

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 for enforcement of this Court’s order of March 31, 2010. On December 27, 2010, Plaintiff, Heartland Recreational Vehicles, LLC (“Heartland”), filed a response. On January 13, 2011, Forest River filed a reply. For the following reasons, this Court **GRANTS IN PART** Forest River’s motion.

**I. RELEVANT BACKGROUND**

On October 28, 2008, a Heartland employee, Brady, sent an email to various dealers discussing events that took place on October 22-23, 2008, related to Forest River’s trade show. The email stated that several Forest River dealers “stopped by” Heartland and signed deals to purchase Heartland products. Doc. No. 144-2 at 1. On March 31, 2010, this Court ordered Heartland to produce “any communications, both internal to the company and external with new dealers, relating to the new sales occurring within the time period.” Doc. No. 112 at 7.

Heartland was given an opportunity to search its own files in order to produce the Brady email of October 28, 2008, and any responses from Forest River dealers. Heartland conducted searches on four separate occasions. However, the email was not produced, nor were any

responses. Heartland claimed that access to the email and its responses was lost because any backups containing the email and its responses had been erased.

Forest River now seeks to enforce Heartland's compliance with this Court's order of March 31, 2010, by searching Heartland's files with its own forensic computer expert in an effort to recover the lost email. Forest River also seeks sanctions, in particular, a stay of all proceedings, including Heartland's motion for summary judgment, until Heartland produces the emails.

## **II. ANALYSIS**

Under Fed. R. Civ. P. 37(b)(2)(A), "[i]f a party . . . fails to obey an order to provide or permit discovery, including an order under Rule 26(f), 35, or 37(a), the court where the action is pending may issue further just orders" including "staying further proceedings until the order is obeyed."

Heartland argues that the present motion should be denied for several reasons. First, Heartland argues that the motion is untimely because it was filed two months after the close of discovery. Second, Heartland argues that the emails are not relevant to this action, because they do not relate to claims in this action, but to claims made in a related action also pending in this Court. Third, Heartland contends that it conducted a search of its computers and could not produce the desired emails because they were deleted.

First, the motion is timely. The matter was first brought to the Court as a motion to compel and is now being reargued as a result of Forest River's dissatisfaction with the results of Heartland's searches. This Court is also persuaded that the emails and its responses are relevant, as already discussed in the Court's previous order. The Court also notes the numerous attempts

made by Heartland to produce the emails. However, the Court is uncertain as to the adequacy of Heartland's search efforts. Therefore, the Court finds that a data recovery expert may be retained by Forest River for the purposes of conducting a more extensive search of Heartland's email backups. If the search yields copies of the sought emails, then Heartland's four previous efforts will be shown to be inadequate, and Heartland must bear the cost of the data recovery expert. On the other hand, if the forensic search is fruitless confirming that Heartland's searches were adequate, then Forest River must bear the cost.

### **III. CONCLUSION**

Because the Court is uncertain as to the adequacy of Heartland's compliance with this Court's March 31, 2010 order, this Court **GRANTS IN PART** Forest River's motion for enforcement. [Doc. No. 144]. The matter of who will bear the cost of the data recovery expert will depend on the results of the forensic search and will be decided upon motion to the Court. Finally, because the discovery that is the subject of this motion is related to damages, the Court now delays any response to any dispositive motion that relates to damages until thirty days following the results of the data recovery expert search. The deadlines for filing any dispositive motion and responses regarding liability remain as previously scheduled and are not altered as a result of this order.

**SO ORDERED.**

Dated this 25th day of January, 2011.

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