

EXHIBIT 36

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.)

CASE NO. 07-CV-01658 (MJJ)

SAP AG, A GERMAN CORPORATION,)
SAP AMERICA, INC., A DELAWARE)
CORPORATION, TOMORROWNOW,)
INC., A TEXAS CORPORATION, AND)
DOES 1-50, INCLUSIVE,)
Defendants.)

"HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY"
ORAL VIDEOTAPED DEPOSITION OF
THOMAS ZIEMEN
September 30, 2008 - Volume 1

ORAL VIDEOTAPED DEPOSITION OF THOMAS ZIEMEN, produced as a witness at the instance of the Plaintiffs and duly sworn, was taken in the above-styled and numbered cause on Tuesday, September 30, 2008 - Volume 1, from 8:45 a.m. to 6:24 p.m., before JAMES M. PLAIR, Certified Shorthand Reporter in and for the State of Texas, reported by computerized stenotype machine at the offices of JONES DAY, 717 Texas, Suite 3300, Houston, Texas 77002-2712, pursuant to the Federal Rules of Civil Procedure and the provisions stated on the record or attached hereto.

Job No. 1603-88906

11:06 1

11:06 2

11:06 3

11:07 4

11:07 5

11:07 6

11:07 7

11:07 8

11:07 9

11:07 10

11:07 11

11:07 12

11:08 13 Q. (MS. HOUSE) Okay. So we've now segregated out

11:08 14 this and we now have Exhibit 452, which starts at

11:08 15 SAP-OR0002893[sic] through 2897, and this is an e-mail

11:08 16 that is from your e-mail box. Correct?

11:08 17 A. Correct.

11:08 18 Q. And it's dated December 22nd, 2004, and it was

11:08 19 from Mr. Oswald to you and to Mr. Welz. Is that correct?

11:08 20 A. Correct.

11:08 21 Q. And this was sent to you the day before you

11:08 22 presented the PeopleSoft attack plan, Exhibit 447.

11:08 23 Correct?

11:08 24 A. Before I sent it as an e-mail, right.

11:08 25 Q. And it's titled PeopleSoft 1-2-3?

11:09 1 A. That is correct.

11:09 2 Q. And did you read this e-mail?

11:09 3 A. I assume, yes.

11:09 4 Q. Did you do the highlighting on the document?

11:09 5 A. I think so.

11:09 6 Q. And did you make the margin notes on the

11:09 7 document?

11:09 8 A. At least the one on the first page.

11:09 9

11:10 10

11:10 11

11:10 12

11:10 13

11:10 14

11:10 15

11:10 16

11:10 17

11:10 18

11:10 19

11:10 20

11:10 21

11:10 22

11:10 23

11:10 24

11:10 25

11:10 1

11:10 2

11:10 3

11:11 4

11:11 5

11:11 6

11:11 7

11:11 8

11:11 9

11:11 10 Q. Do you remember using a highlighter on this
11:11 11 document?

11:11 12 A. I don't recall, but I assume, yes.

11:11 13 Q. And when you highlight, do you tend to highlight
11:11 14 things that are of interest to you?

11:11 15 A. Yes.

11:11 16 Q. And when you underline, you underline things
11:11 17 that are of interest to you?

11:11 18 A. Yes.

11:11 19

11:11 20

11:12 21

11:12 22

11:12 23

11:12 24

11:12 25

11:12 1

11:12 2

11:12 3

11:12 4 Q. And this is an e-mail that Mr. Oswald forwarded
11:12 5 to you and it had been sent to him by Mr. Agassi. Do you
11:13 6 see that?

11:13 7 A. Yes.

11:13 8 Q. And Mr. Agassi had indicated: "Please read the
11:13 9 following e-mail trail," and did you do that?

11:13 10 A. Yes, I did.

11:13 11 Q. And at the bottom of Mr. Zepecki's e-mail trail,
11:13 12 the first one, the one that's dated Tuesday, December 21st
11:13 13 which is on 2893, he indicates, and this is a highlighted
11:13 14 portion of this: "I am not sure how TN -- how TomorrowNow
11:13 15 gets access to PeopleSoft software, but it's very likely
11:13 16 that TomorrowNow is using the software outside the
11:13 17 contractual use rights guaranteed to them and these use
11:13 18 rights could be terminated by Oracle." Do you see that?

11:13 19 MR. COWAN: Objection to form.

11:13 20 A. Where is that? Can you show me?

11:14 21 Q. (MS. HOUSE) The last line.

11:14 22 A. Okay.

11:14 23 Q. Do you see that?

11:14 24 A. Yes.

11:14 25 Q. Why did you highlight that portion?

THOMAS ZIEMEN September 30, 2008
HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY

Page 97

11:14 1 A. It seemed to be important.

11:14 2

11:14 3

11:14 4

11:14 5

11:15 6

11:15 7

11:15 8

11:15 9

11:15 10

11:15 11

11:15 12

11:15 13

11:15 14

11:15 15

11:15 16

11:15 17

11:15 18

11:15 19

11:15 20

11:15 21

11:15 22

11:15 23

11:16 24

11:16 25

11:46 1

11:46 2

11:46 3

11:46 4

11:46 5

11:46 6

11:46 7

11:46 8

11:46 9

11:46 10

11:46 11

11:46 12

11:46 13

11:46 14

11:46 15

11:46 16

11:46 17

11:47 18

11:47 19

11:47 20

11:47 21

11:47 22 After SAP acquired TomorrowNow in 2005, did

11:47 23 you have any particular titles in connection with your

11:47 24 TomorrowNow responsibilities?

11:47 25 A. No particular title.

11:47 1 Q. Did you ever hear yourself referred to as the
11:47 2 SAP TomorrowNow Global Business Owner?

11:47 3 A. That's one of the terms that our corporate
11:47 4 controlling uses.

11:47 5 Q. So the corporate controller portion of the
11:47 6 SAP AG company referred to you as the SAP TomorrowNow
11:48 7 Global Business Owner?

11:48 8 A. That is correct.

11:48 9 Q. Did you have -- can you -- are you aware of any
11:48 10 other titles that were associated with your particular
11:48 11 role as to TomorrowNow?

11:48 12 A. As I said, I was the Vice President of the
11:48 13 Business -- Service Business Development unit. That was
11:48 14 my title.

11:48 15 (Exhibit 450 marked)

11:48 16 Q. (MS. HOUSE) Okay. Could you look at
11:48 17 Exhibit 450, and Exhibit 450 is a document with Bates
11:49 18 numbers SAP-OR00001541 through 1548. It's titled
11:49 19 TomorrowNow Acquisition Monitoring, Status Update,
11:49 20 December 1st, 2006, Thomas Ziemer, SAP AG, Andrew Nelson,
11:49 21 TomorrowNow. Is this your document?

11:49 22 A. I put that together.

11:49 23 Q. And those are your handwriting and scribbles on
11:49 24 it. Correct?

11:49 25 A. That is correct.

11:49 1 Q. And is this the kind of monthly report that you
11:49 2 discussed that you will provide to the SAP -- or to
11:49 3 Mr. Oswald or is this a different type of report?

11:49 4 A. It's a different type.

11:49 5 Q. And what -- what was this report for?

11:50 6 A. For an acquisition monitoring update meeting.

11:50 7 Q. How often were those meetings?

11:50 8 A. I don't know.

11:50 9 Q. More than once a year?

11:50 10 A. I don't know.

11:50 11 Q. So that was a specific meeting that was called
11:50 12 to monitor the TomorrowNow acquisition or all
11:50 13 acquisitions?

11:50 14 A. That was requested by corporate controlling for
11:50 15 all acquisitions.

11:50 16 Q. And this was the contribution that was being
11:50 17 done concerning the TomorrowNow acquisition. Correct?

11:50 18 A. That is correct.

11:50 19 Q. Could you turn to page -- what page is it --
11:51 20 1543?

11:51 21 A. (Witness complies).

11:51 22 Q. And this is titled Global Organization and
11:51 23 Governance Model and it has four boxes at the top and the
11:51 24 top left says TomorrowNow Board of Directors, Andrew
11:51 25 Nelson/Greg Tomb/Mark White, and it has SAP Board Area on

11:51 1 the right GSS, which is Gerd Oswald/Bernd Welz, and then a
11:51 2 line down to you and the title is SAP TomorrowNow Global
11:51 3 Business Owner, Thomas Ziemer, and then there is a line on
11:51 4 the left TomorrowNow President and CEO, Andrew Nelson, and
11:51 5 he has a line to you and he has a line to TomorrowNow
11:52 6 board of directors.

11:52 7 Was that an accurate description of the
11:52 8 governance of TomorrowNow at that point in time?

11:52 9 A. The line between Andrew and me wasn't considered
11:52 10 as reporting line.

11:52 11 Q. What was it considered?

11:52 12 A. Just on the same level.

11:52 13

11:52 14

11:52 15

11:52 16

11:52 17

11:52 18

11:52 19

11:52 20

11:52 21

11:52 22

11:52 23

11:52 24

11:53 25

12:15 1

12:15 2

12:15 3

12:15 4

12:15 5

12:15 6

12:15 7

12:15 8

12:15 9

12:15 10

12:15 11 Q. (MS. HOUSE) Let me show you what's been marked

12:15 12 Exhibit 451, and Exhibit 451 is an August 2nd, 2005,

12:15 13 e-mail from Florence Hanemann. Do you see that?

12:15 14 A. Yes.

12:15 15

12:16 16

12:16 17

12:16 18

12:16 19

12:16 20

12:16 21

12:16 22

12:16 23

12:16 24

12:16 25

12:18 1

12:18 2

12:18 3

12:18 4

12:18 5

12:18 6

12:18 7

12:18 8

12:18 9 Q. Underneath something called Office

12:19 10 Equipment/Purchase it indicates that Andrew Nelson has the

12:19 11 authorization to decide what equipment would need to be

12:19 12 bought by the subsidiaries, whether it be server or

12:19 13 BlackBerries, and Thomas Ziemen will approve. Did you

12:19 14 have to approve any office equipment or purchases by

12:19 15 TomorrowNow?

12:19 16 A. For the different subsidiaries.

12:19 17 Q. Yes?

12:19 18 A. Yes.

12:19 19 Q. Okay. And for the bottom line it says: "Thomas

12:19 20 Ziemen is responsible for any expenses incurred by -- for

12:19 21 all TomorrowNow subsidiaries. As such, he needs to

12:19 22 approve purchases accordingly."

12:19 23 A. Correct.

12:19 24 Q. What does that mean? Did you have to approve

12:19 25 any purchases made by TomorrowNow subsidiaries?

THOMAS ZIEMEN September 30, 2008
HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY

Page 137

12:19 1 A. That is correct.

12:19 2

12:20 3

12:20 4

12:20 5

12:20 6

12:20 7

12:20 8

12:20 9

12:20 10

12:20 11

12:20 12

12:20 13

12:20 14

12:20 15

12:20 16

12:20 17

12:20 18

12:20 19

12:20 20

12:20 21

12:20 22

12:20 23

12:20 24

12:21 25

05:01 1

05:01 2

05:01 3

05:01 4 Q. Let's look at Exhibit 149.

05:02 5 In Exhibit 149 is a document entitled

05:02 6 Business Case TomorrowNow with the name Gerd Oswald on the

05:02 7 front, February 18th, 2004, Board Presentation. It goes

05:02 8 from 217178 through 217193, and is this the business case

05:02 9 that you put together in connection with the headcount

05:02 10 issue for TomorrowNow?

05:02 11 A. That is correct.

05:02 12 Q. And the date on that should read 2005, not 2004.

05:02 13 Correct?

05:02 14 A. That is a mistake.

05:02 15 Q. And does it have Mr. Oswald's name on it because

05:02 16 that is the person to whom you presented it?

05:02 17 A. He was the board member being in charge of

05:03 18 presenting it within the board meeting.

05:03 19 Q. Okay. So he would take this information, then

05:03 20 be the person who would represent it to the larger board?

05:03 21 A. That is correct.

05:03 22 Q. And was this board -- this business case

05:03 23 something that Mr. Oswald presented to the entire SAP

05:03 24 board?

05:03 25 A. Yes.

THOMAS ZIEMEN September 30, 2008
HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY

Page 275

05:17 1

05:17 2

05:17 3

05:18 4

05:18 5

05:18 6

05:18 7

05:18 8

05:18 9

05:18 10

05:18 11

05:18 12

05:18 13

05:19 14

05:19 15

05:19 16

05:19 17

05:19 18

05:19 19

05:19 20

05:31 21

05:31 22

05:31 23

05:31 24 Q. (MS. HOUSE) Okay. We were discussing

05:31 25 Exhibit 149 and we were into the back of what's been

05:31 1 described in this exhibit as the backup materials, and I
05:31 2 guess my first question to you -- and the backup materials
05:31 3 appear to start on 217182.

05:32 4 Did you -- did you prepare the backup
05:32 5 materials or did you help to prepare the backup materials?

05:32 6 A. I helped to prepare -- to prepare the materials.

05:32 7

05:32 8

05:32 9

05:32 10

05:32 11

05:32 12

05:32 13

05:32 14

05:32 15

05:32 16

05:32 17

05:32 18

05:32 19

05:33 20

05:33 21

05:33 22

05:33 23

05:33 24

05:33 25

05:40 1

05:40 2

05:40 3

05:40 4

05:41 5

05:41 6

05:41 7

05:41 8

05:41 9

05:41 10

05:41 11

05:41 12

05:41 13

05:41 14

05:41 15

05:41 16

05:41 17 Q. Okay. What -- the next page is 17186. It's

05:41 18 titled TomorrowNow, Top KPIs. Is that what you're talking

05:41 19 about?

05:41 20 A. Yes.

05:41 21 Q. Okay. And did you help in the creation of this

05:41 22 page?

05:41 23 A. I delivered the input. The service and support

05:42 24 operations team prepared the slide.

05:42 25 Q. And what does KPI stand for?

05:42 1 A. Key performance indicator.

05:42 2 Q. And on the left of the -- I guess the first
05:42 3 topic is called Business and the first chart is Number of
05:42 4 Customers.

05:42 5 A. Exactly.

05:42 6 Q. And there is a dark line that says Original Plan
05:42 7 by TomorrowNow and a lighter line that says SAP Plan based
05:42 8 on Safe Passage. Do you see that?

05:42 9 A. That is correct.

05:42 10 Q. And the SAP Plan based on Safe Passage is the
05:42 11 line that is above the dark line. Correct?

05:42 12 A. That's correct.

05:42 13 Q. And that is a line that's graphing the number of
05:42 14 forecasted customers on a year-by-year basis associated
05:42 15 with the acquisition of TomorrowNow. Is that correct?

05:42 16 A. Correct.

05:42 17 Q. And so starting in -- as we've talked about, the
05:42 18 existence when the acquisition took place was 54
05:43 19 customers. Right?

05:43 20 A. That was the number we started off.

05:43 21 Q. And then projecting out for 2005 the projection
05:43 22 was 500 customers in 2005 and a thousand customers in
05:43 23 2006. Is that correct?

05:43 24 A. Correct.

05:43 25 Q. And those were calculations that you had

05:43 1 provided to Mr. Bamberger?

05:43 2 A. Mr. Bamberger and based on the workshop we had
05:43 3 in Bryan.

05:43 4 Q. Okay. And then the Maintenance Revenue is the
05:43 5 next one over. That's translating those customers into
05:43 6 dollars or actually into euros. Correct?

05:43 7 A. That is correct.

05:43 8 Q. And so the -- again, the lighter line on the top
05:43 9 is the projection that you made in connection with the SAP
05:43 10 Plan based on Safe Passage, correct, the lighter line on
05:44 11 the top of the graph?

05:44 12 A. . Correct.

05:44 13 Q. And the darker line was the Original Plan by
05:44 14 TomorrowNow as a stand-alone entity. Correct?

05:44 15 A. Correct.

05:44 16 Q. And so you were projecting 36 --

05:44 17 A. Million.

05:44 18 Q. -- 650,000 euros in revenue from TomorrowNow for
05:44 19 2006. Is that correct?

05:44 20 A. It's a cumulated number.

05:44 21 Q. So not just for that one year?

05:44 22 A. Correct.

05:44 23 Q. And the key assumptions on the right, are those
05:44 24 your key assumptions?

05:44 25 A. Those are key assumptions, right.

05:44 1 Q. Those are your -- you provided those key
05:44 2 assumptions?

05:44 3 A. We -- we discussed that with Andrew.

05:44 4 Q. Okay. And then you provided them to Mr. Oswald.
05:44 5 Correct?

05:44 6 A. Correct.

05:44 7 Q. And so there's a breakdown of which customers
05:45 8 are going to have a 10 percent of license service fee, and
05:45 9 those would be the TomorrowNow customers. Correct?

05:45 10 A. Correct.

05:45 11 Q. And then there would be certain customers that
05:45 12 would pay SAP's standard 17 percent fee. Correct?

05:45 13 A. Correct.

05:45 14 Q. And those were the assumptions going in at this
05:45 15 point in time?

05:45 16 A. Right.

05:45 17 Q. And you also created assumptions on average deal
05:45 18 size per customer in 2005. Do you see that?

05:45 19 A. Right.

05:45 20 Q. And that -- where did you get the information
05:45 21 for that average deal size?

05:45 22 A. From Andrew Nelson.

05:45 23 Q. That wasn't an average deal size related to
05:45 24 anything that was in SAP's -- so that -- that average deal
05:45 25 size, is that for a stand-alone TomorrowNow revenue-only

05:45 1 customer?

05:45 2 A. That was the estimate that Andrew Nelson handed
05:45 3 over to me.

05:45 4

05:46 5

05:46 6

05:46 7

05:46 8

05:46 9

05:46 10

05:46 11

05:46 12

05:46 13

05:46 14

05:46 15

05:46 16

05:46 17

05:46 18

05:46 19

05:46 20

05:46 21 Q. And then there is a chart titled Headcount

05:46 22 Release Plan & Budget 2005, and you said that I would

05:46 23 understand the business case about the larger number of

05:46 24 full-time equivalents if I looked at that. Is that what

05:47 25 was the original proposal to the board?

05:47 1 A. Yes. We asked for 113 headcounts for 2005.

05:47 2 Q. And did the board approve that?

05:47 3 A. He approved the first 26. It was the first two
05:47 4 quarters.

05:47 5 Q. And did the larger board approve the 26 or was
05:47 6 that just Mr. Brandt?

05:47 7 A. The larger board.

05:47 8 Q. Did the larger board ever approve hiring the
05:47 9 additional delta between the 113 and the 26 for 2005?

05:47 10 A. Later on they approved that.

05:47 11 Q. So at some point you did receive approval for
05:47 12 the additional difference between 113 and 26 for --

05:47 13 A. We -- we submitted it to the board and get the
05:47 14 approval then.

05:48 15

05:48 16

05:48 17

05:48 18

05:48 19

05:48 20

05:48 21

05:48 22

05:48 23

05:48 24

05:48 25

05:55 1

05:55 2

05:55 3

05:55 4

05:56 5

05:56 6

05:56 7

05:56 8

05:56 9

05:56 10

05:56 11

05:56 12 Q. (MS. HOUSE) Do you recall that there were many

05:56 13 presentations internally at SAP that talked about the

05:56 14 value of TomorrowNow associated with the revenue that it

05:56 15 would take away from Oracle?

05:56 16 A. I recall that.

05:56 17

05:56 18

05:56 19

05:56 20

05:57 21

05:57 22

05:57 23

05:57 24

05:57 25

06:04 1

06:05 2

06:05 3

06:05 4

06:05 5

06:05 6

06:05 7

06:05 8

06:05 9

06:05 10 Q. Okay. Let's look back at Exhibit 450. It was

06:05 11 one of the first things I showed you. It's a

06:05 12 December 1st, 2006, PowerPoint entitled TomorrowNow

06:05 13 Acquisition Monitoring. It should be in --

06:06 14 MR. COWAN: He has it.

06:06 15 MS. HOUSE: It looks like this. It's got

06:06 16 his scribbles on the front.

06:06 17 Q. (MS. HOUSE) And I know we've gone over this

06:06 18 briefly before. This was your report to the SAP board in

06:06 19 connection with monitoring the TomorrowNow acquisition.

06:06 20 Correct?

06:06 21 A. Acquisition monitor and report, yes.

06:06 22 Q. And you, again, attempted to be accurate when

06:06 23 you created this. Yes?

06:06 24 A. Yes.

06:06 25 Q. On the first page under the Value Proposition

06:06 1 section -- and that is on Page 1542 under Management
06:06 2 Summary TomorrowNow -- there is a section titled Value
06:06 3 Proposition and that is attempting to capture the value of
06:06 4 the TomorrowNow acquisition to TomorrowNow. -- I mean, to
06:07 5 SAP. Correct?

06:07 6 A. Can you read it again?

06:07 7 Q. The phrase Value Proposition --

06:07 8 A. Yeah.

06:07 9 Q. -- is that meaning to convey the value that the
06:07 10 TomorrowNow acquisition was providing --

06:07 11 A. That's correct.

06:07 12 Q. -- to SAP? Yes?

06:07 13 A. And to customers.

06:07 14 Q. And to customers. Okay. The second part of the
06:07 15 section is the part that talks about the value to SAP.

06:07 16 Correct? The first bullet is about -- or the first box is
06:07 17 the value to the customer and the second box is the value
06:07 18 to SAP. Is that right?

06:07 19 A. That is correct.

06:07 20 Q. And you wrote under the first bullet of that
06:07 21 second box: "Serves as bridge for future SAP license
06:07 22 business for (smaller, not SAP-minded customers)." Do you
06:07 23 see that?

06:07 24 A. That is correct.

06:07 25 Q. And that was one of the values that, as of

06:08 1 December 2006, was assessed as to TomorrowNow. Correct?

06:08 2 A. That's correct.

06:08 3

06:08 4

06:08 5

06:08 6

06:08 7

06:08 8

06:08 9

06:08 10

06:08 11

06:08 12

06:08 13

06:08 14

06:09 15

06:09 16

06:09 17

06:09 18

06:09 19

06:09 20

06:09 21

06:09 22

06:09 23

06:09 24

06:09 25

06:09

06:09

06:09

06:09 4 Q. And now we're talking about the second bullet in

06:09 5 the SAP View of the value.

06:09 6 A. That is correct.

06:09 7 Q. And you agree that the reference there to

06:09 8 hurting Oracle by taking away maintenance revenue was one

06:09 9 of the values of the TomorrowNow acquisition. Correct?

06:09 10 A. The accumulated number of TomorrowNow contracts

06:10 11 for maintenance dollars was of value for SAP.

06:10 12

06:10 13

06:10 14

06:10 15

06:10 16

06:10 17

06:10 18

06:10 19

06:10 20

06:10 21

06:10 22

06:10 23

06:10 24

06:10 25

06:10 1

06:11 2

06:11 3

06:11 4

06:11 5

06:11 6

06:11 7

06:11 8

06:11 9 Q. (MS. HOUSE) You go on under the Business Case

06:11 10 Analysis, which is the next box under this summary, to

06:11 11 write that TomorrowNow -- and this is a quote:

06:11 12 "TomorrowNow established as cornerstone of the Safe

06:11 13 Passage program." Do you see that?

06:11 14 A. Yeah.

06:11 15 Q. And that was accurate?

06:11 16 A. It was one cornerstone of the Safe Passage

06:11 17 program, right.

06:11 18

06:11 19

06:11 20

06:11 21

06:11 22

06:12 23

06:12 24

06:12 25

06:13 1

06:13 2

06:13 3

06:14 4

06:14 5

06:14 6

06:14 7

06:14 8

06:14 9

06:14 10

06:14 11

06:14 12 Q. (MS. HOUSE) And your conclusion on this page to
06:14 13 the board in assessing TomorrowNow in this review as of
06:14 14 December 2006 is: "TomorrowNow is a strategic investment
06:14 15 and serves as strategic weapon against Oracle." Right?

06:14 16 A. Where is that?

06:14 17 Q. Under Conclusion on this page --

06:14 18 A. It's hard --

06:14 19 Q. -- the first bullet.

06:14 20 A. Hard to read.

06:15 21 Q. That's what the language says. Correct?

06:15 22 A. Correct.

06:15 23 Q. And underneath that in the sub bullet you write:
06:15 24 "Take away maintenance revenue from Oracle." Right?

06:15 25 A. Right.

06:15 1 Q. And then you write: "Create pre-pipeline of
06:15 2 future SAP customers." Right?

06:15 3 A. Right.

06:15 4 Q. And that was the first conclusion that you drew
06:15 5 and presented in connection with this report. Correct?

06:15 6 A. This is a summary.

06:15 7 Q. And you reference in the next bullet point that
06:15 8 TomorrowNow was still operating at a loss in 2006. Right?

06:15 9 A. Correct.

06:15 10 Q. But even though it was operating at a loss, it
06:15 11 was review -- it was perceived by you in your conclusion
06:15 12 as a strategic investment that serves as a strategic
06:15 13 weapon against Oracle. Right?

06:16 14 A. That serves as a strategic investment for SAP.

06:16 15 Q. Right? And as a strategic weapon against
06:16 16 Oracle. Right? That's what your language says. Correct?

06:16 17 MR. COWAN: Objection. Form.

06:16 18 A. Correct.

06:16 19 Q. (MS. HOUSE) So the value of TomorrowNow was not
06:16 20 just associated with it making a profit. Correct?

06:16 21 MR. COWAN: Objection. Form.

06:16 22 A. Its value was not only related to the fact to
06:17 23 become a profitable revenue -- a revenue unit.

06:17 24

06:17 25

STATE OF TEXAS
COUNTY OF HARRIS

I, JAMES M. PLAIR, a Certified Shorthand Reporter in and for the State of Texas, do hereby certify that this deposition transcript is a true record of the testimony given by the witness named herein, after said witness was duly sworn by me. The witness was requested to review the deposition.

I further certify that I am neither attorney nor counsel for, nor related to or employed by, any of the parties to the action in which this deposition is taken; and, further, that I am not a relative or employee of any attorney or counsel employed by the parties hereto or financially interested in the action.

I further certify that the amount of time used by each counsel at the time of the deposition is as follows:

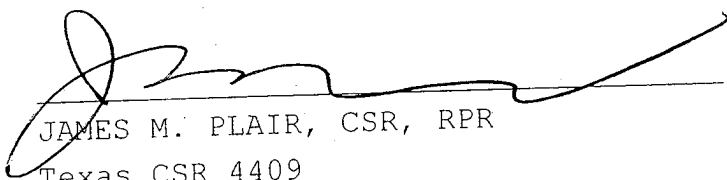
Ms. Holly House -(08:10:54)

Attorney for PLAINTIFFS

Mr. Scott W. Cowan -(00:00:00)

Attorney for DEFENDANTS

GIVEN UNDER MY HAND AND SEAL OF OFFICE on this the
7th day of October, A.D., 2008.



JAMES M. PLAIR, CSR, RPR
Texas CSR 4409

Expiration: 12/31/2009

MERRILL LEGAL SOLUTIONS

315 Capitol Street, Suite 100

Houston, Texas 77002

713.426.0400 Phone

713.426.0600 Fax

210 Firm Registration Number

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.) CASE NO. 07-CV-01658 (MJJ)
SAP AG, A GERMAN CORPORATION,)
SAP AMERICA, INC., A DELAWARE)
CORPORATION, TOMORROWNOW,)
INC., A TEXAS CORPORATION, AND)
DOES 1-50, INCLUSIVE,)
Defendants.)

"HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY"
ORAL VIDEOTAPED DEPOSITION OF
THOMAS ZIEMEN
October 1, 2008 - Volume 2

ORAL VIDEOTAPED DEPOSITION OF THOMAS ZIEMEN, produced
as a witness at the instance of the Plaintiffs and duly
sworn, was taken in the above-styled and numbered cause on
Wednesday, October 1, 2008 - Volume 2, from 8:26 a.m. to
4:36 p.m., before JAMES M. PLAIR, Certified Shorthand
Reporter in and for the State of Texas, reported by
computerized stenotype machine at the offices of JONES
DAY, 717 Texas, Suite 3300, Houston, Texas 77002-2712,
pursuant to recess heretofore taken.

Job No. 1603-88908

08:38 1

08:38 2

08:38 3

08:38 4

08:38 5

08:38 6

08:38 7

08:38 8

08:38 9

08:38 10

08:38 11

08:39 12

08:39 13

08:39 14

08:39 15

Q. (MS. HOUSE) And the next slide in this

08:39 16

presentation, Exhibit 436, is Financial Scorecard for

08:39 17

TomorrowNow, and, again, this looks very similar to the

08:39 18

Financial Scorecard that we saw in the Exhibit 450

08:39 19

yesterday. Do you see that?

08:39 20

A. That is correct.

08:39 21

08:39 22

08:39 23

08:39 24

08:39 25

08:39 1

08:39 2

08:40 3

08:40 4

08:40 5

08:40 6 Q. And the next slide in the presentation on

08:40 7 Page 141573 -- actually, I -- let's see. I'm sorry. I

08:40 8 have the wrong page. The two slides out is 141574 titled

08:40 9 KPI Framework, TomorrowNow, Status December 31st, 2006,

08:40 10 and you helped provide the information that's contained on

08:40 11 this page. Is that correct?

08:41 12 A. Yes.

08:41 13 Q. And one of the metrics that's being graphed is

08:41 14 in the box on the middle right and it's titled Cumulative

08:41 15 Maintenance Volume Taken Away From Oracle in 2006 in euro.

08:41 16 Thousand euros or is that million euros?

08:41 17 A. That is million euros.

08:41 18

08:41 19

08:41 20

08:41 21

08:41 22

08:41 23

08:41 24

08:42 25

09:44 1

09:44 2

09:44 3

09:44 4

09:44 5

09:44 6

09:44 7

09:45 8

09:45 9

09:45 10

09:45 11

09:45 12

09:45 13

09:45 14

09:45 15

09:45 16

09:45 17

09:45 18

09:46 19

09:46 20

09:46 21

09:46 22

09:46 23

09:46 24

09:46 25

So, for the record, what I have shown the witness is Defendant TomorrowNow, Inc.'s responses to Plaintiff Oracle Corporation's third set of interrogatories and SAP America, Inc.'s and SAP AG's responses to Plaintiff Oracle Corporation's second set of interrogatories. A subset of those pages are being shown to the witness which start with Interrogatory No. 4 which reads: "Describe all efforts undertaken by the SAP AG executive board of directors to ensure that SAP TN did not violate any Oracle copyright (or other intellectual property right) in the provision of its services, the time frame for each described effort, and the Identity, roles, and responsibilities of all involved individuals."

The response to Interrogatory No. 4 is what I am showing to the witness. It starts on Page 14,

09:46 1 continues through Page 17 of the interrogatory responses.

09:46 2 Have you seen this document before?

09:46 3 A. No.

09:46 4 Q. Did you have any role in assisting in the
09:46 5 creation of the answer to the interrogatory?

09:47 6 A. No.

09:47 7 Q. I want you to turn to Page 15 of this
09:47 8 interrogatory response, and in Paragraph 2 it starts in
09:47 9 the answer from the defendants: "By March 2005, the
09:47 10 SAP AG executive board issued a directive to TN's --
09:47 11 TomorrowNow's management to remove customer local
09:47 12 environments from TomorrowNow computers. On behalf of
09:47 13 SAP AG's executive board, Thomas Ziemer instructed
09:47 14 TomorrowNow's CEO Andrew Nelson to evaluate and implement
09:47 15 removal of customer Local Environments from TomorrowNow
09:48 16 computers. In response to this direction, TomorrowNow
09:48 17 initiated a project to investigate removal of customer
09:48 18 Local Environments from TomorrowNow computers. Some have
09:48 19 referred to this project as," quote, "Project Blue.
09:48 20 Periodically, Andrew Nelson would communicate the status
09:48 21 of the project to Thomas Ziemer. The following current
09:48 22 and former TomorrowNow employees were involved," and there
09:48 23 is a list of those.

09:48 24 You indicated yesterday -- is it -- first
09:48 25 of all, what I just read, is that an accurate answer? Is

09:48 1 that what happened?

09:48 2 A. I can't recall being ever instructed by the
09:48 3 Executive Board to instruct TomorrowNow to evaluate and
09:48 4 implement removal of the environments.

09:49 5 Q. You have no memory of having been instructed, as
09:49 6 this interrogatory response says you were, by the
09:49 7 Executive Board?

09:49 8 A. That is correct.

09:49 9 Q. And so are you saying that this answer is
09:49 10 incorrect?

09:49 11 A. I'm saying that I've never been instructed to do
09:49 12 so.

09:49 13 Q. Do you know if the -- do you know if the SAP
09:49 14 Executive Board charged anybody with this directive?

09:49 15 A. I don't know.

09:49 16 Q. Do you know of anybody who was told by the SAP
09:49 17 Executive Board to remove -- to assist in TomorrowNow --
09:49 18 TomorrowNow's removal of customer local environments from
09:49 19 the TomorrowNow computers?

09:49 20 A. No, I don't know.

09:49 21 Q. You don't know of anybody who was so instructed
09:49 22 to do?

09:49 23 A. I don't know.

09:50 24 Q. And the reference to having talked to Andrew
09:50 25 Nelson to evaluate and implement removal of the customer

09:50 1 local environments, do you recall having those

09:50 2 conversations with Mr. Nelson?

09:50 3 A. I remember him raising that undertaking in a

09:50 4 couple of calls we had with him -- I had with him.

09:50 5 Q. Okay. What did he say?

09:50 6 A. That there is an undertaking with TomorrowNow

09:50 7 underway to remove that and he will update me on the

09:50 8 progress.

09:50 9 Q. And did he indicate who was -- who had directed

09:50 10 him from SAP to undertake that?

09:50 11 A. He didn't refer to a single person.

09:51 12 Q. And what was your response? Did you say, "What

09:51 13 are you talking about"?

09:51 14 A. I just advised him that he should stick to what

09:51 15 he has been instructed.

09:51 16 Q. By whom?

09:51 17 A. I don't know.

09:51 18 Q. So you told him to stick to what he was

09:51 19 instructed, but you don't know who instructed him or what

09:51 20 the instructions were. Is that your testimony?

09:51 21 A. That is my testimony.

09:51 22 Q. And did you then at that point try to understand

09:51 23 what the issue was about why there should be a need for

09:51 24 removal of local environments from the TomorrowNow

09:51 25 computers?

09:51 1 A. No, I did not.

09:51 2 Q. Why not?

09:51 3 A. That was not part of my responsibility.

09:51 4 Q. So you're talking to Mr. Nelson about a project

09:51 5 to remove customer local environments from TomorrowNow,

09:51 6 but you don't understand why that project was needed and

09:52 7 you don't understand who directed him to do it. Is that

09:52 8 your testimony?

09:52 9 A. I haven't said that it was a project. He just

09:52 10 referred to the -- to the activities, to the undertaking,

09:52 11 to do that.

09:52 12 Q. Did he -- are you aware of any writing? When it

09:52 13 says a directive, do you have an understanding if there

09:52 14 was a written directive to Mr. Nelson or yourself?

09:52 15 A. I'm not aware of any written directive.

09:52 16 Q. Do you remember discussing such a directive at

09:52 17 any point with the SAP -- any member of the SAP Executive

09:52 18 Board?

09:52 19 A. No.

09:53 20 Q. And when Mr. Nelson communicated the status of

09:53 21 the project to you, what did he say the status was?

09:53 22 Because the project -- the word "project" actually comes

09:53 23 from the interrogatory response that was provided by

09:53 24 defendants. Do you see that?

09:53 25 A. I can't recall the date when he mentioned that.

09:53 1 I would have to check all the minutes or the agendas.

09:53 2 Q. So that would have been something that would
09:53 3 have been covered in your monthly calls with him?

09:53 4 A. From time to time, he added that -- he added
09:53 5 this to the agenda.

09:53 6 Q. And from time to time, is that over the 2005
09:53 7 period?

09:53 8 A. That was over the period until 2007.

09:53 9 Q. So throughout the period that you were involved
09:53 10 with TomorrowNow you would get periodic updates on this
09:53 11 removal of customer local environments from Mr. Nelson.
09:54 12 Is that correct?

09:54 13 A. I haven't said periodic updates, but from time
09:54 14 to time he added that to the agenda.

09:54 15 Q. And when he amended that to the agenda, would
09:54 16 you discuss it with him?

09:54 17 A. He then told me briefly what his -- his take on
09:54 18 that undertaking is.

09:54 19 Q. And what did he say?

09:54 20 A. That they are still in discussions with SAP
09:54 21 Americas.

09:54 22 Q. And who at SAP Americas?

09:54 23 A. I can't recall a single name.

09:54 24 Q. So he said that his discussions were with
09:54 25 somebody from SAP Americas. Is that your testimony?

09:54 1 A. That is correct.

09:54 2 Q. And did he ever indicate at any point in your
09:54 3 discussions with him about this that the -- any of the
09:54 4 local environments had actually been removed?

09:55 5 A. No, we did not -- did not discuss it on that
09:55 6 detail level.

09:55 7

09:55 8

09:55 9

09:55 10

09:55 11

09:55 12

09:55 13

09:55 14

09:55 15

09:55 16

09:55 17

09:55 18

09:55 19

09:55 20

09:55 21

09:56 22

09:56 23

09:56 24

09:56 25

10:00 1

10:00 2

10:01 3

10:01 4

10:01 5

10:01 6

10:01 7

10:01 8

10:01 9

Q. Do you have any understanding from your

10:01 10

conversations with Mr. Nelson about any timeline for the

10:01 11

achievement of this directive?

10:01 12

A. He just told me that this was an ongoing

10:01 13

procedure.

10:01 14

Q. To your understanding, was there ever any

10:01 15

timeline for achievement of this project?

10:01 16

A. Not to my knowledge.

10:01 17

Q. Are you aware of any performance measures or

10:01 18

incentives, like bonus incentives, to the TomorrowNow

10:01 19

employees to have them achieve this project's goals?

10:02 20

A. No, I'm not aware of that.

10:02 21

10:02 22

10:02 23

10:02 24

10:02 25

10:12 1

10:12 2

10:12 3

10:13 4

10:14 5

10:14 6

10:14 7

10:14 8

10:14 9

10:14 10

10:14 11

10:14 12

10:26 13

10:26 14

10:26 15

10:26 16

10:26 17 Q. (MS. HOUSE) Okay. Before the break I had handed

10:26 18 you a document that's been marked Exhibit 462. I have

10:26 19 already read in the Bates numbers to the record and it's

10:26 20 about a update call with you and members of the

10:26 21 TomorrowNow management team, and it -- the call is slated

10:26 22 for March 20th, 2007. These notes have a variety of

10:27 23 action items and there are references to AJN and TZ, and

10:27 24 is AJN Andrew Nelson, to your knowledge? If you look

10:27 25 in -- if you look underneath, do you see how there's

10:27 1 various items, like 1, 2, 3, 4?

10:27 2 A. Yeah, but you explained just that this relates

10:27 3 to a call with Andrew and me and the management team.

10:27 4 That is not correct.

10:27 5 Q. Okay. Was it not the management team?

10:27 6 A. It was just Andrew and me.

10:27 7 Q. Okay. And the call took place. Correct?

10:27 8 A. I assume so.

10:27 9 Q. And did you have an understanding that your
10:27 10 call -- was this one of your regular calls with Mr. Nelson

10:27 11 for update status and what was happening with TomorrowNow?

10:27 12 A. That was a regular call.

10:28 13 Q. And did you have these calls scheduled at a
10:28 14 particular time, you know, like monthly or the first week
10:28 15 of the month or --

10:28 16 A. Sometimes monthly, sometimes biweekly. That was
10:28 17 varying a little bit.

10:28 18 Q. Okay. And that was over the course of your
10:28 19 involvement with TomorrowNow from 2005 until when you left
10:28 20 the position in 2007. Is that correct?

10:28 21 A. June-August 2007, right.

10:28 22 Q. And since you were continuing to do the reports
10:28 23 to the board to assist Mr. Bruner[sic] in the latter half
10:28 24 of 2007, did you also have calls with TomorrowNow in the
10:28 25 latter half of 2007?

10:28 1 A. I recall my latest call with Andrew in

10:28 2 July 2007.

10:28 3 Q. And this call that's referenced here, did you
10:28 4 get the write-ups after the calls of the sort of minutes
10:28 5 of what was said by you and Mr. Nelson?

10:29 6 A. No, I did not.

10:29 7 Q. Okay. If you turn to the last page of this
10:29 8 document there's a reference under No. 18 and it says 18
10:29 9 and this is a quote: "Project Blue," dash, "taking much
10:29 10 longer than expected. Don't feel we can get payroll
10:29 11 development in external environments. Focus on new,
10:29 12 non-payroll environments. Will provide formal proposal to
10:29 13 you to present to board for review." Do you see that
10:29 14 quote?

10:29 15 A. I see that.

10:29 16 Q. Do you remember talking about that in this call?

10:29 17 A. He mentioned that at the very end of the
10:29 18 meeting.

10:29 19 Q. And was this news to you, that it was taking
10:29 20 longer than expected?

10:30 21 A. As I already stated, he mentioned that from time
10:30 22 to time in our calls and I can't recall what we discussed
10:30 23 in the earlier ones.

10:30 24 Q. He indicates he'll provide formal proposal to
10:30 25 you to present to board for review. Did he present that

10:30 1 formal proposal to you?

10:30 2 A. Not to my knowledge.

10:30 3 Q. And did you do a presentation to the board for
10:30 4 review in connection with Project Blue?

10:30 5 A. No, I did not.

10:30 6 Q. Did you do anything to follow up on this item on
10:30 7 the agenda? Did you do anything to follow up on this?

10:30 8 A. No, there was no follow-up from my side.

10:31 9 Q. Other than Project Blue, can you think of any
10:31 10 proposed steps that were -- can you think of any steps
10:31 11 proposed by SAP to address the TomorrowNow business model
10:31 12 of service delivery?

10:31 13 A. I have no knowledge on that.

10:31 14 Q. You're not aware of anything else?

10:31 15 A. Not aware.

10:31 16

10:31 17

10:31 18

10:31 19

10:31 20

10:31 21

10:32 22

10:32 23

10:32 24

10:32 25

1 STATE OF TEXAS
2 COUNTY OF HARRIS

3 I, JAMES M. PLAIR, a Certified Shorthand Reporter in
4 and for the State of Texas, do hereby certify that this
5 deposition transcript is a true record of the testimony
6 given by the witness named herein, after said witness was
7 duly sworn by me. The witness was requested to review the
8 deposition.

9 I further certify that I am neither attorney nor
10 counsel for, nor related to or employed by, any of the
11 parties to the action in which this deposition is taken;
12 and, further, that I am not a relative or employee of any
13 attorney or counsel employed by the parties hereto or
14 financially interested in the action.

15 I further certify that the amount of time used by
16 each counsel at the time of the deposition is as follows:

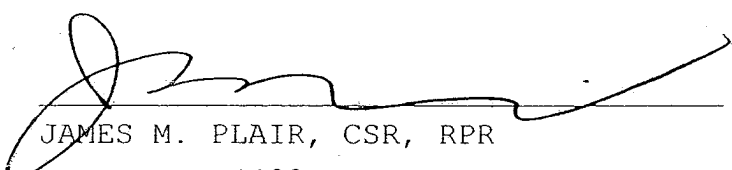
17 Ms. Holly House -(06:34:06)

18 Attorney for PLAINTIFFS

19 Mr. Scott W. Cowan -(00:00:00)

20 Attorney for DEFENDANTS

21 GIVEN UNDER MY HAND AND SEAL OF OFFICE on this the
22 8th day of October, A.D., 2008.

23 
24 JAMES M. PLAIR, CSR, RPR
25 Texas CSR 4409

Expiration: 12/31/2009

MERRILL LEGAL SOLUTIONS

315 Capitol Street, Suite 100

Houston, Texas 77002

713.426.0400 Phone

713.426.0600 Fax

210 Firm Registration Number

THOMAS ZIEMEN September 30, 2008
HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY

Page 312

CHANGES AND SIGNATURE

ORAL DEPOSITION OF THOMAS ZIEMEN SEPTEMBER 30, 2008

	PAGE	LINE	CHANGE	REASON
1				
2				
3				
4	<u>2</u>	20	Mathias (not <u>N</u> athias)	spelling wrong
5	<u>5</u>	19	W-A-L-L-D-O-R-F	D is missing
6	<u>9</u>	20	Mathias (not <u>N</u> athias)	spelling wrong
7	<u>11</u>	23	diplom (not diplom <u>e</u>)	spelling wrong
8	<u>16</u>	8	abroad (not broad)	spelling wrong
9	<u>16</u>	21	for (not in)	word wrong
10	<u>16</u>	23/24	for he (not as far as)	words wrong
11	<u>17</u>	24	market (not market <u>e</u> d)	spelling wrong
12	<u>18</u>	8	in connection with the	phrase wrong
13			(not connecting to the)	
14	<u>26</u>	20	Zencke (not Sanger)	spelling wrong
15	<u>33</u>	25	First (not Seven)	word wrong
16	<u>34</u>	11	Ferose (not Veer Rose)	spelling wrong
17	<u>37</u>	23	connection (not context)	word wrong
18	<u>38</u>	11	proposition (not proposition <u>e</u> d)	word wrong
19	<u>69</u>	6	Jochen Scholten (not Jan)	spelling wrong
20	<u>90</u>	6	Value (not very)	wrong word
21	<u>121</u>	22	needed (not need)	wrong word
22	<u>135</u>	20	pull out (not put out)	wrong word
23	<u>136</u>	6	Carsten (not Carson)	spelling wrong
24	<u>142</u>	23	Tombs (not Thom)	spelling wrong
25	<u>173</u>	23	Junje (not Yeoman)	spelling wrong

THOMAS ZIEMEN September 30, 2008
HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY

Page 312

CHANGES AND SIGNATURE

ORAL DEPOSITION OF THOMAS ZIEMEN SEPTEMBER 30, 2008

PAGE LINE CHANGE

REASON

209 3 Active (not Advanced) Wrong word

THOMAS ZIEMEN September 30, 2008
HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY

Page 313

1 I, THOMAS ZIEMEN, have read the foregoing deposition
2 and hereby affix my signature that same is true and
3 correct, except as noted above.

4
5
6 THOMAS ZIEMEN

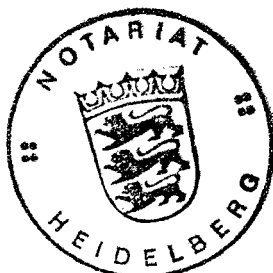
(BORN 2nd DAY OF AUGUST 1966,
RESIDENT AT NEULUSSHEID/GERMANY)

8 THE STATE OF GERMANY

9 ~~COUNTY OF~~ _____)

10 Before me, M. GAUL, NOTARY PUBLIC, on this day
11 personally appeared THOMAS ZIEMEN, ~~known to me~~ ^{proved} (or ~~proved~~
12 to me ~~under oath or~~ through IDENTITY CARD → (description
13 of identity card or other document) to be the person whose
14 name is subscribed to the foregoing instrument and
15 acknowledged to me that they executed the same for the
16 purposes and consideration therein expressed.

17 Given under my hand and seal of office on this
18 31st day of OCTOBER, 2008.



NOTARIAT S HEIDELBERG

M. Gaul
NOTARY PUBLIC IN AND FOR
THE STATE OF HEIDELBERG (GERMANY)

23 My Commission expires: NO LIMIT

24

25

THOMAS ZIEMEN October 1, 2008
 HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY

Page 560

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

CHANGES AND SIGNATURE

ORAL DEPOSITION OF THOMAS ZIEMEN OCTOBER 1, 2008

PAGE LINE CHANGE

REASON

320 17 Plattner (not Platner) spelling wrong

325 13/14 That some of the wrong sentence
 Tomorrow Now customers (context)

they delivered services

to, were part of the

License ...

(not ... of ~~they~~ deliverer

of these services was...)

384 21 Bremer (not Bruner) spelling wrong

428 22 are (not have) wrong word

500 3 Zencke (not Zinke) spelling wrong

THOMAS ZIEMEN October 1, 2008
 HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY

Page 561

1 I, THOMAS ZIEMEN, have read the foregoing deposition
 2 and hereby affix my signature that same is true and
 3 correct, except as noted above.

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

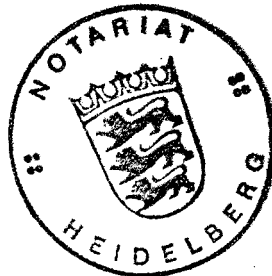
THOMAS ZIEMEN

(BORN 2nd DAY OF AUGUST 1966,
 RESIDENT AT NEULUSSHEIM/GERMANY)

THE STATE OF GERMANY)~~COUNTY OF~~)

Before me, N. GAUL, NOTARY PUBLIC, on this day
 personally appeared THOMAS ZIEMEN, ~~known to me~~ (or proved
 to me ~~under oath or~~ through IDENTITY CARD → (description
 of identity card or other document) to be the person whose
 name is subscribed to the foregoing instrument and
 acknowledged to me that they executed the same for the
 purposes and consideration therein expressed.

Given under my hand and seal of office on this
31st day of OCTOBER, 2008.



NOTARIAT 5 HEIDELBERG

[Signature]
 NOTARY PUBLIC IN AND FOR
~~THE STATE OF~~ HEIDELBERG/GERMANY

My Commission expires: NO LIMIT

5. 10. 2008
 Notarischer Stellvertreter
 und Notarische Bezeichnung
 Notarischer Stellvertreter
 3. NOV. 2008

Merrill Legal Solutions
 (800) 869-9132

9434a69d-2463-427b-bbe3-853c9178b179