

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF INDIANA  
SOUTH BEND DIVISION

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

**ORDER**

On December 8, 2010, Defendant, Forest River, Inc. (“Forest River”), filed a motion to compel the deposition of Plaintiff, Heartland Recreational Vehicles, LLC (“Heartland”), regarding any gain from it received from the alleged use of Forest River’s master client list. On December 27, 2010, Heartland filed its response. For the following reasons, this Court now **DENIES** Forest River’s motion to compel.

**I. RELEVANT BACKGROUND**

On July 19, 2010, Forest River noticed the deposition of Heartland with regard to the nature and extent of Heartland’s gain from the alleged use of Forest River’s master client list. Topic No. 2 of the deposition notice stated that Forest River intended to inquire about “Heartland’s sales of products as a result of obtaining the list of Forest River dealers who were planning to attend the private Forest River trade show in October 2008, including the revenues received from such sales . . . .” Doc. No. 151-1 at 1. The deposition was held on September 24, 2010, after Heartland asked for more time to prepare for the deposition. Dennis Donat (“Donat”), chief financial officer for Heartland, appeared and testified at the deposition on Heartland’s behalf.

At the deposition, when questioning Donat with regard to Topic No. 2, Forest River's counsel asked if Heartland obtained any additional sales of products by using the master client list. Donat responded that he had no knowledge of any such sales, nor had he tried to investigate any such sales.

Forest River argues now that the Court should compel another deposition of Heartland with regard to Topic No. 2, so that Heartland can admit that it received an increase of sales as a result of its alleged use of the Forest River master client list. Forest River argues that because Donat was unprepared to make any admissions regarding the amount of Forest River's damages that his testimony was deficient.

## **II. ANALYSIS**

Under Fed. R. Civ. P. 37(a)(1), "a party may move for an order compelling disclosure or discovery. The motion must include a certification that the movant has in good faith conferred or attempted to confer with the person or party failing to make disclosure or discovery in an effort to obtain it without court action." The person seeking the order must show that it is entitled to the discovery because the information sought is relevant and not privileged. Fed. R. Civ. P. 26(b)(1).

Heartland argues that an order to compel another deposition is inappropriate for several reasons. First, Heartland argues that the motion was untimely because Forest River filed its motion almost two months after the close of the discovery period. Second, Heartland contends that Forest River does not need to conduct another deposition because Forest River already has access to all the information it is seeking. Finally, Heartland argues that compelling a second deposition would be unfair because Donat was prepared for the topics as noticed, but the

questions asked went beyond the scope of the noticed topics.

This Court finds Heartland's arguments persuasive. First, the motion was untimely. Although the "Federal Rules of Civil Procedure place no time limit on the outside date for the filing of a motion to compel discovery, . . . motions to compel filed after the close of discovery generally are deemed untimely." Vision Ctr. Nw., Inc. v. Vision Value, LLC, No. 3:07-cv-183, 2008 WL 5191456 at \*3 (N.D. Ind. Dec. 10, 2008). However, "[m]odern discovery practices seek to facilitate . . . open and even-handed development of relevant facts so that justice may be delivered on the merits and not shaped by surprise or like tactical stratagems." In re Sulfuric Acid, 231 F.R.D. at 342 (citation and internal quotation marks omitted). Thus, an untimely motion "accompanied by a reasonable and persuasive justification for its untimeliness may be excused." Vision Ctr., 2008 WL 5191456, at \*3. "However, when the movant fails to give a reasonable justification, courts' general aversion to unjustified delays usually result in denials of the motions." Fast Food Gourmet, Inc. v. Little Lady Foods, Inc., No. 05 C 6022, 2007 WL 1673563, at \*3 (N.D. Ill. June 8, 2007).

Forest River offers no excuse for the late filing. The deposition concluded more than three weeks before the close of the discovery period. Forest River waited almost two months after the close of the discovery period to file the motion. Now faced with a summary judgment motion, rather than filing a response, Forest River seeks to compel further discovery without any justification. This Court cannot accept Forest River's contentions given their untimely nature.

However, even considering the motion on its merits, Forest River fails to persuade the Court of the necessity of a second deposition. Heartland has offered evidence showing that it has already given Forest River all the information requested in the form of sales information,

specifically, the number of sales completed in the relevant time period, the name of the RV dealer placing the order, the model of trailer ordered, the purchase order number, the invoice price, the costs of the manufacture of the trailer ordered, and whether the dealer was listed on Forest River's master list. Furthermore, if the dealer was listed on Forest River's master list, then Heartland noted whether the dealer was an existing Heartland customer, an entirely new customer, or an existing customer purchasing a new model for the first time. If the dealer was not on Forest River's master list, Heartland noted that, as well. Because Forest River is trying to discover the extent of its damages, it is difficult for this Court to see how the information provided by Heartland does not serve that purpose. Quite the contrary, it appears that Heartland has already provided precisely the information that Forest River is seeking to discover in the present motion.

Furthermore, this Court finds that Donat was prepared to discuss Topic No. 2 as noticed, but not the questions asked in the deposition that went beyond the scope of the topic. The topic required Donat to testify about the "revenues from such sales [those made by using the master list], the actual costs of producing those products, and the marginal profits obtained by Heartland from such sales . . . ." Doc. No. 151-1 at 1. Donat was prepared to discuss the revenues from each individual sale, as noticed by the deposition, but he could not conclude what sales were made using the master list because there was no data to support such conclusions. See Doc. No. 151-2. As a result, this Court finds that a second deposition will not yield any information that has not already been discovered to Forest River.

### **III. CONCLUSION**

Because Forest River's motion to compel is untimely, and because it would only produce

information that Forest River already has, this Court **DENIES** Forest River's motion to compel.  
[Doc. No. 145].

**SO ORDERED.**

Dated this 19th day of January, 2011.

S/Christopher A. Nuechterlein  
Christopher A. Nuechterlein  
United States Magistrate Judge