

United States District Court
Southern District of Texas
FILED

DEC 26 2018

David J. Bradley, Clerk of Court

UNITED STATES DISTRICT COURT FOR
THE SOUTHERN DISTRICT OF TEXAS

UNITED STATES OF AMERICA

Plaintiff,

v.

NATIONAL STEEL CORPORATION;
STRAN-STEEL CORPORATION;
METALLIC BUILDING COMPANY;
BRINKLEY B. BROWN; CHARLES R.
McDANIEL; and GILBERT LEACH,
Defendants;

v.

GOODPASTURE, INC., Defendant;

v.

ARMCO STEEL CORP.; BETHLEHEM
STEEL CORP.; BORDER STEEL
ROLLING MILLS, INC.; THE CECO
LACLEDE STEEL CO.; SCHINDLER
BROTHERS STEEL; STRUCTURAL
METALS, INC.; TEXAS STEEL CO.; and
UNITED STATES STEEL CORP.,
Defendants;

v.

CHILDERS PRODUCTS COMPANY, INC.;
PREFORMED METAL PRODUCTS
COMPANY, INC.; QUALITY SERVICE
METALS COMPANY; and INSUL-
COUSTIC/BIRMA CORP., Defendants;

v.

TEXAS CITRUS AND VEGETABLE
GROWERS AND SHIPPERS, Defendant.

Civil Action No. 13032

Civil Action No. 73-H-1765

Civil Action No. 73-H-1427

Civil Action No. 76-H-1858

Civil No. B-77-41

**THE UNITED STATES' MOTION TO
TERMINATE LEGACY ANTITRUST JUDGMENTS**

The United States moves to terminate the judgments in each of the five above-captioned antitrust cases pursuant to Rule 60(b) of the Federal Rules of Civil Procedure.¹ The United States has concluded that because of their age and changed circumstances since their entry, these judgments—which were issued between 38 and 51 years ago—no longer serve to protect competition. The United States gave the public notice and the opportunity to comment on its intent to seek termination of the judgments; it received no comments opposing termination. For these and other reasons explained below, the United States requests that these judgments be terminated.

I. BACKGROUND

Since 1979, the Antitrust Division of the United States Department of Justice (“Antitrust Division”) has generally followed a policy of including in each judgment a term automatically terminating the judgment after no more than ten years.² This policy was based on the United States’ experience enforcing the antitrust laws, an experience that has shown that markets almost always evolve over time in response to competitive and technological changes in ways that render long-lived judgments no longer protective of competition or even anticompetitive. Often, antitrust judgments entered before implementation of the 1979 policy, and even some judgments entered in the years after, contained no termination clause. Hundreds of such judgments remain in force today. The Antitrust Division recently implemented a program to review and, when

¹ In lieu of conferring under LR 7 with the 20 defendants to these five legacy actions, the United States has notified the public and solicited comment in the manner described in detail below. The initiative underlying this motion implicates hundreds of legacy actions, many with dozens of defendants. Individually conferring with thousands of defendants about decades-old actions is not practical.

² U.S. DEP’T OF JUSTICE, ANTITRUST DIVISION MANUAL at III-147 (5th ed. 2008), <https://www.justice.gov/atr/division-manual>.

appropriate, seek termination of these perpetual legacy judgments, including the judgments in the above-captioned cases. The Antitrust Division described its Judgment Termination Initiative in a statement published in the Federal Register.³ In addition, the Antitrust Division established a website to keep the public apprised of its efforts to terminate perpetual judgments that no longer serve to protect competition.⁴

II. APPLICABLE LEGAL STANDARDS FOR TERMINATING THE JUDGMENTS

This Court has jurisdiction to terminate the judgments in the above-captioned antitrust cases. The judgments, copies of which are included in Exhibit A, provide that the Court retains jurisdiction.⁵ Further, Federal Rule of Civil Procedure 60(b)(5) and (b)(6) states that, “[o]n motion and just terms, the court may relieve a party . . . from a final judgment . . . (5) [when] applying it prospectively is no longer equitable; or (6) for any other reason that justifies relief.” Fed. R. Civ. P. 60(b)(5)–(6); *accord Frew v. Janek*, 780 F.3d 320, 327 (5th Cir. 2015) (explaining that Rule 60(b) should be “construed liberally,” that the “rule is broadly phrased,” that “many of the itemized grounds are overlapping,” and that the rule “free[s] Courts do justice in hard cases where the circumstances generally measure up to one or more of the itemized grounds”); *cf. In re: Termination of Legacy Antitrust Judgments*, No. 2:18-mc-00033 (E.D. Va. Nov. 21, 2018) (terminating 5 legacy antitrust judgments); *United States v. Am. Amusement Ticket Mfrs. Ass’n*, Case 1:18-mc-00091 (D.D.C. Aug. 15, 2018) (terminating 19 legacy antitrust

³ Department of Justice’s Initiative to Seek Termination of Legacy Antitrust Judgments, 83 Fed. Reg. 19,837 (May 4, 2018), <https://www.gpo.gov/fdsys/granule/FR-2018-05-04/2018-09461>.

⁴ *Judgment Termination Initiative*, U.S. DEP’T OF JUSTICE, <https://www.justice.gov/atr/JudgmentTermination> (last updated Dec. 14, 2018).

⁵ *United States v. Nat’l Steel Corp.*, Civil Action No. 13032, Section VI (S.D. Tex. Apr. 10, 1967); *United States v. Goodpasture, Inc.*, Civil Action No. 73-H-1765, Section VII (S.D. Tex. Apr. 13, 1977); *United States v. Armco Steel Corp.*, Civil Action No. 73-H-1427, Section X (S.D. Tex. June 4, 1979); *United States v. Childers Prods. Co.*, Civil Action No. 76-H-1858, Section VIII (S.D. Tex. June 20, 1979); *United States v. Tex. Citrus & Vegetable Growers & Shippers*, Civil No. B-77-41, Section VIII (S.D. Tex. Sept. 11, 1980).

judgments). Given its jurisdiction and authority, the Court may terminate each judgment for any reason that justifies relief, including that the judgments no longer serve their original purpose of protecting competition. As explained in the following section, termination is warranted.

III. REASONS FOR TERMINATING EACH JUDGMENT

The judgments in the above-captioned cases—all of which are decades old—presumptively should be terminated because of their age. As noted above, markets almost always evolve over time such that the prohibitions of decades-old judgments may become either irrelevant to, or inconsistent with, competition. These concerns led the Antitrust Division to adopt its 1979 policy of generally limiting judgments to a term of ten years. As the judgments in the above-captioned cases are all substantially more than ten years old, they presumptively should be terminated. As explained below, however, other reasons also weigh in favor of terminating each judgment.

A. *National Steel Corp.*

The oldest judgment, that in *United States v. National Steel Corp.*, Civil Action No. 13032 (S.D. Tex. Apr. 10, 1967), is more than 51 years old. Concerning the manufacture of prefabricated metal buildings, the judgment required two corporate defendants to divest a company. The judgment also included various time-limited provisions protecting the independence and viability of the divested company, such as a requirement that the two corporate defendants not accept purchase orders for delivery into certain states for 15 months after the divestiture unless the divested company first refused the purchase order.⁶ Because the required divestiture took place years ago, and because all other substantive terms of the judgment were satisfied or expired with divestiture or within a limited time after divestiture, this judgment

⁶ The judgment was slightly amended twice, first in 1962 and again in 1963. Both amendments, along with the initial judgment, are included in Exhibit A.

has been satisfied in full. Terminating this judgment is a housekeeping action that has no implication for competition. Based on this assessment, the Antitrust Division gave the public notice of—and the opportunity to comment on—its intention to seek termination of the judgment.⁷ No comments were received.

B. *Goodpasture, Inc.*

Entered more than 41 years ago, the judgment in *United States v. Goodpasture, Inc.*, Civil Action No. 73-H-1765 (S.D. Tex. Apr. 13, 1977), prohibits Goodpasture, a grain exporting company, from requiring tramp vessel owners to hire a stevedoring firm designated by the exporting company as a condition for using Goodpasture's grain elevators. Finding no reason to preserve this decades-old judgment, the Antitrust Division gave the public notice of—and the opportunity to comment on—its intention to seek termination.⁸ No comments were received.

C. *Armco Steel Corp.*

Entered nearly 40 years ago, the judgment in *United States v. Armco Steel Corp.*, Civil Action No. 73-H-1427 (S.D. Tex. June 4, 1979), is against nine manufacturers of reinforcing steel bars. The judgment prohibits the manufacturers from engaging in any conspiracy or coercive conduct with regard to prices, bidding, or customer or territorial restrictions in connection with the sale of re-bar materials for construction projects in Texas. The judgment also included various time-limited requirements, such as a five-year requirement that the manufacturers report annually on their compliance activities. In addition to the judgment's age,

⁷ *Judgment Termination Initiative*, U.S. DEP'T OF JUSTICE, <https://www.justice.gov/atr/JudgmentTermination> (last updated Dec. 14, 2018); *Judgment Termination Initiative: Texas, Southern District*, U.S. DEP'T OF JUSTICE, <https://www.justice.gov/atr/judgment-termination-initiative-texas-southern-district> (last updated Oct. 4, 2018).

⁸ *Judgment Termination Initiative*, U.S. DEP'T OF JUSTICE, <https://www.justice.gov/atr/JudgmentTermination> (last updated Dec. 14, 2018); *Judgment Termination Initiative: Texas, Southern District*, U.S. DEP'T OF JUSTICE, <https://www.justice.gov/atr/judgment-termination-initiative-texas-southern-district> (last updated Oct. 4, 2018).

other reasons weigh heavily in favor of terminating this decades-old judgment, including that (1) the judgment's time-limited requirements have elapsed and (2) the judgment's ongoing prohibitions target that which the antitrust laws already prohibits (price fixing, bid rigging, and market allocation). Based on this assessment, the Antitrust Division gave the public notice of—and the opportunity to comment on—its intention to seek termination of the judgment.⁹ No comments were received.

D. Childers Products Co.

Also entered nearly 40 years ago, the judgment in *United States v. Childers Products Co.*, Civil Action No. 76-H-1858 (S.D. Tex. June 20, 1979), is against four companies making aluminum roll jacketing. Most notably, the judgment prohibits the companies from fixing prices. The judgment also contains various time-limited requirements, such as a ten-year prohibition on communicating current pricing information to other sellers of aluminum roll jacketing. In addition to the judgment's age, other reasons weigh heavily in favor of terminating this decades-old judgment, including that (1) all the judgment's time-limited requirements have elapsed and (2) the judgment's only ongoing prohibitions target that which the antitrust laws already prohibits (price fixing). Based on this assessment, the Antitrust Division gave the public notice of—and the opportunity to comment on—its intention to seek termination of the judgment.¹⁰ No comments were received.

⁹ *Judgment Termination Initiative*, U.S. DEP'T OF JUSTICE, <https://www.justice.gov/atr/JudgmentTermination> (last updated Dec. 14, 2018); *Judgment Termination Initiative: Texas, Southern District*, U.S. DEP'T OF JUSTICE, <https://www.justice.gov/atr/judgment-termination-initiative-texas-southern-district> (last updated Oct. 4, 2018).

¹⁰ *Judgment Termination Initiative*, U.S. DEP'T OF JUSTICE, <https://www.justice.gov/atr/JudgmentTermination> (last updated Dec. 14, 2018); *Judgment Termination Initiative: Texas, Southern District*, U.S. DEP'T OF JUSTICE, <https://www.justice.gov/atr/judgment-termination-initiative-texas-southern-district> (last updated Oct. 4, 2018).

E. *Texas Citrus & Vegetable Growers & Shippers*

The most recent judgment, which was entered in *United States v. Texas Citrus & Vegetable Growers & Shippers*, Civil No. B-77-41 (S.D. Tex. Sept. 11, 1980), is more than 38 years old. The judgment's most notable provisions prohibit the defendants from fixing prices for the transportation of fresh produce by motor vehicle. The judgment also includes expired terms, such as 60-day and 5-year provisions requiring the defendants to provide notice of the judgment to various entities. In addition to the judgment's age, other reasons weigh heavily in favor of terminating this decades-old judgment, including that (1) all the judgment's time-limited requirements have elapsed and (2) the judgment's only ongoing prohibitions target that which the antitrust laws already prohibits (price fixing). Based on this assessment, the Antitrust Division gave the public notice of—and the opportunity to comment on—its intention to seek termination of the judgment.¹¹ No comments were received.

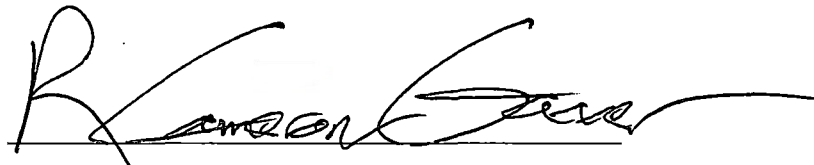
¹¹ *Judgment Termination Initiative*, U.S. DEP'T OF JUSTICE, <https://www.justice.gov/atr/JudgmentTermination> (last updated Dec. 14, 2018); *Judgment Termination Initiative: Texas, Southern District*, U.S. DEP'T OF JUSTICE, <https://www.justice.gov/atr/judgment-termination-initiative-texas-southern-district> (last updated Oct. 4, 2018).

IV. CONCLUSION

For these reasons, the United States believes termination of the judgments in the above-captioned antitrust cases is appropriate and respectfully requests that the Court enter an order terminating them. A proposed order terminating the judgments is attached as Exhibit B.

Respectfully submitted,

Dated: December 19, 2018

A handwritten signature in black ink, appearing to read "R. Cameron Gower", written over a horizontal line.

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