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THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF INDIANA  
SOUTH BEND DIVISION

HEARTLAND RECREATIONAL  
VEHICLES, LLC,  
Plaintiff,  
-vs- Case No. 3:08-CV-490 AS CAN  
FOREST RIVER, INC.,  
Defendant.

The Deposition of KELLY MARIE GEARHART

Date: Friday, January 8, 2010  
Time: 9:39 a.m.  
Place: Country Inns & Suites  
120 West University Drive  
Mishawaka, Indiana

Called as a witness by the Plaintiff in  
accordance with the Rules of the United  
States District Court for the Northern  
District of Indiana, South Bend Division,  
pursuant to Notice.

Before Sharon L. Brady, Court Reporter  
and Notary Public

MIDWEST REPORTING, INC.  
1448 Lincolnway East  
South Bend, Indiana 46613  
(574) 288-4242

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I N D E X

THE DEPOSITION OF  
KELLY MARIE GEARHART

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APPEARANCES:

MR. DAVID P. IRMSCHER  
Baker & Daniels, LLP  
111 East Wayne Street  
Suite 800  
Fort Wayne, Indiana 46802  
On behalf of the Plaintiff,

MR. RYAN M. FOUNTAIN  
Attorney at Law  
420 Lincolnway West  
Mishawaka, Indiana 46544  
On behalf of the Defendant.

\*\*\*

ALSO PRESENT:  
Cindy King

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KELLY MARIE GEARHART,  
called as a witness by the Plaintiff, having been  
first duly sworn, was examined and testified as  
follows:

DIRECT EXAMINATION

BY MR. IRMSCHER:

Q Could you please state your full name for the  
record?  
A Kelly Marie Gearhart.  
Q And where do you currently live?  
A Elkhart.  
Q Can you give me your street address, please?  
A 27681 Cobblestone Way, 46514.  
Q And how are you currently employed?  
A Well, I have three jobs.  
Q Well, can you tell me what the three jobs are,  
please?  
A I work for – I'm officer manager for Dr. Jeremy  
Kwon, who's a dentist here in Granger. I work  
here, front desk. And occasionally I help a  
friend out that has a small furniture store in  
Edwardsburg, a resale shop called Flip 'n  
Furniture.  
Q Okay. And you've met with Mr. Fountain before to  
talk about this deposition; is that right?

1 Q Okay.  
2 A Right? Because -- wait a minute. Let me think.  
3 '86. Probably a year and a half.  
4 Q Okay. And then what was your next job after  
5 that?  
6 A Came back home. I worked at Accra Pac for  
7 awhile, and then I went back to Martin's.  
8 Q Accra Pac, is it?  
9 A Uh-huh. In Elkhart.  
10 Q What do they do?  
11 A It was a canning company.  
12 Q What did you do for them?  
13 A I worked in inventory control.  
14 Q And then you said you went back to Martin's; is  
15 that right?  
16 A Yes.  
17 Q And what did you -- you went back to Martin's as  
18 a cashier again; is that right?  
19 A Cashier and office. Uh-huh.  
20 Q Okay. And how long did you have that --  
21 A Five years.  
22 Q I've lost track of which year we are. What year  
23 are we up to, approximately?  
24 A Me too, actually. Let me see. That would've  
25 been probably '95, '96.

1 Q What is Allcare?  
2 A Allcare Dental over here.  
3 Q What did you do for them?  
4 A Scheduling. Office. General office.  
5 Q How long did you work there?  
6 A Six months.  
7 Q And let's put aside for a second your employment  
8 here at this hotel. Let's kind of make sure we  
9 finish everything else first, if we could.  
10 A Sure. From there, I went to Dr. Kwon where I'm  
11 at now. And I've been with him since November of  
12 2008.  
13 Q And you mentioned you sold furniture part-time;  
14 is that right?  
15 A It's just a resale shop that I -- I've only done  
16 that on and off for maybe the last three or four  
17 months. It's not -- it's a distant relative that  
18 has a little store that I just help out  
19 occasionally.  
20 Q Okay. And you started working at this hotel,  
21 what is it, Country Inn & Suites; is that right?  
22 A Yes.  
23 Q Okay. When did you start working here?  
24 A May of 2007, I think.  
25 Q And what did you do when you first started

10

1 Q Okay. And what was your next job after you left  
2 Martin's?  
3 A Oh, I worked at Auto Tech.  
4 Q How long did you work for them?  
5 A About nine months. From there, I went to Dr. Van  
6 Orsdoll for seven years.  
7 Q What did you do for the doctor?  
8 A Front office manager. Front office. Don't put  
9 manager. I didn't really consider myself a  
10 manager there.  
11 Q What kind of a doctor is that?  
12 A Pediatrician.  
13 Q Is that here in --  
14 A He was in Elkhart. He retired.  
15 Q When did you stop working for him?  
16 A April of -- this is 2010?  
17 Q Uh-huh.  
18 A April of 2008.  
19 Q And did you stop working for him because he  
20 retired? Is that what you said?  
21 A He was getting ready to retire. I left there  
22 before he retired.  
23 Q Okay. And what job did you take at that time?  
24 A Allcare. I was also here at that point. It was  
25 a two-job thing, so --

12

1 working here?  
2 A Front desk.  
3 Q And have you worked continuously here at the  
4 Country Inn & Suites since May of 2007?  
5 A Yes, sir.  
6 Q About how many hours a week do you work?  
7 A 14, 15.  
8 Q Okay. And when you first started in May of 2007,  
9 you said you worked at the front desk; is that  
10 right?  
11 A Yes.  
12 Q What does that mean you do?  
13 A I check guests in. I check guests out. I see to  
14 their needs while they're here if they have a  
15 request or they need something. I dust. I  
16 vacuum. I take out the trash. I monitor the  
17 halls. I -- whatever needs to be done.  
18 Q If someone would've called from their room, they  
19 reached you? Is that what happens --  
20 A Yes.  
21 Q -- when they call the front desk?  
22 A Yes.  
23 Q And you would be the person like, when I think of  
24 a hotel, as being the person to check you in or  
25 check you out?

1 A Uh-huh.  
 2 Q That would've been you?  
 3 A Yes.  
 4 Q And would you work typically alone or would there  
 5 be someone else with you?  
 6 A Depending on the time of year or the day, alone  
 7 or with someone; but generally alone.  
 8 Q Okay. And your job working at the front desk,  
 9 has it stayed basically the same, you know, the  
 10 job duties, what you do, since 2007 to now?  
 11 A Yes.  
 12 Q And have you given us sort of a summary of what  
 13 you do as a front desk worker?  
 14 The little list of things that you said you  
 15 did, is that pretty complete?  
 16 A Yes.  
 17 Q Okay. And when a guest checks in, you take their  
 18 money and you check them in and you give them a  
 19 room key and that kind of stuff, right?  
 20 A Yes.  
 21 Q Okay. And if a package or something would arrive  
 22 for a guest, would you -- how do you deliver it  
 23 to them, if you do that?  
 24 A Well, I look up their room number. And if it's  
 25 a -- like an envelope, I'll slide it under the

1 Q Or call them? Okay. What happens if you call  
 2 them and you don't reach them?  
 3 Is there a way to leave them a message or  
 4 would you just --  
 5 A Actually, yes. There's voice mail on those  
 6 phones.  
 7 Q Okay. So, if you wanted to deliver something  
 8 that was brought for a guest, you look up the  
 9 room number, slide it under the door, slide a  
 10 note under the door, you call them and leave them  
 11 a message telling them there's something at the  
 12 front desk; is that right?  
 13 A Yes.  
 14 Q Is there any other way that you deliver something  
 15 to a guest that you can think of?  
 16 A Nope.  
 17 Q Okay. And when you -- what training did you  
 18 receive to work at the front desk?  
 19 A You mean formal training as far as --  
 20 Q Well, let's start there. Was there any kind of a  
 21 formal training program of any type to work at  
 22 the front desk here?  
 23 A Not as a prerequisite. Just my training that I  
 24 got after I was hired here.  
 25 Q Okay. I'm asking kind of a bad question. I'm

14

1 door.  
 2 Q Okay.  
 3 A If it's a package, I usually would just put a  
 4 note that there's a package at the -- I don't go  
 5 in the room if I don't have to.  
 6 Q When you say you put a note, where would you put  
 7 the note?  
 8 A Slide it under the door.  
 9 Q So, you'd slide a note or a piece of paper --  
 10 A Under the door that there's a package at the  
 11 desk.  
 12 Q I see. Do you have a system where you can put a  
 13 light on in their room or something --  
 14 A No.  
 15 Q -- and tell them they've got a message, anything  
 16 like that?  
 17 A Not to my knowledge, no.  
 18 Q Okay. So, if somebody wants to deliver something  
 19 to a room at this hotel, what they've got to do  
 20 is they've got to come to you and then you either  
 21 deliver it or you slide a note under the door to  
 22 tell them that there's something at the front  
 23 desk for them?  
 24 A Or I would call them and tell them I have  
 25 something for them, okay?

16

1 trying to differentiate between what I would kind  
 2 of call sort of on-the-job training where  
 3 somebody kind of shows you --  
 4 A Yes.  
 5 Q -- what your job duties are and they work with  
 6 you and --  
 7 A I got on-the-job training.  
 8 Q Okay. Was there anything other than that? Was  
 9 there like, you know, an on-line class you had to  
 10 do or any kind of meetings where you had seven or  
 11 eight people come together and they discussed  
 12 what your jobs duties were, anything more formal?  
 13 A No.  
 14 Q And who trained you in your on-the-job training?  
 15 A Steffany, my -- our assistant manager here.  
 16 Q And what's her last name?  
 17 A Miller.  
 18 Q Didn't hear you.  
 19 A Miller.  
 20 Q Thank you. And can you describe in your own  
 21 words just kind of what this on-the-job training  
 22 consisted of? How did that work?  
 23 A Well, there was a computer training to teach me  
 24 how to use the -- the Opera system that they use  
 25 here, showed me where things are and how things

1 A Rarely.  
2 Q Rarely? Okay.  
3 A Unless it's somebody that's staying here  
4 long-term. And then if that's the case, then it  
5 can be frequently. But on a general basis, it's  
6 rarely.  
7 Q So, for example, would you get like FedEx or UPS  
8 deliveries here for guests on a --  
9 A Yes.  
10 Q -- on a weekly basis, a daily basis? I mean, how  
11 often would that be?  
12 A Rarely.  
13 Q Rarely?  
14 A (Nods head.)  
15 Q Okay. But it's something that you're familiar  
16 with, though?  
17 A Absolutely. And if a guest is expecting  
18 something, they generally at check-in will let  
19 you know, "I'm expecting a package. Could you  
20 let me know when it's available?"  
21 And in that case they'll leave me a cell  
22 phone number if they're not going to be in the  
23 room or so I can let them know. Occasionally  
24 luggage gets left or lost. And that's --  
25 Q That's right. Can you think of any circumstances

1 A I was told by the manager at that point.  
2 Q Okay. And that was one time that you can think  
3 of?  
4 A Yes. And I don't remember the circumstance. I  
5 just remember --  
6 Q Is it generally then the policy of this hotel  
7 that if a package of some type, an envelope,  
8 whatever it is that's got a guest's name on it  
9 comes to the hotel, that you try and get it to  
10 the guest? Would that be true?  
11 A Absolutely.  
12 Q And that's because you're really trying to make  
13 sure that you're meeting the guests' needs and  
14 wishes; is that right?  
15 A Yes.  
16 Q Okay.  
17 A But also the senders'.  
18 Q But also what?  
19 A The senders' at the same time.  
20 Q Of course. And do you ever ask where the package  
21 came from or the item came from or do you just  
22 take it and make sure you try and deliver it?  
23 A No. I don't ask. I don't know those people well  
24 enough to be comfortable enough to do that. It's  
25 not my business.

22

1 where you've ever refused to deliver something  
2 that had a guest's name on it?  
3 A Yeah.  
4 Q And when was that?  
5 A Just this fall, the last Notre Dame home game.  
6 What was it? November 21st. It was luggage.  
7 Q And why did you refuse to deliver it?  
8 A Because the guest had already checked out. The  
9 airline lost their luggage. And they had already  
10 checked out to go back home and did not want me  
11 to accept it if they tried to deliver it. So, I  
12 refused it.  
13 Q I see. Because you wanted to make sure it stayed  
14 back with the airline so they could deliver it?  
15 A I wanted it to go back to the people at their  
16 home at that point.  
17 Q Can you think of any other circumstance where  
18 you've ever refused a delivery for a guest?  
19 A I was instructed one other time to refuse  
20 something for somebody, but I don't remember the  
21 circumstance of it.  
22 Q The guest --  
23 A Probably that they were checked out and not here  
24 any longer either.  
25 Q And a guest told you to not --

24

1 Q Right. And I don't want to put words in your  
2 mouth. But I've stayed at a number of hotels  
3 over the years and I've always sort of felt like  
4 the hotel almost acts like a mailbox for you;  
5 that you don't really look at the mail, you just  
6 deliver it.  
7 Is that pretty much what you do here if  
8 something comes for a guest with their name on  
9 it?  
10 A Yeah, pretty much.  
11 Q And if an envelope shows up that has a guest's  
12 name on it, you don't care where it came from, do  
13 you?  
14 A No.  
15 Q Okay.  
16 A Basically.  
17 Q And again, to stretch my post office analogy,  
18 that's because you just deliver the mail. You  
19 don't really concern yourself with what's in the  
20 mail. Is that right?  
21 A I don't consider it my business.  
22 Q And that's the hotel's -- that's the way you're  
23 taught to do it, right?  
24 A Well, it doesn't really matter if I'm taught to  
25 do that or not. I mean, it's not my business.

1 I'm -- I'm simply -- that's my job. An envelope  
2 came for somebody. It had their name on it. I  
3 let them know it was here for them.  
4 I mean, I don't pay attention to the -- that  
5 it's -- if it came from Frederick's of Hollywood,  
6 I wouldn't care. I don't -- I just made sure  
7 that the customer got it.  
8 Q Yep.  
9 A Or the guest.  
10 Q I understand. I'm sure Mr. Fountain has met with  
11 you to talk to you about the incident that took  
12 place in October of 2008. Is that right? Have  
13 you met with him to discuss that?  
14 A Yes.  
15 Q Okay. And when was the first time again? I  
16 think we talked about this earlier on, but I want  
17 to make I've got it straight in my head.  
18 When was the first time you talked to  
19 Mr. Fountain, as best you can recall?  
20 A I want to say this past summer sometime, spring  
21 maybe.  
22 Q And I'm sure you are aware by now that this has  
23 to do with some envelopes that were delivered  
24 here to the hotel that were subsequently  
25 delivered to the guests; is that right?

1 Q Right. And I was gonna ask that. Just following  
2 this, you delivered all the envelopes, so you had  
3 no reason to contact him; is that right?  
4 A Exactly.  
5 Q And did this individual say anything other than,  
6 "These envelopes are for these guests. Could you  
7 please deliver them?"  
8 A Not that I recall.  
9 Q Okay. And when he brought the envelopes in, was  
10 there a stack of them, a few of them? How many  
11 do you recall?  
12 A Maybe eight or ten.  
13 Q And you said he introduced himself. Who did he  
14 introduce himself as; do you remember?  
15 A I know his last name was Esch. At this point, I  
16 can't remember if he introduced himself as Scott  
17 and his name was Eric or if he introduced himself  
18 as Eric and his name was Scott. But I believe he  
19 introduced himself as Scott and I knew him as  
20 Eric.  
21 Q Okay. Did he say anything else other than that?  
22 A Just left me the phone number, thanked me,  
23 whatever probably, and walked out the door.  
24 Q So, he walks in -- I mean, I want to make sure I  
25 understand what happens.

26

1 A Yes.  
2 Q And were you involved in delivering those  
3 envelopes to the guests?  
4 A Yes.  
5 Q Okay. Tell me what you did.  
6 A This gentleman walked in. He had a small stack  
7 of envelopes. He introduced himself as one  
8 person. I knew of him as another person. Had  
9 names on the envelopes, asked me if I would see  
10 to it that the guests on those envelopes received  
11 those envelopes, gave me his phone number to call  
12 him back if they did not receive those envelopes  
13 so he could pick them up. He left.  
14 I looked up the guests' rooms numbers. And  
15 in my spare time between checking people in, we  
16 were very busy that night, I did the best I could  
17 to slide those under the doors.  
18 Q And did you deliver all the envelopes as best you  
19 can recall?  
20 A Yes.  
21 Q And did you call this person on the cell phone  
22 for any reason after that?  
23 A I can't -- I don't think I did. I can't remember  
24 that I did or didn't, but I don't think I did. I  
25 don't think I had any reason to.

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1 He comes in. He's got a stack of eight or  
2 ten envelopes. Those envelopes have guests'  
3 names on them. Correct?  
4 A Uh-huh.  
5 Q He gives those to you and asks you -- introduces  
6 himself, says, "I'm Eric," or, "Scott Esch.  
7 Would you please deliver these to these guests?  
8 And if you can't for some reason, call me and  
9 I'll come pick them up." Is that about it?  
10 A Yes.  
11 Q And then you took the envelopes and you said,  
12 "I'll take care of it."?  
13 A Yes.  
14 Q Or words to that effect, right?  
15 A Yes.  
16 Q Did you have any other communication with him?  
17 A No.  
18 Q Okay. Have you told me everything that you can  
19 remember that this Mr. Esch told you?  
20 A Yes.  
21 Q Was the delivery of these envelopes -- was this  
22 unusual in any way to you? Was this memorable in  
23 any meaningful sense?  
24 A No. Um --  
25 Q Okay. And you've told me that you had subsequent

1 Q Gotcha.  
2 A Actually, I won't even tell you, "Yes, they're  
3 here." I will just -- I'll either ring the room  
4 number for you if they are here or I will say,  
5 "They're not here. They're not registered."  
6 Q Okay. And you mentioned that you assumed, I  
7 think those were your words --  
8 A Yes.  
9 Q -- that Mr. Esch was with Forest River; is that  
10 right?  
11 A Yes.  
12 Q Okay. But Mr. Esch didn't do anything to  
13 indicate to you he was with Forest River,  
14 correct?  
15 A He came in with envelopes for specific people  
16 that were guests of Forest River. I assumed that  
17 he was probably from Forest River handing out  
18 information for those guests.  
19 Q I understand what you're saying.  
20 A To enhance their visit.  
21 Q But I want to make sure we're clear on something.  
22 A Sure.  
23 Q Mr. Esch didn't say anything that --  
24 A Not to my knowledge. He did not tell me he was  
25 from Forest River. I don't -- to my knowledge,

1 envelopes.

2 MR. IRMSCHER: I don't think I  
3 have any further questions. Thanks  
4 very much.

5 MR. FOUNTAIN: Good. I think  
6 we're all set. When the transcript is  
7 made, you will be given an opportunity  
8 to review it, make sure it's accurate.  
9 Then you will have to sign it in front  
10 of a notary and get it on back to us.

11 MR. IRMSCHER: Could I -- one  
12 more. Do you have a phone number?

13 Could you give us a phone number  
14 so in case we need to get hold of you  
15 we have that?

16 THE WITNESS: Sure. (269)  
17 228-2265.

18 MR. IRMSCHER: Thank you.

19 THE WITNESS: Uh-huh.

20 MR. FOUNTAIN: If they have to  
21 get ahold of you, do you prefer they  
22 call you directly or go through Cindy  
23 or myself?

24 THE WITNESS: Generally,  
25 everybody's been going through Cindy.

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1 he didn't tell me he was from anywhere. I  
2 suppose it was my mistake assuming that he was  
3 with Forest River because he came in with very  
4 specific information for -- pertaining to Forest  
5 River guests.  
6 Q Well, he had the names of guests of the hotel,  
7 correct?  
8 A They were guests of Forest River. They were  
9 staying at our hotel, but they were guests of  
10 Forest River.  
11 Q Well, did you know they were guests of Forest  
12 River at that time?  
13 A Yes, I did.  
14 Q Why is that?  
15 A Because Forest River had a block.  
16 Q Okay. So, all he does is he comes in with these  
17 envelopes, doesn't say he's from Forest River,  
18 he's not wearing any clothes that say Forest  
19 River on them, he doesn't do anything other than  
20 ask you to deliver these envelopes and ask you to  
21 call him if you don't deliver them. That takes  
22 about a minute to go through that. And that's  
23 what you agreed to do. Is that right?  
24 A Yes. And when I had time, I would deliver those  
25 envelopes to those guests specified on those

1 So, just so you know.

2 MR. IRMSCHER: I just wanted to  
3 make sure we have a phone number.  
4 That's all I need. Thank you.

5 (Deposition concluded and  
6 witness excused at 10:55 a.m.)

7 \* \* \*

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