

# **EXHIBIT B**

CHARLES PHILLIPS                      April 17, 2009  
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Page 1

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.	)	
	)	

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VIDEOTAPED DEPOSITION OF  
CHARLES PHILLIPS

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FRIDAY, APRIL 17, 2009

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REPORTED BY: HOLLY THUMAN, CSR No. 6834, RMR, CRR  
(1-418649)

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CHARLES PHILLIPS April 17, 2009  
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Page 57

10:28:02 11 competitive language is normal.

10:28:05 12 MR. LANIER: Q. The next story is titled,  
10:28:09 13 "Why Oracle Loves a Fight." It's down toward the  
10:28:12 14 bottom of the first page. And the -- I'm not sure  
10:28:16 15 of the journalistic term, maybe the tagline, I don't  
10:28:19 16 know, says:

10:28:20 17 In the middle of the battle with rival  
10:28:22 18 SAP for retail-software specialist Retek,  
10:28:25 19 President Charles Phillips admits, quote, "we  
10:28:29 20 always need an enemy," close quote.

10:28:31 21 Do you see that?

10:28:32 22 A. Yes.

10:28:32 23 Q. Did you say that, "we always need an  
10:28:34 24 enemy"?

10:28:34 25 A. Probably did.

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CHARLES PHILLIPS April 17, 2009  
HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY

Page 58

10:28:35 1 Q. Did you say it in reference to SAP?

10:28:37 2 A. I said it -- I'm assuming it was a  
10:28:42 3 reference to SAP.

10:28:43 4 Q. Why does Oracle always need an enemy?

10:28:50 5 A. It was a reference to, having a focused  
10:29:01 6 competitor gets the competitive juices flowing.

10:29:06 7 Q. On the second page of this same exhibit, so  
10:29:09 8 it's page -113, about 40 percent down the page,  
10:29:15 9 there's a question and answer.

10:29:17 10 "Question: SAP certainly -- has  
10:29:21 11 certainly become enemy number one for Oracle.

10:29:23 12 "Answer: Yeah, well, we always need an  
10:29:25 13 enemy."

10:29:26 14 Do you see that?

10:29:28 15 A. Yeah.

10:29:29 16 Q. Do you recall that specific dialogue?

10:29:34 17 A. Well, now that I see it here. I mean, I  
10:29:36 18 wouldn't have 2 minutes ago, but yes.

CHARLES PHILLIPS April 17, 2009  
HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY

Page 95

11:27:07 3 MR. LANIER: Q. So Mr. Phillips, this  
11:27:08 4 email says it's from Charles Phillips to Charles  
11:27:14 5 Phillips, and it's dated April 25, 2006.

11:27:18 6 I'm going to ask you about the first  
11:27:19 7 paragraph. Look at as much of this as you want to.  
11:27:22 8 My first question is going to be, do you remember  
11:27:24 9 it; and the second question is going to be, why did  
11:27:26 10 you write it to yourself, if you remember?

11:27:28 11 A. I do remember it. This is a broad  
11:27:33 12 organizational announcement, and was sent out on my  
11:27:37 13 behalf to a distribution list, and I'm on the  
11:27:40 14 distribution list.

11:27:41 15 Q. Okay. Do you recall the distribution list?

11:27:46 16 A. I don't, yeah, remember exactly. Probably  
11:27:49 17 the Global Sales.

11:27:52 18 Q. Okay. The first -- so your assistant or  
11:27:56 19 somebody sent this for you, so that's why it's from  
11:27:59 20 you; and you got it because whatever the  
11:28:01 21 distribution list was, you're a member of that list.  
11:28:04 22 Is that correct?

11:28:05 23 A. Right.

11:28:06 24 Q. The first paragraph says: "Oracle Apps" --  
11:28:09 25 actually, let me back up.

CHARLES PHILLIPS April 17, 2009  
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Page 96

11:28:11 1 Do you recall writing the substance of this  
11:28:13 2 email?  
11:28:22 3 A. Yes.  
11:28:23 4 Q. First paragraph says: "Oracle Apps  
11:28:26 5 Development has committed to new versions of all of  
11:28:29 6 our existing applications on an ongoing basis well  
11:28:32 7 beyond Fusion."  
11:28:34 8 Do you see that sentence?  
11:28:35 9 A. Yes.  
11:28:40 10 Q. Was this a new commitment?  
11:28:44 11 A. It was a formal documentation and packaging  
11:28:48 12 of things we had already been saying, but we needed  
11:28:51 13 to productize it in a message so people could focus  
11:28:58 14 on it.  
11:28:58 15 Q. Why did you need to do that?  
11:29:00 16 A. Because our main competitor, SAP, was out  
11:29:06 17 telling customers that the products wouldn't be  
11:29:10 18 supported, or they wouldn't continue, there would be  
11:29:12 19 no new enhancements -- all the things, you know,  
11:29:16 20 they obviously were saying that weren't helpful.  
11:29:20 21 And so we wanted to respond.

CHARLES PHILLIPS                      April 17, 2009  
HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY

Page 117

12:50:57            9                            MR. LANIER:   Q.   Who at Oracle is  
12:50:59            10           responsible, ultimately, for deciding whether Oracle  
12:51:02            11           will license its intellectual property to some other  
12:51:06            12           company?  
12:51:12            13                      A.   Well, a lot of people involved in  
12:51:14            14           recommending things.   But ultimately, anything  
12:51:18            15           significant Larry would have to approve.  
12:51:22            16                      Q.   Back in January of 2005, when SAP bought  
12:51:25            17           TomorrowNow, had SAP come to Oracle and said, we'd  
12:51:30            18           like a license for TomorrowNow to do what it does,  
12:51:33            19           who would have made the decision for Oracle, whether  
12:51:36            20           or not to grant that license?  
12:51:41            21                      A.   That probably would have required Board  
12:51:43            22           approval.  
12:51:47            23                      Q.   Do you know anything about what price or  
12:51:51            24           pricing methodology would have been required in that  
12:51:55            25           scenario?

CHARLES PHILLIPS April 17, 2009  
HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY

Page 118

12:51:55 1 MS. HOUSE: Calls for speculation.

12:52:04 2 THE WITNESS: Not outside of what we've  
12:52:06 3 already discussed with attorneys. We've talked  
12:52:08 4 about that.

12:52:09 5 MR. LANIER: Q. Okay. As you sit here  
12:52:11 6 today -- well, I'll ask a different question, then  
12:52:15 7 I'll come back to that one.

12:52:16 8 Would you have been involved, back in  
12:52:18 9 January of 2005, with the consideration of whether  
12:52:21 10 or not to grant such a license, a license to SAP?

12:52:26 11 A. Yes.

12:52:28 12 Q. Don't tell me anything you've discussed  
12:52:30 13 with the lawyers.

12:52:31 14 What areas or aspects of that decision  
12:52:33 15 would you have made a contribution to?

12:52:38 16 A. Look at the impact on our business by  
12:52:46 17 granting a competitor intellectual property, by not  
12:52:50 18 having those customers directly ourselves, lost  
12:52:55 19 license sales, and kind of reflect the point of view  
12:52:58 20 of what does it mean for ongoing future sales for  
12:53:01 21 the field if we do this. And if we do do this, we  
12:53:09 22 better get enough to replace the lost sales that  
12:53:11 23 we're going to give up.

12:53:14 24 Q. And how would you have calculated how much  
12:53:15 25 that was?



CHARLES PHILLIPS April 17, 2009  
HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY

Page 119

12:53:17 1 MS. HOUSE: Calls for speculation.

12:53:21 2 THE WITNESS: I probably would have modeled

12:53:23 3 the number of customers leaving, the -- looking at

12:53:27 4 the growing size of the -- our product portfolio and

12:53:31 5 all the cross-sell and up-sell we could have

12:53:33 6 obtained over that -- in perpetuity, because you

12:53:37 7 have to go out many, many years, because this is an

12:53:39 8 ongoing thing, not just 3 or 5 years, but the next

12:53:43 9 20 years. Model in the related support revenue that

12:53:46 10 you get after you sell the license, model in the

12:53:49 11 relationship benefit for future acquisitions, now

12:53:52 12 that we have a great relationship, and they're

12:53:55 13 standardizing our projects we can make other

12:53:57 14 acquisitions and do the same thing with. So try to

12:54:00 15 model all that potential in and make sure that

12:54:05 16 whatever we're getting is greater than that.

12:54:08 17 MR. LANIER: Q. As you sit here today, do

12:54:09 18 you have any idea how big the number would be

12:54:11 19 following the methodology you just described?

12:54:19 20 A. I -- I've only looked at kind of through

12:54:26 21 today, I guess. I didn't look forward for the next

12:54:29 22 whatever years. But that's where I came up with the

12:54:31 23 3 or 4 billion dollar number, just looking at the

12:54:35 24 license sales we could have had historically the

12:54:37 25 last 3 last 3 or 4 years. But going forward, it

CHARLES PHILLIPS April 17, 2009  
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Page 120

12:54:41 1 would be a much bigger number.

12:54:43 2 Q. Bigger than 3 or 4 billion.

12:54:45 3 A. Yes. Because these are perpetual licenses  
12:54:47 4 that last forever, which means the customers  
12:54:49 5 constantly add on to what they have. It's an  
12:54:51 6 ongoing stream.

12:54:53 7 Q. Assuming a price much bigger than 3 or 4  
12:54:57 8 billion, would you have recommended granting such a  
12:54:59 9 license?

12:55:00 10 A. If the price was right. We're businessmen;  
12:55:03 11 if they're willing to pay it, and we could get that  
12:55:06 12 money up front rather than working on it over the  
12:55:10 13 next 20 years, sure, there would be some  
12:55:14 14 circumstances under which it makes sense.

12:55:16 15 Q. Would you have recommended it?

12:55:19 16 A. If the price was right.

12:55:20 17 Q. Would SAP have agreed to that price?

12:55:25 18 A. Have to ask them that. I don't know.

CHARLES PHILLIPS April 17, 2009  
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13:41:43 1 THE VIDEO OPERATOR: Okay. This marks the  
13:41:44 2 ends of Tape No. 2 in the deposition of Charles  
13:41:46 3 Phillips. Going off the record, the time is 1:41.  
13:41:50 4 (Recess from 1:41 p.m.)

13:42:02 5 --o0o--

13:42:02 6 I declare under penalty of perjury that  
13:42:02 7 the foregoing is true and correct. Subscribed at  
13:42:02 8 \_\_\_\_\_, California, this \_\_\_\_ day of  
13:42:02 9 \_\_\_\_\_ 2009.

13:42:02 10   
13:42:02 11 \_\_\_\_\_  
13:42:02 12 CHARLES PHILLIPS

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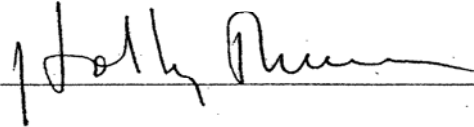
## CERTIFICATE OF REPORTER

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 [X] 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 April 27, 2009

  
HOLLY THUMAN, CSR No. 6834