

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION**

BUCKEYE DIAMOND LOGISTICS, INC. :	:	
fka BUCKEYE RECYCLERS, INC. :	:	
	:	
	:	
Plaintiff,	:	
	:	Case No. C3-01-440
	:	
v.	:	
	:	Judge Walter Herbert Rice
CHEP USA, a general partnership :	:	
	:	
Defendant.	:	

**DEFENDANT'S SUR-REPLY MEMORANDUM**

**I. Introduction**

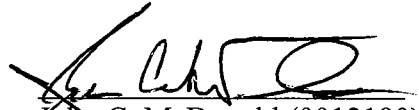
CHEP's initial two page Memorandum (Doc. #64) asking the Court to correct an erroneous reference to CHEP's March 12, 2003 Memorandum (Doc. #36) in the Court's August 11, 2003 Decision and Entry (Doc. #62) has provoked a 34 page torrent of rhetoric best characterized as "much ado about nothing".

In its Memorandum in Opposition to Plaintiff's Motion for Summary Judgment, CHEP had conceded only that it took no exception to transportation of CHEP pallets by Buckeye from one Kroger location to another. (Doc. #36 p. 15). The Court's opinion, perhaps inadvertently, has translated that into a statement that CHEP does not object to Buckeye transporting CHEP pallets from one CHEP customer to another" (Decision and Entry, Doc. #62, p. 10).

Despite Buckeye's lengthy entreaties, the Court need do no more than correct its modest error. The Decision and Entry makes abundantly clear at pp 42-43, that "CHEP is, without question, the owner of said pallets. . . ." and nothing further on the Court's part is required at this

time. Buckeye cannot do anything that is inconsistent with CHEP's ownership rights and should it do so, those actions will be the subject of the February 23, 2004 trial on CHEP's counterclaims for conversion, replevin, and injunctive relief.

Respectfully submitted,



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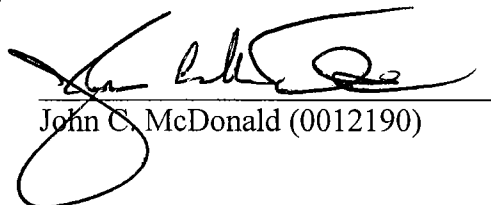
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been served by electronic service and by telefax this 12th day of September, 2003, to the following:

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