

IN THE CIRCUIT COURT  
SEVENTEENTH JUDICIAL CIRCUIT  
BROWARD COUNTY, FLORIDA  
COMPLEX BUSINESS DIVISION

BERGERON ENVIRONMENTAL AND  
RECYCLING, LLC, a Florida limited liability  
company,

Plaintiff,

v.

Case No.: 16-CA-000158 (07)

LGL RECYCLING, LLC f/n/a/ SUN  
RECYCLING, LLC, a Florida limited liability  
company, WASTE MANAGEMENT, INC.  
OF FLORIDA, a Florida corporation,  
ANTHONY LOMANGINO, an individual,  
CHARLES GUSMANO, an individual, and  
CHARLES LOMANGINO, an individual,

Defendants.

---

**NON-PARTY MOTION TO QUASH SUBPOENA AND  
FOR PROTECTIVE ORDER**

Non-party, Lizabeth A. Brady (“Ms. Brady”), moves this Court, pursuant to Rule 1.280(c), Florida Rules of Civil Procedure, to prohibit the parties in this action from deposing Ms. Brady regarding a letter (described further below) which was issued after review of a proposed transaction for possible anticompetitive effects. Should the Court permit any deposition of Ms. Brady, even as limited, Ms. Brady requests that the deposition be on written questions. Finally, should any deposition

be allowed to proceed, Ms. Brady requests that it not occur until after June 2018, for the reasons described below. As grounds therefor, Ms. Brady states:

On May 7, 2018, Plaintiff, Bergeron Environmental & Recycling, LLC (“Plaintiff”), issued a “Subpoena for Deposition of Lizabeth A. Brady, Esq.” for her deposition on June 15, 2018, at 9:00 a.m. [See “Subpoena for Deposition of Lizabeth A. Brady, Esq.” attached hereto as Exhibit “A”.]

Ms. Brady is Chief of the Multistate Antitrust Enforcement Division of the Office of the Attorney General for the State of Florida (“OAG”). Ms. Brady is unavailable for deposition during the month of June 2018, due to prior scheduled obligations. [See Affidavit of Lizabeth A. Brady attached hereto as Exhibit “B”.] Ms. Brady is attending her son’s medical school graduation and wedding ceremonies the first half of June. Ms. Brady is undergoing previously scheduled surgery on June 14, 2018, and with the necessary time to recuperate will be unable to attend deposition at least through June 27, 2018.

### **Background**

Ms. Brady and her staff conduct merger/acquisition reviews of proposed transactions for possible anticompetitive effects. Depending upon the information and testimony obtained during a confidential investigation of the proposed transaction, the OAG decides whether it intends to take antitrust enforcement action.

In 2015, one such review involved a proposed acquisition of assets by Waste Management, Inc. The transaction was Waste Management, Inc's then proposed acquisition of the assets of Southern Waste Systems Holdings, LP, including certain assets of Sun Recycling, LLC ("Sun") (the "Proposed Acquisition"). That investigation culminated in a closing letter dated December 3, 2015, ("Letter"). [Letter (with redactions) attached hereto as Exhibit "C".] In the Letter, after expressly reserving the ability to reconsider the matter in the future, Ms. Brady advised that the OAG did not "presently [at that time] intend to take antitrust enforcement action in connection with the [P]roposed [A]cquisition." That decision or inaction was based on the information obtained by and representations made to the OAG that it reviewed in the course of its confidential investigation of the Proposed Acquisition.

The Letter is based on Ms. Brady's deliberative and mental processes, and conversations and communications with her staff about confidential information collected during the course of the OAG's investigation of the Proposed Acquisition. The information contained in documents and materials and any representations, and testimony obtained by the OAG concerning the Proposed Acquisition during the OAG's investigation are confidential. §§ 542.28(9), and 501.2065, Fla. Stat.

Ms. Brady believes that Plaintiff seeks to depose her about the Letter. Plaintiff's interest in Ms. Brady's deposition may be apparent from the response of

Waste Management Inc. of Florida (“WMIF”) to the Amended Complaint. WMIF states as an affirmative defense that it “received approval for the purchase of certain of Sun’s assets from ... the Florida Attorney General’s Office, who ... reviewed the transactions for any anti-competitive impact.” [See Defendant WMIF’s Amended Corrected Answer, Defenses, and Affirmative Defenses filed January 26, 2017, p. 15 ¶ 5, p. 16, ¶ 7, p. 17 ¶ 14.] Presumably, the reference to “approval” means the Letter. Consequently, Ms. Brady believes that Plaintiff seeks to depose her about communications she had with her staff about the confidential antitrust enforcement investigation information she and her staff obtained from and representations made by the parties involved in the Proposed Acquisition and about her deliberative and mental processes culminating in the Letter.

Ms. Brady seeks a protective order because, although the Letter may be admissible in a court of law, Ms. Brady should not be deposed about why the Letter was issued, the basis for anything stated in the Letter, or what was done as part of the investigation of the Proposed Acquisition. Inquiry about why the Letter was issued or the basis for anything stated in the Letter would necessarily delve into her mental and deliberative processes. And such inquiry, especially the basis for anything stated in the Letter or what was done as part of the investigation of the Proposed Acquisition, would necessarily also delve into the confidential antitrust enforcement investigation conducted culminating in the Letter. And, such inquiry

would also impermissibly invade Ms. Brady's attorney work product. Such inquiry would necessarily violate (i) the confidentiality requirements under §§ 542.28(9), and 501.2065, Fla. Stat., (ii) the deliberative process privilege or so-called mental processes rule, and (iii) the attorney work-product privilege.

Alternatively, should the Court permit Ms. Brady's deposition to proceed, the questions and responses should be written. Rule 1.320, Fla. R. Civ. P. This would be a less burdensome means of obtaining such discovery, and allow Ms. Brady the opportunity to interpose appropriate objections as necessary.

Additionally, should the Court permit Ms. Brady's deposition to proceed, the Court should protect Ms. Brady from such deposition during the month of June 2018.

Based on the foregoing, good cause is shown. Therefore, Ms. Brady moves the Court to enter an order protecting her from discovery in this captioned action.

### **MEMORANDUM OF LAW**

Section 90.501 of the Florida Evidence Code provides that no person has a privilege to refuse to be a witness or refuse to disclose any matter except as otherwise provided in the Florida Evidence Code, any other statute, or the Florida or United States Constitution. *See* § 90.501, Fla. Stat. Rule 1.280(c), Florida Rules of Civil Procedure, provides in pertinent part:

Upon motion ... by the person from whom discovery is sought, and for good cause shown, the court in which the action is pending may make any order to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense that justice requires, including

one or more of the following: (1) that the discovery not be had; (2) that the discovery may be had only on specified terms and conditions, including a designated time or place; (3) that the discovery may be had only by a method of discovery other than that selected by the party seeking discovery; (4) that certain matters not be inquired into, or that the scope of the discovery be limited to certain matters . . .

Rule 1.280, Fla. R. Civ. P. Trial courts have broad discretion under this rule to issue protective orders to prohibit or limit depositions upon a showing of good cause.

Rasmussen v. S. Fla. Blood Serv., Inc., 500 So. 2d 533, 535 (Fla. 1987); City of Miami Beach v. Wolfe, 83 So. 2d 774, 775 (Fla. 1955); Gross v. Sec. Tr. Co., 453 So. 2d 944, 945 (Fla. 4th DCA 1984). There is good cause to prohibit or limit Plaintiff's deposition of Ms. Brady.

### **Information Barred from Disclosure by Statute**

Section 542.27(3), Florida Statutes, provides: "Whenever the Attorney General, by her or his own inquiry or as a result of a complaint, suspects that a violation of this chapter or federal laws pertaining to restraints of trade is imminent, occurring, or has occurred, the Attorney General may investigate such suspected violation." "Section 542.28 gives the state Attorney General broad power, 'prior to the institution' of civil or criminal proceedings, to investigate violations of state and federal anti-trust laws." State of Fla. ex rel. Butterworth v. Indus. Chems., Inc., 145 F.R.D. 585, 587 (N.D. Fla. 1991). Section 542.28, Florida Statutes, "is a legislatively defined investigative tool through which the attorney general may exercise his obligation as chief legal officer of the state, to investigate, independently

of any court proceedings, suspected violations of the state or federal antitrust laws.”

In re: The Petition of Ezell, 446 So. 2d 253, 255 (Fla. 5th DCA 1984) (“The purpose of an investigatory proceeding ... ‘is to discover and procure evidence not to prove a pending charge or complaint, but upon which to make one if, in the [agency’s] judgment, the facts thus discovered should justify doing so.’” (citations omitted)).

Disclosure of information obtained during the antitrust enforcement action investigative process into WMIF’s then Proposed Acquisition of certain of Sun’s assets is prohibited pursuant to:

**542.28 Civil investigative demand. —**

\*\*\*

(9) Notwithstanding s. 119.07(1), it is the duty of the Attorney General or a state attorney to maintain the secrecy of all evidence, testimony, documents, work product, or other results of such investigative demand. However, the Attorney General or state attorney may disclose such investigative evidence to:

- (a) Any court or tribunal in this state; or
- (b) Other law enforcement authorities of the Federal Government or other state governments that have restrictions governing confidentiality similar to those contained in this subsection.

§ 542.28(9), Fla. Stat., and

**501.2065 Confidentiality of intelligence or investigative information. —**Whenever criminal or civil intelligence, investigative information, or any other information held by any state or federal agency is available to the department on a confidential or a similarly restricted basis, the department, in the course of the investigation of any violation of this part, may obtain and use such information. Any such intelligence or investigative information that is confidential or exempt from the provisions of s. 119.07 (1) retains its status as confidential or exempt from the provisions of s. 119.07(1).

§ 501.2065, Fla. Stat. “[I]t is the duty of Attorney General ... to maintain the secrecy of all evidence, testimony, documents, work product, or other results of a civil investigative demand.” 37 Fla. Jur. 2d Monopolies, Etc. § 34 *Protection against disclosure* (Thomson Reuters Feb. 2018).

Plaintiff’s deposition of Ms. Brady about the Letter or the basis for any decision or points set forth in the Letter would necessarily involve information about and conclusions drawn from the confidential antitrust enforcement action investigation i.e., documents, materials, representations, and testimony, regarding the then Proposed Acquisition. Antitrust enforcement action investigation documents, materials, and testimony regarding the then Proposed Acquisition are protected from disclosure by §§ 542.28(9), and 501.2065, Fla. Stat. Plaintiff’s deposition of Ms. Brady about the Letter or the basis for the decision set forth in the Letter would necessarily fall within the scope of and require Ms. Brady to violate these statutes. Therefore, the Court should rule that any inquiry by Plaintiff or others by deposition of Ms. Brady that seeks such information is likewise prohibited.

**Deliberative Process Privilege**

And, to the extent that the parties might wish to inquire about why the Letter was issued, rather than the OAG following another course of action, this would clearly invade Ms. Brady’s deliberative process or mental processes. It has long been the general rule that the deliberative process privilege or mental process rule



protects governmental officials (like Ms. Brady (and her staff)), from discovery to probe the pure deliberative or mental processes of those governmental officials. U.S. v. Morgan, 313 U.S. 409 (1941); Ernest & Mary Hayward Weir Found. v. U.S., 508 F.2d 894 (2nd Cir. 1974); Leyh v. Modicon, Inc., 881 F.Supp. 420 (S.D. Ind. 1995) (prohibiting deposition of an EEOC investigator to elicit testimony concerning the nonparty EEOC’s decisions and deliberations pertaining to investigation of a party’s claims and quashing subpoena based on the deliberative process privilege). The deliberative process privilege protects internal decision-making processes of an agency or between agencies to safeguard the quality of its decisions. *See* N.L.R.B. v. Sears, Roebuck & Co., 421 U.S. 132, 150–51 (1975). It covers documents and information “reflecting advisory opinions, recommendations, and deliberations comprising part of a process by which governmental decisions and policies are formulated.” Moye, O’Brien, O’Rourke, Hogan & Pickert v. Nat’l R.R. Passenger Corp., 376 F.3d 1270, 1277 (11th Cir. 2004) (citation omitted); *see also* U.S. Dep’t of the Interior & Bureau of Indian Affairs v. Klamath Water Users Protective Ass’n, 532 U.S. 1, 8 (2001). “The purpose of this privilege is to allow agencies to freely explore possibilities, engage in internal debates, or play devil’s advocate without fear of public scrutiny” and “to ensure that a decision-maker will receive the unimpeded advice of his[ or her] associates.” Moye, O’Brien, O’Rourke, Hogan &

Pickert, 376 F.3d at 1277, 1278 (*citing* Klamath Water Users, 532 U.S. at 8–9; Fed. Open Mkt. Comm. Of Fed. Reserve Sys. v. Merrill, 443 U.S. 340, 359-60 (1979)).

For the deliberative process privilege to apply, the document or material must be both (1) “pre-decisional. i.e., prepared in order to assist an agency decision-maker in arriving at his[or her] decision and may include recommendations, draft documents ... and other subjective documents which reflect the personal opinions of the writer rather than the policy of the agency” and (2) “deliberative”, i.e., “a direct part of the deliberative process in that it makes recommendations or expresses opinions on legal or policy matters” that “typically reflect the ‘give-and-take of the consultative process’ that is antecedent to final agency action.” Kearney Partners Fund, LLC ex rel. Lincoln Partners Fund LLC v. U.S., 2013 WL 1966967, at \*2 (M.D. Fla. May 13, 2013); Miccosukee Tribe of Indians of Fla. v. U.S., 516 F.3d 1235, 1263 (11th Cir. 2008) (*quoting* Renegotiation Bd. v. Grumman Aircraft Eng’g Corp., 421 U.S. 168, 184 (1975)); Fla. House of Reps. v. U.S. Dep’t of Commerce, 961 F.2d 941, 949 (11th Cir.), *certiorari dismissed*, 506 U.S. 969 (1992); Nadler v. U.S. Dep’t. of Justice, 955 F.2d 1479, 1490 (11th Cir. 1992), *abrogated on other grounds*, 508 U.S. 165 (1993); Moye, O’Brien, O’Rourke, Hogan & Pickert, 376 F.3d at 1277; Klamath Water Users, 532 U.S. at 8.

“A document is ‘deliberative’ if the disclosure of such [documents or] materials would expose an agency’s decision-making process in such a way as to

discourage candid discussion within the agency and, thereby, undermine the agency's ability to perform its functions." Moye, O'Brien, O'Rourke, Hogan & Pickert, 376 F.3d at 1278 (alteration added; citations omitted). "The underlying purpose of the deliberative process privilege is to ensure that agencies are not forced to operate in a fish bowl.... Therefore, courts must focus on the effect of the material's release." Id. (citations omitted; alteration added).

"The only inquiry that should be made in deciding whether something should be denoted opinion, and hence deliberative, is: Does the information reflect the give-and-take of the consult[at]ive process?" Fla. House of Reps., 961 F.2d at 949 (citations omitted; alterations added). The privilege extends to recommendations, draft documents, proposals, suggestions, and other subjective documents which reflect the personal opinions of the writer rather than the policy of the agency." Fla. House of Reps., 961 F.2d at 945. "However, factual findings and conclusions are not protected, unless disclosure of the factual material would reveal the deliberative process or where the factual material is so inextricably intertwined with the deliberative material that meaningful segregation is not possible." Kearney Partners Fund, LLC ex rel. Lincoln Partners Fund LLC, 2013 WL 1966967, at \*2.

"The purpose of the deliberative process privilege is to protect the quality of the agency's decision-making process." Miccosukee Tribe of Indians of Fla., 516 F.3d at 1263. The deliberative process privilege "rests on the obvious realization

that officials will not communicate candidly among themselves if each remark is a potential item of discovery and front-page news, and its object is to enhance the quality of agency decisions by protecting open and frank discussion among those who make them within the Government.” Klamath Water Users, 532 U.S. at 8–9 (internal citations and quotation marks omitted).

As Chief of the Multistate Antitrust Enforcement Division, Ms. Brady is vested with decision-making authority by the OAG. Based on such authority, Ms. Brady prepared and issued the Letter which speaks for itself.

Testimony about the Letter why it was issued or the basis for the Letter clearly implicates the deliberative process privilege. The privilege attaches to Ms. Brady’s decision-making processes that culminated in the Letter, any communications from staff intertwined with those processes, and anything else upon which the Letter was based, including the confidential investigation. Ms. Brady’s testimony at deposition about the antitrust enforcement action investigation information is (1) pre-decisional, as it was prepared, obtained, or utilized to assist her, an agency decisionmaker, in arriving at a decision, and (2) deliberative, as it was a direct part of the decision-making and deliberative process in that it makes and was obtained and utilized to make recommendations or expresses or obtained and utilized to express opinions on legal or policy matters. Fla. House of Reps., 961 F.2d at 945 (citations omitted).

If the information gathered in the investigation and Ms. Brady's and her staff's communications about it are discoverable in this lawsuit, the State will be deterred from investigating potential antitrust violations and this would have a chilling effect on the entire process leading to the decision about whether to initiate an antitrust enforcement action. It would impair the ability of Ms. Brady and her staff to communicate candidly and may impair the willingness of respondents to provide information in future antitrust enforcement action investigations.

And, Ms. Brady and her staff are charged with investigating suspected restraints of trade in commercial matters conducted in Florida. Any time spent responding to depositions is time which Ms. Brady and her staff cannot spend performing their jobs.

Testimony about why the Letter was issued and about the investigation which led to issuance of the Letter is covered by the Deliberative Process Privilege and, therefore, a protective order should issue barring such inquiry.

Intrusions into the deliberative processes which are part of the process to determine whether to bring antitrust enforcement actions, also implicate separation of powers concerns. Article II, Section 3 of the Florida Constitution provides:

**Branches of Government.** – The powers of the state government shall be divided into legislative, executive and judicial branches. No person belonging to one branch shall exercise any powers appertaining to either of the other branches unless expressly provided herein.

The so-called Separation of Powers doctrine protects the legislative, executive, and judicial branches of the government from intrusion into their respective powers and responsibilities. Coal. for Adequacy & Fairness in Sch. Funding, Inc., v. Chiles, 680 So. 2d 400 (Fla. 1996); and Chiles v. Children A, B, C, D, E, & F, 589 So. 2d 260 (Fla. 1991). To allow discovery into the decisions and deliberative and mental processes of Ms. Brady (or her staff) which culminated in the Letter will improperly encroach upon the powers and responsibilities of the executive branch. As in Fla. Office of Ins. Regulation v. Fla. Dep't of Fin. Servs., 159 So. 3d 945, 952-53 (Fla. 1st DCA 2015) (granting certiorari and quashing order compelling deposition of high-ranking government official in part because it would violate the separation of powers doctrine), Ms. Brady should be protected from questions by Plaintiff (or the other parties) that would require her to speculate about what her recommendations, conclusions and decision would have been if presented with alternative hypothetical facts. If allowed, it is impossible to speculate the Pandora's Box that might be opened by doing so. Therefore, the Court should prohibit Plaintiff (and the other parties) from taking the deposition of Ms. Brady in this case.

### **Attorney Work-Product Privilege**

Any inquiry by Plaintiff (or the other parties) of Ms. Brady about her mental impressions, conclusions, opinions, legal theories, her staff's oral and written communications with respect thereto, or her or her staff's oral and written

communications that reflect the confidential antitrust enforcement action investigation information contained in documents and materials and any representations and testimony obtained by the OAG concerning the Proposed Acquisition is also properly withheld to the extent that it involves work-product. Work product protects the “mental processes of the attorney,” U.S. v. Nobles, 422 U.S. 225, 238 (1975) (“the doctrine is an intensely practical one, grounded in the realities of litigation in our adversary system. One of those realities is that attorneys often must rely on the assistance of investigators and other agents in the compilation of materials in preparation for trial. It is therefore necessary that the doctrine protect material prepared by agents for the attorney as well as those prepared by the attorney himself.”). “Material that reflects an attorney’s mental impressions, conclusions, opinions, or legal theories, is referred to as ‘opinion work product.’” Cox v. Adm’r U.S. Steel & Carnegie, 17 F.3d 1386, 1422 (11th Cir.), *opinion modified on reh’g*, 30 F.3d 1347 (11th Cir. 1994) (citations omitted). “[O]pinion work product enjoys a nearly absolute immunity and can be discovered only in very rare and extraordinary circumstances.” Id., (citation omitted). “Not even the most liberal of discovery theories can justify unwarranted inquiries into the files and the mental impressions of an attorney.” Hickman v. Taylor, 329 U.S. 495, 510 (1947). The attorney’s work-product rule applies to government attorneys in litigation. *See Hickman*. “In the context of government attorneys, the ‘work-product privilege applies to ...

discussions between prosecutors and investigating agents, both state and federal.”

Doe v. U.S., 2015 WL 4077440, at \*6 (S.D. Fla. July 6, 2015) (citations omitted).

“[T]he work-product doctrine applies regardless of whether litigation actually ensued, so long as it can be fairly said that the document was prepared or obtained because of the prospect of litigation.” Id. (citations omitted).

Any inquiry of Ms. Brady is clearly likely to impinge upon her opinion work product. Consequently, any testimony elicited by Plaintiff (or the other parties) from Ms. Brady that seeks to delve into her mental impressions or processes and communications with her staff with respect to the Letter regarding the Proposed Acquisition and the confidential antitrust enforcement action investigation information and testimony should be disallowed.

Alternatively, should the Court permit Ms. Brady’s deposition to proceed, the questions and responses should be written. Rule 1.320, Fla. R. Civ. P.

Additionally, should the Court permit Ms. Brady’s deposition to proceed, the Court should protect Ms. Brady from such deposition during the month of June 2018.

WHEREFORE, non-party Ms. Brady moves the Court to enter an order that prohibits Plaintiff’s (and the other parties) deposition of Ms. Brady and quashes the subpoena served on her. Alternatively, should the Court permit Ms. Brady’s deposition to proceed, Ms. Brady requests that the Parties be required to use a deposition on written questions. Additionally, should the Court permit Ms. Brady’s



deposition to proceed, the Court should protect Ms. Brady from such deposition during the month of June 2018.

**CERTIFICATION OF CONFERRAL WITH COUNSEL**

I HEREBY CERTIFY that counsel in the Office of the Attorney General, State of Florida, conferred with counsel for the Plaintiff telephonically and electronically in good faith to resolve the issues raised in this motion, but was unable to do so. Counsel for Plaintiff advised that Plaintiff intends to proceed with the deposition of Ms. Brady on June 15, 2018, and that Plaintiff opposes this motion.

Respectfully submitted,

**PAMELA JO BONDI  
ATTORNEY GENERAL**

*/s/ Charles J. F. Schreiber, Jr.*

Charles J. F. Schreiber, Jr.

Fla. Bar No.: 0843075

E-Mail: [charles.schreiber@myfloridalegal.com](mailto:charles.schreiber@myfloridalegal.com)

Senior Assistant Attorney General

Office of the Attorney General

The Capitol PL-01

Tallahassee, Florida 32399-1050

Telephone: (850) 414-3300

Telefacsimile: (850) 413-4775

Attorneys for Non-Party Lizabeth A. Brady

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy hereof has been furnished on this 22nd day of May 2018, via the Florida E-Portal System, U.S. Mail, or email (as applicable) to:

Mitchell W. Berger  
Anthony J. Carriuolo  
P. Benjamin Zuckerman  
Berger Singerman, LLP  
350 East Las Olas Boulevard, 10<sup>th</sup> Floor  
Fort Lauderdale, Florida 33301-4215  
Telephone: (954) 525-9900  
E-Mail: mberger@bergersingerman.com  
E-Mail: acarriuolo@bergersingerman.com  
E-Mail: bzuckerman@bergersingerman.com  
Melanie A. Hines  
Berger Singerman, LLP  
313 North Monroe Street, Suite 301  
Tallahassee, Florida 32301-7643  
Telephone: (850) 561-3010  
E-Mail: mhines@bergersingerman.com  
Attorneys for Plaintiff Bergeron  
Environmental and Recycling, LLC

Brian K. Hole  
Philip E. Rothschild  
Katherine M. Joffe  
Holland & Knight LLP  
515 East Las Olas Boulevard, Suite 1200  
Fort Lauderdale, Florida 33301-4249  
Telephone: (  
E-Mail: brian.hole@hkllaw.com  
E-Mail: phil.rothschild@hkllaw.com  
E-Mail: katherine.joffe@hkllaw.com  
Attorneys for Defendant Waste Management  
Inc. of Florida

L. Louis Mrachek  
Roy E. Fitzgerald, III  
Mrachek Fitzgerald Rose Konopka  
Thomas & Weiss, P.A.  
505 South Flagler Drive, Suite 600  
West Palm Beach, Florida 33401-5945  
Telephone: (561) 655-2250  
E-Mail: lmrachek@mrachek-law.com  
E-Mail: rfitzgerald@mrachek-law.com  
Attorneys for Defendants LGL  
Recycling, LLC f/k/a Sun Recycling,  
LLC, Anthony Lomangino, Charles  
Gusmano, and Charles Lomangino

/s/ Charles J. F. Schreiber, Jr.

Charles J. F. Schreiber, Jr.

# EXHIBIT “A”

IN THE CIRCUIT COURT OF THE 17TH  
JUDICIAL CIRCUIT, IN AND FOR  
BROWARD COUNTY, FLORIDA

COMPLEX BUSINESS DIVISION

CASE NO. 16-000158 (07)

BERGERON ENVIRONMENTAL AND  
RECYCLING, LLC, a Florida limited  
liability company,

Plaintiff,

v.

LGL RECYCLING, LLC f/k/a SUN  
RECYCLING, LLC, a Florida limited  
liability company, WASTE  
MANAGEMENT INC. OF FLORIDA, a  
Florida corporation, ANTHONY  
LOMANGINO, an individual, CHARLES  
GUSMANO, an individual, and  
CHARLES LOMANGINO, an individual.

Defendants.

Rec'd 5/4/2018 at 10:26am &  
Srv'd 5/7/2018 at 9:30am by  
KDC Karen D. Colson #152  
Certified Process Server, 2nd Judicial Crt, FL

**SUBPOENA FOR DEPOSITION OF LIZABETH A. BRADY, ESQ.**

STATE OF FLORIDA:

TO ALL AND SINGULAR, SHERIFFS OF SAID STATE:

**TO: Lizabeth A. Brady, Esq.  
c/o Florida Office of the Attorney General  
The Capitol PL-01  
Tallahassee, FL 32399-1050**

YOU ARE HEREBY COMMANDED to appear at the offices of **FLORIDA OFFICE  
OF THE ATTORNEY GENERAL**, The Capitol PL-01, Tallahassee, Florida 32399, on Friday,  
June 15, 2018 at 9:00 a.m., for the taking of your deposition in this action.

If you fail to appear as specified or object to this Subpoena before the time specified for the taking of your deposition, you may be in contempt of Court. You are subpoenaed by the attorney whose name appears on this Subpoena and unless excused from the Subpoena by the attorney or the Court, you shall respond to this Subpoena as directed.

Dated: May 3, 2018

FOR THE COURT

By: *s/ Mitchell W. Berger*

Mitchell W. Berger

Florida Bar No. 311340

mberger@bergersingerman.com

Anthony J. Carriuolo

Fla. Bar No. 434541

acarriuolo@bergersingerman.com

P. Benjamin Zuckerman

Florida Bar No. 0187143

bzuckerman@bergersingerman.com

drt@bergersingerman.com

jmalonado@bergersingerman.com

BERGER SINGERMAN LLP

350 East Las Olas Boulevard, 10th Floor

Fort Lauderdale, Florida 33301

Telephone: (954) 525-9900

Facsimile: (954) 523-2872

*Attorneys for Plaintiff, Bergeron*

*Environmental and Recycling, LLC*

**ANY MINOR SUBPOENAED FOR TESTIMONY SHALL HAVE THE RIGHT TO BE ACCOMPANIED BY A PARENT OR GUARDIAN AT ALL TIMES DURING THE TAKING OF TESTIMONY NOTWITHSTANDING THE INVOCATION OF THE RULE OF SEQUESTRATION OF SECTION 90.616, FLORIDA STATUTES, EXCEPT UPON A SHOWING THAT THE PRESENCE OF A PARENT OR GUARDIAN IS LIKELY TO HAVE A MATERIAL, NEGATIVE IMPACT ON THE CREDIBILITY OR ACCURACY OF THE MINOR'S TESTIMONY, OR THAT THE INTERESTS OF THE PARENT OR GUARDIAN ARE IN ACTUAL OR POTENTIAL CONFLICT WITH THE INTERESTS OF THE MINOR.**

**IF YOU ARE A PERSON WITH A DISABILITY WHO NEEDS ANY ACCOMMODATION IN ORDER TO PARTICIPATE IN THIS PROCEEDING, YOU ARE ENTITLED, AT NO COST TO YOU, TO THE PROVISION OF CERTAIN ASSISTANCE. PLEASE CONTACT THE ADA COORDINATOR, ROOM 470, 201 S.E. SIXTH STREET, FORT LAUDERDALE, FLORIDA 33301, 954-831-7721 AT LEAST 7 DAYS BEFORE YOUR SCHEDULED COURT APPEARANCE, OR IMMEDIATELY UPON RECEIVING THIS NOTIFICATION IF THE TIME BEFORE THE SCHEDULED APPEARANCE IS LESS THAN 7 DAYS; IF YOU ARE HEARING OR VOICE IMPAIRED, CALL 711.**

**DAPRE AKO KI FET AVEK AMERICANS WITH DISABILITIES ACT, TOUT MOUN KI GINYIN YUN BEZWEN ESPESIYAL POU AKOMODASIYON POU YO PATISIPE NAN PWOGAM SA-A DWE, NAN YUN TAN REZONAB AVAN NINPOT ARANJMAN KAPAB FET, YO OWE KONTAKTE ADA COORDINATOR, ROOM 470, 201 S.E. SIXTH STREET, FORT LAUDERDALE, FLORIDA 33301, 954-831-7721 OR; IF YOU ARE HEARING OR VOICE IMPAIRED, CALL 711**

**DE ACUERDO CON EL ACTO O DECRETO DE LOS AMERICANOS CON IMPEDIMENTOS, INHABILTADOS, PERSONAS EN NECESIDAD DEL SERVICIO ESPECIAL PARA PARTICIPAR EN ESTE PROCEDIMIENTO DEBERAN, DENTRO DE UN TIEMPO RAZONABLE, ANTES DE CUALQUIER PROCEDIMIENTO, PONERSE EN CONTACTO CON LA OFICINA ADMINISTRATIVA DE LA CORTE, ADA COORDINATOR, ROOM 470, 201 S.E. SIXTH STREET, FORT LAUDERDALE, FLORIDA 33301, 954-831-7721 OR; IF YOU ARE HEARING OR VOICE IMPAIRED, CALL 711.**

**EN ACCORDANCE AVEC LA LOI DES "AMERICANS WITH DISABILITIES", LES PERSONNES EN BESOIN D'UNE ACCOMMODATION SPECIALE POUR PARTICIPER A CES PROCEDURES DOIVENT, DANS UN TEMPS RAISONABLE, AVANT D'ENTREPRENDRE AUCUNE AUTRE DEMARCHE, CONTACTER L'OFFICE ADMINISTRATIVE DE LA COURT, ADA COORDINATOR, ROOM 470, 201 S.E. SIXTH STREET, FORT LAUDERDALE, FLORIDA 33301, 954-831-7721 OR; IF YOU ARE HEARING OR VOICE IMPAIRED, CALL 711.**

8492782-1

# EXHIBIT ‘B’

IN THE CIRCUIT COURT  
SEVENTEENTH JUDICIAL CIRCUIT  
BROWARD COUNTY, FLORIDA  
COMPLEX BUSINESS DIVISION

BERGERON ENVIRONMENTAL AND  
RECYCLING, LLC, a Florida limited liability  
company,

Plaintiff,

v.

Case No.: 16-CA-000158  
(07)

LGL RECYCLING, LLC f/n/a/ SUN  
RECYCLING, LLC, a Florida limited liability  
company, WASTE MANAGEMENT, INC.  
OF FLORIDA, a Florida corporation,  
ANTHONY LOMANGINO, an individual,  
CHARLES GUSMANO, an individual, and  
CHARLES LOMANGINO, an individual,

Defendants.

---

**AFFIDAVIT OF LIZABETH A. BRADY**

STATE OF FLORIDA }

ss:

COUNTY OF LEON }

BEFORE ME, the undersigned authority, personally appeared Lizabeth A. Brady, who after being first duly sworn, deposes and declares that:

1. My name is Lizabeth A. Brady and I am more than 21 years of age. I make this affidavit based on my personal knowledge, unless otherwise indicated herein.



2. I am Senior Assistant Attorney General, Chief of the Multistate Antitrust Enforcement Division of the Office of the Attorney General (“OAG”), State of Florida Department of Legal Affairs. I have held this position at all times material.

3. I am not a named party in the captioned action.

4. I am not available for deposition during the month of June 2018. During the first two weeks of June 2018, I am attending my son’s medical school graduation and wedding ceremonies. On June 14, 2018, I am undergoing previously scheduled surgery with the time necessary to recuperate making me unable to attend deposition at least through June 27, 2018.

5. My staff and I conduct reviews of proposed transactions for possible anticompetitive effects. Depending upon the information and testimony obtained during a confidential investigation of the proposed transaction, the OAG decides whether it intends to take antitrust enforcement action.

6. In 2015, one such review involved a proposed acquisition of assets by Waste Management, Inc. The transaction was Waste Management, Inc’s then proposed acquisition of the assets of Southern Waste Systems Holdings, LP, including certain assets of Sun Recycling, LLC (“Sun”) (the “Proposed Acquisition”).

7. That investigation culminated in a closing letter dated December 3, 2015, (“Letter”). [Letter attached hereto as Exhibit “C”.] In the Letter, after expressly reserving the ability to reconsider the matter in the future, I advised that the OAG did not “presently [at that time] intend to take antitrust enforcement action in connection with the [P]roposed [A]cquisition.” That decision or inaction was based on the information obtained by and representations made to the OAG that it reviewed in the course of its confidential investigation of the Proposed Acquisition.

8. The decision at that time I expressed in the Letter is based on my deliberative and mental processes, and conversations and communications with my staff about confidential information collected during the course of the OAG’s investigation of the Proposed Acquisition. The information and representations obtained during that investigation are confidential. *See* Sections 542.28(9), and 501.2065, Florida Statutes.

9. I believe that Plaintiff (and perhaps other parties) seek(s) to depose me about the Letter. I believe Plaintiff’s interest in my deposition is apparent from the response of Waste Management Inc. of Florida (“WMIF”) to the Amended Complaint. WMIF states as an affirmative defense that it “received approval for the purchase of certain of Sun’s assets from ... the Florida Attorney General’s Office, who ... reviewed the transactions for any anti-competitive impact.” [*See* Defendant WMIF’s Amended Corrected Answer, Defenses, and Affirmative Defenses filed

January 26, 2017, p. 15 ¶ 5, p. 16, ¶ 7, p. 17 ¶ 14.] Presumably, the reference to “approval” means the Letter. Consequently, I believe that during my deposition Plaintiff intends to ask me about my communications I had with my staff about the confidential antitrust enforcement investigation information we obtained from, and representations made by, the parties involved in the Proposed Acquisition and about my deliberative and mental processes culminating in the Letter.

10. I seek the Court’s protection because, I should not be deposed about why the letter was issued, the basis for anything stated in the Letter, or what was done as part of the investigation of the Proposed Acquisition. Inquiry about why the Letter was issued or the basis for anything stated in the Letter would necessarily delve into my mental and deliberative processes. And such inquiry, especially the basis for anything stated in the Letter or what was done as part of the investigation of the Proposed Acquisition, would necessarily also delve into the confidential antitrust enforcement investigation conducted culminating in the Letter. And, such inquiry would also impermissibly invade my attorney work product. Therefore, I believe that such inquiry would necessarily violate (i) the confidentiality requirements under §§ 542.28(9), and 501.2065, Fla. Stat., (ii) the deliberative process privilege or so-called mental processes rule, and (iii) the attorney work-product privilege.

FURTHER AFFIANT SAYETH NAUGHT.

*Lizbeth Brady*

Lizbeth A. Brady  
Senior Assistant Attorney General  
Chief of the Multistate Antitrust  
Enforcement Division  
Office of the Attorney General  
State of Florida  
Department of Legal Services

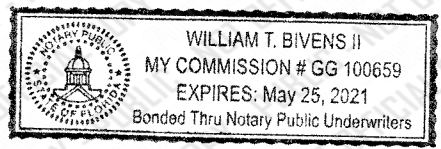
SWORN TO and SUBSCRIBED BEFORE ME this 22<sup>nd</sup> day of May 2018,  
by the affiant, Lizbeth A. Brady, who:  
(check ONE).

is personally known to me, or  
\_\_\_\_\_ has produced \_\_\_\_\_ as identification.

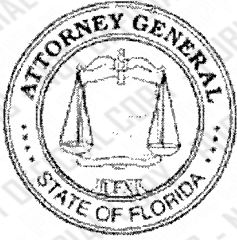
*William T. Bivens II*

My Commission Expires

(Print, Type or Stamp Commissioned  
name of Notary Public) [Notary Seal]



# EXHIBIT “C”



**PAM BONDI**  
**ATTORNEY GENERAL**  
**STATE OF FLORIDA**

OFFICE OF THE ATTORNEY GENERAL  
Antitrust Division

Lizabeth A. Brady  
Chief, Multistate Antitrust Enforcement  
PL-01 The Capitol  
Tallahassee, FL 32399-1050  
Phone (850) 414-3300 Fax (850) 488-9134  
<http://www.myfloridalegal.com>

December 3, 2015

Brian K. McCalmon, Esq.  
K&L Gates  
1601 K Street, NW  
Washington DC, District of Columbia 20006-1600

Daniel E. Hemli  
Bracewell & Giuliani  
1251 Avenue of the Americas  
49th Floor  
New York, New York 10020-1100

RE: **The Acquisition of Southern Waste Systems Holdings, LP assets by Waste Management, Inc., AG Case No. L15-6-1024.**

Dear Messrs. McCalmon & Hemli:

As you are aware, our office has been reviewing Waste Management, Inc.'s ("WM") proposed acquisition of Southern Waste Systems Holdings, LP ("SWS") assets, including certain Sun Recycling, LLC assets ("Sun"), to determine if it raises any competitive concerns in Florida. I am writing to advise you that this office does not presently intend to take antitrust enforcement action in connection with the proposed acquisition. This letter expresses this office's present enforcement intention only.

[REDACTED]

[REDACTED]



If anything should change in these agreements or commitments, or if this letter does not accurately describe the representations the parties have made to us during our review, please call me. This office reserves the right to bring an enforcement action in the future if actions taken by the parties should prove anticompetitive in purpose or effect.

Very truly yours,

A handwritten signature in black ink, appearing to read "Lizabeth A. Brady", is written over the typed name.

Lizabeth A. Brady  
Chief, Multistate Antitrust Enforcement