

**UNITED STATES DISTRICT COURT FOR
THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

v.

CAPITAL GLASS & TRIM CO., INC.;
DUNN GLASS CO., INC.;
NELSON-BRANTLEY GLASS CO., INC.;
NORMENT GLASS COMPANY, INC.;
WAGNON AUTO PARTS, INC.; and
OSCAR LEE, doing business as LEE GLASS
COMPANY,

Defendants.

Civil Action No. 3679N

**MOTION OF THE UNITED STATES TO
TERMINATE A LEGACY ANTITRUST JUDGMENT**

The United States moves to terminate the judgment entered in this antitrust action on April 6, 1973—more than 45 years ago. The judgment prohibits the defendants from fixing prices for goods and services in the auto-glass market.¹ Although decades have passed, this perpetual judgment remains in force and will continue to do so until this Court terminates it. After examining the judgment, soliciting public comment on the proposed termination, and receiving no comments opposing termination, the United States has concluded that termination of this judgment is appropriate. Termination will permit the Court to clear its docket, the United States to clear its records, and the businesses to clear their books, allowing each to utilize its resources more effectively.

¹ Initially, the judgment also required the defendants to file reports with the United States, but that requirement expired 35 years ago.

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 obsolete. Antitrust judgments entered before implementation of the 1979 policy often contained no termination clause and hundreds of such judgments remain in force today. The Antitrust Division recently implemented a program to review and, when appropriate, seek termination of these legacy judgments, including the judgment in this action. 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

This Court has jurisdiction to terminate the judgment in this action. The judgment, a copy of which is included in Exhibit A, provides that the Court retains jurisdiction. Further, the Federal Rules of Civil Procedure grant the Court authority to terminate final judgments. Rule 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 ex rel. Frew v. Hawkins*, 540 U.S. 431, 441 (2004) (explaining that Rule 60(b)(5) “encompasses the traditional

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

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 visited Oct. 24, 2018).

power of a court of equity to modify its decree in light of changed circumstances” and that “district courts should apply a ‘flexible standard’ to the modification of consent decrees when a significant change in facts or law warrants their amendment”); *Griffin v. Sec’y, Fla. Dep’t of Corr.*, 787 F.3d 1086, 1089 (11th Cir. 2015) (“Rule 60(b)(5) applies in ordinary civil litigation where there is a judgment granting continuing prospective relief.”); *see also 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 judgments). The judgment in this action satisfies those standards; hence, termination is appropriate.

The Antitrust Division examined the judgment covered by this motion and determined that it is suitable for termination. Among other things, the judgment perpetually enjoined the defendants’ fixing the price of auto glass, fixing labor rates for replacing auto glass, and coercing any glass shop to adopt uniform glass prices or labor rates. It also required that the defendants set their own glass prices and labor rates within 90 days of entry of the judgment. Finally, it required that the defendants report annually to the United States for ten years on the steps the defendants have taken to advise their employees of their obligations under the judgment.

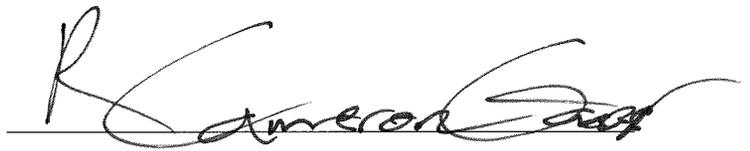
In addition to the judgment’s age, other reasons weigh heavily in favor of terminating this decades-old judgment, including that (1) the judgment’s reporting requirements have elapsed, (2) at least two defendants (Capital Glass & Trim and Dunn Glass) likely no longer exist, (3) the judgment’s only ongoing prohibitions target that which the antitrust laws already prohibits (price fixing), and (4) market conditions likely have changed, rendering the judgment obsolete. 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; no response regarding this judgment was received.

For these reasons, the United States believes termination of the judgment in this action is appropriate and respectfully requests that the Court enter an order terminating it. A proposed order terminating the judgment is attached as Exhibit B.

Respectfully submitted,

Dated: November 30, 2018

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

R. Cameron Gower (NY Bar No. 5229943)
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