

# EXHIBIT “D”

1 IN THE UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
2 TEXARKANA DIVISION

3 JOHN WARD, JR., \*  
Plaintiff, \*  
4 VS. \* CIVIL ACTION NO.:  
CISCO SYSTEMS, INC. AND RICK \*  
5 FRENKEL, \*  
Defendants. \* 08-4022

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7 \*\*\*\*\*

8 ORAL VIDEOTAPED DEPOSITION OF  
9 JILLIAN POWELL

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12 ANSWERS AND DEPOSITION OF JILLIAN POWELL, produced as  
13 a witness at the instance of the Plaintiff, taken in the  
14 above-styled and -numbered cause on the 27th day of March,  
15 2009, A.D., beginning at 10:38 a.m., before Kelly Hassell,  
16 a Certified Shorthand Reporter in and for the State of  
17 Texas, in the offices of Baker Botts, L.L.P., located at  
18 2001 Ross Avenue, Suite 1100, Dallas, Texas, in accordance  
19 with the Federal Rules of Civil Procedure and the agreement  
20 hereinafter set forth.

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1                   A P P E A R A N C E S  
2           HONORABLE IRMA C. RAMIREZ (Via telephone.)  
          Magistrate Judge  
3           1100 Commerce Street  
          Room 1567  
4           Dallas, Texas 75242  
          (214) 753-2393

5  
6           FOR THE PLAINTIFF:  
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16                   FOR THE DEFENDANT CISCO SYSTEMS, INC.:

17                   MR. CHARLES L. BABCOCK  
18                   MS. CRYSTAL J. PARKER  
          Jackson Walker, L.L.P.  
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1 APPEARANCES CONTINUED

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FOR THE DEPONENT:

3

MR. JOSEPH D. CHEAVENS

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ALSO PRESENT:

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MR. GUS PHILLIPS - Videographer

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1 attendance and I think the communications at the meeting  
2 between me and the witness and Ms. Parker are privileged  
3 for that reason.

4 MS. PEDEN: And, Your Honor, if I can just  
5 respond briefly. The facts in this case are Cisco was  
6 represented by Baker Botts working with Cisco originally  
7 when these -- when the events that gave rise to this  
8 lawsuit occurred, but Ms. Parker meeting with counsel this  
9 morning is long after that fact. That's in a separate  
10 lawsuit. It's in this defamation suit. And Jackson Walker  
11 is not representing -- I mean, Baker Botts is not  
12 representing Cisco in the defamation suit. They have  
13 separate counsel, Jackson Walker. And to have defense  
14 counsel in the prep with the witness before she comes in  
15 and gives testimony and then not let us ask what opposing  
16 counsel discussed with her I think is entirely improper.

17 JUDGE RAMIREZ: Well, what about his  
18 allegation of a joint defense agreement?

19 MS. PEDEN: Well, his allegation of a joint  
20 defense agreement, it's -- it's the first time it's been  
21 made in this case. It's an oral agreement. We've not seen  
22 anything in writing. And, in fact, when Cisco served or  
23 filed requests for admission in the Ward case, they refused  
24 to give us any information that was within Baker Botts's  
25 knowledge, claiming that Baker Botts was a third party.

1 So -- and I have those requests for admissions with me if  
2 the Court would like me to fax them over. But it seems to  
3 me that when it comes to providing discovery, Baker Botts  
4 is a third party, but when they want to meet with opposing  
5 counsel to prep a witness, then they're within the zone of  
6 an attorney/client privilege. That was in a case that's  
7 not this case.

8 JUDGE RAMIREZ: But does it arise out of her  
9 employment for the client that Jackson Walker represents?  
10 I mean, I know she was working for Baker Botts, but does it  
11 arise out of her employment for Baker Botts in the course  
12 of representing Jackson Walker's client?

13 MS. PEDEN: It did. So what happened here  
14 was in October of 2007, Baker Botts was working with  
15 Jackson Walker's client, Cisco, to get some information  
16 about a case that was filed. Ms. Powell was the person who  
17 called the court clerk to undertake an investigation of the  
18 facts for Baker Botts. The Defendant in this case, Cisco  
19 Systems, has claimed as a defense that they are not liable  
20 for defamation because there's no actual malice because  
21 they relied on the advice of counsel that they received  
22 from Baker Botts.

23 MR. BABCOCK: Judge, this is Chip Babcock,  
24 representing Cisco. That is absolutely not true, but not  
25 particularly relevant to this dispute because Mr. Cheavens

1 and I do have a -- do have a joint defense agreement and it  
2 seems to me that it does cover this situation.

3 MS. PEDEN: I think, Your Honor, it covers  
4 things that happened arising -- you know, the facts that  
5 happened in 2007 that gave rise to this lawsuit, but I  
6 don't know how they can take a joint defense agreement from  
7 2007 and use it to meet and prep a witness where Baker  
8 Botts is now a third party.

9 JUDGE RAMIREZ: Well, clearly there is a  
10 related interest here. I'm not -- let me ask this: Are  
11 both parties willing to abide by my ruling today?

12 MR. BABCOCK: Speaking for Cisco, we  
13 certainly are, Your Honor.

14 MR. CHEAVENS: Yes. For Baker Botts, yes,  
15 Your Honor.

16 MS. PEDEN: For Plaintiff, Your Honor, we're  
17 willing to abide by your ruling for the deposition today,  
18 but Plaintiff intends to file a motion when the Court is --  
19 where this case is pending arguing for an implied or an  
20 at-issue waiver in this case. So to the extent that the  
21 Court's order doesn't implicate that at all, then  
22 we're willing to abide by it.

23 JUDGE RAMIREZ: Well, I'm not clear as to  
24 the -- I mean, that's a qualified agreement. I'm either  
25 going to be giving you an opinion that's -- I mean, a

1 ruling that's binding or it becomes an advisory ruling,  
2 which I'm not going to do. So that's -- this is a  
3 privilege issue, which I think is appropriate for briefing,  
4 but if you want me to rule on it at this time, I will, but  
5 it needs to be binding. I'm not going to give you an  
6 advisory opinion that you're going to go appeal to another  
7 court without any briefing in front of me.

8 MS. PEDEN: I understand, Your Honor. And  
9 unfortunately, we can't agree to a binding --

10 JUDGE RAMIREZ: Okay. Well, then I suggest  
11 that you continue with the deposition and then brief this  
12 case later rather than stopping for purposes of briefing,  
13 but that's certainly your call.

14 MS. PEDEN: Okay. Thank you, Your Honor.

15 JUDGE RAMIREZ: Thank you.

16 MR. BABCOCK: Thank you, Judge.

17 MR. CHEAVENS: Thank you, Your Honor.

18 THE VIDEOGRAPHER: We are back on the  
19 record. The time is 11:15 a.m.

20 Q (BY MS. PEDEN) Ms. Powell, thank you for your  
21 patience.

22 Other than the meeting that you had this  
23 morning with Mr. Cheavens and Ms. Parker, have you had any  
24 other communications, telephone conversations, with anybody  
25 about your testimony today?