

findings of fact and conclusions of law concerning the disposition of Plaintiffs' Motion for Preservation Order and for Sanctions.

In connection with the Special Master's duties, it will be necessary for him and those working with him on the investigation (collectively, the "Special Master"), to request, review, and analyze information in the parties' possession, custody, or control. For the Special Master to perform these duties effectively and efficiently, the Court has concluded that the Special Master may need to utilize various methods to gather information. This Order governs the protocols the Special Master may use to conduct his investigation and supplements the Order Appointing Special Master and the February 5, 2008 Order Establishing Protocols for Special Master Investigation.

AND NOW, this 26th day of August 2008, pursuant to Fed. R. Civ. P. 53(b), following the grant of notice, an opportunity to be heard to the parties, and with the parties' agreement, it is hereby ORDERED as follows:

1. As described in additional detail below, the Special Master shall have the authority to issue such orders and directives as are necessary to obtain information for the investigation, including orders or directives requiring the parties to:
 - a. produce documents and information;
 - b. prepare chronologies of events and similar summaries or compilations of factual material;
 - c. answer written questions under oath;
 - d. provide specific persons for un-sworn interviews or sworn testimony;
 - e. provide a corporate representative on enumerated issues for un-sworn interviews or sworn testimony;

- f. provide documentation from, relating to, or describing their IT systems;
 - g. make their IT systems and premises available for in-person inspection by the Special Master;
 - h. demonstrate their IT system capabilities and functionalities in the presence of the Special Master;
 - i. run data searches, analyses, or reports from their IT systems, in or outside the presence of the Special Master, and provide the results of those actions to the Special Master;
 - j. collect ESI in a forensically sound manner as directed by the Special Master and provide the ESI to the Special Master; and
 - k. allow the Special Master to collect the parties' ESI in a forensically sound manner.
2. The Special Master shall have the authority to collect ESI from the parties in a forensically sound manner and to conduct forensic analyses and recovery of media, data, or other information provided by or collected from the parties.
3. The Special Master shall have the authority to attend depositions the parties initiate if the testimony is likely to involve issues the Special Master is investigating, to require witnesses appearing for deposition to produce documents and information, and to question the witnesses under oath.
4. As to third parties, the Special Master shall have the authority to issue such orders or directives as are necessary to obtain information for the investigation, including orders or directives requiring third parties to
- a. produce documents and information;
 - b. provide specific persons for sworn testimony; and
 - c. provide a corporate representative as to enumerated issues for sworn testimony.

The Special Master shall have the authority to communicate with third parties on an ex parte basis (a) to gather preliminary information or (b) if the facts

expected to be revealed in the communication are not likely to form the sole basis of a finding of fact. If the Special Master communicates with a third party to gather information that will form the sole basis of a finding of fact, the Special Master shall allow the parties to be present, subject to the need to protect the confidentiality of trade secret or proprietary information of a party or the third party.

5. Unless further directed by Order of this Court, the Special Master is not to make determinations as to what evidence is discoverable. The Special Master shall, however, have the authority to determine what ESI should have been preserved by UPS in connection with this case, as that determination must be made to resolve Plaintiffs' Motion for Preservation Order and for Sanctions.
6. Unless further directed by Order of the Court, the Special Master is not to make determinations of privilege. If a party asserts a privilege to a disclosure ordered by the Special Master, the party shall promptly assert the privilege in writing and, within a time period ordered by the Special Master, provide a privilege log. Additionally, the party asserting the privilege may submit, or the Special Master may order that party to submit, evidence to support the privilege claims and/or a memorandum in support of the privilege assertion. If the opposing party challenges the assertion of privilege, they may submit evidence and a memorandum in support of their position within a time period ordered by the Special Master.
7. The Special Master shall have the authority to order the parties to brief legal issues relating to the investigation. The Special Master shall have the authority to conduct legal research and analysis relating to the issues raised in the

investigation.

8. The Special Master shall have the authority to conduct hearings and such other proceedings as he deems appropriate to conduct the investigation.

Documents and Information

9. Unless otherwise directed by the Special Master, the parties' production of documents shall be accompanied by the following information and signed by an attorney of record that shall constitute a certificate that to the best of the signer's knowledge, information, and belief, formed after a reasonable inquiry, the information is complete and correct as of the time it is made:
 - a. unique (Bates) document number;
 - b. document title or descriptor;
 - c. date the document was last modified;
 - d. time period that the information reflected in the document pertains to, e.g., if UPS provides a disaster recovery plan, it shall state the dates for which that particular plan was in effect;
 - e. identity of the person from whom the document was obtained; and
 - f. such other information as the Special Master may request.
10. Unless otherwise directed by the Special Master, the parties' production of chronologies and other summary information shall be signed by an attorney of record that shall constitute a certificate that to the best of the signer's knowledge, information, and belief, formed after a reasonable inquiry, the submission is correct as of the time it is made and not intended to conceal material, responsive information.
11. The Special Master shall have the authority to order the parties to produce

documents and information in paper, static electronic image, native, load file, and/or other desired format to facilitate the investigation. Before providing documents and information to the Special Master, the parties should inquire as to the required form of production.

12. The Special Master shall have the authority to create electronic document libraries and databases of information suitable for organizing, searching, reviewing, processing, hosting, and analyzing the information obtained during the investigation. If it will facilitate the exchange of information or otherwise advance the investigation, the Special Master may, but is not required to, allow the parties access to some or all such document libraries and databases during the course of the investigation.

Written Answers to Questions

13. The Special Master may submit written questions to the parties and order the questions to be answered by the party they are directed to, or in the case of UPS, by any officer or agent, who shall furnish such information as is available to it. Each question shall be answered separately and fully under oath. The answers are to be signed by the person making them.

Un-Sworn Interviews and Depositions

14. The Special Master may order the parties to provide a person or corporate representative on enumerated issues for un-sworn interviews or sworn testimony.
15. If the Special Master conducts an un-sworn interview of a party to gather preliminary information, or the facts expected to be revealed in the interview are not likely to form the sole basis of a finding of fact, the Special Master may, but

is not required to, allow the other party to be present. If the Special Master conducts an un-sworn interview to gather information that will form the sole basis of a finding of fact, the Special Master shall allow the other party to be present, subject to the need to protect the confidentiality of trade secret or proprietary information.

16. If the Special Master conducts a deposition, the Special Master shall allow all parties to be present, subject to the need to protect the confidentiality or trade secret or proprietary information.
17. If a deposition the parties initiate is expected to involve issues the Special Master is investigating, the parties shall provide the Special Master with the deposition notice, an explanation of the topics to be covered at the deposition that relate to the investigation, and the opportunity to attend the deposition.

IT Documentation, Inspections, System Demonstrations, and Data Analyses

18. The Special Master shall provide reasonable advance notice to the parties of any IT inspections, computer system demonstrations, or other similar activity. When conducting any IT inspections, demonstrations, or collection of ESI, the Special Master shall consult with UPS regarding the impact of such activities on UPS's IT systems and take all steps reasonably necessary to minimize costs and potential disruption to the UPS IT environment.
19. If the Special Master conducts an inspection, demonstration, or review of a party's IT systems to gather preliminary information, or the facts expected to be revealed in the process are not likely to form the sole basis of a finding of fact, the Special Master may, but is not required to, allow the other party to be present.

If the Special Master is conducting an inspection, demonstration, or review of a party's IT systems that will form the sole basis of a finding of fact, the Special Master shall allow the other party to be present, subject to the need to protect the confidentiality of trade secret or proprietary information.

Supplementation and Correction of Information

20. Information provided to the Special Master by the parties shall be timely supplemented or corrected if the party learns that the information previously provided in some material respect is incomplete or incorrect or if the additional or corrective information has not otherwise been provided.
21. The parties' duties under the Order Appointing Special Master, this Order, and any Orders the Special Master may issue are to provide information to the Special Master. The parties will not be excused from producing information to the Special Master on grounds that such information was previously produced to the other party.

Modification of Time Limits

22. In the Order Appointing Special Master, the Court directed the Special Master to prepare and file his report within 90 days of the date of that Order, unless he or a party could show the Court reasonable cause for requiring additional time. That Order also required the Special Master to submit to the parties and the Court a budget of estimated fees and costs. Based on the investigation to date and the factual record demonstrating the need for additional time, the Special Master is directed to prepare a phased project plan and fee estimate setting any appropriate interim objectives and a final deadline to submit his Report and

Recommendations. The Special Master is directed to submit the project plan and fee estimate to the parties and the Court by October 3, 2008, unless he or a party can show reasonable cause for requiring additional time. Any objections to the project plan and fee estimate must be made within five (5) days of its submission.

Parties' Objections to Special Master's Orders

23. If a party has an objection to an Order or other directive from the Special Master, they shall inform the Special Master of the specific nature of the objection being asserted. The Special Master shall have the authority to require the objecting party to provide the specific factual basis and legal support for the objection. The Special Master shall issue a report and recommendations making findings of fact and conclusions of law on the objection. A party may file objections, not to exceed 15 pages, to the Special Master's Order and report and recommendations with the Court within ten (10) days of the filing of the report and recommendations. A response to the objections, not to exceed 15 pages, may be filed within ten (10) days of the filing of the objections. The court shall review the matter de novo.

IT IS SO ORDERED.

DATE: August 26, 2008

/s/ Joy Flowers Conti
U.S. District Judge