

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

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. :	:	

PLAINTIFF’S MOTION IN LIMINE

Buckeye Diamond Logistics (“Buckeye”) moves the Court for an order barring defendant from presenting any evidence of damages not disclosed in its initial or supplemental pretrial disclosures. A memorandum in support is attached.

s/ James A. Wilson
James A. Wilson (0030704)
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MEMORANDUM IN SUPPORT

Fed. R. Civ. P. 26(a)(1)(C) requires the parties to provide as a pretrial disclosure: “a computation of any category of damages claimed by the disclosing party, making available for inspection and copying as under Rule 34 the documents or other evidentiary material, not privileged or protected from disclosure, on which such computation is based, including materials bearing on the nature and extent of injuries suffered.” The only disclosure concerning its damages made by CHEP USA to date on its counterclaims for conversion and replevin is the broad assertion in its initial disclosure that damages would likely exceed \$75,000. CHEP has never made any initial or supplemental disclosure concerning its calculation of damages on its counterclaims, notwithstanding the fact that in the final pretrial order proffered for last May’s trial date specifically raised the failure of CHEP to specify its damages as a defense to CHEP’s damage claims. Under Fed. R. Civ. P. 26(e)(1), CHEP was “under a duty to is under a duty to supplement at appropriate intervals its disclosures under subdivision (a) if the party learns that in some material respect the information disclosed is incomplete or incorrect and if the additional or corrective information has not otherwise been made known to the other parties during the discovery process or in writing.” Having failed to make these required disclosures, CHEP should not be permitted to present such calculations and evidence for the first time at trial. According, Buckeye respectfully requests that the Court enter an

order barring defendant from presenting any evidence of damages not disclosed in its initial or supplemental pretrial disclosures.

s/ James A. Wilson

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of this Motion was served on
February 2, 2004, by electronic delivery or facsimile upon:

John C. McDonald
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_____ s/ James A. Wilson
James A. Wilson