

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

RESCO PRODUCTS, INC.

2 Penn Center West
Pittsburgh, PA 15276

Plaintiff,

— v. —

**BOSAI MINERALS GROUP CO., LTD.
LTD.**

Enrich International Plaza 25th Floor
168 Zhongshan 3rd Road, Shangqingsi
Chongqing, China

CMP TIANJIN CO., LTD
B-13B, The Mansion of Triumphal Arch
No. 66 Nanjing Road,
Tianjin, China

Defendants.

Case No. 06-235
**FIRST AMENDED CLASS ACTION
COMPLAINT
JURY TRIAL DEMAND**

FIRST AMENDED COMPLAINT FOR ANTITRUST VIOLATIONS

Plaintiff, by and through its undersigned attorneys, brings this action on its own behalf and all others similarly situated for treble damages and injunctive relief under the antitrust laws of the United States against the above-named defendants, demanding a trial by jury. For its Complaint against defendants, plaintiff alleges the following:

I. NATURE OF THE ACTION

1. This case arises out of a conspiracy among defendants and their co-conspirators with the purpose and effect of fixing prices and controlling the supply of refractory grade bauxite, also known as calcined bauxite, and committing other unlawful practices designed to inflate the prices of refractory grade bauxite sold to plaintiff and other purchasers in the United States and elsewhere. In particular, the above-named defendants' acts related to price-fixing and supply restraints in the

distribution and sale of refractory grade bauxite constitute *per se* violations of Section 1 of the Sherman Act, 15 U.S.C. § 1.

2. Defendants have established an illegal cartel that is ongoing today and that has deliberately targeted and severely burdened consumers in the United States. The conspiracy has existed at least during the period from January 1, 2003 to date. The cartel has affected tens of millions of dollars of commerce in products found in manufacturing facilities and in American households. The conspiracy has included communications and meetings in which defendants have agreed to limit competition, increase prices, and control supply for refractory grade bauxite exported to the United States and worldwide.

II. JURISDICTION AND VENUE

3. Plaintiff brings this action under Sections 4 and 16 of the Clayton Act, 15 U.S.C. §§ 4 and 16, to obtain injunctive relief and to recover treble damages and the costs of suit, including reasonable attorneys' fees, for the injuries sustained by plaintiff by reason of defendants' violations of the Sherman Act.

4. This Court has jurisdiction over plaintiff's Complaint pursuant to 28 U.S.C. § 1337 and 15 U.S.C. §§ 1, 15, 22, and 26.

5. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391 (d) and 15 U.S.C. §§ 15, 22, and 26.

6. Jurisdiction over all defendants comports with the United States Constitution and 15 U.S.C. §§ 15, 22, and 26.

III. PARTIES

7. Plaintiff Resco Products, Inc. ("Resco Products") is a Pennsylvania corporation with its principal place of business in Pittsburgh, Pennsylvania.

8. Defendant Bosai Minerals Group Co. Ltd, ("Bosai Minerals"), formerly known as Nanchuan Minerals Group Co., Ltd., is a Chinese corporation based in Chongqing Municipality. Defendant Bosai Minerals also has sales offices and conducts sales from Stamford, Connecticut and Bethlehem, Pennsylvania. Bosai Minerals processes refractory grade bauxite at two processing plants in the Shanxi and Guizhou provinces. In 2007, Bosai Minerals purchased a controlling interest in Omai Bauxite Minerals, Inc. located in Guyana. Bosai Minerals is one of the largest exporters of refractory grade bauxite and sells its products under the brand names Big Mountain and RASC. Bosai Minerals sells refractory grade bauxite to U.S. companies for use in the United States.

9. Defendant CMP Tianjin Co., Ltd. ("CMP"), formerly known as Jersey Mineral Processing Co. Ltd and also known as China Mineral Processing Co., is a Chinese company based in Tianjin, China. CMP processes refractory grade bauxite at its processing plant in Xingang, Tianjin and sells refractory grade bauxite throughout the world. CMP opened a new mineral processing plant in China in 2005, which became the largest mineral processing plant in China. CMP sold refractory grade bauxite to U.S. companies for use in the United States during the relevant time period.

10. The acts charged in this Complaint as having been done by defendants and their co-conspirators were authorized, ordered, or done by their officers, agents, employees, or representatives, while actively engaged in the management of defendants' business or affairs, and the acts charged in the Complaint continue to the present day. The horizontal practices charged in this Complaint were designed to, and in fact did, have a substantial and adverse impact on the United States and to inflict substantial antitrust injury in the United States.

IV. CO-CONSPIRATORS

11. Various other persons and corporations not named herein as defendants have participated as co-conspirators with the named defendants and have performed acts and made statements in furtherance of the conspiracy. Some of these persons and entities are as yet unidentified. Others that have been identified include the following:

12. Shanxi Fangshan Foreign Trade Company ("Shanxi Fangshan"). Shanxi Fangshan is a limited liability company headquartered in Fangshan County in the Shanxi Province of China. Shanxi Fangshan operates a mineral processing factory in Tianjin Port. Shanxi Fangshan sells refractory grade bauxite to customers in the United States.

13. Shanxi Minmetals Industrial & Trading Co., Ltd. ("Shanxi Minmetals"). Shanxi Minmetals is a mineral trading company located in Tianjin, China. Shanxi Minmetals sells refractory grade bauxite to customers in the United States.

14. Shandong Deli Trade Development Co., Ltd ("Shandong Deli"). Shandong Deli is a trading company located in Jinan, Shandong Province, China. Shandong Deli sells refractory grade bauxite to customers in the United States.

15. Shandong Refractories Corporation ("Shandong Refractories"). Shandong Refractories is located in Qingdao, China. Shandong Refractories operates the Shandong Wangcun Bauxite Mine and exports refractory grade bauxite worldwide.

16. Tianjin Metals & Minerals Import and Export Co., Ltd, also known as Tianjin Minmetals Co. Ltd ("Tianjin Minmetals"). Tianjin Minmetals is one of the leading international trading companies in China. Tianjin Minmetals is located in Tianjin, China. Tianjin Minmetals has branch companies or representative offices in the United States, Australia, Thailand, Egypt, Jordan and Ecuador. Tianjin Minmetals sells refractory grade bauxite worldwide.

V. CLASS ACTION ALLEGATIONS

17. Plaintiff brings this action on its own behalf, and under Rule 23(b)(2) of the Federal Rules of Civil Procedure, as representatives of a class defined as: all persons or entities who purchase refractory grade bauxite products mined, manufactured, or produced by defendants and sold directly or indirectly to customers in the United States (the "injunctive relief" class).

18. Plaintiff Resco Products brings this action on its own behalf, and under Rule 23(b)(3) of the Federal Rules of Civil Procedure, as representative of a class defined as: all persons or entities who directly purchased refractory grade bauxite products for delivery or use in the United States from any of defendants or their co-conspirators from January 1, 2003 to the date that the cartel is ended by an injunction or otherwise (the "damages" class).

19. Excluded from both classes are all governmental entities, defendants, their co-conspirators, and their respective subsidiaries and affiliates.

20. Members of the classes are numerous and joinder is impracticable.

21. Plaintiff's claims are typical of the members of the classes. Plaintiff and all members of the plaintiff classes were damaged and continue to be damaged by the same wrongful conduct by defendants.

22. Plaintiff will fairly and adequately protect and represent the interests of the plaintiff classes. The interests of plaintiff are coincident with, and not antagonistic to, those of the classes.

23. Plaintiff is represented by counsel who are experienced and competent in the prosecution of complex class action and antitrust litigation.

24. Questions of law and fact common to the members of the classes predominate over questions, if any, that may affect only individual members because defendants have acted on grounds generally applicable to the classes. Such generally applicable conduct is inherent in defendants' collusion.

25. Questions of law and fact common to the classes include:

- (a) whether defendants combined, agreed, and conspired among themselves to fix, maintain, or stabilize prices of and control exports for refractory grade bauxite and refractory grade bauxite products;
- (b) the existence and duration of the horizontal agreements alleged in this Complaint to fix, maintain, or stabilize prices of, and control exports for, refractory grade bauxite and refractory grade bauxite products;
- (c) whether each defendant was a member of, or participant in, the combination and/or conspiracy alleged in this Complaint;
- (d) whether and to what extent defendants' conduct caused injury to plaintiff's business or property and the damages class; and if so, the appropriate measure of damages;
- (e) whether the agents, officers or employees of defendants and their co-conspirators participated in telephone calls and meetings in furtherance of the conspiracy alleged herein; and
- (f) whether plaintiff and members of the plaintiff classes are entitled to declaratory and/or injunctive relief.

26. Class action treatment is the superior (if not the only) method for the fair and efficient adjudication of this controversy, in that, among other things, such treatment will permit a large number of similarly situated persons to prosecute their common claims in a single forum simultaneously, efficiently, and without the unnecessary duplication of evidence, effort, and expense that numerous individual actions would engender. The benefits of proceeding through the class mechanism, including providing injured persons or entities with a method for obtaining redress on

claims that it might not be practicable to pursue individually, substantially outweigh the difficulties, if any, that may arise in management of this class action.

VI. TRADE AND COMMERCE

27. Bauxite is a naturally occurring mineral composed of hydrated aluminum oxides: boehmite, diaspore and gibbsite. China is estimated to have approximately 700 million tons worth of bauxite reserves, which is approximately 7 percent of the world's reserve base.

28. About 85 to 90 percent of the bauxite mined throughout the world is used to produce alumina for refining into aluminum metal. A remaining 10 to 15 percent of bauxite is used to make refractory materials and is called refractory grade bauxite or calcined bauxite. Refractories are heat resistant materials that provide the linings for high temperature furnaces, reactors, and other processing units at temperatures in excess of 2,000 degree centigrade.

29. Sources of refractory grade bauxite are extremely limited due to the rigorous quality requirements pertaining to alumina content, impurity levels, and bulk density that bauxite must meet to be suitable for use in refractory applications.

30. By the mid-1980s China became the leading producer of refractory grade bauxite. Currently, China controls over 60 percent of the international refractories market and is the principal source of refractory grade bauxite throughout the world. Chinese production of refractory and abrasive grade bauxite is among the highest in the world. Production in China is centered in the provinces of Guizhou and Shanx.

31. Refractory grade bauxite is calcinated in shaft, rotary or round (beehive) kilns at 1400-1800 degrees Celsius. The most prevalent applications for refractory grade bauxite include: refractories for steel, glass, cement, aluminum industries; kiln furniture for the ceramic industry; investment casting in the foundry industry; electronic components substrates; and rollers for roller kilns. Refractories are the major market for refractory grade bauxite.

32. In 2002, China was responsible for 25 percent of the U.S. market for refractory grade bauxite. China's control over the U.S. market grew from 25 percent in 2002 to 69.9 percent by 2004. During that same time period, prices for refractory grade bauxite doubled in the United States.

33. Between 2004 and 2007, Chinese imports represented 41.9 to 61.9 percent of all imports of refractory grade bauxite into the United States. In the first quarter of 2008, 51.5 percent of the refractory grade bauxite in the United States was imported from China and another 17.8 percent was imported from Guyana.

34. Market concentration within China has increased dramatically in recent years. The number of exporters of refractory grade bauxite from China declined from 62 in 2002 to only 15 or 20 today.

35. The only viable commercial source of refractory grade bauxite outside of China is located in Guyana. In January 2007, defendant Bosai Minerals purchased Omai Bauxite Minerals, Inc., the sole bauxite producer in Guyana. Defendants and their co-conspirators now control a substantial majority of the refractory grade bauxite sold to United States companies and used in the United States.

36. Defendants' collusive conduct involves the import trade of refractory grade bauxite. Defendants and their co-conspirators have sold refractory grade bauxite directly to domestic importers in the United States. The conduct of defendants and their co-conspirators has taken place in and affected the interstate and foreign trade and commerce of the United States.

37. The conduct of defendants and their co-conspirators has directly, substantially and foreseeably restrained trade and commerce in the United States.

VII. **FACTUAL BACKGROUND**

A. Violations of Antitrust Laws

1. The CCCMC and the Bauxite Branch

38. Defendants in this case are members of the Bauxite Branch of the China Chamber of Commerce of Metals, Minerals and Chemicals Importers and Exporters ("the CCCMC").

39. The CCCMC is a non-governmental membership organization. Its members include producers, processers, and traders of refractory grade bauxite.

40. According to its brochure, the CCCMC "organizes member enterprises to jointly work out and implement...coordinative measures for importing and exporting commodities." Export Commodities Coordination Measures ("Coordination Measures") adopted by the CCCMC explain that the "coordination content" includes "export price" and "sales market and customers."

41. As the Coordination Measures explain, the CCCMC's commodities coordination programs include "export volume, export price, primary market, customers etc." Coordination programs, including collusive pricing, market allocation, and supply restrictions, are proposed by members, discussed among members, and subject to a vote by members. The discussions necessarily involve the sharing of competitively sensitive information about prices, markets, customers, and sales volumes. If the members cannot reach an agreement on a coordination plan for a particular commodity, the CCCMC may provide an arbitration team to assist the members in reaching a collusive agreement.

42. Attendees at coordination meetings are high level company executives and have authority to enter collusive agreements on behalf of member companies. Attendees report communications about pricing, market coordination, and supply restrictions to their member company employers.

43. CCCMC encourages coordination of pricing for exports, including to the United States, for some commodities and not others. According to CCCMC, price coordination results from agreements as to price "among fellow companies."

44. Exporters of bauxite in China formed and are members of the Bauxite Branch of the CCCMC. As members, defendants vote on all proposals to coordinate export prices or restrict supply.

45. According to China's trade representative, the government of China does not mandate the cartel activity alleged in this Complaint. During the 2000 negotiations preceding China's accession to the World Trade Organization ("WTO"), a Communication From China dated March 20, 2000 explained to the WTO Working Party that "[t]here were presently three types of prices [in China]: government price, government guidance price and market-regulated price." For products with "government prices," the price was set by price administration authorities and could not be changed without the approval of these authorities. For products subject to government guidance pricing, enterprises could set their own prices within government set limits. Finally, "market-regulated prices" were prices that companies were free to set in accordance with traditional market factors (i.e., supply and demand). China represented in 2001 that 94.7% of products were subject to market-regulated pricing. Bauxite, moreover, does not appear on the comprehensive listing of all products and services subject to government guidance pricing or government pricing submitted by the Chinese government to the WTO.

2. Specific Meetings to Fix Prices and Control Supply.

46. The Second Governing Board of the Chamber's Bauxite Branch ("Governing Board") was elected by the members of the Bauxite Branch in October 1999. Despite the efforts of the members to coordinate exports to the United States and elsewhere, the Governing Board reported in

early 2003 that “[w]eak sense of professional identity and weak consciousness of self-regulation led to price war.”

47. The Governing Board further reported that its industry self-regulation work had basically come to a standstill.

48. The Governing Board stated that, going forward, “[t]he industry must ... explore methods and regulation towards self-regulation...earnestly propel the establishment of the industry information network, seek common interest and avoid harm.” The Bauxite Branch would “[f]ocus on strengthening industry self-regulation...[p]rimarily focus on breakthrough in self-regulation mechanism, study an industry self-regulation model that would work..., strive to meet the quest for a suitable self-regulation path for the bauxite industry.”

49. At a meeting held on December 3, 2002, the Bauxite Branch passed the Bauxite Branch’s Articles of Association and Meeting Regulations. As members of the Bauxite Branch of the CCCMC, defendants and their affiliates abide by the Bauxite Branch Articles of Association and a self-regulation agreement to limit supply and increase prices.

50. The Branch also coordinates and enforces the self-regulation agreement among the committee members to limit supply and increase prices. The CCCMC in turn oversees the Bauxite Branch to maintain and increase price levels as required by the self-regulation agreement.

51. Due to the constraints on supply and price increases imposed by defendants, the price of refractory bauxite in the United States doubled during 2003 and 2004 and has been unlawfully maintained. Between 2004 and 2007, the export price of refractory grade bauxite increased an additional 70%. U.S. prices have increased and have been maintained during this period despite the fact that worldwide demand for refractory grade bauxite has grown at a rate of 1 percent or less.

52. Defendants Bosai Minerals and CMP both joined the Bauxite Branch and the self-regulation agreement by no later than November 2003, cementing the power of the agreement to

restrain trade. Over the six month period after these defendants joined in the self-regulation agreement, prices for refractory grade rose by over 50 percent.

53. Defendant CMP and co-conspirators Shanxi Minmetals and Shandong Refractories have served as Board Members of the Bauxite Branch. Co-conspirator Tianjin Minmetals has served as the Vice-Secretariat of the Bauxite Branch. In these positions, CMP and its co-conspirators proposed and implemented cartel agreements.

54. Members of the Bauxite Branch, with the assistance of the CCCMC, continue to reach collusive agreements on price and output. For example, the CCCMC issued an “export coordination plan” on January 17, 2007 for the China Import and Export Fair, also known as the Canton Fair, which stated “[f]or the current Canton Fair, [the CCCMC] is to facilitate the coordination of minerals, nonferrous metals, and metallurgical goods...” The “main content of the coordination” includes that “[t]he agreed price among fellow export companies is the industry’s collective contract with which all companies must comply.” The CCCMC instructed its members that “[p]articipating entities shall voluntarily uphold the normal order of export operations and report to the CCCMC any violations, such as low-price competition, that damage the interest of the related industries. Participating entities shall voluntarily observe the rules of the exhibition, no competing for clients, no selling spurious, fake and inferior goods, no negotiating deals outside the Fair, and no divulging trade secrets.”

55. Members of the Bauxite Branch continue to engage in collusive and unlawful conduct up through the present day.

56. The ongoing combination and conspiracy engaged in by the defendants and their co-conspirators is an illegal and unreasonable restraint of interstate trade and commerce in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1.

57. During the period of the charged combination and conspiracy, defendants and their co-conspirators have participated in meetings and conversations in China and elsewhere in which the prices, volume of sales, and markets for refractory grade bauxite were discussed and agreed upon. These meetings have also been coordinated with trade association meetings for associations in which defendants are members.

58. At the above-described meetings and during the period of the conspiracy, defendants and others agreed to and did eliminate, suppress, and limit competition, by, among other things:

- (a) discussing the production volumes and prices of refractory grade bauxite;
- (b) agreeing to control the supply of refractory grade bauxite for export;
- (c) agreeing to increase and maintain prices of refractory grade bauxite.

59. In addition to other practices, defendants' illegal concerted conduct was facilitated by their concentrated control over sales of refractory grade bauxite. Together, defendants and their co-conspirators dominate the production and sale of refractory grade bauxite in the world and the United States. Further, as the cartel has taken steps to restrain production and increase prices, competitors have shown that they would follow price increases rather than undercut the new cartel price levels.

60. During the conspiracy, prices of refractory grade bauxite products have not followed the laws of supply and demand that exist in a competitive market. Prices have remained stable or increased during the period of the conspiracy despite slow growth in demand and low inflation. Throughout the period described herein, the collusive arrangements of the cartel have maintained prices well above those of a competitive market.

61. The effects of the cartel are separate and distinguishable from any government mandated export restriction.

B. Benefit to Defendants

62. Each defendant has substantially benefited from its participation in this illegal conspiracy to fix and maintain prices and control supply.

VIII. INJURY TO PLAINTIFF

63. Defendants' combination and conspiracy have had the following effects, among others:

- (a) The price of refractory grade bauxite products purchased by plaintiff (and the plaintiff classes) in the United States has been fixed, raised, maintained and stabilized at artificial and non-competitive levels;
- (b) Competition in the sale of refractory grade bauxite products in the United States has been restrained.

VII. THE NEED FOR INJUNCTIVE RELIEF

64. During the period covered by this Complaint, plaintiff and members of the plaintiff classes have purchased refractory grade bauxite products from defendants and/or are purchasers of refractory grade bauxite products requiring injunctive relief. By reason of the alleged violations of the antitrust laws, plaintiff and members of the plaintiff classes paid more for refractory grade bauxite products than they would have paid in the absence of the illegal combination and conspiracy, and as a result they have been injured and have suffered damages in an amount presently undetermined.

65. It is in the public interest to enjoin defendants from continuing to operate a conspiracy and combining to fix the prices of refractory grade bauxite.

66. Plaintiff and the classes will continue to be injured by the defendants' ongoing conduct in violation of the antitrust laws of the United States in the absence of injunctive relief.

IX. PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays:

- A. That the Court determine that this action may be maintained as a class action pursuant to Rule 23(b)(2) and (3) of the Federal Rules of Civil Procedure and direct that reasonable notice of this action, as provided by Rule 23(c) of the Federal Rules of Civil Procedure, be given to all members of the plaintiff classes;
- B. That the unlawful combination and conspiracy alleged herein be adjudged and decreed to be an unreasonable restraint of trade or commerce in per se violation of Section 1 of the Sherman Act, 15 U.S.C. § 1;
- C. That plaintiff and each class member of the damages class recover three-fold their damages, as provided by law, determined to have been sustained by each of them (using such damage methodologies as may be appropriate at trial), and that joint and several judgments in favor of plaintiff and the plaintiff classes be entered against defendants and each of them;
- D. That defendants be enjoined from continuing the currently ongoing unlawful combination and conspiracy alleged herein and other appropriate injunctive relief;
- E. That plaintiff and the plaintiff classes recover their costs of this suit, including reasonable attorneys' fees, as provided by law; and
- F. That plaintiff and the plaintiff classes be granted such other, further and different relief as the nature of the case may require or as may be deemed just and proper by this Court.

JURY DEMAND

Plaintiff demands a trial by jury, pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, of all issues triable of right by a jury.

Dated: July 17, 2009

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