



United States Tax Court

Washington, DC 20217

MARC WORRALL AND SUE J.
WORRALL,

Petitioners

v.

COMMISSIONER OF INTERNAL
REVENUE,

Respondent

Docket No. 14793-22, 14734-23.

ORDER

These cases are set for trial at the Court's June 9, 2025, Washington, D.C., Special Trial Session. They are currently in discovery and concern certain microcaptive insurance transactions. We address in this Order two motions filed by respondent on January 30, 2025: (1) a Motion to Review the Sufficiency of Answers or Objections to Request for Admissions (Admissions Motion) and (2) a Motion to Compel Responses to Interrogatories (Interrogatories Motion). We assume that the parties are familiar with the facts and proceedings in respondent's Motions but briefly summarize below so as to rule on the Motion.

Background

On November 19, 2024, respondent filed his First Request for Admissions (First Request) in accordance with Rule 90.¹ In it, respondent sought 145 discrete requests for admission, not including subparts of certain requests, from petitioners. On December 19, 2024, petitioners filed a Response to respondent's First Request for Admissions. In it, petitioners generally objected to respondent's Request as an unnecessary use of formal discovery. Petitioners objected to some of the requests on grounds of vagueness and relevance. Petitioners fully or partially admitted to 83 of these requests.

On December 23, 2024, respondent filed a Second Request for Admissions

¹ Unless otherwise indicated, statutory references are to the Internal Revenue Code, Title 26 U.S.C., in effect at all relevant times, and Rule references are to the Tax Court Rules of Practice and Procedure.

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(Second Request). Respondent sought 22 discrete requests for admission in his Second Request. Also on December 23, 2024, respondent served petitioners with respondent's First Set of Interrogatories, which included ten requests with multiple subparts. That same day, respondent served on petitioners his First Request for Production of Documents, which included 176 requests with multiple subparts.

On January 22, 2025, petitioners filed their Response to the Second Request on January 22, 2025. Petitioners fully or partially admitted to half of these requests. Similarly, as to the First Request, petitioners objected to some of these requests on grounds of vagueness.

On January 30, 2025, respondent filed the two Motions at issue. In the Admissions Motion, respondent seeks the Court's review of six of petitioners' responses between the First and Second Requests pursuant to Rules 50 and 90(e): Admissions Requests 15–17, 20, and 112 from the First Request and Admissions Request 5 from the Second Request. Respondent asks in his Admissions Motion that we deem these requests admitted or, alternatively, that we order petitioners to amend their responses.

In his Interrogatories Motion, respondent asks the Court to enforce Interrogatory 6 and Interrogatory 8. On February 24, 2025, by leave of the Court, petitioners filed objections to respondent's Admissions Motion and Interrogatories Motion. In their objection to the Admissions Motion, Petitioners assert that their qualified admissions to these requests are proper given the purported vague nature of respondent's requests and that one of the requests seeks privileged information. In their objection to the Interrogatories Motion, petitioners argue that Interrogatory 6 seeks privileged information and that Interrogatory 8 is improper discovery on discovery, is protected by work product doctrine, and would require an unduly burdensome response.

Analysis: Admissions Motion

We assess petitioners' responses under Rule 90, under which a request is deemed admitted unless the requested party timely and properly admits or denies the matter, sets forth reasons why the matter cannot be truthfully admitted or denied, or objects and states a detailed reason for the objection. Rule 90(a), (c). If good faith so requires, a party may deny only part of a matter upon specifying as much of the matter as is true while denying only the remainder. Rule 90(c). But lack of information or knowledge as a reason for failing to admit or deny is insufficient absent the responding party having made a reasonable inquiry into the matter. *Id.* Unless it finds that an objection is justified, the Court may order an amended answer or deem the answer admitted should the Court determine that such answer is insufficient. Rule 90(e).

As described above, respondent objects to six of petitioners' responses: Requests 15–17, 20, and 112 from the First Request and Request 5 from the Second Request. For one of these, Request 112 (First Request), respondent states that

petitioners failed to admit or deny to the request. For the other five, respondent categorizes petitioners' response as unclear and therefore insufficient under Rule 90. Petitioners object to Request 112 as lacking relevance and seeking their work product. For the remaining requests for admission as issue, petitioners offered qualified admissions.

Setting aside Request 112 for the moment, we will now consider the other requests at issue in respondent's Motion. In Request 15 (First Request), respondent seeks for petitioners to admit or deny whether "The premiums charged by SPC 1 were not based upon commercially available rates." Petitioners admitted that not all of the premiums were based on commercially available rates but denied that they all were not. Respondent decries in his Motion that this answer is vague and does not allow respondent to draft a proposed stipulation of fact as to the specific premiums. But we agree with petitioners that it is respondent's drafting of Request 15 (First Request) that led to a less-than-specific answer. We agree with respondent that a proposed stipulation of fact will require more specifics as to which of the premiums were based on commercially available rates—but that will require more specifics from respondent as well. We thus will not order petitioners to amend their response to Request 15 (First Request).

We likewise decline to find insufficient petitioners' responses to Requests 16 and 17 (First Request). Petitioners admitted to the dates that the documents which respondent are calling purported and draft feasibility studies were issued, but otherwise denied these requests. Respondent in his First and Second Requests includes useful definitions sections of terms used in the specific requests. But respondent, as petitioners note, does not define the term feasibility study for which he is seeking an admission. As such, we cannot fault petitioners for offering only a qualified admission to these requests and will thus not order them to amend their responses.

Request 20 (First Request) seeks for petitioners to admit or deny whether they maintained their commercial insurance policies after forming their captive during the years 2015–21. Petitioners admitted that they maintained certain existing commercial insurance policies but otherwise denied the request. For the same reasons as Request 15, we will deny respondent's Motion as to Request 20. We again stress that these requests can and should be stipulated to in the event that a draft stipulation of facts lays out the specific policies and specific years for which admissions are sought.

Request 5 (Second Request) seeks an admission or denial regarding whether a government entity threatened or took any portion of petitioners' property via eminent domain during a stated period of time. In their response, petitioners essentially admit to the request but end their response by stating that they otherwise deny it. In their Objection, petitioners explain that their reserved objection is based on the difference between a formal threat of eminent domain and a perceived threat—and thereby answered in the affirmative that they did not receive a formal threat during the period for which respondent seeks admission. Petitioners further in their Objection

describe instances of associates losing their properties to eminent domain and thus felt a perceived threat of eminent domain during the years at issue. To the extent that respondent feels this explanation is not credible or otherwise unnecessary to proving a business need for a policy insuring against eminent domain, respondent can seek petitioners' testimony at trial. But petitioners have otherwise admitted that they received no formal eminent domain threat from a government entity during the period that respondent specifies. We deem this response sufficient under Rule 90.

We return now to Request 112 (First Request). That Request seeks an admission regarding whether petitioners or their counsel received, during the course of this litigation, documents from non-party RSC Topco, Inc., or its subsidiaries (excluding documents received as a result of respondent's subpoenas). Petitioners object to this request on the grounds of relevance and privileged work product. Petitioners responded in terms of hypotheticals but otherwise did not admit or deny to respondent's request.

Respondent objects to petitioners' response to Request 112 (First Request) on the grounds that petitioners failed to respond to the request. We agree. To the extent that the request seeks documents, interviews, statements, memoranda, mental impressions, correspondence, briefs, and tangible items prepared by an attorney during or in anticipation of litigation, such information is protected by the work product doctrine. *See Ames v. Commissioner*, 112 T.C. 304, 310 (citing *Hickman v. Taylor*, 329 U.S. 495, 510–11 (1947)); *see also* Rule 70(c)(3) (setting forth a limitation of discovery of documents and tangible things that are prepared in anticipation of litigation or trial by or for another party or its representatives (including the other party's attorney, indemnitor, or insurer)).

But Request 112 (First Request) does not seek the *contents* of any documents that may be subject to the work product doctrine. Rather, it seeks for petitioners to admit or deny whether petitioners or their counsel have received documents from RSC Topco, Inc., during this litigation. At the time the Admissions Motion was filed, the Court had not yet issued a protective order with respect to RSC Topco, and respondent was still negotiating for documents from that non-party. It is therefore possible that respondent is not seeking information about protected work product but rather seeks information about relevant, non-privileged, documents that have not been produced to respondent by RSC Topco but have been shared with petitioners. If petitioners have received nonprivileged documents from RSC Topco that have not been share with respondent, petitioners should have admitted this request. Indeed, given petitioners admission to request 111, relating to legal fees, it seems quite possible that petitioners have received nonprivileged documents from RSC Topco (in the form of invoices, checks, or related correspondence).

Petitioners are likewise incorrect that the request is irrelevant to the case at hand. As is unfolding in discovery, it appears that RSC Topco, Inc., and its affiliates played a substantial role in the formation of petitioners' microcaptive transactions. The association between petitioners and RSC Topco may also be relevant to the credibility of witness testimony during trial.

Analysis: Interrogatories Motion

As stated above, respondent seeks to enforce Interrogatory 6 and Interrogatory 8.

Interrogatory 6 asks the petitioners identify who they “intend to call or are considering calling as an expert witness” at trial. Rule 71(d) permits written interrogatories asking a party to identify expert witnesses that party “expects to call” at trial. Petitioners object to answering this interrogatory on the grounds that it is too early in the process to identify experts. Petitioners also argue that respondent’s interrogatory goes beyond what is permitted under Rule 71(d) to the extent it seeks the identification of expert witnesses that are merely being considered rather than those that are expected to be called. We agree with petitioners that Interrogatory 6 is overly broad. We are mindful, however, that Rule 71(d) contemplates the identification of expert witnesses prior to the exchange of expert reports. We will therefore modify the Pretrial Scheduling Order to require that any expected case-in-chief expert witnesses be identified by March 27, 2025, and any expected rebuttal expert witnesses be identified by April 18, 2025.

Interrogatory 8 asked petitioners to describe the methods undertaken to respond to respondent’s informal and formal discovery requests. Petitioners object on several grounds, including that the interrogatory is not relevant, seeks to discover privileged information, and is unduly burdensome. Given the contentious nature of the discovery process in this case, we feel that it is not unreasonable for respondent to seek more information about the efforts undertaken by petitioners to locate responsive documents and other information. We are mindful, however, that the burden of assembling a comprehensive list of such steps must be balanced against the utility of such information. We will therefore be ordering petitioners to respond in a narrative format describing the general methods and types of search terms used for locating responsive emails in petitioners’ possession. Regarding requests and to and responses from third parties, we agree with petitioners that Interrogatory 8 seems likely to elicit privileged information including work product and common interest privilege. *See, e.g., In re Pacific Picture Corp.*, 679 F.3d 1121, 1129 (9th Cir. 2012) (citations omitted). We will therefore be denying respondent’s Interrogatory Motion as it relates to those elements of Interrogatory 8.

In light of the foregoing, it is

ORDERED that respondent’s January 30, 2025, Motion to Review the Sufficiency of Answers or Objections to Request for Admission is granted insofar as petitioners’ response to Request 112 (First Request) is deemed insufficient. It is further

ORDERED that petitioners shall, on or before March 27, 2025, supplement their response to Request 112 (First Request) consistent with this Order. It is further

ORDERED that respondent’s January 30, 2025, Motion to Review the

Sufficiency of Answers or Objections to Request for Admission is otherwise denied. It is further

ORDERED that the Court's Pretrial Scheduling Order (Docket 14793-22, Entry No. 76, and Docket 14734-23, Entry No. 71) filed December 18, 2024, is modified in that both parties shall exchange the information described in Rule 71(d) with respect to any expected case-in-chief expert witnesses by March 27, 2025, and any expected rebuttal expert witnesses by April 18, 2025. It is further

ORDERED that respondent's January 30, 2025, Motion to Compel Responses to Interrogatories is granted insofar as petitioners shall, on or before March 26, 2025, supplement their response to Interrogatory 8 consistent with this Order. It is further

ORDERED that respondent's January 30, 2025, Motion to Compel Responses to Interrogatories is otherwise denied.

**(Signed) Kashi Way
Judge**