

**UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA**

UNITED STATES OF AMERICA,	)	
Plaintiff,	)	
	)	
v.	)	Civil No: 99 1018
	)	Filed: 4/26/99
IMETAL,	)	
DBK MINERALS, INC.,	)	
ENGLISH CHINA CLAYS, PLC, and	)	
ENGLISH CHINA CLAYS, INC.,	)	
Defendants.	)	
_____	)	

FINAL JUDGMENT

WHEREAS, plaintiff, the United States of America, and defendants Imetal (“Imetal”), DBK Minerals, Inc. (“DBK”), English China Clays, plc and English China Clays, Inc. (together “ECC”), by their respective attorneys, having consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law herein, and without this Final Judgment constituting any evidence against or an admission by any party with respect to any issue of law or fact herein; and having consented that this Final Judgment shall settle all claims made by plaintiff in its Complaint filed April 26, 1999;

AND WHEREAS, defendants have agreed to be bound by the provisions of this Final Judgment pending its approval by the Court;

AND WHEREAS, the essence of this Final Judgment is, in the event of the acquisition of ECC by Imetal, the prompt and certain divestiture of the identified assets to assure that competition is not substantially lessened;

AND WHEREAS, plaintiff requires defendants to make certain divestitures for the purpose of establishing a viable competitor in the water-washed kaolin, calcined kaolin, ground calcium carbonate (“GCC”), and fused silica businesses specified in the Complaint;

AND WHEREAS, defendants have represented to the plaintiff that the divestitures ordered herein can and will be made and that defendants will later raise no claims of hardship or difficulty as grounds for asking the Court to modify any of the divestiture provisions contained below;

NOW, THEREFORE, before the taking of any testimony, and without trial or adjudication of any issue of fact or law herein, and upon consent of the parties hereto, it is hereby ORDERED, ADJUDGED, AND DECREED as follows:

I.

JURISDICTION

This Court has jurisdiction over each of the parties hereto and over the subject matter of this action. The Complaint states a claim upon which relief may be granted against defendants, as hereinafter defined, under Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18.

II.

DEFINITIONS

As used in this Final Judgment:

A. “Imetal” means defendant Imetal, a French corporation with its headquarters in Paris, France, and includes its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, joint ventures, directors, officers, managers, agents, and employees.

B. “ECC” means defendant English China Clays, plc, a United Kingdom corporation with its headquarters in Reading, England, and its subsidiary, defendant English China Clays, Inc., a Delaware corporation with its headquarters in Roswell, Georgia, and their successors and assigns, and their subsidiaries, divisions, groups, affiliates, partnerships, joint ventures, directors, officers, managers, agents, and employees.

C. “DBK” means DBK Minerals, Inc., a Delaware subsidiary of Imetal, with its headquarters in Dry Branch, Georgia, and includes its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, joint ventures, directors, officers, managers, agents, and employees.

D. “DBK Plant” means the kaolin plant of DBK located in Dry Branch, Georgia.

E. “Kaolin Assets” means the Sandersville # 1 plant of ECC and the Kaolin Reserves inclusive of:

1) all tangible assets used in connection with the business of making, having made, using, packaging, distributing, or selling kaolin from the Sandersville # 1 Plant, including research and development activities, and real property containing the Sandersville # 1 Plant and the Kaolin Reserves; all rights, titles, and interests, including all fee and leasehold rights, all

manufacturing, personal property, inventory, office furniture, fixed assets and fixtures, materials, supplies, on-site and off-site warehouses or storage facilities, and other tangible property or improvements; all licenses, permits and authorizations; all contracts, agreements, leases, commitments and understandings; all customer lists and credit records; and all other records maintained by Imetal or ECC in connection with the operation of the Sandersville # 1 Plant and the Kaolin Reserves;

2) all intangible assets used in connection with the business of making, having made, using, packaging, distributing, or selling kaolin from the Sandersville # 1 Plant, including but not limited to a non-exclusive, transferable, royalty-free license to use all patents, licenses and sublicenses, intellectual property, technical information, know-how, trade secrets, specifications for materials, and quality assurance and control procedures utilized by ECC at the Sandersville # 1 Plant.

F. “DBK Plant Assets” means the DBK Plant inclusive of:

1) all tangible assets used in connection with the business of making, having made, using, packaging, distributing, or selling kaolin, including calcined kaolin, from the DBK Plant, including research and development activities, and real property containing the DBK Plant, Kaolin Reserves and Calcined Kaolin Reserves; all rights, titles, and interests, including all fee and leasehold rights, all manufacturing, personal property, inventory, office furniture, fixed assets and fixtures, materials, supplies, on-site warehouses or storage facilities, and other tangible property or improvements; all licenses, permits and authorizations; all contracts, agreements, leases, commitments and understandings; all customer lists and credit records; and all other records maintained by Imetal in connection with the operation of the DBK Plant;

2) all intangible assets used in connection with the business of making, having made, using, packaging, distributing, or selling kaolin from the DBK Plant, including but not limited to a non-exclusive, transferable, royalty-free license to use all patents, licenses and sublicenses, intellectual property, technical information, know-how, trade secrets, specifications for materials, and quality assurance and control procedures utilized by Imetal or DBK at the DBK Plant.

G. “GCC” means ground calcium carbonate.

H. “GCC Assets” means DBK’s interests in Alabama Carbonates, L.P. (“Alabama Carbonates”), a limited partnership between Carbonate Corporation, a subsidiary of Omya, Inc., and Georgia Marble Stone Corporation (“Georgia Marble”), a subsidiary of DBK, located in Sylacauga, Alabama, which manufactures GCC products in slurry form for use in paper production.

I. “GCC Reserves” means economically recoverable calcium carbonate stone reserves located in the Sylacauga, Alabama area of a minimum pureness quality suitable for slurry products produced and sold to the paper industry.

J. “GCC Reserve Assets” means GCC Reserves in quantities sufficient to ensure that Alabama Carbonates will have available to it 500,000 tons per year of crushed, washed and reduced to size stone suitable to use as feedstock for a period of thirty (30) years. Determination of the amount of GCC Reserves needed to meet this standard shall take into account the amount of any GCC Reserves that any principal or affiliate of Alabama Carbonates (other than the defendants) owns, leases or has an option on, and are available to Alabama Carbonates. In the event that Alabama Carbonates, the purchaser of the GCC Assets, or Georgia Marble’s joint

venturer in Alabama Carbonates and the seller cannot agree on the amount of GCC Reserves that must be divested to meet the standard set forth above or the fair market value of such reserves, such issue may be submitted to binding arbitration in accordance with Section IX of this Final Judgment. .

K. “Fused Silica Assets” means the fused silica plant of Minco, Inc. acquired from Minco Acquisition Corp. in 1998, inclusive of:

1) all tangible assets used in connection with the business of making, having made, using, packaging, distributing, or selling fused silica, including research and development activities; all rights, titles, and interests, including all fee and leasehold rights; all manufacturing, personal property, inventory, office furniture, fixed assets and fixtures, materials, supplies, on-site warehouses or storage facilities, and other tangible property or improvements; all licenses, permits and authorizations; all contracts, agreements, leases, commitments and understandings; all customer lists and credit records; and all other records maintained by Minco in connection with the operation of the fused silica plant divested;

2) all intangible assets used in connection with the business of making, having made, using, packaging, distributing, or selling fused silica, including but not limited to a non-exclusive, transferable, royalty-free license to use all patents, licenses and sublicenses, intellectual property, technical information, know-how, trade secrets, specifications for materials, and quality assurance and control procedures utilized by Minco in the production of fused silica.

L. “Fused Magnesia Assets” means the fused magnesia plant acquired from Minco Acquisition Corp. in 1998, inclusive of:

1) all tangible assets used in connection with the business of making, having made, using, packaging, distributing, or selling fused magnesia, including research and development activities; all rights, titles, and interests, including all fee and leasehold rights; all manufacturing, personal property, inventory, office furniture, fixed assets and fixtures, materials, supplies, on-site warehouses or storage facilities, and other tangible property or improvements; all licenses, permits and authorizations; all contracts, agreements, leases, commitments and understandings; all customer lists and credit records; and all other records maintained by Minco in connection with the operation of the fused magnesia plant divested;

2) all intangible assets used in connection with the business of making, having made, using, packaging, distributing, or selling fused magnesia, including but not limited to a non-exclusive, transferable, royalty-free license to use all patents, licenses and sublicenses, intellectual property, technical information, know-how, trade secrets, specifications for materials, and quality assurance and control procedures utilized by Minco in the production of fused magnesia.

M. “Kaolin Reserves” means kaolin clay suitable for producing kaolin of minimum pureness quality suitable for products produced and sold to the paper industry and at a location and in quantities and qualities sufficient to ensure the operation and viability of the Kaolin Assets or, if divested pursuant to this Final Judgment, the DBK Plant Assets, at full capacity for a period of twenty (20) years.

N. “Calcined Kaolin Reserves” means kaolin clay suitable for producing calcined kaolin of minimum pureness quality suitable for products produced and sold to the paper industry and at a location and in quantities and qualities sufficient to ensure the operation and viability of

the Calcined Assets or, if divested pursuant to this Final Judgment, the calcining assets of the DBK Plant Assets, at full capacity for a period of twenty (20) years.

O. “Calcining Assets” means a plant or plants with two (2) calciners suitable for producing calcined kaolin sold to the paper industry, other than the calcining facilities in Sandersville, Georgia, with a combined capacity of approximately 85,000 to 100,000 tons of calcined kaolin per year, inclusive of:

1) all tangible assets used in connection with the business of making, having made, using, packaging, distributing, or selling calcined kaolin, including research and development activities; real property containing Calcining Assets and Calcined Kaolin Reserves; all rights, titles and interests including all fee and leasehold rights, all manufacturing, personal property, inventory, office furniture, fixed assets and fixtures, materials, supplies, on-site warehouses or storage facilities, and other tangible property or improvements; all licenses, permits and authorizations; all contracts, agreements, leases, commitments and understandings; all customers lists and credit records; and all other records maintained by Imetal or ECC in connection with the operation of the Calcining Assets and the Calcined Kaolin Reserves;

2) all intangible assets used in connection with the business of making, having made, using, packaging, distributing, or selling calcined kaolin from the Calcining Assets and the Calcined Kaolin Reserves, including but not limited to a non-exclusive, transferable, royalty-free license to use all patents, licenses and sublicenses, intellectual property, technical information, know-how, trade secrets, specifications for materials, and quality assurance and control procedures utilized by Imetal or ECC at the Calcining Assets.

P. “Sandersville # 1 Plant” means the water-washed kaolin plant of ECC with a capacity of 850,000 tons annually located in Sandersville, Georgia.

III.

APPLICABILITY

A. The provisions of this Final Judgment apply to the defendants, their successors and assigns, subsidiaries, directors, officers, managers, agents, and employees, and all other persons in active concert or participation with any of them who shall have received actual notice of this Final Judgment by personal service or otherwise.

B. Defendants shall require, as a condition of the sale of all or substantially all of its assets or of lesser business units that include its water-washed kaolin, calcined kaolin, GCC, or fused silica businesses or assets, that the purchaser or purchasers agree to be bound by the provisions of this Final Judgment.

IV.

DIVESTITURES

A. Defendants are hereby ordered and directed, in accordance with the terms of this Final Judgment, within one hundred and eighty (180) calendar days after the filing of the Hold Separate Stipulation and Order in this case, or within five (5) days after notice of entry of the Final Judgment, whichever is later, to sell the Kaolin Assets or at their option the DBK Plant Assets, the Calcining Assets, the GCC Assets and the Fused Silica Assets as viable, ongoing businesses to a purchaser or purchasers acceptable to the United States in its sole discretion and to sell the GCC Reserve Assets to the purchaser of the GCC Assets, to Georgia Marble’s joint venturer in Alabama Carbonates, or to Alabama Carbonates.

B. Defendants are also ordered to enter into, at the option of Alabama Carbonates, a short-term contract to supply Alabama Carbonates with crushed, washed and reduced to size calcium carbonate stone suitable to use as feedstock for slurry products produced and sold to the paper industry in quantities and quality and at terms and conditions substantially similar to those of the existing supply and services agreements between Georgia Marble and Alabama Carbonates and which is acceptable to the United States in its sole discretion. Such contract shall have a term of either three (3) years from the divestiture of the GCC Assets and GCC Reserve Assets or two (2) years from the conclusion of any arbitration permitted by Section IX of this Final Judgment, whichever is longer, and shall be terminable by Alabama Carbonates on six months' notice. The United States, in its sole discretion, may extend the term of the short-term contract for periods of time not to exceed one year in total.

C. Defendants shall use their best efforts to accomplish said divestitures as expeditiously as possible. The United States, in its sole discretion, may extend the time period for any divestitures for an additional period of time not to exceed sixty (60) calendar days.

D. In accomplishing the divestitures ordered by this Final Judgment, defendants shall make known promptly, by usual and customary means, the availability of the Kaolin Assets or at their option the DBK Plant Assets, the Calcining Assets, the GCC Assets, and the Fused Silica Assets. Defendants shall inform any person making an inquiry regarding a possible purchase that the sale is being made pursuant to this Final Judgment and provide such person with a copy of this Final Judgment. Defendants shall also offer to furnish to all prospective purchasers, subject to customary confidentiality assurances, all information regarding these assets customarily provided in a due diligence process, except such information as is subject to attorney-client privilege or

attorney work-product privilege. Defendants shall make such information available to the United States at the same time that such information is made available to any other person. In the event that defendants enter into an agreement to negotiate exclusively with a prospective purchaser for the divestiture of any asset to be divested, defendants' obligations to furnish information to other prospective purchasers may be suspended during such period of exclusive negotiations, provided however, that any such suspension of this obligation shall not affect the time period within which defendants must sell the asset.

E. As customarily provided as part of a due diligence process, defendants shall permit prospective purchasers of the assets to have access to personnel and to make inspection of such assets; access to any and all zoning, building, and other permit documents and information; and access to any and all financial, operational, or other documents and information.

F. Defendants shall not interfere with any negotiations by any purchaser or purchasers to employ any DBK or ECC employee who works at, or whose principal responsibility concerns, any aspect of the Kaolin Assets (or, if appropriate, the DBK Plant Assets), the Calcining Assets, the GCC Assets, the GCC Reserve Assets or the Fused Silica Assets.

G. Defendants shall not take any action, direct or indirect, that would impede in any way the operation of any business connected with the assets to be divested, or take any action, direct or indirect, that would impede the divestiture of any asset.

H. Defendants shall warrant to any and all purchasers of the Kaolin Assets, the DBK Plant Assets, the Calcining Assets, the GCC Assets and the Fused Silica Assets that each existing asset will be operational on the date of sale.

I. Unless the United States otherwise consents in writing, the divestitures pursuant to Section IV, whether by defendants or by trustee appointed pursuant to Section VI of this Final Judgment, shall include the entire Kaolin Assets (or, if appropriate, the DBK Plant Assets), Calcining Assets, GCC Assets, GCC Reserve Assets and Fused Silica Assets, or such other assets as may be substituted or additionally included by the Trustee under Section VI of the Final Judgment. Such divestitures shall be accomplished by selling or otherwise conveying the assets to a purchaser or purchasers in such a way as to satisfy the United States, in its sole discretion, that the assets can and will be used by the purchaser as viable ongoing businesses, engaged in the water-washed kaolin, calcined kaolin for papermaking, GCC for papermaking or fused silica businesses. The divestitures, whether pursuant to Section IV or Section VI of this Final Judgment, shall be made to a purchaser or purchasers who, as demonstrated to the United States's sole satisfaction: 1) has the capability and intent of competing effectively in the water-washed kaolin, calcined kaolin for papermaking, GCC for papermaking or fused silica businesses; 2) has or soon will have the managerial, operational, and financial capability to compete effectively in the water-washed kaolin, calcined kaolin for papermaking, GCC for papermaking or fused silica businesses; and 3) is not hindered by the terms of any agreement between the purchaser and defendants which gives defendants the ability unreasonably to raise the purchaser's costs, lower the purchaser's efficiency, or otherwise interfere with the ability of the purchaser to compete.

J. Defendants shall warrant to the purchaser of the Kaolin Assets, the Calcining Assets, the GCC Assets, the GCC Reserve Assets, the Fused Silica Assets and the Fused Magnesia Assets that there are no material defects in the environmental, zoning or other permits

pertaining to the operation of each asset, and that with respect to the Kaolin Assets, the Calcining Assets, the GCC Assets, the GCC Reserve Assets, the Fused Silica Assets and the Fused Magnesia Assets, defendants will not undertake, directly or indirectly, following the divestiture of any such asset, any challenges to the environmental, zoning, or other permits pertaining to the operation of the assets.

K. In the event that there is a divestiture by either the defendants or the trustee of the DBK Plant Assets, including at least two calciners with capacity of approximately 85,000 to 100,000 tons of calcined kaolin per year, such divestiture shall satisfy the requirements of this Final Judgment to divest the Kaolin Assets and the Calcining Assets.

V.

NOTICE OF PROPOSED DIVESTITURES

Within two (2) business days following execution of a definitive agreement, contingent upon compliance with the terms of this Final Judgment, to effect, in whole or in part, any proposed divestiture pursuant to Section IV or VI of this Final Judgment, defendants or the trustee, whichever is then responsible for effecting the divestiture, shall notify the United States of the proposed divestiture. If the trustee is responsible, it shall similarly notify defendants. The notice shall set forth the details of the proposed transaction and shall list the name, address, and telephone number of each person not previously identified who offered to, or expressed an interest in or a desire to, acquire any ownership interest in the business to be divested that is the subject of the binding contract, together with full details of same. Within fifteen (15) calendar days of receipt by the United States of a divestiture notice, the United States, in its sole discretion, may request from defendants, the proposed purchaser, or any other third party

additional information concerning the proposed divestiture and the proposed purchaser.

Defendants and the trustee shall furnish any additional information requested from them within fifteen (15) calendar days of the receipt of the request, unless the parties shall otherwise agree.

Within thirty (30) calendar days after receipt of the notice or within twenty (20) calendar days after the United States has been provided the additional information requested from the defendants, the proposed purchaser, and any third party, whichever is later, the United States shall provide written notice to defendants and the trustee, if there is one, stating whether or not it objects to the proposed divestiture. If the United States provides written notice to defendants (and the trustee, if applicable) that it does not object, then the divestiture may be consummated, subject only to defendants' limited right to object to the sale under Section VI(B) of this Final Judgment. Upon objection by the United States, a divestiture proposed under Section IV or Section VI may not be consummated. Upon objection by defendants under the provision in Section VI(B), a divestiture proposed under Section VI shall not be consummated unless approved by the Court.

VI.

APPOINTMENT OF TRUSTEE

A. In the event that defendants have not divested any of the Kaolin Assets or DBK Plant Assets, Calcining Assets, GCC Assets, the GCC Reserve Assets, or Fused Silica Assets within the time period specified in Section IV of this Final Judgment, the Court shall appoint, on application of the United States, a trustee selected by the United States, to effect the divestiture of each such asset. The trustee shall have the right, in its sole discretion, to sell either the DBK Plant Assets or the Kaolin Assets. The trustee shall have the right, in its sole discretion, to additionally

include in the sale of the Fused Silica Assets the Fused Magnesia Assets. The trustee shall also have the right, in its sole discretion, and upon notice to the defendants and approval of the United States, to require the divestiture of additional related assets reasonably necessary to divest the Kaolin Assets, the Calcining Assets, and the Fused Silica Assets as viable stand-alone businesses including, but not limited to, sales and marketing facilities and organizations, research and development facilities and organizations. In any such event, all of the obligations of the defendants under the Final Judgment shall apply to the added assets as well.

B. After the appointment of a trustee becomes effective, only the trustee shall have the right to divest any assets. The trustee shall have the power and authority to accomplish any and all divestitures of assets at the best price then obtainable upon a reasonable effort by the trustee, subject to the provisions of Sections IV and VI of this Final Judgment, and shall have such other powers as the Court shall deem appropriate. Subject to Section VI(C) of this Final Judgment, the trustee shall have the power and authority to hire at the cost and expense of the defendants any investment bankers, attorneys, or other agents reasonably necessary in the judgment of the trustee to assist in the divestitures, and such professionals and agents shall be accountable solely to the trustee. The trustee shall have the power and authority to accomplish the divestitures at the earliest possible time to a purchaser or purchasers acceptable to the United States, in its sole discretion, and shall have such other powers as this Court shall deem appropriate. Defendants shall not object to a divestiture by the trustee on any ground other than the trustee's malfeasance. Any such objections by defendants must be conveyed in writing to the United States and the trustee within ten (10) calendar days after the trustee has provided the notice required under Section V of this Final Judgment.

C. The trustee shall serve at the cost and expense of defendants, on such terms and conditions as the Court may prescribe, and shall account for all monies derived from the sale of each asset sold by the trustee, and all costs and expenses so incurred. After approval by the Court of the trustee's accounting, including fees for its services and those of any professionals and agents retained by the trustee, all remaining money shall be paid to defendants and the trust shall then be terminated. The compensation of such trustee and of any professionals and agents retained by the trustee shall be reasonable in light of the value of the divested assets and based on a fee arrangement providing the trustee with an incentive based on the price and terms of the divestiture, and the speed with which it is accomplished.

D. Defendants shall use their best efforts to assist the trustee in accomplishing the required divestitures, including their best efforts to effect all necessary regulatory approvals. The trustee and any consultants, accountants, attorneys, and other persons retained by the trustee shall have full and complete access to the personnel, books, records, and facilities of each of the businesses to be divested, and defendants shall develop such financial or other information relevant to the businesses to be divested customarily provided in a due diligence process as the trustee may reasonably request, subject to customary confidentiality assurances. Defendants shall permit prospective purchasers of each of the Kaolin Assets, the Calcining Assets, the GCC Assets, the GCC Reserve Assets, or the Fused Silica Assets, or other assets being sold by the trustee, to have reasonable access to personnel and to make such inspection of physical facilities and any and all financial, operational or other documents and other information as may be relevant to the divestitures required by this Final Judgment.

E. After its appointment, the trustee shall file monthly reports with the parties and the Court setting forth the trustee's efforts to accomplish the divestitures ordered under this Final Judgment; provided, however, that to the extent such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court. Such reports shall include the name, address and telephone number of each person who, during the preceding month, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in any of the assets to be divested, and shall describe in detail each contact with any such person during that period. The trustee shall maintain full records of all efforts made to sell the assets to be divested.

F. If the trustee has not accomplished such divestitures within six (6) months after its appointment, the trustee thereupon shall file promptly with the Court a report setting forth (1) the trustee's efforts to accomplish the required divestitures, (2) the reasons, in the trustee's judgment, why the required divestitures have not been accomplished, and (3) the trustee's recommendations; provided, however, that to the extent such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court. The trustee shall at the same time furnish such report to the parties, who shall each have the right to be heard and to make additional recommendations consistent with the purpose of the trust. The Court shall enter thereafter such orders as it shall deem appropriate in order to carry out the purpose of the trust which may, if necessary, include extending the trust and the term of the trustee's appointment for a period of time requested by the United States.

VII.

AFFIDAVITS

A. Within twenty (20) calendar days of the filing of the Hold Separate Stipulation and Order in this matter and every thirty (30) calendar days thereafter until the divestitures have been completed pursuant to Section IV or VI of this Final Judgment, defendants shall deliver to the United States an affidavit as to the fact and manner of compliance with Section IV or VI of this Final Judgment. Each such affidavit shall include, *inter alia*, the name, address, and telephone number of each person who, at any time after the period covered by the last such report, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in any of the assets to be divested, and shall describe in detail each contact with any such person during that period. Each such affidavit shall also include a description of the efforts that defendants have taken to solicit a buyer for any and all of the Kaolin Assets or DBK Plant Assets, the Calcining Assets, the GCC Assets, the GCC Reserve Assets, or the Fused Silica Assets and to provide required information to prospective purchasers, including the limitations, if any, on such information. Assuming the information set forth in the affidavit is true and complete, any objection by the United States to information provided by defendants, including limitations on information, shall be made within fourteen (14) days of receipt of such affidavit.

B. Within twenty (20) calendar days of the filing of the Hold Separate Stipulation and Order in this matter, defendants shall deliver to plaintiff an affidavit which describes in detail all actions defendants have taken and all steps defendants have implemented on an on-going basis to preserve the Kaolin Assets, the DBK Plant Assets, the Calcining Assets, the GCC Assets, and the Fused Silica Assets pursuant to Section VIII of this Final Judgment and the Hold Separate

Stipulation and Order entered by the Court. The affidavit also shall describe, but not be limited to, defendants' efforts to maintain and operate each of the Kaolin Assets, the DBK Plant Assets, the Calcining Assets, the GCC Assets, and the Fused Silica Assets as an active competitor, maintain the management, staffing, sales, marketing and pricing of each asset, and maintain each asset in operable condition at current capacity configurations. Defendants shall deliver to plaintiff an affidavit describing any changes to the efforts and actions outlined in defendants' earlier affidavit(s) filed pursuant to this Section within fifteen (15) calendar days after the change is implemented.

C. Until one year after such divestiture has been completed, defendants shall preserve all records of all efforts made to preserve the Kaolin Assets, the DBK Plant Assets, the Calcining Assets, the GCC Assets, and the Fused Silica Assets and to effect the ordered divestitures.

VIII.

FIREWALL

A. During the period of any supply contract for dry processed calcium carbonate between Imetal and Alabama Carbonates, Imetal shall construct and maintain in place a firewall that prevents any information about the purchaser's requirements, purchases, or future requirements for dry processed calcium carbonate from flowing to any other Imetal employee involved in the production, sale or marketing of GCC for paper by Imetal or the former ECC. To implement this provision, Imetal is required to identify those employees of Imetal or of the former ECC who are involved in the production, sale or marketing of GCC for paper, and all such identified employees shall be prohibited from receiving any information about Alabama Carbonates' requirements, purchases, or future requirements for dry processed calcium carbonate.

All other employees of Imetal or the former ECC who receive any such information shall be prohibited from passing on such information to the identified employees.

B. Imetal shall, within ten (10) business days of the entry of the Hold Separate Stipulation and Order, submit to the Department of Justice a document setting forth in detail its procedure to effect compliance with this provision. The Department of Justice shall have the sole discretion to approve Imetal's compliance plan and shall notify Imetal within three (3) business days whether it approves of or rejects Imetal's compliance plan. In the event that Imetal's compliance plan is rejected, the reasons for the rejection shall be provided to Imetal and Imetal shall be given the opportunity to submit, within two (2) business days of receiving the notice of rejection, a revised compliance plan. If the parties cannot agree on a compliance plan within an additional three (3) business days, a plan will be devised by the Department of Justice and implemented by Imetal.

IX.

ARBITRATION

A. In the event that Alabama Carbonates, the purchaser of the GCC Assets, or Georgia Marble's joint venturer in Alabama Carbonates and the seller of the GCC Reserve Assets cannot agree on the amount of GCC Reserves that need to be divested or the fair market value of such reserves, any of those persons may elect to settle the issue through binding arbitration. The seller shall enter into a reasonable arbitration agreement, acceptable to the United States in its sole discretion, to govern such arbitration. The agreement shall provide that:

- 1) Any controversy to be settled by arbitration shall be submitted to the American Arbitration Association;

- 2) The arbitrator appointed shall be one acceptable to the United States in its sole discretion;
- 3) The United States shall provide its assistance to the arbitrator and may submit evidence;
- 4) Rules and procedures shall be adopted to ensure that the controversy shall be completed within four months from the appointment of the arbitrator and any award made pursuant to any arbitration shall be final and binding on the parties to the arbitration.

B. When any such controversy is submitted to arbitration, defendants shall promptly notify the United States in writing and shall promptly serve a copy of the final award on the United States.

C. If any such controversy is submitted to arbitration, the period of time provided by Section IV(A) of this Final Judgment for the defendants to accomplish the divestiture required shall be tolled during the period of the arbitration. Following the conclusion of such arbitration, the United States shall, if necessary, extend the period of time provided in Section IV(A), to provide the defendants up to sixty (60) days in which to complete the divestiture.

X.

HOLD SEPARATE ORDER

Until the divestitures required by the Final Judgment have been accomplished, defendants shall take all steps necessary to comply with the Hold Separate Stipulation and Order entered by this Court. Defendants shall take no action that would jeopardize the sale of the Kaolin Assets, the DBK Plant Assets, the Calcining Assets, the GCC Assets, the Fused Silica Assets, or the Fused Magnesia Assets.

XI.

FINANCING

Defendants are ordered and directed not to finance all or any part of any acquisition made pursuant to Sections IV or VI of this Final Judgment.

XII.

COMPLIANCE INSPECTION

For purposes of determining or securing compliance with the Final Judgment and subject to any legally recognized privilege, from time to time:

A. Duly authorized representatives of the United States Department of Justice, upon written request of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to defendants made to their principal offices, shall be permitted:

- 1) Access during office hours of defendants to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of defendants, who may have counsel present, relating to the matters contained in this Final Judgment; and

- 2) Subject to the reasonable convenience of defendants and without restraint or interference from them, to interview, either informally or on the record, their officers, employees, and agents, who may have counsel present, regarding any such matters.

B. Upon the written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, defendants shall submit such written reports, under oath if requested, with respect to any matter contained in the Final Judgment and the Hold Separate Stipulation and Order.

C. No information or documents obtained by the means provided in Sections VI or VII of this Final Judgment shall be divulged by a representative of the United States to any person other than a duly authorized representative of the Executive Branch of the United States, except in the course of legal proceedings to which the United States is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If at the time information or documents are furnished by defendants to the United States, defendants represent and identify in writing the material in any such information or documents as to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and defendants mark each pertinent page of such material, "Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure," then ten (10) calendar days' notice shall be given by the United States to defendants prior to divulging such material in any legal proceeding (other than a grand jury proceeding) to which defendants are not a party.

XIII.

RETENTION OF JURISDICTION

Jurisdiction is retained by this Court for the purpose of enabling any of the parties to this Final Judgment to apply to this Court at any time for such further orders and directions as may be necessary or appropriate for the construction or carrying out of this Final Judgment, for the modification of any of the provisions hereof, for the enforcement of compliance herewith, and for the punishment of any violations hereof.

XIV.

TERMINATION

Unless this Court grants an extension, this Final Judgment will expire upon the tenth anniversary of the date of its entry.

XV.

PUBLIC INTEREST

Entry of this Final Judgment is in the public interest.

Dated _____, 1999.

United States District Judge