IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

NETQUOTE, INC., a Colorado corporation,

Plaintiff, CIVIL ACTION FILE

vs. NO. 07-CV-00630-DME-MEH

BRANDON BYRD, an internet user making use of the IP Addresses 64.136.27.226 and 64.136.26.227, and MOSTCHOICE.COM, INC., a Georgia corporation,

Defendants.

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VIDEOTAPED DEPOSITION OF

MARK LAWRENCE ZYLA, CPA/ABV

February 13, 2008
9:02 a.m.

600 Peachtree Street, NE, Suite 5300
Atlanta, Georgia

Deborah P. Longoria, CCR B-1557, RPR

APPEARANCES OF COUNSEL

On behalf of the Plaintiff:
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Also Present:
Patrick Gilmore, Videographer

Videotaped Deposition of Mark Lawrence Zyla
February 12, 2008

MR. WILLIAMS:
MS. PERKINS:
MR. ISENBERG:
VIDEOGRAPHER: This is Tape No. 1 to the videotaped deposition of Mark Zyla in the matter of NetQuote, a Colorado corporation versus Brandon Byrd and MostChoice.com, Inc., a Georgia corporation, being heard before you district outer did district of Colorado. Civil action number 0 citizen -- CV -- 00630-dash D ME dash ME H this deposition is being held at Troutman Sanders 600 Peachtree Street, Atlanta, Georgia, 30308 and on February 13th, 2008, at 9:04 a.m.
My name is Patrick Gilmore. Debbie Longoria is the court reporter.
Counsel, will you please introduce yourselves. And then the witness will be sworn.
MS. PERKINS: Good morning. Heather Perkins, Faegre & Benson on behalf of NetQuote, Inc.
MR. WILLIAMS: Dan Williams, Faegre & Benson, on behalf of the plaintiff, NetQuote.

MR. ISENBERG: Ryan Isenberg On behalf of defendants.
MARK LAWRENCE ZYLA, having been first duly sworn, was examined and testified as follows:
EXAMINATION
BY-MS.PERKINS:
Q. Good morning, Mr. Zyla.
A. Good morning.
Q. Could you please state and spell your name for the record.
A. Sure. It's Mark Lawrence Zyla. And my last name is spelled Z-y-l-a.
Q. And I take it you have been deposed before?
A. I have yes.
Q. All right. Then you get the abridged version of the rules for the deposition. As you know, we have a court reporter here and so it's important that I don't talk over you and you don't talk over me. Do you understand that rule?
A. I do.
Q. And because wave court reporter here and huh and huh-uh don't translate well in this written transcript. If you could answer yes or no questions yes or no please.

EXHIBIT
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tabbies
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A. I would assume that yes.
Q. Is there any industry guidance or literature that would in fact require a firm preparing a valuation for purposes of incorporating it into financial statements that would require that valuation firm to perform that testing?
A. Are you asking from valuation perspective or.
A. Have evaluation perspective check this area with audio) there is valuation texts that may discuss that but I don't know of any particular standard that says you have to do that.
Q. And then what about in this audit context?
A. Under SAS 101 I believe it's incumbent upon the auditors when auditing fair value measurements to test management's assumptions.
Q. Would you expect a valuation firm that is doing a valuation for use in connection with financial statements that will be audited to test management's assertions?
A. I would think that that would be a part of their practice, yes.
Q. So you would company those relatively standard practice in the valuation industry?
A. I would think so, yes.

MS. PERKINS: Okay. This is actually a good moment for a break because I'm about to switch subject areas to if you guys wanted the take a few?
VIDEOGRAPHER: Ten tape 21059 off the record.
(Discussion off the record.)
(Recess from TIME ^ a.m. ^ p.m. to TIME ^ a.m. ^ p.m.).
VIDEOGRAPHER: Start tape No. 3 it's 1110:00 a.m. back on the record.
Q. (By Ms. Perkins) Agreement now right before we took the break we were stalk can about testing of management connections in in connection with a projection in incomes a business valuation?
A. Yes.
Q. And correct me if I'm wrong but I believe you testified that if you were performing a valuation and you knew that valuation was going to be incorporated into financial statements that were going to be audited that you would conduct some testing of those projections?
A.
Q. Correct?
A. That he can yes.

Q. Why was that?
A. Because the auditors are required under SAS 101 to test management's projections so in -- I know that that may be a request this they're auditing our work product to I would to be able to answer that and explain there's how we did it.
Q. Would you typically keep working papers to be testing of management projections?
A. Typically what we would do is look at historical trends and then look at the projections and make sure that they're align there's is nothing unusual. And we'll include that that's actually part of your work papers and we'll also sometimes look at the value drivers an projections in terms of either a margin or discount rate and we'll run some a table that says okay if you changed these value drivers by a certain amount here is the impact is.
Q. Would you also look at industry and testing the reasonableness of the projections?
A. We could yes.
Q. Would it just depends on a particular case had you would or would not do that?
A. That's correct yes.
Q. By the way when I said SAS 101 is that statement on auditing standards 101?

A. That's correct yes.
Q. Let's go to your report which is in front of you still. And I'd like I to list the opinions that you have in this case.
A. You want me just describe each of my opinions?
Q. Yes. Just give me a list of your what opinions are.
A. Well, they're listed in if summary under Roman tool of my of my report I say that there's there's I believe that there's three that Mr. Duree's damage calculations for lost customer relationship is incorrect for three primary reasons.
The first is because he relied on primarily on a findings of fair value based on an analysis and other valuation firm did in relation to a purchase price allocation in my first opinion and I list three reasons why I believe that that's incorrect.
Q. Are those three reasons that you list opinions of themselves or are those why you think that's incorrect?
A. They support my general opinion I just stated.
Q. Okay.

A. The Faye if a FASB describes it a market participant it's the value not to that specific owner of the asset nextly. It's the value -- assumption that would be used in estimating fair value would be utilized by a concept market market participants which means other market that potential acquires for that particular asset.
Q. So it's what somebody who is actually participating in the market nor an asset would pay for acquire that asset?
A. That's correct yes.
Q. Saturday market participant always going to be willing to pay more for a given asset?
A. Not necessarily.
Q. Why are are not?
A. It would depend on the assumptions that are utilized I mean when a common market participant might -- how they would utilize that particular asset, with that common body of participants, how they would use that asset. So it's not to a specific user.
Q. Does the market participant assume that -- or does the concept of market participant assume that the market participant has more information than an fair value market buyer?

A. They're totally different concepts.
Q. Okay. How so?
A. Well, fair market value again is the standard for tax purposes tithes hypothetical value, willing buyer, willing seller, would be willing to pay for a particular asset. Market participants is an exit value so it's not necessarily what would be inquired at it's what it would be told so the in market place, first thing.
The second thing is that market participants -- the fair market value may possibly include synergies under circumstances. Fair value, unlikely, unless it's a market participant synergy might not include gin geez in terms of the valuation so there are some differences possibly.
Q. So would you consider most MostChoice to be a market participant in the online lead generation industry?
A. Yes. Likely to be market participant for a specific asset.
Q. Okay.
A. Yes.
Q. All right. And so would using market participant assumption is the value for a customer relationship something that MostChoice would be willing to pay as a market participant to acquire that relationship?
A. Well, it's assumptions in using and estimating fair value would be assumptions that a market participants one of which MostChoice may be, would utilize in estimating the value of that asset.
Q. How did the do the concept of fair value relate to how NetQuote would have out utilized the asset ^ ck?
A. Well, again there may be synergies that NetQuote obtained in using the asset. And how they utilize has they add has they bring to a table that of that other market participants may or may not utilize that same particular asset. So market participants may use a different set of assumptions.
Q. Why is fair value inappropriate for calculating damages in your view?
A. Well, in my view that calculating damages should be to the specific damage so the value to the entity that's actually being damaged my comment is utilizing information based on fair value is based on concepts of marketplace participants to I may or may not be specific to the entity being damaged.
Q. If it is specific to the entity being damaged, is a fair value analysis appropriate?

A. It could be. My criticism is though is it doesn't appear that degree degree didn't actual consider that at all.
Q. But is it fair to say that if it were actually specific to NetQuote that that objection would be overcome?
A. That is something that a damage expert should consider yes.
Q. Okay. Now, have you ever encountered a client that placed a different value on an asset than that that was reported on that are financial statements?
A. I'm not sure I understand that question.
Q. Say you have a trademark and the customer thinks it's worth $10 million but it's carried on their financial statements at $1 million.
A. Sure, that could happen all the time.
Q. And had a climate's value is higher than the financial statement value, does the client get to record that difference?
A. Depending on the purposes of the valuation.
Q. If it's not in connection with the sale, can a client just add the $9 million to their financial statements because they think the tray mark

Q. So is 207 line number for example in the case of an am tiesable intangible asset would remain the same on the balance sheet and then they would rise charge or amortization?
A. That's one way to show it yes.
Q. Okay. Unless there is impairment recognized?
A. I believe that's the case, yes. Or there's a subsequent acquisition or a change in reporting, it could probably happen. But what you describe is typical.
Q. Now, let's go back to your first opinion and we were on subpart one. What facts, exhibits did you base that conclusion on?
A. I looked at the Quist valuation and I looked at Mr. Duree's analysis.
Q. Okay. Anything else?
A. Just the general documents we described if terms of background information about how that standard is applied.
Q. Anything else?
A. Not that irrelevant.
Q. Okay. Now, let's talk about the second subpart of first opinion that you articulated. What is your second reason under the first opinion?

A. My second reason is that the date of damage at least according to the third amend amend complaint began on October 9th, 2006, Mr. Degree utilizes data from the purchase price allocation that began on August 16th, 2005. So by utilizing that data he doesn't adjust to for if a fact if an its more has been a year later so he consequently by not making that adjustment overstates his conclusion.
Q. Does that conclusion assume this the value of the customer relationships has decreased?
A.
Q. In that period between August 2, 0005 and October 2006?
A. D D.
A. Well, has that conclusion assumes is that even if one were to assume is that seven-year life arbitration year later those clients typically wouldn't have a seven-year life on the settles. And that directly relates to a value.
Q. Could you explain that?
A. Sure. The Quist analysis utilizes an they estimate or assume a seven-year life of the customers that were existing as of the date of ago incision for their analysis and purchase price allocation. Mr. Degree uses revenues from that same analysis to

estimate his multiples starting point for his multiple for the damage analysis. My point is that the date of the purchase price allocation was August 16th, 2005. That is assumed a seven-year life. If one were to move that forward, those customers wouldn't still have a seven-year life under the Quist analysis.
Q. A customer that assisted as of August 5, 2006 would not have a seven-year life?
A. That's correct.
Q. So if a customer joined the company, started working with NetQuote after that date, would that time period have started to run as to that customer?
A. Rights it could be. But again by my comment is Mr. Duree didn't seem so take that into consideration.
Q. Has impact would it had if he had taken that into account?
A. Well if the life is shorter just mathematically the value would be much less. Or would be less.
Q. Did you quantify what the difference would be and the damages result based upon that life issue?
A. I did not, no.

Q. And what facts or evidence did you rely upon in reaching that conclusion?
A. The conclusion listed in B?
Q. Yeah in B.
A. I looked he Quist valuation report and their assumptions and their valuation I also looked at Mr. Duree's report.
Q. Anything else else?
A. Again the general documents that we discussed.
Q. Okay.
A. And by general documents, you mean the other documents that are listed in the index to the notebook that you produced.
A. Yes.
Q. Okay. Now, let's look at the third opinion or third subpart to opinion one.
And what's your opinion there?
A. My opinion is that the Quist analysis uses an assumed seven-year life for a customer relationship as of the date of acquisition. And that may be an approach for financial reporting purposes. My comment is that it may not be appropriate for a damage calculation because one would have to consider the turnover actual expected turnover of those

customers not an assumed life for financial purposes.
Q. Now, as part of doing allege valuation under 141, have you ever attempted to determine an expected life for a customer?
A. I have, yes.
Q. And how many occasions have you done that?
A. Multiple occasions. I don't know offhand.
Q. What kind of data did you ask for there your client to perform that analysis, typically you look at a for a period of time the customers that existed that started as of a certain date, customers that have left during a time period and you just trace that over periods of time?
Q. And did you consider actual attrition data in arriving at that life?
A. For reporting purposes or?
Q. Yes.
A. It's something that one would consider. I may not actually been a remaining useful life for financial reporting purposes.
Q. Okay. Do you consider industry retention rates for customers in doing that sort of an analysis?
A. You do because that goes the a market participant assumption.

Q. Would you expect a repetitive valuation firm to consider that information?
A. I would think that they would consider that as part of your analysis yes.
Q. Do you consider developments in technology as impacts as has an impact on customer relationships in doing that analysis?
A. How do you happen in.
Q. Do you consider whether or not technology is permitting the company to hold onto a customer longer as part of that analysis?
A. That may be manager that one could would consider in estimating remaining life.
Q. Would you consider the companies's empty as relates to retention of customers?
A. You could but again, the concept is market participant, not specific to an individual entity so electronics they have market participant would realize the same remaining useful life, then I think it would be appropriate, something one would consider.
Q. But you would consider something other than straight attrition data in looking at 141 valuation of customers that is correct?
A. Is that correct attrition date is just one

of the things that one would look at at. It would have to be under a market participant assumption for remaining useful life.
Q. How would you ultimately make determination of a life for a given customer?
A. We don't. Etc. up to management.
Q. Okay. Is there any guidance in literature for estimating customer lives?
A. Yeah. In FAS 142 there's some discussion on how one would discriminate remaining useful life. There is also in evaluating text there's some remain useful life.
Q. Do you have any idea has the actually life is for NetQuote's customers?
A. I saw some data that management had internally indicated that the remaining life for a national accounts was about three years or eye and a half years in that local accounts was less.
Q. And what data was that?
A. It was in the document I think related to a June know apps.
Q. If the life of the customer relationships is greater than seven years, would that increase the damages?
A. It would have to depend on the

contributory charges and the revenue and the resulting cash flow from that customer. So to determine whether or not that would bin increase the damages so there's other things.
Q. Holding all other things constant.
A. Typically the longer the life is. If there was positive cash throw just mathematically that would increase the number.
Q. Have you ever conducted an audit of financial statements into which a results of a 141 valuation were incorporated?
A. I have not done any audit work.
Q. Okay. Do you have any understanding of has sort of activities what sort of tests an auditor would do to test assumptions about the customer's life?
A. Yes, I have some idea of that.
Q. And what would those be?
A. Well, in general, auditors look at, consider the market participant assumption. So they look at what other primary indication they hook at what other similar companies with some more tiesing those same customers at that's one consideration.
Q. Would you expect PricewaterhouseCoopers to have done so in connection with their financial

statements?
A. I would think so yes.
Q. Neck they can.
Q. Is there anything else you would have expected PwC to do in connection with its evaluation with Quist business valuation report?
A. Oh, there's a lot of things they would have done.
Q. Provide some examples, please.
A. Sure. Typically they bring in a valuation specialist themselves as part of the audit team to review the outside experts report.
Q. So it would be your expectation that PwC would actually have an expert review that specific report?
A. That's common yes.
Q. All right. What other things would you expect?
A. You're it's very general. You mean in terms of how?
Q. With respect to to customer relationships, what sort of audit procedures would you expect the auditors to do in validating the conclusions with respect to to a value of customer relationships?
A. I've never audited customer relationships

I can tell from you a valuation standpoint you think some questions that we were typically were asked.
Q. What kind of questions do you get from if auditor?
A. Typically we we're asked an if projections whether we tested them, they asked about the contributory charges to make sure we accurately consider contributory charges. We asked typically about how we determine the length of our analysis in the projection period, our discount rate is usually they typically ask antibiotic that. How we determine that and how that rate compares to other rates of return.
Q. Is it fair to say that you wouldn't accept expect an auditor just to accept a valuation performed under FAS 141 without question?
A. My understanding is of SAS 101 they would have to test that.
Q. Okay. Now, you don't express in your report a conclusion about what an appropriate useful life for a customer relationships is do you?
A. No, I do not.
Q. And did you have an opinion on that?
A. No I don't have an opinion of the life.
Q. From the standpoint of professional

standards as an auditor is is is permitted to also conduct a FAS 141 valuation far company?
A.
Q. For a the same company?
A. Are you let me see if I understand your question. Are you asking if a company auditor that is auditing their client if they're allowed to do the valuation? Analyze?
Q. Correct.
A. No they're not.
Q. Why is is that?
A. There's an independence issue.
Q. What did you mean by that?
A. Meaning that they would would be auditing their own words. They're not allowed to that.
Q. Is there a different standard of independence for attestation work compared to valuation work?
A. I'm not sure I follow that question.
Q. That wasn't a very good question.
Attestation attestation?
Q. Do you have any opinion on the reasonable?
A. Of the projections that were used in Quist as valuation of NetQuote's's relationships.
A. Only in this con ten that for fair value

reporting that under FAS 141 they have to be based on a market participant assumption.
Q. And what is that opinion?
A. The opinion is that that Mr. Duree should have considered that in his damage calculation.
Q. So record the clear should have considered has exactly?
A. Sorry. In my review of Mr. Duree's damage analyze it doesn't appear that he considered management projection under 141 have to be prepared under a market participant assumption. And therefore, it may be incorrect in a damage calculation.
Q. Now, in that third subpart to your first opinion, what are the facts, exhibits, documents that you relied upon in arriving at that conclusion?
A. Are you referring to C?
Q. Yes.
A. I looked at Mr. Duree' analysis I looked at the Quist valuation and then again the general documents that we've been referring to.
Q.
A. And also I looked at the Juno app memo that had particular significance.
Q.

A. And also while I'm thinking about it, Mr. Duree's deposition I want to include that's as something I consider considered in all of these opinions.
Q. Anything else?
A. Not offhand, no.
Q. Do you agree that SAS 73 permits an auditor to rely upon the work of an expert under certain circumstances?
A. My understanding of SAS 73 is that an outside expert's work product can be relied on as audit evidence in estimating -- or in preparing financial statements.
Q. In order to rely upon Quist valuation as audit evidence, do you have an understanding of what PwC was required to do from a procedure standpoint?
A. Not -- not having audited -- been an auditor, I don't know the exact procedures. I do know from a valuation specialist what typically happens.
Q. Okay. And what from your perspective is in valuation typically happens?
A. Well, what typically happens in these engagements, again they typically bring in a valuation expert as parts of the audit team who

reviews the work product of the management's outside expert.
Q. Does the auditor typically gain an understanding of the valuation specialist's competence?
A. Yes that's part of it.
Q. What about experience?
A. Yes that's part of it as well.
Q. Does the does the accounting firms's expert doctor methods and a-assumption that were applied?
A. Yes they do.
Q. And whether those methods and assumption were reliable?
A. Yes.
Q. So would you agree that auditing standards would have required PricewaterhouseCoopers to obtain an understanding of Quist's methods and assumption to be able to issue an clean opinion?
A. From my valuation perspective? That's seems to be typically the methodology.
Q. Okay. And from your perspective as a doing business valuation, would you agree that Price Waterhouse Coopers was required to test the data that Quist used?

A. My understanding of SAS 101, that they would have to test management's data.
Q. And from your perspective in valuation, would you expect or would you believe that PwC would be required to independently evaluate the conclusions that Quist reached in its valuation to determine their reasonableness?
A. What do you mean by that? I'm not following you.
Q. Would you agree that PwC could not rely for the Quist report as audit evidence for the value of the assets unless it determined that Quist had reached a reasonable valuation for those intangible assets?
A. As part of the process that we just we've been discussing, yes I would agree with that statement.
Q. Okay. Have you ever used to results of a valuation of 141 valuation in your work as an expert witness?
A. I don't think so.
Q. Let's take a look at?
(Exhibit-279 was marked for identification.)
Q. (By Ms. Perkins) I'm handing you what's

been marked as Exhibit 279.
And I'll represent that that is excerpts from the treatise valuation for financial reporting.
And did you coauthor this text?
A. I did, yes.
Q. Now, taking a look if you would, there are page numbers in the upper corners?
A. Uh-huh.
Q. On Page 154?
A. Uh-huh.
Q. You see part G where it says customer relationships?
A. Yes.
Q. And what are these steps basically that are listed there?
A. Has this appears to be is a checklist of just general information data quest.
Q. And is this the type of data that you would expect someone performing a 141 valuation to collect as part of that process?
A. In general yes.
Q. And this is actually suggested prom program for gathering that information?
A. That's correct yes.
Q. Though this is like a practitioner's aide

to arrest property tax first tear no the use in gather data to perform the valuation?
A. Yeah it's a sample information request.
Q. If a firm performing the type of valuation followed these procedures and gathered this information, would you consider the valuation the customer relationships of to be reliable for financial statement purposes?
A. This these this is just a checklist of just general information so it doesn't have anything to do with methodologies or assumptions, things like that, so it I don't have enough information to answer that question.
Q. Okay. Taking, flipping forward a couple of pages, or further on to Page 156, what is contained on pages 156 through 159?
A. That's a model audit program from the AICPA's IPR ^ practice aide.
Q. So this is a program for auditing firm like PwC to use as a practitioner's aid in coming up with its audit of evaluation or 141?
A. The AICPA issued a practice aid related specifically to valuation of in-process research and development. As part of that practice, they list a program to help monitors with one would need to look

at what kind of procedures that they would go through and its reprinted in this - -the text.
Q. If an auditor followed a model audit program such as this, would that be from your perspective in valuation an adequate audit as to a given 141 valuation?
A. I'm an valuation specialist, so I don't know. I have no idea.
Q. Since we've been talking about the actual quit report why don't we taking a look at it. I'm handing you will has been previously marked as Exhibit 2 '01.

A. I have it.
Q. And this the report that you were refer referring to as the allocation of the purchase price resort?
A. Yes appears to be.
Q. Okay. And Mr. Duree reviewed this as apart of his work in the case?
A. Yes he appeared to rely heavily on the report.
Q. And you would agree that this report wasn't prepared in connection with the litigation?
A. I agree.

Q. Would you agree that this report was prepared as NetQuote ordinary operations in financial reporting obligations?
A. I'm not sure has that means.
Q. Did NetQuote have to prepare this report or did NetQuote have 0 retain one so someone to prep in valuation?
A. No. They could have done it internally.
Q. Oh, I see. So was the analysis contained in this report something that NetQuote had to do as part of its ordinary accounting function?
A. As part of the acquisition, they would have to, under FAS 141, list the fair value of the acquired assets on the balance sheet.
Q. So they had to an analysis to be able to do that?
A. I would think so, yes.
Q. Okay. Now, you understand that the values in this report for the intangible assets have been incorporated by NetQuote into its financial statements as of the date of this report?
A. I believe that's case, yes.
Q. Okay. Did you talk with anyone a Quist to determine what procedures they followed in preparing this report?

A. Did I not.
Q. Do you have any experience with Quist?
A. I'm familiar with their name but not a lot of direct experience, no.
Q. Not a lot direct experience. Do you have any?
A. Other than that I know name I'm just familiar from various industry organizations things like that.
Q. Do you consider Quist to be a reputable valuation firm?
A. Yes, I do.
Q. Do you consider PwC to be a reputable accounting firm?
A. I do.
Q. And in Europe experience, does PwC adhere to an appropriate professional standards in conducting auditses?
A. In my experience yes audits fix fix.
Q. If an auditor performed the kinds of inquiry that we've been talking about of a FAS 141 analysis, would you consider that to be reliable audit evidence of a the value of though intangible assets?
A. I'm not sure I follow that question.

customers actually received more than one false application from Byrd?
A. Oh, I don't know. I assume -- I believe that some of the of them did actually in review some of the documents.
Q. And does this mean that a company could never recover nor type of conduct if the customer losses were within its normal attrition rate?
MR. ISENBERG: Object to the form.
THE WITNESS: No, no. The point of my opinion is that within the attrition rate that's already considered in his analysis, that 159 could possibly be in that normal attrition.
Q. (By Ms. Perkins) So you're not saying that these 159 didn't actually receiving applications from Byrd?
A. No. I'm saying that I don't think that Mr. Duree actually in my review of his deposition his report actually demonstrated causation of those specific accounts.
Q. And do you have an opinion as to causation on those specific accounts?
A. I do not, no.
Q. Now, going back to that opinion No. 2 as I guess I've come to call it, on has facts and evidence

did you rely to reach that conclusion?
A. I looked at Mr. Duree's report I looked at highway deposition and I went through his analysis to estimate which accounts may have been impacted from Mr. Byrd. I did not find where Mr. Duree specific specifically said that these accounts were impacted. He did a visual analysis and some purported statistical analysis, but he didn't actually point and said this account left because of this alleged action.
Q. And you don't have an opinion on whether or not a given account left because of the action?
A. No. My opinion is Mr. Duree should have sheen causation.
Q. Okay. Anything else else that you relied upon in arriving at your conclusion?
A. May have been some of the supporting documents that I looked through.
Q. Do you recall specifically which supporting documents those would have been?
A. I don't, not at this point.
Q. Anything else?
A. Nothing that comes to mind.
Q. Is there anything else that you could look at to refresh your recollection on that?

A. Other than just thumbing through some of the documents to see if it strikes me but no.
Q. I may have you do that during a break but okay let's turn to your third opinion what is your third opinion?
A. My third opinion is that I don't agree with the Mr. Mr. Duree ace methodology in calculating his damage estimate.
Q. All right. What specifically don't you agree with?
A. Well there's a number of things. One, Mr. Duree calculates a multiple of what he pure sorts to be a value of the customer relationships by discounting revenue at 25 percent. I don't agree with the discounting of revenue. I don't agree with a 25 percent discount rate. I don't agree with the application of the multiple to start with.
Q. So you don't disagree -- you disagree with discounting revenue?
A. Yes.
Q. You disagree with the 25 percent discount rate?
A. Yes.
Q. And what was the third thing?
A. The third thing is the application, how he

applies a multiple to come up with a conclusion of value of customer relationships.
Q. Okay. With respect to discounting revenue, what do you mean? What do you mean that he did that you objected to?
A. He calculates value of customer of the entire customer relationship by discounting revenue. He doesn't takes into consideration expenses, contributory charges, or the actual cash flow that those customers generate.
Q. Does Mr. Duree actually state in his report that the entire value -- entire value of the relationship the discount revenue flow?
A. Actually he doesn't. He skips over that. But if you follow his logic, that's what he's implying, that's the value of the entire customer relationships.
Q. Well, didn't Duree actually state in his report that the discounted revenue stream associated with the customers total the $123 million?
A. Yeah. He calls it a calculation, I believe.
Q. Okay. And is that the same discounted revenue stream the same thing as the value of a relationship?

A. Yes. Inherently he's calculating the value of the entire customer relationships through how he use that's calculation.
Q. Why is that?
A. Well what he does is he discounts the total revenue attributed to a customer relationships from the Quist valuing, discounts it at 25 percent, comes up with a number. He applies that number in and compares it to revenue as of the date of the Quist valuation and comes up with a multiple of 3.2. He then applies the multiple of 3.2 to his calculation of the 159 lost customers to estimate what the value of the loss of those customers are, his conclusion of value.
Q. Okay. But is that the same as concluding that the total of the entire value of the customer relationship is the $123 million or is that the value of the revenue stream?
A. Well if you follow logic and if he conclusion value of loss of customer by fly that pulling that multiple how he calculates that multiple of has to be a valuation of the entire customer list. It's logic.
Q. Now, a little further on in your report on page 13 it appears that you take issue with Mr. Duree

not including what you call contributory charges; is that correct?
A. That's correct yes.
Q. Assuming that a 159 customers were actually loss as a result of Byrd's malicious applications what cost savings is NetQuote realize as a result of losing these customers?
A. I don't know if they realized any cost savings. My opinion is that in if one were to discount revenues, there are costs associated additional costs with achieving those revenues.
Q. And a 159 customers is less than one percent of NetQuote's customer base, correct?
A. I believe that to be the case, yes.
Q. Okay. And so can you identify specific costs that NetQuote would have saved by losing those customers?
A. Again I'm not quantifying cost savings. What my opinion is that you can't making an assumption that we're going to get checks revenue from customers without also appropriately including expenses associated with generating those revenues. Also with other assets that assist in generating those revenues.
Q. Well so let me ask the question little bit

different I if we're looking at NetQuote's's actual experience and how it was damaged, can you identify any employee salaries that are saved as a result of the loss of these customers?
MR. ISENBERG: Object to the form.
THE WITNESS: No. I I didn't that's not my opinion.
Q. (By [1]Ms. Perkins) Okay and can you identify any operating expenses that it saved as a result of losing these 159 customers?
A. No. Again, that's not my opinion.
Q. Okay. Now, hypothetically, let's say that NetQuote were to be awarded the amount that is set forth in Duree's report for customer relationship losses. Would that recovery be taxable as income?
A. I don't know specifically.
Q. Okay. Are customers always -- is the addition of a customer always going to increase the company's incremental costs?
A. That's a hypothetical question. I depends to understand facts and circumstances.
Q. So there a situation in which a company could add a customer without adding inchemical costs hypothetically?
A. Again I can't recall of any specific but

again that's not my opinion.
Q. Is it ever acceptable in your opinion not to deduct contributory charges had you're doing an analysis such as the one Andrew performed here?
A. There may be certain circumstances but I don't think of any as I sit here today.
Q. Turning to the discount rate that you identified, the 25 percent, what relationship or what is a discount rate reflect in the aunts of the value of a customer's relationship?
A. The discount rate would reflect the risk of actually achieving cash flows generated by those particular customers.
Q. So in laymen's term would a discount rate be sort of handle capping the revenue stream?
A. I wouldn't term it as handicapping. What it does is it quantifies risk of actually achieving projected cash flows.
Q. So is it in simplistic terms a fair relationship to say the higher the discount rate the lower the probability of achieving whatever the projected revenue is?
A. The greater the risk, the lower the value.
Q. Okay. Have you ever previously selected a discount rate in your work in valuation for customer

relationships?
A. Have I -- I'm sorry can you rephrase that?
Q. Sure have you in performing busy valuation selected a discount rate to allay in customer relationships?
A. Yes, I have.
Q. And has have you considered in doing that?
A. Considered the weighted average cost of capital of the entire company. I considered what other assets were contributing to a generate radiation of those particular cash flows an I considered rates relative rates of return on those other assets.
Q. Anything else?
A. Well, there's market based data that all enters into that.
Q. Such as what?
A. Well in calculating the weighted average cost of capital it's typically for from market derived data.
Q. Do you consider the life hood of the customer remaining with the company in the discount rate?
A. That's part of the risk of actually achieving those cash flows, so yes.

Q. In a 25 percent rate reflective of a greater discount than just a cost of money for year?
A. I'm not sure what that means.
Q. Well, is there just -- backup.
What is the weighted average cost of capital?
A. Weighted average cost of capital is a weight of of total sources of capital on an after tax basis that the capital that contributes to a company required rate of return on capital. Usually it's made up of after tax cost of department and return on equity weight of the relative weightings.
Q. Do you know what NetQuote's average cost of weight was in this time frame?
A. Quist calculated it at 25 percent I believe.
Q. Now, you're assuming correct that a 25 percent discount rate is not sufficiently high; is that correct?
A. No. What my opinion is is that given Quist's calculation of a weighted average cost of capital, is based on after tax cash flows that it would be inappropriate to apply it to a revenue stream that is pretax without inclusion of any expenses in contributory charges.

Q. Do you have any opinion as to has an appropriate discount rate would be here?
A. Not specifically New York City.
Q. Okay. And if hypothetically you were to do an analyze and determine that a 15 percent discount rate were more appropriate, all other factors staying equal that would that result in higher amount of damages?
A. Hypothetically 15? Well given the relative first of all given the relative nature weighted average cost of tax and after tax cash flows an we're talking about pretax revenue it wouldn't be lower the discount rate would not be lower. But if you gnatally if it were lower it would result in higher value.
Q. Okay. Have you ever done a damages analysis on behalf of a plaintiff in your work as an expert? I mean not as a party. On behalf of the side who is trying collect the damages as opposed to a rebuttal?
A. Yeah Atomic Fusion I believe. D D the Department of Transportation.
Q. Did you have a methodology that you applied in the aye to come I am I'm sorry are you finished?

A. I am yes.
Q. I'm sorry. Did you have a methodology that you applied in the Atomic Fusion case to come up with a damages calculation?
A. We -- yes, we did.
Q. And what was that?
A. Well, if that particular case the company eventually went public. So we traced the amount of shares that Atomic Fusion should have received and we just traced it as the company was bought and became a public company.
Q. Okay. What about in the Department of Transportation matter?
A. In that particular matter, it involved a sports complex. We looked at the valuation work done by another expert and we commented on rates return that were utilized in that particular matter.
Q. If NetQuote had retained you to do an analysis of its damages here what methodology would you you have applied?
A. D D.
A. What I would have considered is first an unfortunately I would have look at the individual customers to see if I could establish some sort or caution to be customers first of all.

Q. What would you have looked at there?
A. Likely have seen if management had any additional data of why he left the firm and no longer became customers.
Q. So is this in regard to what Mr. Mr. Duree considered?
A. I believe that would be a case, yes.
Q. I see. Would you have considered the account data that the Mr. Duree considered as well?
A. I would have likely approached it differently than Mr. Duree.
Q. How would you you have approached it?
A. Well, his report and his deposition looks like he just did a visual inspection an just made his open judgment of why which accounts were affected. I would have actually taken it a step further to milk sure is that they were actually affected.
Q. How old you have done that?
A. Talked to management, see in what internal management have management talk the a customers possibly.
Q. Anything else?
A. In terms of establishing causation?
Q. Yes.
A. Just explored with management, you know,

the reasons for leaving.
Q. Why a given customer might have left?
A. That's correct. Yeah looked at historical reasons possibly that customer have left, things like that.
Q. And assuming that did you that and reached some conclusions as to causation based on your analysis what would you have done to quantify?
A. I would have had it working with management tried to estimate the cash flow that result that would have resulted from those customers but for the alleged action of the in the damage claim.
Q. And how would you have done that?
A. Similar methodology that the Quist used in their allocation of purchase price.
Q. Meaning you would have gotten projections from management on what sort or expected sales and attrition for those customers?
A. Yes, for the customers that I could determine there was some causation, yes.
Q. Okay. How will ultimately would you have determined if a customer if there was causation how old you have made that determination?
A. If there were some evidence that said yeah

I left because of this action.
Q. So if a customer didn't say hey yeah I left because of this action then you would consider that customer not to be included within the possible damages group?
A. Well it's one thing I would are considered. There may have been other things to consider. But in establishing causation I would look at some direct relationship from the alleged action.
Q.
A. To why a customer left.
Q. Would you have considered the number of applications that a customer got, number arrest malicious applications that a customer received?
A. I certainly would have probably considered that, yes.
Q. Okay. And would you have considered the timing of the customer terminating its relationship relative to receiving those applications?
A. I would. And I would have tried to confirm that even though it looked like that that may have been a result of the action, maybe confirmed that.
Q. And confirmation would be through discussions with management?

A. Well, management if they had any additional information they had feed book from the customers. If there was some abnormal nationality possibly interview the customers themselves.
Q. Now, going back to the themselves putting a number on a piece of it, so I think you said that you would estimate is cash flow that would have resulted from that customer using methodology similar to that applied by Quist in its report?
A. I would have considered that, yes. The value of the loss lost customers in the cash flow that they would have generated but for an action and the methodology a common methodologies is similar to what Quist used in their estimate of the value of the customer relationships and the purchase price allocation.
Q. In what other steps would you have taken?
A. And and and.
A. Well I would have established a discount rate that is commensurate with a risk of those customers.
Q. Okay. How old you have gone about doing that?
A. I would have looked at the weighted average cost of capital. I would have possibly

looked at what other assets or I would definitely look add has other assets contribute though that and looked at required rates of return on those other assets and made sure that it all fit within the weighted average cost of capital.
Q. How old you will determined fit fit within tuberculosis weight?
A. Well, if you think about in terms of balance sheet on the right hand side of the balance sheet the required return on the a modified balance sheet would be the weighted average of cost because you have debt and equity. Algebraically since the balance sheet balances, the weighted average return on assets would have to equal or approximate the weighted averaged cost of capital. That's one way valuation analysts look to see if the required rates of return on intangible assets makes sense.
Q. Anything else?
A. No.
Q. And can you think of any other steps that you would have a taken to conduct such a damages amortized had you been returned by Netquote?
A. Well in general in refining what Mr. Duree did, that's the approach I would have likely taken.
Q. Okay. But?

A. But there may be others; I don't know.
Q. I'm going to hand you what's has been previously marked as Exhibit 202. Do you recognize that document?
A. I do, yes.
Q. Was what is this document?
A. This is a valuation another valuation prepared by Quist valuation on the common stock of NetQuote holdings as of February 20th antibiotic action 2007.
Q. Did you rely on this report in forming your opinions?
A. I looked through the report but I did not use as a direct relationship.
Q. Why not?
A. Because it didn't have information that I needed to form my opinion.
Q. Okay. What is the purpose or what do you understand to be purpose of this report?
A. I believe it's for tax reporting purposes under Section 409 A.
Q. And would that be for reporting of employee compensation?
A. Yes. It would.
Q. Okay. So there we talked about earlier

about valuing stock options in order to report compensation to employees. Is this a report that would be prepared as parts of that obligation?
A. Yeah. Typical 409 A valuation is estimating fair market value of equity on a per ^ pers year basis for granting options.
Q. Okay. And then you use that to determine your stock option compensation expense; is that correct?
A. For tax reporting purposes.
Q. For tax reporting.
A. Yes.
Q. Getting back to financial statements generally, has are financial statements used for?
A. Well, a variety of things. Primarily financial statements are used by management to gauge the financial condition an operating performance of a company. It's also utilized by investors and lenders in that particular company as well.
Q. So in a case of a public company, would members of the public be relying upon financial statements potentially in making investment decisions?
A. Potentially, yes.
Q. And in a context of a private company

would a private company use its financial statements for for example to go the a bank to get a loan?
A. That could be one reasonable, yes.
Q. Okay. So it's fair to say that third parties outside of a company in addition to management might rely for those financial statements?
A. Yes they do.
Q. And is it fair to say that part of the reasonable for auditing financial statements is to determine that they fairly state the operating results of a company?
A. According to general little accepted accounting principles yes.
Q. I can't recite the standard.
And generally speaking though do you think that members of you know say lending community are going to be they're entitle to rely opinion financial statements?
A. I believe generally that's the case, yes. Particularly those that are audited, when you add that.
Q. And certainly something audited by big four accounting firm?
A. Yes that's correct.
Q. Are you aware that Mr. Byrd submitted

it's often used as a basis for an amortization of that particular asset.
Q. You were asked a serious of hypothetical questions about what you would have done if you were retained by NetQuote in this matter. Would you have used the remaining useful life from if Quist report as the basis for calculating customer relationship values?
A. Probably not. I probably -- I would have looked at the actual experience of the company.
Q. Is management experience relevant to a validity of management's projections as it relates to the use by the valuation company?
A. Management's experience in the industry an also preparing projections would be something that one would consider in testing the projections.
Q. The alternative damage calculation was just discussed a minute ago, does that take into account charges or costs of generating revenue?
A. It does. It takes into into account expenses because it's based on has Quist actually did.
Q. Do you have any criticism of the Quist allocation of purchase price report?
A. No, I do not.

Q. So what is the relevance of that report as it relates to your opinion about Mr. Duree's opinion?
A. I'm not search about that question.
Q. Okay. Concern certain certain certain certain certain certain certain certain?
Q. I'm not certain fix fix)?
Q. Is the your opinion that Mr. Duree inappropriately used the allocation of purchase price report?
A. Yes it's my opinion has he made -- he utilized it in an incorrect manner.
Q.
MR. ISENBERG: I don't have any more questions.
MR. WILLIAMS: I don't have any questions.
MS. PERKINS: I don't have anything further.
VIDEOGRAPHER: This concludes the deposition. It's 2:16 p.m. and tape No. 4.
(The reading and signing of the deposition by the witness was reserved.)