

01-27-2003



Form PTO-1594 (Rev. 10/02) OMB No. 0651-0027 (exp. 6/30/2005) Tab settings

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U.S. DEPARTMENT OF COMMERCE U.S. Patent and Trademark Office

To the Honorable Commissioner of Patents and Trademarks: Please record the attached original documents or copy thereof.

1. Name of conveying party(ies): National Bank of Canada
Individual(s) Association
General Partnership Limited Partnership
Corporation-State
Other Canadian Banking Corporation
Additional name(s) of conveying party(ies) attached? Yes No

2. Name and address of receiving party(ies)
Name: National Refractories & Minerals Corporation
Internal Address:
Street Address: 1378 Stealth Street
City: Livermore State: CA Zip: 94551
Individual(s) citizenship
Association
General Partnership
Limited Partnership
Corporation-State California
Other
If assignee is not domiciled in the United States, a domestic representative designation is attached: Yes No
(Designations must be a separate document from assignment)
Additional name(s) & address(es) attached? Yes No

3. Nature of conveyance:
Assignment Merger
Security Agreement Change of Name
Other Court Order Releasing Security Interest
Execution Date: 12/16/2002

4. Application number(s) or registration number(s):
A. Trademark Application No.(s)
B. Trademark Registration No.(s) 665,916; 834,565; 1,313,450
Additional number(s) attached Yes No

5. Name and address of party to whom correspondence concerning document should be mailed:
Name: William H. Murray, Esquire
Internal Address: Duane Morris LLP
Street Address: One Liberty Place, 36th Floor
City: Philadelphia State: PA Zip: 19103-7396

6. Total number of applications and registrations involved: 3
7. Total fee (37 CFR 3.41) \$ 90.00
Enclosed
Authorized to be charged to deposit account
8. Deposit account number: 04-1679

DO NOT USE THIS SPACE

9. Signature.
Allison Z. Gifford, Esquire
Name of Person Signing
Signature
January 14, 2003
Date

Total number of pages including cover sheet, attachments, and document: 6

01/24/2003 TDIAZ1 00000194 041679 665916
01 FC:8521 40.00 CH
02 FC:8522 50.00 CH

Mail documents to be recorded with required cover sheet information to: Commissioner of Patent & Trademarks, Box Assignments Washington, D.C. 20231

TRADEMARK REEL: 002658 FRAME: 0418

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A Professional Corporation
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4 Telephone: (415) 362-5045

5 Attorneys for National Refractories & Minerals Corporation, Chicago Fire Brick
Company, Wellsville Fire Brick Company, National Affiliated Technologies, Inc.
6 and National Refractories & Minerals, Inc., Debtors in Possession

7
8 IN THE UNITED STATES BANKRUPTCY COURT
9 FOR THE NORTHERN DISTRICT OF CALIFORNIA
10 OAKLAND DIVISION

11 In re
12 NATIONAL REFRATORIES &
13 MINERALS CORPORATION, a California
Corporation, et al.,
14 Debtors.

Case No. 01-45482 T 11
Chapter 11
Jointly Administered

I hereby certify that the foregoing/annexed
document is a true and correct copy of the
same as filed in the Northern District of Calif.

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Clerk of the Court
U.S. Bankruptcy Court
BY *[Signature]*
Deputy Clerk
11/16/02

**ORDER AUTHORIZING AND APPROVING AGREEMENT BETWEEN
NATIONAL REFRATORIES & MINERALS CORPORATION AND
RESCO PRODUCTS, INC. FOR SALE OF ASSETS FREE AND CLEAR OF SECURITY
INTERESTS, LIENS, ENCUMBRANCES, CLAIMS OR OTHER INTERESTS**

19 The Motion Of National Refractories & Minerals Corporation For An Order Authorizing And
20 Approving Sale Of Various Assets, Free And Clear Of Liens, To Resco Products, Inc. (the
21 "Motion"), wherein National Refractories & Minerals Corporation ("National") seeks and order (i)
22 authorizing and approving the Asset Purchase Agreement (the "Agreement") between National, as
23 Seller, and Resco Products, Inc. ("Resco"), as Buyer, a copy of which is attached hereto as Exhibit
24 "A", and (ii) approving the sale of the Assets (as defined in the Agreement) free and clear of the
25 security interests, liens, encumbrances, claims or other interests of the lienholders, or potential
26 lienholders, identified in the Motion, having come on for hearing on December 16, 2002;
27 GOLDBERG, STINNETT, MEYERS & DAVIS, A Professional Corporation, by TERRANCE L.
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1 STINNETT, ESQ., appearing on behalf of National in support of the Motion; and the other
2 appearances as noted in the record; and due and proper notice of the hearing upon the Motion having
3 been given to the parties in interest identified in the Motion in accordance with the requirements of
4 the Amended Order Authorizing Limited Notice previously filed herein on December 18, 2001; and
5 no objection to the approval of the Agreement or the additional relief requested in the Motion having
6 been filed; and

7 Congress Financial Corporation (Western) having consented to the approval of the Agreement
8 and the sale of the Assets free and clear of any security interest, lien, encumbrance, claim or other
9 interest of Congress Financial Corporation (Western); and

10 Kaiser Aluminum & Chemical Corporation having ^{stated its non-opposition} ~~consented~~ to the approval of the
11 Agreement and the sale of the Assets free and clear of any security interest, lien, encumbrance, claim
12 or other interest of Kaiser Aluminum & Chemical Corporation; and

13 It appearing, and the Court finds, that any security interest, lien, encumbrance, claim or other
14 interest, if any, asserted by any of the other lienholders, or potential lienholders, identified in the
15 Motion either (i) is subject to a bona fide dispute as to the nature, extent and/or validity of such
16 security interest, lien, encumbrance or other interest, or (ii) secures a claim against the Assets that is
17 not an allowed secured claim herein; and/or any objection filed by such other lienholder or potential
18 lienholder has been withdrawn, resolved as provided herein or overruled; and

19 It further appearing, and the Court finds, that the Agreement was negotiated, proposed and
20 agreed to by National and Resco without collusion, in good faith and at arms-length, and Resco has
21 undertaken the transactions contemplated by the Agreement in good faith, as that term is used in
22 section 363(m) of the Bankruptcy Code, and as such, is entitled to all of the protections afforded
23 thereby; and

24 It further appearing, and the Court finds, that (a) the consideration to be paid by Resco for the
25 purchase of the Assets (i) is fair and constitutes reasonably equivalent value for the Assets under the
26 Bankruptcy Code and applicable state law fraudulent conveyance or fraudulent transfer laws, (ii) is in
27 the best interests of National's estate, (iii) is the highest and best price that can be obtained for the
28 Assets, (iv) will provide a greater recovery for the creditors herein and other interested parties than

1 would be provided by any other practically available alternative; and (b) the Agreement, and the
2 transactions described therein, (i) were not entered into for the purpose of hindering, delaying or
3 defrauding creditors, and (ii) will be a legal, valid and effective transfer of the Assets as of the
4 closing of the transaction, and (iii) upon the closing, and the payment of the Purchase Price, will vest
5 in Resco all of the Sellers' right, title and interest in the Assets free and clear of the security interests,
6 liens, encumbrances, claims or other interests described in the Motion; and

7 It further appearing, and the Court finds, that a sale of the Assets outside of the ordinary
8 course of National's business, and outside the context of a confirmed plan, is appropriate under the
9 circumstances herein and that National has demonstrated a sound business purpose for the transaction
10 contemplated by the Agreement; and

11 The Court having filed herein additional findings of fact and conclusions of law which are
12 deemed to be incorporated herein; and

13 GOOD CAUSE APPEARING

14 IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

15 1. The ^{SALE PURSUANT TO THE} Agreement between National, as Seller, and Resco, as Buyer, attached hereto as
16 "Exhibit "A" is hereby authorized ~~and approved.~~

17 2. All findings of fact set forth above and in the additional findings of fact filed herein
18 are hereby adopted as conclusion of law.

19 3. Pursuant to Sections 363(b) and 363(f)(2) and (f)(4) of the Bankruptcy Code, National
20 is hereby authorized to sell the Assets (as defined in the Agreement) to Resco free and clear of any
21 security interests, liens, encumbrances, claims or other interests of Congress Financial Corporation
22 (Western), Kaiser Aluminum & Chemical Corporation, National Bank of Canada, Citicorp North
23 America, Inc., First National Bank of Mexico, the Pension Benefit Guaranty Corporation, Norstan
24 Financial Services, Inc., F&S International, Inc., Metallia U.S.A., LLC, Vacaville Cryogenics,
25 Charter Financial, Inc., Wells Fargo Financial Leasing, Inc., Toyota Motor Credit Corporation, First
26 National Bank of Audrain County, Aluchem, Inc., ABB Trading US, General Electric Capital
27 Corporation, Penoles Metals & Chemicals, Inc., International Computer Services, Inc., Clark
28 Equipment Corp., Caterpillar Financial Services Corporation, Textron Financial Corporation, Pitney

1 Bowes Credit Corporation, Norwest Equipment Finance, Inc. and those Federal, State and Local
2 taxing authorities set forth in Exhibit "B" attached hereto and incorporated herein by reference
3 (hereinafter collectively referred to as the "Lien Creditors or Potential Lien Creditors").

4 4. National is hereby authorized to execute ^{and enter into the Agreement and} any and all documents reasonably necessary
5 and proper to conclude and effect the Agreement.

6 5. National is hereby authorized to pay out of the proceeds of sale any amounts (a)
7 required to cure any existing defaults with regard to any of the Assumed Contract, Licenses, Permits,
8 etc., to be assumed by National and assigned to Resco, (b) owed as of the closing of the sale of the
9 Assets to any landlord, warehousemen or other person or entity on whose premises any of the Assets
10 may be located, and (c) any lien upon the Assets asserted by any Federal, State or Local taxing
11 authorities, whether or not such Federal, State or Local taxing authorities are set forth in Exhibit "B"
12 hereto.

13 6. National is hereby authorized to pay to Congress Financial Corporation (Western) the
14 final net proceeds from the sale of the Assets.

15 7. This Court retains jurisdiction to enforce ^{the} terms and provisions of the Agreement,
16 all amendments thereto, any waivers and consents thereunder, and each of the agreements executed in
17 connection therewith in all respects, including, but not limited to, retaining jurisdiction to (a) compel
18 delivery of the Assets to Resco, (b) compel delivery of the Purchase Price or performance of other
19 obligations owed to National, (c) resolve any disputes arising under or related to the Agreement, and
20 (d) interpret, implement, and enforce the provisions of the Agreement and this Order.


21 8. The Agreement and any related agreements, documents or other instruments may be
22 modified, amended or supplemented by National and Resco in accordance with the terms thereof,
23 without further order of the Court, provided, however, that any such modification, amendment or
24 supplement does not have a material adverse effect on National's estate.

25 9. The terms and provisions of the Agreement and this Order shall be binding in all
26 respects upon, and shall inure to the benefit of, National, its estate, and its creditors, Resco and their
27 respective affiliates, assigns and transferees and any affected third parties, notwithstanding any
28 subsequent appointment of any trustee(s) under any chapter of the Bankruptcy Code, as to which

1 such terms and provisions likewise shall be binding.

2 10. Notwithstanding Rules 6004(g) of the Federal Rules of Bankruptcy Procedure, the
3 effectiveness of this Order shall not be stayed for ten (10) days after entry on the docket of such
4 Order, which Order shall be effective and enforceable immediately upon such entry.

5 Dated: December 16, 2002

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7 THE HONORABLE LESLIE TCHARKOVSKY
8 United States Bankruptcy Judge

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