



## A Roadmap for Suppliers, Retailers, Licensees, and Employees as the Furniture Brands Bankruptcy Proceeds

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Furniture Brands International filed for Chapter 11 bankruptcy on September 9. In the time leading up to this filing and since, I've received questions from readers and clients about what this means for business in the coming months. Now that the filing has occurred and more information is available, we can begin to analyze its effect on FBI's suppliers, retailers, licensees and employees.

As I mentioned in my last [post](#), the bankruptcy process takes time. Two of many upcoming milestones are the sale of Lane and the auction and bankruptcy court approval, scheduled for January 2014, of the sale of FBI. Here are some of the things to keep in mind in navigating the next few months.

**Suppliers:** In another previous post [here](#), I mentioned a supplier's right of reclamation as a general rule in bankruptcy (a limited right to get back or "reclaim" merchandise). However, this may not be available in the FBI bankruptcy because it is subject to the rights of secured parties.

For suppliers that sent merchandise to FBI shortly before the filing, there may be good news. If FBI received merchandise from a supplier up to 20 days prior to the bankruptcy filing on September 9, that supplier gets administrative claim status, which means a priority over unsecured creditors.

Another key consideration is whether a supplier is "critical." As part of its bankruptcy filing, FBI filed a motion requesting authorization to pay certain unidentified suppliers it believes are "critical" to its business, before other unsecured creditors. FBI's criteria for selecting a critical vendor include several factors. One is whether a supplier is a sole source of the merchandise it supplies, and alternative sources, because of customization, are unavailable within a reasonable time.

If a vendor is not a sole source provider, it may earn critical status if FBI lacks sufficient inventory while a replacement vendor is found. It also may earn critical status if FBI has favorable pricing and other terms that would be lost if it switched to another supplier.

The key take-away for a supplier, then, is to determine whether it meets one of the criteria for critical status. Meeting this critical supplier requirement means more favorable standing in recovery.

**Retailers:** As part of its bankruptcy filing, FBI is selling its assets to investment firm Oaktree Capital Management. This would allow for continued sourcing, manufacturing, and supply of its goods. However, retailers should be aware that uncertainty remains. The bankruptcy court needs to approve the proposed deal, and the intentions of the new owners are not known. There is no single correct way to manage this risk, and the right course of action for any one retailer will depend on its business goals. But retailers should take these uncertainties into account as they decide which products to stock.

**Licensees:** Businesses that are licensed to sell products under a brand name that has been owned by Furniture Brands, such as Thomasville, will also want to make sure they are protected. When their license agreement is assigned and assumed, they should make sure the new owners of FBI are aligned strategically with their business reason for the license.

**Employees, designers, and representatives:** FBI has filed a motion to pay certain compensation and commissions up to the statutory amount of \$12,475 per eligible individual, and to pay and continue certain benefits. Since this amount does not exceed the statutory limit, I expect this to be approved by the court unless an unusual objection is filed. I will be watching this aspect of the proceeding.

**Going forward:** The bankruptcy filing of Furniture Brands is one of the biggest stories in the last decade. As I talk to people in the furniture business, one thing becomes clear. This development is about more than one company and one legal proceeding. Competition, globalization, and changing consumer sentiment have all contributed to the uncertain climate throughout the industry. Every furniture business, regardless of whether it has a relationship with Furniture Brands International, should consider what these larger trends mean for its business plans in the coming years.

*What do you think the business impact of a Furniture Brands International bankruptcy would be? I'm interested in what you think. Contact me directly at [jcohen@ctswlaw.com](mailto:jcohen@ctswlaw.com) with questions or comments. View more posts on law and the business of furniture on the [Furniture Today](#) website.*

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