



This Court finds that discovery should be divided into two phases. In the first phase, discovery may be obtained for the period up to and including the date of cure of the default(s). In the second phase, discovery may be obtained for the period after the cure of the default(s).

The question at this juncture is whether discovery may proceed to the second phase. This is a matter to be decided by Magistrate Judge Shipp. The Magistrate Judge shall decide whether discovery may proceed to the second phase, using procedures subject to his discretion, based on two questions: 1) does the evidence obtained demonstrate that the period during which conversion caps were ineffective ended on a particular date, *i.e.*, November 7, 2007, as asserted in Defendants' briefs in support of their motion to dismiss the Amended Complaint; and 2) if so, does the evidence obtained demonstrate a colorable basis for finding that, as of the date that the conversion caps were reinstated, YA Global had exercised its right to convert such that it then actually owned more than 10% of Neomedia stock? If the discovery produced to date does not demonstrate a colorable basis for finding that, as of the date of cure of the default(s), which triggered reinstatement of the conversion caps, YA Global had exercised its right to convert such that it actually owned more than 10% of Neomedia stock, then, as the Court previously concluded, the reinstated conversion caps would have been effective to preclude subsequent § 16(b) liability, and discovery would not proceed to the second phase.

Thus, to further clarify, this Court has not ruled that the alleged default cure date constitutes a bright line, after which there can be no viable claims. If, as of that date, YA Global actually owned more than 10% of Neomedia stock, subsequent trades which occurred while YA Global actually (as opposed to beneficially) owned more than 10% will be subject to discovery.

**SO ORDERED.**

s/ Stanley R. Chesler  
Stanley R. Chesler, U.S.D.J.

Dated: October 26, 2011