

EXHIBIT A.2

PROTOCOL FOR EXPERT DISCOVERY

Expert discovery in this Action shall be conducted pursuant to the following protocol:

**A. Identification of Expert Witnesses**

1. On or before \_\_\_\_\_ the parties shall identify expert witnesses and submit Superior Court Civil Rule 26(b) statements. On or before \_\_\_\_\_, any party may designate additional expert witness(es) whose function shall be solely to rebut an opinion taken by a designated expert witness. At the same time a party designates a rebuttal expert witness, the party designating the rebuttal expert witness shall produce corresponding Rule 26(b) statements for that witness.

2. Depositions of expert witnesses shall take place during the period of \_\_\_\_\_ through \_\_\_\_\_.

**B. Depositions of Expert Witnesses**

1. As soon as practicable, the party taking a deposition will advise the other side of its good faith estimate of the amount of time it is anticipated that the testifying expert's deposition will take.

2. Each party will pay its testifying experts' fees and expenses incurred in connection with the deposition of such experts. All costs incurred in the production of documents discussed herein shall also be borne by the party producing the documents.

3. The parties will make a good faith effort to schedule testifying expert depositions at locations convenient for counsel and the experts. In the absence of any agreement, each deposition will take place in Wilmington, Delaware. If the deposition is taken in Wilmington, Delaware, the deposition will be held at a location to be selected by counsel for the party taking the deposition.

4. Testifying expert witnesses will appear for depositions without the necessity of subpoenas.

**C. Document Identification And Production Of Documents Relied Upon By Experts**

1. On or before fourteen (14) calendar days before the expert's deposition begins, the party proffering the testifying expert shall provide the other side with a list of the documents reviewed by each testifying expert in his capacity as a testifying expert in this case. The list will include the Bates numbers (if any) or a deposition exhibit number (if any), the date, and a brief description of each document, such as the names of the author and addressee and the title or line reference.

2. On or before fourteen (14) calendar days before each expert deposition begins, the party proffering a testifying expert will produce to the party taking the testifying expert's deposition the following documents relied upon by a testifying expert in his capacity as a testifying expert in this case:

a. Documents relied upon by a testifying expert in his capacity as a testifying expert in this case that were obtained by one side from third parties and not produced to the other side in this action;

b. Documents relied upon by a testifying expert in his capacity as a testifying expert in this case that were produced in this action for which there is no common Bates numbering or a deposition exhibit number;

c. Documents prepared by a non-testifying expert that were relied upon by a testifying expert in his capacity as a testifying expert in this case;

d. All publications of any type relied upon by a testifying expert in his capacity as a testifying expert in this case, including by way of example only, documents considered to be "learned treatises" under D.U.R.E. 803(13). This subparagraph is not intended to include publications that merely form part of the basis of a testifying expert's education, training and experience in a particular field, but rather, only those on which a testifying expert is relying or about which he will testify at trial. Further, if a publication otherwise required to be produced pursuant to this subparagraph is shown by the party proffering a testifying expert to be readily accessible in its entirety from other sources, then only the relevant portions thereof must be produced;

e. Notwithstanding any of the provisions set forth herein, no communications between counsel for a party and the party's expert shall be produced; and

f. No party shall be required to produce any work product between the expert witness and the proffering party's counsel.

3. No later than ten (10) days after a party's designation of a testifying expert, each party proffering a testifying expert will produce to the party taking the expert's deposition: (a) the testifying expert's curriculum vitae and (b) a

list that will include, at a minimum, the cases, administrative matters or other proceedings in which the expert has given trial or other testimony in public within the last four (4) years, without prejudice to any party's right to request such information for a period not to exceed ten (10) years. If the request for information exceeding four (4) years is opposed, the party seeking such additional information may apply to the Court for relief. The list also will include the name of the matter, the name of the court or other public body, the names of the parties and their attorneys, whether the expert or the party for which he is testifying has a copy of the testimony, and a brief description of the nature of the proceeding.

4. The cost of producing documents, as required herein, for a party's testifying expert, shall be borne by the party designating the testifying expert.