

**TSN Liquidating v. United States**  
**624 F.2d 1328 (5th Cir. 1980)**

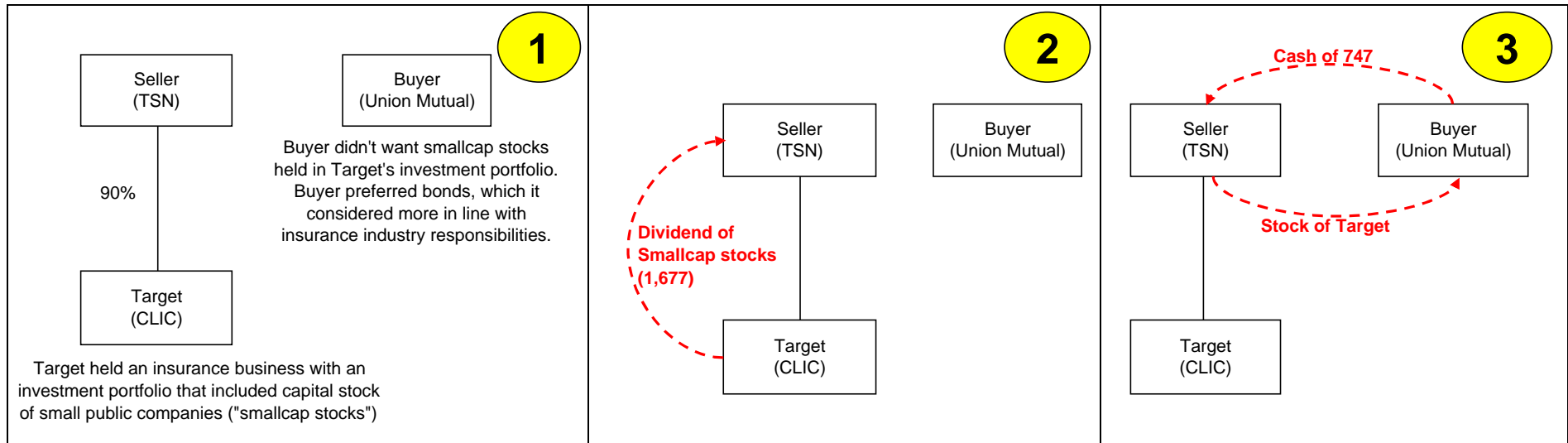
**Pre-sale Distribution**

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**Initial Structure**

**Distribution of Securities (5/19/69)**

**Sale of Target to Buyer (5-20-69)**



The District Court held that the distribution was not a dividend, but instead was part of the consideration received by the Seller from the sale of Target stock. The Fifth Circuit reversed, stating:

**Ending Point**

We agree that the transaction must be viewed as a whole and we accept the district court's finding of fact that the dividend of the unwanted assets was "part and parcel of the purchase arrangement with Union Mutual," motivated specifically by Union Mutual's unwillingness to take and pay for such assets. That being the case, we decline to focus on the business purpose of one participant in the transaction--a corporation controlled by the taxpayer--and instead find that the business purpose for the transaction as a whole, viewed from the standpoint of the taxpayer, controls. The facts found by the district court clearly demonstrate a business purpose for the presale dividend of the unwanted assets which fully explains that dividend. We note that there is no suggestion in the district court's opinion of any tax avoidance motivation on the part of the taxpayer TSN. The fact that the dividend may have had incidental tax benefit to the taxpayer, without more, does not necessitate the disallowance of dividend treatment.

Compare *Waterman Steamship*, 430 F.2d 1185 (5th Cir. 1970), in which the Fifth Circuit held that a pre-sale dividend should be treated as part of the sales proceeds.

