Docket: **1684CV03325-BLS2**
Date: **March 30, 2018**
Parties: **AMERICA'S TEST KITCHEN INC., as the Sole General Partner of America's Test Kitchen Limited Partnership v. CHRISTOPHER KIMBALL and Others[1]**
Judge: **Kenneth W. Salinger**

MEMORANDUM AND ORDER ON CROSS-MOTIONS TO COMPEL PRODUCTION OF DOCUMENTS

Christopher Kimball, Melissa Baldino, Christine Gordon, and Deborah Broide used to work for America's Test Kitchen on a television cooking show and on related programming and publications distributed through various media. This lawsuit concerns and arises from their development of a competing business. ATK brought suit first. Kimball and CPK Media, LLC, asserted counterclaims. The Court will refer to America's Test Kitchen, Inc., and America's Test Kitchen Limited Partnership as the "ATK Parties" and to Defendants as the "CPK Media Parties."

The parties have filed cross-motions to compel the production of documents withheld under a claim of privilege or litigation work product. The party asserting that a particular set of documents is protected from disclosure by the attorney-client privilege or the work product doctrine has the burden of proving that contention. See Commissioner of Revenue v. Comcast, 453 Mass. 293, 304 & 315 (2009); Hanover Ins. Co. v. Rapo & Jepsen Ins. Services, Inc., 449 Mass. 609, 619-620 (2007).

The Court will allow the ATK Parties' motion to the extent that it seeks production of any disputed communications with Matthew Sutton or those disputed communications with William Thorndike that are not protected by the work product doctrine. It will deny the ATK Parties' motion to the extent that it seeks production of protected work product in communications with Thorndike, or the production of any disputed communications with Melissa Baldino or Thomas Hagopian. And it will deny the CPK Media Parties' motion in its entirety, as to communications with ATK's public relations consultants, with its lawyers, or among its board members.

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[1] CPK Media, LLC; Melissa Baldino; Christine Gordon; Deborah Broide; CPK Holdco, LLC; and William Thorndike.

1. The ATK Parties' Motion to Compel.

1.1. Matthew Sutton. The CPK Media Parties have withheld communications with Mr. Sutton regarding legal advice sought by or provided to CPK Media LLC on the ground that those communications are protected by the attorney-client privilege. They argue that (i) this privilege protects confidential communications that share legal advice with a client's employee who is needed to understand or implement that advice, or that concern information known to the employee that is needed to inform or formulate requests for legal advice; (ii) the same is true regarding similar communications with someone who is the functional equivalent of an employee; (iii) Sutton was the functional equivalent of an employee of CPK Media LLC and was involved in seeking and making sense of legal advice for CPK Media; and (iv) therefore the attorney-client privilege applies just as if Sutton were a CPK Media employee with a similar involvement in obtaining and implementing legal advice.

The Court agrees with the legal premises of this argument. But the CPK Media Parties have not shown that Sutton was the functional equivalent of an employee who could share or participate in communications about legal advice without thereby waiving any otherwise applicable privilege.

The attorney-client privilege "protects communications between a client

and an attorney that are made in confidence for the purpose of giving or obtaining legal advice." McCarthy v. Slade Assocs., Inc., 463 Mass. 181, 190 (2012). It therefore covers confidential communications conveying legal advice from attorney to client as well as confidential communications conveying questions or information from client to attorney in order to obtain legal advice. Id. n.21.

In addition, this privilege also protects other "confidential communications made for the purposes of obtaining or providing professional legal services," including such communications between parties that are "involved in a joint defense," "between representatives of the client[,] or between the client and a representative of the client." Mass. Guide Evid. § 502(b); accord Hanover Ins., 449 Mass. at 614-617 (privilege covers confidential communications among parties involved in joint defense

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or sharing other common interest in legal matter, just as it covers such communications with or among a client's necessary agents).

In the context of a corporate client, the attorney-client privilege protects communications that gather or convey information from knowledgeable employees or agents that is needed by counsel in formulating legal advice, as well as communications that relay legal advice obtained from an attorney to employees or other agents of the client who must understand and help to implement that advice. See generally RFF Family Partnership, LPv. Burns & Levinson, LLP, 465 Mass. 702, 708 (2013); Upjohn Co. v . United States, 449 U.S. 383, 389-396 (1981). After all, since a corporate entity like CPK Media LLC "is not a living person, it can act only through its agents." Commonwealth v. Angelo Todesca Corp., 446 Mass. 128, 135 (2006).

Where an outside consultant to a business is the functional equivalent of an employee, and plays a "pivotal role" in matters as to which the business obtains legal advice from an attorney, the attorney-client privilege protecting communications between the business and its counsel is not lost merely because the consultant is involved in, copied on, or becomes privy to those communications. See One Legemont LLC v. Town of Lexington Zoning Bd. of Appeals, no. 13-PS-477585(GHP), 2014 WL 2854788, at *2-*4 (Mass. Land Ct. 2014) (Piper, J.); accord, e.g., United Statesv. Graf; 610 F.3d 1148, 1158-1159 (9th Cir. 2010); Federal Trade Comm'n v. GlaxoSmithKline, 294 F.3d 141, 147-148 (D.C. Cir. 2002); In re Bieter Co., 16 F.3d 929, 936-940 (8th Cir. 1994); Alliance Const. Solutions, Inc. v. Department of Corrections, 54 P.3d 861, 867-870 (Colo. 2002).

This necessarily follows from the general principle that the privilege encompasses confidential communications "made to or shared with necessary agents of the attorney or the client." Hanover Ins., 449 Mass. at 616.

This "functional equivalent doctrine" does not, however, encompass all outside consultants. Where the consultant's "relationship with the company is one the non-employee has with many other clients or customers; is single-purpose and limited in scope, duration, and responsibility; or does not put the non-employee in a high-level, trusted decision-making or guiding role, equivalent to that of an employee, the non-

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employee does not hold the status necessary to keep communications involving him or her privileged." One Legemont, 2014 WL 2854788, at *4.

Nor does this doctrine mean that all communications regarding legal advice with consultants who perform functions similar to employees will be privileged. Even if a consultant is the functional equivalent of an employee for some purposes, distribution of legal advice or other attorney-client communications to the consultant will only be privileged if the client needed the consultant to help facilitate the rendition of legal advice by the lawyer or the implementation of that advice by the client.

GlaxoSmithKline, 294 F.3d at 147; In re Copper Market Antitrust Litigation, 200 F.R.D. 213, 219 (S.D.N.Y. 2001). If otherwise privileged communications are shared willy-nilly among the client's employees or functionally equivalent agents, even though their participation is not necessary to obtain or implement legal advice from an attorney, the privilege will be lost. See Commonwealth v. Senior, 433 Mass. 453, 457 (2001) ("the privilege is destroyed when such communications are made in the presence of a non-necessary agent of the attorney or client").

The CPK Media Parties have not established that Sutton was the functional equivalent of a CPK Media employee who could share in attorney-client communications on a privileged basis. The evidence presented to the Court shows only that in the Fall of 2016 Sutton advised Kimball to consult with a lawyer and recommended particular lawyers to him, and that from February 2016 to February 2017 Sutton was paid by CPK Media for serving as an "independent advisor" to the company. That is not enough to establish that CPK Media needed to gather information from Sutton in order to obtain legal advice, that CPK Media had some need to share confidential legal advice with Sutton, or that Sutton was a necessary agent in seeking or implementing legal advice for any other reason. The mere fact that Sutton directed Kimball and CPK Media to a particular lawyer and law firm does not mean that his communications about that legal representation are protected by the attorney-client privilege.

As a result, voluntary disclosure to Mr. Sutton of what otherwise would have been privileged attorney-client communications, or of any asserted attorney work

product, would constitute a waiver of that privilege. See In re Adoption of Sherry, 435 Mass. 331, 336 (2001).

1.2. William Thorndike. The CPK Media Parties argue that they need not produce communications between Mr. Thorndike and Mr. Kimball regarding legal advice that had been provided to Kimball and CPK Media LLC, whether or not any lawyer representing CPK Media was directly involved in the communication. All of the contested communications with Thorndike have been withheld on the ground that they are protected by the attorney-client privilege under the so-called "common interest" doctrine. Some have also been withheld on the additional ground that they contain protected litigation work product. The Court concludes that the CPK Media Parties may only withhold the disputed Thorndike documents to the extent that they contain protected work product.

1.2.1. The Common Interest Doctrine. The CPK Media Parties have not shown that the sharing with Thorndike of otherwise privileged legal advice received by Kimball or CPK Media LLC constituted a protected attorney-client communication under the common interest doctrine.

The Supreme Judicial Court has adopted "as the law of the Commonwealth" the common interest doctrine as set forth in Restatement (Third) of the Law Governing Lawyers § 76(1) (2000). See Hanover Ins., 449 Mass. at 617. This doctrine provides that "[i]l two or more clients" have "a common interest" in any legal matter (involving litigation or otherwise), "are represented by separate lawyers," and "agree to exchange information concerning the matter," then communications among those clients or their lawyers are protected by the attorney-client privilege "as against third persons." Id. at 614, quoting Restatement § 76(1).

1.2.1.1. Existence of Common Legal Interests. The Court is satisfied that Thorndike, Kimball, and CPK Media shared sufficiently common legal interests during the relevant period from late 2015 through 2016.

ATK's lawyer sent a threatening letter to Kimball's lawyer on November 16, 2015. The letter threatened suit against Kimball "and any persons backing him financially or otherwise" if Kimball were to compete against ATK in any manner. The letter not only warned against any use of ATK's

intellectual property or

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interference with ATK's advantageous relationships, but asserted even more broadly that "any attempt" by Kimball "to compete with" ATK would constitute an unlawful "theft of corporate opportunities."

The Court finds that Thorndike, Kimball, and CPK Media LLC had a common legal interest in protecting themselves against ATK's threatened claims. Thorndike, who was backing Kimball and later invested in his new company, would reasonably have understood that his interests in the threatened litigation were closely aligned with those of Kimball and CPK Media. Cf. Hanover Ins., supra, at 619 (common interest requirement is easily met where parties are engaged in "a joint effort to establish a common litigation defense strategy"). Indeed, the ATK Parties later named Thorndike as a defendant in this lawsuit, alleging that he participating in the misappropriation of trade secrets and unfairly helped use them to compete in violation of G.L. c. 93A.

The ATK Parties' assertion that the common interest doctrine does not apply unless different parties' legal interests are "identical" is without merit. The SJC has rejected that argument, holding that the interests of the different clients need not be "identical" or "entirely congruent" for this doctrine to apply. Hanover Ins., 449 Mass. at 618, quoting Restatement § 76(1) comment e. It explained that since different clients "rarely will have identical interests," imposing such a requirement "would `stifleEl the free flow of communication that the attorney-client privilege is intended to promote.' " Id., quoting K.T. Schaffzin, An Uncertain Privilege: Why the Common Interest Doctrine Does Not Work and How Uniformity Can Fix It, 15 B.U. Pub. Int. L. J. 49, 73 (2005). Two parties should be deemed to share a common legal interest for purposes of applying this privilege where their legal concerns or positions are sufficiently well aligned that they may reasonably "attempt to promote that interest by sharing a privileged communication." Id. at 618-619, quoting Schaffzin, supra.

1.2.1.2. Absence of Legal Representation. Nonetheless, the common interest doctrine does not apply here because Thorndike was not represented by separate counsel. The lawyers representing CPK Media and Kimball were not representing Thorndike. Although Thorndike invested in and is a member of CPK Media LLC, he plays no management role in the company as a board member,

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managing member, or otherwise. And there is no evidence that Thorndike had his own lawyer. As a result there is no proof that Thorndike was communicating with Kimball and others about legal matters as part of Thorndike's own efforts to obtain or follow legal advice.[2]

"A person who is not represented by a lawyer and who is not himself or herself a lawyer cannot participate in a common-interest arrangement" and thereby invoke the attorney-client privilege. See Restatement (Third) of the Law Governing Lawyers§ 76(1), comment d. That is because "the common interest doctrine depends entirely on" and exists only to protect "communications that fall within the attorney-client privilege." See Hanover Ins., 449 Mass. at 618. It "does not create a new or separate privilege;" its only function is to "preventli waiver of the attorney-client privilege when otherwise privileged communications are disclosed to and shared, in confidence, with an attorney for a third person having a common legal interest for the purpose of rendering legal advice to the client." Id. at 614. As a result, the doctrine does not protect communications about shared legal interests with parties who are not represented by counsel.

"Under the strict confines of the common-interest doctrine," therefore, the fact that Thorndike was not represented by counsel "vitiates any claim

to a privilege." Cavallaro v. United States, 153 F. Supp. 2d 52, 61 (D. Mass. 2001) (Saris, J.), affd on other grounds, 284 F.3d 236 (1st Cir. 2002) (where parents and their counsel met with children about shared legal problems, but children were not represented by counsel, common interest doctrine did not apply and discussions were not privileged).

1.2.2. Work Product Shared with Thorndike. The CPK Media Parties also claim that some of the disputed communications with Mr. Thorndike are exempt from disclosure because they contain protected work product. The Court

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[2] The CPK Media Parties argue that "ATK merely offers conjecture" as "it does not know who the identified attorneys represent, nor what legal advice was being conveyed." That is an improper attempt to shift the burden of proof. The CPK Media Parties, as the party asserting that these documents are protected by the attorney-client privilege, "has the burden to show that the privilege applies." See Hanover Ins., 449 Mass. at 619.

agrees. It also finds that these protections were not waived when Kimball or CPK Media shared this work product with Thorndike.

The work product doctrine exempts from discovery things that were prepared "in anticipation of litigation or for trial" by or for an opposing party. See Mass. R. Civ. P. 26(b)(3). A document or other work product is created "in anticipation of litigation" if it was "prepared 'because of existing or expected litigation." See Comcast, 453 Mass. at 316-317, quoting and adopted the holding of United States v. Adlman, 134 F.3d 1194, 1198 (2d Cir.1998) ("Adlman II"). Under this test, a document created because of threatened or actual litigation constitutes protected work product even if it was not created to assist in the litigation itself. Id. The protection afforded work product "is qualified, and can be overcome if the party seeking discovery demonstrates 'substantial need of the materials' and that it is 'unable without undue hardship to obtain the substantial equivalent of the materials by other means.' " Comcast, 45 Mass. at 314, quoting Rule 26(b)(3).[3]

The communications with Thorndike that are claimed to contain protected work product were all created after ATK threatened legal action against Kimball and anyone working with him. The Court finds that at least from that point on the CPK Media Parties could reasonably anticipate litigation, and thus any materials created because of those threats or the possibility of litigation with the ATK Parties constitute protected work product. The ATK Parties have not shown that they have a substantial need for any of the disputed work product.

Although the disclosure of confidential attorney-client communications to Thorndike waived any attorney-client privilege, as discussed above, it does not follow that the sharing of work product created in anticipation of litigation with Thorndike

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[3] There is an exception to this exception that is not relevant here. If the party seeking production makes such a showing, the court must still "protect against disclosure of the mental impressions, conclusions, opinions or legal theories of an attorney or other representative of a party concerning the litigation." Rule 26(b)(3). As a result, such "so-called 'opinion' work product is afforded greater protection than `fact' work product." Comcast, supra. The SJC has "yet to decide whether the protection of opinion work product is absolute,

... but 'at a minimum ... a highly persuasive showing' is needed to justify the disclosure of opinion work product." DaRosa v. City of New Bedford, 471 Mass. 446, 459 (2015), quoting Adlman II, 134 F.3d at 1204; accord Comcast, 453 Mass. at 314-315.

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waives the protections of Rule 26(b)(3). "As a general rule, work product is more difficult to waive than attorney-client privilege." Ace Am. Ins. Co. v. Riley Bros., no. 10-1252-C, 30 Mass. L. Rptr. 116, 2012 WL 3124620, at *5 (Mass. Super. Ct. 2012) (Liebensperger, J.). "The attorney-client privilege "is designed to protect confidentiality, so that any disclosure outside the magic circle is inconsistent with the privilege." Bank of America, N.A. v. Deloitte & Touche LLP, 24 Mass. L. Rptr. 186, 2008 WL 2423265, at *2 (Mass. Super. Ct. 2008) (Gant, J.), quoting United States v. Massachusetts Institute of Technology, 129 F.3d 681, 687 (1st Cir. 1997). In contrast, "Mlle work product doctrine ... is designed to protect work product from disclosure to `adversaries,' so 'only disclosing material in a way inconsistent with keeping it from an adversary waives work product protection.' " Bank of America, supra, quoting MIT supra; accord, e.g., United States v. American Tel. & Tel. Co., 642 F.2d 1285, 1299 (D.C. Cir. 1980).

The Court finds that disclosure of work product to Mr. Thorndike did not waive the protections of Rule 26(b)(3). Thorndike is closely aligned with, and highly unlikely to become adverse to, the other CPK Media Parties. Disclosing CPK Media's confidential litigation or pre-litigation plans or other work product to Thorndike carries little risk or likelihood that as a result that information will be shared with the ATK Parties or any other potential adversary.

For all of these reasons, the Court will not compel the CPK Media Parties to produce communications with Mr. Thorndike that contain or constitute protected work product. If only part of a disputed communication with Mr. Thorndike contains protected work product, the CPK Media Parties must redact that portion and produce the rest of the communication.

1.3. Melissa Baldino. The Court finds that communications among Ms. Baldino, Mr. Kimball, and the lawyers representing them both are privileged and need not be produce. For present purposes, the Court accepts the CPK Media Parties' representation and offer of proof that the same counsel simultaneously represented Kimball, Baldino, and the company they were forming together. However, the Court hereby orders the CPK Media Parties to file an affidavit from Ms. Baldino confirming

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this representation by April 20, 2017. If they do not do so then the Court will entertain a motion to reconsider this part of its decision on that basis.

Plaintiffs assertion that the privilege only protects communications that directly involve counsel, and therefore can never protect emails between Baldino and Kimball alone, is without merit. Where two clients are represented by the same lawyer, they may speak in confidence among themselves regarding what advice to seek from their lawyer or regarding what to do based on their lawyer's legal advice. See Mass. Guide Evid. § 502; Restatement (Third) of the Law Governing Lawyers § 75 (2000). Since a single client may share privileged attorney-client communications with a necessary agent without thereby waiving the privilege, Hanover Ins., 449 Mass. at 616, it follows that two clients that have a common legal interest and have retained the same lawyer to represent them may engage in similar communications without waiving the privilege.

1.4. Thomas Hagopian. The Court finds that the CPK Media Parties have established that all of the disputed communications with Mr. Hagopian

constituted protected work product. The ATK Parties seek to compel the production of certain emails with Hagopian between December 17 and December 20, 2015. Hagopian was working for Mr. Kimball or CPK Media at that time. The communications with Hagopian were created because of the November 2015 threat of litigation against Kimball and anyone working with him or financing his new venture. More specifically, Kimball was communicating with Hagopian to implement advice of counsel regarding the preservation or removal of documents in the possession of Kimball or Baldino. Since these communications with Hagopian were prepared in anticipation of litigation, they are protected from disclosure by the work product doctrine. The ATK Parties have made no showing that they have a substantial need for these documents.

2. The CPK Media Parties' Motion to Compel.

2.1. Public Relations and Digital Media Venders. The ATK Parties have withheld their communications with two public relations firms. The Court finds that these documents were prepared because of this litigation and are therefore protected by the work product doctrine. The CPK Media Parties have not shown that they have

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a substantial need for these documents. The Court will therefore not order that these documents be produced.

The two public relations firms at issue here were hired by the ATK Parties' litigation counsel to deal with matters arising from or otherwise relating to this lawsuit. Counsel hired Rasky Baerlein Strategic Communications to provide "crisis management communications services" and help the ATK Parties explain their litigating positions to the public. Counsel hired Liberty Concepts to provide similar services with respect to social media and other online platforms, and also to help gather potential evidence of brand confusion.

The Court finds that the disputed communications with Rasky and Liberty were all prepared because of the prospect of litigation and therefore constitute protected work product. The SJC has held that the work product doctrine protects documents prepared by an accounting firm to help a client "make an informed business decision" taking into account the risks of potential litigation. Comcast, 453 Mass. at 316-318. If documents concerning services to help a corporate entity prepare for the business or financial impact of potential litigation are protected work product, as in Comcast, then documents prepared to defend a business from attacks or other adverse publicity as a result of anticipated litigation are similarly protected. See Haugh v. Schroder Investment Mgmt. North Am., Inc., no. 02-Civ.795-DLC, 2003 WL 21998674, at *1 & *5 (S.D.N.Y. 2003).

The Court recognizes that some judges have held that the work product doctrine does not cover documents prepared by or exchanged with consultants hired to provide crisis communications and manage negative business consequences of litigation. See, e.g., In re Prograf Antitrust Litig., no. 1;11-md-02242-RWZ, 2013 WL 1868227, at *3 (D. Mass. 2013) (Zobel, J.) (documents regarding "standard public relations services related to ... business or media fallout" of potential litigation were not protected work product because they had nothing to do with "the rendering of legal advice"); Egiazaryan v. Zalmayev v. 290 F.R.D. 421, 436 (S.D.N.Y. 2013) (documents that "relate solely to public relations strategy and contain no discussion of legal strategy or attorney opinions or impressions" are not protected under work product doctrine); Burke v. Lakin Law Firm, PC, No. 07-CV-0076-MJR, 2008 WL

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117838, at *3 (S.D. Ill. 2008) ("though the work product doctrine may protect documents that were prepared for one's defense in a court of law, it does not protect documents that were merely prepared for one's defense in

the court of public opinion"); Calvin Klein Trademark Trust v. Wachner, 198 F.R.D. 53, 55 (S.D.N.Y. 2000) ("public relations advice, even if it bears on anticipated litigation, falls outside the ambit of protection of the so-called 'work product' doctrine embodied in Rule 26(b)(3) ... because the purpose of the rule is to provide a zone of privacy for strategizing about the conduct of litigation itself, not for strategizing about the effects of the litigation on the client's customers, the media, or on the public generally").

But those decisions are inconsistent with the SJC's holding in Comcast. It does not matter whether the disputed communications with Rasky and Liberty contain or reveal any opinions of legal counsel or whether they were created to assist with the litigation itself, as distinguished from more general public relations efforts. So long as the documents were created because of the threat of litigation, which they were, they fall within the scope of the work product doctrine. See Comcast, 453 Mass. at 316-317. And since the CPK Media Parties have not met their burden of proving that they have a substantial need to obtain these documents, the Court must deny this part of their motion to compel.

2.2. Attorneys. The ATK Parties have withheld several hundred email communications with their lawyers on the ground that they constitute privileged attorney-client communication. The CPK Media Parties argue that the privilege log does not adequately demonstrate that these communications concerned legal advice, rather than purely business advice that would not be privileged. The Court disagrees.

As the ATK Parties correctly note, the descriptions they used in their log to justify withholding these documents on the ground of attorney-client privilege are quite similar to the CPK Media Parties' own explanations in their logs of why documents are protected by the same privilege. A party claiming the attorney-client privilege need not disclose the substance of what legal advice was sought or provided. The whole point of the privilege is to keep the substance of the communication secret. In any case, the Court accepts the representation at oral argument by the ATK Parties' counsel that all of these communications concerned legal advice, and did not

involve discussion of purely business issues. The Court therefore finds that the ATK Parties properly withheld these documents under the attorney-client privilege.

2.3. ATK Board Members. Finally, the Court finds that private email communications among America's Test Kitchen board members regarding legal advice by counsel is protected by the attorney-client privilege, even if no lawyer was copied on the email. As noted above, the attorney-client privilege protects all confidential communications made to obtain or provide legal advice, whether the communication involves the attorney herself or takes place among necessary representatives of the client without the direct participation of the attorney. See Mass. Guide Evid. § 502(b); Hanover Ins., 449 Mass. at 616. Members of a corporate board are necessary agents of the corporation when it comes to seeking or implementing legal advice concerning potential or actual litigation that is material to the success or failure of the business. Indeed, since board members are responsible for managing the company, "a corporate director who is not adverse to the corporation" is entitled to have full and equal access to all legal advice provided to the board. Chambers v. Gold Medal Bakery, Inc., 464 Mass. 383, 394 (2013). The CPK Media Parties cite absolutely no authority in support of their argument that private communications among ATK board members about confidential legal advice are not covered by the attorney-client privilege.

ORDER

The motion to compel filed by America's Test Kitchen Inc. (doc. 43) is ALLOWED IN PART and DENIED IN PART. Defendants shall produce (i) all disputed communications to or from Matthew Sutton, and (ii) any other

disputed communications to or from William Thorndike that were withheld only on grounds of attorney-client privilege or the common interest doctrine, and were not withheld under the work product doctrine. This motion is denied with respect to the disputed communications to or from William Thorndike to the extent that they contain or constitute protected work product, and with respect to the disputed communications to or from Melissa Baldino or Thomas Hagopian.

Defendants shall, by April 20, 2018, file an affidavit from Ms. Baldino confirming that at the time of the disputed communications she was represented by the same lawyer or lawyers as Mr. Kimball, CPK Media LLC, or both of them.

The motion to compel filed by the CPK Media Parties (doc. 46) is DENIED.

Kenneth W. Salinger
Justice of the Superior Court