UNITED STATES DISTRICT COURT FOR THE DISTRICT OF CONNECTICUT

IN RE: LEGACY ANTITRUST JUDGMENT TERMINATIONS

MISC. NO. 3:19-MC-~~357 (VLB)~~ 22 (VLB)

MEMORANDUM IN SUPPORT OF THE MOTION OF THE UNITED STATES TO TERMINATE LEGACY ANTITRUST JUDGMENTS

The United States respectfully submits this memorandum in support of its motion to terminate fifteen legacy antitrust judgments. The Court entered these judgments in cases brought by the United States between 1941 and 1981; thus, they are between thirty-seven and seventy-seven years old. After examining each judgment—and after soliciting public comment on each proposed termination—the United States has concluded that termination of these judgments is appropriate. Termination will permit the Court to clear its docket, the Department to clear its records, and businesses to clear their books, allowing each to utilize its resources more effectively.

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

[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.

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 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, nearly all of these judgments likely have been rendered obsolete by 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:[4]

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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] https://www.justice.gov/atr/JudgmentTermination.

[4] The process is identical to that followed by the United States when it recently and successfully moved the District Courts for the District of Columbia and the Eastern District of Virginia to terminate twenty-four legacy antitrust judgments. See Order Granting Mot. to Terminate Legacy Antitrust Js., *United States v. Am. Amusement*

- 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.

- 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 believed warranted termination, partnered with the relevant U.S. Attorney's Office, and the United States moved this Court to terminate them.

The cases for which the United States seeks to terminate the judgments are as follows:

Defendant(s) **(The United States is the Plaintiff in all matters)**	**Docket Number**
CONNECTICUT FOOD COUNCIL, INC., ET AL.	Civil No. 680
PATENT BUTTON COMPANY	Civil No. 1854
SCOVILL MANUFACTURING COMPANY	Civil No. 1853
CENTRAL COAT, APRON & LINEN SERVICE, INC., ET AL.	Civil No. 3005
SHADE TOBACCO GROWERS ANGRICULTURAL ASSOCIATION, ET AL.	Civil No. 3992
THE TORRINGTON COMPANY	Civil No. 4840
PITNEY-BOWES, INC.	Civil No. 7610
CONNECTICUT PACKAGE STORES ASSOCIATION, INC., ET AL.	Civil No. 9157
ROEHR PRODUCTS COMPANY, INC. (CONNECTICUT), ET AL.	Civil No. 9370
ANACONDA AMERICAN BRASS COMPANY, ET AL.	Civil No. 9543
HAT CORPORATION OF AMERICA	Civil No. 10980
ILCO CORPORATION	Civil No. 13261
HARVEY HUBBELL, INC.	Civil No. B-285
HARVEY HUBBELL, INC., ET AL.	Civil No. N-78-292
AMAX, INC., ET AL.	Civil No. H-75-263

Ticket Mfrs. Ass'n, et al., Case No. 1:18-mc-00091-BAH (D.D.C. Aug. 15, 2018); *In Re Termination of Legacy Antitrust Judgments*, Case No. 2:18-mc-00033-HCM (E.D.V.A. Nov. 21, 2018).

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. This section also describes the additional reasons that the United States believes each of the judgments 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 Final Judgments.

II. APPLICABLE LEGAL STANDARDS FOR TERMINATING THE JUDGMENTS

This Court has jurisdiction to terminate the judgments in the above-captioned cases. With one exception, each judgment, a copy of which is included in Appendix A, provides that the Court retains jurisdiction.[5] 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 Nemaizer v. Baker*, 793 F.2d 58, 61 (2d. Cir. 1986). "[T]he power of a court to modify or terminate a consent decree is, at bottom, guided by equitable considerations." *United States v. Eastman Kodak Co.*, 63 F.3d 95, 101 (2d. Cir. 1995).

[5] The one exception is *United States v. AMAX, Inc., et al.*, Civil No. H-75-263 (1975).

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.[6] Termination of these judgments is warranted.

III. ARGUMENT

It is appropriate to terminate the perpetual judgments in each of 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 that which the antitrust laws already prohibit, or changed market conditions likely have rendered the judgment 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

[6] 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.

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.[7]

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.

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, (3) the judgment largely prohibits that which the antitrust laws already prohibit, and (4) market conditions likely have changed. Each of these four reasons suggests the judgments no longer serve to protect competition. In this section, we describe these additional reasons, and we identify those judgments that are worthy of termination for each reason. Appendix 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 the following cases have been satisfied such that termination is appropriate:

- *Roehr Products Co., Inc. (Connecticut), et al.*, Civil No. 9370 (entered 1963),
- *Hat Corporation Of America*, Civil No. 10980 (1967),

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

- *Harvey Hubbell, Inc.,* Civil No. B-285 (1972),
- *Harvey Hubbell, Inc., et al.*, Civil No. N-78-292 (entered 1981, modified 1983).

Because all of the substantive terms of the judgments were either satisfied or have long since expired, these judgments have been satisfied in full. Termination in these cases is a housekeeping action that has no implication for competition: it will allow the Court to clear its docket of several judgments that should have been terminated long ago but for the failure to include a term automatically terminating the judgments upon satisfaction of their substantive terms.

2. Most Defendants Likely No Longer Exist

The Antitrust Division believes that most of the defendants in the following seven cases brought by the United States likely no longer exist:

- *Connecticut Food Council, Inc., et al.*, Civil No. 680 (entered in 1941, five of six defendants no longer in business),
- *Patent Button Company*, Civil No. 1854 (entered in 1947, sole defendant no longer in business),
- *Central Coat, Apron & Linen Service, Inc., et al.*, Civil No. 3005 (entered in 1952, seven of eight defendants no longer in business),
- *Shade Tobacco Growers Agricultural Association, Inc., et al.,* Civil No. 3992 (entered in 1954, seven of nine defendants no longer in business),
- *Connecticut Package Stores Association, Inc., et al.,* Civil No. 9157 (entered in 1963, one of two defendants no longer exists),
- *Ilco Corp.,* Civil No. 13261 (entered in 1969, sole defendant no longer in business),
- *Harvey Hubbell, Inc., et al.*, Civil No. N-78-292 (entered 1981, modified in 1983; two of three defendants no longer in business).

These seven judgments relate to old cases brought against corporations, trade associations or trade groups. The most recent of these cases is thirty-seven years old. With the passage of time, the large majority of defendants in these cases 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 price fixing, customer allocations, or group boycotts:

- *Connecticut Food Council, Inc., et al.*, Civil No. 680 (prohibiting price fixing),
- *Central Coat, Apron & Linen Service, Inc., et al.*, Civil No. 3005 (price fixing and market allocation),
- *Shade Tobacco Growers Agricultural Association, Inc., et al.,* Civil No. 3992 (price fixing),
- *The Torrington Company,* Civil No. 4840 (price fixing and group boycotts),
- *Pitney-Bowes, Inc.,* Civil No. 7610 (price fixing and market allocation),
- *Connecticut Package Stores Association, Inc., et al.,* Civil No. 9157 (price fixing and group boycotts),
- *Roehr Products Co., Inc. (Connecticut), et al.*, Civil No. 9370 (price fixing and market allocation),
- *Anaconda American Brass Co., et al.*, Civil No. 9543 (price fixing and bid rigging),
- *Ilco Corp.,* Civil No. 13261 (market allocation).

These terms amount to little more than an admonition that defendants shall 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. Market Conditions Likely Have Changed

The Antitrust Division has determined that the following three judgments concern products or markets that likely no longer exist, no longer are substantial in size, or now face different competitive forces such that the behavior at issue likely no longer is of competitive concern:

- *Scovill Manufacturing Company*, Civil No. 1853 (concerning button and fastening equipment),

- *Hat Corporation Of America*, Civil No. 10980 (concerning men's felt fur hats),
- *AMAX, Inc. et al.*, Civil No. H-75-263 (concerning copper mining).

The most recent of these judgments is forty-three years old, and substantial changes in technology and consumer preferences during the decades since their entry likely have rendered them obsolete. The *Scovill* judgment, entered in 1948, involved the sale of manufacturing equipment for the production of buttons and snap fasteners. Due to changes in manufacturing technology and the increase in global competition, the industry has changed significantly since 1948. Similarly, the *Hat Corporation* judgment was entered in 1967, when the market for men's hats was dramatically different from what it is today. The *AMAX* judgment perpetually enjoined the merger of two copper mining companies based on a market analysis that is now forty-three years old and likely no longer applicable. Market dynamics in these industries appear to have changed so substantially that the factual conditions that underlay the decisions to enter the judgments no longer exist.

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, and noting that it would begin its efforts by proposing to terminate judgments entered by the federal district courts in Washington, D.C., and Alexandria, Virginia.[8] On July 27, 2018, the Antitrust Division listed the judgments in the above-captioned cases on its public website, describing its intent to move to

[8] Press Release, Department of Justice, Department of Justice Announces Initiative to Terminate "Legacy" Antitrust Judgments, (April 25, 2018), https://www.justice.gov/opa/pr/department-justice-announces-initiative-terminate-legacy-antitrust-judgments.

terminate the judgments.[9] The notice identified each case, linked to the judgment, and invited public comment. In the above-captioned cases, however, the Division received no comments concerning the judgments. Had comments been received, the Division would have reviewed them and considered whether they provided a reason for retaining any of the judgments.

[9] https://www.justice.gov/atr/JudgmentTermination, link titled "View Judgments Proposed for Termination in District of Connecticut."

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. *See* Appendix C, which is a proposed order terminating the judgments in the above-captioned cases.

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