

FILED

AUG 29 2003

APC

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
SPARTANBURG DIVISION

LARRY W. PROPPES, CLERK
U. S. DISTRICT COURT

ChemPro, Inc.,

Plaintiffs,

vs.

Chep USA,

Defendants.

Civil Action No. 7 : 0 3 - 2 8 2 5 - 2 0

NOTICE OF REMOVAL

Comes now Defendant Chep USA, Inc. hereinafter ("Defendant") in the above entitled action, and files this Notice of Removal of the above-referenced state court case pursuant to 28 U.S.C. § 1132. In support of this Notice, Defendant respectfully states:

1. On July 24, 2003, a Civil Action was filed against Defendant in the Court of Common Pleas for the County of Spartanburg, entitled ChemPro, Inc. vs. Chep USA, having civil action no. 2003-CP-42-2717.

2. On or after July 30, 2003, Defendant was served with a copy of the Summons and Complaint, Interrogatories and Requests for Production for the above-mentioned action. The Summons and Complaint constitute the only process, pleadings, and orders that have been filed in this action of which Defendant is aware, and a copy of the Summons and Complaint is respectively attached to this Notice of Removal as Exhibit "A."

3. Upon information and belief, at the time of the commencement of the action as alleged in the Complaint, Defendant was and is a New York general partnership and has a principal place of business in another state other than South Carolina.

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4. At the time of the commencement of the action as alleged in the Complaint, ChemPro, Inc. was and is a corporation organized and existing in the State of South Carolina with a principal place of business in Spartanburg County, State of South Carolina.

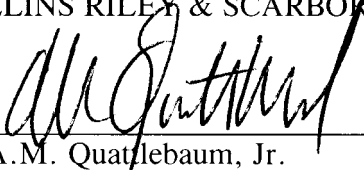
5. To the extent jurisdiction is not barred by the arbitration clause in the parties' contract, this action is of a civil nature and involves a controversy wholly between citizens of different states and arises under the laws of the United States. The value of the matter in dispute in said case, upon information and belief, exceeds the sum of Seventy Five Thousand and No/100 (\$75,000.00) Dollars including claimed actual and punitive damages, exclusive of interest and costs, as it appears from the allegations contained in the plaintiff's Complaint and said action is one over which the District Court of the United States has original jurisdiction, pursuant to 28 U.S.C. §1332.

6. Defendant files together with this Notice a copy of all process, pleadings and Orders served upon it in this action.

7. Defendant has provided a copy of the Notice of Removal to the Clerk of Court for Spartanburg County.

NELSON MULLINS RILEY & SCARBOROUGH, L.L.P.

By: _____


A.M. Quatlebaum, Jr.
ID No. 5052
Poinsett Plaza
104 S. Main Street, Suite 900
P.O. Box 10084
Greenville, SC 29603
(864) 250-2300
Attorneys for Chep USA

Greenville, South Carolina
8/29, 2003

CERTIFICATE OF SERVICE

I, the undersigned of the law offices of Nelson Mullins Riley & Scarborough, L.L.P., attorneys for Attorneys for Chep USA do hereby certify that I have served all counsel in this action with a copy of the pleading(s) hereinbelow specified by mailing a copy of the same by United States Mail, postage prepaid, to the following address(es):

Pleadings:

Notice of Removal
Civil Cover Sheet Rule 26.01 Disclosures of Chep USA
Civil Cover Sheet

Counsel Served:

Kenneth E. Darr, Jr.
Jeffrey J. Galan
Lyles, Darr & Clark, LLP
PO Box 5726
Spartanburg, SC 29304-7526

8/29, 2003

Frances A. Smith

EXHIBIT A

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)

IN THE COURT OF COMMON PLEAS

Case Number 2003-CP-42-2717

ChemPro, Inc.,)
)
Plaintiff,)
)
vs.)
)
Chep USA,)
)
Defendant.)

**SUMMONS
(JURY)**

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2003 JUL 26 PM 1:35
MARC KITCHENS

c/o BRUCE BRAUNER

TO THE DEFENDANT ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in the above-entitled action, a copy of which is herewith served upon you, and to serve a copy of your Answer upon the subscriber at his office at 240 Magnolia Street, Spartanburg, South Carolina 29306, within thirty (30) days after the service hereof, exclusive of the day of such service, and if you fail to answer the Complaint within the time aforesaid, Plaintiff will apply to the Court for the relief demanded in the Complaint and judgment by default will be rendered against you for the relief demanded in the Complaint.

LYLES, DARR & CLARK, LLP

July 22, 2003

BY: Kenneth E. Darr, Jr.
Kenneth E. Darr, Jr.
Jeffrey J. Galan

Attorneys for Plaintiff
Post Office Box 5726 (240 Magnolia Street)
Spartanburg, South Carolina 29304-5726
864-585-4806

Served RITONDA MUELLER
Date 7/30/03 Time 2:50 PM
Donald S. Eisenberg - Garry Ingle
Linda J. Worani - Paul Androsky
Diana L. Earley - Daniel Thorne
Pamela A. Kelley
SPECIAL & CERTIFIED PROCESS SERVERS
Bath # = OR # 1365 # 14
Investigative Legal Services, Inc.
100 E. Pine Street, Suite 205
Spartanburg, SC 29302-7122

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

IN THE COURT OF COMMON PLEAS
Case Number 2003-CP-42-2117

ChemPro, Inc.,)
)
Plaintiff,)
)
vs.)
)
Chep USA,)
)
Defendant.)

COMPLAINT
(JURY TRIAL REQUESTED)

MARC KITCHENS

REC JUL 24 PM 1:37

CLERK OF COURT
SPARTANBURG COUNTY

TO THE DEFENDANT ABOVE-NAMED:

The plaintiff, ChemPro, Inc., complaining of the defendant herein, would respectfully show unto the Court and hereby alleges as follows:

JURISDICTION AND GENERAL ALLEGATIONS

1. Plaintiff ChemPro, Inc. (hereinafter referred to as "ChemPro") is a corporation organized and existing under the law of the State of South Carolina with its principal place of business in Spartanburg, South Carolina.
2. Upon information and belief, defendant Chep USA (hereinafter referred to as "Chep") is a New York general partnership doing business in Spartanburg County, South Carolina, and is in the business of leasing storage and shipping pallets throughout the United States.
3. ChemPro and Chep entered into a Rental Agreement whereby terms and conditions were established for the rental of shipping pallets.
4. On August 5, 1999 ChemPro and Chep entered into a Supplemental Rental Agreement whereby delivery and pricing structures were established and agreed upon.

5. In June of 2001, ChemPro audited its pallet payments to Chep and identified a substantial discrepancy between actual pallet usage and payments made. ChemPro requested an audit by Chep and it was determined by Chep that ChemPro had overpaid on pallet rentals in the amount of One Hundred Twenty Four Thousand Two Hundred Eighty Six and 10/100 Dollars (\$124,286.10).

6. Upon information and belief, Chep agreed to refund all overpayments or issue a rental credit to ChemPro; however, Chep has failed and refused to fulfill its obligations.

FIRST CAUSE OF ACTION
Breach of Contract

7. The plaintiff reiterates the allegations contained in paragraphs 1 through 6 above as if repeated verbatim herein.

8. At all times relevant, ChemPro and Chep were parties to a mutually binding rental agreement.

9. At all times relevant, ChemPro fulfilled all obligations under the mutually binding rental agreement.

10. Upon information and belief, the contract specifies that if there are discrepancies for invoiced amounts, ChemPro must give notice to Chep, allow an inventory of the pallets and is entitled to have subsequent invoices adjusted or receive credit towards the future use of pallets.

11. Upon information and belief, after an inventory of the pallets and invoices, it was agreed by the parties that ChemPro had overpaid on pallet rentals in the amount of One Hundred Twenty Four Thousand Two Hundred Eighty Six and 10/100 Dollars (\$124,286.10) and that Chep would refund all overpayments or issue a rental credit to ChemPro.

12. Chep has unjustifiably failed to fulfill its contractual obligations by refusing to refund and/or give rental credit and is, therefore, in breach of the contract.

13. As a direct and proximate result of the breach of the contract by Chep, ChemPro has been damaged.

14. As a result of the foregoing, ChemPro is entitled to actual damages in the amount of One Hundred Twenty Four Thousand Two Hundred Eighty Six and 10/100 Dollars (\$124,286.10), plus costs of this action.

FOR A SECOND CAUSE OF ACTION
Quantum Meruit

15. The plaintiff reiterates the allegations contained in paragraphs 1 through 14 above as if repeated verbatim herein.

16. The plaintiff conferred a benefit upon the defendant by paying it for the rental of pallets that were not actually used.

17. This benefit was not conferred gratuitously but with the expectation that the plaintiff would be allowed to use the pallets, be given a refund for the overpayment, or be given credit to be applied toward future pallet rentals.

18. The circumstances were such that the defendant knew or ought to have known that the plaintiff expected to be allowed to use the pallets paid for, be reimbursed for overpayment, or be given a credit toward future pallet rentals.

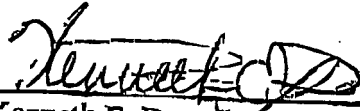
19. As a result of the foregoing, the defendant has been unjustly enriched in an amount to be proved at the trial of this case, and plaintiff is informed and believes that it is entitled to damages, including but not limited to use of the pallets paid for, reimbursement for amounts overpaid, or credit toward future pallet rentals.

WHEREFORE, having fully set forth its Complaint, plaintiff prays for an order of this Honorable Court :

- a. For judgment for actual damages against the defendant in the amount of One Hundred Twenty Four Thousand Two Hundred Eighty Six and 10/100 Dollars (\$124,286.10), plus costs of this action;
- b. For judgment against defendant for unjust enrichment in an amount to be proved at the trial of this case; and
- c. For such other and further relief as may be deemed just and proper by this Court.

July 22, 2003

LYLES, DARR & CLARK, LLP

BY: 
Kenneth E. Dart, Jr.
Jeffrey J. Galan
Attorneys for Plaintiffs
Post Office Box 5726 (240 Magnolia Street)
Spartanburg, South Carolina 29384-5726
864-585-4806

MARC K. BENS

2003 JUL 21 PM 1:37

CLERK OF COURT
SPARTANBURG COUNTY

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)

VERIFICATION

PERSONALLY appeared before me Allen H. McIntyre, who first being duly sworn, deposes and says he is the President of ChemPro, Inc.; he has read the foregoing Complaint; the matters set forth therein are true of his own knowledge, except those matters and things therein alleged on information and belief, and as to those he believes them to be true.


Allen H. McIntyre

SWORN TO and subscribed before
me this 24th day of July, 2003.

 (SEAL)
Notary Public for South Carolina
My Commission Expires 7-21-04

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2003 JUL 24 PM 1:37
MARC KITCHENS

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF SPARTANBURG)

Case Number 2003-CP-42-_____

ChemPro, Inc.)

Plaintiff,)

vs.)

**PLAINTIFF'S FIRST SET OF
REQUESTS FOR PRODUCTION**

Chep USA,)

Defendant.)

TO: DEFENDANT ABOVE-NAMED:

The Plaintiff, by and through the undersigned attorneys, hereby request, pursuant to Rule 34 of the South Carolina Rules of Civil Procedure, that the Defendant produce and/or permit the Plaintiff, or its undersigned attorneys, to inspect and/or copy the following documents and/or materials within thirty (30) days from the date of this request:

1. Any and all documents identified in or responsive to Plaintiff's First Set of Interrogatories to the Defendant.
2. Any and all written or recorded statements taken by or concerning any of the parties or witnesses that may have information relevant to this case.
3. Each and every document relating to any or all of the allegations contained in the pleadings or other documents filed in the above-captioned case.
4. Any and all other documents or photographs of any type, nature, or description whatsoever, not produced in any response to any of the preceding requests, which the Defendant may rely upon at trial, as substantive evidence or for impeachment purposes.

The Plaintiff requests that these documents be made available for inspection and/or copying at the office of the undersigned attorneys at 240 Magnolia Street, Spartanburg, South Carolina, or at such place as may be mutually agreed upon between the parties. In lieu of production for inspection and copying, the Defendant or the Defendant's attorney may comply with this request by forwarding legible photostatic copies of these documents to the undersigned

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attorneys at Lyles, Darr & Clark, LLP, 240 Magnolia Street, Spartanburg, South Carolina, within thirty (30) days of the date of this request.

These requests for production of documents, inspection and copying shall be deemed to continue from the time of service until the time of trial so that documentation which the Defendant or the Defendant's attorney comes into possession of after original responses have been submitted shall be promptly transmitted to the undersigned attorneys.

LYLES, DARR & CLARK, LLP

July 22 2003

BY:


Kenneth E. Darr, Jr.

Jeffrey J. Galan

Attorneys for the Plaintiff

240 Magnolia Street

Spartanburg, South Carolina 29304

864-585-4806

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)
ChemPro, Inc.,)
Plaintiff,)
vs.)
Chep USA,)
Defendants.)

IN THE COURT OF COMMON PLEAS

Case Number 2003-CP-42-_____

PLAINTIFF'S FIRST SET OF INTERROGATORIES

TO: DEFENDANT ABOVE-NAMED:

INSTRUCTIONS

Pursuant to the Rule 33 of the SCRCF, the Plaintiff submits the following interrogatories to the Defendant to be answered under oath according to said Rules. In answering these interrogatories, furnish all information in possession of the Defendant, its representatives, attorneys and investigators. If the Defendant is unable to answer an interrogatory in full, after exercising due diligence to obtain the information, answer to the extent possible and specify your objection or reason you are unable to answer the remainder and further state whatever information or knowledge the Defendant has concerning the unanswered portion. These interrogatories are continuing in character so as to require you to file supplemental answers if you obtain further or different information before trial. If the Defendant obtains information which renders its answers or any of them incomplete or inaccurate, the Defendant is obligated to serve amended answers on the Plaintiff's attorney.

Interrogatories should be answered in the following manner:

A. Insofar as may be applicable and except as otherwise indicated, the term "document" shall refer to any and all reports, records, letters, memoranda, writings or recorded materials of any kind whatsoever (including tapes, videos, or computer data) that are or have been in the possession, control, or custody of the Defendant or of which the Defendant has knowledge of the existence or

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which the Defendant has reason to believe exist.

B. A request to "identify" a document is a request to state insofar as may be applicable (1) the date of the document; (2) the type of the document or written communication; (3) the names and present addresses of persons who prepared such document and the addresses for such persons; (4) the present location of such document and the name and present address of the person now having custody of the document; (5) where the Defendant possesses or control the original or copy thereof, the location and name of the custodian of such original or copy; and (6) a brief description of the contents of the document.

C. The term "person" shall include a natural person, partnership, corporation, LLC, association or other group however organized.

D. Whenever a request is made to "identify" a natural person, it shall mean to supply all of the following information: (1) his or her full name; (2) his or her employer and position at the time; (3) the name of any person or entity whom he or she claims to have represented in connection with the matter to which the interrogatory relates; (4) his or her last known address and telephone number; and (5) his or her present employer.

E. A request to "explain fully" or "describe in detail" any answer, denial, or claim is a request, insofar as may be applicable, to: (1) state fully and specifically each fact and/or contention in support of such answer, denial or claim; (2) for each such fact or contention, to identify each person who has knowledge pertaining to that contention, each document that tends to support that fact or contention and each document that tends to dispute that fact or contention.

F. As used herein, "you" or "your" or "Defendant" includes all officers, agents, employees and other persons acting on behalf of the Defendant.

INTERROGATORIES

1. Give the names and addresses of persons known to the Defendant or its counsel to be witnesses concerning the facts of the case and indicate whether or not written or recorded statements have been taken from the witnesses and indicate who has possession of such statements.

2. Set forth a list of photographs, plats, sketches, or other prepared documents that relate to any and all claims and/or any and all defenses in this case.

WJ
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3. Set forth an itemized statement of all damages, exclusive of pain and suffering, claimed to have been sustained by the Defendant.

4. List the names and addresses of any expert witnesses whom the Defendant proposes to use as a witness at the trial of this case.

5. For each expert the Defendant proposes to use as a witness at a trial in this case, set forth a summary of his or her anticipated testimony sufficient to inform the Plaintiff of the evidence, information, and documents utilized by such expert in arriving at his or her opinion, the basis thereof, the theory upon which such opinion is based, and his or her opinion.

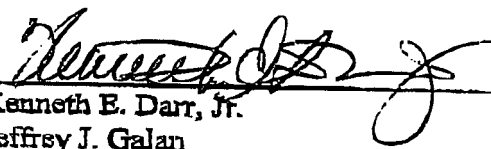
6. For each person known to the Defendant or counsel to be a witness concerning the facts of the case, set forth either a summary sufficient to inform the Plaintiff of the important facts known to or observed by such witness, or provide a copy of any written or recorded statements taken from such witnesses.

7. Identify the following documents or tangible objects; in so identifying them, include if applicable, its name, a description of it or the subject matter, and the witnesses through whom you intend to introduce it into evidence or whose testimony you intend to impeach or refresh with it: all documents, exhibits, or other tangible objects which you intend, desire, or assert you have the right to introduce or use at a trial in this case, either in your case in chief or in rebuttal or reply, or which you assert the right to use for impeachment purposes, or to refresh the recollection of any witness.

These interrogatories shall be deemed to continue from the time of service until the time of trial of the action so that information sought, which comes to the knowledge of the Defendant or its attorney after original answers to interrogatories have been submitted, shall be promptly transmitted to the Plaintiff's attorney.

LYLES, DARR & CLARK, LLP

July 22, 2003

BY: 
Kenneth E. Darr, Jr.
Jeffrey J. Galan
Attorneys for the Plaintiff
240 Magnolia Street
Spartanburg, South Carolina 29304
864-585-4806