

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

C-E Minerals, Inc.,

Plaintiff and Counterclaim
Defendant,

vs.

CARBO Ceramics Inc.,

Defendant and Counterclaim
Plaintiff.

Civil Action No. 1:11-CV-2574-JOF

ANSWER AND COUNTERCLAIMS

Defendant CARBO Ceramics Inc. (“CARBO”) files the following Answer and Counterclaim to the Complaint for Injunctive and Declaratory Relief filed by C-E Minerals, Inc. (“C-E”). Unless specifically admitted, CARBO denies each and every allegation in Plaintiff’s Complaint.

1. Paragraph 1 is admitted only to the extent that Plaintiff purports to seek injunctive and declaratory relief under federal antitrust laws and Georgia and Alabama law. Defendant denies that Plaintiff is entitled to the relief it seeks. The remaining allegations in this paragraph are conclusions of law, to which no response is required, and they are therefore denied. To the extent they are construed as factual, Defendant denies them.

2. On information and belief, CARBO admits the allegations in

paragraph 2.

3. In response to the allegations in paragraph 3, CARBO admits that it is a Delaware corporation. CARBO further admits that it is registered to do business in Georgia. CARBO further admits that its registered agent in Georgia is CT Corporation System and that its registered agent is located at 1201 Peachtree Street, N.E., Atlanta, Georgia 30361. CARBO further admits that it owns and operates a facility in Eufaula, Alabama that it uses for, among other things, the production of ceramic proppants. CARBO further admits that ceramic proppants can be used in the hydraulic fracturing process used in the production of oil and natural gas. CARBO denies all other statements and allegations in this paragraph.

4. The allegations in paragraph 4 assert legal conclusions as to which no response is required. To the extent a response is required, CARBO denies the allegations in paragraph 4 for lack of information sufficient to form a belief as to the truth or falsity of the allegations.

5. The allegations in paragraph 5 assert legal conclusions to which no response is required. To the extent a response is required, CARBO denies the allegations in paragraph 5 for lack of information sufficient to form a belief as to the truth or falsity of the allegations.

6. CARBO admits that it entered into a Raw Material

Requirements Agreement, made as of June 1, 2003 (the “Agreement”), between C-E Minerals Inc. and CARBO. CARBO further admits that Exhibit A to Plaintiff’s Complaint includes a copy of the 2003 Agreement between CARBO and C-E but omits subsequent amendments to the Agreement. CARBO denies all other statements and allegations in this paragraph.

7. CARBO admits that Section 1 of the Agreement states: “The term of this Agreement shall be seven (7) years commencing January 1, 2004 and ending December 31, 2010.”

8. CARBO admits that Section 2(A) of the Agreement states: “During the term of this Agreement, C-E shall make available for sale to CARBO each year and CARBO shall have the right to purchase from C-E each year up to 200,000 net tons of the Product.” CARBO further admits that the Agreement defines the Product to mean “kaolin, a naturally occurring mineral more particularly described (and meeting the specifications set forth) in Appendix A hereto.” CARBO further admits that Section 2(B) of the Agreement states: “In each year during the term of this Agreement, subject to Paragraph 2.A hereof, CARBO shall be obligated to purchase from C-E, as a minimum, seventy percent (70%) of its actual annual requirements of the Product during such year for its operations in

Eufaula, Alabama.” CARBO denies all other statements and allegations in this paragraph.

9. CARBO admits that Section 2(C) of the Agreement states, in part, that “CARBO may specify that up to 25% of the Product provided pursuant to this Agreement come from the Andersonville local low Alumina ores (approximately 47% Alumina). For the quantity of ores provided from Andersonville from time to time C-E shall provide sufficient quantities of ores from other locations to enable CARBO to blend the ores to achieve the specifications set out on Appendix A.” CARBO further admits that some of the Product that C-E supplied to CARBO’s Eufaula, Alabama facility during the term of the Agreement came from mining facilities owned and operated by C-E in Alabama and some of the Product came from C-E’s Georgia mines.

10. Admitted.

11. Admitted.

12. CARBO admits the allegations in paragraph 12. CARBO further avers that the market for ceramic proppants is worldwide and in this market, CARBO faces intense competition from various manufacturers, including Saint-Gobain Proppants, Mineracao Curimbaba, and a growing number of manufacturers in China and around the world. CARBO further

avers that its ceramic proppant products compete with sand-based proppants manufactured by a number of companies, including Unimin Corp., Badger Mining Corp., Fairmount Minerals Limited, Inc., Ogelbay-Norton Company, Hexion Specialty Chemicals, Inc., and Santrol.

13. CARBO admits that market prices for ceramic proppants have sometimes increased as demand and some costs of production have risen. CARBO further admits that it is eventually able to sell out its inventory. CARBO denies that any customer, large or small, is unable to purchase quantities needed to compete for jobs requiring product or has few choices of ceramic proppant suppliers. CARBO denies the remaining allegations of paragraph 13.

14. Admitted.

15. CARBO admits that, under Section 1 of the Agreement, the term of the Agreement ended on December 31, 2010. CARBO further admits that under Section 5 of the Agreement, CARBO and C-E agreed that the parties' mutual covenants not to compete would continue for three years after expiration of the Agreement. CARBO denies all other statements and allegations in this paragraph.

16. CARBO admits that C-E became a potential competitor of CARBO with respect to the sale and manufacture of ceramic proppants after

C-E signed the Agreement with CARBO. CARBO denies that C-E was a potential or actual competitor of CARBO with respect to the sale or manufacture of ceramic proppants before C-E and CARBO entered into the Agreement. CARBO admits that C-E has access to kaolin and a kiln, but denies the remaining allegations in paragraph 16 for lack of knowledge or information sufficient to form a belief as to the truth or falsity of the allegations.

17. The allegations in paragraph 17 are not directed at CARBO and require no response from CARBO. In the event a response is required, CARBO denies the allegations in paragraph 17 for lack of knowledge or information sufficient to form a belief as to the truth or falsity of the allegations.

18. CARBO admits that Section 5 of the Agreement states:

5. NON-COMPETE

Without intending to limit the legal rights of either party, CARBO and C-E agree as follows: that CARBO will not enter into direct competition with C-E in the manufacture of calcined clay for general sale to refractory or other related industry, and that C-E will not enter into competition with CARBO in the manufacture or sale of ceramic proppants. This agreement will endure for 3 years after the expiration of this contract.

CARBO denies the remaining allegations in paragraph 18.

19. CARBO denies the allegations of paragraph 19.

20. CARBO admits the Agreement occurs in interstate commerce and, except as so admitted, CARBO denies the allegations of paragraph 20.

21. CARBO admits that, in a July 15, 2006 letter to Mark Edmunds at CARBO, Bernd Durstberger of C-E stated, in part, “C-E’s position that Paragraph 5 of the current supply agreement as a practical matter is of no consequence and has not been in force since the inception of the supply agreement” and “that C-E Minerals does not intend to abide by the covenant appearing in aforementioned paragraph.” CARBO further admits that, in an August 7, 2006 letter, Durstberger wrote to Edmunds that “we believe that Paragraph 5 is unenforceable, has not been in force as a practical matter since the inception of the agreement, and as such we do not intend to abide by the covenant contained in this particular paragraph,” but offered to consider further CARBO’s position that the rights and obligations set forth in Section 5 of the Agreement are valid, legal and enforceable. CARBO denies all other statements and allegations in this paragraph.

22. CARBO admits that the quoted excerpt represents a portion of the text of a letter, dated July 21, 2006, from Mark L. Edmunds, Vice President, Operations for CARBO, to Bernd Durstberger, C-E’s Chief Operating Officer. CARBO avers that, in addition to the portion quoted in

Plaintiff's Complaint, Edmunds wrote:

Thus, I take your statement in the second paragraph of your letter that C-E Minerals “. . . will of course honor our contractual obligations under the existing supply agreement . . .” at face value and fully expect C-E to honor its commitments. I, too, look forward to C-E performing to both the letter and spirit of the contract for the remainder of the contract term, as will CARBO Ceramics.

I have enjoyed our discussion of these past few months, and look forward to further dialogue in the future.

CARBO denies all other statements and allegations in this paragraph.

23. CARBO admits that Plaintiff purports to attach copies of correspondence between Bernd Durstberger of C-E and Mark Edmunds of CARBO as Exhibit B to their Complaint.

24. CARBO admits that there is an actual controversy between the parties regarding C-E's non-compliance with its contractual obligations under Section 5 of the Agreement and, except as so admitted, CARBO denies the allegations in paragraph 24.

25. CARBO denies the allegations of paragraph 25.

26. CARBO denies the allegations of paragraph 26.

27. CARBO admits that Section 5 of the Agreement states, in part: “This agreement will endure for 3 years after the expiration of this contract.”

Except as so admitted, CARBO denies the allegations of paragraph 27.

28. CARBO denies the allegations of paragraph 28.

29. CARBO denies the allegations of paragraph 29.

30. CARBO denies the allegations in paragraph 30 for lack of knowledge or information sufficient to form a belief as to the truth or falsity of the allegations.

31. CARBO admits that paragraph 31 purports to summarize some of the relief sought by C-E, but CARBO denies that C-E is entitled to such relief.

32. CARBO admits that, in Section 15 of the Agreement, C-E and CARBO agreed that “This Agreement and the language used herein shall be construed and enforced in accordance with the laws of the State of Alabama.” The remaining allegations in paragraph 32 assert legal conclusions to which no response is required. To the extent a response is required, CARBO denies the allegations of paragraph 32.

33. Paragraph 33 asserts legal conclusions to which no response is required. To the extent a response is required, CARBO denies the allegations of paragraph 33.

34. CARBO denies the allegations of paragraph 34.

35. CARBO denies the allegations of paragraph 35.

36. CARBO admits that, in Section 15 of the Agreement, C-E and CARBO agreed that “This Agreement and the language used herein shall be construed and enforced in accordance with the laws of the State of Alabama.” CARBO further admits that CARBO and C-E selected Alabama law to apply to the Agreement. CARBO further admits that paragraph 36 purports to summarize some of the relief sought by C-E, but CARBO denies that C-E is entitled to such relief. Except as so admitted, CARBO denies the allegations of paragraph 36.

37. CARBO admits that, except for an error in punctuation, the quoted excerpt represents a portion of the current text of Ala. Code § 8-10-1. CARBO denies the remaining allegations in paragraph 37.

38. Paragraph 38 asserts legal conclusions to which no response is required. To the extent a response is required, CARBO denies the allegations of paragraph 38.

39. CARBO admits that it produces, manufactures and sells ceramic proppants in and from Alabama. The remaining allegations in paragraph 39 assert legal conclusions to which no response is required. To the extent a response is required, CARBO denies the remaining allegations of paragraph 39.

40. CARBO admits that the quoted excerpt represents a small

portion of the current text of Ala. Code. § 8-10-3. CARBO denies that Ala. Code § 8-10-3 expressly mentions “contracts.” CARBO denies the remaining allegations of paragraph 40.

41. CARBO denies the allegations of paragraph 41.

42. CARBO denies the allegations of paragraph 42.

43. CARBO denies the allegations in paragraph 43.

44. CARBO denies that Plaintiff is entitled to any relief in this matter, including injunctive or declaratory relief of any kind, costs, fees, or any other relief.

DEFENSES

The following defenses are asserted by CARBO. By asserting these defenses, CARBO does not assume the burden of proof on any issue that it would not otherwise have:

1. Plaintiff fails to state a claim for which relief can be granted.

2. The injuries of which plaintiff complains are not attributable to any act by CARBO.

3. Plaintiff has unclean hands.

4. Section 5 of the Agreement is an ancillary restraint designed to foster procompetitive activity. But for C-E’s assent to Section 5, which was freely given, CARBO would have located another source of kaolin, resulting

in, among other things, higher prices for proppant consumers and the loss of C-E jobs in both Alabama and Georgia.

5. Although plaintiff is not entitled to any relief, it is not entitled to injunctive relief because it has an adequate remedy at law.

6. Any injunctive relief for plaintiff would be inappropriate because of the hardship that it would create for CARBO and for consumers.

7. The award of any equitable relief to plaintiff is inappropriate because it would unjustly enrich plaintiff.

8. Plaintiff's claims are barred by the applicable statute of limitations.

9. Plaintiff is precluded from relief by the doctrine of laches.

10. Plaintiff is estopped from seeking relief by its delay in bringing this claim. It has reaped the benefits of the Agreement for years, asserting its claims which seek to relieve it of its contractual obligation only after benefits to plaintiff from the contract ceased.

NOTICE OF RESERVATION OF ADDITIONAL DEFENSES

CARBO hereby gives notice that it reserves the right to assert any additional defenses that may become available during the proceedings and reserves its rights to amend its answer to include any such additional defenses.

COUNTERCLAIMS

The allegations asserted in paragraphs 1 through 23 that follow are common to each of the counterclaims hereby asserted by CARBO against C-E:

1. By these counterclaims, CARBO seeks damages or, in the alternative, disgorgement, as well as specific performance, for C-E's admitted breach and threatened future breaches of C-E's contract with CARBO.

PARTIES

2. CARBO is a corporation organized under the laws of the State of Delaware, with its headquarters and principal place of business located at 575 North Dairy Ashford Road, Suite 300, Houston, Texas 77079.

3. On information and belief, C-E is a corporation organized under the laws of the State of Delaware with its sales offices in King of Prussia, Pennsylvania and general offices in Roswell, Georgia.

JURISDICTION AND VENUE

4. Subject matter jurisdiction for these counterclaims is based upon 28 U.S.C. § 1367.

5. Venue is proper in this district pursuant to 28 U.S.C. §§ 1391(b) & (c).

FACTUAL ALLEGATIONS

6. C-E is a leading worldwide manufacturer and supplier of industrial minerals used in a variety of manufacturing and industrial applications. Among the industrial minerals that C-E produces and sells is kaolin, which may be used for, among other things, the manufacture of ceramic proppants.

7. CARBO sells a variety of products and services to the oil and natural gas industry. Among other things, CARBO manufactures and sells ceramic proppant for use primarily in the hydraulic fracturing of oil and natural gas wells.

8. CARBO uses kaolin to manufacture ceramic proppants at its facility in Eufaula, Alabama. In order to ensure adequate supplies of kaolin of suitable quality for its Alabama manufacturing operations, CARBO entered into a Raw Material Requirements Agreement with C-E (the "Agreement") that was made as of June 1, 2003, a copy of which is attached as Exhibit A to Plaintiff's Complaint.

9. The Agreement commenced on January 1, 2004 and had a term continuing through December 31, 2010. During the term of the Agreement, CARBO agreed to purchase from C-E at least 70 percent of its actual annual requirements of kaolin each year for use at its Eufaula, Alabama

manufacturing facility, subject to C-E's obligation to make available to CARBO up to 200,000 net tons of kaolin each year.

10. In collaborating to supply a substantial volume of the kaolin needed to run CARBO's Eufaula, Alabama manufacturing business over an extended period of time, the parties recognized that each party would be able to learn confidential information of the other party during the performance of the Agreement.

11. The Agreement set forth quality specifications for the kaolin that CARBO would buy from C-E under the Agreement, to ensure that CARBO obtained kaolin with characteristics that were usable in CARBO's manufacturing operations. To identify and evaluate potential sources would require CARBO to share with C-E, on an ongoing basis, sensitive confidential commercial and proprietary information of CARBO.

12. In order to protect the value of the information that the parties expected to share during the life of their business relationship to make their collaboration effective and to foster mutual loyalty and cooperation, among other things, the parties entered into a provision to protect each party against misuse of its confidential and proprietary information. That provision, in Section 5 of the Agreement, stated:

Without intending to limit the legal rights of either party, CARBO and C-E agree as follows: that

CARBO will not enter into direct competition with C-E in the manufacture of calcined clay for general sale to refractory or other related industry, and that C-E will not enter into competition with CARBO in the manufacture or sale of ceramic proppants. This agreement will endure for 3 years after the expiration of this contract.

13. In entering into the Agreement, the parties' objective was to assure the long-term supply of substantially all of the kaolin needs of CARBO's Eufaula, Alabama manufacturing operations. The terms and conditions attendant upon the creation of this long-term business relationship, including the provisions of Section 5, were integral parts of the whole transaction. CARBO would not have agreed to enter into the Agreement without the assurance that it could protect its confidential and proprietary information and guarantee the loyalty of C-E as its supplier by way of Section 5.

14. C-E and CARBO agreed that Alabama law would govern the construction and enforcement of the Agreement.

15. Valid consideration supports the Agreement.

16. Three years after entering into the Agreement, C-E asserted to CARBO that it did not consider the provisions of Section 5 of the Agreement as they applied to C-E to be operative and threatened not to abide by those provisions. In a July 15, 2006 letter to CARBO following up

discussions concerning a possible amendment to the Agreement, C-E asserted its “position that Paragraph 5 of the current supply agreement as a practical matter is of no consequence and has not been in force since the inception of the supply agreement,” and therefore that “C-E Minerals does not intend to abide by” Section 5.

17. In reiterating its belief that Section 5 of the Agreement was valid, legal and enforceable, CARBO responded that it would take at face value C-E’s assurance that it would honor its obligations under the Agreement and that CARBO “look[ed] forward to C-E performing to both the letter and spirit of the contract for the remainder of the contract term, as will CARBO Ceramics.”

18. C-E continued to question the enforceability of Section 5 of the Agreement in a later letter to CARBO on August 7, 2006. Nevertheless, C-E took no further action to challenge Section 5.

19. Notwithstanding the parties’ disagreement, when the parties signed the 2007 Pricing Addendum to amend certain provisions of the Agreement, they left Section 5 unchanged.

20. Throughout the term of the Agreement, CARBO paid for and took delivery of kaolin in the volumes, and at the prices, provided for in the Agreement, and CARBO has otherwise fully and fairly performed all

conditions of the Agreement to be performed on CARBO's part.

21. The Agreement expired on December 31, 2010, except for the provisions of Section 5, which do not expire until December 31, 2013.

22. Although CARBO has demanded that C-E perform its continuing obligations under Section 5 of the Agreement, C-E has brought suit against CARBO seeking to avoid its obligations under Section 5 by voiding Section 5.

23. C-E has unequivocally asserted its present capacity, desire and intent to breach Section 5 of the Agreement. Furthermore, C-E affirmatively avers that it has already breached Section 5 of the Agreement by having an affiliate enter into advance agreements to manufacture and sell proppants to customers.

COUNT I
DAMAGES FOR BREACH OF CONTRACT

24. CARBO incorporates by this reference paragraphs 1 through 23 of these Counterclaims as if fully set forth herein.

25. Pursuant to the parties' choice of law in Section 15 of the Agreement, this action is governed by Alabama law.

26. The Agreement between CARBO and C-E, including Section 5 of the Agreement, was a valid and binding contract for which CARBO and C-E exchanged valuable consideration.

27. Throughout the term of the Agreement, CARBO paid for and took delivery of kaolin in the volumes, and at the prices, provided for in the Agreement. CARBO has otherwise fully and fairly performed all conditions of the Agreement to be performed on CARBO's part. CARBO has fully performed, and continues to perform, all of its obligations under Section 5 of the Agreement.

28. By its terms, Section 5 of the Agreement prohibits C-E from manufacturing or selling ceramic proppants until December 31, 2013. Section 5 expires on December 31, 2013, three years after the expiration of the other terms of the Agreement on December 31, 2010.

29. Notwithstanding that C-E remains contractually obligated to comply with the restrictions in Section 5 for more than two more years, C-E has admitted in its Complaint that it has enlisted an affiliate to enter into advance agreements to manufacture and sell proppants to commercial customers. In doing so, C-E has breached Section 5 of the Agreement.

30. By tying up customers now with contracts that it could not possibly honor during the life of Section 5 of the Agreement, C-E deprived CARBO of customers or potential customers and opportunities to compete for those customers for which CARBO would otherwise have had the opportunity to compete. C-E had no privilege to lock these potential

customers away from competition by CARBO, because C-E was contractually prohibited from doing so by virtue of Section 5 of the Agreement. CARBO has suffered damage by virtue of C-E's breach of Section 5.

31. CARBO is entitled to recover damages to place it in the same condition it would have occupied had C-E not breached its obligations under the Agreement.

COUNT II
DISGORGEMENT/UNJUST ENRICHMENT

32. CARBO incorporates by this reference paragraphs 1 through 31 of these Counterclaims as if fully set forth herein.

33. Alternatively to its claim for damages, CARBO seeks disgorgement of profits obtained by C-E as a result of its breach of the Agreement.

34. In its July 21, 2006 letter to C-E (which Plaintiff has attached as part of Exhibit B to its Complaint), CARBO advised C-E of its belief "that the rights and obligations described in Paragraph 5 [of the Agreement] are valid, legal, and enforceable" and reserved its rights to enforce those rights and obligations should C-E violate them. CARBO took C-E's assurances that it would honor its contractual obligations under the Agreement "at face value and fully expect C-E to honor its commitments." CARBO further

advised that it would “look forward to C-E performing to both the letter and spirit of the contract for the remainder of the contract term, as will CARBO Ceramics.”

35. Despite being reminded of its obligations under the Agreement, C-E has deliberately breached its obligations under the Agreement by enlisting an affiliate to contractually commit itself to sell and deliver proppants to customers in violation of Section 5 of the Agreement.

36. C-E has profited, and intends and expects to profit, from its deliberate breach of its obligations under the Agreement.

37. C-E has been unjustly enriched by the profits it has reaped, and intends and expects to reap, from its deliberate breach of its obligations under the Agreement. After realizing the full value of CARBO’s performance of its obligations under the Agreement, C-E has prevented CARBO from competing for business opportunities and customers by locking into advance supply agreements customers that C-E cannot supply under Section 5 of the Agreement. CARBO is thereby impoverished and injured by C-E’s violations of Section 5 of the Agreement. It would be inequitable for C-E to retain the proceeds from its breach of Section 5.

38. The damages which CARBO will sustain by reason of C-E’s breach of the Agreement are indefinite and uncertain, involving elements of

goodwill, prospective profits and lost competitive opportunities, the value of which cannot be readily ascertained, as a result of which the available damage remedy affords inadequate protection to CARBO's contractual entitlement.

39. For the reasons set forth above, CARBO is entitled to disgorgement by C-E of the profits wrongfully and improperly obtained and retained by C-E as a result of its breach of its obligations under the Agreement.

COUNT III
SPECIFIC PERFORMANCE

40. CARBO incorporates by this reference paragraphs 1 through 39 of these Counterclaims as if fully set forth herein.

41. Throughout the term and following expiration of the Agreement, CARBO has fully and fairly performed all obligations and conditions of the Agreement, including Section 5, to be performed on CARBO's part.

42. Although CARBO has demanded that C-E perform its continuing obligations under Section 5 of the Agreement, C-E has brought suit against CARBO seeking to avoid its obligations under Section 5 by voiding Section 5. Furthermore, C-E has asserted that it has built a plant to manufacture proppants and has admitted in its Complaint that it "is prepared

to compete immediately with CARBO in the manufacture and sale of lightweight ceramic proppants,” such that C-E is highly likely to engage in further breaches of Section 5.

43. CARBO will suffer imminent and irreparable injury by virtue of the misappropriation of its confidential commercial and proprietary information and know-how, loss of customers and business opportunities, and injury to its business, which cannot be undone through monetary remedies. Having opened its confidential business information to C-E in order to permit both parties to promote and profit from the business relationship fostered by the Agreement, CARBO will be placed at a competitive disadvantage in the highly competitive oil and gas services industry in which CARBO competes. The damages which CARBO will sustain by reason of C-E’s continuing and/or threatened future breaches of the Agreement are indefinite and uncertain, involving elements of goodwill, prospective profits and lost competitive opportunities, the value of which cannot be readily ascertained.

44. For the reasons set forth above, unless CARBO is granted specific enforcement of the Agreement, and in particular Section 5 of the Agreement, CARBO will suffer irreparable injury, for which CARBO has no plain, speedy, and adequate remedy at law. The granting of specific

performance of Section 5 of the Agreement will not require the Court to imply terms of the Agreement to which the parties have not clearly agreed, nor will it require the Court to engage in burdensome or complex administration or oversight of any performance of the Agreement that the Court may order. CARBO is entitled to specific performance of Section 5 of the Agreement.

PRAYER FOR RELIEF

WHEREFORE, CARBO respectfully requests entry of judgment in its favor and against C-E as follows:

(a) that C-E's complaint be dismissed and that C-E have and recover nothing by reason thereof;

(b) that C-E be found liable for breach of its Agreement with CARBO;

(c) that CARBO be awarded damages, or in the alternative, disgorgement, for C-E's breach of the Agreement;

(d) that the Court enter an order directing specific enforcement of Section 5 of the Agreement and that C-E fully comply with Section 5 of the Agreement until Section 5 expires according to its terms;

(e) that CARBO be awarded costs of suit, including reasonable attorneys' fees; and

(f) such other and further relief as the Court deems just and proper.

Respectfully submitted this 25th day of August, 2011.

/s/ Samuel S. Woodhouse
Samuel S. Woodhouse
Georgia Bar No. 755070
THE WOODHOUSE LAW FIRM
260 Peachtree Street, N.W.
Suite 1402
Atlanta, Georgia 30303
Tel: (404) 214-7200
Fax: (404) 214-7202
www.woodouselawfirm.com

James R. Eiszner (*pro hac* pending)
SHOOK, HARDY & BACON
L.L.P.
2555 Grand Boulevard
Kansas City, Missouri 64108-2613
Tel: (816) 474-6550
Fax: (816) 421-5547
jeiszner@shb.com

*Counsel for Defendant
and Counterclaim Plaintiff,
CARBO Ceramics Inc.*

CERTIFICATE OF SERVICE

I hereby certify that on August 25, 2011, I electronically filed the Answer and Counterclaims of CARBO Ceramics Inc. with the Clerk of Court using the CM/ECF system which will automatically send e-mail notification of such filing to the following attorneys of record:

Frank M. Lowrey, IV, lowrey@bmelaw.com

Mary Webb Pyrdum, pyrdum@bmelaw.com

/s/ Samuel S. Woodhouse
Samuel S. Woodhouse
Georgia Bar No. 755070
*Attorney for Defendant and Counterclaim
Plaintiff, CARBO Ceramics Inc.*