

hereby directed to proceed with all reasonable diligence to perform the duties set forth herein, as well as any additional duties which the Court in its discretion may impose from time to time as necessary by further orders. Concurrently with this Order, the Court has entered the Amended Order Establishing Protocols for Special Master Investigation, which provides additional detail regarding the Special Master's authority.

A. SPECIAL MASTER'S DUTIES

1) Investigation and Enforcement Duties

The Special Master may retain other experts, consultants, attorneys, legal professionals, and vendors as he may deem necessary to discharge the directives under this order (collectively the "Special Master"), including personnel from Redgrave Daley Ragan & Wagner LLP ("Redgrave Firm"). The Special Master shall undertake an investigation to determine the following:

- a. A detailed description of the following computer hardware, systems, networks, applications, and software used, owned, or controlled by UPS from May 10, 2000 to the present:
 - i. The types and brands of hardware and operating systems;
 - ii. Application software;
 - iii. Electronic mail applications, including the identity of persons responsible for their administration;
 - iv. Personal and office planner applications;
 - v. Word-processing and database applications;
 - vi. Server-side applications;

- vii. Any other computers or other hardware that may have been used to generate, receive, or store any data relevant to the subject matter of this litigation;
 - viii. All computer networks in place;
 - ix. All backups performed on computer systems, including the procedures and devices used to carry out the backups (including their brand names), versions of backup software used, and tape rotation schedules;
 - x. The physical location(s) where backups are stored or catalogued, including offsite locations;
 - xi. The persons responsible for conducting, maintaining, storing, and cataloging any backups made;
 - xii. The identity of any backups currently in existence, including their physical locations, their custodians, their dates of creation, contents, and media types;
 - xiii. The identity of any backup media that has been erased, copied over, destroyed, or otherwise altered since the commencement of this litigation;
 - xiv. The suspension or amending of any standard or extraordinary backup or data destruction protocols that occurred as a result of this litigation;
 - xv. The identity of any data destruction that occurred after this litigation took place; and
 - xvi. The identity of all persons responsible for any of the above items.
- b. Specific findings of fact concerning whether UPS withheld, deleted, destroyed or permitted to be destroyed, information, documents and electronically stored information (“ESI”) that it was legally obligated to maintain in connection with this lawsuit, and whether any such information, documents or ESI that formerly existed either in usable or reasonably retrievable form was withheld, deleted or overwritten by UPS.

- c. Should the Special Master determine that UPS did not retain and safeguard responsive documents, information or ESI in usable or reasonably retrievable form, then the Special Master shall undertake a further investigation to determine whether such documents, information or ESI are relevant and can be recovered or reconstituted, and make specific findings regarding the expense and time that will be required to recover responsive ESI.
- d. The Special Master shall examine the adequacy of UPS's efforts to preserve and retain information, documents, and ESI related to the claims at issue in this lawsuit, including but not limited to the adequacy of UPS's document retention policies and procedures, the existence of any directives to UPS employees to keep and maintain documents, including ESI, and/or not to destroy documents including ESI (i.e., litigation hold notices or orders), and any other affirmative preservation efforts made by UPS (collectively "UPS's retention practices"). The Special Master shall make specific findings concerning, among other things: the earliest date that UPS was reasonably on notice of potential nationwide class litigation with Plaintiffs as well as potential litigation with the original named plaintiffs, a timeline detailing UPS's retention practices, a determination as to the adequacy of UPS's retention practices and the litigation hold notice or order, the extent to which UPS or its counsel audited document and data retention compliance, or

otherwise took affirmative steps to ensure that all relevant evidence was preserved.

- e. The Special Master also shall examine whether Plaintiffs' actions in prosecuting this case contributed in any way to the alleged failure to maintain relevant evidence, including but not limited to an examination of Plaintiffs' pre-litigation communications about the scope of their claims, the date that Plaintiffs first became aware of potential document preservation issues, Plaintiffs' decision to withdraw their earlier Motion to Compel in 2005 and any delay by Plaintiffs in requesting the entry of a document preservation order.
- f. Finally, with respect to Plaintiff's Motions for an Order to Preserve Evidence and for Sanctions , the Special Master shall specifically review the litigation hold order and other preservation activities described by UPS as having been undertaken in August 2007, and make findings of fact and conclusions of law concerning the extent to which such activities are sufficient to ensure the future retention of evidence relative to the discoverable claims at issue in this case.

2) **Report and Recommendation**

Following his investigation and review of the evidence and arguments of the parties, the Special Master shall prepare and file on the docket, a written Report and Recommendation concerning the recommended disposition of the Plaintiff's Motions for an Order to Preserve Evidence and for Sanctions in accordance with Rule 53, Fed. R. Civ. P. The parties will be provided twenty (20) days from the filing of the Report and Recommendation in which to file

objections to the Report. The Special Master's findings of fact and conclusions of law will be reviewed de novo.

3) Special Master's Authority

The Special Master shall have the authority to regulate the proceedings necessary to perform the assigned duties, and to take all appropriate measures to perform fairly and efficiently the assigned duties. The Special Master may by order impose upon a party any noncontempt sanction provided by Rule 37 or 45, and may recommend a contempt sanction against a party and sanctions against a nonparty.

B. CIRCUMSTANCES IN WHICH THE SPECIAL MASTER MAY COMMUNICATE EX PARTE WITH A PARTY OR THE COURT

The Special Master shall be empowered to communicate on an ex parte basis with a party or the Court for purposes of seeking to maintain the confidentiality of trade secret or proprietary information, if any, concerning the operations of UPS's systems, or for routine scheduling and other matters which do not concern the merits of the parties' claims concerning the subject matter of this Order.

The Special Master may communicate with the Court ex parte on all matters as to which the Special Master has been empowered to act.

C. CONFIDENTIALITY

The Special Master, specifically including the Redgrave Firm, agrees to be bound by the terms of the Stipulation and [Proposed] Order of Confidentiality ("Confidentiality Order") signed by the parties and the Court in this case on November 2, 2004 (attached to this Order as Attachment A).

D. NATURE OF MATERIALS TO BE PRESERVED AND FILED AS THE RECORD OF THE SPECIAL MASTER'S ACTIVITIES

Subject to the requirements of the Confidentiality Order, the Special Master will preserve and retain all materials reviewed by the Special Master, expressly identifying all evidence considered in making or recommending findings of fact. The Special Master will preserve and retain the record until the conclusion of the case or directed by the court to file the record or any portion thereof on the docket by means of the Court's Electronic Case Filing System. The Special Master is not required to file as part of the record any notes, internal communications, drafts, work plans, memoranda, or other work product from the investigation, nor are such materials to be provided to the parties or any other person through subpoena, discovery request, or otherwise.

E. TIME LIMITS

The Special Master shall prepare and file his Report and Recommendation with the Court within ninety (90) days of the date of this Order, unless he or a party can show to the Court reasonable cause for requiring additional time, or as otherwise provided in the Amended Order Establishing Protocols for Special Master Investigation.

F. COMPENSATION

The Special Master shall be entitled to be compensated at his customary or prevailing rate for similar services provided to his private clients, including any retainer, fees and costs. Pursuant to the date specified in the Amended Order Establishing Protocols for Special Master Investigation or as otherwise ordered by the Court, the Special Master shall prepare a budget of estimated fees and costs and then submit that budget to both parties and the Court. Any objections to the Special Master's budget must be made within five (5) days of its submission.

After approval of the estimated fees and expenses by the Court, the Special Master shall be paid by Defendant UPS. The Special Master shall submit to both parties and the Court invoices for services performed by him, the Redgrave Firm, and any other retained expert, consultant, attorney, legal professional, or vendor on a monthly or other periodic billing cycle and UPS shall pay such invoices within thirty (30) days of receipt. In accordance with Rule 53(h), Fed. R. Civ. P., after making a decision on the merits of Plaintiffs' Motion, the Court will consider on a motion of a party whether to amend this interim allocation of the Special Master's compensation.

G. DESIGNEES

The parties shall designate the following person as the primary contact for the Special Master:

For Plaintiffs: Walter W. Noss, Scott + Scott, LLP, 33 River Street, Chagrin Falls,
OH, 44022, Phone: (440) 247-8200, Email: wnoss@scott-scott.com

For Defendant: Dena Hong, UPS Corporate Legal Department, 55 Glenlake Parkway,
Atlanta, Georgia 30328, Phone: (404) 828-7098, Email: dhong@ups.com

IT IS SO ORDERED.

DATE: 08/26/2008

/s/ Joy Flowers Conti

U.S. District Judge