

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

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. :

**CHEP USA’S RESPONSE TO COUNTERCLAIM DEFENDANT
BUCKEYE DIAMOND MOTION FOR SUMMARY JUDGMENT
AS TO CHEP USA’S REPLEVIN COUNTERCLAIM**

CHEP USA acknowledges that it recovered 15,981 of its pallets from Buckeye following the Court’s Decision and Entry of August 11, 2003 and that Buckeye has continued to return CHEP pallets on a periodic basis since that date. As a consequence of Buckeye’s actions Count I of CHEP’s counterclaim seeking replevin is moot and CHEP voluntarily stipulates to the dismissal of Count I of its counterclaim.

Respectfully submitted,

s/John C. McDonald
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing CHEP USA's Response to Counterclaim Defendant Buckeye Diamond Motion for Summary Judgment as to CHEP USA's Replevin Counterclaim was served the 17th day of September, 2004, via the Court's electronic filing notification upon:

James A. Wilson
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s/John C. McDonald
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