

# Exh. I

1 travel-trailer.

2 And, I really deferred to those guys to help me in  
3 that regards.

4 But, if you were to -- then I can't give you  
5 specifics, but if you were to go back and look at  
6 Damon's Sales during that period of time, you would see  
7 that we were reasonably effective in Motorized Sales  
8 and we weren't very effective in Towables at all.

9 Q Do you consider yourself someone who is mechanically  
10 inclined?

11 A No.

12 Q Have you ever built anything?

13 A Anything?

14 Q Yes.

15 A Built models when I was a little kid.

16 Q Anything else?

17 A No.

18 Q Do you know how to weld?

19 A No.

20 Q Have you ever repaired a kitchen sink?

21 A No.

22 Q Have you ever installed a light fixture?

23 A No.

24 Q When is the last time you picked up a saw?

25 A I could recall sawing off a tree branch at my house

1 THE VIDEOGRAPHER: We're back on the record  
2 at 2:14 p.m.  
3 MR. RYAN M. FOUNTAIN:  
4 Q Who at Heartland do you think is the most knowledgeable  
5 person concerning Prior-Art with regard to the  
6 invention of the Patent in this lawsuit?  
7 A I don't know if there was anybody that has expertise in  
8 that area.  
9 But, if there was somebody that would have any  
10 expertise in that -- it would be John Rhymer in  
11 Engineering.  
12 Q You understand that when a Patent Application is filed  
13 with the United States Patent and Trademark Office it  
14 goes through a process called "Patent Prosecution"?  
15 A No.  
16 Q Well, let's step back then.  
17 Before the Application for the Patent of Exhibit 1  
18 was filed -- ?  
19 A Okay.  
20 Q (Continuing) -- did you review that Application?  
21 A No.  
22 Q Okay.  
23 After the Application for that Patent was filed,  
24 did you participate in any of the communications with  
25 the Patent Office to get that Patent?

1 A Yes.

2 BY MR. RYAN M. FOUNTAIN:

3 Q That's your signature, isn't it?

4 A Yes.

5 Q You said you "...hereby covenant not to sue Forest  
6 River..." et cetera, et cetera.

7 "...With respect to Forest River Inc's currently  
8 existing products, whether such products are currently  
9 existing or manufactured in the future..."

10 What did you mean by that?

11 A Well, I'm not an Attorney.

12 So, really, in all candor, Baker and Daniels  
13 created the document, and asked me to sign it.

14 And I did.

15 Q Well, at the time you signed it, what did you  
16 understand that to mean?

17 A My understanding was is that: The frame that Forest  
18 River is currently producing is -- does not violate our  
19 Patent."

20 Consequently, in light of that, Heartland  
21 agrees -- so really the common-sense thing to do, which  
22 is to say, "Okay..."

23 Because of new information that we didn't have in  
24 the past, the common sense thing would be say, "Look:  
25 we're not going to sue you."

1 Q Did anyone at Heartland?

2 A Yes.

3 Q What did they see?

4 A I can't tell you what they saw.

5 Q Who was it that saw it?

6 A Either somebody in Sales, John Rhymer or somebody.

7 Q You don't know for sure who seen it?

8 A I don't, no.

9 Q Do you know when they saw it?

10 A I don't.

11 Q Okay.

12 Have you ever seen the frame of Exhibit 11 before?

13 A No (Indicating).

14 I mean, I could see it's a frame. But beyond that

15 I'm not an Engineer. I don't have expertise in this

16 area.

17 Q Are you aware of that this frame was shown to Heartland

18 or its Attorneys before the lawsuit began?

19 A I'm not aware of that.

20 I don't know.

21 Q Okay.

22 Well, you said something about new information

23 that you didn't know before?

24 A Yes.

25 Q What "new information" was that?

1 A I believe that this Winter when I was out of town, my  
2 Attorneys contacted me and said that, I believe you had  
3 shared with them -- I think you called it "Prior-Art"  
4 --

5 Q Yes.

6 A -- that our Attorneys did not Discover in the process.  
7 And, said, "Here's the deal. This is Prior-Art."  
8 And, I what to be careful here because I'm not an  
9 Attorney. So I don't know if I'm going to use the  
10 right words or not.

11 But, it "invalidated" or -- I'm going to use the  
12 word "invalidated" only in the -- not as a legal-term.

13 But, what I understand -- it just invalidated our  
14 Patent.

15 And, said, in light of this, Forest River is okay  
16 doing that.

17 I said, "Well, if that's the case, that's the  
18 case."

19 Q Okay.

20 Just so we're clear on a couple of things.

21 Were you aware that prior to filing the lawsuit,  
22 your Attorneys met at a Forest River Manufacturing  
23 Facility and looked at some Prior-Art?

24 A No.

25 Q Okay.

1 that was the right thing to do?

2 A Again, I don't have any expertise in this area. I have  
3 to trust my Professional Advisers.

4 Q Okay.

5 Let's look at Exhibit 11, again.

6 A Okay (Indicating).

7 Q Does that frame include the invention that was the  
8 subject of the Patent in this lawsuit?

9 A I don't know.

10 Q Well, why don't you know?

11 A I don't have expertise in that area.

12 Q In your own words, what is the invention of the Patent  
13 of Exhibit 1?

14 A In my own words, it is a frame that enables the owner  
15 of a 5th-wheel to turn the truck tightly (Indicating).

16 Q Okay.

17 But, you know that there have been many other  
18 frames for many years that have enabled someone to turn  
19 a trailer tightly.

20 Right?

21 A No.

22 Q You have never seen that before?

23 A I didn't say that.

24 I said, I don't -- I can't recall that.

25 Q You've seen horse trailers.

1 Right?  
2 A I've seen horse trailers.  
3 Q Yeah.  
4 They turn tightly, don't they?  
5 A I don't know.  
6 Q You've never seen a horse trailer turn?  
7 A No.  
8 Q Have you seen snowmobile trailers? Haven't you?  
9 A I have.  
10 Q Have you ever seen them turn?  
11 A No.  
12 Q You were aware of Cobra Industries.  
13 Right?  
14 A Sure.  
15 Q And, you were aware of some of Cobra's products.  
16 Right?  
17 A I -- I know they built recreational vehicles.  
18 Q Okay.  
19 Do you ever hear of a product called "Shadow  
20 Cruiser"?  
21 A Yes.  
22 Q And, do you know roughly what that looks like?  
23 A Small travel-trailers and small 5th-wheels.  
24 Q Yeah.  
25 Had a tapered front-end, didn't it?



1 A I don't recall that.

2 Q The "Shadow Cruiser" product competed with some of  
3 Holiday Rambler's trailers when you were there, didn't  
4 it?

5 A I don't know that.

6 Q What is it about the invention of Exhibit 1 that  
7 enables a tight turning radius?

8 A I defer to my Engineer on that, John Rhymer.

9 It would stand to reason that the -- the bed of  
10 the pickup or the cab of the pickup truck has to get  
11 around the cap.

12 But, as I said before, right from the beginning, I  
13 really didn't have any interest in this.

14 So, I really can't answer that.

15 I don't know.

16 (PAUSE IN THE PROCEEDINGS.)

17 (WHEREUPON, DOCUMENT WAS MARKED

18 BY COUNSEL FOR I.D. AS NO. 12.)

19 BY MR. RYAN M. FOUNTAIN:

20 Q Looking at Exhibit 12.

21 A (Indicating).

22 Q Have you ever seen that frame before?

23 A No.

24 Q Looking at it, do you think that incorporates the  
25 invention of the Patent in this lawsuit?

1 And, that shows up in the Daily Sales Log, doesn't  
2 it?

3 A It would eventually show up in the Daily Sales Log when  
4 the Purchase-Orders were actually written.

5 And, those orders could have been written at that  
6 time.

7 Or they may have been written -- or the Sales  
8 Order may have been written that day.

9 It may have been a week later.

10 Q Okay.

11 A It may have been -- it may have been a month later at  
12 the Louisville Show.

13 Q Okay.

14 Well, at the time you wrote this letter, the  
15 October 28, what were the total number of trailers,  
16 5th-wheel or travel-trailers --

17 A Right.

18 Q (Continuing) -- that you were referring to by this  
19 "unexpected number of orders"?

20 A I don't recall the number.

21 It wasn't a large number.

22 But, it was unexpected in the sense that, again,  
23 let's go back and look at that time of year.

24 One: You were may be a month away from the  
25 Louisville Show.

1 So, typically in any year, dealers aren't buying a  
2 lot of product prior to the Louisville Show.

3 Second of all: You had an economic melt-down.

4 Maybe the worst economic crisis in the United  
5 States since the Great Depression.

6 So, to be honest with you: We didn't expect to  
7 write anything.

8 We expected to show some products.

9 Maybe attract a dealer's interest to come back at  
10 the Louisville Show.

11 So, for a dealer to -- for us to write six, eight,  
12 ten orders, that would have been "pleasantly surprising  
13 and unexpected."

14 Because we didn't expect to write anybody.

15 Q So, the unexpected number of orders would be on the  
16 nature of ten or so?

17 A Maybe.

18 Q Would it be larger?

19 A No.

20 Q If you wanted to know for sure, how would you find out?

21 A I would ask Tim Hoffman to go back and try to research  
22 that, the records.

23 Q Which records would he have to look at?

24 A Whatever Sales-records they keep.

25 I'm not quite sure how they log those orders.

1 THE VIDEOGRAPHER: We're going off the record  
2 at 3:53 p.m.

3 (FOLLOWING A BRIEF RECESS THESE  
4 PROCEEDINGS WERE HAD:)

5 THE VIDEOGRAPHER: We're back on the record  
6 at 4:07 p.m.

7 BY MR. RYAN M. FOUNTAIN:

8 Q I asked you earlier about gathering up or providing any  
9 information to your Attorneys for participation in the  
10 Patent Prosecution process.

11 And, you indicated you did not do that.

12 But, just so that we're clear:

13 Did you gather any information at all for anybody  
14 else to pass on to the Attorneys to aid in the Patent  
15 Prosecution process?

16 A I don't recall doing that.

17 Again, this is a process that I thought was going  
18 to be -- that a positive outcome was highly unlikely.

19 So...

20 And, no, I just -- I don't recall having any  
21 involvement in that whatsoever.

22 Q So, there was never a point in time when you sat down  
23 with the guys and discussed all the Prior-Art you were  
24 aware of with regard to this invention?

25 A I don't recall doing that.

1     A     Information in response to a question.

2     Q     You mean, a question in the Complaint?

3     A     Any question.

4     Q     I see.

5             Okay. Please turn to page six of the Answer.

6     A     (Indicating).

7     Q     There's a reproduction of a frame on that page.

8             Have you ever seen that frame like that before?

9     A     I don't recall having seen a frame like this.

10    Q     Have you seen any cargo trailer frames recently?

11    A     I don't know that I've seen a cargo trailer frame since

12             I was at Utilimaster.

13    Q     Does this frame shown in that picture resemble -- in

14             any way -- any cargo trailer frames you've ever seen?

15    A     Well, I can't -- I don't know.

16    Q     Does it's differ in any way?

17    A     I can't answer that.

18    Q     Turn to the next page, page seven.

19    A     (Indicating).

20    Q     Have you ever seen a frame that resembles what's shown

21             in that sketch?

22    A     I don't recall seeing a frame like this.

23    Q     Have you ever seen a frame that looked different than

24             that?

25             MR. DAVID P. IRMSCHER: Objection. Form.

1 THE WITNESS:  
2 A Just -- the nature of my -- of my experience would help  
3 me really not study engineering principles of frames.  
4 So, no. I don't recall seeing a frame like this  
5 before.  
6 BY MR. RYAN M. FOUNTAIN:  
7 Q Did you ever hear of a Company called "Roadmaster"?  
8 A Yes.  
9 Q Are you aware that they make travel-travelers?  
10 A No. I've heard the name.  
11 But, I don't know what Roadmaster is.  
12 Q Were they ever a competitor of any Company you worked  
13 for?  
14 A I don't recall.  
15 Q Do you recall seeing any trailers made by Roadmaster?  
16 A No, I don't.  
17 Q Okay.  
18 Does the frame shown on page seven resemble in any  
19 way the frames that Heartland uses?  
20 A I would have to -- I don't know.  
21 I would have to look it up.  
22 Q Well, you've actually seen Heartland's frames.  
23 Right?  
24 A Have I seen a Heartland frame?  
25 Q Yes.

1 A I think so.  
2 Q Okay.  
3 MR. RYAN M. FOUNTAIN: We'll label that  
4 Exhibit 17.  
5 A Okay.  
6 (WHEREUPON, DOCUMENT WAS MARKED  
7 FOR I.D. BY COUNSEL AS NO. 17.)  
8 BY MR. RYAN M. FOUNTAIN:  
9 Q If you would, turn to page ten of the Answer?  
10 A (Indicating).  
11 Q Exhibit 16?  
12 A Okay.  
13 Q That was a photograph of a Holiday Rambler trailer.  
14 Have you ever seen that before?  
15 A I don't recall having seen this.  
16 Q Have you ever seen a trailer that looks like that  
17 before?  
18 A I don't recall having seen a trailer that looks like  
19 this, no (Indicating).  
20 Q Can you tell -- looking at that -- if it would also  
21 have an improved turning radius?  
22 A Improved from what?  
23 Q A traditional travel-trailer?  
24 A No, I can't.  
25 Q Well, you notice that there is a front of the

1 travel-trailer that is notched at the corners.  
2 Right?  
3 A I don't know that I would use the words "notched".  
4 I wouldn't --  
5 Q How would you describe the front corners?  
6 A Well, it's difficult to say from this picture.  
7 But, it looks like they're behind the protrusion  
8 of the middle of the cab.  
9 Q Okay.  
10 And, since the corners are behind the protrusion  
11 of the cab, wouldn't it inherently have a better  
12 turning radius than if that corner was not behind the  
13 frame?  
14 A I -- I have no expertise in that area.  
15 I can't answer that.  
16 For example, I don't know whether that protrusion  
17 would hit the pickup truck -- I just don't.  
18 I'm not qualified to answer that.  
19 Q Have you ever hauled a fifth-wheel trailer?  
20 A No.  
21 Q Ever used one?  
22 A No.  
23 Q Page 15, please.  
24 A Sure (Indicating).  
25 Q Have you ever seen a trailer frame that resembles



1 what's shown on the photograph on page 15?

2 A I'm not sure what I'm looking at here (Indicating).

3 Q Okay.

4 The underside of a fifth-wheel trailer made by

5 Cherokee Industries.

6 A No.

7 I mean, it's just a generic frame to me.

8 Q When you say, "generic frame," what do you mean?

9 A Looks just like a frame.

10 I mean, you're asking me if I have ever seen this

11 before.

12 No, I haven't.

13 It just looks like any other frame to me.

14 Q Have you ever heard of "Cherokee Industries"?

15 A Yes.

16 Q In what context have you heard of them?

17 A I think Cherokee makes cargo trailers.

18 Q Do they make cargo trailers with living quarters?

19 A I don't know.

20 Q Have you ever been in competition with any Cherokee

21 trailers?

22 A Not that I'm aware of.

23 Q When is the last time you saw a Cherokee trailer?

24 A I don't know if I have ever seen a Cherokee trailer.

25 Q You go to the Louisville Show.