

**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 IN LIMINE
REGARDING EVIDENCE OF PARTICIPATION IN CHEP USA'S
PALLET RETURN PROGRAM**

Buckeye Diamond Logistics hereby moves for an order in limine precluding CHEP USA from offering into evidence or raising in opening statement evidence concerning participation by other recyclers in its pallet return programs. A memorandum of law in support of this motion is attached.

s/James A. Wilson

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MEMORANDUM IN SUPPORT

Buckeye Diamond Logistics seeks an order in limine precluding CHEP USA from introducing into evidence documents or testimony concerning the number or identity of recyclers participating in CHEP USA's existing program for the return of pallets to CHEP. Proof of participation is different than evidence of the existence of the program, which is relevant to showing that CHEP benefits from the return of pallets from recyclers. Evidence of the number or identity of participants in such a program, however, is irrelevant to the claims in this case. It has no relevance to any of the element of Buckeye's unjust enrichment claim (i.e., proof that (1) Buckeye conferred a benefit upon CHEP, (2) that CHEP knew of the benefit, and (3) that CHEP would be unjustly enriched to retain the benefit without compensating Buckeye). Nor does the number or identify of participants in CHEP's program have any relevance to the measure of damages (i.e., the benefit to CHEP) for Buckeye's unjust enrichment claim. Likewise, whether other recyclers chose to participate in CHEP's return program has no pertinence to the elements of CHEP's counterclaim for conversion. As the Court indicated in its September 8, 2004 Decision and Entry (at p. 18), the issues to be tried in this case concern the relationship between Buckeye and CHEP, and not the relationship between other recyclers and CHEP. Accordingly, Buckeye respectfully requests that the Court

enter an order in limine excluding evidence regarding participation by other recyclers in CHEP's pallet return programs.

s/ James A. Wilson

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of this Motion was served on
September 23, 2004, by electronic delivery or facsimile upon:

John C. McDonald
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s/ James A. Wilson

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