

**UNITED STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF ALABAMA**

UNITED STATES OF AMERICA,
Plaintiff,

v.

THE SOUTHERN WHOLESALE
GROCERS' ASSOCIATION, ET AL.,
Defendants.

In Equity No. 205

UNITED STATES OF AMERICA,
Plaintiff,

v.

LIBERTY NATIONAL LIFE INSURANCE
COMPANY, BROWN-SERVICE
FUNERAL HOMES COMPANY, INC., and
SERVICE INSURANCE COMPANY OF
ALABAMA,
Defendants.

Civil No. 7719-S

UNITED STATES OF AMERICA,
Plaintiff,

v.

FIRST WASHINGTON NET FACTORY
INC., FNT INDUSTRIES, INC., and
INDIAN HEAD INC.,
Defendants.

Civil Action No. 72-1099

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

The United States moves to terminate the judgments in each of the three 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 issued between 42 and 107 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.

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. Antitrust judgments entered before implementation of the 1979 policy often contained no termination clause and hundreds of such judgments remain in force today. The Antitrust Division recently implemented a program to review and, when appropriate, seek termination of these legacy judgments, including the judgments in the above-captioned cases. The Antitrust Division described its Judgment Termination 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

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

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).

This Court has jurisdiction to terminate the judgments in the above-captioned antitrust cases. 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.”); *cf. In re: Termination of Legacy Antitrust Judgments*, No. 2:18-mc-33 (E.D. Va. Nov. 21, 2018) (terminating 5 legacy antitrust judgments); *United States v. Am. Amusement Ticket Mfrs. Ass’n*, Case 1:18-mc-91 (D.D.C. Aug. 15, 2018) (terminating 19 legacy antitrust judgments); *United States v. The Wachovia Corp.*, Case No. 3:75-cv-2656 (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., et al.*, Case 1:19-mc-00069-RDB (D. Md. Feb. 7, 2019) (terminating nine judgments). The judgments, copies of which are included in Exhibit A, satisfy those standards; hence, termination is appropriate.

The oldest judgment covered in this motion, *United States v. The Southern Wholesale Grocers’ Ass’n*, In Equity No. 205 (C.C.N.D. Ala. Oct. 17, 1911), was entered more than 107 years ago. The judgment enjoined a conspiracy of wholesale grocers from fixing resale

prices of groceries and from boycotting manufacturers or producers who sell to anyone who does not maintain fixed prices.

In addition to the judgment's age, other reasons weigh heavily in favor of terminating this century-old judgment, including that (1) most of the defendants, including The Southern Wholesale Grocers' Association, appear to no longer exist and (2) the judgment's only ongoing prohibitions target conduct that antitrust law already prohibits (price fixing). 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 judgment⁴; no response regarding this judgment was received.

The judgment in *United States v. Liberty National Life Insurance Co.*, Civ. No. 7719-S (N.D. Ala. June 29, 1954) was entered more than 64 years ago and was amended most recently in 1967.⁵ The judgment limits the defendants' ability to operate funeral businesses, contractually restrict funeral services or directors, and enter exclusive territory arrangements. The judgment also ordered the defendants to amend then-existing funeral service contracts "forthwith," and continues to require that the defendants, at the United States' request, report to the United States or submit their businesses to the United States' review.

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) one defendant (Service Insurance Company of Alabama) appears to no longer exist. Based on this assessment, the Antitrust Division gave the public notice of—and the opportunity

⁴ *Id.*

⁵ The judgment was slightly amended twice, first on December 10, 1957, and again on June 26, 1967. Both amendments are included in Exhibit A. Neither amendment affects the Division's conclusion that termination of the judgment is appropriate.

to comment on—its intention to seek termination of the judgment⁶; no response regarding this judgment was received.

The most recent judgment, *United States v. First Washington Net Factory, Inc.*, Civil Action No. 72-1099 (N.D. Ala. Apr. 8, 1974), was entered and amended more than 42 years ago. The judgment's most notable perpetual provisions prohibit price fixing or facilitating price fixing in the market for salmon netting. The judgment also includes various expired terms, such as provisions requiring the defendants to set their prices independently within 90 days after entry of the judgment and to report annually to the United States for ten years on the steps that the defendants have taken to advise their employees of their obligations under the judgment.

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; (2) at least one defendant (FNT Industries Inc.) appears to no longer exist; (3) the judgment's only ongoing prohibitions target conduct that antitrust law already prohibits (price fixing); and (4) market conditions likely have changed, such that the judgment is no longer necessary to protect competition, or may be anticompetitive. 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 judgment⁷; no response regarding this judgment was received.

⁶ *Judgment Termination Initiative*, U.S. DEP'T OF JUSTICE, <https://www.justice.gov/atr/JudgmentTermination> (last updated Mar. 8, 2019).

⁷ *Id.*

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

Respectfully submitted,

Dated: March 11, 2019

A handwritten signature in black ink, appearing to read "R. Cameron Gower", written over a horizontal line.

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