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MAR 14 2003

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

LUTHER D. THOMAS, Clerk

[Signature] Deputy Clerk

CHEP USA, a New York Partnership,)

Plaintiff,)

v.)

MOCK PALLET COMPANY, a Georgia Corporation,)

Defendant.)

Case No. 02-CV-2053-BBM

**CHEP USA'S REPLY IN FURTHER SUPPORT
OF ITS MOTION FOR PROTECTIVE ORDER**

In its Memorandum of Law, CHEP established that in-house counsel, Mr. Sean J. Murphy, should have access to highly confidential information Mock will produce in discovery: that Mr. Murphy's position at CHEP does not involve competitive decision-making that could be affected by the highly confidential information Mock will produce; that Mr. Murphy's ability to assist and direct outside counsel in this complex litigation will be severely hindered without access to all information produced by Mock; and that no alternative discovery measure exists to provide Mr. Murphy access to this information. In short, allowing Mr. Murphy access to highly confidential information will not cause Mock competitive harm but will create a hardship for CHEP.

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In response, Mock attempts to rebut these facts through speculation. Citing Brown Bag Software v. Symantec Corp., 960 F. 2d 1465 (9th Cir. 1992), Mock questions the security of its highly confidential information if disseminated to Mr. Murphy; Mock points out that CHEP agreed to a protective order restricting access to outside attorneys' eyes only in another case; and Mock suggests that CHEP would not be harmed if Mr. Murphy were denied access to this information. Mock's speculation is unfounded, and Brown Bag is inapposite to facts presented in this case.

Unlike Brown Bag, Mr. Murphy's role in advising CHEP as General Counsel would not be affected by reviewing Mock's highly confidential information, including its customer list. See 960 F. 2d at 1471. Mr. Murphy simply is not involved in decisions related to specific or potential customers. (See Affidavit of Sean J. Murphy, ¶ 3, attached as Exhibit "C" to CHEP's Memorandum of Law). Nor is Mr. Murphy involved in individual decisions about the pricing or marketing of CHEP's services. (Id.) That Mr. Murphy may associate with CHEP employees who are involved in those decisions does not change these facts and does not provide a basis for entering the more restrictive order Mock proposes. See U.S. Steel Corp. v. U.S., 730 F. 2d 1465, 1469 (Fed. Cir. 1984) (holding that access to confidential information should be determined based on individual counsel's actual activity with the client). To further secure this information from

inadvertent disclosure, Mr. Murphy has agreed to maintain documents containing highly confidential information in a locked file drawer inside his office at CHEP. (See Supplemental Affidavit of Sean J. Murphy, ¶ 3, attached as Exhibit “A”).

That CHEP previously agreed to a protective order limiting access to in-house counsel in other litigation, likewise, does not justify an order precluding Mr. Murphy from accessing Mock’s highly confidential information in this case. In Buckeye Recyclers v. CHEP USA, Southern District of Ohio, Case No. C3-01-440, CHEP agreed to a more restrictive protective order to protect itself from the improper use of highly confidential information by Buckeye. As Mr. Murphy explains in his supplemental affidavit, the President and CEO of Buckeye, Mr. Sam McAdow, Jr., is a lawyer and would have had access to highly confidential information, unless the protective order specifically limited access to outside attorneys. (See Murphy Supp. Aff., ¶ 4). Mr. McAdow, as President and CEO of Buckeye, necessarily is involved in competitive decision-making that would be influenced by his receipt of confidential information.¹ By contrast, Mr. Murphy simply is not involved in competitive business decisions that would be affected by

¹ Mr. McAdow also is on the board of directors of CORE, a non-profit organization of pallet recyclers. Accordingly, the restrictive protective order entered in Buckeye protects CHEP’s highly confidential information from an individual who also is involved in strategic decision-making at a national organization of CHEP’s competitors.

reviewing Mock's highly confidential information. (Id. ¶ 5). Accordingly, the rationale for the more restrictive order agreed to in Buckeye does not exist here.

Finally, CHEP has established that Mr. Murphy's inability to access this information would cause CHEP substantial hardship because Mr. Murphy would be unable to direct outside counsel in this litigation effectively. Unlike the in-house counsel involved in Brown Bag, Mr. Murphy has been involved in this litigation since it commenced. See 960 F. 2d at 1471. Current outside counsel, in fact, first appeared in the case nearly three months after it was filed. See Notice of Substitution of Counsel and Certificate of Consent, filed November 15, 2002. Mr. Murphy's involvement, moreover, has been substantial. (See Murphy Aff., ¶ 6). The entry of a protective order limiting Mr. Murphy's access to information produced by Mock would cause a hardship similar to that caused in Buckeye where such a limitation was necessitated by Buckeye's President and CEO. (See Murphy Supp. Aff., ¶ 6).

The hardship CHEP would incur is illustrated by considering the impact of prohibiting Mr. Murphy's access to a list of Mock's customers. Mock recently announced that prior to this lawsuit it did not maintain records about CHEP pallets received from customers. (See Affidavit of Ricky Mock, ¶ 8, attached as an exhibit to Mock's Response to Motion for Protective Order). If correct, CHEP must consider whether to seek this information through third party discovery of

Mock's customers. Whether CHEP should engage in third party discovery and what form it should take present significant strategic questions that require input from CHEP's in-house counsel. One consideration, for example, is what relationship, if any, CHEP has with the entities to be subpoenaed. Such a decision can be made most effectively only if Mr. Murphy has access to the list of Mock's customers.

Two other illustrations further demonstrate the hardship on CHEP if Mr. Murphy is denied access to a list of Mock's customers. First, CHEP has agreed to produce copies of contracts, correspondence and other documents involving Mock's customers. Yet, without access to the list of customers, Mr. Murphy cannot assist outside counsel in efficiently gathering these documents for production. Second, information about Mock's customers may reveal that CHEP has a tortious interference claim against Mock based on Mock's conversion of CHEP pallets. Yet, CHEP cannot reasonably investigate and assess the merits of such a claim, nor make a decision to pursue such a claim, unless Mr. Murphy can openly and freely communicate with outside counsel about Mock's customers.

Applying the factors adopted by courts to access whether in-house counsel should have access to confidential information, CHEP has shown that Mr. Murphy should have access to Mock's confidential information. By contrast, Mock has failed to justify restricting the dissemination of highly confidential information to

outside counsel only. Accordingly, CHEP requests that its Motion be granted and that its Protective Order be entered.

This 14th day of March, 2003.

KING & SPALDING LLP

A handwritten signature in black ink, appearing to read "W. Randall Bassett", is written over a horizontal line.

Chilton Davis Varner
Georgia Bar No. 725450
W. Randall Bassett
Georgia Bar No. 041525

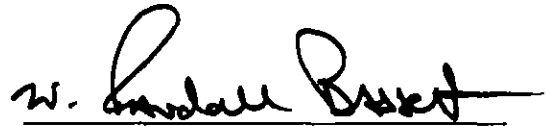
191 Peachtree Street
Atlanta, Georgia 30303-1763
(404) 572-4600

Counsel for Plaintiff CHEP USA

CERTIFICATION OF COMPLIANCE WITH L.R. 5.1B

I further certify that the foregoing CHEP USA'S REPLY IN FURTHER SUPPORT OF ITS MOTION FOR PROTECTIVE ORDER has been computer processed with 14 point New Times Roman font in compliance with N.D.G.A. Local Rule 5.1B.

This 14~~th~~ day of March, 2003.



W. Randall Bassett
Georgia Bar No. 041525
Attorney for the Purdue Defendants

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EXHIBIT ATTACHMENT

A

(To be scanned in place of tab)

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

CHEP USA, a New York Partnership,)

Plaintiff,)

v.)

MOCK PALLET COMPANY,)

a Georgia Corporation,)

Defendant.)

CASE NO. 1:02-CV-2053 BBM

County of Orange
State of Florida

SUPPLEMENTAL AFFIDAVIT OF SEAN J. MURPHY

Appearing before me, Mr. Sean J. Murphy testified as follows:

1. My name is Sean J. Murphy and I am competent in all respects to make this affidavit. I am Senior Vice President and General Counsel of CHEP International, Inc. I previously provided an affidavit in support of CHEP USA's Motion for Protective Order. I provide this supplemental affidavit in further support of CHEP's Motion.
2. I understand that Mock contends I should not be provided certain confidential information and documents because, among other things, (1) no safeguards have been provided to protect against inadvertent disclosure of such information and (2) CHEP agreed to a protective order restricting access to highly confidential information to outside attorneys eyes only in Buckeye Recyclers v. CHEP USA, Southern District of Ohio, Case No. C3-01-440.
3. To address Mock's concern about the potential for inadvertent disclosure, I have a locked cabinet drawer. To secure highly confidential information produced by Mock, I will maintain documents containing information

designated as highly confidential in the locked cabinet drawer within my office when I am not reviewing or otherwise using this information in connection with this litigation.

4. As Mock correctly points out, in Buckeye Recyclers v. CHEP USA, Southern District of Ohio, Case No. C3-01-440, the parties agreed to a protective order that restricted access to certain highly confidential information to outside attorneys eyes only. However, CHEP agreed to this form of a protective order only because the President and CEO of Buckeye, Mr. Sam McAdow, Jr., is also a lawyer. As a lawyer, Mr. McAdow would have had access to highly confidential information unless the protective order specifically limited access to outside attorneys. Accordingly, the restrictive protective order entered in Buckeye was necessary to protect highly confidential information from an individual who was directly involved in competitive business decisions at Buckeye.
5. By contrast to Mr. McAdow's position at Buckeye, as I previously explained, I am not involved in competitive business decisions relating to specific customers or potential customers or in decisions to identify or solicit prospective customers. Nor am I involved in individual decisions about the pricing of CHEP USA's services, including rental fees for CHEP pallets, or in individual decisions about the marketing of CHEP USA's services.
6. The entry of the more restrictive protective order in Buckeye has made it difficult for me to manage the litigation and to provide my legal judgment on the status of Buckeye to the management of CHEP. Because I am prohibited from receiving any material that contains highly confidential information, I am unable to communicate openly and freely with outside counsel concerning the lawsuit. This includes reviewing pleadings and discovery from outside counsel, preparing discovery requests and responses, and collecting documents for production in response to discovery requests. As a result, I also do not have access to all facts associated with the litigation and my ability to strategize with outside counsel about the direction of litigation and to advise the management of CHEP about the litigation is severely limited.
7. I have reviewed the terms of CHEP's proposed Protective Order and will adhere to them. I will not, and indeed have no need to, share business information about Mock with other employees or officers of CHEP USA. My need for this information is limited strictly to my responsibilities as

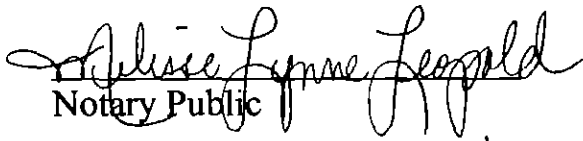
General Counsel in overseeing and managing the litigation of CHEP USA and specifically this lawsuit, and being fully informed so I may make strategic decisions about this litigation.

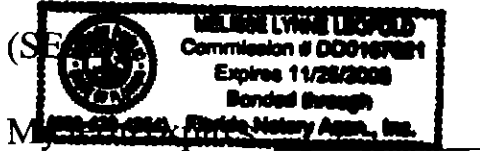
FURTHER AFFIANT SAYETH NOT.

This 13th day of March, 2003.


Sean J. Murphy

Signed before me this 13th day of March, 2003.


Notary Public



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
REPLY IN FURTHER SUPPORT OF ITS MOTION FOR PROTECTIVE
ORDER** 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 14th day of March, 2003.

A handwritten signature in black ink, appearing to read "W. Randall Bassett", written over a horizontal line.

W. Randall Bassett
Georgia Bar No. 041525