

UNITED STATES DISTRICT COURT
Northern District of Indiana
South Bend Division

HEARTLAND RECREATIONAL)	
VEHICLES, LLC,)	
Plaintiff,)	
)	CASE NO.: <u>3:08-cv-490 AS- CAN</u>
v.)	
)	
FOREST RIVER, INC.,)	JURY DEMAND
Defendant.)	

FOREST RIVER’S MOTION FOR CONTINUANCE OF ORAL ARGUMENT

Forest River, Inc., requests a continuance of the oral argument set for February 18, 2009 on the Motion to Dismiss because of a scheduling conflict of Forest River’s counsel.

On Friday, January 9, 2009, at 3:39 p.m., this Court issued an Notice of Oral Argument set for February 18. However, the undersigned counsel has a pre-existing commitment in another lawsuit which is likely to preclude attendance at that oral argument. Specifically, the undersigned counsel is required to attend a jury trial commencing on February 17, 2009, in the case of *Trealoff, et al., v. Forest River, Inc., et al.*, Civil Action #SCVSS96372 before the Superior Court of California, County of San Bernadino. This trial is in San Bernadino, California and is currently set to last six weeks, although a final pre-trial conference is presently set for February 13, 2009 and it is possible that the trial time will be shortened to last only from Feb. 17 to March 6, 2009.

The *Trealoff* case is likely to go to trial at this time. It has been pending since Nov. 1, 2002 and was set for trial last July, only to be “bounced” a few days before hand because of a Court scheduling conflict. At that time, the trial was continued to Feb. 17, 2009. At last report, Friday,

the Judge's docket clerk in the case informed counsel that the Judge had cleared his calendar for this case and it "was a go." The case is not likely to settle, having already been through three mediation attempts.

The undersigned counsel has been retained as a consulting attorney by trial counsel in the *Trealoff* case for the past five years and is needed in daily attendance at trial. The undersigned counsel is also the personal counsel for two of the individual witnesses in that case and may be required to participate in that capacity when those witnesses testify. Further, Forest River has retained the undersigned counsel to separately advise it on certain case issues likely to arise at trial.

The undersigned counsel contacted David Irmischer, Heartland's counsel, on Friday to discuss a continuance and it appears that the following dates are available to both counsel for re-scheduling of the oral argument: January 26 - 29, February 5 or 6, February 9 or 10. Alternatively, counsel is available at the conclusion of the *Trealoff* trial, probably in March.

At the same time, Forest River informs the Court that having on Friday received the Reply Memorandum for the Motion to Dismiss and in light of additional information which has come to light since this lawsuit began, Forest River is filing a motion to amend its Answer, Defenses, and Counterclaims today. That amended pleading is expected to have information which is at least relevant to the Motion to Dismiss, if it does not render it moot altogether, and further briefing may be requested by the parties as a result prior to oral argument.

A proposed form of Order has been sent to chambers herewith.

Dated: January 12, 2009

Respectfully submitted,

s/Ryan M. Fountain

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Certificate of Service

I certify that on January 12, 2009, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF system, which sent notification of such filing to all of the parties through at least the following counsel of record:

David P. Irmischer david.irmscher@bakerd.com
Abigail M. Butler abidgail.bulter@bakerd.com

s/Ryan M. Fountain

Ryan M. Fountain
Attorney for Defendant Forest River, Inc.