

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION**

RAYMOND ANKNER, et al.,)	
)	
)	Case No. 2:21-cv-330-JES-NPM
)	2:21-cv-331-JES.NPM
Plaintiffs,)	2:21-cv-333-JES-NPM
)	2:21-cv-334-JES-NPM
)	
v.)	
)	
UNITED STATES OF AMERICA,)	ANSWER TO AMENDED
)	COMPLAINT AND
Defendant.)	COUNTERCLAIM
_____)	

Defendant, United States of America, for its Answer to Plaintiffs' Amended Complaint, states as follows:

1. The United States admits the allegations contained in paragraph 1 of the Amended Complaint.
2. The United States admits the allegations contained in paragraph 2 of the Amended Complaint.
3. The United States admits the allegations contained in paragraph 3 of the Amended Complaint.
4. The United States admits the allegations contained in paragraph 4 of the Amended Complaint.

5. The United States admits the allegations contained in paragraph 5 of the Amended Complaint.

6. The United States admits the allegations contained in paragraph 6 of the Amended Complaint.

7. The United States admits the allegations contained in paragraph 7 of the Amended Complaint.

8. For its response to paragraph 8 of the Amended Complaint, the United States denies the allegations contained in the third and fourth lines of paragraph 8 of the Amended Complaint that the IRS's determination that the plaintiffs are liable for penalties under 26 U.S.C. § 6700 is improper. The United States admits the remaining allegations contained in paragraph 8 of the Amended Complaint.

9. The United States admits the allegations contained in paragraph 9 of the Amended Complaint.

10. The United States admits the allegations contained in paragraph 10 of the Amended Complaint.

11. The United States admits the allegations contained in paragraph 11 of the Amended Complaint.

12. The United States admits the allegations contained in paragraph 12 of the Amended Complaint.

13. The United States admits the allegations contained in paragraph 13 of the Amended Complaint.

14. The United States admits the allegations contained in paragraph 14 of the Amended Complaint.

15. The United States lacks knowledge or information sufficient for it to form a belief concerning the truth of the allegations contained in paragraph 15 of the Amended Complaint.

16. The United States lacks knowledge or information sufficient for it to form a belief concerning the truth of the allegations contained in paragraph 16 of the Amended Complaint.

17. The United States lacks knowledge or information sufficient for it to form a belief concerning the truth of the allegations contained in paragraph 17 of the Amended Complaint.

18. The United States admits the allegations contained in paragraph 18 of the Amended Complaint.

19. The United States admits the allegations contained in paragraph 19 of the Amended Complaint.

20. The United States admits the allegations contained in paragraph 20 of the Amended Complaint.

21. The United States admits the allegations contained in paragraph 21 of the Amended Complaint.

22. The United States admits the allegations contained in paragraph 22 of the Amended Complaint.

23. The United States admits the allegations contained in paragraph 23 of the Amended Complaint.

24. The United States admits the allegations contained in paragraph 24 of the Amended Complaint.

25. The United States admits the allegations contained in paragraph 25 of the Amended Complaint.

26. The United States admits the allegations contained in the first two sentences of paragraph 26 of the Amended Complaint that the IRS sent Mr. Ankner a Form 886-A dated June 11, 2019 and that the IRS sent Mr. Ankner a Form 886-A with revised penalty calculation amounts on March 2, 2020 and

August 10, 2020. The United States also admits that Plaintiffs attached an Exhibit A to the Amended Complaint. The United States denies all remaining allegations contained in paragraph 26.

27. The United States admits the allegations contained in the first sentence of paragraph 27 of the Amended Complaint. The United States denies all remaining allegations contained in paragraph 27.

28. The United States admits the allegations contained in the first sentence of paragraph 28 of the Amended Complaint. The United States denies all remaining allegations contained in paragraph 28.

29. The United States admits the allegations contained in the first two sentences of paragraph 29 of the Amended Complaint that the IRS sent Mr. Ankner a Form 886-A dated June 11, 2019, and that the IRS sent Mr. Ankner a Form 886-A with revised penalty calculation amounts on March 2, 2020 and August 10, 2020. The United States also admits that Plaintiffs attached an Exhibit B to the Amended Complaint. The United States denies all remaining allegations contained in paragraph 29.

30. The United States admits the allegations contained in the first sentence of paragraph 30 of the Amended Complaint. The United States denies all remaining allegations contained in paragraph 30.

31. The United States admits the allegations contained in the first sentence of paragraph 31 of the Amended Complaint. The United States denies all remaining allegations contained in paragraph 31.

32. The United States admits the allegations contained in the first two sentences of paragraph 32 of the Amended Complaint that the IRS sent Mr. Ankner a Form 886-A dated June 11, 2019, and that the IRS sent Mr. Ankner a Form 886-A with revised penalty calculation amounts on March 2, 2020 and August 10, 2020. The United States also admits that Plaintiffs attached an Exhibit C to the Amended Complaint. The United States denies all remaining allegations contained in paragraph 32.

33. The United States admits the allegations contained in the first sentence of paragraph 33 of the Amended Complaint. The United States denies all remaining allegations contained in paragraph 33.

[Following paragraph 33 in the Amended Complaint, there is an unnumbered paragraph.] The United States admits the allegations contained in the first sentence of the unnumbered paragraph in the Amended Complaint. The United States denies all remaining allegations contained the unnumbered paragraph.

34. The United States admits the allegations contained in the first two sentences of paragraph 34 of the Amended Complaint that the IRS sent Mr. Ankner a Form 886-A dated June 11, 2019, and that the IRS sent Mr. Ankner a Form 886-A with revised penalty calculation amounts on March 2, 2020 and August 10, 2020. The United States also admits that Plaintiffs attached an Exhibit D to the Amended Complaint. The United States denies all remaining allegations contained in paragraph 34.

35. The United States admits the allegations contained in the first sentence of paragraph 35 of the Amended Complaint. The United States denies all remaining allegations contained in paragraph 35.

36. The United States admits the allegations contained in the first sentence of paragraph 36 of the Amended Complaint. The United States denies all remaining allegations contained in paragraph 36.

37. The United States denies the allegations contained in paragraph 37 of the Amended Complaint.

38. The United States admits the allegations contained in paragraph 38 of the Amended Complaint.

39. The United States denies the allegations contained in paragraph 39 of the Amended Complaint.

40. The United States denies the allegations contained in paragraph 40 of the Amended Complaint.

WHEREFORE, the United States requests that the Court deny the relief requested in the Amended Complaint and enter judgement dismissing the Amended Complaint with prejudice, and grant such further relief as the Court deems proper and just, including awarding the United States attorney's fees and costs.

**COUNTERCLAIM OF UNITED STATES
AGAINST PLAINTIFFS AND COUNTERCLAIM DEFENDANTS**

Defendant and Counterclaim Plaintiff, the United States of America (“United States”), hereby Counterclaims against Plaintiffs Raymond Ankner, CJA and Associates, Inc., RMC Property & Casualty, LTD., and RMC Consultants, LTD (“Counterclaim Defendants”) for the unpaid tax penalties assessed against the Counterclaim Defendants by the IRS, which are, in part, the subject of the Complaint filed in this matter by the Plaintiffs and Counterclaim Defendants.

1. This Counterclaim has been commenced pursuant to 26 U.S.C. § 7401 at the direction of the Attorney General of the United States with the authorization

and at the request of the Chief Counsel of the Internal Revenue Service, a delegate of the Secretary of the Treasury.

2. This Court has jurisdiction over the Counterclaim pursuant to 28 U.S.C. §§ 1340 and 1345 and 26 U.S.C. § 7402.

3. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1391(b) and 1396.

BACKGROUND

4. A captive insurance company is an insurance company that insures the risks of companies related to it by ownership.

5. In the present case, Counterclaim Defendants use contracts issued by micro-captive companies or entities that are not operating as legitimate insurance companies as a means to improperly reduce their clients' aggregate taxable income.

6. Under the contracts, taxpayers make payments to captive companies or entities organized by the Counterclaim Defendants and treat the payments as insurance premiums. The taxpayers then deduct the payments from their taxable income as ordinary and necessary expenses under 26 U.S.C. § 162(a).

7. At the same time, the captive companies or entities improperly elect under § 831(b) of the Internal Revenue Code to be taxed only on their investment income and exclude the so-called premium income from their taxable income.

8. Neither party to these captive transactions pays tax on the micro-captive premiums based on the false or fraudulent premise that the captive companies or entities are entitled to compute their taxes as operating insurance companies.

9. To qualify to compute income as an insurance company under § 831(b), more than half of the captive company's business must involve issuing insurance or annuity contracts or the reinsuring of risks underwritten by insurance companies.

10. In the present case, however, the captive transactions at issue do not constitute insurance, and the purchasers of the purported captive insurance are not entitled to deduct the payments they made to the captive companies or entities.

11. In addition, the purported micro-captive insurance companies formed or organized by the Counterclaim Defendants do not qualify to be taxed as insurance companies.

12. The captive companies or entities do not sufficiently distribute risk and they do not provide insurance in its commonly accepted sense.

13. In the present case, only .0057% of the total premiums paid to the captive entities were paid out in claims during the relevant time period.

14. During that same time, only 38 claims were filed resulting in the total amount paid out of only \$422,702.11. The total amount of premiums paid to the captive companies or entities was \$74,003,517.02.

15. During the tax years 2010 through 2016, the Counterclaim Defendants organized, or assisted in the organization of, and sold interests in purported micro-captive insurance companies.

16. The Counterclaim Defendants also marketed their micro-captive arrangement as a tax advantaged deposit arrangement rather than an insurance product.

17. The marketing efforts of the Counterclaim Defendants and the captive companies or entities demonstrate their focus on:

- a. income and estate tax benefits;
- b. investment returns and wealth accumulation; and
- c. asset protection from potential creditors.

18. As part of their marketing efforts, the Counterclaim Defendants attend conferences hosted by trade groups of pension and retirement plan brokers to promote their captive insurance arrangement as a product that the brokers could sell to their clients.

19. Section 6700 imposes a penalty on persons who organize (or assist in the organization of), or participates (directly or indirectly) in the sale of any interest in, an entity, plan or arrangement and makes or furnishes or causes another person to make or furnish a statement with respect to the allowability of tax deductions or credits, the excludability of any income, or the securing of any other tax benefit by reason of participating in a plan or arrangement which the person knows or has reason to know is false or fraudulent as to any material matter.

20. The micro-captive arrangement operated by the Counterclaim Defendants is a plan or arrangement within the meaning of § 6700.

21. The Counterclaim Defendants made or furnished, or caused others to make or furnish, false or fraudulent statements that claimed the transactions promoted by the Counterclaim Defendants met the requirements for being treated as insurance for federal tax purposes thus providing significant federal tax savings. Because the entities created as part of the micro-captive arrangement did not qualify as insurance companies, these statements were false.

22. The statements the Counterclaim Defendants made were also material because they would have had a substantial impact on the decision-making process of a reasonably prudent investor.

24. The Counterclaim Defendants knew or had reason to know that their statements about the purported tax benefits of the captive transactions they were promoting were false or fraudulent.

25. Counterclaim defendant Raymond Anker, who owned and controlled the other Counterclaim Defendants, is an experienced licensed actuary and a member of the American Academy of Actuaries and the American Society of Pension Professionals and Actuaries.

26. Ankner also holds Florida insurance sales licenses for property and casualty insurance and life insurance

27. Given Ankner's level of education and experience and his control over the other Counterclaim Defendants, Ankner and the other Counterclaim Defendants knew or had reason to know that their statements concerning the purported tax benefits for customers of their captive transactions were false or fraudulent.

28. Based on the Counterclaim Defendants' conduct, a delegate of the Secretary of the Treasury assessed the penalties listed on Exhibit A below.

Exhibit A

Taxpayer	Tax Year	Assessment Date	Assessment Amount
Raymond Ankner	2014	10/19/2020	\$51,995.50
Raymond Ankner	2015	10/19/2020	\$61,723.53
CJA and Associates, Inc.	2010	10/19/2020	\$155,787.50
CJA and Associates, Inc.	2011	10/19/2020	\$391,042.90
CJA and Associates, Inc.	2012	10/19/2020	\$147,171.72
CJA and Associates, Inc.	2014	10/19/2020	\$13,617.32
CJA and Associates, Inc.	2015	10/19/2020	\$53,756.14
CJA and Associates, Inc.	2016	10/19/2020	\$54,322.30
RMC Consultants, Ltd.	2011	10/19/2020	\$65,000.00
RMC Consultants, Ltd.	2012	10/19/2020	\$340,975.00
RMC Consultants, Ltd.	2013	10/19/2020	\$277,435.39
RMC Consultants, Ltd.	2014	10/19/2020 11/2/2020	\$627,593.10 \$30,000.00
RMC Consultants, Ltd.	2015	10/19/2020	\$761,041.75
RMC Consultants, Ltd.	2016	10/19/2020	\$357,750.00
RMC Property & Casualty, Ltd.	2010	10/19/2020	\$29,020.00
RMC Property & Casualty, Ltd.	2011	10/19/2020	\$40,250.00
RMC Property & Casualty, Ltd.	2012	10/19/2020	\$42,967.05
RMC Property & Casualty, Ltd.	2013	10/19/2020	\$118,117.77
RMC Property & Casualty, Ltd.	2014	10/19/2020	\$115,535.18
RMC Property & Casualty, Ltd.	2015	10/19/2020	\$158,801.54
RMC Property & Casualty, Ltd.	2016	10/19/2020	\$15,154.56

29. Notice of the assessments and demand for payment were given to the Counterclaim Defendants on or about the dates of the assessments.

30. Despite notice and demand for payment, the Counterclaim Defendants have not fully paid the balance of these assessments.

31. The outstanding balance of the assessments remains unpaid, with statutory interest and additions continuing to accrue.

WHEREFORE, the United States respectfully requests that the Court enter judgment in its favor and against the Counterclaim Defendants on the unpaid § 6700 penalties, plus statutory interest and additions assessed by the IRS against the Counterclaim Defendants, and grant the United States its costs and such other and further relief as the Court deems just and proper.

Date: September 10, 2021.

Respectfully submitted,

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Acting Assistant Attorney General

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