

# EXHIBIT A

**Memorandum to Counsel**  
**(S.G.D. Engineering v. Lockheed Martin Corp.)**

To: Bruce R. Heurlin  
Catherine N. Hounfodji  
Eric D. Gere  
Gerald W. Alston

I reviewed SGD's Opening Memorandum and the Response that Lockheed filed.

I have not reached any definitive conclusions regarding the reasons for SGD's errors in describing Lockheed's Fourth Privilege Log. Even so, it is clear to me that Lockheed has not provided an adequate response to the issues raised in SGD's Opening Memorandum. If Lockheed believes that information that SGD deleted in SGD's descriptions cures SGD's objections, then Lockheed should identify for each applicable item in its Log (a) what was deleted and (b) why that eliminates or cures the objections that SGD made.

So that I can prepare an informed report and recommendation, Lockheed should file, without delay, a supplemental response. The following comments are made to illustrate my current thinking and the information that I believe should be included in Lockheed's response:

- Many entries in Lockheed's Log to which an attorney-client objection is made do not identify an attorney. *See, e.g.*, Nos. 55-58, 60-61, 84, 164, 182-87. Reasonable detail for purposes of Rule 26(b)(5)(A) would seem to require an explanation of how and why these non-attorney entries describe attorney-client privileged documents.
- Some documents described as placeholders have not been produced. *See, e.g.*, Nos. 604, 605, 610. SGD claims that seven placeholder documents have been withheld even though no privilege or claim of work-product immunity has been made. I am inclined to recommend that these placeholder documents be produced unless (a) a privilege (or work-product claim) is identified and (b) the basis on which the privilege or work-product immunity is claimed is described in reasonable detail (for example, that the documents include communications with counsel about potential litigation or strategy).
- "LMC Proprietary Information" is listed as a privilege in dozens of entries. *See, e.g.*, 50-55. Tentatively, I have concluded that this is not a legitimate basis for a privilege claim. A protective order is in place. If that is not sufficient to protect Lockheed's concerns, a reasoned explanation needs to be provided.

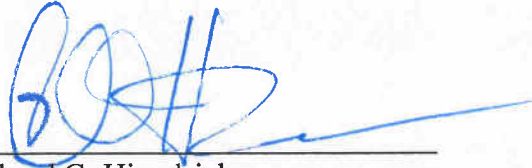
- “Export Controlled Information” is listed as a privilege in dozens of entries. *See, e.g.,* Nos. 50-55. SGD represents that there is no discovery dispute as to these documents if the documents are made available for inspection by SGD’s counsel. *See* SGD’s Mem. at 20 n.4. Is Lockheed willing to make these documents available on the terms described in SGD’s footnote 4? If not, what is Lockheed’s position on these documents?
- Lockheed’s Response does not address why at least some of its privilege objections cannot be eliminated by making redactions. This should be addressed in Lockheed’s supplemental response.
- Many entries involve e-mail strings for which attorney-client privilege, work-product immunity, or both is claimed. *See, e.g.,* Nos. 50-52, 59-67. Has Lockheed’s counsel reviewed all e-mails in each string to ensure that each e-mail for which attorney-client privilege is claimed qualifies for that privilege? Has that been done for the e-mail strings in which work-product immunity is claimed? A declaration explaining that an e-mail-by-e-mail review by counsel has been made may be appropriate. Some courts have required counsel to list separately each e-mail for which a privilege is claimed. A declaration may be a less burdensome way of providing reasonable assurances that nonprivileged e-mails are not included in the e-mail strings. On further review, counsel may wish to remove some of the embedded e-mails from the privilege claim. I am not inclined to view late production as evidence of bad faith or waiver as to other privilege claims.
- In many instances the documents that were withheld have attachments. *See, e.g.,* Nos. 80-81, 84-85. The basis for withholding the attachments, if not clear from the Log’s description, should be explained.
- A number of documents listed in the privilege Log state in the privilege description, “Relevance, Not relevant to the instant case.” *See, e.g.,* Nos. 434-38, 445-55, 458-80. Why were these documents included in the Log? Did a mistake occur? I am not inclined to recommend that Lockheed explain the reason the documents are not relevant. But it is important that Lockheed explain how documents, for which no privilege claim is made, ended up in its privilege Log.

\* \* \* \* \*

These comments are not intended to be all-inclusive. Nor do they represent my final thinking. They do, though, represent my current thoughts about the issues and the information that Lockheed should provide in a supplemental response.

Lockheed may respond to the Notice of Errata that SGD filed today.

Dated: March 28, 2013.

A handwritten signature in blue ink, consisting of several loops and a long horizontal stroke extending to the right.

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Richard G. Himelrick  
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