

**ORIGINAL**

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

MAR 19 2003

LUTHER D. THOMAS, Clerk

By: *VAS*  
Deputy Clerk

CHEP USA, a New York Partnership, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
MOCK PALLET COMPANY, )  
A Georgia Corporation, )  
 )  
Defendant. )

Case No. 02-CV-2053-BBM

REPLY MEMORANDUM OF LAW IN SUPPORT OF  
MOCK PALLET COMPANY'S MOTION TO COMPEL

COMES NOW, Mock Pallet Company and files this its Reply Brief in Support of its  
Motion to Compel showing the Court the following:

I. ARGUMENT AND CITATION OF AUTHORITY

A. REBUTTAL OF CHEP'S APPLICATION OF THE LAW TO THIS CASE

Chep asserts in its response Brief to Mock's Motion to Compel that the scope of discovery is broad. Yet it seeks to restrict discovery and prevent Mock from obtaining information based on erroneous application of law to the facts of this case. For example: 1) Contrary to what CHEP asserts on pages 5 through 7 of its Response in Opposition to Mock's Motion to Compel, abandonment of personal property can occur in one of two ways: a) from acts of the owner (either acts of commission or omission). Walden v. Jones, 252 Ga. App. 692 at 694(1)(556 S.E. 2d 892)(2002) (holding that Walden, through his inaction had abandoned certain personal property in the nature of music memorabilia), See also Maslia v. Hall, 121 Ga. App. 740, at 743 (2)(175 S.E. 2d 48)(1970), (holding that a jury question existed on "the question of whether or not the Plaintiffs, by failing to remove their property before the deadline given by the

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Defendants, abandoned it) or b) failure to bring an action for the recovery of personalty within four years. See O.C.G.A. § 9-3-32;

2) Not only is CHEP in error when it asserts that Mock's abandonment defense is solely a statute of limitations defense but it is also wrong in stating on page 6 that the statute of limitations does not apply in this case. Tidwell v. Tidwell, 251 Ga. App. 863, at 865 (554 S.E. 2d 822)(2001), cited by CHEP on page 4, holds that the statute of limitations in a conversion case becomes viable when the defendant "engaged in an act of dominion hostile to his [the Plaintiff] ownership rights (citing Gibbs v. Dodson, 229 Ga. App. 64, at 68-69)(2)(492 S.E. 2d 923)(1997). Thus, the Tidwell Court held that a conversion occurred at the moment the Defendant wrongfully retained the title to the car. Tidwell, supra, at 864-865.

3) CHEP correctly states that in order for it to establish a prima facie case for conversion, it 1) must show title to the property, i.e., it was not abandoned or given to a non-participating distributor, who has no obligation to return it to CHEP or disprove that CHEP sold the pallet when it collected from its customer a fee in excess of its value for its loss; 2) the right of possession; 3) actual possession of Defendant; and 4) demand for its return and Defendant's refusal. Wood v. Garner, 156 Ga. App. 351, at 352 (174 S.E. 2d 737, at 738)(1980).

CHEP seeks information from Mock regarding approximately 40,000 CHEP-marked pallets that Mock currently has, and pallets which Mock no longer has, despite limiting this lawsuit to approximately 5,000 CHEP-marked fungible pallets in Covington, Georgia<sup>1</sup> (Complaint, Par. 15). CHEP's inability to track the whereabouts of approximately 35,000 CHEP-marked pallets is ample demonstration of its well documented operational and structural problems and its abandonment of the pallets (See Exhibit "A", which is part of industry analyst

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<sup>1</sup> The time for CHEP to have sought to amend this Complaint without leave of Court has long come and gone.

comments on CHEP's serious leakage problem). Thus, it is apparent that abandonment is not only a valid defense, but a relevant issue on which discovery should be obtainable.

4) CHEP characterizes its contracts with its customers as a true lease and on that basis alone states that the amount CHEP contractually negotiates or collects from its customers for the abandoned pallets is irrelevant (Brief of CHEP, pgs. 7-10). "Whether a lease is intended as security is to be determined by the fact of each case." O.C.G.A. § 11-1-201 (37). Thus, just because CHEP states the contract is a "true lease" does not make it so. Ford Motor Company v. Dowdy, 159 Ga. App. 666, at 668-669 (284 S.E. 2d 679)(1981).

Contrary to what CHEP asserts on pages 7 through 9 of its brief, it is not dispositive as to the real character and purpose of these agreements with its customers that just because CHEP claims it retains title in the pallets, that it is a true lease. Citi Leasing Co. v Entertainment Family Style, Inc., 825 F. 2d 1497, at 1500 (11<sup>th</sup> Cir. 1987). It is a jury question to be determined on a case by case basis, whether these contracts are true leases or disguised security transactions.

Herein, there are many factors which make these CHEP transaction sales as opposed to true leases. For example:

1. CHEP knows up from that 20% of these pallets will not be returned (See Exhibit "A").
2. The total sum of the payments, pursuant to the contact, exceeds the original value of the pallets;
3. CHEP's customers assume many incidents of ownership, such as the risk of loss;
4. CHEP, upon default or breach of agreement, maintains right to recover the pallet, and if said pallet is not repaid, said customer will be liable for a charge. The record is silent as to the amount of said charge.

In addition, many questions remain on the issue of whether the agreement constitutes sales or leases, to which CHEP's attached exemplar agreement is silent:

- a) The rental charges of the pallet;
- b) The value of the pallet claimed in CHEP's Complaint to be \$20.00 (new or used, in good condition or in need of repair?);
- c) The amount of the charge to the customers when one of these pallets is abandoned, not returned or lost;
- d) Evidence of depreciation;
- e) Anticipated useful life of the pallets;
- f) Evidence of whether the payments made pursuant to the contract are customary in the industry.
- g) What the extra charge is when the pallets are shipped to non-participating distributors who have no obligation to return them.

Thus, one should not rush to judgment as to the true character of the contract between CHEP and its customers, as without knowing these details, one cannot make a determination as to the true nature of the transaction. Ford Motor Company, supra, at 611.

**B. APPLYING THE GENERAL PRINCIPLES TO THE SPECIFIC  
DISCOVERY REQUESTS, SAID REQUESTS ARE RELEVANT AND  
DISCOVERABLE**

CHEP offers to produce "any contract between CHEP and any entity Mock identifies his highly guarded trade secret, to wit, its customer list", on page 11 of its brief. This offer will result in all likelihood of the production of zero documents, as CHEP engages in a scheme, where it transfers pallets to customers knowing that at least 20% or approximately 13 million pallets will

be abandoned or lost and flood the streams of commerce. Thus, the probability that any of Mock's customers do business with CHEP is remote.

As stated above, abandonment of personal property can occur from acts of the owner (either acts of commission or omission). Walden v. Jones, 252 Ga. App. 692, at 694 (556 S.E. 2d 892)(2002). Maslia v. Hall, 121 Ga. App. 740, at 743 (2) (175 S.E. 2d 48)(1970).

Thus, Requests Nos. 7, 8, and 26 and Interrogatory No. 4 are relevant to Mock's defense of abandonment. They are also relevant to the issue of what the value of each pallet is, whether the contract between CHEP and its customers is a true lease or a disguised security transaction (a sale) and the extent of any monetary benefit to CHEP of Mock's collection, sorting and handling of any such pallets.

CHEP wrongfully asserts, on page 14 of its brief, that the ownership issue only relates to CHEP pallets that Mock has converted (approximately 5,000 as set forth in the Complaint). However, for a determination to be made as to whether CHEP has title to any of these approximate 5,000 CHEP-marked pallets, one must determine the path these pallets take. Thus, one must start with CHEP's initial transaction with its customers, and determine the nature of the transaction itself and to whom the pallets were sent, to wit, whether they were sent to a non-participating distributor with no obligation to return the pallets or somewhere else.

CHEP persists in stating that Discovery of CHEP's litigation expenses is premature, even though it is one of the elements enumerated in the Complaint as part of their damage claim. It then states that there is nothing about CHEP's litigation expenses for Mock to "disprove" (perhaps that is a tacit admission that such damages are not recoverable). Surely, Mock has a right to disprove the hours allegedly spent by lawyers on this case, determine whether the time spent is reasonable, etc. Furthermore, Mock has all the rights of cross examination available to a

litigator on this issue. Mock should not be required to wait for the date and time CHEP chooses to receive this relevant information. Hence, CHEP should be ordered to produce the documents called for in Mock's Request to Produce No. 30.

The Bueno Memorandum (Request to Produce No. 31) is not privileged as it was the subject of a newspaper article. It is relevant to the issue of ownership, as it relates to CHEP's knowledge of how it has abandoned the pallets, and how it has lost control of the pallet pool and the structural problem it has with the leakage of millions of pallets. Moreover, it does illustrate the behavior that CHEP describes in its aptly coined term on page 22 of its brief, to wit, a "litigation bully".

Discovery of other CHEP litigation (Request to Produce No. 37) is also relevant. This is particularly true with the Buckeye case, as it involves identical issues to this litigation. Given the fact that depositions have not even started in this case, and Mock has yet to receive the first document from CHEP, it might also have the positive consequence of reducing the amount of money and time spent in litigating this case, as there may not be a need to duplicate prior efforts.

The Lozano case was a malicious prosecution case, which CHEP settled for an undisclosed amount. It enacted out of CHEP's filing a complaint with law enforcement that Lozano criminally converted certain CHEP-marked pallets. Ownership of the pallets was an issue in that case in which Lozano was not found to be guilty. Thus, discovery taken in this case does pertain to CHEP's allegations that it is the owner of the subject 5,000 CHEP-marked pallets (Interrogatory No. 33)

With regard to the non-participating distributors, this information is most relevant as it goes directly to the abandonment issue, as the non-participating distributors have no obligation at all to return the pallets to CHEP. This is a crucial factor in CHEP's inability to prove legal title

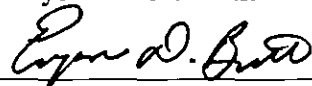
as it must do to prove its allegation in its Complaint that approximately 5,000 CHEP-marked pallets were converted by Mock. The same holds true for Interrogatory No. 8 relating to CHEP's accelerated volume program, which entails revealing manufacturers who ship CHEP-marked pallets to Non-participating Distributors (NPD's) who can do with the pallets whatever they choose and who have no obligation to return them to CHEP.

Clearly, this discovery should be allowed as any hardship that CHEP may endure in producing this discovery (relatively minor for this multi-billion dollar international company) is slight compared to the benefits to be secured from discovery. Beach v. Olathe, Kansas 203 FRD 480 (D. Kan. 200).

As a result of the foregoing, it is submitted that the Court grant Mock's Motion to Compel in its entirety.

This \_\_\_\_\_ day of March, 2003.

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and the lack of control of the one-way pallet pool system has encouraged US retailers, such as Wal-Mart, to accelerate the filling of its DCs with CHEP pallets as reliable storing platforms. In the UK market, retailers also have their DCs full of CHEP pallets, however these were filled at the same rate as its inbound conversion rate, hence the pallets maintained similar asset turns to the retailer. In the case of the US, Wal-Mart is filling its DCs at a faster rate than the inbound volumes, leading to CHEP's asset turns being lower than the retailer's and hence seeing margins and returns fall. We believe this practise is likely to continue until i) all Wal-Mart DCs are penetrated with CHEP pallets (currently estimated to be approximately 80% full ii) CHEP adopts a more rigid pricing regime to discourage this practise (considered unlikely); and/or iii) CHEP and Wal-Mart terminate the contract (considered highly unlikely).

- 2) Secondary Circuit Use—The other difficulty with the Wal-Mart contract is that CHEP has agreed for Wal-Mart to send "order picked" pallets to the store level, known as the secondary circuit. Under the terms of a normal Distributor Agreement, this represents "misuse", again something that didn't occur in the UK pool. The consequence of such is that it lowers asset turns (adds a minimum of 7 unpaid days to an approximate 67-day paid cycle time), as well as increases the damage rate to pallets, due to the use of more damaging equipment such as hand jacks.

Unfortunately, in the case of Wal-Mart, the pallets are staying at the store level significantly longer than the 7 days, sometimes for months, as Wal-Mart uses CHEP pallets as display platforms in its stores, and often, in its garden departments.

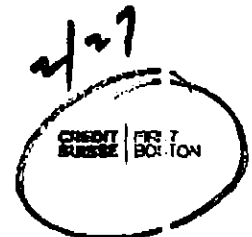
Ramifications: Reduces the asset turns and increases the damage rate (from the usual 20% to an estimated 60%) and repair costs.

- 3) Leakage of the pool to NPDs—in launching the Accelerated Volume Program (AVP) in 1997, CHEP didn't appear to ensure that it had the necessary controls and sales representatives to: 1) prevent Manufacturers from sending pallets to NPDs; and / or 2) follow the pallets and product downstream and then signing up the NPDs. This has resulted in an estimated 20% of the pallet pool being sent to NPDs, distributors who have don't have a contract with CHEP, and hence comply with the care of the assets.

Ramifications: There are several ramifications including: i) reduced asset turns; ii) increased damage rate; iii) increase in lost pallets; iv) greater collection and transport costs; v) "Black Market" pallet pool; vi) litigation; and vii) the dilution of value incorporated in the Participating Distributor Agreement.

It is important to note that an element of these issues also exist in other markets, but most important is that they are not of the magnitude of the US, particularly given the US's relative immaturity and low penetration. Based on discussions with industry experts that have operated in markets outside of the US, we believe these issues are more material than usual.

*For readers seeking for a more detailed discussion please read the following section.*



- 3) A growing proportion of pallets being leaked from the pool (estimated by management to be 20%) as pallets are being sent to Non Participating Distributors (NPDs) — an operational problem.

There are several potential consequences of losing control of the pallet pool including: -

- 1) A decline in asset turns / increase in dwell time for the pool;
- 2) An increase in the damage rates of the pallets, and hence increased repair costs;
- 3) Growing proportion of lost pallets;
- 4) Greater collection and transport costs resulting from pallet "leakage";
- 5) "Black Market" pallet pool proliferation;
- 6) Increasing litigation (see *First Edition*, 21 November 2001) where there were three class actions against CHEP (now two following a settlement); and
- 7) The dilution of value incorporated in the Participating Distributor Agreement and the potential impact that will have on: -
  - Signing/converting NPDs to PDs; and
  - Maintaining current PDs agreements.

We have maintained our more bearish stance on Brambles for the following reasons: -

In our view, the market has not factored these difficulties into consensus earnings forecasts

- 1) While management has noted there are operational and structural difficulties within the US pool, many investors, including those in the UK market, are either not aware of the issues or are of the view that the issues are not of any materiality/can be quickly resolved. We are not as optimistic and suspect once these difficulties are more widely identified in the market, that the stock is likely to have a further round of earnings downgrades (historically CHEP US EBIT has been forecast by the market to grow at rates above 15%) and a potential de-rating of the stock given the short term downgrade to potential ROIC for the US pool;
- 2) Management has yet to be given the opportunity to present the materiality of these issues / our concerns. Hence we have relied upon industry sources, with some risk to accuracy. Given i) growing evidence these difficulties are increasing, ii) the resignation of the Group CEO and CFO in August 2000 (Mr John Fletcher and Mr Michael Brown) and the iv) resignation of the CFO of CHEP USA on 9<sup>th</sup> November 2001 (Mr Roger Miller), coinciding with v) severe profit and margin declines in CHEP USA for the first time since the US pools' inception, we took the view the risk profile for the company had increased;
- 3) Some of the difficulties may actually have longer lasting implications to the franchise value of the US pool and hence reduce our Brambles Group DCF valuation. While we expect profitability and returns will be affected for at least the next 12 months (no dramatic recovery expected before 1H04) as a result of these issues, we also expect there will be a medium term downward shift in returns for the US pool, relative to the UK/Europe and Australian pools, due to the permanent operational and structural differences of the US pool. That said, we recognise the strong pricing power CHEP is likely to have once near fully penetrated as well as the considerable critical mass the US potentially offers, thus allowing CHEP to increase returns closer to UK comparable returns in the long term;



Friday, 23 November 2001

**Recommendation**

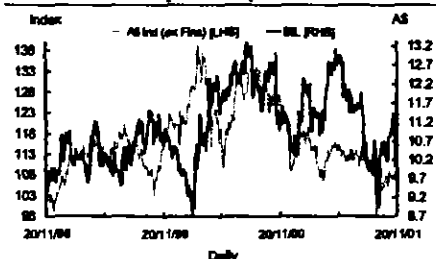
short-term view: market perform  
 long term view: outperform  
 relative to: All Ind (ex Fins)  
 risk factor: Low

**Investment fundamentals**

asx code: BIL  
 stock price: \$10.37  
 market cap: \$9,994m

year end 30 Jun		2001a	2002e	2003e	2004e
reported e	\$m	153.4	680.7	640.0	803.5
adjusted e	\$m	353.9	623.5	742.7	906.3
gross cashflow	\$m	630.5	1786.2	1819.4	2051.5
cips	¢	68.4	106.9	107.8	120.5
cips growth	%	-24.8	56.2	0.8	11.8
pgcips	x	15.2	9.7	9.6	8.6
pgcips rel	x	0.92	0.74	0.78	0.75
eps adj	¢	38.7	37.6	44.2	53.3
eps growth	%	-11.4	-3.0	17.7	20.6
pe	x	26.8	27.6	23.5	19.4
pe rel	x	1.02	1.20	1.14	1.05
dps	¢	20.4	20.0	7.0	9.0
yield	%	2.0	1.9	0.7	0.9
franking	%	65.0	60.0	60.0	60.0

**BIL vs. All Ind (ex Fins)**



Source: ASX

**Analyst**

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 ian.myles@macquarie.com

# Brambles

## Exploring Chep USA's problems

**Event**

- MRE has reviewed the Chep USA business since the AGM announcement that sales have been volatile.

**Impact**

- Brambles' profit warning surrounding Chep USA has highlighted the broader problems in Chep USA, namely Wal-Mart's excessive use of pallets and the slow retrieval of pallets issued to the NPD market. Both have sharply reduced the asset turn and EBIT margins of Chep USA. Thus return on investment is now half of European levels.
- The profit warning means Brambles has not generated EPS growth for the last three years. It is increasingly difficult for investors to simply accept Chep USA will eventually work, and deliver the same returns as its European or Australian counter parts.
- As evidence of improvement is only expected to start appearing in FY2003, MRE expects Brambles in the short term will market perform, trading in a range most likely between \$9.50-10.50. Moreover, if the current volatile Chep USA revenue growth does not resume to the normalised levels of +20% (by December/January), there is a risk that a new problem will appear. Any impairment of the revenue growth will have a significant impact on both Chep and Brambles valuation.
- MRE remains a believer in Chep and that it will dominate the US market. The problems with both Wal-Mart and NPD will naturally resolve as Chep's share of the dry grocery market increases across America. The first signs are likely to be evident by the AGM next year, as efficiency gains and Wal-Mart supplier conversion to Chep nears completion. As these signs come through, MRE expects Brambles will re-rate to \$12.00. Thus MRE's longer term recommendation remains outperform.

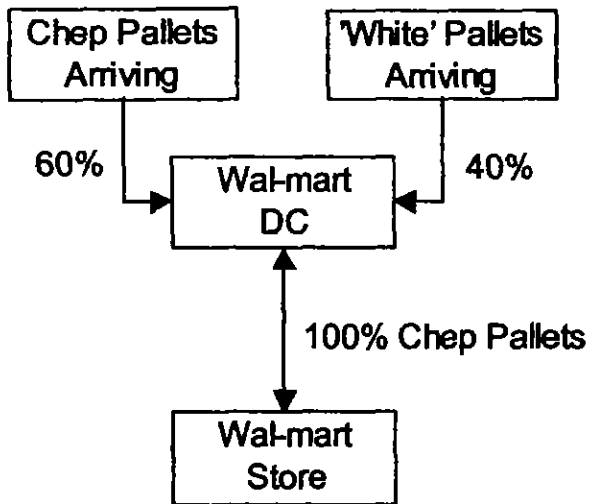
**Analysis**

- MRE believes there are five issues inside Chep that are weighing down both the asset turn and margin performance. These issues are:
  - A sales slump post September 11, with growth rates in the business becoming volatile;
  - Wal-Mart still being a sink for new pallets, resulting in poor turns from these pallets;
  - Non participating distributor pallet pool taking time to develop;
  - Efficiency program, including the depot consolidation and IT upgrade, having a short term margin impact;
  - RPC pool remaining in the start up phase, thus causing an earnings drag;

**Wal-Mart pallets go in – do they ever come out?**

- The biggest issue Chep faces is Wal-Mart and its use of pallets. MRE believes Wal-Mart has approximately 8m pallets, which is between 13-16% of the Chep pallet pool. The difficulty is these pallets are not turning over at the same rates as other distributors (ie one time pa versus 3.5-4x).
- The original agreement between Wal-Mart and Chep was that for Wal-Mart's client list and an encouraging letter to adopt Chep, Chep would provide Wal-Mart with Chep pallets for all its distribution centres (DC) free of charge. These pallets could be used between the DC and the store.

**MRE's estimate of Wal-Mart Pallet flows**



Source: MRE

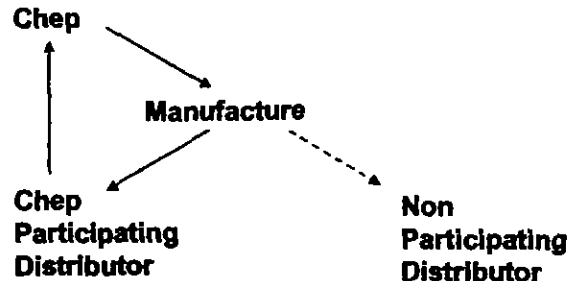
- As the chart above indicates, whilst Wal-Mart is using 100% Chep pallets between the DC and the store, not all pallets arriving at a DC are Chep pallets. As a result Chep needs to inject pallets into Wal-Mart DC's to meet the demand between the DC and the store. In reality this means pallets go into Wal-Mart, but are not being released.
- Brambles has indicated it believes it has a solution, although it is unwilling at this stage to detail the plan (contract renegotiation between Wal-Mart and Chep occurred in September 2001). In MRE's opinion, the key is to accelerate the conversion of Wal-marts suppliers to Chep. With only Chep's pallets entering the Wal-mart system, the average pallet turn at Wal-Mart should naturally improve. For investors, the solution will take time, as Chep must still convert 1,000 of Wal-Mart's 1,500 customers. This will take until FY03.

- On top of the natural imbalance, Wal-Mart's success in growing its share of the US grocery industry means its demand on Chep is even greater, thus exacerbating Chep's problems.
- As a result MRE believes Chep has US\$160 of pallets tied up in Wal-Mart. Based on one turn pa, the capital is generating revenue of only US\$18-20m. This would only just cover the depreciation charge of the pallets tied up. Thus the EBIT margin from the Wal-Mart business may be close to zero.
- MRE sees the potential to lift it to 2-3x turn, and lift margins back to normal levels. This will add US\$100m to revenue and US\$10-15m to EBIT. The impact is a 2% margin improvement across Chep US over the next two to three years.
- Evidence of improvement is unlikely to be available until FY03.

**Non participating distributors – 12-24 months to naturally resolve**

- Chep made a deliberate policy decision to go for growth 12 months ago. The decision meant allowing pallets to be sent to both approved distributors, and non participating distributors (NPD's). This is certainly good for the manufacturers as they can adopt just one pallet system, allowing them to save.
- However for Chep, allowing pallets going to NPD's raises a challenge, as the NPD have no obligation to return the pallets to Chep, or any liability if the pallets are lost.
- From a risk management perspective, MRE estimates Chep charges a \$2-3 premium for a manufacturer to send pallets to an NPD. The premium covers a 10% of pallets being lost, plus a transport cost for Chep to pick up the pallets.
- But the push into the NPD market is like setting up a new pool. Until the pallet density increases in the NPD's, the logistic costs out strip the collection benefits. The impact is Chep's pallet turn suffers.

**Chep closed loop being opened**



Source: MRE, Sept 01

- As a result of the problems, the disconnect between Chep's revenue and EBIT growth will expand in FY02, and the return on funds employed is likely to drop to 10-12%, half that of comparable businesses in Europe and Australia. This naturally leads to the question of whether Chep US may not have the same returns as the other Chep models around the world
- MRE does not believe this. Chep is in a unique position, and its product offering will dominate the market long term. All the distributors MRE spoke to indicated that using Chep generates savings, and they are encouraging suppliers to convert. Suppliers save from reduced shipping failure.
- The problem is that Wal-Mart, NPD and RPC account for at least 70% of the additional revenue growth in Chep. Yet these growth avenues are delivering lower margins and returns, resulting in an overall dilution of Chep's performance in the short term.

**Chep US Incremental returns**

US\$	1999	2000	2001	2002	2003	2004
Revenue Change	127	111	130	108	218	280
EBIT Change	21	15	10	3	82	88
Increment Margin (%)	16.2	13.6	7.8	2.8	37.9	34.1
Inc in Assets	191	257	402	303	278	293
Incremental RoA (%)	11.0	5.8	2.5	1.0	29.5	30.0

Source: MRE Estimates

- MRE expects it will take another 12 months until evidence of improvement occurs. The key indicator will be conversion of the remaining 1,000 (of 1,500) Wal-Mart suppliers on to the Chep program. This should naturally resolve Chep's problems both in Wal-Mart, and the NPD pool. The sign is simply Chep's share of the dry grocery market will increase from 30% to 40-50%.
- From a margin perspective, the table below sets out the likely margin improvement as the key problems are resolved.

**Chep's Margin Restoration**

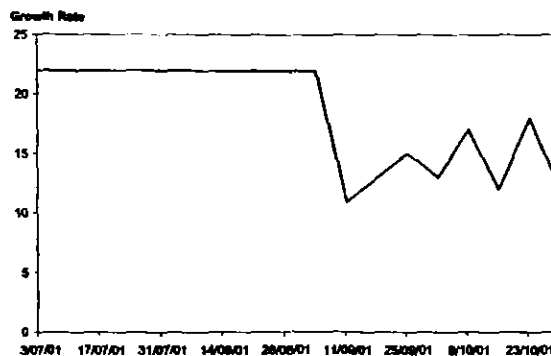
	2002	2003	2004	2005
Margin Changes				
Wal-Mart Program	-1.0	1.0	1.1	0.2
NPD Program	-0.7	1.5	1.1	0.1
Efficiency Program		2.0		
RPC		0.5	0.8	1.1
EBIT Margin Change	-1.7	+5.0	+3.0	+1.4
EBIT Margin	14.0	19.0	22.0	23.4

Source: MRE Estimates

**Chep US September & October sales volatility**

- Chep also reported sales volatility at the AGM that has impacted group profitability. The major issue is why volatility in the sales appeared post September 11.

**Chep's weekly sales picture**



Source: MRE Estimates

- MRE has spoken to most of Chep's major manufacturers and distributors. The common theme is demand for groceries has remained strong despite September 11. Fewer travelling and less eating out has actually increased demand for grocery. This feedback does not fit with the volatility in Chep. If anything, demand should have actually increased!
- Chep's management have asked the same question of their manufacturers, with some feedback indicating destocking. Whilst this seems odd, two minor comments made to MRE by a leading distributor might explain the experience Chep's seeing:
  - The weather in North America has been unseasonably warm. The wrong types of food are in the supermarkets. Thus an inventory build is occurring on the winter foods, and a run down is occurring of the Autumn foods. Chep is impacted as pallet hires drop in the transition;
  - Family reunion sizes are smaller, as less travel is occurring. Whilst total demand has not changed, there may be a risk that the food inventory is in the wrong place, as the demand is spread more evenly across the country. Again, that may create a volatile hiring pattern as some places are destocking, some are not.
- Destocking should only be transitional. To restore balance across all regions, there will need to be additional hiring of pallets. This will need to occur in the next three to four months. Thus Chep should have a concrete indication by the first half results in February that sales patterns have returned to normal.
- From an earnings perspective, MRE expects it will be hard to recover the lost EBIT, given the seasonality of the Chep business towards the first half.

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


CHEP USA, a New York partnership,	)	
	)	
Plaintiff,	)	Civil Action File
	)	No. 02-CV-2053
vs.	)	
	)	
MOCK PALLET COMPANY,	)	
a Georgia Corporation	)	
	)	
Defendant.	)	
	)	

CERTIFICATE OF SERVICE

This is to certify that I have this day served a copy of the foregoing REPLY MEMORANDUM OF LAW IN SUPPORT OF MOCK PALLET COMPANY'S MOTION TO COMPEL upon counsel by depositing a copy of same in the United States Mail in a properly addressed envelope with adequate postage thereon to:

KING & SPALDING  
Chilton Davis Varner  
W. Randall Bassett  
191 Peachtree Street  
Atlanta, Georgia 30303-1763

This 18<sup>th</sup> day of March, 2003.

  
 Eugene D. Butt  
 Attorney for Plaintiff  
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