

UNITED STATES DISTRICT COURT
Northern District of Indiana
South Bend Division

HEARTLAND RECREATIONAL)	
VEHICLES, LLC,)	
Plaintiff,)	
)	
)	
v.)	CASE NO.: 3:08-cv-490 JD
)	
FOREST RIVER, INC.,)	
Defendant.)	

HEARTLAND'S CROSS-MOTION FOR SUMMARY JUDGMENT

Forest River, Inc.'s ("Forest River") Motion for Partial Summary Judgment against Heartland Recreational Vehicles, LLC ("Heartland") seeks judgment on a claim that Forest River has not pled—one based on Heartland's acquisition of a so-called "Master List" of recreational vehicle dealers. While Heartland obtained knowledge of the relevant facts surrounding the claim during discovery, Forest River did not express its intention to base a claim on those facts until after Heartland filed its initial Motion for Summary Judgment in this matter. Heartland expressed its unwillingness to consent to the admission of the claims into the case, and Forest River never sought leave of the Court to formally amend the pleadings. Instead, Forest River filed a separate lawsuit alleging the claims. (*See* Exh. L, Complaint in Cause No. 3:10-CV-409 JD.) Accordingly, Heartland did not conduct full discovery into the claims, and it did not address them in its own Motion for Summary Judgment, which Heartland intended to use to dispose of this entire lawsuit.

The Court should not permit Forest River's untimely attempt to add new claims to this matter. For the reasons outlined in Heartland's Response to Forest River's Motion for Partial Summary Judgment and Memorandum in Support of Cross-Motion for Summary Judgment (the

"Response and Memorandum"), the Court should deny Forest River's Motion for Partial Summary Judgment and instead dismiss its untimely claims with prejudice. However, if the Court decides to consider the merits of Forest River's Motion, it should grant this Cross-Motion for the reasons outlined in Heartland's Response and Memorandum. Furthermore, because Heartland has not had the opportunity to conduct focused, adequate discovery, if the Court declines to award summary judgment to Heartland, it should permit Heartland to take further depositions and then re-file its own, dedicated motion for summary judgment over these belated claims before allowing them to go to trial. That discovery would include, but not be limited to, depositions of Brad Whitehead and Rod Lung, the principal actors at issue with respect to Forest River's claims.

The arguments and evidence supporting this Cross-Motion are outlined more fully in the Response and Memorandum and in Heartland's Statement of Genuine Disputes and Material Facts.

Respectfully submitted,

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ATTORNEYS FOR PLAINTIFF,
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CERTIFICATE OF SERVICE

The undersigned counsel for plaintiff Heartland Recreational Vehicles, LLC, hereby certifies that a copy of the foregoing was served upon the following, this 8th day of December, 2010, by operation of the Court's electronic filing system:

Ryan M. Fountain
420 Lincoln Way West
Mishawaka, Indiana 46544-1902

/s/ David P. Irmischer

David P. Irmischer