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**CHEP's Requested Instruction No. 1:
Introduction**

Members of the jury: You have heard the evidence and the arguments of counsel. It is now the duty of the court to instruct you on the law which applies to this case. The court and jury have separate functions. You decide the disputed facts and I give the instructions of law. It is your sworn duty to accept these instructions and to apply the law as it is given to you. You are not permitted to change the law nor to apply your own idea of what you think the law should be.

Authority: 1 O.J.I 3.01 § 1.

**CHEP's Requested Instruction No. 2:
Claims Raised and Court's Prior Determinations**

In this case, Buckeye asserted a claim against CHEP under a theory of unjust enrichment. An action for unjust enrichment arises when one party at a detriment to itself confers a benefit on another who retains that benefit under circumstances that make it unjust or inequitable to retain that benefit without compensating the party providing it.

CHEP has asserted counterclaims against Buckeye for conversion of its pallets. Conversion occurs when a party wrongfully exercises dominion or control over the personal property of another in denial of or in a manner inconsistent with the owner's rights.

Prior to this trial, this Court determined, as a matter of law, that CHEP has at all times retained ownership of its pallets that have come into the possession of Buckeye. The Court also determined that CHEP has not lost or abandoned its pallets that have come into the possession of pallet recyclers such as Buckeye. You must accept these prior determinations as the law of this case.

Authority: Hummel v. Hummel, 133 Ohio St. 520 (Ohio 1938); Ohio Telephone Equipment & Sales, Inc. v. Hadler Realty Co., 24 Ohio App.3d 91 (Ohio Ct. App. 1985); Jedlicka v. Good Mechanical Auto Company, 21 Ohio App.3d 19 (Ohio Ct. App. 1984); Summary Judgment Decision and Entry, Docket #62.

**CHEP's Requested Instruction No. 3:
Preponderance of the Evidence**

Buckeye has the burden to prove every essential element of its claim by a preponderance of the evidence. If Buckeye should fail to establish any essential element of its claim by a preponderance of the evidence, you must find for CHEP as to that claim.

As to the counterclaim, CHEP is in the position of a plaintiff and CHEP has the burden of proving every essential element of its counterclaim by a preponderance of the evidence. If CHEP should fail to establish any essential element of its counterclaim by a preponderance of the evidence, you must find for Buckeye as to that counterclaim.

CHEP asserts an affirmative defense under the "unclean hands" doctrine that Buckeye is barred from recovering under the theory of unjust enrichment for pallets in its possession prior to mid-September of 2003. With this "unclean hands" defense, CHEP has the burden of proving by a preponderance of the evidence that Buckeye is not entitled to relief under the theory of unjust enrichment because Buckeye's conduct, with respect to CHEP's pallets, violated basic concepts of good faith. If you find that Buckeye's conduct violated basic concepts of good faith with respect to its collection and retention of CHEP's pallets, Buckeye's claim for unjust enrichment will be barred.

To establish by a preponderance of the evidence means to prove that something is more likely so than not. In other words, a preponderance of the evidence means such evidence has, when considered and compared with the evidence opposed to it, more convincing force and produces in your mind a belief that what is sought to be proved is more likely true than not. The standard does not require proof to an absolute certainty, since proof to an absolute certainty is seldom possible in any case.

In determining whether any fact in issue has been proved by a preponderance of the evidence, you may, unless otherwise instructed, consider the testimony of all witnesses, regardless of who may have called them, and all exhibits received into evidence, regardless of who may have produced them.

You may have heard of the term “proof beyond a reasonable doubt.” That is strictly a standard that applies in criminal cases. It does not apply in civil cases such as this. You should therefore put it out of your minds.

Authority: O'Malley, Grenig, & Lee, Federal Jury Practice and Instructions, § 104.01 (5th ed. 2000); Black's Law Dictionary 244 (7th ed. 1999); McClanahan v. McClanahan, 72 N.E.2d 798, 800 (Ohio Ct. App. 1946); Trott v. Trott, No. 01AP-852, 2002 WL 392286 (Ohio Ct. App. Mar. 14, 2002); Bean v. Bean, 471 N.E.2d 785 (Ohio Ct. App. 1983).

**CHEP's Requested Instruction No. 4:
Direct Evidence-Circumstantial Evidence**

There are two types of evidence that you, as jurors, may properly consider in reaching a verdict. They are known as direct evidence and circumstantial evidence. Direct evidence includes direct proof of facts such as testimony by a witness about what the witness said or heard or did. In other words, when a witness testifies about what is known to the witness in his personal knowledge by virtue of his or her own senses—what he or she sees or hears—that is called direct evidence. For example, if a witness testified that she saw it raining outside and you believe her, that would be direct evidence that it is raining.

Circumstantial evidence is proof of one or more facts from which you can find another fact. You infer on the basis of reason, experience and common sense from an established fact the existence or nonexistence of some other fact. For example, if someone walked in the courtroom wearing a raincoat covered with drops of water and carrying a wet umbrella, that would be circumstantial evidence from which you could conclude that it was raining.

You should consider both kinds of evidence. The law makes no distinction between the weight to be given to either direct or circumstantial evidence. You are to decide how much weight to give any evidence. Circumstantial evidence is of the same value as direct evidence.

Authority: O'Malley, Grenig, & Lee, Federal Jury Practice and Instructions, § 101.42 (5th ed. 2000).

**CHEP's Requested Instruction No. 5:
Consideration of Evidence**

Unless you are otherwise instructed, the evidence in the case consists of the sworn testimony of the witnesses regardless of who called the witness, all exhibits received into evidence regardless of who may have produced them, and all facts and events that may have been admitted or stipulated to. (And all facts and events which may have been judicially noticed.)

Statements and arguments by the lawyers are not evidence. The lawyers are not witnesses. What they have said in opening statement and closing argument and at other times is intended to help you interpret the evidence but it is not evidence. However, where the lawyers on both sides have stipulated or agreed on the existence of a fact, you must, unless the court otherwise instructed, accept the stipulation and regard that fact as proven.

[I may have taken judicial notice of certain facts or events. When I declared that I would take judicial notice of some fact or evidence you must, unless otherwise instructed, regard as proven the fact or event which has been judicially noticed.]

Any evidence to which I have sustained an objection and evidence that I have ordered stricken must be entirely disregarded. You must not consider as evidence any suggestion included in a question that was not answered.

Authority: O'Malley, Grenig, & Lee, Federal Jury Practice and Instructions, § 103.30 (5th ed. 2000); 1 O.J.I 5.20 § 1.

**CHEP's Requested Instruction No. 6:
Witnesses**

You, as jurors, are the sole judges of the credibility of the witnesses and the weight their testimony deserves. You may be guided by the appearance and conduct of the witness, the manner in which the witness testifies, the character of the testimony given, or by evidence contrary to the testimony given.

You should carefully scrutinize all the testimony given, the circumstances under which each witness has testified, and every matter in evidence which tends to show whether a witness is worthy of belief. Consider each witness's intelligence, frankness or lack thereof, motive, state of mind, and demeanor or manner while on the stand. Consider the witness's ability to observe the matters as to which he or she has testified, and whether he or she impresses you as having an accurate recollection of these matters. Consider also any relation each witness may bear to either side of the case, the manner in which each witness might be affected by the verdict, and the extent to which, if at all, each witness is either supported or contradicted by other evidence in the case.

Inconsistencies or discrepancies in the testimony of a witness or between the testimony of different witnesses, may or may not cause you to discredit such testimony. Two or more persons witnessing an incident or a transaction may see or hear it differently and innocent mis-recollection, like failure of recollection, is not an uncommon experience. In weighing the effect of a discrepancy, always consider whether it pertains to a matter of importance or an unimportant detail, and whether the discrepancy results from innocent error or intentional falsehood.

After making your own judgment, you will give the testimony of each witness such weight, if any, as you think it deserves.

You may, in short, accept or reject the testimony of any witness in whole or in part.

A witness may be discredited or impeached by contradictory evidence; that is, by other evidence that you accept which is contrary to what he or she has testified. He or she may also be impeached by showing that he or she testified falsely concerning a material matter of fact. He or she may be impeached by evidence that at some other time he or she has said or done something or has failed to say or do something which is inconsistent with the witness's testimony here in this courtroom. If you believe that any witness has been impeached and thus discredited, then it is your exclusive province to give the testimony of that witness such credit or weight, if any, that you think it deserves.

Authority: O'Malley, Grenig, & Lee, Federal Jury Practice and Instructions, § 15.01 (5th ed. 2000); 1 O.J.I 5.30.

**CHEP's Requested Instruction No. 7:
Impeachment-Inconsistent Statement of Conduct**

A witness may be discredited or impeached by contradictory evidence or by evidence that at some other time the witness has said or done something, or has failed to say or do something that is inconsistent with the witness's present testimony.

If you believe any witness has been impeached and thus discredited, you may give the testimony of that witness such credibility, if any, you think it deserves.

If a witness is shown knowingly to have testified falsely about any material matter, you have a right to distrust such witness's other testimony and you may reject all the testimony of that witness or give it such credibility as you may think it deserves.

An act or omission is “knowingly” done, if it is done voluntarily and intentionally and not because of mistake or accident or other innocent reason.

Authority: O'Malley, Grenig, & Lee, Federal Jury Practice and Instructions, § 105.04 (5th ed. 2000).

**CHEP's Requested Instruction No. 8:
Objections**

It is the duty of an attorney to object when the other side offers testimony or other evidence which the attorney believes is not properly admissible. Whether the Court sustained or overruled such objections, you should not be prejudiced against an attorney or his or her client because the attorney has made objections.

Prior to allowing testimony or other evidence to be introduced over the objection of an attorney, the Court does not, unless expressly stated, indicate any opinion as to the weight or effect of such evidence.

When the Court has sustained an objection to a question, the jury must disregard the question entirely and you may draw no inference from the wording of it, or speculate as to what the witness might have said if he or she had been permitted to answer the question.

Authority: Adapted from Divett, Blackmar & Wolff, Federal Jury Practice Instructions, citing U.S. Court of Appeals instructions for the 5th and 9th Circuits, § 10.05 (4th ed. 1987).

**CHEP's Requested Instruction No. 9:
Evidence**

Now that you have heard the evidence and the argument, it is my duty to instruct you about the applicable law. It is your duty to follow the law as I will state it and apply it to the facts as you find them from the evidence in the case. Do not single out one instruction as stating the law, but consider the instructions as a whole. You are not to be concerned about the wisdom of any rule of law stated by me; you must follow and apply the law.

The lawyers have properly referred to some of the governing rules of law in their arguments. If there is any difference between the laws stated by the lawyers and as stated in these instructions, you are governed by the instructions.

Nothing I say in these instructions indicates that I have any opinion about the facts. You, not I, have a duty to determine the facts.

You must perform your duties as jurors without bias or prejudice as to any party. The law does not permit you to be controlled by sympathy, prejudice or popular opinion. All parties accept that you will carefully and impartially consider all the evidence, follow the law as it is now being given to you, and reach a just verdict, regardless of the consequences.

Authority: O'Malley, Grenig, & Lee, Federal Jury Practice and Instructions, § 103.01 (5th ed. 2000).

**CHEP's Requested Instruction No. 10:
Depositions**

Some testimony was presented through depositions. A deposition contains the sworn recorded answers to questions asked of a witness in advance of a trial. A witness's testimony may sometimes be presented in the form of a deposition if the witness is not present. Some time before this trial, attorneys representing the parties in this case questioned this witness under oath. A court reporter was present and recorded the testimony. The questions and answers were read to you during this trial. In one instance, a witness's deposition was videotaped and you were shown portions of that depositions.

You must give this deposition testimony the same consideration as if the witness had been present and had testified from the witness stand in court.

In certain other instances you have seen and heard references to the earlier depositions of witnesses who testified in this trial. If statements in a deposition differ from the testimony given by the same witness in the courtroom, you may consider these statements to test the credibility of such witness.

Authority: Adapted from O'Malley, Grenig, and Lee, Federal Jury Practice and Instructions, § 102.23 (5th ed. 2000); 1 O.J.I 5.31 § 1, 2.

**CHEP's Requested Instruction No. 11:
Elements of Proof-Claim and Counterclaim**

In this case there is one claim by Buckeye and one counterclaim by CHEP. On each you may find for or against either party.

Buckeye has the burden of proving by a preponderance of the evidence that CHEP has been unjustly enriched by Buckeye's actions in transporting, sorting and storing CHEP's pallets that have come into Buckeye's possession. In defense of such claim, CHEP has the burden of proving by a preponderance of the evidence that Buckeye had unclean hands.

CHEP has the burden of proving by a preponderance of the evidence that CHEP has suffered damages under a claim of conversion as a result of Buckeye's withholding of CHEP's pallets.

Authority: Adapted from O'Malley, Grenig, & Lee, Federal Jury Practice and Instructions, § 104.01 (5th ed. 2000).

**CHEP's Requested Instruction No. 12:
Unjust Enrichment**

Buckeye alleges that CHEP has been unjustly enriched by its actions and that it should therefore be compensated. Buckeye alleged that it received CHEP's pallets in the normal course of Buckeye's business operations, and that it transported, sorted and stored CHEP's pallets which created a benefit to CHEP, and that it would be unjust for CHEP to retain that benefit without reimbursing or fairly compensating Buckeye for its services.

In order for Buckeye to prevail under its theory of unjust enrichment, it must demonstrate by a preponderance of the evidence all of the following elements:

- (1) Buckeye conferred a benefit on CHEP;
- (2) Buckeye suffered a detriment;
- (3) CHEP knew of the benefit;
- (4) CHEP retained this benefit under circumstances where it would be unjust to do so without compensating Buckeye; and
- (5) There is a causal connection between CHEP's benefit and Buckeye's detriment.

The parties have stipulated that CHEP receives a benefit when Buckeye notifies CHEP within ten (10) days of its receipt of CHEP pallets and allows CHEP to recover such pallets. A finding that CHEP has received a benefit by Buckeye's actions standing alone does not, however, necessitate a finding of unjust enrichment. The determination of whether retention of a benefit is "unjust" is subjective and must be accompanied by a finding that Buckeye suffered a detriment and a determination that there was a "causal connection" between this detriment and CHEP's benefit.

"Causal" means arising from a cause. "Cause" means something that produces an effect or result. "Connection" means logical relation or sequence. Therefore, "causal connection" means a logical relation or sequence arising from something that produces an effect.

Even if you decide that Buckeye has suffered a detriment and determine that there was a causal connection between this detriment and CHEP's benefit, a finding that CHEP is not responsible for Buckeye's detrimental position or that Buckeye was largely responsible for its own detriment breaks the causal connection. If there was a break in the causal connection, Buckeye has not proven all of the essential elements of a claim for unjust enrichment, then you must find for CHEP. If you find that Buckeye has proven all of the essential elements of a claim for unjust enrichment, you must next consider CHEP's unclean hands defense.

Authority: Reisenfeld & Co. v. Network Group, Inc., 277 F.3d 856, 860 (6th Cir. 2002); The Andersons, Inc. v. Consol, Inc., 185 F.Supp.2d 833, 837 (N.D. Ohio 2001); Fairfield Ready Mix v. Walnut Hills Associates, Ltd., 60 Ohio App.3d 1, 3 (Ohio Ct. App. 1988); Black's Law Dictionary 212 (7th ed. 1999); Merriam-Webster Online Dictionary, available at <http://www.merriam-webster.com>; U.S. Health Practices, Inc. v. Byron Blake, M.D., Inc., No. 00AP-1002, 2001 WL 277291 (Ohio Ct. App. Mar. 22, 2001).

**CHEP's Requested Instruction No. 13:
Unclean Hands Affirmative Defense**

CHEP contends that even if Buckeye proves all of the elements of unjust enrichment, that with respect to those pallets that Buckeye kept from CHEP prior to mid-September of 2003, Buckeye is not entitled to recover anything from CHEP because of Buckeye's "unclean hands." Unclean hands is a defense to an unjust enrichment claim where the party claiming unjust enrichment has acted with fault or violating good faith. "Good faith" means honesty in fact in connection with one's conduct. Here, in order for CHEP to prevail on its unclean hands defense, CHEP must prove that Buckeye was at fault or violated good faith with regard to CHEP and the withholding of CHEP's pallets from CHEP. A finding that Buckeye was at fault or that Buckeye violated good faith prevents Buckeye from recovering any damages with respect to the transportation, sorting and storage of those pallets that it released to CHEP in mid-September of 2003, even if Buckeye proves the essential elements of unjust enrichment.

Authority: Trott v. Trott, No. 01AP-852, 2002 WL 392286 (Ohio Ct. App. Mar. 14, 2002); Bean v. Bean, 471 N.E.2d 785 (Ohio Ct. App. 1983); O.J.I. §253.01

**CHEP's Requested Instruction No. 14:
Damages-Unjust Enrichment**

If Buckeye proves all of the elements of unjust enrichment by a preponderance of the evidence, and CHEP fails to prove its unclean hands defense by a preponderance of the evidence, then Buckeye will be entitled to recover damages for unjust enrichment.

You are permitted to award Buckeye only those damages that reimburse Buckeye for providing transportation, sortation and storage services or fairly compensate Buckeye for these services.

Authority: Buckeye's Complaint, ¶ 42; Banks v. Nationwide Mut. Fire Ins. Co., No. 99AP-1413, 2000 WL 1742064 (Ohio Ct. App. Nov. 28, 2000).

**CHEP's Requested Instruction No. 15:
Conversion**

CHEP alleges that Buckeye converted CHEP's property – its pallets -- and that CHEP should, therefore, be compensated by Buckeye for this conversion. Conversion is the wrongful assuming of unauthorized control over the personal property of another, whether it is done purposefully or not. The elements of a conversion claim are:

- (1) that the party has ownership interests or a right to possession of the property at the time of the conversion;
- (2) that the other party withheld the property from its rightful owner or disposed of the property; and
- (3) that as a result, the property owner suffered damages.

Conversion does not require that Buckeye had the intent or purpose to convert the CHEP's property. Even if Buckeye acted under misapprehension or mistake about CHEP's ownership rights, Buckeye can still be liable for conversion. Conversion does not require a wrongful purpose, intent, or an assertion of ownership by Buckeye over the converted property. Buckeye's motive is not at all relevant to this claim.

Prior to the beginning of this trial, this Court made various determinations as a matter of law. This Court determined that at the time Buckeye obtained CHEP's pallets and kept them, that it was CHEP, not Buckeye, which had the right to possession of the pallets. The Court also previously determined that Buckeye did "not have the right to withhold [the pallets from] return to CHEP" and that the pallets "must be returned." These findings satisfy the first two elements of CHEP's conversion claim against Buckeye. Therefore, you should consider the remaining question regarding the conversion claim: whether and in what amount CHEP was damaged by Buckeye's conversion of CHEP's pallets.

Authority: Summary Judgment Decision and Entry, Docket #62, pp. 19, 42, and 44; Ohio Telephone Equipment & Sales, Inc. v. Hadler Realty Co., 24 Ohio App.3d 91 (Ohio Ct. App. 1985); In re Neumann, 182 B.R. 502, 505 (Bkrcty.N.D.Ohio 1995); Gillespie & McCulley v. Holland, 3 Ohio App. 116 (Ohio Ct. App. 1914); Bear v. Colonial Finance Co., 182 N.E. 521 (Ohio Ct. App. 1932); Irvin v. Pysel, No. 47461, 1984 WL 5529 (Ohio Ct. App. May 10, 1984); Freeman v. Smith, No. 7498, 1988 WL 142289 (Ohio Ct. App. Dec. 27, 1988); Fulks v. Fulks, 95 Ohio App. 515 (Ohio Ct. App. 1953).

**CHEP's Requested Instruction No. 16:
Damages-Conversion**

CHEP is entitled to recover compensation for its losses caused by Buckeye having wrongfully deprived CHEP of its pallets. It is a fundamental rule that the owner of property must be fairly compensated for the loss sustained by reason of being wrongfully deprived of his property.

In this case Buckeye transferred some of CHEP's pallets to third parties. CHEP eventually recovered the rest of its pallets from Buckeye. CHEP contends that the pallets it recovered from Buckeye were in such poor condition that the pallets needed to be washed, repaired or replaced. In determining the compensatory damages awardable to CHEP, you may consider CHEP's evidence as to the cost of capital and depreciation in value with respect to all of its pallets; the cost of repair or replacement of those pallets that it recovered from Buckeye and; what Buckeye received from third-parties for CHEP pallets. It is appropriate to award CHEP damages in an amount that fairly compensates CHEP for its loss.

Authority: Lyle v. Durham, 16 Ohio App.3d 1 (Ohio Ct. App. 1984); Wright v. Miller, No. 752, 1991 WL 37926 (Ohio Ct. App. Mar. 11, 1991); Dalicandro v. Morrison Road Development Co., Inc., Nos. 00AP-619, 00AP-656, 2001 WL 379893 (Ohio Ct. App. Apr. 17, 2001); Summary Judgment Decision and Entry, Docket #62, p. 42; Russell v. Smith, 81 Ohio App.3d 784 (Ohio Ct. App. 1992); Ace Vending Co. v. Davidson, 8 Ohio App.3d 328 (Ohio Ct. App. 1982); Fulks v. Fulks, 95 Ohio App. 515 (Ohio Ct. App. 1953).

**CHEP's Requested Instruction No. 17:
Compensatory Damages**

In discussing conversion, you have heard me refer to compensatory damages or compensation for losses. The purpose of the law of damages is to award, as far as possible, just and fair compensation for the loss, if any, which resulted from a party's harmful action. These are known as compensatory damages. Compensatory damages seek to make a party whole, that is, to compensate him or her for the injury that he or she may have suffered. I remind you that you may award compensatory damages only for injuries that a party proves were proximately caused by the other party's allegedly wrongful conduct. Any damages that you award must be fair and reasonable, neither inadequate nor excessive. You should not award compensatory damages for speculative damages but only for those damages that were actually suffered and proven.

In awarding compensatory damages, if you decide to award them, you must be guided by dispassionate common sense. Computing damages may be difficult but you may not let that difficulty lead you to engage in arbitrary guesswork. On the other hand, the law does not require a party to prove the amount of its loss with mathematical precision, but only with as much definiteness and accuracy as the circumstances permit. In all instances, you must use sound discretion in fixing an award of damages, drawing reasonable inferences where you deem appropriate from the facts and circumstances in the evidence.

Authority: Adapted from Federal Jury Practice & Instructions Pattern & Model Jury Instructions -- Civil Pattern Jury Instructions: Fifth Circuit, Civil Cases, U.S. Fifth District Judges Association, § 15.2 (1999).

**CHEP's Requested Instruction No. 18:
Damages**

The fact that I have instructed you as to the proper measure of damages should not be considered as indicating any view of mine as to whether CHEP has been unjustly enriched by Buckeye's actions, or as to whether CHEP is entitled to damages for its conversion claim. Instructions as to the measure of damages are given for your guidance only in the event you should find that damages are awardable in accordance with the other instructions.

If Buckeye has proven its claim against CHEP by a preponderance of the evidence, and CHEP fails to prove its unclean hands defense by a preponderance of the evidence, you must determine the amount by which CHEP has been unjustly enriched. With respect to CHEP's claims, you must determine the amount of damages to which CHEP is entitled.

Authority: Adapted from O'Malley, Grenig, & Lee, Federal Jury Practice and Instructions, § 106.02 (5th ed. 2000).

**CHEP's Requested Instruction No. 19:
Closing Instructions**

The Court has given you the instructions on the law applicable to this case. I will now instruct you on how to conduct your deliberations and prepare your verdict.

When you go to the jury room, your first function will be to select one of your number to serve as a foreperson. The person you select to preside over your deliberations does not have any greater power nor does that person's vote have any more importance than others. He or she serves the purpose of helping to conduct your deliberations in an orderly manner and to give each of you the opportunity to express your opinion. One additional duty of the foreperson is to see to it that the verdict forms and any exhibits are returned to the Court after you have reached a verdict.

The Court has instructed you on all the law necessary for your deliberations. Whether or not certain instructions are applicable may depend upon the conclusions you reach on the facts by a preponderance of the evidence.

You must not be influenced by any consideration of sympathy or prejudice. It is your duty to weigh the evidence, to decide the disputed questions of fact, to apply the instructions of law to your findings and to render your verdict accordingly. Your duty as jurors is to arrive at a fair and just verdict. Remember at all times that you are not partisans. You are judges—judges of facts. Your sole interest is to seek the truth from the evidence in the case.

Your initial conduct upon commencing deliberations is a matter of importance. It is not wise to express immediately a determination to insist upon a certain verdict. It is your duty, as jurors, to consult with one another, and to deliberate with a view to reaching an agreement, if you can do so without violence to individual judgment. You must each decide the case for yourself, but only after an impartial consideration of the evidence in the case with your fellow jurors. In

the course of your deliberations, do not hesitate to reexamine your own views and change your opinion if convinced it is erroneous. But do not surrender your honest conviction as to the weight or effect of evidence, solely because of the opinion of your fellow jurors or for the mere purpose of returning a verdict.

Jurors selected as alternates are not permitted to participate in the jury's deliberations unless one or more of the regular jurors is unable to complete his or her service due to illness or other misfortune. We are pleased that no such incident has occurred. It will not be necessary for the alternates to render further service in this case.

Due to the potential injury that may be suffered by both parties if confidential information disclosed during the trial were leaked to competitors or customers, you should not discuss or reveal the information you learned in trial even after the verdict is announced. You should not discuss this information among yourselves or with anyone else. Do not permit anyone to discuss it with you or in your presence.

Your verdict must be unanimous and must reflect the conscientious judgment of each juror.

Authority: O'Malley, Grenig, & Lee, Federal Jury Practice and Instructions, § 106.01 (5th ed. 2000); 1 O.J.I 25.10 § 1, 2; 1 O.J.I 25.20 § 2, 4, 5, 6; 1 O.J.I 25.30 § 1; 1 O.J.I 25.40 § 1, 3.

**CHEP's Requested Instruction No. 20:
Verdict Forms and Interrogatories**

I will now read the verdict forms and special interrogatories and caution you not to make any inference by reason of the order in which I read them.

In order to conclude this case, it is necessary that all eight members of the jury agree upon the verdicts. All the members of the jury agreeing upon the verdict and special interrogatory must sign their names to the verdict form and special interrogatories to which they have agreed. You are warned not to discuss your verdict outside of the jury room until it has been returned to the Court, nor are you to discuss the status of your deliberations with anyone.

When you have reached and signed a verdict, you will summon the Courtroom Deputy who will return you to the courtroom at which time your verdict will be announced.

Authority: Adapted from 1 O.J.I 25.10 § 3.

(b)(1) With respect to the 11,414 CHEP pallets delivered by Buckeye Diamond Logistics to Abbott Foods and Mills Pride between July, 2000 and August, 2001, we the jury do hereby find that CHEP USA has been unjustly enriched:

YES _____ or NO _____ [mark appropriate space with an "X"];

(b)(2) With respect to these same pallets, we the jury do hereby find that Buckeye Diamond Logistics acted with unclean hands:

YES _____ or NO _____ [mark appropriate space with an "X"];

(b)(3) If you answered "yes" to (b)(1) and "no" to (b)(2) above, please proceed to (b)(4). If you answered "no" to (b)(1) or "yes" to (b)(2) above, please proceed to paragraph (c)(1) below.

(b)(4) We hereby award compensation to Buckeye Diamond Logistics in the amount of \$ _____.

(c)(1) With respect to the 4,888 CHEP pallets recovered by CHEP USA from Buckeye Diamond Logistics between October 3, 2003 and July 30, 2004, we the jury do hereby find that CHEP USA has been unjustly enriched:

YES _____ or NO _____ [mark appropriate space with an "X"];

(c)(2) With respect to these same pallets, we the jury do hereby find that Buckeye Diamond Logistics acted with unclean hands:

YES _____ or NO _____ [mark appropriate space with an "X"];

(c)(3) If you answered "yes" to (c)(1) and "no" to (c)(2) above, please proceed to (c)(4). If you answered "no" to (c)(1) or "yes" to (c)(2) above, please proceed to Verdict Form 2.

(c)(4) We hereby award compensation to Buckeye Diamond Logistics in the amount of \$ _____.

DATED: _____

FOREPERSON

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of Defendant's Proposed Jury Instructions, Verdict Forms and Special Interrogatories was served this 5th day of October, 2004, via the Court's electronic filing notification, upon:

James A. Wilson
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Trial Attorney for Plaintiff

s/ John C. McDonald
John C. McDonald