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

C-E MINERALS, INC.,	)	
	)	
PLAINTIFF,	)	
	)	
V.	)	CIVIL ACTION FILE
	)	
CARBO CERAMICS, INC.,	)	NO.: 1-11-CV-2574-JOF
	)	
DEFENDANT.	)	

FIRST AMENDED COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF

Plaintiff respectfully files this first amended complaint within 21 days after service of a responsive pleading to add a new count (Count 4) asserting claims under Section 2 of the Sherman Act, 15 U.S.C. § 2. *See* Fed. R. Civ. P. 15(a)(1)(B).

1. This action seeks injunctive and declaratory relief under the federal antitrust laws (15 U.S.C. §§ 1 & 26) and under Georgia and Alabama law, which prohibit the enforcement of contracts that unreasonably restrain trade.

PARTIES, JURISDICTION AND VENUE

2. Plaintiff C-E Minerals, Inc. ("C-E") is a Delaware corporation with its principal office in Roswell, Georgia. It owns and operates a facility for the mining, processing and sale of kaolin clay in Andersonville, Georgia.

3. Defendant CARBO Ceramics, Inc. ("CARBO") is a Delaware corporation. CARBO is registered to do business in Georgia, and maintains a registered office and agent for service of process with CT Corporation System, 1201 Peachtree Street, NE, Atlanta, Georgia 30361, which is within the Atlanta Division of the Northern District of Georgia. It owns and operates a facility in Eufaula, Alabama for the manufacture and sale of ceramic proppants, which are used in the extraction of oil and natural gas.

4. This Court has jurisdiction of this matter under 28 U.S.C. §§ 1331 and 1337, with respect to the federal antitrust claims, and under 28 U.S.C. § 1367, with respect to the state law claims. The state law claims arise from and assert the unenforceability of the same contract provision that C-E challenges under the federal antitrust laws, and so form part of the same case or controversy.

5. Venue is appropriate in this District and Division under 28 U.S.C. § 1391(b) & (c) because CARBO resides in and is subject to personal jurisdiction here.

PRINCIPAL ALLEGATIONS

6. As of June 1, 2003, C-E and CARBO entered into a Raw Material Requirements Agreement (the "Agreement"), a copy of which is attached as Exhibit A.

7. The term of the Agreement was seven years, commencing January 1, 2004 and ending December 31, 2010.

8. Under the Agreement, C-E was to sell and CARBO was to buy up to 200,000 net tons of kaolin clay per year. Subject to this limitation, CARBO was to purchase from C-E at least 70% of its actual annual requirements of kaolin during each year for CARBO's operations in Eufaula, Alabama.

9. Under Paragraph 2(C) of the Agreement, CARBO had the right to specify that a certain quantity of the kaolin clay supplied by C-E come from C-E's Andersonville, Georgia facility. Some of the kaolin that C-E supplied to CARBO's Eufaula, Alabama facility during the term of the Agreement came from C-E's Georgia mines. Some came from mining facilities owned and operated by C-E in Alabama.

10. CARBO used kaolin clay supplied by C-E to manufacture lightweight ceramic proppants, which are used in the extraction and recovery of oil and natural gas.

11. Proppants are used in conjunction with an oil and gas extraction process known as hydraulic fracturing, which consists of pumping fluid down a well at pressures sufficient to create fractures in the rock formation. Proppants are granular materials transported in the fluid to fill the fractures, thus "propping" them open after the pumping stops. The proppant-filled fractures create a permeable channel through which oil or natural gas can flow more freely, thereby increasing production rates and quantities.

12. Ceramic proppants are sold in intrastate, interstate and international commerce. North American customers purchase and use well over a billion pounds of ceramic proppants a year. When the parties entered the Agreement in 2003 and at all times since, CARBO has been the largest domestic manufacturer of lightweight ceramic proppants.

13. In recent years, there have been shortages in the supply of lightweight ceramic proppants of the sort manufactured by CARBO, resulting in multiple market price increases. Despite significant price increases, CARBO has routinely sold out its inventories. Some customers, particularly smaller oil and gas service companies, have not been able to purchase the quantities they required to compete for jobs requiring that product. Even large purchasers have very few choices of

manufacturers from which to obtain the supplies of ceramic proppants required for their operations.

14. Paragraph 5 of the Agreement, entitled "Non-Compete," provides as follows:

> 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.

15. The Agreement expired on December 31, 2010. So, by its terms, the Non-Compete provision will endure until December 31, 2013.

16. When they entered the Agreement and at all times since, C-E and CARBO have been at least potential competitors in the sale and manufacture of ceramic proppants. Among other advantages, C-E enjoyed in 2003 (and at all times since) ready access to substantial reserves of kaolin clay in proximity to a sizeable manufacturing facility, which was equipped with a large kiln and adaptable to manufacture lightweight ceramic proppants.

17. A C-E affiliate has designed and C-E has constructed a lightweight proppants manufacturing line at its Andersonville facility. C-E is prepared to compete immediately with CARBO in the manufacture and sale of lightweight

ceramic proppants. Specifically, C-E has the present capacity, desire and intent to manufacture large quantities of lightweight ceramic proppants from its Andersonville, Georgia facility and transfer those proppants to an affiliated entity for sale in competition with CARBO. A C-E affiliate has entered several advance supply agreements with customers for the sale of proppants to be manufactured by C-E.

COUNT ONE – INJUNCTIVE AND DECLARATORY RELIEF UNDER THE SHERMAN AND CLAYTON ACTS

18. The "Non-Compete" agreement in Paragraph 5 of the Agreement, which provides that C-E "will not enter into competition with CARBO in the manufacture or sale of ceramic proppants" during or within three years of termination of that Agreement, constitutes a horizontal contract, combination or conspiracy in restraint of trade and a *per se* violation of Section 1 of the Sherman Act, 15 U.S.C. § 1.

19. Specifically, Paragraph 5 of the Agreement constitutes a naked agreement by actual or potential competitors to limit output, allocate markets and to refrain from competing in the manufacture and sale of certain goods in commerce. Paragraph 5 was not and is not necessary for the raw materials supply relationship between the parties. It did not and does not expand output or foster new product creation, nor does it confer any other pro-competitive benefit.

20. By prohibiting C-E from competing with CARBO in the sale of lightweight ceramic proppants, Paragraph 5 of the Agreement has a substantial effect and the potential of causing a substantial effect on interstate commerce. The competition prohibited by that provision involves a substantial amount of interstate commerce.

21. C-E previously communicated to CARBO in writing its view that Paragraph 5 of the Agreement is invalid and unenforceable. In those communications, C-E unequivocally disclaimed any obligation to follow Paragraph 5 and any right to enforce that provision against CARBO.

22. CARBO responded in writing as follows:

> We firmly disagree with the opinion stated in your letter regarding Paragraph 5 of the Raw Material Requirements Agreement, dated June 1, 2003 (the "Agreement"). CARBO Ceramics Inc. believes that the rights and obligations described in Paragraph 5 are valid, legal, and enforceable.
>
> As such, we reserve all rights to enforce the mutually agreed upon rights and obligations described in Paragraph 5, and C-E Minerals should fully expect that CARBO Ceramics would do so in the event of a breach of this provision of the Agreement.

23. Copies of correspondence between the parties regarding Paragraph 5 are attached as Exhibit B

24. The existence, prospect and threat of enforcement of Paragraph 5 by CARBO threaten C-E with loss or damage. C-E and its affiliates desire and are

entitled under the antitrust laws to manufacture lightweight ceramic proppants and to enter advance supply contracts with customers for these products free from the threatened or actual enforcement of Paragraph 5 by CARBO. In addition to the prospect that CARBO will attempt to enforce Paragraph 5 through court proceedings after C-E's affiliate has contractually committed itself to the sale and delivery of proppants, C-E also anticipates that CARBO will use Paragraph 5 to dissuade potential customers from doing business with C-E and its affiliates in the first place, contending that they could not lawfully honor their supply obligations.

25. Absent injunctive and declaratory relief, C-E is threatened with and will suffer irreparable harm in the form of lost opportunities to compete during the remaining period of Paragraph 5, which expires by its terms on December 31, 2013. The inability of C-E to compete, develop customer relationships and earn revenues during this period would have lingering effects beyond that date. The prospect of recovering monetary damages would not be an adequate remedy for the loss and delay of these competitive opportunities.

26. Accordingly, C-E is entitled to preliminary and permanent injunctive relief pursuant to Section 16 of the Clayton Act (15 U.S.C. § 26) enjoining CARBO from enforcing or attempting or threatening to enforce Paragraph 5 of the Agreement to prevent C-E from competing with CARBO in the sale or

manufacture of ceramic proppants. The threatened injury to C-E from the enforcement and existence of Paragraph 5 outweighs any alleged harm that injunctive relief might inflict upon CARBO. Indeed, the only "harm" CARBO would suffer is the loss of an unlawful shield from competition, which is not a harm cognizable at law or equity.

27. Injunctive relief would serve the public interest, including the interest of customers for ceramic proppants (and the public generally) in free price and supply competition for those goods. Absent injunctive and declaratory relief, the consumers of ceramic proppants and the general public will suffer irrevocable harm in the form of lost competition during the remaining period of Paragraph 5, which expires by its terms on December 31, 2013, and while its effects linger thereafter. CARBO's ability to exclude C-E from competition in this marketplace will compound the existing price pressures and limitations on ceramic proppant supply, resulting in higher costs for the oil and gas industry and, ultimately, for consumers of those commodities. The prospect of C-E recovering monetary damages would not be an adequate remedy for consumers of proppants or the public generally for the loss and delay of increased competition in the sale of proppants.

28. For the same reasons that C-E is entitled to preliminary and permanent injunctive relief, C-E is entitled to a declaration under 28 U.S.C. § 2201 that Paragraph 5 is invalid and unenforceable as a matter of federal antitrust law. There is an actual controversy between the parties regarding the validity and enforceability of Paragraph 5. Absent a declaration resolving this controversy, C-E is uncertain how or whether to proceed with its plans to compete with CARBO.

29. Pursuant to Section 4(a) of the Clayton Act, 15 U.S.C. § 15(a), C-E is entitled to recover from CARBO the cost of this suit, including reasonable attorney's fees and expenses of litigation.

COUNT TWO – INJUNCTIVE AND DECLARATORY RELIEF UNDER GEORGIA LAW

30. C-E and its affiliates seek and are prepared to compete with CARBO in the manufacture and sale of lightweight ceramic proppants in and from the State of Georgia, including their Roswell headquarters and C-E's Andersonville facility.

31. In addition to relief under the federal antitrust laws, C-E seeks a declaration that Paragraph 5 of the Agreement is an illegal, unreasonable and unenforceable restraint of trade under Georgia law.

32. As a federal court sitting in Georgia, this Court must apply the same choice of law rules to C-E's state law claims as would a Georgia court. Although the parties selected Alabama law to govern the Agreement, the courts of Georgia

would apply Georgia law to determine whether Paragraph 5 is unenforceable and illegal as a matter of Georgia law and public policy.

33. Under Georgia law, Paragraph 5 is a general and unreasonable restraint of trade. As such, it is illegal and unenforceable under Georgia law and public policy. An agreement by the supplier of raw goods not to compete with the buyer in the manufacture or sale of an end product for years after their supply arrangement ends does not fall into any of the categories of agreements even potentially enforceable under Georgia law, such as contracts ancillary to an employment relationship or the sale of an ongoing business. Moreover, Paragraph 5 is broader than necessary to protect any conceivable legitimate interest of CARBO, and it lacks certain features, such as a territorial limitation, that are required for contracts to be enforceable under Georgia law as ancillary restraints on trade.

34. For the reasons set forth above, the existence, potential enforcement and exploitation of Paragraph 5 by CARBO threatens to inflict irreparable injury upon C-E and to unlawfully limit competition within and from the State of Georgia. Accordingly, C-E is entitled to preliminary and permanent injunctive relief under Georgia law restraining CARBO from enforcing or attempting or threatening to enforce Paragraph 5. C-E is further entitled to a declaration that

Paragraph 5 is unenforceable under Georgia law and public policy as an illegal restraint of trade.

35. Given the manifest unenforceability of Paragraph 5, any attempt by CARBO to enforce that provision or to resist the relief sought herein would constitute bad faith and stubborn litigiousness and would cause C-E unnecessary trouble and expense. Accordingly, C-E would be entitled to recover its expenses of litigation, including its reasonable attorney fees, under O.C.G.A. § 13-6-11.

COUNT THREE – INJUNCTIVE AND DECLARATORY RELIEF UNDER ALABAMA LAW

36. If Paragraph 5 withstands scrutiny under federal antitrust law and Georgia public policy, it still must pass muster under Alabama law, which the parties selected as the governing law under Paragraph 15 of the Agreement. C-E seeks a declaration that Paragraph 5 of the Agreement is an illegal and unenforceable contract in restraint of trade under Alabama law as well.

37. Alabama law prohibits "any pool agreement, combination, or confederation to fix or limit the quantity of any article or commodity to be produced, manufactured, mined or sold" in that state. Ala. Code § 8-10-1.

38. Paragraph 5 of the Agreement purports to limit the quantity of an article or commodity produced, manufactured, mined and sold within Alabama.

Specifically, it purports to prohibit CARBO from competing with C-E in the production, mining and sale of calcined clay in Alabama (and elsewhere).

39. Paragraph 5 of the Agreement purports to limit the quantity of an article or commodity (ceramic proppants) produced, manufactured or sold within Alabama. Ceramic proppants are currently produced, sold and manufactured by CARBO in and from Alabama, and C-E is prepared to begin selling ceramic proppants that will be manufactured using (at least in part) Alabama-mined clays. Among other things, Paragraph 5 purports to prevent C-E from manufacturing or selling ceramic proppants using Alabama raw materials in and from Alabama in competition with CARBO.

40. For all of the reasons stated above, Paragraph 5 also violates Alabama Code § 8-10-3, which generally prohibits contracts that "restrain, or attempt to restrain, the freedom of trade or production."

41. For the reasons set forth above, the existence, potential enforcement and exploitation of Paragraph 5 by CARBO threatens to inflict irreparable injury upon C-E and to unlawfully limit competition within and from the State of Alabama. Accordingly, C-E is entitled to preliminary and permanent injunctive relief under Alabama law restraining CARBO from enforcing or attempting or threatening to enforce Paragraph 5. C-E is further entitled to a declaration that

Paragraph 5 is unenforceable under Alabama law and public policy as an illegal restraint of trade.

42. Given the manifest unenforceability of Paragraph 5, any attempt by CARBO to enforce that provision or to resist the relief sought herein would entitle C-E to recover its expenses of litigation, including its reasonable attorney fees, under Alabama law.

43. All statements in this Complaint are adopted by reference with respect to each Count and all relief sought by C-E.

COUNT FOUR – INJUNCTIVE AND DECLARATORY RELIEF UNDER SHERMAN ACT SECTION 2

44. CARBO, which describes itself as "the world's largest manufacturer of ceramic proppant," http://www.carboceramics.com (last visited on Sept. 1, 2011), possesses monopoly power in the market for lightweight ceramic proppants purchased by U.S. customers. In fact, leaving aside C-E's newly developed production capacity, CARBO is the only producer of lightweight ceramic proppants in this country.

45. The relevant product market for purposes of assessing CARBO's monopoly power includes only lightweight ceramic proppants. Specifically, a hypothetical profit-maximizing firm that was the only seller of lightweight ceramic proppants ("hypothetical monopolist") would be able to profitably impose a small

but significant non-transitory increase in price ("SSNIP") of at least 5% over the price that lightweight ceramic proppants would command in a competitive market with multiple, viable suppliers of that product. *See* U.S. Dept. of Justice and Federal Trade Commission Horizontal Merger Guidelines (rev. Aug. 19, 2010) §§ 4.1 & 4.2 (describing method for defining product and geographic markets).

46. Such a hypothetical monopolist would not be precluded from implementing a SSNIP for lightweight ceramic proppants by the prospect that customers would turn to intermediate strength or high strength proppants ("heavier weight proppants") as a substitute in hydraulic fracturing applications that are suitable for lightweight ceramic proppants. First, heavier weight proppants are significantly more costly to manufacture. The raw material for heavier weight proppants (bauxite or bauxitic kaolin with very high aluminum oxide content) can cost up to four times as much as the raw material for lightweight ceramic proppants (kaolin). Due to this difference in production costs, a SSNIP for lightweight ceramic proppants would still be profitable if implemented by a hypothetical monopolist seller of that product.

47. Second, heavier weight proppants are substantially less desirable to customers in any application where lightweight ceramic proppants would be sufficiently durable. That is because heavier weight proppants require use of a gel

to suspend the proppants within the fluid injected during hydraulic fracturing to crack the rock formation. That gel is associated with perceived or actual environmental hazards, with increased pumping and production costs, and with the potential for reduced extraction from the well because the gel-filled cracks can result in reduced flow of oil and natural gas. Thus, the possibility that customers would turn to heavier weight proppants would not foil a SSNIP by a hypothetical monopolist seller of lightweight ceramic proppants.

48. Lightweight ceramic proppants are recognized in the oil and gas service industry as different products from intermediate or high strength proppants, and are sold at different price points. To the extent that there is currently substitution of heavier weight proppants in applications where lightweight ceramic proppants would be sufficiently durable, that is attributable to the inability of customers to obtain a sufficient supply of lightweight ceramic proppants from any source and the fact that lightweight ceramic proppants are already sold at prices that reflect CARBO's market power, rather than the prices that would prevail in a competitive market with multiple, viable suppliers of those products.

49. A hypothetical monopolist seller of lightweight ceramic proppants also would not be precluded from implementing a SSNIP by the prospect that customers would turn to sand or resin-coated sand as substitutes. Lightweight

ceramic proppants do not collapse as readily under pressure from the rock formation as sand and resin-coated sand. Further, their more uniform shape and size create a more permeable channel for the transport of oil and natural gas. For these reasons, lightweight ceramic proppants extract materially more oil and natural gas than sand and resin-coated sand, sometimes more than twice as much. Thus, sand and resin-coated sand are, on balance, significantly less profitable in most applications, even though they are cheaper to produce and purchase than ceramic proppants. Because of the greater extraction and net profitability realized through the use of lightweight ceramic proppants, customers would not substitute sand or resin-coated sand in response to a SSNIP by a hypothetical monopolist seller of lightweight ceramic proppants to any degree that would render that price increase unprofitable.

50. To the extent that there is currently substitution of sand and resin-coated sand for lightweight ceramic proppants, that is attributable to the inability of customers to obtain a sufficient supply of lightweight ceramic proppants from any supplier and the fact that lightweight ceramic proppants are already sold at prices that reflect CARBO's market power rather than the prices that would prevail in a competitive market with multiple, viable suppliers of those products.

51. The relevant sellers that compose the geographic market are those with lightweight ceramic proppant manufacturing facilities located in the United States, rather than the foreign manufacturers of that product, who are located in Russia and China. Imports of lightweight ceramic proppants manufactured outside of this country would not prevent a hypothetical monopolist seller of lightweight ceramic proppants with its major manufacturing facilities in this country from profitably implementing a SSNIP. First, foreign suppliers face customs fees and transportation costs limiting their ability and incentives to undercut a SSNIP by a hypothetical domestic monopolist seller of lightweight ceramic proppants.

52. In addition to transportation costs, foreign-produced lightweight ceramic proppants face both actual and perceived quality problems, creating a further incentive for U.S. customers to accept a SSNIP, rather than attempt to turn to imports to any significant degree. The oil and gas service companies that purchase proppants from manufacturers such as CARBO ultimately resell those products, along with their services, to exploration and production companies that, due to nationalistic preference and perceived quality issues, strongly desire U.S.-manufactured proppants over Chinese or Russian imports.

53. In sum, as CARBO's CEO acknowledged in a 2008 earnings call, "[w]e have proven to ourselves that transporting proppant around the world is not

the best economic position to be in and it's much better to be local in your manufacturing." To the extent that there is currently importation by U.S. customers of ceramic proppants from foreign manufacturers, that is attributable to the inability of customers to obtain a sufficient supply of lightweight ceramic proppants from domestic manufacturers and the fact that lightweight ceramic proppants are already sold at prices that reflect CARBO's market power rather than the prices that would prevail in a competitive market with multiple, viable suppliers of those products.

54. Even if imports of lightweight ceramic proppants are included, CARBO sells approximately 80% or more of the lightweight ceramic proppants purchased by U.S. customers.

55. Finally, a hypothetical monopolist seller of lightweight ceramic proppants would not be precluded from implementing a SSNIP by the prospect that new firms would begin manufacturing lightweight ceramic proppants in this country. First, construction of a proppants manufacturing line from scratch (without the existing facilities, expertise and resources already possessed by C-E) is a costly endeavor, requiring an investment of $80 to $100 million dollars with no immediate return. As CARBO has recognized in its securities filings, "the main

barriers to entry for additional competitors" include "the capital costs involved in building production facilities of sufficient size to be operated efficiently."

56. Second, a new lightweight ceramic proppant producer would need reliable access to substantial deposits of kaolin clay, which are found only in limited geographic areas of the country. The number of entities with ownership or control over substantial kaolin deposits in this country is quite limited. For this reason as well, the prospect of entry by a new manufacturer would not deter or foil a SSNIP by a hypothetical monopolist seller of lightweight ceramic proppants. This is particularly true if C-E is excluded from the market under Paragraph 5 of the parties' supply Agreement.

57. In sum, the relevant market is lightweight ceramic proppants purchased by U.S. customers and manufactured in the U.S. CARBO is the only such manufacturer, and it possesses an 80% share of that market even if imports are included. Thus, CARBO enjoys monopoly power. At a minimum, the facts alleged above establish a dangerous probability that CARBO will possess monopoly power in that market, particularly if it is allowed to exclude C-E through CARBO's enforcement of Paragraph 5 of the parties' supply Agreement.

58. CARBO has acquired and maintained its monopoly power by exclusionary conduct intended to prevent, deter and burden the entry or expansion

of actual and potential competitors in the market for lightweight ceramic proppants. First, the ten-year non-competition provision in Paragraph 5 of the parties' clay supply Agreement was intended by CARBO to prevent and delay the entry of C-E – a domestic manufacturer with a strong potential to produce substantial volumes of high-quality lightweight ceramic proppants. Paragraph 5 would have precisely that effect if enforced, just as CARBO has sought to do through the threats in its prior correspondence and its claims in this present litigation. Enforcement of that provision would bar entry of the only company poised to immediately produce high-quality lightweight ceramic proppants in the United States, prolonging CARBO's monopoly. Accordingly, Paragraph 5 is illegal and unenforceable under Section 2 of the Sherman Act, 15 U.S.C. § 2, which prohibits a monopolist such as CARBO from establishing or maintaining its market position through conduct that excludes competition.

59. CARBO has also excluded and sought to exclude competition by locking up the largest purchasers of lightweight ceramic proppants through price provisions that discourage and penalize purchases from other suppliers. As an example, CARBO has entered long-term contracts with the largest purchaser of lightweight ceramic proppants, which buys about as many pounds of proppants as the next three largest purchasers combined. That contract, which has most recently

been extended through 2016, requires the customer to pay penalty if its proppant purchases from suppliers other than CARBO exceed an allowed percentage of its total proppants purchases.

60. Percentage-based penalty provisions of this type unreasonably deter and discourage entry by new suppliers of lightweight ceramic proppants by restricting their access to the largest purchasers. The effect of such a provision is magnified because there are very few entities purchasing lightweight ceramic proppants in the U.S. in any volume, and the substantial majority of the volume is heavily concentrated in the top four purchasers.

61. The percentage-based penalty provisions in CARBO's long-term supply agreements unreasonably impair the ability of C-E, other Imerys companies and any other potential suppliers of lightweight ceramic proppants to compete with CARBO for sales to the largest purchasers of that product. Accordingly, these provisions are illegal and unenforceable under Section 2 of the Sherman Act, 15 U.S.C. § 2, which prohibits a monopolist such as CARBO from establishing or maintaining a monopoly through conduct that unreasonably excludes competition.

PRAYER FOR RELIEF

62. Plaintiff respectfully asks that this Court:

(a) grant appropriate preliminary and permanent injunctive relief enjoining CARBO from enforcing or attempting or threatening to enforce Paragraph 5 of the Agreement;

(b) enter judgment declaring that Paragraph 5 of the Agreement is invalid, illegal and unenforceable under federal and state law;

(c) grant appropriate injunctive relief enjoining CARBO from enforcing or entering into percentage-based penalty provisions in its supply agreements;

(d) award C-E the cost of this suit, including reasonable attorney's fees; and

(e) order other and further relief as this Court deems proper and just.

This 15th day of September, 2011.

Respectfully submitted,

/s/ Frank M. Lowrey IV

Frank M. Lowrey IV
Georgia Bar No. 410310
Email: *lowrey@bmelaw.com*
Mary Webb Pyrdum
Georgia Bar No. 940420
Email: *pyrdum@bmelaw.com*

BONDURANT, MIXSON & ELMORE, LLP
3900 One Atlantic Center
1201 West Peachtree Street, N.W.
Atlanta, Georgia 30309-3417
Tel: (404) 881-4100
Fax: (404) 881-4111

Counsel for Plaintiff C-E Minerals, Inc.

CERTIFICATE OF SERVICE

I hereby certify that on this day, a true and correct copy of the foregoing **FIRST AMENDED COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF** was electronically filed with the Clerk of Court using the Court's electronic filing system which will automatically send e-mail notification of such filing to the following attorneys of record:

Samuel S. Woodhouse, swoodhouse@woodhouselawfirm.com
James R. Eiszner, jeiszner@shb.com

This 15th day of September, 2011.

/s/ Frank M. Lowrey IV
Frank M. Lowrey IV
Georgia Bar No. 410310