

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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

**MOTION FOR ENTRY OF
CONSENT JUDGMENT**

Plaintiff, the Federal Trade Commission, having filed its Complaint in the above-captioned case, and having filed this date a Stipulation and proposed Consent Judgment, hereby moves this Court for entry of the Consent Judgment. By agreement of the parties, the Consent Judgment against RHI AG, authorized by Section 5(l) of the Federal Trade Commission Act, 15 U.S.C. § 45(l), provides for the payment of six hundred and fifty thousand dollars (\$650,000), and other relief. The parties have agreed that the Consent Judgment may be entered on the motion of either party.

STATEMENT OF POINTS AND AUTHORITIES

The Complaint in this action alleges that defendant RHI AG violated the order entered by the Federal Trade Commission in FTC Docket No. C-4005. Section 5(l) of the Federal Trade Commission Act, 15 U.S.C. § 45(l), authorizes the imposition of civil penalties of not more than \$11,000 per violation, and appropriate equitable relief, for violations of Federal Trade Commission orders. In the case of a continuing violation, each day is considered a separate

violation. The Complaint asks the Court to enter judgment as set forth in the consent judgment. As indicated in the Stipulation, the defendant has agreed that the Court may file and enter the proposed Consent Judgment.

The proposed Consent Judgment requires the defendant to pay a civil penalty of six hundred and fifty thousand United States dollars (\$650,000), payable within thirty (30) days after entry of the Consent Judgment. In addition, the Consent Judgment requires the defendant to comply with and perform a contract with a contractor to repair or remove asbestos-containing materials from a refractories plant that Plaintiff's order required be divested to Resco Products, Inc., to remedy a lessening of competition that otherwise would have resulted from the defendant's acquisition of another company. The contract is attached to the proposed Consent Judgment, and explicitly is incorporated into the proposed Consent Judgment. If the defendant's total payments to the contractor under the contract are less than three hundred and sixty thousand United States dollars (\$360,000), the defendant has agreed to pay an additional civil penalty equal to the difference between this amount and the total payments under the contract. The timetable for the performance of the work under the contract and the payment of any additional civil penalty is provided by the proposed Consent Judgment, but in any event the defendant must complete these obligations within two hundred and ten (210) days after entry of the proposed Consent Judgment.

The Commission submits that the proposed settlement in this action is in the public interest in that it is fair, adequate and reasonable based on consideration of the factors discussed

below.¹ These factors include, among others: the need to deter similar conduct by this defendant and others; the need to remedy the harm to the public; and the need to vindicate the authority of the Commission and the rule of law.²

Here, payment to the United States Treasury by the defendant of the \$650,000 civil penalty set by the Consent Judgment is in the public interest because it likely will have the desired deterrent effect, by signaling to the defendant, other industry participants and other respondents subject to Commission orders, that Commission orders cannot be violated without significant consequences. Requiring the defendant to perform a contract that will cause the repair or removal of asbestos-containing materials from the divested refractories plant addresses directly one of the violations of the order alleged in the Complaint. The provision in the proposed Consent Judgment to require the defendant to pay an additional civil penalty if the defendant's total contract payment is less than \$360,000 promotes the proper remediation of asbestos-containing materials at the plant by eliminating the defendant's financial incentives to instruct its contractor to use less costly, less effective remediation options. Finally, the settlement will also demonstrate the Commission's commitment to assuring the compliance by respondents with the terms of the Commission's orders and will vindicate the authority of the Commission and the rule of law. By achieving these purposes of this enforcement action, the

¹ See Securities And Exchange Commission v. James H. Randolph, Jr., et al., 736 F.2d 525, 529 (9th Cir. 1984) ("[u]nless a consent decree is unfair, inadequate, or unreasonable, it ought to be approved.").

² See United States v. Boston Scientific Corp., 253 F.Supp. 2d 85, 98 (D.Mass. 2003); United States v. Papercraft Corp., 540 F.2d 131,141 (3rd Cir. 1976); United States v. J.B. Williams Co., 498 F.2d 414 (2nd Cir. 1975); United States v. Louisiana-Pacific Corp., 1990-2 Trade Cas. (CCH) ¶ 69,166 at 64,393 (D.Or. 1990), aff'd 967 F.2d 1372 (9th Cir. 1992).

Consent Judgment is in the public interest. For the above reasons, the Federal Trade Commission moves the Court to enter the Consent Judgment in this case.

Respectfully submitted,



Daniel P. Ducore
Assistant Director
D.C. Bar No. 933721
Arthur M. Strong
Attorney
Bureau of Competition
Federal Trade Commission
Washington, D.C. 20580
(202) 326-2687

Dated: March 30, 2004.

CERTIFICATE OF SERVICE

I hereby certify that on this 30th day of March, 2004, I caused a copy of the

foregoing Motion For Entry Of Judgment to be served by mail, postage prepaid, on:

Eric G. Soller, Esq.
Pietragallo, Bosick & Gordon
One Oxford Centre, 38th Floor
Pittsburgh, PA 15219

and

Brian Byrne
Cleary, Gottlieb, Steen & Hamilton
2000 Pennsylvania Avenue, N.W.
Washington, D.C. 20006-1801



Daniel P. Ducore