

**UNITED STATES TAX COURT
WASHINGTON, DC 20217**

SUNIL S. PATEL & LAURIE MCANALLY)	
PATEL, ET AL.,)	
)	
Petitioners,)	
)	
v.)	Docket No. 24344-17, 11352-18,
)	25268-18.
COMMISSIONER OF INTERNAL REVENUE,)	
)	
Respondent)	

ORDER

This case concerns whether certain entities formed by petitioners, Magellan Insurance Company Ltd. (Magellan) and Plymouth Insurance Company, Inc. (Plymouth), were micro-captive insurance companies and engaged in insurance transactions for Federal income tax purposes. See sec. 831(b).

The case was originally scheduled to be tried in a special session of the Court which was to commence in Atlanta, Georgia on June 29, 2020. But on March 24, 2020, the Court issued an Order which canceled the special session because of concerns related to the outbreak of the novel coronavirus and the disease that it causes (COVID-19).

On February 12, 2020 -- prior to the Court's cancellation of the special session -- respondent filed a Motion to Compel the Taking of Deposition of Non-Party Witness under Rule 74, asking the Court to issue an order compelling the non-consensual deposition of non-party witness Christopher Fay (Mr. Fay). Respondent represented, and petitioners did not dispute, that Mr. Fay served as a wealth management advisor to petitioners and, in that capacity, played a significant role in setting up the micro-captive arrangement. Respondent attached to his motion a copy of the notice of deposition, dated October 25, 2019, which he served on Mr. Fay.

Respondent further moved, pursuant to Rule 104(b), to compel Mr. Fay to produce certain documents identified by respondent in an attachment to a subpoena duces tecum. In his motion, respondent represented that he served the subpoena duces tecum on Mr. Fay.

On April 14, 2020, the Court ordered respondent to file a copy of the subpoena duces tecum, including verification of the date of service. Respondent filed a response on April 16, 2020, admitting that he had not served the subpoena duces tecum on Mr. Fay, apologizing to the Court for the incorrect representation, and explaining how it occurred. He nevertheless asked the

SERVED May 20 2020

Court to compel a virtual deposition of Mr. Fay (in the light of concerns related to COVID-19), albeit without the documents.

A notice of deposition in accordance with Rule 74, and a subpoena under Rule 147, must be served on a non-party witness before any deposition may take place.

The record establishes that Mr. Fay's deposition is warranted and that respondent served Mr. Fay with a notice of deposition on October 25, 2019, pursuant to Rule 74(c)(2). But respondent has not met the requirements of Rule 147 because he has not served Mr. Fay with a subpoena to require his testimony and/or production of documents listed in the attachment at the deposition described in the notice. As a result, respondent has not done what is necessary to compel Mr. Fay to testify and/or to produce documents at the deposition.

Respondent's failure to serve Mr. Fay with a subpoena is made more problematic by the current crisis surrounding COVID-19. The Court is concerned that it is not currently safe to serve him. Therefore, it is

ORDERED that respondent's Motion to Compel the Taking of Deposition of Non-Party Witness Christopher Fay, filed February 12, 2020, is denied without prejudice. It is further

ORDERED that in addition to regular service, the Clerk of the Court shall serve a copy of this Order on Christopher Fay as follows:

Christopher Fay
Navitas Wealth Advisors
5909 Glendower Lane
Plano, Texas 75093

(Signed) Courtney D. Jones
Judge

Dated: Washington, D.C.
May 20, 2020