

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF INDIANA  
HAMMOND DIVISION**

IN RE: TERMINATION OF LEGACY  
ANTITRUST JUDGMENTS IN THE  
NORTHERN DISTRICT OF INDIANA

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Case No. 2:19-MC-71

*Consolidating:*

UNITED STATES OF AMERICA,

Plaintiff,

v.

AMERICAN LOCOMOTIVE  
COMPANY, ET AL.,

Defendants.

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Civil Action No. 545

UNITED STATES OF AMERICA,

Plaintiff,

v.

GASOLINE RETAILERS  
ASSOCIATION, ET AL.,

Defendants.

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Civil Action No. 2626

UNITED STATES OF AMERICA,

Plaintiff,

v.

NATIONAL HOMES  
CORPORATION,

Defendant.

Civil No. 114

UNITED STATES OF AMERICA,

Plaintiff,

v.

ESSEX WIRE CORP.,

Defendant.

Civil Action No. 1927

**MEMORANDUM OF LAW 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 five legacy antitrust judgments. This Court entered the judgments in these cases as follows:

<b>Case Name</b>	<b>Case Number</b>	<b>Date Judgment Entered</b>
American Locomotive Co.	Civil Action No. 545	April 1 and October 4, 1947
Gasoline Retailers Assoc.	Civil Action No. 2626	May 17, 1961
National Homes Corp.	Civil No. 114	December 1, 1962
Essex Wire Co.	Civil Action No. 1927	December 1, 1967

The oldest judgment that is the subject of this motion is over seventy years old. The newest judgment is over fifty years old. After examining each judgment—and after soliciting public comments on each proposed termination, and receiving no comments—the United States has concluded that termination of all five of these judgments is appropriate. Termination will permit the Court to clear its docket, and the Department to clear its records, allowing each to utilize its resources more effectively.

## **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.<sup>1</sup> 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

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<sup>1</sup> 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 the Sherman Act.

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 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 of its outstanding perpetual antitrust judgments. The Antitrust Division described the initiative in a statement published in the Federal Register.<sup>2</sup> 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.<sup>3</sup> The United States believes that its outstanding perpetual antitrust judgments presumptively should be terminated; nevertheless, the Antitrust Division examined each judgment covered by this motion to ensure that it is suitable for

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<sup>2</sup> 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>.

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

termination. The Antitrust Division also gave the public notice of—and the opportunity to comment on—its intention to seek termination of its perpetual judgments.

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

The United States followed this process for each judgment it seeks to terminate by this motion.<sup>4</sup>

The remainder of this memorandum is organized as follows: Section II describes the Court's jurisdiction to terminate the judgments in the above-

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<sup>4</sup> The United States followed this process to move other district courts to terminate legacy antitrust judgments. *See, e.g., 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. The Wachovia Corp. and Am. Credit Corp.*, Case No. 3:75CV2656-FDW-DSC (W.D.N.C. Dec. 17, 2018) (terminating one judgment); *United States v. Capital Glass & Trim Co., et al.*, Case No. 3679N (M.D. Ala. Jan. 2, 2019) (terminating one judgment); *United States v. Standard Sanitary Mfg. Co., et al.*, Case 1:19-mc-00069-RDB (D. Md. Feb. 7, 2019) (terminating nine judgments).

captioned cases and the applicable legal standards for terminating the judgments. Section III explains that perpetual judgments rarely serve to protect competition and those that are more than ten years old presumptively should be terminated. This section 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 the United States' reasons for seeking termination. Appendix C is a Proposed Order Terminating 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. Each judgment, a copy of which is included in Appendix A, provides that the Court retains jurisdiction. The Federal Rules of 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); *accord Margoles v. Johns*, 798 F.2d 1069, 1072-73 (7th Cir. 1986) (“Rule 60(b) allows a district court to relieve a party from a final judgment for the reasons specified in subsections (1) through (5). In addition, subsection

(6) provides that the court may grant a motion under Rule 60(b) for ‘any other reason justifying relief.’”).

Given its jurisdiction and its 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.<sup>5</sup> Termination of these judgments is warranted.

### **III. ARGUMENT**

It is appropriate to terminate the perpetual judgments in each of 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 they no longer protect competition. Other reasons, however, also weigh in favor of terminating these judgments, including that the terms of the judgment have been satisfied, defendants no longer exist or are deceased, and the terms of the judgment merely prohibit acts that are prohibited by law. 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.

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<sup>5</sup> 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). 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 many 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.

**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.<sup>6</sup>

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. There are no affirmative reasons for the judgments to remain in effect; indeed, there are additional reasons for terminating them.

**B. The Judgments Should Be Terminated Because They Are Unnecessary**

In addition to age, other reasons weigh heavily in favor of termination of each judgment. These reasons include: (1) terms of the judgment have been satisfied; (2)

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<sup>6</sup> U.S. DEP'T OF JUSTICE, ANTITRUST DIVISION MANUAL at III-147 (5th ed. 2008), <https://www.justice.gov/atr/division-manual>.



defendants no longer exist or are deceased; (3) terms of the judgment prohibit acts that are prohibited by law. Each of these reasons suggests the judgments no longer serve to protect competition. In this section, we describe these additional reasons, and we identify those judgments that are worthy of termination for each reason. Appendix B summarizes the key terms of each judgment and the reasons to terminate it.

1. Terms of the Judgment Have Lapsed or Been Satisfied

The Antitrust Division has determined that the terms of the judgment in *United States v. National Homes*, Civil No. 114, have been satisfied. The judgment required National Homes to divest four prefabricated house companies. Those divestitures took place years ago. In addition, this Court enjoined National Homes for five years from acquiring any interest in a prefabricated house manufacturer. That provision has lapsed. Thus, all the terms of this judgment have lapsed or been satisfied.

In the *American Locomotive Co.* case, defendants were eleven corporations engaged in the manufacture and sale of railroad “spring equipment.” Another defendant, Railway & Industrial Spring Association, was a trade association. Two of the defendants, the Symington-Gould Corp. and Universal Railway Devices Co., held patents on certain component parts used in railroad spring equipment. The complaint alleged a conspiracy among all defendants to restrain trade and monopolize the railroad spring

equipment market by agreeing to anticompetitive provisions in the various patent licensing and sublicensing agreements. This Court entered two decrees to settle the matter: (1) On April 1, 1947, this Court entered a decree against the Symington-Gould Corp.; and (2) On October 4, 1947, this Court entered a decree against the remaining defendants. The decrees contained several injunctive provisions. One, for example, enjoined defendants from enforcing the restrictive provisions in the patent licensing and sublicensing agreements. All of the patents that underlie the two decrees expired decades ago, and therefore the decrees' injunctive provisions serve no continuing purpose.

In the *Gasoline Retailers Association* case, defendants were a labor union, a trade association and four individuals. The complaint alleged a conspiracy – through the trade association – to fix the retail prices for gasoline in Lake County, Indiana and Calumet City, Illinois. This Court, in 1961, ordered defendants to terminate the agreement between the trade association and the labor union that was the basis of the conspiracy. The agreement was terminated and the price fixing conspiracy ended decades ago.

2. Defendants No Longer Exist or Are Deceased

The Antitrust Division believes that most of the defendants in the following cases brought by the United States likely no longer exist:

- *United States v. American Locomotive Co., et al.*, Civil Action No. 545 (judgments entered April 1 and October 4, 1947),
- *United States v. Gasoline Retailers Assoc., et al.*, Civil Action No. 2626 (judgment entered 1961), and
- *United States v. National Homes Corp.*, Civil No. 114 (judgment entered December 1, 1962).

These judgments relate to very old cases brought against corporate defendants, trade associations, and individuals. As shown in Appendix B, most of the corporate and trade association defendants appear to have gone out of existence, and the individual defendants are deceased. To the extent that defendants no longer exist, the related judgment serves no purpose, which is a reason to terminate these judgments.

3. Terms of the Judgment Prohibit Acts Already Prohibited  
by Law

The *American Locomotive Co.* (price fixing, information sharing, group boycotts, and customer allocations) and *Gasoline Retailers Association* (price fixing, group boycotts) judgments enjoin activities that are illegal under the antitrust laws. These prohibitions 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 that the judgments in these cases include terms that do little to

deter anticompetitive acts, they serve no continuing purpose and there is reason to terminate them.

### **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 these judgments. On April 25, 2018, the Antitrust Division issued a press release announcing its efforts to review and terminate legacy antitrust judgments.<sup>7</sup> On October 10, 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.<sup>8</sup> The notice identified each case, linked to the judgment, and invited public comment. No public comments were received with respect to these judgments.

### **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. *See* Appendix C, which is a proposed order terminating the judgments.

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<sup>7</sup> 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/departement-justice-announces-initiative-terminate-legacy-antitrust-judgments>.

<sup>8</sup> *Judgment Termination Initiative*, U.S. DEP’T OF JUSTICE, <https://www.justice.gov/atr/JudgmentTermination>; *Judgment Termination Initiative: Northern District of Indiana*, U.S. DEP’T OF JUSTICE, <https://www.justice.gov/atr/judgment-termination-initiative-indiana-northern-district> (last updated Oct. 3, 2018).

Respectfully submitted,

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