

**Tab F**

**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 FIRST AMENDED RESPONSE TO PLAINTIFF'S  
FOURTH REQUEST FOR PRODUCTION OF DOCUMENTS**

Defendant CHEP USA ("CHEP") hereby provides this First Amended Response to Plaintiff's Fourth Request for Production of Documents as follows:

**GENERAL OBJECTIONS**

CHEP's amended 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 641-655, CHEP10591-10605, CHEP 8255 – 8283, CHEP10591-10605, CHEP10639-10691, CHEP10763 and CHEP10703-10717, and CHEP 10840 which have all been previously produced and CHEP 14588 – 14633, 11662, 12141, 12147, 12148, 12154, 12160, 12167, 12180, 12182, 12188, 12190, 12196, 12198, 12204, 12205, 12211, 12212, 12218, 12219, 12225, 12226, 12232, 12233, 12239, 12240, 12246, 12247, 11903 – 11911, 13592 – 13593, 13601, 13606 – 13608, 13628, 13896 – 13947, 14040 – 14041, 14045 – 14059, and 14065 - 14076 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:**

The request specifically seeks information as to "whether any or all of the pallets in Buckeye's possession since 1999, had been fully depreciated prior to or after receipt by Buckeye." As stated previously, there are no such documents relating to the 27,395 CHEP pallets wrongfully retained by Buckeye since 1999. If, as asserted in counsel's letters of April 1 and April 9, this "request was not limited to the pallets returned by Buckeye" then the request is ambiguous and incapable of being answered in that form. In correspondence from Plaintiff's counsel, he asserted that Mr. Potts testified that such documents were being gathered. This is inaccurate. Counsel is perhaps mistakenly referring to Mr. Potts testimony with respect to Request for Production #3.

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

**RESPONSE:**

CHEP 2593 and 10813 have been previously produced and CHEP 11629, 11660 - 11661 produced herewith.

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." There are, however, documents evidencing CHEP's efforts to encourage customers to switch from stringer to block pallets and representative examples are produced herewith as CHEP 14643 - 14646.

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:**

Objection on the grounds of Relevance, Over-Breadth and Undue Burden. The portion of this request related to "dwell time" is solely designed to buttress Buckeye's damage claim for unjust enrichment. As CHEP is making no claim for lost revenue as part of its damage claims the issue of "dwell time" for pallets is totally irrelevant as well as overly broad and unduly burdensome. CHEP's damage claim is restricted to depreciation in value, cost of capital and repair costs for the 27,345 CHEP pallets wrongfully withheld by Buckeye. As for the documents requested that support CHEP's assumptions as to how long Buckeye held the pallets returned to CHEP pursuant to the Court's order and/or for which CHEP seeks to recover damages see CHEP 00485-6, 00148, 00162-3, 00148-49, 08255-08283, 10591-10605, 10703-762, 10639-691, and 10763 all been previously produced. See also, Buckeye documents numbers 0090-0147, 0177-178, 0086 and 0179. And, see CHEP 11663 - 11731 and CHEP 14588 - 14642.

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. This request is solely designed to buttress Buckeye's damage claim for unjust enrichment. As CHEP is making no claim for lost revenue as part of its damage claims the issue of "dwell time" for pallets is totally irrelevant as well as overly broad and unduly burdensome.

Moreover, with the exception of Axxxxx Fxxxx or Mxxxx Pxxxx, Buckeye has failed or refused to identify other 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 CHEP 07016 – 07294, 10499-10551, 10554, 10876-77, produced previously and CHEP 11663 – 11731, CHEP 14588 – 14642, CHEP 11832 – 11847 and CHEP 11805 – 11831 produced herewith.

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:**

Objection on grounds of Overbreadth and, to the extent that it seeks detailed information spanning a period of nearly five years and involving nearly 300 separate service centers, Undue Burden. The summary weekly report alone from the facilities engaged in reconditioning and washing would involve approximately 78,000 documents. Subject to, and without waiving that objection, CHEP previously produced CHEP10878 through 10948 and produces herewith CHEP 11756 – 11804, 11912 – 12253, and CHEP 13522 - 14587.

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. Subject to the foregoing objections, CHEP has no documents that refer or relate "to bids, quotations or invoices received by CHEP for repainting used pallets since January 1, 1999." The price of painting is typically included in the cost of reconditioning and is not separately itemized. 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. Moreover, painting is never a substitute for washing.

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 10864 through 10875 and 10966 were previously produced and CHEP 11745 – 11754 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:**

Objection on grounds of Overbreadth and, to the extent that it seeks detailed information spanning a period of nearly five years and involving nearly 300 separate service centers, Undue Burden. The summary weekly report alone from the facilities engaged in reconditioning and washing would involve approximately 78,000 documents. Subject to, and without waiving those

objections, CHEP previously produced CHEP10878 through 10948, and CHEP 10763 and produced herewith are CHEP 11756 – 11804, 11912 – 12253 and 13522 – 14587; 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:**

Objection on grounds of Overbreadth and Undue Burden. Plaintiff's counsel is fully aware of the extent to which CHEP has computerized its data system and the fact that the source data underlying the summaries provided involve literally hundreds of thousands of documents. The query forms themselves, some of which have already been provided, do not in themselves provide further detail. Subject to the foregoing objection, arrangements can be made for counsel to visit the CHEP offices and have the appropriate employee pose the queries that have generated the summary data. Subject to, and without waiving that objection, CHEP produces herewith CHEP 11622 - 11662 and previously produced CHEP 10764-10808.

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, to the extent that it seeks detailed information spanning a period of nearly five years and involving an estimated 2500 or more documents, on the grounds of Undue Burden. Subject to those objections, documents previously produced in response to Request #7 above are responsive to this request, as are those documents that were produced for inspection by Greenten Corporation on April 1, 2004. Subject to, and without waiving this objection, responsive documents produced herewith are those identified in response to Request #1 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 of Overbreadth and Undue Burden. Plaintiff's Counsel is fully aware of the extent to which CHEP has computerized its data system and the fact that the source data underlying the summaries provided involve literally hundreds of thousands of documents. The query forms themselves, some of which have already been provided, do not in themselves provide further detail. Subject to the foregoing objections, arrangements can be made for counsel to visit the CHEP offices and have the appropriate employee pose the queries that have generated the summary data. Subject to, and without waiving that objection, 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 and DX 23 - 30. In addition, CHEP produces herewith CHEP 11622 through 11622.

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. Plaintiff's counsel is fully aware of the extent to which CHEP has computerized its data system and the fact that the source data underlying the summaries provided involve literally hundreds of thousands of documents. The query forms themselves, some of which have already been provided, do not in themselves provide further detail. Subject to the foregoing objections, arrangements can be made for counsel to visit the CHEP offices and have the appropriate employee pose the queries that have generated the summary data. Regardless, 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. In addition, and without waiving the foregoing objections, CHEP previously produced CHEP 11542 - 11548, 10841 - 10863, 10949 - 10965.

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. This request is solely designed to buttress Buckeye's damage claim for unjust enrichment. As CHEP is making no claim for lost revenue as part of its damage claims the "calculation [of] the average daily, weekly or monthly revenue paid to CHEP for pallets in the possession of CHEP's manufacturer or distributor customers" is totally irrelevant as well as overly broad and unduly burdensome. CHEP's damage claim is restricted to depreciation in value, cost of capital and repair costs for the 27,345 CHEP pallets wrongfully withheld by Buckeye. 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 and, accordingly, no responsive documents related to same. See also, sworn testimony of Elton Potts, April 8, 2004.

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. This request is solely designed to buttress Buckeye's damage claim for unjust enrichment. As CHEP is making no claim for lost revenue as part of its damage claims the "utilization rates" are totally irrelevant. CHEP's damage claim is restricted to depreciation in value, cost of capital and repair costs for the 27,345 CHEP pallets wrongfully withheld by Buckeye. Utilization rates are 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 2611-2613, 2615-2617, and 10813 which have been previously produced.

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

**RESPONSE:**

Objection on the grounds of Over-breadth, and to the extent that it covers a period of nearly five years and involves hundreds of thousands of financial documents and shareholder records in the possession of CHEP's parent company, Brambles, on the grounds of Undue Burden. Subject to and without waiving that objection, CHEP previously produced CHEP 06894-06906, CHEP 0841 through 10863 and CHEP 10949 through 10965. See also, sworn testimony of Elton Potts, April 8, 2004.

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.

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:**

To the extent that this request seeks documents beyond the scope of pallets returned by Abxxxx Fxxxx or Mxxxx Pxxxx other than those that allegedly came from Plaintiff, the request is objectionable on the grounds of Over-Breadth, Undue Burden and Relevance. Subject to and without waiving those objections, see CHEP 10876, 10877 and 11550 - 11621 produced previously and CHEP 11832 – 11902 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:**

Objection on grounds of Over-breadth, Undue Burden and Relevance. Subject to and without waiving those objections, see Response to Request #21 above and CHEP 12254 – 13521 produced herewith.

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 the grounds of Relevance, Over-Breadth and Undue Burden. CHEP's damage claim is restricted to depreciation in value, cost of capital or repair costs for the 27,345

CHEP pallets wrongfully withheld by Buckeye. This request is solely designed to buttress Buckeye's damage claim for unjust enrichment. As CHEP is making no claim for lost revenue as part of its damage claims the issue of "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" for pallets is totally irrelevant as well as overly broad and unduly burdensome.

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


**RESPONSE:**

All such documents have been 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,

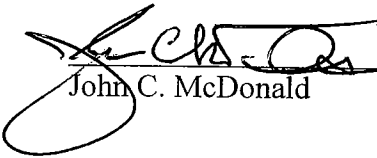
  
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**CERTIFICATE OF SERVICE**

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 hand-delivery, this 20th day of April, 2004.

  
John C. McDonald