

In The Matter Of:

*Advanced Micro Devices v
Intel Corporation*

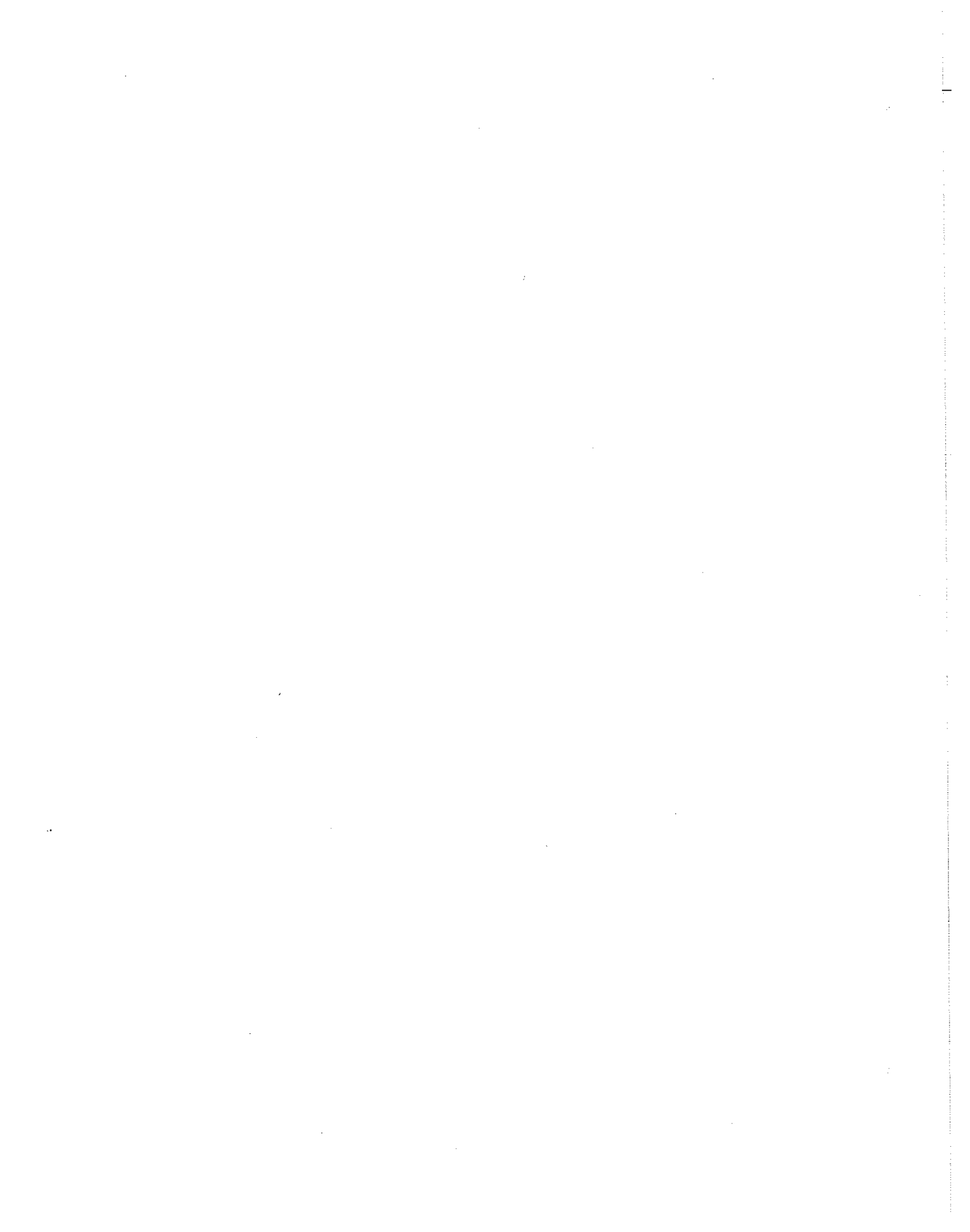
*Teleconference
November 25, 2008*

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

ADVANCED MICRO DEVICES,)
)
Plaintiffs,)
)
v.) Civil Action
) No. 05-441-JJF
INTEL CORPORATION,)
)
Defendant.)

Teleconference in the above matter, taken pursuant to notice before Debra A. Donnelly, Registered Professional/Certified Realtime Reporter, in the offices of Blank Rome, LLP, 1201 North Market Street, Wilmington, Delaware, on Tuesday, November 25, 2008, beginning at approximately 1:00 p.m., there being present:

BEFORE:

THE HONORABLE VINCENT J. POPPITI, SPECIAL MASTER

APPEARANCES:

O'MELVENY & MYERS
LINDA J. SMITH, ESQUIRE
CHARLES P. DIAMOND, ESQUIRE
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1 SPECIAL MASTER POPPITI: Counsel, good
2 afternoon. Vincent Poppiti just joined. I apologize for
3 running a wee bit late.

4 Our court reporter is here with me, so
5 if we could begin to identify, since this is Dell's
6 application, let's identify those that are intending to
7 be on the record on behalf of Dell, please.

8 MS. MAGUIRE: Good afternoon, Your
9 Honor. Lauren Maguire from Ashby & Geddes. With me I
10 have Thomas Jackson and Christopher Maynard from Jones
11 Day.

12 MR. JACKSON: Good afternoon, Your
13 Honor.

14 SPECIAL MASTER POPPITI: Just one
15 moment, please. Good afternoon, counsel. Thank you.

16 MS. MAGUIRE: Your Honor, Ashby & Geddes
17 also represents Mr. Rollins, and with me on the line is
18 William Barry from Richards Kibbe & Orbe.

19 MR. BARRY: Good afternoon, Your Honor.

20 SPECIAL MASTER POPPITI: Thank you very
21 much. Good afternoon.

22 And from AMD, please.

23 MR. BALICK: Good afternoon, Your Honor.
24 It's Adam Balick from Balick & Balick. I have Linda

1 Smith and Charles Diamond and Marc Williams from
2 O'Melveny & Myers on as well.

3 SPECIAL MASTER POPPITI: Mr. Balick, you
4 were just cut off because there was a phone ring behind
5 you, so if you wouldn't mind doing that again.

6 MR. BALICK: Sure. Sorry about that. I
7 have Linda Smith, Charles Diamond, and Marc Williams, all
8 from O'Melveny & Myers, on the line with me.

9 SPECIAL MASTER POPPITI: Thank you.

10 MR. COTTRELL: Your Honor, in
11 Wilmington, Fred Cottrell and Steve Fineman for AMD.

12 SPECIAL MASTER POPPITI: Thank you,
13 Fred.

14 And from the Class, if anyone is joining
15 from the Class since they did join in the application.

16 MR. ATHEY: Your Honor, Clay Athey in
17 Delaware for Class plaintiffs.

18 SPECIAL MASTER POPPITI: Okay.

19 MR. FIMMEL: And Steve Fimmel from
20 Hagens Berman Sobol & Shapiro in Seattle, Your Honor.
21 Good afternoon.

22 SPECIAL MASTER POPPITI: Good afternoon.
23 Thank you.

24 And if anyone is joining on the line for

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1 Intel, please.

2 MR. HORWITZ: Good afternoon, Your
3 Honor. It's Rich Horwitz from Potter Anderson here in
4 Wilmington.

5 MR. STONE: Your Honor, it's Rod Stone
6 and Bob Cooper from Gibson Dunn & Crutcher as well.

7 SPECIAL MASTER POPPITI: Thank you, all.

8 Counsel, before we get started, I think
9 my friends at the local bar know that I try to be a
10 person of even temperament, and when it becomes important
11 to carefully choose language that needs to be stronger
12 than softer, I usually use my pen for purposes of doing
13 that. But let me make an observation at the front end
14 and consider entertaining an application on Dell's end.

15 I am prepared to go through Dell's
16 submission and review with whomever is charged with the
17 responsibility of arguing today each case reference with
18 a full and fulsome discussion of the facts underlying
19 each case, with a full and fulsome discussion as to why
20 Dell would argue propositions to me from cases for which
21 the propositions do not stand in terms of the ultimate
22 ruling of the case.

23 I'm fully prepared to have that
24 conversation against the backdrop of work that I've

1 already done on this issue in this case, and I certainly
2 anticipated that when there was an application to discuss
3 with me the authority that I have through this District
4 Court through Judge Farnan to deal with issues of
5 discovery, I fully anticipated that there would be some
6 discussion by Dell of my ruling in the case involving
7 Fry's Electronics, because I would have expected that if
8 my ruling in Fry's Electronics was somehow off the mark
9 or for some reason, because of newly developed case law,
10 a decision that is no longer applicable in this case,
11 that there would be that discussion in this briefing.

12 So I'm prepared to do this one of two
13 ways. I'm prepared to have Dell consider withdrawing
14 this filing, reviewing the cases that have been cited
15 here, and discuss with me in an honest fashion what these
16 cases stand for.

17 If Dell is not prepared to do that, then
18 I'm prepared to have a full discussion on this record and
19 consider any appropriate application that AMD may want to
20 file or the Class plaintiffs want to file, or, in turn, I
21 may want to consider on my own initiative in terms of the
22 amount of time that I've already spent on the issue of
23 the jurisdictional question, the time that I've spent
24 during the course of the hearing, time that I will spend

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1 if it's important for me to write on this yet again, and
2 time that I would have to spend on any applications that
3 may be forthcoming subsequent to the work that I do.

4 I certainly will entertain discussion
5 today, or at some other time, and by other time, we're
6 talking real quick, on the issue of whether or not there
7 was an agreement to lodge in a district other than this
8 district, being the multi district, the authority to deal
9 with issues involving subpoenas that issue for either
10 documents alone or subpoenas for testimony and documents.

11 If Dell needs some time to confer among
12 its counsel, I'm happy to put you all on hold, give you
13 ten minutes, and I'll climb back on the line again at
14 1:15.

15 MR. JACKSON: Your Honor, this is Tom
16 Jackson.

17 Let me do two things, if I might. One,
18 from our perspective, the Court's decision in Fry's
19 involved a document subpoena that issued out of the
20 Northern District of California.

21 SPECIAL MASTER POPPITI: Mr. Jackson, I
22 don't want your argument now, sir. I've made you an
23 offer and I want you to consider it.

24 MR. JACKSON: I understand. I just want

1 you to understand why we did not consider Fry's.

2 SPECIAL MASTER POPPITI: That's your
3 choice, as to whether you did want to consider it or not,
4 sir.

5 MR. JACKSON: I will be happy to accept
6 the Court's inclination that we should confer, and we
7 will get back on the line.

8 SPECIAL MASTER POPPITI: How much time
9 do you need, sir?

10 MR. JACKSON: If you could give us to
11 the bottom of the hour, that would be most appreciated.

12 SPECIAL MASTER POPPITI: Let's do it
13 this way. If we're going to go to the bottom of the
14 hour, we'll all dial back in.

15 MR. JACKSON: We will dial back in at
16 12:30 our time, 1:30 your time.

17 SPECIAL MASTER POPPITI: Yes, sir.

18 MR. JACKSON: All right. Thank you,
19 Your Honor.

20 SPECIAL MASTER POPPITI: Thank you.

21 (Brief recess taken.)

22 SPECIAL MASTER POPPITI: Counsel, good
23 afternoon. Vincent Poppiti just joined.

24 What we're going to have to do is go

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1 back through the roll call again, please, starting with
2 Dell.

3 MS. MAGUIRE: Your Honor, Lauren Maguire
4 from Ashby & Geddes for Dell. With me I have Tom Jackson
5 and Chris Maynard from Jones Day.

6 SPECIAL MASTER POPPITI: Thank you.

7 MS. MAGUIRE: And on behalf of Kevin
8 Rollins I have William Barry from Richards Kibbe & Orbe.

9 SPECIAL MASTER POPPITI: Thank you very
10 much.

11 From AMD?

12 MR. BALICK: Your Honor, again good
13 afternoon. It's Adam Balick. On the phone with me I
14 have Linda Smith, Charles Diamond, and Marc Williams, all
15 from O'Melveny & Myers.

16 SPECIAL MASTER POPPITI: Thank you, all.

17 MR. COTTRELL: Again, Your Honor, Fred
18 Cottrell and Steve Fineman in Wilmington for AMD.

19 SPECIAL MASTER POPPITI: Thank you.
20 From the Class, please.

21 MR. ATHEY: Your Honor, from Prickett
22 Jones & Elliott, Clay Athey for the Class. Also on the
23 line is Steve Fimmel from Hagens Berman in Seattle.

24 SPECIAL MASTER POPPITI: Thank you.

1 From Intel?

2 MR. HORWITZ: Your Honor, Rich Horwitz
3 here in Wilmington, and Bob Cooper and Rod Stone from
4 Gibson Dunn in Los Angeles.

5 SPECIAL MASTER POPPITI: All right.

6 Thank you.

7 May I hear from Dell, please.

8 MR. JACKSON: Your Honor, yes. This is
9 Tom Jackson.

10 I have spent the last 20 minutes trying
11 by phone, e-mail, and cell phone to contact the client
12 representatives so that I might discuss with them the
13 Court's suggestions, and have been unable to reach
14 anybody. I know that they are most likely at lunch,
15 given the time differences and the time zones, and I
16 would -- I also know that I have a scheduled call with
17 them at 1:30 our time today, because we were going to
18 talk about the hearing in any event.

19 So what I would ask the Court to do is
20 to give me additional time so that I might confer with
21 the clients, because I take the Court's suggestions
22 seriously, and I want to make sure I am able to convey
23 them adequately to the client to get appropriate
24 direction and approval for our future course of action.

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1 SPECIAL MASTER POPPITI: Any comments
2 from counsel on behalf of any other parties with respect
3 to that request, please?

4 MS. SMITH: Your Honor, this is Linda
5 Smith for AMD.

6 I have no comment on the request. My
7 only comment is, not unexpectedly, that Your Honor was
8 gracious enough to yet again advance the hearing so we
9 could get this resolved, and our only aim is to be able
10 to take these Dell depositions, and hopefully this isn't
11 going to slow that purpose down. That's all we want
12 here.

13 SPECIAL MASTER POPPITI: Well, then,
14 maybe what I should do is just outline perhaps a bit more
15 information that would put Mr. Jackson even in the
16 position of having some time frames.

17 If Dell is inclined to want to withdraw
18 its current document and refile, as opposed to
19 withdrawing its contest of jurisdiction, then there would
20 have to be a filing not later than 12 noon tomorrow our
21 time. My time.

22 If there is then the need for argument
23 on that issue, or on the issue of whether or not there is
24 an agreement, then that argument will have to occur

1 sometime on Monday.

2 I can take your pulse and decide now
3 what time that argument would be, if one is necessary.
4 For example, I would have available the same time that we
5 started today; that is, 1:00 p.m. And, of course, you --
6 wait a minute. I'm sorry, I'm looking at the wrong -- it
7 would be Monday, December 1, at 1:00.

8 MS. SMITH: Your Honor, it's Linda Smith
9 again.

10 That would be fine with us. One of the
11 reasons that we asked the Court to expedite is because
12 our briefs in opposition to Dell's motion to quash in
13 Texas is due on December 1. And that's one of the
14 reasons we had hoped to have this matter resolved prior
15 to that time.

16 MR. JACKSON: I don't think that's
17 right. I think it's December 4th.

18 SPECIAL MASTER POPPITI: I had
19 understood it to be later, but I don't have your schedule
20 in front of me.

21 MR. JACKSON: I'm willing to make it
22 December 4th.

23 MS. SMITH: All right. That's fine.

24 SPECIAL MASTER POPPITI: And let me give

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1 you the other date, because the other date we already had
2 scheduled would be a hearing on the ultimate merits, if I
3 determine that there was jurisdiction or if Dell conceded
4 that this court has jurisdiction/the authority to hear
5 the application, that is still on for December the 2nd at
6 2:00 p.m.

7 So, my intent, certainly, is to have
8 issues resolved, at least from my desk, for the purpose
9 of expecting that there would be a quick turnaround, even
10 if there were exceptions taken. I would also probably
11 suggest that any exceptions would be on a very, very
12 short time frame, three, if not shorter, days to get
13 before Judge Farnan.

14 MR. JACKSON: Your Honor, on the
15 question of the substantive matter.

16 SPECIAL MASTER POPPITI: Yes, sir.

17 MR. JACKSON: Again, this is Tom
18 Jackson. I apologize to the court reporter for not
19 saying that at the start.

20 I thought that we had agreed to
21 simultaneously brief that issue on the 4th of December.

22 SPECIAL MASTER POPPITI: Well, we may
23 have done that. But in light of what's happening now --

24 MR. JACKSON: You're changing that.

1 SPECIAL MASTER POPPITI: If you've
2 got -- you either have to tell me that there is something
3 different that's going to occur in Texas, so that the two
4 courts aren't literally whipsawing against each other, or
5 I want to be moving everything up and crunch it as
6 tightly as possible.

7 MR. JACKSON: There is no hearing
8 scheduled in Texas at this point in time, and, you know,
9 I think we can -- we can't necessarily control what that
10 court does, but we're not trying to do anything to push
11 that at this point in the process either. We can
12 certainly alert the Court should there be a hearing set,
13 and then adjust our schedules accordingly.

14 SPECIAL MASTER POPPITI: Well, if you
15 are telling me that the 4th, and I think the other date
16 was the 8th?

17 MR. JACKSON: The 4th and the 8th are
18 the dates that we had agreed to originally. And I can
19 assure you there will be no hearing in Texas prior to
20 that time.

21 MS. SMITH: Your Honor, it's Linda
22 Smith.

23 That still means that our brief will be
24 due there, and what I think --

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1 SPECIAL MASTER POPPITI: Well, I think I
2 just heard, though, that you --

3 MS. SMITH: I guess either we accelerate
4 this in the fashion that Your Honor suggests, which I
5 think is fine, or Texas has to stay. It could be a
6 temporary stay, but staying until -- it can't be in two
7 courts at once that they ask and need actions taken. And
8 until this is decided, that's the position we're in, I
9 mean, we're all in, including this court.

10 SPECIAL MASTER POPPITI: Well, it may be
11 helpful for all of you to understand, while we're talking
12 about schedule, in addition to cases that I essentially
13 brought to your attention by virtue of having written
14 Fry's a number of months ago, and in addition to cases
15 that you discussed or attempted to discuss with me in the
16 filings that you filed, you all may want to be aware of
17 two additional cases that stand for the proposition that
18 a District Court judge where the subpoena's issued from
19 said not my game, it belongs to the multi-district judge.

20 And you may want to be looking at In re
21 Subpoenas served on Wilmer Cutler & Pickering and Goodwin
22 Proctor. That case is at 255 F. Supp. 2d 1, and that's
23 out of the United States District Court for the District
24 of Columbia.

1 And the case of In re Subpoena issued to
2 Boies, B-O-I-E-S, Schiller & Flexner, and that cite is
3 2003 Westlaw 1831426, the Southern District of New York.

4 I'm happy to cut it any way that makes
5 sense, but what does not make sense to me, from my
6 perspective, not only am I concerned about the economy of
7 it all here, but I'm concerned about the amount of time
8 that is being taken up in another district.

9 So we either go with an abbreviated
10 abbreviated schedule; we stick with the 4th and the 8th.
11 I'm happy to cut it either way. But, in any event, if
12 there is to be a refiling of the paper that I have before
13 me, it will be filed no later than noon tomorrow.

14 MR. JACKSON: All right, Your Honor.

15 SPECIAL MASTER POPPITI: So what you may
16 want to be doing, in addition to having discussion with
17 your client, Mr. Jackson, is have further discussion with
18 Ms. Smith and others.

19 What time are you suggesting that we
20 should be back on the line today, if there is a need to
21 be back on the line?

22 MR. JACKSON: Well, Your Honor, if I --
23 as I said, I know I have a call scheduled with them at
24 1:30 my time, which is 2:30 yours.

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1 Now, I think I should be able, in a
2 position to advise the parties and the Court as to the
3 decision that they have made by an hour thereafter.

4 SPECIAL MASTER POPPITI: 3:30?

5 MR. JACKSON: Which would be 3:30 your
6 time and 2:30 my time.

7 SPECIAL MASTER POPPITI: Well, in light
8 of that, and in light of other issues that need to be
9 resolved, it seems to me, although, if what I'm going to
10 hear is that you accept the authority of this Court to
11 deal with the issues, then that can be accomplished
12 certainly without a telephone call, without a
13 teleconference.

14 But expecting that there needs to be
15 additional discussion, we should schedule this again,
16 then, for 3:30.

17 MR. JACKSON: All right.

18 SPECIAL MASTER POPPITI: Okay. Call-in
19 numbers are the same.

20 MS. SMITH: Okay. Very good, Your
21 Honor.

22 MR. JACKSON: Thank you, Your Honor.

23 SPECIAL MASTER POPPITI: Thank you, all.

24 (Hearing adjourned at 1:44 p.m.)

C E R T I F I C A T E

STATE OF DELAWARE

NEW CASTLE COUNTY

I, Debra A. Donnelly, a Notary Public within and for the County and State aforesaid, do hereby certify that the foregoing teleconference was taken before me, pursuant to notice, at the time and place indicated; that the teleconference was correctly recorded in machine shorthand by me and thereafter transcribed under my supervision with computer-aided transcription; that the transcript is a true record of the teleconference; and that I am neither of counsel nor kin to any party in said action, nor interested in the outcome thereof.

WITNESS my hand and official seal this day of
November A.D., 2008.

DEBRA A. DONNELLY, RPR
CERTIFICATE #151-PS
EXPIRATION: PERMANENT

