SAP could do better than that?
16:53:52		16:56:07	4 A. No, I think it could do 50 percent.
16:53:57	5 Q. Let me show you an exhibit that was marked	16:56:12	5 Q. It could only do 50 percent, in your view?
16:54:00	6 as 595.	16:56:15	6 A. No, I said it could do that goal. We
16:54:06	7 This is a Power Point entitled "Safe	16:56:18	7 didn't reach that goal.
16:54:09	8 Passage," January 2004. Have you seen this before?	16:56:19	8 Q. Understood, But at the time, January 2005,
16:54:15	9 A. Yes.	16:56:21	9 the goal was to get half the customers. Right?
16:54:16	10 Q. What is it?	16:56:25	10 A. Yes. That was the stated goal in this
16:54:16	11 A. It's the presentation he's talking about.	16:56:27	11 presentation.
16:54:18	12 Q. The presentation at the board meeting?	16:56:28	12 Q. Did you have in mind at the time that SAP
16:54:20	13 A. I think so.	16:56:30	13 could do --
16:54:21	14 MR. PICKETT: Oh, good, okay. I can	16:56:31	14 A. Could do better than this? No, I thought
16:54:24	15 withdraw my request.	16:56:34	15 that was an aspirational goal.
16:54:26	16 MR. COWAN: I won't double-check it then.	16:56:36	16 Q. So no longer -- you told me 3 minutes ago
16:54:28	17 MR. PICKETT: It rarely gets resolved that	16:56:38	17 or so that you thought that you could get the number
16:54:30	18 quickly in my --	16:56:40	18 of customers that would be equal to the ratio
16:54:31	19 Q. Did you go through this along with the	16:56:43	19 between Oracle and --
16:54:34	20 board -- at the board meeting?	16:56:45	20 A. You're splitting hairs. I think that it
16:54:36	21 A. I assume so.	16:56:47	21 could go -- I think it could go above 50 percent,
16:54:37	22 Q. But you don't remember?	16:56:50	22 but within that ratio. It cannot -- we didn't
16:54:38	23 A. Sometimes presentations were given to the	16:56:53	23 expect to go 90 percent SAP, 10 percent Oracle.
16:54:40	24 board ahead of time. We didn't go through them in	16:56:59	24 Q. Was the goal also to disrupt Oracle's
16:54:44	25 detail. Sometimes board meetings would not get into	16:57:01	25 ability to pay for the acquisition out of cash flow?
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16:54:48	1 every single slide. You would expect to read the	16:57:04	1 A. That would be the outcome of that goal.
16:54:51	2 material ahead of time.	16:57:06	2 Q. Once you converted the 50 percent, that
16:54:52	3 Q. In any event, you don't recall one way or	16:57:08	3 would have that result.
16:54:54	4 the other?	16:57:10	4 A. That's right.
16:54:55	5 A. No, I recall the statements and the quotes,	16:57:11	5 Q. And that was intended by SAP?
16:54:57	6 but I'm not sure we went through every single --	16:57:14	6 A. That was the outcome of reaching the 50
16:55:00	7 every single line item.	16:57:16	7 percent conversion.
16:55:03	8 And you have an answer to your, who was the	16:57:17	8 Q. Well, you -- somebody put this up on a
16:55:05	9 person at the Wall Street Journal. It was David	16:57:20	9 board to show the Board of Directors, good news --
16:55:09	10 Bank.	16:57:23	10 A. Management Board, not board of directors.
16:55:23	11 Q. Does that refresh your recollection what	16:57:26	11 Q. Management Board that -- Executive Board
16:55:25	12 you told Mr. Bank?	16:57:28	12 actually, right?
16:55:26	13 A. No.	16:57:29	13 A. Yes. Which is the same. It's a direct
16:55:33	14 Q. If you turn, please, to the page	16:57:31	14 translation from German. It could be translated to
16:55:35	15 ending -500.	16:57:34	15 Management Board or Executive Board.
16:55:38	16 A. Yes.	16:57:36	16 Q. The Executive Board was shown a slide that
16:55:39	17 Q. There's a slide entitled, "The Goal."	16:57:38	17 said under the goal that one of the outcomes would
16:55:42	18 A. Uh-huh.	16:57:40	18 be that Oracle's ability to pay for the acquisition
16:55:43	19 Q. Was that the goal of the Safe Passage	16:57:42	19 out of cash flow would be disruptive.
16:55:46	20 program?	16:57:45	20 A. Yes.
16:55:46	21 A. I assume so, if that's their -- if that's	16:57:45	21 Q. And that was a good thing.
16:55:49	22 part of the deck.	16:57:46	22 A. Yes.
16:55:50	23 Q. And the goal was to convert approximately	16:57:47	23 Q. And it would shrink their share of the
16:55:52	24 50 percent of the PeopleSoft and J.D. Edwards	16:57:49	24 market?
16:55:56	25 customer installations to SAP?	16:57:50	25 A. Yes.

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16:57:50	1 Q. And it would discredit Oracle's efforts to	17:00:14
16:57:53	2 create a next-generation application platform.	17:00:15
16:57:56	3 A. Yes.	17:00:18
16:57:56		17:00:20
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CERTIFICATE OF REPORTER

I, HOLLY THUMAN, a Certified Shorthand Reporter, hereby certify that the witness in the foregoing deposition was by me duly sworn to tell the truth, the whole truth, and nothing but the truth in the within-entitled cause; that said deposition was taken down in shorthand by me, a disinterested person, at the time and place therein stated, and that the testimony of the said witness was thereafter reduced to typewriting, by computer, under my direction and supervision;

That before completion of the deposition, review of the transcript  was [ ] was not requested. If requested, any changes made by the deponent (and provided to the reporter) during the period allowed are appended hereto.

I further certify that I am not of counsel or attorney for either or any of the parties to the said deposition, nor in any way interested in the event of this cause, and that I am not related to any of the parties thereto.

DATED January 8, 2009.



HOLLY THUMAN, CSR No. 6834