



U.S. Department of Justice

*United States Attorney
Eastern District of New York*

AES/DGR
F. #2016R000467

*271 Cadman Plaza East
Brooklyn, New York 11201*

February 23, 2022

By ECF and E-mail

The Honorable Margo K. Brodie
Chief United States District Judge
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

Re: United States v. Ng Chong Hwa
Criminal Docket No. 18-538 (S-2) (MKB)

Dear Chief Judge Brodie:

On February 15, 2022, the undersigned prosecutors (the “Case Team”) discussed with the Court a production of documents that was made to the defendant on February 14, 2022, which was comprised in part of documents from email accounts and a laptop belonging to Tim Leissner that had been reviewed and released for production by a privilege review team of Department of Justice (“DOJ”) trial attorneys of the Criminal Division (the “Privilege Team”). At that time, the Court asked the Case Team whether the Privilege Team was still reviewing information related to Leissner, and whether all nonprivileged information related to Leissner had been produced to the defendant. Based on multiple representations made by the Privilege Team to the Case Team over several months, the Case Team in turn represented to the Court that the Privilege Team had completed its review of these materials, and that all nonprivileged documents had been produced to the defendant. The Case Team followed up again with the Privilege Team on the evening of February 15, 2022, and were again told that the review had been completed and there were no Leissner-related documents left to produce.

This evening at approximately 10:30 p.m., the Case Team learned that the Privilege Team failed to produce to either the defendant or the Case Team approximately 15,500 documents held by the Privilege Team related to Leissner that were not privileged (the “Nonprivileged Documents”). The basis for the Case Team’s prior representations to the defendant and to the Court are set forth below.

The Case Team has directed the Privilege Team to release for immediate production the Nonprivileged Documents. In addition, the Case Team has escalated the matter to a DOJ attorney who supervises the Privilege Team, who will oversee that production and ensure that the Privilege Team has not retained any other nonprivileged documents. Given the hour, the Case Team has not yet received an exact time when the Privilege Team will produce the Nonprivileged Documents to the defendant and the Case Team, but the Case Team has requested the production be prepared overnight, and expects to have an update in the morning.

The error by the Privilege Team is inexcusable. The Case Team will consent to a reasonable adjournment of the trial prior to the cross-examination of Leissner to permit the defendant to review the Nonprivileged Documents.

On November 15, 2021, in connection with the Case Team's preparation for trial, the Case Team requested, and received, information from the Privilege Team concerning documents retained by the Privilege Team from search warrants on Leissner's email accounts. At that time, the Privilege Team informed the Case Team that the remaining materials from the Leissner materials included a segregated set of approximately 19,922 potentially privileged documents. On November 17, 2021, the Case Team directed the Privilege Team to conduct a priority review of those documents, and the Case Team underscored at that time that, given the upcoming trial, the Case Team needed the documents from the Privilege Team as soon as possible. The Case Team thereafter remained in communication with the Privilege Team about the status of its review of those documents.

On December 20, 2021, defense counsel submitted a letter to the Case Team and the Privilege Team requesting additional information about material withheld from the Case Team by the Privilege Team. In that letter, counsel inquired about the remaining materials related to Leissner. After receiving the letter, the Case Team received an update from the Privilege Team that the priority review of the segregated set of Leissner search warrant materials was still pending. An expedited review of those documents was conducted that day and, on December 21, 2021, the Privilege Team identified 15,500 non-privileged documents that could be released to the Case Team.

On December 23, 2021, the Case Team spoke with defense counsel and discussed the remaining items to be released from the Privilege Team, including the 15,500 non-privileged Leissner search warrant documents.

On December 27, 2021, the Case Team asked the Privilege Team for a status report on the production of the materials discussed with defense counsel on December 23, 2021, including the 15,500 non-privileged Leissner search warrant documents. The Case Team followed up again on December 29, 2021. On December 30, 2021, the Privilege Team responded to the Case Team's inquiries, explaining that in finalizing its work, reviewers flagged additional identifiers for communications with attorneys and proposed using those

additional identifiers to remove any additional privileged communications and allow for the release of the remaining documents to the Case Team. The Case Team agreed with that proposal and directed the Privilege Team to produce the remaining non-privileged documents to the Case Team. Subsequently, the Privilege Team made productions to the Case Team of materials that had been held by the Privilege Team, which were provided promptly to the defendant.

On January 19, 2022, defense counsel requested additional information concerning the Privilege Team's review of documents concerning Leissner. The Case Team thereafter conferred with the Privilege Team who confirmed that, with the exception of approximately 1,700 items from Leissner's laptop—which it was working to complete at that time—its review of Leissner materials had been completed and any nonprivileged documents would be released to the Case Team and the defendant.

Prior to jury selection in this matter, the Case Team again asked the Privilege Team to confirm that it completed the entirety of its review of the Leissner materials in its possession and released those documents to the Case Team for production. At that time, the Privilege Team confirmed that it had in fact completed that review and released that material for production. Thereafter, the Case Team received additional document releases from the Privilege Team, which productions were subsequently made to the defendant on January 28, 2022 and February 14, 2022.

On February 22, 2022, the Privilege Team confirmed that the Privilege Team never released the 15,500 documents to the Case Team as directed and, therefore, that its prior representations to the Case Team were not accurate.

The Case Team will be prepared to discuss the foregoing matters with the Court in the morning.

Respectfully submitted,

BREON PEACE
United States Attorney
Eastern District of New York

DEBORAH L. CONNOR
Chief, Money Laundering and Asset
Recovery Section, Criminal Division
U.S. Department of Justice

By: /s/ Alixandra Smith
Alixandra E. Smith
Drew G. Rolle
Dylan A. Stern
Assistant U.S. Attorneys

By: /s/ Jennifer Ambuehl
Jennifer E. Ambuehl
Trial Attorney

JOSEPH S. BEEMSTERBOER
Acting Chief, Fraud Section,
Criminal Division
U.S. Department of Justice

By: /s/ Brent Wible
Brent Wible
Trial Attorney