

UNITED STATES TAX COURT  
 WASHINGTON, DC 20217

JAMES L. WILSON & VIVIEN WILSON, ET	)		
AL.,	)		
	)		
Petitioner(s),	)		
	)		
v.	)	Docket No. 26547-13,	26548-13,
	)	15011-14,	16759-14.
COMMISSIONER OF INTERNAL REVENUE,	)		
	)		
Respondent	)		
	)		
	)		
	)		
	)		

**ORDER**

The two lower numbered cases were on the Court’s September 22, 2014 trial calendar for Phoenix, Arizona, and have a considerable overlap of legal issues. The parties have not been able to settle, and asked for a special session this summer, when this division of the Court has already set a trial date for another case. On November 19, 2015 the parties proposed a pretrial order that with one exception (a deadline later this summer for motions *in limine*) was acceptable and included deadlines for discovery. On March 1, 2016 respondent moved for a continuance because he wants to get petitioners’ documents to his expert months ahead of the deadline for formal discovery. In a call with the parties on March 24, 2016 the Court learned that respondent has served some presumably reasonable formal discovery but that petitioners haven’t (at least yet) missed the deadline for responding to it. Respondent has also not moved for any orders compelling responses. The motion to continue will be denied.

The Court also learned that some of the documents that petitioners’ counsel have gotten from a likely witness, Ms. Clark, the apparent architect of the captive-insurer arrangement at issue in this and several other Phoenix cases, were redacted. The Commissioner wants the unredacted versions of these documents. We had this precise issue in a very similar Phoenix case, *Avrahami v. Commissioner*, that was tried by the same lawyers as this case. In the phone call, petitioners’ counsel said (as they had in *Avrahami*) that Ms. Clark feels that she is under an ethical obligation imposed by Rule 1.6 of the New York Bar’s Rules of Professional Conduct to guard against disclosure of “confidential information.” Since the material that the Commissioner seeks either contains, or is likely to lead to, information relevant to the characterization of Ms. Clark’s arrangement as “insurance” or “not really insurance,” the Court finds it discoverable and

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nonprivileged. In *Avrahami*, we solved this problem by agreeing with the parties that a lawyer is under no obligation to fight production of such nonprivileged information if ordered to do so by a Court. We'll do so again in this case.

It is therefore

ORDERED that respondent's March 1, 2016 for a continuance is denied. It is also

ORDERED that petitioners' shall produce to respondent unredacted versions of the documents that it has received or later receives from Ms. Celia Clark and that are responsive to respondent's discovery requests.

**(Signed) Mark V. Holmes**  
**Judge**

Dated: Washington, D.C.  
March 28, 2016