UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 17-cv-20301-LENARD/GOODMAN

UNITED STATES SECURITIES AND EXCHANGE COMMISSION,	**:**
Plaintiff,	**:**
v.	**:**
MATHIAS FRANCISCO SANDOVAL HERRERA, MARIA D. CIDRE, AND JOSE ANTONIO MIRANDA GONZALEZ,	
Defendants.	

MORGAN LEWIS' RESPONSE TO DEFENDANTS' MOTION TO COMPEL WORK PRODUCT-PROTECTED MATERIALS

I. Introduction

Defendants Mathias Sandoval and Maria Cidre ("Defendants") move to compel interview notes and memoranda (hereinafter, "Interview Materials") prepared by Morgan Lewis in connection with its internal investigation on behalf of its client General Cable Corporation ("General Cable" or the "Company"). The motion should be denied. Courts – including the United States Supreme Court – have long held that ordering production of such materials is strongly disfavored, and Defendants have failed to demonstrate that Morgan Lewis waived the work product protection, or that Defendants have a substantial need for the materials for defense against the Securities and Exchange Commission's ("SEC") lawsuit.[1]

II. Background

Neither Morgan Lewis nor General Cable is a party to this litigation. In late 2012, General Cable retained Morgan Lewis to provide legal advice in connection with accounting errors identified relating to inventory at the Company's Brazilian operations. Declaration of Alan Singer, ¶ 2, attached hereto as Ex. 1. Morgan Lewis conducted an internal investigation designed to gather information to help the Firm provide informed legal advice. *Id.* ¶ 3. The investigation included interviews of various General Cable personnel. *Id.*

Following Morgan Lewis' November 2012 disclosure to the SEC that it was conducting the investigation, the SEC initiated its own investigation of the Company. *Id.* ¶ 4. The SEC issued multiple document requests to General Cable (*id.*), and in response, the Company produced more than 400,000 documents to the agency, including e-mail communications to and from Defendants and the persons who Morgan Lewis interviewed. Declaration of Thoth Weeda, ¶ 2, attached hereto as Ex. 2. In the course of the SEC investigation, the SEC also requested

[1] On November 2, 2017, the Court directed the parties to answer certain specific questions regarding the Freedom of Information Act. We address those questions in Appendix A.

information concerning General Cable's investigative findings. Ex. 1 ¶ 4. From time to time, Morgan Lewis provided the SEC with information concerning such findings (*id.*); an example of a presentation of that information, prepared for the SEC, is attached as an exhibit to Defendants' Brief. *See* Defendants' Motion to Compel the Law Firm of Morgan Lewis & Bockius, LLP, to Produce Documents ("Def. Br."), ECF No. 51, Ex. 3. Information regarding specific witness interviews was provided to the SEC through oral discussions. Ex. 1 ¶ 4.

Also during the course of the SEC's investigation, General Cable's outside auditors, Deloitte & Touche ("Deloitte"), sought information concerning Morgan Lewis' investigative steps and findings, including information obtained from witness interviews. *Id.* ¶ 5. Morgan Lewis provided information to Deloitte believing that Deloitte would keep it confidential, consistent with Deloitte's professional obligations to its client General Cable. *Id.*

As Defendants concede, Morgan Lewis' Interview Materials were never produced, and were never intended to be produced, to the SEC. Ex. 2 ¶ 4. Nor, as discussed at pages 8-9 below, were copies of the Interview Materials provided to Deloitte. Defendants nevertheless seek an order compelling Morgan Lewis to produce them. Defendants' motion should be denied.

III. Argument

A. The Relevant Standards Strongly Disfavor An Order Compelling The Production of Morgan Lewis' Interview Materials

An attorney's notes and memoranda of interviews performed in the course of an internal investigation are "classic attorney work product." *See, e.g., In Re GM LLC Ignition Switch Litig.*, 80 F. Supp. 3d 521, 532 (S.D.N.Y. 2015); *accord Hickman v. Taylor*, 329 U.S. 495, 512 (1947) ("[T]he privacy of an attorney's course of preparation is … essential to an orderly working of our system of legal procedure."). Therefore, the Supreme Court has explained that "[f]orcing an attorney to disclose notes and memoranda of witness' oral statements ***is***

particularly disfavored because it tends to reveal the attorney's mental processes." *Upjohn v. U.S.*, 449 U.S. 383, 399 (1981) (emphasis added).

For that reason, absent a showing of waiver, under Rule 26 of the Federal Rules of Civil Procedure, Defendants must demonstrate that they "have a substantial need for the materials to prepare [their] case, and cannot, without undue hardship, obtain their substantial equivalent by other means." Fed. R. Civ. P. 26(b)(3)(A)(ii). "Substantial need cannot be overcome simply with an argument that documents are relevant and will assist in bolstering a party's affirmative defenses." *Beaubrun v. GEICO Gen. Ins. Co.*, No. 16-24205-CIV, 2017 WL 1738117, at *5 (S.D. Fla. May 4, 2017). And, courts must not allow parties to claim substantial need as a means to "short-cut" preparation of cases. *See Stern v. O'Quinn*, 253 F.R.D. 663, 686 (S.D. Fla. 2008).

Rule 45 similarly weighs against disclosure, requiring a party issuing a subpoena to take steps to "avoid imposing an undue burden" on the non-party subject of the subpoena. Fed. R. Civ. P. 45(d)(1). Among the factors considered in evaluating whether an undue burden is being imposed is the issuing party's need for the documents, and the status of the person from whom the documents are sought as a non-party. *Great American Ins. Co. v. The Veteran's Support Org.*, 166 F. Supp. 3d 1303, 1310 (S.D. Fla. 2015). The status of the subpoena recipient as a non-party "militates against requiring disclosure of the documents sought." *Id.*

B. **Issues To Be Addressed**

The fact that Morgan Lewis' Interview Materials constitute work product is not in dispute. Def. Br . 7. The Interview Materials are not transcripts, nor are they witness statements. Ex. 2 ¶ 3. They are summaries of what the individual attorney authors personally and in their best judgment determined to be the relevant information derived from the interviews, and include not only a summary of information provided by the witnesses, but insight into the attorneys' determinations (or, in some instances, determinations by employees of FTI Consulting, who

assisted Morgan Lewis) of the witnesses' credibility and cooperativeness. *Id.* Therefore, the only questions that the Court must answer in evaluating Defendants' motion are: 1) Did Morgan Lewis waive the work product protections as to the Interview Materials in communicating with the SEC and Deloitte?; and 2) Have Defendants demonstrated a substantial need for the Interview Materials? For the reasons that follow, undersigned counsel respectfully submits that the answers to those questions are: 1) No; and 2) No.

C. Morgan Lewis' Communications With The SEC Did Not Waive The Work Product Protection

To support their waiver argument, Defendants point to: 1) Morgan Lewis' production to the SEC of an April 2013 PowerPoint presentation setting forth its investigative steps and factual findings (*see* Def. Br., Ex. 3); and 2) a variety of documents reflecting that Morgan Lewis orally relayed information from its investigation interviews to the SEC. *See* Def. Br., Exs. 2, 4-6. Neither set of documents supports Defendants' argument that there was a waiver.

The issue of waiver is inapplicable to the April 2013 presentation because the document itself is not work product. The presentation was prepared specifically for the SEC, and thus is not the type of material contemplated by *Hickman* or Rule 26(b)(3) that warrants work product protection in the first place. Nor does its content – factual timelines, names of interviewees, and factual findings – reflect work product. Facts are facts, not attorney mental processes. *See generally Solidda Grp., S.A. v. Sharp Elecs. Corp.*, No. 12-24469-CIV, 2013 WL 12091057, at *7 (S.D. Fla. Mar. 19, 2013) (permitting discovery that "seek[s] only facts and do[es] not delve into the mental impressions of any … attorneys).

In *In Re GM LLC Ignition Switch Litig.*, the court denied plaintiffs' motion to compel interview notes and memos where GM produced to government agencies an attorney's report summarizing an internal investigation, and where the report contained numerous citations to

many of the interviews conducted. 80 F. Supp. 3d at 524-25. The court found that the disclosure of facts shared in a voluminous report prepared for the government did not manifest an intent to disclose the memos themselves. *Id.* at 532. It also observed that GM had not offensively used the report or made a selective or misleading presentation unfair to its adversaries warranting a finding of waiver with respect to the interview memos and notes. *Id.* at 534.

With regard to the interview information that Morgan Lewis provided to the SEC, the oral conveyance of information derived from interviews does not waive the work product protection as to the underlying attorney notes and memoranda. *BMI Interior Yacht Refinishing, Inc. v. M/Y Claire*, No. 13-62676-CIV, 2015 WL 4316929, at *6 (S.D. Fla. July 15, 2015). Moreover, "disclosure [of work product] operates only to waive the protection for the ***actual*** material disclosed, not other materials." *Brown v. NCL Ltd.*, 155 F. Supp. 3d 1335, 1338 (S.D. Fla. 2015) (emphasis in original); *see also BMI*, 2015 WL 4316929, at *6.

In *BMI Interior Yacht Refinishing, Inc. v. M/Y Claire*, a case from this district that is notably absent from the Defendants' Brief, the court found that the oral disclosure of portions of a work product-protected expert report did "not rise to the level of waiver of work product protection as to the written Report itself." 2015 WL 4316929, at *6. It further found that, even if a waiver occurred, it did not extend beyond the specific oral disclosures made, and thus denied plaintiffs' motion to compel production of the report at issue. *Id*. at *7.

In contrast to this matter, the cases Defendants rely on largely involve companies seeking to avoid disclosure of materials that were physically produced to the government on the basis that the companies had a common interest and/or confidentiality agreement with the government:

- In *U.S. v. Bergonzi*, 216 F.R.D. 487, 494 (N.D. Cal. Aug. 5, 2003), the court found that the company never intended for its investigative materials to remain confidential, but rather, the materials were prepared for the very purpose of providing them to the SEC.

Indeed, the company specifically agreed in writing ***prior to*** the interviews to produce interview memoranda to the SEC, and ultimately produced such memos. *Id.* at 491.

- The company in *In re Initial Public Offering Securities Litigation*, 249 F.R.D. 457, 458 (S.D.N.Y. Feb. 14, 2008), ***produced 169 interview memoranda*** to the Department of Justice, the SEC, and others, and sought to protect them on the grounds that it shared a common interest with the DOJ and SEC.

- In *In re Weatherford International Securities Litig.*, No. 11-1646, 2013 WL 12185082 (S.D.N.Y. Nov. 5, 2013), the court rejected the argument that the interests of the company's audit committee and the SEC were aligned.

- In *In re Qwest Communications Intern Inc.*, 450 F. 3d 1179, 1181 (10th Cir. 2006), the court rejected an argument that a confidentiality agreement with DOJ and SEC avoided waiver where over 220,000 pages of work product-protected documents were produced.

The other cases cited by Defendants are similarly distinguishable, and in any event, are not controlling.[2] Morgan Lewis does not contend that General Cable and the SEC shared a common interest as to the Interview Materials, and Morgan Lewis never the materials to the SEC.[3] Indeed, Defendants' claim that they seek to "level the playing field" (Def. Br. 1) rings hollow for precisely this reason – the SEC does not have what the Defendants are seeking.

D. General Cable Did Not Waive The Work Product Protection By Sharing The Results Of Its Witness Interviews With Deloitte

Request 2 of Defendants' subpoena and pages 9-10 of their Brief seek Interview Materials *over and above* those relating to the witnesses whose interviews were "downloaded" to

[2] *See Securities and Exchange Comm. v. Vitesse Semiconductor Corp.*, No. 10 Civ. 9239, 2011 WL 2899082, at *2 (S.D.N.Y. July 14, 2011) (SEC's notes of oral interview downloads nearly matched attorney's notes, reflecting deep level of detail provided); *Securities and Exchange Comm. v. Roberts*, 254 F.R.D. 371, 379 (N.D. Cal. 2008) (oral communications with SEC involved answering only "factual questions" and, therefore, ordering production of documents and fact information actually provided or disclosed to the SEC); *Securities and Exchange Comm. v. Berry*, No. 07-04431, 2011 WL 825742, at *6 (N.D. Ca. Mar. 7, 2011) (denying access to attorney notes and draft memoranda).

[3] Defendants have proposed an *in camera* review of a Morgan Lewis' attorney's notes of an October 2013 meeting with the SEC to facilitate the Court's decision on Defendants' motion. While Morgan Lewis believes that such a review is unnecessary for purposes of deciding this motion, it has no objection to such a review.

the SEC (see Item 7 of Morgan Lewis' privilege log for Subpoena Request 1, Def. Br. Ex. 6).[4] Thus, with respect to these Interview Materials, the entire premise of Defendants' motion – that the SEC has an unfair advantage because it has access to information that Defendants lack (the faulty, "This motion seeks to level the playing field" argument (Def. Br. 1)) – does not apply. There is no "playing field" to level, because Deloitte is not even a party to the pending litigation, let alone Defendants' adversary.

There are relatively scant facts regarding the sharing of interview materials with Deloitte in Defendants' motion papers.[5] Exhibit 9 is an e-mail from Chip Cottrell of Deloitte to Matthew Siembieda of Morgan Lewis in which Mr. Cottrell refers to a "Reading to Deloitte by ML of key interview notes." (Def. Br. Ex. 9.) Exhibit 11, at page 9 (DT0277212) contains the statement:

> ML provided Deloitte access to review the following documents in their Philadelphia office; however, due to privilege and other considerations, Deloitte was not permitted to retain copies of these documents:
>
> * * *
>
> Interview notes for all individuals interviewed by the Investigative Team. Note: the Deloitte Forensic team selected individuals interviewed by the Investigative Team and were read these interviews by ML team members.

(Def. Br. Ex. 11 at 9.) For purposes of this motion, Morgan Lewis does not contest that it read interview notes and memoranda to Deloitte.[6] However, under the law, neither the reading of

---

[4] In other words, this branch of Defendants' motion concerns Items 2, 5, 7, 15, 17-27, 29-32, 34-36, and 38-44 on Morgan Lewis' privilege log for Subpoena Request 2.

[5] The draft Deloitte notes that is Defendants' Exhibit 10 does not refer to the Interview Materials that are at issue on this motion, but instead discusses a Morgan Lewis partner "read[ing] the investigative report" to Deloitte. That "investigative report" (a draft) was initially sought by Defendants' subpoena, but Defendants do not seek it in this motion (Def. Br. 7).

[6] Morgan Lewis included in its search for responsive documents and on its privilege log the interview materials for all 38 persons who appear on a "List of Interview" produced by Deloitte and served with Defendants' subpoena, even though it is unlikely that all 38 were among the "key" or "selected" witnesses as those terms were used by Deloitte.

work product nor even the actual provision of physical work product to a company's auditors waives the work product protection.

Defendants' description of the law ("the majority of courts hold[] that an independent or outside auditor typically shares a common interest with the corporation for purpose of the work-product and waiver doctrines" (Def. Br. 10)) does not begin to do it justice. The only case that Defendants cite for their position that disclosure to auditors operates as a work product waiver – *Medinol, Ltd. v. Boston Scientific Corp.*, 214 F.R.D. 113 (S.D.N.Y. 2002) – "has been roundly criticized for its holding and analysis." *Westernbank Puerto Rico v. Kachkar*, No. 07-1606, 2009 WL 530131, at *7-8 (D.P.R. Feb. 9, 2009). Moreover, in the eight years since *Westernbank* was decided, more courts have reached the conclusion that disclosure to auditors does not waive work product, including *U.S. v. Deloitte LLP*, 610 F.3d 129, 142 (D.C. Cir. 2010) and *In re Weatherford Int'l Securities Litig.*, No. 11-1646, 2013 WL 12185082 (S.D.N.Y. Nov. 19, 2013).

Weatherford, on which Defendants otherwise rely (Def. Br. 9), held that *Medinol* is not just wrong, but in conflict with controlling authority in the Second Circuit, in which the *Medinol* decision was rendered. *See* 2013 WL 12185082, at *5. And Defendants fail altogether to acknowledge authority in this Court and elsewhere within the Eleventh Circuit that contradicts their position. *See, e.g., Gutter v. E.I. Dupont de Nemours & Co.*, No. 95-CV-2152, 1998 WL 2017926, at *3 (S.D. Fla. May 18, 1998); *Regions Fin. Corp. & Subsidiaries v. U.S.*, No. 2:06-CV-00895, 2008 WL 2139008, at *8 (N.D. Ala. May 8, 2008).

In an effort to escape the crushing weight of authority against their waiver position, Defendants offer an argument that lacks any legal support whatsoever: the notion that a waiver occurs if a public company shares work product with its auditor where the auditor is "on the SEC's radar and entered into a tolling agreement with the SEC regarding its own conduct" (Def.

Br. 10, citing an e-mail between the SEC and counsel for Deloitte attached therein as Exhibit 8).

The flaws in this argument are many:

- The SEC never brought an enforcement case against Deloitte related to this matter;
- The draft tolling agreement is not an enforcement case, or even the threat of one, but instead only refers to an SEC investigation "to determine *whether* there have been violations of the federal securities laws" (emphasis added);
- The SEC's request for a tolling agreement from Deloitte was made in December 2013, ten months *after* Morgan Lewis shared the results of its interviews with Deloitte; and
- Defendants do not (and cannot) make any showing that Morgan Lewis or General Cable was aware in December 2013 (let alone in January and February, when the Interview Materials were shared with Deloitte) that the SEC was interested in tolling the statute of limitations with Deloitte; and thus, Morgan Lewis could not have taken such interest in tolling into account when assessing whether Deloitte was a potential "conduit" of information to the SEC.

E. **Defendants Have Not Demonstrated Substantial Need**

Finally, Defendants have not satisfied their burden under Rule 26(b)(3) of demonstrating a substantial need for the Interview Materials because the information Defendants seek is accessible to them through means other than reviewing Morgan Lewis' Interview Materials, and accessing that information will not result in an undue hardship. Defendants' substantial need argument essentially boils down to this: 1) dozens of undifferentiated interviews took place four or five years ago, and the current recollections of the interviewees may not be fresh; and 2) many of the interviewees live in Brazil, and every one of them must be deposed through letters rogatory. Defendants' blunderbuss approach makes no effort to show "substantial need" as to any particular interview, let alone all of them.

Defendants' "memories fade" speculation is just that – speculation, and the possibility that witnesses' memories may be stale is not a sufficient basis to overcome the work product protection. *See Brown v. NCL (Bahamas) Ltd.*, 155 F. Supp. at 1343. Moreover, Defendants fail to inform the Court that they have the entirety of the 400,000-plus documents that General Cable

produced to the SEC, which includes contemporaneous e-mail communications among the witnesses at issue that can be used to refresh recollections, and which give black and white insight into the very basis of the SEC's case against Defendants. *See In re GM Ignition Switch Litig.*, 80 F. Supp. 3d at 534 (finding "this case does not present the unusual and rare circumstances in which fairness requires a judicial finding of waiver with respect to related, protected information" where, among other things, GM "produced, or will soon produce, millions of pages of documents").

Nor have Defendants explained how the letters rogatory process is "highly insufficient." "[D]epositions taken according to foreign law are not inferior to those taken under United States law," and have been found to satisfy the constitutional requirements for use in connection with a criminal prosecution. *See U.S. v. Salim*, 855 F.2d 944, 951 (2d Cir. 1988). Defendants' claim that the letters rogatory process is more "laborious" and "expensive" than taking depositions in the United States is wholly without basis, and even the case they cite in support of their tenuous position described the letters rogatory process as "much closer to the usual practice." *U.S. v. Trout*, 633 F. Supp. 150, 152 (N.D. Ca. 1985). To the extent such process is more "lengthy" than taking a deposition, Defendants can seek appropriate extensions of the discovery period from the SEC and the Court.

IV. **Conclusion**

Defendants have failed to demonstrate that the work product protection has been waived, or that they have a substantial need for the Interview Materials. For these reasons, Defendants' motion to compel should be denied.

Respectfully submitted,

/s/Alison Tanchyk
Alison Tanchyk, FL Bar No. 0112211
Matthew Papkin, FL Bar No. 106565
Morgan, Lewis & Bockius LLP
200 S. Biscayne Blvd., Suite 5300
Miami, FL 33131
alison.tanchyk@morganlewis.com
matthew.papkin@morganlewis.com
(305) 415-3444
(305) 415-3392

Christian J. Mixter
Morgan, Lewis & Bockius LLP
1111 Pennsylvania Ave, N.W.
Washington, D.C. 20004
christian.mixter@morganlewis.com
(202) 739-5575
Pro hac vice motion pending

APPENDIX A: RESPONSES TO THE COURT'S NOVEMBER 2, 2017 QUESTIONS REGARDING THE FOIA

In an endorsed Order dated November 2, 2017, the Court noted that some of the exhibits attached to Defendants' Motion to Compel the Law Firm of Morgan Lewis & Bockius, LLP, to Produce Documents bear the legend "FOIA Confidential Treatment Request Pursuant to 17 CFR 200.80 and 83," and directed that Morgan Lewis' response address five numbered questions, as well as two observations by the Court. The Court's questions and observations are reproduced below, along with Morgan Lewis' responses.

1. Did a party request disclosure from the SEC under FOIA?

Morgan Lewis made a number of requests to the Securities and Exchange Commission ("SEC" or "Commission") to treat documents and information that Morgan Lewis produced to it as confidential for purposes of the Freedom of Information Act, 5 U.S.C. § 552 ("FOIA") – in other words, asking the SEC *not* to disclose those documents and that information to any persons who requested them from the SEC under the FOIA. Morgan Lewis does not know whether anyone, including any party to this case, has requested that the SEC disclose under the FOIA any of the documents or information that Morgan Lewis asked it to treat as confidential.

2. Do these federal regulations even apply to the subpoena served on Morgan? If so, how?

Understanding the Court to refer to 17 CFR §§ 200.80 and 200.83, those sections deal with requests for information directed by members of the public to the SEC pursuant to the FOIA. Those sections do not apply to information requested from a non-governmental entity such as Morgan Lewis. As to the SEC, 17 CFR § 200.83(a) states that it "provides a procedure by which persons submitting information in any form to the Commission can request that the information not be disclosed pursuant to a request under [the FOIA]. This section does not affect

the Commission's right, authority, or obligation to disclose information in any other context." Morgan Lewis believes that the SEC regards its discovery obligations in litigation to be a context to which the FOIA does not apply.

3. Did Morgan send a copy of its request to the Freedom of Information and Privacy Act Operations, SEC?

When requesting FOIA confidential treatment for materials produced to the SEC, it was Morgan Lewis' practice to send a copy of its request to the SEC's Office of Freedom of Information and Privacy Act Operations.

4. If so, what was the SEC's response?

Morgan Lewis typically requested the Office of Freedom of Information and Privacy Act Operations to return file-stamped copies of Morgan Lewis' requests for confidential treatment under the FOIA, and this was done. Morgan Lewis has not received any other communications from the Office of Freedom of Information and Privacy Act Operations regarding this matter, and would not expect to receive any such communications unless an outside party had requested disclosure from the SEC under the FOIA.

5. If the request was denied, did Morgan appeal?

Morgan Lewis is not aware of any such denials.

The Undersigned also notes that some of the emails about debriefings and interviews (see, e.g., ECF No. 52-5) do *not* contain the FOIA caveat. The additional briefing should discuss the legal effect, if any, of this omission scenario.

Morgan Lewis did not request FOIA confidential treatment for communications, such as Exhibit 5 to Defendants' motion, that did not themselves contain confidential information. Morgan Lewis does not believe that the absence of FOIA confidentiality requests in such situations has any legal effect.

> **Finally, the Undersigned notes that some of the documents [e.g., ECF Nos. 52-9, 52-10 and 52-11] contain the following caveat: "confidential treatment requested by Deloitte and Touche LLP." The response and optional reply should also discuss the legal relevance, if any, of this caveat.**

Morgan Lewis expresses no view on the decision by Deloitte & Touche's counsel to request confidential treatment under the FOIA for information that Deloitte & Touche produced to the SEC. Morgan Lewis does not believe that Deloitte & Touche's request for FOIA confidential treatment has any legal relevance to this motion.

Exhibit 1

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 17-cv-20301-LENARD/GOODMAN

UNITED STATES SECURITIES AND EXCHANGE COMMISSION :

v. :

MATHIAS FRANCISCO SANDOVAL HERRERA AND MARIA D. CIDRE :

DECLARATION OF ALAN SINGER IN OPPOSITION TO DEFENDANTS' MOTION TO COMPEL THE LAW FIRM OF MORGAN LEWIS & BOCKIUS, LLP, TO PRODUCE DOCUMENTS

ALAN SINGER declares under penalty of perjury, pursuant to 28 U.S.C. § 1746, as follows:

1. I am a member of the Bars of the Commonwealth of Pennsylvania and the State of New York and am currently a Senior Counsel at Morgan, Lewis & Bockius LLP ("Morgan Lewis"). I respectfully submit this declaration in opposition to Defendants' Motion to Compel the Law Firm of Morgan Lewis & Bockius, LLP, to Produce Documents ("Defendants' Motion").

2. I have reviewed Defendants' Motion, together with Documents 52-1 through 52-11, entered on the FLSD Docket on October 31, 2017. Beginning in the autumn of 2012, and as of the dates of Entries 7.1. 7.2, 7.3, 7.4, and 7.5 on Morgan, Lewis & Bockius LLP's Privilege Log in Response to Request 1 of Subpoena Dated August 9, 2017 in 1:17-cv-20301-JAL (the "Request 1 Privilege Log") and of Entries 1 through 44 on Morgan, Lewis & Bockius LLP's Privilege Log in Response to Request 2 of Subpoena Dated August 9, 2017 in 1:17-cv-20301-

JAL, some of which are also referenced in Entry 7.6 of the Request 1 Privilege Log (see Defendants' Motion at 7 and Document 52-6), I was part of the Morgan Lewis team providing legal advice to General Cable Corporation ("General Cable") in connection with issues arising from General Cable's discovery of accounting errors relating to inventory in Brazil. Morgan Lewis' advice concerned, among other things, a prospective restatement of several of General Cable's financial statements, as disclosed by General Cable in a Current Report on Form 8-K that it filed with the Securities and Exchange Commission ("SEC") on October 29, 2012, material weaknesses in General Cable's internal control over financial reporting that enabled the accounting errors to be undetected, and an SEC investigation that resulted in the settled SEC administrative order captioned *In the Matter of General Cable Corporation*, Securities Exchange Act of 1934 Release No. 79702 (December 29, 2016), a copy of which is attached as Document 52-2 to Defendants' Motion.

3. Morgan Lewis conducted an internal investigation at the request of its client, General Cable. The investigation was designed to enable Morgan Lewis to engage in fact-finding that would facilitate its ability to provide informed legal advice to its client, General Cable. In the course of the internal investigation, Morgan Lewis conducted, among other investigative tasks, interviews of various General Cable personnel.

4. At General Cable's direction, on or about November 7, 2012, Morgan Lewis disclosed to the SEC staff that it was conducting an internal investigation on behalf of General Cable regarding the inventory accounting errors. Subsequently, the SEC initiated its own investigation of the General Cable. The SEC issued multiple document requests to General Cable. In the course of the SEC's investigation, in what I understand has become common practice for the agency, the SEC also requested from General Cable information regarding

findings derived from the internal investigation. That information was provided to the SEC; information with regard to specific witness interviews was provided through oral discussions with the SEC.

5. While the internal investigation and the SEC's investigation were ongoing, General Cable's outside auditors, Deloitte & Touche LLP ("Deloitte"), sought information concerning Morgan Lewis' investigative procedures and findings, including information obtained from witness interviews. I understood that Deloitte was seeking this information to, among other things, (i) assist it in auditing General Cable's financial statements and in reviewing financial disclosures in General Cable's SEC filings relating to, among other things, the restatement of General Cable's financial statements and management's assessment of internal control over financial reporting, and (ii) assess the adequacy of the internal investigation conducted on behalf of General Cable. I believed that, in accordance with customary practice, Deloitte was receiving that information under the professional obligations of confidentiality that it owed to its client, General Cable, subject to its provision of information pursuant to valid legal process and applicable regulatory requirements.

Dated November 9, 2017 at Philadelphia, PA.

Alan Singer

Exhibit 2

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 17-cv-20301-LENARD/GOODMAN

UNITED STATES SECURITIES AND EXCHANGE COMMISSION :

v. :

MATHIAS FRANCISCO SANDOVAL HERRERA AND MARIA D. CIDRE :

DECLARATION OF THOTH WEEDA IN OPPOSITION TO DEFENDANTS' MOTION TO COMPEL THE LAW FIRM OF MORGAN LEWIS & BOCKIUS, LLP, TO PRODUCE DOCUMENTS

THOTH V. WEEDA declares under penalty of perjury, pursuant to 28 U.S.C. § 1746, as follows:

1. I am a member of the Bar of the Commonwealth of Pennsylvania and am an associate at Morgan, Lewis & Bockius LLP ("Morgan Lewis"). I respectfully submit this declaration in opposition to Defendants' Motion to Compel the Law Firm of Morgan Lewis & Bockius, LLP, to Produce Documents ("Defendants' Motion").

2. I have reviewed the papers filed in support of Defendants' Motion. As of the dates of Entries 7.1. 7.2, 7.3, 7.4, 7.5, and 7.6 on Morgan, Lewis & Bockius LLP's Privilege Log in Response to Request 1 of Subpoena Dated August 9, 2017 in 1:17:-cv-20301-JAL and of Entries 1 through 44 on Morgan, Lewis & Bockius LLP's Privilege Log in Response to Requests 2 of Subpoena Dated August 9, 2017 in 1:17:-cv-20301-JAL (see Defendants' Motion at 7 and Exhibit 6), I was part of the Morgan Lewis team providing legal advice to General Cable Corporation ("General Cable") in connection with issues arising from General Cable's discovery

of accounting errors relating to inventory in Brazil. I was involved in the internal investigation by Morgan Lewis, which included the interviews of various General Cable personnel, as well as General Cable's response to the investigation into accounting matters that was conducted by the Securities and Exchange Commission ("SEC"), during which the SEC issued multiple document requests and General Cable produced more than 400,000 documents, including e-mail communications to and from Defendants and the persons whom Morgan Lewis interviewed.

3. More recently, I have assisted with Morgan Lewis' response to Defendants' August 9, 2017 Subpoena, including the preparation of Morgan Lewis' privilege log and, specifically, Entries 7.5-7.6 and 1-44 above (collectively, the "Interview Materials"). The Interview Materials are not transcripts, nor are they witness statements. They are summaries of what the individual attorney author personally and in his or her best judgment determined to be the relevant information derived from the interviews, and include not only a summary of the information provided by the witnesses, but insight into attorneys' determinations of the witness' credibility and cooperativeness, or in some instances the same types of determinations made by employees of FTI Consulting, who assisted Morgan Lewis with the internal investigation.

4. The Interview Materials were never produced, and never intended to be produced, to the SEC.

Dated November 9, 2017 at Philadelphia, PA.

Thoth V. Weeda