No. 25-1127

IN THE

United States Court of Appeals for the Fourth Circuit

STEVES AND SONS, INC.
Plaintiff-Appellee,
v.
JELD-WEN, INC.,
Defendant-Appellant.

On Appeal from the
United States District Court for the Eastern District of Virginia
Honorable Robert E. Payne
No. 3:16-cv-00545-REP

BRIEF FOR THE UNITED STATES OF AMERICA AS AMICUS CURIAE IN SUPPORT OF PLAINTIFF-APPELLEE

ABIGAIL A. SLATER
Assistant Attorney General
ROGER P. ALFORD
Principal Deputy Assistant Attorney General
MARK H. HAMER
DINA KALLAY
WILLIAM RINNER
Deputy Assistant Attorneys General
DAVID B. LAWRENCE
Policy Director
DANIEL E. HAAR
NICKOLAI G. LEVIN
L. ALLISON HERZOG
Attorneys
U.S. DEPARTMENT OF JUSTICE
ANTITRUST DIVISION
950 Penn. Ave., N.W., Room 3224
Washington, D.C. 20530-0001
(202) 802-6444
alli.herzog@usdoj.gov

Counsel for the United States

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INTEREST OF THE UNITED STATES

The United States enforces the federal antitrust laws and has a strong interest in their correct application. The United States also has a significant interest in ensuring the availability of effective remedies in private antitrust cases, including divestitures. *See California v. Am. Stores Co.*, 495 U.S. 271 (1990). These private suits "provide a significant supplement to the limited resources available to the Department of Justice for enforcing the antitrust laws and deterring violations," *Reiter v. Sonotone Corp.*, 442 U.S. 330, 344 (1979); *see also United States v. Borden Co.*, 347 U.S. 514, 518 (1954).

The United States frequently pursues divestitures in antitrust enforcement actions under 15 U.S.C. §§ 4 & 25. *See, e.g.*, Modified Final J., *United States v. Parker-Hannifin Corp.*, No. 1:17-cv-01354 (D. Del. Apr. 30, 2018), ECF No. 37; Stipulation and Order Regarding Final J., *United States v. Twin Am., LLC*, No. 1:12-cv-08989 (S.D.N.Y. Mar. 18, 2015), ECF No. 131; Final J., *United States v. Haraeus Electro-Nite Co., LLC*, 1:14-cv-00005 (D.D.C. Apr. 7, 2014), ECF No. 10; Stipulation and Order, *United States v. Bazaarvoice*, 13-cv-00133 (N.D. Cal. Apr. 25, 2014), ECF No. 259; Final J., *United States v. Microsemi Corp.*, No. 8:09-

cv-00275 (C.D. Cal. Jan. 29, 2010), ECF No. 139; *see also Ford Motor Co. v. United States*, 405 U.S. 562, 565 (1972); *United States v. Grinnell Corp.*, 384 U.S. 563, 577-78 (1966); *United States v. E.I. du Pont de Nemours & Co.*, 366 U.S. 316, 326 (1961); *Int'l Boxing Club of N.Y., Inc. v. United States*, 358 U.S. 242, 256-59 (1959). Private parties also can seek injunctive relief, including divestitures, under Section 16 of the Clayton Act, 15 U.S.C. § 26. *See Am. Stores Co.*, 495 U.S. at 280-85.

The United States filed an amicus brief in this Court JELD-WEN's appeal of the district court's divestiture order, Br. of the United States as Amicus Curiae in Supp. of Appellee Steves and Sons, Inc., *Steves and Sons, Inc. v. JELD-WEN, Inc.*, No. 19-1397 (4th Cir. Aug. 23, 2019), ECF No. 41-1, https://www.justice.gov/atr/case-document/file/1197696/dl?inline, as well as two statements of interest in the district court addressing the appropriate remedies, Statement of Interest of the United States, *Steves and Sons, Inc. v. JELD-WEN, Inc.*, No. 3:16-cv-00545 (E.D. Va. May 9, 2022), ECF No. 2265, https://www.justice.gov/atr/case-document/file/1504651/dl?inline; Statement of Interest of the United States Regarding Equitable Relief, *Steves and Sons, Inc. v. JELD-WEN, Inc.*, No. 3:16-cv-00545 (E.D. Va.

June 6, 2018), ECF No. 1640, https://www.justice.gov/atr/case-document/file/1069011/dl.

In this case, a jury found that JELD-WEN's acquisition of a doorskin manufacturing plant violated Section 7 of the Clayton Act, and this Court affirmed an award of damages and divestiture, finding it necessary to give "Steves 'complete relief.'" *Steves & Sons, Inc. v. JELD-WEN, Inc.*, 988 F.3d 690, 720 (4th Cir. 2021) (citation omitted). Defendant subsequently filed a motion under Rule 60(b)(5) to amend the judgment to avoid divesting the illegally acquired plant, which the district court denied. The United States files this brief under Federal Rule of Appellate Procedure 29(a)(2) to urge this Court to hold that the district court properly denied the motion based on its findings that Steves continued to suffer irreparable injury and the purposes of the ordered—but not yet executed—divestiture had not been fully achieved.

QUESTION PRESENTED

Did the district court properly deny Defendant's Rule 60(b)(5) motion to vacate a divestiture order where the court's factual findings showed that Plaintiff continued to be injured by the anticompetitive market conditions created by Defendant's illegal acquisition?

STATEMENT

JELD-WEN is a manufacturer of doors and doorskins, fiber cores essential to the manufacturing of modern doors. *Steves*, 988 F.3d at 699. In 2012, it acquired a competitor, CMI, which owned a doorskin manufacturing plant in Towanda, Pennsylvania. *Id.* at 698, 700. Before the acquisition, three U.S. firms manufactured doorskins: Masonite, JELD-WEN, and CMI. *Id.* at 699. The acquisition reduced that number to two and prompted a lawsuit by a door manufacturer ("Steves") that buys doorskins from JELD-WEN. *Id.*

After trial, a jury found that the acquisition substantially lessened competition in the market for doorskins in violation of the Clayton Act Section 7, 15 U.S.C. § 18. *Id.* at 702, 704. It awarded Steves $12.1 million in damages, which the district court trebled. *Id.* at 704-05. The district court also ordered JELD-WEN to divest the Towanda plant. *Id.*

JELD-WEN appealed, and this Court held the divestiture order immediately appealable, even though the specific details of how to accomplish the divestiture would be worked out at a later date. *Steves*, 988 F.3d at 722 (citing *Brown Shoe Co. v. United States*, 370 U.S. 294 (1962)). This Court explained that, while the *Brown Shoe* two-step framework is more commonly applied in cases brought by the government, it was not inappropriate in a private case. *Steves*, 988 F.3d at 722. The court could assess the public interests served by divestiture without identifying a specific buyer. *Id.* And in a private suit, no less than a public one, the process of finding a willing buyer could be undermined by a looming appeal. *Id.*

Turning to the merits, this Court affirmed that divestiture order. *Id.* at 729. It explained that divestiture was appropriate because it would protect not only Steves, but the whole market. *Id.* at 720-21. "[T]he district court reasonably found that a conduct remedy would only protect Steves temporarily." *Id.* at 720. Once it expired, "[t]he threat to Steves's survival would persist, as there would be only two American doorskin manufacturers, each of whom would be vertically integrated" and thus "a conduct remedy wouldn't give Steves 'complete relief,' against the

'threatened loss or damage' for which it seeks divestiture." *Id.* (citations omitted). This Court also noted "Congress's policy judgment that divestiture is 'the remedy best suited to redress the ills of an anticompetitive merger,'" *id.* (citation omitted), and that "reducing market concentration generally promotes competition because, 'where rivals are few, firms will be able to coordinate their behavior, either by overt collusion or implicit understanding, in order to restrict output and achieve profits above competitive levels.'" *Id.* at 723 (*quoting FTC v. H.J. Heinz Co.*, 246 F.3d 708, 715 (D.C. Cir. 2001) (cleaned up)).

The divestiture bidding process lasted several years and involved multiple failed rounds of bids, but on October 25, 2024, the special master recommended the sale of Towanda to Woodgrain, Inc. *See Steves & Sons, Inc. v. JELD-WEN, Inc.*, No. 3:16-cv-00545, 2024 WL 5174825, at *4-5 (E.D. Va. Dec. 19, 2024) (hereinafter "Rule 60 Op."). Woodgrain's final bid was substantially lower than the bids it had submitted in earlier rounds of the bidding process, but the special master found it reasonable in light of changing market conditions, the nature of the forced sale, and the uncertainty around the litigation, which had caused other bidders to withdraw. *Id.* at *5-6.

During the bidding process, Steves used its damages award to fund the construction of its own doorskins manufacturing plant. *Id.* at *2-3. While the record is unclear on the new plant's precise capacity, the plant will allow Steves to produce a portion of the doorskins it needs in its manufacturing, lowering its demand for doorskins from Towanda. *Id.* at *3-4.

JELD-WEN objected to the special master's sale recommendation and moved under Federal Rule of Civil Procedure 60(b)(5) to modify the court's judgment ordering divestiture. Objs. to the Special Master's R. & Rs., *Steves & Sons, Inc. v. JELD-WEN, Inc.*, No. 3:16-cv-00545 (E.D. Va. Nov. 14, 2024), ECF No. 2593 (hereinafter "Objs."); Mot. to Modify the Am. Final J. Under Fed. R. Civ. P. 60(b)(5), *Steves & Sons, Inc. v. JELD-WEN, Inc.*, No. 3:16-cv-00545 (E.D. Va. May 1, 2024), ECF No. 2456.

Both filings focused heavily on the changed market conditions resulting from Steves's planned doorskins plant. Objs. at 15-19; Mem. in Supp. of its Mot. to Modify the Am. Final J. Under Fed. R. Civ. P. 60(b)(5), *Steves & Sons, Inc. v. JELD-WEN, Inc.*, No. 3:16-cv-00545 (E.D. Va. May 1, 2024), ECF No. 2481, at 26-29. The court adopted the special master's

recommendation, *Steves & Sons, Inc. v. JELD-WEN, Inc.*, No. 3:16-cv-00545, 2024 WL 5171177, at *18 (E.D. Va. Dec. 19, 2024) (hereinafter "R&R Op."), and denied JELD-WEN's motion to modify the divestiture order, Rule 60 Op. at *13. The court explained that JELD-WEN's objections to the special master's recommendation improperly compared the sale to Woodgrain to a counterfactual scenario with no divestiture, rather than to counterfactuals with divestitures to other potential purchasers. Thus, JELD-WEN merely sought to relitigate the issue of divestiture, which this Court had affirmed. R&R Op. at *6-7, *8-9.

The district court further held that JELD-WEN failed to meet the Rule 60(b)(5) criteria for modifying an equitable remedy. Rule 60 Op. at *5-6, *12-13. Fourth Circuit case law permits modification if a "significant change in the factual conditions" renders "compliance with the decree substantially more onerous, if the decree proves to be unworkable because of unforeseen obstacles, or if enforcement of the decree without the modification would be detrimental to the public interest." *Thompson v. U.S. Dep't of Hous. & Urb. Dev.*, 404 F.3d 821, 827 (4th Cir. 2005) (internal quotation marks omitted). Applying that

standard, the district court rejected each of JELD-WEN's three arguments in favor of modification. Rule 60 Op. at *4-5.

First, the court rejected JELD-WEN's argument that "[c]hanged market conditions have rendered divestiture unworkable and contrary to the public interest." *Id.* The district court explained that, "without divestiture, the market for interior molded doorskins would today be much the same as it was as a consequence of the merger that the jury found violated the Clayton Act and that warranted divestiture." *Id.* at *12-13. Even when Steves's doorskin plant is operational, Steves will still be a net purchaser of doorskins, meaning that its supply will be inadequate to meet its own needs and thus unavailable to other buyers. *Id.* at *6-7.

Second, the district court rejected JELD-WEN's argument that "[b]ecause Steves is entering the doorskins market with its own plant, it no longer faces a threat of irreparable harm and lacks antitrust injury." *Id.* at *5. Since Steves will remain a net buyer of doorskins, it still will be subject to the anticompetitive effects of JELD-WEN's acquisition that the jury found (as will other door manufacturers). *Id.* at *10-11.

Third, the court rejected JELD-WEN's argument that "[t]he balance of hardships no longer favors divestiture, a contention that is based on the theory that the purchase price recommended by the Special Master is not reasonable or fair." *Id.* at *5 (internal quotation marks omitted). The district court explained that the price of Woodgrain's bid accounts for the fact that Towanda will be sold via a forced sale and is still much higher than the price JELD-WEN originally paid, thus it is reasonable. *Id.* at *10. The divestiture was consummated in January 2025, and JELD-WEN appealed both orders.

ARGUMENT

Under Section 16 of the Clayton Act, private parties can seek injunctive relief, including divestiture, "when and under the same conditions and principles as injunctive relief against threatened conduct that will cause loss or damage is granted by courts of equity." 15 U.S.C. § 26; *Am. Stores*, 495 U.S. at 280-85. *Trump v. CASA, Inc.*, No. 24A884, 606 U.S. __, 2025 WL 1773631 (U.S. June 27, 2025), confirms important limitations on courts' equitable authority under this provision. *Id.* at *3.[1]

[1] The United States has broader authority to seek equitable relief in federal antitrust enforcement actions under 15 U.S.C. §§ 4, 25 than do

CASA holds that the traditional role of a court in equity is to grant relief to the parties before it. At most, "a court of equity may fashion a remedy that awards complete relief" to the plaintiff. *Id.* at *10. The Supreme Court recognized that in certain cases, affording complete relief to the plaintiff has the "practical effect of benefiting nonparties." *Id.* at *11 (emphasis omitted). But an injunction may not be premised on rectifying harm to nonparties alone. Nor may a court of equity grant injunctive relief that is broader than necessary to protect the plaintiff simply to prevent harm to nonparties. "[T]he question is not whether an injunction offers complete relief to *everyone* potentially affected by an allegedly unlawful act; it is whether an injunction will offer complete relief *to the plaintiffs before the court*." *Id.* at *11 (emphasis in original).

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plaintiffs in private antitrust cases under 15 U.S.C. § 26. *See F. Hoffman-La Roche Ltd. v. Empagran S.A.*, 542 U.S. 155, 170-71 (2004) ("A Government plaintiff, unlike a private plaintiff, must seek to obtain the relief necessary to protect the public from further anticompetitive conduct and to redress anticompetitive harm. And a Government plaintiff has legal authority broad enough to allow it to carry out this mission." (citations omitted)); *Am. Stores*, 495 U.S. at 295 ("Our conclusion that a district court has the power to order divestiture in appropriate cases brought under § 16 of the Clayton Act does not, of course, mean that such power should be exercised in every situation in which the Government would be entitled to such relief under § 15.").

In the prior appeal in this case, this Court determined that a divestiture was necessary to provide Steves with "complete relief" and restore competition to the doorskins market following JELD-WEN's illegal acquisition. *Steves*, 988 F.3d at 720. On JELD-WEN's Rule 60(b)(5) motion, the district court determined that JELD-WEN failed to establish significantly changed circumstances warranting vacatur of the divestiture order. Two threads in the district court's decision explain that conclusion. First, the court found that Steves remains irreparably injured despite the opening of its new plant, because Steves will remain a "net buyer" of doorskins and thus still be subject to the anticompetitive effects of JELD-WEN's illegal acquisition (facing the same foreclosure risk that led to the lawsuit). Rule 60 Op. at *6-8, *10-11 (E.D. Va. Dec. 19, 2024). Second, the court found that—because Steves will not produce enough doorskins to meet its own needs—"the other [door manufacturers] who do not have their own internal source of supply of doorskins will continue to be subject to JELD-WEN's exercise of the market power that the jury found offended the Clayton Act." *Id.* at *11.

Under *CASA*, only Steves's continued irreparable injury is a legitimate predicate for a divestiture in this case. Although the

incidental benefits to nonparties of divestiture may bear on whether the divestiture is in the public interest, *see eBay Inc. v. MercExchange, LLC*, 547 U.S. 388, 391 (2006), *CASA* instructs that they are not an independent basis for awarding injunctive relief. Because the district court did not abuse its discretion in finding that Steves still has an irreparable injury and that the public interest favors the divestiture, this Court should affirm.

I. TO VACATE A DIVESTITURE ORDER UNDER RULE 60(b)(5), A DEFENDANT GENERALLY MUST SHOW THAT THE ORDER'S OBJECTIVES HAVE BEEN FULLY ACHIEVED

JELD-WEN has sought relief from the divestiture on the basis that "applying [the judgment] prospectively is no longer equitable." Fed. R. Civ. P. 60(b)(5). To meet this section, it must show, first, that there has been a significant change in fact or law warranting modifying a judgment. *Thompson*, 404 F.3d at 827. Examples are: if compliance has become significantly more onerous, *compare Small v. Hunt*, 98 F.3d 789, 796 (4th Cir. 1996), *with Northridge Church v. Charter Twp. of Plymouth*, 647 F.3d 606, 616-17 (6th Cir. 2011); if unforeseen obstacles have made compliance unworkable, *see Democratic Nat. Comm. v. Republican Nat. Comm.*, 673 F.3d 192, 214 (3d Cir. 2012); *Philadelphia Welfare Rts. Org.*

v. Shapp, 602 F.2d 1114, 1119-21 (3d Cir. 1979); or if compliance has become detrimental to the public interest, *see Duran v. Elrod*, 760 F.2d 756, 759-761 (7th Cir. 1985). "Once a court has determined that changed circumstances warrant a modification in a consent decree," it must then determine "whether the proposed modification is tailored to resolve the problems created by the change in circumstances." *Thompson*, 404 F.3d at 831; *see also Small*, 98 F.3d at 797; *Gilmore v. Hous. Auth. of Baltimore*, 170 F.3d 428, 430 (4th Cir. 1999).

Under any of these three bases, "a critical question in this Rule 60(b)(5) inquiry is whether the objective of the [court's order] . . . has been achieved." *Horne v. Flores*, 557 U.S. 433, 450 (2009). This requirement is particularly important in antitrust cases, in which longstanding antitrust precedent provides that a decree generally "may not be changed in the interests of the defendants if the purpose of the litigation as incorporated in the decree (the elimination of monopoly and restrictive practices) have not been fully achieved." *United States v. United Shoe Machinery Corp.*, 391 U.S. 244, 248 (1968). A Rule 60(b)(5) motion may not be granted merely "when it is no longer convenient to

live with the terms of a [judgment]." *Rufo v. Inmates of Suffolk Cnty. Jail*, 502 U.S. 367, 383.

While the Rule 60(b) standard is flexible, it is not toothless, especially in the context of divestitures subject to the *Brown Shoe* framework. Antitrust litigation would be "a futile exercise if the [plaintiff] proves a violation but fails to secure a remedy adequate to redress it." *du Pont*, 366 U.S. at 323. *Brown Shoe* allows for an order of divestiture to be appealed, even though the details of how the divestiture will be implemented and the identity of the buyer have not yet been determined. 370 U.S. at 308-09. The Supreme Court explained that such an approach was warranted by the "character of the decree still to be entered." *Id.* at 309. Divestiture "requires careful, and often extended, negotiation and formulation," a process which "does not take place in a vacuum, but, rather, in a changing market place, in which buyers and bankers must be found to accomplish the order of forced sale." *Id.* "The unsettling influence of uncertainty as to the affirmance of the initial, underlying decision compelling divestiture would only make still more difficult the task of assuring expeditious enforcement of the antitrust laws." *Id.* Thus, settling the matter of whether divestiture is appropriate

at all facilitates the divestiture sale process and makes it more likely the divestiture will be successful. *Id.*

Reading Rule 60(b) to allow antitrust defendants the opportunity to relitigate the fact of a divestiture judgment, which has already been affirmed on appeal, would undermine the certainty afforded by the two-step process. Potential buyers would be hardly less deterred from participating in the bidding process by the threat of a looming Rule 60(b) modification than by the threat of a looming appeal. And the "unsettling influence of uncertainty as to the affirmance of the initial, underlying decision," *id.* at 308, would merely be replicated at step two—causing precisely the result *Brown Shoe*'s two-step framework aimed to prevent.

II. THE DISTRICT COURT PROPERLY DENIED JELD-WEN'S MOTION TO VACATE THE DIVESTITURE ORDER

The district court correctly rejected JELD-WEN's argument that the purposes of the divestiture order have been fully achieved simply because Steves "has built, and is about to open, its own doorskin plant." Rule 60 Op. at *6.[2] The court found that, due to the limited operational

[2] Steves represents that "Athens had not produced a single doorskin as of the July 14, 2025 filing of this brief." Appellee's Br. 30.

capacity of its new plant and the fact that Steves will remain a "net buyer," the anticompetitive market conditions giving rise to the divestiture order will largely remain. *Id.* at *6-8, *10-13. Thus, the court found that, even if Steves is no longer at imminent risk of going out of business, it is still subject to a similar irreparable injury: it remains at risk of losing reputation and goodwill in selling doorskins if it is foreclosed in its purchase of doorskins or receives lower quality doorskins. *Id.* at *10-13. The district court therefore did not abuse its discretion in concluding that divestiture was still warranted to provide Steves complete relief.

The district court also noted that the divestiture would benefit the independent door manufacturers by preserving doorskin competition on which they rely. *Id.* at *11. Although this does not constitute an independent ground for *irreparable harm* supporting divestiture in this case, it is relevant to, and indeed establishes, a separate injunction factor—the public interest. *eBay*, 547 U.S. at 391; *Zenith*, 395 U.S. at 130-31.

A. The Court's Divestiture Order Continues To Serve the Purpose of Remedying Irreparable Harm to Steves

As this Court recognized, this case is "a poster child for divestiture." *Steves*, 988 F.3d at 724. "[A] conduct remedy would only protect Steves temporarily. After it expired, there would be no structure in place to foster competition." *Id.* at 720 (internal quotation marks omitted). "Thus, a conduct remedy wouldn't give Steves complete relief[.]" *Id.* (internal quotation marks omitted).

In denying JELD-WEN's Rule 60(b)(5) motion, the district court concluded that vacatur of the divestiture was inappropriate because the various purposes of its divestiture order have not been "fully achieved." Rule 60 Op. at *6 (internal quotation marks omitted). Based on the district court's factual findings (on which we take no position because the record is largely sealed), that conclusion is correct.

Among other things, the district court found that Steves will remain a net purchaser of doorskins through at least 2028, *id.* at *6-7; there will remain only two suppliers from which Steves can buy doorskins, *id.* at *7; "Woodgrain has the business acumen, experience, and financial ability to successfully operate the Towanda facility," *id.* at *9 (internal citations and quotation marks omitted); JELD-WEN would continue to have a

motive to use its power in the doorskins market to foreclose Steves, *id.* at *11; and JELD-WEN failed to show any new efficiencies that would result from its continued operation of Towanda, *id.* at *9.

JELD-WEN's argument to the contrary appears to be based largely on a simplistic comparison of the number of firms in the market. *See, e.g.*, Appellee's Br. 25, 45. In an antitrust case, the plaintiff's harm stems from a harm to competition, *Cargill, Inc. v. Monfort of Colorado, Inc.*, 479 U.S. 104, 113 (1986), and thus the remedy redresses the plaintiff's injury by restoring competition, *Am. Stores*, 495 U.S. at 292 n.24. But whether competition has been fully restored to the doorskins market cannot be determined simply by counting the number of doorskin manufacturers in the market. As this Court noted, JELD-WEN's acquisition of Towanda substantially increased concentration in an already highly concentrated market. *Steves*, 988 F.3d at 704. That significant increase in concentration does not automatically disappear because another plant enters. To rectify the competitive problem created by the illegal acquisition, the new plant would, at a minimum, have to replace the full

capacity of the illegally-acquired plant[3]—a factual determination the district court found not to be satisfied here because of the new plant's limited operational capacity. *E.g.*, Rule 60 Op. at *4 ("Steves will remain a significant net buyer of interior molded doorskins even once its new facility is fully operational").[4]

The district court also addressed the continued injury to "the other [door manufacturers] who do not have their own internal source of supply of doorskins [and] will continue to be subject to JELD-WEN's exercise of the market power that the jury found offended the Clayton Act." *Id.* at *11. Such harm to nonparties cannot substitute for *the plaintiffs*' irreparable injury and justify injunctive relief by itself. But harm to the competitive process, and the resulting harm to third parties, is relevant to the separate and important injunction factor—the public interest—which we discuss next.

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[3] Even then, there could be reasons why the new entry may not fully restore competition—e.g., if the new plant were higher cost or lower quality, or if there were regulatory restrictions limiting particular uses or sales.

[4] Indeed, the divestiture price of the Towanda plant to Woodgrain ($115 million) vastly exceeds the $36.4 million in treble damages Steves received for its past lost profits. *See* Appellee's Br. 7, 9.

B. The District Court Correctly Held that the Divestiture Order Continues To Serve the Public Interest

The final injunction factor under *eBay* is "that the public interest would not be disserved by a permanent injunction." 547 U.S. at 391. "In exercising their sound discretion, courts of equity should pay particular regard for the public consequences in employing the extraordinary remedy of injunction." *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 24 (2008) (citation omitted). This Court previously found that the divestiture order was in the public interest. *Steves*, 988 F.3d at 721-24.

JELD-WEN wrongly argues that the divestiture order no longer serves the public interest in restoring competition. *See* Appellant's Br. 45-53. The Supreme Court has long made clear that divestiture in antitrust cases can advance the public interest in several ways: "(1) It puts an end to the combination or conspiracy when that is itself the violation. (2) It deprives the antitrust defendants of the benefits of their conspiracy. (3) It is designed to break up or render impotent the [market or monopoly] power which violates the Act." *Schine Chain Theatres v. United States*, 334 U.S. 110, 128-29 (1948) (internal citations omitted), *overruled on other grounds by Copperweld Corp. v. Indep. Tube Corp.*, 467 U.S. 752 (1984). "[W]e start from the premise that an injunction against

future violations is not adequate to protect the public interest. If all that was done was to forbid a repetition of the illegal conduct, those who had unlawfully built their empires could preserve them intact." *Id.* at 128. Thus, "divestiture or dissolution is an essential feature" of many antitrust judgments. *Id.*

To show the public interest in a divestiture, a private antitrust plaintiff such as Steves must prove harm to competition, not just harm to itself as a competitor. *Steves*, 988 F.3d at 720. Steves satisfied that burden here by proving at trial that "JELD-WEN's original plan was to kill off the [other door manufacturers] by depriving them of doorskins," and that the harm to both Steves and the other door manufacturers came from the anticompetitive market conditions. Rule 60 Op. at *8 (internal citation and quotation marks omitted). In that way, redressing the harm to Steves by eliminating those anticompetitive market conditions would also incidentally benefit the other door manufacturers. *See* p.17-18, *supra*.[5]

[5] The public interest is not a reason to broaden a candidate divestiture, which must be designed to redress the plaintiff's injury, *see supra* p. 10-12. Rather, the public interest is an important consideration in a court in equity's determination whether a candidate divestiture designed to

Additionally, if the remedy were modified to permit JELD-WEN to keep ownership of Towanda, JELD-WEN would improperly retain "the fruits of its statutory violation." *United Shoe*, 391 U.S. at 250.[6] "Those who violate the Act may not reap the benefits of their violations and avoid an undoing of their unlawful project on the plea of hardship or inconvenience." *United States v. Aluminum Co. of Am.*, 91 F. Supp. 333, 343 (S.D.N.Y. 1950) (internal quotation marks omitted).

JELD-WEN's Rule 60(b)(5) motion sought a second opportunity to be relieved from a divestiture before it was imposed. *Cf., e.g.*, *Parton v. White*, 203 F.3d 552, 554 (8th Cir. 2000) (injunction in place 17 years); *United States v. W. Elec. Co., Inc.*, 46 F.3d 1198, 1199 (D.C. Cir. 1995)

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redress the plaintiff's harms is worth the costs to the defendant due to its broader benefits to competition and thus to the public. The situation would be materially different if Steves had no more irreparable injury itself (e.g., if it were already out of business for an unrelated reason). Then, the harm to the other door manufacturers or other public interest considerations could not support a divestiture in this case.

[6] The district court addressed JELD-WEN's incentives if it is allowed to keep ownership of Towanda in its original divestiture decision but not in its Rule 60(b)(5) opinion. *Steves & Sons, Inc. v. JELD-WEN, Inc.*, 345 F. Supp. 3d 614, 656-57 (E.D. Va. 2018). Regardless, if this Court finds it to be a relevant consideration, the Court is "entitled to affirm on any ground appearing in the record, including theories not relied upon or rejected by the district court." *Scott v. United States*, 328 F.3d 132, 137 (4th Cir. 2003).

(injunction in place 10 years). But it did not show that the goals of the divestiture order had been fully achieved. Indeed, by applying too lax a standard to the alleged changed circumstances between this Court's decision upholding the divestiture and its implementation, JELD-WEN effectively seeks to undo the two-step *Brown Shoe* approach that this Court affirmed.

CONCLUSION

This Court should affirm the district court's order denying JELD-WEN's Rule 60(b)(5) motion.

Respectfully submitted.

s/L. Allison Herzog

ABIGAIL A. SLATER
Assistant Attorney General
ROGER P. ALFORD
Principal Deputy Assistant Attorney General
MARK H. HAMER
DINA KALLAY
WILLIAM RINNER
Deputy Assistant Attorneys General
DAVID B. LAWRENCE
Policy Director
DANIEL E. HAAR
NICKOLAI G. LEVIN
L. ALLISON HERZOG
Attorneys
U.S. DEPARTMENT OF JUSTICE
ANTITRUST DIVISION
950 Penn. Ave., N.W., Room 3224
Washington, D.C. 20530-0001
(202) 802-6444
alli.herzog@usdoj.gov

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CERTIFICATE OF COMPLIANCE

1. This amicus curiae brief complies with the type-volume limit of Fed. R. App. P. 29(a)(5) and 32(a)(7)(B) because, excluding the parts exempted by Fed. R. App. P. 32(f), the brief contains 4,240 words.

2. This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type-style requirements of Fed. R. App. P. 32(a)(6) because the brief has been prepared in Microsoft Word 2019, using 14-point Century Schoolbook font, a proportionally spaced typeface.

s/L. Allison Herzog
L. Allison Herzog
Counsel for the United States

CERTIFICATE OF SERVICE

I certify that on July 21, 2025, I caused the foregoing to be filed through this Court's CM/ECF system, which will serve a notice of electronic filing on all registered users, including counsel for Steves and Sons, Inc., WG Towanda LLC, Woodgrain, Inc., JELD-WEN, Inc., and John G. Pierce.

s/L. Allison Herzog
L. Allison Herzog
Counsel for the United States