UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

UNITED STATES OF AMERICA, Plaintiff, v. ANHEUSER-BUSCH, INC.; AMERICAN BREWING COMPANY; CITY PRODUCTS CORPORATION; and WAGNER BREWING COMPANY, Defendants.	Civil Action No. 8906-M
UNITED STATES OF AMERICA, Plaintiff, v. PAUL BARNETT, INC.; CENTRAL STATIONERS, INC.; LONG OFFICE SUPPLY CO.; MR. FOSTER'S STORE, INC.; SEMINOLE PAPER & PRINTING CO., INC.; SKAGSETH-BRYANT, INC.; and ATLANTIC PAPER CO., Defendants.	Civil Action No. 10,422 M
UNITED STATES OF AMERICA, Plaintiff, v. RYDER SYSTEM, INC., Defendant.	Civil No. 10,292

UNITED STATES OF AMERICA, Plaintiff, v. THE HOUSE OF SEAGRAM, INC., Defendant.	No. 417-62-Civ-WAM
UNITED STATES OF AMERICA, Plaintiff, v. CUSTOMS BROKERS AND FORWARDERS ASSOCIATION OF MIAMI, INC., Defendant.	Civil No. 75-3087 Civ.-PF
UNITED STATES OF AMERICA, Plaintiff, v. CLIMATROL CORPORATION and SCREENCO, INC., Defendants.	Civil No. FL-74-78-Civ-NCR, Jr.
UNITED STATES OF AMERICA, Plaintiff, v. AMERICAN SERVICE CORPORATION; CADILLAC OVERALL SUPPLY COMPANY; EVERGLADES LAUNDRY, INC. dba MECHANICS UNIFORM SERVICE; NEWAY UNIFORM & TOWEL SUPPLY OF FLORIDA, INC.; and UNIFORMS FOR INDUSTRY, INC., Defendants.	Civil No. 76-6041-Civ-JE

THE UNITED STATES' 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 United States has concluded that because of their age and changed circumstances since their entry, these judgments—which were entered between forty and fifty-eight years ago—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 opposing termination. 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. 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 firm defendants may have gone

[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 these two laws.

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 continue to do so because of changed circumstances.

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 examined each judgment covered by this motion to ensure that it is suitable for termination. The Antitrust Division also gave the public notice of—and the opportunity to comment on—its intention to seek termination of these judgments.

In brief, the process by which the United States has identified judgments it believes should be terminated is as follows:

- The Antitrust Division reviewed its perpetual judgments entered by this Court to identify those that no longer serve to protect competition such that termination would be appropriate.

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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 (last updated Mar. 8, 2019).

- When the Antitrust Division identified a judgment it believed suitable for termination, it posted the name of the case and a link to the judgment on its public Judgment Termination Initiative website, https://www.justice.gov/atr/JudgmentTermination.

- The public had the opportunity to submit comments regarding each proposed termination to the Antitrust Division within thirty days of the date the case name and judgment link was posted to the public website.

- Following review of public comments, the Antitrust Division identified those judgments it still believes warranted termination, and the United States moves this Court to terminate them.

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. Section III explains that perpetual judgments rarely serve to protect competition and those that are more than ten years old should be terminated absent compelling circumstances. The section also describes the additional reasons that the United States believes each of the judgments should be terminated. Section IV concludes. Exhibit A attaches a copy of each final judgment that the United States seeks to terminate. Exhibit B summarizes the terms of each judgment and the United States' reasons for seeking termination. Finally, Exhibit C is a proposed order terminating the final judgments.

II. APPLICABLE LEGAL STANDARDS FOR TERMINATING THE JUDGMENTS

This Court has jurisdiction to terminate the judgments in the above-captioned cases. Each judgment, a copy of which is included in Exhibit 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); *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."); *cf. United States v.*

Am. Amusement Ticket Mfrs. Ass'n, Case 1:18-mc-00091 (D.D.C. Aug. 15, 2018) (terminating nineteen legacy antitrust 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.*, Case No. 3:75CV2656-FDW-DSC (W.D.N.C. Dec. 17, 2018) (terminating one judgment); *United States v. Capital Glass & Trim Co.*, Case No. 3679N (M.D. Ala. Dec. 17, 2018) (terminating one judgment); *United States v. Standard Sanitary Mfg. Co.*, Case 1:19-mc-00069-RDB (D. Md. Feb. 7, 2019) (terminating nine judgments).

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.[4] 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 continue to 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 all terms of the judgment have been satisfied, defendants likely no longer exist, terms of the judgment merely prohibit acts that the antitrust laws already prohibit, or changed market conditions likely have rendered the judgment

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[4] 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.

ineffectual. 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. The development of new products that compete with existing products, for example, may render a market more competitive than it was at the time of entry of the judgment or may even eliminate a market altogether, making the judgment irrelevant. In some circumstances, a judgment may be an impediment to the kind of adaptation to change that is the hallmark of competition, undermining the purposes of the antitrust laws. 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.[5]

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.

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

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) all terms of the judgment have been satisfied, (2) most defendants likely no longer exist, and (3) the judgment largely prohibits acts that the antitrust laws already prohibit. Each of these reasons suggests the judgments no longer serve to protect competition. In this section, this motion describes these additional reasons and identifies those judgments that are worthy of termination for each reason. Exhibit B summarizes the key terms of each judgment and the reasons to terminate it.

1. All Terms of Judgment Have Been Satisfied

The Antitrust Division has determined that the terms of the judgment in *United States v. Ryder System, Inc.*, Civil No. 10,292, have been satisfied such that termination is appropriate. The judgment prevented the defendant from acquiring additional assets for three years and required the defendant to divest certain assets shortly after the judgment's issuance.[6] Because the required divestitures took place years ago, and because all other substantive terms of the judgment were satisfied or expired with divestiture or within a limited number of years of divestiture, this judgment has been satisfied in full. Termination in this case is a housekeeping action that has no implication for competition: 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 substantive terms.

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[6] The judgment was slightly amended twice, first in 1962 and again in 1963. Neither amendment changes the determination that termination of the judgment is appropriate. Both amendments, along with the initial judgment, are included in Exhibit A.

2. Most Defendants Likely No Longer Exist

The Antitrust Division believes that most of the defendants in *United States v. Paul Barnett, Inc.*, Civil Action No. 10,422 M, likely no longer exist. This case is fifty-eight years old. With the passage of time, most of the defendants likely have gone out of existence. To the extent that defendants no longer exist, the related judgment serves no purpose, which is an additional reason to terminate these judgments.

3. Terms of Judgment Prohibit Acts Already Prohibited by Law

The Antitrust Division has determined that the core provisions of the judgments in the following cases merely prohibit acts that are illegal under the antitrust laws, such as fixing prices and dividing markets:

- *United States v. Paul Barnett, Inc.*, Civil Action No. 10,422 M (prohibiting price fixing).
- *United States v. The House of Seagram, Inc.*, No. 417-62-Civ-WAM (prohibiting price fixing).
- *United States v. Customs Brokers & Forwarders Ass'n of Miami*, Civil No. 75-3087 Civ.-PF (prohibiting price fixing).
- *United States v. Climatrol Corporation and Screenco, Inc.*, Civil No. FL-74-78-Civ-NCR, Jr. (prohibiting price fixing and market division).

These terms amount to little more than an admonition that defendants must not violate the law. Absent such terms, defendants who 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, thereby making such violations of the antitrust laws unlikely to occur. 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.

4. Other Reasons to Terminate

Finally, the judgment in *United States v. Anheuser-Busch, Inc.*, Civil Action No. 8906-M, included provisions enjoining Anheuser-Busch from acquiring shares of stock of any corporation

engaged in brewing beer in Florida and, with limited exceptions, enjoined the remaining defendants from selling any brewing facility or plant to anyone. These provisions have been largely mooted by subsequent statutory developments, which require that sufficiently large stock or asset acquisitions or sales be reported to federal antitrust authorities for their review. *See St. Joseph Hosp., Augusta, Ga., Inc. v. Health Mgmt. Assocs.*, 705 F.3d 1289, 1292 (11th Cir. 2013) ("[T]he Hart–Scott–Rodino Antitrust Improvements Act of 1976 requires the Federal Trade Commission and the Department of Justice to scrutinize the antitrust implications of any transfer or acquisition of assets valued at over $50 million." (citations omitted)).

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.[7] On August 15, 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.[8] The notice identified each case, linked to the judgment, and invited public comment. The time to respond expired on September 14, 2018, and the Antitrust Division has not received any comment opposing termination.

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[7] 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.

[8] *Judgment Termination Initiative: Florida, Southern District*, U.S. DEP'T OF JUSTICE, https://www.justice.gov/atr/judgment-termination-initiative-florida-southern-district (last updated Oct. 2, 2018).

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 Exhibit C.

Respectfully submitted,

Dated: March 14, 2019

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