

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON**

BUCKEYE DIAMOND LOGISTICS, INC. :	:	
fka BUCKEYE RECYCLERS, INC. :	:	
:	:	
Plaintiff, :	:	
:	:	Case No. C3-01-440
:	:	
v. :	:	
:	:	Judge Walter Herbert Rice
CHEP USA, a general partnership :	:	
:	:	
Defendant. :	:	

**DEFENDANT CHEP USA’S RESPONSE TO BUCKEYE DIAMOND LOGISTIC’S
NOTICE TO COURT REGARDING PARTIES PROPOSED
JOINT FINAL PRETRIAL ORDER**

Although the Court has not issued a written order setting a Final Pretrial Conference (or for that matter, a trial date), during a telephonic conference, the Court verbally advised the parties that a Final Pretrial Conference would be held by telephone on May 11, 2004.

Pursuant to the Court’s General Order No. 1, Section I (A)(6), Counsel for Buckeye was to have submitted to counsel for Defendant a “first draft” of the Joint Proposed Final Pretrial Order “at least fifteen working days before the filing date for the Joint Proposed Final Pretrial Order.” Under that same section of the General Order, the Joint Proposed Final Pretrial Order must be filed five to seven days prior to the Final Pretrial Conference. Thus, the “filing date” for the Joint Proposed Final Pretrial Order was, at the earliest May 4, 2004 and at the latest, May 6, 2004. Counsel for Plaintiff, however, had a duty to deliver the “first draft” to counsel for Defendant *fifteen working days* before May 4, 2004---which was April 12, 2004. Buckeye’s delivery was, however, more than two weeks late.

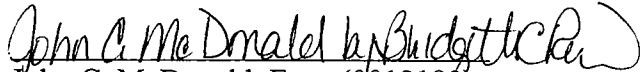
On the face of the “Notice to the Court Regarding Parties’ Proposed Joint Final Pretrial Order,” counsel for Plaintiff acknowledges that he did not timely deliver the “first draft.” In fact, Plaintiff’s counsel did not deliver the “first draft” until Friday, April 30, 2004, at 4:50 p.m., making it more than two weeks overdue. In addition to being late, it did not contain the same Plaintiff’s Exhibit List that was attached to the version submitted to the Court on May 4, 2004. When Plaintiff unilaterally submitted its Proposed Pretrial Order to the Court, it did so after giving less than two business days for CHEP’s review and response. This is in direct violation to the Court’s General Order No. 1.

With the belated delivery of the Plaintiff’s “first draft” counsel for Plaintiff effectively denied CHEP the five working days minimally allowed to the defendant to create the “second draft” of the Joint Proposed Pretrial Order. How did Plaintiff’s counsel make any attempt to meet, as required by the Court’s General Order No. 1, to work out any disagreements over the content of the Proposed Pretrial Order?

Plaintiff’s counsel has misleadingly raised a complaint to the Court (through the filing of the Buckeye’s Notice to Court Regarding Parties’ Proposed Joint Final Pretrial Order-Docket #99) about Defendant’s failure to respond to Plaintiff’s version of the Proposed Joint Final Pretrial Order, but it was Plaintiff that failed to follow the Court’s General Order and failed to provide the “first draft” in a timely fashion. CHEP should not be castigated when its accuser, Buckeye, is the root of the problem.

Regardless of Buckeye’s failure to follow the procedure outlined in the Court’s General Order No. 1, CHEP submits herewith its “second draft” of the Proposed Joint Final Pretrial Order.

Respectfully Submitted,



John C. McDonald, Esq. (0012190)

P.O. Box 165020

Columbus, Ohio 43216

Tele: (614) 462-2700

Fax: (614) 462-5135

Trial Attorney for Defendant,
CHEP USA

OF COUNSEL:

Bridgette C. Roman, Esq. (0040888)

Schottenstein, Zox & Dunn

P.O. Box 165020

Columbus, Ohio 43216

Tele: (614) 462-2700

Fax: (614) 462-5135

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing document was served on the following person via the Court's electronic delivery system or other electronic delivery system on this 5th day of May, 2004:

James A. Wilson

Vorys, Sater, Seymour & Pease LLP

52 East Gay Street

P.O. Box 1008

Columbus, Ohio 43216-1008

Trial Attorney for Plaintiff



Bridgette C. Roman