

UNITED STATES OF AMERICA  
BEFORE THE FEDERAL TRADE COMMISSION



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In the Matter of )  
 )  
RHI AG ) Docket No. C-4005  
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\_\_\_\_\_)

**PETITION OF RHI AG TO APPROVE CERTAIN SETTLEMENT AGREEMENT  
DATED OCTOBER 19, 2001, BETWEEN NORTH AMERICAN REFRACTORIES  
COMPANY, AN INDIRECT SUBSIDIARY OF RHI AG,  
AND RESCO PRODUCTS, INC., AND MAKE PART OF THE DECISION AND ORDER**

**I. INTRODUCTION**

Pursuant to Sections 2.41(f) and 2.51 of the Federal Trade Commission ("Commission") Rules of Practice and Procedure, 16 C.F.R. 2.41(f) and 2.51 (2001), RHI AG ("RHI") hereby petitions the Commission to approve a certain settlement agreement dated October 19, 2001 ("2001 Settlement") between North American Refractories Company ("NARCO"), an indirect subsidiary of RHI, and Resco Products, Inc., and to make said 2001 Settlement part of the FTC Decision and Order, dated March 21, 2001 ("Consent Order"). The 2001 Settlement, among other things, seeks to facilitate the implementation of the Asset Purchase Agreement dated November 11, 1999, as amended (the "Asset Purchase Agreement") between NARCO and Resco Products, Inc. ("Resco") and a settlement agreement between NARCO and Resco dated October 27, 2000 ("2000 Settlement"). The 2000 Settlement has been approved by the FTC and is part of the Consent Order.

RHI, pursuant to Section 2.41(f), applies for the Commission's approval of the 2001 Settlement. (A copy of the 2001 Settlement is attached hereto as Exhibit "A"). Additionally, pursuant to Rule 2.51, RHI requests that the Commission reopen the proceeding in order to

modify the Consent Order, consistent with the terms of the 2001 Settlement. In particular, RHI asks that the Commission reopen and modify the Consent Order to amend the definition of "Divestiture Agreement" to include the 2001 Settlement, and to modify Paragraph II. F. of the Consent Order permitting RHI to exercise its rights under the new patent license set forth in the 2001 Settlement. RHI seeks this relief, because the approval of the 2001 Settlement and the modification to the Consent Order will eliminate future disputes between RHI and Resco; it will facilitate free trade; because the terms are commercially reasonable; and because the terms are consistent with the spirit of the Consent Order.

The 2001 Settlement was voluntarily entered into between NARCO and Resco and settled a number of disputes and issues between the companies that resulted, in part, from certain ambiguities in the 2000 Settlement. The principal effects of the 2001 Settlement were to: (a) resolve once and for all a number of disputes between the parties; and (b) amend or modify certain provisions of the 2000 Settlement, the Magnesite Supply Agreement dated as of March 3, 2000 ("Magnesite Agreement") and the Asset Purchase Agreement.

## **II. BACKGROUND**

On December 30, 1999, the Commission accepted the Consent Agreement and Proposed Decision and Order submitted by RHI and the Commission Staff, relating to the proposed acquisition of Global Industrial Technologies, Inc., ("Global") by NARCO, a wholly owned indirect subsidiary of RHI, an Austrian corporation. The proposed decision and order required the divestiture of certain assets of subsidiaries of RHI [Global - NARCO] to Resco. The divestiture was embodied in the Asset Purchase Agreement. The divestiture transaction closed on March 3, 2000 ("Closing").

Subsequent to the Closing, disputes arose between Resco and NARCO relating to the Asset Purchase Agreement and the parties' respective obligations thereunder. The parties, including RHI, attempted to resolve those disputes by entering into the 2000 Settlement. The 2000 Settlement addressed the main dispute between the parties relating to production and transfer of documents contemplated under the Asset Purchase Agreement. NARCO, under the terms of the 2000 Settlement, paid \$5,000,000 to settle the dispute. The 2000 Settlement also provided for the extension of credit terms under the Magnesite Agreement, and it introduced additional provisions not specifically included in the Asset Purchase Agreement, including, by way of illustration, the assignment of two specific patents, the requirement of best efforts to reform or cancel certain foreign licenses, the purchase of 1,500 tons of material from Resco, and NARCO providing tar impregnation services for Resco.

The 2000 Settlement was incorporated into the Consent Order. The Commission issued the final Decision and Order on March 21, 2001.

As an Austrian corporation, RHI utilized its American subsidiaries, mostly NARCO, to maintain compliance with the Consent Order. RHI operated through its American subsidiaries to better facilitate compliance, and because the divested assets were directly held by the subsidiaries. In no way was the use of an American subsidiary designed to transfer or circumscribe RHI's responsibilities under the Consent Order. Additionally, the management of the American subsidiaries had an ongoing relationship with the management of Resco, which RHI believed would further facilitate compliance.

After the entering of the Consent Order, certain disputes developed between Resco and NARCO relating to, among other things, the reconciliation of accounts, the assigned patents and

the Magnesite Agreement. Resco and NARCO entered into a second settlement agreement, the 2001 Settlement, in an effort to resolve all disputes.

Subsequent to the execution of the 2001 Settlement, NARCO and two of its affiliates filed for protection under Chapter 11 of the United States bankruptcy laws on January 4, 2002. Certain of NARCO's other U.S. affiliates (including Harbison-Walker Refractories Company and Global) subsequently filed for bankruptcy protection, the last being filed March 19, 2002.

RHI has not submitted the 2001 Settlement to the Commission for approval and adoption until the present, because of several factors, including:

- (1) the financial condition of RHI's American subsidiaries in late 2001;
- (2) the Chapter 11 filing of RHI's American affiliates in January, February and March of 2002;
- (3) the change in RHI management in the 4<sup>th</sup> quarter of 2001;
- (4) the dedication of efforts of RHI and its American affiliates to maintain compliance with the Consent Order; and
- (5) the dedication of efforts of RHI and its American affiliates in responding to the Commission's Civil Investigative Demand and Subpoena.

During the final two months of 2001, NARCO was experiencing significant cash flow deficiencies. Its principal motive in settling its dispute with Resco was to collect cash that NARCO required for its operations. Because of the importance of obtaining immediate cash, NARCO initially decided that it did not have the luxury of waiting for the Commission to approve the 2001 Settlement. It intended to apply for the incorporation of the 2001 Settlement promptly. At this same time, RHI was undergoing a change in its executive management. In November, it announced a new Chief Executive Officer, who assumed his duties in January 2002. Virtually all of the management resources of NARCO and other RHI American affiliates

were consumed in the bankruptcy filings and the necessity to meet with creditors, prepare bankruptcy schedules and review executory contracts. For a time, NARCO was requested by bankruptcy counsel not to do any act that might serve as a ratification or assumption of any existing contracts until they could be reviewed in light of the bankruptcy filing and NARCO's duty to its interest-holders. For that reason, NARCO was not in a position to devote resources to filing a petition with the Commission to approve the 2001 Settlement. Because NARCO was the contract party, its assistance in seeking approval of the 2001 Settlement was a prerequisite for RHI to file this Petition.

Moreover, the United States Bankruptcy Code prohibited RHI from directing NARCO or the other American subsidiaries to act or refrain from acting, including but not limited to assumption or rejection of the existing 2001 Settlement, as with any other executory contract. In addition, because of the bankruptcy filing, RHI and NARCO no longer had identical interests as it related to various portions of the 2001 Settlement. Lastly, the Commission issued a Civil Investigative Demand and Subpoena on May 24, 2002. RHI responded to the request with almost 10,000 pages of documents. That submission was made in mid-July of 2002.

During this time period, RHI, both independently and jointly with its American subsidiaries, endeavored to provide notice to the Trustee and Commission staff of any potential issues and has cooperated in obtaining any requested information.

### **III. THE 2001 SETTLEMENT AGREEMENT**

Important points to the 2001 Settlement include the following:

1. **Reconciliation of Accounts.** The parties agreed to a sum certain to reflect amounts due NARCO and its affiliates by Resco, a release for a claim relating to inventory shrinkage, reimbursement obligations of NARCO owing to Resco under the terms of the 2000 Settlement.

2. Amendment of the shape patent licenses to include one specific refractory material. This material known as WO-4358 was disputed as to whether it was a "magnesite-carbon based brick" under the patent license executed pursuant to the 2000 Settlement. The material, WO-4358 was a NARCO developed brick that was not divested to Resco. Under the terms of the license, NARCO is to pay a royalty of 5% of total sales for that refractory.
3. Certain environmental indemnities contained in the Asset Purchase Agreement were amended.
4. A mechanism for determining a credit limit for magnesite purchases by Resco from NARCO was also part of the 2001 Settlement.
5. Other provisions relating to the delivery of unsold inventory, the purchase or products from Resco under the 2000 Settlement and the Allocation of Purchase Price for the Asset Purchase Agreement.

As described below, RHI firmly believes that these changes are in the best interests of the parties to the contract and are consistent with the letter and spirit of the Consent Order. To assist the Commission in analyzing the changes, RHI has prepared Exhibit "B" to identify the changes to the 2000 Settlement accomplished by the 2001 Settlement.

#### **A. Settlement of Accounts and Claims**

Because of the multitude of transactions involved in the divestiture, identifying what inventory was transferred and attempting to identify whether inventory shrinkage at a customer site occurred prior or subsequent to the closing has been difficult. Resco and NARCO found that rather than attempt to litigate the amounts owing by Resco to NARCO, it was beneficial to the parties to settle the amount owing and provide each other with more complete releases than the releases contained in the 2000 Settlement. The 2001 Settlement permits the parties to concentrate management resources in competing against each other instead of litigating claims.

## **B. Amendment of Patent Licenses**

Under the terms of the 2000 Settlement two patents (US patent numbers (5,427,360 and 5,824,263) were assigned to Resco from NARCO. One of the patents (and the patent in issue) provides for a specialized shape for the lip of a ladle used in holding molten steel. This shape, sometimes known as a "lip arch" has a very narrow application and can only be utilized by a limited number of customers who have ladles who utilize this special design. (These customers could use a monolithic material that is applied to the ladle as an alternative to purchasing the specialized shape.) NARCO then received a royalty-free license to use the two patents except for "magnesite carbon-based" refractory brick. A dispute arose between Resco and NARCO as to whether a certain material was a "magnesite carbon-based" brick under the terms of the License Agreement. NARCO had sold products that may have been within the scope of one of the patents, which Resco believed to have been with materials that were "magnesite carbon-based". The parties have attempted to resolve this matter by entering into a patent license for the two shapes limited to that specific material (known as WO-4358), a non-divested product. The License Agreement provides that NARCO would pay a royalty to Resco of approximately 5% of sales under the patents. Respondent believes that such an arrangement can only benefit competition. It provides potential customers with another potential option for certain applications. The license, therefore, encourages competition. The royalty payment, in effect, provides Resco with a built in price advantage of 5% where there may be competition between Resco and NARCO for a given customer. Customers would benefit by having another potential source for this product.

RHI respectfully requests that the Commission, in approving and adopting the 2001 Settlement, also modify Paragraph II. F. of the Consent Order, so that it conforms with the terms

of license set forth in the 2001 Settlement. In particular, RIU requests that Paragraph II of the Consent Order be modified to permit the manufacture and sale of WO-4358. WO-4358 contains more alumina than other brick with comparable carbon content, has different performance characteristics than other bricks with comparable carbon content, and generally does not compete with traditional mag-carbon bricks. Moreover, the WO-4358 is not the product that was referenced in the Commission's Complaint issued with the Consent Order.

**C. Establishing Credit Limits for Magnesite Agreement**

Originally, sales under the Magnesite Agreement were to be paid on 45-day terms. Under the terms of the 2000 Settlement, the payment terms were extended to 75 days. During the summer of 2001, because of the substantial amounts owing by Resco (the bulk of which were undisputed – only the timing of the payments was in dispute), NARCO and Resco sought to resolve these matters. The immediate problem has been rectified to some degree by the settlement referred to above. The credit limits set forth in the 2001 Settlement are based upon historical usage of product based upon a period 30 days longer than the credit terms. Thus, NARCO could impose a credit limit based upon 105-day usage. It is doubtful that Resco's foreseeable usage would cause it to exceed the credit limit. Therefore, the terms are commercially reasonable. The Magnesite Agreement will terminate in March, 2003. The tar impregnation services, could, if Resco exercises certain options to renew, extend until October 2005.

Under the terms of the Section D I of the Order the Respondent is required to deliver "under reasonable terms and conditions" any raw materials necessary for Resco to use the Divested Assets. Under the Magnesite Agreement, Resco agrees to purchase 80% of its annual magnesite requirements from NARCO, using a standard Resco purchase order, with delivery in



accordance with NARCO's order acknowledgement. Resco is to provide forecasts for its anticipated needs for the following month. The magnesite is priced at \$255/metric ton delivered to the Hammond facility (\$265 for the Marelan facility) or market price, whichever is better, plus a PPI adjustment in years 2 and 3. Respondent believes the credit limits agreed to by the parties are commercially reasonable.

**D. Amendment of Environmental Indemnities**

As part of the overall settlement embodied in the 2001 Settlement Resco and NARCO agreed to share (to a limited extent) in the payment of costs related to the environmental indemnities. One of the more positive results from this sharing would be to reduce the likelihood for disputes between the parties, or for spurious claims under the indemnity.


**IV. CONCLUSION**

The terms of the 2001 Settlement are consistent with the spirit and intent of the Commission's Decision and Order. Accordingly, the Respondent, RHI AG, requests that the Commission: (1) approve and adopt the 2001 Settlement, under Rule 2.41(D); (2) reopen and modify the Consent Order to amend the definition of "Divestiture Agreement" to include the 2001 Settlement; and (3) reopen and modify Paragraph II.F. of the Consent Order so that RHI can exercise its rights under the new patent license contained in the 2001 Settlement without violating the Consent Order.

Respectfully Submitted,

PIETRAGALLO, BOSICK & GORDON

By:



William Pietragallo, II

Pa. I.D. #16413

Eric G. Soller

Pa. I.D. #65560

*Counsel for RHI AG*

One Oxford Centre

Thirty-Eighth Floor

Pittsburgh, PA 15219

(412) 263-2000



**Confidential Settlement Proposal  
Inadmissible in any proceeding**

**SETTLEMENT AGREEMENT**

This Settlement Agreement dated as of the 19<sup>th</sup> day of October, 2001 is made by and between North American Refractories Company, an Ohio corporation ("NARCO") and Resco Products, Inc., a Pennsylvania corporation ("Resco").

WHEREAS, on March 3, 2000, Resco purchased certain assets from NARCO pursuant to an Asset Purchase Agreement dated November 11, 1999, as amended (the "Purchase Agreement"); and

WHEREAS, in an effort to resolve certain disputes that has arisen between Resco and NARCO concerning their respective duties and obligations under, and compliance with, the terms of the Purchase Agreement, Resco and NARCO entered into a Settlement Agreement dated October 27, 2000 (the "Settlement Agreement"); and

WHEREAS, certain disputes have arisen between Resco and NARCO concerning their respective duties and obligations under, and compliance with, the terms of the Purchase Agreement and the Settlement Agreement; and

WHEREAS, the parties desire to resolve these disputes without either party admitting liability to the other and without the need for litigation, all on the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the premises and the mutual covenants contained herein, and intending to be legally bound hereby, the parties agree as follows:

1. Defined Terms. All capitalized terms used herein but not defined herein shall have the same respective meanings as are set forth in the Purchase Agreement or the Settlement Agreement, as applicable.

2. Settlement Amount and Payment.

(a) The parties acknowledge and agree that the amounts to be paid by Resco to NARCO or by NARCO to Resco in connection with various contractual commitments or other agreements are as set forth on Exhibit A attached hereto. The aggregate net balance due from Resco to NARCO in connection with such matters is \$2,848,000 (the "Settlement Amount").

(b) The Settlement Amount shall be paid by Resco to NARCO by wire transfer in immediately available funds in accordance with the following wire transfer instructions:

Bank: Citibank, N.A., New York, NY  
ABA No.: 021 000 089  
Account Name: Harbison-Walker Refractories Co  
Account No.: 3043-9874

(c) The Settlement Amount shall be paid on the following schedule:

(i) One million dollars is being paid on the date hereof; and

(ii) the balance of \$1,848,000 shall be payable in weekly installments of \$200,000 on Friday of each week commencing October 26, 2001, until the entire Settlement Amount has been paid, with the final payment being in the amount of \$48,000; provided, however, that Resco shall have no obligation to make any such periodic payment hereunder after November 30, 2001 unless and until Global-GIX Canada ("Global") shall make the entire contribution referenced in Section 2(d) hereof, in which event payments hereunder shall resume as set forth in Section 2(c)(iii) hereof.

(iii) If Global makes the entire contribution referenced in Section 2(d) hereof on or before December 31, 2001, then Resco shall, within three business days thereafter, pay to NARCO an amount equal to the lesser of the unpaid balance of the Settlement Amount or \$200,000 multiplied by the number of Fridays commencing with December 1, 2001 through and, if applicable, including the date on which such contribution is made by Global. If any portion of the Settlement Amount remains unpaid following such payment, Resco shall resume making weekly installment payments in the amount of \$200,000 until such balance is paid in full, with the final payment being \$48,000.

(iv) If Resco defaults on its obligation to make any payment when due pursuant to this Section 2(c) and such default remains uncured for a period of 15 days after notice of such default from NARCO, then (A) all portions of the Settlement Amount that are then due and payable shall accrue interest from and after the date of such default at a rate equal to the prime rate as published from time to time in *The Wall Street Journal* plus 1%, and (B) at NARCO's option, exercisable by notice given to Resco, the entire unpaid Settlement Amount shall become immediately due and payable.

(d) Resco and NARCO acknowledge that, pursuant to the terms of a Pension Plan Transfer Agreement (the "Pension Agreement") dated as of October 27, 2000 between Global and Resco Canada, Inc. ("Resco Canada"), Global has agreed to make a contribution in the amount of CDN \$1,958,400 to the Canadian Hourly Plan not later than December 31, 2001. NARCO agrees that if Global does not make the entire contribution referenced above on or before December 31, 2001, Resco shall have the right, exercisable on or after January 1, 2002, to set off any deficiency in such contribution against any amount then owed by Resco to NARCO pursuant to Section 2(c) hereof, the Magnesite Supply Agreement, the Transition Services Agreement or pursuant to any other obligation then owing by Resco to NARCO; provided that Resco shall first assert any such set-off against any portion of the Settlement Amount that remains unpaid. In order to assert such set-off, Resco shall give notice of its assertion of such

set-off to each of NARCO, Global and Resco Canada, which notice shall include an undertaking by Resco to make a capital contribution to Resco Canada in an amount equal to the amount of the set-off, for purposes of permitting Resco Canada to make a substitute contribution to the Canadian Hourly Plan. Effective upon the giving of such notice, Resco Canada agrees that Global shall be relieved of its obligations under the Pension Agreement to make the contribution referenced therein to the extent of the set-off asserted in the notice.

(e) NARCO represents that set forth on Exhibit B attached hereto is a true, correct and complete description of certain inventory manufactured by NARCO at its Fulton, Missouri facility for use at WCI Steel, Inc. (the "WCI Inventory"). Such description includes a listing of the price and unit quantities of each product included in the WCI Inventory, all of which has been sold to Resco in connection with this Agreement. NARCO agrees that Resco shall be entitled to set off against any amounts owed to NARCO pursuant to Section 2(c) hereof an amount equal to the excess, if any, of \$27,000 over the price as set forth in Exhibit B for all WCI Inventory actually shipped to and received at Resco's East Canton, Ohio facility within 10 days after the date hereof. Resco shall give NARCO notice of any such set-off.

### 3. Mutual Releases.

(a) In consideration for the covenants contained in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by NARCO, NARCO, on its behalf and on behalf of all persons claiming by, through and under it, including, without limitation, each and every subsidiary and joint venture and their respective affiliates, parents, subsidiaries and divisions and any current or former director, officer, agent, employee or stockholder of any of the foregoing, together with their agents, survivors, legal representatives and assigns (collectively, the "NARCO Parties") hereby waives, remises, releases, settles and forever discharges Resco and its subsidiaries and joint venturers and their respective affiliates, parents, subsidiaries and divisions and any current or former director, officer, agent, employee or stockholder of any of the foregoing, together with their respective agents, survivors, legal representatives and assigns (collectively, the "Resco Parties"), from any and all claims, sums of money, fees, compensation, counterclaims, cross-claims, rights, demands, losses, damages, trespasses, bonds, liabilities, suits, actions and causes of action against any of the Resco Parties that any of the NARCO Parties, jointly or severally, ever had, now has or may have, in law or in equity, of every nature or description, whether known or unknown, suspected or unsuspected, foreseen or unforeseen, actual or potential, that exist as of the date hereof; provided, however, that the foregoing release shall not apply to any claims that any of the NARCO Parties may have against any of the Resco Parties arising from or relating to the following:

(i) this Agreement;

(ii) Section 3 of the Transition Services Agreement dated as of March 3, 2000 between Resco and NARCO (the "Transition Services Agreement") and, with respect to any such claim, Section 4 of such Transition Services Agreement;

(iii) the Magnesite Supply Agreement dated as of March 3, 2000 between NARCO and Resco, as amended by the Settlement Agreement (the "Magnesite Supply Agreement"); and

(iv) Sections 3, 5 and 20 (as amended hereby) of the Settlement Agreement.

(b) In consideration for the covenants contained in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by Resco, Resco, on its own behalf and on behalf of each Resco Party, hereby waives, remises, releases, settles and forever discharges each NARCO Party from any and all claims, sums of money, fees, compensation, counterclaims, cross-claims, rights, demands, losses, damages, trespasses, bonds, liabilities, suits, actions and causes of action against any of the NARCO Parties that any of the Resco Parties, jointly or severally, ever had, now has or may have, in law or in equity, of every nature or description, whether known or unknown, suspected or unsuspected, foreseen or unforeseen, actual or potential, that exist as of the date hereof, provided, however, that the foregoing release shall not apply to any claims that any of the Resco Parties may have against any of the NARCO Parties arising from or relating to the following:

- (i) this Agreement;
- (ii) the Supplemental Agreement dated December 1, 1999 by and between NARCO and Resco;
- (iii) Section 3 of the Assignment, Bill of Sale and Assumption Agreement dated March 3, 2000 by and among NARCO, Harbison-Walker Refractories Company ("H-W"), Global, Resco and Resco Canada, Inc. ("Resco Canada");
- (iv) Section 3 of the Transition Services Agreement, and, with respect to any such claims, the provisions of Section 4 of such Transition Services Agreement;
- (v) the Magnesite Supply Agreement;
- (vi) the Assignments of U.S. Trademarks dated February 25, 2000 between H-W and Resco, between A.P. Green Refractories, Inc. and Resco and among H-W, A.P. Green Refractories, Inc., A.P. Green Industries, Inc. and Resco;
- (vii) the Assignment of Trademarks dated February 25, 2000 between NARCO and Resco;
- (viii) the Assignment of Canadian Trademarks dated February 25, 2000 between Global and Resco;
- (ix) the Letter Agreement dated February 25, 2000 between NARCO and Resco regarding Use of Certain Trademarks;

(x) Assignment of Patents dated February 25, 2000 between H-W and Resco;

(xi) the following sections of the Purchase Agreement:

(I) 5.3(b);

(II) 5.3(a)(i) as and to the extent it relates to a breach of Section 2.1.5, 2.1.6 or 2.1.12 of the Asset Purchase Agreement, and only if and to the extent such breach causes Resco any damages after the date of this Agreement;

(III) 5.3(a)(ii) as and to the extent it relates to a breach of Section 6.14 or 6.19, and only if and to the extent such breach causes Resco any damages after the date of this Agreement,

(IV) 5.3(a)(iii), 5.3(a)(iv), 5.3(a)(v) or 5.3(a)(vi);

(V) 5.4, with respect to any claims described in the foregoing clauses (xi)(I) – (xi)(IV);

(VI) 6.14; or

(VII) 6.19 (as amended); or

(xii) Sections 3, 5, 8(a), 14, 20 (as amended hereby) and 21 of the Settlement Agreement.

4. Purchase by NARCO of Products Manufactured by Resco. Subject to the provisions of this Section 4, as promptly as practicable and in any event no later than November 30, 2001, Resco shall ship to NARCO the products manufactured by Resco at its East Canton, Ohio facility using the brand technology that had historically been used by NARCO at the Farber Facility for which NARCO has previously submitted purchase orders, which shipments shall be in accordance with such purchase orders. If NARCO gives Resco notice that it cannot accept any such shipment by November 30, 2001, Resco shall delay shipping the products referenced in any such notice until such date(s) as shall be specified in a subsequent notice from NARCO. Notwithstanding any such delay in shipment, NARCO agrees that Resco may invoice NARCO for all such products that remain unshipped as of November 30, 2001 on such date. The price for such products as set forth on such purchase orders shall be payable within 30 days of the invoice date, which shall be the earlier of November 30, 2001 or the date of shipment. Resco acknowledges that, upon completion of the purchases contemplated by this Section 4 including payment therefor, NARCO shall have completed its obligations under Section 3 of the Settlement Agreement.



5. Purchase Price Allocation. The parties further agree that, notwithstanding the provisions of Section 6.14(b) of the Purchase Agreement or the provisions of the Letter Agreement dated as of March 1, 2000, the Purchase Price shall be allocated among the Acquired Assets as set forth on Exhibit C attached hereto.

6. Unshipped/Unsold Inventory Payment. Section 5(c) of the Inventory Purchase Agreement dated as of May 23, 2000 between Resco and NARCO (the "May Inventory Agreement") and Section 8(c) of the Inventory Purchase Agreement dated as of June 21, 2000 between Resco and NARCO (the "June Inventory Agreement") shall be superseded by the provisions of this Section 5. Resco shall pay to NARCO the purchase price for any Unsold Inventory under the May Inventory Agreement and the June Inventory Agreement (collectively, the "Inventory Agreements") within 45 days after such Unsold Inventory is delivered to the applicable Resco facility. Resco agrees that NARCO shall be permitted to deliver not less than three truckloads of such Unsold Inventory to each applicable Resco facility on each regular business day. The purchase price for such Unsold Inventory shall be (a) the Base Price (as defined in the May Inventory Agreement) for any such Unsold Inventory referenced in the May Inventory Agreement, which amount the parties estimate will not exceed \$331,000, and (b) the purchase price referenced in the June Inventory Agreement, which amount the parties estimate will not exceed \$83,000.

7. Patent License. Resco and NARCO are executing on the date hereof a License Agreement in the form of Exhibit D attached hereto (the "License Agreement")

8. Environmental Matters

(a) As promptly as practicable after this date hereof, NARCO shall retain an Environmental Consultant meeting the criteria set forth in Section 6.19(d) of the Purchase Agreement, as amended, to determine the remediation required by Item 3 of Exhibit B to the Supplemental Agreement dated December 1, 1999 between NARCO and Resco (the "Supplemental Agreement"). Such Environmental Consultant shall complete any such remediation as promptly as practicable and in accordance with the procedures specified in Section 6.19 of the Purchase Agreement, as amended. Notwithstanding the foregoing, Resco agrees that such remediation shall not require that any asbestos-containing materials removed from the equipment or areas to be specified by Resco after reviewing the Environmental Consultant's report in order to satisfy the standards set forth in Item 3 of Exhibit B of the Supplemental Agreement be replaced by substitute materials, provided that Resco agrees that the Environmental Consultant need not replace with substitute materials any asbestos-containing materials removed from either (i) the tunnel kilns or the shaft kiln located at Resco's Hammond, Indiana plant and any piping or ductwork used exclusively in connection with such kilns, or (ii) the tar impregnation building located at Resco's Marelan facility and any contents thereof.

(b) Notwithstanding the provisions of Sections 1.3(b)(x) and 6.19 of the Purchase Agreement and the provisions of the Supplemental Agreement, Resco hereby agrees to assume 50% of the costs incurred by NARCO to third parties in performing its obligations under Section 6.19 of the Purchase Agreement and further agrees to pay such amounts directly to the

third party that has invoiced NARCO for such costs provided that NARCO has furnished Resco a copy of any such invoice; provided, however, that (i) NARCO shall remain responsible for 100% of the costs and expenses incurred in connection with the remediation of matters referenced in Item 3 of Exhibit B to the Supplemental Agreement and the foregoing Section 8(a), and Resco shall bear no portion of the expense in connection with such remediation; (ii) Resco shall not be obligated to assume or reimburse NARCO for more than \$250,000 in costs and expenses incurred in connection with any remediation of the condition identified on Item 1 of Exhibit A to the Supplemental Agreement and (iii) Resco's aggregate liability under this Section 8(b) shall not exceed \$500,000.

9. FTC Cooperation Resco shall use reasonable efforts to advise the FTC staff and trustee that Resco believes that the terms and conditions of this Agreement are in the best interests of Resco and are not expected to have any material adverse effect on Resco's ability to operate the Acquired Assets in a competitive manner. Resco agrees to specifically advise the FTC staff and the trustee that it does not believe the sales by NARCO of the WO-4358 ladle lip arch brick after Closing under the Purchase Agreement and prior to September 20, 2001 have had any material adverse effect upon Resco's competitive position in the magnesite carbon-based refractory market.

10. Credit Limit.

(a) Resco agrees that NARCO may establish a credit limit for purchases by Resco under the Magnesite Supply Agreement in an amount from time to time equal to the aggregate purchases thereunder for the prior twelve months multiplied by 105/365.

(b) Resco agrees that NARCO may establish a credit limit for tar impregnation services provided to Resco pursuant to Section 5 of the Settlement Agreement in an amount from time to time equal to the aggregate price paid or payable by Resco for such services provided during the prior twelve months multiplied by 75/365.

(c) NARCO agrees to evaluate any such credit limit from time to time and to consider in good faith appropriate changes to or elimination of such limits based on such factors as it considers appropriate, including historical payment performance.

11. Miscellaneous.

(a) This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. Nothing in this Agreement is intended, nor shall it be construed, to confer any benefit whatsoever on any persons other than the parties.

(b) Each party warrants and agrees that, as of the effective date of this Agreement, it or one or more of its Affiliates is the sole and lawful owner of all rights, title and interest in and to every claim or matter released herein, that neither it nor any such Affiliate has assigned, conveyed or otherwise transferred to any person or entity not a party to this Agreement

any of its rights, obligations, claims, demands or causes of action released herein, and that it has taken or will take all necessary actions to cause its Affiliates to approve the consummation of the transactions contemplated hereby. Neither party shall assign this Agreement to any person without the express written consent of the other party. Notwithstanding the foregoing, NARCO may assign its rights under the License Agreement to an Affiliate of NARCO provided that such Affiliate also agrees to be jointly liable with NARCO for all obligations thereunder.

(c) The terms of this Agreement shall remain confidential and shall not be disclosed to any person or entity (other than an officer, director or attorney for a party), except: (i) as either party may find necessary in the normal course of business to its employees, attorneys, lenders, accountants, auditors and other professional advisors; (ii) in any proceeding to enforce the terms of this Agreement; (iii) as subsequently agreed to in writing by the parties; (iv) as otherwise required by law or order of court or governmental agency; (v) to the extent such terms have become publicly available other than through a breach of this Section 11(c); or (vi) to the FTC staff and trustee; provided, however, that either party may disclose to its employees the fact that an agreement has been reached, without disclosing the specific terms of the Agreement. If any person seeks disclosure of this Agreement from either party, except as provided above, the party from which disclosure is sought will notify the other party in accordance with the notice provisions set forth in Section 11(h) of this Agreement as soon as practicable and will forward any writings evidencing any such requests to the other party. The party from whom disclosure is sought shall be responsible for undertaking reasonable efforts to resist disclosure and for the costs, including attorneys' fees, thereof. Should a court order the disclosure of the terms of or a copy of this Agreement to any other person, the parties shall use their best efforts to keep it confidential and to maintain its terms under seal.

(d) In addition to the confidentiality provisions in this Agreement, and not by way of limitation thereof, this Agreement shall be deemed to fall within the protection afforded compromises and offers to compromise by Rule 408 of the Federal Rules of Evidence or any similar state law provision; provided, however, that it shall be admissible in any proceeding between NARCO and Resco involving: (i) a claim that this Agreement has been breached; or (ii) a claim that NARCO or Resco violated any term, condition or provision of the Purchase Agreement or the Settlement Agreement and any amendments or supplemental agreements relating thereto.

(e) This Agreement is the product of informed negotiations between and joint drafting of the parties and their representatives, including counsel. In the event any ambiguity is found to exist in any provision of this Agreement, such ambiguity is not to be construed against either party as the drafter of the document. The parties further agree to cooperate in demonstrating to a court or agency, should the issue arise, that this Agreement was negotiated and implemented in good faith.

(f) This Agreement represents the entire understanding between the parties with respect to the subject matter hereof, and the parties agree that any previous or contemporaneous communications, correspondence, memorializations of agreement or proposed agreements, or negotiations, settlement discussions, proposals or offers are superseded by this

Agreement; provided, however, that this Agreement shall not supersede or otherwise modify any obligations of the parties under the Purchase Agreement or the Settlement Agreement or any other agreements executed in connection therewith to be performed in whole or in part after the date hereof except as and to the extent expressly set forth herein. Notwithstanding the foregoing, the parties agree that the Transition Services Agreement has terminated and that neither party has any further obligation thereunder except with respect to the matters referenced in Section 3 thereof. No express or implied representations, warranties or promises have been made or relied on by the parties to this Agreement other than those set forth herein. This Agreement can be modified only by a writing signed by both parties and this provision cannot be orally waived.

(g) Each party warrants and represents that it has the authority to enter into this Agreement. Specifically, each party represents and warrants;

- (i) that it is fully authorized to enter into this Agreement;
- (ii) that in making this Agreement it has obtained the advice of legal counsel; and
- (iii) that all corporate formalities necessary to enter into this Agreement have been completed.

(h) All notices and other communications required or permitted hereunder or under the Purchase Agreement, the Settlement Agreement and any other agreements executed in connection with any of the foregoing shall be in writing and will be deemed to have been duly given when delivered in person or when dispatched by telegram or electronic facsimile transfer (confirmed in writing by mail simultaneously dispatched) or one business day after timely delivery to a nationally recognized overnight courier service for next business day delivery, in each case with all delivery, postage and similar charges prepaid and addressed as follows:

If to Resco:

Resco Products, Inc.  
Four Penn Center West, Suite 200  
Pittsburgh, PA 15276  
Facsimile No.: 412.494.4571  
Attention: Mr. William K. Brown  
President and CEO

with a copy to:

Thomas G. Spencer, Esq.  
Duane Morris LLP  
One Liberty Place  
Philadelphia, PA 19103-7396  
Facsimile No.: 215.979.1020

If to NARCO:

North American Refractories Company  
600 Grant Street, 51<sup>st</sup> Floor  
Pittsburgh, PA 15219  
Facsimile No.: 412.562.6324  
Attention: Michael A. Schalk, Esq.

with a copy to:

Ronald W. Frank, Esq.  
Reed Smith LLP  
435 Sixth Avenue  
Pittsburgh, PA 15219  
Facsimile No.: 412.288.3063

(i) No amendment or waiver of any provision of this Agreement shall be effective unless the same shall be in writing and signed by duly authorized representatives of the parties, and such written and signed amendment or waiver shall be effective only in the specific instance and for the specific purpose set forth in the text of the amendment or waiver. The failure of any party to seek redress for violation of, or to insist upon strict performance of, any provision of this Agreement shall not be deemed a waiver of that provision or estop that party from asserting fully all its rights under this Agreement.

(j) This Agreement will not be effective until it has been executed by both parties.

(k) This Agreement may be executed in one or more counterparts, all of which taken together shall constitute one and the same instrument.

IN WITNESS WHEREOF, NARCO and Resco have caused this Agreement to be executed as of the day and year first above written.

**NORTH AMERICAN REFRACTORIES COMPANY**

By: W. A. Seal

Title: COO

**RESCO PRODUCTS, INC.**

By: \_\_\_\_\_

William K. Brown  
President and CEO

PH1/839099.4

IN WITNESS WHEREOF, NARCO and Resco have caused this Agreement to be executed as of the day and year first above written.

**NORTH AMERICAN REFRACTORIES COMPANY**

By: \_\_\_\_\_

Title: \_\_\_\_\_

**RESCO PRODUCTS, INC.**

By: William K. Brown

William K. Brown  
President and CEO

PH:889099.4

EXHIBIT A

I. Amounts Owed By Resco to NARCO

<u>Description</u>	<u>Amount</u>
1. Reconciliation of all purchases and sales of divested and non-divested brand products through 12/31/00.	\$783,000
2. "Scrap Inventory" within the meaning of Section 3 of the Inventory Purchase Agreement dated as of May 23, 2000 shipped to Resco plants as of September 16, 2001.	191,000
3. "Scrap Inventory" and "Unsold Inventory" within the meaning of Sections 3 and 8 of the Inventory Purchase Agreement dated as of June 21, 2000 shipped to Resco plants as of September 16, 2001.	133,000
4. Reimbursement for lease of laser at WCI through September 2001.	105,000
5. Reimbursement for cost of mixer at USX-ET through September 2001.	8,000
6. Reconciliation of all purchases and sales of divested and non-divested brand products since 12/31/00.	965,000
7. Actual Inventory Valuation.	500,000
8. Inventory in pipeline for WCI.	27,000
9. Reimbursement for 50% of lease payments for laser at Inland Steel.	23,000
10. "Unsold Inventory" within the meaning of the Inventory Purchase Agreement dated as of May 23, 2000 and shipped to Resco plants as of September 16, 2001.	662,000
Subtotal:	<u>\$3,447,000</u>

II. Amounts Owed by NARCO to Resco

11. Credit for overpayment of magnesite invoice #421374.	(\$6,000)
12. Reconciliation of all purchases and sales of divested and non-divested brand products from 1/1/01 through 3/31/01.	(231,000)
13. Reimbursement for supplemental unemployment benefits at Marelan.	(41,000)
14. Reimbursement for vacation benefits.	(28,000)
15. Credit for margin floor adjustments relating to intercompany transactions.	(49,000)
16. USX Fairfield A/R adjustment.	(36,000)
17. Reconciliation of all purchases and sales of divested and non-divested brand products since 3/31/01 where payment is due as of 10/11/01.	(99,000)
18. Reimbursement for Hammond property taxes.	<u>(109,000)</u>
Subtotal:	<u>(\$599,000)</u>
Total:	<u>\$2,848,000</u>

113



**EXHIBIT B**

**Description of WCI Inventory**

<u>Brand</u>	<u>Item #</u>	<u>Size/Shape</u>	<u>Unit Quantity</u>	<u>Per Unit Price</u>	<u>Total</u>
Aladin 80	10492	12 x 6 x 3 st.	1,935	4.03	\$ 7,798.05
Aladin 80	39178	15 x 6 x 3 st.	3,504	5.05	17,695.20
Aladin 80	73985	15 x 3 x 3 st.	342	2.51	858.42
Aladin 80	73986	12 x 3 x 3 st.	173	2.02	349.46

MA

**EXHIBIT C**

**Purchase Price Allocation**

**EXHIBIT C**

Purchase Price Allocation Worksheet  
 \*\*\* NOT FINAL \*\*\*

**Purchase Price**

Inventory Purchase at Settlement  
 Hammond Transfer Tax Paid by Seller (See Closing Sheet)

Inventory Wire (True-Up)  
 Offset Other Trade Balances Used/Interest (Note 1)  
 Inventory Wire (True-Up)  
 Subtotal Inventory

**10/00 Settlement Agreement**

05/01 Inventory True Up  
 09/01 S Agmt, Invent, True-Up  
 04/01 Offset, X Inv Consented (July, Dec-2001)  
 09/01 Settle Agmt, X Inv-Rec'd as of 5/1/00  
 09/01 Settle Agmt, X Inv-TO BE Received after 8/1/00  
 Subtotal  
 09/01 Settle Agmt, Sched E Obsoleto Inventory  
 09/01 Settle Agmt, Sched E Inv Classified as Unsold

**Total Inventory Purchased**

Adjusted Purchase Price Allocation between Resco and RHI  
 Add Audit and Resco Purchase Accounting Adjustments  
 Total Resco Balance

10/01 - Capital of Resco Wire to MARCO, Dated 5/21/01  
 Inventory True Up Adjustments

Market Disruption Adjustment on True Up Fair Estimate Difference  
 Cash Received for by Resco for RHI, AVR  
 Checks Received by Resco & forwarded to RHI that have an amount due to Resco  
 Amounts paid by Resco on behalf of RHI  
 Estimated Gross Margin Due to Resco per discussion w/ J. Vukob on 5/25/00 for RHI sales of livestock  
 Brands for the period 3/00 to 5/00, subject to audit  
 Total Cattle's Taken  
 Net Receiving Dis. Payable Wired to RILIMARCO

**CONFIDENTIAL**  
 Will use  
 of the information

Recorded by RHI as	Recorded by RESCO as	Recorded by RESCO in Normal Course	Recorded by RESCO Subtotal to Camp. w/ RHI	Differences in Amounts Recorded
Purch. Acctg \$ 24,500,000	Purch. Acctg \$ 24,500,000		24,500,000	
4,261,731	4,261,731		4,261,731	33,000
(33,000)				33,000
4,228,731	4,261,731		4,261,731	
765,625	765,625		765,625	
(190,023)				190,023
575,002	765,625		765,625	190,023
4,304,331	5,027,356		5,027,356	223,023
(5,000,000)			(5,000,000)	(5,000,000)
537,058		537,056	537,058	
500,000	500,000		500,000	
600,940		600,940	600,940	
450,150		450,150	450,150	
331,043				(331,043)
781,188		450,156	450,150	(331,043)
190,752		190,752	190,752	
211,838		211,838	211,838	
1,183,789		852,746	852,746	(331,043)
7,706,120	527,356	2,070,744	2,328,100	(5,108,320)
\$ 32,206,120	\$ 25,027,356	\$ 2,070,744	\$ 27,098,100	\$ (5,108,320)
(5,000,000)				
1,889,000				
\$ 27,000	\$ 26,516,356			
190,023				
(331,043)				
27,077,100				
(120,000.00)				
(190,022.43)				
\$ 575,602.20				

immaterial expense

See detail below

related to expense/book and

Notice of Difference

Amount to be paid interest inventory is shipped

**EXHIBIT D**

**Form of Patent License Agreement**

## PATENT LICENSE AGREEMENT

This Patent License Agreement is made as of October 19, 2001, by and between Rescon Products, Inc. ("Licensor"), a Pennsylvania corporation, and North American Refractories Company ("Licensee"), an Ohio corporation.

### Background

Licensor is the owner of a patent entitled "Refractory Brick Design For Open End of Refractory Lined Vessel," No. 5,427,360 (Serial No. 126,256) issued on June 27, 1995 (the "Patent"). Licensee is desirous of obtaining a license to use, commercialize and exploit the Patent in the manufacture and sale of Licensee's current formulation of a ladle lip arch brick known as WO-4353 (the "Product") on a non-exclusive basis throughout the world. Licensor and Licensee have agreed to the terms of such non-exclusive license of the Patent in the manufacture and sale of the Product on the terms provided in this Agreement.

NOW, THEREFORE, in consideration of the mutual promises contained herein and for other good and valuable consideration received, the receipt and sufficiency of which are hereby acknowledged, and of the representations and covenants hereinafter set forth, the parties hereby agree as follows:

### 1. GRANT OF LICENSE

A. License of Patent. Subject to the provisions of this Agreement, Licensor hereby grants to Licensee the non-exclusive right to use, commercialize and exploit the Patent to manufacture, market, distribute, lease and sell the Product throughout the world. The foregoing license shall not apply to any modification of the Product, including without limitation any change in the formulation of the Product, from the Product's current formulation.

### B. Identification of Status and Ownership of Patent.

(i) Licensee acknowledges that Licensor owns the Patent and agrees never to impugn or challenge or to assist in any challenge of the validity of the Patent, the registration of the Patent or Licensor's ownership of the Patent.

(ii) If requested by Licensor in writing, Licensee agrees to affix to each Product or to the package containing such Product or to an insertion slip in the package with each such Product a legible notice reading: "Licensed under U.S. Patent No. 5,427,360."

### 2. ROYALTIES.

A. Royalty Fees for Products. Licensee agrees to pay to Licensor for the license of the Patent for each fiscal quarter of each year during the term of this Agreement (each of which is referred to herein as an "Accrual Period") royalty fees ("Royalty Fees") in the amount

of 5% of Licensee's Royalty Base, as defined in Section 3B. The initial Accrual Period shall be for the period from the date hereof to December 31, 2001.

B. Royalty Base. For purposes of this Agreement, Licensee's "Royalty Base" shall mean Licensee's total Net Revenues derived from the sale of Product. The term "Net Revenues" shall mean sales at the invoiced price of Product after deduction of the following: all trade and quantity discounts actually allowed; freight allowance for credit or returns; sales commissions actually paid to third parties who are not affiliates; and value-added taxes, sales taxes, customer duties or purchase taxes borne by the Licensee. "Net Revenue" shall not include any deduction for cash or prompt payment discounts, and shall not be decreased by invoices which have been written off as uncollectible.

C. Verification by Licensor. For the purposes of verifying the accuracy of the Royalty Fees payable to Licensor, Licensee shall produce and forward to Licensor a quarterly revenue report that is certified by a financial officer of Licensee within 45 days after the close of each Accrual Period. Licensor has the right to appoint a certified public accountant to audit Licensee's books and records at any time upon prior notice to Licensee and during customary business hours. Licensor shall not have the right to conduct more than one such audit in any fiscal year unless any prior audit has revealed an underpayment by Licensee of 5% or more of royalties payable to Licensor hereunder. Any such audit shall be at the expense of Licensor, unless the audit reveals an underpayment by Licensee of 5% or more of royalties payable to Licensor pursuant hereto, in which case the fees and expenses of such audit shall be borne by Licensee.

D. Payment and Report Requirements. With each such quarterly report, Licensee shall remit to Licensor the amount of Royalty Fees due Licensor under Section 3B hereof on account of the activities of Licensee under this Agreement during the Accrual Period. Overdue Royalty Fees will be charged simple interest at the rate per annum of 1% in excess of the prime rate as published in The Wall Street Journal.

### 3. PATENT PROTECTION

A. Licensee shall promptly give notice to Licensor of any infringement of the Patent that shall come to Licensee's attention during the term of this Agreement. Licensee agrees, at Licensor's expense, to cooperate with Licensor, when requested, in stopping such infringement, but Licensee shall not take any action against an infringer in its own name or on behalf of Licensor without Licensor's prior written approval. Licensee acknowledges the validity of and Licensor's exclusive ownership of all right, title and interest in and to the Patent. Licensee shall not at any time (either during or after the termination of this Agreement) directly or indirectly take any action that might impair the validity of or the rights of Licensor in the Patent.

B. Licensee shall promptly notify Licensor in the event that Licensee shall acquire knowledge of any claim that use of the Patent by Licensee infringes the rights of others or of the institution of any action or proceeding against Licensee or otherwise arising out of the use of the Patent by Licensee. Licensor and its duly authorized representative shall have the right (but not the obligation), upon written notification to Licensee within 60 days of receipt of Licensee's notification to Licensor of such infringement claim, to take charge of the defense of

any such claim, action or proceeding (and of any negotiations for the settlement thereof). If Licensor declines, or fails to respond within 60 days after receipt of notification from Licensee, to defend any such claim, action or proceeding, Licensee may do so. Licensor and Licensee each shall pay its own expenses and retain any costs or damages awarded to it in any such claim, action or proceeding. Licensor shall not make any settlement of any such claim, action or proceeding brought against Licensee involving a monetary payment by Licensee without the consent in writing of Licensee. Licensor shall not be liable in any event to Licensee in respect of any damages assessed or asserted against Licensee in, or any liability incurred by or imposed upon Licensee in connection with, any such claim, action or proceeding. Licensor and Licensee agree to cooperate with each other in all respects in any such claim, action or proceeding.

C. In the event that Licensee shall acquire knowledge of any use by a third party (other than any party known to have a license agreement with Licensor) of the Patent, Licensee shall not take any action whatsoever, unless otherwise authorized by Licensor, but shall promptly notify Licensor in writing of such use. Licensor (and its duly authorized representative) shall have the right (but not the obligation) to take whatever action it deems appropriate, including the institution of any action or proceeding against such third party or otherwise, to obtain a discontinuance of such use. Licensor's (or its authorized representative's) right to take such action, however, shall expire if Licensor (or its authorized representative) does not notify Licensee in writing within 30 days of receipt of the aforementioned notice from Licensee of such third party use. If Licensor exercises its right to take such action, Licensor shall pay its own expenses and retain any costs or damages awarded to it therein. If Licensor does not exercise its right to take such action, or such right expires, Licensee may take whatever action Licensee, in its sole option and at its sole expense, deems to be necessary and appropriate. Licensee and Licensor agree to cooperate with each other in all respects and to provide each other with all assistance requested by the other with respect to all such actions.

4. INDEMNIFICATION BY LICENSEE. Licensee shall indemnify, defend and hold Licensor harmless against and from all claims, demands, actions and rights of action with respect to the subject matter of this Agreement, including without limitation the manufacture, distribution and sale of the Product, that shall or may arise by virtue of anything done or omitted to be done by Licensee or by any of Licensee's agents, employees or other representatives unless the claim, demand, action or right arises from an act or omission of Licensor or any of its agents, employees or other representatives. The rights and obligations of the parties hereto under this Section 4 shall survive the termination of this Agreement.

5. TAXES. All payments or reimbursements under this Agreement shall be made without setoff or counterclaim and free and clear of and without deduction for any and all present and future taxes, levies, imposts, duties or any other charges of a similar nature ("Taxes"). Licensee agrees to cause all Taxes imposed in connection with the purchase and sale of the Product to be paid directly to the appropriate governmental authority.

6. TERM, TERMINATION AND DEFAULT.

A. Term. This Agreement shall begin on the date first set forth above and continue for an initial term of one year from the date of this Agreement, unless sooner terminated

as hereinafter provided, and shall be automatically renewed for successive consecutive one-year terms at the end of each term if not terminated in accordance with this Agreement.

B. Default and Termination. This Agreement shall terminate at the election of either party to this Agreement if the other party (the "Defaulting Party") shall breach or default in the performance of any of its obligations under this Agreement or any other agreement between Licensor and Licensee, and such breach or default is not cured after notice is given as provided in Section 6C of this Agreement or as provided in such other agreement.

Regardless of the foregoing provisions, Licensor may terminate this Agreement at any time if any of the following circumstances shall occur:

(i) Declaration of bankruptcy or an assignment for the benefit of creditors by Licensee.

(ii) Failure of Licensee to pay Royalty Fees overdue for longer than six months after the due date.

(iii) In case of a transfer of the rights by Licensee to a third party in violation of Section 10 of this Agreement.

(iv) In case of any material breach of any provision of this Agreement, or an intentional violation of Licensor's rights in the Patent.

C. Notice of Default. If either party desires to terminate this Agreement in the event of a breach or default, such party shall give written notice to the defaulting party of the breach or default by the defaulting party and allow the defaulting party 30 days thereafter within which to cure such breach or default, if such breach or default shall be capable of cure. Failure by either party to terminate this Agreement for any one or more acts or omissions of a defaulting party that constitute a breach or default hereunder shall in no way whatsoever be construed as a waiver, express or implied, of that party's right to terminate the Agreement for any other breach or default or for the same breach or default at a later time.

D. Rights on Termination. Upon termination of this Agreement for any reason, the rights, privileges and obligations of the parties shall be as follows:

(i) Such termination shall be without prejudice to Licensor's rights to recover Royalty Fees or other sums due from Licensee under the terms of this Agreement.

(ii) Any remedy for any breach or default that has not previously been cured shall be preserved.

(iii) Licensee shall immediately cease to use the Patent for any and all purposes.

Without limiting any other provision of this Agreement, the provisions of this Section 6 shall survive the termination of this Agreement.



7. SERVICES PERFORMED BY AUTHORIZED REPRESENTATIVE. Notwithstanding anything in this Agreement to the contrary, Licensor may engage the services of an authorized representative to act for and on behalf of Licensor for any part or all aspects of this Agreement. Accordingly, Licensee agrees to deal with such representative upon written notice from Licensor, which notice shall describe the scope of such representative's responsibilities.

8. AMENDMENT. This Agreement may be amended only by written amendment executed by an authorized officer or agent of each of Licensee and Licensor. No approval, permission or consent by either party to this Agreement shall have any effect unless it is made in writing by an authorized representative of such party.

9. PROHIBITION ON ASSIGNMENT. Nothing in this Agreement shall be deemed to constitute or result in an assignment of the Patent to Licensee or the creation of an equitable or any other interest in the Patent in Licensee.

10. TRANSFERABILITY OF RIGHTS. Licensor's rights and obligations under this Agreement shall be freely transferable, and such rights and obligations shall inure to the benefit of and be binding upon its respective successors and assigns. Licensee's rights and obligations under this Agreement shall not, without the prior written consent of Licensor, be transferred, sublicensed, assigned or alienated in any manner, except as expressly provided hereunder. Notwithstanding the foregoing, Licensee may assign its rights hereunder to an Affiliate (as defined in Rule 12b-2 promulgated by the Securities and Exchange Commission under the Securities Exchange Act of 1934) of Licensee provided that such Affiliate agrees to be jointly liable with Licensee for all obligations hereunder.

11. GOVERNING LAW AND JURISDICTION; ARBITRATION. The validity, interpretation and enforceability of this Agreement shall be determined in accordance with the internal laws of the Commonwealth of Pennsylvania. Each party irrevocably consents to the exclusive jurisdiction of either the United States District Court for the Western District of Pennsylvania or the Allegheny County Court of Common Pleas for purposes of any action, suit or other proceeding arising out of this Agreement.

12. SEVERABILITY. If any provision or any portion of any provision of this Agreement shall be held to be void or unenforceable, the remaining provisions of this Agreement and the remaining portion of any provision held void or unenforceable in part shall continue in full force and effect.

13. NO ACKNOWLEDGMENT OF LIABILITY. Licensor granted Licensee a license with respect to the Patent for use in the field of refractory products other than magnesite-carbon based refractory products pursuant to a Patent License Agreement dated as of April 26, 2001. Resco acknowledges that, by entering into this Agreement, NARCO is not admitting that the Product is a magnesite-carbon based refractory product within the meaning of the April 26, 2001 Patent License Agreement.

IN WITNESS WHEREOF, the parties hereof have duly executed this Agreement as of the day and year first above written.

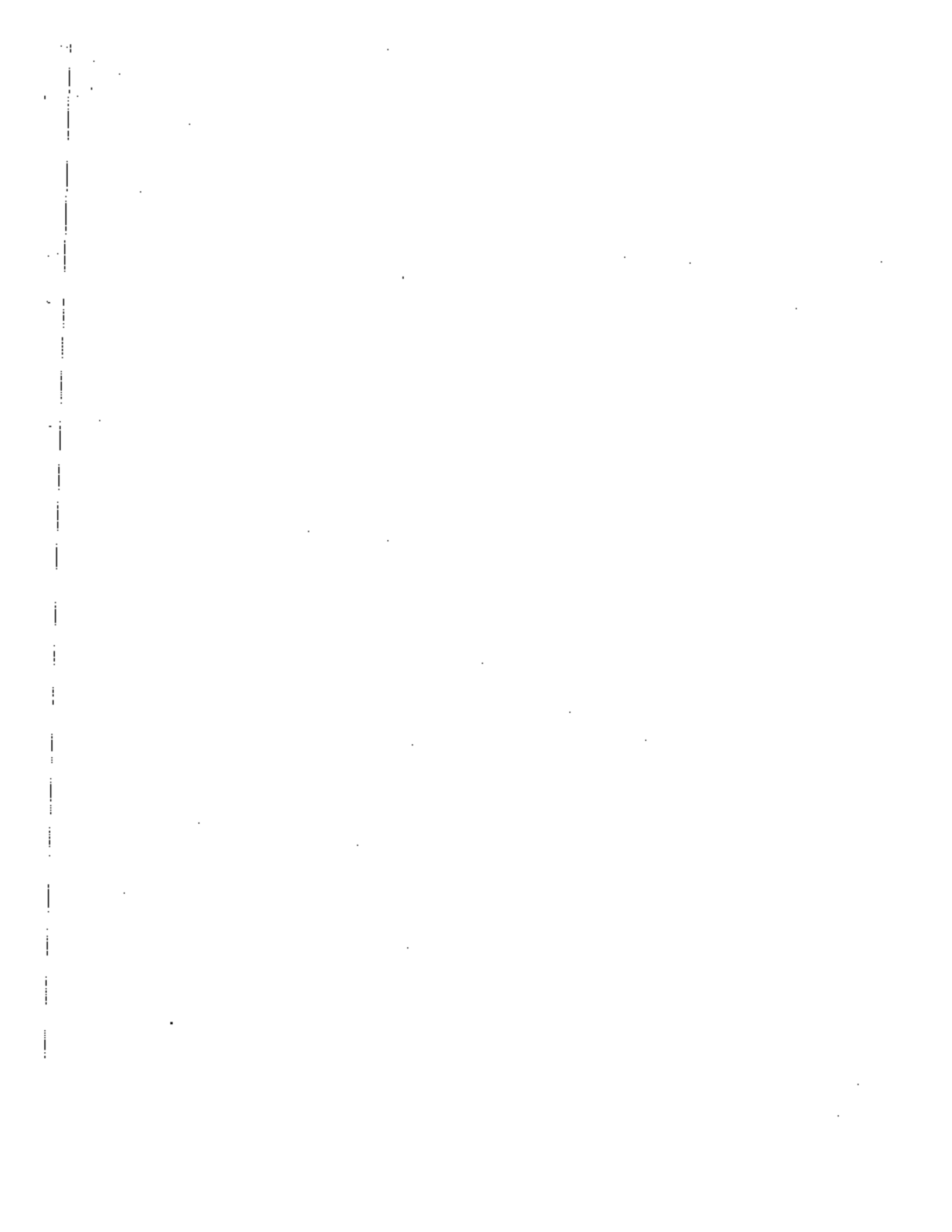
**RESCO PRODUCTS, INC.**

By: \_\_\_\_\_  
William K. Brown,  
President and CEO

**NORTH AMERICAN REFRACTORIES  
COMPANY**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

PH/889241.3



**2000 Settlement Agreement  
By and between NARCO and RESCO**

<b>Paragraph Number</b>	<b>Title or Subject Matter</b>	<b>Material Changes Caused by 2001 Settlement Agreement</b>
1	Defined Terms	No change.
2	Settlement Payment and Releases	Payment not effected. Releases broadened.
3	Purchase by NARCO of Products Manufactured by Resco	Time for purchase extended.
4	Determination of Actual Inventory Valuation	Amount was settled.
5	NARCO Provision of Tar Impregnator to Resco	No change except for credit limits.
6	Magnesite Supply Agreement Terms	No change except for credit limits.
7	WCI Steel Inc. Contract	No material change.
8	Document Production	No material change.
9	Brand Substitution Chart	No material change.
10	Patent Assignment	License back includes WO-4358.
11	Purchase Price Allocation	Allocation confirmed.
12	Reconciliation of Intercompany Transactions	Reconciliation finalized and settled.
13	Farbor Inventory	No material change.
14	Canadian Hourly Plan	Transfer completed.
15	Hammond Safety Bonus	No material change.
16	Hammond Supplemental Unemployment Plan	No material change. Amount owed part of final settlement.
17	Vacation Benefits	No material change. Amount owed part of final settlement.
18	Marelan Supplemental Unemployment Plan	No material change. Amount owed part of final settlement.
19	Removal of Excluded Assets	No material change.
20	Environmental Matters	Indemnity adjusted to reflect limited cost sharings.
21	Foreign Licenses	No material change.
22 through 33 inclusive	Miscellaneous Provisions	No material change.