

Exh. N

1 which one did it the most, but -- but Scott is --
2 you know, he's a creative marketing guy. And,
3 you know, he's the one that had to make it look
4 good.

5 I mean, the bottom line is you can just --
6 you know, a perfect example is the Shadow Cruiser
7 one with just a blunt-cut cap. But we had to
8 put -- we had to make it look good. And that was
9 Scott's -- one of Scott's jobs was to make that
10 cap have some appeal to it and then lay out all
11 the graphics to fit into it.

12 Q That was done by whom?

13 A Scott would've laid out all the graphics.

14 Q Do you consider yourself an inventor with respect
15 to the improved turning radius patent?

16 MR. FOUNTAIN: Object to the form
17 of the question.

18 BY MR. IRMSCHER:

19 Q You can answer.

20 A I'm sorry. Ask me that again.

21 MR. IRMSCHER: Could you read it
22 back?

23 (A portion of the record was
24 read back by the court
25 reporter.)

1 A Yeah. Yeah, I do. I do. I do.

2 BY MR. IRMSCHER:

3 Q What was -- what do you consider to be your
4 inventive contribution?

5 MR. FOUNTAIN: Again, we'll
6 object to the form of that question.

7 A Well, when you sat in as many meetings as I had
8 to and discussed this thing with as many people
9 and have, you know, input as to -- I mean, I'm 25
10 percent of the input.

11 So, I mean, you know, I'm -- there's four of
12 us there, and we're all talking about this thing.
13 I'm part of that input on what we should do, how
14 we -- I mean, again, you know, I sold fifth
15 wheels for years. It wasn't like any of these
16 concepts were -- were, you know -- you know,
17 completely uncommon to me.

18 I was aware of the short-bed trucks. I was
19 aware of extended hitches. I was aware of some,
20 you know, issues out there, that people had to
21 buy special hitches to -- to allow the fifth
22 wheel to move backwards in order to make turns.

23 I think -- I think the group saw me and I
24 think even today -- I mean, I've done product
25 development ever since and have been. And I

1 was -- some of those special projects that I was
2 telling you about at -- at Gulf Stream before I
3 got there were all product development projects.

4 And, so, I was very knowledgeable in fifth
5 wheel, fifth wheel market, towing, concepts,
6 ideas, what we were trying to achieve. I mean,
7 so, I -- I'd say I was very helpful in discussing
8 certain items and issues and trying to overcome
9 what we needed to do. So --

10 Q Can you describe more specifically what ideas or
11 conceptions that you brought to the group that
12 ended up in this patent application?

13 A I can't right now, no. I don't -- I can't. I
14 suppose if I gave it some thought maybe at some
15 point, but --

16 Q Do you have an understanding of what prior art
17 is?

18 A Yes, I do.

19 Q And what's your understanding of what that is?

20 A It would be some of the concepts or ideas or art
21 or drawings of previous products, competitive
22 products or like products, I guess you could say.

23 Q And did you provide any prior art to anyone in
24 connection with the filing of these patent
25 applications?

1 became the turning radius patent. Do you recall
2 that?

3 A Yes.

4 Q And can you tell us specifically any particular
5 contribution that you believe you made?

6 A Yeah. I sure can. How about \$50,000 investment
7 to start the company?

8 Q Okay.

9 A How about getting the building so they could
10 build the fifth wheels or how about getting the
11 computer equipment so that they could make the
12 drawings on the computers or how about the
13 insurance so that they could sit there and
14 function or the bill of materials so they knew
15 how to build this fifth wheel, or the vendors,
16 dealing with Global Glass, and so -- and all of
17 the discussions that took place.

18 And had I known at the time that this was
19 gonna be an issue, I would've documented all of
20 those conversations. But I can't tell you that I
21 pulled out a piece of paper and a pencil and drew
22 a turning radius design, because I'm not very
23 long at drawing, nor do I know how to operate a
24 CAD system.

25 But I am smart enough to understand the

1 concept. And I knew that there was a
2 differentiator there and I knew that we were on
3 to something and I put in my two cents worth on a
4 regular basis. And I reviewed things as they
5 came up, and we all had discussions.

6 But it was not my position, by design, to
7 physically fill out paperwork in the application
8 and/or draw anything for anybody except for maybe
9 sketches on a piece of paper or something, the
10 concepts.

11 But, so, by the act that I with this group
12 had put in my money and did my portion of the job
13 and, you know -- I believe that I was part of the
14 invention. Absolutely.

15 Q Did you take any measurements as to how to change
16 the configuration of the front end of a fifth
17 wheel to improve the turning radius?

18 A I believe that I was involved in going out and
19 measuring a truck and measuring the cap and, you
20 know, taking tape measures and discussion of, you
21 know, "We need to get out here and get this kind
22 of clearance and --" and I remember we
23 specifically decided to get a short-bed, extended
24 cab, three-quarter-ton truck.

25 So, I had to get that. I procured that. I

1 A Yes.

2 Q -- done by the inventors?

3 A I'm aware of that.

4 Q Okay. Did you withhold any prior art from the
5 patent office intentionally?

6 A Not intentionally, I did not, no.

7 Q Okay. And did you misrepresent any prior art to
8 the patent office intentionally?

9 A No. I didn't even know I was supposed to even --
10 had I had any, I -- I didn't even know I was
11 supposed to give it to them or show it to them or
12 go over it or anything.

13 Q Okay. Would it be fair to say that you don't
14 believe you've misrepresented anything to the
15 patent office or lied to the patent office or
16 committed inequitable conduct? Is that true?

17 A I don't think it's true. I -- I -- I think I did
18 inadvertently. I think I did -- now that I have
19 knowledge of it, now that it's been explained to
20 me what I signed and what the requirements were,
21 unfortunately, I believe that -- you know, I
22 wasn't aware of that stuff when I signed it.

23 But --

24 Q What stuff weren't you aware of? What are you
25 referring to?

1 A I have not. But if you'd like to provide me a
2 copy of it, I would certainly be glad to.

3 Q What's your understanding of why the five
4 inventors were -- how many inventors were on the
5 original application? Five?

6 A I don't know.

7 Q Well, there's you, correct?

8 A (Nods head.)

9 Q Mr. Hoffman, correct?

10 A Uh-huh.

11 Q John Rhymer?

12 A Right. Scott.

13 Q Scott and Brian Brady?

14 A So, five. Yeah.

15 Q Okay. What's your understanding of why each of
16 those people was named as an inventor, if you
17 have one?

18 A Yeah. I don't -- I don't -- I don't know or have
19 an opinion. I really don't. I don't know.

20 Q Okay. Do you have any information that any of
21 the inventors were named as investors to deceive
22 anyone?

23 A No. But the -- the fact that Brian was on there,
24 I mean, he had absolutely nothing to do with any
25 part of it. I mean, he -- he wasn't even around

1 you here?

2 Is it your testimony that this bottom
3 photo on the first page of Exhibit 104 -- you'd
4 agree with me that doesn't show the same notched
5 front end as on the Landmark, correct?

6 A It does not show the exact same notch, no.

7 Q And do any of the other photographs in Exhibit
8 104 show the notched invention that you've
9 identified on Exhibit 127?

10 A Wait a second here. I thought -- I thought the
11 invention was the -- was the frame itself. I
12 thought that was what we --

13 Q Did your lawyer ever tell you that there are --
14 there are claims directed to the cap that are on
15 file at the patent office?

16 A I don't -- at which time? Which lawyer?

17 Q Ever.

18 A Have any of the lawyers, including --

19 Q Like Mr. Fountain. Has he ever told you that?

20 A I'm not sure he knows what exactly all the claims
21 were.

22 Q That's not my question. Has Mr. Fountain or
23 anybody else, any other lawyer, ever told you
24 that there are claims pending at the patent
25 office that are directed to the cap?

1 A No, not to my knowledge. I don't remember.

2 Q Don't you think that somebody should've told you
3 that?

4 A Don't you think that your firm should've told me
5 upfront what the original patent was for and what
6 we were doing? So --

7 Q Do you know what were -- what claims were in the
8 original patent as filed?

9 A No, I don't.

10 Q Okay. Did anybody ever tell you that some of the
11 claims were allowed and some of them were not
12 allowed and went on to a continuation
13 application? Did you ever hear anything like
14 that?

15 A He's told me that there has been a continuation,
16 but he didn't know specifically what it was.

17 Q Were you aware that the claims as originally
18 filed included some claims that were directed to
19 more than just the frame?

20 A No.

21 Q Didn't know that?

22 A No. Remember I told you nobody has -- has
23 discussed anything with me --

24 Q Okay.

25 A -- up until --

1 Q But I just thought maybe Mr. Fountain had given
2 you the application and you'd take an opportunity
3 to read it. Have you done it?

4 A Application for what? The claim of --

5 Q The patent. The original patent.

6 A The original patent, no, I don't have it.

7 Q Mr. Fountain never gave it to you, never asked
8 you to read it?

9 A No.

10 Q Okay. And do you have any idea of what prior art
11 was -- was actually provided to the patent
12 office?

13 A No. I've already testified to that. I already
14 said I wasn't aware of any prior art that was
15 given to them.

16 Q You have no idea what was provided?

17 A None.

18 Q Okay. So, if there was a series of ten or
19 fifteen patents that were provided, you have no
20 idea what -- what they show or anything else,
21 right?

22 A A series of ten or fifteen patents?

23 Q Yeah.

24 A I'm not sure I understand the question.

25 Q Well, the lawyers who were prosecuting the patent

1 for Heartland provided information to the patent
2 office, including a number of patents.

3 No one's ever told you that; is that right?

4 A No, not that I can recall.

5 Q And you've never looked at any of those patents,
6 so you have no idea what any of that discloses?

7 A No. I don't even know when the patent was --
8 was -- I don't -- I told you before, I don't know
9 anything about it.

10 Q Okay.

11 A I mean --

12 Q And Mr. Fountain, who's your lawyer, has -- has
13 never shown you any of that information, correct?

14 A He has not shown me the original patent, no.

15 Q Or any of the patents that were filed with the
16 patent office as prior art?

17 MR. FOUNTAIN: Object to the form
18 of the question.

19 BY MR. IRMSCHER:

20 Q You can answer.

21 A Not to -- not that I remember. But --

22 Q Well, has he ever showed you any patents that you
23 can recall as you sit here today?

24 A No.

25 Q Okay. And has he ever told you that the lawyers

1 thing and --

2 Q Well, let's -- let's -- let's stick to the
3 questions that are asked, if we can, so we can
4 try and finish this up.

5 And I think the record is pretty clear right
6 now that you don't know what claims were
7 originally filed for or what claims were filed
8 for at any time; is that true?

9 A What claims were filed for at any time? Well, I
10 mean, at some point I became aware of the fact
11 that it -- that the claim was the cut back,
12 chamfered, cornered frame. But I don't -- I
13 can't tell you when --

14 Q Okay.

15 A -- I was in knowledge of that information.

16 Q Do you have an understanding that there were
17 claims that were directed to the frame and then
18 there were claims that were directed to other
19 aspects of the invention?

20 Do you have any understanding of that?

21 A No.

22 Q Okay.

23 A I would've liked to have, though.

24 Q And Mr. Fountain has never given you any of the
25 patent applications that are currently pending,

1 not aware of any prior art.

2 Q Well, for example, you -- Mr. Fountain wrote in
3 this document on Page -- the page that's got a
4 Number 2 at the bottom of it, "That that has
5 caused important information to be withheld from
6 the USPTO and has caused the '650 Patent to issue
7 with and the '214 application to be prosecuted
8 with the wrong claimed invention."

9 Did you give him that information?

10 A What, that information was withheld from the
11 patent office?

12 Q Right. What important information was withheld
13 from the patent office?

14 A I didn't give him that information. But I think
15 he was able to draw the conclusion based on the
16 information that we had and how it was handled
17 and -- and how we did it that --

18 Q Well, what important information was withheld
19 from the patent office?

20 A Any knowledge of any prior art. I mean --

21 Q What prior art? What are you referring to?

22 A I don't know. No one asked me. So, I never -- I
23 don't know.

24 Q So you're saying prior art was withheld, but you
25 don't know what prior art was withheld; is that