

VIRGINIA:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

APPIAN CORPORATION,

Plaintiff,

v.

PEGASYSTEMS INC. & YOUYONG ZOU,

Defendants.

Civil Action No. 2020-07216

FILED
CIVIL PROCESSING
2022 MAY 26 P 2:25
STEPH J. FREY
CLERK, CIRCUIT COURT
FAIRFAX, VA

**DEFENDANT PEGASYSTEMS INC.'S MOTION FOR JUDICIAL INVESTIGATION
OF JUROR MISCONDUCT AND TO SET ASIDE THE VERDICT¹**

¹ Pega will file its comprehensive post-trial motions by the June 8, 2022 deadline. Because this Motion implicates the integrity of the trial, Pega believed that it had a duty to alert the Court (and Appian) as quickly as possible.

It is a bedrock principle of our jury system, memorialized in the jury instructions in this case, that a jury shall decide a case based only on the evidence presented at trial. When jurors disregard that edict, an investigation is required. And if that investigation shows prejudicial misconduct, the verdict must be set aside. Defendant Pegasystems Inc. ("Pega") has learned that at least one juror in this case conducted and used outside research in an apparent attempt to sway the jury. Pega moves the Court to investigate this juror misconduct and to set aside the verdict.

BACKGROUND

During trial, the Court repeatedly admonished the jury that it "must decide this case based solely on the evidence presented here within the courtroom." **Exhibit 1**, 3.21.22 Tr. at 230:17-18 (preliminary instructions); **Exhibit 2**, 5.6.22 Tr. at 8394:19-23 (final instructions). The Court explained that this meant the jurors "must not conduct any independent research about the legal or the factual issues in the case, or about the individuals and corporations involved in the case" and were "not allowed to search the internet or visit websites." **Exhibit 1** at 230:19-231:7; *see also* **Exhibit 2** at 8394:19-8395:10.

After receiving these admonitions, the jury received the case on Friday, May 6 and began deliberating. The jurors could not reach a decision on Friday and returned for further deliberations the following Monday. That afternoon, the jury returned its verdict, which included a \$2.037 billion VUTSA award against Pega.

After trial, Pega learned from Juror No. 2 that a troubling series of events transpired between Friday, at which point the jury was deadlocked, and Monday, when the jury reached a verdict. As Juror No. 2 sets out in the attached declaration, the jury could not reach a verdict on Friday "in part because the jury could not reach a unanimous decision about the amount of damages to which Appian was entitled." **Exhibit 3**, ¶ 3. When the jury returned on Monday to continue its

deliberations, one of the jurors informed the group that "he had conducted some internet research related to the case over the weekend." *Id.* ¶ 4. The juror then used this information to attempt to break the deadlock. Specifically, the juror told the other jurors that he "had looked up the Pegasystems stock price" and "that Mr. Trefler 'could afford' to pay a high amount of damages." *Id.* ¶ 5. Soon after the juror relayed this information, the jury returned a massive verdict. Pegasystems has been unsuccessful in its attempts to contact additional jurors and therefore does not know whether this juror conducted additional improper outside research.

ARGUMENT

"The reception of any evidence by the jury ... in addition to that produced at trial is ground for setting aside the verdict whenever there is sufficient ground to believe that one of the parties in a civil suit ... has been prejudiced by receipt of the information." *Brittle v. Commonwealth*, 222 Va. 518, 822 (1981). Where a party raises a colorable claim of juror misconduct, "the trial court has the affirmative duty to investigate the charges and to ascertain whether or not, as a matter of fact, the jury was guilty of such misconduct." *Commercial Union Ins. Co. v. Moorefield*, 231 Va. 260, 265 (1986) (quotation omitted). As part of the investigation, the Court "may summon one or more jurors to testify under oath ... about what had transpired." *Id.* at 265; *see also* Va. Evid. R. 2.606(b)(ii). A trial court "abuses its discretion" if it fails to conduct an investigation. *Robertson v. Metropolitan Wash. Airport Auth.*, 249 Va. 72, 76 (1995).

Juror No. 2's account of a juror tainting deliberations with improper outside research states a colorable claim of prejudicial misconduct that triggers this Court's duty to investigate, and requires setting aside the verdict. A juror conducting outside research in violation of this Court's jury instructions and then using that research to sway the jury plainly constitutes juror misconduct. *See Brittle*, 222 Va. at 822.

The misconduct here also satisfies the low bar for prejudice. The Virginia appellate courts have cautioned “that only slight evidence of influence or prejudice as a result of such misconduct of a juror should be required to warrant the granting of a new trial.” *Evans v. Commonwealth*, 39 Va. App. 229, 238 (2002) (quoting *Hickerson v. Burner*, 186 Va. 66, 72 (1947)); see also *McGuire v. Howard*, 203 Va. 965, 970 (1962) (same). Misconduct is most likely to be prejudicial where it pertains “to activities of jurors that occur outside the jury room” which “prejudicially affected the jury’s deliberation of the case by injecting facts connected with the case which had not been admitted in evidence.” *Caterpillar Tractor Co. v. Hulvey*, 233 Va. 77, 83 (1987).

It is not currently possible to fully assess the prejudice from the juror’s improper actions without a better understanding of the juror’s misconduct. After all, a juror who disregarded this Court’s repeated and unmistakable instruction not to engage in outside research may well have violated instructions more than that one time. Only the investigation required as a matter of law can reveal the extent and effect of the wrongdoing. But even now, what is already known from Juror No. 2’s declaration demonstrates stark prejudice to Pega. After the jurors could not agree on a damages figure, a juror researched Pega’s stock price outside the record and shared that information with the jury. The only possible reason for sharing that information was to sway the jurors to award a large damages figure. That same day the jury awarded massive damages. The outside research also injected into deliberations the consideration of Mr. Trefler’s wealth and ability to pay a verdict. The clear inference is that the juror’s attempt to sway his colleagues may have succeeded—and certainly there is a sufficient possibility of this having happened to trigger the mandatory obligation to investigate further.

Pega anticipates that Appian will argue that these events are not prejudicial because the Court allowed testimony about the value of Mr. Trefler’s shares during trial—over Pega’s

objection and in a departure from the Court's pre-trial ruling. See Exhibit 4, 3.24.22 Tr. at 730:5-735:22; Exhibit 5, 2.17.22 Tr. 44:12-47:4 (pre-trial ruling). But the simple fact is that *the juror* considered the outside research to be material—otherwise he wouldn't have conducted the research and shared it with the jury. The timing of these events certainly suggests that this information was material. And Pega's stock price *at the time of deliberations* was not in evidence. Moreover, it remains to be determined whether the juror's misconduct is limited to these facts that Pega has been able to ascertain in this limited time since the verdict.

CONCLUSION

Pega respectfully requests that the Court conduct an investigation into this matter, and on the basis of these shocking facts, set aside the verdict and grant a new trial.

Dated: May 26, 2022

Respectfully submitted,

PEGASYSTEMS INC.

By: 
Counsel

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Counsel for Defendant Pegasystems Inc.

CERTIFICATE OF SERVICE

I hereby certify that on this 26th day of May, 2022, a true copy of the foregoing was delivered to counsel of record for the parties by electronic mail pursuant to the parties' agreement.

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wtravell@hirschlerlaw.com



Counsel

EXHIBIT 1

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

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APPIAN CORPORATION,)	
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Plaintiff,)	Civil Action No.
)	2020-07216
vs.)	
)	
PEGASYSTEMS INC., & YOUYONG)	
ZOU,)	
)	
Defendants.)	

JURY SELECTION - VOIR DIRE
 BEFORE THE HONORABLE RICHARD GARDINER
 Monday, March 21, 2022, 10:03 a.m.

FAIRFAX COUNTY CIRCUIT COURT
 4110 Chain Bridge Road
 Fairfax, Virginia

Reported By: Marjorie Peters, FAPR, RMR, CRR, RSA
 Job Number: 5098673

Page 230

1 going to hear in this case will be in the form of
2 testimony of witnesses from the witness box. In
3 taking into account the weight and value that the
4 jury chooses to give to the testimony of a witness,
5 you may consider, among other things, the
6 appearance, attitude and behavior of the witness
7 while testifying; the interest of the witness in the
8 outcome of this case, if any; the relation of the
9 witness to any party in the case; the inclinations
10 of the witness to speak truthfully or not; the
11 probability or improbability of the witness's
12 testimony, and all other facts and circumstances in
13 evidence.

14 In short, you may give the testimony
15 of any witness just such weight and value that you
16 determine that testimony is entitled to receive.
17 You must decide this case based solely on the
18 evidence presented here within the courtroom.

19 This means that during the trial, or
20 more importantly, during breaks in the trial, you
21 must not conduct any independent research about the
22 legal or the factual issues in the case, or about

Page 231

1 the individuals and corporations involved in the
2 case.

3 Therefore, you're not allowed to
4 search the internet or to visit websites or consult
5 dictionaries or reference materials, or use any
6 other tools to obtain information about the case, or
7 to help you resolve any of the issues in the case.

8 Until the case is submitted to the
9 jury for deliberation, you must not discuss this
10 case with anyone, this includes with your fellow
11 jurors during the breaks.

12 After you retire to deliberate, you
13 may discuss the case only with your fellow jurors
14 and then only in the jury room and only when all
15 Members of the Jury are present.

16 You are not permitted to discuss the
17 case with anyone else until your jury service has
18 ended, and I will try to remember to give you every
19 day when we close for the day a warning about not
20 speaking to the -- anybody outside in your family or
21 among your friends about the case.

22 I know that when you go home, those

Page 232

1 of you who are on the jury, you're going to be asked
2 what kind of case are you on, and what's it all
3 about. You can tell people that you're serving on a
4 civil case, but beyond that, you are not allowed to
5 speak to anyone about the details of the case.

6 Of course, there are going to be
7 opportunities during the day as well during
8 recesses. We typically take a morning recess at
9 about 11:30 to 11:45, a lunch recess from 1 to 2,
10 and an average recess generally about 3:30 to 3:45.
11 Those times will vary slightly depending on how a
12 witness testimony is going.

13 But during those breaks, you may run
14 into one of the lawyers or parties in the cafeteria
15 or in the hallways. They have been instructed to
16 ignore you. Please do not take it personally if
17 they walk by you without even acknowledging your
18 existence. It may seem rude, but it's what they're
19 required to do because there's to be no
20 communication whatever between the lawyers and the
21 parties and the jury, except what goes on here on
22 the record in the courtroom.

Page 233

1 I'm going to ask you please to keep
2 an open mind and please do not decide any issues
3 prematurely in this case until it is submitted to
4 your deliberations at the end of all of the
5 evidence, and after you have received the complete
6 instructions of law.

7 All right. Let me ask counsel, have
8 you had an opportunity to review each other's
9 strikes?

10 MR. MANGI: We have, Your Honor.
11 THE COURT: All right. Any motions
12 from either side on strikes.
13 MR. MANGI: No motions, Your Honor.
14 MR. KAY: No motions.
15 THE COURT: Mr. Travell.
16 MR. TRAVELL: Nothing further, Your
17 Honor.
18 THE COURT: All right.
19 MR. KAY: Judge, can we approach.
20 THE COURT: Yes.
21 (At SIDEBAR:)
22 MR. KAY: The issue becomes that

EXHIBIT 2

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IN THE CIRCUIT COURT OF FAIRFAX COUNTY
APPIAN CORPORATION,
Plaintiff,

vs. Case No.
2020-07216
PEGASYSTEMS, INC. and
YOUYONG ZOU,
Defendants.

Trial - Day 27

BEFORE THE HONORABLE RICHARD GARDINER
Friday, May 6, 2022
10:06 a.m.

REPORTED BY: AMANDA GORRONO, CLR
CLR NO. 052005-01
JOB NO. 210826

Page 8394

1 Final Jury Instruction
2 for Appian, yes or no. And then if
3 you do find your verdict for Appian,
4 put in the amount of damages, but only
5 against Pegasystems.
6 Then it needs to be dated. It
7 needs to be signed by the foreperson,
8 and if the foreperson is not somebody
9 with wonderful handwriting, if you
10 could please print your name
11 underneath there, so we know who it is
12 that signed it.
13 During your deliberations and
14 until you are discharged from jury
15 service, you must not communicate with
16 or provide any information to anyone
17 who is not a member of this jury by
18 any means about this case.
19 Please do not try to find out
20 information from any source outside of
21 the testimony and the exhibits
22 received in as evidence during the
23 trial.
24 And as I told you seven weeks
25 ago at the beginning, you are not

Page 8396

1 Proceedings
2 THE COURT: All right. What I'm
3 going to do is I'll have Deputy Creed
4 take the jury instructions back now.
5 And then if Ms. Spieth, if you
6 want to, if you need a few minutes?
7 Please go ahead and what I want to do,
8 though, is when you're finished, let
9 me know. I'm going to come back on
10 the bench and I'm going to put on the
11 record that both parties are satisfied
12 that those are the exhibits that are
13 going back.
14 MR. MANGI: Your Honor, you're
15 sending back now the instructions and
16 the verdict form?
17 THE COURT: Yes.
18 MR. MANGI: Your Honor, have you
19 separately apprised them of the timing
20 for the day?
21 THE COURT: Yes. I did not, but
22 Deputy Creed has advised them that we
23 have to break at 3:30, that they have
24 to break at 3:30 today for the
25 investiture.

Page 8395

1 Final Jury Instruction
2 permitted to consult dictionaries or
3 reference materials or search the
4 internet or use any other tools to
5 obtain information about this case or
6 to help you decide the case.
7 You are limited to the evidence
8 that was introduced during the trial,
9 and the testimony that you've heard
10 during the trial.
11 And lastly, in closing, you may
12 be as leisurely in your deliberations
13 as the occasion may require, and you
14 may take all the time that you feel is
15 necessary to reach this important
16 decision.
17 Ladies and gentlemen, please
18 retire to the jury room and begin your
19 deliberations.
20 We will get the verdict form and
21 the evidence in to you within the next
22 few minutes.
23 Thank you. And now you may
24 discuss the case with yourselves.
25 (Jury excused.)

Page 8397

1 Proceedings
2 By the way, you are all invited
3 if you wish to come and there's a free
4 reception afterwards.
5 MR. MANGI: Oh, thank you.
6 THE COURT: Off the record.
7 (Discussion held off the
8 record.)
9 THE COURT: So let me know when
10 you're ready, and I'll come back on
11 the bench and we'll put it on the
12 record that everybody is satisfied
13 with the exhibits.
14 Court is in recess.
15 (Recess taken.)
16 THE COURT: On the record.
17 All right. Have both parties
18 had an opportunity to review the
19 exhibits that are on the cart, so that
20 they can go back to the jury?
21 MS. SPIETH: On behalf of
22 Pegasystems, yes, we have.
23 MR. MANGI: Yes, Your Honor,
24 Appian has reviewed. We're also,
25 everyone's in agreement that the set

EXHIBIT 3

VIRGINIA:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

APPIAN CORPORATION,

Plaintiff,

v.

PEGASYSTEMS INC. & YOUYONG ZOU,

Defendants.

Civil Action No. 2020-07216

DECLARATION OF JUROR NO. 2, DEBORA SMITH

I, Debora Smith, say as follows as my declaration:

1. I served as Juror Number 2 in the case of Appian Corporation versus Pegasystems Inc. and Youyong Zou. The trial was held in Fairfax County Circuit Court.
2. I have personal knowledge of the facts set forth in this declaration.
3. The jury began its deliberations on Friday, May 6, 2022. The jury did not reach a verdict on May 6, in part because the jury could not reach a unanimous decision about the amount of damages to which Appian was entitled.
4. On Monday, May 9, 2022, the jury returned to its deliberations. That morning, one of the other jurors entered the deliberation room and told the rest of the jurors that he had conducted some internet research related to the case over the weekend.
5. Specifically, he told us that he had looked up the Pegasystems stock price. Based on that information and the number of shares of stock that Alan Trefler held, this juror told me and the other jurors that Mr. Trefler "could afford" to pay a high amount of damages.
6. We reached our verdict later that day, before lunch.

I declare under penalty of perjury that the foregoing is true and correct.

On this 24 day of May, 2022:


Debora Smith

EXHIBIT 4

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

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APPIAN CORPORATION,)	
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Plaintiff,)	Civil Action No.
)	2020-07216
vs.)	
)	
PEGASYSTEMS INC., & YOUYONG)	
ZOU,)	
)	
Defendants.)	

TRIAL - DAY 3

BEFORE THE HONORABLE RICHARD GARDINER

Thursday, March 24, 2022, 9:36 a.m.

FAIRFAX COUNTY CIRCUIT COURT

4110 Chain Bridge Road

Fairfax, Virginia

Reported By: Marjorie Peters, FAPR, RMR, CRR, RSA

Job Number: 5098686

1 Q. You will see it starts with the three
 2 \$100 investments at the end of 2009, and those three
 3 investments; correct?
 4 A. Yes, I do.
 5 Q. Now, let's look at what would have
 6 happened by the end of 2011, so a couple of years
 7 in. The investment in Pegasystems of \$100 would
 8 have shrunk down to \$87 and change; correct?
 9 A. Yes.
 10 Q. Even though an investment in the Nasdaq
 11 in the market composite would have risen from 100 to
 12 \$117; correct?
 13 A. Yes.
 14 Q. An investment in the software index,
 15 that would also have risen up to \$116; correct?
 16 A. Yes.
 17 Q. So Pegasystems's stock had performed
 18 poorly as compared to those two benchmarks; correct?
 19 A. Yes.
 20 Q. Then, if we look at what happened by the
 21 end of the next year, by the end of 2012, that \$100
 22 investment in Pegasystems from 2009, that would now

1 have shrunk down to \$67; correct?
 2 A. Yes.
 3 Q. So an investor who had put their \$100
 4 into Pegasystems at the end of 2009 hoping to see
 5 returns on their investment, would instead by the
 6 end of 2012 have lost a third of their investment;
 7 correct?
 8 A. Yes.
 9 Q. In the same time period, if they had
 10 instead invested in the Nasdaq, their investment
 11 would have gone up by over a third, to \$137;
 12 correct?
 13 A. In that period.
 14 Q. In that period.
 15 Yes?
 16 A. Yes.
 17 Q. And an investment in the
 18 Software-Software Index, that would have gotten them
 19 pretty close to the Nasdaq at \$136; correct?
 20 A. Yes.
 21 Q. Now, when Pegasystems's stock is
 22 performing badly, that puts some pressure on the

1 executive leadership of a company, including you as
 2 the CEO; correct?
 3 A. Not, I think, in the way you are
 4 implying.
 5 Q. You don't feel concerned or responsible
 6 to your shareholders if you have lost a third of
 7 their money over three years?
 8 A. Not on a one- or three-year horizon. We
 9 tell our shareholders that we're looking for
 10 shareholders who are prepared to be with us for the
 11 long term, as exemplified by my own long-term
 12 commitment. And, you know, this is a very
 13 happened-picked sample, I would observe.
 14 Q. This is your 10-K; correct?
 15 A. Picked by you.
 16 Q. Let's take a look — let's talk, in
 17 fact, sir, about your own holding that you just
 18 referred to.
 19 Now, you are not only the CEO of
 20 Pegasystems?
 21 THE COURT: Mr. Frank.
 22 MR. FRANK: There's an objection

1 coming because I'm pretty sure that I know where
 2 this is going, and I'm pretty sure it's within the
 3 scope of a prior order that Your Honor has made.
 4 MR. MANGI: Your Honor, I have your
 5 order right here. I'm sticking to it.
 6 THE COURT: Approach.
 7 (At SIDEBAR:)
 8 MR. MANGI: Your Honor, you recall,
 9 he made a motion in limine to say I can't talk about
 10 his personal wealth; right?
 11 THE COURT: Right.
 12 MR. MANGI: I said the amount of his
 13 holding in the company is important as well as the
 14 fact that it goes up and down.
 15 Here's what you said. You said,
 16 this is at page 44, line 12 of our pretrial hearing.
 17 You said, quote, you can talk about the fact that he
 18 owns 50 percent or whatever the number actually is
 19 of their stock. You can even talk about the fact
 20 that the stock went up and down.
 21 Later, we talked about it more, and
 22 you said, I'm not going to let you put on evidence

Page 732

1 of his personal wealth. If you want to put on
2 evidence about he owns whatever his shares of the
3 company are, that's fine.
4 That's all I'm doing.
5 MR. FRANK: It is a very small step
6 going to --
7 THE COURT: Mr. Frank, he opened the
8 door. He just answered Mr. Mangi's question about
9 his personal holdings.
10 MR. FRANK: I take your point, but
11 the purpose here is to induce prejudice because
12 there is a -- because the man is wealthy in a way
13 that is very easily ascertainable.
14 And it -- and that is he -- he owns
15 a substantial amount of stock is a fair question.
16 How much he owns, exactly what percentage he owns,
17 in my judgment, I suggest to Your Honor, is designed
18 primarily to prejudice -- primarily to induce
19 prejudice, and should be excluded under Rule 403.
20 I think that it is simply not
21 relevant that he is a -- he is a wealthy man. It is
22 not relevant, and it is -- and it has no purpose

Page 733

1 other than to induce prejudice.
2 The -- and we'll be right in this
3 because what's sauce for the goose is sauce for the
4 gander. We will have their CEO in here and we'll
5 ask him the same questions and we will then have a
6 contest in which the jury is distracted by the
7 amount of money that these people have --
8 MR. MANGI: Your Honor.
9 MR. FRANK: -- on both sides.
10 MR. MANGI: Your Honor. You made an
11 express ruling, and I -- I'm not telling you now why
12 it's relevant. I explained that.
13 You made an express ruling, and he
14 opened the door. If he wanted to make a
15 reconsideration motion, he could have. He didn't.
16 We are at sidebar now. I'm only doing what you
17 allowed.
18 THE COURT: Yeah. Well, you can go
19 ahead and do what I allowed. Also, now, that's the
20 fact that he made that statement himself opening the
21 door. Just be cautious. Don't go too far with it.
22 I don't care about whether he owns a million-dollar

Page 734

1 house or what else.
2 MR. MANGI: Your Honor, he has now
3 also opened the door to the value of his stock
4 holdings.
5 THE COURT: Yes, he has.
6 MR. MANGI: I am going to go to that
7 but I'm not going to ask about his house or his boat
8 or his jet.
9 (End SIDEBAR.)
10 MR. MANGI: Your Honor, could you
11 state the ruling on the objection, please.
12 THE COURT: Yes. The objection is
13 overruled.
14 BY MR. MANGI:
15 Q. Now, Mr. Trefler, let's pick up where we
16 were. You are not only the CEO you're also the
17 largest individual shareholder in Pegasystems;
18 correct?
19 A. Correct.
20 Q. You have maintained a controlling
21 interest in the company since its founding; correct?
22 A. Slightly less than controlling now, but

Page 735

1 I would say yes.
2 Q. You personally own -- you personally own
3 just under 50 percent of the shares of Pegasystems;
4 correct?
5 A. Yes.
6 Q. And what is the value of your
7 shareholding of Pegasystems?
8 MR. FRANK: Objection.
9 THE COURT: Overruled.
10 A. It would be order of magnitude \$3
11 billion.
12 Q. That's \$3 billion with a B; correct?
13 A. Yes.
14 Q. You have maintained a shareholding in
15 Pegasystems right around 50 percent all the way back
16 to 1983; correct?
17 A. I have maintained, and not so -- I have
18 not sold any shares in the last 10, 15 years.
19 Q. In fact, the number of shares that you
20 hold is just north of 40 million shares in
21 Pegasystems; correct?
22 A. Yes.

EXHIBIT 5

In The Matter Of:

Appian v.

Pegasystems

Hearing

February 17, 2022

Misty Klapper & Associates

8703 Eaglebrook Court

Alexandria, VA 22308

703-402-7555

Original File Appianhearing21722.txt

Min-U-Script®

1 Pegasystems stock.

2 Now, you know, then -- then they get into --
3 they decide they're going to find a way to do better in
4 the market, they're going to find a way to compete
5 better, and they get into this Zouskii and they start
6 using it and their performance improves and their stock
7 takes off. All of them clear billions of dollars from
8 that improvement in the conduct.

9 So, Your Honor, this is not, you know, wealth
10 for wealth sake, but this is a fundamental part of the
11 motivation.

12 THE COURT: You can talk about the fact that
13 he owns 50 percent, or whatever the number actually is,
14 of their stock and you can even talk about the fact that
15 the stock went up and down. Why -- I still don't see
16 why his personal value has any bearing in this case.

17 MR. MANGI: Well, it's not his -- his net
18 worth, Your Honor. So, you know, if he has got cars and
19 boats and yachts, you know, I don't care about that.
20 The question is his owning of the Pegasystems stock and
21 the value that has.

22 And the reason that matters, Your Honor, is

1 because, you know, there are a lot of penny stocks out
2 there, right, especially in the software world. You
3 could own 50 percent of the stock in something and it
4 could be worth \$5,000. Right. You are under a very
5 different set of circumstances and motivation if you own
6 \$5,000 worth of a company versus \$4 billion of a
7 company.

8 THE COURT: I don't know, it would seem to me
9 your motivation might be about the same even if your
10 stake -- the stakes are smaller.

11 MR. MANGI: I respectfully think, Your Honor,
12 a jury would not agree with that and, respectfully, I
13 wouldn't either, because, you know, if I've got \$2,000
14 at stake, you know, versus if I've got \$2 billion at
15 stake, is my motivation going to be different? Yeah, it
16 is. I mean, that's -- that's human nature, Judge. The
17 stakes matter.

18 THE COURT: Well, I -- here's -- I am not
19 going to let you put on evidence of his personal wealth.
20 If you want to put on evidence about he owns whatever
21 his shares are of the company, that's fine. And if you
22 want to put on evidence with regard to what the -- the

1 fluctuation of the stock, that's fine too.

2 MR. MANGI: Okay.

3 THE COURT: But his personal -- personal
4 wealth, I -- I think is not relevant and I think would
5 serve possibly to be prejudicial to him.

6 MR. MANGI: That's fine. I'll focus in on the
7 stock value.

8 THE COURT: The personal, that number 3 is
9 granted.

10 All right. Mr. -- who is going take up number
11 4.

12 MS. SPIETH: That's me, Your Honor. But just
13 to clarify your order, not the stock -- not the value of
14 the stock that the executives -- your order precludes --

15 THE COURT: No. I'm talking about the value
16 of the stock in the market. Mr. Mangi talked about the
17 NASDAQ stock values and how they were going up and down.
18 If he wants to put in that evidence, that's okay.

19 MS. SPIETH: Right. But my understanding is
20 not the evidence about, for example, the executive --
21 the value of the executives' holdings.

22 THE COURT: That's correct. That's right.

1 You can say they own 50 percent of the shares or 20
2 percent of the shares, or whatever that is, but not what
3 the value of 20 percent of the shares is.

4 MS. SPIETH: Thank you, Your Honor.

5 Sailing right along, onto the --

6 THE COURT: Did you say sailing right along?

7 MS. SPIETH: Yes. Onto the next issue in
8 Pega's motion in limine.

9 Pega moves to exclude --

10 THE COURT: Let me find out on this one what
11 Mr. Mangi -- what he intends to introduce about the SEC
12 reporting obligations.

13 MR. MANGI: Your Honor, that's the one I
14 addressed earlier, which is the list disclosures and the
15 SEC, we're not planning to get into that one.

16 THE COURT: Does that resolve your problem?

17 MS. SPIETH: It does, Your Honor.

18 THE COURT: Okay.

19 MS. SPIETH: I'll continue to sail.

20 THE COURT: All right. So that's granted,
21 number 4 is granted. Number 5.

22 MS. SPIETH: I appreciate that, Your Honor.