

**UNITED STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF ILLINOIS
MOTION**

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

Consolidating:

UNITED STATES OF AMERICA,
Plaintiff,

v.

SWIFT & COMPANY, *et al.*
Defendants;

Equity No. 26291

UNITED STATES OF AMERICA,
Plaintiff,

v.

AMERICAN SEATING COMPANY, *et al.*
Defendants;

Civil No. 28604

UNITED STATES OF AMERICA,
Plaintiff,

v.

AMERICAN SEATING COMPANY, *et al.*
Defendants;

Civil No. 28605

UNITED STATES OF AMERICA,
Plaintiff,

v.

CENTRAL-WEST PUBLISHING
COMPANY, *et al.*
Defendants;

Equity No. 30888

UNITED STATES OF AMERICA,
Plaintiff,

v.

INTERNATIONAL BROTHERHOOD OF
ELECTRICAL WORKERS, LOCAL
UNIONS NOS. 9 AND 134, *et al.*

In Equity No. 14

Defendants;)	
_____)	
UNITED STATES OF AMERICA,)	
Plaintiff,)	
v.	)	In Equity No. 31051
ELGIN BOARD OF TRADE, <i>et al.</i>)	
Defendants;)	
_____)	
UNITED STATES OF AMERICA,)	
Plaintiff,)	
v.	)	Civil No. No. 30042
CHICAGO BUTTER AND EGG BOARD,)	
<i>et al.</i>)	
Defendants;)	
_____)	
UNITED STATES OF AMERICA,)	
Plaintiff,)	
v.	)	In Equity No. 30887
ASSOCIATED BILLPOSTERS AND)	
DISTRIBUTORS OF THE UNITED)	
STATES AND CANADA, <i>et al.</i>)	
Defendants;)	
_____)	
UNITED STATES OF AMERICA,)	
Plaintiff,)	
v.	)	Equity No. 5460
UNITED STATES V. WESTERN)	
CANTALOUPE EXCHANGE, <i>et al.</i>)	
Defendants;)	
_____)	
UNITED STATES OF AMERICA,)	
Plaintiff,)	
v.	)	In Equity No. 2943
RAILWAY EMPLOYEES')	
DEPARTMENT OF THE AMERICAN)	
FEDERATION OF LABOR, <i>et al.</i>)	
Defendants;)	
_____)	
UNITED STATES OF AMERICA,)	

Plaintiff,)	
v.	)	In Equity No. 1490
AMERICAN LINSEED OIL COMPANY,)	
<i>et al.</i>)	
Defendants;)	
_____)	
UNITED STATES OF AMERICA,)	
Plaintiff,)	
v.	)	Equity No. 4913
TANNERS PRODUCTS COMPANY, <i>et</i>)	
<i>al.</i>)	
Defendants;)	
_____)	
UNITED STATES OF AMERICA,)	
Plaintiff,)	
v.	)	In Equity No. 8958
GLAZIERS LOCAL NO. 27 OF)	
CHICAGO AND VICINITY OF THE)	
BROTHERHOOD OF PAINTERS,)	
DECORATORS AND PAPER HANGERS)	
OF AMERICA, <i>et al.</i>)	
Defendants;)	
_____)	
UNITED STATES OF AMERICA,)	
Plaintiff,)	
v.	)	In Equity No. 8556
PAINTERS DISTRICT COUNCIL NO. 14)	
OF CHICAGO AND VICINITY OF THE)	
BROTHERHOOD OF PAINTERS,)	
DECORATORS, AND PAPER HANGERS)	
OF AMERICA, <i>et al.</i>)	
Defendants;)	
_____)	
UNITED STATES OF AMERICA,)	
Plaintiff,)	
v.	)	In Equity No. 11634
CORN DERIVATIVES INSTITUTE, <i>et al.</i>)	
Defendants;)	
_____)	
UNITED STATES OF AMERICA,)	
Plaintiff,)	

v.
THE TILE CONTRACTORS'
ASSOCIATION OF AMERICA, INC., *et*
al.
Defendants;

UNITED STATES OF AMERICA,
Plaintiff,

v.
THE MOSAIC TILE COMPANY, *et al.*
Defendants;

UNITED STATES OF AMERICA,
Plaintiff,

v.
THE BORDEN COMPANY, *et al.*
Defendants;

UNITED STATES OF AMERICA,
Plaintiff,

v.
KEARNEY & TRECKER
CORPORATION, *et al.*
Defendants;

UNITED STATES OF AMERICA,
Plaintiff,

v.
THE RAIL JOINT COMPANY, *et al.*
Defendants;

UNITED STATES OF AMERICA,
Plaintiff,

v.
U.S. MACHINE CORPORATION, *et al.*
Defendants;

UNITED STATES OF AMERICA,
Plaintiff,

v.
AUTOMATIC SPRINKLER COMPANY
OF AMERICA, *et al.*
Defendants;

UNITED STATES OF AMERICA,
Plaintiff,

v.
WHITE CAP COMPANY, *et al.*
Defendants;

UNITED STATES OF AMERICA,
Plaintiff,

v.
PHILLIPS SCREW COMPANY, *et al.*
Defendants;

UNITED STATES OF AMERICA,
Plaintiff,

v.
MAX GERBER, *et al.*
Defendants;

UNITED STATES OF AMERICA,
Plaintiff,

UHLEMANN OPTICAL CO. OF
ILLINOIS, *et al.*
Defendants;

UNITED STATES OF AMERICA,
Plaintiff,

v.
MAGER & GOUGELMAN, INC., *et al.*
Defendants;

Civil Action No. 49 C 1028

UNITED STATES OF AMERICA,
Plaintiff,

v.
OUTDOOR ADVERTISING
ASSOCIATION OF AMERICA, INC., *et al.*
Defendants;

Civil Action No. 50 C 935

UNITED STATES OF AMERICA,
Plaintiff,

v.
ALLIED FLORISTS ASSOCIATION OF
ILLINOIS, *et al.*
Defendants;

Civil Action No. 51 C 1036

UNITED STATES OF AMERICA,
Plaintiff,

v.
THE BORDEN COMPANY, *et al.*
Defendants;

Civil Action No. 51 C 947

UNITED STATES OF AMERICA,
Plaintiff,

v.
NATIONAL CITY LINES, INC., *et al.*
Defendants;

Civil Action No. 49 C 1364

UNITED STATES OF AMERICA,
Plaintiff,

v.
GENERAL OUTDOOR ADVERTISING
CO., INC.

Defendant;

Civil Action Docket No. 50 C 936

UNITED STATES OF AMERICA,
Plaintiff,

v.
HILTON HOTELS CORPORATION, *et al.*
Defendants;

Civil Action No. 55 C 1658

UNITED STATES OF AMERICA,
Plaintiff,

v.
AMERICAN LINEN SUPPLY COMPANY
Defendant;

Civil Action No. 55 C 1481

UNITED STATES OF AMERICA,
Plaintiff,

v.
CHICAGO TOWEL COMPANY, *et al.*
Defendants;

Civil Action No. 56 C 158

UNITED STATES OF AMERICA,
Plaintiff,

v.
CROWN ZELLERBACH
CORPORATION, *et al.*
Defendants;

Civil Action No. 55 C 1480

UNITED STATES OF AMERICA,
Plaintiff,

v.
J.P. SEEBURG CORPORATION, *et al.*
Defendants;

Civil Action No. 56 C 419

UNITED STATES OF AMERICA,
Plaintiff,

v.
MAGNAFLUX CORPORATION,
Defendant;

UNITED STATES OF AMERICA,
Plaintiff,

v.
LOCAL NO. 27 OF THE
BROTHERHOOD OF PAINTERS,
DECORATORS AND PAPERHANGERS
OF AMERICA (HAMILTON GLASS
COMPANY), *et al.*
Defendants;

UNITED STATES OF AMERICA,
Plaintiff,

v.
OPERATIVE PLASTERERS AND
CEMENT MASONS INTERNATIONAL
ASSOCIATION OF THE UNITED
STATES AND CANADA, *et al.*
Defendants;

UNITED STATES OF AMERICA,
Plaintiff,

v.
MAREMONT AUTOMOTIVE
PRODUCTS, INC., *et al.*
Defendants;

UNITED STATES OF AMERICA,
Plaintiff,

v.
PARENTS MAGAZINE ENTERPRISES,
INC., *et al.*
Defendants;

UNITED STATES OF AMERICA,
Plaintiff,

v.
SPERRY RAND CORPORATION, *et al.*

) Civil Action No. 51 C 859
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) Civil Action No. 57 C 432
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) Civil Action No. 56 C 1096
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) Civil Action No. 60-C-1897
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) 62 C 1453
)
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)
)
)

) Civil Action No. 63 C 1100
)
)

Defendants;)	
_____)	
UNITED STATES OF AMERICA,)	
Plaintiff,)	
v.)	No. 63 C 2025
CHICAGO TITLE AND TRUST)	
COMPANY, <i>et al.</i>)	
Defendants;)	
_____)	
UNITED STATES OF AMERICA,)	
Plaintiff,)	
v.	)	Civil Action No. 66 C 1652
CHICAGO LINEN SUPPLY)	
ASSOCIATION, <i>et al.</i>)	
Defendants;)	
_____)	
UNITED STATES OF AMERICA,)	
Plaintiff,)	
v.	)	Civil No. 67-C-1621
PEABODY COAL COMPANY, <i>et al.</i>)	
Defendants;)	
_____)	
UNITED STATES OF AMERICA,)	
Plaintiff,)	
v.	)	Civil Action No. 67 C 612
HARPER & ROW, PUBLISHERS INC.)	
Defendant;)	
_____)	
UNITED STATES OF AMERICA,)	
Plaintiff,)	
v.	)	Civil Action No. 67 C 613
THE BOBBS-MERRILL COMPANY,)	
INC.)	
Defendant;)	
_____)	
UNITED STATES OF AMERICA,)	
Plaintiff,)	
v.	)	Civil Action No. 67 C 614
CHILDRENS PRESS, INC.)	

Defendant;)	
)	
UNITED STATES OF AMERICA,)	
Plaintiff,)	
v.	)	Civil Action No. 67 C 615
THOMAS Y. CROWELL COMPANY)	
Defendant;)	
)	
UNITED STATES OF AMERICA,)	
Plaintiff,)	
v.	)	Civil Action No. 67 C 616
DODD, MEAD & COMPANY, INC.)	
Defendant;)	
)	
UNITED STATES OF AMERICA,)	
Plaintiff,)	
v.	)	Civil Action No. 67 C 617
E. P. DUTTON & COMPANY, INC.)	
Defendant;)	
)	
UNITED STATES OF AMERICA,)	
Plaintiff,)	
v.	)	Civil Action No. 67 C 618
GOLDEN PRESS, INC.)	
Defendant;)	
)	
UNITED STATES OF AMERICA,)	
Plaintiff,)	
v.	)	Civil Action No. 67 C 619
GROSSET & DUNLAP, INC.)	
Defendant;)	
)	
UNITED STATES OF AMERICA,)	
Plaintiff,)	
v.	)	Civil Action No. 67 C 620
HOLT, RINEHART AND WINSTON,)	
INC.)	
Defendant;)	
)	

UNITED STATES OF AMERICA,
Plaintiff,
v.
LITTLE, BROWN & COMPANY, INC.
Defendant;

Civil Action No. 67 C 621

UNITED STATES OF AMERICA,
Plaintiff,
v.
THE MACMILAN COMPANY
Defendant;

Civil Action No. 67 C 622

UNITED STATES OF AMERICA,
Plaintiff,
v.
WILLIAM MORROW & COMPANY,
INC.
Defendant;

Civil Action No. 67 C 623

UNITED STATES OF AMERICA,
Plaintiff,
v.
G. P. PUTNAM'S SONS
Defendant;

Civil Action No. 67 C 624

UNITED STATES OF AMERICA,
Plaintiff,
v.
RANDOM HOUSE, INC.
Defendant;

Civil Action No. 67 C 625

UNITED STATES OF AMERICA,
Plaintiff,
v.
CHARLES SCRIBNER'S SONS
Defendant;

Civil Action No. 67 C 626

UNITED STATES OF AMERICA,

Plaintiff,)
v.) Civil Action No. 67 C 627
THE VIKING PRESS, INC.)
Defendant;)

UNITED STATES OF AMERICA,)
Plaintiff,)
v.) Civil Action No. 67 C 628
HENRY Z. WALCK, INC.)
Defendant;)

UNITED STATES OF AMERICA,)
Plaintiff,)
v.) Civil Action No. 67 C 629
FRANKLIN WATTS, INC.)
Defendant;)

UNITED STATES OF AMERICA,)
Plaintiff,)
v.) Civil Action No. 68 C 549
WILSON SPORTING GOODS)
COMPANY, *et al.*)
Defendants;)

UNITED STATES OF AMERICA,)
Plaintiff,)
v.) Civil Action No. 68 C 48
GANNETT COMPANY, INC., *et al.*)
Defendants;)

UNITED STATES OF AMERICA,)
Plaintiff,)
v.) Civil Action No. 66 C 1253
THE COLLEGE OF AMERICAN)
PATHOLOGISTS)
Defendant;)

UNITED STATES OF AMERICA,)
Plaintiff,)

v.
MINNESOTA MINING AND
MANUFACTURING COMPANY
Defendant;

UNITED STATES OF AMERICA,
Plaintiff,

v.
TANDY CORPORATION, *et al.*
Defendants;

UNITED STATES OF AMERICA,
Plaintiff,

v.
FISONS LIMITED, *et al.*
Defendants;

UNITED STATES OF AMERICA,
Plaintiff,

v.
TOPCO ASSOCIATES, INC.
Defendant;

UNITED STATES OF AMERICA,
Plaintiff,

v.
TECHNICAL TAPE, INC., *et al.*
Defendants;

UNITED STATES OF AMERICA,
Plaintiff,

v.
AMPRESS BRICK COMPANY, INC., *et*
al.
Defendants;

UNITED STATES OF AMERICA,
Plaintiff,

BOARD OF TRADE OF THE CITY OF CHICAGO, INC.)	
Defendant;)	
<hr/>)	
UNITED STATES OF AMERICA,)	
Plaintiff,)	
v.	)	Civil Action No. 72 C 2484
GONNELLA BAKING COMPANY, <i>et al.</i>)	
Defendants;)	
<hr/>)	
UNITED STATES OF AMERICA,)	
Plaintiff,)	
v.	)	Civil Action No. 76 C 1860
LAKE COUNTY CONTRACTORS ASSOCIATION, INC., <i>et al.</i>)	
Defendants;)	
<hr/>)	
UNITED STATES OF AMERICA,)	
Plaintiff,)	
v.	)	Civil Action No. 77 C 501
ILLINOIS PODIATRY SOCIETY, INC.)	
Defendant;)	
<hr/>)	
UNITED STATES OF AMERICA,)	
Plaintiff,)	
v.	)	Civil Action No. 79-C-3626
MARTIN MARIETTA CORPORATION, <i>et al.</i>)	
Defendants.)	
<hr/>)	
UNITED STATES OF AMERICA,)	
Plaintiff,)	
v.	)	Civil Action No. 79 C 3550
BENEFICIAL CORPORATION, <i>et al.</i>)	
Defendants;)	
<hr/>)	
UNITED STATES OF AMERICA,)	
Plaintiff,)	
v.	)	Civil Action No. 79 C 3551

BENEFICIAL CORPORATION, <i>et al.</i>)	
Defendants;)	
<hr/>)	
UNITED STATES OF AMERICA,)	
Plaintiff,)	
v.	)	Civil Action No. 79 C 80
HOUSEHOLD FINANCE)	
CORPORATION, <i>et al.</i>)	
Defendants;)	
<hr/>)	
UNITED STATES OF AMERICA,)	
Plaintiff,)	
v.)	Civil Action No. 79-C-1144
EMERSON ELECTRIC CO., <i>et al.</i>)	
Defendants;)	
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**THE UNITED STATES' MOTION AND MEMORANDUM
REGARDING TERMINATION OF 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 the Court in the Northern District of Illinois between 1903 and 1980. 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 these 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.² 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.

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

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 this motion concern violations of these two laws.

² The judgments in *U.S. v. Household Finance Corporation, et al.*, 79 C 80 and *U.S. v. Emerson Electric Co., et al.*, 79-C-1144, both entered in 1980, are two of the few exceptions in which antitrust final judgments entered after 1979 did not have a ten-year term limit. For the reasons set forth below, the United States moves that these two judgments be terminated along with the other judgments discussed in this memorandum.

Division described the 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 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 by which 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.⁵

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>.

⁵ The United States followed this process to move several dozen other district courts to terminate legacy antitrust judgments. See, e.g., *United States v. Consolidated Papers Inc., et al.*, 3:19-mc-00005-jdp (W.D. Wis. May 9, 2019) (terminating one judgment); *United States v. Milk Haulers and Dairy Workers Union Local 916, et al.*, 19-mc-0024 and 19-mc-0025 (S.D. Ill. May 13, 2019) (terminating two judgments); *United States v. Am. Amusement Ticket Mfrs. Ass'n*, 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.*, 1:19-mc-00069-RDB (D. Md. Feb. 7, 2019) (terminating nine judgments).

The remainder of this motion 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 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. 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. Most of the judgments, copies of which are included in Appendix A, provide that the Court retains jurisdiction. Jurisdiction was not explicitly retained in 10 of the above-captioned cases, but it has long been recognized that courts are vested with inherent power to modify judgments they have issued which regulate future conduct.⁶ In addition, 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); *see also Klapprott v. United States*, 335 U.S. 601, 614-15 (1949) ("In simple English, the language of the 'other reason'

⁶ *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 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).

clause, . . . vests power in courts adequate to enable them to vacate judgments whenever such action is appropriate to accomplish justice.”); *Pantoja v. Texas Gas & Transmission Corp.*, 890 F.2d 955, 960 (7th Cir. 1989) (“Clearly, a court may relieve a party from a final judgment for ‘any other reason justifying relief from the operation of the judgment.”); *United States v. City of Chicago*, 663 F.2d 1354, 1360 (7th Cir. 1981) (“The standard also incorporates consideration of whether there remains any need to continue the injunction, that is, whether ‘the purposes of the litigation as incorporated in the decree’ have been achieved.”). 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.⁷ 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 they no longer protect competition. Other reasons, however, also weigh in favor of terminating 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

⁷ 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.

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. Based on its examination of the judgments, the Antitrust Division has determined that each should be terminated for one or more of the following reasons:

- All requirements of the judgment have been met such that it has been satisfied in full. In such a case, 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.
- Most defendants likely no longer exist. With the passage of time, many of the company defendants in these actions likely have gone out of existence, and many individual defendants likely have passed away. To the extent that defendants no longer exist, the related judgment serves no purpose and should be terminated.
- The judgment prohibits acts that the antitrust laws already prohibit, such as fixing prices, allocating markets, rigging bids, or engaging in group boycotts. 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 a judgment includes terms that do little to deter anticompetitive acts, it should be terminated.
- Market conditions likely have changed such that the judgment no longer protects competition or may even be anticompetitive. For example, the subsequent development of new products may render a market more competitive than it was at the time the judgment was entered or may even eliminate a market altogether, making

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

the judgment irrelevant. In some circumstances, a judgment may impede the kind of adaptation to change that is the hallmark of competition, rendering it anticompetitive. Such judgments clearly should be terminated.

Appendix B summarizes the key terms of each above-captioned judgment and lists the specific reasons, more generally listed above, to terminate it.

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 April 5, 2019, 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. 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

⁹ 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/departments-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: Northern District of Illinois*, U.S. DEP’T OF JUSTICE, <https://www.justice.gov/atr/judgment-termination-initiative-illinois-northern-district> (last updated April 5, 2019).

order terminating them. A proposed order terminating the judgments in the above-captioned cases is attached as Appendix C.

Respectfully submitted,

Dated: June 11, 2019

s/ Carla M. Stern
Carla M. Stern, IL Bar No. 6201979
Trial Attorney

United States Department of Justice,
Antitrust Division
209 South LaSalle Street
Suite 600
Chicago, IL 60604
Phone: (312) 984-7237
Email: carla.stern@usdoj.gov