

EXHIBIT F

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF KANSAS

EVOLUTION, INC.,)	Civil Action File
)	No. 01-2409-CM
Plaintiff,)	
)	
vs.)	
)	
SUN TRUST BANK and PREMIUM)	
ASSIGNMENT CORPORATION,)	
)	
Defendants.)	
_____)	

DEPOSITION OF DONALD J. REIFER
Los Angeles, California
Thursday, September 25, 2003

Reported by:
KARIN E. GLAAB
CSR No. 2638
JOB No. 411054

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DISTRICT OF KANSAS

4	EVOLUTION, INC.,)	Civil Action File
)	No. 01-2409-CM
5	Plaintiff,)	
)	
6	vs.)	
)	
7	SUN TRUST BANK and PREMIUM)	
	ASSIGNMENT CORPORATION,)	
8)	
	Defendants.)	

Deposition of DONALD J. REIFER, taken on behalf of Defendants, at 1800 Avenue of the Stars, 10th Floor, Los Angeles, California, beginning at 8:20 a.m. and ending at 11:27 a.m. on Thursday, September 25, 2003, before KARIN E. GLAAB, Certified Shorthand Reporter No. 2638, RPR.

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1 Los Angeles, California, Thursday, September 25, 2003

2 8:20 a.m. - 11:27 a.m.

3

4 DONALD J. REIFER,

5 having been first duly sworn, was examined and testified
6 as follows:

7

8 EXAMINATION

9 BY MR. HARRISON:

10 Q Good morning. Just for purposes of clarity, how
11 do you pronounce your last name?

12 A Reifer.

13 Q Reifer. Just confirming. I have heard several
14 variations, so if at some point in time I slip up, don't
15 hesitate to correct me, and a lot of people do, so no
16 problem.

17 Mr. Reifer, have you ever had your deposition
18 taken before?

19 A No, I have not.

20 Q Okay. Would you please state your full name for
21 the record.

22 A Donald Jay Reifer. That's -- full name is
23 J-a-y.

24 Q And where are you presently located?

25 A Torrance, California.

1 Q What is the street address there?

2 A Home or business?

3 Q Home.

4 A Home is 2922 West 227th Street, Torrance 90505.

5 Q And what is your business address down in
6 Torrance?

7 A It's located at 22850 Crenshaw, C-r-e-n-s-h-a-w,
8 Boulevard, Suite 202, Torrance 90505.

9 Q What is your Social Security number?

10 A 146-32-0090.

11 Q Am I correct in assuming that you have been
12 retained by Evolution, the plaintiff, in this case, to
13 testify as to certain matters purportedly within your
14 expertise?

15 A That is correct.

16 Q Okay. Do you have an understanding of how you
17 came to be retained by Evolution in this matter?

18 A Could you clarify that.

19 Q Certainly. Do you understand how it is that
20 they came to hire you?

21 A Yes.

22 Q What is your understanding of how that occurred?

23 A My understanding, to the best of my knowledge,
24 they did a search of experts in the field of software
25 economics. They identified me as an expert, contacted

1 me, then entered into discussions to see if I would
2 represent them in this case.

3 Q When was the first time that you recall being
4 contacted by Evolution or someone on their behalf?

5 A November of last year.

6 Q And was that by telephone?

7 A Yes, it was.

8 Q Do you recall who it was?

9 A Don Sprowl.

10 Q What did Mr. Sprowl say in that conversation in
11 November of last year?

12 A He was interested in getting a valuation expert
13 to help him assess the damages that he reportedly
14 sustained in a contract dispute with Sun Bank and Premium
15 Assignment Company.

16 Q PAC?

17 A Yeah, PAC. Okay.

18 Q For ease of reference, it's PAC.

19 A Yeah.

20 Q What was the next contact that you recall with
21 anyone from Evolution or someone acting on their behalf?

22 A With Don Sprowl again.

23 Q Okay. When did that occur?

24 A We had multiple telephone conversations in
25 November.

1 A No, I did not.

2 Q What were your initial opinions that you
3 formulated in December last year?

4 A Again they are -- well, for the most part, they
5 are what are contained within the report; that there were
6 breaches of the license agreement and that -- and then
7 the other thing that I concluded was basically the
8 approach that I would take to come up with a -- for
9 valuation purposes, based on current best practices, as
10 referenced in the reference list that we have just noted
11 on page 15.

12 Q Have you ever been retained to do a valuation
13 analysis for a software product before Evolution?

14 A I have been retained to do independent estimates
15 of what it would cost to develop products and also to
16 achieve certain productivity. But to do an -- to do
17 valuation -- strictly speaking, to do valuation like I
18 did for Evolution, no.

19 Q To provide the valuation opinion in this case,
20 you -- one element was, you utilized the cost estimating
21 functionality of a computer program called COCOMO II,
22 correct?

23 A Yes, I did use the COCOMO II software cost
24 estimation model.

25 Q And you did research on how valuations should be

1 doing testing, that's what consumes time and effort.

2 Q As I understand this section of your report,
3 5.2.2, you estimate that it would take 9.4 staff months
4 to create a replacement for PF32. Is that correct?

5 A Let me look at -- that's what the COCOMO model
6 predicted, yes. Also predicted an average cost per line
7 of \$19 which is well within national norms. Actually
8 on -- it's on the low side. I mean, you know, very
9 productive.

10 Q How did you reach the 9.4 staff months estimate?

11 A I ran the model, calibrating the parameters as
12 noted in, I think it's, Exhibit --

13 Q 6.1?

14 A Yeah, I think so. It's in the report somewhere.
15 I am familiar with a different, you know --

16 So what I did is, I calibrated the 22 parameters
17 to which cost is found sensitive to, and then ran the
18 model several times to come up with a prediction of cost
19 and effort. Duration and effort.

20 Q And it's your opinion that COCOMO II is an
21 appropriate tool for arriving at a value for the use of
22 PF32 code in the MIDAS program; is that correct?

23 A Based on my experience and based on the
24 literature, I am of the opinion that it is an appropriate
25 tool.

1 for the proposition that the use of COCOMO II is an
2 appropriate method for valuation of software?

3 A Yes.

4 Q Which ones?

5 A I would have to review them. I do know that it
6 is called out very specifically by name in several of the
7 references, but I would have to review the references to
8 give you the exact citing.

9 Q Okay.

10 A I do remember that because it made me feel good
11 as one of the authors. Almost positive would be the way
12 to say it.

13 Q Why did you make the decision to use SLOC rather
14 than function point analysis for purposes of the COCOMO
15 II model that you developed for Evolution?

16 A The simple answer was that we could count the
17 lines of code on the product.

18 Q Couldn't you also count the function points?

19 A No, you can't.

20 Q Why not?

21 A You have to -- the reason that you can't count
22 function points is that you have to have the spec to do a
23 specification analysis to determine the number of
24 function points.

25 Q So without a specification, you can't do a

1 function point.

2 A I couldn't do a function point count. I don't
3 know if others could. Without a spec, I couldn't do it.

4 Q You didn't do the SLOC count --

5 A But I can count them with a counter. I have the
6 tools, and they are downloadable.

7 Q But you didn't do that counting.

8 A No. They did the counting. That is correct.

9 Q Couldn't they also have done the function point
10 analysis?

11 A If they had the spec, but it's a much more labor
12 intensive task. The easy way to do that is to backfire,
13 which is a very common practice. Take the lines of code
14 and convert them to function points or vice versa.

15 Q Why would it be inappropriate to take the source
16 lines of code and, as I believe you said, backfire to
17 create function points?

18 A Would you restate your question.

19 MR. HARRISON: Would you read that back, please.

20 THE WITNESS: I don't know if you said
21 "appropriate" or "inappropriate."

22 BY MR. HARRISON:

23 Q "Inappropriate" is what I said.

24 A Okay.

25 Q I was asking: Why would it be inappropriate to

1 get SLOC?

2 A You mean project data --

3 Q Yes.

4 A -- if I may clarify.

5 Q Thank you.

6 A In the database? I'm not positive.

7 Q Would you agree with me that function points are
8 a more reliable measure of the complexity of the code?

9 A No.

10 Q Why not?

11 A They have been shown to be ineffective for
12 realtime in scientific type applications.

13 Q What about for applications that aren't realtime
14 or scientific?

15 A They're just as appropriate. This is --
16 function points and source lines of code in the software
17 estimating world is religion, and we are arguing religion
18 here. My opinion is that whatever is easy, as a
19 pragmatist, so I use both.

20 Q What version of PF32 was used to come up with
21 the count 9,972 SLOC?

22 A I do not know.

23 MR. HARRISON: Let's take five minutes.

24 THE WITNESS: Yeah.

25 (There was a brief recess from 11:20 a.m.

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I, the undersigned, a Certified Shorthand Reporter of the State of California, do hereby certify:

That the foregoing proceedings were taken before me at the time and place herein set forth; that any witnesses in the foregoing proceedings, prior to testifying, were placed under oath; that a verbatim record of the proceedings was made by me using machine shorthand which was thereafter transcribed under my direction; further, that the foregoing is an accurate transcription thereof.

I further certify that I am neither financially interested in the action nor a relative or employee of any attorney of any of the parties.

IN WITNESS WHEREOF, I have this date subscribed my name.

Dated: _____



KARIN E. GLAAB
CSR No. 2638