

Daily Journal

COVER STORY

JANUARY 19, 2011

TOP VERDICTS OF 2010

Top Plaintiffs' Verdicts | by Dollar



Oracle USA Inc. v. SAP AG / \$1.3 billion

On Nov. 23, two days before Thanksgiving, a federal jury in Oakland gave Oracle Corp. and its team of attorneys something to be thankful for: a \$1.3 billion verdict against rival software company SAP AG in a widely-watched copyright infringement trial.

But the truth is, Redwood City-based Oracle had much to be thankful for even before the verdict. In the months leading up to the trial's Nov. 1 start, Germany-based SAP began admitting liability in the case, first on behalf of its subsidiary, TomorrowNow, which made illegal downloads of Oracle's software to lure away Oracle customers. The most generous gift of all came just four days before jury selection when SAP admitted to contributory liability, conceding it either knew or should have known about TomorrowNow's conduct. SAP purchased TomorrowNow in 2005 shortly after Oracle paid \$11 billion to acquire PeopleSoft Inc.

With the contributory admission, the trial was reduced to a single issue: how much SAP should pay in damages.

Despite the best efforts of Jones Day partner Robert A. Mittelstaedt, who tried to limit SAP's damages to between \$28 million and \$40 million, jurors sided with Oracle, coming in just shy of the company's requested \$1.7 billion. The \$1.3 billion verdict was the largest verdict in California in 2010 and it is also believe to be the highest

ever for a copyright infringement trial.

"It was a nice way to get into the Thanksgiving holiday," said Geoffrey M. Howard, one of Oracle's lead attorneys and a partner at Bingham McCutchen in San Francisco.

On top of the verdict, U.S. District Judge Phyllis J. Hamilton has ruled SAP must pay Oracle pre-judgment interest, which Howard said would be approximately \$16 million.

Howard said the admission of contributory liability was "a big deal," but, in light of the evidence, not too surprising.

"The evidence was just so overwhelming and so vast that I think they felt like they had no choice but to ultimately admit to the liability in an effort to keep the damages number down," he said.

Jim Dever, head of SAP's media relations, declined to comment on the company's strategy.

"As we've said, we will consider all available options, including post-trial motions to Judge Hamilton and appeal if necessary," he said.

Whatever SAP chooses to do in the aftermath of the verdict, Mittelstaedt will have help. In December, attorneys from Durie Tangri, including Mark A. Lemley, the director of Stanford University's Program in Law, Science and Technology, joined the team.

For Oracle, Howard said, the case was "never about money" although he acknowledged

Copyright Infringement

U.S. District Court for the Northern District
Oakland
Judge Phyllis J. Hamilton

Plaintiffs' attorneys: Bingham McCutchen, Geoffrey M. Howard in San Francisco, Donn P. Pickett in San Francisco and East Palo Alto, Holly A. House, Bree Hann and Zachary J. Alinder in San Francisco; Boies, Schiller & Flexner, David Boies in New York, Steven C. Holtzman and Fred Norton in Oakland

Defendants' attorneys: Jones Day, Robert A. Mittelstaedt in San Francisco; Greg Lanier in Palo Alto, Scott W. Cowan in Houston, Jason McDonell and Elaine Wallace in San Francisco

his team, which was co-led by David Boies of Boies, Schiller & Flexner in New York, was "thrilled" by the verdict.

"The importance of that number is that it reflects the value of Oracle's intellectual property and the amount of it that was taken here," Howard said.

Oracle maintained throughout trial that the case was important for the entire software industry, and its general counsel, Dorian Daley, reiterated that in a statement recently.

"The verdict reflected the truth: that SAP itself knowingly engaged in a massive theft of our valuable intellectual property," Daley said. "The verdict, while a tremendous victory for Oracle, is also a victory for every other company that seeks to protect its intellectual property."

At trial, Mittelstaedt tried to portray SAP as repentant and reasonable, saying in his opening statement and closing argument that Oracle was seeking "a windfall" and "a bonanza."

Howard said his team's strategy was to rely on the facts.

"Had they only taken a little bit, or had they taken something that wasn't that important or had they not timed it to try to completely undermine or undo an \$11 billion acquisition, the claim would have been different," he said. "But the facts were what the facts were."

— Rebecca Beyer