

EXHIBIT 4

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 3; PAGES 648 - 937

FRIDAY, MAY 14, 2010

HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY

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

(1-427378)

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10:28:08 15 Q. In your opinion, is the fact that a
10:28:11 16 customer has been identified as a Safe Passage
10:28:13 17 customer by someone at SAP sufficient by itself to
10:28:19 18 meet the plaintiffs' burden of proving that the
10:28:21 19 profits from the customer are attributable to
10:28:27 20 infringement?
10:28:27 21 MS. HOUSE: Objection. Vague, overbroad.
10:28:30 22 THE WITNESS: It would be my opinion, as I
10:28:32 23 mentioned this morning already. And if you go back
10:28:34 24 to all the cites in my report about the Safe
10:28:37 25 Passage program and back to paragraph 40 through 70

10:28:41 1 of the report, and then you look at the business
10:28:44 2 records of SAP, I'm relying upon those records that
10:28:47 3 reflect how the company was managing its business
10:28:50 4 contemporaneously outside this litigation. And to
10:28:53 5 the extent that it was reported to management,
10:28:56 6 here's how we're doing, here's the customers that
10:28:59 7 are a part of Safe Passage, I'm relying upon
10:29:02 8 contemporaneously prepared business record to make
10:29:06 9 these determinations.
10:29:07 10 And so from my perspective, that's
10:29:09 11 certainly the appropriate analysis to do on behalf
10:29:11 12 of the plaintiff.

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10:35:15 15 MR. McDONELL: Q. Do you think that the
10:35:16 16 fact that a customer purchased SAP product for
10:35:19 17 reasons unrelated to TomorrowNow is irrelevant to
10:35:20 18 the causation analysis?
10:35:23 19 A. Are you asking this with inside of Safe
10:35:26 20 Passage, the program Safe Passage.
10:35:27 21 Q. Yes.
10:35:28 22 MS. HOUSE: And I'm going to object.
10:35:28 23 Vague and calls for a legal conclusion.
10:35:30 24 THE WITNESS: So in your hypothetical,
10:35:31 25 if -- are they called a Safe Passage customer?

10:35:36 1 MR. McDONELL: Q. Yes.

10:35:36 2 A. And you're saying they are part of that
10:35:38 3 program, but it's unrelated, whatever that means,
10:35:39 4 to TomorrowNow?

10:35:41 5 Q. Yes.

10:35:41 6 A. It would be my position on something like
10:35:42 7 that in in this case, you would have to be able to
10:35:45 8 show on a detailed basis that for some reason, that
10:35:49 9 customer was not impacted by the TomorrowNow
10:35:53 10 involvement.

10:35:53 11 So from my perspective, if the customer is
10:35:55 12 classified as Safe Passage, and we know how that
10:35:58 13 program was marketed and set up, from my
10:36:01 14 perspective, that customer should be in the
10:36:03 15 analysis of infringer's profits.

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10:37:16 23 MR. McDONELL: Q. Have you made an effort
10:37:17 24 in your work in this case to look at evidence
10:37:19 25 relating to customers' actual purchases of SAP

10:37:23 1 software and support and try to determine the --
10:37:25 2 all of the information you could about the reasons
10:37:28 3 the customers made those purchase decisions?
10:37:31 4 MS. HOUSE: Objection. Compound, and
10:37:34 5 vague.
10:37:36 6 THE WITNESS: Could you read that back,
10:37:37 7 please?
10:37:38 8 (Record read as follows:
10:37:56 9 Question: Have you made an effort in
10:37:56 10 your work in this case to look at evidence
10:37:56 11 relating to customers' actual purchases of
10:37:56 12 SAP software and support and try to determine
10:37:56 13 the -- all of the information you could about
10:37:56 14 the reasons the customers made those purchase
10:37:56 15 decisions?)
10:37:57 16 THE WITNESS: I worked from the premise of
10:37:58 17 the Safe Passage program, I worked through that and
10:38:01 18 the motivations as described in my report at length
10:38:04 19 in paragraphs 40 through 70. And from that
10:38:07 20 perspective, I've done the analysis, I've
10:38:09 21 identified the customers, I have identified the
10:38:11 22 revenue, and then I've -- from my perspective, I've
10:38:15 23 been open to looking at the adjustments proposed by
10:38:18 24 the defendant, and I've considered those. And
10:38:19 25 that's what I've done. But I've worked from the

10:38:21 1 premise that the program that was marketed and
10:38:24 2 solicited was part of the accused acts in this
10:38:26 3 case.

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12:37:57 21 Q. Mr. Meyer, would you please take a look at
12:37:58 22 the declaration of Daniel A. Clark which has been
12:38:02 23 marked as Exhibit 2042?
12:38:04 24 A. I'm reading it right now.
12:38:16 25 (Examining document.) Okay

12:40:02 1 Q. Mr. Meyer, have you had a chance to read
12:40:04 2 Exhibit 2042, which is a Declaration of Daniel A.
12:40:07 3 Clark?

12:40:10 4 A. Yes, I have.

12:40:11 5 Q. Okay. And do you see there that Mr. Clark
12:40:14 6 describes himself as the Senior Vice President of
12:40:20 7 NewPage Corporation?

12:40:23 8 A. That's correct.

12:40:23 9 Q. And with reference to your Exhibit -- or
12:40:27 10 to Exhibit 2020, which is your schedule, on page 2
12:40:33 11 thereof, am I correct that you've included NewPage
12:40:36 12 Corporation revenues in the amount of 4.2 million
12:40:43 13 dollars in your infringer's profits calculation?

12:40:47 14 A. Yes, on page 2 of 42.2.DU.

12:40:53 15 Q. Now, referring to Exhibit 2042, the
12:40:56 16 declaration of Mr. Clark, do you see in paragraph 3
12:41:01 17 where he wrote:

12:41:02 18 In late 2007, NewPage completed its
12:41:05 19 acquisition of the issued and outstanding
12:41:09 20 common stock of Stora Enso North America from
12:41:13 21 Stora Enso OYJ. Prior to the acquisition,
12:41:17 22 NewPage had used SAP applications as its
12:41:19 23 primary business software. Following the
12:41:21 24 acquisition, in the interest of
12:41:23 25 standardization, NewPage converted SENA to

12:41:26 1 SAP applications in replacement of the JDE
12:41:30 2 applications previously used by SENA.

12:41:33 3 Do you see that?

12:41:34 4 A. Yes, I see that.

12:41:35 5 Q. And do you consider that information
12:41:37 6 relevant to your infringer's profits analysis?

12:41:43 7 A. Well, once again, this was information
12:41:44 8 I've not seen before, and there may have been
12:41:46 9 something I would have considered if I had received
12:41:49 10 it back before my report was filed.

12:41:52 11 And once again, I would want to know what
12:41:55 12 the responsibilities of Mr. Clark are, and do they
12:41:58 13 include the authorization and the approval of
12:42:01 14 making these decisions. It's not clear.

12:42:04 15 But certainly I would read this and
12:42:08 16 consider it.

12:42:09 17 Q. Okay. Then referring you to paragraph
12:42:11 18 No. 4 of Mr. Clark's declaration, he says:

12:42:15 19 Our decision to replace SENA's JD Edwards
12:42:19 20 applications with SAP applications was not
12:42:21 21 influenced in any way by the fact that SENA
12:42:25 22 had used TomorrowNow support for its
12:42:27 23 JD Edwards applications.

12:42:28 24 Do you see that?

12:42:29 25 A. I do see that.

12:42:30 1 Q. Okay. Do you consider that information
12:42:33 2 relevant to your infringer's profits analysis?

12:42:36 3 A. It becomes difficult, because the
12:42:40 4 relationship with NewPage and the company it
12:42:47 5 acquired goes back over time, before the
12:42:51 6 acquisition, some of my data.

12:42:54 7 So once again, it's hard to separate it.
12:42:56 8 And the fact that TomorrowNow has been providing
12:43:00 9 service to Stora Enso North America, now known as
12:43:03 10 NewPage, it's a complicated situation.

12:43:07 11 Q. But my question is, do you consider the
12:43:10 12 information in paragraph 4 of Mr. Clark's
12:43:13 13 declaration to be relevant to an infringer's
12:43:15 14 profits analysis?

12:43:20 15 A. It's information, and then the question
12:43:22 16 becomes, it's complicated, because you have
12:43:25 17 revenue, and my analysis goes back to 2006, well
12:43:30 18 before late 2007, and now I have an undated
12:43:33 19 declaration that's one page that looks not very
12:43:37 20 official to me, and it shows up at my deposition?

12:43:41 21 I've been working on doing my study for a
12:43:44 22 long period of time, spent a lot of effort trying
12:43:46 23 to do things correctly and appropriately, and so
12:43:48 24 it's hard just to rely on something like this just
12:43:51 25 sort of the way you're presenting it.

12:43:52 1 I would take information like this and
12:43:54 2 follow up and see if I could corroborate some of
12:43:56 3 this, but it doesn't seem to give me an indication
12:43:59 4 that this is very well founded. I'd like to see
12:44:01 5 more information from his files about the
12:44:04 6 decision-making and the process, particularly in
12:44:07 7 light of the revenue that's incurred prior to the
12:44:08 8 acquisition.

12:44:11 9 Q. Do you agree, Mr. Meyer, that if the
12:44:14 10 statements Mr. Clark makes in his declaration are
12:44:16 11 true, that that should cause you to eliminate
12:44:21 12 revenue from NewPage Stora Enso from your
12:44:24 13 infringer's profits calculation?

12:44:25 14 MS. HOUSE: Asked and answered.

12:44:29 15 THE WITNESS: I would view it differently.
12:44:31 16 From my perspective, if Mr. Clark were to come into
12:44:36 17 trial and testify at trial that the sole reason
12:44:38 18 that they made the switch was to move to an
12:44:42 19 application that was offered by SAP, and it wasn't
12:44:48 20 based on service, it wasn't based on the
12:44:51 21 TomorrowNow relationship, it wasn't based on
12:44:53 22 price -- because remember, you know, we don't know
12:44:55 23 the involvement of the Stora Enso individuals that
12:44:59 24 were the ones that were contracting with
12:45:01 25 TomorrowNow, and they may have come into this

12:45:04 1 merger and acquisition situation and said, hey,
12:45:07 2 we've been working with these folks for a couple of
12:45:10 3 years, they're great, and then that may have
12:45:12 4 changed the impressions of Mr. Clark, even though
12:45:14 5 he was already under the motivation to try to
12:45:18 6 standardize more things, we'd need know more about
12:45:22 7 that.

12:45:22 8 MR. McDONELL: Q. In your answer, you're
12:45:23 9 referring to Mr. Daniel Clark, who gave this
12:45:26 10 declaration. Correct?

12:45:27 11 A. I'm looking at the declaration.

12:45:27 12 Q. Because there's another Mr. Clarke here,
12:45:30 13 I'm trying to make sure we keep the record clear.
12:45:32 14 You're not referring to Stephen Clarke in that last
12:45:35 15 answer?

12:45:35 16 A. I'm sorry, Daniel Clark with the undated
12:45:38 17 declaration.

12:45:39 18 Q. And I think it's actually dated May 4,
12:45:41 19 2010. It's a little funny in the word processing
12:45:46 20 there. You'll see a date at the bottom of the
12:45:48 21 page. Correct?

12:45:48 22 A. I -- if you're going to represent to me
12:45:51 23 that's what it is, then I'll accept that.

12:45:54 24 Q. That's my understanding of it.

12:45:55 25 Mr. Meyer, if -- is it your position that

12:46:01 1 even if you accept the declaration of Daniel Clark
12:46:06 2 as being entirely true, that it's your
12:46:09 3 determination to continue to include in your claim
12:46:12 4 of infringer's profits 4.2 million dollars of
12:46:17 5 revenue from NewPage Corporation?

12:46:19 6 MS. HOUSE: Objection. Misstates his
12:46:21 7 testimony.

12:46:22 8 THE WITNESS: As I sit here today, I would
12:46:23 9 need to analyze this further. I think you have to
12:46:28 10 recognize -- the is for the court -- that this was
12:46:33 11 provided to me 5 minutes ago. I have not seen it
12:46:35 12 before, ever. I've done a very detailed study, a
12:46:38 13 very comprehensive study. So I'd want to take this
12:46:42 14 back, do some research, some analysis, and I would
12:46:46 15 deserve to report back to the court on my position
12:46:48 16 at this at some later point in time if the court
12:46:50 17 asks.

12:46:51 18 MR. McDONELL: Q. Okay. But as you sit
12:46:53 19 here today, you're not going to remove the 4.2
12:46:56 20 million dollars of revenue from NewPage Stora Enso
12:46:59 21 from your infringer's profits calculation?

12:47:03 22 A. I most certainly will not, having just
12:47:05 23 seen this 5 minutes ago. And it's a single piece
12:47:07 24 of paper that doesn't purport to give me the
12:47:10 25 information I need at this point in time. I would

12:47:11 1 want to do some more research and follow-up, as I
12:47:14 2 mentioned a moment ago.

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14:06:22 16 Q. Okay. And again, to the best your
14:06:26 17 knowledge, that was an established pricing model in
14:06:31 18 January of 2005 for that Oracle product?
14:06:34 19 A. Well, my understanding is that
14:06:35 20 Mr. Allison, who was in charge of basically -- I
14:06:41 21 think he's in global product services -- but you
14:06:46 22 would basically configure the license for the
14:06:49 23 customer's needs. But the configuration that he
14:06:52 24 provided to me when I talked to him about this
14:06:54 25 situation was this would be the configuration from

14:06:57 1 his perspective that would be subject to the
14:07:00 2 license, based on -- because we're in a unique
14:07:03 3 situation here, as he sized up how Oracle would do
14:07:08 4 something that -- in this license that they don't
14:07:10 5 do normally, he would configure it this way.
14:07:14 6 And so he said this is the license
14:07:15 7 arrangement that he felt would meet the terms of
14:07:19 8 what TomorrowNow and SAP would need.

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14:08:41 11 A. It's the other way around. What we're
14:08:43 12 doing here is determining something that's
14:08:46 13 different than what Oracle would allow customers to
14:08:49 14 do. They have their enterprise license for the
14:08:52 15 database, it's very standard, it has significant
14:08:57 16 restrictive terms of use. And what you can do with
14:09:00 17 it, my understanding is, that's not available, in
14:09:03 18 this situation. This is -- we are configuring a
14:09:05 19 license for something that Oracle doesn't normally
14:09:07 20 do. That's the exercise we're involved in.

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14:12:20 4 Q. In that same time frame, are you aware of
14:12:23 5 a different pricing formula comparable to the one
14:12:28 6 that you're suggesting in this case that was
14:12:32 7 actually used by Oracle with customers?

14:12:35 8 MS. HOUSE: Objection. Vague.

14:12:36 9 THE WITNESS: That doesn't make any sense
14:12:37 10 to me. You say a different pricing comparable. So
14:12:39 11 what I'm using is what Mr. Allison told me would be
14:12:42 12 the proper metric for this circumstance, which is
14:12:44 13 unique. The basic Enterprise Edition license and
14:12:47 14 support. And we can go to my support work papers
14:12:49 15 for 527 and pull it out and look at it, and I'd be
14:12:54 16 glad to do that for you. That's what I used.

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14:18:27 12 Q. And would you agree with me that the
14:18:30 13 Standard database product would be powerful enough
14:18:34 14 to run TomorrowNow's operations?
14:18:41 15 MS. HOUSE: Calls for speculation.
14:18:41 16 THE WITNESS: I cannot address the
14:18:42 17 particular capacity issues. I have been informed
14:18:45 18 by Mr. Allison that one would have to price that
14:18:48 19 under the Enterprise edition license, in these
14:18:52 20 circumstances.

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14:22:52 10 MR. McDONELL: Q. Did you read the expert
14:22:53 11 report of Defendants' expert Mr. Gray on this
14:22:57 12 subject?
14:22:58 13 A. Not at this point in time, I have not done
14:22:59 14 that.

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14:27:03	22	MR. McDONELL: Q. Okay. So -- and what
14:27:04	23	is the basis for your conclusion that for all of
14:27:07	24	those customers of TomorrowNow, there would have to
14:27:12	25	be a separate database license to create the

14:27:14 1 environments and to create the other changes and
14:27:16 2 modifications and updates for that particular
14:27:19 3 customer?

14:27:20 4 MS. HOUSE: Asked and answered.

14:27:21 5 THE WITNESS: I believe I've given you my
14:27:23 6 best response. There's two parts to it, and I
14:27:25 7 think you understand this. There's a technical
14:27:27 8 part -- there's three parts. There's a business
14:27:29 9 part, which is Oracle's input into how they would
14:27:33 10 structure the license; and there's a legal part.

14:27:35 11 And from my perspective, I'm taking the
14:27:37 12 input from Oracle, who has said, this is how we
14:27:39 13 would structure this license if the terms of use,
14:27:43 14 if the grant's going to be what we now understand
14:27:46 15 it has to be because of the infringing activities.

14:27:50 16 MR. McDONELL: Q. So Mr. Allison told you
14:27:51 17 what the license should be. Right?

14:27:54 18 A. He told me the -- basically the structure
14:27:56 19 of the license. That's really an input from him.

14:27:59 20 Q. And you accepted what he told you to do.
14:28:01 21 Correct?

14:28:02 22 A. Yes. In these circumstances, when I came
14:28:03 23 to understand that this is not just what you
14:28:06 24 mentioned a while back, sort of an off-the-shelf
14:28:09 25 use of Oracle's database property.

14:28:13 1 Q. Did you -- and you did not see any other
14:28:17 2 similarly structured license anywhere in Oracle's
14:28:20 3 past. Correct?

14:28:22 4 A. I didn't do that analysis, because I knew
14:28:24 5 at this point I was being asked to come up with the
14:28:28 6 value of something that does not occur at Oracle,
14:28:33 7 in its everyday customers. It's a different type
14:28:37 8 of license.

14:28:39 9 Q. If Mr. Allison would have told you that
14:28:41 10 you could price that exact same license he
14:28:45 11 described to you at 50 percent of that cost, would
14:28:47 12 you have accepted that?

14:28:51 13 A. Based on my understanding of the
14:28:53 14 situation, since this was so highly focused on the
14:28:57 15 particulars of this case, and because it was
14:29:00 16 focused on a license that is not granted of this
14:29:04 17 nature by Oracle, I would have had to defer to
14:29:06 18 Mr. Allison to provide that input. And if he felt
14:29:10 19 that was the way it would be structured, I would
14:29:12 20 have accepted that, in terms of the structure of
14:29:13 21 the license.

14:29:14 22 Q. And in terms of the pricing.

14:29:16 23 A. The structure, which leads to the pricing,
14:29:18 24 that's correct.

14:29:19 25 Q. And by the same token, if Mr. Allison

14:29:22 1 would have described to you a structure of a
14:29:25 2 license that was twice as expensive as the one he
14:29:28 3 described to you, you would have accepted that,
14:29:30 4 too. Correct?
14:29:32 5 A. I would defer to him as -- and I have his
14:29:35 6 title back here. I believe he's the global
14:29:37 7 business leader. It's -- Oracle's Senior Vice
14:29:41 8 President of Global Practices and Risk Management.
14:29:45 9 Paragraph 250.

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15:13:28 23 Q. So let's then just focus on Table 8 at
15:13:31 24 page 101 of your report.
15:13:33 25 Do you have that in front of you?

15:13:34 1 A. I'm on page 101.

15:13:36 2 Q. And you're referring to Table 8 on page

15:13:38 3 101?

15:13:39 4 A. That's correct.

15:13:40 5 Q. Okay. Please tell us how you use the

15:13:42 6 numbers reflected in Table 8 and then end up with a

15:13:46 7 final conclusion of fair market value of no less

15:13:48 8 than 2 billion dollars.

15:13:50 9 MS. HOUSE: Asked and answered over the

15:13:51 10 past 2 1/2 days, overbroad, calls for a narrative.

15:13:58 11 THE WITNESS: Once again, I have to refer

15:14:00 12 you back to my report --

15:14:02 13 MR. McDONELL: Q. Are you not able to

15:14:03 14 just tell me directly?

15:14:04 15 MS. HOUSE: Asked and answered.

15:14:05 16 MR. McDONELL: Q. Because if you can't,

15:14:06 17 that's fine.

15:14:07 18 MS. HOUSE: He was in the process of

15:14:09 19 answering. He has been answering for 2 1/2 days.

15:14:12 20 More than 2 1/2 days now.

15:14:18 21 THE WITNESS: We spent a long time talking

15:14:21 22 for 2 1/2 days, many hours, about this process, and

15:14:25 23 now all of a sudden you ask me another question.

15:14:28 24 We've be talking about it for 2 1/2 days. And I

15:14:30 25 would take you back to my report, back to the

15:14:32 1 section on the beginning of the value of use, the
15:14:34 2 overview, probably take you a little deeper back to
15:14:38 3 paragraph 91, to paragraph 153, in which we've
15:14:42 4 talked about in detail the calculations, the
15:14:46 5 inputs, the different analytical techniques, the
15:14:51 6 market approach, the income approach, the cost
15:14:53 7 approach, all the considerations and all the
15:14:56 8 metrics that have come out of that process, and
15:14:59 9 we've talked at length about the transaction
15:15:01 10 between PeopleSoft and Oracle, the timing of that
15:15:04 11 transaction, all the projections and the Board
15:15:08 12 involvement, all the things that SAP was doing to
15:15:11 13 respond to the biggest threat probably that had
15:15:13 14 happened to its company in many years in terms of
15:15:16 15 having a legitimate market competition from a
15:15:18 16 company like Oracle combined with PeopleSoft, all
15:15:21 17 those factors, all those inputs, and that's how I
15:15:25 18 came to no less than 2 billion dollars.

15:15:27 19 MR. McDONELL: Q. Why didn't you come up
15:15:28 20 with some other number? Why wasn't it 1.5 billion,
15:15:31 21 for example?

15:15:32 22 MS. HOUSE: Same objections.

15:15:34 23 THE WITNESS: Because ultimately, in the
15:15:36 24 process, you assess all the information. And we've
15:15:40 25 talked at length about the projections of SAP, all

15:15:45 1 the involvement of senior individuals. Not persons
15:15:47 2 that run low-level departments, but the top chief
15:15:52 3 technology office in all of SAP, the top Board
15:15:55 4 members, the canvassing of the marketplace, the
15:15:58 5 4,000 joint customers, all that information and how
15:16:00 6 important it was for SAP to have a response to
15:16:02 7 Oracle's acquisition, all that information is
15:16:05 8 tremendous risk that Oracle was taking on with the
15:16:08 9 license and tremendous benefit that SAP is gaining.
15:16:11 10 And I've been through all of that.

15:16:12 11 And from my perspective, I can turn you to
15:16:15 12 my report, 2 1/2 days of exhaustive testimony, all
15:16:19 13 the detail, all the footnotes.

15:16:22 14 I'm sitting here in the room, and I've got
15:16:25 15 30 binders of support documents behind me,
15:16:27 16 which just -- the key documents to support all
15:16:29 17 these findings. And it goes right to this question
15:16:34 18 of no less than 2 billion dollars.

15:16:35 19 MR. McDONELL: Q. Okay. Why not 1.5
15:16:37 20 billion?

15:16:38 21 MS. HOUSE: Same objections.

15:16:39 22 THE WITNESS: I've given you my best
15:16:40 23 response on that.

15:16:41 24 MR. McDONELL: Q. Could you reasonably
15:16:42 25 calculate your value of use at 3 billion?

15:16:47 1 MS. HOUSE: Same objections.

15:16:49 2 THE WITNESS: It could have been higher,
15:16:50 3 from my perspective. I was at a point where that's
15:16:52 4 the appropriate amount, and I'm very comfortable
15:16:54 5 there, and it's an opinion that's supportable and
15:16:57 6 makes very strong economic sense in these
15:17:00 7 circumstances.

15:17:16 8 MR. McDONELL: Q. Can you explain to me
15:17:17 9 as you sit here today why the number is 2 billion
15:17:20 10 dollars and not some other number in the ranges
15:17:24 11 that you've depicted on Table 8?

15:17:28 12 MS. HOUSE: Asked and answered.

15:17:29 13 THE WITNESS: I've already answered that.
15:17:30 14 And behind all these numbers on Table 8 I've gone
15:17:32 15 through all these details. I've looked at all the
15:17:34 16 financial metrics of the value of a maintenance
15:17:37 17 contract on an annual basis to SAP and Oracle. The
15:17:41 18 value of cross-selling, the value of upselling.
15:17:44 19 All the calculations that Oracle did when it paid
15:17:46 20 11 billion dollars for PeopleSoft and was acquiring
15:17:49 21 these 10,000 customers under service contracts that
15:17:52 22 were protected by the intellectual property that's
15:17:55 23 been infringed in this case by SAP.

15:17:58 24 I've gone through all that information,
15:17:59 25 have spent hundreds of hours doing calculations and

15:18:02 1 discounted cash flows, looking at market
15:18:04 2 information, looking at other details about
15:18:06 3 valuation. And it's all in the report, and it's
15:18:08 4 all in the work pages, and it's all in SAP's own
15:18:11 5 projections and plans and it's all there.
15:18:14 6 There's -- it's not -- it's all been talked about.
15:18:17 7 MR. McDONELL: Q. Anything else to add?
15:18:18 8 A. I -- the last 2 1/2 days of testimony, all
15:18:20 9 the work papers in this room, all the footnote
15:18:24 10 references, all the calculations, the hundreds of
15:18:27 11 calculations.
15:18:33 12 Q. Would your answer be the same for your
15:18:35 13 hypothetical license number under Georgia Pacific
15:18:39 14 if I asked you why you came up with no less than 2
15:18:42 15 billion dollars as opposed to some other number?
15:18:44 16 MS. HOUSE: Same objections.
15:18:46 17 THE WITNESS: I don't follow that
15:18:47 18 question.
15:18:47 19 MR. McDONELL: Q. Okay. You looked at a
15:18:48 20 number of different numbers and factors when you
15:18:53 21 developed your Georgia Pacific calculation.
15:18:56 22 Correct?
15:18:57 23 A. That's correct.
15:18:58 24 Q. All right. If I asked you -- and with
15:19:02 25 reference to the exhibit that's before you,

15:19:06 1 Exhibit 2044, we've endeavored to try to put some
15:19:10 2 of them on paper. Correct?

15:19:14 3 A. I don't recognize this as being an
15:19:16 4 appropriate summary of a report that is hundreds of
15:19:20 5 pages, it's I believe upwards of --

15:19:31 6 Q. Mr. Meyer, I --

15:19:32 7 A. -- it's almost --

15:19:34 8 MS. HOUSE: Let him finish.

15:19:35 9 THE WITNESS: I'm going to give you the
15:19:36 10 number of pages of this report. 281 pages, with I
15:19:42 11 believe there's 853 footnotes, and that doesn't --
15:19:46 12 and then there's the fact that -- there's more
15:19:48 13 footnotes than that. There's 857 footnotes. And
15:19:54 14 then there's attachments or schedules, and one
15:19:57 15 schedule alone is 1,500 pages. And I have over 50
15:20:02 16 schedules. I have all kinds of data that goes into
15:20:05 17 supporting my findings. And we've been talking
15:20:08 18 about that for a very long time.

15:20:10 19 MR. McDONELL: Q. Is there some specific
15:20:12 20 calculation that you came up -- you used to come up
15:20:16 21 with your no less than 2 billion dollars, or is it
15:20:19 22 just your judgment?

15:20:20 23 MS. HOUSE: Asked and answered.

15:20:22 24 THE WITNESS: I'm going back to all my
15:20:23 25 testimony I've given in the last 2 1/2 days

15:20:26 1 that's -- and all the work papers in the report.
15:20:29 2 And even on Table 8, you'll see the
15:20:31 3 information. And behind each of these numbers are
15:20:33 4 exhaustive calculations, calculations that go on
15:20:36 5 for pages with all kinds of detailed calculations.
15:20:39 6 And we looked at the Project Spice
15:20:42 7 documents that were put together contemporaneously
15:20:45 8 by Oracle when they made the acquisition with all
15:20:47 9 their values, how they saw the importance of the
15:20:49 10 maintenance contracts -- let me finish; you asked
15:20:50 11 the question -- went through all that information,
15:20:52 12 all the information that went into Mr. Ellison and
15:20:55 13 Ms. Catz and Mr. Phillips and the Board deciding to
15:20:59 14 buy PeopleSoft, and the very next day, this is the
15:21:01 15 program that's been -- let me finish -- that's been
15:21:05 16 launched by SAP. Tremendous impact on Oracle's
15:21:08 17 premium in this acquisition. We have lots of
15:21:09 18 discussion about that.
15:21:11 19 All that information has been brought
15:21:13 20 together, and this is my opinion.
15:21:15 21 MR. McDONELL: Q. Okay. So what is -- is
15:21:17 22 there a methodology that I can see that would make
15:21:22 23 it clear to me why under your Georgia Pacific
15:21:25 24 analysis you get the number of no less than 2
15:21:28 25 billion dollars as opposed to, say, 1.5 billion or

15:21:34 1 2.5 billion?

15:21:35 2 MS. HOUSE: Asked and answered, overbroad.

15:21:37 3 THE WITNESS: From my perspective -- and
15:21:39 4 obviously you haven't been paying much attention to
15:21:42 5 my testimony and you haven't read my report and
15:21:44 6 looked at my schedules, because I've actually used
15:21:46 7 contemporaneous documents from Oracle back in
15:21:49 8 January 2005, and from SAP, and I've taken all
15:21:53 9 their numbers and all their metrics. The value of
15:21:56 10 cross-sell, the value of upsell the value of an
15:21:58 11 annual maintenance contract, the 10-year value of a
15:22:01 12 maintenance contract. I've done all those
15:22:02 13 calculations.

15:22:03 14 And even on the schedule, Table 8, you see
15:22:06 15 the range of values. And so it's all right here.
15:22:09 16 So I've given you my best testimony, my complete
15:22:11 17 answers, my untethered attention, and I have a
15:22:14 18 report here with all this backup.

TEXT REMOVED - NOT RELEVANT TO MOTION

17:59:24 1 Thank you, Counsel.

17:59:26 2 THE VIDEO OPERATOR: This marks the end of
17:59:26 3 Videotape No. 4, Volume 3, in the deposition of
17:59:31 4 Paul Meyer. The time now is 5:59, and we are off
17:59:38 5 the record.

18:00:02 6 (Time noted, 5:59 p.m)

18:02:11 7 --o0o--

18:02:11 8 I declare under penalty of perjury that
18:02:11 9 the foregoing is true and correct. Subscribed at
18:02:11 10 San Francisco, California, this 17 day of
18:02:11 11 June, 2010.

18:02:11 12 Subject to the attached errata

18:02:11 13 

18:02:11 14 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 [X] 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 26, 2010
Holly Thuman
HOLLY THUMAN, CSR