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## Heartland RV lawyers threaten RV Daily Report

Greg Gerber posted on October 19, 2010 13:36 ★★★★★



ELKHART -- James Brotherson, a partner in the law firm of Baker and Daniels, told RV Daily Report this afternoon his company is preparing to issue a subpoena to force the website to identify the name, e-mail address and IP address of someone who posted a comment to a story which appeared in the Oct. 15 issue of RV Daily Report.

To read the story and the comments, [click here](#).

Representing Heartland RV, Brotherson claims a comment posted by a person identified only as "The Thinker" will become a source of litigation because of its malicious nature.

"The fact I am telling you this creates a duty for you to preserve your electronic information," Brotherson told Greg Gerber, publisher of RV Daily Report. "According to our technical consultants, whoever is posting the comments is required to enter a name and an e-mail address. Our consultant says the system you use keeps those names and e-mail addresses."

Brotherson claims that RV Daily Report has a duty to prevent problem posters from posting information Heartland considers malicious and libelous.

When Gerber asked Brotherson what about the posting he thought was malicious and libelous, he replied, "You are not interviewing me."

"I am not trying to threaten you, but we regard this as a problem posting," said Brotherson. "If people want to make general comments to a story, we consider that to be fine. We are assuming you are a neutral journalist."

Brotherson then threatened Gerber against spoiling any evidence or manipulating that evidence as it relates to the story and comments posted to the story.

RV Daily Report requires people posting comments to stories to enter a name or e-mail address, but nothing is done to verify that information, Gerber said. That step is required to make it more difficult for electronic robots to post spam messages to the news articles and blog posts, he explained.

"It has been our long standing policy that we will allow anyone to sound off on any issue, as long as they are polite and not using offensive language," said Gerber. "RV Daily Report is designed to be the RV industry's source for open debate about critical issues facing the industry. Many times, people have information pertinent to the issue being discussed; however, for whatever reason, they may not wish to be identified."

"In reviewing the comment posted by 'The Thinker,' it appeared the individual had specific knowledge about the situation. Heartland RV is always welcome to post any rebuttal at any time to anything that appears on our website. They don't even need a lawyer to do so," said Gerber. "We have also removed comments upon occasion when presented with evidence the information contained in the post is inaccurate."

"It is unfortunate that Heartland RV feels a need to drag RV Daily Report into its long-standing feud with Forest River. But we will continue to cover this story, and to allow people to weigh in on any story we post," he added.

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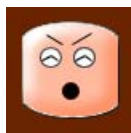
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## Comments



# Cornfused

Tuesday, October 19, 2010 3:36 PM

The "malicious" comment must have been deleted, cause I see nothing there that would even remotely require the services of an attorney.



# Aaron

Tuesday, October 19, 2010 3:49 PM

Sounds like his post mentions things that would be in the news or otherwise public record but with his opinion in the mix. Seriously they contacted a lawyer over that? What a waste of money. No offence Greg but there are not that many people who read the stories let alone the comments to worry about that.



# Ronald Burdge

Tuesday, October 19, 2010 3:58 PM

I read the comments too and I don't see anything there that looks malicious or libelous either. However, in a really good mud wrestling match, malice and libel don't matter much anyway.



# Jim Anderson

Tuesday, October 19, 2010 6:40 PM

I Guess if you don't like the message you shoot the messenger..

OR if you build and inferior product you really do have to worry about the competition.



# John Gilmer

Tuesday, October 19, 2010 9:57 PM

OK ... now I'm really curious. I was actually looking at their Road Warrior and Cyclone toy haulers a few days ago but have concerns now because they seem to be so thin skinned. Anyone want to give us the Reader's Digest version of what was said?



# Mike in Maine

Wednesday, October 20, 2010 12:09 AM

I support your efforts 100%, I actually find it humorous that Heartland couldn't post a response to the poster if they found the post inaccurate.



# The Thinker

Friday, October 22, 2010 6:54 AM

You know what, I can't believe all this fuss. I'm just a little guy. Just a consumer, and an RV'er, who used to work in the RV industry (on the retail sales and service side) MANY years ago. I no longer have any connection to the industry other than the fact that I use an RV, and still have a great interest in the industry that I loved in my youth. In that regard, I still subscribe to, and faithfully read, many trade publications and online trade sites.

Litigation, some of it meaningful, necessary, and justified, and some of it (in my opinion) frivolous, has become such an issue in the industry that I voraciously follow that too, line by line, and word by word, via public records and services like Justia.com Dockets & Filings.

I am not an attorney, and don't profess to be one, but am just a layperson (and retired peace officer) with just a rudimentary understanding of the judicial system and court proceedings and, just maybe, too much time on my hands. Thus, my posts, in regard to this or any other case, are my opinions based on my understanding of the filings, proceedings, and rulings which I have read. If I misinterpret, it's an honest mistake and certainly not malicious.

I am a person of meager means who was forced into medical retirement before my time due to an assault and battery by a felon. I'm in poor health, and constant pain, due to my on-the-job injury and subsequent surgeries. I have no real assets (other than a five year old Class-C ) and find it rather astounding that a big, powerful, law firm would seemingly threaten to sue me for expressing my understanding of, and opinion, regarding proceedings that are in the public record.

I make no apologies, as I feel I have done nothing wrong, other than to Greg Gerber for bringing heat down upon he and his website.



# Ronald Burdge

Friday, October 22, 2010 7:26 AM

Dear Thinker, I've been following the industry for years too but I've never owned an Rv. Been in 'em. Rode in 'em. Even stayed in 'em awhile back. But admit I never owned one. I am a lawyer, but that's neither here nor there. Your response to the company lawyer's indirect threats, above, certainly makes it clear to everyone that you had no intent to libel or slander anyone and, frankly, reading your earlier post, I just can't see what all the fuss by them is about either. In my own experience, I have seen some lawyers (unfortunately often factory lawyers) who make threats just to quiet someone - not having anything to do, really, with whether or not they

crossed the line somewhere - more just because they don't want the opinion to be spoken out loud. Then there are the times, like this I suppose, where all they are doing in reality is making the noise louder. Like I said before, if they built their product right, treated their customers right, and honored their warranties without trying to short-sheet their own dealers, manufacturers would find themselves with a lot more customers and a lot more sales, and nothing for anyone to complain about. The net result would be they'd be in the courts a lot less. But then again, those company lawyers would have to start writing wills or something a little more productive, I suppose.



# Greg Gerber

Friday, October 22, 2010 10:08 AM

I haven't received a subpoena yet, but that doesn't mean one is not in the works. My sister is an attorney and she's told me that Heartland will have to file a subpoena in federal court and pay to have it served on me in Arizona.

At that point, we'll kick the ball to the company hosting our website, which will require another round of subpoenas. But, in talking to them, they can't figure out where to get the information, so it would be kicked to another company, and possibly four or five others, each requiring a different subpoena and service.

She estimates it could cost Heartland up to \$10,000 just to try to find the IP address of the poster.

From there, they have to subpoena the poster's Internet service provider to find out more identifying information in order to consider any type of legal action against a poster. And that just buys them the physical address. If it was sent from a company, then Heartland needs another subpoena to force the company to identify the specific computer used to post the comment.

If it was sent from a common area, like a Starbucks, or some place with a wireless connection, like a hotel room -- good luck Charlie!

In the meantime, any one of the media companies being subpoenaed, including RV Daily Report, may see this as a First Amendment test case which needs to be challenged.

After all, what Heartland is attempting to do would have a chilling effect on the Internet. Another legal-minded friend wondered if Heartland's lawyers even understood how the Internet worked.

It appears Heartland officials want me to verify the accuracy of every comment or statement that appears on our site. That's where their libel claims come from. How they expect a site owner to verify the accuracy of an opinion remains to be seen. But it opens up a whole can of worms as to who is considered authoritative enough to verify a claim. And, if it is the company which has been charged, can they simply hold up effective communication by refusing to say a statement is accurate.

Then, Heartland's officials are expecting me, as a website owner, to be able to verify the identification of every person who posts a comment to my site. How would that be done? Faxing a copy of a drivers license and birth certificate before a comment can be approved?

That's why at least one law firm specializing in First Amendment issues is kind of interested in this case. Because if a company like Heartland can unleash its legal team against little old RV Daily Report, how many lawsuits and subpoenas would websites like Fox News, CNN, ESPN, MSNBC -- and every blogger in the country -- have to fend off if such a tactic were allowed to be employed every time someone's feelings were hurt.

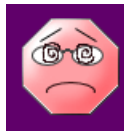
So with its threats against RV Daily Report, Heartland has taken the lid off a rather large can of worms -- not to mention irritated the editor of publication operating in the industry in which the company serves.



# Mike in Maine

Friday, October 22, 2010 11:45 AM

Very well put "The Thinker" and Greg. I would prefer Heartland to speak to the market with their products and services; not their corporate lawyer. Perhaps now that they are a THOR unit they need something for their legal department to do...?



# Bob Taylor

Sunday, October 24, 2010 6:59 PM

I like, Thinker, keep up with RVing News and I have read the same things that Thinker has written in his Post. The only difference is that I have just remembered some details from the reading. We all pick up info in areas that concern or interests us. I have sold Heartland products and I had a high opinion of them in the past but that has been changing the past couple of years.



# Mike McKay

Monday, October 25, 2010 8:39 AM

Greg, KUDOS for taking the high road! By affording both sides the opportunity to clarify, you keep an independent/objective bent, providing your readers with real news, not the polarized version we see in the media today. As a good reporter, we know that you will check out the obvious claims that may not be based on fact, as noted in your comments.

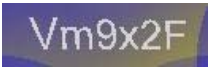
Keep it up!

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