

ELIZABETH ANN SHIPPY March 5, 2009
HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY

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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
ELIZABETH ANN SHIPPY

THURSDAY, MARCH 5, 2009

HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY

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

(1-416868)

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10:12:18 1 THE WITNESS: I'm sure there were emails
10:12:20 2 that would have said, nominations of Customer X, who
10:12:25 3 would like them to attend. But once again, I don't
10:12:29 4 remember any formal effort to track that
10:12:32 5 information. It was really just to help the
10:12:36 6 customers that we were aware of with some general
10:12:38 7 information.
10:12:40 8 MR. DELAHUNTY: Q. So if Customer X was
10:12:42 9 nominated, was it possible to confirm that Customer
10:12:45 10 X participated in, say, for example, the World phone
10:12:51 11 conference that you hosted?
10:12:52 12 MS. HOUSE: Objection. Calls for
10:12:53 13 speculation.
10:12:54 14 THE WITNESS: Yeah, I don't recall.
10:13:02 15 MR. DELAHUNTY: Q. Do you -- you were on
10:13:03 16 each of these phone calls.
10:13:05 17 A. Yes.
10:13:11 18 Q. Was this your primary job responsibility
10:13:13 19 prior to taking over the "At Risk" report?
10:13:16 20 A. No.
10:13:17 21 Q. Do you remember any of your other programs
10:13:19 22 or responsibilities prior to taking over the "At
10:13:21 23 Risk" report?
10:13:24 24 A. It would be around the system and process
10:13:26 25 improvements, working on OKS, for example, which is

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10:13:30 1 our contract system. If there's updates to it, if
10:13:34 2 there's fixes, enhancements that need to be rolled
10:13:37 3 out to the team, I would be part of that.
10:13:41 4 Q. When you took over the "At Risk" report, do
10:13:43 5 you remember whom you took it over from?
10:13:46 6 A. Patricia.
10:13:49 7 Q. Is Patricia -- I'm not going to pronounce
10:13:53 8 this right -- Patricia Murguia, is she still at
10:13:58 9 Oracle?
10:13:58 10 A. Yes.
10:13:59 11 Q. And what capacity she is in?
10:14:02 12 A. She's in reporting and support sales
10:14:04 13 operations.
10:14:05 14 Q. So she's still there?
10:14:06 15 A. Yes.
10:14:20 16 Q. I apologize for this non sequitur, but I'm
10:14:23 17 going to ask you one more question about those phone
10:14:25 18 calls that you hosted, and then go back to the "At
10:14:28 19 Risk" report.
10:14:29 20 A. Sure.
10:14:29 21 Q. I was asking you about the number of
10:14:31 22 customers that were on those phone calls, and you
10:14:33 23 testified that you could not recall the exact
10:14:36 24 number.
10:14:38 25 But there was a -- there was enough

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10:14:42 1 customers to warrant hosting one of those calls a
10:14:48 2 month per product line.
10:14:50 3 MS. HOUSE: Objection. Vague.
10:14:52 4 THE WITNESS: We ran those calls until we
10:14:56 5 felt such time that there was enough information
10:14:59 6 about the future direction that we could point
10:15:03 7 customers to without having those calls.
10:15:06 8 MR. DELAHUNTY: Q. Do you recall when that
10:15:07 9 time period was that you felt that those phone calls
10:15:13 10 were no longer necessary?
10:15:14 11 A. I believe it was till the end of calendar
10:15:17 12 year 2005.
10:15:24 13 Q. Was there a specific directive given down
10:15:26 14 to you to cease hosting those phone calls?
10:15:30 15 A. No. I would say it was a matter of, the
10:15:33 16 volume decreased. We just weren't seeing the
10:15:36 17 requests coming through from the various teams, so
10:15:40 18 we're not going to host a call if nobody comes.
10:15:44 19 Q. Understandable. And you were evaluating
10:15:47 20 the volume by the amount of requests.
10:15:49 21 A. Yes.
10:15:50 22 Q. Not by the amount of participants? Well,
10:15:55 23 you were evaluating it by the amount of requests --
10:15:59 24 A. Yes.
10:16:01 25 Q. Okay. Do you know of anywhere that those

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10:16:06 1 requests are tracked, or cataloged?
10:16:13 2 A. I don't.
10:16:19 3 Q. You took over the "At Risk" report at the
10:16:21 4 end of 2005.
10:16:24 5 A. Approximately.
10:16:33 6 Q. And can you describe -- or how would you
10:16:38 7 describe the "At Risk" report?
10:16:41 8 A. The "At Risk" report was a tracking
10:16:44 9 mechanism to allow management to see the customers
10:16:49 10 who were considering going to TomorrowNow or other
10:16:54 11 third-party vendors.
10:17:00 12 Q. So to be an at-risk customer, Oracle had to
10:17:06 13 perceive a threat that that customer would go to
10:17:09 14 TomorrowNow or a third-party support provider?
10:17:14 15 A. To be considered for that report.
10:17:15 16 Q. What is your understanding of the term
10:17:22 17 "third-party support provider"?
10:17:27 18 A. A competitor to the support sales business.
10:17:32 19 Q. Who would provide support for Oracle
10:17:35 20 products?
10:17:36 21 A. That's correct.
10:17:37 22 Q. Okay. Would a third-party support provider
10:17:42 23 be limited to companies like TomorrowNow -- and I'll
10:17:45 24 name a couple examples: TomorrowNow, Rimini Street,
10:17:52 25 Klee & Associates, for example?

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10:24:40 1 A. He just took the slide --
10:24:42 2 Q. Fair enough. Fair enough.
10:24:46 3 Was there any other slides of a similar
10:24:48 4 nature?
10:25:02 5 A. The third-party SWAT team, -296, the very
10:25:06 6 last page, Rob Lachs really ran that initiative. So
10:25:09 7 once again, I'm sure I took some information based
10:25:12 8 on the information that he's been putting together
10:25:13 9 for that initiative.
10:25:16 10 Q. Were you a member of the third-party SWAT
10:25:18 11 team?
10:25:18 12 A. From an operational perspective, yes.
10:25:25 13 Q. The page that I wanted to ask you about at
10:25:27 14 this time is actually -293, which is Slide No. 8.
10:25:35 15 A. Yes.
10:25:35 16 Q. And you authored this slide?
10:25:42 17 A. Yes. I validated it with Rick Cummins, I'm
10:25:45 18 sure; but yes, I'm sure I put it together.
10:25:48 19 Q. So you testified earlier that one of your
10:25:50 20 responsibilities was receiving information from
10:25:54 21 sales reps to input into the "At Risk" report.
10:25:58 22 A. Yes.
10:26:00 23 Q. Does this slide offer the criteria for what
10:26:06 24 should be reported into the "At Risk" report?
10:26:09 25 A. No.

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10:26:11 1 Q. How would you describe what this slide has?
10:26:16 2 A. This slide was to educate the reps of what
10:26:23 3 types of customer should be reported on the report,
10:26:29 4 but it doesn't list on this slide all of the details
10:26:33 5 that are -- that are needed to fill out the report.
10:26:37 6 Does that make sense?
10:26:39 7 Q. It does.
10:26:39 8 A. Okay.
10:26:41 9 Q. The language that I'm curious about is in
10:26:45 10 the third bullet, or No. 3. And it's, "Any customer
10:26:50 11 or group of customers that are at risk due to common
10:26:53 12 trends that need higher level of visibility."
10:27:06 13 So I was -- can you explain what you meant
10:27:13 14 by "common trends that need higher levels of
10:27:18 15 visibility"?
10:27:20 16 A. I don't. And in fact, what's interesting
10:27:23 17 about that is, my understanding, and what Rick and I
10:27:26 18 had originally been working on this report, was that
10:27:30 19 it was truly to track the customers that were being
10:27:33 20 targeted by the third party.
10:27:35 21 So this surprises me that No. 3 is in here
10:27:39 22 saying that any customer or group of customers that
10:27:42 23 are at risk due to common trends. I really don't
10:27:46 24 know where that came from.
10:27:48 25 Q. Okay. Well, you had -- we'll put this

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10:28:01 1 document aside for a second.
10:28:03 2 When you would receive reports from sales
10:28:05 3 reps with information to input into the "At Risk"
10:28:10 4 report, did you read each of those communications
10:28:14 5 from sales reps?
10:28:16 6 A. Yes.
10:28:23 7 Q. Were you tasked with reporting to anybody
10:28:25 8 the information that you were receiving from the
10:28:28 9 sales reps?
10:28:30 10 A. I would put that information in the report
10:28:32 11 which would then get sent to management.
10:28:35 12 Q. Were you tasked with making a report of the
10:28:41 13 reports, or a summary of what was in the "At Risk"
10:28:45 14 report? For example, an update?
10:28:52 15 MS. HOUSE: Objection. Vague.
10:28:53 16 THE WITNESS: The report had summary --
10:28:56 17 there was a summary tab on it. So the reps would
10:29:01 18 give me the specific details, which would go on the
10:29:06 19 data tab. And then from the data tab, I would then
10:29:08 20 manipulate the data and put it in the right buckets,
10:29:11 21 whether it was on the won, lost, or negotiated tab,
10:29:17 22 and then I would also summarize all the information
10:29:19 23 based on that data tab.
10:29:24 24 MR. DELAHUNTY: Q. And your job
10:29:25 25 responsibilities, with the "At Risk" report, related

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10:29:27 1 to TomorrowNow?
10:29:29 2 A. Yes.
10:29:30 3 Q. Okay. Did you have any other job
10:29:35 4 responsibilities at Oracle, other than the "At Risk"
10:29:37 5 report, that you feel related to TomorrowNow?
10:29:46 6 A. Not that I recall.
10:29:47 7 Q. Okay. For example, the SWAT team, would
10:29:54 8 you consider that as a job responsibility that
10:29:56 9 related to TomorrowNow?
10:29:58 10 A. Yes. And I guess I'm lumping all that in
10:30:02 11 to the "at risk." But you're right. I mean, I
10:30:04 12 guess -- if I can explain, the SWAT team was more of
10:30:09 13 just putting out information to help the support
10:30:11 14 sales reps, which I did not create that information.
10:30:14 15 I just was assisting, like I say, from an operations
10:30:17 16 perspective, helping Kristin put things on the web,
10:30:21 17 that type of thing.
10:30:22 18 But the "At Risk" report is what I
10:30:24 19 physically worked on and owned for that period of
10:30:26 20 time.
10:30:29 21 Q. Was there anything else similar to the SWAT
10:30:33 22 team that you may not have physically worked on or
10:30:38 23 owned during that period of time that related to
10:30:43 24 TomorrowNow?
10:30:45 25 A. I don't recall.

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11:32:42	1 "At Risk" report. Is that an accurate description?	11:35:09	1 was just a fluke. We shouldn't have had any
11:32:45	2 MS. HOUSE: Objection.	11:35:12	2 in-house accounts listed on that "At Risk" report.
11:32:46	3 THE WITNESS: I believe so.	11:35:14	3 That -- the -- the basis of that report was to truly
11:32:46	4 MR. DELAHUNTY: Q. Okay. And the	11:35:19	4 track the third-party threat, and specifically
11:32:49	5 attachment here indicates that it's the 2-14-06 --	11:35:21	5 against TomorrowNow.
11:32:54	6 A. Correct.	11:35:23	6 MR. DELAHUNTY: Q. Okay. One tab that
11:32:56	7 Q. So and this email includes a chart of	11:35:54	7 we -- one part of that small excerpt from the "at
11:33:01	8 third-party support providers. And it appears to	11:35:59	8 risk" analysis that we did not discuss is the
11:33:04	9 be -- those providers appear to be ranked by the	11:36:02	9 "unknown" listing. Do you see that, Ms. Shippy?
11:33:09	10 number of times they appear in the "At Risk" report.	11:36:05	10 A. I do.
11:33:17	11 A. It says the 62 customers that have dropped	11:36:06	11 Q. So I take that to mean that some customers
11:33:21	12 support. So it would have been the customers on the	11:36:10	12 were lost, but the "At Risk" report, at least, did
11:33:23	13 "Lost" tab on the "At Risk" report.	11:36:14	13 not reflect where those customers went?
11:33:32	14 Q. So the third company is Versytec.	11:36:18	14 A. Correct. So once again, let me clarify
11:33:36	15 A. Yes.	11:36:21	15 that this report was as good as the information that
11:33:37	16 Q. Do you recall anything specific about	11:36:24	16 we received from the rep, which then received the
11:33:39	17 Versytec, different from another one of these	11:36:28	17 information directly from the customer. And in some
11:33:42	18 companies?	11:36:30	18 cases, the customer was not willing to share with us
11:33:43	19 A. No.	11:36:33	19 who they were going with.
11:33:44	20 Q. Do you recall anything specific about the	11:36:36	20 Q. Okay. But the "unknown" tab does -- it is
11:33:46	21 next company listed, CH2M Hill, relative to the	11:36:43	21 accurate to say that the "unknown" tab does reflect
11:33:51	22 other companies on this list?	11:36:45	22 that the customer has gone to some third-party
11:33:53	23 A. No.	11:36:50	23 support provider. It's just not known which one?
11:33:54	24 Q. We've discussed Klee.	11:36:54	24 A. To the best our knowledge, that is correct.
11:33:56	25 Do you recall the company Hewitt?	11:37:08	25 Q. I asked you a few questions about Klee, and
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11:33:59	1 A. I don't.	11:37:10	1 I'll ask you a few more.
11:34:01	2 Q. You have no recollection about who they	11:37:12	2 It's on this chart. It's listed as a
11:34:02	3 are?	11:37:15	3 third-party support provider.
11:34:03	4 A. No.	11:37:18	4 Do you know if Klee still provides
11:34:04	5 Q. Okay. And then finally, it says -- it	11:37:19	5 third-party support?
11:34:10	6 looks like the third-party risk analysis tracked	11:37:21	6 A. I don't.
11:34:15	7 when in-house -- when a customer was lost to	11:37:23	7 Q. Do you know if Klee is an Oracle partner?
11:34:18	8 in-house support.	11:37:25	8 A. I don't know.
11:34:20	9 A. Right. And per previous testimony, where	11:37:29	9 Q. Do you know if Klee has any affiliation
11:34:22	10 we talked about the criteria for "at risk," we	11:37:30	10 with Oracle? And that is a broad question, but --
11:34:25	11 really shouldn't have had any in-house accounts on	11:37:35	11 A. I don't know.
11:34:28	12 that report, but obviously, we had one that somehow	11:37:35	12 (Deposition Exhibit 212 was marked for
11:34:33	13 the rep sent to me, and I just -- and I'm not sure	11:38:08	13 identification.)
11:34:38	14 if I classified it or Patricia did or Rick did,	11:38:09	14 MR. DELAHUNTY: Q. Ms. Shippy, I'm showing
11:34:41	15 because I don't know what time this customer came on	11:38:10	15 you what's been marked as Exhibit 212. And if you'd
11:34:43	16 the report. But you can see with just one, we were	11:38:13	16 like to take a moment, Ms. Shippy, to review that.
11:34:45	17 really trying not to track the in-house	11:38:17	17 A. Thank you.
11:34:48	18 cancellations. We were really going after the	11:38:17	18 (Examining document.)
11:34:53	19 customers that were going to TomorrowNow and any	11:38:43	19 Q. Okay. So Exhibit 211 is a document -- is
11:34:54	20 other third-party vendor.	11:38:50	20 an email chain. The most recent is from Elizabeth
11:34:57	21 Q. But it appears that the "At Risk" report	11:38:53	21 Del Ferro to you on February 20th, 2006.
11:34:59	22 would report a customer as lost if it went to	11:39:05	22 MS. HOUSE: 212.
11:35:02	23 in-house?	11:39:05	23 MR. DELAHUNTY: Pardon me, it's 212.
11:35:04	24 MS. HOUSE: Objection. Overbroad.	11:39:08	24 Q. Referring to Exhibit 212, an email from
11:35:06	25 THE WITNESS: No. Like I say, to me, this	11:39:10	25 Elizabeth Del Ferro to Ms. Elizabeth Shippy on

CERTIFICATE OF REPORTER

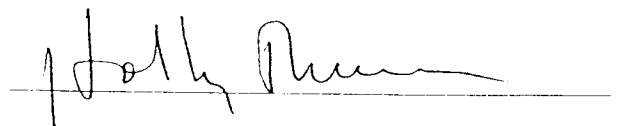
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I, HOLLY THUMAN, a Certified Shorthand Reporter, hereby certify that the witness in the foregoing deposition was by me duly sworn to tell the truth, the whole truth, and nothing but the truth in the within-entitled cause; that said deposition was taken 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 March 11th, 2009



HOLLY THUMAN, CSR No. 6834