

Tab A

Marsha L. Couri

From: Wilson, James A. [jawilson@vssp.com]

Sent: Friday, February 27, 2004 2:46 PM

To: Marsha L. Couri; John McDonald

Subject: Attached Files

<<COLUMBUS-#9418332-v1-Letter_to_John_McDonald_of_Feb_24_2004.PDF>> <<COLUMBUS-#9418336-v1-Letter_to_John_McDonald_of_Feb_26_2004.PDF>> The attached are PDFs of letters sent to John earlier this week. John's voice mail to me caused me to be concerned that he has not seen them.

From the law offices of Vorys, Sater, Seymour and Pease LLP.

CONFIDENTIALITY NOTICE: This e-mail message is intended only for the person or entity to which it is addressed and may contain confidential and/or privileged material. Any unauthorized review, use, disclosure or distribution is prohibited. If you are not the intended recipient, please contact the sender by reply e-mail and destroy all copies of the original message. If you are the intended recipient but do not wish to receive communications through this medium, please so advise the sender immediately.

Marsha L. Couri

From: Wilson, James A. [jawilson@vssp.com]
Sent: Friday, February 27, 2004 3:08 PM
To: Marsha L. Couri; John McDonald
Subject: RE: Attached Files

I just saw that there is a typo on the fax cover sheets, for which I apologize. I am not sure how my office managed to get a typo in there that is still a working fax number. Once John has had a chance to digest these letters, please ask him to call me.

-----Original Message-----

From: Wilson, James A.
Sent: Friday, February 27, 2004 2:46 PM
To: 'mcouri@szd.com'; 'jmcDonald@szd.com'
Subject: Attached Files

<< File: COLUMBUS-#9418332-v1-Letter_to_John_McDonald_of_Feb_24_2004.PDF >> << File: COLUMBUS-#9418336-v1-Letter_to_John_McDonald_of_Feb_26_2004.PDF >> The attached are PDFs of letters sent to John earlier this week. John's voice mail to me caused me to be concerned that he has not seen them.

From the law offices of Vorys, Sater, Seymour and Pease LLP.

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March 9, 2004

VIA FACSIMILE

The Hon. Walter Herbert Rice
United States District Judge
United States District Court
Federal Building, 7th Floor
200 West Second Street
Dayton, Ohio 45402

Re: Buckeye Diamond Logistics v. CHEP USA.
Case No. C3-01-440

Dear Judge Rice:

I am writing to request a conference with the Court regarding two discovery issues. As you know, on February 20th, the trial date of February 23rd was vacated and Buckeye was given 60 days to gain discovery concerning the damage claims CHEP USA disclosed on February 4, 2004. Since discovery must be completed by April 20th, and we are anxious to keep the trial date of May 24th set by the Court, I am currently seeking to schedule depositions on the dates available between now and April 20th. To that end, two issues require the Court's determination:

1. Buckeye Diamond Logistics Motion for Leave to Serve in Excess of 25 Interrogatories, which was filed on March 5, 2004. If this motion is not granted, Buckeye will have to schedule additional depositions to gain the discovery these interrogatories seek, and therefore a conference resolving this motion would be very helpful.
- 2.. Buckeye's request to depose the person at CHEP most knowledgeable as to the creation of CHEP 00795, a document entitled "Benefit of Paying Recyclers for Recovery of CHEP Pallets." CHEP has agreed to schedule, without objection, the other depositions that Buckeye has requested, although it has not yet confirmed dates for these depositions, which were requested almost two weeks ago.

Vorys, Sater, Scymour and Pease LLP

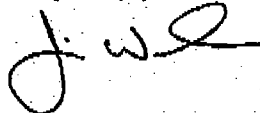
March 9, 2004
Page 2

However, CHEP has sought to put the deposition concerning CHEP 0795 into a state of flux, by neither agreeing to the deposition nor agreeing to a time by which it will advise if it is objecting to this deposition. Given the short time frame to accomplish this deposition, I therefore feel I have no choice to seek the Court's intervention.

I believe that given the discrete nature of the issues Buckeye seeks to have addressed, such a conference can be completed quickly. I am happy to elaborate on Buckeye's positions by letter or memorandum in advance of the conference if the Court so desires.

I appreciate the Court's consideration of scheduling such a conference.

Very truly yours,



James A. Wilson

JAW/kc

cc: John McDonald (via e-mail)

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

March 9, 2004

Via Facsimile

The Honorable Walter Herbert Rice
United States District Judge
United States District Court
Federal Building, 7th Floor
200 West Second Street
Dayton, Ohio 45402

Re: *Buckeye Diamond Logistics v. CHEP USA*
Case No. C3-01-440

Dear Judge Rice:

In response to Mr. Wilson's letter of earlier this morning, I wish to advise as follows:

- (1) CHEP fully expects to respond to Buckeye's pending discovery requests in advance of the date specified by Buckeye for a response.
- (2) Contrary to Mr. Wilson's statement, CHEP has agreed to make three witnesses available in Columbus, Ohio on April 6 and 7 as he, himself, acknowledged in his letter to me of March 1 (copy attached).
- (3) With respect to Mr. Wilson's request to depose "the person most knowledgeable about the creation of CHEP 00795" I have attempted to explain, apparently without success, that Mr. Wilson has already inquired of no fewer than six (6) people who are "the most knowledgeable" about the document in question. Keith Norder, CHEP's CFO was asked about the document on two separate occasions and his predecessor, Roger Miller was also questioned together with four other company officials. Excerpts of their testimony are attached. To date, we have been unable to identify anyone else at CHEP who would be more knowledgeable about this document than the

The Honorable Walter H. Rice

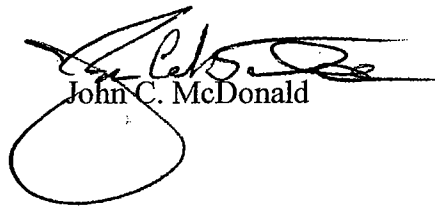
March 9, 2004

Page 2

individuals already deposed with a result that I cannot accommodate Mr. Wilson's request for an immediate response.

Should the Court still wish to proceed with the conference scheduled for 4:30 p.m. on Monday, March 15, however, we will, of course, make ourselves available at your convenience.

Best personal regards,



John C. McDonald

JCM:bs

~~Enclosure~~ 

cc: James A. Wilson, Esq. (via facsimile)



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Columbus
Cleveland
Cincinnati

{H0411956.1}

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March 15, 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 phone call of a few minutes ago. You indicated that you believed that the three witnesses you are producing on April 7th and 8th (Elton Potts, Derek Smith and Candice Southwick) would provide testimony on each of the topics identified in my letter of February 26th. You further indicated that you would advise me shortly as to which of the topics identified each witness would testify.

So that there is no confusion, I understand these three individual are responsive to and being produced to comply with the following requests contained in my February 26, 2004 letter:

1. The CHEP employee most knowledgeable concerning in the recovery of pallets from Buckeye in August or September 2003.
2. 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.
3. Any CHEP employee who participated in any aspect of the calculations of CHEP's damages in this matter.
4. The CHEP employee most knowledgeable concerning CHEP's depreciation

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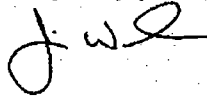
John McDonald
March 15, 2004
Page 2

calculations and rates for block or stringer pallets since 1999.

5. 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.
6. The CHEP employee most knowledgeable concerning CHEP's cost of capital at any time since January 1, 1999.

If I am incorrect that these three witnesses are being produced as the appropriate CHEP employees to cover all of these topics, please advise me immediately so that this topic may be addressed in the conference with Judge Rice today. I understand that you continue to object to producing the CHEP employee most knowledgeable concerning the creation of CHEP 00795.

Very truly yours,



James A. Wilson

JAW/jw

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E-Mail - jawilson@vssp.com

April 13, 2004

VIA FACSIMILE

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

Re: Buckeye Recyclers v. CHEP USA

Dear John:

Your letter of today does not address whether CHEP is withdrawing any of the objections it previously made to Buckeye's discovery responses, but seeks to defer that discussion yet another week. The fact that CHEP is still searching for documents that were due for production several weeks ago is no excuse for delaying a response to my questions as to CHEP's legal objections. Unless I receive a response by tomorrow addressing which, if any, of the objections CHEP is now withdrawing, I will assume we are at an impasse concerning these issues. I look forward to your prompt response.

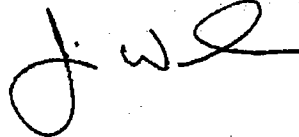
Many of the new copies documents sent in response to my letter of January 14, 2003, remain illegible in significant parts. If your position is that I have the best available copies

Vorys, Sater, Seymour and Pease LLP

John McDonald
April 13, 2004
Page 2


of the documents identified in my letter, please produce the originals of those documents in your office for me to review.

Very truly yours,



James A. Wilson

JAW/jw

 **SCHOTTENSTEIN
ZOX & DUNN** CO., LPA
JOHN C. MCDONALD
614/462-2201
E-MAIL: JCDONALD@SZD.COM

April 20, 2004

FACSIMILE & HAND DELIVERY

James A. Wilson, Esq.
VORYS, SATER, SEYMOUR & PEASE
52 East Gay Street
P.O. Box 1008
Columbus, Ohio 43216-1008

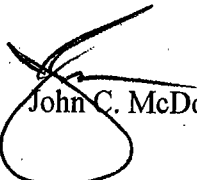
*Re: Buckeye Diamond Logistics, Inc. (fka Buckeye
Recyclers, Inc.) v. CHEP USA
U.S. District Court for the Southern District of Ohio
Western Division
Case No. C3-01-440 - Judge Walter Herbert Rice*

Dear Jim:

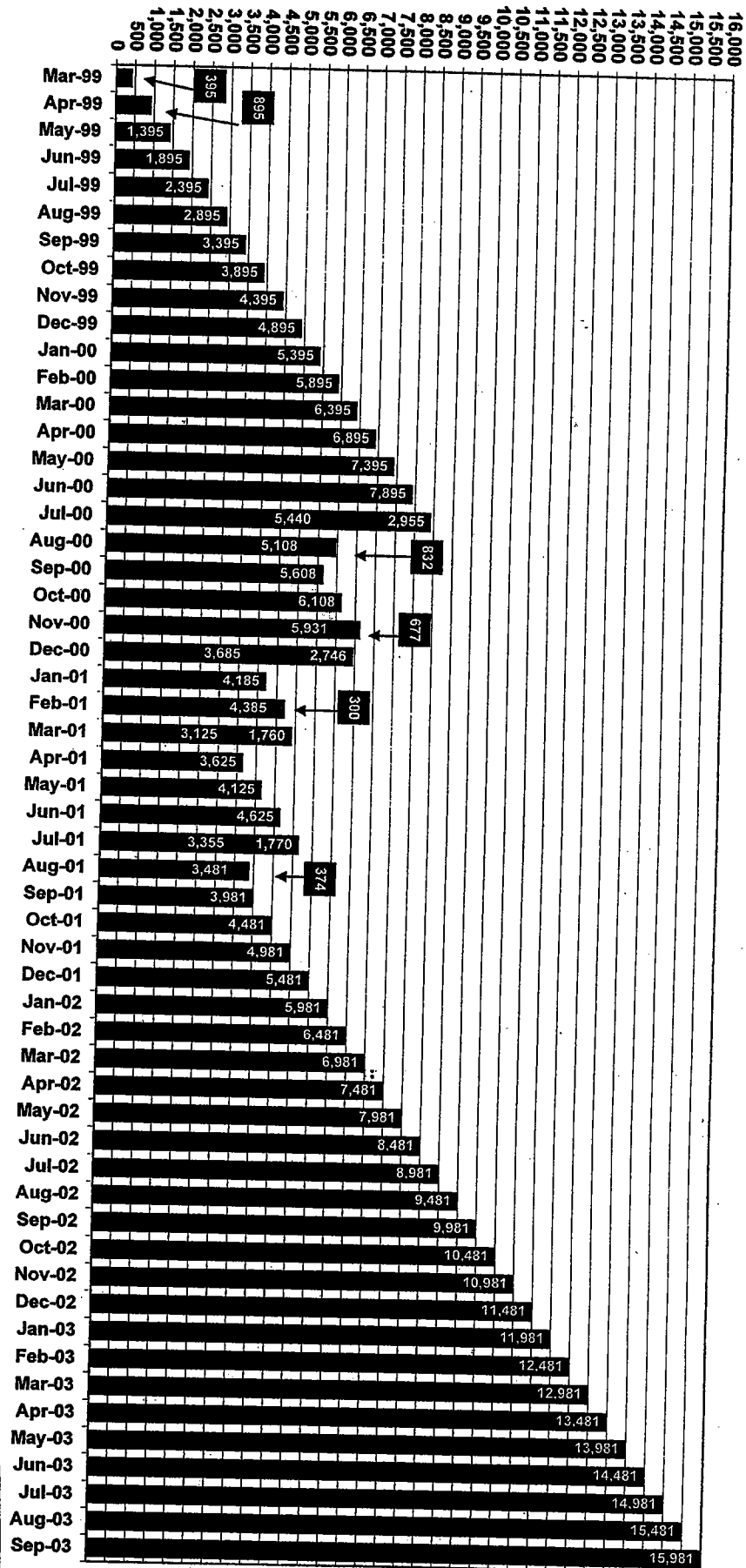
Following your questioning of Candace Southwick, Derrick Smith and Elton Potts we have updated Exhibit 24 to reflect the number of pallets actually returned to CHEP from Buckeye over a six month period (October 2003, through March 2004) rather than the shorter period available when the exhibit was originally repaired. That, combined with your suggestion that our calculations failed to take into account the estimated split between block and stringer pallets or the actual lumber charges at Greenten, rather than the system average has led to the re-calculations reflected in Revised Exhibits 23 - 30 which should replace the Exhibits previously furnished. The methodology explained by Smith and Potts during the depositions however remains unchanged.

Also enclosed in response to the exceptions expressed in your letters of April 1 and April 9 are Revised Answers to your Third Set of Interrogatories and Fourth Request for Production of Documents, together with additional documentation Bates Numbered CHEP 11622 through 14646. I will be available to speak with you concerning our remaining objections in person or by phone either today or tomorrow.

Best personal regards,


John C. McDonald

JCM/mc
Enclosure



27,395 CHEP PALLETES HELD BY BUCKEYE
MARCH 1999 - SEPTEMBER 2003

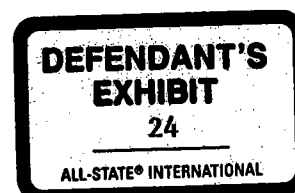
DEPENDANT'S
EXHIBIT
23
ALL STATE INTERNATIONAL

PALLETS RETURNED TO CHEP BY BUCKEYE
OCTOBER, 2003 – MARCH, 2004*

PICKUP DATE	BILL OF LADING NUMBER	NUMBER OF PALLETS
October 3, 2003	3627319045	141
October 10, 2003	3627355210	117
October 17, 2003	3627389786	91
October 24, 2003	3627401706	123
October 31, 2003	3627462863	157
November 7, 2003	3627499908	117
November 14, 2003	3627536189	136
November 21, 2003	3627673606	193
December 1, 2003	3627597735	42
December 5, 2003	3627645171	160
December 12, 2003	3627684211	128
December 19, 2003	3627720401	219
December 31, 2003	3627735651	115
January 13, 2004	3627818022	178
January 16, 2004	3627866189	61
January 23, 2004	3627890223	95
February 10, 2004	3627936148	74
February 20, 2004	3627804009	133
February 27, 2004	3628060182	150
March 5, 2004	3628096246	90
March 12, 2004	3628096248	147
March 19, 2004	3628096249	102
April 2, 2004	3628096251	60
April 5, 2004	3628096251	166
	Total	2995

Approximate Monthly Average = 500

*No pallets were returned during latter part of March;
early April returns were added to total to adjust numbers



MONTHLY PURCHASE PRICE OF BLOCK AND STRINGER PALLETS

<u>Month</u>	<u>Price Per Block Pallet</u>	<u>Price Per Stringer Pallet</u>
Mar-99	\$22.97	\$20.99
Apr-99	\$21.92	\$0.00
May-99	\$0.00	\$0.00
Jun-99	\$22.97	\$0.00
Jul-99	\$21.08	\$20.62
Aug-99	\$0.00	\$0.00
Sep-99	\$0.00	\$20.54
Oct-99	\$22.38	\$0.00
Nov-99	\$0.00	\$0.00
Dec-99	\$21.59	\$20.24
Jan-00	\$17.87	\$0.00
Feb-00	\$24.93	\$20.43
Mar-00	\$21.77	\$19.96
Apr-00	\$17.74	\$0.00
May-00	\$22.14	\$20.19
Jun-00	\$20.76	\$19.55
Jul-00	\$20.85	\$19.12
Aug-00	\$20.96	\$18.87
Sep-00	\$20.65	\$19.11
Oct-00	\$19.94	\$19.38
Nov-00	\$20.18	\$19.07
Dec-00	\$19.82	\$18.79
Jan-01	\$17.13	\$0.00
Feb-01	\$18.75	\$18.66
Mar-01	\$20.25	\$0.00
Apr-01	\$19.05	\$0.00
May-01	\$19.39	\$0.00
Jun-01	\$19.50	\$18.09
Jul-01	\$21.44	\$0.00
Aug-01	\$20.29	\$18.89
Sep-01	\$19.25	\$0.00
Oct-01	\$19.03	\$0.00
Nov-01	\$18.71	\$0.00
Dec-01	\$19.32	\$0.00
Jan-02	\$18.41	\$0.00
Feb-02	\$20.78	\$0.00
Mar-02	\$19.51	\$0.00
Apr-02	\$20.05	\$0.00
May-02	\$19.80	\$0.00
Jun-02	\$19.12	\$0.00
Jul-02	\$18.59	\$0.00
Aug-02	\$19.33	\$0.00
Sep-02	\$19.04	\$0.00
Oct-02	\$19.55	\$0.00
Nov-02	\$18.45	\$0.00
Dec-02	\$18.60	\$0.00
Jan-03	\$18.23	\$0.00
Feb-03	\$18.39	\$0.00
Mar-03	\$18.72	\$0.00
Apr-03	\$18.37	\$0.00
May-03	\$19.50	\$0.00
Jun-03	\$19.00	\$22.22
Jul-03	\$18.64	\$21.28
Aug-03	\$19.09	\$0.00
Sep-03	\$18.54	\$0.00



1999
Average \$21.73
(65% block, 35% stringer)



2000
Average \$20.36
(65% block, 35% stringer)



2001
Average \$19.18
(65% block, 35% stringer)



2002
Average \$19.19
(100% block)



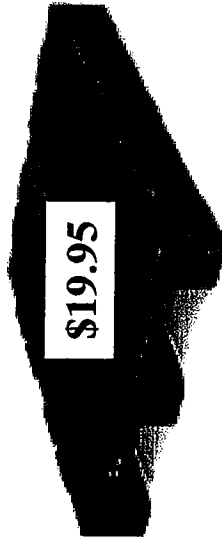
2003
Average \$19.86
(65% block, 35% stringer)

54-month average cost
\$19.93

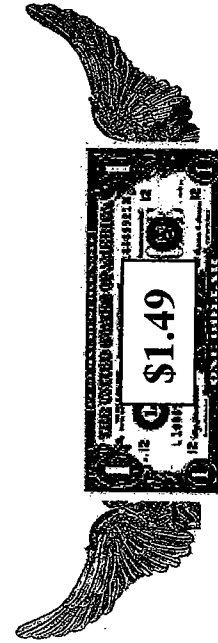
**DEFENDANT'S
EXHIBIT**
25
ALL-STATE® INTERNATIONAL

AVERAGE MONTHLY DEPRECIATION IN VALUE

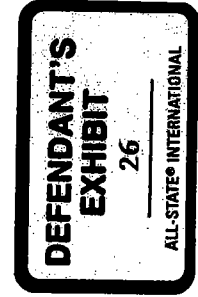
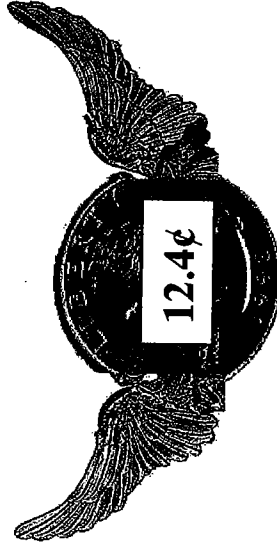
COST OF PALLET



ANNUAL DEPRECIATION IN VALUE

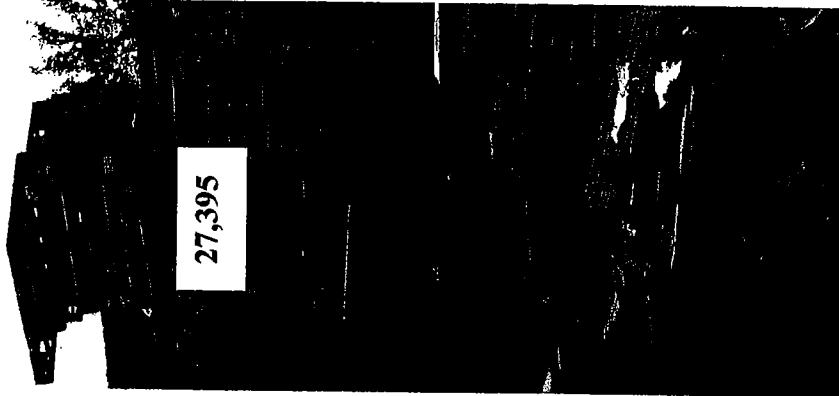


MONTHLY DEPRECIATION IN VALUE



**TOTAL DEPRECIATION IN VALUE OF
PALLET'S HELD BY BUCKEYE**

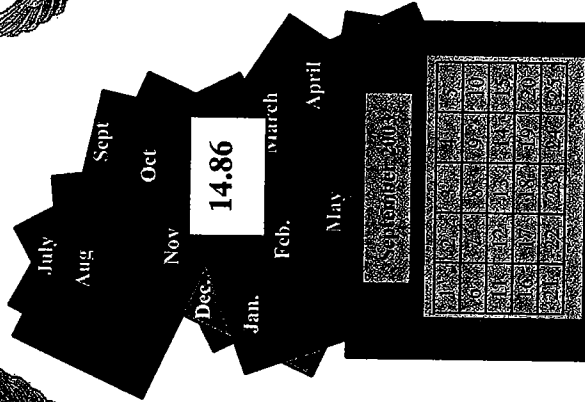
**TOTAL PALLET'S HELD
BY BUCKEYE**



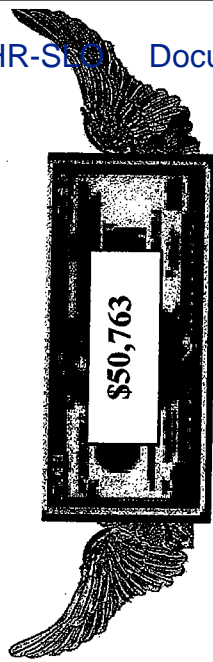
**AVERAGE MONTHLY
DEPRECIATION
PER PALLET**



**AVERAGE MONTHS HELD
BY BUCKEYE**



**TOTAL DEPRECIATION
IN VALUE**



**DEFENDANT'S
EXHIBIT**
27
ALL-STATE® INTERNATIONAL

**COST TO RECONDITION OR REPLACE PALLETS
RECOVERED FROM BUCKEYE
SEPTEMBER 2003**

Undamaged Pallets	8576
Damaged Pallets	7287
Scrap Pallets	<u>118</u>
Total Recovered	15,981

TOTAL COST TO RECONDITION OR REPLACE PALLETS

15,981 Pallets Washed @ \$1.75 =	\$27,966
15,303 Parts Replaced @ \$0.588=	\$ 8,998
7,287 Pallets Repaired @ \$1.07=	\$ 7,797
118 Pallets Replaced @ \$18.54=	<u>\$ 2,188</u>
Total Cost	\$46,949

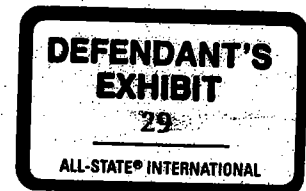
COST ATTRIBUTABLE TO BUCKEYE

14,703 Pallets Washed @ \$1.75 =	\$25,730
6,122 Parts Replaced @ \$0.673=	\$ 3,599
2,301 Pallets Repaired @ \$1.07=	\$ 2,461
52 Pallets Replaced @ \$18.54=	<u>\$ 964</u>
Total	\$32,754



COST OF CAPITAL FOR REPLACEMENT PALLETS

<u>YEAR</u>	<u>NUMBER OF REPLACEMENT PALLETS</u>	<u>AVERAGE PURCHASE PRICE</u>	<u>TOTAL REPLACEMENT COST</u>	<u>COST OF CAPITAL @ 9% FOR 14.8 MONTHS</u>
1999	4895 x	21.73 =	\$106,368.35	\$ 11,774.97
2000	6000 x	20.36 =	\$122,160.00	\$ 13,523.11
2001	6000 x	19.18 =	\$115,080.00	\$ 12,739.35
2002	6000 x	19.19 =	\$155,140.00	\$ 12,745.99
2003	4500 x	19.86 =	<u>\$ 89,370.00</u>	<u>\$ 9,893.25</u>
			\$548,118.35	\$ 60,676.67



SUMMARY OF DAMAGES

DEPRECIATION IN VALUE	\$50,763
COST TO RECONDITION	\$32,754
COST OF CAPITAL	\$60,676
SALES BY BUCKEYE	<u>\$37,482</u>
TOTAL LOSS SUFFERED BY CHEP	\$181,675


**DEFENDANT'S
EXHIBIT**

30

ALL-STATE® INTERNATIONAL

MEMORANDUM

TO: CHEP File

FROM: John C. McDonald 

DATE: April 21, 2004

RE: Voice Mail Message to Jim Wilson @ 9:20 a.m. 4-21-2004

"This is John McDonald at 462-2201. I have received your facsimile this morning and as indicated in my letter of last week and yesterday, I am available in person or by phone to discuss our remaining objections to your discovery requests. I can only assume from the fact that you have already requested a conference with the Court that you have elected to by-pass the impass procedure contemplated by Rule 37.2. If that assumption is incorrect please give me a call. In any event I'll be happy to talk to you at 462-2201."

J.C.M.

/mc

 **SCHOTTENSTEIN
ZOX & DUNN** CO., LPA
JOHN C. McDONALD
614/462-2201
E-MAIL: J.MCDONALD@SZD.COM

April 21, 2004

FACSIMILE & U.S. MAIL

James A. Wilson, Esq.
VORYS, SATER, SEYMOUR & PEASE
52 East Gay Street, P.O. Box 1008
Columbus, Ohio 43216-1008

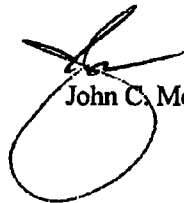
***Re: Buckeye Diamond Logistics, Inc. (fka Buckeye
Recyclers, Inc.) v. CHEP USA
U.S. District Court for the Southern District of Ohio
Western Division
Case No. C3-01-440 - Judge Walter Herbert Rice***

Dear Jim:

Your assumption again is incorrect but I respectfully decline your demand to "respond in writing to my previous written attempt to resolve these disputes" as I am unaware of any attempt on your part to resolve any disputes and believe that our responses, production of another 3000 documents and 11 hours of deposition testimony was a good faith effort to address your concerns. In any event please call me at 462-2201 or Bridgette at 462-2348 to discuss these issues before you have further ex-parte contacts with the Court.

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Best personal regards,



John C. McDonald

JCM/mc

cc: Bridgette C. Roman, Esq.