

# **EXHIBIT NO. 2**



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August 15, 2012

**VIA ELECTRONIC MAIL**

Charles E. Pell  
Assistant U.S. Attorney  
U.S. Department of Justice, U.S. Attorney's Office  
Central District of California  
Santa Ana Branch Office  
Ronald Regan Federal Building  
411 W. 4th Street, Suite 8000  
Santa Ana, California 92701

Re: Violation of Attorney Client Privilege and Work Product Doctrine Caused by  
Seizure of USA\_DKI\_0000009-14

Dear Mr. Pell:

I write in follow-up to our meeting on August 2, 2012. One of the issues we discussed was my concern that the document you produced to me as Exhibit D to your letter dated July 27, 2012 is protected by the attorney client privilege and that its review by you and your team members has tainted the government's investigation of my client, Dongkuk International Inc. ("DKI"). We have now received a translated copy of the document which confirms that it is protected from disclosure by the attorney-client privilege. The protected nature of the document is evident in many ways, but, most notably, the heading on page 6 stating that the document results from consultation with an attorney leaves no doubt that it is indeed privileged.

It is well settled that the attorney-client privilege protects confidential disclosures made by a client to an attorney in order to obtain legal advice, as well as an attorney's advice in response to such disclosures. See *In re Grand Jury Investigation*, 974 F.2d 1068, 1070 (9th Cir. 1992) (denying government's motion for in camera review of privileged documents subpoenaed in a grand jury investigation of a defendant corporation). The attorney-client privilege exists when: (1) legal advice of any kind is sought (2) from a professional legal adviser in his or her capacity as such, (3) the communications relating to that purpose, (4) made in confidence (5) by the client, (6) are, at the client's instance, permanently protected (7) from disclosure by the client or by the legal adviser (8) unless the protection is waived by the client. *Id.* at 1071, fn. 2 (quoting 8 John H. Wigmore, *Evidence* § 2292, at 554 (McNaughton Rev. 1961)). Here, the document clearly contains confidential information that was shared with counsel for the purpose of obtaining legal advice on the matters discussed in the document as well as a summary of

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legal advice actually received on those same matters. There is no evidence of waiver. The document, therefore, is protected by the attorney-client privilege.<sup>1</sup>

Based on previous conversations with Special Agent Brad Harker, we believe this document is the sole genesis of the government's investigation of DKI. We hereby formally protest the violations of the attorney-client privilege and the work product doctrine that occurred when Exhibit D, labeled USA\_DKI\_0000009-14, was used as part of the government's investigation.

The protections granted both to the attorney-client privilege and to the work product doctrine underscore their extraordinary importance to the legal process. The taint caused by the use of this document can be cured only by suppressing all "fruit of the poisonous tree" associated with the government's access to this document. Our request below for information about the government's use of the document is compelled by the need to protect our client's rights. We are mindful that this detailed examination may not be necessary if the investigation can be resolved; and we discuss this further below.

To determine the scope of the taint and the resulting suppression that will be necessary to cure it, please provide the following information regarding anyone associated with the investigation from either the government of the United States or from the government of the Republic of Korea. The information requested below is preliminary. It is likely that additional information will be necessary in order to cure the taint.

- a. Describe the protocol created by the investigation prior to seizure of the document about the manner in which to handle documents that appeared to be protected by the attorney-client privilege or the work product doctrine, including, but not limited to, production of briefing books, memos, or search criteria that describe the protocol.
- b. Describe how the document originally was obtained, including, but not limited to, the date and time at which it was seized, the identity of the persons who seized it, the authority that allegedly justified the seizure of the document, how the document was stored after seizure, and where the document was stored after seizure.
- c. Describe precisely where the document was seized, including, but not limited to production of photos of the place of seizure and reports describing the seizure.

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<sup>1</sup> The document appears also to be protected by the attorney work product doctrine, as a document created in anticipation of litigation. As you are aware, *Upjohn v. United States*, 449 U.S. 393 (1981) involved work product protection in the context of an IRS summons enforcement proceeding for items gathered after the corporation learned that possible criminal conduct occurred among its employees but well before any governmental entity was aware of those allegations. See e.g., *Upjohn v. United States*, 449 U.S. 393 (1981); *United States v. Davis*, 636 F.2d 1028, 1040 (5<sup>th</sup> Cir. 1981); *In re Grand Jury Investigation*, 599 F.2d 1224, 1229 (3<sup>rd</sup> Cir. 1979).

- d. List every person who has been given access to the document in any way, including, but not limited to, access to the original, access to a copy, access to a translation, access to a summary of the document in whole or in part, or access to a fragment of the document, copy, translation or summary. (In the following items, the term "document" means the original, a copy, a translation, a summary, or a fragment of a copy, translation or summary).
- e. List the number of translations of the document that have been made.
- f. Provide copies of the translations of the document that have been made.
- g. List the number of copies of the document that have been made.
- h. For each person listed in (d), describe the circumstances under which the person was given access, including but not limited to,
  - i. The date on which access was given.
  - ii. The length of time the person had access to the document.
  - iii. Whether a translation was provided, and, if so, which translation.
  - iv. What use the person made of the document.
  - v. What happened to the document between the time the person was given access and the time the person no longer had access.
  - vi. Any investigative item the person was involved in preparing having access including, but not limited to, a report, an analysis, a list of questions, or a draft of a report, analysis or list of questions
  - vii. List every individual with whom the person had contact, including but not limited to, contact by writing, by email, by phone, or by other communication medium after the person was given access. The list of individuals, includes, but is not limited to, every witness interviewed by the person after the person was given access.

Despite the duty to protect our client's rights, we wish to resolve questions that have been raised during the investigation. The circumstances surrounding the loans you are investigating do not indicate intentional misconduct. To the contrary, the circumstances show that the repayment proceeded in a forthright manner. We are prepared discuss this further, however, only if we can do so without waiving our client's right to seek suppression of the fruit of the poisonous tree. Accordingly, we seek your agreement that continued discussions between us do not waive our ability to seek suppression at a future time.

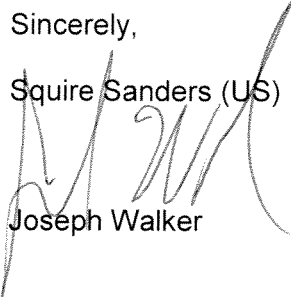
Squire Sanders (US) LLP

Charles E. Pell  
August 15, 2012

Please call me as soon as possible to discuss.

Sincerely,

Squire Sanders (US) LLP



Joseph Walker