

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION (DAYTON)**

ART SHY, et al.

Plaintiffs,

vs.

NAVISTAR INTERNATIONAL
CORPORATION, et al.

Defendants.

Case No. 3:92-CV-00333

District Judge Walter H. Rice

**MEMORANDUM IN SUPPORT OF
UNOPPOSED MOTION TO FURTHER MODIFY CONSENT DECREE**

By their unopposed motion, Defendants Navistar International Corporation and Navistar, Inc. (collectively, “Navistar”) move under Rule 60 of the Federal Rules of Civil Procedure to make certain modifications of the consent judgment entered in this matter in 1993 (the “1993 Consent Decree”) in addition to and in conjunction with those changes sought in the Class Representatives’ filed Unopposed Motion for Preliminary Approval of Class Action Settlement and Approval of Amendments to the Supplemental Benefit Program (“Settlement Approval Motion,” ECF No. 598). Per Local Rule 7.3, Navistar consulted with the appropriate parties before filing the Motion and determined that the Motion is unopposed. In support of the Motion, Navistar states the following:

A. Background

As this Court is aware, in October 2021, Navistar and intervenor plaintiff Supplemental Benefit Program Committee of the Navistar International Transportation Corp. Retiree Supplemental Benefit Program (the “SBC”) entered into a letter of intent to settle disputes between them, supported by other interested parties (the “LOI”). In order to effectuate the LOI, certain

parties have executed a Class Action Settlement Agreement. The Class Representatives then filed the Settlement Approval Motion, which seeks an order from the Court under Fed. R. Civ. P. 23 and asks the Court to approve modifications of the 1993 Consent Decree pursuant to Fed. R. Civ. P. 60. During this process, in which certain parties worked arduously to achieve a consensual resolution, it became apparent to Navistar that there are several provisions in the 1993 Consent Decree that are no longer applicable, have already occurred, or are otherwise moot.¹ Because certain parties are already seeking certain changes to the 1993 Consent Decree to effectuate the most recent settlement, Navistar submits that certain additional modifications to the 1993 Consent Decree are appropriate in order to prevent confusion.

B. Legal Standard

Under Rule 60(b), this Court may modify the 1993 Consent Decree because “applying it prospectively is no longer equitable” or based upon “any other reason that justifies relief.” Fed. R. Civ. P. 60(b)(5) and (6). Courts have discretion to modify consent decrees where warranted. *See Brown v. Plata*, 563 U.S. 493, 542 (2011) (“The power of a court of equity to modify a decree of injunctive relief is long-established, broad, and flexible.”); *see also United States v. Swift & Co.*, 286 U.S. 106, 114 (1932) (“A continuing decree of injunction directed to events to come is subject always to adaptation as events may shape the need.”); *Sweeton v. Brown*, 27 F.3d 1162, 1164 (6th Cir. 1994) (court applies “flexible standard” to a motion “to terminate or modify an injunction and [] an equitable remedy should be enforced only as long as the equities of the case require.”). “The source of the power to modify is of course the fact that an injunction often requires continuing supervision by the issuing court.” *Sys. Fed’n No. 91 v. Wright*, 364 U.S. 642, 647 (1961).

¹ Attached to this Memorandum as Exhibit A is the Modified Consent Decree proposed in Exhibit C to the Class Settlement Agreement (ECF No. 598, Ex. 1) with Navistar’s additional proposed modifications redlined. Although not an exclusive compilation of the provisions Navistar believes to be no longer effective, the proposed modifications are those that the parties other than Navistar have agreed not to object to.

“The District Court should modify the decree so as to achieve the required result with all appropriate expedition.” *United States v. United Shoe Mach. Corp.*, 391 U.S. 244, 252 (1968). “[A] party seeking modification of a consent decree must establish that a significant change in facts or law warrants revision of the decree and that the proposed modification is suitably tailored to the changed circumstance.” *Rufo v. Inmates of Suffolk Cty. Jail*, 502 U.S. 367, 393 (1992). The Court's essential inquiry then is whether modification or clarification is necessary to achieve the intended result of the 1993 Consent Decree. *See 1250 24th St. Assocs. v. Brown*, 684 F. Supp. 326, 328 (D.D.C. 1988).

C. Discussion

In light of the events that have occurred since the 1993 Consent Decree, Navistar seeks to modify certain terms in the Consent Decree that are no longer applicable, have already occurred, or are otherwise moot. The modifications proposed would assist in accomplishing the objectives of the Court's original order by eliminating any confusion as to whether certain provisions remain effective. While the proposed modifications do not alter the obligations imposed upon Navistar under the Consent Decree, they modify the Consent Decree by identifying more clearly those obligations that remain and particular tasks to comply with those obligations. Despite significant changes over the past three decades, Navistar has remained—and continues to remain—committed to upholding the material provisions at the heart of the 1993 Consent Decree.

For example, §§ 9.1 and 9.2 of the Amended and Restated Settlement Agreement within the 1993 Consent Decree concerned contributions of certain securities by Navistar, a task that was accomplished in 1993. Retaining this provision could create confusion over whether Navistar is required to contribute more securities to the Supplemental Benefit Trust. (It is not.) Likewise, the provisions in § 11.1 of the Amended and Restated Settlement Agreement pertaining to attorney

fees and costs pertain to the settlement process in 1993. That provision is also not applicable to the current settlement because attorney fees and costs pertaining to this settlement are addressed in the proposed Class Settlement Agreement.

These and the other modifications proposed in Exhibit A reflect the evolution of the facts of this case and are ministerial in nature. The changes in circumstances coupled with the inherent confusion in maintaining certain ineffective provisions provide the requisite cause justifying relief in this case. *See* Fed. R. Civ. P. 60(b)(6). Further, Navistar believes continued application of these provisions would be inequitable under the circumstances. *See* Fed. R. Civ. P. 60(b)(5); *see also Sweeton v. Brown*, 27 F.3d 1162, 1164 (6th Cir. 1994). Accordingly, the Court should exercise its discretion to grant Navistar's motion. *See Brown v. Plata*, 563 U.S. 493, 542 (2011); *Rufo v. Inmates of Suffolk Cty. Jail*, 502 U.S. 367, 393 (1992).

The proposed modifications are the product of discussions between certain parties during which these certain parties worked together to clarify ongoing obligations. Indeed, modifying the Consent Decree does not compel any individual to accept the modifications, and any party can press its claims in court. Rather, it is equitable that, in these circumstances, the ongoing agreement be updated to reflect certain changes that occurred over the past three decades and will occur upon approval of the Class Action Settlement Agreement.

D. Conclusion

For the foregoing reasons, Navistar requests that, conditioned upon the final approval of the Class Action Settlement Agreement, the Court enter the proposed order attached as Exhibit B approving the additional requested modifications to the 1993 Consent Decree.

January 28, 2022

Respectfully submitted,

/s/ David P. Pierce

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