

EXHIBIT 5

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)

TEXT REMOVED - NOT RELEVANT TO MOTION

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?

09:56:30 18 A. No, I have not.

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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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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