

1 PARTIES CAN ARGUE ABOUT THAT, AND IT'S HARD FOR ME
2 TO MAKE A JUDGMENT BASED ON SAYING THERE IS NO
3 EVIDENCE.

4 MR. PULGRAM: WELL, I UNDERSTAND WHERE
5 YOU ARE. AND WHAT MR. TRIMBLE TESTIFIED, AND THIS
6 IS THEIR WITNESS AND IT'S THE ONLY EVIDENCE OF
7 RECORD, WHAT HE SAID SPECIFICALLY WAS THAT THE
8 PEOPLE WHO HAD DONE THE DEVELOPMENT WORK WERE
9 EMPLOYEES OF CHORDIANT SOFTWARE INTERNATIONAL
10 LIMITED. THIS WAS NOT CHORDIANT'S WITNESSES. THIS
11 IS MR. TRIMBLE. AND THAT'S THE ONLY EVIDENCE IN
12 THE RECORD AS TO WHAT THE EMPLOYEES WERE WORKING ON
13 WHEN THEY ACTUALLY DID THE WORK.

14 THE COURT: WHO IS MR. AKANDE?

15 MR. PULGRAM: MR. AKANDE WAS AN EMPLOYEE
16 OF CHORDIANT SOFTWARE INTERNATIONAL LIMITED.

17 AT SOME POINT HE SENT AN E-MAIL.

18 THE COURT: SO HE WAS NEVER CHORDIANT
19 SOFTWARE, INC.?

20 MR. PULGRAM: THERE'S NO EVIDENCE THAT
21 HE'S A CHORDIANT SOFTWARE, INC., EMPLOYEE.

22 THERE IS AN E-MAIL THAT HE SENT
23 IDENTIFYING THE COMPANY THAT WANTED AN UPGRADE AS
24 CHORDIANT SOFTWARE, INC., BUT THAT WAS ONLY IN
25 2004.

1 THE COURT: DID HE SWITCH?

2 MR. PULGRAM: YOUR HONOR, I DON'T KNOW
3 THAT HE SWITCHED. THERE'S NOTHING IN THE RECORD
4 ABOUT IT, AND I CAN'T REPRESENT TO YOU WHO PAID HIS
5 PAYCHECK THAT DAY, BUT I CAN TELL YOU THAT IT'S
6 PLAINTIFFS' BURDEN.

7 THE COURT: BUT AREN'T YOU JUST NOW
8 INTRODUCING CONFUSION INTO THE RECORD BECAUSE IF HE
9 INDEED WAS A CHORDIANT INTERNATIONAL EMPLOYEE AND
10 HE WROTE A LETTER SAYING CHORDIANT SOFTWARE WHILE
11 INDEED HE WAS INTERNATIONAL, IT PROVES THE
12 PLAINTIFFS' POINT THAT THEY THOUGHT THEY WERE STILL
13 DEALING WITH INTERNATIONAL AND IT UNDERCUTS YOUR
14 CLAIM THAT THEY KNEW THAT THEY WERE DEALING WITH A
15 DIFFERENT COMPANY.

16 I DON'T WANT TO GET INTO THIS. I'M JUST
17 TRYING TO COME UP WITH NEUTRAL PRINCIPLES OF LAW.
18 I'M GOING TO LET YOU GUYS ARGUE AS CONFUSING OF A
19 CASE THAT YOU GUYS CREATED.

20 AND YOU KEEP TRYING TO GET ME TO
21 UNDERSTAND YOUR LEGAL POSITIONS. I DON'T CARE TO
22 SPEND THIS RECORD -- AND IN A MOMENT I'M GOING TO
23 GO OFF THE RECORD BECAUSE YOU'RE BURDENING THE
24 RECORD.

25 I THOUGHT THAT THIS WOULD MAYBE BE

1 ORALLY HERE IN OPEN COURT.

2 REMEMBER, YOU ARE NOT TO TELL ANYONE,
3 INCLUDING ME, HOW THE JURY STANDS NUMERICALLY OR
4 OTHERWISE UNTIL AFTER YOU HAVE REACHED A UNANIMOUS
5 VERDICT OR HAVE BEEN DISCHARGED.

6 AT THIS POINT I'LL ASK THE CLERK OF COURT
7 TO TAKE CHARGE OF THE JURY TO CONDUCT THEM TO THE
8 JURY ROOM FOR DELIBERATIONS.

9 (WHEREUPON, THE PROCEEDINGS IN THIS
10 MATTER WERE HELD OUT OF THE PRESENCE OF THE JURY:)

11 THE COURT: PLEASE BE SEATED. WE'RE OUT
12 OF THE PRESENCE OF THE JURY.

13 THERE'S ONLY ONE ASPECT OF THE ARGUMENT
14 THAT I FOUND SOMEWHAT OF A MATTER OF CONCERN, AND I
15 STARTED TO GIVE FURTHER COMMENT BUT I WANTED TO
16 STATE MY CONCERNS HERE ON THE RECORD BEFORE I DID
17 FURTHER.

18 AND THAT WAS A DEFENSE ARGUMENT THAT THE
19 PREVIOUS NAME OF THE COMPANY, AND AT THAT TIME IT
20 WAS TALKING ABOUT CHORDIANT SOFTWARE, INC., WAS
21 PRIME RESPONSE.

22 IT DOES SEEM TO ME THAT ON BALANCE I
23 SHOULDN'T SAY ANYTHING MORE ABOUT THAT BECAUSE OF
24 THE DEBATE THAT THE PARTIES ARE WAGING IN FRONT OF
25 THE JURY AS TO WHETHER OR NOT THERE IS A BASIS FOR

1 CHORDIANT SOFTWARE TO BE SUBJECT TO A LICENSE, BUT
2 I WAS CONCERNED THAT IT WAS A -- IT RAN CONTRARY TO
3 EVEN THE ADMITTED FACTS THAT THE PREVIOUS NAME OF
4 PRIME RESPONSE WAS CHORDIANT SOFTWARE, INC.

5 AND ALTHOUGH IT OCCURRED TO ME AT THE
6 TIME AND I THOUGHT THAT IT MIGHT HAVE JUST BEEN A
7 MISSTATEMENT OUT OF THE CONFUSION IN THE VARIOUS
8 COURT ENTERPRISES THAT WAS -- THAT CAUSED THE
9 STATEMENT TO BE MADE IN THE WAY THAT IT WAS.

10 I DON'T PRESUME THAT YOU'VE HAD A CHANCE
11 WITH ALL OF THIS GOING ON TO LOOK AT THE VERDICT
12 FORM. SO BEFORE I GO TO LUNCH WHAT I WOULD ASK YOU
13 TO DO IS GO THROUGH THIS AND LET ME KNOW.

14 BECAUSE ONE OF THE FIRST THINGS I WOULD
15 LIKE THE JURY TO HAVE AVAILABLE TO THEM AS SOON AS
16 THEY COME BACK FROM THEIR LUNCH BREAK, WHICH I
17 PRESUME THAT THEY'LL TAKE IMMEDIATELY, IS A VERDICT
18 FORM.

19 I PRESUME THAT YOU FOLLOWED MY DIRECTION
20 AND HAVE THE EXHIBITS IN A PLACE WHERE MS. GARCIA
21 CAN COLLECT THEM UP AND TAKE THEM IMMEDIATELY.

22 I DID IN MY INSTRUCTIONS, WITHOUT
23 VERIFYING WITH YOU, SAY THAT THEY WOULD HAVE A
24 LIST, AND I DON'T KNOW IF THAT'S TRUE OR NOT. IF
25 IT'S NOT, I CAN SIMPLY SEND A NOTE SAYING THAT THE