

**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.	:	

**DEFENDANT CHEP USA'S MEMORANDUM IN OPPOSITION  
PLAINTIFF BUCKEYE DIAMOND LOGISTICS' FIRST MOTION  
TO ENFORCE DISCOVERY ORDER**

On September 10, 2004, the Magistrate Judge issued her Discovery Order (Doc. # 111) directing CHEP to produce, among other things, dwell time to information to Buckeye. In response to the Discovery Order, CHEP produced approximately 1,100 pages of detailed information on more than 800 NPDs to Buckeye. Included in those documents was the dwell time information that Buckeye requested. Buckeye does not dispute receiving the information but, rather, filed the instant action solely because it does not understand the information despite the fact that CHEP voluntarily made Elton Potts available by phone to explain the data. Despite Mr. Potts explanation, Buckeye asserts that because the reports provided refer to "cycle time" rather than "dwell time," CHEP has not complied with the Discovery Order.

The reports that CHEP produced are the only reports it has that calculate the time pallets remain in the possession of NPDs. CHEP prepares the reports by utilizing "cycle time," which is the best measure available for CHEP to determine how long pallets are held by a particular NPD.

Further, the terms "dwell time" and "cycle time" are used interchangeably to refer to the period of time between the initial shipment of a pallet from CHEP to a manufacturer and its ultimate return to CHEP. Buckeye does not demonstrate how receiving the documents in the format submitted prejudices Buckeye or fails to provide it with the information it needs to defend CHEP's conversion claim. In short, Buckeye is arguing over semantics and ignoring the fact that the substance of the information produced by CHEP constitutes full compliance with the Discovery Order.

For the foregoing reasons, CHEP respectfully requests that Buckeye's Motion to Enforce Discovery Order be overruled. CHEP requests further that the Court issue an Order declaring that CHEP is in compliance with the Discovery Order.

Respectfully submitted,

s/ John C. McDonald

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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a copy of the foregoing was served the 5th day of October, 2004, via the Court's electronic filing notification upon:

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s/ John C. McDonald  
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