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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES
CENTRAL CIVIL WEST**

IN RE: TV WRITERS CASES,

[Assigned to Hon. Emilie H. Elias for all purposes]

Case No. BC 268 836

THIS DOCUMENT RELATES TO:

- Alch, et al., v. Time Warner Entertainment, Company, et al., Case No. BC 268 836;
- Neal, et al., v. Viacom Inc. and United Paramount, Network, et al., Case No. BC 268 837;
- Young, et al., v. DreamWorks SKG TV LLC , Case No. BC 268 838;
- Bast, et al., v. Fox, Broadcasting Company, et al., Case No. BC 268 839;
- Levy, et al., v. The Gersh Agency, Inc., Case No. BC 268 840;
- Edwards, et al., v. The Carsey-Werner, Company, et al., Case No. BC 268 841;
- Wynn, et al., v. National Broadcasting Company, Inc., et al., Case No. BC 268 842;
- Brooks, et al., v. William Morris Agency, Case No. BC 268 843;
- Brett, et al., v. The Walt Disney Company, et al., Case No. BC 268 844;
- DiStefano, et al., v. Columbia TriStar Television, Inc., Case No. BC 268 845;
- Eisenson, et al., v. Lucy Stille & Associates, Inc., d/b/a Paradigm Talent & Literary Agency, et al., Case No. BC 268 847;
- Lang, et al., v. Shapiro-Lichtman, Inc., d/b/a Shapiro-Lichtman-Stein, Case No. BC 268 848;
- Neal, et al., v. The Endeavor Agency, Inc., Case No. BC 268 849;

**DISCOVERY PROTOCOL FOR
DISCOVERY IN NON-SETTLING
CASES**

1 Kinghorn, et al., v. Universal Studios, Inc., et al.,
Case No. BC 268 877;
2 Moriarty, et al., v. Viacom Inc., and Paramount,
Studios, Inc., et al., Case No. BC 268 878;
3 Yanok, et al., v. Agency for the Performing Arts,
Inc., Case No. BC 268 880;
4 Schwartz, et al., v. United Talent Agency, Inc., Case
No. BC 268 881;
5 Shayne, et al., v. Viacom Inc. and CBS
Broadcasting, Inc., Case No. BC 268 882,
6 Kalish, et al., v. Viacom Inc., et al., Case No. BC
268 883.

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1 I. Preamble

2 A. The Settlement Class¹ and Class Counsel on their behalf agree that they shall
3 continue to copy Defendants' Counsel on all Deposition Calendars and Deposition
4 Scheduling Lists issued in connection with the Non-Settling Cases (defined in
5 Section VI.A.25 of the Settlement Agreement), pursuant to Section III.B and III.C
6 of the Joint Deposition Protocol Order, so that Defendants' Counsel and
7 Defendants can determine (a) whether a proposed deponent is subject to the
8 scheduling and numerical restrictions set forth in this protocol, and (b) whether to
9 attend the deposition.² If a Defendant believes that a deponent is subject to the
10 scheduling and numerical restrictions set forth in this protocol, it may notify
11 Plaintiffs within ten days of receiving the notice of a deponent's inclusion on a
12 Scheduling List. If Defendants have not so notified Plaintiffs within this time
13 period, Plaintiffs can proceed with the deposition without following the protocol
14 herein.

15 B. The Settlement Class and Class Counsel on their behalf shall not propound any
16 discovery in the above-captioned cases.

17 C. The parties recognize that the Non-Settling Cases are not being settled
18 contemporaneously and will thus continue for the foreseeable future and that
19 Defendants and Settling Party Affiliates wish to limit their involvement in
20 discovery in such cases. Therefore, **except as expressly set forth below**, the
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22 ¹ The discovery obligations and rights specified herein are intended to bind and inure to the
23 benefit of the Plaintiffs and proposed (as well as any certified) litigation class in the *Ruben, et al.*
24 *v. Creative Artists Agency, LLC* case (BC 268879), as well as the proposed (as well as any
25 certified) litigation class in any of the other Non-Settling Cases. Nothing in this Settlement,
26 however, restricts or affects the parameters of the litigation class the plaintiffs in such cases are
27 now seeking or can seek in the future.

28 ² If the Joint Deposition Protocol Order is modified in the Non-Settling Cases, such that Plaintiffs
and Defendants in the Non-Settling Cases are no longer required to provide the notice specified in
the Joint Deposition Protocol Order, then Class Counsel and Defendants' Counsel shall negotiate
and implement a protocol so that Defendants and Defendants' counsel can receive notification of
planned depositions with sufficient time to implement the restrictions and other provisions set
forth herein.

1 Settlement Class, and each member thereof, and Lead, National, Local, and Class
2 Counsel, agree that the Defendants and Settling Party Affiliates shall be excluded
3 from all future discovery initiated by the Settlement Class, and each member
4 thereof, in the Non-Settling Cases or related indemnification litigation:

5 II. Protocol

6 A. General Standard for Requesting Discovery

7 Except for the heightened standards set forth below, and provided Defendants are
8 in compliance with those provisions, *infra*, governing the pursuit of a Good Faith Determination,
9 following Preliminary Approval, for all discovery permitted under this Section (i.e., discovery
10 initiated by Class Counsel, etc.), including any related motion practice (e.g., motions to compel;
11 motions for protective order), the Defendants and Settling Party Affiliates shall be considered
12 nonparties to the proceeding in which the discovery is propounded (e.g., no requests for admission
13 or special or form interrogatories permitted; greater protection from invasive and burdensome
14 discovery) – even if the Defendants and Settling Party Affiliates are subsequently named as cross-
15 claim defendants or otherwise become parties to the Non-Settling Cases.

16 B. Depositions

- 17 1. The scheduling and numerical restrictions set forth herein shall apply to (i)
18 persons who were previously employed at or previously contracted with one
19 of the defendants in the Non-Settling Cases, but who are employed or
20 contracted with a Defendant or a Settling Party Affiliate at the time the
21 deposition is noticed (“Non-Settling Defendant Employee”), (ii) other
22 persons who are employed or contracted with, in an executive, managerial,
23 or other position, by a Defendant or a Settling Party Affiliate at the time the
24 deposition is noticed (“Other Settling Defendant Employees” or “Other
25 Employees,” for short), and (iii) solely with respect to their activities on a
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Work covered by the release in the Settlement, persons who had the title executive producer or was the creator of such Work (“EPs”).³

2. The deposition of a Non-Settling Defendant Employee or Other Employee may only be noticed by the Settlement Class and Class Counsel on their behalf and taken by the same if the following conditions are satisfied:
 - a. The Settlement Class and Class Counsel on their behalf meet and confer in good faith with the Defendant or Settling Party Affiliate employing or contracting with the deponent regarding the time, date, location, need for, and scope of the deposition, including the lack of alternative discovery means for securing the same evidence;
 - b. The Settlement Class and Class Counsel on their behalf state in writing, following said meet and confer, (a) that the Settlement Class and Class Counsel on their behalf have a good faith belief based on objective considerations that the testimony sought has a reasonable probability of becoming directly relevant to a material issue in the Non-Settling Cases; (b) that the Settlement Class and Class Counsel on their behalf have a good faith belief based on objective considerations that other reasonable means of obtaining the same evidence have been pursued unsuccessfully or would be unsuccessful; and (c) the basis for such good faith beliefs;
 - c. The Settlement Class and Class Counsel on their behalf agree to limit and actually limit the scope of the deposition questioning to evidence that the Settlement Class and Class Counsel on their behalf have a good faith belief, based on objective considerations, has a

³ Pursuant to Section II.B.3, *infra*, unless the EP is also a Non-Settling Defendant Employee or an Other Employee, EPs may be deposed without these restrictions regarding activities on or related to Works not subject to the releases set forth in Section VII.B.1.b of the Settlement Agreement (the “Show Release”).

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reasonable probability of becoming directly relevant to a material issue in the Non-Settling Cases; and

- d. Unless this requirement is waived by the affected person, the Settlement Class and Class Counsel on their behalf serve a valid subpoena compelling the witness’s attendance at deposition at a mutually convenient time, date, and location, with agreement on time and date not to be unreasonably withheld.
- e. If the employing Defendant or Settling Party Affiliate, or the proposed deponent, objects in writing to the deposition proceeding, a motion to compel the deposition may be filed. (Anyone may also file a motion for a protective order.) The parties agree that to prevail on a motion to compel, or to successfully defeat a motion for a protective order, the Settlement Class and Class Counsel on their behalf must demonstrate that (i) the evidence sought has a reasonable probability of becoming directly relevant to a material issue in the Non-Settling Case; and (ii) no reasonable alternative means exists for securing the evidence sought. Unless the objection was tendered in bad faith, the Settlement Class and Class Counsel on their behalf will not seek sanctions in connection with such a motion to compel.

3. Provided the EP is not also a Non-Settling Defendant Employee or an Other Employee, in which case the rules specific to such categories of witnesses shall apply, the deposition of an EP may be noticed and taken as follows:

- a. If the Settlement Class and Class Counsel on their behalf agree not to ask questions, and do not ask questions, regarding Works covered by Section VII.B.1.b of the Settlement Agreement (the “Show Release”), including but not limited to the writer representation, selection and hiring process related thereto, the deposition may

1 proceed pursuant to the relevant provisions of the Code of Civil
2 Procedure.

3 b. If the Settlement Class and Class Counsel on their behalf refuse to
4 forego broader examination, including by virtue of reserving the
5 right to conduct examination into matters covered by the “Show
6 Releases”, including but not limited to the writer representation,
7 selection and hiring process related thereto, that portion of the
8 deposition regarding such matters may only be noticed and taken as
9 follows:

10 (i) The Settlement Class and Class Counsel on their behalf shall
11 meet and confer in good faith with representatives of the EP,
12 if identified, regarding the time, date, location, and need for
13 the deposition, including the lack of alternative discovery
14 means for securing the same evidence;

15 (ii) The Settlement Class and Class Counsel on their behalf shall
16 state in writing, following said meet and confer, (a) that the
17 Settlement Class and Class Counsel on their behalf have a
18 good faith belief based on objective considerations that the
19 testimony sought has a reasonable probability of becoming
20 directly relevant to a material issue in the Non-Settling
21 Cases; (b) that the Settlement Class and Class Counsel on
22 their behalf have a good faith belief based on objective
23 considerations that other reasonable means of obtaining the
24 same evidence have been pursued unsuccessfully or would
25 be unsuccessful; and (c) the basis for such good faith beliefs;

26 (iii) The Settlement Class and Class Counsel on their behalf shall
27 obtain a ruling from the Court – on a contested basis
28 following briefing by the relevant parties unless waived –

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that evidence regarding Works covered by the Show Release, is admissible in connection with the allegation of a pattern and practice of age discrimination in one or more of the Non-Settling Cases or otherwise has a reasonable probability (i.e., 50% or more) of becoming materially relevant to such Cases;⁴

- (iv) Unless the requirement is waived by the affected person, the noticing party shall serve a valid subpoena compelling the witness’s attendance at deposition at a mutually convenient time, date, and location, with agreement on time and date not to be unreasonably withheld.
- (v) If Defendant, a Settling Party Affiliate, or the EP objects in writing to the deposition proceeding, a motion to compel the deposition may be filed. (Anyone may also file a motion for a protective order.) The parties agree that to prevail on a motion to compel, or to successfully defeat a motion for a protective order, the noticing party must demonstrate that (i) the evidence sought has a reasonable probability of becoming directly relevant to a material issue in the Non-Settling Case; and (ii) no reasonable alternative means exists for securing the evidence sought. If the objection was tendered in good faith, the Settlement Class and Class Counsel on their behalf will not seek sanctions in connection with such a motion to compel.

⁴ A prior ruling from the Court stating that such evidence is admissible, obtained in connection with a different witness, shall satisfy this requirement, unless the witness or other objecting party has a good faith basis for distinguishing the prior ruling.

1 4. With the exception of subpoenas *duces tecum* to deponents noticed pursuant
2 to Section II.B.3.a, *supra*, that do not encroach on the topics restricted under
3 that Section, the Settlement Class and Class Counsel on their behalf shall
4 not serve a subpoena *duces tecum* or otherwise request the production of
5 documents or business records in connection with the depositions noticed
6 pursuant to this Section.

7 5. Maximum Number of Depositions

8 a. A maximum of three (3) Other Employee and EP depositions (three
9 total for those two categories combined) may be taken by the
10 Settlement Class and Class Counsel on their behalf without leave of
11 court. There is no limit on the number of Non-Settling Defendant
12 Employee depositions as long as the conditions set forth in Section
13 II.B.2, *supra*, are satisfied.

14 b. The Settlement Class and Class Counsel on their behalf may request
15 additional depositions beyond the maximums set forth herein, but
16 unless the witness agrees to voluntarily appear, the onus shall be on
17 Class Counsel in the Non-Settling Cases to file a motion to request
18 the right to notice/subpoena such additional deposition(s) (i.e., a
19 motion to exceed the limit). The standard for granting said motion
20 shall be as follows:

21 (i) The Settlement Class shall be permitted to take up to two (2)
22 additional depositions, beyond the three-deposition
23 maximum set forth in Paragraph II.B.5.a, *supra*, upon a
24 showing of good cause.

25 (ii) The Settlement Class shall be permitted to take further
26 depositions, beyond the five (5) identified above, only upon
27 a showing that said evidence has a strong probability of
28 becoming directly relevant to a material issue in the Non-

1 Settling Case for which it is sought and no reasonable
2 alternative means exists for securing the evidence sought.

- 3 6. Absent other agreement, any deposition noticed pursuant to this provision
4 shall take place at defense counsel's offices or a business location of the
5 witness's choice within 30 miles of the Defendant's or witness's business
6 office and, absent agreement of the witness or other extenuating
7 circumstances, examination shall be limited to no more than seven (7) hours
8 in duration over one day. (The witness may move for a protective order
9 seeking to further limit his or her deposition at any time for any reason.)
- 10 7. The defending attorney may instruct the witness not to answer questions by
11 the Settlement Class and Class Counsel on their behalf that exceed the
12 scope limitations set forth herein and adjourn the deposition if necessary.
13 (Nothing herein shall be construed to preclude the defending attorney from
14 instructing, where appropriate, the witness not to answer any question posed
15 by any examiner.) If the Court subsequently grants a motion to compel the
16 answers to any question for which such instruction was made, provided the
17 objection/instruction was tendered in good faith, the requesting party shall
18 not request or accept any sanctions for the witness's failure to respond.

19 C. Document Discovery

- 20 1. A subpoena *duces tecum* or other request for the production of documents
21 or things may only be served on Defendants or a Settling Party Affiliate by
22 the Settlement Class and Class Counsel on their behalf if the following
23 conditions are satisfied:
- 24 a. The Settlement Class and Class Counsel on their behalf meet and
25 confers with the proposed responding party in good faith regarding
26 the proposed request, including the contours/description of the
27 request, the need for the evidence, alternative means for securing the
28 evidence, and the deadline for production;

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- b. The Settlement Class and Class Counsel on their behalf state in writing, following said meet and confer, (a) that the Settlement Class and Class Counsel on their behalf have a good faith belief based on objective considerations that documents responsive to the request, if any, have a reasonable probability of becoming directly relevant to a material issue in the Non-Settling Cases; (b) that the Settlement Class and Class Counsel on their behalf have a good faith belief based on objective considerations that other reasonable means of obtaining the same evidence have been pursued unsuccessfully or would be unsuccessful; and (c) the basis for such good faith beliefs;
 - c. The request contains a particularized description of the documents sought beyond that ordinarily required by the Code of Civil Procedure. The description cannot seek all documents regarding a given topic or that evidence a given point; rather, the description must be designed to identify a particular document or series of documents (e.g., if available, the author and recipients of an email exchange). The requesting party must provide as much information as is reasonably accessible to assist the responding party in identifying the documents/limiting the search parameters.
2. No more than 15 requests may be served on Defendants or their Settling Party Affiliates (i.e., 15 total for all such entities for all of the Non-Settling Cases combined).⁵ Settlement Class and Class Counsel on their behalf in the Non-Settling Cases may make additional requests beyond the maximums set forth herein, but unless the receiving party voluntarily agrees to comply, the onus shall be on Settlement Class and Class Counsel on their

⁵ For example, and without limitation, a single subpoena containing five descriptions of documents to be produced would constitute five requests for purposes of this restriction. A single subpoena containing one description that contained five subparts would constitute five requests for purposes of this restriction.

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behalf in the Non-Settling Cases to file a motion to request the right to serve such additional requests. The standard for granting said motion shall be that no reasonable alternative means exist for securing the evidence sought and that said evidence has a reasonable probability of becoming directly relevant to a material issue in the Non-Settling Case for which it is sought.

3. If the Defendant, Settling Party Affiliate, or other Person receiving a document request or subpoena pursuant to these provisions objects in writing to the request, a motion to compel may be filed. (Anyone may also file a motion for a protective order.) The parties agree that to prevail on a motion to compel, or to successfully defeat a motion for a protective order, the Settlement Class and Class Counsel on their behalf must demonstrate that (i) the evidence sought has a reasonable probability of becoming directly relevant to a material issue in the Non-Settling Case; and (ii) no reasonable alternative means exists for securing the evidence sought. If the objection was tendered in good faith, the Settlement Class and Class Counsel on their behalf will not seek or accept sanctions in connection with such a motion to compel.

D. Matters Material

The Settlement Class and Class Counsel on their behalf may not solicit testimony, or request documents, from any Person covered by these discovery restrictions regarding the Works, including but not limited to the writer representation, selection and hiring process related thereto, covered by the releases set forth in the Settlement, absent a ruling from the Court that such matters are admissible in connection with plaintiffs’ allegation of a pattern and practice of discrimination or of a facially neutral practice that has a disparate impact in one or more of the Non-Settling Cases or otherwise have a reasonable probability (i.e., 50% or more) of becoming

1 materially relevant to such Cases. The ruling must be obtained on a contested basis following
2 briefing by the relevant parties to satisfy this requirement.⁶

3 E. Motion for Protective Order

4 The Defendants and Settling Party Affiliates may move for a protective order at
5 any time for any reason, but should exhaust all meet and confer efforts in advance of doing so.

6 F. One Deposition Rule

7 This Agreement, in and of itself, does not modify the Deposition Protocol.
8 Defendants have requested and received an exemption from that Protocol, such that if depositions
9 proceed during the pendency of this Agreement, but the Agreement is subsequently terminated or
10 otherwise fails to achieve the Effective Date, Defendants shall have the right to re-open said
11 depositions and question the witnesses (i.e., Defendants would not be subject to the one-deposition
12 rule).

13 G. Discovery Initiated by a Non-Settling Defendant

- 14 1. The scheduling and numerical limitations set forth herein shall not apply to
15 any deposition noticed by the defendant(s) in an Non-Settling Case – i.e., a
16 deposition noticed by CAA shall not count toward the maximum set forth
17 above.
- 18 2. The examination scope limitations set forth herein shall not apply to a
19 deponent if a Non-Settling Defendant in a Non-Settling Case “opens the
20 door” by examining the witness on matters outside the scope permitted
21 herein.
- 22 3. The Settlement Class and Class Counsel on their behalf will initiate and
23 complete any and all discovery permitted under this Section by the earlier
24 of (i) one-year from Preliminary Approval, or (ii) completion of the Phase
25 III discovery specified in the case management order. This deadline can be
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27 ⁶ A prior ruling from the Court stating that such evidence is admissible, obtained in connection
28 with a different witness or request, shall satisfy this requirement, unless the witness or other
objecting party has a good faith basis for distinguishing the prior ruling.

1 extended for good cause shown or by agreement of the parties to the
2 discovery at issue.

3 III. Defendants' Expense Reserve

4 A. A Defendants' Expense Reserve funded pursuant to Section VI.D of Administrative
5 Order No. 3 shall be established to reimburse the Settling Defendants for, among
6 other things, reasonable attorneys' fees and expenses incurred in connection with
7 discovery in the Non-Settling Cases.

8 B. The Defendants' Expense Reserve is a collective fund for all of the Settling Cases.

9 C. The following reimbursement procedure shall only apply to requests for
10 reimbursement related to discovery activities. The procedure for requesting
11 reimbursement or payment for fees and expenses incurred by Defendants' Liaison
12 Counsel and/or the Trustee of Settlement Fund II selected by the Settling
13 Defendants, is set forth in Administrative Order No. 3

14 1. Settling Defendants may request disbursements from the Defendants'
15 Expense Reserve by submitting an invoice for services rendered within a
16 reasonable time of incurring such costs. The invoice shall specify the
17 amount of hours worked (by timekeeper), his or her hourly rate, a highly
18 generalized description of work performed (e.g., defend deposition, review
19 documents for production), and the total amount. No other documentation
20 may be required for reimbursement absent challenge. Submission of
21 invoices for reimbursement under this provision shall in no way be deemed
22 a waiver of the attorney-client privilege, the attorney work product doctrine
23 or any other applicable privilege or doctrine, and the Settlement Class and
24 Class Counsel on their behalf agree that they will make no such waiver
25 argument based upon the submission of such invoices.

26 2. Defendant(s) seeking reimbursement shall initiate or reasonably seek to
27 initiate a meet and confer with Class Counsel prior to incurring more than
28 \$1,000.00 in fees and expenses relating to any project.

- 1 3. Absent a challenge as specified below, the Trustees of Settlement Fund II or
2 QSF II, as appropriate, must pay any valid requests for reimbursement –
3 assuming sufficient funds exist – within 30 days of submission.
- 4 a. Absent an agreed on extension, which request will not be
5 unreasonably withheld, Class Counsel shall have ten (10) business
6 days to object to reimbursement on the grounds that the fees or
7 expenses incurred are not reasonable. If Class Counsel objects to
8 reimbursement, Class Counsel and the requesting defendant shall
9 meet and confer regarding the dispute. If the parties cannot reach
10 agreement, the dispute shall be submitted to the Discovery Expense
11 Reimbursement Referee, Hunter Hughes, for final resolution
12 pursuant to binding mediation.
- 13 b. In assessing any challenge to a request for reimbursement, the
14 Discovery Expense Reimbursement Referee may request an in
15 camera review of detailed billing statements relating to the
16 discovery, and shall take the following considerations and
17 information into account:
- 18 (i) Whether the fees and expenses are reasonable;
- 19 (ii) Whether the requesting Defendant(s) initiated or reasonably
20 sought to initiate a meet and confer with Class Counsel prior
21 to incurring more than \$1,000.00 in fees and expenses
22 relating to any project and whether Defendants provided
23 notice, where required, under Section III.D of this protocol;
- 24 (iii) Whether fees and expenses are unreasonably duplicative of
25 the fees and expenses of Other Settling Defendants and,
26 whether, where possible, Defendants and Other Settling
27 Defendants coordinated defense efforts and relied on a single
28 attorney to represent their aligned interests; and

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(iv) The fees and expenses charged are the rates customarily charged by such outside counsel to the respective client(s).

- D. If the Defendants' Expense Reserve (including any cross-funding by other settlement reserves permitted under Administrative Order No. 3) is insufficient to reimburse any discovery costs or fees, then the Settling Defendants shall meet and confer regarding an equitable distribution of the Defendants' Expense Reserve monies available, including any funds previously disbursed. If a voluntary agreement cannot be reached regarding distribution, the parties may use the Dispute Resolution Procedure specified in the Settlement Agreement. In no event shall a Settling Defendant have recourse against Plaintiffs or their counsel for discovery fees and costs in excess of the funds provided by Administrative Order No. 3.
- E. If a request for reimbursement is made and paid prior to the Effective Date, but the Settlement is terminated or otherwise fails to become effective pursuant to its terms thereafter, then Defendants and the Other Settling Defendants shall meet and confer regarding whether any adjustment to the pro rata reversion of Settlement Fund II monies is appropriate.
- F. The parties agree that plaintiffs may seek as expenses the amounts reimbursed pursuant to this protocol in any subsequent resolution of the Non-Settling Cases.