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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

_____)	
NOVELL, INC.,)	
)	
)	
Plaintiff,)	
)	
vs.)	Case 2:04-CV-1045 JFM
)	
MICROSOFT CORPORATION,)	
)	
Defendant.)	
_____)	

BEFORE THE HONORABLE J. FREDERICK MOTZ

DATE: NOVEMBER 17, 2011

REPORTER'S TRANSCRIPT OF PROCEEDINGS

JURY TRIAL
VOLUME XVI

Reported by: KELLY BROWN HICKEN, CSR, RPR, RMR
EDWARD YOUNG, CSR, RPR
PATTI WALKER, CSR, RPR

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A P P E A R A N C E S

FOR THE PLAINTIFFS:

DICKSTEIN SHAPIRO
BY: PAUL R. TASKIER, ESQ
JEFFREY M. JOHNSON, ESQ
MIRIAM R. VISHIO, ESQ
1825 EYE STREET N.W.
WASHINGTON, D.C. 20006

WILLIAMS & CONNOLLY
BY: JOHN E. SCHMIDTLEIN, ESQ
725 TWELFTH STREET N.W.
WASHINGTON, D.C. 20005

SNOW, CHRISTENSEN & MARTINEAU
BY: MAX D. WHEELER, ESQ
10 EXCHANGE PLACE, 11TH FLOOR
SALT LAKE CITY, UTAH 84145

NOVELL
BY: JIM LUNDBERG, ESQ

FOR THE DEFENDANT:

SULLIVAN & CROMWELL
BY: DAVID B. TULCHIN, ESQ
STEVEN L. HOLLEY, ESQ
SHARON L. NELLES, ESQ
125 BROAD STREET
NEW YORK, NEW YORK 10004

MICROSOFT CORPORATION
BY: STEVE AESCHBACKER, ESQ
ONE MICROSOFT WAY
REDMOND, WASHINGTON 98052

RAY, QUINNEY & NEBEKER
BY: JAMES S. JARDINE, ESQ.
36 SOUTH STATE STREET, SUITE 140
SALT LAKE CITY, UTAH 84145

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I N D E X

WITNESS	EXAMINATION BY	PAGE
FREDERICK WARREN-BOULTON	CROSS BY JARDINE (cont'd)	2296
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EXHIBITS RECEIVED INTO EVIDENCE

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1 SALT LAKE CITY, UTAH, THURSDAY, NOVEMBER 17, 2011

2 * * * * *

3 THE COURT: Good morning, everybody. Before the
4 jury comes let me just ask a question. I think I know the
5 answer, but the damages you're requesting are approximately
6 \$1 billion. It's not a \$1 billion, and you're not expecting
7 me to bring it to present value.

8 MR. TASKIER: No.

9 THE COURT: Thank you.

10 (Whereupon, the jury returned to the court
11 proceedings.)

12 THE COURT: Good morning. Doctor, please resume
13 the stand, and we'll hear from the attorney and you.

14 FREDERICK WARREN-BOULTON,
15 called as a witness at the request of Plaintiff,
16 having been previously duly sworn, was examined
17 and testified further as follows:

18 CROSS-EXAMINATION (Continued)

19 BY MR. JARDINE:

20 Q. Good morning, Dr. Warren-Boutlon.

21 A. Good morning, sir.

22 Q. I just have a few items to follow up from yesterday
23 on. When I finished my examination someone said to me, you
24 talked a lot about Professor Hubbard, but never didn't really
25 identify who he is. Do you know Professor Hubbard?

1 A. Not personally, no.

2 Q. You are aware that he is the Dean of Columbia
3 Graduate School of Business?

4 A. Yes. I read that in his report, yes.

5 Q. And he is the former chairman of the council --
6 President's Council of Economic Advisors under President Bush?

7 A. That's correct.

8 Q. All right. I would like to go back to one of the
9 things you and I talked about and there was some question. Do
10 you remember we looked at the chart of the WordPerfect
11 earnings over a number of years?

12 A. Yes.

13 Q. Can we have, Roger, slide 10A.

14 And you raised the question about whether we had
15 included in those numbers because we had operating income
16 extraordinary losses in several years?

17 A. Yes. That was my question. Yes.

18 Q. And I sent to your counsel yesterday the underlying
19 S4 documents from which this data was obtained. Were you able
20 to look at that?

21 A. Yes.

22 Q. All right. I will represent to you that last night
23 we adjusted this slide to include the items that we understood
24 you were concerned about, looking at the S4, the information
25 we sent you. And I can tell you we increased the operating

1 income in fiscal years 1992 and 1993 to reflect your concerns.

2 Does that chart appear now to reflect the operating
3 income from the perspective you were concerned about
4 yesterday?

5 A. The one I'm looking at now?

6 Q. Yes.

7 A. I can't tell. I mean, all I can tell you is that
8 there was, I believe, \$51 million in nonrecurring expenditures
9 on your previous chart. And if you've added that back in
10 again, then you've added that back in again.

11 Q. I will represent to you that I've been told by some
12 really good young economists that they did it. I can't tell
13 you that I did it myself.

14 A. Then fine. That's an improvement.

15 THE COURT: Were they economists or lawyers?

16 MR. JARDINE: No. They were economists. I
17 wouldn't trust a lawyer.

18 THE COURT: Good.

19 Q. BY MR. JARDINE: With those adjustments, isn't the
20 trendline beginning in 1991 for the operating income of
21 WordPerfect still roughly the same? It shows a very
22 significant and serious decline over those four years.

23 A. Well, I think two points. It's still a decline. I
24 would agree with you. It's less of a decline than it was
25 yesterday. So things have improved.

1 Q. Yes.

2 A. The other two points, of course, still stand, which
3 is that much or all of this decline is the increase in the
4 costs of sales force, which is what the purpose of the merger
5 was to reverse. And then, of course, the second point which
6 is that all of this would have been known at the time of the
7 purchase and would have been reflected in the purchase price
8 of Novell. So regardless as to whether it's going up or down,
9 it's very hard to see how it relates to damage calculations.

10 Q. Well, let me just pick up on two points you made.
11 You said it was known to Novell. But presumably it was
12 understood by the market, and so isn't it at least, it's
13 plausible that the market's reaction, the \$1.8 billion
14 decrease in the market capitalization was due to the market's
15 estimations that Novell was making a bad bet?

16 A. I think the issue is if it's known to a buyer who's
17 buying, it's known to Lotus. If it's known to Novell, this is
18 common information. There is no reason why it would be known
19 to the market without known to Novell. This is by now
20 everybody knows.

21 Q. So the market's view of this information presumably
22 was different than Novell's?

23 A. No. I'm saying despite this, the market and Novell
24 would both value Novell highly. The fact that this is
25 declining during this time period doesn't mean that

1 WordPerfect is a sinking ship that is valueless. You have --
2 you would have a stream of earnings. You have prospects of
3 the future, you know, and you have a good reason for a merger.
4 So it seems perfectly reasonable that the market would value
5 Novell -- I'm sorry -- value WordPerfect at close to what
6 Novell is valuing WordPerfect.

7 Q. And we may just agree to disagree on this. But I'm
8 trying -- I used this chart as a way to explain at least the
9 competing theory of Professor Hubbard, and that is, that when
10 the market had its very negative reaction of \$1.8 billion to
11 this announced merger in March of 1994, isn't it possible that
12 one of the reasons for this negative reaction was the market
13 saw this downward trend in operating income at WordPerfect as
14 a reason to believe that Novell had overpaid?

15 A. Well, the problem with that argument is, let's
16 suppose that the market and Novell both -- suppose there
17 hadn't been this decrease, okay, then presumably both the
18 market and Novell would have valued it more highly. So let's
19 suppose that people really thought that this decrease was --
20 let's suppose in some sort of but-for world this decrease
21 hadn't happened, that there had been steadily increasing
22 income, then the market and Novell would have valued it even
23 higher. Perhaps they would have valued it at 3 billion, and
24 Novell would have bought it for 3 billion. But if you have
25 common information that's available to Novell, to the market

1 and to Lotus, I see no reason why having the same information
2 available to all these parties would leave one party to vastly
3 differentially react to that information. I mean, I can't --
4 I don't know of any reason why Novell would somehow sort of
5 ignore this, but the market would not.

6 Q. Well, I'm trying to deal with the real world. And
7 what we know is that on March 21st, Novell announced this
8 acquisition for \$1.55 billion, and over the next two days, the
9 market fell by over 1.8 billion. And my only question to you
10 is, do you think in your view is it possible that the market's
11 apparent disagreement with Novell, was the market looking at
12 this trend at WordPerfect and concluding that Novell made a
13 bad bet? Is that possible in your view?

14 A. No. I think it's possible that the market looking
15 at the trend and Novell looking at the trend might have each
16 changed their valuations. But if the trend had been different
17 and people believed that the trend was different, then the
18 valuation would be different from both of them. But my point
19 is this doesn't let you say anything about the idea of an
20 overpayment.

21 Q. Let me move on because I don't -- I think we've got
22 our views clear.

23 Yesterday we talked about the fact that the bottom
24 line of your chart should be around \$440 million, and you
25 weren't sure of that number. And we went back and looked, and

1 we think it is 440 million. Do you agree with me?

2 A. Well, the problem perhaps, you know, perhaps we
3 should go into this more. The difficulty that we're running
4 into here is that the number that is up there using the
5 forecast methodology is the standard way that the economists
6 use forecasts to estimate damages. It's done differently from
7 the others. It's done differently from the others because
8 there's a time dimension that's involved here.

9 For the other three, we can simply look around the
10 time of 1996. And right in around that time we've got
11 purchase sale, we've got a harm and we've got an effect. And
12 so we can actually look and sort of say if we were back in
13 1996 what we would be talking about. The purchase -- the
14 forecast methodology is a way that economists standardly do
15 damages. And because it's a forecast what we have is we have
16 a stream of lost profits that extend over a long time period.
17 That's what we're looking at. We're not looking at the
18 immediate effects. We're looking at the long-term forecasts
19 that go way out, principally it goes out forever.

20 So when we're calculating damages, when we look at
21 forecast to affirm where we are saying in a but-for world
22 there would be lost profits forever, you wind up with the
23 infinite damages. And, you know, that's neither a practical
24 solution, nor is it a economic solution.

25 So economists do, when they use forecast models to

1 estimate damages, they do it in kind of two steps. They
2 calculate that stream of profits that's going off in the
3 future, and then they say, I've got to bring that to some time
4 period. I can't just record a damage expert that's so much
5 per month, per month, per month going out in the future. I
6 have to bring that to a moment. And the standard process by
7 which we do that -- there are different ways of doing it. You
8 can just bring it all to today, but a very conservative way to
9 do it is to discount all that stream of profits back to some
10 early point at the cost of capital, which is a high interest
11 rate, and then bring it back to the present using a much lower
12 interest rate. And that's the calculation we arrive at at
13 1119.

14 So 1119 is an economist's estimate of what the
15 damages are in this case using the forecast methodology. If
16 you're not going to simply add up all of those losses and use
17 the raw data, then you have to do some kind of discounting.
18 And you can't really just discount one direction and not in
19 the other. And I know that's incomprehensible, but that's how
20 you wind up with the 1119. And if you only discounted one
21 direction back to 1996, which is the first step of that, you
22 wind up with something like 496. So 496 is the first step in
23 this calculation.

24 Q. Let me just, so we're clear, just to remember, my
25 understanding is that the first three lines are numbers as of

1 1996.

2 A. That's correct.

3 Q. And I'll just read to you from your report, Page 3,
4 and I can give you a copy.

5 A. Yes.

6 Q. Would you like --

7 A. No. No. I trust your reading. Lawyers, lawyers
8 can --

9 Q. The third methodology which is this:

10 Using the average experience of those
11 comparables to predict the but-for world market
12 share supports a damage estimate of at least
13 \$440 million as of March 1st 1996.

14 A. Yes.

15 Q. And is that true?

16 A. That's if you -- if you discounted all of the flow
17 of income back to 1996 at about 15 or 16 percent, you will get
18 that low number. But if you're going to discount it back to
19 an economist, you can't just do it in one direction. It
20 doesn't make sense. I mean, you can be asked the question on
21 the first three methodologies, you know, what is the harm in
22 1996? Okay. And I think, you know, this is the prejudgment
23 interest issue. And what is the harm without any prejudgment
24 interest? And that's what I've calculated here.

25 But when you're doing a forecast methodology and

1 you're going to -- you're going to already discount that all
2 the way back to 1996, what we really are talking about is the
3 present value, you know, today.

4 Q. I understand that that's a 2011 number, the other
5 1996. If -- I don't know whether you intended this chart to
6 be apples to apples or apples to oranges. If I had prepared,
7 maybe I'd prepare the 440 to make it be apples to apples. But
8 if I hear you, you don't think it would be appropriate for me
9 to make the change?

10 A. I don't think it's appropriate for you to put a
11 440 on there. I think it's important for everybody to
12 recognize that the first three methodologies are kind of a
13 constrained what happened in 1996 methodology. And the last
14 methodology is the methodology if you said, let's put an
15 economist up here and ask, what's the estimate of damages
16 using the forecast methodology? That's the number we would
17 come up with using -- using the methodology that I've used in
18 every damage case that I've been part of.

19 Q. All right. Let's move to another topic.

20 A. Okay.

21 Q. Let's go back to method one. And I'm going to ask
22 Mr. Goldberg to put back up the Novell stock chart, which we
23 were talking about yesterday.

24 A. Okay.

25 Q. And if I understand your method one, what I

1 understand is that you, to begin with -- let's not look at
2 that. Let me just make sure. Your method one takes the
3 purchase price that Novell announced for the WordPerfect
4 Borland assets of 1.55 billion, and after some adjustments
5 subtract out the sales price that it sold those assets minus
6 GroupWise to Corel in 1996 and treats the difference after
7 adjustments as damages completely attributable to Microsoft.

8 A. Yes.

9 Q. All right. And as I understand the big difference
10 between you and Professor Hubbard is how much you adjust the
11 starting point, that 1994 \$1.5 billion, of overpaid. And he
12 regards the majority of that as overpayment, and you would
13 regard the majority of that as loss of focus.

14 A. Or some other explanation, yes.

15 Q. All right.

16 A. It's reversible.

17 Q. And my understanding is, if I understood your
18 testimony, that you reach or deduce or calculate your -- the
19 loss of focus number you apply to that \$1.55 billion, which I
20 think as we calculate it, you think \$1.4 billion of the
21 1.8 market decline is attributable to loss of focus.

22 A. That's what we looked at yesterday, right.

23 Q. Why don't we put up graphic 12 that we looked at
24 yesterday just to double check.

25 A. I think I looked at it as if I looked at the share

1 of the purchase price how much was loss of focus. If you want
2 to put up my graph, I can --

3 Q. Let me just say, my understanding of what you told
4 us yesterday was that the majority of that \$1.8 billion you
5 thought was loss of focus.

6 A. That's correct.

7 Q. And my understanding is that -- let's go back to
8 the stock chart. We're going back and forth. We have dueling
9 graphics here.

10 My understanding is the way you calculate that is
11 to go to the October 30th stock price drop, which is the red,
12 it's not -- this says it's October 6th. That's pointing to
13 the green, but to the red stock increase that happened on
14 October 30th when Novell announced it was going to get out of
15 the WordPerfect business, and the stock increase over the
16 period you use over \$1 billion. And you look at that and say,
17 most of that is regaining focus. I think you talked about it
18 reversing --

19 A. Yes, I did.

20 Q. -- the loss of focus in March, 15, 16 months
21 earlier.

22 A. If I could get a copy of my slides, it would make
23 it easier and see where we're going and speed things up a
24 little bit.

25 Q. Sure. I'd be glad to have you have them.

1 THE COURT: Here.

2 MR. JOHNSON: Thank you, Judge.

3 THE WITNESS: Thank you very much.

4 Q. BY MR. JARDINE: Would you like me to repeat my
5 question?

6 A. Yes.

7 Q. Great. What I'm trying to understand, and I think
8 that I understood your testimony to be in this case -- let's
9 see if this is -- it's not working. I'm going to walk over
10 and talk loud, if that's okay and point. My understanding,
11 Dr. Warren-Boulton, is that you look at this red increase,
12 stock increase on October 30th when Novell announced it was
13 going to sell off, exit the WordPerfect business, and that you
14 calculate most of that to be regaining focus. That means that
15 Novell was now going to be able to concentrate on NetWare
16 better. And that that's how you then -- you take that, and
17 that's how you get to your loss of focus here. You say this
18 reversed what was loss of focus here. Is that generally
19 correct?

20 A. Yes, that's correct.

21 Q. All right. Doesn't your theory as we consider the
22 theories then depend on the idea that the \$1.4 billion,
23 whatever loss of focus number you attribute in March of 1994,
24 stayed, baked in, in your phrase, in the Novell stock price
25 until it got reversed in October of 1995? It has to stay in

1 there for it to be reversed, doesn't it?

2 A. Umm, yes; in the sense that they're both referring
3 to the same thing. But these stock prices can move up or
4 down, in-between.

5 Q. It obviously does go up and down, in-between.

6 A. Right.

7 Q. But for it to be, in your words, reversed, I think
8 that's what you told us yesterday, reversed on October 30th,
9 going up, didn't it have to -- it had to stay in the stock
10 price, that cloud, that weight, the \$1.4 billion loss of focus
11 had to stay in from March of '94 to October of '95?

12 A. Sure. But that doesn't mean that the price of a
13 stock remains the same. Other things could happen.

14 Q. Sure. Lots of other things happened.

15 A. Okay.

16 Q. So my question to you is, doesn't your theory, just
17 to be clear, your -- the difference between you and
18 Professor Hubbard is he thinks it's overpayment in March of
19 '94, and you think it's loss of focus. For your theory to be
20 correct, that loss of focus number, the market believes that
21 Novell was going to neglect NetWare, stays in the stock and
22 the stock moves up and down for other reasons that whole 17-,
23 18-month period?

24 A. I think I'm following you. I think the answer is
25 yes. Let me just go with the flow here.

1 Q. Okay. You can back out of yes, but I think the
2 answer is yes.

3 A. No. No. That's fine. That's fine.

4 Q. All right.

5 A. I'm saying it's partially, you know, restored, yes.

6 Q. All right. Then my question is this. We have
7 evidence that NetWare did reasonably well over this period. I
8 think we looked at the graph yesterday.

9 Can we call up 22DF.

10 This is NetWare revenues, and you can begin, if you
11 look at 1994 Q1, that's when it's announced, at the end of
12 Q1 --

13 A. Sure.

14 Q. -- they seem to be doing pretty well; correct?

15 A. That's fine. Yeah.

16 Q. And we'll read some press releases later that show
17 that NetWare is doing well.

18 A. Okay.

19 Q. So isn't it possible that if the market watched
20 Novell management beginning in March of 1994, it could see
21 that it wasn't -- it didn't lose focus on NetWare, NetWare was
22 doing pretty well?

23 A. Well, anything is possible. But the issue is I
24 have no way of knowing whether this looks better or worse than
25 the market was expecting. We're talking about relating real

1 things to stock market evaluations.

2 Q. Right.

3 A. Stock market movement depends on what happens
4 relative to what they thought was going to happen. So if the
5 market looked at this and thought, oops, there's a loss of
6 focus, let's put it this way, thought they should have done
7 better than this, then the market price will fall. If the
8 market thought it was doing less, it would go up. It's very
9 hard to go from inferring anything like this into what the
10 market is doing, because you have to know both what happened
11 and what the market expected to happen.

12 Q. I agree with that. But you made a judgment in
13 constructing your method one that on October 30th when the
14 stock went up because of the announcement that Novell was
15 going to get out of this business --

16 A. Uh-huh (affirmative).

17 Q. -- you made the judgment that most of that was
18 attributable to the Novell regaining focus about NetWare. So
19 didn't you make the judgment that the market disregarded this
20 or thought this was less than its expectation in order to
21 support your theory?

22 A. No. I'm just saying that there's a fairly short
23 time period here. The market expects there to be problems
24 with NetWare. Those problems don't necessarily occur
25 immediately. The market discounts indefinitely into the

1 future. So if the market when the announcement was made was
2 concerned that the lack of focus was going to result in a
3 worse network product in a year or two years, you would get a
4 fall in the value of the stock. You would never actually see
5 that because they backed out of it in time.

6 So, you know, if I had a company like Novell and
7 somebody said, management is making a long-run decision here
8 to remove its focus from its core network business and this is
9 likely to have real problems in the future, that future might
10 be six months later, it might have to do with the next
11 generation, am I going to invest enough to produce the next
12 good generation of NetWare, which is really the crucial
13 decision, or am I going to invest a lot of other money in this
14 other funny application business?

15 So the market says, I look at this and I think this
16 signals to me that they're going to take all that cash, and
17 instead of investing it in NetWare, they're going to invest it
18 in something else, okay. Then what I say is I was counting on
19 the next generation, two generations of NetWare as being a
20 great product. That's not going to happen anymore, because
21 these guys have lost their way. So what I do is I say, I'm
22 going to get out of this stock. And the stock price falls.

23 Now, two years later, okay, what happens is they
24 announce that they're not going to do this. At that point, I
25 say terrific. You know, they're not going to, in fact, going

1 to, you know, go off and ruin the next generation of NetWare.
2 So, you know, I find that this is a long-term industry, and
3 the stock market looks way off into the future. So there's no
4 reason to expect that the market, it's reversible because the
5 decision is reversible. Does that make sense? I know it's --

6 Q. I won't argue sense. I think we have a
7 disagreement.

8 You don't contend that this chart of network
9 revenue shows that Novell was ruining NetWare?

10 A. No.

11 Q. Okay. Can we go back to the stock chart one more
12 time?

13 I just want to make sure the jury is clear about
14 the two competing theories, as you described it. And it's my
15 understanding that, I think we established this a few minutes
16 ago, that you determine, the way you -- the way you arrive at
17 the conclusion of what's the loss of focus here is how you
18 interpret that stock increase when Novell announces that it's
19 going to exit the WordPerfect business.

20 A. Well, the two of them together, yes.

21 Q. This one and this one?

22 A. No. The last two. That's refocus.

23 Q. I'm sorry. You take all of that together?

24 A. The two.

25 Q. The two. You take this point and this point, but

1 not this point, anyway.

2 So your view is that this, when the market goes up
3 in hearing the news, you think that's because the \$1.4 billion
4 loss of focus stayed in here all the way through even though
5 NetWare seems to be doing well, and this reverses that and
6 that you infer back loss of focus.

7 A. Sure. I can't -- you know, the stock market
8 doesn't just look immediately into the future.

9 Q. No.

10 A. I don't mean to repeat myself.

11 Q. No. I got that. And you told us yesterday you
12 like method one because you believe in the efficiency of the
13 market; correct?

14 A. Well, less than I used to.

15 Q. I think you said that yesterday.

16 A. Yes. Given a choice. Let's put it this way. If I
17 believe the market is wrong, I will go out and sell the stock
18 or buy the stock.

19 Q. I understand.

20 A. And I'd make a lot of money.

21 Q. Just so we're clear, Professor Hubbard believes
22 that most of the increase on October 30th in response to the
23 announcement that Novell was going to exit this business is
24 the market being relieved that Novell's no longer going to try
25 to keep managing a losing asset, and that's how he gets to

1 overpayment. So you have two different explanations.

2 A. That's not -- that's not my recollection.

3 Q. Well, he'll come and testify his view. But my
4 understanding of his view is that he interprets the market's
5 reaction to the announcement --

6 A. Uh-huh (affirmative).

7 Q. -- as positive?

8 A. Yes, sir.

9 Q. And that he interprets that as they were going to
10 relieve themselves of assets that were continuously
11 underperforming and dragging down earnings. And that's why he
12 was able to go back and say, most of this drop is overpayment.
13 Wouldn't that be the difference between your two views?

14 A. Well, we may have read two different reports. It's
15 my recollection, and I really don't want to speak for
16 Dr. Hubbard, you know. But it's my recollection that
17 Dr. Hubbard agrees with the general principle that if the
18 stock recovered that it would be a loss of focus. It would
19 not be -- he agreed with the general principle, which seems to
20 me indisputable, that you can't recover if it's sunk, if it's
21 gone. So, therefore, to the extent that there actually is a
22 recovery of the stock price, it can't be because -- excuse
23 me -- because of overpayment.

24 That's how I read Dr. Hubbard. As I said in the
25 beginning, I thought that was one of the points of agreement.

1 Now if he's changed his report or if he's going to testify to
2 something different than his report, I can't speak to that.
3 But based on his report, as I understand it, Dr. Hubbard
4 agrees that if, in fact, the loss here is because of
5 overpayment, it's unrecoverable, and therefore that loss
6 cannot be part of recovery. Where Dr. Hubbard and I disagree,
7 and I'm sure you're going to get to this in a minute, on the
8 October 1995 intended sale is on the size of that -- of that
9 effect that we observed in October 1995 and to the extent to
10 which it's due to an earnings announcement.

11 But it is my understanding that on the principle
12 that you just elucidated that that's at least Dr. Hubbard and
13 I strangely are in agreement as opposed to what you just put
14 before me.

15 Q. I think he'll come and explain it. Just so we're
16 clear, let's go back to graphic 12 as we leave this.
17 Graphic 12 is the difference in the way you allocate the
18 \$1.8 billion roughly drop. And you agree with me that
19 Dr. Hubbard attributes roughly \$1.3 billion to overpayment.
20 And in applying your approach, he then credits 430 million to
21 loss of focus. You're almost the exact mirror opposite. You
22 attribute 1.4 billion to the loss of focus?

23 A. I think it's clear the way I put it, which is the
24 shares of 1.555, but obviously this looks vaguely similar.

25 Q. Let's move now on now to the second point if we

1 can. Do we have the stock price?

2 We concluded the day yesterday when I asked you
3 whether you thought there was any relationship between the
4 stock price drop on October 6th of over \$1 billion and the
5 stock price increase three weeks later. It ends up if you
6 take all your events of being in excess of \$1 billion. And I
7 think your answer to me was no, you didn't think there was any
8 relationship. Is that correct?

9 A. I think what I probably said is that I think that
10 the October 6 fall was the market's recognition of the effects
11 of the delay and that the October 1995 announcement with
12 intent to sale was -- I would interpret that as a recovering
13 focus.

14 Q. Well, let's look --

15 A. I think I'm agreeing with you. I just want to make
16 it clear.

17 Q. Okay. So is that a yes?

18 A. If I've restated your statement, it's a yes.

19 Q. Okay. We'll call it an approximate yes.

20 I'd like to look at the October 6th announcement,
21 if we could, which is PX335, just so the jury understands
22 exactly what Novell announced.

23 If we look at the first paragraph, and this is --
24 its fiscal yearend is -- excuse me. Its fiscal quarter end, I
25 think its fiscal yearend is the end of October; is that

1 correct?

2 A. Yes. But the fiscal -- I'm quite sure -- Novell
3 has an odd fiscal year which ends on the 31st. It really
4 complicates everything.

5 Q. But it's roughly the end of October?

6 A. The 31st, yes.

7 Q. Okay. The first paragraph says:

8 Novell, Inc., said today that due to
9 continued weakness in the application of its
10 segment of its software business, the company
11 expects earnings in its fourth fiscal quarter
12 which ends October 28, 1995, to be below
13 financial analyst projections. Management
14 currently estimates earnings from operations for
15 the quarter to be in the range of 15 to 18 cents
16 per share.

17 Right?

18 A. Yes.

19 Q. So that's the primary news. And then it goes into
20 explanation. And they say, don't you agree with me, that the
21 announcement date, in the first paragraph, they say that it's
22 due to continued weakness in the application segment?

23 A. That's correct.

24 Q. And that would be the WordPerfect business?

25 A. Yes. Specific -- yes.

1 Q. Let's go to the second paragraph.

2 Although fourth quarter revenue from its
3 principal network software business is expected to
4 reflect good year-over-year growth, the company
5 does not expect this growth to make up completely
6 for the decline in the applications segment of its
7 business.

8 A. Uh-huh (affirmative).

9 Q. What is Novell telling us in that sentence?

10 A. What it's saying is that the reduction that we're
11 looking at, the 15 to -- the reduction in the estimate of
12 earnings per share, they're saying that that is due to lower
13 earnings in their fourth fiscal quarter. This is the one that
14 ends October 31st. In the fourth fiscal quarter, that there's
15 a -- there's going to be a reduction or they're going to
16 announce a reduction in the earnings, and that most of that
17 earning -- reduction earnings per share reflects a reduction
18 in earnings in applications. And if you take that change in
19 earnings per share and you calculate the amount, it's about
20 \$41 million.

21 Q. Well, we'll get to that in a minute.

22 A. Sure.

23 Q. Doesn't the first half of that sentence say that
24 NetWare is doing just fine?

25 A. Yes, that's what they're saying.

1 Q. All right. Let's look at the third paragraph.

2 The company said preliminary indications based
3 on the first two months of the quarter are that
4 its WordPerfect family of personal productivity
5 application products could decline more than
6 \$75 million from the \$134 million contributed by
7 applications the year before. In the fourth
8 fiscal quarter, 1994 applications accounted for
9 28 percent of Novell revenue.

10 So that tells us that the applications sales have
11 fallen off pretty significantly; correct?

12 A. That's correct. They had -- go ahead.

13 Q. The last sentence reads:

14 For the fourth quarter 1995, applications
15 could decline to below 13 percent of company
16 revenue.

17 And that sounds like it's talking about the
18 calendar quarter, doesn't it? Or maybe it's not.

19 A. I think nobody -- they keep talking about fiscal
20 quarter, so it might be. I don't know why they would suddenly
21 switch to calendar quarter. I think you probably want to
22 stick with fiscal.

23 Q. Let's read the next paragraph.

24 Novell believes that the anticipated fourth
25 quarter weakness in its application business is

1 primarily due to the continued falloff in the
2 Windows 3.1 application market following the
3 introduction of Microsoft's new Windows 95
4 operating system in August.

5 What does that sentence tell you?

6 A. Well, what happened was that Novell was selling
7 WordPerfect for Windows 3.0. As we came close into the
8 second -- I'm sorry -- the third and fourth fiscal quarter of
9 that year, what happened is it became clear that Windows 95 is
10 going to be a big hit. It was coming up, and that people were
11 holding off on buying 16-bit applications because the 32-bit
12 applications were going to become available. So as we get
13 into the third and fourth quarter of that year, what Novell
14 begins to see is that -- is that their sale of 16-bit
15 applications of PerfectOffice 3.0 is beginning to fall
16 considerably below expectations because everybody is expecting
17 much more of the Windows 95 product. So you have a product
18 for a 16-bit product, and suddenly you get into two quarters.
19 Windows 95 is going to be a big boom. And what's essentially
20 going on is that there's a reduction in the sales of the
21 16-bit application during those time periods. And that's what
22 we're seeing here.

23 Q. And do you understand that Windows 95 was backwards
24 compatible with the 16-bit products, WordPerfect 6.1 and
25 PerfectOffice 3.0?

1 A. The Windows which one?

2 Q. That is, do you understand that the
3 PerfectOffice 3.0 WordPerfect product Novell released in
4 December of '94 and the WordPerfect 6.1 product released in
5 November/December 1994 would run on Windows 95?

6 A. Well, there's running and there's running, you
7 know. This is a little bit outside of my area of expertise,
8 but it's my understanding that if you ran it -- you could run
9 it on Windows 95, but you wouldn't want to. Let's put it that
10 way.

11 Q. That's an interesting question. Because wasn't --
12 hadn't Novell placed a bet by investing resources in
13 developing those products at the end of 1994 that they'd sell
14 into '95 and '96?

15 A. Sure. And overall they did quite well. I think
16 what we're talking about is that during these last two
17 quarters, I mean, we looked at how well they did and
18 PerfectOffice did quite well. What happened during these last
19 two quarters was that Windows 95 clearly was going to do much
20 better than everybody expected. And the market's reaction to
21 this, two reactions to it, one is that on the ground what
22 people started saying is, you know, maybe I'll wait for
23 Windows 95 product. And a Novell user, my Novell, you know,
24 PerfectOffice for Windows 95 is going to come out, so I'll
25 hold off in buying a 16-bit. You know, and as a result, one

1 thing is that you get a temporary reduction.

2 But the other thing to remember, of course, is in
3 our but-for world where Novell -- in our but-for world, Novell
4 is about to come out with a really good application for
5 Windows 95. And the news that Windows 95 is going to be a
6 bigger success than expected, that may reduce your sales in a
7 but-for world of PerfectOffice for 32-bit, but what it really
8 does is it really increases your potential profit you're going
9 to make when Windows 95 comes out.

10 But in a but-for world there may be some reduction
11 in 16-bit sales, but in a but-for world where you actually
12 have this product available to you, then what you would expect
13 is you could expect it to make a lot of money if you were able
14 to release your product soon enough. It's basically shifted
15 Novell's sales in a but-for world from the 16-bit to the
16 32-bit.

17 Q. I want to talk about the real world for just a
18 minute. So if I understand what we've just heard, does it
19 appear that Novell and/or the market anticipated better sales
20 of these products, these 16-bit products, through '95 and it
21 actually happened because Windows 95 was more popular than
22 anticipated?

23 A. Exactly.

24 Q. Perfect. That's not Microsoft's fault, is it?

25 A. No. No. In fact, that's not Microsoft's fault,

1 nor anywhere have I blamed Microsoft for that. What I blamed
2 Microsoft for or at least liability people blame Microsoft for
3 is not for what happened to sales of PerfectOffice
4 necessarily, but for what happened, what didn't happen to
5 sales of Windows 95. Can I make one caveat?

6 Q. No.

7 A. No. Okay.

8 Q. Because I promised I'd finish at a certain time.

9 MR. TASKIER: I'm sorry, Your Honor, if he wants to
10 make a caveat --

11 MR. JARDINE: I'm sorry.

12 THE COURT: Make the caveat, and we won't count it
13 against your time.

14 MR. JARDINE: All right. Sorry.

15 THE WITNESS: I'm stretching my memory now. But
16 it's also my recollection that there's at least some evidence
17 that says that a delay in the release of Windows 95 also
18 affected the sales of PerfectOffice. And essentially there
19 are large enterprise customers who would normally be
20 considering -- enterprise customers take a while to -- they're
21 not the first to adopt it. They're not the guys who are lined
22 up outside the shop to get the Windows 95. So enterprise
23 customers take a while before they decide to commit to a new
24 processor -- sorry, platform.

25 So what happens is that there are enterprise

1 customers of Novell who normally would be buying, upgrading to
2 PerfectOffice to the new 16-bit, and who would be, during this
3 time period and shortly after who would be buying
4 PerfectOffice 16-bit. Those customers would have to make a
5 decision to buy 16-bit, and it would be conditional upon their
6 understanding that in the long run they were going to stay
7 with the Novell platform. It was worth it to buy the 16-bit
8 product, you know, if the 32-bit product was coming down the
9 line, okay.

10 But once it became clear that that 32-bit product
11 wasn't coming down the line soon enough, and so those
12 enterprise customers now really had to decide, am I going to
13 switch out of the Novell platform or not? At that point, it
14 becomes worth it to say, look, if I'm going to have to switch
15 out of it later, I might as well switch out of it now. And as
16 a result, there are significant sales particularly to
17 enterprise customers of 16-bit product that weren't made.

18 I just want to make it clear that I am not saying
19 that Microsoft's actions in delaying the introduction of a
20 Windows 95 product, I'm not saying that that did not affect
21 their sales of 16-bit. There is -- there is evidence on the
22 record that I've seen that there were affects, particularly on
23 enterprise sales of 16-bit sales. That's my caveat.

24 Q. BY MR. JARDINE: That raised an interesting
25 question. You're aware that Novell invested a lot of time and

1 resources in '94 in developing those 16-bit products?

2 A. Yes. And they did very well.

3 Q. Well, are you aware of what the Novell sales force
4 was saying to customers in the first and second quarter of
5 '95? Were they saying you should buy 16-bit products to run
6 on Windows 95? What exactly was their message to their
7 customers about whether to buy this product they placed such a
8 big bet on in light of the fact that Windows 95 was coming out
9 in six or eight months?

10 A. Well, I wasn't there to listen in on conversations.
11 So I really can't tell you what salesmen were selling.

12 Q. That's fine.

13 A. They were selling the 16-bit product. A lot of
14 people hadn't upgraded. A lot of people weren't planning on
15 upgrading. There was quite a market for 16-bit. In fact, if
16 you look at the sales of 16-bit product, you know, at some
17 point this becomes a memory test. But it is my recollection
18 sales of 16-bit products for word processors stayed ahead of
19 32-bit I think through '95 and '96. But I can stand
20 corrected.

21 Q. You know at least from this press release that they
22 were significantly below what they were expected; right?

23 A. That is correct. And the crucial thing is,
24 expectations, okay. They were still quite high. They
25 expected to sell approximately \$120 million worth of 16-bit

1 products in that fourth quarter. And instead they sold
2 something like I think about \$80 million.

3 Q. Right.

4 A. So it's less than expectations, but that's still --
5 I'd take it.

6 Q. Well, let's just finish this scenario. The last
7 sentence of that paragraph you talked about yesterday where it
8 says:

9 Novell applications designed specifically for
10 this new operating system, which is the 95 system,
11 are not available today but are expected to ship
12 early in 1996.

13 A. Yes.

14 Q. And as I understand, your view is that all but
15 \$41 million of the \$1.1 billion drop in response to this is
16 due to that piece of the announcement?

17 A. And the reason is because the \$41 million just
18 effects the date. The first part of this announcement
19 basically says, we have \$41 million less. You know, if
20 there's any further drop in the share price, it can't be
21 because of the 41 million. 41 million is 41 million. It
22 doesn't change. So -- excuse me.

23 So to the extent that the stock price falls by more
24 than \$41 million, it must be because the market is expecting a
25 reduction of profits in the future, not for this quarter.

1 This quarter is already baked. It's done. Okay. That's the
2 41 million. So it has to be something in the future. So the
3 thing that's in this notice about the future is that the new
4 operating system is not going to be available today. And
5 these two things go together because when Novell announces
6 that it's selling significantly less of its 16-bit
7 applications, then somebody looks at that and says, boy,
8 there's good news and bad news. The bad news is I've got
9 \$41 million less in 16-bit applications. The good news is the
10 reason for that is because people are waiting to buy Novell's
11 Windows 95 product. And so when the Windows 95 product comes
12 out, you know, then I'm going to make a lot of money.

13 So if you just announced that there was less 16-bit
14 sales, I don't think you would have seen much of any movement
15 in the market. What the market sees is a double whammy. It
16 sees, wow, there's less 16-bit. You know, that means, oh,
17 great. I'm going to expect to see all these terrific sales of
18 Windows 95 product. And then you get the rug pulled out on
19 you and the analysts say, yep, that would be great.
20 Unfortunately we won't have a product then.

21 So what you're told is you have the worst of
22 possible roles. Your 16-bit sales are falling. You lost
23 \$41 million. But that's nothing compared to you're not going
24 to be able to earn what you thought you would be able to earn
25 from Windows 95.

1 Q. So if I understood your answer, your answer is yes,
2 of the \$1.1 billion drop you allocate \$41 million of it to the
3 announced lower earnings from applications; and the remainder,
4 \$1.9 -- excuse me -- \$1.09 billion to the announcement to the
5 delay of the operating system.

6 A. That's correct.

7 Q. Fine. Do you know what as of this date the
8 market's expectation was as to when prior to this announcement
9 those operating systems would be -- the new applications for
10 the Windows 95 would be released by November?

11 A. Well, I can offer my opinion as to what it is.

12 Q. Well, I don't want -- do you factually know what
13 Novell had told the market?

14 A. Oh, yes. That's what it's based on.

15 Q. And what had Novell told the market, to your
16 knowledge?

17 A. Well, on August 23rd, I think August 23rd, the day
18 of or the day before the release of Windows 95, there was
19 another release, press release by Novell. And it looked a
20 little bit like this press release. It was a press release
21 that said, earnings in the third quarter -- that's fiscal
22 quarter. Earnings of the third quarter are going to be lower
23 than anticipated, was one; and, two, in addition to which we
24 don't expect -- we can pull it up, but my recollection is they
25 were saying we don't expect to ship our Windows 95 product

1 until November.

2 So the news, the news of the delay -- and so in my
3 terms, the news to the market of the effects of Microsoft's
4 actions really probably happened in two steps. It happened in
5 August 23rd when the first announcement was made that it looks
6 like we're not going to make our August 23rd, obviously.
7 We're announcing the day before, we're saying, we're not going
8 to have a product coming out tomorrow along with Windows 95.
9 It probably is not going to come along until November. Bad,
10 but not too bad. And then this announcement, we have a second
11 announcement, which then says, well, not only is it not going
12 to come along until November, it's not going to come along
13 until sometime in 1996.

14 So those two combined really I think are the
15 market's discovery of the effects of Microsoft's actions.

16 Q. Let me -- before we leave this, we're going to look
17 at the August '95 press release --

18 A. Sure.

19 Q. -- in just a minute. But what does the phrase --
20 how would you interpret the phrase, ship early in 1996? What
21 do you think that means? January or February?

22 A. You know, I don't know. You know, one would hope
23 that it would be in the first half of 1996. One would hope it
24 would be early. There is -- the market is sitting there and
25 looking at these press releases. They've already had one

1 press release that says it's going to be delayed until
2 November. Now we get another press release that says, now
3 it's going to be delayed until early 1996. You know, I think
4 maybe a reasonable date is to when it was delayed to. May of
5 1996.

6 Q. So are you telling the jury that you interpret the
7 phrase, early in 1996, as May?

8 A. I'm telling the jury that this is vague. I don't
9 know what early in 1996 means. I do know that it's well after
10 presumably November of 1995, and that you're now getting into
11 that critical period when, you know, you're not talking about
12 people waiting a couple months, two months. Now you're
13 talking about people waiting a significant time period.

14 In terms of what Novell meant by, ship early in
15 1996, I don't know. I'm just offering the following opinion
16 as an economist, that if I saw a company that was announcing
17 delays and this was the second time that they had announced a
18 delay, okay, I would probably, you know, just as a normal
19 investor say, gosh, early in 1996. I bet that's not January
20 the 1st of 1996. So that's one point.

21 And the second is, often one of the best ways to
22 get a feeling for what the market thought was going to happen
23 and still actually happen, and it didn't actually ship until
24 May. So if the market correctly understood by now what was
25 going on, then we're talking about May of 1996.

1 Q. Novell was a public traded company, wasn't it?

2 A. Yes.

3 Q. And this is information that's given to the market;
4 correct?

5 A. It is.

6 Q. And it's obligated to be as accurate as possible;
7 correct?

8 A. I don't think saying early in 1996 is precise.
9 It's accurate, but it's not very precise.

10 Q. Well, let me just leave this. I think we've -- the
11 point I want to make is that as between you and
12 Professor Hubbard, you attribute almost all, all but
13 \$41 million of the \$1.1 billion negative market reaction to
14 the announced delay of shipping early in 1996. And
15 Professor Hubbard attributes the majority of this to the
16 continued missing earnings and underperforming of the entire
17 WordPerfect set of assets; correct?

18 A. That's correct. And to tie in what you've just
19 been saying, one of the reasons why I believe that this --
20 oops, it's gone is not only by looking at the increase in the
21 stock value when Novell announced it was getting out, it is
22 precisely what we've been talking about, which is what we see
23 is the actual place that the market finds that reaction and
24 discovers it, and that is in the two press releases that we've
25 just been talking about. So that's where I place the market's

1 understanding of the effects of Microsoft's actions, not March
2 of 1995.

3 Q. Well, let's now --

4 A. The two work together.

5 Q. Let's now look at the August press release, and
6 that's a new exhibit. It would be PX 639, Your Honor.

7 THE COURT: All right.

8 MR. JARDINE: May I hand it to the witness?

9 THE COURT: Sure.

10 MR. JARDINE: Mr. Taskier, do you have any
11 objection of this being shown on the screen?

12 MR. TASKIER: No.

13 Q. BY MR. JARDINE: This is a press release dated
14 August 23, 1995. And if we can go up and have the top of the
15 very headline, if you go up there, Roger. That's correct. It
16 says:

17 Novell announces third quarter fiscal results,
18 1995 results; earnings grow 33 percent, revenue up
19 10 percent over fiscal '94.

20 So, in fact, this is announcing improvement, not
21 losses, but improvement, correct?

22 A. No. What it's announcing is an improvement in
23 their financial results to date, yes.

24 Q. Okay. And it talks about that in the first
25 paragraph. Let's go to the third paragraph where

1 Mr. Frankenberg describes what this success is attributable
2 to.

3 Robert J. Frankenberg, Novell chairman and
4 chief executive officer, said, NetWare 4 major
5 account wins, rapid channel demand growth and
6 response to our upgrade promotions held to a
7 29 percent year-over-year NetWare growth in the
8 third fiscal quarter. NetWare network operating
9 system revenue increased to 54 percent of total
10 company revenue with NetWare 4 accounting for
11 almost half of that amount.

12 So it sounds like that at least the NetWare part of
13 Novell's business is doing very well.

14 A. And we agree on that.

15 Q. Well, do we agree? I thought you believed that the
16 market continued to think the loss of focus is still in effect
17 to the tune of \$1.4 billion until October.

18 A. What I'm saying is the market is looking at their
19 expectations of long-run behavior. The question is, you know,
20 when you look at this, do you now -- do you still believe that
21 there's a focus concern? You know, when Mr. Frankenberg
22 announces that he's getting out of the business, what he
23 announces is, you know, we are going to return to our core --
24 we're going to return and focus on our core business, and
25 that's good news.

1 Well, if you're announcing that we're now going to
2 focus again on our core business, what Mr. Frankenberg is
3 basically saying is, you know, we think we were doing well.
4 We're going to even do better now that we're out of the
5 application business.

6 Q. That's your interpretation?

7 A. That's, that's Mr. Frankenberg's interpretation.

8 Q. Well, isn't another interpretation of the October
9 event that rather than doing better in network, you were going
10 to shed underperforming, negative growth assets in
11 WordPerfect? That's an equally possible explanation.

12 A. In October? The announcement in October is that
13 you're late with coming out with the product.

14 Q. I was talking about the October 30th announcement
15 where I thought that's what you were --

16 A. Just a minute. Where are we?

17 THE COURT: October 30.

18 Q. BY MR. JARDINE: October 30 when they announced
19 they're getting out of the business and the price goes up.

20 A. Oh, yes.

21 Q. Let's now look at the fifth paragraph. It starts,
22 although revenue grew.

23 A. Yes.

24 Q. Although -- excuse me.

25 Although revenue grew in all other major

1 categories, it declined sharply in our personal
2 productivity applications. Overall this segment
3 of our application business declined 35 percent
4 year over year dropping to 16 percent of total
5 revenue. PerfectOffice and WordPerfect are
6 Novell's lead products in this category. Clearly
7 the Windows application market slow down in
8 anticipation of Windows 95 has impacted this
9 business.

10 So he's giving the bad news about that part of the
11 business.

12 A. This is my story.

13 Q. I think it's -- you know, we have these two
14 competing theories. I think it's Professor Hubbard's story,
15 too.

16 A. That's nice that Professor Hubbard agrees with me.

17 Q. Until you reach the conclusion. But we'll put that
18 aside.

19 A. What this is saying is, and I may be repeating
20 myself and my apologies. But if we look at this press release
21 and we look at the October press release, what we see is like
22 two peas in a pod. They both say the same thing. They both
23 say, boy, our sales of 16-bit are down. And our sales of
24 16-bit are down because people are waiting for this terrific
25 Windows 95 product. And then they both do something else,

1 which is they both say, but our product is going to be
2 delayed. And both also share exactly the same characteristic
3 in terms of the market's reaction. I mean, they're
4 announcing, oh, gosh, we've got these higher network earnings.
5 We've got this all great NetWare stuff.

6 And what happens to the price of stock when this
7 announcement goes out? It falls about 10 percent. I can't
8 remember the exact number, but we're talking about something
9 like, I don't know, \$500 million. So I've got a \$500 million
10 fall in the stock price at the first of these announcements,
11 okay? And why is that? The answer is because the only
12 possible explanation is by all this good news about NetWare is
13 our Windows 95 product is being delayed.

14 So I get a \$500 million hit due to the delay, okay.
15 Again, they don't know why the delay is going on, but there is
16 a delay. October comes, and I get another 1,000. Sorry.

17 Q. Let's read the last sentence. It says:

18 Novell's standalone and suite applications run
19 on Windows 95 today.

20 That's what we said; right? The 16-bit can run on
21 Windows 95.

22 A. Yes.

23 Q. And versions of these applications that take
24 advantage of the new operating system features
25 will ship in early fiscal '96.

1 A. Correct.

2 Q. What does the phrase "ship in early fiscal '96"
3 mean to you?

4 A. November.

5 Q. Okay. That's the first month of that fiscal
6 quarter; correct?

7 A. That's right.

8 Q. So when they say in the next press release they'll
9 ship in early 1996, wouldn't the same meaning be that they
10 ship in January?

11 A. Well, it could be anywhere in there. My point is
12 that we've just gone through this, is that if you were looking
13 at the second announcement, having seen -- they just said
14 we're going to ship in early fiscal, early 1996. Let's
15 suppose the market says, okay, this must just be a temporary
16 glitch. It's November of 1996.

17 Now I get another announcement that says, oh, now
18 we're going to -- I'm sorry -- 199- -- sorry. November 1995.
19 Now I get another announcement, how much later? We're going
20 August, September, October. Two months later that says in two
21 months, now I've gone from early fiscal fourth quarter -- I'm
22 sorry -- early fourth quarter -- fourth quarter to sometime
23 early in 1996. So a month has gone by, and my shipment date
24 has now moved another four or five months.

25 I'm just saying, you know, you can do this as well

1 as I can. I don't want to get into, you're as good as I am
2 thing before. But I think -- can I say a reasonable person
3 looking at these announcements would say exactly what I've
4 described, which is I look at the first announcement. I see a
5 delay. I see that it's going to be very expensive. Despite
6 all the other good news that Novell tried to throw into the
7 press release to make this look nice, okay, what I see is
8 serious delay in a vital product. And I drop the value of my
9 stock by about 500 million.

10 A month and a half later, they say, whoops, now
11 it's going to be even much more later. By this time I don't
12 know how much confidence you would have in this, but I
13 wouldn't have a lot of confidence in this. And in reality it
14 comes out in May of 1996. So I take these two announcements,
15 and I look at the effects on the market value of the company
16 with these two announcements. And what I see on this is the
17 effects of the delay.

18 Q. Well, let me just make one clear point, and then I
19 want to come to this language. The August 23, 1995, press
20 release is nowhere taken into account in any of your
21 methodologies; correct? You use the October 6, October 30,
22 but not the August 23rd?

23 A. That's right; because I'm being very nice. But the
24 reality of it is if you want to follow this methodology and if
25 you don't like the \$1.136 for October 6 and you'd like to add

1 the August fall, as well, which to me would be perfectly
2 reasonable. I am perfectly happy to say that the market's
3 estimate of the announcement was \$1.636. And if you would
4 like me to raise the damage estimate by \$500 million, you
5 know, I'm not going to argue with you.

6 Q. Well, no. I was just asking you what you did. And
7 you didn't include it; correct?

8 A. In the first report I actually showed the effect.
9 Actually I could go back.

10 Q. Well, let me just -- let me -- is the calculations
11 from this press release in any of the calculations of those?

12 A. No. But it is in the first report. Well, I can go
13 back and go over them.

14 Q. Dr. Warren-Boulton --

15 A. Sure.

16 Q. -- if Mr. Taskier thinks that's important, then he
17 will ask you about that.

18 A. I don't think it would be a bad idea.

19 Q. I want to make a point. If you look at the
20 August 23rd announcement, it says, these applications, this is
21 what Novell is telling the market as a publicly traded
22 company, these new WordPerfect -- excuse me -- these new
23 Windows 95 product will ship in early fiscal '96.

24 What months for Novell would be early fiscal '96?

25 A. Well, fiscal '96 -- hang on just a second. Fiscal

1 '96 would be --

2 Q. Wouldn't it be November?

3 A. -- November, December -- oh, I always think of the
4 first quarter. Fiscal '96 begins on the 1st of November.

5 Q. So it would be -- early fiscal '96 would be
6 November or December?

7 A. It depends on how you interpret. I'm happy with
8 that being early. Okay.

9 Q. Okay. When they use the same word in the October
10 press release in early 1996, would you agree that would be
11 January or February?

12 THE COURT: No, he doesn't agree with that. We've
13 been through that.

14 MR. JARDINE: All right.

15 Q. BY MR. JARDINE: I just want to know if you use the
16 word "early" -- the Judge -- you used the word "early" in the
17 August press release different than you use it in the October
18 press release.

19 A. Okay. The only point I'm trying to make here is if
20 I combine the first press release and the second press
21 release, I don't have to worry about whether the first press
22 release meant November/December or if the second press release
23 meant January. If I combine that first and second press
24 release, I have two announcements, and what they take me from
25 is presumably August of 1995, when Windows is going to come

1 out, all the way close to May of 1996. And so if I combine
2 those two press releases, I really don't have to separate them
3 out, because if I combine the two, I have two falls in the
4 stock market value. I have \$500 million with the first
5 release which moved it somewhere down the line, you know. I'm
6 not good at sports analogy, but some sort of football analogy.
7 Okay. And then I've got the remaining \$1.1 billion which
8 moves it all the way down. And we can argue about where that
9 is, but all I'm really interested in is the total effect.

10 Q. Let me see if I can bring this discussion forward.
11 If you assume, and I'd like you to assume, that when Novell
12 used the word "early" in its August 23rd press release and it
13 used the word "early" in its October 6 press release, it meant
14 to use "early" in the same way. I'd like you to assume that.

15 MR. TASKIER: It's been ten minutes getting an
16 answer on same issue.

17 THE COURT: I think that would be a safe
18 assumption. I would hope they would use it. I understand
19 exactly what he is saying, but I think that's a fair
20 assumption. Go ahead.

21 MR. JARDINE: All right.

22 Q. BY MR. JARDINE: I'd like you to assume that.
23 Isn't it fair to say, then, that the October 6th press release
24 is simply announcing that the products are going to be delayed
25 by about two months, if you assume that "early" means the same

1 thing?

2 A. Hang on. The first possible interpretation of
3 early fiscal '96 is November. And all of us know that the
4 first possible interpretation of calendar 1996 would be
5 January.

6 Q. Yes.

7 A. So if you assume that what they have done is they
8 shifted from talking about a calendar year to a fiscal year
9 and you take the earliest of both, you're moving from November
10 to January.

11 Q. So two months?

12 A. That's correct.

13 Q. All right. So if you assume that "early" means the
14 same in both, aren't you telling us that the market's
15 \$1.1 billion negative reaction to the October 6th announcement
16 was in reaction to news in your view that the products were
17 going to be two months later than the market had previously
18 been told?

19 A. No. I mean, when you're asking me to assume a
20 counterfactual, okay, you're saying to me assume something
21 for which there is no evidence that the market thinks that
22 this announcement means that this product is going to appear
23 on the 1st of January. I just -- you can read this. I can
24 read this. I don't see that as remotely what this press
25 release is saying. I see it as saying early in 1996 for the

1 second time after you've already Charlie Browned the football
2 guys once, maybe you would have thought it would have come out
3 in January of 1996, but I sure wouldn't have thought it was
4 coming out in January of '96.

5 Q. I'm only asking you to assume that "early" in the
6 two announcements means the same --

7 THE COURT: Approach the bench.

8 (Whereupon, the following proceedings were held
9 at the bench:)

10 THE COURT: I think we've been through this.
11 Secondly, I'm not even supposed to ask you, but, I don't know,
12 the SEC and all, I think would be, and I understand exactly
13 what you guys are saying. I would think that if I was in the
14 SEC I wouldn't be very happy calling two different things in
15 two different press releases. I mean, that's why I think it
16 is a fair assumption. I just I have -- I understand what he's
17 saying, and what he's saying makes some sense, but --

18 MR. TASKIER: I don't think he's looking at it as
19 an SEC lawyer, he's looking at it as an economist.

20 THE COURT: But I think frankly it better mean the
21 same thing.

22 MR. JARDINE: I think it better.

23 THE COURT: But -- but -- but I think we've been
24 through this.

25 MR. JARDINE: This is my last question, and I think

1 I've laid it out.

2 (Whereupon, the following proceedings were
3 held in open court:)

4 Q. BY MR. JARDINE: I think that I've finished my
5 questions with regard to these announcements.

6 A. Good.

7 Q. I hope that's not -- that sounds like relief being
8 expressed.

9 A. No. No. No. I'm happy to say it all over again.

10 Q. No. No. I think you probably are. Let me just
11 turn --

12 A. And expand.

13 Q. Let me turn to a few other disagreements that you
14 and Professor Hubbard had over method one, the purchase of the
15 sale. You testified yesterday that you have to make sure when
16 you look at market reaction that you've adjusted out general
17 market trends.

18 A. Yes.

19 Q. In other words, you want to make sure that if
20 Novell stock fell but the market fell, you're not reading that
21 as unique to Novell.

22 A. Yes. And I've done that in the standard way that
23 I've always done in the past and virtually everybody always
24 does, I use the S&P 500.

25 Q. Well, you use a market index?

1 A. Yes. S&P 500.

2 Q. And you picked the S&P 500.

3 A. I didn't pick the S&P 500. Everybody else with
4 very few exceptions picks the S&P 500.

5 Q. No. You used the S&P 500.

6 A. I certainly did. I was trying to be traditional.
7 I don't want to do anything unusual or something that might
8 arouse your ire or anything like that. I just wanted to do
9 what's normal.

10 Q. We'll get to argue to the jury about those issues
11 later. But I just want to make sure. Professor Hubbard
12 picked the NASDAQ composite index; correct?

13 A. Well, either Professor Hubbard or his staff, yes.

14 Q. He picked it; correct?

15 A. He appears to have picked it.

16 Q. Isn't it fair to say --

17 A. The NASDAQ for --

18 (Whereupon, the realtime court reporter
19 interrupted the proceedings.)

20 Q. BY MR. JARDINE: I need to let you finish, and
21 unfortunately I didn't hear that you were still talking. So I
22 apologize.

23 MR. TASKIER: Will you talk into the microphone,
24 Dr. Warren-Burton.

25 Q. BY MR. JARDINE: It's probably my hearing, but it

1 helps.

2 A. Well, it's probably mine because I wear hearing
3 aids. But they're on.

4 Q. In selecting a market index to make sure that you
5 adjusted for market effects, you're really trying to select a
6 proxy for the market; right?

7 A. The answer is yes, but it's complicated.

8 Q. Well --

9 A. And can I just say yes and reserve the right to be
10 complicated?

11 THE COURT: Yes, you can. Yes. And life is
12 complicated.

13 THE WITNESS: This is an enormous literature in
14 economics.

15 Q. BY MR. JARDINE: Would you agree with me that the
16 NASDAQ composite index typically features more technology
17 stock than the Standard & Poors 500 index?

18 A. Of course it does.

19 Q. And Novell, in fact, was listed on the NASDAQ?

20 A. That's correct.

21 Q. And would you agree with me that Novell's stock
22 price is more highly correlated with the NASDAQ composite
23 index?

24 A. And that's quite possible, too.

25 Q. In fact --

1 A. Can I -- there's an inference floating around here.
2 Well, I'll let you go.

3 Q. Well, I'd like to just look at slide 27B, if we
4 could. This shows the Novell, Inc., stock and the S&P and the
5 NASDAQ performance over September 27th through October 17th of
6 1995 which relates to some events in this market. And the
7 Novell is the red line.

8 A. Uh-huh (affirmative).

9 Q. And the NASDAQ is the dark blue line, and the S&P
10 is the light blue line.

11 A. Yes.

12 Q. So it would -- at least for this period you could
13 say that the Novell stock price is more -- is more correlated
14 with the NASDAQ index than the S&P index?

15 A. That's always going to be true when you pick a
16 narrow index. We were using a steel company, and you plotted
17 the S&P 500, and you plotted an index of steel company stocks,
18 and then you look at steel company stock. Steel company stock
19 would look more correlated with an index of steel company
20 stocks than it would as a market as a whole. That's going to
21 be true here. It's going to be true for peanuts. It's going
22 to be true for anything.

23 Q. And you'd agree that technology stocks may behave
24 differently than other stocks in other segments?

25 A. Segments are different. Steel, peanuts.

1 Q. And so --

2 A. Technology.

3 Q. If we're trying to determine what is the Novell
4 stock price movement is unique, wouldn't using the NASDAQ as
5 the index to determine that give you a better picture?

6 A. This is where we have to get complicated.

7 THE COURT: Get complicated.

8 THE WITNESS: Okay.

9 There's two separate things that we're really
10 relating to. The first is, suppose that you were interested
11 in a question of how would a steel company stock do over some
12 time period? You would sort of say, well, the same things
13 that affect that steel company are likely to affect other
14 steel companies. So, you know, if I were to tell you that
15 steel company stocks are going to go up, you know, by
16 20 percent in the next month and the NASDAQ is going to go up
17 by 5 percent, you would go with the index of steel company
18 stocks because it's a better predictor of what would have
19 happened with your particular stock.

20 So if you're asking the question, you know, I have
21 two time periods, and I have Novell here with a product and
22 I'm asking, well, how much do I think it would have likely to
23 have been worth two years later, you'd say, well, I'd like to
24 look at an index that looks a lot like the Novell product. So
25 for that purpose, you would like as narrow an index as

1 possible. You wouldn't even pick the NASDAQ here. You
2 probably would just pick the narrowest index of things that
3 look as close as possible to the particular product. Maybe
4 you use operating systems and other applications. But you
5 would narrow it down to software. Why NASDAQ; right? Let's
6 go all the way down to software products. So that's one
7 purpose of what's going on. That's not the purpose of using
8 an index in adjusting or changes in market movements.

9 And the reason is, and there is an enormous finance
10 literature on this issue, is what the finance literature looks
11 at is it looks at the riskiness of holding a particular stock
12 as part of the portfolio. So it assumes that when people own
13 Novell or any other stock, it's part of a portfolio. And the
14 riskiness of the stock is the riskiness that it adds to the
15 portfolio. This is just going to go on and on and on.

16 So when you adjust when the -- when you adjust for
17 an announcement, when you look at what the, how you should
18 adjust for an announcement, you use -- you try to use the
19 broadest practical index that you can. And I know I'm not
20 explaining this well, okay.

21 But what you should realize is what the finance
22 market literature says is when you're adjusting a stock as
23 part of an event study, you don't go out and just find index
24 of stocks that look exactly like yours. That's pretty good
25 for predicting what is going to happen with your particular

1 stock in the future if you knew that. But in looking at the
2 stock market, an adjustment and event study, you look -- you
3 look at something called a beta. It's the relationship
4 between how this stock moves and how the rest of the market --
5 this is just going to go on and on and on. Let me just leave
6 it at this.

7 Q. BY MR. JARDINE: I'm happy, because I just want to
8 point this out.

9 A. Because this doesn't have anything to do with the
10 adjustments that you need to make in an event study, okay, to
11 adjust for the market movement. When you have an event study
12 and the market moves by 2 percent and you're going to subtract
13 that from the change in the value of your particular stock,
14 what you do is you take the percentage in a broad index like
15 the S&P 500. You don't use a specific industry index. And we
16 would be here for a week.

17 Q. Let me see if I can explain this to the jury.

18 A. Good.

19 Q. I don't know why I can't get this pointer to work.

20 A. Just don't do it to me.

21 THE COURT: Use your finger.

22 MR. JOHNSON: Let me help you. There you go.

23 THE COURT: Thank you, Mr. Johnson.

24 MR. JARDINE: Thank you.

25 Q. BY MR. JARDINE: As I understand your testimony,

1 what we're trying to measure is whether and to what extent the
2 movement in Novell stock was unique or unusual or abnormal.

3 A. Actually the term is abnormal. It's not saying
4 anything strange. It's called the abnormal return.

5 Q. All right. Thank you. And if we look at this
6 right in this period, you can see if you use the NASDAQ as
7 your index --

8 A. Yes.

9 Q. -- then that would be, that gap would be what was
10 considered unusual.

11 A. No. Not --

12 Q. If you'll look here and see where I'm pointing.

13 A. Sorry.

14 Q. In other words, if we use the NASDAQ index, then on
15 that day we would say that is how the Novell stock moved in an
16 unusual or abnormal way.

17 A. You would not use abnormal. The abnormal return is
18 a very specific term of art in finance literature. And you
19 really shouldn't do that.

20 Q. Okay. I'm trying to not be nontechnical.

21 A. I am, too.

22 Q. Okay.

23 A. We're trying to not be nontechnical.

24 Q. And if this is too, if this is over simplistic,
25 I'll give up and let Professor Hubbard explain this.

1 A. I think that's the way to go.

2 Q. But if we use this, when you use the S&P, then you
3 would deal with that differentiation, whereas if you use the
4 NASDAQ you're only dealing with that differentiation, it would
5 show that Novell is less unusual in that day relative to the
6 NASDAQ in a stock movement than it is in the S&P. Is that
7 true in a very general way?

8 A. Novell's stock is going to move more closely, like
9 any stock it's going to move more closely with a very narrow
10 index of very, very similar products. As I say, it's going to
11 be true here. It's going to be true anywhere else. If you
12 are adjusting an events study for an abnormal return, then
13 while it may not be immediately obvious, it certainly wasn't
14 when I first took my first finance course, okay, what you use
15 is you use an index like the S&P 500, and it's for a very good
16 reason. And I'm sure Dr. Hubbard will be able to explain to
17 you, as well. Or I hope he would.

18 Q. Well, let me just show the consequence of this.
19 Could we put graphic 14 back?

20 As I understand using your method one, the
21 difference between your using the S&P 500 and Dr. Hubbard's
22 using the NASDAQ results in a 14-percent difference, roughly
23 \$135 million adjustments, is that --

24 A. On --

25 Q. Just using the choice of which one to use. That's

1 a pretty good number.

2 A. This is on all three of the events studies?

3 Q. No. I think just method one.

4 A. Method one. Method one has three event studies.

5 Which event study are we talking about here? He uses them
6 all.

7 Q. He uses them all?

8 A. He uses them in all three. That would be
9 unfortunate.

10 Q. I'm just asking --

11 A. What is left -- Richard Nixon said once, you could
12 do it, but it would be wrong. I don't know what else to say
13 about it.

14 Q. All I'm saying is the difference between your
15 approach and using the NASDAQ results in a --

16 A. I can -- if you let me choose a narrower index, I
17 can make this number anything you want it to become.

18 Q. I'm just -- I would like to leave this subject.

19 A. So would I.

20 Q. I just want to say that it appears that the
21 difference in the choice, whether S&P or NASDAQ, results in
22 \$135 million difference, if you apply it across the board.

23 A. If that's your numbers, yes.

24 Q. Okay. Great.

25 A. But --

1 Q. Let me move on and just say, and I've thought about
2 this. I think this is the best way to do it. In your method
3 one, you and Professor Hubbard disagree on two or really three
4 major areas of how to calculate an event study.

5 Could we put up graphic 19?

6 And as I understand it, these are the three areas
7 of difference. You prefer to use a four-day window. He
8 recommends a two-day window. You want to include January 31,
9 1996, in the event study. And you prefer a percentage focus
10 adjustment. He preferred an absolute dollar adjustment.

11 A. Yeah. I think these are the remaining -- I mean, I
12 should in all honesty credit Dr. Hubbard that he made several
13 other suggestions and which I have adopted. So I think he had
14 eight, something like eight suggestions. I don't know,
15 criticisms. And I looked through all of them, and I think
16 I've accepted four, which is what's here, some of which I
17 think we've mentioned before, the compensation of overpayment.
18 We both have changed our number of shares. In other words,
19 these are the remaining ones.

20 Q. And you and probably even more the jury will be
21 relieved to know, I'm going to leave that for him to explain
22 and not explore it today.

23 A. Which?

24 Q. All three.

25 A. Oh, okay.

1 Q. I just want to say the differences in your two
2 approaches to that result in a very, very, very, large
3 difference; correct? On method one?

4 A. Oh, yes. And I think we've talked -- well, I think
5 we've talked earlier -- we haven't talked about the third. We
6 have talked certainly about the first one.

7 Q. I don't -- my goal is not to talk about them.

8 A. Okay.

9 Q. They're very technical.

10 A. Actually very simple.

11 Q. And we'll leave it to another day.

12 THE COURT: Let me just ask, and just like I
13 apparently missed something when Mr. Gibb testified.

14 MR. JARDINE: Yes.

15 THE COURT: We haven't heard about the January --
16 I'm not suggesting that we hear about it. We have not heard
17 about the January 31, '96, event, have we?

18 MR. JARDINE: I think actually, Your Honor, in a
19 very passing way.

20 THE COURT: Okay. Fine. Focus has been October
21 and -- I just want to make sure I wasn't asleep at the switch.

22 MR. JARDINE: If you'll recall this slide --

23 THE COURT: Which is --

24 MR. JARDINE: I'll show it to the jury. There was
25 a brief reference that last -- right side of that slide refers

1 to the January announcement because it's included in the
2 calculations but not discussed in his testimony.

3 THE COURT: Which was the January announcement?

4 MR. TASKIER: I couldn't see it.

5 MR. JARDINE: I'm sorry.

6 MR. TASKIER: I can't see around corners.

7 THE COURT: The January announcement was the sale?
8 I just don't remember.

9 MR. JARDINE: It's the sale in which they announced
10 Corel was the purchaser. They announced in October that they
11 were going to --

12 THE COURT: Sell to Corel.

13 Q. BY MR. JARDINE: In any event, Professor Hubbard
14 will be here. When he applies -- when he does those three
15 issues his way, he gets to a damages number of approximately
16 zero.

17 A. Yeah. Although I read his deposition. I'm not
18 sure he would still hold to the first one. But he may decide
19 that the first of these, the two-day event versus the four-day
20 event window, he may actually decide with me at this point.
21 But based on reading his deposition, he'll be some --

22 Q. He'll be here.

23 A. He'll be here.

24 Q. I just want the jury to know --

25 A. Just building it up too much.

1 Q. Let me turn to another subject which was that with
2 respect to your method one and maybe even more talked about
3 some other data points that you used to give yourself comfort
4 or confidence in your numbers. Do you recall that testimony?

5 A. Yes. I think -- aren't we talking about the --

6 Q. We're talking about some other things, and I'll
7 show you.

8 A. Oh.

9 Q. We had only -- and you used a different graph, and
10 I'll show you the graph. Do you remember you charted some
11 bars? And I'll show you. Do you remember these?

12 A. Oh, yes.

13 Q. Okay. Well, in your report you didn't have that
14 form. You had another one, so if you'll forgive me we'll just
15 use that because it has most if not all you showed the jury.
16 So if I could have what was Exhibit 3 of your reply brief and
17 have it as graphic 24A. And this was your old version where
18 you listed 18 or 19 or 20 different --

19 A. Let me just get myself --

20 Q. All right.

21 A. Exhibit 3? It looks familiar.

22 Q. I may actually -- it's been suggested it's better
23 to use the new version, so I will do that.

24 I'm sorry. I was reminded this is a slightly
25 revised version from Exhibit 3, I'm being told by the

1 economist through the lawyers.

2 THE COURT: Just so the professor knows --

3 MR. JARDINE: Yes. I want to be clear.

4 THE COURT: Go ahead.

5 Q. BY MR. JARDINE: We took your Exhibit 3 from your
6 reply report and adjusted the numbers to reflect what you've
7 changed; correct?

8 Can I make sure I'm representing it correctly?

9 THE COURT: Of course.

10 (Discussion held off record.)

11 Q. BY MR. JARDINE: Well, this will probably work.
12 I'm told they took your slide from yesterday while I was
13 sleeping and adjusted this to reflect your slide from
14 yesterday.

15 A. It sounds like the shoemakers, the elves. The
16 economist elves.

17 Q. Let me just ask you --

18 A. Sorry.

19 Q. -- of the events that you showed here, how many are
20 actual events that happened, that actually are completed
21 transactions?

22 A. Out of all of these?

23 Q. Yes.

24 A. Well, the first is my estimate, so that's --

25 Q. Well --

1 A. Yes.

2 Q. That's your estimate of what actually happened when
3 the --

4 A. Wait. I'm sorry. Which slide do you want the jury
5 to be watching?

6 Q. I'd like them to be watching this one here.

7 A. Okay.

8 Q. Do we have a copy? Let me give you a copy.

9 A. That's okay. I can see what you have on that
10 screen.

11 Q. This might be easier to work with.

12 A. It looks like what's on my screen.

13 Q. So which of those transactions are actually -- of
14 those bars represent actual transactions that were completed?

15 A. Peterson is an estimate. Comparable firm of sales,
16 those are existing firms, so that's real.

17 Q. Well, no. Those aren't transactions. Those are
18 your -- those are appraisals or valuations or formulas where
19 you took comparables and created an estimate; correct? That's
20 not an actual transaction.

21 A. I'm saying those are market transactions that
22 generate the value of firms. And I take a look at those
23 market transactions, whether they are stock market
24 transactions gives you the value of the firm or when someone
25 comes along and buys the whole firm, those are real market

1 transactions that generate prices and values. And that's what
2 I'm using in the comparables.

3 Q. Just let me -- so the jury is clear, that bar
4 doesn't represent a single actual transaction, it represents
5 some calculations you've made off of bases of transactions.

6 A. It represents average of a group of transactions.

7 Q. All right. We'll come back and talk about those.

8 A. Also the range. All right. So I have comparable
9 firms, which is based on, if you like, the data on the value
10 of those.

11 Q. But isn't the first of these bars, the first actual
12 transaction, the purchase price, the one, two, three, four,
13 fifth bar down, that's an actual transaction?

14 A. Well, that's an actual transaction of -- that's the
15 transaction in question.

16 Q. Yes.

17 A. Yes. That's our transaction.

18 Q. So that's an actual transaction.

19 A. That's a true transaction, yes.

20 Q. All right. The next, if you look down, as nearly
21 as I can tell, the only other actual transaction on here is
22 the Peterson stock sale in 1992; true?

23 A. I think if you're defining an only actual
24 transaction involving these companies, then there have been
25 only two. There's been Peterson's for this particular

1 company. The others were all -- the others were all
2 transactions.

3 Q. Well, we'll talk about those.

4 A. Yeah.

5 Q. So let's look, if we can --

6 A. Or they're bids on transactions, yes.

7 Q. Well, we'll talk about those.

8 A. Okay.

9 Q. So in terms of actually completed transaction, the
10 only two bars are this purchase and the Peterson, which is the
11 third from the right?

12 A. They're the only actual transactions for this
13 particular company.

14 Q. Okay. That's fair.

15 A. But all the rest are actual transactions for actual
16 companies.

17 Q. We'll go through them.

18 A. I don't want to imply that these are somehow
19 hypothetical.

20 Q. Let's just talk briefly with the Peterson
21 transaction.

22 A. Uh-huh (affirmative).

23 Q. When did that occur?

24 A. Back in 1992.

25 Q. All right. If we could put graphic 24D up.

1 So that shows the two actual transactions we're
2 talking about.

3 If we could now go to --

4 MR. TASKIER: Objection. That's a
5 mischaracterization of his testimony, Your Honor.

6 MR. JARDINE: Well, I'll let --

7 THE COURT: Explain that a little bit more.

8 Q. BY MR. JARDINE: If we look at the Peterson
9 transaction, my understanding is that he sold, this is
10 Mr. Pete Peterson, who was then a chief operating officer, his
11 title isn't exactly clear for WordPerfect.

12 A. Yes.

13 Q. Correct? And he sold his stock out as he left the
14 company.

15 A. Yes.

16 Q. And he sold -- it represented 1 percent of the
17 company.

18 A. That's correct. I think we went through this.
19 Yes.

20 Q. And so if you actually take the implied value of
21 WordPerfect just on a straight calculation, it's something
22 less than the number you show there; right? That shows
23 about --

24 A. This is --

25 Q. Remember? I think you showed Peterson --

1 A. I'm guessing it's 955 million.

2 Q. I think you have on your chart from yesterday 857.

3 A. 857 -- where are you? Mr. Peterson?

4 Q. In any event?

5 A. 857, yes.

6 Q. All right. And that reflects the actual price he
7 paid, plus an adjustment Professor Hubbard made for control
8 premium, plus the addition of the Quattro Pro assets to make
9 it equivalent, and I think Soft Solutions; right? That's how
10 you get to the 857.

11 A. I think that's correct for the Peterson, yes.

12 Q. Did you make any adjustments to this number to
13 reflect the impact of the subsequent two years between 1992
14 and 1994 when you're comparing it with the purchase price?

15 A. No. But I talked about it in my report.

16 Q. Did you adjust downward in any way this price to
17 reflect the decrease in earnings of WordPerfect from 1992 to
18 1994?

19 A. What I did is I looked at exactly what you were
20 looking at before was NASDAQ. And not to reopen old wounds,
21 but if you are going to ask the question, how would you expect
22 a company to do, a particular company in the industry to do
23 over the next two years, then you probably would want to look
24 at an index that was similarly close. So if you were going to
25 look at an index you could look at the S&P or you could look

1 at the NASDAQ.

2 And my point was that over the next two years
3 between the Peterson sale and the Novell sale, the NASDAQ went
4 up by about 20 percent. But I did not increase -- I haven't
5 increased this number by 20 percent.

6 Q. So if I understand your testimony, you actually in
7 this instance looked at the NASDAQ and saw that it went up,
8 and that caused you to not adjust for the fact that
9 WordPerfect earnings went down.

10 A. Yeah. I'm asking the question, I have this sale --
11 I'm sorry. I have this implicit number of \$857 million in
12 1992. I'm trying to ask the question, and you could never do
13 it perfectly, what might one have expected this company or a
14 typical company like this to sell in a year and a half? And a
15 reasonable way to do that is to ask what would have happened
16 to similar companies, you know, like in the NASDAQ. And it
17 would have gone up by 20 percent. But, you know, instead of
18 increasing the thing by 20 percent, I just left it at
19 857 million, assuming that you would ask me the question why
20 would I increase this thing by 20 percent.

21 Q. I probably would have.

22 A. You probably would have. I've avoided that issue.

23 Q. Now, you talked to the jury yesterday about two
24 transactions that were potential but actually never completed;
25 correct? The WordPerfect IPO and the Lotus bid?

1 A. Correct.

2 Q. Let's look at Exhibit 24E, if we can. Those are
3 those two. They're purported events that never occurred.
4 Let's just talk about the WordPerfect IPO for a minute that
5 you chose to put on your graph.

6 A. Sure.

7 Q. As I understand it, you listed it as \$1.17 billion
8 and related it to an August 1993 Morgan Stanley IPO
9 evaluation; is that correct?

10 A. That's correct.

11 Q. But the IPO never happened.

12 A. That's correct.

13 Q. And do you have -- do you know why it didn't
14 happen?

15 A. Well, you know, I talk about this in my report,
16 and, of course, Dr. Hubbard --

17 THE COURT: Ladies and gentlemen, I'm sure you
18 remember that IPO is an initial public offering.

19 MR. JARDINE: Sorry.

20 THE WITNESS: You know, they proposed to sell
21 16 percent at an implicit price of about \$19 a share. That's
22 not an unreasonable thing to do. You would want to cash out a
23 little bit. People came along with in effect a better offer.
24 So my reading of the documents, and this going back a ways,
25 but they were still considering during the time period they

1 were considering an IPO, thinking about doing an IPO, Morgan
2 Stanley has given them an evaluation of about \$19. And while
3 they're still considering an IPO, the alternatives come up
4 that instead of just signing 16 percent, how about a merger?
5 Merger with Lotus, a merger with Novell, and the question is,
6 what's likely to be better?

7 So these two things, the IPO and the merger with
8 Novell or the merger with Lotus, are sort of, you're sitting
9 there saying to yourself, what's the best thing to do? Now,
10 the IPO evaluation is \$19 a share. If you look at the price
11 of the share that was actually sold, you know, to Novell, the
12 valuation under the IPO, I'm sure we have it somewhere. For
13 WordPerfect it was about 1.44. And they decided to go with
14 the Novell bid.

15 Q. BY MR. JARDINE: So is it fair to say that the IPO
16 never got out to the market to be tested whether this
17 valuation was accurate or whether the market had a different
18 view?

19 A. That's right. Morgan Stanley's business is to try
20 to come up with as accurate a number as possible. And you
21 want to put yourself in the shoes of a founder of WordPerfect.
22 They're about to have an IPO. They go to Morgan Stanley
23 because it's supposed to be an investment bank to give you the
24 best number you can. If they -- suppose they guess wrong --
25 or I wouldn't say guess wrong. If they give you too low of an

1 estimate, okay, if they said, well, let's sell it for 16, then
2 you're going to lose a lot of money because a lot of money is
3 left on the table. And if they give you too high of an
4 estimate and go to an IPO, your IPO fails. So it's a very
5 strong incentive to come up with a right estimate. This is
6 suddenly you're going to cash out, you want the right number.

7 And without putting in a plug for Morgan Stanley,
8 it's a first-rate investment house. And I would say that it
9 is as competent as anybody else to come up with a valuation
10 for an IPO.

11 Q. Without debating that point, it's true, isn't it,
12 that projected valuations of IPO and what they actually end up
13 selling for in the market often vary?

14 A. And that's interesting; because the general
15 pattern -- sorry. The general pattern has been throughout
16 that IPOs get issued at prices which turn out to be well
17 below. And there's a lot of concern about that, about
18 people -- about companies, I'm not saying Morgan Stanley, but
19 there's a history of investment firms coming up with suggested
20 IPO prices which, in fact, are below market, because then you
21 get what's called pop, okay. It comes out in the IPO at 19,
22 and it pops to 22, and everybody thinks this is a great idea.

23 So IPO valuations tend to be systematically lower
24 or have been in the past systematically less than the true
25 market values because investment houses like to say, oh, our

1 IPO is a big success. We set a price of 19, and, bang, it
2 went to 21. And part of the reason it's a big success is
3 unfortunately in the past a lot of people get preferential
4 access to IPO. I have no idea if that's going on here. All
5 I'm saying is the past history is the valuation that actually
6 gets put on in IPO turns out in most situations less than the
7 price on the day after of the IPO.

8 Q. You'd agree with me there are certainly some
9 situations where the IPO sells below what the valuation was.

10 A. I think they're rare.

11 Q. Well --

12 A. There's a lot of IPOs.

13 Q. Well, in this case, the market, with respect to
14 this IPO, the market never had a chance to vote on it the way
15 it did on the Novell merger?

16 A. The transaction never went through, but the
17 inference from this is that \$19 a share is likely to be an
18 underestimate of what the market price would have been had
19 that IPO gone through, because that's the history in this
20 industry.

21 Q. But we don't know because it never issued.

22 A. We don't know because it was never issued. But we
23 do know that they decided to take a higher offer.

24 Q. On which the market in two days indicated that it
25 was \$1.8 billion --

1 A. That's correct.

2 Q. -- overstated.

3 Let's turn to the Lotus bid for a minute.

4 THE COURT: After the Lotus bid, then we'll take a
5 break.

6 MR. JARDINE: Thank you.

7 THE COURT: After -- I'm sorry. After the Lotus
8 bid. I'm sorry.

9 MR. JARDINE: Oh.

10 THE COURT: As long as --

11 MR. JARDINE: I didn't want to communicate that I
12 was anxious.

13 THE COURT: No. No. Sorry. I wasn't clear.

14 MR. JARDINE: That's fine. Sorry.

15 Q. BY MR. JARDINE: Now, as I understood it, you
16 listed, in fact, not just as a bar on this chart, but as a
17 separate estimate of damages what you call the Lotus condition
18 bid.

19 A. Yes. I was trying to say if you used some of these
20 alternative valuations instead of going to the overpayment
21 mechanism, if you just simply used one of the alternative
22 valuations, you know, I just want to make it clear how you can
23 get from A to Z. Use whatever valuation you want to make the
24 own subtraction. It's a pretty straight forward process. So
25 what I'm really trying to say is you can get there easily just

1 by using whatever valuation you choose to use.

2 Q. As I understand it, you listed -- you assumed that
3 a Lotus bid was \$1.3 billion roughly; correct?

4 A. Correct.

5 Q. Did you ever see an actual bid document from Lotus?

6 A. No. It's just -- just reports.

7 Q. All right.

8 A. I don't know.

9 Q. And you assume since WordPerfect would have
10 received such a document that if one would have ever existed
11 it would have been in WordPerfect's files.

12 A. Oh, I can't speak about WordPerfect's files. I
13 think the 1.3 bid appears to have been, you know, what was
14 offered, as I say, as a conditional offer. This is -- you're
15 in the middle of a price war. Of all the reports that I read
16 have said and some descriptions were quite extensive of the
17 process that was going on. It was a pretty exciting moment.
18 And Novell's -- I would call it a conditional bid. I'm not
19 sure what the technical term is. But they were saying, we're
20 prepared to offer 1.3 billion amount. And there's always --
21 there was a particular antitrust concern tie-up with the Lotus
22 bid so that the Lotus couldn't say we could definitely do it.
23 We have to get antitrust clearance. And that's my
24 understanding of the term conditional.

25 Q. Well, let me just be clear. You're telling the

1 jury there was a bid. I'm asking you if you've ever seen a
2 bid document from Lotus for such a bid.

3 A. No, I haven't. I think -- and again, this is a bit
4 in the past. I think there's -- there are -- and you'll
5 correct me if I'm wrong, but there is a document, Novell
6 document which is I think a board of directors, I may misspeak
7 here, but a board of directors document for Novell that may
8 have mentioned the 1.3 billion. But this is --

9 Q. The answer is there is no underlying bid document
10 from Lotus to support that bar.

11 A. You know, is there a contract out there that says,
12 here, let me offer you \$1.3 billion? No. It is my
13 understanding that the \$1.3 billion was an offer in the course
14 of negotiations that were being made rather heatedly when
15 Lotus management flew out here to talk to the Novell people,
16 and that's where the 1.3 billion come from.

17 Q. Let me move on to the next point --

18 THE COURT: Okay. Let's --

19 MR. JARDINE: No. The next point on Lotus. I
20 didn't mean to get you moving.

21 Q. BY MR. JARDINE: Just two or three very brief
22 points.

23 A. Sure.

24 Q. We know there were no documents and this
25 transaction never closed. Is it possible that the market

1 looking at the assets of WordPerfect in the hands of Lotus
2 might have viewed it differently than it viewed the assets in
3 the hands of Novell?

4 A. Yeah. I think, you know, we've got two suitors
5 here. Each have advantages and disadvantages. I think a
6 reasonable person on the outside could look at the combination
7 with Lotus and say there are some real advantages with
8 combining with Lotus. If you combine with Lotus you combine
9 with Lotus 1, 2, 3. And, you know, I think what the market,
10 what people said is, Gee, you know, Lotus 1, 2, 3 is stronger
11 than Quattro Pro at the point.

12 On the other hand, there were real advantages of
13 combining with Novell. One of them we talked about before
14 which is that Novell has this dealership system or sales
15 force. Everybody recognized that one of the real problems
16 with WordPerfect was its selling procedure. And so the
17 combination with Novell offered a cure to what was
18 WordPerfect's basic problem, which is its selling prices or
19 costs were way too high. It also offered a cure to the
20 problem of integration because Novell also went out and bought
21 Quattro Pro so it could be integrated with WordPerfect.

22 So, you know, the founders of WordPerfect, and I
23 think I may have mentioned this before, you know, were
24 concerned about the strategic fit. I think that's one of the
25 things that comes out. They weren't just concerned about the

1 purchase price. They were concerned about whether or not
2 their company -- they founded this company. It's your life,
3 okay. They were concerned about the strategic fit of your
4 company, and they were also concerned about being able to be
5 involved, continue in the future.

6 And I think that's one of the reasons, that appears
7 to be one of the reason. And they may also have been a
8 preference for -- it's Utah, and it's a Utah company. That
9 may have been some of the preferences for why they decided to
10 go with Novell rather than Lotus. I think both there are
11 advantages and disadvantages on both sides.

12 Q. Well, just so I'm clear on my question. I think
13 you answered it. We don't know whether the market would have
14 thought that WordPerfect would have done better in the hands
15 of Lotus than it would have Novell; correct?

16 A. That's correct.

17 Q. And so if I understand your second line there where
18 you say purchase vs. sale, Lotus conditional bid, you've
19 eliminated any overpayment component of that number; correct?

20 A. Yeah. Essentially what I've said is, let's assume,
21 let's assume that Novell overpaid, got caught up in the
22 frenzy, okay, and it paid more than the Lotus bid. Then we
23 call that overpayment.

24 Q. But you don't know -- we don't know whether the
25 market would have thought that Lotus assuming they made such a

1 bid for which we have no documentary evidence from Lotus, we
2 don't know whether the market would have also thought that
3 Lotus overpaid for WordPerfect as it did when Novell
4 purchased. We just don't know that, do we?

5 A. Well, that's true. But we also don't know
6 something else. We don't know how high Lotus would have gone.
7 When Lotus offered the 1.3 billion, it's -- my understanding
8 of the history is that they were, in fact, prepared to
9 continue negotiations, and they were somewhat startled when
10 WordPerfect said, okay, I'm not going to keep this going. You
11 know, I'm going to go with Novell.

12 So it's quite possible that Lotus would have wound
13 up paying significantly higher than 1.3 billion. So, you
14 know, we're --

15 MR. JARDINE: I think we've established what I
16 wanted to establish, Your Honor.

17 THE COURT: Let's take a break. I'm ready whenever
18 anybody else is ready.

19 (Whereupon, the jury left the court proceedings.)

20 (Recess.)

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1 STATE OF UTAH)

2) ss.

3 COUNTY OF SALT LAKE)

4 I, KELLY BROWN HICKEN, do hereby certify that I am
5 a certified court reporter for the State of Utah;

6 That as such reporter, I attended the hearing of
7 the foregoing matter on November 17, 2011, and thereat
8 reported in Stenotype all of the testimony and proceedings
9 had, and caused said notes to be transcribed into typewriting;
10 and the foregoing pages number from 2293 through 2375
11 constitute a full, true and correct report of the same.

12 That I am not of kin to any of the parties and have
13 no interest in the outcome of the matter;

14 And hereby set my hand and seal, this ____ day of
15 _____ 2007.

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KELLY BROWN HICKEN, CSR, RPR, RMR

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