

**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' SECOND MOTION  
TO ENFORCE DISCOVERY ORDER**

As it did in its First Motion to Enforce Discovery Order with respect to CHEP's dwell time information, Buckeye files the instant Motion not because CHEP failed to comply with the Discovery Order but, rather, because Buckeye does not understand the data it received. That is not an appropriate basis for wasting the Court's and CHEP's time with yet another Motion filed less than a week before trial. Buckeye's transparent attempt to delay the inevitable day of reckoning by burdening this Court with multiple last-minute and baseless motions should not be rewarded and its Motion should be dismissed.

**A. Buckeye Received Exactly What it Requested**

The Discovery Order required CHEP to produce "the pallet revenue and utilization rate information as sought by Buckeye's Request for Production of Documents #s 16 and 17." (Doc. # 112 at 5.) Buckeye specifically requested:

- 16. All documents referring or relating to any calculation the average daily, weekly or monthly revenue paid to CHEP for pallets in the possession of CHEP's

manufacturer or distributor customers or any NPD, for any period since January 1, 1999.

17. All documents referring or relating to CHEP's utilization rates (i.e., the percentage of CHEP's inventory not at customer locations or outside of CHEP's control and available for rental) for block or stringer pallets on an annual, monthly, weekly or daily basis for any period since January 1, 1999.

On September 23, 2004, CHEP produced CHEP 14801, which was CHEP's Monthly Volumes, Activities, and Costs Report of Key Performance Indicators ("KPI") showing the relevant data on a month-by-month basis commencing January 1999 and continuing through August 2004.

On September 24, 2004, Buckeye's counsel asked for clarification on some of the items contained in CHEP 14801. CHEP voluntarily made Elton Potts, CHEP's Senior Vice President of Asset Management, available by phone to explain the data. CHEP also provided Buckeye with an Inventory Summary Planning Forecast establishing the stock day coverage for block and stringer pallets. Subsequently, Buckeye complained that it still needed documents showing utilization rates, also known as "field stock ratio", separately for stringer and block pallets. In response, CHEP explained that because its reports do not include data as to the number of pallets in the field at any given time, there were no reports providing the utilization rate either separately or collectively for block or stringer pallets.

On September 30, 2004, Buckeye continued to assert that it needed additional information regarding utilization rates for block and stringer pallets and that it was irrelevant that CHEP's reports do not include such information! Although informed in advance that they did not include the information sought, Buckeye demanded monthly inventory summary planning forecast reports, which CHEP provided the following day (CHEP 16055-16074). Demonstrating its predisposition to complaining and filing baseless motions regardless of what type of information it receives, Buckeye apparently did not even review the monthly inventory reports

before sending another letter regarding those reports. In its letter dated October 4, 2004, Buckeye asked CHEP to confirm that the periods listed in the reports were for CHEP fiscal year 2004 (i.e. July 2003 to June 2004). However, CHEP expressly stated in its October 1, 2004 cover letter that the reports were "for the time period of February, 2003 (when this report was first generated) to date." (Correspondence attached to Buckeye's Motion at Tabs "E" and "F".)

Not being satisfied with CHEP's prior representations, in its letter of October 4, 2004, Buckeye yet again asked whether it was CHEP's position that it does not "have data in any form segregating total holdings and pallets ready to be circulated by block and stringer types." CHEP had already explained that it did not have that information in any readily available format.

**B. The Information Buckeye is Seeking is Irrelevant**

Notwithstanding the fact that CHEP has provided Buckeye with all of the information in its possession that is responsive to Buckeye's requests, Buckeye has failed to articulate what relevance any of the information has to either Buckeye's unjust enrichment claim or CHEP's conversion claim. The parties have wasted countless hours, as well as the time of the Court, regarding this information. Buckeye should be restrained from continuing a future fishing expedition on the utilization rates issue so that this matter can proceed to trial as scheduled.

**C. CHEP Has Fully Complied with the Discovery Order**

As demonstrated above, CHEP has fully complied with the Discovery Order. CHEP produced all documents in its possession responsive to Buckeye's requests for production as ordered. Fed. R. Civ. P. 34 does not require CHEP to spend hours, if not days, creating reports for Buckeye that (1) are irrelevant, (2) are not utilized by CHEP in the ordinary course of business, and (3) do not exist. Buckeye received all of the documents that CHEP has related to utilization rates. The fact that Buckeye does not understand the information it requested is of no

consequence. Similarly, the fact that the data was not formatted in a manner preferable to Buckeye does not amount to noncompliance by CHEP. CHEP has gone beyond the scope of the Discovery Order in responding to Buckeye's numerous requests.<sup>1</sup> Therefore, CHEP respectfully requests that the Court deny Buckeye's Second Motion to Enforce Discovery Order and issue an order allowing this case to proceed to trial next week as scheduled.

Should the Court be unable to determine the adequacy of CHEP's production based solely on the pleadings, CHEP will make available a representative to be questioned by the Court or by the Magistrate regarding the items produced as soon as possible so as not to delay the trial any further. CHEP stands ready to proceed to trial on October 12, 2004 and requests that Buckeye's attempts to further delay this matter be rejected.

Respectfully submitted,

s/ John C. McDonald

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<sup>1</sup> For example, with respect to the dwell time reports, CHEP was ordered only to produce information regarding NPDs with whom Buckeye had a relationship. CHEP produced 1,100 pages of reports for over 800 NPDs that were located within 150 mile radius of Buckeye, despite the fact that Buckeye subsequently identified only 60 such NPDs. Buckeye, not surprisingly, filed a motion complaining that those reports were inadequate as well.

**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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