IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

IN RE: NORTH AMERICAN REFRACTORIES COMPANY, ET AL., Debtor.	In Proceedings for a Reorganization under Chapter 11 Case No. 02- 20198
NORTH AMERICAN REFRACTORIES COMPANY, ET AL., Movant, v. (NO RESPONDENT).	Motion No. 02-0118

MOTION OF DEBTORS FOR AUTHORITY TO
(1) OBTAIN POST-PETITION FINANCING,
(2) GRANT LIENS AND ADMINISTRATIVE EXPENSE STATUS,
AND (3) ENTER INTO AGREEMENT WITH HONEYWELL

The above-captioned debtors and debtors in possession (collectively, the "Debtors") hereby move the Court for authority to enter into an agreement with and obtain post-petition financing from Honeywell. In support of this Motion, the Debtors respectfully represent as follows:

Jurisdiction

1. On January 4, 2002 the Debtors commenced their respective reorganization cases by filing voluntary petitions for relief under chapter 11 of the Bankruptcy Code, 11 U.S.C. §§ 101-1330 (the "Bankruptcy Code").

2. The Debtors are continuing in possession of their respective properties and are operating and managing their businesses, as debtors in possession, pursuant to sections 1107 and 1108 of the Bankruptcy Code.

3. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2).

Factual Background

4. The Debtors are the manufacturers of a full line of clay and non-clay refractory products used in the steel industry to line industrial furnaces. Refractory materials are specially designed and manufactured to be both chemically and physically stable at extremely high temperatures to support heat-processing and steel handling applications.

5. The Debtors conduct operations in several states and have about 790 employees. The Debtors are headquartered in Pittsburgh, Pennsylvania and also operate industrial plants located in Indiana Hills and Ione, California; Gary, Indiana; South Shore, Kentucky; White Cloud, Michigan; and Cincinnati, Ohio.

6. The Debtors' business has been significantly impacted by the downturn in the steel industry, which is the primary market for the Debtors' products. As more of the Debtors' steel-producing customers have encountered financial problems, the demand for refractory products has declined considerably, resulting in financial difficulties for the Debtors as well.

7. In addition to the negative effects flowing from the downturn in the steel industry, the Debtors' current economic situation has been strained by a massive number of asbestos-related litigation cases which target the Debtors as defendant. Because the Debtors' products formerly included asbestos, the Debtors, like other former producers of asbestos-containing products, have been overwhelmed by the claims of individuals who assert that they have been injured by exposure to asbestos or asbestos-containing products. The Debtors estimate that more than 100,000 asbestos claims may currently be pending against them. The cost and effect upon the

Debtor's business operations of defending and resolving these asbestos claims is overwhelming and consuming.

Pre-Petition Relationship of the Debtors and Honeywell

8. Prior to January 17, 1986, a portion of the refractory business currently owned by North American Refractories Corp. ("NARCO") was an unincorporated division of a predecessor to Honeywell International Inc. ("Honeywell").

9. In 1986, in connection with the sale of the NARCO business, Honeywell agreed to indemnify NARCO, with certain exceptions, for any liability associated with asbestos-containing products manufactured and sold by the NARCO business prior to January 17, 1986 and that constituted "Discontinued Products" as defined in the agreement granting the indemnity, as such indemnity has been amended to date (the "Honeywell Indemnity").

10. There is a significant dispute between Honeywell and NARCO relating to which products are Discontinued Products, the scope of the Honeywell Indemnity, and the respective rights and obligations of Honeywell and NARCO with respect to pending and future claims arising from the NARCO business.

11. As previously described, NARCO is a defendant in numerous personal injury actions related to (a) Discontinued Products, (b) NARCO products that were continued after January 17, 1986, and (c) NARCO products manufactured and sold for the first time after January 17, 1986, and NARCO expects similar actions to be asserted in the future (the "NARCO Actions"). Honeywell is a defendant in some of the NARCO Actions.

12. Prior to January 1, 2001, Honeywell and NARCO, by agreement, shared in the costs of the defense and/or settlement of all cases. NARCO's obligation to make certain payments in connection with the Honeywell Indemnity is hereinafter referred to as the "NARCO

Contribution." Honeywell contends that since January 1, 2001, NARCO has not performed its obligations with respect to the NARCO Contribution, and NARCO contends that it has a claim for an overpayment of the NARCO Contribution for years prior to 2001.

13. Notwithstanding this dispute, with a full reservation of rights since January 1, 2001, Honeywell has undertaken the defense of NARCO Actions filed against NARCO, including those that allege liability arising out of the manufacture and sale of products that Honeywell believes are not covered by the Honeywell Indemnity.

14. Prior to the bankruptcy filing, Honeywell indicated to the Debtors that it was unwilling to continue the entire defense of NARCO Actions in light of the significant disputes between the parties as to the Honeywell Indemnity. In addition, Honeywell informed the Debtors that it would seek contribution from NARCO for amounts which Honeywell alleged was owed to it by NARCO as required by the NARCO Contribution.

15. Prior to the Filing Date, Honeywell and NARCO evaluated many options for resolving their disputes and managing the asbestos litigation. They agreed that the only way to achieve a fair, orderly, timely and efficient disposition and payment of all valid current and future claims against the NARCO business would be a Chapter 11 filing by NARCO, whereby a plan of reorganization would be approved which would include, among other things, a channelling injunction under §524(g) of the Bankruptcy Code, and the creation of a trust for the payment of present and future asbestos claims.

16. The purpose of the bankruptcy filing is to restructure and strengthen the business operations of the Debtors, while utilizing the channeling injunction provided by 11 U.S.C. § 524(g) to provide a central forum and mechanism for resolving and providing for the asbestos claims.

Financing Requirements

17. Prior to the Filing, the Debtors were able to operate their business without a line of credit or any other type of secured financing.

18. The Debtors have conducted a lien search and, except for nominal financed equipment, the Debtors' property is unencumbered.

19. The Debtors have undertaken an extensive evaluation of their business and financing needs. The Debtors have determined that a line of credit, in an amount not to exceed $20,000,000.00 (the "Loan"), is necessary in order meet their operating expenses and continue operating their businesses during the bankruptcy case, with the ultimate goal of rehabilitating their business and proposing a plan of reorganization.

20. The Debtors have engaged in extensive negotiations with Honeywell regarding post-petition financing.

21. Honeywell has indicated its willingness, through its affiliate Jan 2002 Funding LLC (the "DIP Lender"), to provide financing, upon the terms and conditions contained herein. Honeywell is prepared to begin funding the line of credit immediately upon this Court's approval of the transaction described in this Motion and upon the terms set forth in the proposed order included as Exhibit E.

Terms of the Financing

22. Prior to the Filing, NARCO, Honeywell and the parent company of NARCO, RHI Refractones Holding Company ("RHI") executed agreements relating to post-petition financing for the Debtors and other financial accommodations between the parties. A copy of the agreement between NARCO and Honeywell is attached as Exhibit B (the "NARCO

Agreement"). A copy of the agreement between RHI and Honeywell is attached as Exhibit C (the "RHI Agreement").

23. The Debtors and Honeywell have agreed upon the terms of post-petition financing to be provided by the DIP Lender (the "DIP Facility").

24. The terms of the DIP Facility are set forth in the Debtor-In-Possession Credit Agreement between NARCO and Honeywell (the "DIP Loan Agreement"), a final but unexecuted copy of which is attached hereto as Exhibit D (excluding exhibits, copies of which will be provided upon request).

25. In order for the DIP Lender to advance funds pursuant to the DIP Credit Agreement, the Debtors must, among other things:

a. Grant the DIP Lender, pursuant to 11 U.S.C. §364(c)(2), a first priority lien on the cash collateral, inventory and accounts receivable assets of the Debtors (the "Collateral"). Additional collateral must be pledged in the event that the value of the eligible receivables and eligible inventory fall below a defined level.

b. Have an interim and then final order entered in this case in substantially the same form as the order attached as Exhibit E (the "Order").

c. Grant the DIP Lender first priority administrative expense status, as permitted by 11 U.S.C. § 364(c)(1), over all administrative expenses specified in 11 U.S.C. §§503(b) or 507(b), subject to the carve-out described in paragraph 4 of the Order.

d. Seek, by means of an adversary proceeding in form and substance satisfactory to Honeywell, an injunction under Bankruptcy Code §§ 362 and 105 to stay any litigation against Honeywell arising out of the NARCO business (the "Honeywell Actions").

26. The DIP Credit Agreement and Order can be generally outlined as follows:

Borrower. NARCO shall be the borrower and each of the other Debtors shall be a guarantor.

Amount of DIP Loan. The advances to NARCO shall not exceed $20,000,000, exclusive of interest and other fees and charges.

Use of Proceeds: Borrowings by NARCO under the Loan shall be subject to and in accordance with a budget reasonably approved by the DIP Lender.

Term of DIP Loan. Upon satisfaction of the conditions precedent described in the DIP Financing Agreement, the Loan shall be immediately available to NARCO. The DIP Credit Agreement and the Loan shall terminate and payment in full shall be required, after the applicable notice and cure period, upon any of the following events ("NARCO Termination Events"):

(a) Exceeding the Budget, in any month, by more than 10%;

(a) Failure by NARCO to fulfill its obligations under the DIP Financing Agreement;

(b) Failure by RHI to fulfill its obligations under the RHI Agreement;

(c) Entry of an order dismissing this Case or converting it to a case under Chapter 7 of the Bankruptcy Code;

(d) Entry, in this case, of an order appointing a trustee or a responsible officer or an examiner with enlarged powers relating to the operation of NARCO's business (beyond those set forth in Bankruptcy Code §§ 1106(a)(3) or (4)) under Bankruptcy Code § 1106(b);

(e) After the termination of NARCO's exclusive right to file a plan of reorganization or to solicit acceptances to a plan, a plan of reorganization is proposed by NARCO or any other entity that is unsatisfactory to Honeywell in its sole discretion.

In the event that Honeywell elects to terminate its obligations to make any further payments to RHI pursuant to the RHI Agreement, NARCO shall have a period of 90 days in which to obtain replacement DIP Financing, and during such interim period the DIP Lender shall continue to fund under the DIP Commitment and DIP Orders as if no NARCO Termination Event had occurred.

Interest. The DIP Loan shall bear interest on the principal amount at a rate per annum equal to the sum of the LIBO Rate as in effect from time to time plus 2 ½%. Upon termination, the interest rate is increased to the sum of the LIBO Rate as in effect from time to time plus 4%.

Fees. An upfront administrative fee and annual administrative fees, as specified in the Credit Agreement, shall become due and payable on the Termination Date or such earlier date on which such fees become due and payable on account of acceleration or otherwise.

Repayment Terms: Periodic principal and interest payments are not required because all fees and interest payable by the Debtors are accrued and become due and payable upon the occurrence of specified events, as described in the DIP Financing Agreement.

Lien for DIP Financing. The DIP Lender will be granted first priority security interest and liens, superior to all other creditors of the Debtors' estates and all other liens granted by the Debtors, in and upon the Debtors' cash collateral inventory and accounts receivable and the proceeds of such (the "DIP Collateral"). "). Additional collateral must be pledged in the event that the value of the eligible receivables and eligible inventory fall below a defined level. The Debtors must also provide a negative pledge of their remaining property.

Administrative Priority Claim. In addition to the DIP Collateral, the claims of the DIP Lender shall be allowed an administrative priority claim under Bankruptcy Code § 507(b) over all other expenses of administration of the Debtors' cases, excluding professional fees as described in paragraph 4 of the Order.

Administrative Agent: JPMorgan Chase Bank will be providing all administrative services for the Credit Agreement. The rights, remedies and obligations of the Administrative Agent are detailed in the DIP Credit Agreement, the Agency Agreement and other Loan Documents.

Potential Cancellation/Forgiveness of Amounts due under DIP Loan: Upon confirmation and substantial consummation of a plan acceptable to Honeywell in its sole discretion, the Debtors' obligations to repay the Loan shall be cancelled and forgiven. At a minimum, a plan that is acceptable to Honeywell must provide for a channeling injunction pursuant to Section 524(g) of the Bankruptcy Code in form and substance satisfactory to Honeywell in its sole discretion that enjoins any future litigation against Honeywell or any affiliate (or any insurer thereof) in respect of the NARCO Actions and the Honeywell Actions, but Honeywell shall retain sole and absolute discretion and approval with respect to the amount and timing of any payment or other contribution to the Plan made by or on its behalf.

Legal Analysis

27. Section 364(c), of Title 11 of the United States Code, provides:

> (c) If the trustee is unable to obtain unsecured credit allowable under section 503(b)(1) of this title as an administrative expense, the court, after notice and a hearing, may authorize the obtaining of credit or the incurring of debt –
>
> > (1) With priority over any or all administrative expenses of the kind specified in section 503(b) or 507(b) of this title;

(2) Secured by a lien on property of the estate that is not otherwise subject to a lien; or

(3) Secured by a junior lien on property of the estate that is subject to a lien.

28. The Debtors are unable to obtain credit and the DIP Lender is unwilling to lend funds on an unsecured basis allowable under 11 U.S.C. § 503(b)(1).

29. The Debtors are unable to obtain credit on any more favorable basis than that offered by the DIP Lender under the DIP Credit Agreement.

30. The Debtors intend to use the DIP Financing to fund operations in accordance with a Budget attached to the DIP Credit Agreement. The Debtors believe that the DIP Financing will provide them with adequate resources to meet all post-petition obligations as and when they become due.

31. Continued operation of the Debtors' businesses is in the best interest of the Debtors' estates. Specifically, continued operation will preserve the going concern value and provide the prospect of a greater potential recovery for creditors than would an immediate termination and liquidation of the Debtors' businesses. Continued operation of the Debtors' businesses and maintenance of the value of the Debtors' assets can only be accomplished with the use of DIP Facility.

32. The DIP Credit Agreement has been negotiated by the Debtors and Honeywell and the DIP Lender in good faith and at arms length and the Debtors believe that the Loan is in the best interest of the Estate. The terms of the DIP Credit Agreement are fair and reasonable, reflect the Debtors' exercise of prudent business judgment consistent with their fiduciary duties, and are supported by reasonably equivalent value and fair consideration.

COUNT I
INTERIM RELIEF PURSUANT
TO BANKRUPTCY RULE 4001(c)(2)

33. The allegations contained in paragraphs 1 - 32 are incorporated by reference.

34. The Debtors must borrow, on an interim basis, funds sufficient to meet their operating expenses during the next 30 days, pending a final hearing on the Motion.

35. The Debtors anticipate that they may require immediate access to cash, from the Loan, in the amount of $5,500,000.00 (the "Interim Borrowing Amount"). This amount is based upon projected expenses for the month of January, 2002, as reflected on the Budget.

36. The need for immediate access to the Interim Borrowing Amount is based upon the need to restore and maintain proper raw material inventory levels, the potential requirement to provide adequate assurance to utility providers, and the necessity to make certain payments to vendors, employees and other critical persons, all of which is the subject of separate motions pending before this Court.

37. Without the Interim Borrowing Amount, the Debtors will be unable to operate their businesses, maintain the continuity of business and maintain appropriate raw material levels and immediate and irreparable harm will result.

38. Rule 4001(c)(2) of the Federal Rules of Bankruptcy Procedure states that the court "may commence a final hearing on a motion for authority to obtain credit no earlier than 15 days after service of the motion." Fed.R.Bankr.P. 4001(c)(2). At the request of a moving party, the court may conduct an interim hearing to avoid irreparable harm to the estate. Id.

39. As permitted by Bankruptcy Rule 4001(c)(2), the Debtors request a hearing before the 15-day notice period expires in order to avoid immediate and irreparable harm to the estates pending a final hearing.

RELIEF REQUESTED IN COUNT I

WHEREFORE, the Debtors ask the Court to provide the following interim relief:

a. Authorize the Debtors to borrow money and seek other financial accommodations from the DIP Lender on an interim basis up to an aggregate amount of $5,500,000 .00, which is the amount necessary to avoid immediate and irreparable harm, on the terms and conditions stated in the DIP Credit Agreement, pursuant to 11 U.S.C. §§ 364(c)(1) and (c)(2).

b. Enter an interim order in substantially the form as the Order attached as Exhibit E to this Motion;

c. Authorize the Debtors to grant the DIP Lender and/or the Administrative Agent a first priority security interest, pursuant to 11 U.S.C. § 364(c)(2), in the Collateral pursuant to the terms and provisions of the DIP Credit Agreement;

d. Grant the DIP Lender and/or the Administrative Agent first priority administrative expense status, as permitted by 11 U.S.C. § 364(c)(1), over all administrative expenses specified in 11 U.S.C. §§503(b) or 507(b), subject to the carve-out described in paragraph 4 of the Order.

e. Authorize the Debtors to execute those documents necessary to effectuate the transaction contemplated by this Motion and perform their obligations to the DIP Lender imposed thereby;

f. Grant a final hearing on this Motion; and

g. Grant such other and further relief as is just under the circumstances;

COUNT II
FINAL RELIEF PURSUANT
TO BANKRUPTCY RULE 4001(c)(2)

40. The allegations contained in paragraphs 1 - 32 are incorporated by reference.

41. The Debtors filed their Chapter 11 petition to facilitate in the reorganization of their financial affairs. Based upon the Debtors budget, in order to maintain appropriate raw material levels and continue business uninterrupted, it must have Debtor in Possession financing as contemplated by the DIP Credit Agreement.

RELIEF REQUESTED IN COUNT II

WHEREFORE, the Debtors ask the Court to provide the following final relief:

a. Authorize the Debtors to borrow money and seek other financial accommodations from the DIP Lender in the principal amount of $20,000,000, in the form of a line of credit, on the terms and provisions stated in the DIP Credit Agreement, pursuant to 11 U.S.C. §§ 364(c)(2) and (c)(3);

b. Enter a final order in substantially the form as the Order attached as Exhibit E to this Motion;

c. Authorize the Debtors to grant the DIP Lender and/or the Administrative Agent a first priority security interest, pursuant to 11 U.S.C. § 364(c)(2), in the Collateral pursuant to the terms and provisions of the DIP Credit Agreement;

d. Grant the DIP Lender and/or the Administrative Agent first priority administrative expense status, as permitted by 11 U.S.C. § 364(c)(1), over all administrative expenses specified in 11 U.S.C. §§503(b) or 507(b), subject to the carve-out described in paragraph 4 of the Order.

e. Authorize the Debtors to execute those documents necessary to effectuate the transaction contemplated by this Motion and perform their obligations to the DIP Lender imposed thereby;

f. Grant such other and further relief as is just under the circumstances;

Notice

42. No trustee or examiner has been appointed in these chapter 11 cases. The Debtors will serve motion and notice of hearing on the creditors holding the twenty (20) largest unsecured claims against the Debtors on a consolidated basis, counsel for Honeywell and the DIP Lender, counsel for the Administrative Agent and the United States Trustee.

Dated: January 4, 2002

Respectfully submitted,

Paul M. Singer (PA I.D. #00286)
David Ziegler (PA I.D. #37527
Amy M. Tonti (PA I.D. #33468)
REED SMITH LLP
435 Sixth Avenue
Pittsburgh, PA 15219
(412) 288-3114/3026

ATTORNEY FOR DEBTORS
AND DEBTORS IN POSSESSION

See CD

For Balance

Of

Documents