

**In The Matter Of:**

*Advanced Micro Devices v  
Intel Corporation*

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*Teleconference  
December 1, 2008*

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1 SPECIAL MASTER POPPITI: Okay. Let's  
2 start the roll call with AMD, since it's AMD's  
3 application, please.

4 MR. BALICK: Good afternoon, Your Honor.  
5 It's Adam Balick from Balick & Balick. I have on the  
6 line with me Linda Smith, Charles Diamond, and Marc  
7 Williams, all from O'Melveny & Myers.

8 MS. SMITH: Good morning, Your Honor.

9 MR. COTTRELL: Your Honor, in Wilmington  
10 Fred Cottrell and Steve Fineman.

11 SPECIAL MASTER POPPITI: Thank you all.  
12 From Dell, please.

13 MS. MAGUIRE: Your Honor, Lauren Maguire  
14 from Ashby & Geddes, and with me I have Tom Jackson and  
15 Chris Maynard from Jones Day.

16 SPECIAL MASTER POPPITI: Thank you very  
17 much.

18 MS. MAGUIRE: Your Honor, we also  
19 represent Kevin Rollins, and Wil Barry from Richards  
20 Kibbe & Orbe is on the line as well.

21 SPECIAL MASTER POPPITI: Thank you. And  
22 from the Class, please.

23 MR. ATHEY: Your Honor, Clay Athey from  
24 Prickett Jones & Elliott for the Class.

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1 MR. FIMMEL: Steve Fimmel from Hagens  
2 Berman Sobol & Shapiro for the Class. Good afternoon,  
3 Your Honor.

4 SPECIAL MASTER POPPITI: Good afternoon  
5 to the both of you.

6 And from Intel, please.

7 MR. HORWITZ: Good afternoon, Your  
8 Honor. Here in Wilmington it's Rich Horwitz at Potter  
9 Anderson.

10 MR. STONE: Good afternoon, Your Honor.  
11 It's Rod Stone and Bob Cooper from Gibson Dunn & Crutcher  
12 in Los Angeles.

13 SPECIAL MASTER POPPITI: Good afternoon  
14 to you as well.

15 Please, let's proceed with the argument  
16 on AMD's motion.

17 MS. SMITH: Your Honor, it's Linda  
18 Smith. Should I begin since it's our motion?

19 SPECIAL MASTER POPPITI: Yes, please.

20 MS. SMITH: Okay. I think we disposed  
21 of the case law regarding concurrent jurisdiction, and so  
22 I'm going to just argue very quickly the effect of the  
23 contractual arrangement. This is the subject of their  
24 replacement brief.

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1           SPECIAL MASTER POPPITI: And as you do  
2 that, and I understand that -- first of all, I'm going to  
3 ask Dell whether Dell agrees that we had disposed of that  
4 particular issue?

5           However, I do want to ask it in the  
6 context, for my own benefit, not necessarily for the  
7 benefit of any decision I need to make, but are you  
8 suggesting, Ms. Smith, that you agree that there is  
9 concurrent authority? That is, that each of the courts  
10 has the authority to enforce subpoenas that issue from  
11 the district in Texas?

12           MS. SMITH: Your Honor, I'm a little  
13 bit -- I have not seen the use, in the cases, and I have  
14 reviewed all the applicable case law, I hope, and I have  
15 not seen the use of the word concurrent.

16           SPECIAL MASTER POPPITI: I haven't  
17 either.

18           MS. SMITH: And that was the term that  
19 Dell used in their replacement brief.

20           But, you know, I'm just following -- I  
21 mean, there is a Fifth Circuit Court case, and I know  
22 Your Honor is well familiar with these, but this is  
23 In re: Clients and Former Clients of Barron & Budd, P.C.  
24 and Occupational Medical Resources, Inc.



1 SPECIAL MASTER POPPITI: Yes.

2 MS. SMITH: And it's 478 F. 3d 670, and  
3 it's 5th Circuit.

4 It starts out with the basic principle  
5 that a motion to quash or modify a subpoena is to be  
6 granted by the court in which the subpoena is issued.  
7 And then it goes down to say certain federal statutes  
8 create an exception to the rule that only the issuing  
9 court may quash, modify, or enforce the subpoena.

10 SPECIAL MASTER POPPITI: Right.

11 MS. SMITH: For example, the  
12 multidistrict litigation statute authorizes a judge  
13 assigned an MDL action to "exercise the powers of a  
14 district judge in any district for the purpose of  
15 conducting pretrial depositions in such coordinated or  
16 consolidated pretrial proceedings." Citing Section  
17 1407(b). This statute, therefore, authorizes the  
18 transferee district court to exercise the authority of a  
19 district judge in any district. The transferee court may  
20 hear or decide motions to compel or motions to quash or  
21 modified subpoenas directed to nonparties in any  
22 district.

23 Though the statutory language refers to  
24 pretrial depositions, the statute wisely has been

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1 interpreted to embrace document production subpoenas as  
2 well. And then it cites Moore's Federal Practice.

3 And then, Your Honor, we found another  
4 5th Circuit case, which is called -- and, I'm sorry, this  
5 will be the last. There is plenty of case law. I don't  
6 need to cite it, but it's called Astarte, A-S-T-A-R-T-E,  
7 Shipping Co. versus Allied Steel & Export Service, 767 F.  
8 2, 86, 87 is the jump cite, and it's 5th Circuit 1985,  
9 that cited In re: Miller, and it says, "First of all, a  
10 transfer under Section 1407 transfers the action lock,  
11 stock, and barrel. The transferee district court has the  
12 power and the obligation to modify or rescind any orders  
13 in effect in the transferred case which it concludes are  
14 incorrect."

15 And between that and the Pogue case,  
16 Your Honor, and certain other cases that are at least  
17 governing in the 5th Circuit, not to mention the other  
18 cases that have been cited both by Your Honor in the  
19 Fry's decision, as well as by the parties in their  
20 original briefing, it seems to us that whether the MDL  
21 Court under Section 1407, and the case law and the  
22 Panel's mandate sit as if it is in the Western District  
23 of Texas, and every other district court where a subpoena  
24 issues in an MDL case, or if it sort of transfers to you,

1 it doesn't make a difference. And probably the starkest  
2 example of this is a case that I really like, and that's  
3 the one that they cited again, Dell has cited again, and  
4 that's In re: Uranium Antitrust Litigation, and that is  
5 503 F. Supp. 33, and that is a case where --

6 SPECIAL MASTER POPPITI: Yes, buy me a  
7 ticket to fly.

8 MS. SMITH: Yeah, that is a case where  
9 the court decided that the transferee judge did have the  
10 jurisdiction, but that he had to -- he had to move and  
11 hear these things in every district court where a  
12 subpoena was pending. And that was later -- you know,  
13 that notion was later disabused, both in Pogue, where  
14 they basically said, you know, they gave U.S. ex rel.  
15 Pogue, P-O-G-U-E, versus Diabetes Treatment Centers of  
16 America, which said, basically, I'm not going to give you  
17 the whole thing, but the judge found that while he had  
18 the power to act in another district as a judge of that  
19 district, the language of Section 1407 permitting a judge  
20 to exercise the powers in any district requires the judge  
21 to journey to another district. And the judge said we do  
22 not find that Section 1407 requires the court to become a  
23 peripatetic dispenser of justice, and agree with the  
24 other courts that have rejected this reading.

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1           SPECIAL MASTER POPPITI: But I think you  
2 are suggesting by my question and your comments that even  
3 though you are accepting the words that Dell uses for  
4 purposes of refiling their document, you're not agreeing  
5 with Dell that it is concurrent authority. Is that  
6 correct?

7           MS. SMITH: That is correct. I think  
8 this court, as the MDL court, has the authority and it  
9 can operate as it so chooses.

10           SPECIAL MASTER POPPITI: Okay. Then  
11 even before you get into a discussion as to whether there  
12 is or there was an agreement as between you and Dell that  
13 subpoenas would issue from the District Court in Texas,  
14 and in addition to that the authority that the  
15 multidistrict court ultimately received, because I  
16 understand that the -- that the agreement was -- the  
17 order that Judge Farnan entered was earlier. But let me  
18 assume for the moment that that agreement lived beyond  
19 the order of the Panel to refer this case to Delaware.

20           I'd like to hear your view as to whether  
21 parties are able to agree to strip the multidistrict  
22 judge from the authority that that judge would have to  
23 enforce subpoenas or to manage issues involving the  
24 discovery in his or her case simply because there was an

1 agreement to issue subpoenas from another district? I'd  
2 like to hear some conversation as to whether or not you  
3 think it is, number one, permissible, or even if it is  
4 permissible, is it wise for a certain judge to permit  
5 that to occur?

6 MS. SMITH: Your Honor, I think it is --  
7 it is that it is not permissible for the parties to  
8 contract away the MDL court's authority.

9 I think if the MDL court made the  
10 decision, for whatever reason, to allow the Western  
11 District to adjudicate it for some reason, then the  
12 MDL -- that's in the MDL court's discretion, but it is  
13 not in the discretion of the parties to contract away the  
14 MDL court's authority. That's the first part of the  
15 question.

16 And the second is, is it wise? You  
17 know, I think we've had a lot of discussion about this  
18 already, but Section 1407 and the whole MDL process was  
19 conceived of for a very clear purpose, and in the -- you  
20 know, as we talked about, the Panel's order assigned  
21 Judge Farnan as the single judge to, quote, formulate a  
22 pretrial program that, quote, eliminates duplicative  
23 discovery, prevents inconsistent pretrial rulings,  
24 conserves the resources of the parties, their counsel,

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1 and the judiciary, and ensures that pretrial proceedings  
2 will be coordinated in a manner leading to a just and  
3 expeditious resolution of the actions to the benefit of  
4 not just some, but all of the litigation parties.

5 Litigation's parties.

6 And I think it was the specter of  
7 having, you know, in a case this large, of having  
8 subpoenas issuing all over the United States and being  
9 differently and separately adjudicated there, was one of  
10 the reasons for the MDL pretrial consolidation. And I  
11 think the court, the reason behind the multidistrict  
12 litigation and the Panel's order is to prevent forum  
13 shopping and inconsistent results.

14 The other thing is -- and so I think it  
15 is wise for the MDL judge to retain that authority. And,  
16 also, I mean, frankly, this case has been now -- we're  
17 now on our three, three plus years anniversary. And this  
18 court has the expertise to evaluate this dispute, you  
19 know, based on three years of familiarity with the  
20 factual and legal issues of this MDL, and I can't imagine  
21 any other court having that kind of expertise to exercise  
22 over any kind of dispute, discovery dispute that occurs.

23 SPECIAL MASTER POPPITI: But overlay  
24 your comments with the fact, and this is what Dell was

1 saying -- the efficacy of the fact is another question.  
2 But overlay your comments with the apparent agreement --  
3 well, not apparent. There was an agreement as between  
4 Dell and AMD that subpoenas would issue from other than  
5 the MDL court.

6 Now, of course, that agreement predated  
7 the MDL order. What is your view of what effect that  
8 agreement has after the entry of the MDL order?

9 MS. SMITH: Well, there is two things at  
10 issue here.

11 The effect of that order is nothing more  
12 or less than we will issue the subpoenas out of the  
13 United States District Court for the Western District of  
14 Texas on Dell, and that is basically the full extent of  
15 the order. And it was entered into before the MDL order  
16 was issued, etc. But, nonetheless -- so I think, number  
17 one, it was issued at a time -- it's limited in its  
18 context to we agree to issue the subpoenas out of.

19 It's very clear from the authority of  
20 Section 1407, the Panel's rules, as well as the case law,  
21 that the adjudication of disputes arising from the  
22 issuance of the subpoenas is by the MDL Panel.

23 So I see nothing -- by the MDL judge,  
24 excuse me.

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1           So I see nothing inconsistent, if you  
2 take our agreement a deal is a deal is a deal, that we  
3 will issue the subpoenas out of the Western District of  
4 Texas, and this court's authority to adjudicate any  
5 disputes arising therefrom.

6           And one other --

7           SPECIAL MASTER POPPITI: What is your  
8 take, though, from the agreement as described by Intel in  
9 Intel's correspondence to me -- let me just give you a  
10 date for purposes of the record. Intel's correspondence  
11 is dated November 24 of 2008. And in that correspondence  
12 Mr. Drane advises that as between Intel and Dell, there  
13 was an agreement with respect to the issuance of the  
14 subpoenas, and there was an agreement with respect to any  
15 enforcement action on those subpoenas.

16           MS. SMITH: Right. Your Honor, and my  
17 view is that it's utterly and completely irrelevant to  
18 this dispute. This is an undisclosed oral agreement  
19 between Intel and Dell, and has nothing to do with this  
20 issue.

21           SPECIAL MASTER POPPITI: Okay.

22           MS. SMITH: First I heard of it, and  
23 doesn't matter.

24           SPECIAL MASTER POPPITI: Okay.



1 MS. SMITH: The other thing, Your Honor,  
2 and this is -- there is two more things, and I will try  
3 to be very brief.

4 One is that it's one thing to agree with  
5 Dell and to agree with other companies that we will issue  
6 the subpoenas out of a place where their headquarters is.  
7 And that's all well and good.

8 SPECIAL MASTER POPPITI: What was the  
9 purpose of that?

10 MS. SMITH: Well, I think you will have  
11 to ask Dell. They wanted it, and we saw no down side to  
12 it, so we gave it to them.

13 But the intent was undisclosed, and it  
14 certainly didn't encompass in our mind giving up the  
15 adjudication by the MDL, which had not yet been entered  
16 yet.

17 But, Your Honor, I do see something  
18 different here, and that is, you know, we looked at this  
19 long and hard in the last couple of days, and Federal  
20 Rules of Civil Procedure 45 does provide that you are  
21 supposed to issue the subpoena on a nonparty, you know,  
22 within a hundred miles of where they reside. And I think  
23 that whether or not the MDL is in effect -- of course, it  
24 is -- we are still obligated right now, with individual

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1 deponents, as opposed to Dell the corporation, to issue  
2 subpoenas within a hundred miles of where the individuals  
3 reside.

4           And that is why we did the five out of  
5 the Western District of Texas; we did Mr. Rollins out of  
6 Massachusetts; and consistent with that, we've done Elio  
7 Levy from Tech Data as the Middle District of Florida,  
8 and Rich Pereira of Tech Data as the Middle District of  
9 Florida; and Alex Hsu from Supermicro out of the Northern  
10 District of California, and I can go on and on.

11           But basically, with third parties, we  
12 are issuing them out of the district in which they  
13 reside, or within a hundred miles of the district in  
14 which they reside. And then if there is any disputes  
15 that need to be adjudicated, they're all going over to  
16 the MDL court, as is required and expected.

17           And the last thing, of course, and I  
18 know Your Honor is aware of this, is that the original  
19 stipulation back in June of '05 -- oh, sorry --

20           SPECIAL MASTER POPPITI: I'm sorry, I  
21 missed your comment.

22           MS. SMITH: Okay. The original  
23 preservation stipulation, September 6, 2005, says in  
24 paragraph 11, "AMD agrees that any subpoena for testimony

1 or for the production of documents and/or testimony AMD  
2 may serve upon Dell will issue out of the United States  
3 District Court for the Western District of Texas." On  
4 the same page of that agreement at paragraph 13 it says,  
5 "This stipulation will remain in force pending further  
6 stipulation or order of the court, or agreement of the  
7 parties to this stipulation."

8 And that takes us to the agreement of  
9 the parties, which is between not only AMD and Dell, but  
10 AMD and Dell and Intel and the Class. And at that time  
11 there was also another Class in the California state  
12 court, and that is the agreement that's effective as of  
13 January 1, 2007.

14 And as Your Honor knows, it recites that  
15 it governs all subpoenas served on Dell in a list of  
16 matters, and including the MDL, the AMD action, and the  
17 California action. Then it recites all the -- the  
18 preservation stipulation from back at September 2nd,  
19 2005, the supplemental stipulation, the AMD service of  
20 subpoenas, Intel's service of subpoenas, the plaintiff in  
21 the MDL's action service of subpoenas, the plaintiff in  
22 the California action service of subpoenas, and concludes  
23 by saying in G, on page 2, "This agreement supersedes the  
24 subpoena, the preservation subpoena, and the supplemental

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1 preservation subpoena," and it's signed by all parties.

2 And I don't know how -- you know, I  
3 don't know how, even if you just rely on a deal is a deal  
4 is a deal, that in addition to the intervening MDL Panel  
5 order and the authority that it conveyed, just as a  
6 contractual basis, the original agreement was abrogated  
7 by this agreement between all the parties.

8 SPECIAL MASTER POPPITI: And Dell says  
9 that it wasn't. I mean, that's their response to that.  
10 Correct?

11 MS. SMITH: I think Dell says that they  
12 had the undisclosed intent, as they do in the hundreds of  
13 subpoenas that they receive, that they have the  
14 undisclosed intent to commit to something broader than  
15 what the language that we agreed to, which just says the  
16 subpoenas will issue out of the Western District of Texas  
17 full stop. And then it's certainly abrogated. So I  
18 don't know where they get that argument. I'm sure we'll  
19 hear next.

20 SPECIAL MASTER POPPITI: Okay. Just  
21 give me one moment, please.

22 Counsel, let me just again for purposes  
23 of the record understand your position with respect to  
24 the subpoenas that you have requested issue. And I guess

1 my question is: You've made the decision to issue  
2 subpoenas from different districts. Correct?

3 MS. SMITH: Yes, Your Honor, based on  
4 Federal Rule 45.

5 SPECIAL MASTER POPPITI: And my question  
6 is quite squarely: Do you then not agree that this  
7 district, as the multidistrict court, that this district  
8 has authority to issue subpoenas throughout the country?

9 MS. SMITH: Your Honor, I think this  
10 district court, the MDL court has the authority to issue  
11 subpoenas throughout the country.

12 That said, to be safe, and I also think  
13 it is extremely clear under 1407, the Panel's rules and  
14 the case law that this court has the authority to  
15 adjudicate disputes over the subpoenas wherever they may  
16 issue.

17 SPECIAL MASTER POPPITI: Right.

18 MS. SMITH: I do think, in an excess of  
19 caution, that it's probably prudent when you get to the  
20 individual third-party deponents to issue the subpoenas  
21 out of the district where they reside, because that way,  
22 since we know that any dispute over them will come to  
23 this court anyway, it seems to me, quote, safer. But I  
24 don't think it abrogates the authority of this court, the

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1 MDL court to issue the subpoenas if it chooses.

2 SPECIAL MASTER POPPITI: Yes, and that  
3 would be -- that's certainly consistent with my view of  
4 this court's authority with respect to the initial  
5 authority to issue subpoenas.

6 MS. SMITH: Yes, Your Honor.

7 SPECIAL MASTER POPPITI: I don't know  
8 whether Dell has a different view, and I'm sure I'll hear  
9 that when I turn to Dell.

10 Any other comments, then, please?

11 MS. SMITH: No, Your Honor.

12 SPECIAL MASTER POPPITI: All right. Who  
13 am I going to be hearing from for Dell? Mr. Jackson?

14 MR. JACKSON: Yes, Your Honor, I'm on.

15 SPECIAL MASTER POPPITI: Thank you, sir.  
16 You may proceed.

17 MR. JACKSON: All right, Your Honor.

18 Let me begin by making a point that I  
19 think is important.

20 The concept of where disputes get  
21 decided as it relates to Dell and Dell employees is not  
22 an issue that is unique to this litigation. Dell, in  
23 fact, as you might imagine for a company of its size,  
24 gets served with subpoenas, you know, as a nonparty from

1 a variety of different matters during the course of a  
2 year, and it certainly adds up over time.

3 Dell's policy uniformly has been in  
4 those circumstances to try and get a uniform, consistent  
5 resolution of disputes that might arise, and the way they  
6 have done that is by requiring that all subpoenas come  
7 out of the Western District of Texas. They've done that  
8 in both individual actions, and they've done it in MDL  
9 actions other than the current one that is before the  
10 court.

11 SPECIAL MASTER POPPITI: Let me focus on  
12 that for a moment, Mr. Jackson. And I'll want you -- I'm  
13 sure you will want me to be understanding that in more  
14 detail.

15 From the perspective of the  
16 multidistrict court, you suggested that it's important  
17 for Dell to have -- and I hope I'm adopting the word that  
18 I heard. If not, please, please correct me if I didn't.  
19 Consistency from Dell's point of view is important. Is  
20 that a fair statement?

21 MR. JACKSON: Yes, Your Honor. Across  
22 all of the various subpoenas that it gets, that is  
23 correct.

24 SPECIAL MASTER POPPITI: And I

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1 understand that.

2 My question is: From this district's  
3 point of view, as the multidistrict court in massive  
4 litigation as this is, isn't this the epitome of the  
5 reason for a multidistrict assignment, number one?

6 And if that is the case, isn't this the  
7 epitome of an example where consistency in this case,  
8 consistency across all defendants -- I'm sorry, third  
9 parties, isn't that consistency from the court's  
10 perspective much more important than consistency as it  
11 relates to Dell as an individual third party?

12 MR. JACKSON: Your Honor, I learned a  
13 long time ago never to try and speak for a court's point  
14 of view.

15 Let me say this, that from the  
16 perspective of nonparty discovery, that, you know, we  
17 think any issue as to whether or not it was going to be  
18 consistently decided in the MDL court or not was taken  
19 away by the stipulation which agreed as part of a whole  
20 document production process that it would occur in the  
21 Western District of Texas.

22 And Dell was very happy that they were  
23 able to get that agreement. They got that same agreement  
24 from Intel, and Intel understood what it meant.



1                   So we think that whatever that issue may  
2 be from the Court's perspective, and again I don't  
3 presume to speak for the Court on its desire for  
4 consistency, that it was essentially bargained away as it  
5 relates to Dell.

6                   And that wouldn't necessarily apply to  
7 other nonparties who either did or did not ask for a  
8 similar and get a similar agreement.

9                   SPECIAL MASTER POPPITI: But,  
10 Mr. Jackson, and focusing squarely on that issue,  
11 wouldn't that present the domino effect or the  
12 possibility of a domino effect of many third parties  
13 negotiating for a position that literally strips this  
14 court of its authority as granted by the transfer order  
15 as contemplated by the federal statute? Namely, to  
16 manage discovery, to eliminate duplicate discovery, to  
17 prevent inconsistent pretrial rulings, right down the  
18 line.

19                   MR. JACKSON: But, Your Honor, I also  
20 don't want to engage in a question of trying to predict  
21 what may or may not happen or what has happened with  
22 respect to other nonparties. I simply don't know the  
23 answer to that question.

24                   What I do know is that the process and

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1 its efforts of consolidating together discovery doesn't  
2 strip the parties to the MDL, both the plaintiff and the  
3 defendant, from being able to engage in negotiations for  
4 the production of documents and other things.

5 SPECIAL MASTER POPPITI: I understand  
6 that completely.

7 MR. JACKSON: And in the process of  
8 doing that, you know, if they choose to give up the  
9 resolution of that dispute to another place, I don't see  
10 any reason why an MDL court wouldn't honor that  
11 obligation, just like any other court would in a normal  
12 piece of litigation.

13 And so --

14 SPECIAL MASTER POPPITI: Would you not  
15 agree with me?

16 MR. JACKSON: I'm sorry?

17 SPECIAL MASTER POPPITI: Would you not  
18 agree with me that when you submit -- at least it's been  
19 my experience on the receiving end of receiving  
20 stipulations from the parties dealing with pretrial  
21 issues, it is the practice, at least of this Special  
22 Master, on behalf of this particular judge, to review the  
23 stipulations, and if I make a determination that the  
24 stipulation is not consistent with my responsibility of

1 coordinating and conducting and supervising discovery, I  
2 won't sign a stipulation just because it's submitted. I  
3 won't put a so ordered just because there is a so ordered  
4 on the bottom of it.

5                   Isn't it my responsibility as a special  
6 master to review that stipulation and make sure that it  
7 makes sense in the entire operation of the multidistrict  
8 litigation?

9                   MR. JACKSON: Your Honor, again, I'll  
10 confess I've never been in your position, and so I  
11 haven't thought about it as far as I'm concerned.

12                   What I do know is that there is nothing  
13 about the MDL process that ought to take away the parties  
14 to that proceeding's ability to come to accommodations or  
15 resolutions to try and cut down the number of issues that  
16 find their way to you or to the district judge or anybody  
17 else.

18                   SPECIAL MASTER POPPITI: It would seem  
19 to me that that's working the process for the purposes of  
20 making it more efficient.

21                   My question goes to parties agreeing in  
22 the context of multidistrict litigation that you are --  
23 you are taking the authority away from the multidistrict  
24 court to benefit the third party, for whatever reason.

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1 MR. JACKSON: Understood, Your Honor.  
2 And I think that the parties in the process are trying to  
3 get a vast amount, in this case in trying to get vast  
4 amounts of information from Dell, which they have  
5 gotten --

6 SPECIAL MASTER POPPITI: Yes.

7 MR. JACKSON: -- were encouraged to sort  
8 of come to some agreements and resolutions and to  
9 cooperate with Dell in order to make that happen.

10 And that one of the consequences of that  
11 is if they voluntarily decide that should there be future  
12 disputes that arise -- and, you know, and we got through  
13 the document production process without ever having to  
14 have a dispute.

15 SPECIAL MASTER POPPITI: You sure did.

16 MR. JACKSON: Knock on wood. You know,  
17 but if in exchange for that they voluntarily want to  
18 have, or were willing to give up the question of who is  
19 going to decide this issue, then I think that's perfectly  
20 consistent with all the other federal rules that exist  
21 out there.

22 SPECIAL MASTER POPPITI: Okay. Then  
23 let's go back to --

24 MR. JACKSON: I'm not trying to --

1                   SPECIAL MASTER POPPITI: Go back to the  
2 question of whether there is an agreement or whether  
3 there isn't.

4                   MR. JACKSON: All right.

5                   SPECIAL MASTER POPPITI: The question I  
6 asked Ms. Smith later in our conversation, let me start  
7 with that.

8                   Do you agree or disagree that the  
9 multidistrict court has the authority to issue subpoenas  
10 nationwide?

11                   MR. JACKSON: Your Honor, I think if you  
12 have jurisdiction, the natural correlation of that  
13 jurisdiction is you have that power. I just think those  
14 go one from the other.

15                   SPECIAL MASTER POPPITI: And I don't  
16 disagree with that. That makes sense to me.

17                   My next question is, then, aside from  
18 the language in the stipulated order, whereby you and AMD  
19 did agree that the subpoenas would issue from the United  
20 States District Court for the Western District of Texas,  
21 you hear Ms. Smith saying that's the extent of the  
22 agreement, and I'm hearing you say, no, it's not.

23                   How do I come out on that? I mean, how  
24 do you expect me to come out on that when the language of

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1 the document only refers to the issuance of the subpoenas  
2 in the first place?

3 MR. JACKSON: Well, as my client  
4 responded, Judge, when we read the AMD argument, why in  
5 the world else would they have thought we insisted on  
6 that provision to start with? And there is no other  
7 explanation for it.

8 SPECIAL MASTER POPPITI: Other than the  
9 question --

10 MR. JACKSON: Dell's reason for  
11 insisting on having it come out of the Western District  
12 is because it meets Dell's purpose of trying to have a  
13 consistent resolution of Dell's discovery obligations in  
14 the multiple lawsuits that it addresses and handles on an  
15 annual basis.

16 SPECIAL MASTER POPPITI: But I'm looking  
17 at rather, you would agree with me, clear and unambiguous  
18 language in this stipulated order. I'm looking at the  
19 four corners of the document, and there is nothing that  
20 deals with the issue of enforcement. Is that a fair  
21 comment?

22 MR. JACKSON: I think -- I think there  
23 is -- the words enforcement appear no place in the  
24 stipulation, Your Honor. I agree with that.

1           I think as a natural consequence of the  
2 agreement, I think Intel understood the natural  
3 consequence of the agreement, and that's what's reflected  
4 in their letter to you.

5           SPECIAL MASTER POPPITI: Well, Intel  
6 comes at it from a little bit of a different perspective,  
7 because Intel names names, if you will. They said there  
8 was a conversation as between -- let me go back to that  
9 letter again for purposes of the record. Mr. Stone of  
10 Intel was having conversation with Mr. Joyce of Dell.  
11 And Mr. Joyce said that he was not going to accept -- I  
12 guess that's the word that was used, was it not? He was  
13 not going to accept service of the subpoena on behalf of  
14 Dell on the condition -- only on the condition it be  
15 issued out of the district that -- District of Texas.  
16 That's a little bit of a different record, is it not?

17           MR. JACKSON: Your Honor, in the context  
18 of "he said, she said" sorts of comments, I will tell the  
19 Court that I have spoken to the gentleman here,  
20 Mr. Conrad, who was handling the negotiations with  
21 Mr. Pearl of O'Melveny, and Mr. Conrad tells me in no  
22 uncertain terms Mr. Pearl understood exactly why Dell was  
23 insisting on this provision.

24           Also, in the context of what the Court

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1 has said, which is, you know, you're looking at the  
2 agreement and the four corners, trying to avoid getting  
3 out and away from that, that the purpose of including it  
4 was clear, is because that way, that the issuing court  
5 would then decide the issue.

6 MS. SMITH: Your Honor, it's Linda  
7 Smith.

8 Can I say one thing here? One of the  
9 things we had expected to see, because of the undisclosed  
10 intent and the clear language of the agreement, not to  
11 mention that it was superseded, was a declaration, a  
12 letter, an Affidavit, an e-mail --

13 SPECIAL MASTER POPPITI: We'll get to --

14 MS. SMITH: Anything. And, also,  
15 Mr. Pearl of our office is my partner, and he did not  
16 deal with Mr. Conrad on this, he dealt with Jeffrey  
17 Joyce. And he tells me in no uncertain terms that  
18 adjudication of disputes was never discussed.

19 SPECIAL MASTER POPPITI: I can't --

20 MS. SMITH: I understand that, Your  
21 Honor.

22 SPECIAL MASTER POPPITI: That's part of  
23 the reason why there is a different record here with  
24 Dell.



1 MS. SMITH: I agree, Your Honor. But  
2 what I'm saying is I would have expected --

3 SPECIAL MASTER POPPITI: Counsel, I'm  
4 going to ask you to hold your comments until you have  
5 another chance, please.

6 MS. SMITH: Okay. Thank you.

7 SPECIAL MASTER POPPITI: Let me then  
8 focus for the moment and accept the proposition that the  
9 order, which does not contain the language of  
10 enforcement, let me assume for the moment that it did.

11 And then I'm directed to the stipulation  
12 that was entered into in January of 2007. I don't know  
13 any other way to read the document production agreement  
14 between Dell and requesting parties in any other fashion  
15 than to read it that all agreements entered into before  
16 that date are obviated by the agreement of that date.

17 How can I read that any differently,  
18 Mr. Jackson?

19 MR. JACKSON: Your Honor, if you look at  
20 the obligations that were imposed in the original  
21 stipulation and the supplemental stipulation, those  
22 obligations survived, or at least the parties have  
23 behaved as if they did, because they are obligations to  
24 maintain and preserve various items that were not

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1 superseded by the document production agreement.

2           What was superseded was the  
3 requirement -- two things, really.

4           One, the requirement to continue an  
5 ongoing maintenance of documents on the theory that the  
6 time and path for such a requirement to make any sense.

7           Secondly, because we at that point had  
8 received, as Ms. Smith pointed out, multiple subpoenas  
9 that all asked for different types of documents in  
10 different forms and factions, and had different date  
11 ranges and all the variations one can imagine when you  
12 get multiple subpoenas in a same topic area, they were  
13 all superseded and replaced by a single set of search  
14 terms in a process that was agreed upon to handle that.

15           But the obligation as it related to  
16 future subpoenas was not part of that part of the  
17 negotiation. So I think what -- if the Court looks at  
18 the other obligations that were in those stipulations,  
19 you'll see that they weren't superseded.

20           SPECIAL MASTER POPPITI: Well, the  
21 problem I'm having with that is the language itself.  
22 Again, I'm confronted with language in an order which is  
23 clear and unambiguous and within the four corners of an  
24 order. It's certainly more than a contract at the point

1 in time when Judge Farnan signed it.

2 But I'm looking at the stipulation, and  
3 looking at paragraph II-G. It says, This agreement  
4 supersedes the subpoenas. I understand that.

5 The preservation stipulation and the  
6 supplemental preservation stipulation. Now, there is no  
7 date for the preservation stipulation and no date for the  
8 supplemental preservation stipulation. And yet I'm  
9 hearing that the only possible reference for the  
10 preservation stipulation is the stipulation re  
11 preservation of documents by Dell, Inc., so ordered by  
12 the court on whatever date Judge Farnan signed it. It  
13 was September the 8th.

14 MR. JACKSON: In the document production  
15 agreement that was entered on the 18th of January, 2007,  
16 all of those various orders are attached as exhibits.  
17 And the Court is correct, you are referring to the  
18 right -- the right stipulations.

19 SPECIAL MASTER POPPITI: I don't know  
20 how I can read --

21 MR. JACKSON: -- as a practical matter,  
22 was the ongoing preservation obligation that was also in  
23 that stipulation. So...

24 SPECIAL MASTER POPPITI: But, counsel,

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1 what it didn't do, it didn't literally carve out what  
2 you're suggesting. It didn't simply carve out the  
3 preservation stip -- the part of the order that dealt  
4 with the obligation to preserve.

5 It says, This agreement supersedes the  
6 preservation stipulation. I mean, how do I read that any  
7 other way than reading it the way it reads?

8 MR. JACKSON: The only thing I can  
9 suggest, Your Honor, is that you look at the other things  
10 that Dell was obligated only under those prior  
11 stipulations to preserve.

12 The argument that AMD is advancing would  
13 leave you in a situation in which the replacement  
14 agreement would have relieved us of an obligation to  
15 preserve any of the documents that we have agreed to  
16 preserve for purposes of a search, which would have left  
17 us with a very hollow result.

18 So, as a matter of simply reading the  
19 agreements together, it can't possibly mean that all of  
20 those obligations were gone. And the stipulation as it  
21 relates to future subpoenas and the issuance of those,  
22 because at that point the document subpoenas had already  
23 been issued out of the Western District of Texas, would  
24 have had no reason to have been superseded as it relates

1 to that.

2 And again, Your Honor, were I to know  
3 now, or were I to know then what the dispute would be  
4 now, of course we would have insisted upon better  
5 language to describe it. You are reading the language  
6 correctly, Your Honor.

7 SPECIAL MASTER POPPITI: And that is, of  
8 course, one of the reasons for the parallel evidence  
9 rule, because in hindsight we would all perhaps make  
10 language tighter in documents of this nature when we're  
11 looking back in hindsight and when there is, in fact, a  
12 dispute.

13 Just give me one moment to collect my  
14 thoughts. Hold on.

15 (Brief recess.)

16 SPECIAL MASTER POPPITI: Counsel, if you  
17 have any more thoughts, please. Otherwise, I would like  
18 to hear from the Class, if there is anything to add to  
19 Ms. Smith's argument. I should have asked you that in  
20 the first place. I do apologize.

21 MR. FIMMEL: Your Honor, the only point  
22 that the Class wanted to make was that we were not a  
23 party to the purported agreement to have the disputes  
24 adjudicated in the Western District of Texas.

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1 SPECIAL MASTER POPPITI: Thank you.

2 Counsel, by virtue of even hearing that  
3 statement, and I guess I should have expected that were  
4 the case in light of the papers that have been put before  
5 me, but perhaps that's even the best example of, the  
6 Class plaintiffs from their perspective just said to me,  
7 I think, we shouldn't be stuck with this because we're in  
8 multidistrict litigation here, and we anticipated that it  
9 means what it means, and we expected ultimately Judge  
10 Farnan would have a say when there is a dispute with  
11 respect to a subpoena that gets issued.

12 Intel, please.

13 MR. STONE: Your Honor, Rod Stone on  
14 behalf of Intel.

15 We really were not a party to the  
16 agreement between Dell and AMD, and were not part of  
17 those negotiations, so don't really have anything to add  
18 beyond what we put in our letter with respect to the  
19 conversation I had with Mr. Joyce with respect to the  
20 issuance of the Intel subpoena.

21 SPECIAL MASTER POPPITI: And that, of  
22 course, is, as I understand it, simply the subject of an  
23 oral agreement as between Intel counsel and Dell counsel.  
24 Is that correct? There is nothing in writing?

1 MR. STONE: That is correct, Your Honor.

2 SPECIAL MASTER POPPITI: Okay. All  
3 right.

4 Here is my view of this, and here is the  
5 way I think it is important to create the record. I'm  
6 going to ask AMD and the Class to discuss an appropriate  
7 form of order. I'm going to ask that Dell have the  
8 opportunity to review it and to agree to it as to form  
9 only, expecting that they may not agree to the substance  
10 of it.

11 Number one, it seems to me if I am  
12 asked, as I am being asked, to look at the stipulation  
13 and order that was entered by the Court on September the  
14 8th of 2005, the language of the order is what it is. It  
15 is no more and no less than AMD and Dell agreeing that  
16 subpoenas will issue for Dell out of the United States  
17 District Court for the Western District of Texas.

18 I'm mindful of the fact that that order  
19 was entered prior to the order of the MDL Panel. I'm  
20 also mindful of the fact that Judge Farnan would have had  
21 an opportunity consistent with the law surrounding  
22 referral of a case to an MDL judge to make a  
23 determination as to whether that order should have been  
24 modified, and he did not do that.

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1           Just for purposes of rounding out the  
2 record, let me just direct counsel's attention to -- just  
3 hold for a second, please.

4           In terms of Judge Farnan having the  
5 opportunity to look at and modify any existing orders  
6 once he received the MDL assignment, if you will look at  
7 In re: Master Key Antitrust Litigation, 320 F. Supp.  
8 1404, and that's the JPML 1971, the language of the  
9 order, as I said, is what it is. And it's important for  
10 me, absent a record that would permit me to make a  
11 determination that there was an agreement above and  
12 beyond the language of this order, to say that the  
13 language of the order is what it is, and it does not  
14 address the issue of enforcement.

15           So I do conclude on the basis of this  
16 record that there was no agreement that took this  
17 language and extended it. Said another way, no agreement  
18 that it's different from the language of the order  
19 itself.

20           Second, it seems to me that the whole  
21 purpose of the MDL federal legislation would be easily  
22 frustrated if third parties were able in conjunction with  
23 their proper effort to do what I think all parties do,  
24 and that is attempt to meet, confer, and resolve issues



1 regarding discovery, particularly in a case of this  
2 nature where the cooperation on the part of AMD and Dell  
3 would likely -- the cooperation itself produce the kind  
4 of information that has been shared, I think it would be  
5 foolish of me not to expect that if Dell chose to contest  
6 some of the requests that were being made, if other third  
7 parties chose to contest some of the requests that were  
8 being made, this litigation could come to a grinding  
9 halt.

10 I know that you're all aware of the path  
11 that Fry's Electronics took, and how long it took to get  
12 that matter resolved when Class plaintiffs tested those  
13 issues. But it seems to me that the whole purpose of the  
14 MDL statute and order would be frustrated were agreements  
15 of this nature to be routine.

16 Said another way, even if there were an  
17 agreement, and even if the -- this order was not  
18 superseded by the later agreement in January of 2007, and  
19 I conclude that it, in fact, was, even if it weren't, I  
20 would recommend to Judge Farnan that the order of  
21 September 8 of 2005 be modified in such fashion that  
22 would permit him to exercise the authority that he does  
23 have throughout the country in dealing with issues  
24 involving subpoenas, whether they issue from this court

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1 or whether they issue from any other court.

2 What I would like AMD to do is to craft  
3 a form of order which puts in place my recommendation to  
4 the court. I would like to hear how quickly that can be  
5 done, because, as AMD knows, if Dell does not agree with  
6 my recommendation, they have the right to go to Judge  
7 Farnan and convince him that this is not the appropriate  
8 way or not the correct way to approach this dispute.

9 How quickly can AMD and the Class work  
10 on the order, and how quickly can it be turned over to  
11 Dell, and how quickly can I have it back for purposes of  
12 my signing it?

13 MS. SMITH: Your Honor, it's Linda  
14 Smith.

15 We can work with the Class and get this  
16 done and over to Dell by close of business today.

17 SPECIAL MASTER POPPITI: And turned  
18 around from Dell, please?

19 MR. JACKSON: Your Honor, if we get it  
20 by the end of the day, we'll have it back to you by no  
21 later -- well, assuming it follows exactly what the Court  
22 said, I'm sure we won't have problems in terms of the  
23 form, we'll get it back to you first thing in the  
24 morning.

1                   SPECIAL MASTER POPPITI: Okay. And that  
2 would be good. I'll look for it, then, not later than  
3 noon tomorrow.

4                   What I'm also going to propose is,  
5 knowing how quickly you all brought this to my attention  
6 and knowing that the papers do not represent a  
7 significant universe of material, as I have in other  
8 matters, I'm going to propose to the Court a quicker  
9 turnaround for you to take; that is, if Dell chooses to  
10 take exception to the order. And my inclination is to  
11 suggest that that be not later than three days from the  
12 issuance of the order.

13                   And what I'll ask AMD to do is if you  
14 will -- no, actually, I'll generate that from this end.  
15 What I intend to do is propose a form of order to Judge  
16 Farnan where he, number one, shortens the amount of time  
17 within which Dell can take an exception. And your  
18 submittals are, short as they are, I will likely suggest  
19 to Judge Farnan that he also impose a page limitation,  
20 if, in fact, there are exceptions taken.

21                   What, clearly, I'm not in a position to  
22 do, in light of the expected schedule for discovery, if  
23 Dell chooses to take exception, I'm certainly not in a  
24 position to suggest how quickly this gets turned around

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1 back to me for purposes of making a determination on the  
2 underlying dispute.

3 In the context of the order that I  
4 prepare for Judge Farnan's signature, by virtue of  
5 language that I will choose to use in that order, I will  
6 suggest to him the urgency from AMD's perspective.

7 Any questions or comments, please?

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

10 I have just two questions, both of which  
11 are not -- I think you -- both of which are not easy.

12 The first is that our response in Texas  
13 to Dell's motion to quash is due on December 4, which  
14 under even this expedited program would pass before this  
15 was completely resolved by Judge Farnan. And my question  
16 to Dell is: Will you agree not to proceed in Texas until  
17 such time as Judge Farnan issues his order?

18 MR. JACKSON: I am more than happy to  
19 ask the clients their view on that request. I am not --  
20 I do not have the authority to respond one way or the  
21 other as we sit here on the phone.

22 MS. SMITH: All right. Judge Poppiti,  
23 would -- this seems -- this seems to sort of again --

24 SPECIAL MASTER POPPITI: Ms. Smith,

1 you're cutting out.

2 MS. SMITH: I'm sorry. This seems to  
3 exemplify the problems with not having things  
4 multidistricted.

5 You have made a recommendation, which  
6 may or may not be appealed to Judge Farnan. And  
7 meanwhile, can you or can Judge Farnan, if Dell will not  
8 agree to halt the Texas proceeding, ask that it be stayed  
9 until such time as -- I'm not asking you to speak for  
10 Judge Farnan. I just -- this is exactly what happens  
11 when the multidistrict court is trying to interface with  
12 another court at the same time.

13 SPECIAL MASTER POPPITI: I understand  
14 what you're saying.

15 In your papers to me, I believe that  
16 there was some request or suggestion that Judge Farnan  
17 engage the judge in the Western District of Texas. And I  
18 think I told you, it may not have been the last time that  
19 we talked, it may have been the first time, that I had  
20 already advised Judge Farnan's case manager that there  
21 was that request that was made. And I think I remember,  
22 without looking down at the transcript, remember telling  
23 all of you that by virtue of making that contact with  
24 Judge Farnan's Chamber, I'm sure that he is aware of it.

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1 And yet, at the same time, I'm certainly not in a  
2 position to expect when, if at all, he will accept that  
3 suggestion.

4 MS. SMITH: Understood, Your Honor.  
5 When will -- I'm not sure --

6 SPECIAL MASTER POPPITI: The only  
7 other -- I landed on three days only because I landed on  
8 three days. It seems to me it's doable in two, because  
9 all of your papers are finished. It's just a matter of  
10 reformatting them to some extent, perhaps taking into  
11 consideration what I have recommended, and simply  
12 repackaging it for Judge Farnan's view if Dell chooses to  
13 do that.

14 So if there is an expectation, and I'm  
15 certainly wanting to be fair to all concerned parties, if  
16 there is an expectation it can be done in two days, then  
17 I will recommend that we shorten the time to two days.

18 And my experience, counsel, with respect  
19 to suggestions to Judge Farnan of that nature is that he  
20 has -- he has always accepted the recommendation to  
21 shorten the time and has always taken the time that I  
22 have recommended for purposes of establishing a deadline.

23 MR. JACKSON: Your Honor, this is Tom  
24 Jackson.

1                   Taking our normal 20 days to three is  
2 fairly dramatic. Taking it yet another day or two seems  
3 very, very short for us.

4                   SPECIAL MASTER POPPITI: Okay. Then  
5 I'll leave it at three.

6                   Do you have another comment or question?

7                   MS. SMITH: Yes, I did. But,  
8 Mr. Jackson, will you be able to indicate to us today  
9 whether your client is so inclined to allow us to stay  
10 this until we hear from Judge Farnan?

11                  MR. JACKSON: I promise to raise the  
12 issue with them. I do not know how quickly they will  
13 come to a decision, but as soon as they do, I will let  
14 you know. That's all I can do.

15                  SPECIAL MASTER POPPITI: Any other  
16 comments or questions, or would you prefer -- I can  
17 certainly leave you all on the line, just put you on  
18 hold, and when you're finished, if it's a matter of  
19 further conferring --

20                  MS. SMITH: Your Honor, this is Linda  
21 Smith.

22                  I have one last issue. The subpoena  
23 issued in the Western District of Texas, the first one  
24 for the deposition of Dan Allen, provides that his

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1 deposition is scheduled to commence on September 8th. I  
2 mean, excuse me, I've lost my track of time,  
3 December 8th. And that would be -- that would be pretty  
4 quickly, especially considering that we need at this  
5 point to wait for Judge Farnan's ruling and then brief  
6 and address the duration of the deposition issue.

7 I had already written on November 24th  
8 to Mr. Jackson and his other folks at Jones Day  
9 suggesting that under the original schedule, which  
10 contemplated a more expedited -- well, was expediting  
11 things, but contemplated that the original times for  
12 briefing the second part, the duration of the deposition  
13 issue, would be originally, I'm saying, simultaneous  
14 briefs on the 4th of December and hearing on the 8th.  
15 And I, therefore, expressed to Mr. Jackson, et al. that  
16 because there may be a hearing on the 8th, that we would  
17 be happy to either issue a new subpoena for the 10th, or  
18 maybe he would agree to treat the subpoena for Dan Allen,  
19 which requires an appearance on December 8th, as if it  
20 requires his appearance on December 10th.

21 Mr. Jackson's response was, no, we have  
22 not -- I'm reading it. We have not agreed to any dates  
23 in any of your subpoenas. We have consistently  
24 maintained that position and continue to do so.



1           So I guess what I'm saying is, we have  
2 and have always been willing to be flexible about the  
3 issue. We do need to get these depositions done, but we  
4 do understand that these have to be resolved. There is  
5 currently an outstanding subpoena directing -- Federal  
6 subpoena directing Mr. Allen to appear on the 8th at  
7 9 o'clock, and we need to have some sort of agreement on  
8 that.

9           And if we can't do it between the  
10 parties, I think we have to bring that issue now to Your  
11 Honor.

12           MR. JACKSON: Your Honor, Tom Jackson,  
13 if I might.

14           SPECIAL MASTER POPPITI: Yes, please.

15           MR. JACKSON: The issue of the subpoenas  
16 is the subject of a pending motion to quash. And as the  
17 Court knows, all of that is wound up into the issue of  
18 the question of length. And that's the sole basis on  
19 which there is a motion to quash.

20           I am not going to recommend to my client  
21 that we require Ms. Smith to re-serve subpoenas for  
22 whatever date we ultimately agree to to take these depos  
23 on. I think one subpoena is good enough, and we can  
24 agree to change the date to whatever date it ultimately

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1 turns out to be. Because I realize and understand that  
2 each of these people, in fact, will be deposed. The open  
3 question is for how long.

4 And so, you know, I'm not going to  
5 require to keep serving subpoenas or otherwise deal with  
6 that, if that helps her in any way.

7 MS. SMITH: Well --

8 SPECIAL MASTER POPPITI: It sounds like  
9 it helps some, doesn't it, Ms. Smith?

10 MS. SMITH: Well, it does help some.  
11 You know, as Your Honor is aware, for at least these six  
12 deponents, the five current and the one former, there is  
13 an agreement that they will appear, and the question is  
14 how long.

15 I feel like -- and, you know, I feel  
16 like if we don't have consent that the motion to quash  
17 will be stayed, and if we don't have consent on any date,  
18 and sort of a, what I would regard as, with all due  
19 respect, somewhat of an intransigence on this issue, you  
20 know, we're in position to move for contempt on the 8th  
21 if he doesn't --

22 SPECIAL MASTER POPPITI: My reaction is  
23 you have to do what you have to do. And if the  
24 conversation is going to be, as Mr. Jackson just

1 suggested, the same. I mean, once this matter leaves my  
2 desk, it seems to me that the issue will be squarely  
3 before all of you, and it will be Dell's decision as to  
4 whether or not they take exception. And if they do, I  
5 think I've done my part in trying to move this along by  
6 suggesting that there also be an order accompanying this  
7 order asking Judge Farnan to turn to it as quickly as he  
8 chooses. I don't think there is really anything more  
9 that I can do from my desk other than tee it up for Judge  
10 Farnan in the next four days.

11 MS. SMITH: Okay. Thank you, Your  
12 Honor.

13 SPECIAL MASTER POPPITI: And leave it to  
14 whomever to get his intention as quickly as possible.

15 All right. I will look for an order not  
16 later than noon tomorrow, and I can assure you it will be  
17 out of here soon thereafter.

18 (Hearing concluded at 2:11 p.m.)

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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  
December A.D., 2008.

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