

**UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA**

UNITED STATES OF AMERICA,

Plaintiff,

v.

IMETAL,

DBK MINERALS, INC.,

ENGLISH CHINA CLAYS, PLC, and

ENGLISH CHINA CLAYS, INC.,

Defendants.

Civil No: 99 1018 GK

**MOTION OF THE UNITED STATES TO STRIKE THE MEMORANDUM OF THE
PAPER, ALLIED-INDUSTRIAL, CHEMICAL AND ENERGY WORKERS
INTERNATIONAL UNION IN OPPOSITION TO THE PROPOSED CONSENT
DECREE, AND MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT**

The United States hereby moves to strike the Memorandum that Paper, Allied-Industrial, Chemical and Energy Workers International Union (“PACE”) filed on March 2, 2000 in opposition to the proposed Consent Decree in this matter. PACE is not a party to this lawsuit, nor has the Court granted it permission to intervene or to appear as amicus curiae. It has no right to insert itself into these proceedings sua sponte, and its Memorandum should be struck from the record.

In support of this motion, the United States alleges:

1. On February 3, 2000, PACE filed a motion with this Court for leave to intervene, or in the alternative to appear as amicus curiae, in this proceeding, and “to enter an order permitting PACE to file a memorandum in opposition” to the proposed final judgment. See PACE’s

Motion to Intervene at paragraph 1.

2. Both the United States and defendants opposed PACE's motion.

3. On February 16, 2000, the Court denied PACE's motion, for failure to comply with Local Rule 7.1(m).

4. On February 24, 2000, PACE filed an amended motion to intervene, or in the alternative to appear as amicus curiae. That motion, which is opposed by all parties for the same reasons stated in their initial memoranda in opposition, is pending before this Court.

5. On February 28, 2000, PACE filed a Reply to the oppositions filed to its original motion to intervene, notwithstanding that the motion had been denied.

6. On March 2, 2000, without waiting for a ruling by the Court on its pending motion, PACE filed its Memorandum in Opposition to the Proposed Consent Decree.

7. This Court has not granted PACE permission to intervene or appear as amicus curiae in this proceeding. It denied PACE's initial motion to do so, and PACE's amended motion, in which it seeks the Court's permission to intervene or appear as amicus curiae so that it can file a memorandum in opposition to the proposed decree, is pending.¹ In the meantime, PACE has gone ahead and done what its motion asks this Court for permission to do -- namely, filed its brief in opposition to the proposed final judgment.

8. There is no basis for PACE to file this memorandum without express authorization by the Court. Neither the Federal Rules of Civil Procedure, nor the Local Rules of this Court, provide for people to file briefs in ongoing cases in which they are not parties, intervenors, or

¹The time for the parties to respond to that motion does not run until March 9, 2000, and the United States filed its Opposition just today.

amicus curiae. Nor does the Tunney Act authorize such filings. The Tunney Act, which PACE cites in its Memorandum (at footnote 1), does permit this Court to authorize full or limited participation in this proceeding by interested persons -- but vesting discretion in this Court to permit a person to be heard is one thing; allowing people to take matters into their own hands and insert themselves into ongoing Tunney Act proceedings without the Court's permission is quite another.

For the foregoing reasons, and PACE's refusal to follow local rules and procedures of this Court, the Memorandum of Paper, Allied-Industrial, Chemical and Energy Workers International Union in Opposition to the Proposed Consent Decree, filed March 2, 2000, should be struck from the record in this case. The United States has conferred with counsel for defendants before filing this motion, and defendants do not object to the motion. The United States has also conferred with counsel for PACE, even though it is not a party, an intervenor or amicus, and determined that PACE does not consent to the motion.

Dated: March 8, 2000

Respectfully submitted,

/s/

Patricia G. Chick, Attorney for the United States
D.C. Bar # 266403
U.S. Department of Justice
Antitrust Division
1401 H Street, N.W. Suite 3000
Washington, D.C. 20530
Phone: (202) 307-0946 Fax: (202) 514-9033

UNITED STATES OF AMERICA,
Plaintiff,
v.
IMETAL,
DBK MINERALS, INC.,
ENGLISH CHINA CLAYS, PLC, and
ENGLISH CHINA CLAYS, INC.,
Defendants.

The United States having filed a Motion to Strike the Memorandum of the Paper, Allied-Industrial, Chemical and Energy Workers International Union in Opposition to the Proposed Consent Decree,

ORDERED, that the Memorandum of the Paper, Allied-Industrial, Chemical and Energy Workers International Union in Opposition to the Proposed Consent Decree, which was filed with the Court on March 2, 2000, be and hereby is stricken from the record.

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Copies to:

Patricia G. Chick
U.S. Department of Justice
Antitrust Division
1401 H Street NW, Suite 3000
Washington, DC 20530

George M. Chester, Jr., Esquire
Covington & Burling
1201 Pennsylvania Avenue, NW
Washington, D.C. 20004-7566

Jonathan W. Cuneo, Esquire
THE CUNEO LAW GROUP, P.C.
317 Massachusetts Avenue, NE
Suite 300
Washington, D.C. 20002

CERTIFICATE OF SERVICE

I hereby certify that I caused a copy of the foregoing Motion of the United States to strike the Memorandum of the Paper, Allied-Industrial, Chemical and Energy Workers International Union in Opposition to the Proposed Consent Decree, to be served by first class mail, postage prepaid, this 8th day of March, 2000 on:

George M. Chester, Jr., Esquire
Covington & Burling
1201 Pennsylvania Avenue, NW
Washington, D.C. 20004-7566
Counsel for All Defendants

In addition, I have caused a courtesy copy of this pleading to be sent by first class mail, postage prepaid, this 8th day of March, 2000 to:

Jonathan W. Cuneo, Esquire
THE CUNEO LAW GROUP, P.C.
317 Massachusetts Avenue, NE
Suite 300
Washington, D.C. 20002
Counsel for PACE

_____/s/_____
Patricia G. Chick
D.C. Bar # 266403
Trial Attorney
U.S. Department of Justice
Antitrust Division
1401 H Street, NW, Suite 3000
Washington, D.C. 20530
(202) 307-0946