

**MOTION FOR
FILE A BRIEF
DEAN MILK
AMICUS CURIAE**

LEAVE to
ON BEHALF of
COMPANY AS

IN THE
Supreme Court of the United States

OCTOBER TERM, 1954.

No. 199

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

vs.

GLENSHAW GLASS CO. AND WILLIAM GOLDMAN
THEATRES, INC.,
Respondents.

ON CERTIORARI FROM THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT.

**MOTION FOR LEAVE TO FILE A BRIEF ON BEHALF
OF DEAN MILK COMPANY AS AMICUS CURIAE.**

THOMAS C. McCONNELL,
*Attorney for Dean Milk Company,
a corporation.*

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*To the Chief Justice and Associate Justices of the Supreme
Court of the United States:*

Now comes DEAN MILK COMPANY, a corporation, by
Thomas C. McConnell, its attorney, and asks leave of this
Court to file instanter a brief as *amicus curiae* in the instant
case, and for cause shows:

This proceeding originated upon petitions for redeter-
mination of deficiencies determined by the Commissioner of
Internal Revenue against *Glenshaw Glass Co.* and *William*

Goldman Theatres, Inc., on account of the recovery of punitive damages or the two-thirds penalty part of a Clayton Act recovery.

The Commissioner appealed two decisions of the Tax Court of the United States, reported in 18 T. C. 860 and 19 T. C. 637, in favor of these two taxpayers, and the Court of Appeals for the Third Circuit affirmed the Tax Court decisions in an opinion reported in 211 F. 2d 928. Certiorari was granted by this Court on October 14, 1954, and the case has been placed on the summary docket.

Movant corporation received by settlement the sum of \$1,225,000 in satisfaction of its claims under the Sherman Act for loss of profits and treble damages occasioned by virtue of an illegal monopoly and conspiracy in the milk business in the City of Chicago. The case is docketed in the United States District Court for the Northern District of Illinois, Eastern Division, as "*Dean Milk Company v. American Processing and Sales Company, Inc., a corporation, et al.*," No. 49 C 1159.

Movant corporation has been advised by the Commissioner of Internal Revenue that whether or not two-thirds of the sum it received in settlement of the aforesaid action is taxable depends upon the decision of this Court in the instant case.

While the present state of the tax law is adequately briefed by the litigants in the present case, we understand that important questions of public policy involved in the effect of a decision declaring the penalty provisions of the anti-monopoly laws taxable income have not been brought to the attention of the Court.

Since the enforcement of the anti-trust laws has been encouraged by the Congress by the grant of treble damage judgments, to construe the tax laws in a way to include such punitive penalty as taxable income is to destroy any

incentive to private litigants to engage in treble damage litigation and to thwart the express intention of the Congress to provide effective anti-trust law enforcement through the adjunct of private suits.

As pointed out in the accompanying brief, the private treble damage action is an important adjunct to the enforcement of the anti-trust laws by the Department of Justice. A decision in the instant case which would permit the taxing away of the penalty provided by the statutes would to that extent render nugatory the treble damage incentive created by the Congress for the enforcement of the anti-trust laws.

WHEREFORE, DEAN MILK COMPANY asks leave to file in stante the accompanying brief as *amicus curiae*.

Respectfully submitted,

DEAN MILK COMPANY, a corporation.

By THOMAS C. MCCONNELL,

Its Attorney.