

EXHIBIT C

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

PAUL K. MEYER

VOLUME 1; PAGES 1 - 331

WEDNESDAY, MAY 12, 2010

HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY

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

(1-427362)

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09:51:27 19 MR. McDONELL: Q. Have you read the
09:51:29 20 report of Mr. Brian Sommer?
09:51:33 21 A. I have just glanced through it at a very,
09:51:38 22 very high level.
09:51:42 23 Q. And why did you choose to review it in
09:51:44 24 that way?
09:51:46 25 A. More from the perspective of timing.

09:51:49 1 Q. What do you mean by that?

09:51:50 2 A. I understood that -- my understanding was
09:51:52 3 that Mr. Clarke was -- one of his assignments was
09:51:56 4 to look at the opinions that I had and the backup
09:52:01 5 for those opinions and come to his opinions. And
09:52:04 6 so that was my first task when the reports were
09:52:08 7 received over a month ago. And then there were
09:52:10 8 other reports, obviously, that came in, and I know
09:52:13 9 Mr. Sommer supplied a report that at some level
09:52:19 10 provides information about my work, but I have not
09:52:20 11 really gotten to his findings at this point in
09:52:23 12 time.

09:52:23 13 Q. Have you developed any responses to
09:52:25 14 Mr. Sommer's report?

09:52:27 15 A. No, not at this point in time.

09:52:30 16 Q. Do you understand that it is offered as a
09:52:33 17 rebuttal of your report?

09:52:36 18 A. I would say I understand that in a general
09:52:38 19 sense. I believe he tries to take on overall
09:52:41 20 enterprise application marketing and selling issues
09:52:44 21 and apply it to some of my findings. And from that
09:52:47 22 perspective, in a general sense, I don't feel like
09:52:54 23 I'm -- that where he comes out in his opinions are
09:52:58 24 going to have impact on my opinions. But I -- as I
09:53:01 25 said, I will need to caveat that I have not really

09:53:05 1 studied it and gone through where it actually is
09:53:08 2 meant to apply to what we've come up with in our
09:53:11 3 work.

09:53:11 4 Q. When you say that you don't feel that his
09:53:24 5 opinions are going to have an impact on your
09:53:26 6 opinions, what do you mean by that?

09:53:28 7 A. Well, from the standpoint of my assignment
09:53:33 8 and my valuation work and damage work and focusing
09:53:37 9 on the relationship of SAP and Oracle, both in
09:53:40 10 January 2005 and going forward, there are certainly
09:53:45 11 background issues about the enterprise market that
09:53:50 12 may be helpful to one to understand.

09:53:53 13 But from my perspective, what is really
09:53:56 14 driving the valuation and the damages is how these
09:53:58 15 two companies were interacting with each other, and
09:54:03 16 so that's where my focus was.

09:54:05 17 Obviously, I need to read Mr. Sommer's
09:54:08 18 report in detail and interface with what he says
09:54:11 19 with my opinions, and at some point I'll get to
09:54:14 20 that.

09:54:14 21 But from my perspective, the real focus in
09:54:17 22 this case should be on these two large entities,
09:54:20 23 and what their business records say about their
09:54:24 24 focus and intents, since 2004, late in the year.

09:54:30 25 Q. Would you agree that in the course of your

09:54:32 1 work, it's important to understand the behavior of
09:54:35 2 customers in this enterprise software market; you
09:54:39 3 know, specifically customers of Oracle and SAP?

09:54:47 4 A. I understand your question. I would say
09:54:49 5 only in a general sense.

09:54:50 6 Q. Would you agree that it's important to
09:54:52 7 understand what customers take into consideration
09:54:57 8 when making enterprise software purchase decisions?

09:55:03 9 A. See, when you phrase that question in a
09:55:06 10 sort of a generic customer, I'm not certain that
09:55:08 11 that inquiry is going to be that helpful to the
09:55:12 12 court in these circumstances, so --

09:55:13 13 Q. Do you --

09:55:14 14 A. Let me finish. Because of the large
09:55:15 15 volume of information that relates to the
09:55:17 16 acquisition of PeopleSoft by Oracle, and then SAP's
09:55:23 17 senior management and Executive Board management
09:55:26 18 response to that acquisition.

09:55:27 19 So I would focus the issues there. And
09:55:32 20 issues that relate to in a general sense why a
09:55:34 21 customer may choose to buy software or not I think
09:55:42 22 will be a lot less important.

09:55:43 23 And I think that Mr. Sommer at some level
09:55:46 24 addresses those issues, and I'll have to refer to
09:55:49 25 it when I get to his report and see how it

09:55:51 1 interfaces with my findings to really address that.
09:55:53 2 Q. So you just testified that in your view,
09:55:56 3 why a customer chooses to buy is less important
09:56:00 4 than other factors. But do you agree that it is a
09:56:03 5 relevant factor?
09:56:05 6 MS. HOUSE: Objection. Misstates his
09:56:06 7 testimony.
09:56:07 8 THE WITNESS: It would really --
09:56:09 9 MS. HOUSE: Incomplete question.
09:56:11 10 THE WITNESS: It would really depend on
09:56:12 11 how it's applied, and that's more where I've come
09:56:15 12 out. I need to study what he says and see how he
09:56:18 13 tries to use it in contrast to my findings. That's
09:56:21 14 sort of where I'm at right now with his analysis.
09:56:24 15 MR. McDONELL: Q. Have you prepared any
09:56:25 16 notes of your initial preliminary reactions to
09:56:28 17 Mr. Sommer's report?

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10:34:51	23	MR. McDONELL: Q. Mr. Meyer --
10:34:53	24	A. Excuse me, let me offer one thing, and
10:34:55	25	maybe just out of an abundance of caution, with the

10:34:57 1 question you asked about Mr. Sommer.

10:35:01 2 I don't have any sort of direct rebuttal

10:35:03 3 points about his analysis and his opinions. I

10:35:05 4 thought at the break about the question again. And

10:35:08 5 to the extent that in Mr. Clarke's report, as I've

10:35:12 6 made some notations in there as I've gone through

10:35:15 7 that report, there may be references where

10:35:17 8 Mr. Clarke has made to inputs from Mr. Sommer. And

10:35:20 9 to the extent that that comes up, there is that

10:35:22 10 interface.

10:35:23 11 And so I want the record to be complete

10:35:24 12 that I've seen Mr. -- some Mr. Sommer inputs

10:35:28 13 through Mr. Clarke. And so if we get to that point

10:35:32 14 in the next couple of days, I just want the record

10:35:35 15 clear on that. Thank you.

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16:24:15 9 Q. Do you believe that as a result of the
16:24:17 10 events giving rise to this case, there was any
16:24:20 11 damage done to Oracle's goodwill?

16:24:26 12 A. Well, that's a very complicated
16:24:28 13 discussion, because you can talk about accounting
16:24:30 14 goodwill, and what I'm dealing with really is not
16:24:33 15 accounting goodwill. I'm dealing with paying a
16:24:35 16 premium for access to the customers protected by
16:24:38 17 copyrights at PeopleSoft.

16:24:40 18 And so in January 2005, if the extent of
16:24:47 19 the copying and illegal activities of
16:24:52 20 SAP/TomorrowNow was known to the public at that
16:24:55 21 point in time, at the same time that Oracle had
16:25:00 22 closed on a transaction for \$11 billion, if the
16:25:03 23 extent of that was known to the public, there would
16:25:05 24 have been I believe a tremendous impact on Oracle
16:25:08 25 publicly.

16:25:08 1 It just turned out that although Safe
16:25:10 2 Passage was announced by SAP/TomorrowNow, it wasn't
16:25:13 3 described that it was going to be carried out in a
16:25:16 4 manner that's now been potentially found to be
16:25:18 5 illegal.

16:25:19 6 And so that's the difference. But at that
16:25:21 7 point in time, if you knew the scope of the illegal
16:25:23 8 activities around the downloading and copying and
16:25:26 9 creation of environments and cross-use, there would
16:25:29 10 have been a tremendous impact. And Oracle had just
16:25:32 11 spent 11 billion dollars in cash on buying
16:25:33 12 PeopleSoft.

16:25:34 13 Q. So is it your understanding that the
16:25:35 14 activities of the defendants in this case harmed
16:25:40 15 Oracle's ability to make upsell and cross-sells of
16:25:46 16 its products?

16:25:49 17 A. Ultimately what I believe happened in
16:25:51 18 January of 2005 is that S&P -- SAP had a plan to
16:25:56 19 make cross-sell and upsell to Oracle's customers by
16:25:59 20 using TomorrowNow, and that would be basically the
16:26:03 21 other side of the losses to Oracle.

16:26:07 22 Q. Okay. Please try to listen carefully to
16:26:09 23 my question.

16:26:09 24 Do you believe that the activities of the
16:26:12 25 defendants in this case harmed the goodwill value

16:26:17 1 of Oracle?

16:26:19 2 MS. HOUSE: Vague as to time.

16:26:21 3 THE WITNESS: If you're asking that
16:26:22 4 outside the -- I need to know the basis, sort of
16:26:27 5 with the parameters that you're asking about,
16:26:29 6 because we're not talking about so much accounting
16:26:33 7 goodwill writeoff. We're talking about basically
16:26:35 8 the value paid for PeopleSoft and what you thought
16:26:37 9 you were getting versus what happened with
16:26:38 10 SAP/Tomorrow Now. I need more of a context.

16:26:42 11 MR. McDONELL: Q. Okay. So the context
16:26:43 12 is this:

16:26:44 13 I think you've said that you believe that
16:26:47 14 the defendants in this case have done damage to
16:26:50 15 Oracle. Is that right?

16:26:51 16 A. That's correct.

16:26:52 17 Q. And as part of that damage, that they've
16:26:55 18 damaged Oracle's ability to make upsales and
16:26:58 19 cross-sales of its product.

16:27:01 20 A. That's correct.

16:27:01 21 Q. And you've also indicated that a large
16:27:03 22 portion of the recorded goodwill arising from
16:27:07 23 Oracle's acquisition of PeopleSoft was that ability
16:27:10 24 to make upsales and cross-sales of products. Is
16:27:13 25 that right?

16:27:14 1 A. That's correct.

16:27:14 2 Q. Okay. So is it your belief that in that
16:27:16 3 context, the activities of the defendants did
16:27:19 4 substantial harm to Oracle's goodwill?

16:27:21 5 MS. HOUSE: Same objection.

16:27:22 6 THE WITNESS: I believe I already answered
16:27:23 7 this, that it's my opinion that Oracle would not
16:27:28 8 have paid 11 billion dollars for PeopleSoft in
16:27:31 9 January 2005 if it knew the extent of
16:27:36 10 SAP/TomorrowNow's plans to compete by using
16:27:40 11 software that they did not have rights to.

16:27:43 12 Because Oracle disclosed a deal where they
16:27:47 13 were coming into 10,000 customer relationships, and
16:27:49 14 at the same time, you have SAP planning to compete
16:27:53 15 for 2,000, 3,000, 4,000 of those customers, using
16:27:57 16 the property that Oracle just acquired.

16:27:59 17 So that's the impact that happens at the
16:28:01 18 time of the transaction.

16:28:03 19 MR. McDONELL: Q. Okay. So I think what
16:28:04 20 you're saying is that in your opinion, the
16:28:07 21 activities of defendants did harm Oracle's
16:28:11 22 goodwill, because it harmed Oracle's ability to
16:28:15 23 make upsales and cross-sales. Is that correct?

16:28:18 24 MS. HOUSE: Misstates his testimony.

16:28:19 25 THE WITNESS: I think if you take things

16:28:21 1 to January 2005, and to the --

16:28:25 2 MR. McDONELL: Q. Why? Don't do that.

16:28:26 3 I'm not asking you to do that.

16:28:27 4 A. Because that's where you are. That's what

16:28:29 5 I focused on. I'm valuing a license in January of

16:28:32 6 2005.

16:28:33 7 Q. Put all that aside. No valuing the

16:28:35 8 license, no nothing. Just answer my question.

16:28:38 9 Is it your belief that the activities of

16:28:39 10 the defendants damaged the value of Oracle's

16:28:44 11 goodwill?

16:28:46 12 MS. HOUSE: Vague as to time.

16:28:48 13 MR. McDONELL: Q. At any time.

16:28:48 14 A. I have two levels to respond.

16:28:50 15 Certainly in January 2005, I believe that

16:28:53 16 the premium paid for PeopleSoft was impacted by the

16:28:56 17 transaction that SAP entered into with TomorrowNow

16:29:01 18 and their planning. There's no question about

16:29:04 19 that.

16:29:05 20 And after January 2005, I've not really

16:29:07 21 contemplated the question. I haven't had to to do

16:29:10 22 my analysis. And so I know Oracle has done all it

16:29:13 23 can to maximize the value from PeopleSoft, and I

16:29:16 24 haven't really had to go out and contemplate what's

16:29:18 25 been the exact impact downstream.

16:29:20 1 I know that January 2005, if we corral
16:29:22 2 that point in time, there is an impact of the
16:29:25 3 accused activities in this case on Oracle when they
16:29:28 4 acquired PeopleSoft.

16:29:29 5 Q. So as you sit here today, you don't know
16:29:32 6 if the activities of the defendants actually harmed
16:29:37 7 Oracle's ability to cross-sell and upsell its
16:29:40 8 products. Is that true?

16:29:42 9 A. That's not the case. My understanding is
16:29:44 10 that those activities did harm Oracle. You asked
16:29:46 11 me do I have an opinion about that, do I have to
16:29:50 12 quantify that, and I haven't had to do that.

16:29:52 13 I certainly looked at the lost profits on
16:29:54 14 the customers, I looked at the infringer's profits,
16:29:57 15 I looked at downstream business records and what
16:30:00 16 happened. But my valuation is focused in January
16:30:03 17 2005. I've been very clear about that.

16:30:06 18 Q. As you sit here today, do you believe that
16:30:07 19 the activities of the defendants caused harm to
16:30:09 20 Oracle's ability to make upsales and cross-sales of
16:30:13 21 products?

16:30:14 22 MS. HOUSE: Asked and answered.

16:30:15 23 THE WITNESS: Yes, I believe that that
16:30:16 24 was -- that has happened. I haven't had to
16:30:19 25 quantify that.

18:10:50 1 of what Oracle owns with the acquisition of
18:10:53 2 PeopleSoft.
18:11:01 3 MS. HOUSE: Are we at 7 hours?
18:11:04 4 THE VIDEO OPERATOR: We're at 7.
18:11:06 5 MR. McDONELL: What's that?
18:11:08 6 THE VIDEO OPERATOR: We're at 7 hours.
18:11:09 7 MR. McDONELL: We're done?
18:11:11 8 MS. HOUSE: That's it. We're at 7 hours.
18:11:13 9 MR. McDONELL: That's it for today, sir.
18:11:14 10 THE VIDEO OPERATOR: Going off the record,
18:11:14 11 the time now is 6:11. This also is the conclusion
18:11:18 12 of Tape 5 in the deposition of Paul Meyer.
18:11:27 13 (Time noted, 6:11 p.m.)

14 --o0o--

15 I declare under penalty of perjury that
16 the foregoing is true and correct. Subscribed at
17 San Francisco, California, this 17 day of
18 June, 2010.

19 Subject to the attached errata

20 Paul K. Meyer
21 PAUL K. MEYER
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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 state, and that the testimony of 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: May 19, 2010
Holly Thuman
HOLLY THUMAN, CSR