

Tab C

3/23/04

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. 23-01-440

v. :

Judge Walter Herbert Rice

CHEP USA, a general partnership :

Defendant. :

**CHEP USA'S RESPONSES TO PLAINTIFF'S
FOURTH REQUEST FOR PRODUCTION OF DOCUMENTS**

Defendant CHEP USA responds to Plaintiff's Fourth Request for Production of Documents as follows:

GENERAL OBJECTIONS

CHEP USA's responses to Plaintiff Buckeye Recyclers' ("Plaintiff") Fourth Request for Production of Documents, including the definitions relative thereto, are subject to the general objections set forth below. These objections form a part of each of CHEP USA's responses to Plaintiff's Fourth Request for Production of Documents even though they may not be specifically referred to in each and every response. Failure to incorporate any of these general objections in any specific response should not be construed as a waiver of same.

1. The Court's allowance of limited further discovery was to allow for discovery specifically related to CHEP's damages claims. The scope of certain of Plaintiff's requests herein exceeds this very limited scope.

2. The following responses are based upon information available as of the time of this written response. These written responses are subject to revision or supplementation in accordance with Fed.R.Civ.P. 26(e). Further discovery, independent investigation and analysis may supply additional facts and add meaning to known facts, as well as establish entirely new factual conclusions and legal contentions, all of which may lead to additions, changes to, or variations from the responses set forth herein. CHEP therefore reserves the right to supplement and/or modify these responses to the extent necessary based on information it may learn in the future. CHEP's reservation of this right should not be construed as the assumption of an obligation to supplement or modify beyond what is required by Rule 26(e).

3. These responses are made for the sole purpose of this action and are subject to all objections to competence, relevance, authenticity, materiality, propriety, admissibility, and any and all other objections or grounds which would or could require or permit the exclusion of any document or statement herein from evidence, all of which objections and grounds are reserved and may be interposed at the time of trial.

4. CHEP objects to each request to the extent that it seeks one or more documents that are irrelevant and not reasonably calculated to lead to the discovery of admissible evidence (Objection on the grounds of "Relevance").

5. CHEP objects to each request to the extent that it calls for the disclosure of documents protected by the attorney/client privilege or the work product doctrine (Objection on the grounds of "Privilege"). In responding to these requests, CHEP is not waiving any objection or failing to claim any privilege available to it, including but not limited to the attorney-client privilege, work product doctrine, or any other privilege or immunity available by statute, rule or common law. CHEP's responses are exclusive of any such privileged material. If any privileged

document is inadvertently produced, that production is not to be construed as a waiver of such privilege or immunity.

6. CHEP objects to each request to the extent that it requires CHEP to produce documents not within its possession, custody or control (objection on the grounds of "Availability"). Without waiving this objection, the answers given shall identify information known only to those persons who are employees of CHEP or are known by employees of CHEP to possess the information sought.

7. CHEP objects to each request to the extent that it seeks documents that are confidential and proprietary. Certain documents sought by Plaintiff's Fourth Request for Production are or contain confidential and/or proprietary information or may lead to the disclosure of confidential and/ or proprietary information owned by CHEP that would be a benefit to competitors if they were to learn it. Documents that are or embody confidential and/or proprietary information have been and will be disclosed only subject to the protections afforded by the parties' Stipulation and the Court's Protective Order (Objection on the grounds of "Confidentiality").

8. CHEP further objects to each and every request to the extent that the request is overbroad or production in accordance with the request imposes an undue burden upon CHEP in responding to it (Objection on the grounds of "Overbreadth" or "Undue Burden").

9. Any response by CHEP that one or more documents will be produced is not to be construed as a representation that any specific document has been located. It is only meant to indicate that any such document, if found by CHEP, will be produced.

REQUESTS FOR PRODUCTION

1. All documents referring or relating to any pallet returned by Buckeye to CHEP in August or September 2003, including but not limited to documents referring or relating to the transportation of such pallets or any service performed with respect to or cost associated with such pallets.

RESPONSE:

Objection on the grounds of Relevance. CHEP's claim for damages does not include transportation costs. Subject to that objection, see CHEP document numbers 10591-10605, 10639-10691, 10763 and 10703-10717, which have all been previously produced and CHEP document number 10840 produced herewith.

2. All documents referring or relating to whether any or all of the pallets in Buckeye's possession since 1999, including stringer pallets, had been already fully depreciated prior to or after receipt of the pallet by Buckeye.

RESPONSE:

There are no such documents specifically relating to the 27,395 CHEP pallets wrongfully retained by Buckeye since 1999.

3. All documents referring or relating to any write off of stringer pallets by CHEP since January 1, 1999.

RESPONSE:

CHEP document number 10813 has been previously produced.

4. All documents referring or relating to any withdrawal from circulation or limitation on the rental of stringer pallets by CHEP since January 1, 1999.

RESPONSE:

CHEP has sought to encourage its customers in the last few years to convert from stringer to block pallets. There are no documents however pertaining to withdrawal from circulation or limitation on the rental of stringer pallets.

5. All documents referring, relating to, or used in any calculation of actual, average or estimated dwell times for pallets marketed with CHEP's logo at Buckeye or that CHEP asserts otherwise supports its assumptions as to how long Buckeye possessed the pallets returned to CHEP in August or September 2003 or for which CHEP seeks to recover damages from Buckeye.

RESPONSE:

CHEP document numbers 00485-6, 00148, 00162-3, 00148-49, 08255-08283, 10591-10605, 10703-762, 10639-691, and 10763 have all been previously produced. See also, Buckeye documents numbers 0090-0147, 0177-178, 0086 and 0179.

6. All documents referring or relating to (a) any calculation of average dwell times for pallets marketed with CHEP's logo at NPDs, any category of NPDs, NPDs in any geographic area, or any particular NPD having a location in Ohio or within 100 miles of Buckeye's facility in South Charleston; and (b) receipt and returns of pallets marked with CHEP's logo by any NPD having a location in Ohio or within 100 miles of Buckeye's facility in South Charleston.

RESPONSE:

Objection on grounds of Overbreadth, Undue Burden, Availability and Relevance. The subject of this request is irrelevant to CHEP's damage claims. CHEP's damages are based on the depreciation in value, cost of capital and repair costs for the 27,395 CHEP pallets wrongfully withheld by Buckeye. Moreover, with the exception of Axxxxx Fxxxx or Mxxxx Pxxxx, Buckeye has failed or refused to identify the sources from which it obtained CHEP pallets, therefore, preventing CHEP from being able to respond to the portion of this request that is, perhaps, relevant (other NPDs from whom Buckeye acquired CHEP pallets). Subject to that

objection, see documents Bates numbered CHEP 07016 – 07294, 10499-10551, 10554, 10876-77.

7. All documents referring or relating to bids, quotations or invoices received by CHEP for reconditioning (including reconditioning fees and lumber costs) or for washing fees relating to pallets since January 1, 1999, including but not limited to those pallets returned by Buckeye to CHEP in August or September 2003.

RESPONSE:

CHEP document numbers 10878 through 10948 are produced herewith.

8. All documents referring or relating to bids, quotations or invoices received by CHEP for repainting used pallets since January 1, 1999.

RESPONSE:

Objection on grounds of Overbreadth, Undue Burden and Relevance. More than one year prior to the return of its pallets by Buckeye, CHEP began using pre-painted components in the repair and reconditioning of its pallets as was the case with the pallets returned in September, 2003. CHEP is making no claim for damages arising from the repainting of its pallets.

9. All documents referring or relating to any guidelines possessed or prepared by CHEP, including guidelines or directions to depots or service centers, regarding when washing of pallets is appropriate or the manner by which the repairs or reconditioning needed for a pallet should be determined.

RESPONSE:

CHEP documents number 10864 through 10875 and 10966 are produced herewith.

10. All documents referring or relating to CHEP payments for reconditioning (including reconditioning fees and lumber costs) or washing fees relating to pallets since January

1, 1999, including but not limited to those pallets returned by Buckeye to CHEP in August or September 2003.

RESPONSE:

CHEP document number 10763 has been previously produced; see also response to Request #7 above.

11. All documents referring or relating to, supporting, or considered in formulating CHEP's conclusions or assumptions as to the portion of the cost attributable to Buckeye for recondition of pallets recovered from Buckeye in August and September 2003..

RESPONSE:

CHEP document numbers 10764-10808 have been previously produced.

12. All documents referring or relating to invoices, quotations or bids from Greenten Corp. to CHEP or payments by CHEP to Greenten Corp. since January 1, 1999.

RESPONSE:

Objection on grounds of Overbreadth and Undue Burden. Subject to those objections see those documents produced in Response to Request #7 above.

13. All documents from which any information contained in the documents labeled CHEP 10764 through CHEP 10812 is derived or which constitutes an earlier draft or calculation of any analysis contained therein.

RESPONSE:

Objection on grounds that the request is overbroad and unduly burdensome. This request would require locating (if available) and producing such a large volume of documents that it would be unduly burdensome. The essential content of these voluminous documents is contained in the documents generated by CHEP's SAP operating system which have been previously produced as CHEP document number 10764-10812.

14. The complete document from which CHEP 10813 is taken.

RESPONSE:

CHEP document numbers 10949 through 10965 are produced herewith.

15. All documents referring or relating to the daily, weekly or monthly cost to CHEP for pallets in the possession of CHEP's manufacturer or distributor customers or any NPD, for any period since January 1, 1999.

RESPONSE:

Objection on grounds of Overbreadth and Undue Burden. In addition, the request is ambiguous. This request would require locating (if available) and producing such a large volume of documents that it would be unduly burdensome. The essential content of these voluminous documents is contained in the documents generated by CHEP's SAP operating system which have previously been produced as CHEP document numbers 10809-10812.

16. All documents referring or relating to any calculation the average daily, weekly or monthly revenue paid to CHEP for pallets in the possession of CHEP's manufacturer or distributor customers or any NPD, for any period since January 1, 1999.

RESPONSE:

Objection on grounds of Overbreadth, Undue Burden and Relevance. As to the 27,395 CHEP pallets wrongfully held by Buckeye, there was no revenue paid to CHEP from any source nor has CHEP made any damage claim for any loss of revenue.

17. All documents referring or relating to CHEP's utilization rates (i.e., the percentage of CHEP's inventory not at customer locations or outside of CHEP's control and available for rental) for block or stringer pallets on an annual, monthly, weekly or daily basis for any period since January 1, 1999.

RESPONSE:

Objection on grounds of Over-breadth, Undue Burden and Relevance. In addition, as phrased, the request is ambiguous. Utilization is a component of lost revenues and CHEP is not claiming any damages for lost revenues. The requested documents referring or relating to CHEP's utilization rates have no relevance whatsoever to CHEP's damage claims concerning the 27,395 CHEP pallets wrongfully withheld by Buckeye.

18. All documents referring or relating to CHEP methods and calculations of depreciation for pallets since January 1, 1999.

RESPONSE:

See CHEP document number 10813 which has been previously produced.

19. All documents referring or relating to CHEP's or Brambles' cost of capital from January 1, 1999 to date.

RESPONSE:

CHEP document numbers 06894-06906, have been previously produced; CHEP document number 10841 through 10863 and 10949 through 10965 are produced herewith.

20. All documents referring or relating to any damage CHEP has suffered since January 1, 1999, as the result of the return by Buckeye of any pallet to any CHEP customer for the payment of a fee.

RESPONSE:

See Buckeye document numbers 090-147, 177-78, 086-89 and 179, and Defendant's Trial Exhibits 23-28 and 30 which have been previously produced.

21. All documents referring or relating to pallets in the possession of or returned to CHEP since January 1, 1999, by Abxxxx Fxxxx or Mxxxx Pxxxx, including any

documents related to the repair or reconditioning of such pallets and any audit records or internal communications of CHEP concerning Axxxxx Fxxxx or Mxxxx Pxxxx.

RESPONSE:

See CHEP documents numbers 10876 and 10877 which are produced herewith.

22. All documents referring or relating to any charges by or payments to CHEP since January 1, 1999, with respect to Axxxxx Fxxxx or Mxxxx Pxxxx.

RESPONSE:

See Response to Request #21 above.

23. All documents referring or relating to the inspection of Buckeye's facilities by Elton Potts in January 2003.

RESPONSE:

CHEP document numbers 08255-08283 have been previously produced.

24. All documents referring or relating to any analysis of the costs incurred by CHEP since January 1, 1999, as the result of any delay in the return of pallets by any customer, category of customers or NPDs or of the benefit to CHEP of expediting the return of pallets or increasing its asset recovery rates.

RESPONSE:

Objection on grounds that the request is overbroad and unduly burdensome and has no relevance whatsoever to CHEP's damage claims for depreciation in value, cost of capital or repair costs for the 27,345 CHEP pallets wrongfully withheld by Buckeye.

25. All documents identified in response to Buckeye's Third Set of Interrogatories.


RESPONSE:

All such documents have been previously produced.

CERTIFICATION OF COUNSEL AS TO OBJECTIONS

The undersigned, as counsel for CHEP USA hereby certifies that the objections interposed in response to the foregoing Interrogatories propounded by Plaintiff are interposed in good faith and not for the purpose of delay. All objections are asserted in compliance with Fed. R. Civ. P. 26, et seq.

Respectfully submitted,

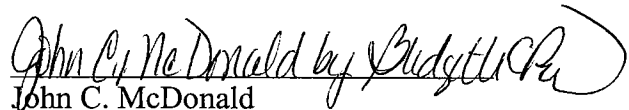

John C. McDonald (0012190)
P. O. Box 165020
Columbus, Ohio 43216-5020
(614) 462-2201
Attorney for Defendant,
CHEP USA

Of Counsel:

Bridgette C. Roman, Esq. (0040888)
Schottenstein, Zox & Dunn
P. O. Box 165020
Columbus, Ohio 43216-5020
Tele: (614) 462-2700
Fax: (614) 462-5135

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing document was served upon James A. Wilson, Vorys, Sater, Seymour & Pease, 52 East Gay Street, P.O. Box 1008, Columbus, Ohio 43216-1008 by regular U.S. Mail, this 23rd day of March, 2004.


John C. McDonald