

# Exh. R

1           you say you spent preparing to testify today,  
2           total?

3       A   More gathering than preparing.

4       Q   Okay. Well, about how much time did you spend  
5           gathering and preparing then?

6       A   50 hours.

7                           MR. IRMSCHER: What number are we  
8                           up to?

9                           THE COURT REPORTER: 116.

10                          MR. IRMSCHER: Mark this, please.

11                                   (Deposition Exhibit 116 marked  
12                                   for identification.)

13       BY MR. IRMSCHER:

14       Q   Mr. Babcock, let me show you what's been marked  
15           for identification as Exhibit 116 and ask if  
16           that's the deposition notice that you are  
17           prepared to testify under today.

18       A   It looks familiar, yes.

19       Q   Does that appear to be the notice that you're  
20           prepared to testify about?

21       A   Yes.

22       Q   Okay. And is it your understanding that you are  
23           to provide information on behalf of Forest River  
24           for all of the topics that are identified in  
25           there?

1                   MR. FOUNTAIN: Let me answer at  
2                   least in part. It's my understanding  
3                   that Topics 3, 4, and 6 are off the  
4                   table. Is that correct?

5                   MR. IRMSCHER: I believe 3, 4,  
6                   and 6 are off the table to the extent  
7                   we're talking about invalidity.

8                   To the extent we're talking about  
9                   inequitable conduct, they're not.  
10                  They're still in the case.

11                  MR. FOUNTAIN: For 3 and 4, yes.  
12                  For 6, the content of opinion is off  
13                  the table.

14                  MR. IRMSCHER: Well, you can --  
15                  if there is -- I think we know you've  
16                  got one, and I think you've claimed  
17                  it's privileged. So, I don't think --

18                  MR. FOUNTAIN: Right.

19                  MR. IRMSCHER: -- there's much  
20                  more to talk about.

21                  MR. FOUNTAIN: Okay. Apart from  
22                  that, he is Forest River's designated  
23                  witness for these topics.

24                  MR. IRMSCHER: Okay.

25                  BY MR. IRMSCHER:

1 Q Did you review the Interrogatory Answers in  
2 connection with preparing to testify today?

3 A Yes. I'm prepared to read the Interrogatory  
4 Answers.

5 Q Okay. Did you sign the Interrogatory Answers?

6 A Yes.

7 Q Under oath?

8 A No.

9 Q Why not?

10 A The attorney didn't swear me in to answer them.  
11 I guess he gave me the last page. I read them  
12 all, went through them. It's part of the time I  
13 spent with Ryan, going through the answers, read  
14 them, and I signed them and agreed.

15 Q Okay. So, you believe everything in there is  
16 truthful and accurate?

17 A I do believe so, yes.

18 Q Okay.

19 MR. IRMSCHER: Ryan, do I have a  
20 signed copy of these?

21 MR. FOUNTAIN: Yes. It was faxed  
22 to you.

23 MR. IRMSCHER: Okay. There it  
24 is.

25 MR. FOUNTAIN: It was a

1 it.

2 A (Witness Complying.)

3 Q I'll -- I'll represent to you it's the same  
4 Interrogatories and signature page I just showed  
5 it -- showed to you. But you've just got to tell  
6 me what -- you've got to say that you identify  
7 what it is.

8 A This is my signed statement on the Forest River's  
9 Response to Heartland's First Interrogatories to  
10 Forest River, Inc.

11 Q Okay. And these are the Interrogatory Answers  
12 that you reviewed, and you've sworn on behalf of  
13 the company that the information's true and  
14 correct?

15 A These are the answers I'm gonna state today.  
16 That's correct.

17 Q Yeah. And it's your signature that's swearing  
18 they're true and correct, correct?

19 A They are -- they are true and correct.

20 Q Okay.

21 A You want me to say I swear, that I swear to you  
22 they're true and correct?

23 Q Yes.

24 A Yes.

25 Q And that's your signature at the back?

1 A Yes.

2 Q Okay. And I think I asked you this, but I've  
3 forgotten. What's your title presently at Forest  
4 River?

5 A Vice-president of sales.

6 Q Okay. I want to try and take some time here and  
7 kind of go through the hotel incident, as it's  
8 been called in the -- in the case.

9 And let's start out first of all by, Forest  
10 River was having a dealer show in October of last  
11 year; is that right?

12 A That is correct.

13 Q Was that the first dealer show that Forest River  
14 had held in Elkhart?

15 A No.

16 Q Can you -- can you tell me when was the -- what I  
17 want to understand, and just so you can  
18 understand this, I was understanding the show  
19 that you had was a unique event last year. Is  
20 that true or not?

21 A We had one prior, about ten years prior to that,  
22 in Elkhart. But we hadn't done it for ten years.

23 Q Okay. So, the event that happened last October  
24 here in Elkhart was the first time you had done a  
25 show like that in ten years?

1 Q Did you pay for them to travel there?

2 A We did not.

3 Q And how many dealers came, approximately?

4 A Roughly, 350.

5 Q Okay. And how many dealers do you have  
6 nationwide, roughly?

7 A In the RV division?

8 Q Yes.

9 A Active current dealers, probably 800 to a  
10 thousand.

11 Q Okay. What I -- what I was trying to ask you is  
12 how many of the ones that you invited came. So,  
13 it's about 40 percent or so?

14 A If you're asking me how many actually RSVP'd and  
15 how many showed up, I think we probably had a  
16 attrition rate of -- I'm gonna say 15 percent of  
17 the dealers that registered probably didn't show.

18 Q So, in rough percentages, you thought you were  
19 going to get about half of your dealers, and you  
20 had a little less than half that showed? Is  
21 that -- is that about right?

22 A We invited them all.

23 Q Yep.

24 A And we invited every dealer we had. And we had  
25 about 350 basically RSVP and probably 10 to 15

1       percent that registered to say they were gonna  
2       show up that didn't. The rest came. So, we had  
3       probably close to an 80 percent turnout of the  
4       350.

5       Q So, you had -- doing the math in my head, that's  
6       about 300 dealers?

7       A About 260, I think, probably showed up.

8       Q 260 dealers out of how -- how many that you  
9       invited? That's all I was trying to ask.

10      A There was probably -- we invited them all.  
11      Probably 800 to a thousand.

12      Q Okay. And 260 showed up; is that right?

13      A Roughly.

14      Q Okay. And of these dealers, how many of them  
15      sold other products besides just Forest River of  
16      the ones that showed up?

17      A Are you asking how many are exclusive?

18      Q Yes.

19      A To Forest River?

20      Q Yes.

21      A Very few dealers are exclusive. I'd say a small  
22      percentage.

23      Q Just so we can understand, of the 260 dealers  
24      that showed up, you'd say what percentage,  
25      roughly, would've been exclusive to you folks?



1 A 3, 4, 5 percent maybe.

2 Q Okay. And why is that rare in the industry or  
3 rare for your company, I guess?

4 A So many different products. I think that a  
5 dealer likes to balance out his inventory as  
6 well. I think that a dealer doesn't necessarily  
7 want to be exclusive. If you were an exclusive  
8 Fleetwood dealer last year, it's not probably  
9 very good. If you were an exclusive Monaco  
10 dealer, it probably didn't work out too good for  
11 you.

12 I think that the dealers are now starting to  
13 realize they have to align themselves with  
14 stronger manufacturers just because the cost of a  
15 manufacturer going out of business is a huge cost  
16 on a dealer.

17 Q And of the dealers that came to your show, do you  
18 know which ones of them or which percentage of  
19 them were selling your competitors' products?  
20 Have you tracked that?

21 A Well, it would be -- be the opposite number I  
22 gave you. I mean, if they're not exclusive,  
23 they'd be selling other people's stuff. So, it  
24 would be --

25 Q I asked a bad question. What I was trying to get

1           Fountain, our attorney.

2           Q   And did that envelope, in fact, indicate -- have  
3           a big old Heartland logo in the upper corner?

4           A   I do believe it did.

5           Q   And is it your understanding that all of the  
6           envelopes had Heartland logos on them?

7           A   I don't know if they all had Heartland --

8           Q   Okay.

9           A   -- envelopes (Sic) on them.

10          Q   Are you aware of --

11          A   However --

12          Q   I'm sorry.

13          A   -- Heartland could be -- it could be a Forest  
14          River brand as far as the lady at the front desk  
15          knows. How would she actually know the  
16          difference? She -- he was -- his case was he was  
17          making her feel like he was part of Forest River.  
18          Who was she to know the difference on what --  
19          what the envelope said?

20                 You're assuming she knows this industry and  
21          knows these two companies. She does not. She  
22          only knows that Forest River is -- is -- is  
23          paying for the hotel. So, he played on probably  
24          her naiveness, in my opinion.

25          Q   Okay. Well, where's -- where's the evidence of

1 Q -- or did he report --

2 A At that time, he reported to Pete.

3 Q To Pete Liegl?

4 A Yeah.

5 Q And in the corporate organization while John was

6 there, were you above him, equal to him, or is

7 that something --

8 A I was -- yeah. I was in charge of sales. I

9 mean, I -- I worked with John. But he didn't

10 have to necessarily report to me.

11 Q And you were responsible for the sales of the

12 products that John was general manager of; is

13 that right?

14 A Yeah. He's -- he's the first guy there that he's

15 gotta -- you know, anything we can do, we -- I

16 approve all the price sheets for the product, go

17 through the pricing exercises with him. It's

18 kind of his job to day to day be watching over

19 the salespeople and trying to gain the sales.

20 Q And did John leave to go to Heartland under good

21 circumstances?

22 A Yeah. He said he had another opportunity.

23 Q Would you say you're friends with John?

24 A Yeah. I'm not -- I'm not -- when I say friends,

25 I see him out for lunch and stuff like that,

1           always talk to him. I think John's a very  
2           personable, nice guy, very honest.

3       Q I'm glad you mentioned that because that was  
4           gonna be my next question. You don't think he's  
5           a liar, do you?

6       A I do not personally have any experience of John  
7           ever lying to me or I do not believe he's lied to  
8           Forest River.

9       Q Okay. And you don't have any information that  
10           tells you that John Rhymer lied to the patent  
11           office, do you?

12      A I don't know what John did at the patent office.

13      Q Okay.

14      A I --

15      Q Well --

16      A Again, I would --

17      Q Let's -- let's ask the question a little  
18           differently.

19                You don't know what he did, right? Is that  
20           what you said?

21      A I don't know what he did at the patent office.

22      Q That's what you said, right?

23      A Yeah. I said I don't know what -- I don't know  
24           how he -- I don't know how he filed his patent.

25      Q Okay. And then you don't have any information

1           that John Rhymer lied to the patent office then,  
2           do you?

3       A   I never said he did lie to the patent office.

4           I --

5       Q   Okay.

6       A   I guess that's the, you know --

7       Q   Do you know Doug Lantz?

8       A   No.

9       Q   Okay. Never met the man, that you know of?

10      A   No.

11      Q   And do you know Scott Tuttle?

12      A   Yes.

13      Q   How do you know Scott Tuttle?

14      A   He did work for us at Cornerstone Designs.

15      Q   Work for us? Was that Forest River then?

16      A   Yeah, it was Forest River.

17      Q   Okay. And how long have you known Mr. Tuttle?

18      A   I'd probably say 12, 13 years.

19      Q   Okay. You friends?

20      A   Again, yeah. I mean, I guess we're friends. I

21           mean, we don't see other, never have, outside

22           work socially. I mean, we cross paths and I

23           think Scott's a -- Scott's a nice guy.

24      Q   Truthful?

25      A   I would say truthful.

1 Q You understand that you're here to talk on behalf  
2 of Forest River. And, again, I'm looking at the  
3 Notice, which is, I think, this one.

4 Look at Deposition Exhibit 116, if you  
5 would. And take a look at the second page, I  
6 believe it is. Yeah. There you go.

7 A Which page?

8 Q Second page. You're here to talk about Topic  
9 Number 5. And that is that any basis that Forest  
10 River contends supports its defense that the  
11 Patent in Suit is unenforceable as a result of  
12 inequitable conduct. Do you see that?

13 A Which one again? Could you read that one again?

14 Q Sure. Number 5. Any basis that Forest River  
15 contends supports its defense that the Patent in  
16 Suit is unenforceable as a result of inequitable  
17 conduct.

18 You're here to testify about those topics;  
19 is that right?

20 A Yes.

21 Q Okay. What information do you have about  
22 inequitable conduct and how did you get it?

23 A Okay. Ask your question you're asking.

24 Q Yeah. What information do you have about  
25 inequitable conduct and how did you get it?

1 A I think what the -- our stances on it is that  
2 they were trying to patent something that was  
3 already produced prior to and they did not either  
4 at the time know that they were doing it, but at  
5 the same time they were still doing it, that  
6 there was other products out there prior to their  
7 patent that would actually not allow them to  
8 actually get a patent if it was provided.

9 Q What's your understanding of what inequitable  
10 conduct is?

11 A I'm gonna say that we were saying that they were  
12 just outright lying on a patent is what you're  
13 asking me. Is that what you're asking me if I  
14 think that that is?

15 Q No. I'm asking what your understanding of the  
16 term inequitable conduct is. You tell me what it  
17 is, what you think it is otherwise.

18 A I think it's passing something off that's  
19 untruthful.

20 Q Okay. Which one of the inventors passed  
21 something off as untruthful?

22 A Again, I think that the inventors tried to patent  
23 something -- again, after even listening to the  
24 deposition of Scott yesterday, they were trying  
25 to, not knowingly, however at the same time were

1       trying to get a patent for something that they  
2       had no right in getting in simple laymen's terms,  
3       I guess, is the --

4       Q   So, if I'm understanding what you're telling me  
5       correctly, you believe that the patent that is at  
6       issue in this case, the '650 Patent, should not  
7       have been granted, right?

8       A   That is correct.

9       Q   And why do you believe that?

10      A   Because people were using that type of -- that  
11      type of frame prior to that.

12      Q   Okay. And which frame in particular are you  
13      referring to?

14      A   Well, we --

15      Q   And I'm talking about the frame that you  
16      mentioned.

17      A   And you said the prior frame?

18      Q   No. You said the prior frame. I -- let me back  
19      up.

20                 You just said you believe that people were  
21      using a frame prior to their -- the patent; is  
22      that right?

23      A   Yeah. I mean, I think that --

24      Q   Which frame -- which frame are you referring to?

25      A   We had built some of those frames on the cargo



1 A I hate to use the word intentional. That's for  
2 sure.

3 Q I -- you need to answer my question.

4 A I think after listening to Scott's deposition  
5 yesterday, I don't think people -- I kind of  
6 think he was pointing towards the attorney firm  
7 that was representing them and maybe they didn't  
8 ask all the right questions.

9 Q So, you don't think Scott Tuttle intentionally  
10 lied to the patent office, do you?

11 A I think that in the midst of everything there  
12 that Scott didn't intentionally go out and say,  
13 "We're gonna lie to the patent office here and  
14 try to prove something here." I don't think that  
15 their scope was broad enough --

16 Q Okay.

17 A -- prior to filing that. Then they should've and  
18 their attorney should've probably caught that.

19 Q And you don't have any information that John  
20 Rhymer lied to the patent office, do you?

21 A Just for making it shorter, I don't -- I think,  
22 again, that would stand probably for John Rhymer  
23 as well.

24 Q Same answer?

25 A Same answer for John.

1 Q So, you don't believe he did lie. You think he  
2 got excited?

3 A I think that there was not a broad enough scope  
4 on that actual patent and it kind of got through  
5 the system.

6 Q I need a straight answer. You don't have any  
7 information that John Rhymer lied to the patent  
8 office, do you?

9 A I do not believe that they were outright trying  
10 to lie to them.

11 Q Okay. You understand that you're -- you've made  
12 a claim for criminal deception against Heartland;  
13 is that correct?

14 A Yes.

15 Q Okay. And can you tell us what you understand  
16 the criminal deception to be and what the facts  
17 are that support it?

18 A I guess probably the biggest thing, you know, I  
19 guess on the -- on the criminal side, they  
20 probably should've known what they were -- what  
21 they were filing, and they didn't.

22 Q Okay.

23 A Now, whether that's those individuals or their  
24 law firm --

25 Q Just so you can understand, the criminal

1           it's -- it's this Page 92 here, if you could  
2           direct yourself to that part of it.

3       A   (Witness Complying.)

4       Q   So, now that you've looked at that, let me  
5           rephrase my question.

6                    Is it true that you had no idea of what was  
7           said to the hotel clerks?

8       A   No. That's not true.

9       Q   Is it true that you don't know the exact words  
10          that were said to any given hotel clerk?

11      A   I wasn't there to actually hear the exact words.  
12          I'm hearing, I guess, the version of the people  
13          that heard at the hotel that were there.

14      Q   Okay.

15      A   I did not personally hear. I'm hearing the story  
16          from our people that heard, that had the -- that  
17          heard the -- from the hotel people that actually  
18          heard the conversation.

19      Q   And is that what you meant on Page 92?

20      A   That's what I meant.

21      Q   Okay.

22      A   Yeah.

23      Q   All right. You described this conversation you  
24          had with Mr. Esch, okay? And you said at some  
25          point you asked him was his name Scott or Eric;

1           some more.

2                    You've got statements in these Interrogatory  
3           Answers.  And they're in Paragraphs 5, 6, and 7  
4           on Page 11 if you want to look at them.

5   A   I think I got the right one.  Do I?

6   Q   It's the Interrogatory Answers.  It's -- Page 11  
7           of the Interrogatory Answers is where I want you  
8           to look.

9   A   Yep.  Okay.  I think I got the right one.

10  Q   You see there it says Paragraphs 5, 6, and 7?

11  A   Yeah.

12  Q   Read Paragraph 5 for me and let me know when  
13           you've done that.  You don't have to read it out  
14           loud.  Just read it to yourself.

15  A   (Witness Complying.)  Okay.

16  Q   What's the source for that information?  Where  
17           did that come from?

18  A   I can't remember the girl's name from the -- from  
19           the hotel.  But she had told our people that she  
20           was told that that person was from Forest River  
21           and needed to get that information out.

22  Q   Okay.  And who's that person?  Who was told that?

23  A   Lisel.

24  Q   Okay.  And she doesn't have the name of the  
25           person?  She can't tell us which person it was?

1 A Well, I think we gave you a whole list of  
2 people's names. I don't know which ones --

3 Q Yeah. But you're trying to accuse my client of  
4 stealing something here and doing -- and criminal  
5 conduct, and you can't even tell me who it was  
6 that was told this. Is that right?

7 A We gave you the names of the people at the Hyatt  
8 Hotel. Call them.

9 Q Who was told that? Who was told that in  
10 Paragraph 5?

11 A Who was the -- who was --

12 Q Who was the employee at the hotel that was told  
13 these things?

14 A You need to do your own investigation on that.  
15 We told you --

16 Q No, I don't. That's what I'm doing right now.  
17 This is discovery. You're supposed to tell me.

18 A I can't -- I can't tell you who it is. But I  
19 told you that -- that -- we identified the people  
20 at the Hyatt Hotel. We gave you their names  
21 and -- and who they were. So, you're gonna have  
22 to find out.

23 Q No. You have to tell us.

24 A Where's that list that says the Hyatt Hotel  
25 employees? And I'll tell you which three you can

1 choose from.

2 Q But you can't tell me as you sit here today --

3 A I can't. No, I can't.

4 Q -- which person was told these alleged things in  
5 Paragraph 5, correct?

6 A I can't tell you. No. I can't tell you. I can  
7 just tell you what was told.

8 Q Okay. And all you know that from -- again, I'm  
9 not trying to put words in your mouth -- is Lisel  
10 told you this?

11 A Through an investigation, yes.

12 Q No. That's not what I asked you. Is Lisel the  
13 only person that told you about what happened,  
14 allegedly, at the Hyatt?

15 A Yes.

16 Q Okay. Read Paragraph 6. Let me know when you've  
17 finished it.

18 A (Witness Complying.) Okay.

19 Q What person at the Country Inn & Suites was told  
20 this information?

21 A Same answer.

22 Q You don't know?

23 A I don't know. We gave you a list of the people's  
24 names.

25 Q Do you have it someplace written down that

1 "So-and-so has told me this."?

2 A I'm sure we do somewhere.

3 Q Where?

4 A Probably back at the office.

5 Q Where back at the office?

6 A Probably back at the office, probably at the --  
7 probably at Lisel's desk.

8 Q Well, why didn't you put the name in these  
9 Interrogatory Answers?

10 A Didn't think that we had to. I mean, we gave you  
11 a -- we gave you a list of all the people at the  
12 hotels and where they worked at and what their  
13 names were and their phone -- and their cell  
14 phone numbers.

15 Q And you think that's all you've got to do?

16 A Yeah.

17 Q You think it's unfair for us to specifically ask  
18 you which person do you claim was told these  
19 things and you don't have to tell us?

20 A We gave you the information we had.

21 Q You didn't give us the name of the person that  
22 was told these things in Paragraph 6, did you?

23 A We -- we can certainly try to get you the name.

24 Q But you haven't tried to yet, have you?

25 A Did you ask me last time to get you the name?