UNITED STATES DISTRICT COURT
DISTRICT OF NEW HAMPSHIRE

United States of America

v. **Civil No. 08-cv-499-SM**

David M. Hulick
Caroline P. Hulick

NOTICE OF RULING / ORDER

Re: Document No. 120, Motion for Entry of Order Determining US Objection to Order of Magistrate Judge and Vacating Attorney's Fees Order Issued by Magistrate Judge

Ruling: Granted. The United States' objection to the Magistrate Judge's order dated May 30, 2012 (Dkt. No. 98) is sustained, and that order is vacated. Having carefully reviewed the pleadings and the docket, it appears to me that in large part the imposed sanctions followed inevitably from a mistake made by me in granting the joint assented to motion to continue and extend deadlines (Dkt. No. 76) and mooting the motion to continue and extend deadlines (Dkt. No. 71) when, upon reflection, I intended the reverse. The Magistrate Judge correctly concluded that the court considered the discovery deadline extended to allow the depositions of IRS employees before trial. But, I cannot say it was unreasonable for the United States to have viewed the circumstances differently

given the actual rulings entered on the docket. While good practice consistent with the collegiality expected in this district should have resulted in an agreement with respect to those depositions, particularly given the government's apparent agreement in principle to produce the witnesses for deposition, still, the government could have plausibly construed my earlier rulings as justifying a refusal to do so absent an order compelling that result, or an order reopening and extending the discovery period for that purpose, particularly in light of the court's known reluctance to enforce private discovery agreements that are inconsistent with outstanding case management orders.

So ordered.

August 8, 2012

/s/ Steven J. McAuliffe
United State District Court

cc: Counsel of Record