UNITED STATES DISTRICT COURT **EASTERN DISTRICT OF TEXAS**

UNITED STATES OF AMERICA,	§	
	§	
Plaintiff,	§	
	§	
versus	§	CIVIL ACTION NO. 1:70-CV-6733
	§	
CONTINENTAL GRAIN COMPANY,	§	
	§	
Defendant.	§	

MEMORANDUM AND ORDER

Pending before the court is Plaintiff United States of America's (the "Government") Motion and Memorandum Regarding Termination of Legacy Antitrust Judgment (#2), wherein it requests that the court terminate a judgment it entered in 1970 that enjoined Defendant Continental Grain Company ("Continental") from conditioning the availability of its grain loading services on an agreement to use particular stevedoring services for grain handling. Having considered the motion and the applicable law, the court is of the opinion that the Government's motion should be GRANTED and that the final judgment in this case should be TERMINATED.

I. Background

On July 21, 1970, Judge Joe J. Fisher entered a final judgment in this case finding that the Government had stated a claim upon which relief could be granted pursuant to the Sherman Act and enjoining Continental from conditioning the use of its grain loading services on an agreement to use particular stevedoring services for grain handling. The judgment did not indicate that this prohibition would end at any particular point, and it has been in effect indefinitely. On April 29, 2019, over 48 years after the final judgment was entered, the Government filed the present motion wherein it seeks to terminate the injunction against Continental pursuant to Federal Rules of Civil

Procedure 60(b)(5) and 60(b)(6). The Government argues the judgment should be terminated because it is outdated, it does not conform with the Government's present-day policy regarding the length of antitrust judgments, and a request for public comment on terminating the judgment went unanswered.

II. Analysis

Rule 60(b) of the Federal Rules of Civil Procedure provides that a court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons:

> (1) mistake, inadvertence, surprise, or excusable neglect;
>
> (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b);
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> (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party;
>
> (4) the judgment is void;
>
> (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, 327 (5th Cir. 2015) (citing *League of United Latin Am. Citizens, Dist. 19 v. City of Boerne*, 659 F.3d 421, 438 (5th Cir. 2011)); *see Lyles v. Medtronic Sofamor Danek, USA, Inc.*, 871 F.3d 305, 316 (5th Cir. 2017), *cert. denied*, 138 S. Ct. 1037 (2018); *United States v. City of New Orleans*, 947 F. Supp. 2d 601, 615 (E.D.

La.), *aff'd*, 731 F.3d 434 (5th Cir. 2013). "[T]he decision to grant or deny relief under Rule 60(b) lies within the sound discretion of the district court and will be reversed only for abuse of that discretion." *Lyles*, 871 F.3d at 315 (quoting *Hesling v. CSX Transp. Inc.*, 396 F.3d 632, 638 (5th Cir. 2005)); *see Buck v. Davis*, ___ U.S. ___, 137 S. Ct. 759, 777 (2017) ("Rule 60(b) vests wide discretion in courts . . . ."). Rule 60(b) "is to be construed liberally to do substantial justice . . . [it] is broadly phrased and many of the itemized grounds are overlapping, freeing Courts to do justice in hard cases where the circumstances generally measure up to one or more of the itemized grounds." *Frew*, 780 F.3d at 327 (quoting *Johnson Waste Materials v. Marshall*, 611 F.2d 593, 600 (5th Cir. 1980)).

Under Rule 60(b)(6), a district court may relieve a party from an order or proceeding for any reason which justifies relief, other than those also enumerated in Rule 60(b). *Buck*, 137 S. Ct. at 777; *see Rocha v. Thaler*, 619 F.3d 387, 399-400 (5th Cir. 2010), *cert. denied*, 565 U.S. 941 (2011). "Rule 60(b)(6) is a grand reservoir of equitable power to do justice in a particular case when relief is not warranted by the preceding clauses . . . ." *Balentine v. Thaler*, 626 F.3d 842, 846 (5th Cir. 2010), *cert. denied*, 564 U.S. 1006 (2011) (quoting *Batts v. Tow-Motor Forklife Co.*, 66 F.3d 743, 747 (5th Cir. 1995)); *see Guevara v. Davis*, 679 F. App'x 332, 334 (5th Cir.), *cert. denied*, 138 S. Ct. 554 (2017); *Boissier v. Katsur*, 676 F. App'x 260, 264 (5th Cir. 2017). The court is of the opinion that Rule 60(b)(5) warrants relief in this case; hence, reliance on Rule 60(b)(6) is not necessary.

Rule 60(b)(5) authorizes district courts to terminate final judgments with prospective effects when their enforcement is no longer equitable. *Pico v. Glob. Marine Drilling Co.*, 900 F.2d 846, 851 (5th Cir. 1990); *Bailey v. Ryan Stevedoring Co.*, 894 F.2d 157, 160 (5th Cir. 1990). "In

reviewing a request for relief under Rule 60(b)(5), '[w]e are not framing a decree [. . .] [w]e are asking ourselves whether anything has happened that will justify us now in changing a decree.'" *W. Water Mgmt., Inc. v. Brown*, 40 F.3d 105, 108 (5th Cir. 1994) (quoting *United States v. Swift & Co.*, 286 U.S. 106, 119 (1932)). "The inquiry . . . is whether the changes are so important that the dangers, once substantial, have become attenuated to a shadow." *Swift & Co.*, 286 U.S. at 119. There is no time limit on when a Rule 60(b)(5) motion must be filed, other than that it should be brought "within a reasonable time." *Johnson Waste Materials*, 611 F.2d at 601.

Continuing injunctions, such as the one at issue here, "have the requisite prospective effect" required by Rule 60(b)(5). *Cook v. Birmingham News*, 618 F.2d 1149, 1152 (5th Cir. 1980). The Government contends that the judgment should be terminated because permanent antitrust injunctions typically fail to protect competition, as markets change over time due to competitive and technological advances. In fact, beginning in 1979, this prompted the Government to begin including term limits, typically no longer than 10 years, on the judgments they sought. After the passage of nearly 50 years, the court is satisfied that the judgment in this case has exhausted its useful purpose and that the dangers it once addressed are no longer present. Further, the Government received no opposition to the termination of this judgment during the public comment period. The Government has demonstrated that relief from this judgment is warranted under Rule 60(b)(5). Thus, the Government's motion is GRANTED.

III. Conclusion

Consistent with the foregoing analysis, it is ordered that the final judgment entered in this case is TERMINATED.

SIGNED at Beaumont, Texas, this 7th day of September, 2004.

Marcia A. Crone

MARCIA A. CRONE
UNITED STATES DISTRICT JUDGE