

UNITED STATES DISTRICT COURT
Northern District of Indiana
South Bend Division

HEARTLAND RECREATIONAL)	
VEHICLES, INC.,)	
Plaintiff,)	
)	CASE NO.: <u>3:08-CV-490</u>
v.)	
)	
FOREST RIVER, INC.,)	
Defendant.)	

**CERTIFICATE UNDER FED. R. CIV. P. 26(c)(1) AND L. R. 37.1 IN SUPPORT OF
FOREST RIVER’S MOTION FOR PROTECTIVE ORDER COMPELLING
HEARTLAND TO PARTICIPATE IN THE DISCOVERY PROCESS**

I certify that on various occasions, I made good faith efforts to resolve the discovery disputes of the subject motion to without the need for Court action. For example, on October 5, 2010 commencing at 3:30 pm and extending until 4:23 pm, I engaged in a telephone conference with David Irmscher and Peter Meyer, Heartland’s counsel, in an attempt to get Heartland to set forth its contentions with respect to the issued raised in various discovery disputes. At that time, I was in Indian Wells, CA and Heartland’s counsel were believed to be in their offices in Fort Wayne, IN. Although I explained Forest River’s position at length as to particular items needed in discovery, including the legal theories of damage analysis that Forest River was using, Heartland’s counsel repeatedly refused to tell me Heartland’s position on specific items and instead asked that the explanation be put into writing for their further review since it was “too complicated” to consider at that time. This insistence was maintained even though I had previously forwarded to Mr. Irmscher a detailed explanation of the accounting issues created by our expert witness. Thereafter, on October

10, 2010 I forwarded a detailed summary of the issues to Mr. Irmischer, and placed a follow up call to him at 3:20 pm on October 14, 2010, leaving a voice mail message and sending a confirmatory email message asking for his response on the discovery issues. I was informed by his assistant that Mr. Irmischer was out of town until October 18 and that he did not have a copy of my email from Oct. 10 in his email files. Being unable to determine what happened to that missing email, I forwarded another copy to him on October 18, 2010 and again requested that he call me to discuss this matter. At no time since then did Mr. Irmischer call me to discuss these issues, and at no time since then has he sent me any correspondence about these issues.

Dated: October 28, 2010

Respectfully submitted,

s/Ryan M. Fountain

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ATTORNEY FOR DEFENDANT

Certificate of Service

I certify that on October 29, 2010, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF system, which sent notification of such filing to all of the parties through at least the following counsel of record:

David P. Irmischer david.irmscher@bakerd.com

s/Ryan M. Fountain

Ryan M. Fountain
ATTORNEY FOR DEFENDANT