

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

FEDERAL TRADE COMMISSION,	)	
600 Pennsylvania Avenue, NW	)	
Washington, DC 20580	)	
	)	
Plaintiff,	)	
v.	)	Civ. No.
	)	
RHI AG	)	
Twin Tower	)	
Wienerbergstrasse 11	)	
1100 Vienna, Austria	)	
Defendant	)	

**COMPLAINT**

Plaintiff, the Federal Trade Commission (“Commission”), by its undersigned attorneys brings this action under Sections 16(a)(1) and 5(l) of the Federal Trade Commission Act, as amended, 15 U.S.C. §§ 56(a)(1) and 45(l), for civil penalties and for such other equitable relief as the Court deems appropriate, for violations of a final order to cease and desist issued by the Federal Trade Commission.

**JURISDICTION AND VENUE**

1. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331, 1337, 1345, and 1355, and 15 U.S.C. §§ 45(l) and 45(a)(1).
2. Venue in this District is proper.

3. RHI AG (“RHI”) is a corporation organized, existing and doing business under and by virtue of the laws of the Sovereign Nation of Austria with its principal executive offices located at Twin Tower, Wienerbergstrasse 11, 1100 Vienna, Austria.
4. North American Refractories Company (“NARCO”) is a corporation organized, existing and doing business under and by virtue of the laws of the State of Ohio with its principal executive offices located at 400 Fairway Drive, Moon Township, Pennsylvania 15108.  
  
At all times relevant to this proceeding, NARCO was an indirect, wholly-owned subsidiary of RHI and was engaged in, among other things, the research, development, manufacture, sale, and distribution in the United States of: (a.) magnesia-carbon refractory bricks used in structures and equipment related to the production of steel (“Mag-Carbon Bricks”); and, (b.) high-alumina refractory bricks used in structures and equipment related to the production of steel (“High-Alumina Bricks”).
5. NARCO, at all times relevant to this proceeding, was an indirect, wholly owned subsidiary of RHI AG, and was engaged in commerce, as “commerce” is defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44.

### **PRIOR COMMISSION PROCEEDINGS**

6. In a proceeding entitled In the Matter of RHI AG, FTC Docket No. C-4005, the Commission issued an administrative complaint charging RHI AG with, among other things, violating Section 7 of the Clayton Act, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45. The administrative complaint alleged,

*inter alia*, that the acquisition by RHI of Global Industrial Technologies, Inc. (“Global”) violated Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45. The complaint alleged, *inter alia*, that the acquisition of Global would lessen competition and tend to create a monopoly in the relevant markets for: (a.) Mag-Carbon Bricks for basic oxygen furnaces (“BOF”), electric arc furnaces, BOF steel ladles, and steel degassers (collectively, “Basic Refractory Bricks For Steel Production”); and, (b.) High-Alumina Bricks for BOF steel ladles and torpedo cars (collectively, “High Alumina Refractory Bricks For Steel Production”).

7. On March 21, 2001, the Commission issued a final order in FTC Docket No. C-4005 (“Order”), with the consent of, among others, RHI. The Order was duly served, and became final, on March 23, 2001. At all times relevant to the violations alleged in this Complaint, the Order had not been modified or set aside. However, the Commission modified the Order on February 18, 2004, in a manner that is not relevant to this Complaint.
- 8(a). Paragraph I.A. of the Order defined RHI to mean, *inter alia*, RHI AG, its successors and assigns, and its subsidiaries, divisions, groups, and affiliates (including, but not limited to, NARCO).<sup>1</sup>
- 8(b). Paragraph I.I. of the Order defined the term “Divested Assets” to mean: (a.) all of RHI’s interest acquired from Global in assets and businesses in North America related to the

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<sup>1</sup> The term “RHI” as used herein has the same definition as the term “RHI” in the Order.

research, development, manufacture, sale and distribution of Basic Refractory Bricks For Steel Production, including but not limited to property listed in Paragraph I.I.(1.) of the Order; and, (b.) all of RHI's interest in assets and businesses in North America related to the research, development, manufacture, sale and distribution of High Alumina Refractory Bricks For Steel Production, including but not limited to property listed in Paragraph I.I.(2.) of the Order.

- 8(c). Paragraph I.L. of the Order defined the term "Divestiture Agreement" to mean a series of agreements between NARCO and Resco entitled Asset Purchase Agreement (dated November 11, 1999) between NARCO and Resco (including Amendments Nos. 1 through 6), Transition Services Agreement (March 3, 2000), Magnesite Supply Agreement (March 3, 2000), and Settlement Agreement (October 27, 2000).
- 8(d). Paragraph I.H. defined Divested Products to include Basic Refractory Bricks For Steel Production.
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- 8(e). Paragraph II.A. of the Order required RHI to divest to Resco Products, Inc. ("Resco") the Divested Assets pursuant to the Divestiture Agreement on or before a date provided by Paragraph II.G. of the Order.
9. Paragraph II.E. of the Order prohibited RHI from using any patents or other intellectual property licensed from Resco pursuant to the Settlement Agreement for the manufacture, distribution, or sale of Divested Products in North America.
10. Paragraph II.F. incorporated the Divestiture Agreement into the Order, provided that RHI must comply with the terms of the Divestiture Agreement, and stated that any failure to comply with the Divestiture Agreement constituted a failure to comply with the Order.

Paragraph II.F. further provided that any modification of the Divestiture Agreement without the prior approval of the Commission constituted a failure to comply with the Order.

11. Paragraph III of the Order required RHI to execute an agreement approved by the Commission with an Interim Trustee appointed by the Commission to monitor RHI's compliance with the Order and the Divestiture Agreement incorporated into it. Paragraph III of the Order further provided that the Interim Trustee, as well as any attorneys or other representatives employed by the Interim Trustee, serve at the expense of RHI, subject to the approval of the Commission.
12. The Commission approved an agreement between an Interim Trustee and RHI on January 21, 2000 ("Trustee Agreement"). Paragraph 3 of the Trustee Agreement required RHI to "fully and promptly comply" with all terms of the Order imposing any duties or obligations on RHI with respect to the Interim Trustee. Paragraph 8 of the Trustee Agreement specified the rates at which the Interim Trustee and others retained by him would be compensated by RHI.
13. Section 3 of the Settlement Agreement, as incorporated into the Order, together with Paragraph II.G. of the Order, required RHI to order from Resco a total of 1500 tons of High Alumina Refractory Bricks For Steel Production by May 21, 2001, for shipment on or before June 6, 2001, and required RHI to pay for these refractory bricks within 30 days of shipment.
14. Section 16 of the Settlement Agreement, as incorporated into the Order, required RHI to reimburse Resco for contributions and payments relating to the supplemental

unemployment plan for employees at a plant in Hammond, IN, acquired by Resco prior to the date that Resco acquired the plant. Section 16 of the Settlement Agreement and Paragraph II.G. of the Order specify a schedule for RHI to reimburse Resco for these payments.

15. Section 17 of the Settlement Agreement, as incorporated into the Order, and Paragraph II.G. of the Order, required RHI to reimburse Resco for payments relating to vacation earned by employees at a plant in Hammond, IN, acquired by Resco prior to the date that Resco acquired the plant. Section 17 of the Settlement Agreement and Paragraph II.G. of the Order specify a schedule for RHI to reimburse Resco for these payments.
16. Section 20 of the Settlement Agreement, as incorporated into the Order, and Section 6.19 of Amendment No. 4 of the Asset Purchase Agreement, as incorporated into the Order, required RHI to retain by March 30, 2001, an environmental consultant to evaluate environmental issues at the two refractories plants divested to Resco.
17. Section 20 of the Settlement Agreement, as incorporated into the Order, and Section 6.19 of Amendment No. 4 of the Asset Purchase Agreement, as incorporated into the Order, required RHI to complete as promptly as possible any required environmental remediation at the two refractories plants divested to Resco.
18. Section 21 of the Settlement Agreement, as incorporated into the Order, required RHI, as promptly as possible, to commence reformation or cancellation of seven intellectual property license agreements relating to the Divested Assets between Harbison-Walker Refractories Company, an indirect, wholly-owned subsidiary of RHI, and various licensees. Under the circumstances relevant to this action, RHI should have commenced

reformation or cancellation of these licenses by at least May 15, 2001.

19. On or about March 3, 2000, RHI, through NARCO, divested assets and businesses to Resco, including refractories plants located in Hammond, IN, and Marelán, Quebec Province, Canada.

## VIOLATIONS ALLEGED

### COUNT 1

20. The allegations contained in Paragraphs 1 through 19 hereof are repeated and re-alleged as though fully set forth herein
21. On or about May 14, 2001, NARCO, while it was an indirect, wholly-owned subsidiary of RHI AG, manufactured approximately 720 refractory bricks designated by the trade name "BL5G" using a patent licensed from Resco pursuant to the Settlement Agreement.
22. As noted in paragraph 8(d), supra, the BL5G refractory brick is a Divested Product subject to the Order.
23. The manufacture by NARCO, while it was an indirect, wholly-owned subsidiary of RHI AG, of each BL5G refractory brick was a separate violation of Paragraph II.E. of the Order.
24. RHI AG, through its indirect, wholly-owned subsidiary, NARCO, was in violation of the Order for at least one day with regard to each BL5G brick manufactured by NARCO on May 14, 2001.

### COUNT 2

25. The allegations contained in Paragraphs 1 through 24 hereof are repeated and re-alleged

as Othough fully set forth herein.

26. On or about May 17, 2001, NARCO, while it was an indirect, wholly-owned subsidiary of RHI AG, sold approximately 720 BL5G refractory bricks to a customer in the United States.
27. The sale by NARCO, while it was an indirect, wholly-owned subsidiary of RHI AG, of each BL5G refractory brick was a separate violation of Paragraph II.E. of the Order.
28. RHI, through its indirect, wholly-owned subsidiary, NARCO, was in violation of the Order for at least one day with regard to each BL5G brick sold by NARCO on May 14, 2001.

### COUNT 3

29. The allegations contained in Paragraphs 1 through 19 hereof are repeated and re-alleged as though fully set forth herein.
30. NARCO, while it was an indirect, wholly-owned subsidiary of RHI AG, failed to retain an environmental consultant to determine environmental remediation required at the refractories plant located in Hammond, Indiana, divested to Resco until on or after November 21, 2001.
31. The failure of NARCO, while it was an indirect, wholly-owned subsidiary of RHI AG, to retain an environmental consultant until on or after November 21, 2001, violated Section 20 of the Settlement Agreement, as incorporated into the Order.
32. RHI AG, through its indirect, wholly-owned subsidiary, NARCO, was continuously in violation of the Order due to NARCO's delay in retaining an environmental consultant for the refractories plant in Hammond, Indiana, from March 30, 2001, until on or after



November 21, 2001.

#### COUNT 4

33. The allegations contained in Paragraphs 1 through 19 and 29 through 32 hereof are repeated and re-alleged as though fully set forth herein.
34. NARCO, while it was an indirect, wholly-owned subsidiary of RHI AG, failed to perform required environmental remediation at the refractories plant located in Hammond, Indiana, determined necessary by the environmental consultant retained by NARCO, until on or after January 13, 2003.
35. The failure of NARCO, while it was an indirect, wholly-owned subsidiary of RHI AG, to perform required environmental remediation until on or after January 13, 2003, violated Section 20 of the Settlement Agreement, as incorporated into the Order.
36. RHI AG, through its indirect, wholly-owned subsidiary, NARCO, was continuously in violation of the Order due to NARCO's delay in performing required remediation at the refractories plant in Hammond, Indiana, from May 31, 2001, to on or after January 13, 2003.

#### COUNT 5

37. The allegations contained in Paragraphs 1 through 19 and 29 through 36 hereof are repeated and re-alleged as though fully set forth herein.
38. NARCO, while it was an indirect, wholly-owned subsidiary of RHI AG, failed to retain an environmental consultant to determine environmental remediation required at the refractories plant located in Marelán, Quebec Province, Canada, divested to Resco until on or after July 16, 2002.

39. The failure of NARCO, while it was an indirect, wholly-owned subsidiary of RHI AG, to retain an environmental consultant until on or after July 16, 2002, violated Section 20 of the Settlement Agreement, as incorporated into the Order.
40. RHI AG, through its indirect, wholly-owned subsidiary, NARCO, was continuously in violation of the Order due to NARCO's delay in retaining an environmental consultant for the refractories plant in Marelan, Quebec Province, Canada, from March 30, 2001, to on or after July 16, 2002.

#### COUNT 6

41. The allegations contained in Paragraphs 1 through 19 and 29 through 40 hereof are repeated and re-alleged as though fully set forth herein.
42. NARCO, while it was an indirect, wholly-owned subsidiary of RHI AG, failed to perform required environmental remediation at the refractories plant located in Marelan, Quebec Province, Canada, determined necessary by the environmental consultant retained by RHI, until on or after January 1, 2003.
43. The failure of NARCO, while it was an indirect, wholly-owned subsidiary of RHI, to perform required environmental remediation until on or after January 1, 2003, violated Section 20 of the Settlement Agreement, as incorporated into the Order.
44. RHI AG, through its indirect, wholly-owned subsidiary, NARCO, was continuously in violation of the Order due to NARCO's delay in performing required remediation at the refractories plant in Marelan, Quebec Province, Canada, from May 31, 2001, to on or after January 1, 2003.

## COUNT 7

45. The allegations contained in Paragraphs 1 through 19 hereof are repeated and re-alleged as though fully set forth herein.
46. NARCO, while it was an indirect, wholly-owned subsidiary of RHI AG, failed to commence reformation or cancellation of intellectual property licenses with seven licensees until various dates between August 13, 2001, and October 10, 2001.
47. The failure of NARCO, while it was an indirect, wholly-owned subsidiary of RHI AG, to commence reformation or cancellation of each of the seven intellectual property licenses on or before May 15, 2001, violated Section 21 of the Settlement Agreement, as incorporated into the Order.
48. RHI AG, through its indirect, wholly-owned subsidiary, NARCO, was continuously in violation of the Order due to NARCO's delay in commencing reformation or cancellation of each of the seven intellectual property licenses from on or before May 15, 2001, until the date NARCO commenced reformation or cancellation of each of the seven intellectual property licenses.

## COUNT 8

49. The allegations contained in Paragraphs 1 through 19 hereof are repeated and re-alleged as though fully set forth herein.
50. On or about July 11, 2001, NARCO, while it was an indirect, wholly-owned subsidiary of RHI AG, agreed with Resco to modify the date specified in Section 3 of the Settlement Agreement, as incorporated into the Order, by which NARCO would order a total of 1500 tons of High Alumina Refractory Bricks For Steel Production from Resco.

51. NARCO, while it was an indirect, wholly-owned subsidiary of RHI AG, failed to obtain the prior approval of the Commission before modifying Section 3 of the Settlement Agreement, as incorporated into the Order.
52. NARCO, while it was an indirect, wholly-owned subsidiary of RHI AG, never has obtained the Commission's approval of its agreement with Resco to modify Section 3 of the Settlement Agreement, as incorporated into the Order. However, the Commission approved the modification of Section 3 on February 17, 2004.
53. The failure of NARCO, while it was an indirect, wholly-owned subsidiary of RHI AG, to obtain the Commission's approval before modifying Section 3 of the Settlement Agreement, as incorporated into the Order, violated Paragraph II.F. of the Order.
54. RHI AG, through its indirect, wholly-owned subsidiary, NARCO, has been continuously in violation of Paragraph II.F. of the Order due to NARCO's failure to obtain prior approval of Section 3 of the Settlement Agreement from on or about July 11, 2001, until February 17, 2004, when the Commission approved and incorporated the Order a settlement agreement dated October 19, 2001, between NARCO and Resco.

#### COUNT 9

55. The allegations contained in Paragraphs 1 through 19 hereof are repeated and re-alleged as though fully set forth herein.
56. As set forth below, NARCO, while it was an indirect, wholly-owned subsidiary of RHI AG, failed to pay for any of the shipments of High Alumina Refractory Bricks For Steel Production within 30 days after shipment. The date of each shipment of high alumina refractory bricks, and the number of days that payment exceeded 30 days after

shipment, are set forth below:

	Date Shipped	Number Of Days Payment Exceeded 30 Days After Shipment
a.	August 14, 2001	36
b.	August 15, 2001	35
c.	August 21, 2001	28
d.	August 23, 2001	27
e.	August 24, 2001	26
f.	August 30, 2001	20
g.	August 31, 2001	20
h.	September 5, 2001	14
i.	September 24, 2001	19
j.	September 25, 2001	18
k.	September 27, 2001	16
l.	September 28, 2001	15
m.	October 2, 2001	60
n.	October 3, 2001	59
o.	October 15, 2001	6
p.	October 16, 2001	46
q.	October 17, 2001	45

	Date Shipped	Number Of Days Payment Exceeded 30 Days After Shipment
r.	October 19, 2001	43
s.	October 30, 2001	32
t.	October 31, 2001	31
u.	November 1, 2001	273

57. The failure of NARCO, while it was an indirect, wholly-owned subsidiary of RHI AG, to pay for shipments of High Alumina Refractory Bricks For Steel Production within 30 days of shipment by Resco violated Section 3 of the Settlement Agreement, as incorporated into the Order, and Paragraph II.G. of the Order.
58. RHI AG, through its indirect, wholly-owned subsidiary, NARCO, was continuously in violation of the Order due to NARCO's delay in paying for High Alumina Refractory Bricks For Steel Production for at least a total of 869 days.

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**COUNT 10**

59. The allegations contained in Paragraphs 1 through 19 hereof are repeated and re-alleged as though fully set forth herein.
60. NARCO, while it was an indirect, wholly-owned subsidiary of RHI AG, failed to pay invoices from the Interim Trustee dated December 6, 2000, and January 17, February 2, and March 19, 2001, until June 6, 2001.
61. The failure of NARCO, while it was an indirect, wholly-owned subsidiary of RHI AG, promptly to pay all invoices from the Interim Trustee violated Paragraph III of the Order.

62. RHI AG, through its indirect, wholly-owned subsidiary, NARCO, was continuously in violation of the Order due to NARCO's delay in paying invoices from the Interim Trustee from 45 days after the date of each invoice until June 6, 2001.

**COUNT 11**

63. The allegations contained in Paragraphs 1 through 19 hereof are repeated and re-alleged as though fully set forth herein.

64. As set forth below, NARCO, while it was an indirect, wholly-owned subsidiary of RHI AG, failed to reimburse Resco for supplemental unemployment contributions and payments, and to reimburse Resco for vacation benefit payments, relating to the divested plants according to the schedules provided by Sections 16 and 17 of the Settlement Agreement incorporated into the Order. The date of each request for reimbursement by Resco, and the number of days NARCO's payment to Resco exceeded the schedule set forth in the Order, are set forth below:

	Date Of Resco's Request	Number Of Days NARCO's Payment Exceeded Schedule In Order
a.	February 15, 2001	3 days
b.	March 13, 2001	3 days
c.	April 9, 2001	15 days
d.	May 7, 2001	7 days
e.	June 14, 2001	5 days

65. The failure of NARCO, while it was an indirect, wholly-owned subsidiary of RHI AG, to

reimburse Resco for supplemental unemployment contributions and payments, and to reimburse Resco for vacation benefit payments, relating to the divested plants according to the schedules provided by Sections 16 and 17 of the Settlement Agreement, as incorporated into the Order violated the Order.

66. RHI AG, through its indirect, wholly-owned subsidiary, NARCO, was continuously in violation of the Order due to NARCO's failure to reimburse Resco for these payments as required by Sections 16 and 17 of the Settlement Agreement for a total of 33 days.

### **PRAYER**

#### **WHEREFORE PLAINTIFF PRAYS:**

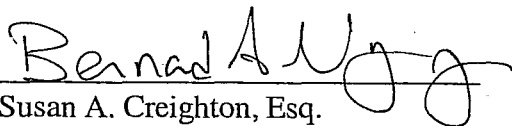
1. That this Court adjudge and decree that Defendant was in violation of the Order as alleged in Counts 1 through 11 of this Complaint.
  2. That this Court enter judgment against Defendant as set forth in the consent judgment attached hereto and incorporated by reference.
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3. That Plaintiff Federal Trade Commission be awarded costs and disbursements of this action in addition to the relief requested in paragraphs 1 and 2 above.

Dated: March 30, 2004.

FOR THE PLAINTIFF FEDERAL TRADE COMMISSION:



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