

Dave:

A. To confirm and elaborate on our Rule 37 conference of October 5, the following items are still missing from the March 31 Order:

1. The August 1-22 invoices - they exist, they are needed in order to track the income statement figures, they were requested in discovery, they were ordered to be produced. Heartland's argument that the Court's March 31 opinion stated only 2 months prior to the trade show need be produced is in error. The court stated "this Court agrees with Forest River that a time period spanning **the two months prior** ... is reasonable in scope. "The two months" are September and August. To not show all of August invoices does not allow us to verify the income statement for August. Further, Forest River specifically requested that time period and the Court agreed.

2. The purchase orders from the dealers. Mr. Donat's spread sheet shows that many existed. None at all were provided. Mr. Leonard's testimony shows that these are kept in the dealer files. The spread sheet shows that some record of these existed at least as of the time the spread sheet was created. Heartland's comment that it "has produced the documents "it has in its possession with respect to this request" is not understood. Did Heartland mean that as of today no such purchase orders exist? If so, when were they destroyed and what was the basis for Mr. Donat's reference to them in the spread sheet? Are there any document containing a record of the content of those purchase orders?

3. Dealer correspondence and agreements. Two dealer agreements were produced, and yet Heartland's records show many more are likely to exist. In addition, the emails to the dealers concerning the hotel event were not produced, only the basic form, and no replies were produced at all.

4. The actual expense records. Mr. Donat's spread sheet only included accrued expenses, not actual expenses. Actual expenses are used to correct the accrued expenses periodically, as Mr. Donat testified, but Heartland is only entitled to deduct, at best, certain actual expenses. Heartland has those records in its general ledger and readily available.

5. Production Request No. 28 documents. These documents are needed for several reasons. We have shown, for example, that constructive dividends were present in the income statement, such as the excessive rent paid to Mr. Brady and so the "profit" analysis Heartland proffers cannot be trusted. Heartland's refusal on relevance was considered by the Court as part of the Motion to Compel. That argument did not prevail, and it is too late to raise it again.

6. The Brady emails as set forth on the back-up email records. You say you cannot find any such emails in the system today, but admit you did not look at the back-up records.

7. The Prospect Call lists and other sales persons' records of dealer contacts (as per Production Request 18). Mr. Leonard testified they exist and produced his set. No one else did. We need the rest of them.

8. The rest of the sales invoices. There are gaps in the numbers we were given. Mr. Donat testified that only completed sales invoices were on his spread sheet. We want the rest of them. That information was ordered to be produced and is still relevant. For example, if a dealer placed an order with you and later cancelled it because Forest River had to give a better price to counteract the below cost pricing offered by Heartland, those missing invoices are a measure of the damage in that regard.

9. The actual sales invoices as they are kept in the ordinary course of business. What

Heartland sent us was not in any order at all, apparently shuffled up. If we are to properly analyze the invoices, we need to be able to see them as Heartland sees them.

B. No documents at all were received in response to the Fourth, Fifth, and Sixth set of Production Requests. As explained on Chris Lauber's sheet emailed to you on September 28, the missing financial documents from those requests are important for her analysis. Further, we have discussed at length the relevance of separating out the "buy-back inventory" from the sales. I detailed for you on October 5 the six different types of damage analysis that we are undertaking in this case based upon sales and discount trend analysis, market share increase/business valuation, etc. Particularly the documents of the Fifth and Sixth production requests are each relevant to one or more of those analyses. As is clear from the transcripts of Mr. Donat's deposition, the documents we requested are not cumulative of what was already provided.

C. We need Heartland to produce a witness as to the marginal profits as defined by Item #2 of the Notice of Deposition. Mr. Donat made it clear that he did not do that analysis and Heartland has not provided us the documents we requested to be able to do that analysis ourselves. Mr. Donat indicated that he knew what records and work would be needed, but he did not actually do it. Therefore, a witness is required from Heartland still.

Ryan