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April 23, 2009

**VIA ELECTRONIC MAIL & HAND DELIVERY**

The Honorable Vincent J. Poppiti  
Blank Rome LLP  
Chase Manhattan Centre, Suite 800  
1201 North Market Street  
Wilmington, DE 19801-4226

**Re: *Advanced Micro Devices, Inc., et. al. v. Intel Corporation, et. al.,*  
C.A. No. 05-441-JJF; and *In Re Intel Corporation, C.A. No. 05-*  
**MDL-1717-JJF****

Dear Judge Poppiti:

We write requesting the opportunity to be heard by Your Honor via telephone conference tomorrow or as soon as possible thereafter regarding the scheduling of the deposition of HP's Joe Beyers. Unfortunately, Intel and AMD have been unable to reach agreement on this issue. The timing is critical because the deposition at issue is scheduled for next week.

In March and April, counsel for Intel, AMD and HP had numerous conversations, both electronically and telephonically, regarding the scheduling of upcoming HP deponents. During these conversations, we agreed to set firm dates for Duane Zitzner (March 26-27) and Joe Lee (May 7-8). HP also proposed dates for the deposition of Joe Beyers (April 30-May 1), but Intel made clear that its key attorney working on the HP portion of the case had prior commitments on this and other cases on those dates. HP's counsel has communicated his willingness to consider producing Mr. Beyers on other dates if Intel and AMD could reach agreement. Nevertheless, despite HP's amenability, AMD has refused to move the date.

A similar issue was presented to Your Honor with regard to a Dell deponent. In that situation, AMD's counsel argued successfully that because she was the AMD lawyer most prepared to take the deposition, and could not take it on the date Dell offered, the deposition would be moved. Copies of certain correspondence on the Dell issue is attached.

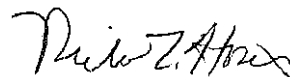
April 23, 2009

Page 2

We are in a similar situation. Intel counsel Joe Ostoyich is in charge of the HP issues for Intel and is prepared to take Mr. Beyers' deposition but cannot do so on April 30 or May 1, the current dates offered by HP. HP is willing to move it. AMD will not agree.

We are available tomorrow at the convenience of the Court and stand by awaiting any further directions from Your Honor.

Respectfully,



Richard L. Horwitz

RLH:cet

cc: Clerk of the Court (via electronic filing)  
Frederick L. Cottrell (via electronic filing)  
Michael McGuinness (via email)  
Paul Weller (via email)

913157/29282

# ASHBY & GEDDES

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302-654-1888  
FACSIMILE  
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December 22, 2008

Special Master Vincent J. Poppiti VIA ELECTRONIC FILING AND HAND DELIVERY  
Blank Rome LLP  
1201 Market Street, Suite 800  
Wilmington, DE 19801

Re: In re Intel Corporation. C.A. Nos. 05-md-1717.05-441 and 05-485

Dear Special Master Poppiti:

We submit the following brief response to Adam Balick's letter submitted to this Court earlier today and in support of our request for a teleconference today on the current disagreement between AMD and Class Plaintiffs on the one hand and Dell Inc. ("Dell") and current Dell employee Dan Allen with respect to his deposition dates.'

AMD has consistently reminded Dell and this Court that the depositions of the Dell witnesses must start as soon as humanly possible—going so far as to threaten to move for contempt if Mr. Allen did not show for deposition on December 8, 2008 (12.1.2008 Transcript 48:10-21)—and subsequently stated that it would work with the witnesses' schedules (12.8.2008 Transcript 25:22-24). During the December 8, 2008 hearing with this Court, Intel apprised this Court and Dell that it had a conflict in late December (12.8.08 Transcript 31:7-12); AMD did nothing to similarly apprise anyone of a potential conflict.

With that in mind, Mr. Allen was able to arrange his schedule to provide two consecutive days in December and one in January for the 22.5 hours of time that has been ordered for his deposition. Dell sought pre-clearance of the December dates with Intel given their disclosed conflict and informed all parties of the December dates on December 15. Yet, AMD now claims that it cannot begin the deposition of Mr. Allen until after January 2, 2009. The witness, a third-party to this MDL proceeding, has already altered personal and work plans to accommodate AMD's time request, Mr. Allen's counsel has similarly altered holiday travel schedule to accommodate the witness' availability, and AMD failed to provide anyone with notice of Ms. Smith's unavailability. A case the size and scope of this unprecedented MDL proceeding surely is not contingent on the schedule of one AMD lawyer. Moreover, Mr. Allen's January schedule is much more congested and is likely unavailable for consecutive deposition dates until March.

As for Class Plaintiffs' objection that they should not be made to travel for two hours to Austin for the same deposition, Class Plaintiffs were allocated only 2 hours of deposition time.

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<sup>1</sup> As Dell has stated in its previous submissions to this Court, in submitting this letter brief, Dell is not admitting that it is subject to the jurisdiction of this Court with respect to any issues that may arise. Further, we reserve all rights to have this and any related dispute resolved in the Western District of Texas and to appeal the previous orders of this Court relating to the deposition disputes regarding Dell.

There is no requirement—especially at the considerable inconvenience of a third-party witness—that the deposition dates be consecutive or that Class Plaintiffs even physically attend the other days of testimony. Further, Class Plaintiffs have failed to remit to Dell the \$66,666.66 they agreed to pay Dell to produce the second inspection set, for which Intel and AMD remitted their portions to Dell a month ago.

Finally, this Court has ordered that current Dell employees Dan Allen, Jeff Clarke, and Alan Luecke sit for deposition times of 22.5, 22.5, and 15 hours, respectively. These ordered times slightly exceed the 7-hour durational limit for a single day of testimony. Nevertheless, we request that these depositions be taken in such a manner as to ease the burden on these non-parties by increasing the daily limit to allow for these depositions to be completed in 3 days for Mr. Allen and Mr. Clarke and 2 days for Mr. Luecke rather than extending the depositions for an additional partial day.

We look forward to discussing these issues with Your Honor this afternoon.

Respectfully,

*/s/ Lauren E. Maguire*

Lauren E. Maguire

cc: Adam L. Balick, Esquire (by hand)  
Frederick L. Cottrell, III, Esquire (by hand)  
Richard L. Horwitz, Esquire (by hand)  
James L. Holzman, Esquire (by hand)

December 22, 2008

Sidney Balick

Adam Balick

Joanne Ceballos

James Drnec

**BY ELECTRONIC MAIL**

The Honorable Vincent J. Poppiti  
Special Master  
Blank Rome LLP  
Chase Manhattan Centre, Suite 800  
1201 North Market Street  
Wilmington, DE 19801-4226

**Re: *In re Intel Corporation Microprocessor Antitrust Litigation***

Dear Judge Poppiti:

With apologies for having to involve Your Honor once again in a disagreement over the Dell depositions, AMD, Class Plaintiffs and Dell have been unable to work out agreeable dates for the deposition of Dan Allen. This latest dispute started when counsel for Dell gave AMD and Class Plaintiffs two weeks notice that Mr. Allen was available for deposition on December 29 and 30, 2008, right in the middle of the holidays and when the AMD attorney responsible for Mr. Allen's deposition (Linda Smith) will be out of the country. We used our best efforts to explain why those dates are unsuitable and expressed concern that the two dates proffered for Mr. Allen were inadequate to allow for all 22.5 hours that this Court allotted for Mr. Allen's deposition. Dell provided no other dates to complete Mr. Allen's deposition and no dates whatsoever for the other five witnesses. We were concerned that Dell would continue to dribble out dates for all six depositions with little notice and without clearing those dates with the subpoenaing parties. (Counsel for Intel informed us that Dell pre-cleared December 29 and 30 with Intel, but Dell has sought to unilaterally impose those dates on AMD and Class Plaintiffs.)

It was only after counsel for AMD and Class Plaintiffs sent numerous and unnecessary emails that counsel for Dell finally provided a third date for Mr. Allen (January 5, 2008) and a "complete" schedule for all six witnesses. We immediately accepted all of the proposed dates. But we have been met with refusal in response to our request for different dates for Mr. Allen. As we have told counsel for Dell numerous times. Linda Smith has prepared to depose Mr. Allen, but she had previously planned a vacation with her family out of the country during the Christmas vacation. She is now out of the country and will not return until January 2, 2009. She has offered to be available on the following day. Class Plaintiffs have also objected to having to fly back and forth to Texas twice in two weeks for the same deposition.

I see that Dell has requested a teleconference with Your Honor to discuss this conflict. We agree that a teleconference is necessary.

Honorable Vincent J. Poppiti  
December 22, 2008  
Page 2-

Attached to this letter are examples of correspondence exchanged with Dell's counsel on this matter.

Respectfully;

A handwritten signature in black ink, appearing to read "Adam Balick". The signature is written in a cursive style with a long horizontal stroke at the end.

Adam Balick  
(Bar ID#2718)

cc: Clerk of the Court  
Richard L. Horwitz, Esq.  
James L. Holzman, Esq.  
Thomas R. Jackson, Esq.  
Michael D. Mann, Esq.  
Lauren E. Maguire. Esq.

# Exhibit A

## Deposition Dates for Dan Allen

Adam Balick

From: Smith, Linda [LSmith@OMM.com]  
Sent: Monday, December 22, 2008 6:24 AM  
To: Adam Balick  
Subject: Fw: Deposition Dates for Dan Allen

From: Thomas R. Jackson  
To: Smith, Linda; mmann ; William Barry ; Floyd, Daniel S. ; Rod J. Stone ; Cottrell, Frederick ; Fineman, Steven ; Lisa Magids ; Steve Fimmel  
Sent: Sat Dec 20 04:46:22 2008  
Subject: Re: Deposition Dates for Dan Allen

I am the only one trying to make sure you get what you asked for. If AMD wants Dan Allen, this is the time to take him. The only desperation seems to be in your refusal to do what you told the Court you would do which is work with the witnesses schedule. You think I picked these dates? I had planned on being in Ky and I have already changed my plans to accommodate the witness. You don't have to, you have a team of people. We simply can't make the witnesses victims of your schedule. As for notice, we will do what we can consistent with the Court's schedule.

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This email message, sent from my wireless device, contains privileged and confidential information. If you are not the intended recipient of this message, please notify the sender and then delete it.  
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This e-mail (including any attachments) may contain information that is private, confidential, or protected by attorney-client or other privilege. If you received this e-mail in error, please delete it from your system without copying it and notify sender by reply e-mail, so that our records can be corrected.  
-----

From: "Smith, Linda" [LSmith@OMM.com]  
Sent: 12/19/2008 11:12 PM PST  
To: Thomas Jackson; "mmann" <mmann@rkollp.com>; "William Barry" <WBarry@rkollp.com>; "Floyd, Daniel S." <DFloyd@gibsondunn.com>; "Rod J. Stone" <RStone@gibsondunn.com>; "Cottrell, Frederick" <Cottrell@RLF.com>; "Fineman, Steven" <Fineman@RLF.com>; "Lisa Magids" <lmagids@smith-robertson.com>; "Steve Fimmel" <stevef@hbsslaw.com>  
Subject: RE: Deposition Dates for Dan Allen

Please provide me with sufficient **email** notice as I do not have any cell phone contact. I fail to understand why you now grasping at straws. Will you do anything to prevent these depositions? Are you that desperate? Are you trying to circumvent the MDL Court's Orders? What exactly do you intend to bring up regarding these issues? That the parties are unwilling to take a partial Dan Allen deposition during the holidays on a date you unilaterally imposed?

As to the seven hour rule, there is no dispute.

Tom, as I already told you, "we will use BEST efforts with the cooperation of the Dell



witnesses to finish within the days you've allotted, but of course reserve if the parties need more time to comply with the Court-ordered times." For example, the Court ordered Clarke to appear for 22.5 hours and Luecke to appear for 15 hours. You have given the parties three days for Clarke and two days for Luecke. Therefore, even if the three parties complete seven hours each day, there is additional Court ordered time necessary for the completion of the depositions of Clarke and Luecke. Under Judge Poppiti's Report and Recommendation and MDL Court Judge Farnan's Order the parties are entitled to all the time allowed under the Court's Order for Clarke, Luecke and the other four witnesses and require the use of the allotted time to examine the Dell witnesses who are critical to the matters at issue in this unprecedented MDL antitrust action. We intend to abide by the Court's rulings.

Linda J. Smith  
**O'Melveny & Myers**  
1999 Avenue of the Stars  
Los Angeles, CA 90067  
Direct 310-246-6801  
Fax 310-246-6779

**From:** Thomas R. Jackson [mailto:trjackson@JonesDay.com]  
**Sent:** Friday, December 19, 2008 7:24 PM  
**To:** Smith, Linda; mmann; William Barry; Floyd, Daniel S.; Rod J. Stone; Cottrell, Frederick; Fineman, Steven; Lisa Magids; Steve Fimmel  
**Subject:** Re: Deposition Dates for Dan Allen

We will raise this issue, the Class failure to pay, and the 7 hour day with the Court on Monday.

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This email message, sent from my wireless device, contains privileged and confidential information. If you are not the intended recipient of this message, please notify the sender and then delete it.  
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This e-mail (including any attachments) may contain information that is private, confidential, or protected by attorney-client or other privilege. If you received this e-mail in error, please delete it from your system without copying it and notify sender by reply e-mail, so that our records can be corrected.  
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-----  
**From:** "Smith, Linda" [LSmith@OMM.com]  
**Sent:** 12/19/2008 07:09 PM PST  
**To:** Thomas Jackson: "mmann" <mmann@rkollp.com>; "William Barry" <WBary@rkollp.com>; "Floyd, Daniel S." <DFloyd@gibsondunn.com>; "Rod J. Stone" <RStone@gibsondunn.com>; "Cottrell, Frederick" <Cottrell@RLF.com>; "Fineman, Steven" <Fineman@RLF.com>; "Lisa Magids" <lmagids@smith-robertson.com>; "Steve Fimmel" <stevef@hbsslaw.com>  
**Subject:** RE: Deposition Dates for Dan Allen

Tom, the order says no such thing.

AMD and Class subpoenaed the deposition.

You unilaterally set these dates. AMD and Class never agreed to those dates and indeed told you no, for a variety of very good and sufficient reasons.

You cannot insist on the subpoenaing parties taking a deposition on a date they can not take it and never asked for.

We are happy to work cooperatively with you on all of this and indeed have already accepted the entirety of your proposed dates for Luecke, Dell, Neeld, Clarke and **Rollins** (if **Intel** can work out Roehm's schedule.) We just said yes to everything you proffered for those five Dell witnesses. But this cooperation has to be a two way street.

Scheduling mutually agreeable dates for a deposition that everyone agrees will take place should be something we can work out without the Court's intervention.

That said, since you refuse to proffer any other dates for Mr. Allen and insist on a deposition on dates none of the parties ever offered, I suggest that we take this to Judge **Poppiti**. Since I am leaving at **4:30** Saturday morning and will not have cell phone access, please advise me by **email** if we all have to resort to this or whether we can agree on alternate dates for Allen.

Linda J. Smith  
**O'Melveny & Myers**  
1999 Avenue of the Stars  
Los Angeles, CA 90067  
Direct 310-246-6801  
Fax 310-246-6779

---

**From:** Thomas R. Jackson [mailto:trjackson@JonesDay.com]

**Sent:** Friday, December 19, 2008 6:44 PM

**To:** Smith, Linda; mrnann; William Barry; Floyd, Daniel S.; Rod J. Stone; **Cottrell**, Frederick; **Fineman**, Steven; Lisa Magids; Steve **Fimmel**

**Subject:** Re: Deposition Dates for Dan Allen

I appreciate the tone of your response. Mr. Allen is available on the 29th and 30th. As instructed by the Court, we have done our very best to get all of these scheduled and I believe you said any time and in any order. So, please stop complaining and send someone to take the deposition.

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This email message, sent from my wireless device, contains privileged and confidential information. If you are not the intended recipient of this message, please notify the sender and then delete it.  
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This e-mail (including any attachments) may contain information that is private, confidential, or protected by attorney-client or other privilege. If you received this e-mail in error, please delete it from your system without copying it and notify sender by reply e-mail, so that our records can be corrected  
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**From:** "Smith, Linda" [LSmith@OMM.com]

**Sent:** 12/19/2008 04:59 PM PST

**To:** Thomas Jackson; "mmann" <mmann@rkollp.com>; "William Barry" <WBarry@rkollp.com>; "Floyd, Daniel S." <DFloyd@gibsondunn.com>; "Rod J. Stone" <RStone@gibsondunn.com>; "Cottrell, Frederick" <Cottrell@RLF.com>; "Fineman, Steven" <Fineman@RLF.com>; "Lisa Magids" <lmagids@smith-robertson.com>; "Steve Fimmel" <stevef@hbsslaw.com>

**Subject:** RE: Deposition Dates for Dan Allen

Tom,

You, sir, are in no position to issue ultimatums regarding AMD and the Class Plaintiffs' subpoenas. You are not the subpoenaing **party**. You cannot just pick dates unilaterally for part of one Dell witness in the middle of the holidays and impose them on the parties. The subpoena for Mr. Alien called for his deposition to start on December 8. AMD was fully prepared to proceed on that date and has repeatedly for the last six months and on the record at hearings before the Special Master said we were prepared to be (1) flexible and cooperative in scheduling the allotted time for each witness and (2) flexible in taking the Dell witnesses in whatever sequence you proffered them. That has always been part of our commitment and continues to be so.

In order to obtain the depositions of the six Dell witnesses which you promised us in early August, we have now had to go to two Federal District Courts and three judges-- the MDL Special Master, the MDL Court and the W. D. Texas Court. We have filed endless briefs, participated in at least half a dozen hearings and had numerous orders issued, each one establishing the MDL Court's jurisdiction over third party depositions generally and the Dell witnesses' depositions specifically. Today MDL Court Judge Farnan overruled the Dell witnesses' objections to the duration of their depositions and adopted Special Master Poppiti's Report and Recommendation. A copy of today's order is attached.

Now that you have seemingly run out of Courts to go to in order to prevent these depositions from occurring or from providing the parties with sufficient time to ask these critical witnesses our questions, we are justly concerned that you will dribble these folks out if, as and when you **want, and** drag the process out as long as possible.

Your ultimatum with respect to Mr. Allen confirms AMD's concerns. I am sending you for the third time (see below) my response of Tuesday. It fully expresses AMD's concerns with you lobbing in on two weeks notice in the middle of the holidays only part of one witness' Court ordered time with no mention whatsoever of either when Mr. Allen's deposition will conclude or when the rest of the Dell witnesses will be made available. AMD insisted on receiving from you before the commencement of Mr. Allen's deposition the dates for the full time allotment ordered by Judge **Poppiti** (and now MDL Judge Farnan) for Mr. Alien's deposition and the dates, again using the full time allotment ordered by Judge **Poppiti** (and now MDL Judge Farnan), for the other five depositions.

You appeared to respond to this concern on Tuesday ten minutes after I sent the message by saying: "I am working on a complete schedule and I would not worry about it if I were you."

That is exactly what we asked for and it appeared that we would finally be able to get

12/22/2008

this done. Now, for reasons, unknown you have withdrawn that position and are "ordering" us into precisely the situation we feared. With respect to our subpoenas of the six Dell witnesses, our position remains the same as it was when you agreed to it on Tuesday. Here it is again for your reference. Please read and respond to this:

I have reviewed your exchange with counsel for Class Plaintiffs and am concerned that you are overlooking the main point that Class Plaintiffs were making--the parties to this MDL need a firm schedule for the depositions of the six Dell witnesses, not a short fuse offer to dribble them out one witness at a time and then only for part of the Court ordered time allotment for that one witness.

Having wrangled and litigated with you for over six months to get deposition dates for the six Dell witnesses, I do not appreciate receiving just two weeks notice of the pair of dates you are proposing for Mr. Allen, particularly since (1) those days are smack in the middle of the holiday season, (2) the proposed dates are not sufficiently long to complete the Allen deposition in one sitting and (3) you have left us completely hanging as to when we will complete the Allen deposition or conduct the depositions of the remaining five Dell witnesses. At this point, we are entitled well in advance to a complete schedule of when all six witnesses will be made available for the time allotments that Judge **Poppiti** ordered. Advance scheduling should be in Dell's interests as well, given what you have characterized as the difficulty of finding open days for these busy executives.

As for Mr. Allen, I am vacationing with my family out of the country during Christmas. I will be returning on January 2nd and am prepared to start Mr. Allen's deposition on the next business day. But we insist on receiving from you before then the dates for the full time allotment ordered by Judge **Poppiti** for Mr. Allen's deposition and the dates, again using the full time allotment ordered by Judge **Poppiti**, for the other five depositions."

Linda J. Smith  
**O'Melveny & Myers**  
1999 Avenue of the Stars  
Los Angeles, CA 90067  
Direct 310-246-6801  
Fax 310-246-6779

**From:** Thomas R. Jackson [mailto:trjackson@JonesDay.com]  
**Sent:** Friday, December 19, 2008 3:52 PM  
**To:** Smith, Linda; mmann; William Barry; Floyd, Daniel S; Rod J. Stone; Cottrell, Frederick; Fineman, Steven; Lisa Magids; Steve Fimmel  
**Subject:** Re: Deposition Dates for Dan Allen

This makes no sense. I gave you dates to start Dan. I now have a third day for him. January 5. See you all on the 29th. As I said I have changed mt Christmas plans to accommodate Dan's schedule. You should do likewise. Remember you are the one that threatened to hold Dan in contempt if he didn't show up in December. As for making statements for the record, that is funny. You are the one that seems intent on that front. I wish all of you a Merry Christmas or Happy Holidays depending on your beliefs. And remind the class they owe Dell for the last round of documents.

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12/22/2008

## Deposition Dates for Dan Allen

intended recipient of this message. please notify the sender and then delete it.

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This e-mail (including any attachments) may contain information that is private, confidential, or protected by attorney-client or other privilege. If you received this e-mail in error, please delete it from your system without copying it and notify sender by reply e-mail, so that our records can be corrected.  
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**From:** "Smith, Linda" [LSmith@OMM.com]  
**Sent:** 12/19/2008 03:02 PM PST  
**To:** Thomas Jackson; <mmann@rkollp.com>; "Barry, Ian" <WBarry@rkollp.com>; "Floyd, Daniel S." <DFloyd@gibsondunn.com>; <RStone@gibsondunn.com>; "Cottrell, Frederick" <Cottrell@RLF.com>; "Fineman, Steven" <Fineman@RLF.com>; "Lisa Magids" <lmagids@smith-robertson.com>; "Steve Fimmel" <stevef@hbsslaw.com>  
**Subject:** Deposition Dates for Dan Allen

**Tom--**I am in receipt of your **email**, curiously only sent to me. I do not understand your about face and am forced to conclude that it is "for the record" as opposed to a serious response since it does not address either **AMD's** or the Class plaintiffs' valid substantive concerns about your attempted last minute scheduling during the holidays of only **13-14** hours of Dan Allen's Court ordered **22.5** hour deposition and is contrary to your response on Tuesday. Here's what transpired. Tuesday at **7:50** am, I sent you and all of the addresses above the following message:

"Tom,

**I** have reviewed your exchange with counsel for Class Plaintiffs and am concerned that you are overlooking the main point that Class Plaintiffs were making--the parties to this MDL need a firm schedule for the depositions of the six Dell witnesses, not a short fuse offer to dribble them out one witness at a time and then only for part of the Court ordered time allotment for that one witness.

Having wrangled and litigated with you for over six months to get deposition dates for the six Dell witnesses, **I** do not appreciate receiving just two weeks notice of the pair of dates you are proposing for Mr. Allen, particularly since **(1)** those days are smack in the middle of the holiday season, **(2)** the proposed dates are not sufficiently long to complete the Allen deposition in one sitting and **(3)** you have left us completely hanging as to when we will complete the Allen deposition or conduct the depositions of the remaining five Dell witnesses. At this point, we are entitled well in advance to a complete schedule of when all six witnesses will be made available for the time allotments that Judge **Poppiti** ordered. Advance scheduling should be in Dell's interests as well, given what you have characterized as the difficulty of finding open days for these busy executives.

As for Mr. Allen, **I** am vacationing with my family out of the country during Christmas. **I** will be returning on January 2nd and am prepared to start Mr. Allen's deposition on the next business day. But we insist on receiving from you before then the dates for the full time allotment ordered by Judge **Poppiti** for Mr. Allen's deposition and the dates, again using the full time allotment ordered by Judge **Poppiti**, for the other five depositions."

This was after you received the following message on Monday from the Class Plaintiffs:

**"Tom-**

Thank you for providing proposed dates for Mr. Allen. However, Class Plaintiffs cannot agree to the precedent of bifurcating the schedule of deponents. To fly into Austin for two days, only to return to complete the 22.5 hours of Mr. Allen's testimony at some later, **unspecified** date wastes enormous resources. It forces AMD, Class **Plaintiffs** and Intel counsel to travel twice into Austin to conduct the examination of a single witness. Furthermore, it strategically advantages our opponent with the opportunity to thoroughly review the initial two days of deposition testimony and exhibits with which to prepare its later examination. We will not agree to conducting third-party depositions on a piecemeal basis. Please provide us with continuous dates for Mr. Allen's deposition, and with a complete schedule of dates for Messrs. Neeld, Clarke, Luecke, **Rollins** and Dell.

Please feel free to contact me if you wish to discuss further. "

You responded to me on Tuesday, 10 minutes after my message, and addressed the scheduling issue regarding both Dan Allen and the five other Dell witnesses:

"Thanks. I am working on a complete schedule and I would not worry about it if I were you."

That was a sensible and responsive message to the concerns raised. Your latest message eschews all of what has transpired and simply relies on that old saw (which you as a Jones Day partner know is a complete myth) that "you are a big firm, send someone else." Due to the importance of the Dell witnesses to the AMD v. Intel case (a subject we have battled over for many weeks now), I am required to be there.

Linda J. Smith  
**O'Melveny & Myers**  
1999 Avenue of the Stars  
Los Angeles, CA 90067  
Direct 310-246-6801  
Fax 310-246-6779

Linda J. Smith  
**O'Melveny & Myers**  
1999 Avenue of the Stars  
Los Angeles, CA 90067

Deposition Dates for ~~Dan~~ Allen

**Direct 310-246-6801**

**Fax 310-246-6779**

# Exhibit B



Deposition Dales for Dan Allen

Adam **Balick**

**From:** Smith, Linda [LSmith@OMM.com]  
**Sent:** Monday, December 22, 2008 6:25 AM  
**To:** Adam Balick  
**Subject:** Fw: Deposition Dates for Dan Alien

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**From:** Smith, Linda  
**To:** Thomas R. Jackson ; mmann ; William Barry ; Floyd, Daniel S. ; Rod J. Stone ; Cottrell, Frederick ; Fineman, Steven ; Lisa Magids ; Steve Fimmel  
**Sent:** Fri Dec 19 19:09:57 2008  
**Subject:** RE: Deposition Dates for Dan Allen

Tom, the order says no such thing.  
AMD and **Class** subpoenaed the deposition.  
You unilaterally set these dates. AMD and Class never agreed to those dates and indeed told you no, for a variety of very good and sufficient reasons.  
You cannot insist on the subpoenaing parties taking a deposition on a date they can not take it and never asked for.

We are happy to work cooperatively with you on all of this and indeed have already accepted the entirety of your proposed dates for Luecke, Dell, Neeld, Clarke and **Rollins** (if **Intel** can work out Roehm's schedule.) We just said yes to everything you proffered for those five Dell witnesses. But this cooperation has to be a two way street.

Scheduling mutually agreeable dates for a deposition that everyone agrees will take place should be something we can work out without the Court's intervention.

That said, since you refuse to proffer any other dates for Mr. Allen and insist on a deposition on dates none of the parties ever offered, I suggest that we take this to Judge **Poppiti**. Since I am leaving at **4:30** Saturday morning and will not have cell phone access, please advise me by **email** if we all have to resort to this or whether we can agree on alternate dates for Allen.

Linda J. Smith  
**O'Melveny & Myers**  
1999 Avenue of the Stars  
Los Angeles, CA 90067  
Direct **310-246-6801**  
Fax **310-246-6779**

---

**From:** Thomas R. Jackson [mailto:trjackson@JonesDay.com]  
**Sent:** Friday, December 19, 2008 6:44 PM  
**To:** Smith, Linda; mmann; William Barry; Floyd, Daniel S; Rod J. Stone; Cottrell, Frederick; Fineman, Steven; Lisa Magids; Steve Fimmel

## Deposition Dates for Dan Allen

**Subject:** Re: Deposition Dates for Dan Allen

I appreciate the tone of your response. Mr. Allen is available on the 29th and 30th. As instructed by the Court, we have done our very best to get all of these scheduled and I believe you said any time and in any order. So, please stop complaining and send someone to take the deposition.

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**From:** "Smith, Linda" [LSmith@OMM.com]

**Sent:** 12/19/2008 04:59 PM PST

**To:** Thomas Jackson; "mmann" <mmann@rkollp.com>; "William Barry" <WBarry@rkollp.com>; "Floyd, Daniel S." <DFloyd@gibsondunn.com>; "Rod J. Stone" <RStone@gibsondunn.com>; "Cottrell, Frederick" <Cottrell@RLF.com>; "Fineman, Steven" <Fineman@RLF.com>; "Lisa Magids" <lmagids@smith-robertson.com>; "Steve Fimmel" <stevef@hbsslaw.com>

**Subject:** RE: Deposition Dates for Dan Allen

Tom,

You, sir, are in no position to issue ultimatums regarding AMD and the Class Plaintiffs' subpoenas. You are not the subpoenaing party. You cannot just pick dates unilaterally for part of one Dell witness in the middle of the holidays and impose them on the parties. The subpoena for Mr. Allen called for his deposition to start on December 8. AMD was fully prepared to proceed on that date and has repeatedly for the last six months and on the record at hearings before the Special Master said we were prepared to be (1) flexible and cooperative in scheduling the allotted time for each witness and (2) flexible in taking the Dell witnesses in whatever sequence you proffered them. That has always been part of our commitment and continues to be so.

In order to obtain the depositions of the six Dell witnesses which you promised us in early August, we have now had to go to two Federal District Courts and three judges-- the MDL Special Master, the MDL Court and the W. D. Texas Court. We have filed endless briefs, participated in at least half a dozen hearings and had numerous orders issued, each one establishing the MDL Court's jurisdiction over third party depositions generally and the Dell witnesses' depositions specifically. Today MDL Court Judge Farnan overruled the Dell witnesses' objections to the duration of their depositions and adopted Special Master Poppiti's Report and Recommendation. A copy of today's order is attached.

Now that you have seemingly run out of Courts to go to in order to prevent these depositions from occurring or from providing the parties with sufficient time to ask these critical witnesses our questions, we are justly concerned that you will dribble these folks out if, as and when you want, and drag the process out as long as possible.

Your ultimatum with respect to Mr. Allen confirms AMD's concerns. I am sending you for the third time (see below) my response of Tuesday. It fully expresses AMD's concerns with you lobbying in on two weeks notice in the middle of the holidays only part of one witness' Court ordered time with no mention whatsoever of either when Mr. Allen's deposition will conclude or when the rest of the Dell witnesses will be made available. AMD insisted on receiving from you before the commencement of Mr. Allen's deposition the dates for the full time allotment ordered by Judge **Poppiti** (and now MDL Judge Farnan) for Mr. Allen's deposition and the dates, again using the full time allotment ordered by Judge **Poppiti** (and now MDL Judge Farnan), for the other five depositions.

You appeared to respond to this concern on Tuesday ten minutes after I sent the message by saying: "I am working on a complete schedule and I would not worry about it if I were you."

That is exactly what we asked for and it appeared that we would finally be able to get this done. Now, for reasons, unknown you have withdrawn that position and are "ordering" us into precisely the situation we feared. With respect to our subpoenas of the six Dell witnesses, our position remains the same as it was when you agreed to it on Tuesday. Here it is again for your reference. Please read and respond to this:

I have reviewed your exchange with counsel for Class Plaintiffs and am concerned that you are overlooking the main point that Class Plaintiffs were making--the parties to this MDL need a firm schedule for the depositions of the six Dell witnesses, not a short fuse offer to dribble them out one witness at a time and then only for part of the Court ordered time allotment for that one witness.

Having wrangled and litigated with you for over six months to get deposition dates for the six Dell witnesses, I do not appreciate receiving just two weeks notice of the pair of dates you are proposing for Mr. Allen, particularly since (1) those days are smack in the middle of the holiday season, (2) the proposed dates are not sufficiently long to complete the Allen deposition in one sitting and (3) you have left us completely hanging as to when we will complete the Allen deposition or conduct the depositions of the remaining five Dell witnesses. At this point, we are entitled well in advance to a complete schedule of when all six witnesses will be made available for the time allotments that Judge **Poppiti** ordered. Advance scheduling should be in Dell's interests as well, given what you have characterized as the difficulty of finding open days for these busy executives.

As for Mr. Allen, I am vacationing with my family out of the country during Christmas. I will be returning on January 2nd and am prepared to start Mr. Allen's deposition on the next business day. But we insist on receiving from you before then the dates for the full time allotment ordered by Judge **Poppiti** for Mr. Allen's deposition and the dates, again using the full time allotment ordered by Judge **Poppiti**, for the other five depositions."

Linda J. Smith  
**O'Melveny & Myers**  
1999 Avenue of the Stars  
Los Angeles, CA 90067

Deposition Dates for Dan Allen

Direct 310-246-6801  
Fax 310-246-6779

**From:** Thomas R. Jackson [mailto:ttjackson@JonesDay.com]  
**Sent:** Friday, December 19, 2008 3:52 PM  
**To:** Smith, Linda; mmann; William Barry; Floyd, Daniel S.; Rod J. Stone; Cottrell, Frederick; Finerman, Steven; Lisa Magids; Steve Fimmel  
**Subject:** Re: Deposition Dates for Dan Allen

This makes no sense. I gave you dates to **start** Dan. I now **have** a third day for him, January 5. See you all on the 29th. As I said I have changed mt Christmas plans to accommodate Dan's schedule. You should do likewise. Remember you are the one that threatened to hold Dan in contempt if he didn't show up in December. As for making statements for the record, **that** is funny. You are the one that seems intent on that front. I wish all of you a Merry Christmas or Happy Holidays depending on your beliefs. And remind the class they owe Dell for the last round of documents.

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**From:** "Smith, Linda" [LSmith@OMM.com]  
**Sent:** 12/19/2008 03:02 PM PST  
**To:** Thomas Jackson; <mmann@rkollp.com>; "Barry, William" <WBarry@rkollp.com>; "Floyd, Daniel S." <DFloyd@gibsondunn.com>; <RStone@gibsondunn.com>; "Cottrell, Frederick" <Cottrell@RLF.com>; "Finerman, Steven" <Finerman@RLF.com>; "Lisa Magids" <lmagids@smith-robertson.com>; "Steve Fimmel" <stevef@hbsslaw.com>  
**Subject:** Deposition Dates for Dan Allen

**Tom--**I am in receipt of your **email**, curiously only sent to me. I do not understand your about face and am forced to conclude that it is "for the record" as opposed to a serious response since it does not address either **AMD's** or the Class plaintiffs' valid substantive concerns about your attempted last minute scheduling during the holidays of only 13-14 hours of Dan Allen's Court ordered 22.5 hour deposition and is contrary to your **response on** Tuesday. Here's what transpired. Tuesday at **7:50 am**, I sent you and all of the addresses above the following message:

"Tom,

I have reviewed your exchange with counsel for Class Plaintiffs and am concerned that you are overlooking the main point that Class Plaintiffs were making--the parties to this MDL need a firm schedule for the depositions of the six Dell witnesses, not a short fuse offer to dribble them out one witness at a time and then only for part of the Court ordered time allotment for that one witness.

Having wrangled and litigated with you for over six months to get deposition dates for

the six Dell witnesses, I do not appreciate receiving just two weeks notice of the pair of dates you are proposing for Mr. Allen, particularly since (1) those days are smack in the middle of the holiday season, (2) the proposed dates are not sufficiently long to complete the Allen deposition in one sitting and (3) you have left us completely hanging as to when we will complete the Allen deposition or conduct the depositions of the remaining five Dell witnesses. At this point, we are entitled well in advance to a complete schedule of when all six witnesses will be made available for the time allotments that Judge **Poppiti** ordered. Advance scheduling should be in Dell's interests as well, given what you have characterized as the difficulty of finding open days for these busy executives.

As for Mr. Allen, I am vacationing with my family out of the country during Christmas. I will be returning on January 2nd and am prepared to start Mr. Allen's deposition on the next business day. But we insist on receiving from you before then the dates for the full time allotment ordered by Judge **Poppiti** for Mr. Allen's deposition and the dates, again using the full time allotment ordered by Judge **Poppiti**, for the other five depositions."

This was after you received the following message on Monday from the Class Plaintiffs:

"**Tom-**

Thank you for providing proposed dates for Mr. Allen. However, Class Plaintiffs cannot agree to the precedent of bifurcating the schedule of deponents. To fly into Austin for two days, only to return to complete the 22.5 hours of Mr. Allen's testimony at some later, unspecified date wastes enormous resources. It forces AMD, Class Plaintiffs and Intel counsel to travel twice into Austin to conduct the examination of a single witness. Furthermore, it strategically advantages our opponent with the opportunity to thoroughly review the initial two days of deposition testimony and exhibits with which to prepare its later examination. We will not agree to conducting third-party depositions on a piecemeal basis. Please provide us with continuous dates for Mr. Allen's deposition, and with a complete schedule of dates for Mssrs. Neeld, Clarke, Luecke, **Rollins** and Dell.

Please feel free to contact me if you wish to discuss further. "

You responded to me on Tuesday, 10 minutes after my message, and addressed the scheduling issue regarding both Dan Allen and the five other Dell witnesses:

"Thanks. I am working on a complete schedule and I would not worry about it if I were you."

That was a sensible and responsive message to the concerns raised. Your latest message eschews all of what has transpired and simply relies on that old saw (which you as a Jones Day partner know is a complete myth) that "you are a big firm, send someone else." Due to the importance of the Dell witnesses to the AMD v. Intel case (a subject we have battled over for many weeks now), I am required to be there.

Linda J. Smith

12/22/2008

Deposition Dates for Dan Allen

**O'Melveny & Myers**  
**1999 Avenue of the Stars**  
**Los Angeles, CA 90067**  
**Direct 310-246-6801**  
**Fax 310-246-6779**

**Linda J. Smith**  
**O'Melveny & Myers**  
**1999 Avenue of the Stars**  
**Los Angeles, CA 90067**  
**Direct 310-246-6801**  
**Fax 310-246-6779**

# Exhibit C

Fw: Deposition Dates for Dan Allen

**Adam Balick**

From: Smith, Linda [L.Smith@OMM.com]  
Sent: Monday, December 22, 2008 6:29 AM  
To: Adam Balick  
Subject: Fw: Deposition Dates for Dan Allen

----- Original Message -----

From: smith, Linda  
To: Thomas R. Jackson <trjackson@JonesDay.com>; RStone@gibsondunn.com <RStone@gibsondunn.com>; stevef@hbsslaw.com <stevef@hbsslaw.com>; mmann@rkollp.com <mmann@rkollp.com>; Barry, William <WBarry@rkollp.com>  
Cc: csmaynard@JonesDay.com <csmaynard@JonesDay.com>; Evan P Singer <epsinger@JonesDay.com>  
Sent: Tue Dec 16 07:51:11 2008  
Subject: RE: Deposition Dates for Dan Allen

Tom,

I have reviewed your exchange with counsel for Class Plaintiffs and am concerned that you are overlooking the main point that Class Plaintiffs were making--the parties to this MDL need a firm schedule for the depositions of the six Dell witnesses, not a short fuse offer to dribble them out one witness at a time and then only for part of the Court ordered time allotment for that one witness.

Having wrangled and litigated with you for over six months to get deposition dates for the six Dell witnesses. I do not appreciate receiving just two weeks notice of the pair of dates you are proposing for Mr. Allen, particularly since (1) those days are smack in the middle of the holiday season, (2) the proposed dates are not sufficiently long to complete the Allen deposition in one sitting and (3) you have left us completely hanging as to when we will complete the Allen deposition or conduct the depositions of the remaining five Dell witnesses. At this point, we are entitled well in advance to a complete schedule of when all six witnesses will be made available for the time allotments that Judge Poppiti ordered. Advance scheduling should be in Dell's interests as well. given what you have characterized as the difficulty of finding open days for these busy executives.

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Linda J. Smith  
O'Melveny & Myers  
1999 Avenue of the Stars  
Los Angeles, CA 90067  
Direct 310-246-6801  
Fax 310-246-6779

-----Original Message-----

From: Thomas R. Jackson [mailto:trjackson@JonesDay.com]  
Sent: Monday, December 15, 2008 9:08 AM  
To: RStone@gibsondunn.com; Smith, Linda; stevef@hbsslaw.com  
Cc: csmaynard@JonesDay.com; Evan P Singer  
Subject: Deposition Dates for Dan Allen

Recognizing that Dan Allen will, most likely be deposed for at least two



days, and without waiving any rights to maintain that his deposition should not take anywhere near that long (including the right to pursue any appeal of any orders to the contrary), and trying to accommodate Mr. Allen's schedule, please be informed that Mr. Allen will be available for deposition in Austin, Texas on December 29 and December 30. If a third day is required, it will not be possible to conduct until early January.

Our assumption is that the deposition will be held at V&E's Austin office given the address in the subpoena and that it will start early in order to assure a complete 7 hour day. We will expect that the parties will keep the breaks and off record conversations to a bare minimum in order to move the deposition along as efficiently as possible.

Thomas R. Jackson  
Jones Day  
2727 North Harwood Street  
Dallas, Texas 75201  
214-969-2978

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Fw: Dell Deposition Dates

## Adam Balick

**From:** Smith, Linda [LSmith@OMM.com]  
**Sent:** Monday, December 22, 2008 6:26 AM  
**To:** Adam Balick  
**Subject:** Fw: Dell Deposition Dates

----- Original Message -----

From: Thomas R. Jackson <trjackson@JonesDay.com>  
To: Smith, Linda; Rod J. Stone <RStone@gibsondunn.com>; Steve Finmel <stevef@hbsslaw.com>  
Cc: Mary Pape <Mary\_Pape@Dell.com>; William Barry <WBarry@rkollp.com>; Christopher S Maynard <csmaynard@JonesDay.com>; Evan P Singer <epsinger@JonesDay.com>; Floyd, Daniel S. <DFloyd@yibsondunn.com>; Cottrell, Frederick <Cottrell@RLF.com>; Fineman, Steven <Fineman@RLF.com>; Lisa Magids <Imagids@smith-robertson.com>; Lauren Maguire <Imaguire@ashby-geddes.com>  
Sent: Fri Dec 19 18:46:03 2008  
Subject: Re: Dell Deposition Dates

Linda, we intend to insure 7 hour days. Be prepared to do so. Don't expect anything less and be sure to plan breaks accordingly.

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----- Original Message -----

From: "Smith, Linda" [LSmith@OMM.com]  
Sent: 12/19/2008 05:26 PM PST  
To: Thomas Jackson: <RStone@gibsondunn.com>; <stevef@hbsslaw.com>  
Cc: <Mary\_Pape@Dell.com>; <WBarry@rkollp.com>; Cliristopher Maynard: Evan Singer: "Floyd, Daniel S." <DFloyd@gibsondunn.com>; <RStone@gibsondunn.com>; "Cottrell, Frederick" <Cottrell@RLF.com>; "Fineman, Steven" <Fineman@RLF.com>; "Lisa Magids" <Imagids@smith-robertson.com>; <Imaguire@ashby-geddes.com>; <Mary\_Pape@Dell.com>  
Subject: RE: Dell Deposition Dates

Tom,  
Let me respond before our messages cross again.  
At first look, Luecke, Neeld, Dell and Clarke look fine.  
Rollins is the same week as Art Roehm. Let me discuss that with Intel and Class.  
Allen won't work for all the reasons previously discussed.  
Let's discuss a new plan for Allen.  
Also we will use BEST efforts with the cooperation of the Dell witnesses to finish within the days you've allotted, but of course reserve if the parties need more time to comply with the Coun-ordered times.

12/22/2008

## Fw: Dell Deposition Dates

Linda J. Smith  
O'Melveny & Myers  
1999 Avenir of the Stars  
Los Angeles, CA 90067  
Direct 310-246-6801  
Fax 310-246-6779

-----Original Message-----

From: Thomas R. Jackson [mailto:trjackson@JonesDay.com]  
Sent: Friday, Decanbr 19,2008 4:59 PM  
To: Smith, Linda; RStone@gibsondunn.com; stevef@hbsslaw.com  
Cc: Mary\_Pape@Dell.com; WBarry@rkollp.com; csmaynard@JonesDay.com; Evan P Singer; Floyd. Daniel S; RStone@gibsondunn.com; Cottrell, Frederick; Fineman, Steven; Lmaguire@ashby-geddes.com;  
Mary\_Pape@Dell.com  
Subject: Dell Deposition Dales

I have the remainder of the schedule, though I leave it to Will to confirm that I have the right dates for Mr. Rollins. for all of the Dell depositions. Michael Dell's deposition will take place at Dell's Headquarters, the other Dell witnesses will be as noticed at V&E (unless someone tells me otherwise). Mr. Rollins will be in Boston. (Will to provide the location.) Class counsel need to make their remaining payment to Dell for the last of the document production.

Here are the dates:

Dan Allen 12/29/08; 12/30/08; 1105109  
Alan Luecke 1113109; 1/14/09  
Jerele Neeld 1/21/09; 1122109  
Michael Dell 211 1109; 3/02/09  
Jeff Clarke 2118109; 2119/09; 2120109  
Kevin Rollins 3104109; 3105109

Thomas K. Jackson  
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2727 Nonh Harwood Street  
Dallas. Texas 75201  
214-969-2978

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12/22/2008