

AFFIDAVIT OF ELTON POTTS

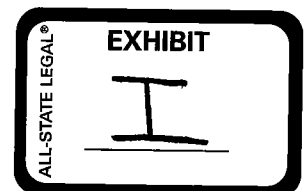
I, Elton Potts, having been duly sworn and cautioned do hereby state as follows:

1. I am currently the Senior Vice President of Asset Management for CHEP. I have first-hand knowledge of the matters addressed herein and am competent to testify as to these matters.

2. Prior to assuming my current duties and responsibilities with Asset Management, I worked in the finance area of CHEP. Therefore, in addition to my knowledge and experience with CHEP's asset management functions and customer information, I am also familiar with many of CHEP's practices and procedures in the finance and accounting areas.

3. CHEP produced over ten thousand documents to Buckeye in connection with the *Buckeye Diamond Logistics, Inc. vs. CHEP USA* lawsuit. As addressed below in greater detail, many of these documents contain highly sensitive information that CHEP would never release to the public and certainly not to a competitor such as Buckeye (particularly in the detailed format that the information was prepared and produced in response to Buckeye's discovery requests). CHEP did so only because we had the security afforded by the Protective Order that allowed CHEP to produce certain information subject to a high degree of protection such as limiting that information to "Outside Attorney's Eyes Only." In addition, much of the information produced to Buckeye is information that would place CHEP at a competitive disadvantage and create an unfair advantage for our competitors who gain access to this information. Given the fact that Buckeye and CHEP are actual competitors for business with a number of customers, CHEP certainly would not share its confidential and proprietary business information with Buckeye.

4. Buckeye has placed within the documents that they filed as part of their Summary Judgment filings a contract with CHEP's single largest customer. (It is part of Plaintiff's



Exhibits in Support of its Motion for Summary Judgment, Attachment Y—Docket # 30). This contract is a current, on-going contract. The public disclosure of this contract, which both CHEP and the customer regard as highly confidential business information, places CHEP's relationship with that customer in jeopardy. In addition, the specifics in this contract such as pricing, volume, duration, the termination provisions would be of tremendous commercial value to CHEP's competitors---and would be the very type of information that a competitor seeking to compete for this customer's business would want. CHEP would be placed at a serious disadvantage if this information was made public. The contract also contains a confidentiality stipulation at Para. 27, which imposes on CHEP an obligation to this customer to keep this type of information confidential. In addition to the disclosure of the contract described in this paragraph, any references made to similar specifics concerning the relationship with this customer in the course of its Summary Judgment Memoranda to the Court would be equally problematic. At no time have I been made aware of any occasion where CHEP pallets from this particular customer came into Buckeye's possession. Based on the geographic scope of Buckeye's business area, as I understand it and the operations at this particular customer, I do not believe that it is likely that any of CHEP's pallets the came into Buckeye's possession through this particular customer.

5. CHEP has engaged in various steps to improve its business methods, including but not limited to improving the prompt recovery of its assets and its relationship with the recycler community. These steps include utilizing outside consultants and engaging in internal critical self-examination. As a result of these processes, a consultant produced some reports and some internal brain-storming was reduced to writing (See, for example, Exhibit U, X to Buckeye's Summary Judgment Exhibits—Docket 30, and Exhibit B to Buckeye's Memorandum in Opposition—Docket #40). Besides putting these documents before the Court, I am informed

that Buckeye has quoted liberally from these documents throughout their various Summary Judgment filings. With respect to the consultant's reports, this is information that CHEP regards as highly confidential. As the reports note on each and every page, they were prepared by the consultant "solely for the use of our client it is not to be relied on by any 3rd party without [the consultant's] prior written consent." While some of the factual underpinnings of the consultant's report have been seriously called into question by various CHEP personnel, the fact remains that CHEP safeguards this information from disclosure and limits its dissemination within the company to those with a business reason to know the information. Both the consultant's information and that which came out of the internal brain-storming sessions, would be the type of information that would be of benefit to CHEP's competitors because it purports to show the company's weaknesses and plans for future strategies. Any company would benefit by seeing this type of information about a competitor because it would allow for the competitive exploitation of any weaknesses disclosed by the reports or notes and would allow the competitor to see the plans and strategies that the company will likely pursue in the future.

6. In addition to what is addressed in Paragraphs 4-5 above, the following additional information is that which CHEP does not reveal to anyone outside of CHEP and in which CHEP takes steps to maintain in a confidential matter (such as limiting disclosure of the information within the company to those who have a business reason to know it and adopting facility security measures to assure that persons who do not have a business reason to know the information are restricted from access to it):

- a. CHEP USA's annual rental revenue (from the Norder Affidavit).
- b. Customer agreements and internally generated customer reporting information which disclose CHEP's customer's name as well as the terms of the business relationship which include, but are not limited to, revenue generated by that customer, fees, financial terms, anticipated growth, projections, volumes, pricing

adjustment, and contact people at the customer. Also, some of these documents contain express confidentiality stipulations between CHEP and its customer. While CHEP does disclose the existence of certain customer relationships (such as Procter & Gamble, Wal*Mart, Sam's Club, and Tropicana), CHEP does not disclose any specific information about these relationships related to revenue generated by that customer, fees, financial terms, anticipated growth, projections, volumes, pricing adjustment, and contact people at the customer.

- c. Exhibit 7 of my affidavit filed as part of CHEP's Summary Judgment Motion, discloses the name, address and contact person of a member of the recycling industry that is cooperative with CHEP with respect to returning pallets. This information would be useful to others in the recycling industry who (as is exemplified by *The Pallet Board*) are interested in disrupting CHEP's relationship with cooperative recyclers. Moreover, this is a neutral third-party who should be protected from annoyance or harassment, which may occur if its name is revealed publicly.
- d. "FIFO inventory value" for pallets and internal accounting treatments.
- e. Information concerning the relationship between fees charged to CHEP customers and accounting treatment of the pallets.
- f. CHEP's actual acquisition costs for certain materials.
- g. Internal accounting accruals and write-offs.
- h. Internal Financial Data ---such as profit/loss info, margins & costs.
- i. Internal reporting about the movement, location and cycling of CHEP's assets.

7. It is my belief that the public disclosure of this information has the potential of causing great harm to CHEP as well as harm to CHEP's relationships with its customers and recyclers who work with CHEP. That harm is evidenced, in part, by the vitriolic comments made about CHEP on The Pallet Board and the fact that whenever CHEP has provided Buckeye with any information, Sam McAdow Sr., posts it quickly to that website.



Elton Potts

NOTARY ACKNOWLEDGMENT

State of Florida :
: ss.
County of Orange :

SUBSCRIBED AND SWORN to before me this 25TH day of March, 2004.

Sam B. Bloom
Notary Public

