

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF ARKANSAS
FORT SMITH DIVISION**

**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
District Judge

DEFENDANTS' MOTION FOR PERMISSION TO FILE DOCUMENTS UNDER SEAL

Defendants, Brambles Industries, Inc. and Brambles North America, Inc. d/b/a CHEP USA (collectively "CHEP"), move for permission to file certain documents under seal and in support, state as follows:

1. CHEP's response to Plaintiffs' Motion for Class Certification is due by February 26, 2009.
2. In responding to Plaintiffs' motion, CHEP needs to rely on evidence that Plaintiffs, third party witnesses, and CHEP have designated as confidential under the Stipulation and Motion for Protective Order Pertaining to Confidential Information ("Protective Order") (Dkt 59).

3. Pursuant to the Protective Order, any pleadings or papers filed with the Court that contain or make reference to information designated “confidential” by any party shall be filed under seal. *See* Protective Order at ¶ 9.

Defendants' Brief

4. Defendants' Brief In Opposition to Plaintiffs' Motion for Class Certification (hereinafter “Brief”) needs to be filed under seal because it contains confidential and proprietary financial information provided by CHEP. It also contains information provided by, and citations to, non-party pallet recyclers deposed by CHEP. Upon Plaintiffs' request, CHEP's attorneys agreed that, during the discovery process, the identities of these non-party recyclers would not be disclosed to CHEP employees. CHEP also agreed to keep certain information obtained from these non-party recyclers as confidential. Because the Brief contains such confidential material, the Brief should be filed under seal to protect this sensitive information from public disclosure.

Expert Reports

5. The attachments to CHEP's Brief include expert reports. One of the experts provides extensive analysis of materials provided by Plaintiffs and their experts. Much of the information being analyzed has been designated by the Plaintiffs as confidential pursuant to the Protective Order. The report also contains the confidential and proprietary information of CHEP. Accordingly, expert reports, with their attachments, should be filed under seal pursuant to the Protective Order.

Witness Testimony

6. The declarations of several CHEP employees and others will be filed in support of the Brief. Some of these declarations contain confidential and proprietary information of CHEP and others. Such declarations, with their attachments, should be filed under seal pursuant to the Protective Order.
7. CHEP will cite to some deposition testimony in its Brief. Plaintiffs have designated some portions of the depositions as confidential by the Plaintiffs. Pursuant to the Protective Order, CHEP respectfully asks to be allowed to file depositions testimony under seal.
8. CHEP has spoken with the attorneys for the Plaintiffs concerning this Motion, but no clear agreement concerning the motion was reached.
9. CHEP intends to file a public version of its Brief, with redactions of any confidential information, at the time it files the Brief and attachments under seal. Within a reasonable time after the filing of the Brief and attachments, CHEP will confer with Plaintiffs about information in the attachments that may be confidential, and CHEP will file redacted versions of the attachments following those discussions.

WHEREFORE, pursuant to the Protective Order and Rule 5.2 of the Federal Rules of Civil Procedure, CHEP respectfully requests that the Court enter an Order allowing it to file the following materials under seal:

- a. Defendants' Brief in Opposition to Motion for Class Certification;
- b. Expert reports, with attachments;
- c. Declarations of CHEP employees and others, with attachments; and

d. Excerpts of depositions transcripts.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Cliff Plunkett, hereby certify that on the 23rd day of February, 2009, I caused the foregoing to be electronically filed with the Clerk of Court using the CM/ECF system, which shall send notification of such filing to the following:

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