33 The claims for punitive damages, especially the claim in No. 2791, were serious claims that undoubtedly figured prominently in the settlement negotiations and final settlement agreement. In No. 1650, the petitioner pressed a claim for treble damages under section 4 of the Clayton Act. Hartford had already been found guilty of violating Federal antitrust laws and the judgment was affirmed by the United States Supreme Court. In No. 2791, the Circuit Court of Appeals for the Third Circuit ruled that the petitioner should receive punitive damages and prepared the way for a large award by scathingly denouncing the fraud of which the petitioner had been a victim, and by stating that "In those circumstances, the trial court has power to inflict such damages, having in view the enormity of * * * [the] offense rather than the measure of compensation * * *." Hartford had earned large profits as a result of those fraudulent practices.

The sum of $813,358.24 received as a lump settlement will be apportioned in the manner set forth in our findings and the tax thereon will be computed as we have determined herein.

The parties have agreed that the legal fees incurred in the litigation and settlement of the several claims against Hartford should be allocated between the claims in the same proportion as the settlement proceeds are allocated. They further agreed that the fees allocated to the claims that gave rise to taxable income are deductible as an ordinary and necessary business expense, and that the fees allocated to the claims that did not give rise to taxable income are not deductible.

Decision will be entered under Rule 50.

34

DECISION

Pursuant to the Opinion of the Court promulgated August 13, 1952, the respondent herein, on December 1, 1952, filed a recomputation for entry of decision, the petitioner's acquiescence in the respondent's recomputation being noted thereon. Wherefore, it is

ORDERED and DECIDED: That there is no deficiency in income tax for the taxable year ended September 30, 1948, and that there is an overpayment in income tax for the taxable year ended September 30, 1948, in the amount of $85,709.20, all of which was paid after the mailing of the notice of deficiency.

Entered: Dec. 3, 1952.

(Signed) ERNEST H. VAN FOSSAN
Judge

35 The Tax Court of the United States

Docket No. 29450

WILLIAM GOLDMAN THEATRES, INC., *Petitioner*

v.

COMMISSIONER OF INTERNAL REVENUE, *Respondent*

DOCKET ENTRIES

1950

July 7. Petition received and filed. Taxpayer notified. Fee paid.

July 7. Copy of petition served on General Counsel.

Aug. 4. Answer filed by General Counsel.

Aug. 4. Request for Hearing in Philadelphia, Penna. filed by General Counsel.

Aug. 8. Notice issued placing proceeding on Philadelphia calendar. Service of Answer and Request made.

Dec. 19. Hearing set February 26, 1951, Philadelphia, Penna.

1951

Jan. 18. Motion for continuance to the next Philadelphia calendar filed by petitioner. 1-19-51—Granted.

June 25. Hearing set September 17, 1951, Philadelphia, Pa.

Aug. 10. Entry of appearance of Samuel H. Levy, as counsel filed.

36 Aug. 10. Entry of appearance of Bernard Wolfman as counsel filed.

Aug. 15. Motion for continuance to next Philadelphia calendar filed by taxpayer. Granted.

Aug. 21. Entry of appearance of D. Hays Sohs-Cohen, as counsel filed.

Aug. 28. Motion to withdraw as counsel Daniel J. Hanlon, filed. Granted as to J. Daniel Hanlon.

Nov. 8. Hearing set January 21, 1952, Philadelphia, Pa.

1952

Jan. 21. Hearing had before Judge Johnson on merits. Stipulation of facts with exhibits filed. Briefs March 21, 1952. Replies April 30, 1952.

Jan. 30. Transcript of Hearing 1-21-52 filed.

Mar. 10. Joint motions to correct official record filed. Granted.

Mar. 14. Motion for extension to May 20, 1952 to file brief, filed by General Counsel. 3-19-52 Granted to May 21, 1952.

the Court of Appeals for the Third Circuit filed August 11, 1947.

1952

Mar. 18. Motion for extension to May 21, 1952 to file brief, filed by taxpayer. 3/19/52—Granted.

May 20. Brief filed by taxpayer. Copy served 5/21/52.

May 20. Brief filed by General Counsel.

June 19. Reply Brief filed by General Counsel.

June 20. Reply Brief filed by taxpayer. 6/20/52 copy served.

Nov. 28. Motion for leave to file the attached supplemental reply brief, brief lodged filed by taxpayer. 12/2/52—Granted. 12/3/52 Copy served.

1953

Jan. 9. Findings of Fact and Opinion rendered. Judge Johnson. Decision will be entered under Rule 50. Copy served.

37 Mar. 18. Agreed Computation for entry of decision filed.

Mar. 25. Decision entered. Le Mire, Judge. Div. 5.

June 24. Petition for Review by U. S. Court of Appeals for the Third Circuit filed by General Counsel.

June 24. Notice of filing petition for review mailed to Samuel H. Levy, filed.

June 30. Proof of Service of filing petition for review from Samuel H. Levy, filed.

July 23. Proof of Service of petition for review filed.

July 29. Motion for extension of time to 9/22/53 to prepare, transmit and deliver record on review, filed by General Counsel.

July 30. Order enlarging time to 9/22/53 to file and docket record on appeal, entered.

Aug. 21. Motion to retain original exhibits until 10 days prior to hearing filed by General Counsel.

Aug. 24. Statement Re Diminution of record filed by Respondent with statement of service thereon.

Aug. 25. Order of Tax Court directing that original exhibits be held here until 10 days before hearing, entered.

Stipulation of Facts

It is hereby stipulated with respect to the above captioned proceeding that the following statements may be accepted as facts and that this stipulation shall be without prejudice to the right of either party to introduce other and further evidence at the trial of this case not inconsistent with the facts herein stipulated.

1. The petitioner is a Delaware corporation duly authorized to do business in the Commonwealth of Pennsylvania and has its principal place of business in the Goldman Theatre Building, 15th and Chestnut Streets, Philadelphia, Pennsylvania.

38 2. The petitioner's income tax return for the taxable year 1948, the year herein involved, was filed with the Collector of Internal Revenue for the First District of Pennsylvania at Philadelphia.

3. The taxes in controversy are income taxes for the taxable year 1948.

4. The petitioner's business during the year herein involved consisted of the operation of motion picture houses and the exhibition therein of motion pictures produced and distributed by other persons and corporations.

5. On December 8, 1942, the petitioner instituted a civil action in the District Court of the United States for the Eastern District of Pennsylvania (Civil Action 2877) against Loew's, Inc., Paramount Pictures, Inc., RKO Radio Pictures, Inc., Twentieth Century Fox Film Corporation, Columbia Pictures Corporation, Warner Bros. Pictures, Inc., Vitagraph, Inc., Warner Bros. Circuit Management Corporation, Stanley Company of America, Inc., Universal Corporation, Universal Film Exchanges, Inc., and United Artists Corporation. A copy of the Complaint filed by the petitioner, as plaintiff in the action, is attached hereto, made part hereof, and designated Exhibit "1-A".

6. After the case was at issue, the District Court heard evidence relating to the primary issue of the existence of a conspiracy, on the basis of which judgment was entered in favor of the defendants therein: *William Goldman Theatres, Inc.* v. *Loew's, Inc. et al.*, 54 F. Supp. 1011 (D.C., E.D., Pa. 1944), which opinion

39 is incorporated herein by reference.

7. On appeal, the Court of Appeals for the Third Circuit reversed the judgment of the District Court, holding that a conspiracy existed as charged: *William Goldman Theatres, Inc.* v. *Loew's, Inc. et al.*, 150 F. 2d 738 (C.A. 3rd 1945), which opinion is incorporated herein by reference.

8. Pursuant to an agreement of the parties, the petitioner offered no evidence relating to the issue of damages at the first stage of the trial, pending the Court's decision on the question of liability under the Sherman Act. After the Court of Appeals for the Third Circuit held the evidence sufficient to sustain the charge of conspiracy in restraint of trade, the District Court heard evidence directed solely to the question of damages.

9. On September 10, 1946, the District Court Judge made his findings with respect to damages, which damages were based on the petitioner's loss of profits at the Erlanger Theatre. The Court's finding is as follows:

> "I, therefore, find as a fact that the plaintiff, but for the wrongful acts of the defendants, would have earned profits at the Erlanger Theatre amounting to $125,000 during the damage period."

The opinion of the District Court Judge setting forth his findings of fact and his conclusions of law with respect to the dam-
40 age question is officially reported as *William Goldman Theatres, Inc.* v. *Loew's, Inc. et al.*, 69 F. Supp. 103 (D.C., E.D., Pa. 1946), and a copy of that opinion is attached hereto, made part hereof, and designated Exhibit "2-B".

10. On December 18, 1946, the District Court entered a final decree based on the findings as set forth in the opinion of September 10, 1946. Paragraph 4 thereof provides:

> "The amount of the plaintiff's damages is $125,000 and the defendant shall pay to the plaintiff threefold that amount, or $375,000. Interest to date is not allowed."

A copy of said decree is attached hereto, made part hereof, and designated Exhibit "3-C".

11. On January 7, 1947, the defendants filed an appeal from said decree with the Court of Appeals for the Third Circuit. Prior to argument of said appeal, however, the defendants petitioned the Court of Appeals for the Third Circuit for leave to apply to the District Court for permission to file a Bill of Review. The petition was denied on August 11, 1947, in an opinion officially reported as *William Goldman Theatres, Inc.* v. *Loew's, Inc. et al.*, 163 F. 2d 241 (C.A. 3rd 1947), which opinion is incorporated herein by reference.

12. On January 6, 1948, the Court of Appeals for the Third Circuit affirmed the judgment of the District Court in a *per curiam* opinion: *William Goldman Theatres, Inc.* v. *Loew's, Inc. et al.*, 164 F. 2d 1021 (C.A. 3rd 1948), which opinion is incorporated herein by reference. Certiorari was subsequently denied by the Supreme Court of the United States, 334 U. S. 811
41 (1948).

13. On May 28, 1948, the defendants, pursuant to paragraph 4 of said decree, paid the petitioner the sum of $375,000.

14. Of the foregoing amount of $375,000, the petitioner, in its income tax return for the year 1948, included in gross income the amount of $125,000. The balance of the $375,000 was not included in the petitioner's gross income for the year herein involved.

15. The amount of $4423 disallowed by the respondent in the notice of deficiency dated April 12, 1950, represents expenditures for capital items in the taxable year 1948 and is not deductible in said year. It is agreed that a decision on such basis may be entered under Rule 50 of The Tax Court's Rules of Practice.

16. In addition to the amount heretofore allowed to the petitioner by respondent as a deduction from gross income for Pennsylvania foreign franchise tax for the taxable year 1948, petitioner is entitled to deduct $2750 for Pennsylvania foreign franchise tax. It

is agreed that a decision on such basis may be entered under Rule 50 of The Tax Court's Rules of Practice.

(S.) SAMUEL H. LEVY,
(S.) BERNARD WOLFMAN,
Counsel for Petitioner.
(S.) MASON B. LEMON,
J.F.W.
Acting Chief Counsel
Bureau of Internal Revenue

42 FINDINGS OF FACT AND OPINION OF THE TAX COURT

Docket No. 29450. Promulgated January 9, 1953.

Income—Punitive Damages.—Petitioner, as an injured party, received a damage judgment in an antitrust suit. *Held*, one-third of the award was compensatory damages for loss of profits and taxable as income. *Held, further*, that two-thirds of the award was punitive damages and not taxable.

Samuel H. Levy, Esq. and *Bernard Wolfman, Esq.*, for the petitioner.

Jules I. Whitman, Esq., for the respondent.

The respondent determined deficiencies in petitioner's income tax for the years 1947 and 1948 in the amounts of $1,847.19 and $924.70, respectively. The deficiency determined for the year 1947 is not in issue.

Two of the three allegations of error for the year 1948 were resolved by stipulation of the parties. The sole remaining issue before us is whether a two-thirds portion of the aggregate award received by petitioner in an antitrust suit was taxable income.

Findings of Fact

The facts are stipulated and are so found.

The petitioner is a Delaware corporation authorized to do business in the Commonwealth of Pennsylvania and has its principal place of business at Philadelphia, Pennsylvania. Petitioner's
43 income tax return for 1948 was filed with the collector of internal revenue for the district of Pennsylvania.

Petitioner's business during the year 1948 consisted of the operation of motion picture houses and the exhibition of motion pictures produced and distributed by other persons and corporations. On December 8, 1942, petitioner instituted a civil action in the District Court of the United States for the Eastern District of Pennsylvania against certain motion picture distributors; peti-

tioner alleged that the named defendants violated the Federal antitrust laws. The action was brought under section 4 of the Act of Congress of October 15, 1914, entitled "An Act to supplement existing laws against unlawful restraints and monopolies and for other purposes," as amended and supplemented (15 U.S.C.A. 15), commonly known as the Clayton Act, and sections 1 and 2 of the Act of Congress of July 2, 1890, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies" (15 U.S.C.A. 1), said Act being commonly known as the Sherman Anti-Trust Act, and the Act of Congress of June 19, 1936 (15 U. S. C. A. 13), commonly known as the Robinson-Patman Act. Petitioner's complaint was in part as follows:

> 28. As a result of the discrimination against plaintiff which defendants accomplished through said monopoly, plaintiff has been unable to operate the Erlanger Theatre and has thereby suffered great loss and damage, to-wit, the sum of $450,000.00.

44 WHEREFORE, plaintiff prays:

* * * * * *

> (c) That the defendants be decreed to pay to the plaintiff triple all such damages as may have been sustained by the plaintiff as above, to wit, the sum of $1,350,000.00.

After the case was presented to the district court a judgment was entered in favor of the defendants. *William Goldman Theatres, Inc. v. Loew's, Inc.*, 54 F. Supp. 1011.

On appeal the United States Court of Appeals for the Third Circuit reversed the judgment of the district court; the Court of Appeals held that a conspiracy existed as charged. *William Goldman Theatres, Inc. v. Loew's Inc.*, 150 F. 2d 738. Pursuant to an agreement of the parties and pending the court's decision on the question of liability under the Sherman Act, William Goldman Theatres, Inc., offered no evidence relating to the issue of damages at the first stage of the trial. After the Court of Appeals held the evidence sufficient to sustain the charge of conspiracy in restraint of trade, the district court heard evidence directed solely to the question of damages.

On September 10, 1946, the district court made its findings with respect to damages. The damages were based solely on the petitioner's loss of profits at the Erlanger Theatre. The court's findings is as follows:

> I, therefore, find as a fact that the plaintiff, but for the wrongful acts of the defendants, would have earned profits at
45 the Erlanger Theatre amounting to $125,000 during the damage period.

William Goldman Theatres, Inc. v. Loew's Inc., 69 F. Supp. 103.

On December 18, 1946, the district court entered a final decree based on the findings as set forth in the opinion of September 10, 1946. Paragraph four of the opinion provides:

> The amount of the plaintiff's damages is $125,000 and the defendant shall pay to the plaintiff threefold that amount, or $375,000. Interest to date is not allowed.

On January 6, 1948, the Court of Appeals for the Third Circuit affirmed the judgment of the district court in a *per curiam* opinion. *William Goldman Theatres, Inc. v. Loew's Inc.*, 164 F. 2d 1021. Certiorari was denied by the United States Supreme Court, 334 U.S. 811.

On May 28, 1948, the defendant paid the petitioner the sum of $375,000. Of this amount petitioner, on its income tax return for the year 1948, included in gross income the amount of $125,000. The balance of the $375,000 was not included in petitioner's gross income for the year 1948.

Of the aggregate award of $375,000 petitioner received $250,000 as punitive damages and $125,000 for the loss of profits.

46 JOHNSON, *Judge*: Petitioner has reported as taxable income $125,000 of a total of $375,000 judgment received upon the successful prosecution of an antitrust suit. The award was made under what is commonly known as section 4 of the Clayton Act (15 U.S.C.A. 15).[1]

Respondent maintains that the excess ($250,000) by which the award exceeds the actual damages ($125,000) constitutes taxable income under section 22 (a) of the Internal Revenue Code and the Sixteenth Amendment. Respondent also contends that the entire award in this case was for loss of profits and therefore the entire amount is taxable. Petitioner, in opposition, relies on the contention that the sum of $250,000 constitutes a penalty which is not income and therefore is not taxable.

Two questions must be answered before we ascertain the correctness of respondent's contention. First, we must determine for what purpose the $250,000 was awarded. Was it received in lieu

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[1] §15. Suits by persons injured; amount of recovery.

Any person who shall be injured in his business or property by reason of anything forbidden in the antitrust laws may sue therefor in any district court of the United States in the district in which the defendant resides or is found or has an agent, without respect to the amount in controversy, and shall recover threefold the damages by him sustained, and the cost of suit, including a reasonable attorney's fee. Oct. 15, 1914, c. 323, § 4, 38 Stat. 731.

of profits or capital gain, or was it received as a punitive award under the Clayton Act? Next, if the money was received as a punitive award, is it taxable income?

The district court did not specifically denominate this $250,000 as a particular type of damage; that court, however, did
47 find as a fact that petitioner's damages from loss of profits amounted to $125,000 and under the statute (Clayton Act) it was entitled to threefold the damages sustained. This decision of this district court does not resolve the issue before us; therefore we must look elsewhere.

The words of the Clayton Act, "and shall recover threefold the damages by him sustained," do not in themselves answer our question; we have, therefore, gone into the legislative history of the Sherman Act (section 7, 26 Stat. 210), and the Clayton Act.[2] We have found that even though Congress did not set forth in the statute the words "punitive" or "exemplary" in describing part of the threefold damages, there can be no doubt that Congress intended part of the threefold damages to be compensatory and part to be punitive.

The courts have also interpreted the award in antitrust suits to be composed of both punitive and compensatory damages. The court in *Clark Oil Co.* v. *Phillips Petroleum Co.*, 148 F. 2d 580, 582, said:

> * * * The Sherman Act and the Clayton Act afford a cause of action for those suffering damages. In their provisions for damages they embody both punitive and compensatory damages but no recovery can be had unless a case for compensatory damages is made. In the event of compensatory damages, then automatically the punitive damages follow * * *;

48 Again, it was said in *Johnson* v. *Schlitz Brewing Co.*, 33 F. Supp. 176, 182, Aff'd. 123 F. 2d 1016, that section 7 of the Sherman Act "was intended to be punitive in nature and deterrent in effect." Further, in *Bigelow* v. *RKO Radio Pictures, Inc.*, 150 F. 2d 877, 883, reversed on other grounds, 327 U.S. 251, it was said:

> * * * The amount of this verdict [under 15 U.S.C.A. 15] was required by statute to be trebled by the judgment. In this respect neither the jury nor either court had any discretion. The verdict should represent actual damages sustained, and two-thirds of the judgment is a penalty which Congress has seen fit to impose in such cases upon a guilty defendant * * *

[2] See Bills and Debates in Congress Relating to Trusts, 1903 S. Doc. No. 147, 57th Cong., 2d Sess.; The History of Bills and Resolutions, 51 Cong., Res. Index #160, H. R. 15657, 63rd Cong., 2d Sess.

In other instances the courts have been required to determine whether the threefold damages for antitrust violations were penal in the strict and primary sense in that they were redresses for injuries to the public rather than redresses for wrongs to individuals. In these cases the courts held that the treble damages are either exemplary damages or penalties. *United Copper Securities Co.* v. *Amalgamated Copper Co.*, 232 F. 574, 577; *City of Atlanta* v. *Chattanooga Foundry & Pipeworks*, 127 F. 23, 28, aff'd. 203 U.S. 390.

We have found no case which held that the excess over the actual damages, when the excess was severable from the actual damages, was anything but a penalty, punitive or exemplary damages. Cf. *Durkee* v. *Commissioner*, 181 F. 2d 189, affirming a Memorandum Opinion of this Court; *Durkee* v. *Commissioner*, 162 F. 2d 184, reversing 6 T.C. 773; *Mathey* v. *Commissioner*, 177 F. 2d
49 259, affirming 10 T.C. 1099. We shall not attempt to distinguish between punitive or exemplary damages. For our purposes they shall be considered the same. See 15A Words and Phrases 341. It is proper for us to conclude that the part of the award which represents loss of profits is compensatory in that it makes the injured petitioner whole. Likewise that part of the award in excess of compensation is punitive damages. Of the statutory threefold damages, we conclude that one part is compensatory and two parts are punitive; therefore the $250,000 was awarded as punitive damages.

Following the determination that part of the award is a penalty, we must next ascertain whether it is taxable income. The question of whether penalties are taxable is not new or novel. In a recent decision involving a settlement under an antitrust suit, we held that those sums apportioned to penalties were not taxable as income. *Glenshaw Glass Co.*, 18 T.C. —, (promulgated Aug. 13, 1952). In an earlier case, *Highland Farms Corporation*, 42 B.T.A. 1314, a jury awarded the taxpayer damages for slander of title to its property and for interference with its business, and in addition awarded a sum as exemplary damages. We held that the exemplary damages were not taxable income. On p. 1322 we said: "A penalty imposed by law does not meet the test of taxable income set forth in *Eisner* v. *Macomber*, 252 U.S. 189, as ' 'the gain derived from capital, from labor, or both combined,' provided it be understood to include profit gained through a sale or conversion of capital assets." See also *Central R. Co. of New Jersey* v. *Commissioner*, 79 F.
50 2d 697, where it was held that a penalty imposed by law upon faithless fiduciary was not taxable income.

Respondent would have us hold that these cited cases are no longer authority to be followed in holding that punitive damages are not taxable income. Respondent has cited a great many cases

in support of his contention but has failed to show that punitive damages are taxable as income. Until such time as the *Glenshaw Glass Co.*, the *Central R. Co.*, and the *Highland Farms* cases are overruled, or until Congress by legislation requires that punitive damages be taxable as income, we must follow the established decisions. We think that *General American Investors Co.*, 19 T.C. —, (promulgated Dec. 30, 1952), is distinguished from our present case. In that case the taxpayer did not receive money in payment of punitive damages, but pursuant to a statute which provided certain profits realized by corporate insiders under circumstances there present should "inure to and be recoverable by" the corporation.

We conclude, therefore, that the petitioner shall be sustained as to the $250,000, but the other adjustments in the deficiency notice shall require a Rule 50 computation.

Decision will be entered under Rule 50.

DECISION—March 25, 1953.

Pursuant to Opinion of the Tax Court in the above-entitled pro-
51 ceeding promulgated January 9, 1953, respondent filed a computation on March 18, 1953, in which petitioner concurred. Now, therefore, it is

ORDERED AND DECIDED: That there is a deficiency in income tax for the calendar year 1948 in the amount of $523.54.

(Signed) O. P. LEMIRE.
Judge.

52-54 MOTION FOR EXTENSION OF TIME TO FILE RESPONDENT'S BRIEF AND ORDER THEREON OMITTED IN PRINTING

55-58 PETITION OF WILLIAM GOLDMAN THEATRES, INC., FOR LEAVE TO FILE BRIEF AMICUS CURIAE AND ORDER THEREON OMITTED IN PRINTING

59 United States Court of Appeals for the Third Circuit

No. 11,073

COMMISSIONER OF INTERNAL REVENUE, Petitioner,

v.

GLENSHAW GLASS COMPANY, Respondent.

No. 11,150

COMMISSIONER OF INTERNAL REVENUE, Petitioner,

v.

WILLIAM GOLDMAN THEATRES, INC., Respondent

APPEALS FROM THE TAX COURT OF THE UNITED STATES

Argued December 23, 1953

Before BIGGS, *Chief Judge*, and MARIS, MCLAUGHLIN, KALODNER, STALEY and HASTIE, *Circuit Judges*.

OPINION OF THE COURT—Filed April 9, 1954

By BIGGS, *Chief Judge*.

The Commissioner seeks to reverse two decisions of the United States Tax Court in favor of two taxpayers. In Glenshaw a claim for punitive damages based upon a competitor's, Hartford's
60 fraudulent suits which disastrously affected the taxpayer's business, as well as a claim for treble damages under Section 4 of the Clayton Act, 15 U.S.C.A. § 15, were settled by the payment of a sum of money.[1] In Goldman a judgment for treble damages was awarded Goldman against Loew's, Inc.,[2] also pursuant to Section 4 of the Clayton Act. The sole question presented for

[1] For the history of the litigation see: Hartford-Empire Co. v. Shawkee Mfg. Co., 163 F. 2d 474 (3 Cir. 1947); Hartford-Empire Co. v. Shawkee Mfg. Co., 67 F. Supp. 26 (D.C.W.D.Pa. 1946); Hartford-Empire Co. v. United States, 323 U.S. 386 (1945); Hartford-Empire Co. v. Shawkee Mfg. Co., 147 F. 2d 532 (3 Cir. 1944); Shawkee Mfg. Co. v. Hartford-Empire Co., 322 U.S. 271 (1944), reversing Hartford-Empire Co. v. Shawkee Mfg. Co., 137 F. 2d 764 (3 Cir. 1943); Shawkee Mfg. Co. v. Hartford-Empire Co., 68 F. 2d 726 (3 Cir. 1934); and Hartford-Empire Co. v. Hazel-Atlas Glass Co., 59 F. 2d 399 (3 Cir. 1932).

[2] See William Goldman Theatres, Inc. v. Loew's, Inc., 164 F. 2d 1021 (3 Cir. 1948).