

**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. :

**BUCKEYE DIAMOND LOGISTICS' STATUS REPORT**  
**REGARDING COMPLIANCE WITH AND APPEALS FROM COURT'S**  
**DISCOVERY ORDER OF SEPTEMBER 10, 2004**

Buckeye Diamond Logistics hereby submits this status report to advise the Court of the current posture of compliance with the Discovery Order of September 10, 2004. Issues determined by the Magistrate Judge requiring no further action by the parties are not included in this report.

Buckeye Issue 2: Buckeye sought an Order requiring CHEP to produce data or documents concerning pallet dwell times at non-participating distributors (“NPDs”), the entities from whom Buckeye frequently receives pallets, as requested in Buckeye’s Interrogatory # 2 and Buckeye’s Request for Production of Document #s 5, 6, and 24. The Magistrate order as follows: “For the reasons stated in the trial court’s decision and entry dated September 8, 2004 (Doc. # 111), the information sought is relevant and therefore discoverable. CHEP states that a “few of these NPDs have a connection to Buckeye” and thus CHEP appears to know which NPDs have such a connection. CHEP should therefore produce dwell time reports of NPDs that have a connection to Buckeye. In the event that

CHEP claims that it does not know which NPDs have a connection to Buckeye, CHEP shall produce dwell time reports of all NPDs within a 150 mile radius of Buckeye's place of business." On September 23, 2004, CHEP produced approximately 1100 pages of documents showing shipments of pallets to and collections from non-participating distributors, as well as CHEP's record of the pallet balance at each entity. These documents have a column for "cycle time," which CHEP claims is the same as dwell time, but Buckeye asserts is a different calculation. On October 4, 2004, Buckeye filed its First Motion to Enforce Discovery Order (Docket # 133), which raises this issue with the Court. CHEP filed its Memorandum in Opposition to Buckeye's Motion today (Docket # 137). Buckeye will file a Reply Memorandum as quickly as possible, unless the Court decides to hear argument on this issue at the Final Pretrial Conference.

Buckeye Issue 3: Buckeye sought an Order requiring CHEP to produce data or documents regarding pallet revenue and utilization rates as requested in Buckeye's Request for Production of Document #s 16 and 17. The Magistrate Judge found: "The information sought is relevant to Buckeye's unjust enrichment claim and is therefore discoverable. CHEP has admitted that CHEP's utilization rate information could be produced without substantial burden. CHEP must therefore produce the pallet revenue and utilization rate information as sought by Buckeye's Request for Production of Documents #s 16 and 17." On September 23, 2004, CHEP produced a summary page showing, among other things, consolidated information for utilization rates and gross revenue figures. Buckeye requested the actual reports concerning such information prepared on a regular basis for CHEP management, as well as information segregated by type of pallet (block and stringer). On September 29, 2004, CHEP sent an addition page

containing CHEP apparent calculation of “coverage days” segregated between block and stringer pallets, but not containing utilization rates or the periodic reports to management concerning utilization rates and revenue that Buckeye sought. After Buckeye indicated that it did not believe that this document was responsive, on October 1, 2004, CHEP produced CHEP16055-74, which CHEP says were reports from February 2003 through September 2004. On October 4, 2004, Buckeye wrote CHEP asking for (a) data concerning CHEP’s total holdings of block and string pallets and (b) for data, to the extent written reports do not exist, showing (with data segregated between string and block pallets) total holdings and pallets available for use from the period before July 2003. CHEP this morning, October 5, 2004, advised that it will not produce any additional documents, and Buckeye is therefore in the process of preparing a second motion to enforce the discovery order.

Buckeye Issue 5: Buckeye sought an Order requiring CHEP to produce, in Columbus, Ohio, the full original file in which CHEP 00795 was found, as ordered by the Court at the March 15<sup>th</sup> discovery conference, together with documents subsequently promised to Buckeye. The Magistrate Judge found: “The Court previously issued an order for CHEP to produce in Columbus, Ohio the full original file in which CHEP 00795 was found. CHEP represents that CHEP 00795 was pulled from the “old files” left behind by Roger Miller and found by Keith Norder when he moved into the office. CHEP should immediately produce the “old files” from which CHEP 00795 was found, as previously ordered.” CHEP filed objections to this portion of the Discovery Order on September 20, 2004 (Docket # 120) and Buckeye filed its Memorandum in Opposition to those objections on October 3, 2004 (Docket # 132).

Buckeye Issue 6: Buckeye sought an Order requiring CHEP to produce in Ohio certain original documents, rather than the unclear or illegible copies CHEP has produced. The Magistrate Judge ordered CHEP to produce legible copies. CHEP has complied with that portion of the Discovery Order.

Buckeye Issue 9: Buckeye sought an Order requiring CHEP to produce unredacted copies of CHEP 14643–46 and any other redacted documents CHEP has produced in this case. The Magistrate Judge ordered CHEP to produce such unredacted documents. CHEP has complied with that portion of the Discovery Order.

CHEP Issue 1: CHEP sought an order requiring Buckeye to supplement its discovery responses. The Magistrate Judge found: “Rule 26(e) of the Federal Rules of Civil Procedure provides that ‘a party who has... responded to a request for discovery with a disclosure or response is under a duty to supplement or correct the disclosure or response to include information thereafter acquired ... (a) if the party learns that in some material respect the information disclosed is incomplete or incorrect and if the additional or corrective information has not otherwise been made known to the other parties during the discovery process or in writing...’ Pursuant to Rule 26(e), Buckeye has a duty to supplement its discovery responses and must do so immediately.” Both parties have complied with that portion of the Discovery Order by supplementing their discovery responses.

CHEP Issue 7: CHEP sought an order finding Buckeye’s stated intention to “reserve the right” to call an expert untimely and barring Buckeye from doing so. The Magistrate Judge found: “Buckeye has been aware of CHEP’s damages claim for an extensive period of time and certainly could have identified an expert prior to the present

time. Indeed, it is not uncommon for experts to be provided documents as discovery progresses. Even though this Court has ordered production of certain pallet dwell times, utilization rates and revenue rates, that fact alone is insufficient to allow Buckeye to name a new expert at this juncture. In short, it is too late to name a new expert.” Buckeye filed an appeal from this portion of the Discovery Order on September 13, 2004 (Docket # 113). CHEP filed its Memorandum in Opposition on September 20, 2004 (Docket # 119) and Buckeye filed its Reply Memorandum on September 30, 2004 (Docket # 127). Accordingly, this appeal is at issue before the Court.

s/James A. Wilson  
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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a copy of this Status Report was served on October 5, 2004, by electronic delivery upon:

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s/James A. Wilson  
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