

**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. :	:	
	:	Chief Judge Walter Herbert Rice
CHEP USA, a general partnership :	:	
	:	
Defendant. :	:	

**Buckeye Diamond Logistics Motion for Extension of Time
To File Memorandum in Opposition to CHEP USA's Motion to
Exclude PX 2 ("Bain Report")**

Buckeye Diamond Logistics hereby moves for an extension of time to file its Memorandum in Opposition to CHEP USA's Motion to Exclude PX 2 ("Bain Report") until five business days after resolution of the proper procedure for filing materials CHEP has marked confidential been resolved. A memorandum in support is attached.

s/ James A. Wilson
 James A. Wilson (0030704)
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 Attorneys for Plaintiff and Counterclaim
 Defendant Buckeye Diamond Logistics

MEMORANDUM IN SUPPORT

CHEP USA's Motion to Exclude PX 2 ("Bain Report") selectively cites portions of a heavily redacted documents to argue that Bain & Company was not an agent of CHEP within the meaning of Fed. R. Evid. 801. The full text of these documents, however, as well as other documents produced by CHEP concerning the retention of Bain, belies the assertion that Bain was not CHEP's agent. Buckeye is hamstrung in presenting this evidence to the Court, because CHEP marked the original, unredacted versions of these documents, as confidential "counsel's eye's only."

On March 15th, this Court ordered unsealed a number of documents filed under seal by the parties in this case, resting its decision on controlling Sixth Circuit precedent that holds the Court may not allow the parties unchecked discretion in filing materials under seal. CHEP, however, continues to take the position that documents or transcripts designated confidential cannot be filed with the Court unless Buckeye does what the Court has said is impermissible – i.e., to file them under seal. Thus Buckeye is currently, without risking violation of this Court's order or the threat of sanctions from CHEP, unable to file with the Court the evidence that will support its opposition to CHEP's motion.

Buckeye has placed on the agenda for the discovery conference scheduled for June 18, 2004 the issue of how to resolve the conflict between CHEP's position and the Court's order. Buckeye therefore respectfully requests the Court extend the date for it to file its opposition to CHEP USA's Motion to Exclude PX 2 ("Bain Report") until five

days after the Court sets in place a process for the filing of materials CHEP claims are confidential.

s/ James A. Wilson

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of this Motion was served on
June 4, 2004, by electronic delivery or facsimile upon:

John C. McDonald
Bridgette Roman
Schottenstein Zox & Dunn
250 West Street
Columbus, OH 43215

s/ James A. Wilson

James A. Wilson