

**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' REPLY MEMORANDUM IN  
SUPPORT OF FIRST MOTION TO ENFORCE  
DISCOVERY ORDER (WITH RESPECT TO PRODUCTION OF PALLET  
DWELL TIME INFORMATION)**

CHEP USA's Memorandum in Opposition to Buckeye Diamond Logistics ("Buckeye") seeking an order enforcing the Court's Discovery Order (Docket # 112) rests on the assertion that "cycle time" and "dwell time" are the same. This assertion simply is not true. CHEP does not dispute that "cycle time" is calculated by dividing the pallet balance for the entity by the number of pallets sent the entity, and then multiplying by the number of days in the particular CHEP period (i.e., "cycle time" =  $(\text{Balance}/\text{Transfers In}) \times (\# \text{ of days in CHEP period})$ ). Nor does CHEP deny that in the Discovery Conference Agenda (at p. 7), CHEP defined "dwell time" as: the "amount of time that a pallet stay[s] in the distribution channel." A simple illustration shows that cycle time cannot possibly be the same as dwell time as CHEP has defined the two terms: Suppose two distributors (A and B) have each received 50 pallets in the same CHEP period, returned none, and ended the period with 100 pallets. Suppose also that distributor A had received the remaining 50 pallets the month before, while distributor B

had received the remaining 50 pallets two years (730 days) earlier. The cycle time calculation for each would be the same –  $100/50 \times 28$  (assuming a 28 day CHEP period), or 56 days. However, the dwell time for distributors A and B plainly would not be the same. Calculating the dwell time in CHEP’s favor by assuming all pallets came in on the last day of the period, for distributor A, the calculation for average dwell time simply requires doing an average – half the pallets were out 28 day and half were out zero days, so the average dwell time is 14 days. On the other hand, for distributor B, half the pallets were out 730 days and half out zero days, so the average dwell time would be 365 days.

CHEP cannot deny that it has the data to calculate dwell time in a manner consistent with the definition it gave the Court in the Discovery Agenda – it has records of when pallets were sent to a distributor, and it claims to know when they were returned. CHEP’s substitution of “cycle time” data at the eleventh hour, having never argued to the Magistrate Judge that it cannot calculate dwell times under the very definition it proffered the Court should not be allowed. Given the pending trial, CHEP should be ordered to produce accurate dwell time calculations within two business days of the Court’s decision.

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

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

John C. McDonald  
Kevin L. Murch  
Schottenstein Zox & Dunn  
250 West Street  
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s/James A. Wilson  
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James A. Wilson