

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

BUCKEYE DIAMOND LOGISTICS, INC. :	:	
flka BUCKEYE RECYCLERS, INC. :	:	
	:	
	:	
Plaintiff, :	:	Case No. C3-01-440
	:	
v. :	:	
	:	Judge Walter Herbert Rice
CHEP USA, a general partnership :	:	
	:	
Defendant. :	:	

**CHEP USA'S REPLY MEMORANDUM IN SUPPORT OF OBJECTIONS TO
MAGISTRATE JUDGE'S DISCOVERY ORDER**

CHEP objects to that portion of the Discovery Order directing CHEP to produce the "original files" in which CHEP 00795 was found because, quite simply, there are no "original files" to produce. CHEP explained, through affidavit, the efforts it took to locate the original stack of papers in which CHEP 00795 was found. In response, Buckeye argues that CHEP should be sanctioned because the documents do not exist. Stripped of its hyperbole, however, Buckeye's memorandum in opposition and its fascination with CHEP 00795 is nothing more than a red herring. Nothing contained in CHEP 00795 supports Buckeye's remaining claim for unjust enrichment and declaratory judgment. In fact, nothing contained in CHEP 00795 is relevant to any issues in this action.

First, CHEP has never denied and, in fact, has stipulated that it receives a benefit if its pallets are returned in a timely manner. (Stipulation ¶ 25.) Thus, a document that implies that such a benefit exists is not necessary to establish that fact. Second, Buckeye has never asserted that the measure of CHEP's benefit is that which a CHEP employee speculated and assumed it is

as contained in a memo entitled "Benefit of Paying Recyclers." Rather, Buckeye has consistently asserted that it should receive "reasonable compensation" for services provided or "fair compensation" based on two alternative theories: (a) the \$8.00 surcharge for shipment to NPDs or (b) the \$4.00 to \$6.50 that Buckeye sets for reselling beer pallets. (See correspondence dated January 15, 2003, attached hereto at Tab "A"). Neither of these measures of damages is addressed in CHEP 00795. Thus, nothing in that document supports Buckeye's claims and its continued focus on it is misplaced.

Moreover, the sanctions that Buckeye requests for the fact that the "original files" in which CHEP 00795 was found do not exist are nonsensical. Buckeye requests that the Court issue an order precluding CHEP from disputing that CHEP 00795 is an accurate assessment of the benefit CHEP would receive from paying recyclers for the return of pallets. As set forth above, such an order would be unnecessary because it is not supportive of either of the two theories which Buckeye said were the basis of its claim for "reasonable compensation" or "reimbursement."

Buckeye also asks that the Court issue an order precluding CHEP from disputing that CHEP 00795 was "disregarded and concealed when CHEP began making qualified offers of compensation to recyclers such as Buckeye for returning pallets." Buckeye's request ignores the fact that the documents was in fact produced to Buckeye in the early stages of this litigation and was the focus of questioning in several depositions conducted by Buckeye in 2002. In short, Buckeye wants the Court to allow it to argue, without rebuttal, that CHEP concealed information (which it had no obligation to publicize) when it began entering into the asset recovery program with NPDs. Such a holding would be untrue and irrelevant and would serve only to confuse and

mislead the jury. Buckeye seeks an unreasonable solution to a discovery dispute in which there is absolutely no evidence of any wrongdoing.

Based on the foregoing, CHEP objects to that portion of the Discovery Order directing CHEP to produce the "original files" in which CHEP 00795 was found. Because Buckeye has failed to demonstrate that CHEP should not be relieved from that portion of the Discovery Order, CHEP respectfully requests that the Court set aside that portion of the Discovery Order and find that CHEP has complied with Buckeye's discovery requests pertaining to CHEP 00795.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing was served the 6th day of October, 2004, via the Court's electronic filing notification upon:

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s/ John C. McDonald
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