EXHIBIT D

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

ORACLE CORPORATION, a Delaware corporation, ORACLE USA, INC., a Colorado corporation, and ORACLE INTERNATIONAL CORPORATION, a California corporation,	
Plaintiffs,	
vs.	No. 07-CV-1658 (PJH)
SAP AG, a German corporation, SAP AMERICA, INC., a Delaware corporation, TOMORROWNOW, INC., a Texas corporation, and DOES 1-50, inclusive,	
Defendants.	

VIDEOTAPED DEPOSITION OF

PAUL K. MEYER

VOLUME 1; PAGES 1 - 331

WEDNESDAY, MAY 12, 2010

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

(1-427362)

14:01:36 MS. HOUSE: Yes, it is.
14:01:37 MR. McDONELL: Q. Okay. Go ahead.
14:01:37 A. You asked a question this morning about three documents, and I want to clarify that these were printed out from the SAS system, and we gave these to you on Monday, and that's why they have the Oracle Bates number on there.
14:01:49 We also were pursuing information from Mr. Clarke's records, and I think I said these were from Mr. Clarke's records. I wanted you to have a complete answer on that.
14:01:57 MR. McDONELL: Q. Okay. Can I ask you to take your report, which has been marked Exhibit 2018, please.
14:02:06 Turn to paragraph 95. Take a moment to look over paragraph 95, please.
14:02:19 A. (Examining document.)
14:02:28 Q. Have you had a chance to look at that?
14:02:30 MS. HOUSE: Give him a second.
14:02:31 THE WITNESS: Okay.
14:02:32 MR. McDONELL: Q. There you indicate that there are four approaches to determining valuation, and you cite the market approach, the income approach, the cost approach, and the Georgia Pacific hypothetical license negotiation approach.

14:02:50 Right?
14:02:51 A. I mention those four approaches, that's
14:02:52 correct.
14:02:53 Q. And you claim to have applied each of
14:02:56 those four approaches in this case?
14:02:58 A. That's what I've done, that's correct.
14:02:59 Q. In your opinion, are each of those
14:03:01 approaches equally appropriate in this case?
14:03:07 A. No, no, I wouldn't say that. I certainly
14:03:09 have done the analyses, and I believe I point out
14:03:13 in the report some of the issues, like with the
14:03:15 cost approach. But I believe that the market
14:03:18 approach and the income approach can be looked very
14:03:22 closely in conjunction with the hypothetical
14:03:24 negotiation.
14:03:25 The cost approach is a little more -- is a
14:03:27 little different. Just because you're looking at
14:03:30 cost it would take to design different software
14:03:35 systems, you're not always looking at the future
14:03:37 value, so there are probably some more limits on
14:03:40 that. But it's still an approach that should be
14:03:42 considered.
14:03:42 Q. Okay. Which of these approaches do you
14:03:44 consider the best?
14:03:47 MS. HOUSE: Objection. Assumes facts not

14:03:48 in evidence.
14:03:50 THE WITNESS: In this situation, I
14:03:51 certainly think that the hypothetical negotiation
14:03:54 brings together the results of all the analyses, so
14:03:57 it's probably the most comprehensive. But the
14:04:00 market approach and the income approach I would say
14:04:02 also have aspects that are very valuable to
14:04:07 figuring out the value of the copyrighted
14:04:09 materials.
14:04:09 MR. McDONELL: Q. Okay. Why do you think
14:04:10 the hypothetical license approach is the best?
14:04:12 A. Because basically, in Factor 15, you get
14:04:16 to look back at what you did in the first 14
14:04:18 factors or 13 factors, and you get to also address
14:04:26 market and income and cost in those approaches and
14:04:30 techniques in the entire analysis.
14:04:32 And so in some respects, you get the
14:04:34 benefits of all that to figure out the value of the
14:04:40 copyrighted materials that are in suit here.
14:04:42 Q. Are there any shortcomings or limitations
14:04:44 to the market approach?
14:04:47 A. I don't follow that question.
14:04:48 Q. Well, do you think the market approach is
14:04:50 somehow inferior to the hypothetical license
14:04:52 approach?

can match up with the hypothetical when I think that it brings together a pretty instructive set of calculations and results.

Can we take a break pretty soon?

MS. HOUSE: When you are winding up on this, can we have a restroom break, please?

MR. McDONELL: Yes. Now is fine.

THE VIDEO OPERATOR: Going off the record, the time now is 3:02.

(Recess from 3:02 p.m. to 3:18 p.m.)

THE VIDEO OPERATOR: The time now is 3:18. We are back on the videotape record. This also marks the beginning of Tape 4 in the deposition of Paul Meyer. Please continue.

MR. McDONELL: Q. Mr. Meyer, I want to talk about your use of the Oracle acquisition of PeopleSoft in your analysis.

Do you have that in mind?

A. Yes.

Q. If you turn in your report to paragraph 116, there you indicate that Oracle reattained Standard & Poors to value certain PeopleSoft assets and liabilities and allocate them -- or allocate the 11.1 billion dollar acquisition price for financial reporting purposes.

15:18:44 Do you see that?
15:18:45 A. Yes.
15:18:47 Q. And you did in fact rely on a written
15:18:51 report from Standard & Poors as part of your
15:18:54 analysis?
15:18:55 A. I used some of the data in that analysis,
15:18:56 that's correct.
15:18:57 Q. I'm showing you what's been marked as
15:18:59 Exhibit 403.
15:19:13 Is this a copy of document you relied
15:19:15 upon?
15:19:39 A. Yes, I believe so.
15:19:40 Q. Okay. Would you turn to paragraph 122 of
15:19:43 your report, please?
15:19:58 Do you see there, paragraph 122, and it
15:20:01 has several bullet points within it?
15:20:16 A. Yes.
15:20:17 Q. With respect to your valuation of the
15:20:21 value of use of the PeopleSoft license, did you
15:20:29 rely primarily on the numbers from the S&P
15:20:33 valuation that are in the third bullet point of
15:20:37 paragraph 122 -- I'm sorry, fourth bullet point,
15:20:42 adding up to the 8.85 billion?
15:20:52 MS. HOUSE: Objection. Vague.
15:21:01 THE WITNESS: Could I have the question

15:21:01 read back, please?

15:21:25 (Record read as follows:

15:21:27 Question: With respect to your valuation of the value of use of the PeopleSoft license, did you rely primarily on the numbers from the S&P valuation that are in the third bullet point of paragraph 122 -- I'm sorry, fourth bullet point, adding up to the 8.85 billion?)

15:21:27 THE WITNESS: And now you're asking about

15:21:29 the market value approach though. Right?

15:21:31 MR. McDONELL: Q. Let me try to be more

15:21:32 clear.

15:21:33 In paragraph 122, you're -- that's part of

15:21:36 your analysis in the market approach. Right?

15:21:39 A. That's correct.

15:21:40 Q. And in the third bullet point of paragraph

15:21:44 122, there's the number 8.85 billion. Do you see

15:21:48 that?

15:21:49 A. Yes.

15:21:49 Q. And that consists of 2.12 billion of the

15:21:56 PeopleSoft support agreements and related customer

15:21:59 relationships at the time of the acquisition.

15:22:01 Correct?

15:22:02 A. Yes.

15:22:03 Q. It also consists of 250 million dollars of the avoided cost of developing certain new customer relationships. Correct?
15:22:10 A. Yes.
15:22:11 Q. And it also consists of 6.5 billion of Oracle's recorded goodwill.
15:22:18 All true?
15:22:23 A. That is correct.
15:22:27 Q. And you summarized those numbers as the 8.85 billion, which is a number that you use as part of your analysis under the market approach. Right?
15:22:43 A. That number is part of the analysis under the market approach. It's some components within the overall 11 billion dollars.
15:23:18 Q. Now, in the next bullet point, which is the fourth bullet point of the paragraph 122?
15:23:25 A. Yes.
15:23:26 Q. You develop a percentage of 30.2 percent?
15:23:33 A. Yes. The 3,000 customers divided by the 9,920.
15:23:36 Q. And the 3,000 customers, you state, are the number of customers that SAP indicated it planned to convert from PeopleSoft customers to SAP and TomorrowNow support service customers. Is that

15:23:53 correct?
15:23:53 A. That's from the SAP management plans,
15:23:55 that's correct.
15:23:57 Q. And then you developed that percentage of
15:24:00 30.2 percent, and you apply it times the 8.885
15:24:05 billion. Correct?
15:24:07 A. That's correct.
15:24:07 Q. And you come up with a number of 2.67
15:24:12 billion.
15:24:14 A. That's correct.
15:24:21 Q. Now, is that 2.67 billion, is that part of
15:24:24 your support for your -- what I think is your
15:24:27 conclusion that the value-of-use license for the
15:24:30 PeopleSoft IP at issue is no less than 2 billion?
15:24:36 A. It would be part of that conclusion,
15:24:39 that's correct.
15:24:40 Q. And in fact, I think you told us earlier
15:24:42 that your actual opinion on the value-of-use
15:24:47 damages was 2.156 billion. Correct?
15:24:54 A. I think that includes Siebel.
15:24:56 Q. Right. But the 2.156 included 2 billion
15:25:00 for PeopleSoft/JD Edwards. Right?
15:25:05 A. It would be the 2 billion, that's correct.
15:25:13 Q. So just kind of to understand the process
15:25:17 here, had you assumed -- instead of 3,000

15:25:21 customers, had you assumed 358 customers in this calculation, that would have just driven the numbers down proportionately. So, you know, I did the math. Instead of 30.2 percent, it would be approximately 3.6 percent. Does that sound right?

15:25:41 A. If you're cutting the number of customers that SAP was planning to convert from 3,000 down to 350, that was part of their planning, then you would potentially work that into what they basically -- what you're trying to do is figure out what they're acquiring; basically, what's the value here.

15:26:02 And so if they're going off 3,000 customers or 4,000 customers, or 350, you would have to work that into your analysis, if it changed the -- what actually happened back in January 2005.

15:26:18 Q. All right. So stay with me on this.

15:26:20 So if you did the same calculation using the 8.85 billion dollar amount that you used, but applied it to just the 358 actual TomorrowNow customers, you'd get this percentage of 3.6 percent. And multiplying that by the 8.85 billion, you'd come up with a number of approximately 318 million. Does that sound right?

15:26:51 A. I haven't done the math, but it's about,

15:26:54 you know, 10 percent of the other number, so I
15:26:57 would say somewhere around 300 million would not --
15:27:00 would make sense to me, if one were to change the
15:27:05 historical plans, and instead of targeting 3,000
15:27:09 customers, having plans to do that, it was
15:27:13 something less than that, then you could work that
15:27:16 into the analysis.
15:27:16 Q. And similarly, if you assumed that just
15:27:18 the 358 customers as a percentage of the 9,920
15:27:23 total customers, and came up with the 3.6 percent
15:27:28 and multiplied it only by the value of the customer
15:27:35 contracts that S&P valued, the 2.1 billion dollar
15:27:41 number, you'd come up with a number more like $76
15:27:45 million dollars. Does that sound right?
15:27:47 A. Right. That's the math, but you would
15:27:50 never do that, because that would not account for
15:27:52 what's basically the premium, which is the ability
15:27:54 to cross-sell and upsell those customers. That's
15:27:58 why you're paying -- that's the goodwill. That
15:28:01 wouldn't make sense.
15:28:02 That's the mathematics. I agree with the
15:28:04 mathematics.
15:28:05 Q. Okay. The goodwill, the 6.5 billion
15:28:08 dollar number, is Oracle's opportunity to make
15:28:11 upsell and cross-sell sales. Is that right?

A. There's two pieces. The first piece would be to -- the existing customers to come in. There's an opportunity to upsell and cross-sell, and then over time, there's an opportunity to actually beat the transaction value and to even sell more products across more platforms from the Oracle perspective.

So you actually can do better than the 11 billion.

So -- but the reason why you pay that premium is to have access to those customers and to make additional product sales beyond the servicing, that's absolutely correct.

Q. So the 2.67 billion dollar number you calculated includes dollars for Oracle's future upsell and cross-sell. Correct?

A. The goodwill would relate to amounts that you've paid for more than the current tangible assets, the currently identified intangible assets. And that would be a chance to expand your business to the basic customers that you now have acquired, and you can now license and service and use your IP to their advantage.

Q. So I think you've answered the question, but let me make sure.

The 2.67 billion dollar number that you calculated includes a value for Oracle's future upsell and cross-sales. Correct?

A. As I mentioned a moment ago, the reason why you pay 11 billion dollar for --

Q. I didn't ask you the reason. I did not ask you that.

MS. HOUSE: Let him answer, please. Don't interrupt him.

MR. McDONELL: No. He's got to answer my question, or we don't finish. Answer my question.

THE WITNESS: I'm going to give you the complete answer.

MR. McDONELL: Q. Does the 2.67 billion dollar calculation include a calculation for Oracle's upsells and cross-sells?

MS. HOUSE: Answer how you feel is appropriate.

THE WITNESS: It allows Oracle to maximize the value of that customer relationship, which includes a lot of things, including upsell and cross-sell opportunities, and selling more service.

MR. McDONELL: Q. Does the 2.67 billion dollar number also include Oracle's opportunity to make sales to new customers that were not included

15:30:18 in the 9,920 existing customers?
15:30:27 A. From my understanding -- and Oracle could
15:30:30 address this better than I can -- I believe that
15:30:31 when they look at those kinds of benefits, that's
15:30:34 beyond the 11 billion. So it does not factor that
15:30:37 in. That's things that they can do because they're
15:30:41 expert at executing on these transactions, so those
15:30:43 are things that are over and above the 11 billion
15:30:46 dollars.
15:31:04 Q. With respect to the intellectual property
15:31:07 rights of PeopleSoft that Oracle acquired in the
15:31:11 acquisition, would you agree that Oracle acquired
15:31:15 full ownership rights to that subject IP when it
15:31:20 acquired PeopleSoft?
15:31:21 A. I would agree with that.
15:31:22 Q. Would you also agree that the hypothetical
15:31:27 license that you're contemplating in your work
15:31:33 being a license from Oracle to SAP and TomorrowNow
15:31:38 would not contemplate giving full ownership rights
15:31:43 to SAP and TomorrowNow?
15:31:45 A. Of the IP, that is correct. Not full
15:31:49 ownership rights, I agree with that.
15:31:51 Q. For example, under the assumptions you're
15:31:54 making here about this license and what it would
15:31:57 encompass, the defendants in this case would not

15:45:23 the phone call of Mr. Agassi as he talked to the world about the Safe Passage deal, it's a very illuminating series of pages.

15:45:31 Q. Do you believe you're qualified to draw conclusions about what SAP thought from looking at the documents of SAP's internal deliberations?

15:45:44 A. Those documents in combination with the testimony from people like Mr. Agassi that says he could have in his mind gotten more customers, I think that's what people like myself consider and come to these determinations.

15:45:58 And I'll put that forward, and I'll let others in the record speak to the projections, but that's my perspective on it.

15:46:04 Q. All right. So let me go back to the 2.1 billion dollar figure that you've testified is the value of the customer contracts and relationships.

15:46:11 Do you have that in mind?

15:46:13 A. Yes.

15:46:13 Q. You multiply that by your 30.2 percent. Right?

15:46:18 A. Yes.

15:46:19 Q. What I want to know is this: If the -- if PeopleSoft actually had the customer contracts and SAP only had the right to try to get the customer

15:46:34 contracts, wouldn't it be more valuable to Oracle
15:46:40 such that you should make some adjustment to that
15:46:43 number?
15:46:44 A. Well, I think that I've done that. I
15:46:46 mean, the 30 percent calculation actually comes out
15:46:49 to 2. -- almost 2.7 billion dollar, and I'm at 2
15:46:54 billion dollars.
15:46:55 And so it's not like you're talking about
15:46:57 SAP's outside the facility of the 4,000 customers.
15:47:02 They're already there, and they're providing
15:47:05 enterprise systems, and PeopleSoft's providing
15:47:07 human resource. And in fact, they may have 80
15:47:10 percent of the data shop.
15:47:11 Q. So --
15:47:12 A. Let me finish. So they may be the
15:47:14 incumbent, and all they have to then do is say,
15:47:17 now, let's go down the hall and see the folks that
15:47:21 are in charge of human resources, and if we can
15:47:23 convince them to give us that maintenance contract,
15:47:26 we can maybe convince them to convert the human
15:47:29 resource function over to SAP.
15:47:31 So that's the dynamic that's occurring,
15:47:32 and that's what's in all these Safe Passage
15:47:35 documents. It's not a couple documents. It's many
15:47:37 documents, and it's testimony.

Q. So are you saying that you made an adjustment from your 2.67 billion dollar calculation to 2.1 billion to take into account the fact that Oracle actually owned the PeopleSoft customer relationships and SAP and TomorrowNow did not?

MS. HOUSE: I think you misspoke. It's 2.0, not 2.1.

THE WITNESS: Not specifically. I think --

MR. McDONELL: Q. Hold on, I'm sorry. Did I misspeak?

A. It's 2 billion for the market value.

Q. No, but what I'm asking you about is -- okay, thank you, Counsel.

So are you saying -- let me restate the question.

Are you saying that you made an adjustment from the 2.67 billion dollar calculation to the 2 billion dollar calculation to take into account the fact that Oracle actually owned the PeopleSoft customer relationships, and SAP and TomorrowNow did not?

A. From my perspective, not specifically. I certainly knew that one could value it upwards of

15:48:43 the 2.67 billion dollars. From my perspective, 15:48:47 there was obviously a range of potential customers. 15:48:49 And also, I knew that the head of technology, the 15:48:53 CTO, Mr. Agassi, thought it could be as high as 15:48:56 6,000 customers.

15:48:57 So from my perspective, I backed it down 15:48:59 to account for things like you're mentioning. 15:49:01 Obviously, I understand that it's better to have 15:49:03 9,000 customers under contract than to have none 15:49:07 under contract. But let's not forget the 4,000 15:49:10 that are joint customers.

15:49:11 So I made an adjustment. It wasn't 15:49:12 specific for that, but I wanted to back it down to 15:49:15 say, okay, I know there will be some issues about 15:49:17 how you apportion the goodwill and the opportunity 15:49:20 to upsell and cross-sell these customers over time, 15:49:23 and to earn their service contracts.

15:49:27 Q. Well, as you sit here today, can you tell 15:49:29 me specifically what adjustment you made to the 15:49:32 2.67 billion dollar number to take into account the 15:49:35 fact that PeopleSoft owned the customer 15:49:37 relationships and SAP and TomorrowNow did not?

15:49:40 MS. HOUSE: Asked and answered.

15:49:42 THE WITNESS: Well, the market value, I've 15:49:44 said, is at least billion dollars. And so the

15:49:47 simple math is, you know, 670 million dollars. But
15:49:51 from my perspective -- and I've done many of these
15:49:54 analyses -- I didn't need to be that precise,
15:49:57 because I could have also run a calculation at
15:50:00 6,000 customers, or probably the 4,000 customers,
15:50:02 because that's the joint IT shop, and that's
15:50:05 probably the number that has as much traction as
15:50:09 any other number.
15:50:10 MR. McDONELL: Q. With respect to the 2.1
15:50:12 billion dollar number from S&P, which is the value
15:50:21 of the customer agreements and relationships, did
15:50:23 you make any assumption about the attrition rate
15:50:26 applicable to that customer base?
15:50:34 A. Are you asking, did I consider the
15:50:36 attrition that they considered in their
15:50:38 calculations?
15:50:39 Q. Yes.
15:50:40 A. I believe I've seen -- the backup for the
15:50:43 S&P analysis is something called Project Spice,
15:50:46 which was actually the discounted cash flow
15:50:49 analysis that was run by Oracle's due diligence
15:50:52 team on the PeopleSoft transaction. And I've seen
15:50:54 all the inputs to Project Spice, and my
15:50:58 understanding is there's attrition in those
15:51:00 numbers, and that same attrition information was

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.

SAP AG, a German corporation, SAP AMERICA, INC., a Delaware corporation, TOMORROWNOW, INC., a Texas corporation, and DOES 1-50, inclusive,

Defendants.

No. 07-CV-1658 (PJH)

VIDEOTAPED DEPOSITION OF

PAUL K. MEYER

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THURSDAY, MAY 13, 2010

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

(1-427374)

10:59:36 out?

10:59:36 A. I think it's something that's instructive, but at the same time, it's -- you know, it doesn't involve -- it involves a different software company. There are some differences.

10:59:54 Q. Okay. Let's talk about the market approach as applied to Siebel next.

11:00:02 Can you turn to paragraph 265 of your report?

11:00:31 Is it correct that in applying the market approach to Siebel, you've considered the same three acquisition transactions that you considered for the PeopleSoft and JD Edwards software?

11:01:00 A. I'm looking for a reference. I'm not sure if I referred back to it, but I think in the first paragraph I say something about it.

11:01:06 Oh, yeah, we -- in 265. So I think it just says, background. I refer back to the other section.

11:01:11 Q. So your understanding is what you've done in your market approach analysis of the Siebel software is, you've used as your comparables the same three acquisitions that you used in your analysis of the PeopleSoft software, that being the PeopleSoft acquisition, the Siebel acquisition, and the Business Objects acquisition?

A. I wouldn't state it the way you have, because even on the PeopleSoft analysis, I focused as I mentioned on the one transaction in January 2005. The others provide instruction about the nature of the software transaction and the value. And you say comparable, but I don't sort of view them that directly, and I was clear on that.

Here, once again, we're talking about acquisitions, acquisition of the CRM technology. And it comes with the software, and the ability sell license and to maintain customers. It's a similar kind of business with similar kinds of metrics.

And so I think that's helpful to compare back to the PeopleSoft/Oracle arrangement, and it's also -- the other ones are once again some more information that's instructive.

Q. So the Siebel acquisition request, what you learned about the Siebel acquisition you're saying was corroborative of what you concluded about the value of the PeopleSoft value of use?

MS. HOUSE: Objection. Vague.

THE WITNESS: Well, it was the other way around. That when I looked at the valuation of

Siebel, I was able to think about and use the information I had gathered on the Business Objects arrangement, and on the PeopleSoft -- on the JDE transaction. And then also, I had already analyzed the PeopleSoft/Oracle transaction, which was the big focus in my market approach to the PeopleSoft copyrights.

MR. McDONELL: Q. All right. So for your value-of-use calculation for Siebel, you relied on the Duff & Phelps valuation report that was the purchase price allocation in connection with the acquisition. Is that right?

A. Well, it was similar to the situation with PeopleSoft. There was an acquisition for 6.1 billion, and then as part of that, Duff & Phelps did an analysis of the identified assets. And so I used some of that information to help understand the contents and assets of the Siebel deal.

Q. Please take a look at paragraph 273 of your report.

A. I'm sorry, 274?

Q. 275. I'm sorry, 273.

A. 273, I'm with you.

Q. Okay. Now, in 273, do you identify the main values from the Duff & Phelps report that you

11:04:34 used to do your value-of-use calculation for
11:04:36 Siebel?
11:04:44 A. Yes. Those are summarized in that
11:04:45 paragraph.
11:04:46 Q. So to summarize it, it is -- the value of
11:04:52 Siebel maintenance agreements and customer
11:04:53 relationships is 808 million. The avoided costs of
11:04:58 developing new customer relationships is
11:04:59 108 million. And Oracle's recorded goodwill from
11:05:03 the transaction is 2.5 billion. And that adds up
11:05:07 to 3.4 billion. Correct?
11:05:09 A. That's correct.
11:05:10 Q. And that's kind of the baseline you used
11:05:12 then to do your value-of-use calculation. Right?
11:05:16 A. Some of those -- that information, that's
11:05:18 correct, was then used.
11:05:19 Q. And then in the next paragraph, paragraph
11:05:21 274, you develop a 5 percent number by assuming SAP
11:05:31 would get 200 of the Siebel support customers out
11:05:35 of 4,000. Right?
11:05:37 A. Right. I went to SAP's projections, and
11:05:41 their planning, and they had 200 customers as being
11:05:45 their projection, and I compared that to Siebel's
11:05:48 customers.
11:05:49 Q. And so you applied the 5 percent times 3.4

11:05:53 billion, and you came up with your -- what is the
11:06:01 number you came up with?
11:06:03 A. I think it's 170 million. Is that what it
11:06:05 is?
11:06:06 Q. Yeah.
11:06:06 A. At the top of page 186.
11:06:14 Q. And that methodology we just went through,
11:06:18 that's essentially identical to what you went
11:06:20 through on the PeopleSoft methodology. Right?
11:06:23 A. A similar approach, that's correct.
11:06:25 Q. And then in addition to that, you
11:06:26 developed an average cost per customer, just by
11:06:32 dividing the purchase price by the number of
11:06:33 customers?
11:06:34 A. It was another sort of reasonableness
11:06:36 check, and got the average cost of the
11:06:38 1.525 million.
11:06:40 Q. Okay. And then you multiplied that by the
11:06:43 200 potentially lost customers to indicate a value
11:06:48 of 305 million?
11:06:49 A. That's correct.
11:06:50 Q. And when you say potentially lost
11:06:53 customers, you're consciously acknowledging that
11:06:57 they were never actually lost. Right?
11:07:00 A. Well, I'm focusing on, once again, the

11:31:39 Do you see that?
11:31:39 A. Yes.
11:31:40 Q. Have you applied the relief-from-royalty
11:31:42 approach in this case?
11:31:43 A. No. I didn't think it was appropriate to
11:31:45 do.
11:31:48 Q. All right. In paragraph 128 of your
11:31:50 report -- I'll give you a minute to get there --
11:31:59 under the heading "Income Approach," there you
11:32:06 state that the income approach values intellectual
11:32:09 property based upon the additional cash flows a
11:32:12 business is expected to generate in the future from
11:32:16 the exploitation of the technology at issue. The
11:32:19 income approach measures the net present value of
11:32:22 these future cash flows as of the date of the
11:32:25 valuation.
11:32:25 Do you see that?
11:32:28 A. Yes.
11:32:28 Q. And what is the date of the valuation in
11:32:30 this instance?
11:32:34 A. I don't follow your question.
11:32:36 Q. Okay. Well, you are doing a valuation
11:32:40 using the income approach. Correct?
11:32:42 A. That's correct.
11:32:43 Q. And you have to pick a date for the

11:32:45 valuation. Right?
11:32:46 A. Right. We've been working off of January
11:32:49 2005, and then with the income approach, I'll look
11:32:53 at the future benefits, and then I will look at
11:32:58 that generally over a period of 10 years, and we'll
11:33:04 get to those calculations.
11:33:06 And so I'm not certain what you're asking
11:33:08 me.
11:33:09 Q. So basically, you're bringing it back to a
11:33:12 value as of January 2005?
11:33:16 A. Well, we can -- if we're just talking
11:33:18 about the income approach and you're asking about a
11:33:21 discounting issue, and if you would ask, you know,
11:33:23 a direct question, I could get you right to the
11:33:25 answer.
11:33:25 I think you're going to an issue about at
11:33:28 what point in time should the damages be stated
11:33:31 from the standpoint of discounting the cash flows.
11:33:34 And if that's your question, I can give an answer
11:33:36 to that.
11:33:37 Is that the question you're asking?
11:33:38 Q. Not really. My question is, you're
11:33:41 valuing this use as of what date? And I think
11:33:45 you're saying January 2005.
11:33:49 A. We're doing an evaluation at January 2005,

11:33:52 that's correct.
11:33:53 Q. Okay. In paragraph 128, you say that
11:33:55 you've considered two things in your application of
11:33:57 the income approach: The net cash flows Oracle
11:34:00 would expect to lose to SAP as a result of
11:34:03 licensing the copyrighted materials in suit.
11:34:06 Right?
11:34:07 A. Yes.
11:34:08 Q. That's part of it?
11:34:09 A. Yes.
11:34:09 Q. And the second part is what you call the
11:34:11 income approach analyses, performed
11:34:14 contemporaneously by SAP or TomorrowNow, indicating
11:34:17 either the revenues they expected to receive or the
11:34:20 amount of Oracle's business they expected to
11:34:22 displace.
11:34:23 Correct?
11:34:25 A. That's correct.
11:34:26 Q. So let's take a look at paragraph 129,
11:34:29 please. I want to look at the first sentence.
11:34:48 A. On 129?
11:34:50 Q. Yes.
11:34:50 A. Okay.
11:34:51 Q. Are you there?
11:34:52 A. Yes.

11:34:53 Q. So there you say that the overall
11:34:59 valuation of Oracle's PeopleSoft acquisition was
11:35:01 measured using a discounted cash flow model for
11:35:05 revenues and profits from PeopleSoft support
11:35:09 customers lost to TomorrowNow and SAP, post-October
11:35:14 2008, lost incremental license revenue, upsell, and
11:35:22 related support, and lost new license revenue,
11:35:26 cross-sell, and related support.
11:35:28 Do you see that?
11:35:29 A. Yes.
11:35:31 Q. What did you mean when you say S&P's
11:35:34 overall valuation considered support customers lost
11:35:40 to TomorrowNow and SAP?
11:35:42 A. What I did there -- and to clarify, there
11:35:45 was -- the framework basically, there was something
11:35:50 called Project Spice, which was done -- it was a
11:35:53 discounted cash flow to support the acquisition of
11:35:56 PeopleSoft by Oracle. It was the discounted cash
11:35:58 flow model that S&P used.
11:36:00 And so what I did was, I took that --
11:36:03 MS. HOUSE: Slow down.
11:36:08 THE WITNESS: So what I did was, I took
11:36:09 that model from Project Spice, and I worked with
11:36:13 some data from that, and then S&P -- because we're
11:36:18 focusing on the Oracle losses now -- and then I

11:36:21 inserted into that model the information that was
11:36:25 from SAP's strategic plans.
11:36:29 And so I basically took the potential lost
11:36:34 customers for maintenance, cross-sell and upsell,
11:36:38 from SAP's strategic plans, and then put that back
11:36:43 into Oracle's models. And so that's the intercept
11:36:46 that's being described there in the first sentence.
11:36:48 MR. McDONELL: Q. So you weren't
11:36:49 suggesting that S&P actually referred to or focused
11:36:52 on TomorrowNow or SAP in any way. Right?
11:36:55 A. That's correct.
11:36:56 Q. Okay. Was the -- to the extent you relied
11:37:13 on the S&P document for your income approach, was
11:37:21 S&P's -- I'm sorry, strike that.
11:37:25 You did rely on S&P's work in connection
11:37:29 with applying your income approach. Right?
11:37:33 A. Only indirectly, because -- and I think
11:37:35 it's important to understand this, and certainly in
11:37:38 my work papers, the -- the document that was
11:37:41 created during the acquisition between Oracle and
11:37:46 PeopleSoft, Oracle had a team called Project Spice,
11:37:50 which created a discounted cash flow to look at
11:37:54 basically PeopleSoft's business and to look at its
11:37:57 revenues and its costs and its cash flow.
11:38:00 And so that basic model, which we have and

11:38:04 was produced in this case, was really what is needed to do the calculations that I've done on my Schedule 11 in this part of the report on the income approach.

11:38:16 So I took the Project Spice information. It just turns out that S&P used that same model when it began to do its valuation. So I really focused on the Project Spice financial metrics and data, but I used S&P just as a little structure to help pull things together.

11:38:35 Q. Is there a reference to Project Spice in your report?

11:38:47 A. I think the way the referencing works, it goes from -- if you look at the S&P valuation and look at their information, they rely upon Project Spice. And so the variables in S&P are included in Project Spice, and so that's sort of the documentation trail.

11:39:02 Q. But in terms of the text of your report, is there any mention of Project Spice?

11:39:08 A. I'd have to go page by page to give you that complete answer, but I don't think we referenced it, at least in this section, directly.

11:39:15 Q. So you relied on the S&P overall valuation of Oracle's PeopleSoft acquisition to the extent they used a discounted cash flow model, but you're saying S&P in turn relied on some data from Project Spice?

A. Well, you're not properly describing it.

What I ultimately do on Schedules 11, 12, and 13 in my report, I do my own calculations. Okay? So I do my own analysis. But in coming up with the inputs, which would be the inputs from Oracle's management about the metrics of value, what's the annual maintenance revenue for a customer, what's the annual -- what's the value of a cross-sell license, what's the value of an upsell license, that data comes from Project Spice. It just turned out that that data was put into the S&P analysis of the identified assets.

So that's the process. But ultimately, my schedules include my calculations. I just take the data from Oracle's records, and some of that was in S&P.

Q. Let me turn you to your paragraph 130. In there, you indicate that you used three scenarios: One assuming 1,375 customer switches, another assuming 2,000 customer switches, and another assuming 3,000 customer switches. Correct?

A. That's correct.

11:40:46 Q. And by customer switches, you mean not just switching from PeopleSoft to TomorrowNow support, but you mean these customers completely left PeopleSoft and completely replaced their PeopleSoft software with SAP software. Is that right?

11:41:06 A. Well, there's two levels to it. The first level is support, and so that would be a switch. You would go on maintenance at SAP/TomorrowNow, and that would be lost income to Oracle.

11:41:21 And then Oracle has upsell and cross-sell expectations that are tied into their customers, and you would lose that.

11:41:30 And those -- and it's important to note, those are not -- if you lose a customer -- say you lose a thousand customers. There's a ratio that's used for upsell and cross-sell. So if you lose a thousand customers, they -- from Oracle's perspective, a percent relate to upsell, a percent relate to cross-sell. So it's not as if there's a thousand customers in lost maintenance, lost upsell, lost cross-sell. There's a dynamic that goes into making those analyses and looking at benefits and impacts.

11:42:05 Q. Okay. So in your assumptions of 1,375,

11:42:12 2,000, and 3,000 customers, are you making any
11:42:16 assumption about whether the customers would switch
11:42:20 from PeopleSoft software to SAP software?
11:42:26 A. Well, we need to break it down. There's
11:42:29 two calculations I do. The first one is the impact
11:42:32 on Oracle. Okay? So I'll calculate how Oracle was
11:42:35 impacted when -- when the infringing activities
11:42:39 occur.
11:42:40 And then the other side, I look at SAP's
11:42:43 gains. So this discussion here is just impact on
11:42:46 Oracle, and we should be clear about that;
11:42:47 otherwise, we're going to have a -- a transcript
11:42:50 that's not very clear.
11:42:51 So we're focused on Oracle in these
11:42:53 calculations initially.
11:42:54 Q. Okay. So when you use your assumptions of
11:42:57 1,375, 2,000, and 3,000 customers as an impact on
11:43:03 Oracle, you're assuming that those customers leave
11:43:08 Oracle for all purposes, and therefore Oracle is
11:43:12 never able to cross-sell or upsell anything to them
11:43:15 again. Correct?
11:43:15 A. No, I -- you haven't listened to my
11:43:18 answers. So let's break -- if you you give me
11:43:21 time, I can break it down for you.
11:43:23 Take the 1,375. You'll have the 1,375

customers shift out. Okay? Switch.

Then you'll have a percent of those, if you're Oracle, would have taken an upsell license, and a percent would take a cross-sell license. So this means if you lose customers, you lose that opportunity to make that. It's not a dollar-for-dollar thing, but you have an expectation of your business model.

So even though when we get to the SAP side, they're going to gain maintenance, and then they are going to gain potential upsell and cross-sell, they being SAP.

Here, what Oracle's going to lose is maintenance, and then some cross-sell and upsell. we can look at the dynamics of calculations, but I took Oracle's Spice cash flow model from the PeopleSoft transaction and used their metrics in figuring out the impact on Oracle.

Q. What I was trying to get at, though, is, is it your assumption in assessing the impact on Oracle of 1,375 customers going to TomorrowNow that Oracle would lose its opportunity to make upsales and cross-sales?

A. That would be one aspect of the loss. I agree with that.

11:44:50 Q. Did you also assume in the income approach that the 1,375 customers that you assumed would go to TomorrowNow would purchase SAP software?

11:45:04 A. Okay. Let's break it down. Now we're getting to the SAP side. So if we stay -- so let's be clear. Oracle side, SAP side.

11:45:11 So if you're asking about SAP side, yes. There's also a calculation of that, which is a different calculation, and it's not the first one I do. This is Oracle's expected losses.

11:45:21 Q. Okay. So staying with your paragraph 130, for your income approach on the PeopleSoft calculation, you do assume that 3,000 customers would switch from PeopleSoft support to TomorrowNow support between January '05 and October '08. Correct?

11:45:49 A. Okay. And under one calculation, that's correct. I do three calculations. And so in each calculation, I make an assumption about maintenance, and it's consistent for maintenance, it's 3,000 switch over that period of time. I think we use '05 to '07, and then we extend it a little bit. But that's the amount of customers that go to support at TomorrowNow based on the projections.

11:46:20 Q. So just to be clear, in all of those scenarios, you assume 3,000 customers would leave support from PeopleSoft and get their support from TomorrowNow?
11:46:30 A. That's correct.
11:46:33 Q. And you got -- that's the same 3,000 customer number you used in your market approach. Right?
11:46:39 A. Yes. Same source of data, that's correct.
11:46:44 Q. And the source of that data -- well, can you grab Exhibit 447, please?
11:47:36 Okay. Turn to Bates page ending -288. Do you have that in front of you?
11:47:41 A. Yes.
11:47:42 Q. Is that the source for your assumption of 1,375 customers?
11:47:45 A. It would be the source, that's correct.
11:47:47 Q. So you added the 250 to 375 and the 750?
11:47:54 A. Yes.
11:47:55 Q. Is that right?
11:47:55 A. It's very difficult to read. So there's a 250, there's a 375, and then there's a -- well, I have to go back to my work papers. What's the last number that you read?
11:48:08 Q. 750?

12:16:51 would be a good idea to consider the actual number
12:16:53 of customers that went from PeopleSoft to
12:16:56 TomorrowNow?
12:16:58 MS. HOUSE: Objection. Vague.
12:17:00 THE WITNESS: It's a vague question. Not
12:17:01 if you're -- if you're trying to determine the fair
12:17:04 market value of the license at the time and using
12:17:07 SAP's management input and strategic initiatives.
12:17:12 MR. McDONELL: Q. What if you're trying
12:17:13 to measure the actual economic impacts of the
12:17:15 activity?
12:17:15 MS. HOUSE: Objection. Vague.
12:17:17 MR. McDONELL: Q. Wouldn't it be better
12:17:18 to look at the actual evidence of what happened?
12:17:20 MS. HOUSE: Objection. Vague.
12:17:21 THE WITNESS: We're back to the discussion
12:17:22 we had the last -- yesterday about the whole issue
12:17:24 about how difficult it is to quantify once the
12:17:26 market as changed and SAP's got this offering in
12:17:29 the marketplace with all this intellectual property
12:17:31 that they are using from Oracle. You just can't
12:17:33 roll the clock back.
12:17:36 MR. McDONELL: Q. Let's go back to
12:17:36 Exhibit 447, please.
12:17:46 Are you familiar with the data that's on

page Bates number ending -288? I know you're having trouble reading it, but can you make it out?
A. Yes. I can see it now.
Q. So in performing your income assumption -- sorry, your income approach for the PeopleSoft license, you relied on certain customer assumptions. Right?
A. Yes.
Q. And you relied on 1,375 as one assumption about how many customers would upswitch. Is that right?
A. I do various calculations, but one calculation would work into it, the number of customers that would upswitch, that's correct.
Q. And by upswitch, what do you mean there?
A. Well, from Oracle's perspective, that's their ability for an existing customer -- if they have a customer under maintenance, they know from their historical data and operations that a percentage of those customers will take a license to additional Oracle applications. That's how Oracle views upswitch.
Q. Okay. In paragraph 130, when you say that one model assumes 1,375 customer upswitches, what does that mean?

12:19:08 A. Well, it means basically we're within the
12:19:11 impact on Oracle. So if we're setting aside
12:19:14 maintenance for a second, with upswitch, what we've
12:19:17 done is basically says, over the period -- over the
12:19:26 period from 2005 through 2007, there will be
12:19:31 customers that leave Oracle and that go to SAP.
12:19:36 And therefore, they're not available in Oracle's
12:19:40 business for an upswitch opportunity.
12:19:44 So I use 250 customers in 2005, 375
12:19:48 customers in 2006, and 750 customers in 2007. So
12:19:53 since they've gone to SAP, they're not available to
12:19:58 have an upsell opportunity for Oracle. Because I
12:20:03 mentioned --
12:20:03 Q. Well, why not? Why can't Oracle sell them
12:20:05 something?
12:20:06 A. They've lost the customer. The customer's
12:20:09 gone on to another application.
12:20:11 Q. Give them a call. So that was my question
12:20:14 before, whether you were assuming that all of these
12:20:16 customers switched to SAP software and replaced
12:20:20 their Oracle software. And you said no, you
12:20:23 weren't assuming that. That was the second part of
12:20:25 the analysis.
12:20:26 So now let me go back to that.
12:20:28 Are you assuming that all 1,375 customers

12:20:31 completely replaced their PeopleSoft software with
12:20:34 SAP software?
12:20:36 A. Over a time period, yes.
12:20:38 Q. What time period?
12:20:39 A. So -- well, let me -- you keep
12:20:41 interrupting me.
12:20:42 MS. HOUSE: Please.
12:20:42 THE WITNESS: You want a complete
12:20:43 transcript, and I'm trying to give you the
12:20:45 information. It's very detailed. You know,
12:20:46 there's hundreds of schedules, there's lots of
12:20:48 information, and I want to give you the best
12:20:50 answers.
12:20:51 And so on my Schedule 11, 250 customers,
12:20:54 250 in 2005, 375 in 2006, 750 in 2007. So by 2008,
12:21:04 1,375 customers have gone to SAP.
12:21:08 So if you're Oracle's business, they're
12:21:10 not in your system to be part of an upswitch
12:21:14 effort, because an upswitch, I use a factor of 14
12:21:18 percent. That becomes the calculation. So of
12:21:20 those 250 customers, only 14 percent take the
12:21:24 upswitch in my model. So it's not like 250 become
12:21:28 lost revenue. It's only 14 percent of that in the
12:21:30 calculations.
12:21:35 MR. McDONELL: Q. Okay. So you're

12:21:36 assuming, for example, for 2005, that 250 customers left PeopleSoft and completely replaced their PeopleSoft software with SAP software.

12:21:48 A. That's right. For those applications, that's correct.

12:21:50 Q. And you're assuming 375 for 2006 and 750 for 2007.

12:21:56 A. That's correct.

12:21:57 Q. Okay. And then in paragraph 130 --

12:22:06 A. And just to clarified, because I don't know when you're being general or specific, in my model, I start that lost upsell revenue in 2006. So 250 switch to SAP in 2005 and become part of an upsell loss in 2006.

12:22:21 Q. Okay. So the -- in paragraph 130, you're identifying scenarios, three different scenarios. One assumes 1,375 of these customer upswitches, one assumes 2,000 customer switches, and one assumes 3,000 customer switches. Right?

12:22:41 A. That's correct.

12:22:42 Q. And what is your basis for assuming that 3,000 customers would leave PeopleSoft support, go to TomorrowNow, and completely replace their PeopleSoft applications with SAP applications?

12:23:01 A. That would be under the scenario that --

12:23:06 in all the scenarios, there's the question of maintenance, and if 3,000 change maintenance.

12:23:15 So in the last scenario, which is basically my Schedule 13, I have the number of lost maintenance customers equal the number of lost customers available for an upswitch or a cross-sell.

12:23:28 So the other two scenarios don't reflect the 3,000, but that's the ultimate Scenario 13.

12:23:34 Q. Okay. So the -- that's my question, though.

12:23:37 In your scenario in which you assume 3,000 PeopleSoft customers would leave PeopleSoft, go to TomorrowNow for support, and completely replace their PeopleSoft applications with SAP applications, what is your basis for that assumption?

12:23:54 A. Well, there's two bases. One, the -- this document, 447, takes us through 2007. So I would add another year onto that, and basically, at these switch rates, if you switch the 750 in 2007, and you switch another 750, you're at 3,000 by 2008. But if you ask what the support is for that last scenario, which is the -- it was just the highest scenario, then I would turn back to the phone call

12:24:21 and the other projections that are done by SAP in
12:24:25 that month that talk about upwards of 4,000 or
12:24:28 6,000 customers.
12:24:29 But I would agree, that's the highest
12:24:31 scenario, and so it's there for consideration, but
12:24:33 I would probably, you know, focus on all three of
12:24:36 them. But the middle one, the first one.
12:24:39 Q. I didn't quite follow you. How did you
12:24:41 get to the 3,000 in 2008?
12:24:44 A. Well, we know that -- okay. Let's go back
12:24:46 to 447 and 288. We know in 2005, 250 customers go
12:24:54 to mySAP application. And then 2006, it's
12:24:58 another -- it's at 375, and in 2007, it's 750.
12:25:04 Then we keep -- and then we go down to
12:25:09 what I guess would you call the cross-switch, which
12:25:12 we go from 500 customers in 2005 to 750 in 2006 to
12:25:18 a thousand in 2007. And then by the last year,
12:25:22 2008, you add 750 more on to get to 3,000.
12:25:30 Q. And what are you interpreting the
12:25:33 cross-switch number to be?
12:25:34 A. Well, there's two things. And we're
12:25:36 using -- remember, we're using the planning of SAP
12:25:42 and putting it back on Oracle's business. And so
12:25:46 what SAP's thoughts were was they could upswitch a
12:25:52 certain number of customers, and they could

cross-sell other customers. Okay?

And so we're using those dynamics back on Oracle. And I laid out the basis of the first scenario, the upswitch, and then we just modify those scenarios to reflect other projections made by SAP.

Q. So I still don't quite see how you got from 1,375 upswitch customers in 2007 to 3,000 in 2008. Can you explain that to me?

A. Yes. So the numbers that I use on my Schedule 13 for upsell, it's 500 customers in 2005, it's a thousand customers in 2006, and it becomes 1500 customers in 2007, which would be consistent with the 3,000 customers that are on maintenance. So that's the source.

I had to interpolate there to get to that number, which would be consistent with management's plans to switch the customers.

Q. Okay. In paragraph 131 of your report, you kind of summarize these findings, and you note that the results of these calculations indicate that under various assumptions, Oracle would lose to SAP as a result of licensing the copyright materials between 2 billion and 3.8 billion dollars.

12:27:36 Do you see that?
12:27:37 A. That's correct.
12:27:37 Q. Okay. That's a range of 1.8 billion
12:27:42 dollars. Am I correct?
12:27:45 A. Yes, based on the different assumptions in
12:27:47 the scenarios about the level of upswitch and
12:27:50 cross-sell.
12:27:51 Q. And do you consider that to be an
12:27:52 acceptably precise range?
12:27:56 MS. HOUSE: Objection. Vague.
12:27:56 THE WITNESS: Well, I think if you read my
12:27:59 report and look at my schedules and you see how the
12:28:01 variables change, and as you change the number of
12:28:04 customers that are lost for maintenance, upswitch
12:28:08 and cross-sell, the results make total sense.
12:28:11 And so you would expect to see this kind
12:28:13 of difference if you change the number of customers
12:28:16 in the calculations.
12:28:18 MR. McDONELL: Q. Have you formed an
12:28:18 opinion about what the best assumption is for the
12:28:21 number of upswitch customers?
12:28:25 A. It wasn't part of what I had to do. But
12:28:27 as you know, I've come to the opinion of, it's a
12:28:30 2-billion-dollar market value, so that's certainly
12:28:34 supported by all three scenarios. And I'm

12:28:39 comfortable with the scenarios and the logic, but
12:28:42 I've not selected any one, but I believe that this
12:28:44 method supports my opinion.
12:28:45 Q. And is that based on the 1,375-customer
12:28:49 assumption?
12:28:49 A. Well, we can go through the numbers. But
12:28:51 basically, the first scenario, which produces the
12:28:57 result of 1.97 billion, so basically, 1.98 billion,
12:29:10 that relates to 1,375 customers switching, and
12:29:14 3,000 lost maintenance customers. And that's the
12:29:18 first scenario.
12:29:18 The second scenario, which is predicate on
12:29:21 the 3,000 lost maintenance customers and 2,000
12:29:28 customers switching to SAP, comes up with 2.6
12:29:31 billion dollars, approximately.
12:29:33 And then lastly, the scenario we've been
12:29:35 talking about, which there's 3,000 support
12:29:40 maintenance customers lost, and then that's matched
12:29:43 with 3,000 customers switching to SAP applications.
12:29:48 That's a 3.76 value.
12:30:02 MR. McDONELL: (Directed to the court
12:30:02 reporter.) Holly, in his answer where you've
12:30:05 written it was a part of what I had to do, I think
12:30:09 he said it was not a part of what I had to do. Is
12:30:11 that correct.

(Discussion off the record.)

MR. McDONELL: Q. Mr. Meyer, again referring to your report, paragraph 131, in which you report the number is 2.0 billion to 3.8 billion, let's take the 2.0 billion.

Can you tell me roughly what portion of that relates to Oracle's expected losses attributable to support, lost support revenues?

A. The numbers on my Schedule 11 -- and they're not all present valued, but I can give them to you sort of as I have them.

So the total is ultimately 1.9 billion dollars. And so the -- on my summary schedule, I do the present value sort of in total, but I'll read you the nominal amounts so you can get a sense of the relative values before present value.

So on Schedule 11, the support customers that are lost to TomorrowNow -- so this is the loss through 2008 -- that's 607 million, 607. Then the support -- the value of the support customers lost post October 2008, that's 739 million, the -- the value of the upsell license, the license that -- so upsell -- the license value lost is 119 million. Then the lost support on that license, that upsell license, is 112 million. And then when it comes to

12:33:19 cross-sell, the value of the lost license is 12:33:22 199 million. And then the lost support on that 12:33:27 cross-sell license, because if you lose a license 12:33:29 sale, you'll lose the support of that, that's 12:33:32 293 million.

12:33:33 So the total is basically 2 billion, but 12:33:37 that's in nominal dollars. So when I -- when I put 12:33:43 that in present value, it's 1.2. So we'd have to 12:33:47 reduce those numbers accordingly if you wanted me 12:33:50 to do it on an individual basis.

12:33:52 Q. Thank you. Okay.

12:33:55 In paragraph 133 of your report, you 12:33:58 describe how you've used the income approach to 12:34:01 calculate SAP's expected gains. Correct?

12:34:05 A. Yes.

12:34:07 Q. And in doing so, you've used the same 12:34:09 three scenarios of 1,375, 2,000, and 3,000 upswitch 12:34:13 customers. Is that correct?

12:34:37 A. It's generally similar, but now we're 12:34:40 focusing on the gains of SAP, the benefits, as 12:34:42 opposed to Oracle's losses. And we -- we use one 12:34:47 calculation with 1,375 switched customers, and then 12:34:52 we do two calculations at the 2,000 switched 12:34:57 customers.

12:34:59 Q. Okay. And the -- as indicated in

12:35:01 paragraph 134 of your report, you end up with a range of gains between 881 million and 2.7 billion. Is that correct?

12:35:13 A. One second. I was grabbing the calculation.

12:35:20 I'm sorry, could I have the question read back, please?

12:35:23 Q. Yes. In paragraph 134, in your application of the income approach to SAP's expected gains, you come up with a range between 881 million and 2.7 billion dollars. Is that right?

12:35:36 A. That's correct.

12:35:38 Q. It's a range of approximately 2 billion dollars?

12:35:41 A. That's correct.

12:35:41 Q. And do you consider that to be an acceptably precise range for your purposes?

12:35:46 A. Yes. Because once again, once you break it down by the various inputs, changing the number of customers that are part of the switch and cross-sell revenues, it makes perfect logical economic sense to have a range like that.

12:36:03 Q. Okay. And is the thing that drives that range the assumption about the number of customers?

12:36:09 A. Yes. The number of customers that switch, and that are part of the cross-sell, would drive that range.

12:36:16 Q. Do you have, for this issue, an opinion about what the best number is to use, whether it's the 881 or the 2.7 or something different?

12:36:28 A. Similar to my response on the Oracle side of the impact here, I believe that it's appropriate to consider all three of these. And if you look at the results, obviously one is 881 billion. The second calculation, which assumes that there's 3,000 support maintenance customers gained by SAP and there's 2,000 that are part of the switch, that value is -- just a second -- that value is 1.2 billion. And then the last calculation, which takes the maintenance again at 3,000, the switch at 2,000, but we do a different calculation on the value of the customer at the end, what we call the terminal value, that comes out to 2.7 billion.

12:37:40 So I think the range is worthy of considering. I didn't have to pick any one of them, and they all make sense based on how the calculations were put together.

12:37:50 Q. Okay. So turning to paragraph 135 of your report, there you use the TomorrowNow document to

14:21:44 ago about having seen Oracle's business models. Do
14:21:49 you recall that?
14:21:50 A. Project Spice?
14:21:52 Q. Well, that's what I was going to ask you.
14:21:54 Is that what you were referring to?
14:21:58 A. Yes.
14:21:58 Q. And you're talking about the modeling that
14:22:00 was done in connection with the acquisition of
14:22:01 PeopleSoft?
14:22:02 A. That's correct.
14:22:12 Q. I want to turn next to the income approach
14:22:17 for Siebel. Do you have that concept in mind?
14:22:20 A. One moment, please.
14:22:37 MS. HOUSE: Is there a paragraph?
14:22:39 MR. McDONELL: Q. It's page 186. You
14:23:21 know, you're looking for schedules. I don't think
14:23:23 you're going to need them. My questions are pretty
14:23:26 general.
14:23:26 A. Okay.
14:23:26 Q. So you did perform an income approach
14:23:29 analysis for the value of use of the Siebel license
14:23:35 you're talking about. Correct?
14:23:36 A. That's correct.
14:23:38 Q. Is it fair to say that you applied the
14:23:41 same basic approach that you used in the income

approach in connection with the PeopleSoft copyrighted material?

A. I would say generally that is correct.

Q. And that would include -- it also included your same number of customer assumptions that you relied on in connection with your market approach for Siebel?

A. Yes. The 200 support customers were the basis, and then we used 200 switch customers, and that's similar to the market approach.

Q. All right. Now I want to turn to the Georgia Pacific analysis.

Would you turn to paragraph 154 of your report, please?

A. Okay.

Q. Is that the beginning of your analysis applying the Georgia Pacific factors?

A. Yes, for PeopleSoft.

Q. And there, you cite to the 15th Georgia Pacific factor, and you state that it's essentially the same test as the one set forth in the relevant Ninth Circuit jury instruction. Is that right?

A. I'm sorry, are you on 154 or on --

Q. I'm on 154, in the second sentence.

A. Just one second.