

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF ARKANSAS**

BEST PALLETS INC. and BEST INDUSTRIAL PALLETS, L.L.C., by and through their President and Owner JAMES L. TAYLOR; ITNOLAP PALLET & CRATING, INC., by and through its President and Owner WILLIAM M. CLARK; ITNOLAP PALLET & CRATING, L.L.C., by and through its President and Half-Owner WILLIAM M. CLARK; PALLET EXPRESS, INC., by and through its Vice-President and Owner LYNN RIDGE BELL; and GOEMAN'S WOOD PRODUCTS, INC., by and through its President and Owner DANNY J. GOEMAN, for themselves and all others similarly situated,  
PLAINTIFFS AND PROPOSED CLASS REPRESENTATIVES,

vs.

BRAMBLES INDUSTRIES, INC., and BRAMBLES NORTH AMERICA, INC., d/b/a CHEP USA,  
DEFENDANTS.

Case No: 08-2012  
The Honorable Robert T. Dawson  
U.S. District Judge

**AGREED MOTION AND DEFENDANT CHEP'S BRIEF TO ALLOW DEFENDANT  
TO TAKE ADDITIONAL DEPOSITIONS PURSUANT TO  
FEDERAL RULE OF CIVIL PROCEDURE 30(a)(2)(A)**

This case involves four named plaintiffs, and they have disclosed five experts to date in support of their motion for class certification. These experts have in turn conducted and relied on in-depth studies of eight pallet recyclers' operations and financials. As a result of the complicated factual story that plaintiffs have put forth to support their motion for class certification, defendant CHEP respectfully requests that this Court permit it to take fifteen depositions during the class certification stage. Plaintiffs' counsel does not oppose this request and has consented to increasing the limit from ten to fifteen depositions for the class certification phase of this litigation.

## ARGUMENT

A party wishing to take more than ten depositions must obtain leave of court to do so. Fed. R. Civ. P. 30(a)(2). The Court must permit more than ten depositions when it is “consistent with Rule 26(b)(2).” *Id.* Rule 26 provides that additional discovery should be allowed unless the Court determines that: (1) the discovery sought is unreasonably cumulative or duplicative, or is obtainable from some other source that is more convenient, less burdensome, or less expensive; (2) the moving party has had ample opportunity to obtain the information by discovery in the action; or (3) the burden or expense of the proposed discovery outweighs its likely benefit. Fed. R. Civ. P. 26(b)(2)(C)(i)-(iii).

In interpreting these discovery rules, the Supreme Court has long held that they should be entitled to “broad and liberal treatment.” *Hickman v. Taylor*, 329 U.S. 495, 507 (1947). Courts routinely have expanded deposition limits where they have determined that the concerns underlying Rule 26(b)(2)(C) are not implicated. *See, e.g., In re Baycol Products Liability Litigation*, 2002 WL 32154241 at \*2 (D. Minn. 2002) (allowing for 24 depositions per month).

Here, plaintiffs’ experts have conducted detailed studies of eight recyclers’ operations, including those of the four named plaintiffs. They have made multi-day visits to each of those recyclers’ facilities. They have collected and made adjustments to financial and operational information about each recycler based on interviews with personnel at each facility, and their analysis shows that each recycler’s operations are different.<sup>1</sup> Of particular note, these experts have explicitly told CHEP that they did not retain documents that support the dozens of assumptions they made in their analysis but instead that “such support is proprietary and *remains in individual company records* not available to us.” (December 12, 2008 letter, emphasis

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<sup>1</sup> See Appendix A, reports of Drs. Michael and Ray.

added). They also said that many of their assumptions were based on discussions and are not supported by any documents. Thus, the only way for CHEP to probe whether these assumptions are reasonable is by deposing the eight recyclers who were the subjects of the experts' analysis. CHEP has already deposed three of the named plaintiffs, and the fourth named plaintiff deposition is scheduled for February 4, 2009.

CHEP also anticipates the potential need to depose other recyclers or industry participants to inquire about issues other than those that are in plaintiffs' experts' reports. Therefore, CHEP requests, and plaintiffs' counsel does not oppose, leave to take 15 depositions in this class certification phase.

Respectfully submitted,

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**OF COUNSEL**

**CERTIFICATE OF SERVICE**

I, Brian M. Simmonds, hereby certify that on January 13, 2009, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which shall send notification of such filing to Herbert T. Schwartz, counsel for plaintiffs.

/s/ Brian M. Simmonds