

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

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

**Defendant CHEP USA’s Memorandum in  
Opposition to Plaintiff Buckeye Diamond Logistics’  
Motion in Limine (filed February 2, 2004)**

On February 2, 2004, Plaintiff Buckeye Diamond Logistics, Inc. (hereinafter “Buckeye”) filed a Motion in Limine seeking an order barring Defendant from presenting *any* evidence of damages. The basis for Buckeye’s Motion was that CHEP had not provided Buckeye, as of the date of that Motion, with any specific supplementary disclosure of those damages.

On February 4, 2004, however, CHEP’s counsel did provide the specific computation of CHEP’s damages. As noted in cover correspondence transmitting the damages summary to Buckeye’s counsel, the calculations were completed that very morning. In addition to providing Buckeye’s counsel with the damages computations, CHEP followed that disclosure with a substantial quantity of back up documentation supporting the damages computation.

Buckeye has since complained that, irrespective of being provided with the damages computation within hours of its completion, the damages computations come too late. What Buckeye, not surprisingly, fails to mention is that there is no way that CHEP could have completed the damages assessment any earlier. The earliest point that CHEP could begin the

process of calculating its damages was in mid-September of 2003, when CHEP was permitted by Buckeye to enter Buckeye's premises to retrieve the 15,981 pallets that Buckeye had wrongfully retained (not the 3700 previously asserted by CHEP). CHEP then had to transport those pallets to a facility where they could be inspected, washed, and repaired---a process that continued well into October of 2004. After the work was done to repair the heavily damaged pallets that had been in Buckeye's possession, CHEP began the process of collecting the necessary information to determine the losses that it had sustained as a result of Buckeye's retention of the pallets. Within hours of CHEP completing that analysis and assessment, CHEP's damages computation was provided to Buckeye's counsel.

Having held nearly 27,000 CHEP pallets for a prolonged period of time and having sold 11,000 of these pallets for over \$37,000, Buckeye can hardly claim surprise at being held accountable for damages to the remaining pallets and the cost of capital for their replacement pending the Court ordered return.

Buckeye took a calculated risk in electing to hold on to CHEP's pallets and denying CHEP the right to retrieve them from Buckeye before they had had been damaged and deteriorated to a point requiring extensive refurbishment. Buckeye surrendered CHEP's pallets only after this Court's Decision and Entry on Summary Judgment which made it abundantly clear that Buckeye had no right to continue to hold CHEP's pallet. Buckeye cries foul at CHEP's allegedly belated disclosure of its damages, but tries to ignore that it caused the foul by refusing to allow CHEP to recover the pallets. The recovery of the pallets was a necessary beginning point to CHEP's ability to assess its damages. Buckeye should not, by virtue of having gambled by retaining possession of CHEP's pallets, be permitted to benefit from its own wrongful conduct in depriving CHEP of earlier access to its pallets through arguing that CHEP

was late in disclosing its damages. Significantly, Buckeye has yet to quantify its unjust enrichment claim (see Wilson letters of February 4, 2003 and January 15, 2003 which merely recite an inadmissible methodology that Buckeye now seems intent on abandoning in favor of some unspecified "benefit" to CHEP).

Based on the foregoing, CHEP respectfully requests that Buckeye's February 2, 2004, Motion in Limine be denied, and that CHEP be permitted to proceed forward with its evidence of damages.

Respectfully Submitted,

s/John C. McDonald  
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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a copy of Defendant's Proposed Jury Instructions, Verdict Forms and Special Interrogatories was served this 18th day of February, 2004, via the Court's electronic filing notification, upon:

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s/Bridgette C. Roman  
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