UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OHIO

UNITED STATES OF AMERICA, Plaintiff, v. THE CLEVELAND STONE COMPANY, *et al.* Defendants;	In Equity No. 175
UNITED STATES OF AMERICA, Plaintiff, v. GREAT LAKES STEAMSHIP COMPANY, *et al*., Defendants;	In Equity No. 2546
UNITED STATES OF AMERICA, Plaintiff, v. PORCELAIN APPLIANCE CORPORATION, *et al*., Defendants;	In Equity No. 1640

UNITED STATES OF AMERICA, Plaintiff, v. AMERICAN LECITHIN COMPANY, *et al.*, Defendants;	Civil Action No. 24115
UNITED STATES OF AMERICA, Plaintiff, v. THE NATIONAL ACME COMPANY, Defendant;	Civil Action No. 24530
UNITED STATES OF AMERICA, Plaintiff, v. MORTON GREGORY CORPORATION, Defendant;	Civil Action No. 6279
UNITED STATES OF AMERICA, Plaintiff, v. THE LORAIN JOURNAL COMPANY, *et al.*, Defendants;	Civil Action No. 26823

UNITED STATES OF AMERICA, Plaintiff, v. THE MANSFIELD JOURNAL COMPANY, *et al*., Defendants;	Civil Action No. 28253
UNITED STATES OF AMERICA, Plaintiff, v. REPUBLIC STEEL CORPORATION, *et al*., Defendants;	Civil Action No. 26043
UNITED STATES OF AMERICA, Plaintiff, v. NORMA-HOFFMAN BEARINGS CORPORATION, Defendant;	Civil Action No. 24216
UNITED STATES OF AMERICA, Plaintiff, v. THE GOFF-KIRBY COMPANY, *et al*., Defendants;	Civil Action No. 26537

UNITED STATES OF AMERICA, Plaintiff, v. TOBACCO AND CANDY JOBBERS ASSOCIATION, INC., *et al*., Defendants;	Civil Action No. 28293
UNITED STATES OF AMERICA, Plaintiff, v. PITTSBURGH CRUSHED STEEL COMPANY, *et al*., Defendants;	Civil Action No. 28126
UNITED STATES OF AMERICA, Plaintiff, v. THE AMERICAN MONORAIL COMPANY, Defendant;	Civil Action No. 31799
UNITED STATES OF AMERICA, Plaintiff, v. AMERICAN STEEL FOUNDRIES, *et al*., Defendants;	Civil Action No. 32140

UNITED STATES OF AMERICA, Plaintiff, v. THE OHIO CRANKSHAFT COMPANY, *et al*., Defendants;	Civil Action No. 28299
UNITED STATES OF AMERICA, Plaintiff, v. THE COMMERCIAL ELECTRIC COMPANY, *et al*., Defendants;	Civil Action No. 8107
UNITED STATES OF AMERICA, Plaintiff, v. INSURANCE BOARD OF CLEVELAND, Defendant;	Civil Action No. 28042
UNITED STATES OF AMERICA, Plaintiff, v. THE WHITE MOTOR COMPANY, Defendant;	Civil Action No. 34593

UNITED STATES OF AMERICA, Plaintiff, v. THE SHERWIN-WILLIAMS COMPANY, *et al*., Defendants;	Civil Action No. 34728
UNITED STATES OF AMERICA, Plaintiff, v. OWENS-ILLINOIS GLASS COMPANY, Defendant;	Civil Action No. 7686
UNITED STATES OF AMERICA, Plaintiff, v. THE A P PARTS CORPORATION, *et al*., Defendants;	Civil Action No. 8541
UNITED STATES OF AMERICA, Plaintiff, v. THE LIMA NEWS, *et al*., Defendants;	Civil Action No. 64-178

UNITED STATES OF AMERICA, Plaintiff, v. THOMSON-BRUSH-MOORE NEWSPAPERS, INC., Defendant;	Civil Action No. C 67-904
UNITED STATES OF AMERICA, Plaintiff, v. BOWLING PROPRIETORS' ASSOCIATION OF NORTHERN OHIO, INC., Defendant;	Civil Action No. 66-649
UNITED STATES OF AMERICA, Plaintiff, v. GOULD INC., Defendant;	Civil Action No. C 69-590
UNITED STATES OF AMERICA, Plaintiff, v. LAUB BAKING COMPANY, *et al*., Defendants;	Civil Action No. C-67-850

UNITED STATES OF AMERICA, Plaintiff, v. THE STANDARD OIL COMPANY, *et al.*, Defendants;	Civil Action No. C 69-954
UNITED STATES OF AMERICA, Plaintiff, v. VIKING CARPETS, INC., Defendant;	Civil Action No. C 70-160
UNITED STATES OF AMERICA, Plaintiff, v. INDEPENDENT TOWEL SUPPLY COMPANY, *et al.*, Defendants;	Civil Action No. 68-935
UNITED STATES OF AMERICA, Plaintiff, v. WORK WEAR CORPORATION, Defendant;	Civil Action No. C 68-467

UNITED STATES OF AMERICA, Plaintiff, v. AMERICAN SHIP BUILDING COMPANY, *et al*., Defendants;	Civil Action No. C72-859
UNITED STATES OF AMERICA, Plaintiff, v. YODER BROTHERS, INC., *et al*., Defendants;	Civil Action No. C-70-931
UNITED STATES OF AMERICA, Plaintiff, v. THE STANDARD OIL COMPANY, Defendant;	Civil Action No. C 70-895
UNITED STATES OF AMERICA, Plaintiff, v. THE CLEVELAND TRUST COMPANY, Defendant;	Civil Action No. C 70-301

UNITED STATES OF AMERICA, Plaintiff, v. ATOMIC FIRE EQUIPMENT COMPANY, *et al*., Defendants;	Civil Action No. C72-1185
UNITED STATES OF AMERICA, Plaintiff, v. GUARDIAN INDUSTRIES CORP., Defendant;	Civil Action No. C73-383
UNITED STATES OF AMERICA, Plaintiff, v. AIR CONDITIONING AND REFRIGERATION WHOLESALERS, *et al*., Defendants;	Civil Action No. C-70-829
UNITED STATES OF AMERICA, Plaintiff, v. PARKER-HANNIFIN CORPORATION, Defendant;	Civil Action No. C72-493

MEMORANDUM IN SUPPORT OF THE MOTION OF THE UNITED STATES TO TERMINATE LEGACY ANTITRUST JUDGMENTS

The United States respectfully submits this memorandum in support of its motion to terminate the judgments in each of the above-captioned antitrust cases pursuant to Rule 60(b) of the Federal Rules of Civil Procedure. The judgments were entered by this Court between 42 and 103 years ago. The United States has concluded that because of their age and changed circumstances since their entry, these judgments 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. For these and other reasons explained below, the United States requests that the judgments be terminated.

I. BACKGROUND

From 1890, when the antitrust laws were first enacted, until the late 1970s, the United States frequently sought entry of antitrust judgments whose terms never expired.[1] Such perpetual judgments were the norm until 1979, when the Antitrust Division of the United States Department of Justice ("Antitrust Division") adopted the practice of including a term limit of ten years in nearly all of its antitrust judgments. Perpetual judgments entered before the policy change, however, remain in effect indefinitely unless a court terminates them. Although a defendant may move a court to terminate a perpetual judgment, few defendants have done so. There are many possible reasons for this, including that defendants may not have been willing to bear the costs and time resources to seek termination, defendants may have lost track of decades-old judgments, individual defendants may have passed away, or company defendants may have gone out of business. As a result, hundreds of these legacy judgments remain open on the

[1] The primary antitrust laws are the Sherman Act, 15 U.S.C. §§ 1–7, and the Clayton Act, 15 U.S.C. §§ 12–27. The judgments the United States seeks to terminate with the accompanying motion concern violations of one or both of these laws.

dockets of courts around the country. Originally intended to protect the loss of competition arising from violations of the antitrust laws, none of these judgments likely continues to do so because of changed circumstances.

The Antitrust Division has implemented a program to review and, when appropriate, seek termination of legacy judgments. The Antitrust Division's Judgment Termination Initiative encompasses review of all its outstanding perpetual antitrust judgments. The Antitrust Division described the initiative in a statement published in the *Federal Register*.[2] 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.[3] The United States believes that its outstanding perpetual antitrust judgments presumptively should be terminated; nevertheless, the Antitrust Division is examining each judgment to ensure that it is suitable for termination. The Antitrust Division is giving the public notice of—and the opportunity to comment on—its intention to seek termination of its perpetual judgments.[4]

In brief, the process the United States is following to determine whether to move to terminate a perpetual antitrust judgment is as follows:

- The Antitrust Division reviews each perpetual judgment to determine whether it no longer serves to protect competition such that termination would be appropriate.
- If the Antitrust Division determines a judgment is suitable for termination, it posts the name of the case and the judgment on its public Judgment Termination Initiative website, https://www.justice.gov/atr/JudgmentTermination.
- The public has the opportunity to comment on each proposed termination within thirty days of the date the case name and judgment are posted to the public website.

[2] 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.

[3] *Judgment Termination Initiative*, U.S. DEP'T OF JUSTICE, https://www.justice.gov/atr/JudgmentTermination.

[4] Given the extensive notice it provided to the public, the lack of public opposition, the age of the judgments, and the relief sought, the United States does not believe that additional service of this motion is necessary.

- Following review of public comments, the Antitrust Division determines whether the judgment still warrants termination; if so, the United States moves to terminate it.

The United States followed this process for each judgment it seeks to terminate by this motion.[5]

The remainder of this memorandum is organized as follows: Section II describes the Court's jurisdiction to terminate the judgments in the above-captioned cases and the applicable legal standards for terminating the judgments. Section III explains that perpetual judgments rarely serve to protect competition and that those that are more than ten years old presumptively should be terminated. Section III also presents factual support for termination of each judgment. Section IV concludes. Appendix A attaches a copy of each final judgment that the United States seeks to terminate. Appendix B summarizes the terms of each judgment and further details the United States' reasons for seeking termination. Finally, Appendix C is a proposed order terminating the final judgments.

II. APPLICABLE LEGAL STANDARDS FOR TERMINATING THE JUDGMENTS

This Court has jurisdiction and authority to terminate the judgments in the above-captioned cases. All but one of the judgments expressly provide that the Court retains jurisdiction. Although one of the judgments does not explicitly state the Court retains jurisdiction,[6] it has long been recognized that courts are vested with inherent power to modify judgments they have issued which regulate future conduct.[7] In addition, the Federal Rules of

[5] The United States followed this process to move other district courts to terminate legacy antitrust judgments. *See, e.g., United States v. Am. Column and Lumber Co., et al*., Case No. 2:19-mc-00011-SHM (W.D. Tenn. Mar. 28, 2019) (terminating eight judgments); *In re: Termination of Legacy Antitrust Judgments in the Middle District of Tennessee*, Case No. 3:19-mc-00011 (M.D. Tenn. Apr. 16, 2019) (terminating five judgments); *United States v. Am. Amusement Ticket Mfrs. Ass'n*, Case 1:18-mc-00091 (D.D.C. Aug. 15, 2018) (terminating nineteen judgments); *In re: Termination of Legacy Antitrust Judgments*, No. 2:18-mc-00033 (E.D. Va. Nov. 21, 2018) (terminating five judgments); *United States v. Standard Sanitary Mfg. Co., et al.*, Case 1:19-mc-00069-RDB (D. Md. Feb. 7, 2019) (terminating nine judgments).

[6] *United States v. Great Lakes Steamship Co.*, In Equity No. 2546 (N.D. Ohio Feb. 25, 1930).

[7] *See United States v. Swift & Company*, 286 U.S. 106, 114-15 (1932) ("We are not doubtful of the power of a court of equity to modify an injunction in adaptation to changed conditions, though it was entered by consent. . . . Power to modify the decree was reserved by its very terms, and so from the beginning went hand in hand with its

Civil Procedure grant the Court authority to terminate each judgment. Rule 60(b)(5) and (b)(6) provides 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); *see also East Brooks Books, Inc. v. City of Memphis*, 633 F.3d 459, 465 (6th Cir. 2011) ("Federal Rule 60(b)(5) gives a court discretion to relieve a party from a final judgment if the 'judgment has been satisfied, released or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable.'") (internal citation omitted); *West v. Carpenter*, 790 F.3d 693, 696 (6th Cir. 2015) ("Federal Rule 60(b)(6) is a catchall provision that provides for relief from a final judgment for any reason justifying relief not captured in other provisions of Rule 60(b).") (internal citation omitted). Thus, the Court may terminate each judgment for any reason that justifies relief, including that the judgment no longer serves its original purpose of protecting competition.[8] Termination of these judgments is warranted.

III. ARGUMENT

It is appropriate to terminate the perpetual judgments in each the above-captioned cases because they no longer serve their original purpose of protecting competition. The United States believes that the judgments presumptively should be terminated because their age alone suggests

restraints. If the reservation had been omitted, power there still would be by force of principles inherent in the jurisdiction of the chancery. A continuing decree of injunction directed to events to come is subject always to adaptation as events may shape the need.") (citations omitted); *East Brooks Books, Inc. v. City of Memphis*, 633 F.3d 459, 465 (6th Cir. 2011) ("It is settled law that a Rule 60(b) motion is considered a continuation of the original proceeding. If the district court had jurisdiction when the suit was filed, it has jurisdiction to entertain a Rule 60(b) motion.").

[8] In light of the circumstances surrounding the judgments for which it seeks termination, the United States does not believe it is necessary for the Court to make an extensive inquiry into the facts of each judgment to terminate them under Fed. R. Civ. P. 60(b)(5) or (b)(6). All of these judgments would have terminated long ago if the Antitrust Division had the foresight to limit them to ten years in duration as under its policy adopted in 1979. Moreover, the passage of decades and changed circumstance since their entry, as described in this memorandum, means that it is likely that the judgments no longer serve their original purpose of protecting competition.

they no longer protect competition. Additional reasons also weigh in favor of terminating many of them. Under such circumstances, the Court may terminate the judgments pursuant to Rule 60(b)(5) or (b)(6) of the Federal Rules of Civil Procedure.

A. The Judgments Presumptively Should Be Terminated Because of Their Age

Permanent antitrust injunctions rarely serve to protect competition. The experience of the United States in enforcing the antitrust laws has shown that markets almost always evolve over time in response to competitive and technological changes. These changes may make the prohibitions of decades-old judgments either irrelevant to, or inconsistent with, competition. These considerations, among others, led the Antitrust Division in 1979 to establish its policy of generally including in each judgment a term automatically terminating the judgment after no more than ten years.[9] The judgments in the above-captioned matters—all of which are decades old—presumptively should be terminated for the reasons that led the Antitrust Division to adopt its 1979 policy of generally limiting judgments to a term of ten years.

B. The Judgments Should Be Terminated Because They Are Unnecessary

In addition to age, other reasons weigh heavily in favor of terminating many of these judgments. These reasons include: (1) all requirements of the judgment have been met; and (2) the judgment prohibits acts the antitrust laws already prohibit. A further discussion of each of these reasons and identification of the judgments that are worthy of termination for each reason follows below. A summary of each judgment and the reasons to terminate it also appears in Appendix B.

[9] U.S. DEP'T OF JUSTICE, ANTITRUST DIVISION MANUAL at III-147 (5th ed. 2008), https://www.justice.gov/atr/division-manual.

1. All Requirements of the Judgment Have Been Met

The Antitrust Division has determined that the core provisions of the judgments in the following eight cases have been satisfied such that termination is appropriate:

- *United States v. Owens-Illinois Glass Co.*, Civil Action No. 7686 (divestiture ordered by the judgment was completed);
- *United States v. Thomson-Brush-Moore Newspapers, Inc.*, Civil Action No. 67-904 (divestiture ordered by the judgment was completed);
- *United States v. Gould Inc.*, Civil Action No. C 69-590 (divestiture ordered by the judgment was completed);
- *United States v. Standard Oil Co.*, Civil Action No. C 69-954 (divestiture ordered by the judgment was completed);
- *United States v. Work Wear Corp.*, Civil Action No. C 68-467 (divestiture ordered by the judgment was completed);
- *United States v. Am. Ship Bldg. Co..*, Civil Action No. C72-859 (divestiture ordered by the judgment was completed);
- *United States v. Guardian Ins. Corp.*, Civil Action No. C73-383 (divestiture ordered by the judgment was completed); and
- *United States v. Parker-Hannifin Corp.*, Civil Action No. C72-493 (divestiture ordered by the judgment was completed).

Because the substantive terms of these judgments have been met, termination of the judgment is a housekeeping action: it will allow the Court to clear its docket of a judgment that should have been terminated long ago but for the failure to include a term automatically terminating it upon satisfaction of its terms.

2. Judgment Prohibits Acts that the Antitrust Laws Already Prohibit

The Antitrust Division has determined that the core provisions of the judgments in the following cases brought by the United States merely prohibit acts that the antitrust laws already prohibit, such as fixing prices, allocating markets, rigging bids, or engaging in group boycotts:

- *United States v. Great Lakes Steamship Co.*, In Equity No. 2546 (price fixing);
- *United States v. Porcelain Appliance Corp.*, In Equity No. 1640 (price fixing);
- *United States v. Am. Lecithin Co.*, Civil Action No. 24115 (price fixing and market allocation);
- *United States v. Morton Gregory Corp.*, Civil Action No. 6279 (market allocation);
- *United States v. Republic Steel Corp.*, Civil Action No. 26043 (market allocation);

- *United States v. Norma-Hoffman Bearings Corp.*, Civil Action No. 24216 (market and customer allocation);
- *United States v. Goff-Kirby Co.*, Civil Action No. 26537 (price fixing);
- *United States v. Tobacco and Candy Jobbers Ass'n*, Civil Action No. 28293 (price fixing);
- *United States v. Pittsburgh Crushed Steel Co.*, Civil Action No. 28126 (price fixing, market allocation, and bid rigging);
- *United States v. Am. MonoRail Co.*, Civil Action No. 31799 (market allocation);
- *United States v. Am. Steel Foundries*, Civil Action No. 32140 (price fixing and market and customer allocation);
- *United States v. Ohio Crankshaft Co*., Civil Action No. 28299 (price fixing and market and customer allocation);
- *United States v. Commercial Elec. Co.*, Civil Action No. 8107 (price fixing and group boycotts);
- *United States v. Ins. Bd. of Cleveland*, Civil Action No. 28042 (group boycotts);
- *United States v. White Motor Co*., Civil Action No. 34593 (price fixing and market and customer allocation);
- *United States v. Bowling Proprietors' Ass'n of N. Ohio*, Civil Action No. 66-649 (price fixing);
- *United States v. Laub Baking Co.*, Civil Action No. C-67-850 (price fixing and bid rigging);
- *United States v. Indep. Towel Supply Co.*, Civil Action No 68-935 (price fixing and market allocation);
- *United States v. Yoder Bros.*, Civil Action No. C-70-931 (price fixing, market allocation, and group boycotts);
- *United States v. Standard Oil Co.*, Civil Action No. C 70-895 (price fixing);
- *United States v. Atomic Fire Equip. Co.*, Civil Action No. C72-1185 (price fixing and market allocation); and
- *United States v. Air Conditioning and Refrigeration Wholesalers*, Civil Action No. C-70-829 (group boycotts).

The core terms of these 22 judgments amount to little more than an admonition that defendants must not violate the law. Absent such terms, defendants still are deterred from violating the law by the possibility of imprisonment, significant criminal fines, and treble damages in private follow-on litigation; a mere admonition to not violate the law adds little additional deterrence. To

the extent a judgment includes terms that do little to deter anticompetitive acts, it should be terminated.

C. There Has Been No Public Opposition to Termination

The United States has provided adequate notice to the public regarding its intent to seek termination of the judgments. On April 25, 2018, the Antitrust Division issued a press release announcing its efforts to review and terminate legacy antitrust judgments.[10] On November 30, 2018, the Antitrust Division listed the judgments in the above-captioned cases on its public website, describing its intent to move to terminate the judgments.[11] The notice identified each case, linked to the judgment, and invited public comment. No comments were received.

IV. CONCLUSION

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

Respectfully submitted,

Dated: May 31, 2019

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[10] Press Release, *Department of Justice Announces Initiative to Terminate "Legacy" Antitrust Judgments*, U.S. DEP'T OF JUSTICE (April 25, 2018), https://www.justice.gov/opa/pr/department-justice-announces-initiative-terminate-legacy-antitrust-judgments.

[11] *Judgment Termination Initiative*, U.S. DEP'T OF JUSTICE, https://www.justice.gov/atr/JudgmentTermination; *Judgment Termination Initiative: Ohio, Northern District*, U.S. DEP'T OF JUSTICE, https://www.justice.gov/atr/judgment-termination-initiative-ohio-northern-district (last updated Nov. 30, 2018).