

Pallet Profile's

September 2004



The Pallet Profile's monthly answer to the recycling industry.

Buyer Uses Bogus Info

Southland Manufacturing Co. Inc., a Bowling Green, Kentucky-based pallet manufacturing business, has passed along information about a recent **incident** that may be helpful to other pallet companies.

Southland **sold several loads of used pallets** to someone who called and said he represented a company doing business in **Chattanooga, Tenn.** Southland required a letter of confirmation and billing information, which was faxed to its office.

The company **has yet to pay** for the pallets, and the **federal taxpayer identification number** that was contained in the confirmation letter **appears to be false**, according to Southland.

In addition, the **Post**
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Contact Jeff McBee
jeff@palletprofile.com

804/550-0323

Fax: 804/550-2181

www.palletprofile.com

FIRST SORT

News Analysis: Buckeye Case Update

Pre-trial Motions Set Stage for Possible Major Monetary Award

By Chaille Brindley

What's a blue pallet really worth to CHEP? The pallet industry may find out soon if the *Buckeye Diamond Logistics v. CHEP USA* case continues on its current path. Judge Walter Herbert Rice and Magistrate Judge Sharon Ovington recently released their decisions on several key pre-trial issues, including compensation and disclosure of internal CHEP documents.

Based on comments made by Judge Rice in the pre-trial motions, it looks like compensation for return-

ing CHEP-marked pallets will be based on the value of the service to CHEP not Buckeye's cost. Judge Rice sighted current legal precedent pointing to other cases where unjust enrichment awarded damages based on value not supplier cost. The exact jury instruction will only come out at the trial. But at this point, the initial indicators are in Buckeye's favor.

CHEP, the world's largest pallet rental company, argued that Buckeye should only receive compensation for its costs, which is much less

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IN THE MARKET

Recycled Pallet Market

Pallet demand in the new market tapered off slightly, but that is far from the case in the **recycled pallet market**. Recycled pallet demand **east** of the Rockies remains **white hot**. Contacts report demand levels to be the **strongest in many years**. Strong demand is **widespread** throughout the country, and the common factor at the heart of it is the **improving economy**. The recycled pallet market has grown **stronger by the week** throughout the summer.

Pallet recyclers in the **East** are having **difficulty keeping up** with the demand, and this trend has con-

tinued the past month. The strong demand has placed quite a bit of **upward pressure** on **recycled pallet prices**. **Resistance** to price increases has made for **varying degrees of price movement**, ranging from a **bullish posture** to **strong upward price pressure**. **Price increases are widespread**, covering almost every region. **Demand is outpacing supply** in many areas.

The widespread strong demand has taken a **toll on core supplies**. Recyclers are now faced with a core supply situation that ranges

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Pre-trial Motions Set Stage for Possible Major Monetary Award

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than the projected value of the service to CHEP.

Magistrate Judge Ovington ordered CHEP to produce internal documents detailing the value of returned pallets. Before launching its Asset Recovery Program (ARP), CHEP commissioned a survey to study its Non-Participating Distributor (NPD) network. NPDs are locations where CHEP ships pallets but has no return agreement with the company. CHEP has fought to keep the details of the survey confidential. CHEP claimed the report was hearsay and not admissible as evidence. But the court has rejected this claim.

CHEP even claimed that the report could not be provided as required by the court. The magistrate judge has put CHEP on notice that it must produce the documents or else.

Ovington wrote, "CHEP must endeavor to obtain legible copies of the previously produced documents at issue. In the event CHEP fails to produce legible copies within fourteen days from the date of this order. CHEP shall permit counsel for Buckeye to enter the place where the documents or computer system is for the purposes of obtaining legible copies of the disputed previously produced documents, and CHEP shall pay all costs associated with Buckeye's trip to obtain legible copies of the previously produced documents at issue."

Since CHEP vehemently opposes releasing this information, some in the industry believe that the results could be significantly damaging to CHEP. It could show that the value of the returned pallets to CHEP is much more than what the company cur-

rently pays recyclers through its ARP. If the case goes to trial, detailed information on the value of returned pallets may become part of public record. This could give recyclers more ammunition to ask for more compensation.

Some recyclers have held out from joining the ARP claiming that what CHEP offered was not fair. Some recyclers have made more money by providing CHEP-marked pallets to CHEP customers seeking to fulfill return quotas.

The jury will have to decide if returning CHEP-marked pallets can be considered unjust enrichment. It then will have to decide how much to award Buckeye for its services.

Regardless of the amount of the judgment in favor of Buckeye, CHEP may get some of the money back because it has a conversion claim pending against the recycler.

CHEP is seeking \$185,000 in costs associated with washing, repairing or replacing pallets held by Buckeye. These costs may be hotly contested because Buckeye alleges that CHEP has produced a counterfeit invoice for some of these expenses. And some of the pallets in question are stringer pallets. CHEP is in the process of phasing out stringer pallets, and depending on the condition of the pallets, they normally might not have been repaired or washed. CHEP's damage claim is based on depreciation of value and repair costs.

Interestingly, CHEP is not seeking compensation for lost rental revenue in the Buckeye case. This has been one of the major defenses that CHEP has used to refute requests for detailed customer and pool information, such as dwell time, utiliza-

tion rates, etc. CHEP has been successful in keeping under wraps many things that Buckeye wanted to include in the case. But what Buckeye has managed to get put into the record may be damaging enough to CHEP's ARP if the protective order is lifted. Nobody knows for sure yet because only CHEP and Buckeye have access to the information.

Ralph Buono, CHEP's asset protection manager, may have to testify about the company's enforcement practices and efforts to obtain pallets from recyclers. This information is liable to work against CHEP. Buono has been known for having some rough interactions in the past with the pallet recycling community.

Not everything went Buckeye's way in the pre-trial motions. Records detailing CHEP's relationship with Wal-Mart will be excluded from the trial because they were deemed irrelevant. None of the pallets that Buckeye returned to CHEP can be linked directly to Wal-Mart.

The magistrate also ruled that it is too late for Buckeye to name any new expert to refute CHEP's damage claims.

The trial is scheduled to start October 12, 2004 although another delay is possible.

Judge Rice made it clear in his decision that this is not a class action lawsuit on the behalf of all recyclers. The outcome would only apply directly to Buckeye and those within the jurisdiction of the court. However, a major award in favor of Buckeye could spark interest in a national class action lawsuit.

Unlike the Mock Pallet Co. case in Georgia, the basis for the Buckeye case is a law common throughout the country. The Mock

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Market Report

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from tight to critical in virtually all markets east of the Rockies. The core supply has been dwindling all year, and the strength of pallet demand has exacerbated the problem. As the problem grows worse, supplies of #1s are approaching critical levels in some markets.

Contacts report the declining core supply is also a result of the improving economy. Distribution centers are holding more inventory and therefore are not releasing as many pal-

lets during the upturn in the economic cycle.

The current market is very similar to conditions of the late 1990s. At that time strong demand created core supplies that were hand-to-mouth. The sluggish economy had provided a reprieve from the core crunch until

the economy picked up again.


The declining quality of the overall pallet pool is a constant drag on the percentage of #1 GMAs in the inbound core supply. The combination of fewer inbound cores and a lower percentage of #1s in the restricted flow creates even more problems in the instant demand market.

Core supplies in the West have held up better than those in the East. The supply of #1 GMAs in the West is equally tight for all the same reasons. Core inventories in the West lost ground due to strong seasonal demand, but inventories seem to have leveled off. The Pacific Northwest is the Western market with the strongest core supplies.

Demand is strong enough that markets that lean heavily on #2 GMAs have similar problems with inbound supplies of #2 GMAs. Despite the higher percentage of #2 GMAs, demand is outstripping supply.

Contacts report that special requests and service demands from customers are becoming painfully problematic. Today's corporate customer has a mindset that service is a given and price is what they are shopping for. This often takes money out of the market on high maintenance accounts.

Premium #1s and combo pallets remain in high demand.

Last-minute orders are common in the current market, but conditions make accommodating last-minute orders very difficult. 

Recycle Record Quotes:

"The economy is very strong despite what the Democrats want us to think."

(Pennsylvania)


Pre-trial Motions...

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decision could not be easily replicated in other courts. This decision could if enough recyclers decided to take up the cause. The overall impact to CHEP depends on how much money hangs in the balance. If the decision is favorable to Buckeye, recyclers may see enough money to put up a fight.

The court could easily give a price tag as high as \$8 per pallet since that is what CHEP charges customers. CHEP wants to avoid return costs because the more it has to pay to get back pallets, the less advantage it has over white wood. CHEP has always voiced concerns about creating a black market for its pallets.

White wood recyclers say that all they want is a fair market. They say that CHEP's system forces them to work for their competitor at a price dictated to them by their competitor. They say that CHEP had a free ride for far too long, and now they want fair compensation.

While nobody can be sure what will come out of the trial, at least the white wood industry may know how valuable its services are to one of its biggest competitors. 

Buyer Uses Bogus Info

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Office Box number that was listed as the company's address apparently is not bona fide; apparently it is located at a business that rents such boxes for collecting mail.

Southland sold two loads to the buyer in June and another load a few weeks later. It was never paid for the pallets, and eventually turned the matter over to its collection agency. Southland has not referred the matter to police.

A Chattanooga police detective said the man identified as the buyer has previously been under investigation but is not currently under investigation.

For pallet suppliers who may have done business with this buyer or received calls from him, we would suggest contacting Southland at 270/781-1444.

Are any readers wondering if we have a potential rehash of the Vegas pallet scam developing? Time will tell. In the meantime, keep alert.

We are not releasing too many details at this time because no formal charges have been made. 