

**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 DESIGNATIONS OF REDIRECT
TESTIMONY OF KEITH NORDER VIDEOTAPE DEPOSITION AND
OBJECTIONS TO CHEP USA DESIGNATIONS**

Buckeye Diamond Logistics hereby gives notice that it will offer page 90, line 22 to page 91, line 18 as redirect testimony of Mr. Norder via videotape at trial. In addition, to the extent the Court overrules Buckeye's objections set forth below to the testimony offered by CHEP from page 83, line 2 to page 85 line 18, 18, Buckeye further proffers page 87, line 6 though page 90, line 21 as its redirect testimony from Mr. Norder.

Buckeye does not object to CHEP's offer of the following testimony:

Page 80, line 19 through page 83, line 11

Page 91, line 25 to page 92, line 2

Page 92, line 7 to page 93, line 2

Buckeye objects to the remaining designations offered by CHEP, on the grounds set forth below:

Page 14, line 1 to page 16, line 11: This segment of testimony involves the witness looking at the wrong exhibit, and therefore being unable to answer questions about the document counsel was looking at. It is probative of nothing.

Page 30, line 24 to page 31, line 4: This section contains a question the witness asked to have repeated, which counsel did in the portion of the transcript previously offered.

Page 33, lines 20-25: These questions relate to an exhibit that the witness could not locate. (The deposition was taken by video conference).

Page 46, line 13 to page 47, line 2: The witness simply says he cannot read the document, which is not probative of any fact relevant to the case.

Page 54 line 25 through page 55, lines 1, 3-4: This testimony has no probative value because all Mr. Norder says, after being coached by CHEP's counsel, says he does not know about the document.

Page 83, line 1 to page 88, line 7 and page 93, lines 3-11 and 13-14: This testimony all relates to CHEP's beliefs as to the costs recyclers incur if they return pallet to CHEP. It is irrelevant and potentially confusing because the Court has ruled that the benefit to CHEP, not the cost to Buckeye, is the measure of damages on Buckeye's unjust enrichment claim. See Decision and Entry of September 8, 2004 (Docket # 110) at 506; U.S. Health Practices, Inc. v. Byron Blake, M.D., Inc., 2001 WL 277291 (Ohio App. 2001). Thoms v. Thayer, 1998 WL 65514 (Ohio App. 1998); Hartley v. Dayton Computer Supply, 106 F. Supp. 2d 976 (S.D. Ohio 1999). In addition, this testimony is further confusing because it relates to recyclers other than Buckeye, not to Buckeye. Further, it rest on hearsay, as the information in the document came from another CHEP

employee, not Mr. Norder, based on what he heard from recyclers other than Buckeye. See page 87, lines 19-22. As noted above, if this testimony is admitted, Buckeye will offer page 87, line 6 through page 90, line 21 as further redirect testimony from Mr. Norder.

All other designations by CHEP: All of the other designations offered by CHEP are objections interposed during the deposition, many of them improper speaking objections. While the Court can consider any of these objections that have survived its rulings on CHEP's Motions in Limine, putting the objections before the jury would be improper.

s/ James A. Wilson
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of this pleading was served on
October 8, 2004, by electronic delivery upon:

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s/ James A. Wilson

James A. Wilson