

EXHIBIT 7

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND 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
BRIAN S. SOMMER

FRIDAY, JUNE 25, 2010

HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY
REPORTED BY: HOLLY THUMAN, CSR No. 6834, RMR, CRR
(1-429044)

TEXT REMOVED - NOT RELEVANT TO MOTION

11:20:03 9 MS. HOUSE: Q. Why is that?
11:20:06 10 A. Because the -- the only way one could
11:20:12 11 do -- my job was not to do a customer-by-customer
11:20:15 12 review of the companies involved, or the
11:20:20 13 TomorrowNow customers.
11:20:21 14 My work product was to focus on the
11:20:25 15 general market trends and buying issues, the
11:20:28 16 dynamics I think was the word I used, in the
11:20:31 17 marketplace, not on the specific customers.

TEXT REMOVED - NOT RELEVANT TO MOTION

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11:55:17	13	THE WITNESS: Given that my report is to
11:55:20	14	look at the general trends and what's going on in
11:55:22	15	the market and how customers buy, if he didn't
11:55:24	16	cover it in his summary document, I didn't go into
11:55:27	17	the detailed economic calculations he had in the
11:55:30	18	attachments.

TEXT REMOVED - NOT RELEVANT TO MOTION

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12:06:10 14 MS. HOUSE: Q. And yet you feel
12:06:11 15 comfortable talking about Safe Passage having never
12:06:14 16 considered that. Correct?
12:06:15 17 MR. McDONELL: Asked and answered
12:06:15 18 repeatedly. Define the scope of what he looked at.
12:06:20 19 THE WITNESS: Again, that wasn't the main
12:06:22 20 purpose of my expert report.
12:06:24 21 MS. HOUSE: Q. And the stated goals and
12:06:26 22 marketing of Safe Passage that you referenced in
12:06:29 23 Footnote 73, is that what you cover at the top of
12:06:36 24 page 50, which is the description of the program,
12:06:42 25 or what is it?

12:06:44 1 A. Well, you --

12:06:45 2 MR. McDONELL: Compound. Object to the
12:06:46 3 form of the question.

12:06:49 4 THE WITNESS: You can see I reference some
12:06:52 5 outside parties on what their general understanding
12:06:54 6 of the Safe Passage program was.

12:06:56 7 And given the fact that my report is to
12:06:59 8 cover more of a general market overview, I knew
12:07:03 9 that -- or I suspected that this program may have a
12:07:09 10 bunch of little subtleties. All I was trying to do
12:07:11 11 was capture the essence of what this program was
12:07:14 12 about.

12:07:14 13 And that was by design, because I had to
12:07:18 14 respond to what other companies offered, and I
12:07:20 15 covered their programs in the preceding pages, and
12:07:23 16 I tried to carry them at a similar level of detail.

12:07:27 17 MS. HOUSE: Q. Okay. Let's talk about
12:07:28 18 your Footnote 73.

12:07:29 19 You say your opinions are offered on a
12:07:32 20 review of the stated goals.

12:07:34 21 A. That's correct.

12:07:35 22 Q. And marketing. What stated goals?

12:07:47 23 A. Stated as they were discussed publicly.

12:07:52 24 Q. Did you look at any of the internal goals
12:07:53 25 for Safe Passage of SAP?

12:07:56 1 A. I saw the stuff that was in those two
12:07:59 2 depositions we've been talking about, the Hurst
12:08:01 3 and -- deposition and the other one, and I felt
12:08:07 4 that the only reasonable approach I could take was
12:08:10 5 to go with what was stated publicly in the
12:08:12 6 marketplace and what customers would know.

12:08:14 7 And again, I want to point out, my report
12:08:16 8 has -- is looking at this market from the view of
12:08:19 9 the customer, I believe, is the only really
12:08:22 10 relevant view one should focus on, because it's how
12:08:25 11 customers perceive programs like Safe Passage and
12:08:27 12 competing programs. That's what really matters.

12:08:32 13 MS. HOUSE: I'll move to strike.

12:08:34 14 Q. My question is, when you say the stated
12:08:36 15 goals, could you tell me the stated goals and where
12:08:38 16 you got those goals?

12:08:40 17 A. They're at the top of page 50, right
12:08:42 18 there, the license credit reference to Footnote 71
12:08:45 19 and the -- the maintenance support comment
12:08:49 20 referenced by Footnote 72.

12:08:51 21 Q. And those are the only stated goals that
12:08:53 22 you mean in your reference in 73?

12:08:58 23 A. Those were two -- two important ones that
12:09:01 24 I chose that were -- that would line up -- line
12:09:04 25 up's not the right word -- that were of a similar

12:09:07 1 level of detail in understanding the programs that
12:09:10 2 other companies had around that same time frame or
12:09:12 3 in the effective time period.

12:09:17 4 Q. And are your opinions offered in
12:09:18 5 connection with any of the internal goals that SAP
12:09:22 6 articulated for the Safe Passage program?

12:09:24 7 MR. McDONELL: Vague and ambiguous, object
12:09:25 8 to the form of the question.

12:09:44 9 THE WITNESS: I'm not quite sure how to
12:09:45 10 answer that question. The -- I'm working off the
12:09:50 11 stated goals. That's what I'm working off of. And
12:09:53 12 I did draw some conclusions that said things like,
12:09:57 13 you know, it would offer little incentive for a
12:10:00 14 customer to move, or that a support-only option
12:10:05 15 would possibly keep somebody on SAP.

12:10:07 16 And again, those are from a customer
12:10:09 17 perspective. So actually, I'd say I'm working off
12:10:13 18 the stated goals.

12:10:14 19 MS. HOUSE: Q. Okay. So one can state
12:10:16 20 something and it can be public, or it can be
12:10:19 21 internal to the company.

12:10:21 22 Are you only talking about publicly stated
12:10:24 23 goals?

12:10:27 24 A. Again, I'm taking a customer-focused view
12:10:30 25 of this. And as far as the customer is concerned,

12:10:32 1 the stated goals are the ones that matter. And if
12:10:36 2 there were others, that -- other goals and
12:10:39 3 objectives that were expressed, either other
12:10:44 4 experts should have covered that or that wasn't
12:10:46 5 part of the scope of my report.

12:10:49 6 Q. So you're not intending to offer any
12:10:51 7 opinion on whether the internal goals of SAP in
12:10:54 8 connection with the Safe Passage program were
12:10:56 9 unreasonable or reasonable?

12:11:08 10 MR. McDONELL: Object to the form of the
12:11:16 11 question. His report speaks for itself.

12:11:17 12 THE WITNESS: I've rendered some opinions
12:11:19 13 about whether I thought the program would be
12:11:21 14 successful or not. And that's in my report.

12:11:26 15 MS. HOUSE: Q. Okay. I'm asking you
12:11:28 16 about the specific language here, and I'm asking
12:11:32 17 you whether or not, when you're offering your
12:11:35 18 opinions -- it seems very murky at this point to
12:11:39 19 me.

12:11:39 20 Are you talking about the external,
12:11:42 21 publicly stated goals; or are you also reviewing
12:11:46 22 and commenting on SAP's internal goals and strategy
12:11:52 23 in connection with the Safe Passage program?

12:11:54 24 MR. McDONELL: Argumentative, object to
12:11:56 25 the form of the question, assumes facts not in

12:11:59 1 evidence, object to the form.

12:12:03 2 THE WITNESS: For the most part, my report
12:12:05 3 is discussing the -- is dealing with the stated
12:12:10 4 goals.

12:12:13 5 And I'd like to suggest if we're getting
12:12:15 6 close to a topic change or anything, I'd like to
12:12:18 7 take a lunch break soon. But I'm open.

12:12:22 8 MS. HOUSE: Q. I think we should keep
12:12:24 9 going, because we've had a lot of breaks, it's only
12:12:27 10 12:10, and we are never going to get through this
12:12:30 11 by 7 o'clock if we don't continue.

12:12:32 12 MR. McDONELL: The witness has asked for a
12:12:33 13 break. He's been going for over an hour. Let's
12:12:37 14 take a short one. We don't have to do lunch right
12:12:40 15 now.

12:12:45 16 THE VIDEO OPERATOR: Going off the record,
12:12:45 17 the time now is 12:12.

12:12:51 18 (Recess from 12:12 p.m. to 12:28 p.m.)

12:28:20 19 THE VIDEO OPERATOR: Back on the record,
12:28:21 20 the time now is 12:28. Please continue.

12:28:25 21 MS. HOUSE: Q. We're on Footnote 73 of
12:28:27 22 your report, where you state: My opinions are
12:28:29 23 offered on a review of the stated goals and
12:28:31 24 marketing of Safe Passage.

12:28:33 25 Could you please tell me what the stated

12:28:35 1 goals of SAP were from a financial standpoint for
12:28:40 2 Safe Passage?

12:28:41 3 MR. McDONELL: Vague and ambiguous, object
12:28:42 4 to the form, misstates the testimony.

12:28:45 5 THE WITNESS: I believe I listed them at
12:28:47 6 the top of page 50. And generally what those were,
12:28:50 7 were a license credit of up to 75 percent on a
12:28:53 8 customer's license, in this case I guess with
12:28:55 9 SAP -- I mean, excuse me, with Oracle. And as I
12:28:58 10 noted on here, at some point it could have gone as
12:29:00 11 much as a hundred percent. And that would be
12:29:03 12 applied against a new SAP license.

12:29:05 13 The second bullet point referenced that
12:29:08 14 maintenance support for three of the product
12:29:13 15 lines -- PeopleSoft, JD Edwards, and Siebel --
12:29:15 16 would be provided by TomorrowNow at 50 percent of
12:29:18 17 the fee previously paid to Oracle or PeopleSoft.

12:29:22 18 MS. HOUSE: Q. What you've just described
12:29:24 19 or what you've just read are descriptors of the
12:29:26 20 program, Safe Passage. Right?

12:29:28 21 MR. McDONELL: Vague and ambiguous.
12:29:28 22 Object to the form of the question.

12:29:32 23 THE WITNESS: I guess --

12:29:33 24 MS. HOUSE: Q. Program parameters.

12:29:34 25 Right?

12:29:34 1 A. Yeah, I guess they could be described as
12:29:36 2 such, yes.

12:29:37 3 Q. Do you understand that's different than
12:29:38 4 what SAP's goals were in implementing the program?

12:29:44 5 MR. McDONELL: Vague and ambiguous.
12:29:45 6 Object to the form.

12:29:47 7 THE WITNESS: Do I understand those were
12:29:49 8 different from SAP's goals?

12:29:50 9 MS. HOUSE: Q. Yes. Do you understand a
12:29:52 10 goal is different than a description of a program?

12:29:54 11 A. I understand the two are different.

12:29:56 12 Q. What were the goals that SAP stated that
12:29:59 13 you are providing opinions on?

12:30:03 14 MR. McDONELL: Same objections.

12:30:07 15 THE WITNESS: That would be on the
12:30:07 16 preceding page, where it says, SAP introduced a
12:30:11 17 switching program called Safe Passage for users of
12:30:14 18 those products. And the goal obviously would be to
12:30:19 19 move customers from one product line to the next.
12:30:22 20 That would be the goal.

12:30:24 21 MS. HOUSE: Q. Okay. Do you have any
12:30:26 22 understanding about the amount of customers that
12:30:30 23 SAP was intending to move?

12:30:33 24 MR. McDONELL: Assumes facts not in
12:30:33 25 evidence. Object to the form.

12:30:36 1 THE WITNESS: That wasn't part of the
12:30:37 2 scope. The part of my report -- but I did see some
12:30:41 3 of those kind of materials I believe in one of
12:30:44 4 those depositions.

12:30:45 5 MS. HOUSE: Q. Did you have any
12:30:46 6 understanding about the amount of revenue that SAP
12:30:52 7 expected to get from the Safe Passage program?

12:30:55 8 MR. McDONELL: Beyond the scope, object to
12:30:56 9 the form.

12:30:57 10 THE WITNESS: Again, that wasn't part of
12:30:58 11 my report, but I did see some claims like that, I
12:31:02 12 believe, in some of those deposition documents.

12:31:07 13 MS. HOUSE: Q. Do you -- so you are not
12:31:09 14 intending to provide any opinions about the
12:31:12 15 specific financial goals that SAP had for Safe
12:31:15 16 Passage?

12:31:16 17 MR. McDONELL: Same objections.

12:31:19 18 THE WITNESS: My report was to cover the
12:31:20 19 general effects of -- or the general activities of
12:31:24 20 software buyers and what would cause them to move
12:31:26 21 from one product to the next. I believe other
12:31:29 22 experts in this case, Messrs. Clarke and Meyer,
12:31:32 23 have already opined on that from a monetary or
12:31:36 24 numerical perspective.

12:31:38 25 MS. HOUSE: Q. You -- in Footnote 73 --

12:31:40 1 I'm just trying to understand the lay of the land,
12:31:42 2 sir.

12:31:43 3 You're talking about how your opinions in
12:31:44 4 this particular section of your report on Safe
12:31:47 5 Passage are offered on a review of the stated goals
12:31:49 6 and marketing of Safe Passage.

12:31:51 7 I want to make sure I understand what
12:31:53 8 goals it is that you think you're talking about so
12:31:55 9 that I -- if you're not talking about other goals,
12:31:57 10 we don't have to worry about them. But I need to
12:32:00 11 understand, are you talking about the specific
12:32:02 12 financial goals that SAP articulated for Safe
12:32:06 13 Passage?

12:32:06 14 Are you going to be offering any opinions
12:32:08 15 about the reasonableness of those financial goals?

12:32:12 16 MR. McDONELL: Object. Asked and
12:32:12 17 answered.

12:32:16 18 THE WITNESS: I don't believe my report
12:32:17 19 discussed the financial goals that SAP had for
12:32:21 20 that, other than to say that it did -- that I did
12:32:24 21 discuss some of the financial issues around what
12:32:29 22 difficulties customers have with software
12:32:33 23 implementations, total cost of ownership, and those
12:32:36 24 kind of matters.

12:32:37 25 MS. HOUSE: Q. Are you going to be

12:32:38 1 offering any opinions on the reasonableness of
12:32:39 2 SAP's financial goals for the Safe Passage program?
12:32:43 3 MR. McDONELL: Assumes facts, beyond the
12:32:44 4 scope, object to the form. Asked and answered.
12:32:49 5 THE WITNESS: In the way that I'm
12:32:50 6 understanding your question, I think the answer is
12:32:52 7 possibly no.
12:32:54 8 MS. HOUSE: Q. You don't even know what
12:32:55 9 those financial goals are, do you?
12:32:57 10 MR. McDONELL: Same objections.
12:32:58 11 THE WITNESS: I didn't say that.
12:32:59 12 MS. HOUSE: Q. Do you know what the
12:33:00 13 financial goals were for -- that SAP had for Safe
12:33:04 14 Passage?
12:33:04 15 A. I indicated that I saw some documents like
12:33:07 16 that, I believe, in like the Hurst -- or one of
12:33:10 17 those two depositions I referenced in my Appendix
12:33:13 18 C.
12:33:13 19 Q. Are you intending to offer an opinion that
12:33:15 20 those financial goals of SAP for the Safe Passage
12:33:19 21 program were unreasonable?
12:33:21 22 MR. McDONELL: Vague and ambiguous, object
12:33:21 23 to the form, asked and answered.
12:33:24 24 THE WITNESS: My report already has
12:33:25 25 some --

12:33:27 1 MS. HOUSE: Q. It's a yes or no question.

12:33:28 2 MR. McDONELL: Don't interrupt please,

12:33:29 3 Counsel.

12:33:30 4 MS. HOUSE: No, I need a clear answer,

12:33:31 5 because I need a clear record. Let's try it again.

12:33:35 6 Can you read back the question, Holly?

12:33:36 7 (Record read as follows:

12:33:49 8 Question: Are you intending to offer an

12:33:49 9 opinion that those financial goals of SAP for

12:33:49 10 the Safe Passage program were unreasonable?)

12:33:50 11 MR. McDONELL: Object to the form of the

12:33:50 12 question, asked and answered, beyond the scope,

12:33:51 13 vague and ambiguous.

12:33:56 14 THE WITNESS: From about page 50 on, I

12:33:57 15 have some opinions here I've stated, and they are

12:34:00 16 what they are. And if -- I don't know what you

12:34:02 17 mean by a financial deal, because I could see

12:34:04 18 someone arguing that I -- that my discussion of

12:34:08 19 total cost of ownership is a financial factor.

12:34:11 20 So I guess if you're -- in the purest

12:34:14 21 sense, yes. I would probably say no, but --

12:34:18 22 MS. HOUSE: Q. Well, let's figure it so

12:34:20 23 we can get a clean record.

12:34:21 24 Do you understand that SAP had financial

12:34:24 25 goals for the Safe Passage program?

12:34:27 1 MR. McDONELL: Lack of foundation, object
12:34:28 2 to the form.
12:34:30 3 THE WITNESS: I believe they did.
12:34:32 4 MS. HOUSE: Q. Okay. Are you intending
12:34:35 5 to offer an opinion that the financial goals that
12:34:38 6 SAP had for the Safe Passage program were
12:34:40 7 unreasonable?
12:34:42 8 MR. McDONELL: Asked and answered, object
12:34:42 9 to the form.
12:35:32 10 THE WITNESS: Generally, my report is not
12:35:34 11 making an assessment of the financial goals of Safe
12:35:39 12 Passage, other than how customers would perceive
12:35:45 13 these programs.
12:35:46 14 MS. HOUSE: Q. So the answer is no.
12:35:47 15 Correct?
12:35:48 16 MR. McDONELL: Asked and answered. Object
12:35:49 17 to the form of the question.
12:35:51 18 THE WITNESS: Under the criteria I just
12:35:54 19 answered, that would be correct.
12:35:56 20 MS. HOUSE: Q. And do you understand that
12:35:57 21 SAP also had other strategic goals for the Safe
12:36:01 22 Passage program?
12:36:03 23 MR. McDONELL: Vague and ambiguous, lack
12:36:04 24 of foundation, object to the form. Beyond the
12:36:06 25 scope.

12:36:09 1 THE WITNESS: Define "strategic goals."
12:36:13 2 MS. HOUSE: Q. Well, do you understand
12:36:15 3 what any of the strategic goals SAP had for the
12:36:18 4 Safe Passage program were?
12:36:20 5 MR. McDONELL: Object to the form. Vague
12:36:21 6 and ambiguous.
12:36:28 7 THE WITNESS: Because SAP wanted to move
12:36:32 8 customers from Oracle to SAP, one of their
12:36:34 9 strategic goals must have been to increase market
12:36:37 10 share.
12:36:40 11 Is that what you mean by a strategic goal?
12:36:42 12 MS. HOUSE: Q. I'm asking you if you
12:36:44 13 understood what SAP's strategic goals for Safe
12:36:47 14 Passage were.
12:36:50 15 MR. McDONELL: Asked and answered. Object
12:36:50 16 to the form. Vague and ambiguous.
12:36:53 17 THE WITNESS: Again, that wasn't part of
12:36:55 18 my scope of my report or my assignment. I was not
12:36:58 19 to look at what SAP thought or Oracle thought. I
12:37:01 20 looked at this from the perspective of how this was
12:37:04 21 perceived by clients or customers of the firms.
12:37:07 22 MS. HOUSE: Q. And so you are not
12:37:08 23 intending to offer an opinion that any of the
12:37:11 24 strategic goals that SAP had for the Safe Passage
12:37:14 25 program was unreasonable. Is that right?

12:37:17 1 MR. McDONELL: Asked and answered. Object
12:37:18 2 to the form.

12:37:29 3 THE WITNESS: Again, I'm not trying to be
12:37:31 4 difficult.

12:37:31 5 What I wrote is what I wrote, and it
12:37:34 6 speaks to some matters that could be considered
12:37:37 7 either strategic or financial. But I think it was
12:37:40 8 very clear about the opinions I expressed in my
12:37:42 9 report.

12:37:46 10 MS. HOUSE: Q. Unfortunately, it's not.
12:37:48 11 And unfortunately, we have to get a clear record.
12:37:51 12 It's a simple question.

12:37:52 13 Are you -- first of all, do you even know
12:37:55 14 what the strategic goals of SAP were for the Safe
12:37:57 15 Passage program?

12:37:58 16 MR. McDONELL: Asked and answered
12:37:59 17 repeatedly. At this point, you're harassing the
12:38:02 18 witness. Object to the form.

12:38:05 19 THE WITNESS: I know what was available
12:38:06 20 publicly, and I know -- and I reference that in my
12:38:10 21 report, and I know what was in those two
12:38:12 22 depositions generally.

12:38:14 23 And again, my report focuses on what the
12:38:17 24 customers would see, so I have a general idea of
12:38:21 25 that.

12:38:21 1 MS. HOUSE: Q. You're not intending to
12:38:23 2 offer any opinion that SAP's strategic goals for
12:38:28 3 the Safe Passage program were unreasonable. Is
12:38:30 4 that fair?

12:38:31 5 MR. McDONELL: Object to the form of the
12:38:32 6 question. Asked and answered repeatedly. Vague
12:38:35 7 and ambiguous.

12:38:40 8 THE WITNESS: That was not part of my
12:38:41 9 assignment. So no, I'm not going to be answering
12:38:44 10 that type of a question.

12:38:56 11 MS. HOUSE: Q. Could you look at page 50?
12:39:05 12 You say -- in the sentence under little
12:39:09 13 ii, you say:

12:39:11 14 I note, however, that Mr. Meyer offers
12:39:14 15 scant if any support for opinions about the
12:39:17 16 merits of Safe Passage and whether the
12:39:18 17 Defendants' goals for Safe Passage were
12:39:19 18 reasonable or realistic.

12:39:25 19 Are you intending to opine that
12:39:28 20 Defendants' goals for Safe Passage were not
12:39:30 21 reasonable or realistic?

12:39:32 22 MR. McDONELL: Object to the form. Asked
12:39:32 23 and answered repeatedly.

12:40:09 24 THE WITNESS: Well, as I said before, I
12:40:11 25 offer these -- I think it's three points about this

12:40:14 1 program. And -- yes, three points. And -- about
12:40:22 2 this program.

12:40:23 3 I also want to note that in that sentence
12:40:25 4 you just quoted about the support for opinions
12:40:31 5 about the merits of the program, what I provided in
12:40:36 6 my report was additional support or things that
12:40:40 7 Mr. Meyer should have considered in his discussions
12:40:44 8 about whether those goals for Safe Passage were
12:40:47 9 reasonable or realistic.

12:40:50 10 MS. HOUSE: Q. Okay. That's not my
12:40:52 11 question.

12:40:53 12 I think you've said that you're not
12:40:55 13 intending to opine whether or not SAP's strategic
12:40:59 14 goals were reasonable. Just because of the
12:41:02 15 language in this sentence, I want to make sure
12:41:05 16 that's not what you intend to opine.

12:41:08 17 A. In an earlier answer, I said that what I
12:41:12 18 put here were my opinions about this, and did it
12:41:15 19 from a customer perspective, and that's still
12:41:18 20 consistent with what I've got here in this report.

12:41:24 21 Q. Are you aware that at the time SAP created
12:41:26 22 its goals and financial projections for the Safe
12:41:28 23 Passage program, that SAP was the world's largest
12:41:32 24 ERP application vendor?

12:41:34 25 MR. McDONELL: Vague and ambiguous, object

12:41:35 1 to the form.

12:41:39 2 THE WITNESS: If it wasn't the biggest, it
12:41:40 3 was one of the biggest.

12:41:44 4 MS. HOUSE: Q. Would you agree that SAP
12:41:46 5 had expertise at making projections related to ERP
12:41:49 6 purchasing behavior?

12:41:51 7 MR. McDONELL: Object to the form. Lack
12:41:52 8 of foundation, vague and ambiguous, incomplete
12:41:54 9 hypothetical.

12:41:58 10 THE WITNESS: I would find it hard to
12:42:00 11 believe that they wouldn't have that sort of
12:42:02 12 expertise, either in-house or under contract.

12:42:05 13 MS. HOUSE: Q. And would you agree that
12:42:06 14 SAP had expertise at setting strategic goals?

12:42:09 15 MR. McDONELL: Vague and ambiguous,
12:42:11 16 undefined terms. Object to the form. Incomplete
12:42:13 17 hypothetical and beyond the scope.

12:42:20 18 THE WITNESS: I would -- again, I would
12:42:21 19 imagine that they would have that sort of expertise
12:42:23 20 available to them.

12:42:25 21 MS. HOUSE: Q. And you have no reason to
12:42:26 22 believe that they didn't apply that expertise in
12:42:29 23 creating the Safe Passage program, do you?

12:42:31 24 MR. McDONELL: Beyond the scope, calls for
12:42:32 25 a legal conclusion, object to the form. Vague and

12:42:36 1 ambiguous.

12:42:38 2 THE WITNESS: Well again, all of these
12:42:39 3 last few questions are all speculative about --
12:42:42 4 that I would imagine that they would have some
12:42:44 5 ability to come up with those kind of estimates and
12:42:47 6 plans and --

12:42:48 7 MS. HOUSE: Q. No, I didn't ask you about
12:42:50 8 imagining anything. I asked you if you knew of
12:42:52 9 anything that would indicate that SAP did not apply
12:42:54 10 that expertise in creating the Safe Passage
12:42:56 11 program.

12:42:57 12 MR. McDONELL: Object to the form. Lack
12:42:58 13 of foundation, beyond the scope, incomplete
12:43:01 14 hypothetical, vague and ambiguous.

12:43:06 15 THE WITNESS: I'm not aware of any -- I'm
12:43:08 16 not aware of any -- I have no reason to believe
12:43:11 17 they lacked that capability.

12:43:15 18 MS. HOUSE: Q. Do you understand that SAP
12:43:16 19 believed that their acquisition of TomorrowNow and
12:43:20 20 offering of Safe Passage could have a detrimental
12:43:22 21 effect on whether or not Oracle realized the return
12:43:26 22 on its investment in PeopleSoft?

12:43:29 23 MR. McDONELL: Lack of foundation, beyond
12:43:30 24 the scope, object to the form. Vague and
12:43:33 25 ambiguous.

12:43:35 1 THE WITNESS: Can you just read the last
12:43:36 2 little bit of that again, or I guess reread the
12:43:39 3 question -- or can you --

12:43:41 4 MS. HOUSE: Q. I can do that.

12:43:42 5 Do you understand that SAP believed that
12:43:43 6 their acquisition of TomorrowNow and offering of
12:43:46 7 Safe Passage could have a detrimental effect on
12:43:49 8 whether or not Oracle realized the return on its
12:43:52 9 investment in PeopleSoft?

12:43:55 10 MR. McDONELL: Lack of foundation, calls
12:43:56 11 for speculation, beyond the scope, vague and
12:43:59 12 ambiguous, object to the form.

12:44:02 13 THE WITNESS: That was -- that wasn't
12:44:04 14 exactly part of my report, but here's my answer on
12:44:08 15 it:

12:44:10 16 I believe that someone put together a
12:44:12 17 business plan in all likelihood for this, and they
12:44:15 18 probably had assumptions about market share growth
12:44:17 19 and penetration estimates. Whether those
12:44:19 20 assumptions covered what competitors would do also
12:44:22 21 in response or other kinds of assumptions I don't
12:44:27 22 know, and I don't know how or what was in those
12:44:29 23 plans. So --

12:44:31 24 MS. HOUSE: Q. Assuming it's true, do you
12:44:32 25 intend to opine that that was unreasonable goal for

12:44:35 1 SAP?

12:44:36 2 MR. McDONELL: Object to the form,
12:44:36 3 incomplete hypothetical, beyond the scope, vague
12:44:39 4 and ambiguous. Object to the form.

12:44:42 5 THE WITNESS: That they were going -- when
12:44:44 6 you said that that was an unreasonable, that --
12:44:47 7 what is the "that"?

12:44:49 8 MS. HOUSE: Q. That is using TomorrowNow
12:44:51 9 and the Safe Passage to have a detrimental effect
12:44:54 10 on Oracle's ability to get a return on investment
12:44:57 11 on PeopleSoft.

12:44:58 12 MR. McDONELL: Same objection. Vague as
12:44:59 13 to undefined terms, object to the form, beyond the
12:45:02 14 scope, vague and ambiguous.

12:45:04 15 THE WITNESS: I believe that -- it's hard
12:45:13 16 for me to imagine what somebody thought or did
12:45:16 17 since I wasn't there.

12:45:17 18 But as to its reasonableness, every day
12:45:23 19 there's probably a couple of dozen companies
12:45:27 20 pitching a business plan somewhere here in the Bay
12:45:29 21 Area for a new startup, and somebody probably
12:45:33 22 thinks it's going to work and it's going to be very
12:45:35 23 viable and so forth, and not all those pan out. In
12:45:38 24 fact, very few.

12:45:39 25 MS. HOUSE: Q. That's not my question.

12:45:40 1 I'm asking assuming that that was a
12:45:42 2 strategic goal for SAP, are you intending to opine
12:45:45 3 that that was an unreasonable goal?
12:45:47 4 MR. McDONELL: Object to the form, beyond
12:45:48 5 the scope, calls for speculation, lack of
12:45:50 6 foundation, vague and ambiguous.
12:45:57 7 THE WITNESS: I'm saying that -- again,
12:46:17 8 this is not part of my overall assignment to deal
12:46:21 9 with this market generally -- that if someone had
12:46:25 10 made certain assumptions, whether those came true
12:46:29 11 or not, I don't know, and I'm not going to -- but I
12:46:32 12 am saying in this report, I have three key points:
12:46:34 13 That marketing by these large vendors
12:46:37 14 generally isn't as effective, that -- and there's
12:46:40 15 more detail on that.
12:46:41 16 That Safe Passage didn't offer enough
12:46:43 17 incentive, and I had a number of points regarding
12:46:46 18 TCL and why that's tough to do.
12:46:48 19 And the third point, that a support option
12:46:50 20 with TomorrowNow might actually keep customers on
12:46:52 21 older products.
12:46:53 22 Those were the opinions I put in there,
12:46:54 23 and that's what I've rendered an opinion of in my
12:46:58 24 expert report.
12:47:02 25 MS. HOUSE: Q. So from your answer, it's

12:47:04 1 clear that you're not going to be intending --
12:47:08 2 you're not going to be offering an opinion that if
12:47:11 3 that was a goal of SAP, that that was an
12:47:14 4 unreasonable goal?
12:47:16 5 MR. McDONELL: Counsel, you keep asking
12:47:17 6 the same question. You're badgering the witness.
12:47:20 7 MS. HOUSE: I'm trying to get a clean
12:47:21 8 answer.
12:47:21 9 MR. McDONELL: Well, he's giving you the
12:47:22 10 answer. You apparently --
12:47:27 11 MS. MacDONALD: The witness is being very
12:47:28 12 evasive and not responding to the question. So --
12:47:30 13 MR. McDONELL: Counsel, we can only have
12:47:32 14 one attorney speaking.
12:47:33 15 MS. HOUSE: Just let's keep going. We're
12:47:33 16 trying to get clean answers.
12:47:33 17 Q. It's very simple. You've said, I've only
12:47:37 18 got it in my report. So the simple answer is -- do
12:47:39 19 you intend to opine that -- if having a detrimental
12:47:43 20 effect on whether Oracle realized its return on
12:47:46 21 investment for PeopleSoft was a goal of SAP, do you
12:47:49 22 intend to opine that that was an unreasonable goal?
12:47:51 23 MR. McDONELL: It's been asked and
12:47:52 24 answered repeatedly. You're now harassing the
12:47:54 25 witness. I repeat all my prior objections.

12:47:58 1 THE WITNESS: I -- my opinions are what's
12:47:59 2 in my report. And you're asking me if I'm going to
12:48:03 3 opine on some things that may or may not be in my
12:48:06 4 report. That's my understanding of your question.

12:48:08 5 And that's why I'm struggling with your
12:48:11 6 question, is because you're asking, am I going to
12:48:13 7 give an opinion about whether the -- whether some
12:48:17 8 goals about SAP's program were reasonable or not.
12:48:21 9 And all I could do is talk about the ones that I
12:48:23 10 put in this particular report, particularly those
12:48:26 11 that have a customer -- a significant customer
12:48:29 12 impact and focus.

12:48:31 13 MS. HOUSE: Q. Your report, sir, is what
12:48:33 14 triggered this. You have language in there where
12:48:35 15 you criticize Mr. Meyer about not considering
12:48:38 16 things that you say, whether the defendants' goals
12:48:42 17 for Safe Passage were reasonable or realistic.

12:48:45 18 That is your language, sir. Correct?

12:48:47 19 MR. McDONELL: The document speaks for
12:48:47 20 itself. You're arguing with the witness.

12:48:49 21 MS. HOUSE: Q. Yes?

12:48:50 22 A. Yes.

12:48:51 23 MR. McDONELL: Object.

12:48:52 24 MS. HOUSE: Q. Okay. So I'm asking you,
12:48:53 25 sir: Are you intending to opine whether any of the

12:48:56 1 goals that SAP had for Safe Passage were reasonable
12:49:01 2 or unreasonable -- or I'm sorry.

12:49:03 3 Are you intending to opine whether any of
12:49:05 4 the goals that SAP had for Safe Passage were
12:49:08 5 unreasonable or unrealistic? And if the answer is
12:49:10 6 no, then we can move on.

12:49:12 7 MR. McDONELL: Object to the form of the
12:49:12 8 question. It's been asked and answered repeatedly.
12:49:15 9 He's given you an answer, and I reincorporate all
12:49:20 10 of my prior objections.

12:49:21 11 THE WITNESS: I'm only going to opine on
12:49:23 12 the three opinions that I have right here. That's
12:49:25 13 it. That's the limit of my opinions. And these
12:49:27 14 are the things that I thought were things that
12:49:30 15 Mr. Meyer needed to include in his report, and
12:49:33 16 that's why I put them in mine.

12:49:36 17 MS. HOUSE: Q. So -- so we have a clean
12:49:38 18 record, you don't intend to talk about SAP's goals.
12:49:45 19 Is that right? You're not going to opine about
12:49:46 20 whether they were realistic or unrealistic for Safe
12:49:50 21 Passage. Is that correct?

12:49:50 22 MR. McDONELL: Asked and answered
12:49:51 23 repeatedly. Object. Incorporate all my prior
12:49:54 24 objections.

12:50:00 25 THE WITNESS: I'm only going to opine on

12:50:02 1 these points that are already in my report. That's
12:50:04 2 the limit of what I'm talking about --
12:50:07 3 MS. HOUSE: Q. And you don't articulate
12:50:08 4 what any of the goals are for SAP, do you, in this
12:50:11 5 section of your report. Right?
12:50:13 6 MR. McDONELL: The document --
12:50:14 7 MS. HOUSE: Let's try it this way.
12:50:15 8 MR. McDONELL: The document speaks for
12:50:16 9 itself.
12:50:16 10 MS. HOUSE: Q. Do you articulate what any
12:50:18 11 of SAP's goals are for the Safe Passage program?
12:50:20 12 MR. McDONELL: The document speaks for
12:50:20 13 itself. You're arguing with the witness. Object
12:50:23 14 to the form. And it's been asked and answered.
12:51:43 15 MS. HOUSE: Q. Now you've read it for the
12:51:45 16 third time, do you see whether you articulate any
12:51:48 17 goals of SAP? And if you do, are you intending to
12:51:51 18 opine if any of those goals are unreasonable?
12:51:53 19 MR. McDONELL: Compound, object to the
12:51:54 20 form. You're arguing with the witness. Assumes
12:51:55 21 facts not in evidence, and it's been asked and
12:51:59 22 answered repeatedly.
12:52:00 23 THE WITNESS: On page 49, I state here
12:52:03 24 that I will reiterate the program's two primary
12:52:06 25 incentives.

12:52:07 1 I did not use the word "goals" there. I
12:52:09 2 used the word "incentives."
12:52:11 3 And you're right, on the next page, page
12:52:13 4 50, under -- in this section we've been going back
12:52:16 5 and forth on, about the -- and whether the
12:52:21 6 defendants' goals for Safe Passage were reasonable
12:52:24 7 or unrealistic, while I do not explicitly state in
12:52:29 8 this -- in my report those -- whatever goals there
12:52:32 9 were for Safe Passage, I did discuss and did create
12:52:36 10 three opinions on three different subjects in this
12:52:39 11 section of the report.
12:52:43 12 MS. HOUSE: Q. And so we're clean, you're
12:52:44 13 not intending to articulate what the goals of SAP
12:52:48 14 were for the Safe Passage program. That's not part
12:52:52 15 of your opinion. Right?
12:52:53 16 MR. McDONELL: He's asked and answered
12:52:54 17 this question repeatedly. Object to the form.
12:52:56 18 MS. HOUSE: Can you answer it yes or no?
12:52:58 19 MR. McDONELL: Counsel, don't cut me off.
12:52:59 20 I'm entitled to state my objections.
12:53:01 21 It's been asked and answered to the best
12:53:02 22 of his ability. Your badgering the witness. The
12:53:04 23 question is vague and ambiguous.
12:53:07 24 THE WITNESS: I think I've answered that
12:53:08 25 question many times.

12:53:17 1 MS. HOUSE: Q. So the answer is no,
12:53:18 2 you're not intending to articulate the goals that
12:53:20 3 SAP had for the Safe Passage program. Right?

12:53:23 4 MR. McDONELL: Object to the form of the
12:53:23 5 question. It's been asked and answered repeatedly,
12:53:26 6 it's vague and ambiguous, you're confusing the way
12:53:30 7 you're putting the question.

12:53:35 8 THE WITNESS: I'm only offering opinions
12:53:37 9 about what's in my report.

12:53:39 10 MS. HOUSE: Q. That language is in your
12:53:40 11 report. That's why we're spending this much time
12:53:42 12 on it. It's very simple, sir. Can you please try
12:53:46 13 to answer the question:

12:53:47 14 Are you or are you not intending to opine
12:53:49 15 about the reasonableness of SAP's goals for the
12:53:52 16 Safe Passage program?

12:53:54 17 MR. McDONELL: Object to the form of the
12:53:55 18 question. Asked and answered. You're badgering
12:53:57 19 the witness. It's vague and ambiguous.
12:54:00 20 Incorporate all my prior objections.

12:54:08 21 THE WITNESS: I just don't know any other
12:54:10 22 way to answer it other than the way I've answered
12:54:12 23 it before. I have three main opinions about Safe
12:54:14 24 Passage, and they're right here in these pages in
12:54:17 25 this report.

12:54:17 1 MS. HOUSE: Q. And none of them are about
12:54:19 2 SAP's goals and the reasonableness of them, are
12:54:21 3 they?

12:54:22 4 MR. McDONELL: Object to the form. Asked
12:54:23 5 and answered repeatedly. Incorporate all my prior
12:54:26 6 objections.

12:54:37 7 MS. HOUSE: Q. You've read it three
12:54:38 8 times. Yes or no?

12:54:40 9 MR. McDONELL: Counsel, he's answering
12:54:41 10 your questions. You may not be happy with the
12:54:44 11 answer, but he's answered --

12:54:45 12 MS. HOUSE: I'm going to ask for more time
12:54:47 13 if you keep this up.

12:54:49 14 Q. Come on. Answer the question. Answer the
12:54:51 15 question.

12:54:53 16 MR. McDONELL: Incorporate all my prior
12:54:54 17 objections. You're arguing with and badgering the
12:54:56 18 witness.

12:55:00 19 THE WITNESS: I don't know -- I just don't
12:55:03 20 either -- I'm sorry if we're not communicating, but
12:55:06 21 I'm not offering any opinions other than the three
12:55:08 22 that are right here in the report. And I don't
12:55:11 23 know how much clearer I can make that for you.

12:55:15 24 MS. HOUSE: Q. So if you know what the
12:55:16 25 three are, then you can say whether or not the one

12:55:19 1 I'm asking about is part of those three.

12:55:22 2 You're very comfortable knowing what the
12:55:24 3 three are. Let's try to say that the other ones
12:55:27 4 are excluded from those three. Very simple.

12:55:29 5 Are you intending to opine about SAP's
12:55:32 6 goals and whether they were unreasonable?

12:55:36 7 MR. McDONELL: Object to the form. It's
12:55:37 8 been asked and answered. Incorporate all my prior
12:55:39 9 objections. You just -- you don't like the answer,
12:55:42 10 Counsel, but he's answered it.

12:55:55 11 THE WITNESS: I'm just really
12:55:56 12 uncomfortable with your question in the way you're
12:55:59 13 talking about, am I going to opine about something
12:56:01 14 that -- about somebody's goals.

12:56:04 15 We haven't even really covered what those
12:56:07 16 are. So how can I answer yes or no on that, other
12:56:10 17 than to tell you, what I'm going to give you an
12:56:12 18 opinion on is what's in my report?

12:56:14 19 MR. McDONELL: We're going to take a lunch
12:56:16 20 break, Counsel. Maybe we can smooth this over and
12:56:20 21 make things move along faster this afternoon,
12:56:22 22 because you're clearly just repeating yourself.

12:56:25 23 MS. HOUSE: This is ridiculous. I'm
12:56:25 24 really -- off the record.

TEXT REMOVED - NOT RELEVANT TO MOTION

TEXT REMOVED - NOT RELEVANT TO MOTION

14:26:54 6 Q. Let me hand you his report. And you can
14:27:01 7 turn to page -- to paragraphs 439 and 440.
14:27:30 8 And this paragraph, 439, discusses
14:27:34 9 evidence in the case. Do you see that?
14:27:52 10 MR. McDONELL: Vague and ambiguous.
14:27:55 11 THE WITNESS: I see that.
14:27:57 12 MS. HOUSE: Q. And that's material that
14:27:59 13 you yourself did not review. Correct?
14:28:01 14 MR. McDONELL: Vague and ambiguous.
14:28:05 15 THE WITNESS: Excuse me?
14:28:06 16 MS. HOUSE: Q. That's material that you
14:28:07 17 did not yourself review. Correct?
14:28:09 18 MR. McDONELL: It's vague and ambiguous
14:28:10 19 the way you're phrasing the question.
14:28:13 20 THE WITNESS: I read Mr. Meyer's report.
14:28:14 21 Are you asking about the specific footnoted items
14:28:17 22 that he has below? Is that what you're referring
14:28:19 23 to?
14:28:20 24 MS. HOUSE: Q. And the quotes, yes.
14:28:21 25 Other than reading what was a paraphrase

14:28:23 1 in the report, you didn't go to the source
14:28:25 2 documents yourself. Right?

14:28:27 3 A. That's correct.

14:28:36 4 Q. And these look like some of SAP's goals
14:28:38 5 for the Safe Passage program, don't they?

14:28:41 6 MR. McDONELL: Vague and ambiguous.
14:28:42 7 Object to the form.

14:28:45 8 THE WITNESS: And it's -- Mr. Meyer's
14:28:47 9 words here say SAP's goal was to convert 50 percent
14:28:50 10 of Oracle's PeopleSoft and JD Edwards customers to
14:28:52 11 SAP, and he continues on with other -- another
14:28:55 12 primary goal. So yes, these look like goals.

14:28:58 13 MS. HOUSE: Q. Okay. And are you
14:29:01 14 intending to opine about the reasonableness of
14:29:04 15 these goals, sir?

14:29:06 16 MR. McDONELL: Object to the form of the
14:29:06 17 question. Asked and answered repeatedly.

14:29:12 18 THE WITNESS: I am going to give an
14:29:14 19 opinion about the reasonableness of these
14:29:17 20 generally, yes.

14:29:19 21 MS. HOUSE: Q. Is that something that you
14:29:20 22 came to over lunch, sir?

14:29:23 23 MR. McDONELL: Object to the form.
14:29:24 24 Argumentative.

14:29:27 25 THE WITNESS: I think over lunch I came to

14:29:28 1 better understand maybe where you and I weren't
14:29:33 2 communicating I guess on our question-and-answer
14:29:35 3 session.

14:29:37 4 MS. HOUSE: Q. Looking at paragraph 439,
14:29:39 5 which goal that is listed in that paragraph do you
14:29:41 6 intend to offer an opinion on?

14:29:44 7 MR. McDONELL: Object to the form of the
14:29:45 8 question. Asked and answered.

14:29:55 9 THE WITNESS: In particular, this one that
14:29:57 10 says: SAP's goal was to convert 50 percent of
14:30:00 11 Oracle's PeopleSoft and JD Edwards customers to
14:30:02 12 SAP.

14:30:04 13 That one I discuss in a couple of spots in
14:30:15 14 the report that --

14:30:18 15 MS. HOUSE: Q. Where do you reference
14:30:19 16 that goal?

14:30:19 17 MR. McDONELL: Well, don't cut him off,
14:30:20 18 Counsel.

14:30:23 19 THE WITNESS: I'm sorry, I'm done. What
14:30:25 20 was --

14:30:26 21 MS. HOUSE: Q. Where in your report? You
14:30:27 22 said you reference it in the report. I have not
14:30:29 23 seen that cite in your report, sir. Where do you
14:30:31 24 cite that goal of SAP?

14:30:33 25 A. I didn't cite that goal.

14:30:37 1 Q. Is this the first time that you decided
14:30:38 2 that you're going to be opining about it?

14:30:40 3 MR. McDONELL: Counsel, you're arguing
14:30:42 4 with the witness. He's explained his position and
14:30:44 5 the scope of his opinion.

14:30:45 6 MS. HOUSE: Q. Do you understand that
14:30:46 7 your report was supposed to tell us what you were
14:30:48 8 going to be testifying about, sir?

14:30:50 9 MR. McDONELL: Object. You're arguing
14:30:51 10 with the witness.

14:30:52 11 THE WITNESS: Yes.

14:30:53 12 MS. HOUSE: Q. Okay. And you don't
14:30:54 13 reference that goal that SAP had to convert 50
14:30:58 14 percent of Oracle's PeopleSoft and JD Edwards
14:30:59 15 customers to SAP anywhere in your report, do you,
14:31:03 16 sir?

14:31:03 17 MR. McDONELL: Same objection. Asked and
14:31:04 18 answered.

14:31:17 19 MS. HOUSE: Q. There's a question
14:31:17 20 pending. Yes or no?

14:31:23 21 A. Please say the question again.

14:31:26 22 Q. You do not reference the goal of SAP to
14:31:29 23 convert 50 percent of Oracle's PeopleSoft and
14:31:31 24 JD Edwards customers to SAP anywhere in your
14:31:34 25 report, sir, do you?

14:31:36 1 A. I do not explicitly express that or state
14:31:39 2 that goal, that is correct.

14:31:43 3 Q. And do you even know where that goal is
14:31:45 4 articulated?

14:31:47 5 MR. McDONELL: Vague and ambiguous.

14:31:48 6 MS. HOUSE: Q. By SAP?

14:31:49 7 MR. McDONELL: Vague --

14:31:50 8 MS. HOUSE: Q. Or what any of the
14:31:50 9 witnesses said about it?

14:31:52 10 MR. McDONELL: Compound, vague and
14:31:52 11 ambiguous.

14:31:59 12 THE WITNESS: I know it's right here in
14:32:00 13 Mr. Meyer's report.

14:32:02 14 MS. HOUSE: Q. So other than the
14:32:02 15 reference in Mr. Meyer's report, you have no other
14:32:04 16 information about that goal of SAP. Is that
14:32:06 17 correct?

14:32:07 18 MR. McDONELL: Misstates the testimony.
14:32:08 19 Object to the form of the question.

14:32:15 20 THE WITNESS: Can you repeat that?

14:32:25 21 (Record read as follows:

14:32:26 22 Question: So other than the reference in
14:32:26 23 Mr. Meyer's report, you have no other
14:32:26 24 information about that goal of SAP. Is that
14:32:26 25 correct?)

14:32:28 1 THE WITNESS: I believe that may be
14:32:29 2 correct, unless it was already indicated in one of
14:32:31 3 the other two depositions that I had listed at the
14:32:34 4 top of Appendix C.

14:32:41 5 MS. HOUSE: Q. And what are you intending
14:32:44 6 to opine about that goal now?

14:32:46 7 MR. McDONELL: Object to the form of the
14:32:47 8 question.

14:32:48 9 MS. HOUSE: Q. With my objection about
14:32:50 10 whether it's appropriate to be doing so, having not
14:32:52 11 disclosed it --

14:32:54 12 MR. McDONELL: You're arguing with the
14:32:55 13 witness.

14:32:56 14 MS. HOUSE: I'm reserving our rights here.

14:32:57 15 MR. McDONELL: That's fine. But don't
14:32:59 16 argue with him. Ask your questions.

14:33:01 17 MS. HOUSE: Q. What do you intend to
14:33:02 18 opine about that goal, sir?

14:33:04 19 A. I'm --

14:33:04 20 MR. McDONELL: And you're misstating his
14:33:06 21 testimony. I object.

14:33:09 22 THE WITNESS: What I have already included
14:33:10 23 in my report is that when customers go to make
14:33:13 24 software-changing -- software change decisions,
14:33:16 25 that they -- as I stated in my report, they often

14:33:19 1 have these software products installed for many
14:33:21 2 years, and that these are very expensive projects
14:33:26 3 to change out one package to another.

14:33:30 4 That -- I also state somewhere in my
14:33:32 5 report that most of these programs aren't going to
14:33:36 6 work unless they happen to catch customers who are
14:33:39 7 already motivated or in the market for new
14:33:43 8 solutions.

14:33:44 9 So for someone to convert 50 percent of
14:33:48 10 the installed base of another vendor's product in
14:33:51 11 any kind of short order, that would be an
14:33:53 12 exceptionally aggressive deal, because a lot of
14:33:56 13 those customers, in my expert opinion, would not be
14:33:59 14 in the market for a solution at that point in time.

14:34:03 15 They may get there eventually over a
14:34:05 16 period of many years, but not in a short order --
14:34:09 17 short amount of time.

14:34:11 18 MS. HOUSE: Q. So are you going to be
14:34:12 19 opining that that was an unreasonable goal?

14:34:15 20 MR. McDONELL: Object to the form of the
14:34:16 21 question. He's asked and answered it.

14:34:20 22 THE WITNESS: A goal to convert 50 percent
14:34:22 23 of the PeopleSoft/JD Edwards customers to SAP in a
14:34:26 24 short amount of time, yes, I'm opining that would
14:34:28 25 be -- that would not be a reasonable goal.

18:53:02 1 THE VIDEO OPERATOR: Going off the record,
18:53:03 2 the time now is 6:52. This also will be the
18:53:07 3 conclusion of Tape 5.

18:53:09 4 (Time noted, 6:52 p.m.)

18:53:09 5 --o0o--

18:53:09 6 I declare under penalty of perjury that
18:53:09 7 the foregoing is true and correct. Subscribed at

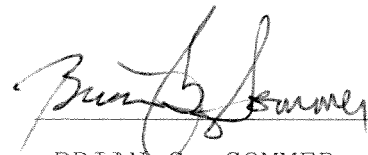
18:53:09 8 _____, California, this nd 22 day of

18:53:09 9 *July*, 2010.

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BRIAN S. SOMMER

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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: July 1st, 2010
Holly Thuman
HOLLY THUMAN, CSR