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Major players likely face messy legal battles ahead

By Ellen Lee
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The courts could ultimately make the final decision in the high-stakes battle between Oracle Corp. and PeopleSoft Inc., a decision that will have a dramatic impact on the beleaguered business software industry.

After a week of bitter charges, Oracle and PeopleSoft have set the stage for what could become a series of long, messy legal battles. And J.D. Edwards & Co., the Denver software firm whose merger with PeopleSoft was interrupted by Oracle's hostile takeover bid, has already gone to court, filing two suits Thursday.

"The bottom line is most likely the court will cast the deciding vote here," said Martin Zohn, a corporate reorganization attorney with Proskauer Rose.

J.D. Edwards' suits against Oracle seek \$1.7 billion in damages and ask a California state court to stop Oracle from its takeover attempt of Pleasanton-based PeopleSoft.

Six shareholder lawsuits also have been filed against PeopleSoft, accusing its executives and board of not doing their duties and seriously reviewing Oracle's offer, as is required by law.

What could happen next is anyone's guess. Now that PeopleSoft has rejected Oracle's offer, Oracle could either raise the bid's \$5.1 billion price tag or walk away, although it appears the offer has already damaged PeopleSoft and J.D. Edwards.

"It's a win-win for Oracle, either way," said Mike Trigg, an analyst at Morningstar. "Either it gets PeopleSoft on the cheap or manages to significantly disrupt its business."

Oracle could also take the offensive and file a lawsuit accusing PeopleSoft's board of acting improperly, Zohn said. "In our post-Enron climate, there's likely to be litigation over the propriety of the board's actions," he said.

Ellison, in fact, has already made thinly veiled criticisms of PeopleSoft CEO Craig Conway and his comment that he found it hard to imagine any price or terms in which PeopleSoft would sell to Oracle.

"In this new era of corporate governance, we think managers and boards of directors would be careful to put shareholder interests before their interests."

Meanwhile, Oracle, like PeopleSoft, is likely trying to line up shareholder support. It could also be meeting behind closed doors with PeopleSoft's executives to hash out an offer that the board would be more likely to accept, said Eric Upin, a software analyst at Wells Fargo Securities.

"They could go into a quiet dialogue confidentially with PeopleSoft," he said.

In the other corner, PeopleSoft, as well as J.D. Edwards, have repeatedly raised potential antitrust problems if Oracle goes forward with its bid. Oracle, which dismissed the antitrust concerns, filed required

documents with the Department of Justice and the Federal Trade Commission on Thursday as part of its PeopleSoft bid, starting the clock on a 15-day waiting period for antitrust regulators to decide whether to intervene.

Conway said that if Oracle took control of PeopleSoft, it would leave only two software companies that offered an entire collection of business software, which helps companies manage their business operations. Other business software companies, such as Siebel Inc., only offer one type of program or another, such as programs that help manage customer relationships.

PeopleSoft shareholders have until July 7 to decide if they want to tender their shares to Oracle for \$16 per share in cash. If enough of them do so, PeopleSoft could be forced to invoke its "poison pill," an anti-takeover measure in its bylaws that would make a hostile takeover nearly impossible.

Conway and Chief Financial Officer Kevin Parker declined Thursday to comment on the company's poison pill, saying that it invited speculation. "It was put into place more than a few years ago," Parker said. "I think it's a very typical process for any company."

Another alternative involves PeopleSoft's stock price. So far PeopleSoft's shares, which closed Thursday at \$17.37, are trading above Oracle's proposed offer price. But that could change soon, as PeopleSoft struggles to close deals before its quarter ends June 30. Analysts have speculated that Oracle's announcement has raised questions about PeopleSoft's long-term viability to potential customers and that many will likely delay decisions.

"(Oracle) will wait until PeopleSoft puts out their earnings for the quarter," said Alan Pelz-Sharpe, an analyst at Ovum, a research and consulting firm. "If, as we suspect, PeopleSoft has a not-so-great quarter, and Oracle then revised their offer, the shareholders will be a little bit more interested."

Lorraine Segil, a strategic alliance and merger consultant, said that it's still not too late for PeopleSoft to seek a white knight who could swoop in and make a counter offer.

PeopleSoft could also make itself undesirable for Oracle. PeopleSoft's top programmers, which Oracle hopes to merge with its team, could vow to jump ship if the takeover is successful, Zohn said. Likewise, PeopleSoft's customers, probably the most prized possession for Oracle, could decide that they will not do business with Oracle.

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