

ORIGINAL

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

FILED IN CLERK'S OFFICE
U.S.D.C. Atlanta
MAR - 7 2003

LUTHER D. THOMAS, Clerk
By: *[Signature]*
Deputy Clerk

CHEP USA, a New York Partnership,)
)
Plaintiff,)

CASE NO. 02-CV-2053-BBM

v.)

MOCK PALLET COMPANY,)
a Georgia Corporation,)
)
Defendant.)

**CHEP USA'S RESPONSE IN OPPOSITION TO MOCK PALLET
COMPANY'S MOTIONS TO COMPEL AND FOR ATTORNEYS FEES**

Mock Pallet Company's ("Mock") Motion to Compel and Motion for Attorneys' Fees demonstrates Mock's fundamental misunderstanding of both CHEP USA's ("CHEP") business and the matters presented by this lawsuit. Accordingly, Mock's motions should be summarily denied.

This case is about 35,000 to 40,000 blue CHEP pallets converted by Mock.¹ CHEP seeks to recover these wrongfully converted pallets and to enjoin Mock from converting CHEP pallets in the future. Mock counterclaims, contending that CHEP abandoned or otherwise lost ownership of these pallets, or, alternatively, requesting compensation for its alleged services in sorting and storing CHEP's

¹ CHEP initially sued for conversion of approximately 5000 CHEP pallets, which was the approximate number Mock possessed when CHEP representatives first discovered Mock's wrongful conversion of CHEP pallets in March 2000. Through discovery, Mock has admitted to possessing many more CHEP pallets. (See Mock's Resp. to Interrog. 1 of CHEP USA's First Interrs., attached as Ex. "H" to CHEP USA's Mot. to Compel).

19

pallets. Accordingly, this case is about how Mock came to possess 35,000 to 40,000 CHEP pallets. Yet, Mock's broad discovery seeks information about matters not involved in this case, including CHEP's national operations, the approximately 67 million pallets CHEP leases nationally, and the amount of fees CHEP receives under its leases.

CHEP concedes the scope of discovery is broad. Indeed, CHEP has moved to compel the production of information from Mock in this case. (See CHEP USA's Mot. to Compel and Mem. of Law, filed Feb. 14, 2003). Yet discovery is not limitless and must relate to a matter that is "relevant to the claim or defense of [a] party. . . ." Fed. R. Civ. P. 26(b)(1). See also Hickman v. Taylor, 329 U.S. 495, 507-08 (1947) ("But discovery, like all matters of procedure, has ultimate and necessary boundaries.") Moreover, bald statements claiming relevance are insufficient to overcome a specific objection. See Home Ins. Co. v. Ballenger Corp., 74 F.R.D. 93, 101 (N.D. Ga. 1977). Even if relevant, courts generally conduct a balancing test, weighing the need for the requested discovery against the burden of providing it. See generally Green Const. Co. v. Kansas Power & Light Co., 732 F. Supp. 1550, 1554 (D. Kan. 1990) (holding relevancy outweighed by burden and denying motion to compel); G-69 v. Degnan, 130 F.R.D. 339, 347 (D.N.J. 1990) (holding that "plaintiff's discovery request is unduly burdensome given the limited relevance of third-party files to plaintiff's claims."); Anker v. G.

D. Searle & Co., 126 F.R.D. 515, 519 (M.D. N.C. 1989) (applying balancing test to evaluate motion to compel).

In this case, Mock's motion is without merit and should be denied for two reasons: (1) the information Mock seeks to compel is irrelevant (not likely to lead to admissible evidence) to the matters in this case, and (2) to the extent some of the information is marginally relevant, the burden of producing that information far outweighs its marginal relevance. Below, CHEP demonstrates in Section I that the claims and defenses in this case do not support the broad discovery Mock seeks. In Section II, CHEP demonstrates that it has met its obligations in responding to Mock's discovery and that its objections to this discovery are appropriate.²

I. The Parties' Claims and Defenses Relate to the CHEP Pallets Mock Had or Currently Possesses, not the 67 Million Pallets CHEP Leases Nationwide.

CHEP has asserted a conversion claim for Mock's intentional and wrongful interference with CHEP's possession of CHEP pallets and seeks possession of its pallets, or in the alternative, all damages caused by that conversion. (See Compl., Count I, ¶¶ 26-29). Mock counterclaimed asserting, among other things, (1) that Mock owns the CHEP pallets in its possession because it obtained them in the ordinary course of business (Answer and Countercl., Count One, ¶¶ 1-29); (2) that CHEP has abandoned the pallets in Mock's possession (Id. Count Two, ¶¶ 30-35);

² For the Court's convenience, CHEP also attaches as Exhibit "A" a chart summarizing each request compelled, CHEP's response, and CHEP's argument opposing Mock's motion.

(3) that by collecting fees for “lost pallets,” CHEP’s pallet leases are converted into “sales”; and (4) that Mock has unjustly enriched CHEP by collecting, sorting and storing CHEP pallets. (*Id.* Count Three, ¶¶ 36-40). Nothing within the pleadings suggest that the matters involved in this case go beyond the CHEP pallets that have been or are currently in Mock’s possession.

A. CHEP’s Conversion Claim Involves Only Those CHEP Pallets Mock Currently Possesses and Has Possessed.

“Conversion consists of an unauthorized assumption and exercise of the right of ownership over personal property belonging to another, in hostility to his rights; an act of dominion over the personal property of another inconsistent with his rights; or an unauthorized appropriation.” *Tidwell v. Tidwell*, 251 Ga. App. 863, 864-65, 554 S.E.2d 822, 823-24 (2001). CHEP contends that Mock’s “assumption and exercise of the right of ownership” over CHEP’s pallets is unauthorized because CHEP, not Mock, possesses title to CHEP pallets.

In response, Mock concedes that CHEP’s pallets have CHEP’s distinctive marking and labeling. Mock argues that it obtains CHEP pallets “in the ordinary course of business” in that it “accepts the contents of [] tractor trailers, sight unseen, and buys its contents,” and that it receives CHEP pallets from retailers “which have bought goods from distressed distributors on a ‘fully packaged basis’” and therefore “Chep [sic] has no legal right to interfere in the recycler’s

relationship with a distributor or other party that conveyed pallets to Mock.” (See Answer and Countercl., Count One, ¶¶ 11, 22, 25, 28).³

To prove this, however, Mock must demonstrate that it was a good faith purchaser of these CHEP pallets. The relevant inquiry is Mock’s acquisition of the CHEP pallets it possesses currently and those it previously possessed. Information about all 67 million CHEP pallets under lease nationwide, CHEP’s national operations, and its lease receipts are simply beyond the scope of this case.

B. Mock’s “Abandonment” Theory Is a Statute of Limitations Defense and, at Best, Is Limited to CHEP’s Knowledge and Actions Concerning Mock’s Possession of CHEP Pallets.

Mock argues that even if it did not obtain title through the ordinary course of business, CHEP has “abandoned” the pallets. Mock contends that “[d]ue to CHEP’s negligence and/or their ratification of the fact that 20% of their pallets . . . are ‘leaked from the pool’, CHEP has no knowledge as to these pallets location,” and that “such neglect constitute [sic] abandonment of property by CHEP.” (See Mot. at 3). Mock, not surprisingly, cites no legal authority for its “abandonment” theory. Moreover, “abandonment” is not a cause of action but is simply a statute of limitations defense and discovery on this issue is properly limited to CHEP’s knowledge of Mock’s possession of CHEP pallets.

³ The basis for this defense appears to be O.C.G.A. 11-2A-305 (2002), which determines the rights of the lessor when leased goods are acquired by a third-party outside the terms of the lease agreement. However, this defense is belied by the fact that Mock has been soliciting CHEP pallets for purchase. (See Flyer from Mock soliciting the purchase of “48 x 40-4-way Blue”, attached as Exhibit “B”).

O.C.G.A. § 9-3-32 states: “Actions for the recovery of personal property, or for damages for the conversion or destruction of the same, shall be timely brought within four years after the right of action accrues.” If an action is not timely pursued, a presumption of abandonment arises. See O.C.G.A § 9-3-32; Walden v. Jones, 252 Ga. App. 692, 694, 556 S.E.2d 566, 567 (2001) (“Abandonment ... may result from acts of the owner or from failure to bring an action for the recovery of the personalty within four years). CHEP is aware of no Georgia case (and Mock has cited none) that suggests abandonment is either an independent cause of action or an affirmative defense to conversion.

Moreover, the statute of limitations simply does not apply here. CHEP’s “right of action” accrued when Mock refused CHEP’s demand for return of its pallets. See Hooks v. Cobb Center Pawn and Jewelry Brokers, Inc., 241 Ga. App. 305, 308, 527 S.E.2d 566, 569-70 (1999) (“To establish a prima facie case for conversion, [a] plaintiff is required to show title to the property or the right of possession, actual possession in defendant, *demand for its return*, and *defendant's refusal*.”) (emphasis added). See also Wood v. Garner, 156 Ga. App. 351, 352, 174 S.E. 2d 737, 738 (1980) (“In the present case, possession having been voluntarily surrendered for an indefinite time, demand and refusal were necessary to show conversion. The statute began to run from the date of demand and refusal”) (quoting Hicks v. Moyer, 10 Ga. App. 488, 491, 73 S.E. 754, 756 (1911)).

There is no evidence that CHEP knew four years before filing suit that Mock was in possession of CHEP pallets, or that Mock refused CHEP's demand to return its pallets more than four years before CHEP filed suit. To the contrary, CHEP first learned that Mock possessed CHEP pallets on March 22, 2000, when a CHEP representative visited Mock's premises. (See Aff. of Elton Potts, ¶ 11 [Potts Aff.], filed separately under seal). At that time, as Mock acknowledges, CHEP demanded return of its pallets, and Mock refused CHEP's demand. (See Mock's Resp. to Int. 6 of CHEP's First Ints., attached as Exhibit "C"). Because CHEP filed this action well within the statutory period, Mock's so-called abandonment defense is without merit and discovery based on it should be denied. Alternatively, such discovery should be limited to information and documents about CHEP's knowledge of Mock's possession of CHEP pallets.

C. Mock's "Sale" Argument Is Without Support as CHEP Indisputably Leases its Pallets, and Mock is Therefore Not Entitled to Discovery of Lost Equipment Fees .

Mock contends that CHEP has "no absolute right to assert ownership of pallets that leak out of the system, especially those pallets for which CHEP has been reimbursed by the assessment of the fee in lieu of the pallet." (Mot. at 2). Mock does not explain this argument, but CHEP assumes Mock is arguing that CHEP's leases are not "true leases" but are "secured transaction sales" and that charges paid by customers for lost, stolen or damages pallets constitute "sales."

See O.C.G.A. 11-1-207(37) (criteria for distinguishing lease and security interest). See also Summerhill Neighborhood Dev. Corp. v. Telerent Leasing, 242 Ga. App 142, 528 S.E.2d 889 (2000) (applying O.C.G.A. § 11-1-201(37) and finding true lease); Carter v. Tokai Financial Svcs., 231 Ga. App. 755, 500 S.E.2d 638 (1998) (applying O.C.G.A. § 11-1-201(37) and finding true lease). A review of CHEP's standard Rental Agreement (attached as Ex. 2 to Potts Aff.) demonstrates that CHEP's contracts indisputably constitute true leases under Article 2A of the Uniform Commercial Code, and therefore discovery of fees CHEP contractually charges its customers is irrelevant to any issue in this case.

CHEP's form Rental Agreement ("Agreement") restricts the use of CHEP pallets by customers, including that CHEP pallets "shall at all times remain the exclusive property of CHEP and the customer has no right to sell or deal with the Equipment in any way that is inconsistent with CHEP's ownership of it." (Agreement, ¶ 6). The Agreement also specifies various charges, including (1) an issue fee when CHEP delivers pallets, (2) a daily rental fee for each day the pallets are used by the customer, and (3) a transfer fee when pallets are transferred to a distributor or retailer. (Id. ¶ 5.3). Importantly, the Agreement provides no option to purchase CHEP pallets, but charges customers for pallets that are:

lost, destroyed, stolen or damaged (reasonable wear and tear excepted). **Nothing contained in this paragraph shall confer upon the customer any property right or interest in such Equipment which has been so destroyed, damaged, lost, stolen or transferred and**

the ownership of such Equipment shall at all times remain in CHEP, notwithstanding any payment by the Customer of such charge.

(Id. ¶ 7) (emphasis added). Finally, the Agreement expressly provides that “[e]ither party may terminate this Agreement at any time by giving at least sixty (60) day’s prior written notice to the other party.” (Id. ¶ 8.1).

Applying O.C.G.A. § 11-1-207(37), CHEP’s Agreement constitutes a lease. Just as the courts in Summerhill and Carter concluded, CHEP’s Agreement specifically provides that CHEP retains ownership of the pallets, Summerhill at 142, 528 S.E.2d at 890, and specifically allows either party to terminate the agreement, Carter at 756, 500 S.E.2d at 640. Most importantly, unlike Summerhill and Carter, CHEP’s Agreement provides *no* option to purchase CHEP pallets for any price under any circumstances. CHEP pallets simply are not sold. (See Potts Aff. ¶ 3). See also Tri-Continental Leasing Corp. v. Charles Beale & Co., Inc., 709 F. Supp. 218, 220 (N.D. Ga. 1989) (holding agreement to be a lease when agreement did not provide for the transfer of ownership or an option to purchase). Because CHEP’s Agreements do not transfer ownership of CHEP pallets under any circumstances, the Agreements constitute true leases.

Thus, Mock’s claim that contractual charges paid by customers constitute sales is unfounded, and discovery based on such a claim is irrelevant. While a lessee is obligated to pay a “lost equipment fee” if the number of pallets shipped to

the lessee does not match the number of pallets shipped to its customers, there is no potential “sale” associated with this fee since the Agreement is a lease. Mock has cited no case law (nor can it) to suggest that such a charge under these circumstances could constitute a sale. The amount CHEP contractually negotiates or collects from its customers for lost equipment fees is simply irrelevant to any issue in this case, and Mock's requests for discovery should be denied.

II. Mock’s Discovery Requests Are Overly Broad and Are Either Irrelevant or Unduly Burdensome Given the Matters in this Case.

A. The Production of CHEP’s Contracts with Almost 500 of Its Customers Constitutes an Impermissible Burden Given Their Lack of Relevance (Request 3).

In Request 3, Mock seeks the production of “all documents ... relating to any contract ... between CHEP and any entity ... that purport to govern in any manner the contracting parties’ rights or obligations with respect to any pallets that might reasonably be anticipated to be shipped, used, located, possessed, or stored in the state of Georgia.” In support of this broad request, Mock vaguely asserts that it is “pertinent to the ownership issue, as well as proving that CHEP has abandoned the subject pallets.” (Mot. at 4). Mock does not suggest, nor can CHEP discern, how the production of almost 500 contracts will help Mock prove that it owns the CHEP pallets that Mock possesses or possessed. (Potts Aff. ¶ 13).

As demonstrated in Section I.C. above, CHEP’s rental agreements are leases and not sales. CHEP has agreed to produce representative samples of its contracts

with current customers. These sample contracts represent the material terms between CHEP and customers regarding the ownership of leased pallets. (See Potts Aff. ¶¶ 8-9). To the extent Mock seeks to discover “the true nature of the initial transactions involving the pallets once they leave CHEP” (Mot. at 4), the production of these contracts meets this need.

In addition, CHEP has offered to produce any contract between CHEP and any entity Mock identifies as its customer. This is a sensible offer because it is far less burdensome and far more efficient for Mock, a recycler in Conyers, Georgia with a regional business in the Southeast, to identify its customers and permit CHEP to produce any contracts it has with those customers, than for CHEP, a national business with thousands of customers, to produce every contract with each of its customers whose business reaches the state of Georgia.

The burden of Mock’s request, moreover, is substantial. CHEP has identified nearly 200 customers who lease CHEP pallets and are either located in Georgia or ship CHEP pallets into Georgia, and CHEP estimates that it has agreements with 300 distributors who receive CHEP pallets in Georgia. (See Potts Aff. ¶ 13). Mock’s request, therefore, would require CHEP to search for and produce almost 500 contracts. CHEP estimates that searching for the approximately 200 contracts with its manufacturers, which are not centrally located, will take at least 40 work hours. (Id. ¶ 14). Searching for the contracts

with the 300 distributors will take even substantially more time. (*Id.*) Given the dubious relevance of these documents, imposing such a burden is unwarranted. Rather, CHEP's offer to produce representative contracts, as well as any contracts with entities Mock identifies, is more than sufficient to show the "true nature" of the relationship between CHEP and its customers and about CHEP's continuous ownership of its pallets at all times.

B. Discovery of CHEP's Lost Equipment Fees and Pallet Recovery Operations Should be Limited to the Pallets Mock Has Possessed.

The bulk of Mock's discovery requests asks about (1) CHEP's lost equipment fees on a national basis; (2) CHEP's efforts to locate and recover its pallets nationwide; and (3) CHEP's efforts to recover "leaked" pallets nationwide. This discovery allegedly relates to Mock's "abandonment" and "sale" claims and defenses and, as explained in Sections I. B. and C. above, should be denied.

1. Discovery of Lost Equipment Fees Is Not Related To Any Issue In This Case (Requests 7, 8, & 26, Interrogatory 4).

Requests 7, 8, and 26 and Interrogatory 4 seek information about CHEP's collection of contractually agreed lost equipment fees when pallets are lost, damaged, destroyed, or otherwise unaccounted for. As discussed in Section I.C. above, the agreement authorizing this fee is a lease and, therefore, the amount of fees collected is irrelevant.. Contrary to Mock's suggestion that CHEP charges customers or demands payment "in lieu of return of pallets to CHEP." CHEP

assesses lost equipment fees only when a lessee transfers fewer pallets to its customers than it initially received from CHEP. (See Potts Aff. ¶ 10). CHEP invoices lessees in these circumstances by sending Lost Equipment Notes, which state the amount of pallets unaccounted for and the amount due to CHEP. Id. Despite their irrelevance, CHEP agreed to produce Lost Equipment Notes issued to entities from whom Mock obtained CHEP pallets. (CHEP's Resp. to Req. 7 & 8, and Interrog. 4). Mock's requests asking for additional information are irrelevant, overly broad, without justification, and should be denied.

- **Request 7** seeks "all documents ... relating to any calculation, analysis, evaluation or investigation by CHEP as to the amount CHEP would charge customers in lieu of the return of pallets to CHEP prepared or used since January 1, 1997."

Mock asserts that how CHEP determined the amount of the lost equipment fee is relevant, "given the fact that [Mock] has made a claim for unjust enrichment in the case, and given the fact that [Mock] contends making customers pay a liquidated sum for not 'properly accounting' for CHEP-marked pallets constitutes a sale. . . ." (Mot. at 7). How could this information relate to Mock's unjust enrichment claim where that claim relates to the value of Mock's alleged service in sorting and storing CHEP pallets, not the amount collected by CHEP in Lost Equipment Notes? Mock's second argument is just as futile because, as shown in Section I.C. above, CHEP's agreements assessing this fee are true leases and are

not "sales." Nonetheless, CHEP has agreed to produce these irrelevant Lost Equipment Notes for any entity from whom Mock has obtained CHEP pallets.

- **Request 8** seeks "all documents ... relating to any charges or demands made by CHEP to customers doing business in the state of Georgia in lieu of the return of pallets to CHEP."⁴

Mock conclusorily asserts, without more, that this information "is relevant to the issues of ownership and the extent of any unjust enrichment." (Mot. at 8). The ownership issue, however, only relates to the CHEP pallets that Mock has converted. Lost equipment fees that CHEP contractually collects from its customers are irrelevant to ownership. Furthermore, the amount of these fees is wholly unrelated to the amount that CHEP is allegedly "unjustly enriched" by Mock's alleged "services" in sorting and storing CHEP's pallets. See Home Ins. Co., 74 F.R.D. at 101 (requesting party must demonstrate relevance of discovery sought).

- **Interrogatory 4** requests CHEP to identify "all individuals, companies, or entities who, in the past four (4) years have not returned all of the pallets referred to in Paragraph 8 of Plaintiff's Complaint and state how much has been collected by CHEP in lieu of the return of a pallet(s) for each individual, company, or entity."

⁴ Request 26 seeks "all documents ... the purpose of which is to obtain reimbursement for lost or leaked pallets in the state of Georgia or which CHEP believes are in the possession of Mock" and is nearly identical to Request 8, except it refers only to the pallets in Mock's possession. CHEP has agreed to produce all documents related to Mock. (See Opposition, infra, pp. 19-20). Beyond this, Request 26 is defective for the same reasons as Request 8.

Mock argues that this information is relevant to its so-called defenses of “sale” and “abandonment” but offers no legal or factual authority for its contentions. (Mot. at 18). This interrogatory is not limited even to CHEP’s activities in Georgia but seeks information related to CHEP’s nationwide operations. With no justification for this broad discovery, and with the express terms of CHEP’s lease agreements directly contradicting Mock’s alleged “factual” argument, Mock’s request should be denied. See Home Ins. Co., 74 F.R.D. at 101.

2. Discovery of CHEP’s Efforts to Locate and Recover Its Pallets Is Irrelevant and Unduly Burdensome (Requests 5, 19, 20 & 35, Interrogatory 7).

The common theme in these requests is Mock’s assertion that CHEP’s actions are evidence that CHEP abandoned its pallets. As it does throughout its Motion, Mock offers only threadbare and conclusory arguments. As explained in Section I.B. above, abandonment is not a defense to a claim of conversion, nor is it a recognized claim under Georgia law. Rather, it represents a statute of limitations defense. Mock’s far-reaching discovery of CHEP’s nationwide asset recovery efforts and associated costs do not relate to this statute of limitations issue. Furthermore, the burden of producing the requested information far outweighs any conceivable relevance. Accordingly, Mock’s request to compel this information should be denied.

- **Request 5** seeks “all documents ... relating to any analysis, evaluation or investigation by CHEP, or any agent or independent agency acting on CHEP’s behalf, of the costs of recovering pallets out of its system.”

In response, CHEP agreed to produce documents sufficient to demonstrate its costs associated with asset recovery activities in Georgia. (CHEP’s Resp. to Req. 5). Given the questionable relevance of this request, CHEP’s limitation is reasonable. Yet Mock seeks cost information for CHEP’s recovery activities *nationwide*, arguing “what CHEP contends are the costs associated with the retrieval of these stray abandoned pallets is germane to any analysis of whether CHEP’s arrangement with its customers constitutes a sale.” (Mot. at 6).

Mock’s conclusory argument does not explain the relevance of the request, and its request is simply designed to harass CHEP, not to discover any relevant evidence. As shown in Section I.C. above, CHEP’s contracts are leases and not sales. To the extent this request relates to Mock’s assertion that CHEP’s actions evidence an intent to abandon its pallets, the request is irrelevant as it does not relate to this statute of limitations defense. (See Section I.B.)

- **Request 19** seeks “all documents ... relating to any actions or investigation undertaken by any police department, sheriff’s department, or other local, state, or federal law enforcement body related in any way to any effort of CHEP to recover pallets in any jurisdiction over the past ten years.”

Mock argues that this information “is relevant given CHEP’s history of threatening criminal prosecution as a means of trying to control its structural and

operational difficulties caused by its abandoning of these pallets....” (Mot. at 9). Mock also claims “this request bears on the ownership question.” (Id.) Again, Mock offers no explanation for how any law enforcement activities to recover CHEP pallets relates to “the ownership question,” but CHEP presumes it relates to Mock’s abandonment argument which, as discussed above, is inapplicable. Moreover, this is not a criminal case, nor has CHEP threatened criminal prosecution of Mock.

- **Request 20** seeks “all documents ... relating to any non-participating distributors (i.e., distributors who have not executed a written obligation to sort and return pallets to CHEP or its agents) in the state of Georgia (in the past four (4) years) which CHEP knows or believes have been received or been sent pallets bearing CHEP’s markings, and the volume of such pallets CHEP believes such non-participating distributor received and how CHEP believes each such distributor disposed of each such pallet.”

Mock contends this information is “relevant to [Mock’s] contention that CHEP has a) abandoned the pallets, b) has no idea where they end up, c) taken an unreasonable position in expecting businesses such as Mock to handle and sort these pallets, which CHEP has abandoned, for free.” (Mot. at 10.) Again, none of the information relates to an abandonment statute of limitations defense.

- **Request 35** seeks “any brokerage analysts (sic) reports in the past two (2) years that refer or describe in any way the pallet leakage problem experienced by CHEP USA and its extent.”

Mock asserts that this information is relevant “since it refers to the ‘pallet leakage problem experienced by CHEP USA ... and will aid [Mock] in proving

that CHEP abandoned its pallets.” (Mot. at 15). This case is not about a “pallet leakage problem,” but is about Mock’s possession of 35,000-40,000 CHEP pallets. Brokerage reports, which are publicly available hearsay, are unlikely to discuss how Mock came to possess CHEP pallets or any other issue presented by the claims and defenses in this case.

- **Interrogatory 7** asks if “any CHEP-marked pallets ever leak out of its alleged ‘one-way’ system, and if so, how many CHEP-marked pallets are currently in the possession of recyclers or distributors have that have no agreement with CHEP.”

In response to this interrogatory, CHEP has agreed to provide Mock with information about the balance of CHEP pallets in the possession of NPDs from whom Mock obtained CHEP pallets. CHEP therefore has agreed to produce any responsive information that is arguably relevant. Anything more constitutes an undue burden and fishing expedition and should be denied.

3. Mock’s Other Discovery Requests Seek Irrelevant Information and Should Be Denied.

a. CHEP Has Agreed to Produce Information Regarding Mock’s Operations (Request 22).

Mock seeks all documents in CHEP’s possession relating to Mock’s actions in obtaining CHEP pallets, including from whom Mock obtained CHEP pallets, CHEP’s communications with Mock and the entities it does business with, and tracking information related to CHEP pallets in Mock’s possession. (See Req. 22). In response, CHEP referred to documents it agreed to produce in Request 1

(examples of correspondence with recyclers, all correspondence with Mock, and Stray Equipment Reports related to Mock), Request 2 (examples of CHEP's contracts with manufacturers), Request 4 (CHEP's Asset Protection Manual and Georgia-related asset recovery reports), and Request 12 (CHEP's Asset Recovery Manual). These documents contain the information sought by the numerous subparts of Request 22. CHEP also asserted attorney-client and work-product privilege objections because Mock asked for information from *any source* upon which CHEP bases its allegations against Mock. Documents prepared by CHEP's attorneys during or in anticipation of litigation, discussing Mock's wrongful conduct are protected from disclosure. See generally Hickman v. Taylor, 329 U.S. 495 (1947).

Mock argues it needs "CHEP to specifically identify the pallets it is claiming (5,000) that Mock had at the time of the institution of the suit" because "CHEP's conversion claim should only relate to tangible and specifically identifiable things." (Mot. at 11). This latter point, however, is contrary to Georgia law. Even though each CHEP pallet is readily identifiable from its unique blue coloring and distinctive labeling, CHEP need not identify each pallet to demonstrate ownership, but must only introduce evidence of ownership. See Adler v. Hertling, 215 Ga. App. 769, 773-74, 451 S.E.2d 91, 96-97 (1994). Proof of ownership, moreover, is established because CHEP never sells its pallets and offers no option for the

purchase of its pallets. (See Potts Aff. ¶¶ 3, 8-10). Accordingly, CHEP's response to Request 22 is appropriate and the production of additional information is unwarranted and is only calculated to harass and burden CHEP.

b. Discovery of CHEP's Damages Is Premature (Request 29).

In response to Request 29, seeking documents about CHEP's damages, CHEP states that it has no documents. CHEP also objected to the extent the request seeks privileged documents. In its Motion, Mock "wonders if no such documents exist, how can these phantom documents be privileged or be part of some attorney's work product?" (Mot. at 13). However, Mock overlooks in its sarcastic question that all parties in this case are under an obligation to supplement discovery responses consistent with Fed. R. Civ. P. 26(e), and as this case matures, CHEP or its attorneys may calculate the damages caused by Mock's tortious conduct. Many of the documents created by CHEP's attorneys, as well as communications between CHEP's attorneys and CHEP employees regarding these damages, will be subject to the attorney-client and work-product privileges. Accordingly, CHEP's response is complete and appropriate.

c. Discovery of CHEP's Litigation Expenses Is Premature (Request 30).

Mock asserts that CHEP's expenses of litigation "is another measure of damages being sought by CHEP and should be discoverable now, and not at the

time CHEP chooses.” (Mot. at 13). While CHEP’s litigation expenses are an element of its damages, CHEP should not be required to provide information about its expenses because (1) CHEP’s expenses will continue to grow and (2) there is nothing about CHEP’s litigation expenses for Mock to “disprove.” This Court will decide whether CHEP is entitled to recover its litigation expenses (including attorneys’ fees) at the end of the case when CHEP makes an application for those costs. See O.C.G.A. §§ 9-15-14 and 13-6-11. At the time it applies for expenses, CHEP will be required to prove its costs and Mock can challenge their appropriateness. There is no legitimate basis for producing this information now.

d. The “Bueno Memorandum” Is Not Related to Any Issue in this Case (Request 31).

Mock seeks a memorandum between CHEP employees about a malicious prosecution claim brought by a recycler in San Antonio, Texas (Lozano) and for “all subsequent internal communications that referred to” this memorandum. (See Req. 31). Mock’s argument for this information is frivolous, contending the memorandum is “relevant to the question of ownership and the litigious nature of CHEP, as well as showing CHEP’s plan to use criminal prosecution and the civil courts to attempt to control a ‘pallet pool’ that they have lost control over and abandoned.” (Mot. at 14). First, CHEP does not understand how the memorandum could relate to “ownership” *in this case*. Second, CHEP’s alleged litigiousness is irrelevant (and prejudicial) to any matter at issue in this case. This

is a civil action for conversion, not a criminal prosecution. Mock's allegations regarding CHEP's motivations for bringing this lawsuit are not only irrelevant to any issue in this case, but also completely baseless.

e. Discovery of Other CHEP Litigation Is Irrelevant and Will Not Advance the Issues in this Case (Requests 36 & 37).

Mock seeks the production of documents from other litigation, including deposition transcripts, between CHEP and pallet recyclers in Texas (Lozano) and Ohio (Buckeye). (See Req. 36-37). These other cases are unrelated to this case, involving different recyclers in different jurisdictions. Yet, Mock argues that they are relevant because they "involve the question of the ownership of CHEP-marked pallets." (Mot. at 16). While the ownership of CHEP pallets was at issue in Buckeye, Lozano was a malicious prosecution case. In any event, the single common issue of ownership does not justify production of this material. Were this the rule, discovery in cases involving corporations would quickly grow unmanageable as parties would move to compel a company to produce all documents produced in all prior litigation.

CHEP suspects Mock's real intent in seeking this information is to improperly inject other litigation into the trial of this case to give the impression that CHEP is a "litigation bully". Only the former deposition testimony of CHEP employees who CHEP intends to present as witnesses in this case could be relevant

here, and accordingly CHEP will produce deposition transcripts from these cases involving individuals identified as potential witnesses in CHEP's Initial Disclosure and Amended Initial Disclosure.

f. There Is No Basis for Requiring CHEP to Identify its Customers and Non-Participating Distributors (NPDs) in Georgia (Interrogatories 3 & 5).

Mock asks CHEP to identify every entity to whom CHEP has "sold, leased, or transferred pallets in the State of Georgia in the last four (4) years." (Mot. at 17). Mock's justification for this request is the same as its request for every contract between CHEP and its customer that touches Georgia. (See Opposition, supra, pp. 10-12). CHEP has agreed to produce sample contracts with its customers. Identifying all CHEP's customers in Georgia will not advance any issue in this case, but will only subject CHEP's customers to nuisance and harassment by Mock. Similarly, identifying every NPD in Georgia will not lead to the discovery of admissible information. Yet it does present Mock with a prospect list to use in acquiring CHEP pallets in the future.

g. CHEP's Accelerated Volume Program Is Not Relevant to Any Issue In this Case (Interrogatory 8).

Mock has asked CHEP to identify "all of the contract manufacturers who participate in CHEP's Accelerated Volume Program (AVP) and who ship CHEP-marked pallets to Non-Participating Distributors or NPDs." (See Int. 8). Simply put, Mock is seeking the identity of every manufacturer who is allowed to ship

products on CHEP pallets to NPDs, regardless of their location. Indeed, Mock justifies this interrogatory not by establishing its relevance, but by noting feebly that this information will enable “this Court [to] appreciate the time, extent and heavy volume of CHEP-marked pallets that are abandoned and stray from this erroneously designed, closed, ‘one-way system’.” (Mot. at 21). Without providing any legitimate basis for this information, Mock’s request should be denied.

III. Conclusion

Mock suggests that CHEP has refused to produce any documents or information in response to Mock’s discovery requests, ignoring that CHEP has agreed to produce a large volume of information including:

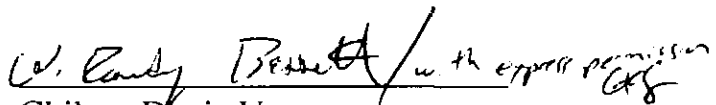
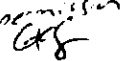
- Representative rental agreements with its customers (RFP 3);
- Contracts between CHEP and any entity from whom Mock obtained CHEP pallets (RFP 3);
- Documents demonstrating CHEP's costs associated with asset recovery activities in Georgia (RFP 5);
- Lost Equipment Notes sent to any entity from whom Mock obtained CHEP pallets (RFP 7); and
- Non-privileged documents related to Mock's possession of CHEP pallets (RFP 1, 2, 4).⁵

⁵ Because the parties have been unable to agree on the scope of a protective order to govern the production and use of confidential and highly confidential information, CHEP is awaiting entry of a protective order before producing responsive documents.

Notwithstanding CHEP's willingness to produce this information, Mock seeks overly broad discovery that includes CHEP's nationwide operations. The production of this information is unwarranted and would be an undue burden to CHEP. Mock offers only conclusory, self-serving statements, rather than well-reasoned justification for this breadth of discovery. Moreover, the marginal relevance of the information is outweighed by the burden of its production. Accordingly, this Court should deny Mock's Motion to Compel and Mock's Motion for Attorneys Fees.

Respectfully submitted this 7th day of March, 2003.

KING & SPALDING LLP

 *W. Randall Bassett* / *with express permission* 

Chilton Davis Varner
Georgia Bar No. 725450
W. Randall Bassett
Georgia Bar No. 041525
Gregory K. Smith
Georgia Bar No. 658363

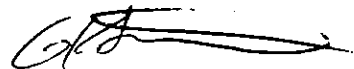
191 Peachtree Street
Atlanta, Georgia 30303-1763
(404) 572-4600

Counsel for Plaintiff CHEP USA

CERTIFICATION OF COMPLIANCE WITH L.R. 5.1B

I further certify that the foregoing RESPONSE IN OPPOSITION TO
MOCK PALLET COMPANY'S MOTION TO COMPEL AND MOTION FOR
ATTORNEYS FEES has been computer processed with 14 point New Times
Roman font in compliance with N.D.G.A. Local Rule 5.1B.

This 7th day of March, 2003.



Gregory K. Smith
Georgia Bar No. 658363
Attorney for the Plaintiff

KING & SPALDING LLP
191 Peachtree Street, N.E.
Atlanta, Georgia 30303-1763
(404) 572-4600
(404) 572-5144

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION


CHEP USA, a New York Partnership,)	
)	
Plaintiff,)	
)	
v.)	Case No. 02-CV-2053-BBM
)	
MOCK PALLET COMPANY,)	
a Georgia Corporation,)	
)	
Defendant.)	

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **CHEP USA'S RESPONSE IN OPPOSITION TO MOCK PALLET COMPANY'S MOTION TO COMPEL AND MOTION FOR ATTORNEYS FEES** was served upon counsel for defendant by depositing same in the United States mail, with sufficient postage thereon to insure delivery, and addressed as follows:

Eugene D. Butt, Esq.
Ballard, Stephenson & Waters, LLP
P.O. Box 29
Covington, GA 30015.

This 7th day of March, 2003.



Gregory K. Smith
Georgia Bar No. 658363



EXHIBIT / ATTACHMENT

 A

(To be scanned in place of tab)

RFP or Interrogatory Number	Mock's Request	CHEP's Response and Argument	Location of Argument
RFP 3	All documents constituting, referring or relating to any contracts entered into or renewed since January 1, 1997, between CHEP and any entity, including manufacturers, distributors (whether "participating" or "non-participating"), recyclers or retailers, that purport to govern in any manner the contracting parties' rights or obligations with respect to any pallets that might reasonably be anticipated to be shipped, used, located, possessed or stored in the state of Georgia.	CHEP has agreed to produce any contract between CHEP and any entity Mock identifies as its customer. CHEP's offer to produce representative contracts, as well as any contracts with entities Mock identifies, is sufficient. For production beyond that CHEP has offered, this request is unduly burdensome and beyond the scope of relevance. There are nearly 500 contracts involved with this request. It is inconceivable how such production will allow Mock to prove that it owns the CHEP pallets it possesses or possessed. CHEP has agreed to produce representative samples of its contracts with current customers.	Page 10 Section II.A.
RFP 5	All documents constituting, referring or relating to any analysis, evaluation or investigation by CHEP, or any agent or independent agency acting on CHEP's behalf, of the cost of recovering pallets not returned by distributors or manufacturers or the "leakage" of CHEP pallets out of its system.	CHEP has agreed to produce documents sufficient to demonstrate its costs associated with asset recovery activities in the State of Georgia. Beyond this, this Request relates to Mock's claim of CHEP's abandonment of its pallets. Abandonment is neither a defense to a claim of conversion, nor is it an independent cause of action. Abandonment is a presumption arising by virtue of the running of the statute of limitations for conversion. This request does not address this issue and the burden of producing this information far outweighs any conceivable relevance.	Page 15 Section II.B.2.
RFP 7	All documents constituting, referring or relating to any calculation, analysis, evaluation or investigation by CHEP as to the amount CHEP would charge customers in lieu of the return of pallets to CHEP prepared or used since January 1, 1997.	CHEP has agreed, subject to an appropriate protective order, to produce Lost Equipment Notes for any entity from whom Mock has obtained CHEP pallets. Beyond this, this Request seeks documents and information about CHEP's collection of lost equipment fees when pallets are lost, damaged, destroyed, or otherwise unaccounted for. This information is irrelevant because CHEP's agreements are leases and not sales.	Page 13 Section II.B.1.
RFP 8	All documents constituting, referring or relating to any charges or demands made by CHEP to customers doing business in the state of Georgia in lieu of the return of pallets to CHEP.	CHEP has agreed, subject to an appropriate protective order, to produce Lost Equipment Notes for any entity from whom Mock has obtained CHEP pallets. Otherwise, this Request seeks documents and information about CHEP's collection of lost equipment fees when pallets are lost, damaged,	Page 13 Section

RFP or Interrogatory Number	Mock's Request	CHEP's Response and Argument	Location of Argument
		destroyed, or otherwise unaccounted for. This information is irrelevant because CHEP's agreements are leases and not sales. Lost equipment fees CHEP collects from other entities, in Georgia or elsewhere, are unrelated to the CHEP pallets Mock possesses or has possessed, and Mock's failure to justify its need for this information requires that its request be denied.	II.B.1.
RFP 19	All documents constituting, referring, or relating to any actions or investigation undertaken by any police department, sheriff's department, or other local, state, or federal law enforcement body related in any way to any effort of CHEP to recover pallets in any jurisdiction over the past ten years.	This Request relates to Mock's claim of CHEP's abandonment of its pallets. Abandonment is neither a defense to a claim of conversion, nor is it an independent cause of action. Abandonment is a presumption arising by virtue of the running of the statute of limitations for conversion. This request does not address this issue and the burden of producing this information outweighs any conceivable relevance.	Page 15 Section II.B.2.
RFP 20	All documents constituting, referring, or relating to any non-participating distributors (i.e., distributors who have not executed a written obligation to sort and return pallets to CHEP or its agents) in the state of Georgia (in the past four (4) years) which CHEP knows or believes have received or been sent pallets bearing CHEP's markings, and the volume of such pallets CHEP believes each such non-participating distributor received and how CHEP believes each such distributor disposed of each such pallet.	This Request relates to Mock's claim of CHEP's abandonment of its pallets. Abandonment is neither a defense to a claim of conversion, nor is it an independent cause of action. Abandonment is a presumption arising by virtue of the running of the statute of limitations for conversion. This request does not address this issue and the burden of producing this information outweighs any conceivable relevance.	Page 15 Section II.B.2.
RFP 26	All documents constituting, referring or relating to billings, statements or written requests generated the purpose of which is to obtain reimbursement for lost or leaked pallets in the state of Georgia or which CHEP believes are in the possession of Mock.	CHEP has agreed, subject to an appropriate protective order, to produce Lost Equipment Notes for any entity from whom Mock has obtained CHEP pallets. Otherwise, this Request seeks documents and information about CHEP's collection of lost equipment fees when pallets are lost, damaged, destroyed, or otherwise unaccounted for. This information is irrelevant because CHEP's agreements are leases and not sales. Lost equipment fees CHEP collects from other entities, in Georgia or elsewhere, is unrelated to the CHEP pallets Mock possesses or has possessed, and Mock's failure to	Page 13 Section II.B.1.

RFP or Interrogatory Number	Mock's Request	CHEP's Response and Argument	Location of Argument
		justify its need for this information requires that its request be denied.	
RFP 30	All documents which evidences CHEP's expenses of litigation including but not limited to the amount of time expended by any attorney and a description of the task performed by the attorney. These shall include but not be limited to billing statements, invoices, etc.. [sic]	CHEP will provide documentation sufficient to determine its litigation costs as required by the Federal Rules of Civil Procedure and any court order when the issue of litigation costs matures. While CHEP's litigation expenses are an element of its damages, CHEP should not be required to provide information about its expenses because (1) CHEP's expenses will continue to grow and (2) there is nothing about CHEP's litigation expenses for Mock to "disprove." At the time it applies for expenses, CHEP will be required to prove its costs and Mock can challenge their appropriateness. There is no reasonable argument, at this time, for the production of this information.	Page 21 Section II.B.3.c.
RFP 31	A communication from Ralph Bueno to Bob Wells, senior manager for CHEP, which was sent on or about the time Edgar Lazamo was acquitted (September 29, 1998) wherein among other things, it was stated that "CHEP should start civil action as soon as possible. If we don't, we will lose the San Antonio area and CHEP will experience the domino effect throughout the United States", and all subsequent internal communications that referred to the Bueno to Wells e-mail or memo.	CHEP does not understand how the memorandum could relate to "ownership" <i>in this case</i> . CHEP's alleged litigiousness is irrelevant (and prejudicial) to any matter at issue in this case.	Page 22 Section II.B.3.d.
RFP 35	Copies of any brokerage analysts reports in the past two (2) years that refer or describe in any way the pallet leakage problem experienced by CHEP USA and its extent.	This Request relates to Mock's claim of CHEP's abandonment of its pallets. Abandonment is neither a defense to a claim of conversion, nor is it an independent cause of action. Abandonment is a presumption arising by virtue of the running of the statute of limitations for conversion. This request does not address this issue and the burden of producing this information outweighs any conceivable relevance.	Page 15 Section II.B.2.
RFP 36	The transcript of any and all depositions taken in the cases involving claims made by Edgar Lozano in the state of Texas and Buckeye Diamond Logistics, Inc. f/k/a Buckeye	These other cases are unrelated to this case, involving different recyclers in different jurisdictions with different applicable state laws. Mock argues that they are relevant	Page

RFP or Interrogatory Number	Mock's Request	CHEP's Response and Argument	Location of Argument
	Recyclers (U.S. District Court for the Southern District of Ohio, Western Division at Dayton. Case No. 23-01-440).	because they "involve the question of the ownership of CHEP-marked pallets." Lozano involved a claim for malicious prosecution, not ownership. While Buckeye involved the ownership of CHEP pallets, this single common issue does not justify production of this material. Were this the rule, discovery in cases involving corporations would quickly grow unmanageable as parties would move to compel a company to produce all documents produced in all prior litigation. The former deposition testimony of CHEP employees who CHEP intends to present as witnesses in this case could be relevant here, and, accordingly, CHEP will produce deposition transcripts from these cases involving individuals identified as potential witnesses in CHEP's Initial Disclosure and Amended Initial Disclosure.	23 Section II.B.3.e.
RFP 37	All documents produced by CHEP USA in Case No. 23-01-440 referred to in No. 36 above, wherein Buckeye Diamond Logistics, Inc. f/k/a brought suit against CHEP USA in Ohio.	This other case is unrelated to this case, involving a different recycler in a different jurisdiction with different applicable state law. Mock argues that it is relevant because it "involve[s] the question of the ownership of CHEP-marked pallets." While the ownership of CHEP pallets is at issue in this case, this single common issue does not justify production of this material. Were this the rule, discovery in cases involving corporations would quickly grow unmanageable as parties would move to compel a company to produce all documents produced in all prior litigation.	Page 23 Section II.B.3.e.
INT 3	Identify all individuals, companies or entities to whom CHEP USA has sold, leased or transferred pallets in the state of Georgia in the last four (4) years.	Subject to entry of an appropriate protective order, CHEP will identify, from the entities that Mock identifies as those from whom it received CHEP pallets, those entities to whom CHEP has leased pallets in the last four years. Requiring any further identification regarding this Interrogatory relates to Mock's claim of CHEP's abandonment of its pallets. Abandonment is neither a defense to a claim of conversion, nor is it an independent cause of action. Abandonment is a presumption arising by virtue of the running of the statute of limitations for conversion. This request does not address this	Page 24 Section II.B.3.F.

RFP or Interrogatory Number	Mock's Request	CHEP's Response and Argument	Location of Argument
		issue and the burden of producing this information far outweighs any conceivable relevance.	
INT 4	Identify all individuals, companies or entities who, in the past four (4) years have not returned all of the pallets referred to in Paragraph 8 of Plaintiff's Complaint and state how much has been collected by CHEP in lieu of the return of a pallet(s) for each individual, company or entity.	Subject to entry of an appropriate protective order, CHEP has agreed to produce copies of any Lost Equipment Notes issued to entities identified by Mock as a source of the CHEP pallets it possesses or has possessed. Any further identification in relation to this Interrogatory seeks information about CHEP's collection of lost equipment fees when pallets are lost, damaged, destroyed, or otherwise unaccounted for. This information is irrelevant because CHEP's agreements are leases and not sales. Lost equipment fees CHEP collects from other entities, in Georgia or elsewhere, is unrelated to the CHEP pallets Mock possesses or has possessed, and Mock's failure to justify its need for information beyond that which CHEP has offered requires that its request be denied.	Page 13 Section II.B.1.
INT 5	State the name and address of each non-participating distributor in the state of Georgia referred to in Paragraph 9 of Plaintiff's Complaint and for each such Non-Participating distributor state what percentage of CHEP-marked pallets that such entity returns.	Subject to entry of an appropriate protective order, CHEP has agreed to identify, from those entities that Mock names as a customer, any non-participating distributors of CHEP pallets. CHEP objects to any further information in this Interrogatory because it is irrelevant. The issue at hand is the conversion of the CHEP-owned pallets that are or have been in the possession of Mock.	Page 24 Section II.B.3.f.
INT 7	Do any of CHEP-marked pallets ever leak out of its alleged "one-way" system, and if so, how many CHEP-marked pallets are currently in the possession or recyclers or distributors that have no agreement with CHEP?	Subject to entry of an appropriate protective order, CHEP has agreed to identify, from those entities that Mock names as a customer, any non-participating distributors of CHEP pallets. Other information sought by this Interrogatory relates to Mock's claim of CHEP's abandonment of its pallets. Abandonment is neither a defense to a claim of conversion, nor is it an independent cause of action. Abandonment is a presumption arising by virtue of the running of the statute of limitations for conversion. This request does not address this issue and the burden of producing this information far outweighs any conceivable relevance.	Page 15 Section II.B.2.
INT 8	Identify all of the contract manufacturers who participate in	This Interrogatory relates to Mock's claim of CHEP's	

RFP or Interrogatory Number	Mock's Request	CHEP's Response and Argument	Location of Argument
	CHEP's Accelerated Volume Program (AVP) and who ship CHEP-marked pallets to Non-Participating Distributors or NPDs.	abandonment of its pallets. Abandonment is neither a defense to a claim of conversion, nor is it an independent cause of action. Abandonment is a presumption arising by virtue of the running of the statute of limitations for conversion. This request does not address this issue and the burden of producing this information outweighs any conceivable relevance.	Page 24 Section II.B.3.g.



EXHIBIT / ATTACHMENT

B

(To be scanned in place of tab)

MOCK PALLET COMPANY, INC.

"FOR ALL YOUR PALLET NEEDS"



RICKY MOCK
(770) 787-8343 Office

175 COOK ROAD
COVINGTON, GA 30014

(770) 787-4809 Fax
(770) 787 1055 Home

MOCK PALLET CO. BUYS THESE SIZES:
(PLEASE NOTE THE RUNNER SIZE IS LISTED FIRST)

	REPAIRED	UNREPAIRED
56 x 44 block	\$1.00	\$.50
48 x 42 flush only	\$1.00	\$.50
48 x 40-2-way flush only	\$1.00	\$.50
44 x 40-4-way flush only	\$1.00	\$.50
48 x 44 flush only	\$1.00	\$.50
48 x 43 flush only	\$1.00	\$.50
48 x 45 flush only	\$1.00	\$.50
40 x 48-2-way	\$1.00	\$.50
40 x 48-4-way	\$1.00	\$.50
42 x 42	\$.50	\$.25
36 x 36-2-way flush only	\$.50	\$.25
32 x 40-2-way flush only	\$.50	\$.25

Pricing for 48 x 40-4-way is:

- #1 \$1.75 (repaired without repair blocks, NO DAMAGE)
 - #2 \$1.25 (repaired with repair blocks) Block Ready or "B" Grade
 - #3 \$1.00 (chunk missing out of outside runner but repaired with repair block, 4 -runner pallet, thin boards, wide gap or a rough looking pallets)
- Unrepaired \$.75 (needs to be repaired) NOT OVER 4 PIECES MISSING

48 x 40-4-way Blue:

#1	\$1.00	Unrepaired	\$.75
#2	\$1.00	Good Block	\$1.00

Some pallets have certain specifications that must be met. All pallets are subject to inspection and must be sorted by size and quality..

PRICES ARE SUBJECT TO CHANGE WITHOUT NOTICE!

Receiving Hours: 7:30 a.m. to 4:00 p.m. Monday – Friday

No pallets are received after 4:00 p.m.. Pallets may be left by the road with a name and will be checked in the following day.

Please cleanup any wood scraps or trash that comes off your pallets or truck while unloading.

We do close for most holidays!



EXHIBIT / ATTACHMENT

 C

(To be scanned in place of tab)

12/16

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

CHEP USA, a New York partnership,)	
)	
Plaintiff,)	
)	
)	CIVIL ACTION
)	NO. 02-CV-2053-BBM
vs.)	
)	
MOCK PALLET COMPANY,)	
a Georgia Corporation)	
)	
Defendant.)	
)	

RESPONSE TO PLAINTIFF'S FIRST INTERROGATORIES

COMES NOW, Defendant, Mock Pallet Company and files this its Response to Plaintiff's First Interrogatories showing the Court the following:

1.

Mock contends that it owns the subject pallets that according to Plaintiff are worth \$20.00 a piece. Mock does not know the exact number of Chep-marked pallets in its possession, but estimates that it currently has between 35,000 to 40,000 Chep-marked pallets.

In the event that the Court disagrees with Mock who contends that he owns the subject pallets, Mock contends that he is entitled to be paid \$3.10 per pallet as a handling fee and a storage fee of \$.05 per pallet/per day.

The handling fee is calculated as follows:

- \$.50 per pallet for transportation;
- \$.35 per pallet for unloading the pallet off the trailer and moving it to a storage area;
- \$.35 per pallet for moving the pallet from the storage area to the sorting area;

grounds that Plaintiff improperly denominates the pallets as "Chep pallets", since the ownership of these pallets is a central issue to be decided by this Court.

Accordingly, Defendant will respond to this interrogatory, only following execution of an appropriate Consent Protective Order by the parties, that is entered of record by the Court.

5.

Defendant objects to Interrogatory No. 5 on the grounds that the information relating to the response to this Interrogatory are confidential in nature and in the nature of a trade secret, as Defendant has always treated this information as a closely guarded secret, and said information represent substantive value to Defendant, such that it would be valuable to Defendant's competitors, of which Plaintiff is one.

Accordingly, Defendant will respond to this interrogatory, only following execution of an appropriate Consent Protective Order by the parties, that is entered of record by the Court.

6.

On March 22, 2000 Reginald Sterling (who had come by to Mock's place of business in Covington) requested that Mock give CHEP USA the Chep-marked pallets in its possession.

Ricky Mock called him the next day and explained to him that CHEP had already charged its customers a fee for these pallets and that Mock had lawful possession of these pallets. He further told Sterling that CHEP USA would need to pay a storage and handling fee. Sterling responded that he was not authorized to accept Mock's offer and that he would get somebody else at CHEP to contact Ricky shortly. Sterling did not fulfill this commitment.

Almost eighteen (18) months later, CHEP employees Kevin S. Fleeman and Rigo C. Vangerelli came to Mock's premises on September 14, 2001.

Mock reiterated its ownership claim to the subject pallets, but stated that he would give them to CHEP if they paid storage and handling for the Chep-marked pallets. Fleeman and Vangerelli stated that they were authorized to offer a return fee of \$.75 per pallet, if Mock brought the pallets to CHEP's depot (which is in McDonough, Georgia).

When Mock refused the offer, the two stated that someone, who had the authority to offer more money would get in touch with Mock.

On September 14, 2001, Walt Russell called Ricky Mock, Mock informed Russell that he would accept \$5.00 per pallet.


On January 2, 2002, Mock received a call from Greg with CHEP USA who wanted to pick up Chep-marked pallets. Ricky Mock told him he would have to pay storage and handling fees. Mock received a call from Steve Payne of CHEP USA. Payne, on behalf of CHEP, offered to pay \$1.50 transportation fee per CHEP-marked pallet returned to the CHEP depot in McDonough, Georgia. Mock responded that before he would accept the \$1.50 transportation fee per Chep-marked pallet, CHEP would also have to pay the storage and handling fee. Mock also told Payne that their lawyers had been corresponding. Mock, when asked by Payne how many Chep-marked pallets he had on the premises, told him that in order to find out the number, they would have to contact his attorney, who was entrusted with handling the negotiations.

On June 27, 2002, Paul Knight, who represented himself as a Chep consultant, talked to Ricky Mock. Knight wanted to know how many pallets Mock had. Mock told him to contact his lawyer. Knight asked Mock "what it would take to have Mock release the pallets to Chep", or words to that effect. Mock replied that Chep would have to pay the storage and handling fee.

This case is also proof positive that CHEP is virtually clueless as to where Chep-marked pallets end up and hence they abandon them. This is evidenced by their claim that Mock has 5,000 pallets in Covington, Georgia.

This 16th day of December, 2002.

BALLARD, STEPHENSON & WATERS, LLP
Attorney for Defendant

By: 
Eugene D. Butt
Georgia Bar No. 099987


1148 Washington Street
P. O. Box 29
Covington, Georgia 30015
(770) 786-8123

VERIFICATION

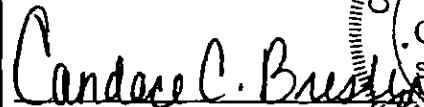
STATE OF GEORGIA

COUNTY OF NEWTON

Personally appeared before the undersigned officer in and for said State and County,
Ricky Mock, who, on first being sworn, deposes and says that the facts set forth in the
within and foregoing Responses to Plaintiff's First Interrogatories are true and correct.


RICKY MOCK, President
Mock Pallet Company

Sworn to and subscribed before
me, this 16th day of
December, 2002.


Notary Public

