

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

IN RE: : CIVIL ACTION
: :
ISOSTATIC GRAPHITE ANTITRUST :
LITIGATION : NO. 00-cv-01857-JF

MEMORANDUM AND ORDER

Fullam, Sr. J.

June 19, 2006

Counsel for the plaintiff class has filed a motion to approve the approve the proposed plan of allocation, distribution of settlement funds, and payment of additional attorneys' fees and costs. A hearing on this application was held this date. Two claimants objected to the proposed arrangement. This memorandum deals with one of those objections. The issue is whether that claimant is or is not a member of the class.

The class is defined as:

"All purchasers of non-machined and semi-machined isostatic or isotropic graphite in the United States who, at any time during the period from July 1, 1993 through February 29, 1998, directly purchased isostatic or isotropic graphite from one or more of the defendants in the litigation...."

It is undisputed that Morgan purchased non-machined or semi-machined isostatic or isotropic graphite; the disputed issue is whether it did so "in the United States."

Morgan is located in the United Kingdom. It placed orders for these materials with the defendant Carbone of America Industries Corp. at its plant in the United States. But the

purchases were carried out pursuant to a "consignment agreement" whereby, upon receipt of an order, Carbone would ship the materials to England "on consignment." Morgan's obligation to pay for these purchases did not arise until, later, Morgan withdrew items from the consignment storage arrangement in England. The agreement specifically provided that, until Morgan withdrew the materials from the consignment storage, and paid for them, title would remain in Carbone, and would pass to Morgan only when payment was made.

Both counsel for the plaintiff class, and the defendant Carbone, assert that Morgan is not a member of the class, is not bound by the settlement, and has no right to participate in the distribution. Morgan argues that the language of the releases specified in the settlement agreement is sufficiently broad to bar any further claims by Morgan, hence fundamental fairness requires that Morgan participate in the distribution. But the settlement and release language applies only to class members, and I am persuaded that Morgan is not a member of the class, since its purchases were made in the United Kingdom, not in the United States. If there were any doubt on this subject, counsel for Carbone specifically agreed, on the record at today's hearing, that Morgan's claims are not covered by the releases contemplated by the settlement agreement.

An Order follows.

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ORDER

AND NOW, this 19th day of June 2006, IT IS ORDERED:

That the objections of Morganite Special Carbons
Limited to the plan of distribution are DENIED.

BY THE COURT:

/s/ John P. Fullam
John P. Fullam, Sr. J.