

EXHIBIT 3

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 2; PAGES 332 - 647

THURSDAY, MAY 13, 2010

HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY

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

(1-427374)

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09:40:34 13 Q. Now, did you believe that your approach of
09:40:37 14 looking at the 1 million dollar per customer value
09:40:41 15 was a reasonable -- a -- you know, a legitimate
09:40:44 16 reasonableness check?

09:40:45 17 A. It was a check that made sense from my
09:40:47 18 perspective, because I understood from Oracle's
09:40:49 19 management that at times they'll look at the value
09:40:51 20 of an acquired customer, just to make certain it's
09:40:54 21 within the proper range of what they can find
09:40:57 22 utility and value on.

09:40:59 23 Q. Okay. And the 1 million dollar per
09:41:02 24 customer number that you came up with is basically
09:41:04 25 dividing the purchase price by the number of

09:41:06 1 customers?

09:41:09 2 A. That's right. In a very simple fashion,
09:41:11 3 that's correct.

09:41:12 4 Q. And by doing that, you included as part of
09:41:14 5 the value any real property assets owned by
09:41:18 6 PeopleSoft?

09:41:20 7 A. It would include that and the other
09:41:21 8 assets, that's right.

09:41:22 9 Q. The fixed assets?

09:41:24 10 A. Very gross, that's correct.

09:41:26 11 Q. It would include IP assets that are not at
09:41:28 12 issue in this case, such as patents and trademarks?

09:41:31 13 A. I would agree with that, that's correct.

09:41:33 14 Q. It would include other assets not at issue
09:41:35 15 here, like accounts receivable?

09:41:37 16 A. Right, I think that's exactly --

09:41:38 17 Q. Cash?

09:41:39 18 A. That's correct. We can go back to the
09:41:40 19 balance sheet and look at all those items, that's
09:41:43 20 correct.

09:41:50 21 Q. And you're not suggesting that those types
09:41:52 22 of assets that I just listed should be part of the
09:41:56 23 calculation of the value of use, are you?

09:41:58 24 A. No, I'm not. But it's important for the
09:42:00 25 jury to know that these kinds of metrics exist, and

09:42:03 1 at Oracle at times, they'll say the value of a
09:42:05 2 customer could be 5 or 10 million dollars,
09:42:07 3 depending on the customer. In fact, I think
09:42:09 4 Mr. Phillips at one point said it could be 10 or 20
09:42:12 5 million dollars.

09:42:12 6 So these are very reasonable gut checks,
09:42:15 7 and it doesn't say that's a million dollars just
09:42:17 8 for this, but it's something that says we can do
09:42:19 9 this and make certain we're in the proper range of
09:42:23 10 determining the value.

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09:48:36 5 Q. Going to this issue of the statement in
09:48:40 6 your report that the Oracle senior executives said
09:48:44 7 they'd value 30 percent of the customers going to
09:48:50 8 SAP at 3.33 billion, who said that?
09:48:58 9 A. If you ask me without the notes in front
09:49:00 10 of me, and just from sort of my understanding of
09:49:03 11 what was communicated to me --
09:49:06 12 Q. Let's look at the notes. I mean, we have
09:49:07 13 the notes here.
09:49:08 14 A. Okay, that's fine.
09:49:58 15 (Deposition Exhibit 2031 was marked for
09:50:00 16 identification.)
09:50:02 17 MR. McDONELL: Q. So I'm showing you,
09:50:02 18 Mr. Meyer, what's been marked as Exhibit 2031,
09:50:05 19 which appear to be a collection of handwritten
09:50:08 20 notes. And they have document production numbers
09:50:10 21 on them in the lower right-hand corner.
09:50:13 22 To move things along, I refer you to page
09:50:16 23 39 of 41. Do you have that before you?
09:50:28 24 A. Yes.
09:50:29 25 Q. Why don't you take a moment to look over

09:50:31 1 those notes.

09:50:43 2 A. (Examining document.) Okay.

09:52:17 3 Q. Okay. Have you had a chance to look over
09:52:19 4 those notes?

09:52:20 5 A. Yes, I have.

09:52:20 6 Q. Whose handwriting is that?

09:52:22 7 A. This would be Ms. Dean's. And I think
09:52:27 8 there may be some of my handwriting also. But for
09:52:30 9 the most part, though, she drafted the notes and I
09:52:33 10 looked at them.

09:52:34 11 Q. And please identify these notes. What are
09:52:36 12 they?

09:52:37 13 A. These are the notes that at a high level
09:52:42 14 address the major points that were provided to us
09:52:44 15 by Mr. Ellison, Ms. Catz, and Mr. Phillips in our
09:52:49 16 conversation on November 4th of 2009.

09:52:52 17 Q. Okay. Which one of them expressed the
09:52:54 18 opinion that the fair market value of the loss of
09:53:00 19 30 percent of support customers would be
09:53:03 20 approximately 3.3 billion, or 30 percent of
09:53:07 21 PeopleSoft's acquisition price?

09:53:09 22 A. Well, the conversation was -- involved
09:53:13 23 everybody. And so if you walk through the -- the
09:53:20 24 notes, basically, we had discussions about the
09:53:23 25 potential losses, customer losses. And from their

09:53:29 1 perspective, as they understood the scope of the
09:53:32 2 license, they would think that the loss could be as
09:53:35 3 high as 50 percent, 30 to 50.

09:53:40 4 And so we were talking about this issue of
09:53:42 5 30 percent, although Mr. Ellison and Ms. Catz and
09:53:46 6 Mr. Phillips felt it could be more based on the
09:53:49 7 significant access that was provided through the
09:53:51 8 copyrighted property to SAP in this negotiation.

09:53:58 9 And so we talked about the value that was
09:53:59 10 paid for PeopleSoft --

09:54:01 11 Q. Okay. Who came up with that concept?

09:54:04 12 MS. HOUSE: Let him finish.

09:54:05 13 MR. McDONELL: Well, I don't know what
09:54:06 14 he's answering. I asked him who expressed the
09:54:08 15 opinion, and he's starting to go on a long
09:54:10 16 explanation of all these other things.

09:54:12 17 MS. HOUSE: Every time you do it, Jason,
09:54:14 18 it's inappropriate. Let him finish his answer.

09:54:18 19 MR. McDONELL: Q. I said, who came up
09:54:19 20 with the concept?

09:54:20 21 MS. HOUSE: And he's answering it.

09:54:25 22 MR. McDONELL: Let me try again.

09:54:27 23 Q. Did one of these individuals come up with
09:54:28 24 the concept --

09:54:29 25 MS. HOUSE: Asked and answered.

09:54:30 1 MR. McDONELL: Q. -- of using 30 percent
09:54:33 2 of the support customers to come up with the
09:54:37 3 3.3-billion-dollar valuation?

09:54:39 4 MS. HOUSE: Asked and answered.

09:54:41 5 THE WITNESS: You've already asked that
09:54:43 6 question, and I gave you my response that basically
09:54:46 7 it was a dynamic conversation and it quickly
09:54:48 8 centered on once they understood the scope of the
09:54:51 9 access and the scope of the materials that they
09:54:53 10 would be providing in the license, that the group
09:54:55 11 at large felt the losses could be as high as 50
09:54:58 12 percent.

09:54:59 13 And I sort of reigned them back to their
09:55:02 14 lower end, which is 30 to 50, and worked from
09:55:06 15 there. But they felt this would be a devastating
09:55:08 16 impact on their company, which was consistent with
09:55:11 17 their prior thoughts as to why this value could be,
09:55:14 18 you know, tens of billions.

09:55:15 19 So we focused on this 30 to 50 percent
09:55:18 20 range, and that's how the conversation progressed.
09:55:19 21 And then we moved to what was important to them,
09:55:22 22 which was the value of what they had just paid for
09:55:25 23 PeopleSoft, the 11 billion. And that's when we had
09:55:28 24 this discussion that worked through the notes about
09:55:32 25 basically, they paid a million dollars per

09:55:34 1 customer, they understand the customers are enabled
09:55:36 2 and protected by the technology that they have just
09:55:41 3 paid for. And at the bottom of page 2, the impact
09:55:45 4 of licensing would be greater than 3 billion
09:55:47 5 dollars if lost at least 3,000 PeopleSoft
09:55:51 6 customers.

09:55:51 7 And so we worked from that perspective of
09:55:54 8 the greater than 3, 30 percent, against the 11
09:56:00 9 billion dollars.

09:56:00 10 But there was large sentiment that the
09:56:03 11 losses could be much larger, as high as 50 percent,
09:56:06 12 probably sort of nearing Mr. Agassi's thoughts on
09:56:08 13 the other side of the table that they could gain as
09:56:11 14 much as 60.

09:56:12 15 So that was the dynamic conversation with
09:56:14 16 three very savvy people that were sort of talking
09:56:16 17 in unison about these. They were in unison on
09:56:20 18 these issues.

09:56:22 19 MR. McDONELL: Q. So you're saying that
09:56:23 20 all three of the Oracle senior executives --
09:56:25 21 Mr. Ellison, Mr. Phillips and Ms. Catz -- all came
09:56:28 22 up with the idea and explained to you that their
09:56:31 23 losses could be as high as 30 percent, or 3.3
09:56:36 24 billion dollars?

09:56:36 25 A. It just didn't transpire that way. And

09:56:38 1 so -- and I'm not going to give testimony that
09:56:40 2 doesn't reflect the conversation.

09:56:42 3 Basically, they came together on -- and
09:56:45 4 were consistent on the impact, which could be up to
09:56:48 5 50 percent. And from there, the conversation, I
09:56:51 6 can't exactly recall all the voices, but it sort of
09:56:54 7 came together that -- and Mr. Ellison was involved
09:56:57 8 in this -- saying that it could be devastating to
09:57:00 9 the company with this license, but if we had to do
09:57:02 10 it -- and then we forced them back towards the 30
09:57:04 11 percent just to sort of see if that was the lower
09:57:07 12 end of the range. And then from there we talked
09:57:09 13 about the value of the PeopleSoft deal, how
09:57:11 14 important it was, they paid per customer. And then
09:57:15 15 basically the 30 percent brings you up to 3.3
09:57:17 16 billion.

09:57:18 17 So we talked around that, even though you
09:57:20 18 could feel the sentiment that it could be much,
09:57:24 19 much higher. And so from my perspective, I was
09:57:27 20 trying to get their most conservative view on what
09:57:30 21 would happen if you licensed.

09:57:32 22 And it wasn't like the conversation -- you
09:57:34 23 can't always tell sort of who's saying what, but it
09:57:36 24 was basically a consistent message that is now I
09:57:39 25 believe laid out with the highlights in these

09:57:42 1 notes.

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11:11:55 2 Q. And would you agree that to the best of
11:11:56 3 your knowledge, Oracle has never recorded any
11:11:59 4 impairment in its financial statements of the
11:12:01 5 goodwill of -- created in the Siebel acquisition?
11:12:04 6 A. That's my understanding.

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11:25:06 7 MR. McDONELL: Q. Tell me as specifically
11:25:07 8 as you can what analysis was conducted by SAP that
11:25:13 9 generated the 200-customer number.
11:25:18 10 A. I wouldn't have the specifics of that. I
11:25:19 11 have to rely upon what's available
11:25:21 12 contemporaneously in the business records of SAP.
11:25:25 13 And I can work off of their business records, which
11:25:27 14 are not dissimilar to what they generated for the
11:25:30 15 PeopleSoft transaction. The same people were
11:25:31 16 involved, it was being woven into Safe Passage,
11:25:35 17 they're tracking Safe Passage. They even say that
11:25:37 18 there's 2,000 joint SAP/PeopleSoft customers, they
11:25:42 19 went through and they chronicled all the customers,
11:25:44 20 they have -- in fact, on Bates -219, they go
11:25:50 21 through and they've got PeopleSoft/JDE customers,
11:25:53 22 they have Enterprise customers, and they come down
11:25:56 23 to the 2,000 customers. And this is all a reaction
11:25:58 24 to -- there's another document that lays out this
11:26:00 25 threat.

11:26:02 1 Q. Did you do any independent analysis of the
11:26:05 2 reasonableness of the 200-customer estimate?

11:26:13 3 A. When you say independent analysis --

11:26:15 4 Q. Did you do any independent market analysis
11:26:17 5 to see -- to independently verify that the
11:26:20 6 200-customer assumption, if that's what it was, was
11:26:26 7 reasonable and reasonably likely to come to
11:26:30 8 fruition, meaning, at that time SAP was reasonably
11:26:35 9 likely to have 200 customers go to TomorrowNow
11:26:38 10 support for Siebel?

11:26:42 11 A. If I understand the question, in an
11:26:43 12 overall sense, I compared the 2,000 existing joint
11:26:46 13 customers to the projection of 200, I looked at the
11:26:51 14 other records that indicated the threat could be
11:26:53 15 1.5 billion euros, and from that perspective I'm
11:26:58 16 accepting the projections at the time of the same
11:27:00 17 individuals that have -- were involved in the
11:27:02 18 launch of the PeopleSoft Safe Passage initiative,
11:27:04 19 and we've been tracking along the results in all
11:27:08 20 the large customers that have been part of that
11:27:10 21 program.

11:27:16 22 And that's are not small companies.

11:27:21 23 Q. What was the mathematical computation that
11:27:25 24 was done that produced the 200-customer number?

11:27:29 25 MS. HOUSE: Asked and answered now three

11:27:31 1 times.

11:27:36 2 THE WITNESS: I don't follow your
11:27:37 3 question.

11:27:37 4 MS. HOUSE: Do you want him to answer it
11:27:39 5 again? I just don't want to hear complaints about
11:27:42 6 the timing.

11:27:43 7 MR. McDONELL: Q. How did the
11:27:44 8 200-customer number come to be?

11:27:47 9 MS. HOUSE: Asked and answered.

11:27:50 10 THE WITNESS: I can tell you how -- from
11:27:51 11 my perspective what they would have done. They
11:27:53 12 would have taken the 2,000 customers --

11:27:54 13 MR. McDONELL: Q. Not what they would
11:27:55 14 have done. What they did do.

11:27:56 15 MS. HOUSE: Let him answer.

11:27:56 16 THE WITNESS: Let me give you my answer.

11:27:57 17 MR. McDONELL: Q. Are you telling me what
11:27:58 18 they actually did or what you --

11:28:01 19 MS. HOUSE: Don't interrupt him, and don't
11:28:02 20 be dismissive and argumentative. You ask a
11:28:05 21 question, you get an answer.

11:28:06 22 MR. McDONELL: Q. Okay. What did someone
11:28:07 23 do to come up with the 200-customer number?

11:28:11 24 MS. HOUSE: Asked and answered.

11:28:12 25 THE WITNESS: If you're asking me my

11:28:14 1 perspective on that, I can give you my perspective.
11:28:15 2 I'm not privy to the work papers and all the
11:28:17 3 analysis and all the detailing that was done by
11:28:20 4 people at SAP, and we've been through that already.
11:28:22 5 So --

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12:06:08 4 Q. Okay. So it's your view that when
12:06:11 5 evaluating the hypothetical negotiation under the
12:06:13 6 Georgia Pacific factors, you look at the time of
12:06:16 7 the hypothetical negotiation only. Right? The
12:06:20 8 data available as of that time only. Right?
12:06:23 9 A. There's two levels. There's a level that
12:06:25 10 focuses on at the time of the hypothetical, and
12:06:28 11 Georgia Pacific, but I think what overrides that
12:06:31 12 even more here is, it's my understanding of the law
12:06:34 13 that when you figure out the fair market value of
12:06:37 14 the license, it's an exercise that occurs back in
12:06:41 15 January 2005, and you focus on the valuation at
12:06:44 16 that point in time, just like you would focus on
12:06:47 17 any valuation assignment. A valuation assignment,
12:06:50 18 you look at the point in time, and you do your
12:06:53 19 valuation.
12:06:54 20 And that's consistent with what I think
12:06:56 21 the law has asked here, which is, assign the fair
12:06:59 22 market value at that time, which is consistent with
12:07:01 23 Georgia Pacific, which says, do the hypothetical
12:07:04 24 focused on that time.

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13:52:04 11 MR. McDONELL: Q. So is this a
13:52:05 12 document -- is this a document, Exhibit 1018, in
13:52:08 13 the paragraph numbered 1, which you relied on for
13:52:12 14 that -- that data point that you cite in 135 of
13:52:17 15 your report that TomorrowNow estimated that \$1 of
13:52:20 16 TomorrowNow revenue equaled \$10 of SAP strategic
13:52:23 17 license revenue pipeline?
13:52:25 18 A. This document, and also 1019. They both
13:52:27 19 have that reference. But this one has it.
13:52:30 20 Q. And you relied on this document in doing
13:52:32 21 your income approach?
13:52:34 22 A. Yes.
13:52:36 23 Q. And did you consider it reliable?
13:52:40 24 A. I considered it a source of information
13:52:42 25 that would reflect inputs from TomorrowNow's

13:52:46 1 management.

13:52:46 2 Q. Did you read the deposition testimony of
13:52:50 3 Andrew Nelson about the document?

13:52:52 4 A. I believe I've seen that.

13:52:55 5 Q. And did you in particular read the portion
13:53:00 6 of his testimony or are you aware of his testimony
13:53:02 7 where he basically testified that what he meant was
13:53:07 8 that the business model was to sell half of what
13:53:09 9 the -- sell at half of what the vendor had, meaning
13:53:14 10 a TomorrowNow price of \$1 would mean an Oracle
13:53:20 11 price of \$2. Right?

13:53:21 12 A. I understand that.

13:53:22 13 Q. And that if Oracle was charging
13:53:27 14 maintenance at \$20 -- I'm sorry, 20 percent of the
13:53:29 15 license fee, that simply mathematically translated
13:53:34 16 into a \$10 license. Correct?

13:53:38 17 A. You're talking about the \$10 license for
13:53:40 18 SAP.

13:53:42 19 Q. Well, I'm not there yet. I mean, I think
13:53:44 20 we're starting with the assumption that \$1 of
13:53:47 21 TomorrowNow support translates into \$2 of Oracle
13:53:51 22 support, which would imply there was a \$10 Oracle
13:53:56 23 license at the outset of it all.

13:53:58 24 A. I'll agree with that.

13:54:00 25 MS. HOUSE: Do you have Mr. Nelson's

13:54:01 1 testimony so he can look at it?

13:54:03 2 MR. McDONELL: I do, but I don't want to
13:54:05 3 take the time to go over it unless we have to.

13:54:08 4 MS. HOUSE: Well, then we're just going to
13:54:09 5 assume that you're properly paraphrasing it without
13:54:13 6 seeing it.

13:54:14 7 MR. McDONELL: Q. So in connection -- and
13:54:16 8 then did you understand Mr. Nelson then to be
13:54:23 9 saying that that mathematically translates into \$10
13:54:28 10 of SAP license pipeline?

13:54:33 11 A. What I understand is that if it's a dollar
13:54:35 12 of TomorrowNow support revenue, it becomes a \$10
13:54:40 13 increase in SAP's strategic license revenue
13:54:43 14 pipeline.

13:54:44 15 Q. And pipeline means an opportunity to sell.
13:54:46 16 Is that your understanding?

13:54:49 17 A. Pipeline would be -- it's how you want to
13:54:53 18 view it. It can be backlog, it can be future
13:54:57 19 sales. But it's basically saying, if we get
13:55:00 20 service, we have an opportunity to get license.

13:55:04 21 Q. Exactly. So that's exactly the point.
13:55:05 22 It's an opportunity. You didn't understand
13:55:08 23 Mr. Nelson to be saying here that if -- for every
13:55:13 24 \$1 of TomorrowNow support revenue, SAP would
13:55:16 25 necessarily get \$10 of license revenue. Is that

13:55:20 1 true?

13:55:21 2 A. Well, I differ on that, because I think
13:55:22 3 what he's saying is that it's a value-based
13:55:25 4 proposition. If we make a dollar, SAP's going to
13:55:28 5 make \$10.

13:55:29 6 Now, if you and I want to quibble over
13:55:31 7 whether they're going to make \$8 or \$12, I would
13:55:35 8 agree there could be some flex there. But the
13:55:38 9 value proposition, and why they did the deal with
13:55:41 10 TomorrowNow, was, it was a vehicle to have
13:55:43 11 maintenance revenues lead to license revenues.

13:55:46 12 Q. But Mr. Meyer, I want you to really focus
13:55:48 13 on this.

13:55:49 14 You understand, don't you, that they don't
13:55:50 15 always lead to license revenues. Correct?

13:55:53 16 A. I think we differ on this. My
13:55:55 17 understanding of this business is that you -- if
13:55:57 18 you have maintenance, there's a very good
13:55:59 19 opportunity to win other business. And it's a very
13:56:02 20 important -- it provides you an opportunity to be
13:56:05 21 in the IT shop with the customer, with the
13:56:07 22 contract.

13:56:07 23 And that's a relationship that both SAP
13:56:10 24 coveted, and so did Oracle.

13:56:12 25 Q. Okay. So just to be clear, for purposes

13:56:14 1 of your assumption, based on the use of the
13:56:19 2 1-to-10-dollar ratio cited in Exhibit 1018 that you
13:56:25 3 then refer to in paragraph 135 of your report, your
13:56:29 4 assumption is that for every \$1 of support revenue
13:56:32 5 TomorrowNow gets, SAP would get \$10 of license
13:56:36 6 revenue.
13:56:37 7 A. That's the value proposition, that's
13:56:39 8 right.

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14:03:39 24 Q. So let's go to Exhibit 1018, and I just
14:03:42 25 want to understand your interpretation of that

14:03:43 1 document.

14:03:44 2 Are you interpreting that document to mean
14:03:46 3 that Andrew Nelson was saying, for every dollar
14:03:50 4 that TomorrowNow gets, SAP is necessarily going to
14:03:56 5 get \$10 worth of license sales?

14:03:58 6 A. That's the value proposition and why his
14:04:01 7 business makes sense. It's a very important part
14:04:03 8 of their company.

14:04:04 9 Q. So you're interpreting this to mean that
14:04:06 10 that was going to happen?

14:04:07 11 A. No, I'm interpreting it for what it was,
14:04:09 12 was at the time, as the leader of TomorrowNow, he's
14:04:12 13 showing the benefits that he brings to SAP both for
14:04:14 14 SAP's pipeline and also the impact on their chief
14:04:18 15 rival, Oracle.

14:04:18 16 Q. And you used to 10-to-1 ratio in
14:04:22 17 performing your income approach analysis. Correct?

14:04:26 18 A. What I did was, I used that -- as I
14:04:28 19 mentioned about the market approach, this was a way
14:04:30 20 for me to do a reasonableness check on the income
14:04:33 21 approach. It was sort of -- let me finish -- it
14:04:35 22 was a way for me to check whether or not my results
14:04:39 23 were reasonable.

14:04:40 24 Q. Okay. So you used that 1-to-10-dollar
14:04:42 25 ratio, as you just testified you understood it, to

14:04:45 1 check the reasonableness of your income approach
14:04:48 2 analysis for the PeopleSoft license. Correct?
14:04:51 3 A. That's right.

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16:29:51 15 Q. So with respect to the market income and
16:29:53 16 cost approaches, you looked at those as independent
16:29:57 17 stand-alone measures. Correct? And then you also
16:30:00 18 considered them within the ambit of Georgia
16:30:04 19 Pacific. Is that what I understand you to be
16:30:06 20 saying?
16:30:06 21 MS. HOUSE: Asked and answered, misstates
16:30:08 22 his testimony.
16:30:09 23 THE WITNESS: What I've done is looked at
16:30:11 24 all those separately. And I feel like they stand
16:30:14 25 on their own for the reasons I've put them forth

16:30:17 1 and described them.

16:30:18 2 But then I take that information and the
16:30:22 3 additional considerations in Georgia Pacific and
16:30:25 4 also come to a separate independent opinion of
16:30:28 5 that, and I issue a value of 2 billion dollars.

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17:12:26 1 Q. Okay. Would you turn in your report to
17:12:28 2 paragraph 189, please?

17:12:58 3 There you've stated that the
17:13:00 4 10-million-dollar price that SAP paid to acquire
17:13:03 5 TomorrowNow is not instructive as to the fair
17:13:07 6 market value of the license to the copyrighted
17:13:10 7 materials at issue. Correct so far?

17:13:16 8 A. That's correct.

17:13:17 9 Q. And in -- your reasoning is that SAP was
17:13:23 10 not acquiring any intellectual property in its
17:13:27 11 acquisition of TomorrowNow. Isn't that right?

17:13:29 12 A. That's one of the factors.

17:13:45 13 Q. Is it your -- is it your opinion that in
17:13:49 14 the hypothetical negotiation for the
17:13:54 15 PeopleSoft/JD Edwards license, that the parties,
17:13:59 16 Oracle and SAP, should not take into consideration
17:14:02 17 the TomorrowNow acquisition by SAP?

17:14:07 18 A. That would be my opinion.

TEXT REMOVED - NOT RELEVANT TO MOTION

18:14:29

so on the cost approach.

18:14:33

MR. McDONELL: We'll wrap for the day with

18:14:34

that.

18:14:37

MS. HOUSE: Thank you.

18:14:39

MR. McDONELL: Done. Wrap. You know what

18:14:40

a wrap is?

18:14:44

MS. HOUSE: Did we use all 7 hours --

18:14:47

MR. PICKETT: Well, we're only going 7

18:14:49

hours tomorrow.

18:14:51

MR. McDONELL: Well, whoopdee-doo.

18:14:51

MR. PICKETT: Okay. I'll take that as a

18:14:51

yes.

18:14:55

THE VIDEO OPERATOR: Going off the record,

18:14:57

the time -- the time now is 6:15. We're going off

18:15:07

the videotape record. This also is the conclusion

18:15:09

of Tape 5, Volume 2 of Paul Meyer.

18:15:27

(Time noted, 6:15 p.m.)

18:15:29

--o0o--

18:15:29

I declare under penalty of perjury that

18:15:29

the foregoing is true and correct. Subscribed at

18:15:29

San Francisco, California, this 17 day of

18:15:29

June, 2010.

18:15:29

Subject to the attached errata

18:15:29



18:15:29

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 25, 2010
Holly Thuman
HOLLY THUMAN, CSR