

Sincerely yours,
 Anthony V. Nanni,
 Chief, *Litigation I Section*.

Coastal Carting Limited, Inc.

Garbage and Trash Removal, 2316 S.W. 56th Terrace, West Hollywood, Florida 33021

February 8, 1995.

Anthony V. Nanni,
 Chief, *Litigation One Section, Anti-Trust Division, United States Department of Justice, 1401 H Street, NW., Suite 4000, Washington, DC 20530*

Re: Browning-Ferris Industries, Acquisition of Attwoods PLC, Civil action No.: 94-2588, United States of America, State of Florida, and State of Maryland vs. Browning-Ferris Industries, Inc., United States District Court for the District of Columbia

To Whom It May Concern: I am writing because I am very concerned about the acquisition of Attwoods by Browning-Ferris Industries and its effect upon my business.

Finally, BFI has utilized the Contract that as attached Exhibit "B" of the proposed Final Judgment as a marketing tool to discredit the smaller haulers. BFI is out in the market place telling the customer if he is not happy with the service provided by BFI, they can terminate the contract with minimum cost to the customer.

My suggestion is to terminate all the existing agreements immediately and then have BFI compete with us with them using the new Contract.

Finally, BFI will be able to subsidize their competitive commercial work by the monies made on the "combined" franchises of BFI and Attwoods allowing BFI to subsidize competitive prices, thereby, keeping the small hauler from competing in the market place where they can compete.

Once again, I am concerned about the effect this transaction will have on the market place and my business. Please feel free to contact me at your earliest convenience regarding these issues and I hope you will strongly consider my concerns.

Very truly yours,

Frank D'Agostino,
 President, *Coastal Carting Ltd., Inc.*

Department of Justice Antitrust Division

City Center Building, 1401 H Street, NW., Washington, DC 20530

March 1, 1995.

AVN: NHM
 60-4953-0059

Frank D'Agostino,
 President,
Coastal Carting Limited, Inc.,
 2316 SW. 56th Terrace,
 West Hollywood, Florida 33021

Re: United States v. Browning-Ferris Industries, Inc.; Civ. Action No.: 1:94CV02588 (D.D.C. Dec. 1, 1994)

Dear Mr. D'Agostino: This letter responds to your letter dated February 8, 1995 commenting on the proposed Final Judgment in the above-referenced civil antitrust case, which challenges the acquisition of the assets

of Attwoods plc ("Attwoods") by Browning-Ferris Industries, Inc. ("BFI"). The Complaint alleges that the acquisition, as originally structured, violated Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, because its effects may be substantially to lessen competition in small containerized hauling services in the following relevant markets: Baltimore, MD; Broward County, FL; Chester County, PA; Clay County, FL; Duval County, FL; Polk County, FL; the Southern Eastern Shore of Maryland; Sussex County, DE; and Western Maryland. Under the proposed Final Judgment, BFI would be required to divest Attwoods' assets in Chester County, PA; Clay County, FL; Duval County, FL; the Southern Eastern Shore of Maryland; Sussex County, DE; and Western Maryland. BFI would also be required to offer new, less restrictive contracts to its small containerized hauling customers in Broward County, FL; Polk County, FL; and the greater Baltimore, MD metropolitan area.

Your letter expresses concern that BFI is using the less restrictive contracts the proposed Final Judgment requires it to use in Broward County, FL as a marketing tool to discredit the smaller haulers. You suggest that BFI should be required immediately to terminate all of its existing, more restrictive contracts, and compete using only the new contract. The Department considered requiring BFI to terminate all existing contracts immediately and to switch all of its customers to the new contract at once. The Department believed that this would result in much confusion and potentially high cost. Part VIII D of the proposed Final Judgment requires BFI to offer the new contract to all new customers and all customers that sign contracts effective beginning on the date BFI acquires a majority of the Attwoods' ordinary shares. That paragraph also requires that BFI offer the new contract to all other customers by December 1, 1995. As a result, BFI is required to offer the new contract to all of its Broward County customers within one year of the filing of the Complaint and proposed Final Judgment. The Department believes that this rapid phase-in of the contracts will enhance competition by getting the contracts into use quickly, but without the confusion and cost of an immediate switch of all customers to the new contract.

You also state that you are concerned that BFI will be able to subsidize their competitive commercial work through monies obtained from franchises previously controlled by Attwoods. The Department understands you to be referring to franchises for residential (and sometimes residential and commercial) solid waste hauling periodically put up for bid by municipal authorities.

Your concern appears to be that combining Attwoods' franchises with those already controlled by BFI will enable BFI to offer lower prices to its commercial small containerized hauling customers, undercutting your ability to compete with BFI in the commercial small containerized hauling market. This assumes that BFI will be able to obtain supracompetitive profits from the franchises to undercut other firms in the commercial small containerized hauling market. This subsidization could

only happen if the bidding for franchises is not competitive. The Department is not aware of any evidence that the market for bidding on franchises in your area is not competitive.

While we understand your concerns, we believe that the proposed Final Judgment would adequately safeguard competition for small containerized hauling service in the markets alleged in the Complaint. Pursuant to the Antitrust Procedures and Penalties Act, a copy of your letter and this response will be published in the Federal Register and filed with the Court.

Sincerely yours,

Anthony V. Nanni,
 Chief, *Litigation I Section*.

Certificate of Service

I hereby certify that on this date I have caused to be served by first class mail, postage prepaid, a copy of the foregoing Comments on the Proposed Final Judgment and the United States' Responses to the Comments upon the following persons, counsel for defendant in the matter of *United States of America v. Browning-Ferris Industries, Inc.*:

Rufus Wallingford, Esquire, Executive Vice President and General Counsel, 757 North Eldridge Street, Houston, Texas 77079, (713) 870-7670

Martha J. Talley, DC Bar No. 246330, Dewey Ballantine, 1775 Pennsylvania Ave. NW., Washington, DC 20006, (202) 862-1014

Dated: March 2, 1995.

Nancy H. McMillen,
 Attorney, *Litigation I Section, Antitrust Division, Department of Justice*.

[FR Doc. 95-6045 Filed 3-10-95; 8:45 am]

BILLING CODE 4410-01-M

Drug Enforcement Administration

Robert E. Sylvester, D.O.; Denial of Application

On June 23, 1994, the Deputy Assistant Administrator of the Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Robert E. Sylvester, D.O., (Respondent) of Fairfax, South Carolina, proposing to deny his application for a DEA Certificate of Registration as a practitioner under 21 U.S.C. 823(f). The Order to Show Cause alleged that Respondent's registration would be inconsistent with the public interest based on Respondent's lack of authorization to handle controlled substances in the State of South Carolina; that Respondent issued various controlled substances prescriptions for himself and others and such prescriptions were not in the usual course of his professional practice and not for a legitimate medical reason; that he had previously surrendered a DEA Certificate of Registration for cause; that he materially falsified an application for

a DEA Certificate of Registration; that he had previously been convicted of a felony relating to controlled substances; and that he submitted false medicaid claims.

The Order to Show Cause was served on Respondent by registered mail. On July 14, 1994, Respondent, through counsel, submitted a written statement waiving a hearing, admitting all allegations except those pertaining to the false medicaid claims and the material falsification of his DEA application. The Deputy Administrator has considered this statement along with the investigative file. Accordingly, the Deputy Administrator now enters his final order in this matter without a hearing and based on the investigative file and the written statement submitted by Respondent. 21 CFR 1301.57.

The Deputy Administrator finds that effective September 18, 1991, Respondent's medical license was revoked, pursuant to an Administrative Consent Agreement, by the State of South Carolina, Department of Health and Environmental Services (DHES). As a result of the DHES's action, Respondent is no longer authorized to prescribe, dispense, administer or otherwise handle controlled substances in any schedule in the State of South Carolina.

The Deputy Administrator concludes that the DEA does not have the statutory authority under the Controlled Substances Act to issue or maintain a registration if the applicant or registrant is without authority to handle controlled substances in the State in which he/she practices. See 21 U.S.C. 832(f). The Deputy Administrator and his predecessors have consistently so held. See *Howard J. Reuben, M.D.*, 52 FR 8375 (1987); *Ramon Pla, M.D.*, Docket No. 86-54, 51 FR 41168 (1986); *Dale D. Shahan, D.D.S.*, Docket No. 85-57, 51 FR 23481 (1986); and cases cited therein.

Since Respondent lacks State authorization to handle controlled substances, it is not necessary for the Deputy Administrator to decide the other issues alleged in the Order to Show Cause.

Respondent does not contest that he is not currently authorized to handle controlled substances in South Carolina. Therefore, the Deputy Administrator concludes that Respondent's application for a DEA Certificate of Registration must be denied.

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that the application for a

DEA Certificate of Registration, submitted by Robert E. Sylvester, D.O., be, and it is hereby denied. This order is effective March 13, 1995.

Dated: March 7, 1995.

Stephen H. Greene,

Deputy Administrator.

[FR Doc. 95-6115 Filed 3-10-95; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Prohibited Transaction Exemption 95-20; Exemption Application No. D-09690, et al.]

Grant of Individual Exemptions; Iron Workers Pension Trust of Colorado, et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of Individual Exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Notices were published in the **Federal Register** of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, D.C. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of proposed exemption were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue

exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

Iron Workers Pension Trust of Colorado (The Pension Plan); and Colorado Iron Workers (Erection) Statewide Joint Apprenticeship and Trust Fund (the Apprenticeship Plan; together, the Plans) Located in Denver, Colorado

[Prohibited Transaction Exemption 95-20; Exemption Application Nos. D-09690 and L-09691]

Exemption

The restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply to the loan (the Loan) of \$141,601.36 by the Pension Plan to the Apprenticeship Plan, under the terms described in the notice of proposed exemption, provided the following conditions are satisfied:

(a) The Loan represents less than 25% of the assets of the Pension Plan; (b) the terms of the Loan are not less favorable to either Plan than those obtainable in arm's-length transactions with unrelated parties; (c) the trustees of each Plan approved the Loan as being appropriate for, and in the best interest of each Plan; (d) no trustee of either Plan made such determination on behalf of the other Plan; and (e) the property securing the Loan has been appraised by a qualified, independent appraiser as having a fair market value in excess of 150% of the principal amount of the Loan.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on January 4, 1995 at 60 FR 488.

EFFECTIVE DATE: This exemption is effective August 11, 1992.

WRITTEN COMMENTS: The Department received two written comments with respect to the proposed exemption. One comment sought further information