

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:

HOLD SEPARATE STIPULATION AND ORDER

It is stipulated and agreed by and between the undersigned parties:

1. As used in this Stipulation and Order:

(a) "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. After BFI acquires control of Attwoods plc, BFI includes

Attwoods plc, but does not include the entities described in paragraphs (e)-(h) herein.

- (b) "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.
- (c) "Small Container Business of Attwoods" means the provision by Attwoods of solid waste hauling service to commercial customers using frontend load trucks to service 1 to 10 cubic yard containers: in Frederick County, Maryland; Washington County, Maryland; by the operations of Attwoods' Salisbury, Maryland Division; in Duval and in Clay Counties, Florida; and the provision by Attwoods of solid waste hauling service to commercial customers using frontend load and rearload trucks to service 1 to 10 cubic yard containers in Chester County, Pennsylvania.
- (d) "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.

- (e) "Honey Brook Assets" means the assets of the 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 Service, 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.

2. It is the intent of the Final Judgment filed in this proceeding to require BFI to divest as viable business operations the Small Container Business of Attwoods. It is the intent of this Hold Separate Stipulation and Order to insure, prior to such divestiture, that the Divestiture Assets will remain available as a source of assets for a prospective purchaser to insure such viability.

3. BFI shall preserve, hold, and continue to operate the Honey Brook Assets, All Jax Assets, Frederick Assets, and Salisbury Assets ("hereinafter referred to together as the 'Divestiture Assets'") as ongoing businesses with their assets, management and operations entirely separate, distinct and apart from those of BFI, unless the United States of America (hereinafter "United States"), after consultation with the State of Florida (hereinafter "Florida") and the State of Maryland (hereinafter "Maryland") otherwise consents in writing in advance. BFI shall use all

reasonable efforts to maintain, preserve and increase the customer base of the Divestiture Assets, and to otherwise maintain the Divestiture Assets as viable and active competitors in solid waste hauling in the areas in which they operate. Nothing herein shall prevent BFI from appointing a person with oversight responsibility for the Divestiture Assets to insure compliance with this Stipulation and Order and the Final Judgment provided that such person agrees to comply in all respects with the terms of this Stipulation and Order.

4. BFI shall not sell, lease, assign, transfer or otherwise dispose of, or pledge as collateral for loans (except such loans as are currently outstanding or replacements or substitutes therefor), any Divestiture Assets, except such assets as are replaced in the ordinary course of business with newly purchased assets and are so identified as replacement assets.

5. The provisions of paragraphs 3 and 4 include but are not limited to: preserving all facilities and equipment used for solid waste hauling and their right and ability to be used or operated at the site(s) where they are located or customarily used; preserving all operating permits and permit applications (including proceeding with such operation or application as is necessary to renew such permits, make permanent any temporary permits, or obtain a permit applied for); and preserving all administrative and support facilities within such areas. It is expressly recognized that

nothing herein shall prevent BFI, upon divestiture of the Small Container Business in any area identified in paragraph 1(c), from taking over the remaining Divestiture Assets in that area.

6. BFI shall not use the "Attwoods" name or any other Attwoods names or trademarks nor identify any relationship between BFI and Attwoods in any advertising, sales or promotional activities pertaining to solid waste hauling in the areas where the Divestiture Assets operate until such time as the Divestiture Assets are divested. BFI shall permit the use by the Divestiture Assets of the "Attwoods" name or any other Attwoods names or trademarks presently being used by the Divestiture Assets in their solid waste hauling operations until such time as they are divested. Until such time, BFI shall not cause any change in the identification of services provided by the Divestiture Assets, including identifications on correspondence, invoices or similar documents.

7. BFI shall preserve all of the Divestiture Assets, except those replaced with newly acquired assets in the ordinary course of business, in a state of repair comparable to their state of repair as of December 1, 1994, subject to ordinary and customary wear and tear in the ordinary course of business. BFI shall continue to perform normal maintenance and to replace the Divestiture Assets in the ordinary course of business.

8. To maintain the Divestiture Assets as viable, ongoing businesses, BFI shall, until divestiture, (a) provide and maintain sufficient working capital for the Divestiture Assets and (b) provide and maintain sufficient lines and sources of additional credit for the Divestiture Assets.

9. BFI shall refrain from taking any action that would jeopardize the sale or operation of any of the Divestiture Assets as viable ongoing concerns, including but not limited to refraining from causing or allowing a shift of customers from any of the Divestiture Assets to BFI or to any other provider of solid waste hauling. A rebuttable presumption that BFI has caused or allowed a shift of customers shall arise if, prior to divestiture of the Honey Brook Assets, the All Jax Assets, the Frederick Assets, or the Salisbury Assets the number of residential, commercial or industrial solid waste hauling customers drops seven and one half (7.5) percent or more below the number existing on December 1, 1994 for the specified asset, or if monthly solid waste hauling revenues decline seven and one half (7.5) percent or more below the December 1994 solid waste hauling revenues for the specified Asset.

10. BFI shall maintain on behalf of the Divestiture Assets, in accordance with sound accounting practices, separate, true and complete financial ledgers, books and records reporting the profit and loss, assets and liabilities, separately, of the Honey Brook

Assets, the All Jax Assets, the Frederick Assets, and the Salisbury Assets on a monthly and quarterly basis.

11. BFI shall refrain from terminating or reducing any current employment, salary, or benefit agreements for any management, sales, marketing, mechanical, or other technical personnel employed by the Divestiture Assets, except in the ordinary course of business, without the prior written approval of the United States, after consultation with Florida and Maryland.

12. In the absence of prior consent by the purchaser of any of the Divestiture Assets, defendant is hereby enjoined and restrained until six (6) months following the date of divestiture from negotiating for or offering any employment to any person who is currently employed by the Divestiture Assets acquired by said purchaser.

13. The defendant shall refrain from taking any action that would have the effect of reducing the scope or level of competition between the Divestiture Assets and other providers of solid waste hauling without the prior written approval of the United States, after consultation with Florida and Maryland.

14. BFI shall take all steps necessary to assure that no proprietary business or financial information specific to the Divestiture Assets is transferred or otherwise becomes available to BFI's employees having direct marketing and sales responsibilities for any area where BFI competes with the Divestiture Assets. This

paragraph includes, but is not limited to, contract, account or customer-specific information of any kind, and pricing and marketing plans and strategies of the Divestiture Assets.

15. Defendant shall take no action that would interfere with the ability of the trustee appointed pursuant to the proposed Final Judgment filed in this proceeding to sell the Divestiture Assets to a suitable purchaser or purchasers.

16. This Hold Separate Stipulation and Order shall remain in effect pending consummation of the divestiture contemplated by the proposed Final Judgment filed in this proceeding or until further Order of the Court.

Dated:

Respectfully submitted,

FOR PLAINTIFF UNITED STATES OF AMERICA:

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SO ORDERED.

UNITED STATES DISTRICT JUDGE

Date: