

**UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA**

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

HOLD SEPARATE STIPULATION AND ORDER

It is hereby stipulated and agreed by and between the undersigned parties, subject to approval and entry by the Court, that:

I.

DEFINITIONS

As used in this Hold Separate Stipulation and Order:

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 customers 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 customers 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 the Final Judgment in this case.

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 Imetal 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 the Final Judgment in this case, 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 the Final Judgment in this case, 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, 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.

Q. “ECC Kaolin Business” means the entire United States water-washed and calcined kaolin business acquired by Imetal from ECC, including the operation of ECC’s Sandersville # 1 Plant, Sandersville # 2 Plant and the Wrens Plant

R. “Hold Separate Assets” means the ECC Kaolin Business, the Fused Silica Assets and the Fused Magnesia Assets collectively.

II.

OBJECTIVES

The Final Judgment filed in this case is meant to ensure Imetal’s prompt divestiture of the Kaolin Assets, Calcining Assets, GCC Assets, GCC Reserve Assets, and Fused Silica Assets for the purposes of creating viable competitors in the development, production and sale of each of these products and to remedy the effects that the United States alleges would otherwise result

from Imetal's proposed acquisition of ECC. This Hold Separate Stipulation and Order ensures the timely and complete transfer of these assets and maintains the separation of the ECC and Imetal water-washed kaolin, calcined kaolin, GCC for papermaking, fused silica and fused magnesia businesses as independent, viable competitors until the required divestitures are complete.

III.

JURISDICTION AND VENUE

The Court has jurisdiction over the subject matter of this action and over each of the parties hereto, and venue of this action is proper in the United States District Court for the District of Columbia.

IV.

COMPLIANCE WITH AND ENTRY OF FINAL JUDGMENT

A. The parties stipulate that a Final Judgment in the form attached hereto may be filed with and entered by the Court, upon the motion of any party or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act (15 U.S.C. § 16), and without further notice to any party or other proceedings, provided that the United States has not withdrawn its consent, which it may do at any time before the entry of the proposed Final Judgment by serving notice thereof on defendants and by filing that notice with the Court.

B. Defendants shall abide by and comply with the provisions of the proposed Final Judgment, pending the Judgment's entry by the Court, or until expiration of time for all appeals of any Court ruling declining entry of the proposed Final Judgment, and shall, from the date of the

signing of this Stipulation by the parties, comply with all the terms and provisions of the proposed Final Judgment as though the same were in full force and effect as an order of the Court.

C. This Stipulation shall apply with equal force and effect to any amended proposed Final Judgment agreed upon in writing by the parties and submitted to the Court.

D. In the event (1) the United States has withdrawn its consent, as provided in Section IV(A) above, or (2) the proposed Final Judgment is not entered pursuant to this Stipulation, the time has expired for all appeals of any Court ruling declining entry of the proposed Final Judgment, and the Court has not otherwise ordered continued compliance with the terms and provisions of the proposed Final Judgment, then the parties are released from all further obligations under this Stipulation, and the making of this Stipulation shall be without prejudice to any party in this or any other proceeding.

E. Defendants represent that the divestitures ordered in the proposed Final Judgment can and will be made, and that defendants will later raise no claim of hardship or difficulty as grounds for asking the Court to modify any of the divestiture provisions contained therein.

V.

HOLD SEPARATE PROVISIONS

A. Imetal shall preserve, maintain, and operate the Hold Separate Assets as independent competitive businesses, with management, research, development, production, sales and operations of such assets held entirely separate, distinct and apart from those of Imetal. Imetal shall not coordinate its production, marketing or sale of any products with that of any of the Hold Separate Assets, except to the limited extent provided in Section V below. Within

fifteen (15) days of the entering of this Order, Imetal will inform the United States of the steps taken to comply with this provision.

B. Imetal shall not influence or attempt to influence any operational or financial decision of the Alabama Carbonates Limited Partnership (“Joint Venture”) and shall not obtain, directly or indirectly, any information, except (1) information that is clearly necessary for Imetal to comply with federal, state or local laws and regulations, and (2) information that is clearly necessary for Imetal to carry out its obligations under the Joint Venture or under any supply or services agreement with the Joint Venture. Imetal shall cause its Georgia Marble Stone Corporation members of the Alabama Carbonates Management Committee to resign and shall assign its right to appoint Committee members to Carbonate Corporation pending divestiture of the GCC Assets. Within ten (10) working days of the entering of this Order, Imetal will inform the United States of the steps taken to comply with this provision.

C. Imetal shall take all steps necessary to ensure that each of the Hold Separate Assets will be maintained and operated as independent, ongoing, economically viable and active competitors in the development, production and sale of their respective products, that the management of the Hold Separate Assets will not be influenced by Imetal, and that the books, records, competitively sensitive sales, marketing and pricing information, and decision-making associated with the Hold Separate Assets, including the performance and decision-making functions regarding internal research and development, sales and pricing, will be kept separate and apart from the business of Imetal. Imetal’s influence over the Hold Separate Assets shall be limited to that necessary to carry out Imetal’s obligations under this Order and the Final

Judgment. Imetal may, subject to the use of firewalls acceptable to the United States, plan the post-divestiture integration of its DBK and ECC kaolin businesses.

D. Imetal shall provide and maintain sufficient working capital to maintain the Hold Separate Assets as viable, ongoing businesses, consistent with current business plans.

E. Imetal shall provide and maintain sufficient lines and sources of credit to maintain the Hold Separate Assets as viable, ongoing businesses.

F. Imetal shall maintain, on behalf of the Hold Separate Assets, in accordance with sound accounting practices, separate, true and complete financial ledgers, books and records reporting the profit and loss and liabilities of each of the businesses on a monthly and quarterly basis.

G. Imetal shall use all reasonable efforts to maintain and increase the sales of each of the Hold Separate Assets to be divested, such as maintaining at 1998 or previously approved levels for 1999, whichever are higher, internal research and development funding, sales, marketing, and support for the Hold Separate Assets.

H. Imetal shall not sell, lease, assign, transfer or otherwise dispose of, or pledge as collateral for loans, assets that may be required to be divested pursuant to the Final Judgment.

I. Imetal shall preserve the assets that may be required to be divested pursuant to the Final Judgment in a state of repair equal to their state of repair as of the date of this Order, ordinary wear and tear excepted.

J. Except in the ordinary course of business or as is otherwise consistent with this Order, defendants shall not transfer or terminate, or alter, to the detriment of any employee, any current employment or salary agreements for any employee who, on the date of entry of this

Order, works for any of the Hold Separate Assets. Defendants shall not solicit to hire any individual who, on the date of entry of this Order, was an employee of any of the assets to be divested under the Final Judgment. .

K. Within ten (10) days of the filing of this Hold Separate Stipulation and Order, defendants shall appoint one or more persons who shall have complete managerial responsibility for the Hold Separate Assets, subject to the provisions of this Order and the Final Judgment, until such time as this Order is terminated. In the event that such manager(s) is unable to perform his or her duties, Imetal shall appoint from the current management of the Hold Separate Assets, subject to the plaintiff's approval, a replacement within ten (10) working days. Should Imetal fail to initially appoint a manager acceptable to the United States, or fail to appoint any replacement required within ten (10) working days, the United States shall appoint the manager.

L. Imetal shall take no action that would interfere with the ability of any trustee appointed pursuant to the Final Judgment to complete the divestiture pursuant to the Final Judgment to a suitable purchaser.

M. This Order shall remain in effect as to the ECC Kaolin Business until the divestiture of the Kaolin Assets or DBK Plant Assets required by the Final Judgment is complete, or until further Order of the Court. This Order shall remain in effect as to the Fused Silica Assets and Fused Magnesia Assets until the divestiture of the Fused Silica Assets required by the Final

Judgment is complete, or until further Order of the Court.

Dated: April 26 , 1999

FOR PLAINTIFF UNITED STATES
OF AMERICA:

FOR DEFENDANTS IMETAL and
DBK MINERALS, INC.:

/s/

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IT IS SO ORDERED by the Court, this _____ day of April, 1999.

United States District Judge