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Income Taxation—Capital Gains—Lump-Sum Distributions from Employees' Pension Plans—Separation from the Service in Corporate Reorganizations—*Victor S. Gittens*.[1] In 1961 the Ford Motor Company acquired Philco Corporation. Ford liquidated Philco and re-incorporated it in Delaware. Most employees of the old Philco continued in their same jobs with the new Philco with duties similar to those under the old employer. The old Philco had maintained a pension plan through a trust qualified under Section 501(a) of the Internal Revenue Code.[2] In anticipation of the acquisition by Ford, Philco amended the plan to allow lump-sum distributions to participating employees. The new provision allowed employees to withdraw their accrued benefits under the plan as a lump-sum distribution at the date of the acquisition by Ford, or to leave their share in the trust until death or other separation from the service of the successor corporation. After the acquisition by Ford and the reorganization, the new Philco adopted the plan and notified each employee of his right to elect a lump-sum distribution.

Gittens, a former employee of the old Philco, now working for the new Philco, elected to receive the lump-sum distribution. On his income tax return for the year 1962 he reported the distribution as a long term capital gain pursuant to Section 402(a)(2) of the Code.[3] The Commissioner reported a deficiency contending that Gittens did not qualify under section 402(a)(2) for capital gains treatment since he had not separated from the service as required by that provision. Gittens then sought relief in the Tax Court. HELD: Even though the cause of a distribution may relate back to a corporate reorganization, there is no "separation from the service" within the meaning of section 402(a)(2) of the Code when a corporate liquidation incident to a reorganization does not include a substantial change in the make-up of employees.[4]

The importance of private pension programs cannot be overstated.[5] Congress, recognizing their value, has made pension and profit-sharing plans the object of special grace in tax treatment. The present tax law encourages the establishment of these plans by allowing employers a deduction for

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[1] 49 T.C. 419 (1968).

[2] Int. Rev. Code of 1954 [hereinafter referred to as the Code], § 501(a).

[3] Code § 402(a)(2). This section provides:

Capital gains treatment for certain distributions.—In the case of an employees' trust described in section 401(a), which is exempt from tax under section 501(a), if the total distributions payable with respect to any employee are paid to the distributee within 1 taxable year of the distributee on account of the employee's death or other separation from the service, or on account of the death of the employee after his separation from the service, the amount of such distribution, to the extent exceeding the amounts contributed by the employee (determined by applying section 72(f)), which employee contributions shall be reduced by any amounts theretofore distributed to him which were not includable in gross income, shall be considered a gain from the sale or exchange of a capital asset held for more than 6 months. . . .

[4] Victor S. Gittens, 49 T.C. 419 (1968).

[5] For a discussion of the importance of private pension and profit-sharing programs, see Public Policy and Private Pension Programs, President's Committee on Corporate Pension Funds and Other Private Retirement and Welfare Programs (1965).

contributions to pension or profit-sharing funds,[6] the trust itself being exempted from taxation.[7] For the avoidance of "income bunching," lump-sum distributions to employees may be treated as long term capital gains in some circumstances.[8]

Capital gains treatment is permissible under section 402(a)(2) when the following four conditions are met: 1) there has been a lump-sum distribution; 2) the distribution is made within a single taxable year; 3) there has been a "separation from the service"; 4) and the distribution was made "on account of" that separation from the service. There has been little problem in determining whether there has been a lump-sum distribution or whether that distribution was made within a single taxable year.[9] There are problems, however, in determining whether a separation from the service has occurred, and whether subsequent distributions are made "on account of" that separation. These problems are particularly troublesome in the area of corporate reorganizations.

All separations from the service involve changes in the employment relationship.[10] Corporate reorganizations invariably effect changes in the employment relationship, but the courts have formulated special rules to determine which of these changes constitutes a "separation from the service" under section 402(a)(2). Furthermore, the complexity of many reorganizations makes it difficult to establish the prerequisite causal relationship between a separation from the service and the actual distribution. In *Gittens,* which involved a corporate reorganization, the court established new rules for determining when a separation from the service occurs and when that separation is the cause of the distribution within the meaning of section 402(a)(2).

Separation from the service. The death of an employee[11] and his retirement or discharge[12] are clear instances of changes in the employment relationship which constitute a separation from the service. Not all changes in the employment relationship constitute a separation from the service, however. Promotion and transfer from one city to another are not included within the meaning of separation from the service, although they are changes in the employment relationship.[13]

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[6] See Code § 404(a).

[7] See Code § 501.

[8] See Code § 402(a)(2). In addition, it is inherent in such plans that benefits represent a form of deferred compensation which will normally be paid to an employee after retirement and therefore will be taxed at lower rates.

[9] Cf. Beecher v. United States, 226 F. Supp. 547, 550 (N.D. Ill. 1963).

[10] See United States v. Martin, 337 F.2d 171, 174 (8th Cir. 1964). See generally 4A Mertens, Law of Federal Income Taxation § 25B.52 (1966).

[11] See Code § 402(a)(2).

[12] See Thomas E. Judkins, 31 T.C. 1022, 1027 (1959).

[13] Estate of Frank B. Fry, 19 T.C. 461, 464 (1952), aff'd per curiam, 205 F.2d 517 (3d Cir. 1953), and Edward Joseph Glinske, Jr., 17 T.C. 562, 565 (1951), where separation from the service was interpreted to mean separation from the service *of the employer.* Many cases have been decided on this point. See United States v. Martin, 337 F.2d 171, 176 (8th Cir. 1964), and United States v. Johnson, 331 F.2d 943, 954 (5th Cir. 1964) (where the identity of the corporate employer remained the same, but its beneficial ownership changed); McGowan v. United States, 175 F. Supp. 364, 366 (E.D. Wis. 1959),

Early cases established that the change in the employment relationship which occurs in a corporate reorganization could constitute a separation from the service. In *Mary Miller*,[14] a change in the beneficial ownership of a corporation followed by the liquidation of the acquired corporation was held to be a separation from the service. The employment relationship in *Miller* was changed in that the employees no longer worked for their former corporate employer but for its successor. A similar conclusion was reached in *Lester B. Martin*[15] even though the acquired corporation was not liquidated until some time after the acquisition effected a change in the beneficial ownership.[16] The Internal Revenue Service in a series of 1958 Revenue Rulings conceded that a liquidation could constitute a separation from the service even though the employees of the corporation continued to work in similar jobs for the successor corporation.[17]

The rule developed in *Miller* could lead to incongruous results. For example, if a subsidiary of Ford had acquired Philco, rather than Ford itself as in *Gittens*, Ford might have decided not to liquidate Philco, but to merge it with the acquiring subsidiary. If Philco were the company surviving the merger there would be no "separation from the service" for its employees,[18] but there would be a separation from the service for the employees of the subsidiary corporation.[19] On the other hand, if the subsidiary survived the merger and Philco disappeared, there would be a separation from the service for Philco employees, because the identity of their corporate employer had changed when Philco was liquidated, but there would be no separation from the service for the employees of the acquiring subsidiary.[20] Obviously, there is little real difference in either situation since the employer's ownership and operation would be the same no matter which corporate entity Ford deemed most convenient to survive. In spite of such difficulties with this rule, it was assumed that the basis of *Miller* was correct and that liquidation of a corporation could constitute a separation from the service for its em-

aff'd, 277 F.2d 613 (7th Cir. 1960); William S. Bolden, 39 T. C. 829, 831-33 (1963); and Harry K. Oliphint, 24 T.C. 744, 749 (1955) (where the employee continued to work in some capacity for the corporate employer). See also Rev. Rul. 56-214, 1956-1 Cum. Bull. 196.

14 22 T.C. 293 (1954), aff'd per curiam, 226 F.2d 618 (6th Cir. 1955), nonacquiescence in 1955-1 Cum. Bull. 8 acquiesced in, 1958-1 Cum. Bull. 5. In *Miller*, the taxpayer was an employee of a corporation which was acquired by another company. All employees were transferred to the acquiring company. The former employer was liquidated and its pension plan was terminated.

15 26 T.C. 100 (1956), acquiesced in, 1958-1 Cum. Bull. 5.

16 In *Martin*, the taxpayer was employed by the subsidiary of another corporation. All assets and all employees of the subsidiary were transferred to the parent corporation and the subsidiary was liquidated. As in *Miller*, the former employer's plan was terminated when the subsidiary was liquidated.

17 Compare Rev. Rul. 59-99, 1958-1 Cum. Bull. 202 with Rev. Ruls. 58-94 through 58-98, 1958-1 Cum. Bull. 194, 197, 200, 201, 202 and Rev. Rul. 58-383, 1958-2 Cum. Bull. 147.

18 See United States v. Martin, 337 F.2d 171 (8th Cir. 1964). Cf. Rev. Rul. 58-99, 1958-1 Cum. Bull. 202.

19 Cf. Lester B. Martin, 26 T.C. 100 (1956), acquiesced in 1958-1 Cum. Bull. 5; Rev. Ruls. 58-94 through 58-98, supra note 17. But see United States v. Johnson, 331 F.2d 943, 951 (5th Cir. 1964) (dictum).

20 Supra note 18.

ployees even if they continued at very similar employment with the corporation's successor.[21]

This assumption was challenged in *United States v. Johnson.*[22] Although that case was decided on another issue, the majority's analysis of the legislative history of sections 402(a)(2) and 402(e) of the Code strongly indicated that no corporate reorganization could constitute a separation from the service unless it included a "substantial change in the make-up of employees."[23] *Gittens* used the dicta in *Johnson* and the legislative history to which it referred as the grounds for its holding.

The majority in *Gittens* reasoned that the adoption of section 402(e) by Congress in 1954 and the legislative history of that section clearly indicated a change in the law, and that *Miller* no longer provided a correct statement of the instances in which a separation from the service occurred in a corporate reorganization.[24]

The court's examination of the legislative history of section 402 may be summarized as follows: When the 1954 Code was being drafted, the Senate feared that certain abuses might be possible under the *Miller* rule. When the House bill appeared to continue the *Miller* rule in force,[25] the Senate changed the bill to exclude from the meaning of separation from the service all corporate reorganizations not including a substantial change in the make-up of employees.[26] This exclusion by the Senate was finally incorporated in the Act as evidenced by section 402(e)[27] which limits application of the *Miller* rule to 1954 only. The inclusion of the rule for 1954 was intended to avoid hardship for those who might have relied on *Miller,* which had been decided in the previous year.[28]

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[21] See Haggart v. Rockwood, 274 F. Supp. 817, 818 (D.N.D. 1967).

[22] 331 F.2d 943 (5th Cir. 1964). In *Johnson,* the taxpayer's employer was purchased by the subsidiary of another company. The parent merged the subsidiary and the taxpayer's employer. The taxpayer's employer was the surviving company and it remained a subsidiary of the parent company. The taxpayer's employer then terminated its pension plan and distributions were made to employees at that time. The court held that there was no separation from the service and that the distributions were made only on account of the termination of the plan.

[23] Id. at 947-49. But see Haggart v. Rockwood, 274 F. Supp. 817, 819-20 (D.N.D. 1967).

[24] 49 T.C. at 424-25.

[25] See H.R. Rep. No. 1337, 83d Cong., 2d Sess. (1954), 3 U.S. Code Cong. and Ad. News 4017, 4285-86 (1954).

[26] See S. Rep. No. 1622, 83d Cong., 2d Sess. (1954), 3 U.S. Code Cong. and Ad. News 4621, 4685-86, 4928-29 (1954).

[27] See H.R. Rep. No. 2543, 83d Cong., 2d Sess. (1954), 3 U.S. Code Cong. and Ad. News 5280, 5301-03 (1954). This is the Conference Committee report. Code § 402(e) provides in pertinent parts:

> Certain plan terminations—For purposes of subsection (a)(2), distributions made after December 31, 1953, and before January 1, 1955, as the result of the complete termination of a stock bonus, pension, or profit-sharing plan of an employer which is a corporation, if the termination of the plan is incident to the complete liquidation, occurring before the date of the enactment of this title, of the corporation, . . . shall be considered to be distributions made on account of separation from service.

[28] United States v. Johnson, 331 F.2d 943, 949 (5th Cir. 1964); S. Rep. No. 1622, 83d Cong., 2d Sess. (1954), 3 U.S. Code Cong. and Ad. News, supra note 26, at 4685-86.

The precise abuse which the Senate feared is not detailed either in the legislative history of section 402 or in *Gittens*. Apparently, the Senate feared that the owners of closely held corporations could easily deflect into a qualified plan funds normally used for salaries or dividends. Periodically, the corporation could be liquidated and the funds distributed in a lump sum. The Senate feared that benefits thus gained would be taxed as long term capital gains.[29] It felt that benefits received in this way should be taxed as ordinary income.[30]

There was dispute in *Gittens* over how great a change the Senate had made to prevent the abuses which it foresaw. The majority felt that the Senate instituted a broad change in the meaning of separation from the service and excluded *all* liquidations incident to reorganizations which did not involve a substantial change in the make-up of employees.[31] A concurring judge felt that more narrow reform was intended by the Senate, and that only the liquidation of *closely held* corporations need include substantial changes in the make-up of employees in order to constitute separation from the service.[32]

The interpretation suggested in the concurring opinion does have appeal, but it is not convincing. It is appealing because it narrows the reform to deal only with the threatening abuse without changing the tax treatment accorded to less suspect liquidations. There is some support in the committee reports for this view since the reports do not criticize *all* reorganizations, but only reorganizations which might be arranged merely to take advantage of the capital gains provision.[33] However, this interpretation, while plausible on its face, fails upon a reading of section 402(e). Section 402(e) was intended to include in the meaning of "separation from the service" for 1954 only those occasions which the Senate had decided to exclude from section 402(a)(2). If a more narrow revision of the definition of "separation from the service" had been intended by the Congress, the language of 402(e) would have been made correspondingly narrow. The broad language of 402(e) is unmistakable.

Although the rationale of the majority in *Gittens* is correct, its impact is unfortunate. Congress has denied capital gains treatment to employees who receive lump-sum distributions in most corporate reorganizations, even though it continues to grant capital gains treatment to distributions made under similar circumstances. Many corporate reorganizations necessitate the distribution of pension benefits to participants in the plan. Typically, such a need arises after the liquidating corporation has transferred all of its employees and assets to the acquiring corporation. At this point the liquidating corporation still has a pension trust to administer, and it may dis-

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[29] See Hearings on H.R. 8300 before the Senate Comm. on Finance, 83d Cong., 2d Sess., pt. 1, at 572 (1954).

[30] See S. Rep. No. 1622, 83d Cong., 2d Sess. (1954), 3 U.S. Code Cong. and Ad. News, supra note 26.

[31] 49 T.C. at 425.

[32] Id. at 428-29.

[33] See S. Rep. No. 1622, 83d Cong., 2d Sess. (1954), 3 U.S. Code Cong. and Ad. News, supra note 26, at 4685.

tribute the trust benefits in a lump sum simply to avoid overseeing the administration of periodic payments.

"Income bunching" can have a substantial effect on the employee's tax rate for the year in which he receives the distribution. It was precisely this effect which Congress intended to eliminate by granting capital gains treatment to lump-sum distributions in other situations.[34] It has not been explained why all employees who receive lump-sum distributions because of the liquidation of their employer during a reorganization which does not include a substantial change in the make-up of employees should be denied capital gains treatment while such relief is afforded to the employees of corporations which liquidate under other circumstances.[35] Different treatment for distributions made to employees of closed corporations can be justified because a high potential for abuse exists in the reorganization of closed corporations. Some beneficiaries of the pension plan of a closed corporation may also be the owners of the corporation and, therefore, in a position to force a sham reorganization. No adequate justification for Congress' decision to deny capital gains treatment to employees who do not have such power has yet been given. Congress need not have made its revision so broad if abuse by closely held corporations was its only fear. In several areas, Congress closed loopholes by narrowly defining closely held corporations and by specifying different tax treatment for them.[36]

The solution chosen by Congress is particularly unfortunate since the loophole which it was trying to close may not have existed at all. A close scrutiny of the facts in *Miller* reveals a change in the beneficial ownership of the corporation as well as a liquidation. Sham reorganizations of closed corporations undertaken merely to obtain capital gains treatment would only rarely involve a change in the beneficial ownership of the corporation. A significant change in the ownership of a corporation would almost always indicate that there had been some other reason for the reorganization. If *Miller* was narrowly limited to its facts, no sham reorganizations could meet its requirements and no loophole would exist. Furthermore, existing Treasury regulations under the 1939 Code made it difficult to arrange sham pension plans.[37] This regulation alone probably would have sufficed to elim-

[34] Cf. United States v. Johnson, 331 F.2d 943, 954 (5th Cir. 1964); Eckerman, The Unrationalized Capital Gains Treatment of Lump-Sum Termination Distributions from Qualified Pension, Profit-Sharing and Annuity Plans, 7 Syracuse L. Rev. 1, 4 (1955).

[35] A series of 1958 Revenue Rulings demonstrates that even the Internal Revenue Service was willing to grant relief in situations where a lump-sum distribution was made because of a corporate reorganization. See Rev. Ruls. 58-94 through 58-98, Rev. Rul. 58-383, supra note 17. And, in 1958, the Internal Revenue Service acquiesced in the *Mary Miller* and *Lester B. Martin* decisions. See 1958-1 Cum. Bull. 5. It is difficult to understand why the Internal Revenue Service later reversed its position and pressed for the result reached in *Gittens*. It is clear from the Government's brief in *Gittens*, however, that the Government did change its position. See Brief for the Respondent at 20-23, Victor S. Gittens, 49 T.C. 419 (1968).

[36] E.g., Code § 1239 where capital gains treatment is denied for certain dealings between a closed corporation and its controlling shareholder. Capital gains treatment is allowed in similar transactions which do not involve closely held corporations. See Code § 1231.

[37] See Reg. 111, Sec. 29.165-1, 3 CCH 1953 Stand. Fed. Tax Rep. ¶ 1150A. This

inate the abuse which Congress feared. The long-run effects of the *Gittens* decision on "separation from the service" may be harmful to many employees in the future, but the *Gittens* court merely enforced the law as it was written by Congress.[38] If a change is to be made, Congress must make it.[39]

Causation. When inquiring into causation, the courts have distinguished two basic situations in corporate reorganizations: those in which a successor corporation *does not* adopt the pension plan and those in which the successor *does* adopt the plan. Where there is no adoption of the plan by the successor corporation, the courts have viewed distributions made to employees of the liquidated corporation as having been made on account of their separation from the service even if the employees transferred to the successor corporation.[40] The transfer of employees to the successor corporation was apparently considered to be a "mass" separation from the service of the liquidated corporation which vested a right to the distribution in the separated employees.

In cases where the plan was adopted by the successor corporation, the courts came to a different conclusion.[41] The adoption of the plan was seen as establishing a new employer-under-the-plan, and, therefore, only a separation from the service of *that* employer would occasion capital gains treatment. Any separation from the service of the former employer was irrelevant. If the successor corporation terminated the plan after its adoption, the courts denied capital gains treatment to resulting distributions. Courts would often ascribe their decisions to the fact that the distribution was made on account of the termination of the plan, or whatever contemporaneous event appeared to cause the distribution.[42] Although in such cases the courts constantly speak of causation, it would appear that the real reason for the decisions was the lack of separation from the service of the proper employer, the present employer-under-the-plan. In spite of this apparent confusion of the issues, courts were consistent in their result: capital gains treatment was

regulation requires, for example, that plans be permanent rather than temporary in nature and it disqualifies plans which "amount to subterfuge for the distribution of profits to shareholders." See also Gregory v. Helvering, 293 U.S. 465 (1935), where the Court disregarded a reorganization which was arranged solely for tax purposes.

38 A measure of relief is available to employees who receive lump-sum distributions if they can qualify under Code §§ 1301-05 for "income averaging" relief. This relief is not available to all, and it serves only to reduce, not to eliminate, the inequality of tax treatment.

39 Some proposed changes require a different method for granting relief to recipients of lump-sum distributions. Accrual of income, proration, income averaging and other schemes have been suggested. See generally Eckerman, supra note 34. The President's Committee on Corporate Pension Funds and Other Private Retirement and Welfare Programs has recommended income averaging in place of the present capital gains device. See Public Policy and Private Pension Programs, supra note 5, at 65. The Committee suggested income averaging for reasons divorced from the problem mentioned above, but enactment of such a device may well have the incidental merit of solving the difficulties raised by section 402(a)(2).

40 See Mary Miller, 22 T.C. 293 (1954), nonacquiescence in 1955-1 Cum. Bull. 8, acquiesced in, 1958-1 Cum. Bull. 5; Lester B. Martin, 26 T.C. 100 (1956), acq. 1958-1 Cum. Bull. 5.

41 Rybacki v. Conley, 340 F.2d 944 (2d Cir. 1955); Jack E. Schlegel, 46 T.C. 706 (1966); Clarence F. Buckley, 29 T.C. 455 (1957).

42 See E.N. Funkhouser, 44 T.C. 178, 184-85, aff'd, 375 F.2d 1 (4th Cir. 1967), where a request by the employee was considered the cause of the distribution.

always denied if the successor corporation adopted the plan and later terminated it.

The obvious shortcoming of this view is that an employee's separation from his old employer may well have been the dominant cause of the distribution even though the plan had been adopted by the successor corporation. Some recognition of this possibility came in *Jack E. Schlegel*.[43] There, the Tax Court indicated in dicta that separation from the service of the liquidating corporation might be considered the cause of a distribution made by its successor if the successor's adoption was made merely to provide a "breathing spell" in which to effect the orderly termination of the plan. Until *Gittens*, however, the courts never related any distribution back to a cause which occurred prior to the adoption of the plan.

If the court in *Gittens* had not been willing to look back to the acquisition by Ford, it could have used the lack of a separation from the employer-under-the-plan (the new Philco) to decide the case against Gittens. If the court had followed the traditional rationale and found that the distribution was not made on account of separation from the service of the correct employer, it would most likely have held that the distribution was made on account of the election by Gittens to receive the lump-sum distribution because that election was the only contemporaneous event which could explain the distribution.

In *Gittens* the court reasoned that since the distribution "related back" to the reorganization and was causally connected with it, then the distribution was made "on account of" that reorganization. It pointed out that, although the adoption by the new Philco was more than a breathing spell, only a few weeks had elapsed between the liquidation of the old Philco and the announcement of the employees' right to a lump-sum distribution by the new Philco. That right had been secured for the employees by the old Philco when the plan was amended in anticipation of the reorganization with Ford.

It should be noted, however, that in some respects *Gittens* was an easy case in which to ignore the adoption of the plan by the new Philco since the employees' election privilege was announced only a few weeks after the liquidation of the succeeded corporation. And, the only other cause which the court might have found, the election of the lump-sum distribution by Gittens, was itself created by the old Philco in anticipation of the impending reorganization. The plan was not terminated by the new Philco and, in fact, the new Philco was only remotely connected with the distribution to Gittens. It was relatively easy, then, for the court to look back to the old Philco to find the cause of the distribution.

Future cases may involve much more activity by the successor corporation than did *Gittens*, and it will be more difficult for a court to relate the distribution back to the reorganization. For example, the activity of the successor corporation will be much more important if the successor adopts the plan and terminates it some time later. But the language in *Gittens* is so broad that it appears likely that many post-adoption distributions—even

[43] 46 T.C. 706 (1966).

plan terminations—could qualify as being causally connected with the reorganization. If this is so, and if these reorganizations can qualify as separations from the service under the new *Gittens* test, then capital gains relief will be available. This new approach appears more rational than the older more formal approach to causation, since it considers what Congress surely intended that it consider: the actual cause for a distribution.

Conclusion: Even though *Gittens* has liberalized the test for determining the cause of a distribution when the distribution is made after an adoption by a successor corporation, it is clear that the net effect of the decision is the drastic curtailment of capital gains relief for employees receiving lump-sum distributions made in a reorganization situation. The new test rules out capital gains relief in a great number of corporate reorganizations. Except in reorganizations where a substantial change in the make-up of employees occurs, capital gains treatment will be denied. With this restrictive view of separation from the service, the liberal changes made by the case in the area of causation have almost no practical effect. One may assume that corporate reorganizations will only rarely produce section 402(a)(2) relief for employees in the future.

Congress, in its anxiety to protect against possible abuses under section 402, apparently desired the result reached in *Gittens*. But such broad-brush treatment is of doubtful wisdom. *Gittens* makes manifest the need for legislative reappraisal of section 402(a)(2).

JOHN P. BIRMINGHAM, JR.

Antitrust—Summary Judgment—Discovery—*First Nat'l Bank v. Cities Service Co.*[1]—On June 11, 1956, Gerald B. Waldron, hereinafter referred to as petitioner, instituted a private antitrust action under the Sherman Act against seven large oil companies.[2] Petitioner had an agreement to purchase oil from the National Iranian Oil Company (NIOC), which had been organized to handle the nationalized oil holdings of the Anglo-Iranian Oil Company.[3] He was in turn negotiating to sell this oil to Cities Service Co., one of the defendants. Petitioner accused Cities of joining in a conspiracy already established by the six other defendant companies to boycott Iranian oil. The purpose of the alleged boycott was to compel NIOC to return the property to Anglo-Iranian.

Cities was in need of substantial amounts of crude oil and had long desired an independent supplier in the Middle-East.[4] Petitioner's original claim was that Cities could satisfy this need by purchasing from him the oil which he commanded under his agreement with NIOC. However, according to petitioner, as the result of a bribe from the other defendant com-

[1] 391 U.S. 253 (1968). The majority opinion was written by Mr. Justice Thurgood Marshall.

[2] Id. at 259.

[3] Id. at 259-60.

[4] Id. at 275.