

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

FEDERAL TRADE COMMISSION,)	
)	
Plaintiff,)	
v.)	Civ. No.
)	
RHI AG,)	
)	
Defendant.)	

CONSENT JUDGMENT

Plaintiff, Federal Trade Commission, having commenced this civil action by filing its Complaint herein for alleged violations of an Order issued by the Federal Trade Commission on March 21, 2001, in FTC Docket No. C-4005 (the "Order"), and Defendant, RHI AG ("RHI"), having agreed to the entry of this Consent Judgment in settlement of disputed claims without trial or adjudication of any issue of fact or law herein:

NOW, THEREFORE, prior to the taking of any testimony, civil discovery and without trial or adjudication of any issue of fact or of law herein, and upon the consent of the parties hereto, it is hereby

ORDERED, ADJUDGED, AND DECREED as follows:

I.

This Court has jurisdiction of the subject matter herein and of each of the parties consenting hereto. The Complaint states a claim upon which relief can be granted against Defendant under Sections 5(l) and 16(a)(1) of the Federal Trade Commission Act, 15 U.S.C. §§ 45(l) and 56(a)(1).

II.

Judgment is hereby entered in favor of the Plaintiff, Federal Trade Commission, and against the Defendant on Counts 1, 2, 3, 4, 5, 6, 7, 8, 9, 10 and 11 as alleged in the Complaint filed in this action. Defendant shall comply with the provisions of this Consent Judgment.

III.

Defendant shall pay to the United States, pursuant to Section 5(l) of the Federal Trade Commission Act, 15 U.S.C. §§ 45(l), a civil penalty in the amount of six hundred and fifty thousand United States dollars (\$650,000.00), which shall be paid and delivered in the following manner:

- A. Payment shall be made within thirty (30) days after entry of this Consent Judgment;
- B. Payment shall be made by wire transfer of funds to the United States Treasury through the Treasury Financial Communications System; and,

- C. In the event of a default or delay in payment, interest at the rate of eighteen (18) percent per annum shall accrue thereon from the date of the default or delay to the date of payment.

IV.

- A. Within fifteen (15) days after entry of this Consent Judgment, Defendant shall use its best efforts to obtain in writing the consent of Resco Products, Inc., for work related to the performance of the contract (“Contract”) attached as Exhibit A to this Consent Judgment to commence on a date (“Marelan Work Commencement Date”) not more than forty-five (45) calendar days after entry of this Consent Judgment. Defendant shall provide written notice to Plaintiff of the Marelan Work Commencement Date, and attach to its notice a copy of the written consent obtained from Resco Products, Inc.
- B. As promptly as possible after Defendant obtains the written consent described in Paragraph IV(A) of this Consent Judgment, Defendant shall provide the Marelan Work Commencement Date to all engineers, contractors, agents, independent contractors, and other natural and non-natural persons with duties or obligations under the Contract. Defendant shall use its best efforts to cause the commencement of work on the Site (as that term is defined in the Contract) on the Marelan Work Commencement Date.
- C. Defendant shall use its best efforts to enforce the Contract, including, but not

limited to, the schedule for performing the Contract and the scope of work and services described in the Contract. As promptly as possible, Defendant shall provide written notice to Plaintiff of any allegation or claim (including, but not limited to, any notice of breach, and any action or proceeding in any arbitration, mediation, or judicial forum) relating to the Contract by Defendant against engineers, contractors, agents, independent contractors, and other natural and non-natural persons with duties or obligations under the Contract.

- D. Defendant shall comply with the terms of the Contract, which terms are incorporated by reference into this Consent Judgment, and made a part hereof. Any failure by Defendant to comply with the Contract shall constitute a failure to comply with this Paragraph IV of this Consent Judgment. Notwithstanding the preceding statement, Plaintiff will not consider a failure of Conestoga Rovers & Associates, its engineers, contractors, agents, independent contractors, and other natural and non-natural persons with duties or obligations under the Contract (“CRA”) to perform the Contract as a failure by Defendant to comply with this Consent Judgment if CRA’s failure occurs due to no fault of Defendant, or acquiescence of Defendant. Similarly, Plaintiff will not consider Defendant as having failed to comply with this Consent Judgment if Resco unreasonably denies CRA access to the Marelan facility or otherwise prevents or prohibits CRA from performing the Contract due to no fault of Defendant, or acquiescence of Defendant. Moreover, the Plaintiff will not consider a failure by CRA, Defendant or Resco to perform under the Contract as a failure by Defendant to comply with

this Consent Judgment if performance of the Contract is excused by force majeure, as force majeure is defined by the Contract.

- E. Any material modification of the Contract without further order of this Court or the prior approval of Plaintiff shall constitute a failure to comply with this Paragraph IV of this Consent Judgment.
- F. Defendant shall provide written notice to Plaintiff of the date the final Application for Payment (as that term is defined in the Contract) is received within five (5) business days after Defendant receives it. Defendant shall attach a copy of the final Application for Payment to its written notice under this Paragraph IV(F) of this Consent Judgment.
- G. Within thirty (30) calendar days after Defendant receives the final Application for Payment, Defendant shall provide written notice to Plaintiff accounting for all payments (including, but not limited to, the final payment) by Defendant under the contract (“Accounting of Payments”). The Accounting of Payments shall include a list of the date and amount of each payment made by Defendant that constitutes all or any portion of the Contract Price (as that term is defined in Article 3.1(C) of the Contract), and state the total Contract Price paid by Defendant (“Total Contract Price”). If Defendant makes any payment in any currency other than United States dollars, Defendant shall convert the amount of any such payment listed on the Accounting of Payments into United States dollars using the exchange rate in effect as of the date of such payment, published in the New York Edition of the Wall Street Journal on the date of such payment.

H. If Defendant receives the final Application for Payment within one hundred and eighty (180) days after entry of this Consent Judgment and the Total Contract Price is less than \$360,000 (U.S.), Defendant shall pay to the United States, pursuant to Section 5(l) of the Federal Trade Commission Act, 15 U.S.C. § 45(l), an additional civil penalty in an amount equal to the difference between the Total Contract Price and \$360,000 (U.S.), which shall be paid and delivered in the following manner:

1. Payment shall be made within forty-five (45) calendar days after Defendant receives the final Application for Payment;
2. Payment shall be made by wire transfer of funds to the United States Treasury through the Treasury Financial Communications System; and,
3. In the event of a default in payment, interest at the rate of eighteen (18) percent per annum shall accrue thereon from the date of the default to the date of payment.

I. If Defendant does not receive a final Application for Payment within one hundred and eighty (180) days after entry of this Consent Judgment, and the conditions excusing Defendant's non-performance in Section IV.D. do not apply, Defendant shall pay to the United States, pursuant to Section 5(l) of the Federal Trade Commission Act, 15 U.S.C. § 45(l), an additional civil penalty in the amount of \$360,000 (U.S.) (less all amounts paid by Defendant as of that date under the Contract) which shall be paid and delivered in the following manner:

1. Payment shall be made within two hundred and ten (210) calendar days

after entry of this Consent Judgment;

2. Payment shall be made by wire transfer of funds to the United States Treasury through the Treasury Financial Communications System; and,
3. In the event of a default or delay in payment, interest at the rate of eighteen (18) percent per annum shall accrue thereon from the date of the default or delay to the date of payment.

J. For the purpose of determining or securing compliance with this Paragraph IV of the Consent Judgment, and subject to any legally recognized privilege, from time to time:

1. Representatives of Plaintiff, or the Interim Trustee approved on January 14, 2000, by Plaintiff pursuant to Paragraph III of Order, or any successor Interim Trustee appointed pursuant to the Order, shall, on reasonable notice to Defendant, be permitted:
 - a. Access during office hours of Defendant (including all of its subsidiaries and divisions) to inspect and copy all books, ledgers, correspondence, memoranda and other records and documents (including e-mails, databases, documents, and records maintained or stored in electronic form) in the possession or under the control of Defendant that relates to this Paragraph IV of the Consent Judgment; and,

b. Subject to the reasonable convenience of Defendant, and without restraint or interference from Defendant, to interview any officers or employees of Defendant, who may have counsel present, regarding any matters related to this Paragraph IV of the Consent Judgment.

2. For the purpose of determining or securing compliance with this Paragraph IV of the Consent Judgment, Defendant shall submit such reports in writing, under oath if so requested, with respect to any matters related to this Paragraph IV of the Consent Judgment as may from time to time be requested by Plaintiff.

K. Whenever any provision of this Paragraph IV of the Consent Judgment requires Defendant to provide written notice to Plaintiff, Defendant shall send the written notice:

1. by certified mail, return receipt requested, to:

a.)

Secretary, Federal Trade Commission

600 Pennsylvania Avenue, NW

Room 172

Washington, DC 20580;

and,

b.)

Assistant Director, Compliance Division

Federal Trade Commission

601 New Jersey Avenue, NW

Room 5223

Washington, DC 20580; and,

2. by facsimile sent to (202) 326-3396, to:

Assistant Director, Compliance Division

Federal Trade Commission

601 New Jersey Avenue, NW

Room 5223

Washington, DC 20580

L. Whenever any provision of this Paragraph IV of the Consent Judgment requires Plaintiff to provide written notice to Defendant, Plaintiff shall send the written notice by certified mail, return receipt requested, to:

Eric G. Soller

Pietragallo, Bosick & Gordon

One Oxford Centre, 38th Floor

Pittsburgh, PA 15219

With copy to:

Robin Schmidt-Whitley

RHI AG

Twin Tower

Weinerbergstrasse 11

Vienna 1100

Austria

V.

Each party shall bear its own costs of the within action.

VI.

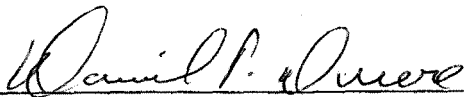
Entry of this Consent Judgment is in the public interest.

VII.

By their attached signatures hereto, the parties agree to the entry of this Consent Judgment.

FEDERAL TRADE
COMMISSION

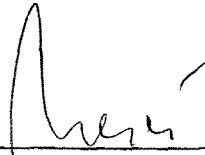
By:



Daniel P. Ducore, Esq.
Assistant Director
Arthur M. Strong
Attorney
Bureau of Competition
Federal Trade Commission
Washington, D.C. 20580

RHI AG,
an Austrian corporation

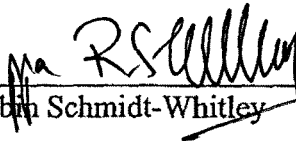
By:



Andreas Meier
Chief Operating Officer

RHI AG,
an Austrian corporation

By:



Robin Schmidt-Whitley

By:



Eric G. Soller, Esq.
Pietragallo Bosick & Gordon

Dated: _____, 2003

United States District Judge

ATTORNEYS ENTITLED TO NOTICE

The following counsel are entitled to notice of entry of judgment:

Attorney for Plaintiff:

Daniel P. Ducore, Esq.

Assistant Director

Bureau of Competition

Federal Trade Commission

601 New Jersey Avenue, NW

Room 5223

Washington, D.C. 20580;

and

Attorney for Defendant:

Eric G. Soller

Pietragallo, Bosick & Gordon

One Oxford Centre, 38th Floor

Pittsburgh, PA 15219