

**UNITED STATES DISTRICT COURT FOR
THE MIDDLE DISTRICT OF FLORIDA**

UNITED STATES OF AMERICA,
Plaintiff,

v.

WARD BAKING COMPANY; AMERICAN
BAKERIES COMPANY; DERST BAKING
COMPANY; FLOWERS BAKING
COMPANY, INC.; and SOUTHERN
BAKERIES COMPANY,
Defendants.

Civil No. 4735-Civ.-J

UNITED STATES OF AMERICA,
Plaintiff,

v.

FIRST AT ORLANDO CORPORATION;
COMMERCIAL BANK AT DAYTONA
BEACH; PENINSULA STATE BANK AT
DAYTONA BEACH SHORES; and
EXCHANGE BANK AT HOLLY HILL,
Defendants.

Civ. No. 69-281 Orl. Div.

UNITED STATES OF AMERICA,
Plaintiff,

v.

FLORIDA POWER CORP. and TAMPA
ELECTRIC CO.,
Defendants.

Civil No. 68-297-T

2019 APR 18 AM 11:04
CLERK OF DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA, FLORIDA

FBI FD

UNITED STATES OF AMERICA,
Plaintiff,

v.

ST. PETERSBURG AUTOMOBILE
DEALERS ASSOCIATION,
Defendant.

Civil Action No. 72-725-Civ-T

UNITED STATES OF AMERICA,
Plaintiff,

v.

BETHLEHEM STEEL CORPORATION;
FLORIDA STEEL CORPORATION;
LACLEDE STEEL COMPANY; and OWEN
STEEL COMPANY OF FLORIDA,
Defendants.

Case No. 74-435 Civ-T-H

**THE UNITED STATES' MOTION TO
TERMINATE LEGACY ANTITRUST JUDGMENTS**

The United States moves under Rule 60(b) of the Federal Rules of Civil Procedure to terminate the judgments in each of the five above-captioned antitrust cases. The United States has concluded that because of their age and changed circumstances since their entry, these judgments—which were issued from thirty-nine to fifty-three 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

Since 1979, the Antitrust Division of the United States Department of Justice (“Antitrust Division”) has generally followed a policy of including in each judgment a term automatically

terminating the judgment after no more than ten years.¹ This policy was based on the United States' experience enforcing the antitrust laws, an experience that has shown that markets almost always evolve over time in response to competitive and technological changes in ways that render long-lived judgments no longer protective of competition or even anticompetitive. Often, antitrust judgments entered before implementation of the 1979 policy, and even some judgments entered in the years after, contained no termination clause. Hundreds of such judgments remain in force today. The Antitrust Division recently implemented a program to review and, when appropriate, seek termination of these perpetual legacy judgments, including the judgments in the above-captioned cases.² The Antitrust Division described its Judgment Termination 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

II. APPLICABLE LEGAL STANDARDS FOR TERMINATING THE JUDGMENTS

This Court has jurisdiction to terminate the judgments in the above-captioned antitrust cases. The judgments, copies of which are included in Exhibit A, provide that the Court retains

¹ U.S. DEP'T OF JUSTICE, ANTITRUST DIVISION MANUAL at III-147 (5th ed. 2008), <https://www.justice.gov/atr/division-manual>.

² The United States followed this process to move several other district courts to terminate legacy antitrust judgments. *E.g.*, *United States v. Savannah Cotton & Naval Stores Exchanges, Inc.*, Civ. 559 (S.D. Ga. Apr. 4, 2019) (terminating two judgments), <https://www.justice.gov/atr/judgment-termination-initiative-georgia-southern-district>; *United States v. The Southern Wholesale Grocers' Ass'n*, In Equity No. 205 (N.D. Ala. Mar. 22, 2019) (terminating three judgments), <https://www.justice.gov/atr/judgment-termination-initiative-alabama-northern-district>; *United States v. Capital Glass & Trim Co.*, Case No. 3679N (M.D. Ala. Jan. 2, 2019) (terminating one judgment), <https://www.justice.gov/atr/judgment-termination-initiative-alabama-middle-district>; *Judgment Termination Initiative*, U.S. DEP'T OF JUSTICE, <https://www.justice.gov/atr/JudgmentTermination> (last updated Apr. 12, 2019) (collecting similar orders from at least twelve other Districts).

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> (last updated Apr. 12, 2019).

jurisdiction.⁵ Further, Federal Rule of Civil Procedure 60(b)(5) and (b)(6) states 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 Frew ex rel. Frew v. Hawkins*, 540 U.S. 431, 441 (2004) (explaining that Rule 60(b)(5) “encompasses the traditional power of a court of equity to modify its decree in light of changed circumstances” and that “district courts should apply a ‘flexible standard’ to the modification of consent decrees when a significant change in facts or law warrants their amendment”); *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.”).

III. REASONS FOR TERMINATING EACH JUDGMENT

The judgments in the above-captioned cases—each of which is decades old—presumptively should be terminated because of their age. As noted above, markets almost always evolve over time such that the prohibitions of decades-old judgments may become either irrelevant to, or inconsistent with, competition. These concerns led the Antitrust Division to adopt its 1979 policy of generally limiting judgments to a term of ten years. As the judgments in the above-captioned cases are all substantially more than ten years old, they presumptively should be terminated. As explained below, however, other reasons also weigh in favor of terminating each judgment.

⁵ *United States v. Ward Baking Co.*, Civil No. 4735-Civ.-J, Section VII (M.D. Fla. Sept. 1, 1965); *United States v. First at Orlando Corp.*, Civ. No. 69-281 Orl. Div., Section VI (M.D. Fla. Aug. 27, 1970); *United States v. Fla. Power Corp.*, Civil No. 68-297-T, Section VII (M.D. Fla. Aug. 19, 1971); *United States v. St. Petersburg Auto. Dealers Ass’n*, Civil Action No. 72-725-Civ-T, Section VIII (M.D. Fla. Sept. 15, 1973); *United States v. Bethlehem Steel Corp.*, Case No. 74-435 Civ-T-H, Section IX (M.D. Fla. Nov. 7, 1979).

A. *Ward Baking Co.*

The oldest judgment, that in *United States v. Ward Baking Co.*, Civil No. 4735-Civ.-J (M.D. Fla. Sept. 1, 1965), is more than fifty-three years old. The most notable provisions of the judgment prohibit manufacturers of bakery products from fixing prices, submitting rigged bids, or allocating customers in the sale of bakery products to the United States or its instrumentalities. The judgment also included various time-limited requirements, such as a three-year prohibition against fixing prices or rigging bids in the States of Georgia and Florida. In addition to the judgment's age, other reasons weigh heavily in favor of terminating this decades-old judgment, including that (1) the judgment's time-limited requirements have elapsed and (2) the judgment's ongoing prohibitions target that which the antitrust laws already prohibits (fixing prices, rigging bids, and allocating markets). Based on this assessment, the Antitrust Division gave the public notice of—and the opportunity to comment on—its intention to seek termination of the judgment.⁶ No comments were received.

B. *First at Orlando Corp.*

Entered more than forty-eight years ago, the judgment in *United States v. First at Orlando Corp.*, Civ. No. 69-281 Orl. Div. (M.D. Fla. Aug. 27, 1970), is an eight-year prohibition, with limited exceptions, from acquiring certain commercial banks without first obtaining permission from the Attorney General. This decades-old judgment has expired. In addition, judgments such as this 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

⁶ *Legacy Antitrust Judgment: U.S. v. Ward Baking Company, et al.*, U.S. DEP'T OF JUSTICE, <https://www.justice.gov/atr/legacy-antitrust-judgment-ward-baking-company-et-al> (last updated Aug. 16, 2018).

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)). Based on this assessment, the Antitrust Division gave the public notice of—and the opportunity to comment on—its intention to seek termination of the judgment.⁷ No comments were received.

C. *Florida Power Corp.*

Entered more than forty-seven years ago, the judgment in *United States v. Florida Power Corp.*, Civil No. 68-297-T (M.D. Fla. Aug. 19, 1971), prohibits two utilities from allocating markets for bulk power supply for resale. The judgment also includes various time-limited requirements, such as a requirement to cancel, within ninety days of entry of the decree, certain then-existing contract provisions. In addition to the judgment’s age, other reasons weigh heavily in favor of terminating this decades-old judgment, including that (1) the judgment’s time-limited requirements have elapsed and (2) the judgment’s ongoing prohibitions target that which the antitrust laws already prohibits (allocating markets). Based on this assessment, the Antitrust Division gave the public notice of—and the opportunity to comment on—its intention to seek termination of the judgment.⁸ No comments were received.

D. *St. Petersburg Automobile Dealers Ass’n*

Entered more than forty-five years ago, the judgment in *United States v. St. Petersburg Automobile Dealers Ass’n*, Civil Action No. 72-725-Civ-T (M.D. Fla. Sept. 15, 1973), prohibits an association of automobile dealers from fixing prices for automobile repairs and parts. The judgment also contains various time-limited requirements, such as a ten-year requirement to file

⁷ *Legacy Antitrust Judgment: U.S. v. First at Orlando Corporation, et al.*, U.S. DEP’T OF JUSTICE, <https://www.justice.gov/atr/legacy-antitrust-judgment-first-at-orlando-corporation-et-al> (last updated Aug. 16, 2018).

⁸ *Legacy Antitrust Judgment: U.S. v. Florida Power Corporation, et al.*, U.S. DEP’T OF JUSTICE, <https://www.justice.gov/atr/legacy-antitrust-judgment-florida-power-corporation-et-al> (last updated Aug. 16, 2018).

annual reports with the United States. In addition to the judgment's age, other reasons weigh heavily in favor of terminating this decades-old judgment, including that (1) all of the judgment's time-limited requirements have elapsed and (2) the judgment's only ongoing prohibitions target that which the antitrust laws already prohibits (fixing prices). Based on this assessment, the Antitrust Division gave the public notice of—and the opportunity to comment on—its intention to seek termination of the judgment.⁹ No comments were received.

E. *Bethlehem Steel Corp.*

The most recent judgment, which was entered in *United States v. Bethlehem Steel Corp.*, Case No. 74-435 Civ-T-H (M.D. Fla. Nov. 7, 1979), is more than thirty-nine years old. The judgment's most notable provisions prohibit the defendants from fixing prices, allocating markets, and rigging bids for rebar materials. The judgment also contains various time-limited requirements, such as a five-year requirement to file annual reports with the United States and this Court. In addition to the judgment's age, other reasons weigh heavily in favor of terminating this decades-old judgment, including that (1) all the judgment's time-limited requirements have elapsed and (2) the judgment's only ongoing prohibitions target that which the antitrust laws already prohibits (fixing prices, allocating markets, and rigging bids). Based on this assessment, the Antitrust Division gave the public notice of—and the opportunity to comment on—its intention to seek termination of the judgment.¹⁰ No comments were received.

⁹ *Legacy Antitrust Judgment: U.S. v. St. Petersburg Automobile Dealers Association*, U.S. DEP'T OF JUSTICE, <https://www.justice.gov/atr/legacy-antitrust-judgment-st-petersburg-automobile-dealers-association> (last updated Aug. 16, 2018).

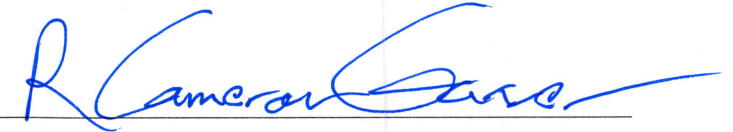
¹⁰ *Legacy Antitrust Judgment: U.S. v. Bethlehem Steel Corporation et al.*, U.S. DEP'T OF JUSTICE, <https://www.justice.gov/atr/legacy-antitrust-judgment-bethlehem-steel-corporation> (last updated Aug. 16, 2018).

IV. CONCLUSION

For these reasons, the United States believes termination of the judgments in the above-captioned antitrust cases is appropriate and respectfully requests that the Court enter an order terminating them. A proposed order terminating the judgments is attached as Exhibit B.

Respectfully submitted,

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