

UNITED STATES TAX COURT
WASHINGTON, DC 20217

MURFAM ENTERPRISES LLC,)	
WENDELL MURPHY, JR.,)	
TAX MATTERS PARTNER, ET AL.,)	
)	
Petitioners,)	
)	
v.)	Docket No. 8039-16, 14536-16,
)	14541-16.
COMMISSIONER OF INTERNAL REVENUE,)	
)	
Respondent)	

ORDER

Trial in this case will begin at 10:00 a.m. on August 6, 2018. Petitioners have submitted, *inter alia*, two expert reports with multiple authors--i.e., (1) “Summary of Conservation Values of the Landing Tract Conservation Easement, Wallace, NC”, and (2) “Summary of Conservation Values of the River Tract Conservation Easement, Wallace, NC”. On July 23, 2018, the Commissioner filed two nearly identical motions in limine (Docs. 60 & 61), each requesting that one of the reports be excluded from evidence. In each motion, the Commissioner’s argument includes the following:

This Court has also kept out of evidence reports with two authors even when both were present to testify. In Belk v. Commissioner, at Docket No. 5437-10, the Court excluded just such a report. Pages 337-362 of the trial transcript in Belk are attached as Exhibit A.

We understand this argument to ask us to rely on the Court’s evidentiary ruling in Belk as precedent we should follow here. Although we will not literally strike Exhibit A from each motion, we will not treat as precedent the evidentiary ruling in Belk as we decide how to rule on the motions now pending. Rule 50(f) provides generally that orders (in contrast with opinions) “shall not be treated as precedent”.

SERVED Jul 25 2018

We think that an evidentiary ruling given orally during a trial is similarly non-precedential.

However, we do encourage petitioners to do immediately whatever they think appropriate to address the Commissioner's complaints and "to delineate which of [the authors] prepared which portions, [and] which author's opinions make up the conclusions of the report." (Motions at 3.) We share the Commissioner's expressed concern that "a lack of clarity as to who wrote which parts of the report would significantly impair the opposing party's ability to cross examine the expert witness, as outlined in Rule 143(g)(2)." (Motions at 6.) We would not expect to require the Commissioner to cross-examine multiple persons to find out who can answer his questions, nor to allow petitioners to consume substantial trial time rehabilitating the reports.

It is

ORDERED that we will take the Commissioner's motions in limine under advisement, and we expect to rule on them during or after the trial in this case. Petitioner's may file short responses to the motions. They may do so at any time, up to and including when the case is called on August 6, 2018, but the Court may not be able to give substantial attention before trial to a filing made any later than Wednesday, August 1. However, we acknowledge that trial preparation time between now and August 6 is a scarce commodity, and petitioners should not spend inordinate time drafting responses. If they file no responses, then we would hear their oral argument before ruling on the motions.

**(Signed) David Gustafson
Judge**

Dated: Washington, D.C.
July 25, 2018