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OF THE
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November 30, 2005

The Honorable Joseph J. Farnan, Jr.
United States District Court for the
District of Delaware
844 North King Street
Wilmington Delaware 19801

RE: Advanced Micro Devices, Inc., et al. v. Intel Corp., et al, (05-441-JJF)

Your Honor:

The Reporters Committee for Freedom of the Press and undersigned national media entities and open government groups submit this letter to bring to your attention a potential issue in the above-referenced case that may have a serious impact on the public's right to know about this important and newsworthy litigation.

It has come to our attention that the parties in this case are currently negotiating a stipulated Protective Order. If improperly crafted, it will hide from public scrutiny many facts uncovered through discovery. While we understand that the issue may not be ripe for intervention, we take this opportunity to respectfully remind the Court that the Third Circuit and other influential courts have provided considerable guidance in this area.

To help minimize intervention and press access litigation later, we emphasize the learning provided in *Shingara v. Skiles*, 420 F.3d 301 (3d Cir. 2005). In rejecting an overbroad Protective Order, the Third Circuit reminded trial courts that they must "always consider the public interest when deciding whether to impose a protective order." *Id.*, citing *Pansy v. Borough of Stroudsburg*, 23 F.3d 772, 785 (3d Cir. 1994).

The public interest in this antitrust case is considerable. The defendant stands accused of coercing customers to create and protect an unlawful monopoly on microprocessors. Such allegations, if proven true, have serious implications – monopolies injure the public by forcing consumers to pay higher costs and crippling progress by prohibiting innovations from entering the market. Moreover, the corporate parties' shareholders have a stake in the outcome of this litigation, and include the pension funds of teachers, tens of thousands of state employees, and others for whom the press serves as the eyes and ears into the judicial process. Aside from the obvious effect of this litigation on shareholders and waltoners, a combined 100,000 employees of both companies

may feel the effects of this litigation. In an economy of ever-increasing corporate layoffs, they have every right to know – indeed, a need to know – what has transpired.

As Judge Posner's well-reasoned *Citizens' First National Bank of Princeton v. Cincinnati Insurance Company*, 178 F.3d 943 (7th Cir. 1999) reminds us, when protective orders are at issue, the public's interest is paramount, and it is the role of judges, not self-interested litigants, to determine whether "good cause" for sealing has been shown:

The determination of good cause cannot be elided by allowing the parties to seal whatever they want, for then the interest in publicity will go unprotected unless the media are interested in the case and move to unseal. The judge is the primary representative of the public interest in the judicial process and is duty-bound therefore to review any request to seal the record (or part of it)

Id. At 945.¹

For this reason, we ask that the Court reject any prospective Protective Order that seeks to seal documents based merely on grounds of "embarrassment" or that is unacceptably founded on unsubstantiated claims to trade secrets or competitive harm through disclosure. We also recommend withholding endorsement unless the Protective Order has a reasonable, swift and transparent process that permits challenges to any "over designation" of confidentiality.

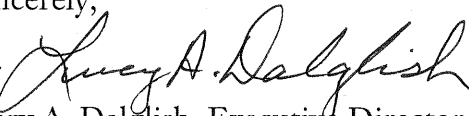
¹ It is worth noting that Judge Posner cited a considerable body of precedent, much of it from this Circuit, to obviate objections that parties' need to litigate quickly overcomes the public interest: "We are mindful of the school of thought that blanket protective orders ("umbrella orders"), entered by stipulation of the parties without judicial review and allowing each litigant to seal *all* documents that it produces in pretrial discovery, are unproblematic aids to the expeditious processing of complex commercial litigation because there is no tradition of public access to discovery materials The weight of authority, however, is to the contrary. Most cases endorse a presumption of public access to discovery materials, e.g., *Grove Fresh Distributors, Inc. v. Everfresh Juice Co.*, *supra*, 24 F.3d at 897; *Beckman Industries, Inc. v. International Ins. Co.*, 966 F.2d 470, 475-76 (9th Cir.1992); *Public Citizen v. Liggett Group, Inc.*, *supra*, 858 F.2d at 788-90; *Meyer Goldberg, Inc. v. Fisher Foods, Inc.*, 823 F.2d 159, 162-64 (6th Cir.1987); *In re "Agent Orange" Product Liability Litigation*, *supra*, 821 F.2d at 145-46, and therefore require the district court to make a determination of good cause before he may enter the order. E.g., *EEOC v. National Children's Center, Inc.*, 98 F.3d 1406, 1411 (D.C. Cir.1996); *Glenmede Trust Co. v. Thompson*, 56 F.3d 476, 484-85 (3d Cir.1995); *Leucadia, Inc. v. Applied Extrusion Technologies, Inc.*, 998 F.2d 157, 165-67 (3d Cir.1993); *In re Remington Arms Co.*, 952 F.2d 1029, 1032 (8th Cir.1991); *City of Hartford v. Chase*, *supra*, 942 F.2d at 135-37; *Farnsworth v. Procter & Gamble Co.*, 758 F.2d 1545, 1547 (11th Cir.1985). Rule 26(c) would appear to require no less. And we note that both the First and Third Circuits, which used to endorse broad umbrella orders (e.g., *Cryovac*, *Cipollone*), have moved away from that position (*Public Citizen*, *Glenmede*, *Pansy*, *Leucadia*)."

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In closing, we believe that a properly supervised Protective Order will in the long run serve judicial efficiency by obviating or limiting the need for press intervention and access litigation at a later date.

Thank you for your attention to this matter.

Sincerely,

/s/ 

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