IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

IN RE: TERMINATION OF LEGACY ANTITRUST JUDGMENTS IN THE WESTERN DISTRICT OF PENNSYLVANIA	**Misc. No. 19-**
UNITED STATES OF AMERICA, Plaintiff, v. ALUMINUM COMPANY OF AMERICA, Defendant;	Civil Action No. 159
UNITED STATES OF AMERICA, Plaintiff, v. NATIONAL ASSOCIATION OF MASTER PLUMBERS OF THE UNITED STATES, *et al.*, Defendants;	Civil Action No. 151
UNITED STATES OF AMERICA, Plaintiff, v. CANDY SUPPLY COMPANY, *et al.*, Defendants;	Civil Action No. 2162
UNITED STATES OF AMERICA, Plaintiff, v. VOLUNTARY CODE OF THE HEATING, PIPING, AND AIR CONDITIONING INDUSTRY FOR ALLEGHENY COUNTY, *et al.*, Defendants;	Civil Action No. 698

UNITED STATES OF AMERICA, Plaintiff, v. WESTERN PENNSYLVANIA SAND AND GRAVEL ASSOCIATION, *et al.*, Defendants;	Civil Action No. 780
UNITED STATES OF AMERICA, Plaintiff, v. MARBLE CONTRACTORS' ASSOCIATION, *et al.*, Defendants;	Civil Action No. 805
UNITED STATES OF AMERICA, Plaintiff, v. PITTSBURGH TILE & MANTEL CONTRACTORS' ASSOCIATION, *et al.*, Defendants;	Civil Action No. 806
UNITED STATES OF AMERICA, Plaintiff, v. EMPLOYING PLASTERERS' ASSOCIATION OF ALLEGHENY COUNTY, *et al.*, Defendants;	Civil Action No. 840

UNITED STATES OF AMERICA, Plaintiff, v. BLAW-KNOX COMPANY, Defendant;	Civil Action No. 9683
UNITED STATES OF AMERICA, Plaintiff, v. ROLL MANUFACTURERS INSTITUTE, *et al.*, Defendants;	Civil Action No. 9657
UNITED STATES OF AMERICA, Plaintiff, v. ROBERTSHAW-FULTON CONTROLS COMPANY, *et al.*, Defendants;	Civil Action No. 14745
UNITED STATES OF AMERICA, Plaintiff, v. ROCKWOOD SPRINKLER COMPANY, *et al.*, Defendants;	Civil Action No. 16199

UNITED STATES OF AMERICA, Plaintiff, v. ERIE COUNTY MALT BEVERAGE DISTRIBUTORS ASSOCIATION, *et al.*, Defendants;	Civil Action No. 436
UNITED STATES OF AMERICA, Plaintiff, v. AMERICAN RADIATOR & STANDARD SANITARY CORPORATION, *et al.*, Defendants;	Civil Action No. 14469
UNITED STATES OF AMERICA, Plaintiff, v. HOLIDAY ON ICE SHOWS, *et al.*, Defendants;	Civil Action No. 62-215
UNITED STATES OF AMERICA, Plaintiff, v. INGERSOLL-RAND COMPANY, *et al.*, Defendants;	Civil Action No. 63-124
UNITED STATES OF AMERICA, Plaintiff, v. PENNZOIL COMPANY, *et al.*, Defendants;	Civil Action No. 60-838

UNITED STATES OF AMERICA, Plaintiff, v. PITTSBURGH BREWING COMPANY, *et al.*, Defendants;	Civil Action No. 65-1406
UNITED STATES OF AMERICA, Plaintiff, v. MONSANTO COMPANY, *et al.*, Defendants;	Civil Action No. 64-342
UNITED STATES OF AMERICA, Plaintiff, v. AMERICAN STANDARD, INC., *et al.*, Defendants;	Civil Action No. 66-1184
UNITED STATES OF AMERICA, Plaintiff, v. PITTSBURGH AREA PONTIAC DEALERS, INC., Defendant.	Civil Action No. 77-1125

THE UNITED STATES OF AMERICA'S MEMORANDUM IN SUPPORT OF ITS MOTION TO TERMINATE LEGACY ANTITRUST JUDGMENTS

The United States moves 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 40 and 106 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 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.

[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 here concern violations of one or both of these laws.

The Antitrust Division recently 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*.[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.

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 moves to terminate it.

The United States followed this process for each judgment it seeks to terminate by this motion.[4]

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[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] The United States followed this process to move several dozen other district courts to terminate legacy antitrust judgments. *See, e.g., United States v. York Corp., et al.*, Case No.

The remainder of this motion is organized as follows: Section II describes this 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. Appendix A includes 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. Twenty out of the 22 judgments in the above-captioned cases explicitly provide that this Court retains jurisdiction. Jurisdiction was not explicitly retained in the other two judgments,[5] but it has long been recognized that courts are vested with inherent power to modify judgments they have issued which regulate future conduct.[6]

3:19-cv-00616-MEM (M.D. Pa. Apr. 10, 2019) (terminating three 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. 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).

[5] The final judgments in *United States v. Aluminum Co. of Am.*, Civil Action No. 159 (entered 1912) and *United States v. Nat'l Ass'n of Master Plumbers of the United States, et al.*, Civil Action No. 151 (entered 1917) are the only judgments that do not explicitly provide that this Court retains jurisdiction.

[6] *See United States v. Swift & Co.*, 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 . . . [the] [po]wer to modify the decree was reserved by its very terms, and so from the beginning went hand in hand with its restraints. If the reservation had

In addition, this Court has the authority to terminate the final judgments in the above-captioned cases pursuant to the Federal Rules of Civil Procedure. Rule 60(b)(5) and (b)(6) provide 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)-(b)(6); s*ee also Bldg. & Constr. Trades Council v. NLRB*, 64 F.3d 880, 887-88 (3d Cir. 1995) (holding that "the generally applicable rule for modifying a previously issued judgment is that set forth in Rule 60(b)(5), i.e., that it is no longer equitable that the judgment should have prospective application," and instructing that "equity demands a flexible response to the unique conditions of each case") (internal quotation marks omitted); *Coltec Indus., Inc. v. Hobgood*, 280 F.3d 262, 273 (3d Cir. 2002) (describing Rule 60(b)(6) as a "catchall provision which allows a court to relieve a party from the effects of an order for any other reason justifying relief from the operation of the judgment'") (internal quotation marks and citation omitted). Thus, this Court may terminate the judgments in the above-captioned cases for any reason that justifies relief, including that each judgment no longer serves its original purpose of protecting competition.[7] For the reasons set forth below, termination of the final judgments in the above-captioned cases is warranted.

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been omitted, power there still would be by force of principles inherent in the jurisdiction of the chancery.") (citations omitted).

[7] In light of the circumstances surrounding the final judgments in the above-captioned cases for which it seeks termination, the United States does not believe it is necessary for this Court to make an extensive inquiry into the facts of the above-captioned judgments to terminate them under Fed. R. Civ. P. 60(b)(5) or (b)(6). The final judgments in the above-captioned cases 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 circumstances since entry, as described in this memorandum, means that it is likely that the above-captioned judgments no longer serve their original purposes of protecting competition.

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 them. Under such circumstances, this 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.[8] 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 termination of each judgment. These reasons include: (1) the judgment prohibits acts that the antitrust laws already prohibit; (2) most defendants likely no longer exist; and/or (3) all requirements of the judgment have been

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

met. A further discussion of each of these reasons and identification of the judgments that are appropriate to terminate for each reason follows below. A summary of each judgment and the reasons to terminate it also appears in Appendix B.

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

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 are illegal under the antitrust laws, such as price fixing, bid rigging, market allocations, and group boycotts:

- *United States v. Nat'l Ass'n of Master Plumbers of the United States, et al.*, Civil Action No. 151 (price fixing, market allocation, and group boycott);
- *United States v. Candy Supply Co., et al.*, Civil Action No. 2162 (price fixing, market allocation, and group boycott);
- *United States v. Voluntary Code of the Heating, Piping & Air Conditioning Indus. for Allegheny County, et al.*, Civil Action No. 698 (price fixing, bid rigging, and market allocation);
- *United States v. W. Pa. Sand and Gravel Ass'n, et al.*, Civil Action No. 780 (price fixing and bid rigging);
- *United States v. Marble Contractors Ass'n, et al.*, Civil Action No. 805 (bid rigging);
- *United States v. Pittsburgh Tile & Mantel Contractors' Ass'n, et al.*, Civil Action No. 806 (bid rigging);
- *United States v. Employing Plasterers' Ass'n of Allegheny County, et al.*, Civil Action No. 840 (bid rigging);
- *United States v. Blaw-Knox Co.*, Civil Action No. 9683 (price fixing and market allocation);
- *United States v. Roll Mfrs. Inst., et al.*, Civil Action No. 9657 (price fixing);
- *United States v. Robertshaw-Fulton Controls Co.*, et al., Civil Action No. 14745 (price fixing and market allocation);
- *United States v. Rockwood Sprinkler Co., et al.*, Civil Action No. 16199 (price fixing and market allocation);
- *United States v. Erie County Malt Beverage Distribs. Ass'n, et al.*, Civil Action No. 436 (price fixing and group boycott);
- *United States v. Holiday on Ice Shows, Inc., et al.*, Civil Action No. 62-215 (market allocation);
- *United States v. Am. Standard, Inc., et al.*, Civil Action No. 66-1184 (price fixing and bid rigging); and
- *United States v. Pittsburgh Area Pontiac Dealers, Inc.*, Civil Action No. 77-1125 (price fixing).

The core terms of these 15 judgments amount to little more than an admonition that defendants must not violate the law. Absent such terms, defendants that engage in the type of behavior prohibited by these judgments still face 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 these judgments include terms that do little to deter anticompetitive acts, they serve no purpose and there is reason to terminate them.

2. Most Defendants Likely No Longer Exist

The Antitrust Division believes that most of the defendants in the following cases brought by the United States likely no longer exist (companies or trade associations) or appear to have passed away (individual defendants):

- *United States v. Candy Supply Co., et al.*, Civil Action No. 2162 (judgment entered 1928);
- *United States v. Voluntary Code of the Heating, Piping & Air Conditioning Indus. for Allegheny County, et al.*, Civil Action No. 698 (judgment entered 1939);
- *United States v. W. Pa. Sand and Gravel Ass'n, et al.*, Civil Action No. 780 (judgment entered 1940);
- *United States v. Marble Contractors Ass'n, et al.*, Civil Action No. 805 (judgment entered 1940);
- *United States v. Pittsburgh Tile & Mantel Contractors' Ass'n, et al.*, Civil Action No. 806 (judgment entered 1940);
- *United States v. Employing Plasterers' Ass'n of Allegheny County, et al.*, Civil Action No. 840 (judgment entered 1940);
- *United States v. Roll Mfrs. Inst., et al.*, Civil Action No. 9657 (judgment entered 1955);
- *United States v. Erie County Malt Beverage Distribs. Ass'n, et al.*, Civil Action No. 436 (judgment entered 1958);
- *United States v. Holiday on Ice Shows, Inc., et al.*, Civil Action No. 62-215 (judgment entered 1963); and
- *United States v. Pittsburgh Area Pontiac Dealers, Inc.*, Civil Action No. 77-1125 (judgment entered 1978).

These ten judgments relate to very old cases—ranging from 40 to 90 years old—brought against individuals, trade associations, or companies, and most of the underlying defendants no longer

exist. To the extent that defendants subject to a judgment no longer exist (or have passed away), the related judgment serves no purpose, and should be terminated.

3. Requirements of the Judgment Have Been Met

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

- *United States v. Am. Radiator & Standard Sanitary Corp.*, Civil Action No. 14469 (divestiture ordered by the judgment was completed);
- *United States v. Ingersoll-Rand Co., et al.*, Civil Action No. 63-124 (acquisition enjoined by the judgment was not consummated, and due to changes to the original defendants, could not be consummated today);
- *United States v. Pittsburgh Brewing Co., et al.*, Civil Action No. 65-1406 (acquisitions enjoined by the judgment were not consummated, and due to changes to one of the original defendants, could not be consummated today);
- *United States v. Monsanto Co., et al.*, Civil Action No. 64-342 (divestiture ordered by the judgment was completed); and
- *United States v. Pennzoil Co., et al.*, Civil Action No. 60-838 (acquisitions enjoined by the judgment were not consummated, and due to changes to the original defendants, could not be consummated today).

The core terms of the judgments in these five cases involved (1) divestitures that have already been completed or (2) enjoined acquisitions that were never consummated and could not be consummated today. Because the substantive terms of the judgments in the five above-captioned cases have been met, the judgments have been satisfied in full, and termination will allow this Court to clear its docket of judgments that should have been terminated long ago.

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.[9] On November 13,

[9] Press Release, *Department of Justice Announces Initiative to Terminate "Legacy" Antitrust Judgments*, U.S. DEP'T OF JUSTICE (April 25, 2018),

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.[10] The notice identified each case, linked to the judgment, and invited public comment. The Antitrust Division did not receive any comments regarding any of the judgments in the above-captioned cases.

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 this 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: June 21, 2019

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https://www.justice.gov/opa/pr/department-justice-announces-initiative-terminate-legacy-antitrust-judgments.

[10] *Judgment Termination Initiative*, U.S. DEP'T OF JUSTICE, https://www.justice.gov/atr/JudgmentTermination; *Judgment Termination Initiative: Western District of Pennsylvania*, U.S. DEP'T OF JUSTICE, https://www.justice.gov/atr/judgment-termination-initiative-pennsylvania-western-district (last updated Nov. 13, 2018).

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