

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,

STATE OF FLORIDA, by and
through its Attorney General
Robert A. Butterworth, and

STATE OF MARYLAND, by and
through its Attorney General
J. Joseph Curran, Jr.,

Plaintiffs,

v.

BROWNING-FERRIS INDUSTRIES,
INC.,

Defendant.

Civil Action No.:

Filed:

FINAL JUDGMENT

WHEREAS, plaintiffs, United States of America (hereinafter "United States"), the State of Florida (hereinafter "Florida"), and the State of Maryland (hereinafter "Maryland"), having filed their Complaint herein on December 1, 1994, and plaintiffs and defendant, by their respective attorneys, having consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law herein, and without this Final Judgment constituting any evidence against or an admission by any party with respect to any issue of law or fact herein;

AND WHEREAS, defendant has agreed to be bound by the provisions of this Final Judgment pending its approval by the Court;

AND WHEREAS, prompt and certain divestiture of certain assets and the prompt adoption of contract terms to assure that competition is not substantially lessened is the essence of this agreement;

AND WHEREAS, the parties intend to require defendant to divest, as viable business operations, the Small Container Business of Attwoods;

AND WHEREAS, defendant has represented to plaintiffs that the divestiture and contract changes required below can and will be made and that defendant will later raise no claims of hardship or difficulty as grounds for asking the Court to modify any of the divestiture or contract provisions contained below;

NOW, THEREFORE, before the taking of any testimony, and without trial or adjudication of any issue of fact or law herein, and upon consent of the parties hereto, it is hereby ORDERED, ADJUDGED, AND DECREED as follows:

I

JURISDICTION

This Court has jurisdiction over the subject matter of this action and over each of the parties hereto. The Complaint states a claim upon which relief may be granted against the defendant under Section 7 of the Clayton Act, as amended (15 U.S.C. § 18).

II

DEFINITIONS

As used in this Final Judgment:

A. "Solid waste hauling" means the collection and transportation to a disposal site of trash and garbage (but not medical waste; organic waste; special waste, such as contaminated soil; sludge, or recycled materials) from residential, commercial and industrial customers. Solid waste hauling includes hand pick-up, containerized pick-up and roll-off service.

B. "BFI" means defendant Browning-Ferris Industries, Inc., a Delaware corporation with its headquarters in Houston, Texas, and includes its successors and assigns, their subsidiaries, affiliates, directors, officers, managers, agents and employees.

C. "Attwoods" means Attwoods plc, a British corporation with its headquarters in Buckinghamshire, U.K., and its successors and assigns, their subsidiaries, affiliates, directors, officers, managers, agents and employees.

D. "Small Container Business of Attwoods" means the provision by Attwoods of solid waste hauling service to commercial customers using frontend load trucks to service small containers: in Frederick County, Maryland; Washington County, Maryland; by the operations of Attwoods' Salisbury, Maryland Division; in Duval and Clay Counties, Florida; and the provision by Attwoods of solid waste hauling service to commercial customers using frontend load and rearload trucks to service small containers in Chester County, Pennsylvania.

E. "Honey Brook Assets" means the assets of Honey Brook Division of Attwoods with an office on Chestnut Tree Road, Honey Brook, Pennsylvania, that provides solid waste hauling services in the Chester County, Pennsylvania area. Honey Brook Assets include all customer lists, contracts and accounts, all contracts for disposal of solid waste at disposal facilities, all trucks, containers, equipment, material, supplies, computer software, bank accounts, and all other tangible and intangible assets, rights and other benefits presently owned, licensed, possessed or used by the Honey Brook Division.

F. "All Jax Assets" means the assets of County Sanitation Inc., an Attwoods subsidiary, d/b/a All Jax Waste Services, with an office at 8619 Western Way, Jacksonville, Florida, that provides solid waste hauling services in the Duval County and Clay County, Florida area. The All Jax Assets include all customer lists, contracts and accounts, all contracts for disposal of solid waste at disposal facilities, all trucks, containers, equipment, material, supplies, computer software, bank accounts, and all other tangible and intangible assets, rights and other benefits presently owned, licensed, possessed or used by County Sanitation d/b/a All Jax Waste Service.

G. "Frederick Assets" means the assets of the Frederick Division of Attwoods with an office at 8145 Reichs Ford Road, Frederick, Maryland, that provides solid waste hauling services in the western Maryland area. Frederick Assets include all customer lists, contracts and accounts, all contracts for disposal of solid

waste at disposal facilities, all trucks, containers, equipment, material, supplies, computer software, bank accounts, and all other tangible and intangible assets, rights and other benefits presently owned, licensed, possessed or used by the Frederick Division.

H. "Salisbury Assets" means the assets of the Salisbury Division of Attwoods with an office at 9140 Ocean Highway, Delmar, Maryland, that provides solid waste hauling services in the Maryland and southern Delaware area. Salisbury Assets include all customer lists, contracts and accounts, all contracts for disposal of solid waste at disposal facilities, all trucks, containers, equipment, material, supplies, computer software, bank accounts, and all other tangible and intangible assets, rights and other benefits presently owned, licensed, possessed or used by the Salisbury Division.

I. "Divestiture Assets" refers to the Honey Brook Assets, All Jax Assets, Frederick Assets, and Salisbury Assets taken together.

J. "Small Container" means a 1 to 10 cubic yard container.

III

APPLICABILITY

A. The provisions of this Final Judgment apply to the defendant, its successors and assigns, its subsidiaries, affiliates, directors, officers, managers, agents, and employees, and all other persons in active concert or participation with any of them who shall have received actual notice of this Final Judgment by personal service or otherwise.

B. BFI shall require, as a condition of the sale or other disposition of all or substantially all of the Divestiture Assets, that the acquiring party or parties agree to be bound by the provisions of this Final Judgment.

C. Nothing contained in this Final Judgment is or has been created for the benefit of any third party, and nothing herein shall be construed to provide any rights to any third party.

D. Unless otherwise stated herein, BFI's obligations become effective upon its ownership of more than 50.0 percent of the ordinary shares of Attwoods plc.

IV

DIVESTITURE OF ASSETS

A. BFI is hereby ordered and directed, within 90 days following the date a majority of the Attwoods Board of Directors is elected or appointed by BFI, but in no event later than March 30, 1995, to divest all of the Divestiture Assets, unless the United States, after consultation with Florida and Maryland, consents that only some portion of the Divestiture Assets need be divested. BFI is further ordered and directed to notify plaintiffs in writing immediately when it has elected or appointed a majority of the Attwoods Board of Directors.

B. Unless the United States, after consultation with Florida and Maryland, otherwise consents, divestiture under Section IV.A, or by the trustee appointed pursuant to Section V, shall be accomplished in such a way as to satisfy the United States, in its

sole determination after consultation with Florida and Maryland, that the Honey Brook Assets, the All Jax Assets, the Frederick Assets, and the Salisbury Assets can and will be operated by the purchaser or purchasers as viable, ongoing businesses engaged in solid waste hauling in their respective areas. Divestiture under Section IV.A or by the trustee, shall be made to a purchaser or purchasers for whom it is demonstrated to the satisfaction of the United States, after consultation with Florida and Maryland, that (1) the purchase or purchases is or are for the purpose of competing effectively in at least small container solid waste hauling and (2) the purchaser or purchasers has or have the managerial, operational, and financial capability to compete effectively in at least small container solid waste hauling.

C. BFI shall not require of the purchaser or purchasers, as a condition of sale, that any current employee of the Divestiture Assets be offered or guaranteed continued employment after the divestiture.

D. BFI shall take all reasonable steps to accomplish quickly the divestiture contemplated by this Final Judgment.

V

APPOINTMENT OF TRUSTEE

A. In the event that BFI has not divested all of its interest required by Section IV.A by the time set forth in Section IV.A, the Court shall, on application of the United States, after consultation with Florida and Maryland, appoint a trustee selected

by the United States to effect the remainder of the divestiture required by Section IV.A. After the appointment of a trustee becomes effective, only the trustee shall have the right to sell the assets required to be divested pursuant to Section IV.A. The trustee shall have the power and authority to accomplish the divestiture at the best price then obtainable upon a reasonable effort by the trustee, subject to the provisions of Section VI of this Final Judgment, and shall have such other powers as the Court shall deem appropriate. Defendant shall not object to a sale by the trustee on any grounds other than the trustee's malfeasance, or on the grounds that the sale is contrary to the express terms of this Final Judgment. Any such objections by defendant must be conveyed in writing to plaintiffs and the trustee within ten (10) days after the trustee has provided the notice required under Section VI.

B. The trustee shall serve at the cost and expense of BFI, on such terms and conditions as the Court may prescribe, and shall account for all monies derived from the sale of the assets sold by the trustee and all costs and expenses so incurred. After approval by the Court of the trustee's accounting, including fees for its services, all remaining money shall be paid to BFI and the trust shall then be terminated. The compensation of such trustee shall be reasonable and based on a fee arrangement providing the trustee with an incentive based on the price and terms of the divestiture and the speed with which it is accomplished.

C. BFI shall use its best efforts to assist the trustee in accomplishing the required divestiture. The trustee and any consultants, accountants, attorneys, and other persons retained by the trustee shall have full and complete access to the personnel, books, records, and facilities of the Divestiture Assets, and defendant shall develop financial or other information relevant to such assets as the trustee may reasonably request, subject to reasonable protection for trade secret or other confidential research, development, or commercial information. Defendant shall take no action to interfere with or to impede the trustee's accomplishment of the divestiture.

D. After its appointment, the trustee shall file monthly reports with the parties and the Court setting forth the trustee's efforts to accomplish the divestiture ordered under this Final Judgment. If the trustee has not accomplished such divestiture within six (6) months after its appointment, the trustee shall thereupon promptly file with the Court a report setting forth (1) the trustee's efforts to accomplish the required divestiture, (2) the reasons, in the trustee's judgment, why the required divestiture has not been accomplished, and (3) the trustee's recommendations. The trustee shall at the same time furnish such report to the parties, who shall each have the right to be heard and to make additional recommendations consistent with the purpose of the trust. The Court shall thereafter enter such orders as it shall deem appropriate in order to carry out the purpose of the trust, which may, if necessary, include extending the trust and the

term of the trustee's appointment by a period requested by the United States, after consultation with Florida and Maryland.

E. Defendant shall give 45 days' notice to the United States, to Florida and to Maryland prior to:

(1) acquiring any interest in any assets other than in the ordinary course of business of any person that, at any time during the 12 months immediately preceding the acquisition, was engaged in the solid waste hauling industry in Maryland, Florida, Delaware or Pennsylvania where that person had small container revenues in excess of \$500,000 per year or total revenues in excess of \$1 million per year;

(2) acquiring any capital stock, or any other securities with voting rights of any supplier of solid waste hauling services, that at any time during the twelve (12) months immediately preceding the acquisition had been engaged in the solid waste hauling industry in Maryland, Florida, Delaware or Pennsylvania where that person had small container revenues in excess of \$500,000 per year or total revenues in excess of \$1 million per year;

(3) selling or transferring to any firm engaged in the solid waste hauling industry in the United States any of defendant's assets other than in the ordinary course of business that at any time during the 12 months immediately preceding the sale or

transfer were used in the solid waste hauling industry in Maryland, Florida, Delaware or Pennsylvania where the assets are small container assets that generated in excess of \$500,000 in revenues per year or where total revenues are in excess of \$1 million per year;

(4) selling or transferring to any firm engaged in the solid waste hauling industry in Maryland, Florida, Delaware or Pennsylvania any of defendant's equity securities or any other securities with voting rights if the sale would give control over a solid waste hauling operation that generated small container revenues in excess of \$500,000 per year or total revenues of \$1 million per year.

F. Defendant shall give 45 days' notice to the United States and to Maryland prior to:

(1) acquiring any interest in any assets other than in the ordinary course of business of any person that, at any time during the 12 months immediately preceding the acquisition, was engaged in the solid waste hauling industry in Maryland, Delaware or the counties of Pennsylvania contiguous to Maryland, where the revenues of that person, when aggregated with the revenues of any person or persons acquired in the previous 6 months, exceed the revenue limits of paragraph E (1) above;

(2) acquiring any capital stock, or any other securities with voting rights of any supplier of solid waste hauling services, that at any time during the 12 months immediately preceding the acquisition had been engaged in the solid waste hauling industry in Maryland, Delaware or the counties of Pennsylvania contiguous to Maryland, where the revenues of that person, when aggregated with the revenues of any person or persons acquired in the previous 6 months, exceed the revenue limits of paragraph E (2) above.

G. Defendant shall give 45 days' notice to the United States and to Florida prior to:

(1) acquiring any interest in any assets other than in the ordinary course of business of any person that, at any time during the 12 months immediately preceding the acquisition, was engaged in the solid waste hauling industry in Florida, where the revenues of that person, when aggregated with the revenues of any person or persons acquired in the previous 6 months, exceed the revenue limits of paragraph E (1) above;

(2) acquiring any capital stock, or any other securities with voting rights of any supplier of solid waste hauling services, that at any time during the 12 months immediately preceding the acquisition had been engaged in the solid waste hauling industry in Florida, where the revenues of that person, when aggregated with the

revenues of any person or persons acquired in the previous 6 months, exceed the revenue limits of paragraph E (2) above.

H. The purchaser or purchasers of the Divestiture Assets, or any of them, shall not, without the prior written consent of the United States, after consultation with Florida and Maryland, sell any of those assets to, or combine any of those assets with, those of BFI during the life of this decree. Furthermore, the purchaser or purchasers of the Divestiture Assets, or any of them, shall notify plaintiffs 45 days in advance of any proposed sale of all or substantially all of the assets, or control over those assets, acquired pursuant to this Final Judgment.

VI

NOTIFICATION

A. BFI or the trustee, whichever is then responsible for effecting the divestiture required herein, shall notify plaintiffs of any proposed divestiture required by Section IV or V of this Final Judgment. If the trustee is responsible, it shall similarly notify BFI. The notice shall set forth the details of the proposed transaction and list the name, address, and telephone number of each person not previously identified who offered or expressed an interest or desire to acquire any ownership interest in the Divestiture Assets or any of them, together with full details of the same. Within fifteen (15) days after receipt of the notice, plaintiffs may request additional information concerning the

proposed divestiture, the proposed purchaser, and any other potential purchaser. BFI or the trustee shall furnish the additional information within fifteen (15) days of the receipt of the request. Within thirty (30) days after receipt of the notice or within fifteen (15) days after receipt of the additional information, whichever is later, the United States, after consultation with Florida and Maryland, shall notify in writing BFI and the trustee, if there is one, if it objects to the proposed divestiture. If the United States fails to object within the period specified, or if the United States notifies in writing BFI and the trustee, if there is one, that it does not object, then the divestiture may be consummated, subject only to BFI's limited right to object to the sale under Section V.A. Upon objection by the United States, after consultation with Florida and Maryland, or by BFI under Section V.A, the proposed divestiture shall not be accomplished unless approved by the Court.

B. Thirty (30) days from the date when BFI elects or appoints a majority of the Board of Directors of Attwoods, but in no event later than December 30, 1994, and every thirty (30) days thereafter until the divestiture has been completed, BFI shall deliver to plaintiffs a written report as to the fact and manner of compliance with Section IV of this Final Judgment. Each such report shall include, for each person who during the preceding thirty (30) days made an offer, expressed an interest or desire to acquire, entered into negotiations to acquire, or made an inquiry about acquiring any ownership interest in the Divestiture Assets or any of them, the

name, address, and telephone number of that person and a detailed description of each contact with that person during that period. BFI shall maintain full records of all efforts made to divest the Divestiture Assets or any of them.

VII

FINANCING

BFI shall not finance all or any part of any purchase made pursuant to Sections IV or V of this Final Judgment without the prior written consent of the United States, after consultation with Florida and Maryland.

VIII

CONTRACTUAL REVISIONS

A. In accordance with paragraph VIII B, below, BFI shall alter the contracts it uses with its small container solid waste commercial customers in the following Maryland areas: Anne Arundel County, Baltimore City, Baltimore County, Calvert County, Carroll County, Harford County, Howard County, Montgomery County and Prince George's County to the form contained in the attached Exhibit A.

B. BFI shall offer contracts in the form attached as Exhibit A to all new small container solid waste commercial customers or customers that sign new contracts for small container solid waste commercial service effective beginning on the date BFI acquires a majority of Attwoods' ordinary shares. BFI shall offer such contracts to all other small container solid waste commercial customers in the above area by December 1, 1995.

C. In accordance with paragraph VIII D below BFI shall alter the contracts it uses with its small container solid waste commercial customers in the following areas of Florida: Broward County and Polk County to the form contained in the attached Exhibit B.

D. BFI shall offer contracts in the form attached as Exhibit B to all new small container solid waste commercial customers or customers that sign contracts for small container solid waste commercial service effective beginning on the date BFI acquires a majority of Attwoods' ordinary shares. BFI shall offer such contracts to all other small container solid waste commercial customers in Broward County, Florida and Polk County, Florida by December 1, 1995.

IX

COMPLIANCE INSPECTION

For the purpose of determining or securing compliance with this Final Judgment, and subject to any legally recognized privilege, from time to time:

A. Duly authorized representatives of the United States, Florida, or Maryland, including consultants and other persons retained by the plaintiffs, shall, upon the written request of the Assistant Attorney General in charge of the Antitrust Division or the Attorney General of the State of Florida or the Attorney General of the State of Maryland, respectively, and on reasonable notice to BFI made to its principal offices, be permitted:

1. access during office hours to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of defendant, which may have counsel present, relating to any matters contained in this Final Judgment; and

2. subject to the reasonable convenience of BFI and without restraint or interference from them, to interview BFI directors, officers, employees, and agents who may have counsel present, regarding any such matters.

B. Upon the written request of the Assistant Attorney General in charge of the Antitrust Division or the Attorney General of the State of Florida or the Attorney General of the State of Maryland, respectively, made to BFI at its principal offices, BFI shall submit such written reports, under oath if requested, with respect to any of the matters contained in this Final Judgment as may be requested.

C. No information nor any documents obtained by the means provided in this Section IX shall be divulged by any representative of the United States or the Office of the Attorney General of Florida or the Office of the Attorney General of Maryland to any person other than a duly authorized representative of the Executive Branch of the United States or of the Office of the Attorney General of Florida or of the Office of the Attorney General of Maryland, except in the course of legal proceedings to which the United States or the Attorney General of Florida or the State of Maryland is a party (including grand jury proceedings), or for the purpose of

securing compliance with this Final Judgment, or as otherwise required by law.

D. If at the time information or documents are furnished by BFI to plaintiffs, BFI represents and identifies in writing the material in any such information or documents for which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and BFI marks each pertinent page of such material, "Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure," then plaintiffs shall give ten (10) days notice to BFI prior to divulging such material in any legal proceeding (other than a grand jury proceeding) to which BFI is not a party.

X

RETENTION OF JURISDICTION

Jurisdiction is retained by this Court for the purpose of enabling any of the parties to this Final Judgment to apply to this Court at any time for such further orders and directions as may be necessary or appropriate for the construction, implementation, or modification of any of the provisions of this Final Judgment, for the enforcement of compliance herewith, and for the punishment of any violations hereof.

