

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

UNITED STATES OF AMERICA,

v.

Civil Case No. 8906-M

ANHEUSER-BUSCH, INC. *et al.*,

Defendants

UNITED STATES OF AMERICA,

v.

Civil Action No. 10,422 M

PAUL BARNETT, INC. *et al.*,

Defendants

UNITED STATES OF AMERICA,

v.

Civil No. 10,292

RYDER SYSTEM, INC.,

Defendant

UNITED STATES OF AMERICA,

v.

No. 417-62-Civ-WAM

THE HOUSE OF SEAGRAM, INC.,

Defendant

UNITED STATES OF AMERICA,

v.

Civil No. 75-03087 Civ.-PF

**CUSTOMS BROKERS AND
FORWARDERS ASSOC. OF MIAMI, INC.,**

Defendant

UNITED STATES OF AMERICA,

v.

Civil No. FL-74-00078-Civ-NCR, Jr.

**CLIMATROL CORP. and
SCRENCO INC.,**

Defendants

UNITED STATES OF AMERICA,

v.

Civil No. 76-6041-Civ-JE

AMERICAN SERV. CORP. *et al.*,

Defendants

ORDER TERMINATING FINAL JUDGMENTS

THIS CAUSE came before the Court upon the United States of America's Motion to Terminate the Judgments in each of the above-captioned antitrust cases pursuant to Federal Rule of Civil Procedure 60(b).¹ The Government gave public notice and the opportunity to comment on its intent to seek termination of the judgments and it received no comments opposing

¹ The Government filed an identical motion to terminate the seven above-captioned antitrust judgments in each above-captioned case and as such, this Order will address all of the above-captioned cases and will be filed separately on the respective dockets.

termination. The motion is now ripe for review.

I. BACKGROUND

The Government moves, pursuant to Federal Rule of Civil Procedure 60(b), to terminate seven anti-trust judgments, discussed herein. First, in *United States v. Ryder System Inc.*, No. 10,292 (1961), a judgment was entered requiring the defendant to sell all of its interests in varying numbers of trucks and accompanying lease contracts and preventing the defendant from acquiring additional assets for three years. *See* 1:61-cv-10292-KMM, ECF No. 2. The Government moves to terminate this judgment arguing that the judgment has been satisfied in full and should have been terminated but for the failure to include a term automatically terminating it upon satisfaction of its substantive terms.

Second, in *United States v. Anheuser-Bush, Inc.*, No. 8906-M (1960), multiple judgments were entered which included provisions enjoining the defendant from acquiring shares of stock of any corporation engaged in brewing beer in Florida and selling any brewing facility or plant. *See* 1:60-cv-08906-KMM, ECF No. 2. The Government argues that these provisions have been 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.

Finally, the Government argues that the judgments in the following cases are more than ten years old and merely prohibit acts that are illegal under the antitrust laws, such as fixing prices and dividing markets: *United States v. American Service Corporation et al.*, No. 76-6041-Civ-JE (1976) (prohibiting price fixing and dividing markets); *United States v. Customs Brokers & Forwarders Ass'n of Miami*, No. 75-3087 Civ.-P (1975) (prohibiting price fixing); *United States v. Climatrol Corp. and Screenco, Inc.*, No. FL-74-00078-Civ-NCR, Jr. (1974) (prohibiting price fixing and market division); *United States v. The House of Seagram, Inc.*, No. 417-62-Civ-

WAM (1962) (prohibiting price fixing); *United States v. Paul Barnett, Inc.*, No. 10,422 M (1961) (prohibiting price fixing and selling below cost). See 1:76-cv-06041-KMM, ECF No. 2; 1:75-cv-03087-KMM, ECF No. 3; 1:74-cv-00078-KMM, ECF No. 2; 1:62-cv-00417-KMM, ECF No. 2; 1:61-cv-10422-KMM, ECF No. 2. Thus, the Government argues that these judgments are no longer necessary.

Accordingly, the Government moves to terminate the above-captioned judgments arguing that Rule 60(b)(5) and (b)(6) provide the Court the authority to do so.

II. DISCUSSION

The Government explains that, since 1979, the Antitrust Division has generally followed a policy of including in each judgment a term that automatically terminates the judgment after no more than ten years. However, this was not the policy prior to 1979 and thus, hundreds of judgments entered prior to 1979 contain no termination clause and remain in force today. As a result, the Government has implemented a program to review and, when appropriate, seek termination of these perpetual legacy judgments, including the judgments in the above-captioned cases. The Government now seeks termination of the above-captioned judgments pursuant to Rule 60(b)(5) and (b)(6).

Rule 60(b)(5) and (b)(6) of the Federal Rules of Civil Procedure provide that:

the court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons. . . . (5) 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; or (6) any other reason that justifies relief.

Fed. R. Civ. P. 60(b). The party seeking relief from a judgment, order, or proceeding bears the burden of showing that Rule 60(b) applies. *Frew v. Janek*, 780 F.3d 320, 326–27 (5th Cir. 2015) (“Consent decrees, like other judgments, may be modified or terminated pursuant to Rule

60(b)(5), which provides three independent, alternative grounds for relief. . . . As the party seeking relief, Defendants must bear the burden of showing that Rule 60(b)(5) applies.”).

Rule 60(b)(5) “applies in ordinary civil litigation where there is a judgment granting continuing prospective relief, such as an injunction.” *Griffin v. Sec’y, Fla. Dept of Corr.*, 787 F.3d 1086, 1089 (11th Cir. 2015). It is appropriate to grant a Rule 60(b)(5) motion “when the party seeking relief from an injunction . . . can show a significant change either in factual conditions or in law.” *Agostini v. Felton*, 521 U.S. 203, 215, 237 (1997) (internal citation and quotation marks omitted) (holding that “a court errs when it refuses to modify an injunction or consent decree in light of” changes in factual conditions or in law). Further, Rule 60(b)(6) provides that the Court “may relieve a party or its legal representative from a final judgment” for “any other reason that justifies relief.” Fed. R. Civ. P. 60(b)(6).

Courts in other districts have granted the Government’s request to terminate similar legacy antitrust judgments. *See, e.g., United States v. Kahn’s Bakery Inc. et al.*, No. 3:75-cv-00106 (W.D. Tex. Mar. 26, 2019), ECF No. 4; *United States v. Continental Grain Co.*, No. 1:70-cv-06733 (E.D. Tex. May 30, 2019), ECF No. 3; *United States v. V.I. Gift and Fashion Shop Assoc. Inc.*, No. 3:69-cv-00295 (V.I. June 11, 2019), ECF No. 4.

Here, the Government points to changes in the factual and legal landscape that they believe justify their claim for relief under Rule 60(b)(5) and (b)(6). First, the Government argues that the judgments should be terminated because of their age. In addition to age, the Government argues that the judgments should be terminated because (1) all terms of the judgments have been satisfied, (2) most defendants no longer exist, and (3) the judgments largely prohibit act that the antitrust laws already prohibit.

Given these circumstances, and pursuant to Rule 60(b), the termination of the above-

captioned judgments is appropriate.

III. CONCLUSION

Accordingly, UPON CONSIDERATION of the Motion, the pertinent portions of the record, and being otherwise fully advised in the premises, it is hereby ORDERED AND ADJUDGED that the Government's Motion to Terminate Judgments in each of the above-captioned cases is GRANTED.

DONE AND ORDERED in Chambers at Miami, Florida, this 19th day of July, 2019.

K. Michael Moore
Digitally signed by K. Michael Moore
DN: cn=K. Michael Moore, o=Southern District of Florida,
ou=United States District Court,
email=k_michael_moore@flsd.uscourts.gov, c=US
Date: 2019.07.19 13:46 52 -0400

K. MICHAEL MOORE
UNITED STATES CHIEF DISTRICT JUDGE

c: All counsel of record