

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA  
No. 08-CR-364 (RHK/AJB)

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UNITED STATES OF AMERICA,

Plaintiff,

vs.

THOMAS JOSEPH PETTERS,

Defendant.

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**DEFENDANT'S MOTION  
TO SUPPRESS  
(4400 BAKER ROAD)**

Defendant Thomas Joseph Petters moves the Court for an order suppressing any and all evidence obtained directly or indirectly from the search and seizure conducted at the premises known as Offices of Petters Company, Inc. and affiliated entities, 4400 Baker Road, Minnetonka, Minnesota, on or about September 24, 2008, pursuant to the Search Warrant issued by the United States District Court for the District of Minnesota. Fed. R. Crim. P. 12(b)(3) and 41(h). Additionally, Defendant requests that the Court conduct an evidentiary hearing based on the defense's challenges to the Government's "taint team," and the Government's seizure of documents protected by the attorney-client privilege and the attorney work product privilege.

The search and seizure violated Defendant's rights under the Fourth Amendment of the United States Constitution in the following ways:

1. The Search Warrant was an unlawful general warrant.
2. The Search Warrant Affidavit did not establish probable cause to seize documents related to entities not affiliated with PCI.

3. The Search Warrant Affidavit did not establish probable cause to search the office of in-house counsel, David Baer, or the legal department.

4. The manner in which the Government's "taint team" has reviewed the items seized is deficient.

In support of this motion, the undersigned provides the following:

1. Application and Affidavit for Search Warrant (Exhibit A);
2. Search Warrant and Search Warrant Return (Exhibit B);
3. Search Warrant Inventory (Exhibit C);
4. Inventory of "Taint" Items Seized (Exhibit D);
5. E-mail from Mr. Petters' former counsel, John W. Lundquist of Fredrikson & Byron, P.A., to the U.S. Attorney's Office dated September 26, 2008, which objected to the Government's use of a "taint team" (Exhibit E);

6. A letter from Mr. Petters' current counsel, Jon M. Hopeman of Felhaber Larson Fenlon & Vogt, P.A., to the U.S. Attorney's Office dated October 6, 2008, which objected to the Government's use of a "taint team" and demanded the return of privileged materials (Exhibit F);

7. A letter from another of Mr. Petters' attorneys, Eric J. Riensche, to the U.S. Attorney's Office dated November 7, 2008, which listed attorneys and law firms that may have had privileged communications with Mr. Petters (Exhibit G);

8. A letter from the U.S. Attorney's Office to Mr. Hopeman, dated November 24, 2008, which asserted that many of the attorneys and/or law firms listed in Mr. Riensche's November 7 letter did not represent Mr. Petters personally (Exhibit H);

9. A letter from Mr. Hopeman to the U.S. Attorney's Office dated December 1, 2008, which listed attorneys and/or law firm that had represented Mr. Petters personally (Exhibit I);

10. Affidavit of Mr. Petters' attorney Jessica M. Marsh detailing her observations during document review of "non-privileged" and "privileged" boxes (Exhibit J);

11. Affidavit of Mr. Petters' attorney Richard C. Salmen regarding affiliations between various corporate entities of Mr. Petters (Exhibit K); and

12. Affidavit of Mr. Petters' attorney Jon M. Hopeman regarding the Government's notice that Mr. Petters was represented by the Felhaber law firm (Exhibit L).

The undersigned submits the accompanying memorandum in support of this motion.

Dated: February 25, 2009

**s/ Jon M. Hopeman**

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