

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

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In re: : Chapter 11  
FBI WIND DOWN, INC. (f/k/a Furniture : Case No. 13-12329 (CSS)  
Brands International, Inc.), *et al.*, : (Jointly Administered)  
Debtors.<sup>1</sup> : **Hearing Date: 7/21/2015 at 11:30 a.m. (ET)**  
: **Objection Deadline: 6/17/2015 at 4:00 p.m. (ET)**  
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**NOTICE OF MOTION OF THE LIQUIDATING TRUSTEE FOR AN ORDER  
AUTHORIZING AND APPROVING THE STIPULATION WITH THE  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**

**PLEASE TAKE NOTICE** that on June 3, 2015, Alan D. Halperin, Esq., as the Liquidating Trustee of the FBI Wind Down, Inc. Liquidating (the "Liquidating Trustee"), by the undersigned counsel, filed the **Motion of the Liquidating Trustee for an Order Authorizing and Approving the Stipulation with the United States Environmental Protection Agency** (the "Motion") with the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court").

**PLEASE TAKE FURTHER NOTICE** that any responses or objections to the Motion must be filed in writing with the Bankruptcy Court, 824 Market Street, 3<sup>rd</sup> Floor, Wilmington, Delaware 19801, and served upon and received by the undersigned counsel for on or before **June 17, 2015, at 4:00 p.m. (ET)**.

**PLEASE TAKE FURTHER NOTICE** that if an objection is timely filed, served and received and such objection is not otherwise timely resolved, a hearing to consider such objection and the Motion will be held before the Honorable Christopher S. Sontchi, United States Bankruptcy Judge for the District of Delaware, in the Bankruptcy Court, 5th Floor, Courtroom 6, 824 Market Street, Wilmington, Delaware 19801 on **July 21, 2015, at 11:30 a.m. (ET)**.

**IF NO OBJECTIONS TO THE MOTION ARE TIMELY FILED, SERVED AND RECEIVED IN ACCORDANCE WITH THIS NOTICE, THE BANKRUPTCY COURT**

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<sup>1</sup> The debtors in these chapter 11 cases, along with the last four digits of each debtor's tax identification number, as applicable, are: FBI Wind Down, Inc. (7683); AT Wind Down, Inc. (7587); BFI Wind Down, Inc. (3217); BHF Wind Down, Inc. (8844); BR Wind Down, Inc. (8843); BT Wind Down, Inc. (1721); FBH Wind Down, Inc. (2837); FBO Wind Down, Inc. (4908); FBRC Wind Down, Inc. (1288); HFI Wind Down, Inc. (7484); HR Wind Down, Inc. (6125); HT Wind Down, Inc. (4378); LFI Wind Down, Inc. (5064); LHFR Wind Down, Inc. (9085); LV Wind Down, Inc. (8434); MSFI Wind Down, Inc. (7486); TFI Wind Down, Inc. (6574); THF Wind Down, Inc. (3139); and TR Wind Down, Inc. (6174).

MAY GRANT THE RELIEF REQUESTED IN THE MOTION WITHOUT FURTHER NOTICE OR HEARING.

Dated: June 3, 2015

**BLANK ROME LLP**

/s/ Victoria Guilfoyle

Michael B. Schaedle  
Victoria A. Guilfoyle (No. 5183)  
1201 Market Street, Suite 800  
Wilmington, Delaware 19801

-and-

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*Co-Counsel to Alan D. Halperin, Liquidating  
Trustee of the FBI Wind Down, Inc. Liquidating  
Trust*

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

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| In re:  | : Chapter 11   |
| FBI WIND DOWN, INC. (f/k/a Furniture Brands International, Inc.), <i>et al.</i> , | : Case No. 13-12329 (CSS)                                |
|   | : (Jointly Administered)                                 |
| Debtors. <sup>1</sup>   | : <b>Hearing Date: 7/21/2015 at 11:30 a.m. (ET)</b>      |
|   | : <b>Objection Deadline: 6/17/2015 at 4:00 p.m. (ET)</b> |

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**MOTION OF THE LIQUIDATING TRUSTEE FOR AN ORDER  
AUTHORIZING AND APPROVING THE STIPULATION WITH THE  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**

Alan D. Halperin, Esq., as the Liquidating Trustee (the “Liquidating Trustee”) of the FBI Wind Down, Inc. Liquidating Trust (the “Liquidating Trust”), by his co-counsel Hahn & Hessen LLP and Blank Rome LLP, hereby moves (the “Motion”) for entry of an order, pursuant to section 105(a) of title 11 of the United States Code (the “Bankruptcy Code”) and Rule 9019 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), approving the stipulation (the “Stipulation”) by and between the Liquidating Trustee and the United States, on behalf of the Environmental Protection Agency (“EPA”). In support of the Motion, the Liquidating Trustee respectfully represents as follows:

**PRELIMINARY STATEMENT**

1. The proposed settlement between the Liquidating Trustee and the EPA resolves one of the largest unresolved claims against the estates. EPA’s proof of claim includes previously incurred costs and estimated future costs in connection with the Buckingham Landfill

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<sup>1</sup> The debtors in these chapter 11 cases, along with the last four digits of each debtor’s tax identification number, as applicable, are: FBI Wind Down, Inc. (7683); AT Wind Down, Inc. (7587); BFI Wind Down, Inc. (3217); BHF Wind Down, Inc. (8844); BR Wind Down, Inc. (8843); BT Wind Down, Inc. (1721); FBH Wind Down, Inc. (2837); FBO Wind Down, Inc. (4908); FBRC Wind Down, Inc. (1288); HFI Wind Down, Inc. (7484); HR Wind Down, Inc. (6125); HT Wind Down, Inc. (4378); LFI Wind Down, Inc. (5064); LHFR Wind Down, Inc. (9085); LV Wind Down, Inc. (8434); MSFI Wind Down, Inc. (7486); TFI Wind Down, Inc. (6574); THF Wind Down, Inc. (3139); and TR Wind Down, Inc. (6174).

Site (as defined below) that exceed \$15.5 million in the aggregate. Under the proposed Stipulation, the estates' potential liability to EPA is significantly reduced and capped at a \$6 million general unsecured claim. Moreover, the proposed Stipulation avoids potential litigation over the Debtors', their estates', and/or the Liquidating Trust's liability, or obligation to take further action, in connection with the cleanup of the Buckingham Landfill Site. For the reasons set forth more fully below, the Liquidating Trustee submits that approval of the Stipulation is in the best interests of the Debtors' estates and their creditors and should be approved.

### **BACKGROUND**

2. On September 9, 2013 (the "Petition Date"), the above captioned Debtors (the "Debtors"), including TFI Wind Down, Inc. (f/k/a Thomasville Furniture Industries, Inc. ("Thomasville"), commenced voluntary cases under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court").

3. Prior to the Petition Date, on September 29, 1995, EPA issued an *Administrative Order for Remedial Design and Remedial Action* (the "Administrative Order") with respect to certain real property known as the Buckingham County Landfill Site and the Buckingham County Drum Site located in Dillwyn, Buckingham County, Virginia (the "Buckingham Landfill Site" or "Site").<sup>2</sup> According to the Administrative Order, the Buckingham Landfill Site had been operated as a commercial dump from approximately 1962 until 1982. During that period, Thomasville utilized the Site for the purpose of disposing of certain waste associated with Thomasville's furniture-making activities. In or about 1983, the Buckingham Landfill Site was closed as a dump, and EPA began an investigation of the Site. In or about November 1984, EPA

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<sup>2</sup> Upon information and belief, Thomasville never owned the Buckingham Landfill Site. Nevertheless, EPA has determined that Thomasville was one several potentially responsible parties with respect to the Site.

determined that the Site was eligible for inclusion on the National Priority List (Superfund) and, on or about October 4, 1989, the Site was added to the National Priority List.

4. Pursuant to the Administrative Order, Thomasville agreed to provide certain remedial and monitoring activities with respect to the Site. Thomasville continued to undertake various remedial and/or monitoring activities in connection with the Site until the Petition Date.

5. Following the Petition Date, on March 7, 2014, the United States Department of Justice (“DOJ”), as counsel to EPA, filed proof of claim number 4098 (“Claim 4098”) against Thomasville with respect to the Buckingham Landfill Site. According to Claim 4098, EPA had incurred approximately \$4,450,663.91 in unreimbursed response costs in connection with the Site as of January 23, 2014, which costs are itemized in Claim 4098. EPA further asserts that its estimated future costs in connection with the Site will be approximately \$11,107,208. Claim 4098 was filed as an “unsecured non-priority claim, except to the extent: (i) that any rights of setoff secure the United States’ claims; (ii) that any secured/trust interest exists in insurance, indemnity or escrow proceeds; and (iii) that any administrative priority exists with respect to property of the estates, post-petition violations of law, or otherwise.” Claim 4098 at ¶ 17. Claim 4098 further states that “with respect to equitable remedies that are not within the Bankruptcy Code’s definition of ‘claim’, . . . this Proof of Claim is filed only in a protective fashion.” Claim 4098 at ¶ 2.

6. On July 14, 2014, the Court entered an order (the “Confirmation Order”) (i) confirming the Debtors’ *Second Amended Joint Plan of Liquidation of FBI Wind Down, Inc. and Its Subsidiaries under Chapter 11 of the Bankruptcy Code* [Dkt. No. 1840] (as amended, the “Plan”), (ii) establishing the Liquidating Trust, and (iii) appointing the Liquidating Trustee to wind down the Debtors’ estates.

7. The Confirmation Order provides, in relevant part, that if any Remaining Real Property (as defined in the Plan) is not disposed of by January 31, 2015 (the “Remaining Real Property Disposition Deadline”), then within five business days’ thereafter, the Liquidating Trustee must either transfer such Remaining Real Property into the Liquidating Trust or file a motion to abandon such Remaining Real Property, provided that the Liquidating Trustee and EPA may agree to extend the Remaining Real Property Disposition Deadline. Consistent with the Confirmation Order, the Liquidating Trustee and the EPA have agreed to extend the Remaining Real Property Disposition Deadline, most recently to August 31, 2015, pending approval of the Stipulation.

8. On August 1, 2014 (the “Effective Date”), the Plan became effective. Upon the Effective Date, the Liquidating Trustee was authorized and empowered to settle or compromise any Disputed Claim (as defined in the Plan).

9. Since the Effective Date, the Liquidating Trustee and his professionals have negotiated with DOJ on a proposed resolution of EPA’s claims against Thomasville, the other Debtors, their chapter 11 estates, the Liquidating Trust, and the Liquidating Trustee (collectively, the “Liquidating Parties”) in connection with the Buckingham Landfill Site.

#### **SUMMARY OF PROPOSED SETTLEMENT**

10. After extensive, arm’s-length negotiations, the Liquidating Trustee and EPA have reached a proposed settlement as set forth in the Stipulation. The material terms of the Stipulation include the following:

- EPA’s Claim 4098 shall be allowed and fixed as a general unsecured claim in the amount of six million dollars (\$6,000,000) against Thomasville (the “Allowed EPA Claim”) and EPA shall be entitled to receive its pro rata distribution in accordance with the Plan on account of the Allowed EPA Claim.

- EPA covenants not to file a civil action or take administrative action against the Liquidating Parties pursuant to Sections 106 or 107 of CERCLA, 42 U.S.C. §§ 9606 or 9607, with respect to the Buckingham Landfill Site, except as specifically provided in paragraphs 6-8 of the Stipulation.<sup>3</sup>
- The Liquidating Parties receive protection from contribution actions or claims by third parties for “matters addressed” in the Stipulation.
- EPA agrees to extend the Remaining Real Property Disposition Deadline through and including the date of termination of the Liquidating Trust, provided, that, in the event the Liquidating Trustee has not sold or otherwise disposed of all Remaining Real Property prior to determining to terminate the Liquidating Trust, the Liquidating Trustee shall file a motion to abandon any such Remaining Real Property on notice to the EPA at least ninety (90) days prior to the termination of the Liquidating Trust.

### **JURISDICTION, VENUE AND STATUTORY PREDICATES**

11. The Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334. Venue is proper in this district pursuant to 28 U.S.C. § 1408. This matter is core within the meaning of 28 U.S.C. § 157(b)(2). The statutory predicates for the relief sought herein are 11 U.S.C. § 105(a) and Bankruptcy Rule 9019.

### **RELIEF SOUGHT**

12. By this Motion, the Liquidating Trustee seeks entry of an order, substantially in the form annexed hereto as Exhibit A (the “Proposed Order”), authorizing and approving the Stipulation by and between the Liquidating Trustee and EPA, a copy of which is annexed to the Proposed Order as Exhibit 1.

### **BASIS FOR RELIEF SOUGHT**

13. Settlements in bankruptcy are favored as a means of minimizing litigation, expediting the administration of the bankruptcy estates, and providing for the efficient resolution of bankruptcy cases. *See In re Martin*, 91 F.3d 389, 393 (3rd Cir. 1996); *Tindall v. Mavrode (In*

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<sup>3</sup> The description of the covenants and other provisions of the Stipulation provided herein are intended only to be a summary. In the event of any inconsistency between the description set forth herein and the Stipulation, the terms of the Stipulation shall govern.

*re Mavrode*), 205 B.R. 716, 719 (Bankr. D.N.J. 1997). To achieve these results, Bankruptcy Rule 9019(a) empowers a bankruptcy court to approve a settlement or compromise by a debtor after notice and a hearing. *See* FED. R. BANKR. P. 9019(a).

14. In applying this rule, a bankruptcy court should approve a settlement if it is fair and equitable and in the best interest of the estates. *See Key3Media Group, Inc. v. Pulver.com, Inc. (In re Key3Media Group, Inc.)*, 336 B.R. 87, 93 (Bankr. D. Del. 2005). To properly make this determination, the court “must be apprised of all relevant information that will enable it to determine what course of action will be in the best interest of the estate.” *Id.* at 92; *see Martin*, 91 F.3d at 393.

15. The United States Court of Appeals for the Third Circuit has provided four criteria that a bankruptcy court should consider in approving a settlement: (1) the probability of success in litigation; (2) the likely difficulties in collection; (3) the complexity of the litigation involved, and the expense, inconvenience and delay necessarily attending it; and (4) the paramount interest of the creditors. *See Martin*, 91 F.3d at 393. When applying these four criteria to the facts of a particular case, a court “is not supposed to have a mini-trial on the merits, but should canvass the issues to see whether the settlement falls below the lowest point in the range of reasonableness.” *Key3Media Group*, 336 B.R. at 93. The court does not have to be convinced that the settlement is the best possible compromise. Rather, the court must conclude that the settlement is within the reasonable range of litigation possibilities. *See In re World Health Alt., Inc.*, 344 B.R. 291, 296 (Bankr. D. Del. 2006).

16. The Liquidating Trustee submits that the terms of the Stipulation fall well within the reasonable range of litigation possibilities and, accordingly, the Stipulation should be approved. The proposed amount of the Allowed EPA Claim, while not insignificant, represents



a substantial reduction off the face amount of Claim 4098. Additionally, under the Stipulation, the Allowed EPA Claim will be treated as a general unsecured claim. As a result, the projected distribution on the Allowed EPA Claim likely represents far less than the amount EPA asserts it has already incurred in connection with the Site. Moreover, given the magnitude of the past and future costs that EPA is asserting in connection with the Buckingham Landfill Site, the Stipulation resolves what might otherwise be costly and time-consuming litigation over the nature, priority, and extent of EPA's claims, rights and remedies against the estates.

17. The Stipulation fixes and caps the Liquidating Parties' obligations to EPA in connection with the Site, notwithstanding the fact that remediation and monitoring at the Site are ongoing and are likely to continue at the Site into the future. Thus, the Stipulation both resolves a substantial legacy liability of the estates and avoids any potential future costs or expenses associated with the Site, including any potential EPA administrative expense claim. The Stipulation also addresses any argument that the estates are subject to equitable or other remedies in connection with the Site that may not fall within the definition a "claim" in section 101(5) of the Bankruptcy Code.

18. Finally, pursuant to the Stipulation, EPA is agreeing to an extension of the Remaining Real Property Disposition Deadline through the termination of the Liquidating Trust. The extension of Remaining Real Property Disposition Deadline will free the Liquidating Trustee from the requirement to dispose of the Remaining Real Property by an artificial deadline, thereby giving him far greater flexibility to sell or otherwise dispose of the Remaining Real Property when the benefits to the estates can be maximized.

19. Having considered the above factors, and after weighing the potentially significant costs of litigating with EPA, and given the uncertainty with respect to the ongoing

cleanup costs of the Site, the Liquidating Trustee has determined that entering into the Stipulation is in the best interests of the estates and their creditors and is a sound exercise of his business judgment. Therefore, the Liquidating Trustee respectfully requests that the Court enter the Proposed Order and approve the Stipulation upon the terms set forth therein.

**NOTICE**

20. Notice of this Motion has been given to: (i) the United States Trustee for the District of Delaware; (ii) the EPA; (iii) the DOJ; (iv) Univar USA, Inc.; and (v) all parties that have requested notice pursuant to Bankruptcy Rule 2002. The Liquidating Trustee respectfully submit that, in light of the nature of the relief requested, no further notice is necessary or required.

**NO PRIOR REQUEST**

21. No previous request for the relief sought herein has been made to this or any other court.

22. The Liquidating Trustee submits that this Motion does not present novel issues of law requiring the citation to any authority, other than the statutes and rules cited above, and, accordingly, submit that no separate memorandum of law is necessary.

**CONCLUSION**

**WHEREFORE**, the Liquidating Trustee respectfully request that the Court enter an order, substantially in the form annexed hereto as **Exhibit A**, (i) authorizing and approving the Stipulation between the Liquidating Trustee and EPA, a copy of which is attached to the Proposed Order as **Exhibit 1**, and (ii) granting such other and further relief as may be just and proper.

Dated: June 3, 2015

**BLANK ROME LLP**

/s/ Victoria Guilfoyle  
Michael B. Schaedle  
Victoria A. Guilfoyle (No. 5183)  
1201 Market Street, Suite 800  
Wilmington, Delaware 19801

-and-

**HAHN & HESSEN LLP**

Mark S. Indelicato  
Mark T. Power  
Janine M. Figueiredo  
488 Madison Avenue  
New York, New York 10022  
(212) 478-7200

*Co-Counsel to Alan D. Halperin, Liquidating  
Trustee of the FBI Wind Down, Inc. Liquidating  
Trust*

**EXHIBIT A**

**PROPOSED ORDER**

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

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In re: : Chapter 11  
  
FBI WIND DOWN, INC. (f/k/a Furniture : Case No. 13-12329 (CSS)  
Brands International, Inc.), *et al.*, : (Jointly Administered)  
  
Debtors.<sup>1</sup> : **Re: Dkt. No.** \_\_\_\_\_  
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**ORDER PURSUANT TO BANKRUPTCY RULE 9019 APPROVING THE  
STIPULATION BY AND BETWEEN THE LIQUIDATING TRUSTEE AND  
THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**

Upon consideration of the motion (the “Motion”)<sup>2</sup> of Alan D. Halperin, Esq., as the Liquidating Trustee of FBI Wind Down, Inc. Liquidating Trust (the “Liquidating Trustee”) of the FBI Wind Down, Inc. Liquidating Trust (the “Liquidating Trust”), pursuant to Bankruptcy Rule 9019, for entry of an order approving the Stipulation attached hereto as Exhibit 1 between the Liquidating Trustee and the United States Environmental Protection Agency (“EPA”); and the Court having reviewed the Motion and the terms of the Stipulation; and it appearing to the Court that: (a) it has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; and (b) this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); the Court being fully advised in the premises and having determined that the legal and factual basis set forth in the Motion establish just cause for the relief granted herein; and the Court having determined that the relief sought in the Motion is in the best interests of the Debtors’ estates and their creditors,

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<sup>1</sup> The debtors in these chapter 11 cases, along with the last four digits of each debtor’s tax identification number, as applicable, are: FBI Wind Down, Inc. (7683); AT Wind Down, Inc. (7587); BFI Wind Down, Inc. (3217); BHF Wind Down, Inc. (8844); BR Wind Down, Inc. (8843); BT Wind Down, Inc. (1721); FBH Wind Down, Inc. (2837); FBO Wind Down, Inc. (4908); FBRC Wind Down, Inc. (1288); HFI Wind Down, Inc. (7484); HR Wind Down, Inc. (6125); HT Wind Down, Inc. (4378); LFI Wind Down, Inc. (5064); LHFR Wind Down, Inc. (9085); LV Wind Down, Inc. (8434); MSFI Wind Down, Inc. (7486); TFI Wind Down, Inc. (6574); THF Wind Down, Inc. (3139); and TR Wind Down, Inc. (6174).

<sup>2</sup> Capitalized terms used herein and not otherwise defined herein shall have the meanings ascribed to such terms in the Motion and/or the Stipulation, as applicable.

**IT IS HEREBY FOUND AND DETERMINED THAT:**

- A. Adequate notice of the Motion and of the Stipulation has been given, and no further or other notice is required.
- B. The Motion and the Stipulation satisfy the Bankruptcy Rules, including, but not limited to, Bankruptcy Rule 9019.
- C. Entry into the Stipulation is (i) a proper exercise of the Liquidating Trustee's authority under the Plan and the Liquidating Trust Agreement, and (ii) in the best interests of the estates and creditors.
- D. The Stipulation constitutes a judicially approved settlement for purposes of Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2).
- E. The Stipulation is fair, reasonable, and consistent with environmental law.

**IT IS HEREBY ORDERED THAT:**

- 1. The Motion is granted and the Stipulation is approved.
- 1. EPA's Claim 4098 shall be allowed and fixed as a general unsecured claim in the amount of six million dollars (\$6,000,000) against Thomasville and shall be entitled to receive its pro rata distribution from the estates of the Thomasville Debtors.
- 2. The Remaining Real Property Disposition Deadline is hereby extended through and including through and including the date of termination of the Liquidating Trust; provided, that, in the event the Liquidating Trustee has not sold or otherwise disposed of all Remaining Real Property prior to determining to terminate the Liquidating Trust, the Liquidating Trustee shall file a motion to abandon any such Remaining Real Property on notice to the EPA at least ninety (90) days prior to the termination of the Liquidating Trust.

3. EPA's covenant not to file a civil action or take administrative action against the Liquidating Parties pursuant to Sections 106 or 107 of CERCLA, 42 U.S.C. §§ 9606 or 9607, with respect to the Buckingham Landfill Site, is approved.

4. The Liquidating Parties are entitled to the protections afforded to them under the Stipulation, including, but not limited to, the contribution protections set forth in paragraph 11 of the Stipulation.

5. The Parties are authorized to take all actions necessary to effectuate the relief granted pursuant to this Order in accordance with the terms of the Stipulation.

6. This Court shall retain jurisdiction over any matter or dispute arising from or relating to the Stipulation and/or implementation of this Order.

Dated: \_\_\_\_\_, 2015.  
Wilmington, Delaware

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THE HONORABLE CHRISTOPHER S. SONTCHI  
UNITED STATES BANKRUPTCY JUDGE

**EXHIBIT 1**

**STIPULATION**



**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

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In re: : Chapter 11  
FBI WIND DOWN, INC. (f/k/a Furniture : Case No. 13-12329 (CSS)  
Brands International, Inc.), *et al.*, :  
Debtors.<sup>1</sup> : (Jointly Administered)  
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**STIPULATION BY AND BETWEEN THE LIQUIDATING TRUSTEE AND  
THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**

This stipulation (the “Stipulation”)<sup>2</sup> is made and entered into by and between Alan D. Halperin, Esq., as the Liquidating Trustee (the “Liquidating Trustee”) of the FBI Wind Down, Inc. Liquidating Trust (the “Liquidating Trust”), and the United States, on behalf of the Environmental Protection Agency (“EPA”, and, together with the Liquidating Trustee, each a “Party” and together, the “Parties”).

**RECITALS**

WHEREAS, on September 9, 2013 (the “Petition Date”), the above captioned Debtors (the “Debtors”), including TR Wind Down, Inc. (f/k/a Thomasville Furniture Industries, Inc. (“Thomasville”), commenced voluntary cases under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”) in the United States Bankruptcy Court for the District of Delaware (the “Bankruptcy Court”).

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<sup>1</sup> The debtors in these chapter 11 cases, along with the last four digits of each debtor’s tax identification number, as applicable, are: FBI Wind Down, Inc. (7683); AT Wind Down, Inc. (7587); BFI Wind Down, Inc. (3217); BHF Wind Down, Inc. (8844); BR Wind Down, Inc. (8843); BT Wind Down, Inc. (1721); FBH Wind Down, Inc. (2837); FBO Wind Down, Inc. (4908); FBRC Wind Down, Inc. (1288); HFI Wind Down, Inc. (7484); HR Wind Down, Inc. (6125); HT Wind Down, Inc. (4378); LFI Wind Down, Inc. (5064); LHFR Wind Down, Inc. (9085); LV Wind Down, Inc. (8434); MSFI Wind Down, Inc. (7486); TFI Wind Down, Inc. (6574); THF Wind Down, Inc. (3139); and TR Wind Down, Inc. (6174).

<sup>2</sup> Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Motion.

WHEREAS, prior to the Petition Date, EPA issued an *Administrative Order for Remedial Design and Remedial Action* dated as of September 29, 1995 (the “Administrative Order”) to Thomasville with respect to the Buckingham County Landfill Site and the Buckingham County Drum Site located in Dillwyn, Buckingham County, Virginia (the “Buckingham Landfill Site”). Pursuant to the Administrative Order, Thomasville agreed to provide certain remedial and monitoring activities with respect to the Buckingham Landfill Site.

WHEREAS, following the Petition Date, on March 7, 2014, the United States Department of Justice (“DOJ”), as counsel to EPA, filed proof of claim number 4098 (“Claim 4098”) against Thomasville, asserting that EPA had incurred approximately \$4,450,663.91 in unreimbursed response costs in connection with the Buckingham Landfill Site as of January 23, 2014, and asserting estimated future costs of approximately \$11,107,208. Claim 4098 was filed as an “unsecured non-priority claim, except to the extent: (i) that any rights of setoff secure the United States’ claims; (ii) that any secured/trust interest exists in insurance, indemnity or escrow proceeds; and (iii) that any administrative priority exists with respect to property of the estates, post-petition violations of law, or otherwise.” Claim 4098 at ¶ 17. Claim 4098 further states that “with respect to equitable remedies that are not within the Bankruptcy Code’s definition of ‘claim’... this Proof of Claim is filed only in a protective fashion.” Claim 4098 at ¶ 2.

WHEREAS, on July 14, 2014, the Court entered an order (the “Confirmation Order”) confirming the Debtors’ *Second Amended Joint Plan of Liquidation of FBI Wind Down, Inc. and Its Subsidiaries under Chapter 11 of the Bankruptcy Code* [Dkt. No. 1840] (as amended, the “Plan”) and establishing the Liquidating Trust. Among other things, the Confirmation

Order provides that certain Remaining Real Property (as defined in the Plan) would not be transferred to the Liquidating Trust upon the Plan effective date and would remain an asset of the respective Debtor's estate until the time of disposition of such Remaining Real Property. The Confirmation Order further provides that:

Notwithstanding the foregoing, if any Remaining Real Property is not disposed of on or before January 31, 2015 [the "Remaining Real Property Disposition Deadline"], the Liquidating Trustee shall, within 5 business days, either transfer such Remaining Real Property into the Liquidating Trust or file a motion to abandon such Remaining Real Property; provided, however, that the Liquidating Trustee and the Environmental Protection Agency may stipulate to extend such time by which any Remaining Real Property may remain in the respective Debtor's Estate.

Confirmation Order at ¶ 44.

WHEREAS, on August 1, 2014 (the "Effective Date"), the Plan became effective and the Liquidating Trustee was appointed to wind down the Debtors' affairs. Thereafter, the Parties agreed to extend the Remaining Real Property Disposition Deadline through and including May 31, 2015, pending the drafting and execution of this Stipulation.

WHEREAS, since the Effective Date, the Parties have negotiated and have agreed to resolve this matter as set forth herein.

NOW THEREFORE, THE PARTIES, INTENDING TO BE BOUND, HEREBY STIPULATE AND AGREE, SUBJECT TO THE BANKRUPTCY COURT'S APPROVAL, AS FOLLOWS:

1. EPA's Claim 4098 for the Buckingham Landfill Site shall be allowed and fixed as a general unsecured claim in the amount of six million dollars (\$6,000,000) against Thomasville (the "Allowed EPA Claim") and shall be entitled to receive its pro rata distribution in accordance with the Plan.

2. EPA may, in its sole discretion, deposit any portion of any cash distributions it receives pursuant to this Stipulation to be retained and used to conduct or finance response actions at or in connection with the Buckingham Landfill Site, or to be transferred to the Hazardous Substance Superfund.

3. Cash distributions to the United States pursuant to this Stipulation shall be made at <https://www.pay.gov> or by FedWire Electronic Funds Transfer in accordance with instructions, including a Consolidated Debt Collection System (“CDCS”) number, to be provided to the Liquidating Trustee by the Financial Litigation Unit of the United States Attorney’s Office for the District of Delaware. At the time of any cash distribution pursuant to this Stipulation, the Liquidating Trustee shall transmit written confirmation of such distribution to the United States at the addresses specified below, with a reference to Bankruptcy Case Number 13-12329, the CDCS number, and Site ID Number 03 M8:

United States Department of Justice

Chief, Environmental Enforcement Section  
Environment and Natural Resources Division  
U.S. Department of Justice  
P.O. Box 7611  
Washington, DC 20044  
Ref. DOJ File No. 90-11-2-07971/1

United States Environmental Protection Agency

Daria D. Arnold (3PM30)  
US EPA  
Region III  
1650 Arch Street  
Philadelphia, PA 19103  
Ref. Site ID Number 03 M8

-and-

US EPA Cincinnati Finance Center (CFC) by email or by regular mail at:

[CINWD\\_AcctsReceivable@epa.gov](mailto:CINWD_AcctsReceivable@epa.gov)

EPA Cincinnati Finance Center  
26 W. Martin Luther King Drive, MS-002  
Cincinnati, Ohio 45268  
Attn: Molly Williams

4. EPA hereby consents and agrees to a further extension of the Remaining Real Property Disposition Deadline through and including the date of termination of the Liquidating Trust; provided, that, in the event the Liquidating Trustee has not sold or otherwise disposed of all Remaining Real Property prior to determining to terminate the Liquidating Trust, the Liquidating Trustee shall file a motion to abandon any such Remaining Real Property on notice to the EPA at least ninety (90) days prior to the termination of the Liquidating Trust. Notice in accordance with this Paragraph 4 shall be provided to the following:

United States Department of Justice

Chief, Environmental Enforcement Section  
Environment and Natural Resources Division  
P.O. Box 7611  
Washington, D.C. 20044  
Ref. DOJ File No. 90-11-2-07971/1

-and-

United States Environmental Protection Agency

Bankruptcy Contact  
US EPA Region 4  
61 Forsyth St., SW  
Atlanta, GA 30303

5. In consideration of the distributions that will be made under the terms of this Stipulation, and except as specifically provided in Paragraphs 6-8, EPA covenants not to file a civil action or take administrative action against the Debtors, including Thomasville, the

Debtors' chapter 11 estates, the Liquidating Trust, and the Liquidating Trustee (collectively, the "Liquidating Parties") pursuant to Sections 106 or 107 of CERCLA, 42 U.S.C. §§ 9606 or 9607, with respect to the Buckingham Landfill Site.

6. The covenant set forth in Paragraph 5 extends only to the Liquidating Parties and does not extend to any other person. Nothing in this Stipulation is intended as a covenant for any person or entity other than the Liquidating Parties and the United States. EPA and the Liquidating Parties expressly reserve all claims, demands, and causes of action, either judicial or administrative, past, present, or future, in law or equity, which either Party may have against all other persons, firms, corporations, entities, or predecessors of the Liquidating Parties for any matter arising at or relating in any manner to the Buckingham Landfill Site. Further, nothing in this Stipulation diminishes the right of the United States, pursuant to Section 113(f)(2) and (3) of CERCLA, 42 U.S.C. § 9613(f)(2)-(3), to enter into any settlement that gives rise to contribution protection for any person not a party to this Stipulation, subject to the protections afforded to the Liquidating Parties by this Stipulation, including, but not limited to, the contribution protection set forth in Paragraph 11.

7. The covenant not to sue set forth in Paragraph 5 does not pertain to any matters other than those expressly specified therein. The United States expressly reserves, and this Stipulation is without prejudice to, all rights against the Liquidating Parties with respect to all matters other than those set forth in Paragraphs 5 and 11. The Parties specifically reserve, and this Stipulation is without prejudice to, any action based on a failure to meet a requirement of this Stipulation. In addition, the United States reserves, and this Stipulation is without prejudice to, all rights against the Liquidating Parties with

respect to the Buckingham Landfill Site for liability under federal or state law for acts taken by the Liquidating Parties after the date on which this Stipulation is approved by the Bankruptcy Court.

8. Nothing in this Stipulation shall be deemed to limit the authority of the United States to take any response action under Section 104 of CERCLA, 42 U.S.C. § 9604, or any other applicable statute or regulation, or to alter the applicable legal principles governing judicial review of any action taken by the United States pursuant to such authority; provided, however, nothing in this sentence affects the covenant set forth in Paragraph 5. Nothing in this Stipulation shall be deemed to limit the information-gathering authority of the United States under Sections 104 and 122 of CERCLA, 42 U.S.C. §§ 9604 and 9622, or any other applicable statute or regulation, or to excuse the Liquidating Parties from any disclosure or notification requirements imposed by CERCLA or any other applicable statute or regulation. Nothing herein shall be construed to imply a duty of disclosure or notification for information not within the care, custody, or control of the Liquidating Parties.

9. The Liquidating Parties covenant not to sue and agree not to assert or pursue any claims or causes of action against the United States, including any department, agency, or instrumentality of the United States, with respect to the Buckingham Landfill Site, including, but not limited to: (i) any direct or indirect claim for reimbursement from the Hazardous Substance Superfund established pursuant to 26 U.S.C. § 9507; (ii) any claim under Section 107 or 113 of CERCLA, 42 U.S.C. §§ 9607 or 9613, or Section 7002(a) of RCRA, 42 U.S.C. § 6972(a); or (iii) any claims arising out of response activities at the Buckingham Landfill Site. Nothing in this Stipulation shall be deemed to constitute

preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

10. Notwithstanding any other provision of this Stipulation, the Liquidating Parties reserve, and this Stipulation is without prejudice to, claims against the United States in the event any claim is asserted by the United States against the Liquidating Parties pursuant to any of the reservations set forth in Paragraphs 7 and 8, other than for failure to meet a requirement of this Stipulation, but only to the extent that the Liquidating Parties' claim arises from the same response action or response costs that the United States is seeking pursuant to the applicable reservation.

11. The Parties hereto agree, and by entering this Stipulation the Bankruptcy Court finds, that this Stipulation constitutes a judicially approved settlement for purposes of Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), and that the Liquidating Parties are entitled to protection from contribution actions or claims as provided by Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), or as may be otherwise provided by law, for "matters addressed" in this Stipulation. The "matters addressed" in this Stipulation are all response actions taken or to be taken, and all response costs incurred or to be incurred, at or in connection with the Buckingham Landfill Site by the United States or any potentially responsible parties; provided, however, that, if EPA exercises rights under the reservations in Paragraph 7, other than for failure to meet a requirement of this Stipulation, the "matters addressed" in this Stipulation shall no longer include those response costs or response actions that are within the scope of the exercised reservation.

12. This Stipulation shall be subject to approval of the Bankruptcy Court and shall not be effective until and unless the Stipulation has been approved by the Bankruptcy



Court. The Liquidating Parties shall promptly seek approval of this Stipulation under Bankruptcy Rule 9019 or applicable provisions of the Bankruptcy Code.

13. This Stipulation shall be filed with the Bankruptcy Court and shall thereafter be subject to a thirty (30) day period of public comment following publication of notice of the Stipulation in the Federal Register. The United States, at its own expense, shall be responsible for publication of notice and the response to any comments, as necessary. After the conclusion of the public comment period, the United States will file with the Bankruptcy Court any comments received, as well as the United States' responses to the comments, and at that time, if appropriate, the United States will request approval of the Stipulation. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Stipulation disclose facts or considerations which indicate that the Stipulation is not in the public interest.

14. If for any reason (a) the Stipulation is withdrawn by the United States as provided in Paragraph 13, or (b) the Stipulation is not approved by the Bankruptcy Court: (i) this Stipulation shall be null and void, and the parties hereto shall not be bound under the Stipulation or under any documents executed in connection herewith; (ii) the Parties shall have no liability to one another arising out of or in connection with this Stipulation or under any documents executed in connection herewith; and (iii) this Stipulation and any documents prepared in connection herewith shall have no residual or probative effect or value.

15. This Stipulation constitutes the sole and complete agreement of the Parties hereto with respect to the matters addressed herein.

16. This Stipulation may not be amended except by a writing signed by all the Parties and approved by the Bankruptcy Court.

17. This Stipulation may be executed in counterparts, each of which shall constitute an original, and all of which shall constitute one and the same agreement.

18. The Bankruptcy Court or, upon withdrawal of the Bankruptcy Court's reference, the United States District Court for the District of Delaware shall retain jurisdiction over the subject matter of this Stipulation and the Parties hereto for the duration of the performance of the terms and provisions of this Stipulation for the purpose of enabling any of the Parties to apply at any time for such further order, direction, and relief as may be necessary or appropriate for the construction or interpretation of this Stipulation or to effectuate or enforce compliance with its terms.

19. EPA warrants and represents to the Liquidating Trustee that EPA owns Claim 4098 and that it has not assigned, transferred, conveyed, or in any way encumbered such claim.

20. It is hereby expressly agreed and understood that nothing in this Stipulation shall constitute any admission or acknowledgement of liability by any of the Parties.

21. The undersigned counsel represent that they have the authorization to execute this Stipulation on behalf of their respective clients.

22. This Stipulation may be executed in counterparts, any of which may be transmitted by facsimile, and each of which should be deemed an original and all of which together shall constitute one and the same instrument.

***[Signature Page Follows]***

*[Handwritten signature]*  
/s/

Mark S. Indelicato, Esq.  
Hahn & Hessen LLP  
488 Madison Avenue  
New York, New York 10022

*Co-Counsel to the Alan D. Halperin,  
Liquidating Trustee of the FBI Wind Down, Inc.  
Liquidating Trust*

*[Handwritten signature]*  
/s/

Nathaniel Douglas  
Deputy Section Chief  
Environmental Enforcement Section  
Environment and Natural Resources  
Division  
U.S. Department of Justice

*[Handwritten signature]*  
/s/

Elliot M. Rockler  
Trial Attorney  
Environmental Enforcement Section  
United States Department of Justice  
P.O. Box 7611  
Washington, D.C. 20044-7611

*[Handwritten signature]*  
/s/

Shawn M. Garvin  
Regional Administrator  
U.S. Environmental Protection Agency  
Region III  
1650 Arch Street  
Philadelphia, PA 19103-2029

*for*

*[Handwritten signature]*  
/s/

Gail P. Wilson  
Senior Assistant Regional Counsel  
U.S. Environmental Protection Agency  
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