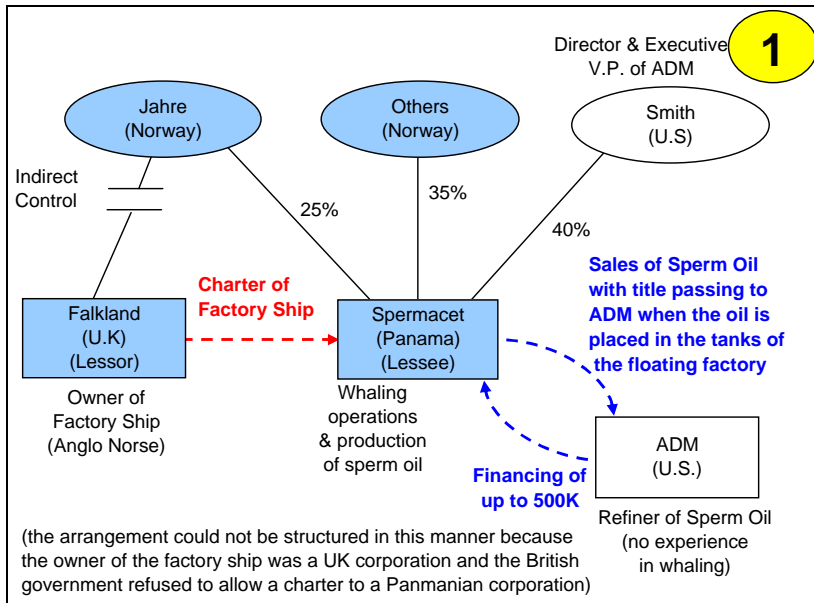


Spermacet Whaling & Shipping Co. S.A.
30 T.C. 618 (1958), Affirmed
281 F.2d 646 (6th Cir. 1960)

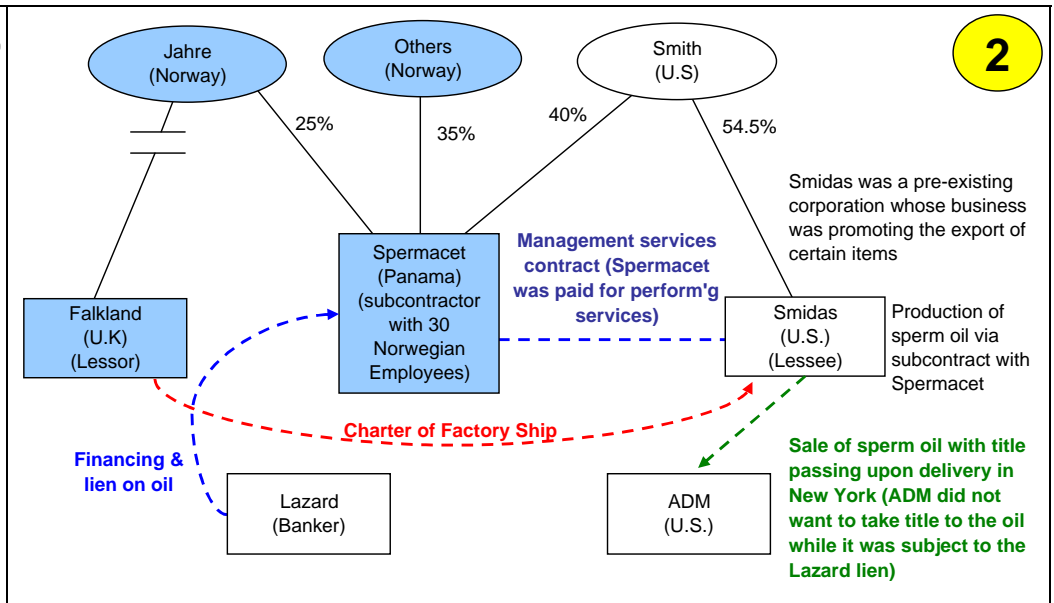
**Whaling Expedition Was
 Not Engaged in a
 U.S. Trade or Business**

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Proposed Structure



Revised Structure



Excerpt from the Tax Court Opinion (which was reviewed by the full Tax Court):

[I]t was Smidas who chartered the boats, contracted with [Spermacet] to manage them, took title to the oil, and made delivery of it to ADM pursuant to a written contract entered into between Smidas and ADM. If we read the contracts as they are written, Smidas engaged [Spermacet] to perform services under which [Spermacet] would be rewarded with "the entire balance of the proceeds to be received by [Smidas] from the sale of the oil produced under [Spermacet's] management" in excess of \$25,000 and certain expenses to be incurred by Smidas in the sale and delivery of such oil. . . . We think the chartering of the boats, the . . . management contract between [Spermacet] and Smidas, and the sales contract . . . between Smidas and ADM were all bona fide contracts serving a real business purpose, and were in fact what they appeared to be in form.

We think the facts here clearly show that [Spermacet] was not the owner and seller of the oil. It had no contract with ADM for the sale of oil. The oil which [Spermacet] produced was produced for Smidas, and it was Smidas that entered into the contract of sale with ADM. Smidas was a separate and independent entity and in no way could it be regarded as if it were [Spermacet's] agent. . . . The business in which [Spermacet] was engaged was that of managing the expedition for Smidas, and [Spermacet's] activities which produced the income in question took place almost entirely on the high seas or in Norway.

The acts of Smith in receiving monthly statements or correspondence involving [Spermacet], or in paying a limited number of obligations requiring payment in American dollars out of a bank account . . . by [Spermacet], were ministerial and clerical in nature, involving very little exercise of discretion or business judgment necessary to the production of the income in question. The holding of the directors' meetings in New York City solely for the personal convenience of the directors was of no particular consequence. Nor do we think the fact that the whaling enterprise was under the management of [Spermacet] at the time the Anglo Norse made a delivery of sperm oil in New York is enough to say [Spermacet] was engaged in trade or business within the United States. . . . [T]he Anglo Norse at the time was under charter to Smidas and the oil cargo belonged to Smidas.

[Spermacet] was not engaged in any substantial, regular, or continuous ordinary business activity in the United States. We hold that petitioner is not a "resident * * * foreign corporation engaged in trade or business within the United States"