

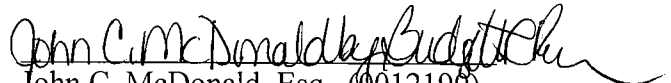
IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

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

**DEFENDANT'S MOTION IN LIMINE PREVENTING BUCKEYE FROM
INTRODUCING EVIDENCE AS TO IRRELEVANT MATTERS IN THE
CONTESTED ISSUES OF FACT SET FORTH IN THE
PROPOSED JOINT FINAL PRETRIAL ORDER**
(Motion in Limine #15)

Defendant CHEP USA moves the Court for an order in limine preventing Plaintiff Buckeye Diamond Logistics, Inc. ("Buckeye") from introducing evidence as to certain irrelevant matters in the Contested Issues of Fact. The grounds supporting this Motion are set forth in the attached Memorandum in Support.

Respectfully Submitted,


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MEMORANDUM IN SUPPORT

I. INTRODUCTION

The parties have prepared a Joint Proposed Final Pretrial Order listing "Contested Issues of Fact." Several of the "Contested Issues of Fact" proposed by Buckeye are irrelevant to its sole remaining claim for unjust enrichment. Because these several matters are not related to the unjust enrichment claim, Buckeye should be prevented from introducing evidence regarding them.

II. THE IRRELEVANT "CONTESTED ISSUES OF FACT"

The following are "Contested Issues of Fact" in the Joint Proposed Pretrial Statement that CHEP contends are irrelevant:

1. Whether manufacturers are required to make reports to CHEP about transfers of the blue pallets, including the date of the transfer, the name of the transferee, the address to which the pallets will be transferred and the number of pallets being transferred to that location, and whether such reports are accurate and monitored by CHEP.
2. Whether CHEP permits certain participating manufacturers to ship goods on CHEP pallets to distributors that have no written agreement with CHEP, who CHEP refers to as "non-participating distributors".
17. Whether under CHEP's written agreement with Wal*Mart, dating back to 1996, Wal*Mart received free use of the blue pallets in exchange for encouraging its manufacturers and suppliers to ship to it on CHEP's pallets.
18. Whether Wal*Mart has any responsibility for reporting to CHEP information about where the blue pallets are/were sent and the reasons why/why not.

19. Whether Wal*Mart's use of blue pallets led CHEP to perform any accounting adjustments, and if so, what was CHEP's intent with regard to the recovery of these pallets.
20. Whether Wal*Mart ships blue pallets to NPDs and, whether CHEP's agreements with Wal*Mart prevent Wal*Mart from shipping to NPDs or require that Wal*Mart report where it ships pallets with CHEP's logo.

III. ARGUMENT

The "facts" embodied in the foregoing Contested Issues of Fact are all irrelevant to the remaining claims. Under Fed. R. Evid. 402, "evidence which is not relevant is not admissible." Rule 401 defines relevant evidence as "evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." And, although CHEP does not concede the relevance of the above facts, relevant evidence may be properly excluded if "its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time or needless presentation of cumulative evidence." Fed. R. Evid. 403.

In order to simplify the presentation of evidence at trial and avoid numerous objections, CHEP seeks a preliminary ruling from the Court under Federal Rules of Evidence 401 and 402 precluding evidence regarding several matters in the Contested Issues of Fact.

Paragraphs 1 and 2 purport to be mere background information, but even as background, these "facts" are not relevant to Buckeye's remaining claim. These "facts" appear to be little more than a thinly disguised effort to characterize CHEP's business as one that allows its pallets to scatter to the wind. There is no purpose to these facts which, in any way, relates to the unjust enrichment claim. In addition, these paragraphs are rendered irrelevant by this Court's finding that "CHEP attempts to control the outward flow of its pallets by requiring lessees to obtain its approval before shipping goods to an NPD on CHEP pallets, which includes their providing

CHEP with information as to the name and address of the NPD, the volume of CHEP pallets used, and the date of the shipment." (See Summary Judgment Decision and Entry, Docket #62, p. 6).

The issues posed in paragraphs 17, 18, 19, and 20 of the Contested Issues of Fact relate to Wal*Mart's contractual relationship with CHEP and its conduct with regard to CHEP's pallets. These matters are completely unrelated to Buckeye's sole remaining claim of unjust enrichment.

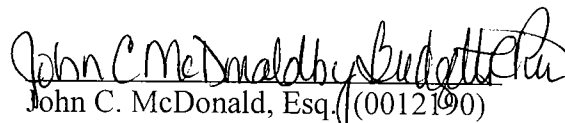
As this Court noted, "parties to an arm's length business transaction should be entitled to structure an agreement in any way they see fit, and as long as it is not illegal or unconscionable, it is not for the court to set aside." (Decision & Entry, Docket #62, at p. 21 and 30). Thus CHEP's agreement with or relationship with Wal*Mart and Wal*Mart's handling of CHEP's pallets is not relevant.

The evidence that may be offered by Buckeye as reflected in the "Contested Issues of Fact" above does not have any tendency to make the existence of any fact that is of consequence to the determination of Buckeye's Unjust Enrichment claim more probable or less probable than it would be without the evidence. This Court's decision to grant summary judgment to CHEP on all but the unjust enrichment claim renders evidence on such unrelated issues irrelevant. Evidence that is unrelated to this issue should therefore be excluded.

IV. CONCLUSION

The various matters embodied within the Contested Issues of Fact set forth above are not relevant to Buckeye's sole remaining claim or to the outcome of this case. Accordingly, Defendant CHEP respectfully requests that the Court issue an Order preventing Buckeye from introducing evidence as to the irrelevant matters contained in the Contested Issues of Fact set forth above.

Respectfully Submitted,



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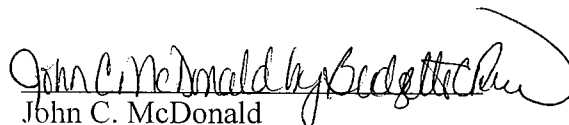
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of Defendant's Motion in Limine was served
this 30th day of January, 2004, via the Court's electronic filing notification, upon:

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