

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

**Declaration of David Kessler**

I, David Kessler, pursuant to 28 U.S.C. § 1746, declare the following to be true and correct to the best of my personal knowledge and understanding.

1. I am over the age of 18 and competent to testify. If called to testify at any hearing I would swear to the truth of the matters set forth below.
2. I have personal knowledge of the facts recited in this declaration.
3. I am employed by CARBO Ceramics, Inc. ("CARBO") as its Plant Manager for its Eufaula, Alabama manufacturing facility. I have served in this position at CARBO since 1999.
4. In my current position at CARBO, my responsibilities include overseeing all operational aspects of the Eufaula, Alabama lightweight ceramic

proppant manufacturing plant (“Eufaula Plant”). This includes supervising the following areas: testing and qualifying raw materials (including kaolin clay), scheduling deliveries, manufacturing at the plant, maintaining quality control over the ceramic proppants, and working with raw material suppliers to ensure that raw materials and end products remain within specifications.

5. The manufacture of ceramic proppants is highly technical and requires specialized knowledge (“know-how”), including the materials, equipment, and processes needed to create quality proppants in a cost effective and profitable manner. CARBO has been an innovator in this regard and holds, and has held, a number of patents related to the manufacture of proppants.
6. Manufacturing lightweight ceramic proppants requires kaolin clay as the primary ingredient. Not all clay, however, is created equal or is appropriate for manufacturing ceramic proppants. Alumina content is an important factor, as are other more subtle issues, such as the inherent particle size of dissolved platelets, the presence of trace contaminants and the clay’s mineralogy.
7. Consequently, CARBO rigorously tests the clay that it purchases before employing it in its factories to produce ceramic proppants in commercial

quantities. This includes laboratory testing for alumina and contaminants as well as test runs of the clay in actually manufacturing small quantities of ceramic proppants.

8. The quality of kaolin clays can vary widely from location to location. At the prospecting phase, a high percentage of clay, when tested, fails to measure up to the requirements for manufacturing quality ceramic proppants. Even from a reserve or stockpile known to contain suitable clay, not all clay measures up to the requirements for manufacturing quality ceramic proppants.
9. The process for testing, analyzing and qualifying a new field of clay reserves is a time-consuming and costly process. This involves drilling holes from many different sites or stockpiles, pulling clay cores, analyzing 3' to 5' segments, laboratory testing and production testing.
10. CARBO has compiled years of proprietary data and know-how concerning which specific clays, mined from particular areas, make suitable candidates for ceramic proppants and which specific clays are unsuitable. It also has acquired proprietary information and knowledge regarding what to test for, how to optimally blend clays which are less than ideal candidates with other clays so that quality lightweight ceramic proppants can be manufactured.

11. CARBO considers this type of information to be confidential and proprietary because it provides CARBO with a significant competitive advantage over other manufacturers.
12. CARBO began to use kaolin clay mined near Eufaula, Alabama when CARBO opened its Eufaula Plant in the early 1980's. The company which supplied CARBO with high alumina content kaolin eventually sold its mineral rights for this Eufaula clay to C-E Minerals, Inc. ("C-E"), who continued to supply a vast majority of CARBO's needs for kaolin at the Eufaula Plant during the 1990's.
13. By 2002, C-E was reporting that its reserves of high alumina kaolin from Eufaula, Alabama mines were diminishing and that it was becoming more difficult and costly to mine. When our raw materials requirement contract was up for renewal and renegotiation in 2003, C-E proposed price increases for Eufaula kaolin.
14. When we received C-E's initial proposal for a new supply agreement on January 20, 2003 from Mr. Pierce I was disappointed at the significant price increases that C-E was proposing. After reviewing Mr. Pierce's letter, in my internal comments to CARBO's Vice President of Operations, Mark Edmunds, I commented that C-E was playing hardball and owned the bat, the ball and the field. By that I meant that C-E held

the leverage in the negotiations due to its near stranglehold on the supply of kaolin that we needed for our Eufaula Plant.

15. To help with pricing, C-E offered to replace Eufaula clay with lower priced, lower alumina content clay from Andersonville, Georgia. The use of Georgia clays would require blending with Eufaula clays to ensure that an acceptable lightweight ceramic proppant could be manufactured and meet product specifications.
16. This, in turn, necessitated extensive testing and analysis of these Georgia clays and the results of blending efforts. The new testing, experimenting and blending the Georgia clays promised to create an entirely new set of confidential and proprietary information for CARBO. For example, we spent time over approximately a two-year period analyzing and testing to fully qualify reserves of Georgia clays for use in manufacturing lightweight ceramic proppants.
17. Given the long-standing supply relationship with C-E as a majority supplier to CARBO, we viewed C-E as a trusted, strategic partner, whom we expected to keep such information confidential and not disclose or use it, except in fulfilling our supply contract. Notwithstanding this understanding and expectation, CARBO did require C-E and some of its

other suppliers to sign confidentiality agreements acknowledging that the type of information described above was confidential and proprietary.

18. Several individuals from C-E, including its Vice President, Paul Hall, have signed confidentiality and nondisclosure agreements with CARBO from time to time. I, or other CARBO employees, were present when these confidentiality agreements were signed by Mr. Hall and other C-E employees. Each of these agreements is executed by a CARBO employee and Mr. Hall. These agreements were created and maintained in CARBO's business files in the ordinary course of business. True and correct copies of two confidentiality agreements signed by Mr. Hall are attached to this declaration as Exhibit 1.

19. Mr. Hall executed these confidentiality agreements on behalf of himself and his employer, "C-E Minerals."

20. In connection with CARBO's testing and production, persons under my supervision communicated daily with representatives from C-E and reported to them the results of our tests and analysis, including, on occasions, which clays were unacceptable for making ceramic proppants (and why) and which clays were suitable candidates. We also shared with C-E many of the results of a comprehensive analysis and study of the Georgia clays and their suitability for manufacturing ceramic

proppants. C-E needed this information so they could project for and supply clays that best met CARBO's needs and fulfill its obligations under the June 1, 2003 Raw Materials Requirements Agreement.

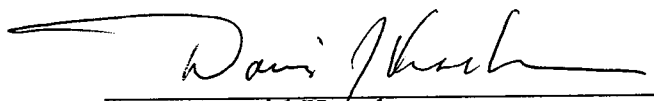
21. The kaolin which we purchased from C-E for the Eufaula Plant was primarily delivered "just in time" to meet our production schedule of ceramic proppants. Consequently, daily deliveries of kaolin were common. CARBO did not maintain high levels of raw material stockpiles on site at its Eufaula Plant. Consequently, CARBO's ordering and scheduling patterns with C-E revealed information about the blending of clays from various stockpiles and mines and what proportions would produce commercially successful ceramic proppants.

22. If an existing competitor acquired and used any of this confidential and proprietary information and know-how, it would impair CARBO's competitive advantages. If a new entrant acquired and used this confidential information and know-how, the entrant would get a cost-free head start and speed up the entry process, allowing it to compete unfairly with CARBO.

23. I estimate that it would take a new entrant into the ceramic proppants business a minimum of three (3) years to become a commercially viable competitor if it started the entry process without the benefit of this type

of confidential and proprietary information and manufacturing know-how. Besides learning the basic manufacturing processes, locating an appropriate site, constructing a factory and the normal matters attendant with any new manufacturing facility, such an entrant would have to find an appropriate source of kaolin supply and then replicate the type of testing and trial and error that CARBO has expended many years acquiring. In short, developing a profitable, ore-based proppant manufacturing facility is a multi-year proposition.

I declare under penalty of perjury that the foregoing is true and correct.

  
\_\_\_\_\_  
David Kessler

Executed on October 11, 2011  
Eufaula, Alabama  
United States of America



**Exhibit 1 to  
Declaration of David Kessler**



36 Arch Drive  
Eufaula, AL 36027  
(Owner)

**RECORD OF VISITATION OF INVITEES,  
CONTRACTORS, LICENSEES, VENDORS AND OTHERS**

I understand that the party identified above as the owner or lessee ("Owner") is the owner or lessee of the building and facilities identified above and of the land under and around the building or facilities (all of which, collectively, are referred in this document as the "Owner's Property").

I am asking for permission to enter the Owner's Property. To induce Owner to authorize such entry, I agree to the following terms and conditions:

1. **Confidentiality:** Without the prior written consent of Owner in each case, neither I nor anyone that I represent or that I am employed by will disclose to any other party or remove from Owner's Property, in any manner whatsoever, "Proprietary Information" (which as used in this document, means all information that constitutes intellectual property, trade secrets and other confidential information which gives Owner or its affiliates an opportunity to obtain an advantage over competitors who do not know or use such information, including without limitation information about the manufacturing processes, facilities layout, equipment, products, management, marketing and corporate strategies of Owner and its affiliates). I understand that I may be permitted to observe Proprietary Information, or that Proprietary Information may be disclosed to me during or because of my entry upon the Owner's Property. I agree that I will not create any notes, data, reference materials, sketches, drawings, photographs, memoranda, documentation or records of any kind concerning Proprietary Information without the prior written consent of Owner. I also understand and acknowledge that if Proprietary Information is not kept confidential, Owner or its affiliates may suffer substantial damages. Owner shall be entitled, without limiting other available remedies, to an injunction or other equitable relief to prevent or stop any breach or threatened breach of this confidentiality provision.

2. **Assumption of Risk:** I assume all risk associated with my entry upon the Owner's Property and hereby waive, release, covenant not to sue, and forever discharge Owner and its affiliates, directors, officers and employees (all of which are referred to, collectively, in this document as the "Released Parties") from any liability, property damage or other loss I may suffer during, because of, arising out of or resulting from my entry upon the Owner's Property. Further, I and anyone that I represent or that I am employed by must indemnify, defend, and hold harmless each and every Released Party from and against any liability, claims, demands, actions, damages, expenses (including, without limitation, attorney fees) incurred or suffered because of, arising out of or resulting from (a) my entry upon the Owner's Property, (b) my acts or omissions while on the Owner's Property, or (c) any breach of the confidentiality provisions above. The releases and indemnities contained in this paragraph are intended to protect the Released Parties against matters for which they may be strictly liable or which may be caused by their own negligence. Accordingly, the releases and indemnities shall not be impaired by any actual or alleged strict liability or negligence on the part of any released party.

3. **Miscellaneous:** The agreements in this document I make not only for myself individually, but also on behalf of any party identified below that I represent or that employs me. Accordingly, this document shall be binding upon me and upon any such party. This agreement shall be governed by the laws of the state of Texas, without regard to its conflict law principles. You consent to Texas as the site of jurisdiction and agree that any action pertaining to this agreement will only be brought in the U.S. District Court in Dallas, Texas.

Date Signed: [Signature] 2/3/05

Date(s) of Visitation: 2/3/05

Printed Name of Individual: W. Hall

Signature of Individual: [Signature]

Name of the Party the Individual represents or that employs the Individual, if any:

C-E Minerals

Signature of CARBO Ceramics Inc. Representative: [Signature]



36 Arch Drive  
Eufaula, AL 36027 (Owner)

**RECORD OF VISITATION OF INVITEES,  
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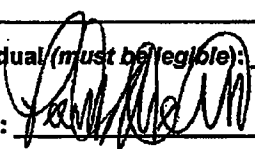
1. **Confidentiality:** Without the prior written consent of Owner in each case, neither I nor anyone that I represent or that I am employed by will disclose to any other party or remove from Owner's Property, in any manner whatsoever, "Proprietary Information" (which as used in this document, means all information that constitutes intellectual property, trade secrets and other confidential information which gives Owner or its affiliates an opportunity to obtain an advantage over competitors who do not know or use such information, including without limitation information about the manufacturing processes, facilities layout, equipment, products, management, marketing and corporate strategies of Owner and its affiliates). I understand that I may be permitted to observe Proprietary Information, or that Proprietary Information may be disclosed to me during or because of my entry upon the Owner's Property. I agree that I will not create any notes, data, reference materials, sketches, drawings, photographs, memoranda, documentation or records of any kind concerning Proprietary Information without the prior written consent of Owner. I also understand and acknowledge that if Proprietary Information is not kept confidential, Owner or its affiliates may suffer substantial damages. Owner shall be entitled, without limiting other available remedies, to an injunction or other equitable relief to prevent or stop any breach or threatened breach of this confidentiality provision.

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3. **Miscellaneous:** The agreements in this document I make not only for myself individually, but also on behalf of any party identified below that I represent or that employs me. Accordingly, this document shall be binding upon me and upon any such party. This agreement shall be governed by the laws of the state of Texas, without regard to its conflict law principles. You consent to Texas as the site of jurisdiction and agree that any action pertaining to this agreement will only be brought in the U.S. District Court in Dallas, Texas.

Date Signed: 3/8/05

Date(s) of Visitation: \_\_\_\_\_  
Printed Name of Individual (must be legible): Paul V. Hart

Signature of Individual: 

Name of the COMPANY the Individual represents or that employs the Individual, if any:  
C.E. Minors

Signature of CARBO Ceramics Inc. Representative: Tom Sproun