

Ryan Fountain

From: Ryan Fountain <RyanFountain@aol.com>
Sent: Tuesday, September 28, 2010 11:29 PM
To: David.Irmscher@bakerd.com
Subject: Forrest River v. Heartland: Various open matters
Attachments: forestriverheartlanddecmmowers.pdf; forestriver4heartlandcomplaint.pdf; forestriverheartlandexpertmemo.docx

Dave:

1. As to witnesses and declarations expected to be used in this case, I think we have previously sent you one way or another all of the declarations made by witnesses we expect to use except for Todd Mowers. A copy of his declaration is attached (this supplements the prior answer to your Interrogatory 15 to Forest River). After the depositions of last week, we saw renewed value in what Mr. Mowers recalls. We had previously considered using him in response to the summary judgment issues on the Hotel Action, but when those issues were moot it was not necessary to use his testimony. However, in light of what we saw last week, we are going ahead now and it is more likely than not he would be needed. I assume you will want to depose him, and I am available almost any time after 10/11 to do that, although I do not know what his schedule is.
2. As to other witnesses, all those whose declarations have been used in this case or who were previously deposed are likely to be trial witnesses and/or witnesses for various motions. In addition, we will likely use Steve Keilman if there is any question of authenticity of electronic records. He is most likely available for deposition whenever you like and it is likely to not take much time since he is largely just a custodian of records (as you probably found out if you contacted him to get the old CAD hard drive copied that had the Damon drawings on it which I referred to in the last document request response). Further, we are designating as witnesses Walczak, Colin Brady, Creech, Ryan, Pearson, and Tribble from Heartland and Whitehead from Shasta, those persons all having information about the acquisition and use of Forest River's dealer list in October 2008 as well as Heartland's marketing of products at that time. As long as these persons remain in their present employ I have no plans to depose them.
3. I have just recently received the transcripts for last week's depositions and will be reviewing them this week. I assume you are doing the same. As a result of what was revealed last week, Forest River is planning to file:
 - a. A motion for contempt for Heartland's failure to comply with the Court's March 31 order on discovery,
 - b. A motion to compel other discovery served upon Heartland since but not complied with,
 - c. A motion to compel a Rule 30b6 witness for the second topic listed in the notice,
 - d. A motion to consolidate discovery at least as to financial matters between the first and second lawsuits, and
 - e. A motion to amend the pleadings to conform to the evidence disclosed thus far based upon the analysis presented in the attached draft Complaint and upon the admissions made by Denis last Friday as to predatory pricing.
4. As soon as you have gone through those deposition transcripts sufficiently, I would like to have a Rule 37 conference to see if we can reach some agreements as to these motions. Please let me know when you are available to do so. Given the number of issues, I suggest we set aside at least an hour.
5. To assist in preparation for the Rule 37 conference, I have also attached a copy of Chris Lauber's memo about the documents still needed. If you have any technical questions about this we should probably include Dennis and Chris in our conference so that perhaps they can sort out directly what documents will do the job most efficiently.
6. The attached draft Complaint should be considered a supplement to the objections to Interrogatories No. 12(2), 12(4), and 14 in that despite the overbreadth of the request, Forest River is willing to summarize the events as set forth therein.

7. We need to finish up Gerry G. at some point. I have no idea what his availability is, but again, I am wide open after 10/11. What is your availability?

Ryan