

Exh. E

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1 Q Is there anything in this document that you see that
2 says the references attached are Prior Art?

3 A No.

4 Q Okay.

5 Is the Patent in this lawsuit the only Patent that
6 you have ever been a named/inventor for?

7 A Yes.

8 Q Okay.

9 Were you aware that a Patent -- by its very
10 nature -- is affected with a public interest?

11 A Would you rephrase that?

12 I don't understand the question.

13 Q Has anyone ever told you that before?

14 A No. Not to my knowledge.

15 Q Have you ever read that before?

16 A No.

17 Q Have you read -- or has anyone explained to you -- the
18 duty of candor and good faith that an inventor has to
19 the Patent Office?

20 A No.

21 Q Did you ever hear of something called "Rule 56"?

22 A No.

23 Q Okay.

24 Were you aware that, quote: "Each individual
25 associated with the filing and Prosecution of a Patent

1 Application has a duty of candor and good faith in
2 dealing with the Office; which includes a duty to
3 disclose to the Office all information known to that
4 individual to be material to Patentability, ..." end
5 quote.
6 A In regards to that phrase, I'm aware of that, yes.
7 Q How were you aware of that?
8 A It was discussed early on when we were originally
9 filing for the Patent that, you know, we had to -- you
10 know, give any information that we could of any Prior
11 Art.
12 Q And what did you understand that to encompass?
13 A Anything that we seen that was related to what we were
14 trying to do.
15 Q Did you do that?
16 A I believe so.
17 Q So, you did some sort of an investigation to find Prior
18 Art?
19 A Well, I personally didn't.
20 But I know that we had Attorneys that did that,
21 yes.
22 Q Okay.
23 Did you, yourself, gather up any information about
24 Prior Art you were aware of?
25 A Just one document.

1 Q What was that?

2 A It was a Glendale Patent, Titanium product.

3 Q Mm-mm.

4 A I can't -- I can't specifically name the inventor, but

5 we were aware of that Patent for sure.

6 Q You personally were aware of that Patent?

7 A Yes, sir.

8 Q How is it that Patent first came to your attention?

9 A There was a -- you know, we were doing a product study,

10 marketing study, trying to find out what kind of a

11 product would sell in the market.

12 And there was a need for some way to deal with

13 short/bed trucks:

14 Current product out there historically without

15 spending a lot of money on a hitch that would move in

16 the bed of the truck, would interfere with the back of

17 the cab of the truck on a short/bed truck and bust the

18 window or do truck/damage.

19 Q Those same problems did not exist for long/bed pick-up

20 trucks, did they?

21 A Not to the extent.

22 Q You said you were doing the "study."

23 When did you begin that study?

24 A When we were forming our Company in November of '03.

25 Q Okay.

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1 "Shadow Cruiser", no.

2 Q Well, the top-view of a Shadow Cruiser trailer, at that
3 point in time, had that inclined angle, didn't it?

4 A I don't have any recollection of that.

5 I don't know that, no.

6 Q But you did see Shadow Cruisers at the time.

7 Right?

8 A I'm aware of Shadow Cruiser Company.

9 I'm not saying that I've seen that particular item
10 on a travel -- on a Shadow Cruiser or any travel
11 trailer.

12 Q You've never seen a travel trailer where the top-view
13 like that had inclined front-walls?

14 A Well, you say "never."

15 I've seen new travel trailers that have a "V" nose
16 to them.

17 Q Okay.

18 What is --

19 A Bumper/pull travel trailers.

20 Q Okay.

21 And when's the first time that you saw a travel
22 trailer with an inclined front-wall, whether it be "V"
23 nose or anything approximating it?

24 A Well, during discovery, our Attorneys showed us a
25 Patent of a travel trailer that had inclined front-end

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1 come up with any frame they wanted to suit their
2 product's needs?

3 A Yes. It would be.

4 Q Okay.

5 And would the same be true of fifth-wheel trailer
6 frames?

7 A Yeah. I think so.

8 Q Okay.

9 Looking back at Exhibit 18 for a minute, if you
10 would.

11 A (Indicating).

12 Q Is there any indication there of travel trailer frame
13 information being provided to the Patent Office?

14 A Not that I could interpret from what's on this page.

15 Q Okay.

16 So you, yourself, didn't gather up any information
17 about travel trailer frame Prior Art to give that to
18 someone to give to the Patent Office?

19 A Well, again, as I mentioned earlier, I consider "travel
20 trailers" and "fifth-wheels" completely different.

21 Q Okay.

22 A Two different products.

23 But did I go out and collect drawings of
24 fifth-wheel frames and provide them to the Patent
25 Office?

1 I did not.

2 Q And you didn't collect travel trailer frames either,
3 did you?

4 A No.

5 Q Okay.

6 Let's turn to Exhibit 1 for a minute, please.

7 On the last page of Exhibit 1?

8 MR. DAVID P. IRMSCHER: The stack is over
9 there, I think, isn't it?

10 MR. RYAN M. FOUNTAIN:

11 Q Yeah.

12 It should be at the very bottom of the stack.

13 A (Indicating).

14 Q Let's go to the last page of that, please.

15 A (indicating).

16 Q Lower right-hand portion, column 8.

17 A (Indicating).

18 Q You recognize Exhibit 1, don't you?

19 A Yes (Indicating).

20 Q That's the Patent in this lawsuit, isn't it?

21 A Correct.

22 Q Okay.

23 Going -- going to the lower right-hand portion,
24 there's a section -- on the last page that says, "What
25 is claimed is..."

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1 A Am I supposed to look through this stuff here, too?

2 Q If you think it might be in those.

3 A I don't know what they are.

4 Q Then take a look, please.

5 A (Indicating).

6 (PAUSE IN THE PROCEEDINGS.)

7 THE WITNESS:

8 A No.

9 MR. RYAN M. FOUNTAIN:

10 Q Okay.

11 Earlier when the deposition began, we were talking
12 about Exhibit 18, and the gathering of information
13 about Prior Art to give to the Patent office.

14 Do you recall that?

15 A Yes.

16 Q Okay.

17 After the real Patent Application -- as you call
18 it -- was filed, did there come a point in time when
19 someone said to you "We need to gather up all the Prior
20 Art that you are aware of, or any other information you
21 think the Patent office should know about"?

22 A Well, it was never said to me. It was said to Scott.

23 But I know Scott worked on that project.

24 Q Okay.

25 Did Scott ever come to you and ask you for your

1 input on that?

2 A No.

3 Q Okay.

4 A I mean, we discussed it, though.

5 I mean, he didn't come to me and ask me
6 specifically to -- to do that project for him because
7 frankly, I wouldn't have. It was his project. I was
8 working on other things.

9 Q Okay.

10 You say he discussed it with you.

11 What was the substance of that discussion?

12 A Say "You have time to sit down and put together all the
13 Prior Art that we know about?"

14 I said, "No, not really. I mean, I can share with
15 you what I know."

16 I mean, obviously, we know of the Glendale Patent
17 and you know -- by this point in time we'd seen -- I'm
18 sorry. That's earlier. That's before the Provisional.

19 He had passed others in front of me. The travel
20 trailer stuff that was going back and forth between him
21 and our attorney at the time.

22 I mean, I'd seen that stuff.

23 And the Glendale Patent that we saw originally.

24 Q Okay.

25 So, when you had that discussion where he said,

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1 Did you see some correspondence from the Patent
2 office?

3 A No.

4 I saw -- when they were working on the project of
5 Prior Art. I can't tell you exactly in the time-frame
6 when that happened.

7 I don't know if it was for the Provisional. I
8 don't know if it was for the regular Patent, you know.
9 This was Scott's project and -- and I was very busy.

10 And Scott would come to me and say, "Hey, this
11 is -- do you see this as Prior Art?"

12 I'm like, "Well, it's a travel trailer. I mean, I
13 don't. But, you know, if they say it does, it is. I
14 mean, I'm not an expert here. I can't tell you whether
15 it is or it isn't."

16 And, you know, sometimes it would be "Jeez, look
17 at this. This has got nothing to do with what we are
18 doing."

19 There was quite a few in there that might have
20 been -- you know, our Patent was this big when we
21 started, and it got down to this size as we went on.

22 And, you know, some of the Crean Patents in there
23 that are mentioned, he showed them to me because they
24 were involving holding tanks and things like that.

25 Our Patent has nothing to do with that. So -- but

1 load.

2 I mean, I wasn't in the room when Doug was let go.
3 I mean, I know what I know.

4 I can't speak for what was said to Doug. I wasn't
5 in the room. But...

6 Q Now, you described some meetings that you had or --
7 sorry -- described some discussions that you had with
8 Scott Tuttle concerning Prior Art at various points.

9 Right?

10 A Yes.

11 Q Was Doug Lantz present at any of these meetings?

12 A Not that I'm aware of.

13 Q Was Tim Hoffman present?

14 A No.

15 Q Was Brian Brady present?

16 A No.

17 Q Do you know if Scott went to gather information about
18 Prior Art from any of those gentleman?

19 A I don't know if he did or didn't.

20 (WHEREUPON, DOCUMENT WAS MARKED
21 FOR I.D. BY COUNSEL AS NO. 19.)

22 BY MR. RYAN M. FOUNTAIN:

23 Q Okay.

24 This is Exhibit 19 (Indicating).

25 Do you recognize that?

1 That earlier answer included a lot of information
2 about Prior Art.

3 Right?

4 A In your opinion, yes.

5 You are the expert. I'm not.

6 Q Okay.

7 A I don't think Prior Art is a cargo trailer, in my
8 opinion.

9 Q Why not?

10 A Because it's not an RV.

11 Q Cargo --

12 A Meaning -- neither is a horse trailer.

13 A horse trailer, in the area that we are talking
14 about, all it has to do is hold hay in the manger.

15 It's not an RV. It's not -- it doesn't have
16 living quarters in it.

17 Now, that's my opinion.

18 Q Have you ever seen a cargo trailer with living quarters
19 in it?

20 A Yeah. Now.

21 Q Prior to the lawsuit, had you seen a cargo trailer with
22 living quarters?

23 A Never with a bedroom slide.

24 Q But with bedrooms, though.

25 Right?

1 A Yeah.
2 But ours includes a bedroom slide. It's
3 different.
4 Q I see.
5 A And I never seen one with short bed truck clearance,
6 either.
7 Q Okay.
8 Well, let's -- let's stick with cargo trailers for
9 a minute.
10 A Okay.
11 Q You were aware that before your invention, people had
12 cargo trailers with living quarters in them.
13 Right?
14 A Yes.
15 Q And let's look at horse trailers.
16 You were aware that before your invention, people
17 had horse trailers with living quarters in them.
18 Right?
19 A Yes.
20 Q And in those instances when people had cargo trailers
21 with living quarters in them, did you consider that to
22 be an "RV"?
23 A No.
24 Q Have you ever seen a toy hauler?
25 A Mm-mm. I own one.

1 Q Do you consider that to be an RV?
2 A Yes.
3 Q Well, what's the difference -- in your mind -- between
4 a "toy hauler" and a "cargo trailer with living
5 quarters"?
6 A Well, I can live in my upstairs, the upper deck in my
7 toy hauler. That's an RV.
8 And I've got four foot of clearance in a cargo
9 trailer. So all I have room for is a bed laying up.
10 And I can't stand up in it.
11 Q And being able to stand up in the bed area is, in your
12 mind, the Hallmark of an RV?
13 A Of a conventional fifth-wheel. It always has been.
14 At least for 20 years it has been.
15 Q Would it be fair to say, though, that a cargo trailer
16 with the living quarters is a travel trailer?
17 A I wouldn't say that, no.
18 Q It wouldn't --
19 A It's a cargo trailer.
20 Q Well, what's the difference between a "cargo trailer
21 with the living quarters" and a "travel trailer", in
22 your mind?
23 A In my mind, it's -- it's how it's used. You know, it
24 doesn't contain metal walls. It's insulated.
25 I mean, I know there's -- now there's products

1 to work for us.

2 He was an employee of ours.

3 Q Okay.

4 When is the last time you talked to Eric?

5 A Probably Louisville Show.

6 Q December of last year?

7 A '08 -- December of '08.

8 Q Okay.

9 A Just in passing. Not big conversation.

10 Q Okay.

11 If you would, turn back to Exhibit 16 for a
12 minute.

13 A (Indicating).

14 Q Page seven.

15 (PAUSE IN THE PROCEEDINGS.)

16 MR. RYAN M. FOUNTAIN:

17 Q Do you consider the drawings shown there to be of a RV
18 product?

19 A Never seen one that looked like that before
20 (Indicating).

21 Q Did you ever hear of a Company called "Roadmaster"?

22 A The Roadmaster that I'm aware of is a cargo trailer
23 manufacturer.

24 Q Do you know someone named Danny Yarnel?

25 A Not that I can recall.

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1 Do you think the drawing shown on figure 7 is
2 Prior Art?

3 A No.

4 Q Why not?

5 A I believe it's a cargo trailer.

6 Q Even though it says: "RMC 8-wide fifth-wheel with
7 wedge nose...?"

8 A Yeah.

9 It's -- and at the end of that statement, it could
10 say: Cargo trailer.

11 I mean, this is your document, not mine. You can
12 say anything you want to say.

13 Q Okay.

14 (WHEREUPON, DOCUMENT WAS MARKED
15 FOR I.D. BY COUNSEL AS NO.29.)

16 (PAUSE IN THE PROCEEDINGS.)

17 MR. RYAN M. FOUNTAIN:

18 Q I would like you to take a look at Exhibit 29.

19 A (Indicating).

20 Q Do you recognize what's shown there?

21 A I mean, I don't recognize it for what it is, but I
22 recognize it's a travel trailer of sorts.

23 More likely a cargo trailer.

24 I don't know the Patent.

25 I don't know if reference.

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1 A Yeah.

2 Q Do you recall any others?

3 A No.

4 Q How about a Cherokee?

5 A I had a Cherokee but it wasn't "V" nose.

6 Q But have you ever seen any Cherokee "V" nose?

7 A Not that I can recall.

8 Q Okay.

9 Ever heard of an Eliminator travel trailer?

10 A Only in this document that I reviewed -- in your
11 original Answer, that's what you call it.

12 Q You don't recall ever seeing one?

13 A I seen an Eliminator cargo trailer going by one time
14 because I seen the word "Eliminator."

15 But I couldn't tell you what the front end looked
16 like. It was going the other way.

17 I just recognized it because of the word
18 "Eliminator."

19 Q Okay.

20 Prior to this lawsuit being filed, Forest River
21 received a cease and desist letter from your attorney.

22 You are aware of that, aren't you?

23 A I believe so, yes.

24 Q Okay.

25 And, were you aware that Forest River responded to

1 that letter?

2 A Not really.

3 Q Did anybody --

4 A I mean -- go ahead.

5 Q No. Finish, please.

6 A I had heard and timing is -- I don't -- because
7 post-mortem or prior to the lawsuit.

8 But, I know that there was some sort of answer.

9 And I think there was some -- maybe "Eliminator"
10 was mentioned at that time.

11 And we have Prior Art that says we can -- you
12 know, we -- we believe the Patent is invalid. To
13 that -- something -- something to that extent.

14 Q Well, the correspondence from your Attorneys was back
15 in 2007.

16 Do you recall that?

17 A The only thing I remember was this recent issue.

18 Q I see.

19 Well, do you recall anybody at Heartland checking
20 out Forest River's allegation in that early
21 correspondence that there was this Prior Art?

22 A I don't know of any.

23 Q You don't know of anybody who checked to see if Forest
24 River was telling the truth?

25 A I don't know of anybody, no.

- 1 Q Do you know of any reason why that would not have been
2 done?
- 3 A I think our opinions were that we had a fifth-wheel RV
4 and a cargo trailer -- are two different things.
- 5 Q Well, how did you know Forest River was talking about a
6 "cargo trailer" at that point in time?
- 7 A Scott was aware of what an "Eliminator" was.
- 8 Q Scott told you that at the time?
- 9 A Scott told me what an "Eliminator" was.
- 10 Q And did he tell you at the time that it was a cargo
11 trailer?
- 12 A Yes.
13 I believe he'd seen it.
14 I don't know that for sure.
15 But I believe he had seen it.
- 16 Q Okay.
17 So you didn't look further because you said cargo
18 trailers are different from RV's?
- 19 A Yes.
- 20 Q Cargo trailers and RV's use substantially the same
21 trailer frame, don't they?
- 22 A I'm not in the cargo trailer business.
23 I can't answer that question.
- 24 Q You have no idea whether the frames are similar or not?
- 25 A Not without making assumption.

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1 it.

2 I can't do that.

3 Q Okay.

4 So, in your mind then, this is not showing Prior

5 Art.

6 Is that right?

7 A This isn't enough information to show Prior Art.

8 Q You would need to see the actual trailer?

9 A Yes.

10 Q Ever hear of something called a Sunrise Friend trailer?

11 A No.

12 Q Well, when you were working at Gulf Stream, you were

13 aware of Gulf Stream's competitors in the fifth-wheel

14 market.

15 Right?

16 A Many of them, yes.

17 Q And you were aware that Cobra Industries was a

18 competitor in the fifth-wheel market.

19 Right?

20 A Cobra Industries.

21 Q At that point in time?

22 A Not really.

23 (PAUSE IN THE PROCEEDINGS.)

24 BY MR. RYAN M. FOUNTAIN:

25 Q If this product was advertised as having an improved

1 A I've seen the product.

2 I've seen the actual product in front of me.

3 Q But you never saw the frame?

4 A Correct.

5 Q Okay.

6 MR. RYAN M. FOUNTAIN: I don't have any other
7 questions for you at this time.

8 Would you like to cross-examine the witness?

9 MR. DAVID P. IRMSCHER: Take a short break.

10 THE VIDEOGRAPHER: We're going off the record
11 at 5:03 p.m.

12 (FOLLOWING A BRIEF RECESS THESE
13 PROCEEDINGS WERE HAD:)

14 THE VIDEOGRAPHER: We are back on the record
15 at 5:08 p.m.

16

17 **CROSS-EXAMINATION**

18 MR. DAVID P. IRMSCHER:

19 Q Mr. Rhymer, can you tell us why the five names are on
20 the Patent as named/inventors in your understanding?

21 A Well, early on as the Company was formed, I was the
22 inventor of the Patent.

23 However -- however, when it became time to fill
24 out the information, it didn't seem right for just my
25 name to be on there.

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1 So when the question was asked to me, I answered,
2 "Well, I think we should all been on there."

3 Q And why did -- why did you think all the names should
4 be on there?

5 A Because we were a start-up Company.

6 It just didn't seem fair that just my name would
7 be on there.

8 Q Earlier today, you were asked a number of questions
9 about the turning standard for travel trailers.

10 Do you recall that?

11 A Yes.

12 Q Do you believe that was relevant to your invention?

13 A If you are referring to the SAE standard, no.

14 We're talking travel trailers and fifth-wheels.

15 Q And you were asked a number of questions about "V" nose
16 cargo trailers and "V" nose horse trailers.

17 Did you consider those to be relevant to your
18 invention?

19 A I did not consider any horse trailers or cargo
20 trailers -- travel trailers as Prior Art according to
21 our fifth-wheel RV.

22 MR. DAVID P. IRMSCHER: Thanks very much. I
23 have no further questions.

24 MR. RYAN M. FOUNTAIN: A couple things.

25 RE-DIRECT EXAMINATION

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1 MR. RYAN M. FOUNTAIN:

2 Q You said when the time came to fill out the
3 information, you felt it wouldn't be right to have just
4 you on the Patent.

5 Right?

6 A Yes.

7 Q When was that?

8 A It was when we did the -- the first document early on
9 in -- in '04.

10 In March of the '04.

11 Our Preliminary.

12 Q The Provisional Patent Application?

13 A Provisional Patent, yeah.

14 The question was asked to me.

15 I don't recall which partner asked the question.
16 I think they asked it because they knew I was the
17 inventor. And I said, "Well, everybody's name can be
18 on there."

19 I mean, as far as I'm concerned, we were all --
20 we're Heartland.

21 Q Who asked you that question?

22 A I don't recall who asked that question.

23 Q Was it a member of Heartland?

24 A Yes. Yes.

25 It was one of the partners.

1 It was either Scott or Brian.

2 I don't recall which.

3 Q Okay.

4 Did you ever discuss this inventorship issue with
5 an attorney while that Patent Application was pending?

6 A My contact was through Scott.

7 If that's what you mean.

8 Q Do you know if Scott discussed the inventorship issue
9 with an attorney when the Application was pending?

10 A Meaning having multiple names on there?

11 I don't know of anything about that.

12 I mean, I don't know that was a problem.

13 Q Do you know of any discussion Scott had with any
14 attorney before that Patent issued concerning who was
15 an inventor?

16 A Not that I am aware of.

17 Q Okay.

18 And Mr. Irscher asked you a moment ago about SAE
19 standards.

20 And you said, "We're talking travel trailers and
21 fifth-wheels."

22 Well, there are SAE standards for
23 fifth-wheels.

24 Right?

25 A Not for turning radius.