

[Faint, illegible text]

Tab A

**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. :

AFFIDAVIT OF JAMES A. WILSON

State of Ohio :

County of Franklin : ss.

James A. Wilson, being duly cautioned and sworn, hereby states as follows:

1. I am member in good standing in the bars of the State of Ohio and of the United States District Court for the Southern District of Ohio, a partner in the law firm of Vorys, Sater, Seymour and Pease LLP and counsel for Buckeye Diamond Logistics in the above captioned matter.

2. On February 23, 2004, I served Buckeye Diamond Logistics' Third Set of Interrogatories upon CHEP USA.

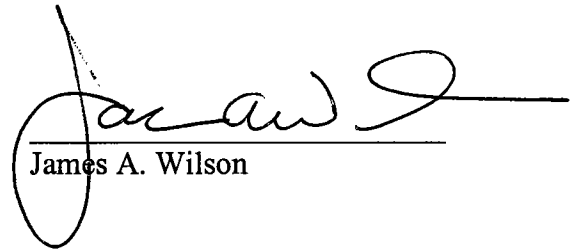
3. On February 24, 2004, I received a letter from John McDonald, a copy of which is attached, concerning these discovery requests.

4. On February 24, 2004 and February 26, 2004, I prepared correspondence in response to Mr. McDonald's February 24th letter, copies of which are attached hereto.

Due to an error in my office, these letters were faxed to an erroneous facsimile number. They were transmitted to Mr. McDonald by e-mail on February 27, 2004.

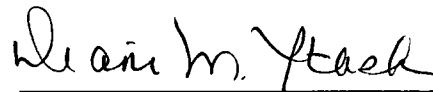
5. On March 1, 2004, I received a telephone call from Mr. McDonald. Among other things, in that call he indicated that CHEP was unwilling to waive objection to Buckeye's Third Set of Interrogatories on the ground that Buckeye had served more than 25 interrogatories and distinct subparts, but would answer some of the interrogatories CHEP did not consider objectionable on other grounds. I confirmed by a letter of that same date (attached) my belief that the parties were at an impasse as to this issue. On March 2, 2004, Mr. McDonald sent me a letter (also attached) which I understand to confirm our impasse as to this issue.

Further affiant saith naught.



James A. Wilson

Sworn in my presence and subscribed before me this 4th day of March, 2004.



Notary Public

DIANE M. STASH
NOTARY PUBLIC, STATE OF OHIO
MY COMMISSION EXPIRES 10/1/08



JOHN C. McDONALD
614/462-2201
E-MAIL: JMC DONALD@SZD.COM

February 24, 2004

FACSIMILE & REGULAR U.S. MAIL

James A. Wilson, Esq.
Vorys, Sater, Seymour & Pease, LLP
52 East Gay Street
P.O. Box 1008
Columbus, Ohio 43216-1008

Re: *Buckeye Diamond Logistics, Inc. (formerly Buckeye Recyclers, Inc.) v. CHEP USA*
U.S. District Court for the Southern District of Ohio Western Division
Case No. C3-01-440 - Judge Walter Herbert Rice


Dear Jim:

When I called your office shortly after lunch yesterday, I left the message that I was forwarding a draft of the letter to Judge Rice and that I wished to speak with you about the scope of discovery as outlined in Plaintiff's Supplemental Memorandum in Support of Motions in Limine Regarding CHEP USA's Failure to Make Timely Damage Disclosures (Doc. #80).

You failed to return my call but e-mailed a revised copy of the draft letter at 3:35 p.m. Shortly thereafter, I placed another call to your office but did not receive any return call until shortly before 6:00 when I had already left the office. Forty-five minutes later your office forwarded twenty pages of discovery requests consisting of your Third Set of Interrogatories and Fourth Request for Production of Documents.

A cursory review of those requests indicates that much of the information sought is or should be in Buckeye's possession while much of it is not relevant to the damage claims asserted by CHEP. Moreover, Buckeye has already far exceeded the number of interrogatories permitted by Rule 33(a) as we noted in our responses to your Second Set of Interrogatories. Let me suggest that you review your requests to see if they can be narrowed and that we confer in person or by phone on Thursday of this week after I have had the opportunity to review them in more detail. If we are unable to agree I would suggest that we approach the Court immediately rather than wait until CHEP's responses and objections are due on March 20, 2004.

Best personal regards,


John C. McDonald

JCM/mc

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February 24, 2004

VIA FACSIMILE

John McDonald
Schottenstein, Zox & Dunn
250 West Street
Columbus, OH 43215

Re: Buckeye Recyclers v. CHEP USA

Dear John:

I am writing in response to your letter of this morning. From your letter, it appears that I somehow offended you by sending back a redlined draft rather than calling you when I received your draft letter to Judge Rice yesterday. If that is the case, I apologize. In my judgment, however, more could be accomplished by revising your draft and allowing you to see some of my basic concerns, than by an call. I returned your 3:45 p.m. call as soon as I got out of a meeting and had returned two other calls that had come in before yours. In any event, since we spoke this morning after your letter was sent and we seem to have resolved all remaining issues with the letter to Judge Rice, I assume your concerns with my not having called you have been resolved.

With respect to the second paragraph of your letter, I do not agree with either your assertion that much of the information sought by the discovery requests is or should be in Buckeye's possession or your assertion that much of the discovery sought is irrelevant to defense of CHEP's damage claims. If CHEP is unwilling to answer additional interrogatories without the Court granting Buckeye leave to propound the ones served yesterday, I will seek that leave from the Court. I do agree that we should talk this week and bring any discovery disputes to the Court's attention immediately. In addition, I would like to discussing scheduling approximately two days of depositions of CHEP witnesses concerning these damage claims. I should be able at least preliminarily to identify those witnesses by Thursday. Would you please check your calendar by Thursday as to whether you are available on April 7th and 8th for such depositions? My preference would be that CHEP make these individuals available in Columbus. However, if

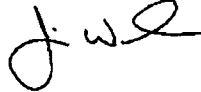
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John McDonald
February 24, 2004
Page 2

a trip to Orlando is necessary to take these depositions, please check you calendar to see if you are available on either April 6th or 9th for me to take the videotape trial depositions of some of the witnesses we previously had anticipated reading to the jury (Messrs. Brumsey, Fisher, Kirk, Sizemore and Russell).

I am available anytime Thursday morning before noon and after 2:30 p.m. for the phone conference you have suggested.

Very truly yours,

A handwritten signature in black ink, appearing to read "J. Wilson", written over the typed name below.

James A. Wilson

JAW/jw

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February 26, 2004

VIA FACSIMILE

John McDonald
Schottenstein, Zox & Dunn
250 West Street
Columbus, OH 43215

Re: Buckeye Recyclers v. CHEP USA

Dear John:

I am writing to follow up on my letter of February 24th regarding depositions of CHEP employees and others regarding CHEP's damage claims. I would like to take the following depositions for approximately the follow lengths of time:

- | | |
|--|-----------|
| Elton Potts | 2 hours |
| If other than Mr. Pottes, the CHEP employee most knowledgeable concerning in the recovery of pallets from Buckeye in August or September 2003 | 1 ½ hours |
| If other than Mr. Pottes, the CHEP employee who had principal responsibility for arranging or making determinations with respect to transportation, reconditioning or washing of pallets recovered of pallets from Buckeye in August or September 2003 | 2 hours |
| Any CHEP employee who participated in any aspect of the calculations of CHEP's damages in this matter | 1 ½ hours |

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John McDonald
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The CHEP employee most knowledgeable concerning CHEP's depreciation calculations and rates for block or stringer pallets since 1999 1 ½ hours

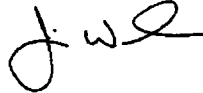
The CHEP employee(s) most knowledgeable concerning overseeing, monitoring or auditing the return of pallets by Abbott Foods or Mills Pride since January 1, 1999 1 ½ hours

The CHEP employee most knowledgeable concerning CHEP's cost of capital at any time since January 1, 1999 2 hours

In addition, I would like to depose Derek Smith, who you added to your witness list and I believe works in this area. I will be serving document subpoenas on J.B. Hunt and GreenTen Corp. shortly, and will likely need to take a short telephonic of GreenTen and either a telephonic or local deposition of J.B. Hunt.

I look forward to talking to you later today.

Very truly yours,



James A. Wilson

JAW/jw

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March 1, 2004

VIA FACSIMILE

John McDonald
Schottenstein, Zox & Dunn
250 West Street
Columbus, OH 43215

Re: Buckeye Recyclers v. CHEP USA

Dear John:

I am writing to confirm our telephone conversation of this afternoon. You indicated that CHEP would make Elton Potts and Derek Smith available in Columbus on April 7th and 8th. You indicated that you were checking on witness responsive to the other requests I have made. I would appreciate your adding to that list the individual employed by CHEP most knowledgeable concerning the creation of CHEP 00795. This deposition should take less than an hour.

In our call you indicated that you were planning to object to the discovery I have served to the extent that (1) you believe that it relates to Buckeye's unjust enrichment claim rather than to CHEP's claim for damages; or (2) you believe it relates to an area of damages not sought by CHEP (e.g., repainting pallets, transportation costs). I believe that you also indicated that these were not the full extent of your objections. While your letter of February 24 suggested that we confer and bring any differences we have to the Court's attention immediately rather than waiting until March 20th when CHEP's responses are due, today you indicated that you were unwilling to state in full your objections or to bring them to the Court's attention immediately because I had affirmed in my correspondence that I believed that I was entitled to the discovery I have sought. Finally, while you said that you were gathering some information responsive to Buckeye's Third Set of Interrogatories, you indicated that CHEP was not willing to waive objections that Buckeye had exceeded the maximum number of interrogatories, and suggested that I may wish to pursue my suggestion that I would seek leave of Court to propound these interrogatories.

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John McDonald
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Please let me know if I have inaccurately characterized our conversation.

While you have said that you are now unwilling to try to resolve our differences prior to March 20th, I remain willing to do so, and to raise them with the Court as soon as possible if we cannot reach agreement. To that end, I will shortly file a motion for leave to propound the additional interrogatories that Buckeye has served, since I believe that you have confirmed that we are at an impasse as to that issue.

With respect to the two areas of objection that you made this afternoon, toward the end of seeking to resolve our differences, let me offer the following responses:

1. **Your assertion that Buckeye's discovery relates to Buckeye's unjust enrichment claim rather than to CHEP's claim for damages:** While you did not point to any specific discovery requests in raising this point, I assume that your objection relates to Document Requests 6, 15, 16, 17 and 24 and Interrogatories 2 and 7. Most of this discovery seeks information from CHEP regarding dwell times at NPDs and CHEP's costs of having pallets dwell at NPDs. Such information is relevant to CHEP's damage claim in that it sets the baseline for the costs attributable to Buckeye. If Buckeye returned pallets more quickly than the average dwell time at an NPD, Buckeye may have converted pallets (assuming CHEP proves this claim), but it will not have damaged CHEP by doing so. Likewise, some of these requests also go to the inconsistency of CHEP's damage calculation in the midst of litigation with the manner in which it calculates the cost of not timely getting pallets returned or, conversely (as in CHEP 00795), the benefit of expediting their return outside the context of litigation. I hope this explanation will clarify why this discovery is relevant to CHEP's damage claims. I am willing to discuss each of these particular discovery requests separately if you like.

2. **Your assertion that Buckeye's discovery relates to areas of damages not sought by CHEP:** As I tried to explain in our conversation today, the requests that you object to as outside the scope of the type of damages CHEP is seeking, by which I assume you meant Document Requests 1 and 8, go to whether CHEP's claimed damages were reasonable in light of other alternatives. For example, we believe we are entitled to determine if pallets could have been repainted more cheaply than they were washed. Likewise, we are entitled to probe why CHEP chose a company in Tennessee to wash these pallets rather than to have them washed locally in determining whether GreenTen's invoice was legitimate or inflated.

To avoid any confusion, I will only be able to proceed with depositions on April 7th and 8th if we have all the discovery we either agree I am entitled to or the Court finds that I am entitled to. I hope you will consider the explanation I have offered above as to the relevance of the items to which you indicated that you intended to object and will continue to seek to work

Vorys, Sater, Seymour and Pease LLP

John McDonald
March 1, 2004
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out your objections to this discovery now rather than waiting three weeks. I remain willing to discuss your objections to the discovery I have served at any mutually convenient time.

Very truly yours,

A handwritten signature in black ink, appearing to read "J. Wilson". The signature is written in a cursive style with a large initial "J" and a long, sweeping underline.

James A. Wilson

JAW/jw



JOHN C. McDONALD
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March 2, 2004

James A. Wilson, Esq.
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Re: *Buckeye Diamond Logistics, Inc. (formerly Buckeye Recyclers, Inc.) v. CHEP USA*
U.S. District Court for the Southern District of Ohio Western Division
Case No. C3-01-440 - Judge Walter Herbert Rice

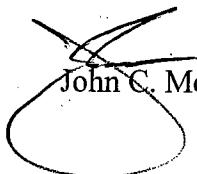
Dear Jim:

I am currently engaged in working my way through your third set of interrogatories and fourth request for production of documents containing 25 separate requests, many with multiple subcategories and frankly do not have time to engage in the posturing that is implicit in your letters of February 24 and March 1, 2004.

Suffice it to say that, when in response to my request that you review your discovery requests to see if they could be narrowed your immediate response was that you were entitled to all of the discovery you had requested, I saw little to be gained by further dialogue, at least until my client and I have had the opportunity to determine what is readily available and what is pertinent to CHEP's damage claims. While dwell time or timeliness of return can have an effect on revenue, let me remind you that my client is making no claim for lost revenue. CHEP's claims are exclusively for (1) depreciation in value while its pallets sat on Buckeye's recycling yard; (2) the cost of reconditioning those pallets that were eventually returned (15,981 out of 27,395); (3) the cost of capital for replacement pallets; and (4) recovery of Buckeye's proceeds from the sale of CHEP pallets which it did not own.

I fully expect to answer the majority of your discovery requests but will object to those which I believe to be improper and with respect to those will also bring to the Court's attention that you long ago exceeded the 25 interrogatory limit imposed by Rule 33(a) which constitutes additional grounds for objection to the 28 new interrogatories you have posed.

Best personal regards,


John C. McDonald

JCM/mc

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