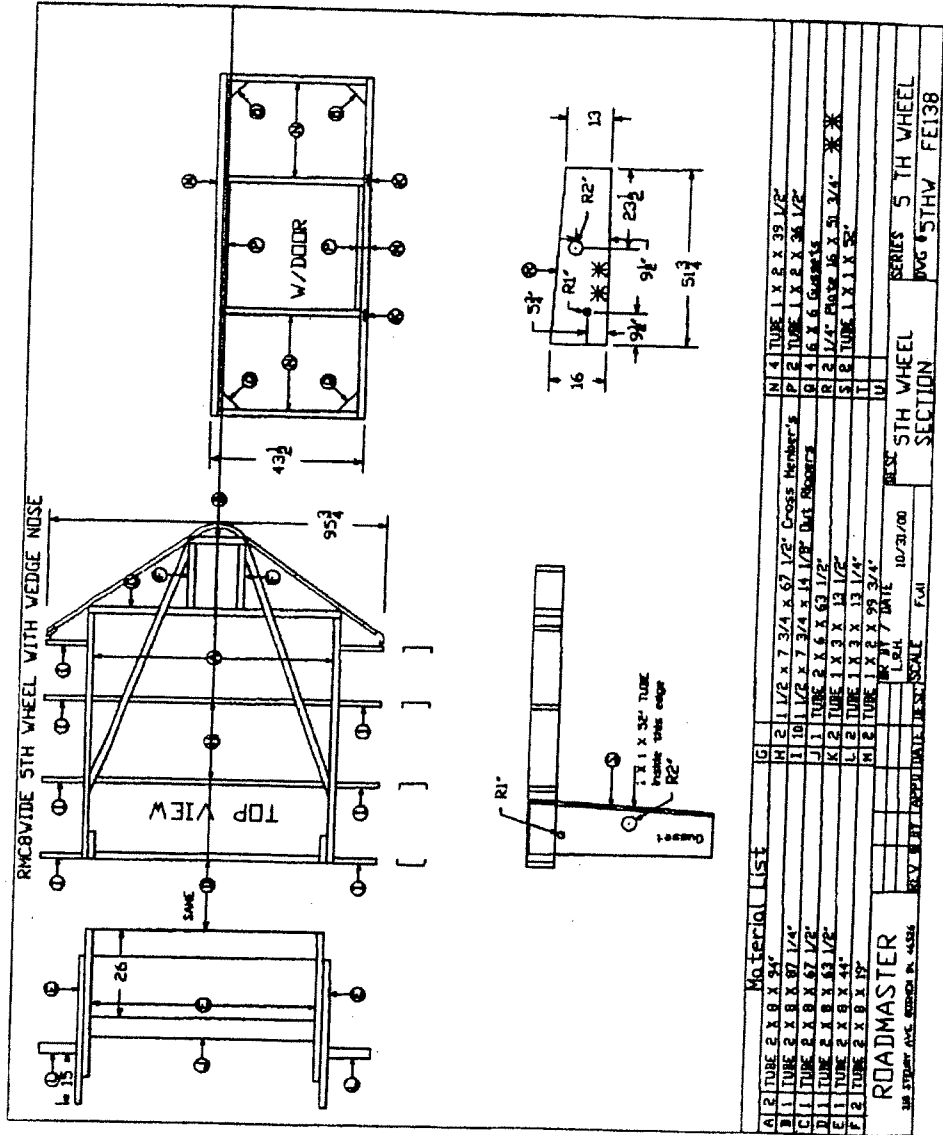


Tab L

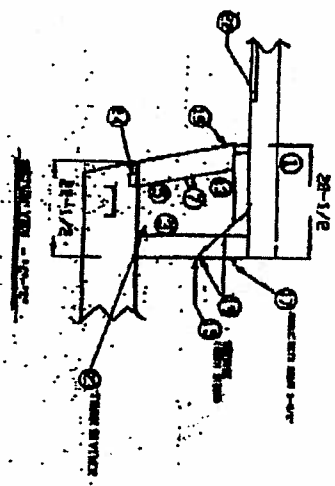
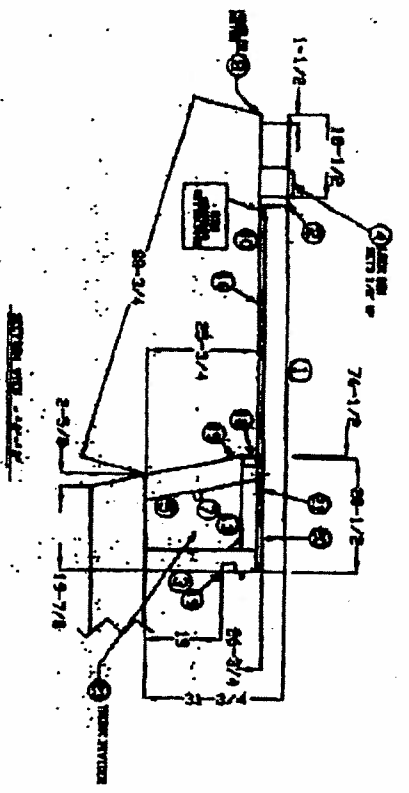
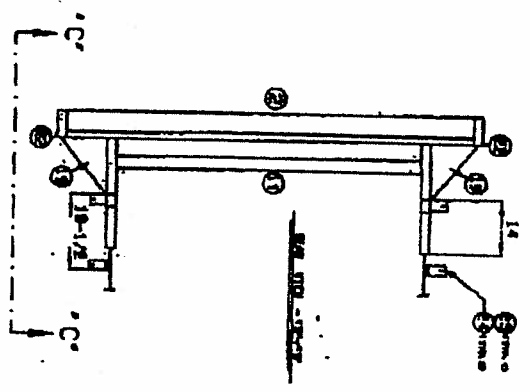
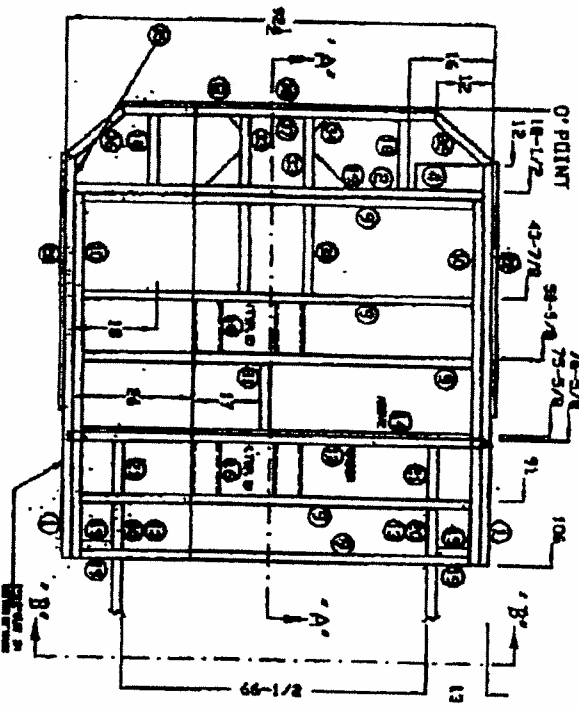


Material List		REV. BY		REVISION		DATE		SCALE		SERIES	
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B	1	TUBE	2 X 8 X 87 1/4"								
C	1	TUBE	2 X 8 X 67 1/2"								
D	1	TUBE	2 X 8 X 63 1/2"								
E	1	TUBE	2 X 8 X 44"								
F	2	TUBE	2 X 8 X 17"								
G	1	TUBE	1 X 1 X 32"								
H	2	1 1/2 X 7 3/4 X 67 1/2"	Cross Member's								
I	1	1 1/2 X 7 3/4 X 14 1/2"	MAX MEMBER								
J	1	TUBE	2 X 6 X 63 1/2"								
K	2	TUBE	1 X 3 X 13 1/2"								
L	2	TUBE	1 X 3 X 13 1/2"								
M	2	TUBE	1 X 3 X 13 1/2"								
N	4	TUBE	1 X 2 X 35 1/2"								
P	2	TUBE	1 X 2 X 36 1/2"								
Q	4	1/4 X 6 GASKETS									
R	2	1/4" PLATE	16 X 51 3/4"								
S	2	TUBE	1 X 1 X 20"								
T	1										
U	1										
ROADMASTER										SERIES 5 TH WHEEL	
REV. BY: [REDACTED]										DATE: 10/31/00	
REV. BY: [REDACTED]										SCALE: FULL	
REV. BY: [REDACTED]										SECTION: JWG 5THW FE138	

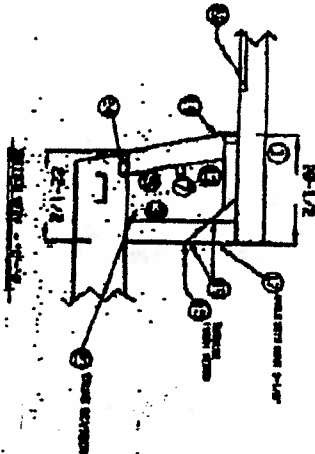
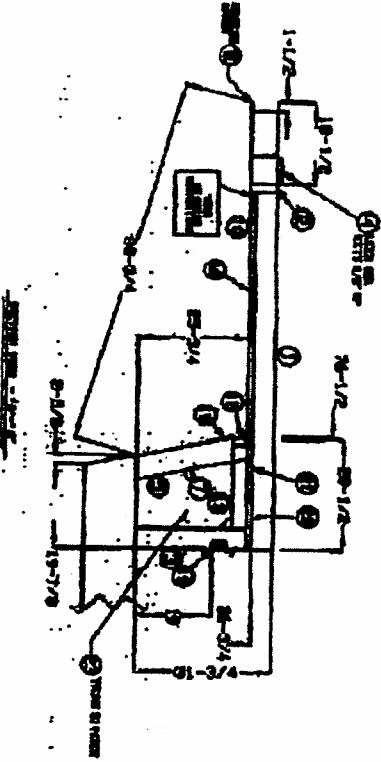
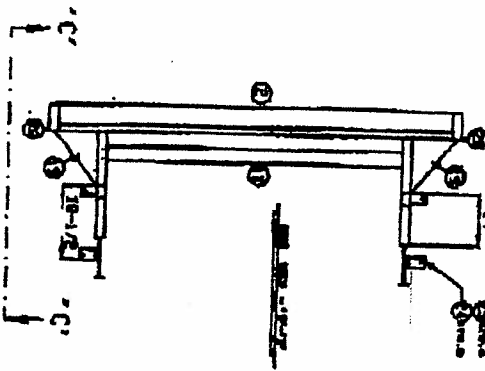
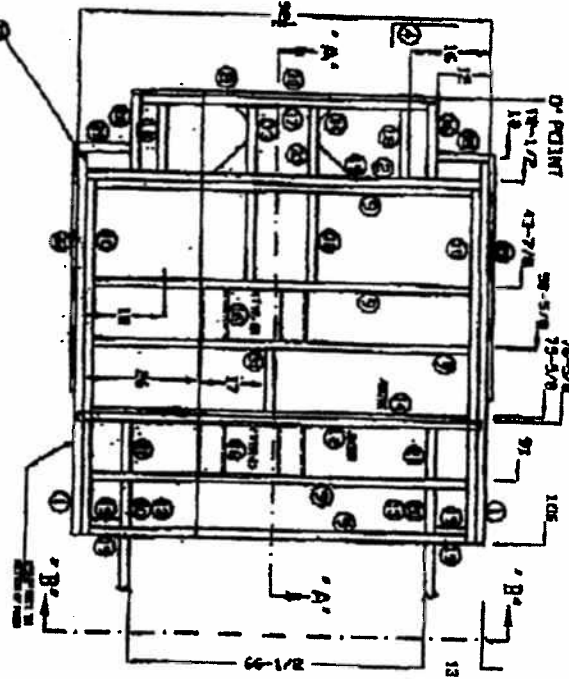
"Roadmaster" frame

Tab M

PROTO



NO.	DESCRIPTION	QUANTITY	UNIT	DATE	BY
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PROTO

PENGAD 800-631-698

EXHIBIT

4/1

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99	DP-1099	1	EA
100	DP-1100	1	EA

Tab N

1 which one did it the most, but -- but Scott is --
2 you know, he's a creative marketing guy. And,
3 you know, he's the one that had to make it look
4 good.

5 I mean, the bottom line is you can just --
6 you know, a perfect example is the Shadow Cruiser
7 one with just a blunt-cut cap. But we had to
8 put -- we had to make it look good. And that was
9 Scott's -- one of Scott's jobs was to make that
10 cap have some appeal to it and then lay out all
11 the graphics to fit into it.

12 Q That was done by whom?

13 A Scott would've laid out all the graphics.

14 Q Do you consider yourself an inventor with respect
15 to the improved turning radius patent?

16 MR. FOUNTAIN: Object to the form
17 of the question.

18 BY MR. IRMSCHER:

19 Q You can answer.

20 A I'm sorry. Ask me that again.

21 MR. IRMSCHER: Could you read it
22 back?

23 (A portion of the record was
24 read back by the court
25 reporter.)

1 A Yeah. Yeah, I do. I do. I do.

2 BY MR. IRMSCHER:

3 Q What was -- what do you consider to be your
4 inventive contribution?

5 MR. FOUNTAIN: Again, we'll
6 object to the form of that question.

7 A Well, when you sat in as many meetings as I had
8 to and discussed this thing with as many people
9 and have, you know, input as to -- I mean, I'm 25
10 percent of the input.

11 So, I mean, you know, I'm -- there's four of
12 us there, and we're all talking about this thing.
13 I'm part of that input on what we should do, how
14 we -- I mean, again, you know, I sold fifth
15 wheels for years. It wasn't like any of these
16 concepts were -- were, you know -- you know,
17 completely uncommon to me.

18 I was aware of the short-bed trucks. I was
19 aware of extended hitches. I was aware of some,
20 you know, issues out there, that people had to
21 buy special hitches to -- to allow the fifth
22 wheel to move backwards in order to make turns.

23 I think -- I think the group saw me and I
24 think even today -- I mean, I've done product
25 development ever since and have been. And I

1 was -- some of those special projects that I was
2 telling you about at -- at Gulf Stream before I
3 got there were all product development projects.

4 And, so, I was very knowledgeable in fifth
5 wheel, fifth wheel market, towing, concepts,
6 ideas, what we were trying to achieve. I mean,
7 so, I -- I'd say I was very helpful in discussing
8 certain items and issues and trying to overcome
9 what we needed to do. So --

10 Q Can you describe more specifically what ideas or
11 conceptions that you brought to the group that
12 ended up in this patent application?

13 A I can't right now, no. I don't -- I can't. I
14 suppose if I gave it some thought maybe at some
15 point, but --

16 Q Do you have an understanding of what prior art
17 is?

18 A Yes, I do.

19 Q And what's your understanding of what that is?

20 A It would be some of the concepts or ideas or art
21 or drawings of previous products, competitive
22 products or like products, I guess you could say.

23 Q And did you provide any prior art to anyone in
24 connection with the filing of these patent
25 applications?

1 became the turning radius patent. Do you recall
2 that?

3 A Yes.

4 Q And can you tell us specifically any particular
5 contribution that you believe you made?

6 A Yeah. I sure can. How about \$50,000 investment
7 to start the company?

8 Q Okay.

9 A How about getting the building so they could
10 build the fifth wheels or how about getting the
11 computer equipment so that they could make the
12 drawings on the computers or how about the
13 insurance so that they could sit there and
14 function or the bill of materials so they knew
15 how to build this fifth wheel, or the vendors,
16 dealing with Global Glass, and so -- and all of
17 the discussions that took place.

18 And had I known at the time that this was
19 gonna be an issue, I would've documented all of
20 those conversations. But I can't tell you that I
21 pulled out a piece of paper and a pencil and drew
22 a turning radius design, because I'm not very
23 long at drawing, nor do I know how to operate a
24 CAD system.

25 But I am smart enough to understand the

1 concept. And I knew that there was a
2 differentiator there and I knew that we were on
3 to something and I put in my two cents worth on a
4 regular basis. And I reviewed things as they
5 came up, and we all had discussions.

6 But it was not my position, by design, to
7 physically fill out paperwork in the application
8 and/or draw anything for anybody except for maybe
9 sketches on a piece of paper or something, the
10 concepts.

11 But, so, by the act that I with this group
12 had put in my money and did my portion of the job
13 and, you know -- I believe that I was part of the
14 invention. Absolutely.

15 Q Did you take any measurements as to how to change
16 the configuration of the front end of a fifth
17 wheel to improve the turning radius?

18 A I believe that I was involved in going out and
19 measuring a truck and measuring the cap and, you
20 know, taking tape measures and discussion of, you
21 know, "We need to get out here and get this kind
22 of clearance and --" and I remember we
23 specifically decided to get a short-bed, extended
24 cab, three-quarter-ton truck.

25 So, I had to get that. I procured that. I

1 A Yes.

2 Q -- done by the inventors?

3 A I'm aware of that.

4 Q Okay. Did you withhold any prior art from the
5 patent office intentionally?

6 A Not intentionally, I did not, no.

7 Q Okay. And did you misrepresent any prior art to
8 the patent office intentionally?

9 A No. I didn't even know I was supposed to even --
10 had I had any, I -- I didn't even know I was
11 supposed to give it to them or show it to them or
12 go over it or anything.

13 Q Okay. Would it be fair to say that you don't
14 believe you've misrepresented anything to the
15 patent office or lied to the patent office or
16 committed inequitable conduct? Is that true?

17 A I don't think it's true. I -- I -- I think I did
18 inadvertently. I think I did -- now that I have
19 knowledge of it, now that it's been explained to
20 me what I signed and what the requirements were,
21 unfortunately, I believe that -- you know, I
22 wasn't aware of that stuff when I signed it.

23 But --

24 Q What stuff weren't you aware of? What are you
25 referring to?

1 A I have not. But if you'd like to provide me a
2 copy of it, I would certainly be glad to.

3 Q What's your understanding of why the five
4 inventors were -- how many inventors were on the
5 original application? Five?

6 A I don't know.

7 Q Well, there's you, correct?

8 A (Nods head.)

9 Q Mr. Hoffman, correct?

10 A Uh-huh.

11 Q John Rhymer?

12 A Right. Scott.

13 Q Scott and Brian Brady?

14 A So, five. Yeah.

15 Q Okay. What's your understanding of why each of
16 those people was named as an inventor, if you
17 have one?

18 A Yeah. I don't -- I don't -- I don't know or have
19 an opinion. I really don't. I don't know.

20 Q Okay. Do you have any information that any of
21 the inventors were named as investors to deceive
22 anyone?

23 A No. But the -- the fact that Brian was on there,
24 I mean, he had absolutely nothing to do with any
25 part of it. I mean, he -- he wasn't even around

1 you here?

2 Is it your testimony that this bottom
3 photo on the first page of Exhibit 104 -- you'd
4 agree with me that doesn't show the same notched
5 front end as on the Landmark, correct?

6 A It does not show the exact same notch, no.

7 Q And do any of the other photographs in Exhibit
8 104 show the notched invention that you've
9 identified on Exhibit 127?

10 A Wait a second here. I thought -- I thought the
11 invention was the -- was the frame itself. I
12 thought that was what we --

13 Q Did your lawyer ever tell you that there are --
14 there are claims directed to the cap that are on
15 file at the patent office?

16 A I don't -- at which time? Which lawyer?

17 Q Ever.

18 A Have any of the lawyers, including --

19 Q Like Mr. Fountain. Has he ever told you that?

20 A I'm not sure he knows what exactly all the claims
21 were.

22 Q That's not my question. Has Mr. Fountain or
23 anybody else, any other lawyer, ever told you
24 that there are claims pending at the patent
25 office that are directed to the cap?

1 A No, not to my knowledge. I don't remember.

2 Q Don't you think that somebody should've told you
3 that?

4 A Don't you think that your firm should've told me
5 upfront what the original patent was for and what
6 we were doing? So --

7 Q Do you know what were -- what claims were in the
8 original patent as filed?

9 A No, I don't.

10 Q Okay. Did anybody ever tell you that some of the
11 claims were allowed and some of them were not
12 allowed and went on to a continuation
13 application? Did you ever hear anything like
14 that?

15 A He's told me that there has been a continuation,
16 but he didn't know specifically what it was.

17 Q Were you aware that the claims as originally
18 filed included some claims that were directed to
19 more than just the frame?

20 A No.

21 Q Didn't know that?

22 A No. Remember I told you nobody has -- has
23 discussed anything with me --

24 Q Okay.

25 A -- up until --

1 Q But I just thought maybe Mr. Fountain had given
2 you the application and you'd take an opportunity
3 to read it. Have you done it?

4 A Application for what? The claim of --

5 Q The patent. The original patent.

6 A The original patent, no, I don't have it.

7 Q Mr. Fountain never gave it to you, never asked
8 you to read it?

9 A No.

10 Q Okay. And do you have any idea of what prior art
11 was -- was actually provided to the patent
12 office?

13 A No. I've already testified to that. I already
14 said I wasn't aware of any prior art that was
15 given to them.

16 Q You have no idea what was provided?

17 A None.

18 Q Okay. So, if there was a series of ten or
19 fifteen patents that were provided, you have no
20 idea what -- what they show or anything else,
21 right?

22 A A series of ten or fifteen patents?

23 Q Yeah.

24 A I'm not sure I understand the question.

25 Q Well, the lawyers who were prosecuting the patent

1 for Heartland provided information to the patent
2 office, including a number of patents.

3 No one's ever told you that; is that right?

4 A No, not that I can recall.

5 Q And you've never looked at any of those patents,
6 so you have no idea what any of that discloses?

7 A No. I don't even know when the patent was --
8 was -- I don't -- I told you before, I don't know
9 anything about it.

10 Q Okay.

11 A I mean --

12 Q And Mr. Fountain, who's your lawyer, has -- has
13 never shown you any of that information, correct?

14 A He has not shown me the original patent, no.

15 Q Or any of the patents that were filed with the
16 patent office as prior art?

17 MR. FOUNTAIN: Object to the form
18 of the question.

19 BY MR. IRMSCHER:

20 Q You can answer.

21 A Not to -- not that I remember. But --

22 Q Well, has he ever showed you any patents that you
23 can recall as you sit here today?

24 A No.

25 Q Okay. And has he ever told you that the lawyers

1 thing and --

2 Q Well, let's -- let's -- let's stick to the
3 questions that are asked, if we can, so we can
4 try and finish this up.

5 And I think the record is pretty clear right
6 now that you don't know what claims were
7 originally filed for or what claims were filed
8 for at any time; is that true?

9 A What claims were filed for at any time? Well, I
10 mean, at some point I became aware of the fact
11 that it -- that the claim was the cut back,
12 chamfered, cornered frame. But I don't -- I
13 can't tell you when --

14 Q Okay.

15 A -- I was in knowledge of that information.

16 Q Do you have an understanding that there were
17 claims that were directed to the frame and then
18 there were claims that were directed to other
19 aspects of the invention?

20 Do you have any understanding of that?

21 A No.

22 Q Okay.

23 A I would've liked to have, though.

24 Q And Mr. Fountain has never given you any of the
25 patent applications that are currently pending,

1 not aware of any prior art.

2 Q Well, for example, you -- Mr. Fountain wrote in
3 this document on Page -- the page that's got a
4 Number 2 at the bottom of it, "That that has
5 caused important information to be withheld from
6 the USPTO and has caused the '650 Patent to issue
7 with and the '214 application to be prosecuted
8 with the wrong claimed invention."

9 Did you give him that information?

10 A What, that information was withheld from the
11 patent office?

12 Q Right. What important information was withheld
13 from the patent office?

14 A I didn't give him that information. But I think
15 he was able to draw the conclusion based on the
16 information that we had and how it was handled
17 and -- and how we did it that --

18 Q Well, what important information was withheld
19 from the patent office?

20 A Any knowledge of any prior art. I mean --

21 Q What prior art? What are you referring to?

22 A I don't know. No one asked me. So, I never -- I
23 don't know.

24 Q So you're saying prior art was withheld, but you
25 don't know what prior art was withheld; is that

Tab O

1 Q Just so we're clear on terminology: Is there a
2 difference between a "travel-trailer" and "Fifth Wheel"
3 in your mind?
4 A Yes.
5 Q Okay.
6 What is that difference?
7 A A "travel-trailer" is pulled by a bumper pull.
8 Is pulled from the rear of the unit.
9 Where a "Fifth Wheel" is pulled from inside the
10 truck-bed over the axle.
11 Q Okay.
12 You say, "inside the truck-bed."
13 You mean on a pickup truck bed?
14 A Mm-mm.
15 Yes.
16 Q Okay.
17 Now, getting back to some of your background
18 skills:
19 Have you ever built a travel-trailer?
20 A No.
21 Q Did you ever work on a travel-trailer Production
22 Facility?
23 A Be more specific?
24 Q Did you ever help someone build a travel-trailer?
25 A I might have handed them a tool or a wrench.

1 A No. Basically those two.
2 Q You said, "basically."
3 But --
4 A Those two.
5 Q Okay.
6 And, when did you hear that?
7 A Probably two days later.
8 Probably the 23rd, 24th, October.
9 Q And, how did that come up?
10 A Walking in the halls and walking in the rooms asking
11 them what's going on?
12 And, they mentioned that they heard that Forest
13 River was mad about them delivering -- or Walczek
14 delivering packets to the hotels.
15 Q And what was your response?
16 A My response was -- I didn't have much of a response.
17 I don't find that as a problem.
18 A guy delivering packets to a hotel is normal
19 business in Elkhart, and anywhere in the RV-Industry.
20 Q You say "delivering packets to a hotel."
21 What do you mean?
22 A Well, like at Louisville every year we get information
23 put underneath our door from every competitor, for the
24 dealers and competitors alike.
25 Giving information is a normal way of doing

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CROSS EXAMINATION

BY MR. DAVID P. IRMSCHER:

Q You've mentioned a number of times that -- I believe it's Loveall's and Race Track -- purchased products from Heartland after the Forest River show.

Is that correct?

A Yes.

Q Okay.

What did you do to figure out that they did that?

How did you go about generating the list that's in front of you?

A I asked the Office Personnel to pull all orders up between the month of October and November.

And, who was the dealers.

And, we matched them up, also, against the Forest River list was, too.

So, we double-checked that.

Q Okay.

And, the only two that purchased that were on the Forest River list, Lovealls and Race Track.

Correct?

A Yes, sir.

Q And, Race Track was a pre-existing customer.

Is that right?

1 A Yes.

2 Q Did Race Track get a packet under its door?

3 Or do you know?

4 A Race Track did get a packet.

5 Q Okay.

6 How do you know that?

7 A They mentioned it to me when they stopped in and saw

8 us.

9 Q Did they buy their -- the products that they bought as

10 a result of getting a packet under the door?

11 A No.

12 Q Why do you say that?

13 A They were a current dealer. We prospected them before

14 on the new product-line, the Eagle Ridge.

15 And, he was a very happy customer with us. And he

16 indicated to us that he wanted to do more business with

17 Heartland.

18 Q So, he was already a customer of Heartland's and he

19 just bought a new product, the "Eagle Ridge" product.

20 Is that right?

21 A Yes, sir.

22 Q And, that happened in October after the Forest River

23 event?

24 A That's correct.

25 Q What about "Race Track?"

1 Did "Race Track" get a packet under their door, to
2 your knowledge?

3 A "Race Track" did.

4 Q I'm sorry.

5 "Loveall."

6 Did Loveall's?

7 A I do not know.

8 Q Okay.

9 Did you talk with Loveall's -- that dealer at the
10 time of the Forest River show?

11 A No. I did not.

12 Q Do you know if they came to your dealership?

13 Or to the Heartland facility during the Forest
14 River show?

15 A Yes.

16 My Brand Manager said they came to the Heartland
17 Facility.

18 Q Okay.

19 And, is it your opinion that they purchased the
20 products that they purchased as a result of getting a
21 packet under the door?

22 A No. They did not.

23 Q How do you know that?

24 A We had been prospecting them for quite some time.

25 Approximately six months. We did repeated drive-bys.

1 We've been on their lot.

2 We've been pursuing them for quite sometime.

3 And, they showed strong/interest in buying
4 Heartland product.

5 Q And, this was the first time they purchased any
6 Heartland product, would have been in October of 2008.

7 Is that right?

8 A Yes.

9 That's correct.

10 Q Okay.

11 Early today you had been asked some questions
12 about the Patent, Exhibit 1, in this case.

13 Is it your understanding that that Patent relates
14 to Fifth Wheels?

15 Or travel-trailers?

16 Or do you have an understanding?

17 A My understanding is it relates to Fifth Wheels only.

18 Q That's because the turning radius that's at issue there
19 is with respect to a Fifth Wheel.

20 Is that right?

21 A That's correct.

22 Q Okay.

23 You talked earlier today about a possible sale of
24 interest in the Patent.

25 Do you recall that testimony?

Tab P

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION

HEARTLAND RECREATIONAL VEHICLES,)
LLC)

Plaintiff,)

vs.)

FOREST RIVER, INC.)

Defendant.)

Case No. 3:08-CV-490 AS CAN

**HEARTLAND'S AMENDED NOTICE OF DEPOSITION
TO FOREST RIVER, INC. PURSUANT TO RULE 30(b)(6)**

Pursuant to Rule 30(b)(6) of the Federal Rules of Civil Procedure, notice is hereby given that the plaintiff, Heartland Recreational Vehicles, LLC ("Heartland"), will take the deposition of Forest River, Inc. ("Forest River") on September 3, 2009, at 10:00 a.m., at the offices of Ryan M. Fountain, 228 West High Street, Elkhart, Indiana 46514.

The testimony at the deposition shall be recorded by sound, visual and/or stenographic means.

Heartland requests that Forest River designate one or more officers, directors, managing agents, or other persons duly authorized by Forest River to testify at the deposition, in accordance with Rule 30(b)(6), and who consent to testify on its behalf. Heartland also requests that, for each such person designated, Forest River also designate the matter(s) on which he or she will testify.

As used in this Notice, the term "Patent in Suit" refers to U.S. Patent No. 7,278,650, and the term "Hotel Action" refers to the factual scenario set forth in paragraphs 73-84 of Forest

River's Amended Answer, Counterclaims, and Defenses, and which is alleged to support Forest River's Lanham Act and Criminal Deception counterclaims against Heartland.

Examination is requested on the following matters:

1. All responses to Heartland's Interrogatories directed to Forest River.
2. All documents produced in response to Heartland's Requests For Production of Documents directed to Forest River.
3. Any basis that Forest River contends supports its defense that the Patent in Suit is invalid pursuant to the provisions of 35 U.S.C. §§ 101, 102, 103, and 112.
4. All documents or things that Forest River alleges are invalidating prior art to the Patent in Suit.
5. Any basis that Forest River contends supports its defense that the Patent in Suit is unenforceable as a result of inequitable conduct.
6. Whether Forest River requested any opinions of counsel that refer or relate to the issues of validity and/or enforceability of the subject matter of the Patent in Suit, and if so, the content of any such opinion communicated to Forest River.
7. All lost sales or damages that Forest River alleges were the result of the Hotel Action.
8. All misrepresentations or untruthful statements that Forest River alleges were made by Heartland in connection with the Hotel Action, including but not limited to, any misrepresentations or untruthful statements alleged to have been made by Heartland in an effort to obtain Forest River's customer list in connection with the Hotel Action.

9. All communications with anyone about Forest River's customer list, including but not limited to, communications with Mike Creech, Brad Whitehead, Brian Brady, or Tim Hoffman.

10. All communications with any hotel personnel regarding the Hotel Action.

11. All evidence of any disruption or confusion (including initial interest confusion) of any Forest River guest alleged to have been caused by the Hotel Action.

12. All information or documents that support Forest River's counterclaim against Heartland for criminal deception.

The deposition will continue from day to day thereafter, holidays and weekends excepted, until completed. The deposition will be by oral examination, with a written record made thereof before a notary public or before such other officer authorized by law to administer oaths, and may be videotaped.

BAKER & DANIELS LLP

By: 

David P. Irmscher (#15026-02)

Abigail M. Butler (#22295-02)

111 East Wayne, Suite 800

Fort Wayne, Indiana 46802

Tel: 260.424.8000

Fax: 260.460.1700

david.irmscher@bakerd.com

abigail.butler@bakerd.com

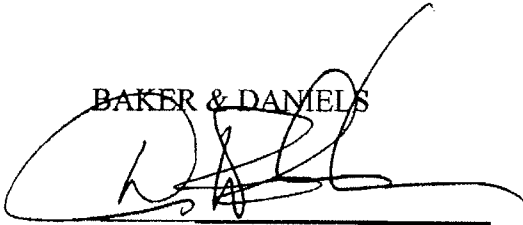
ATTORNEYS FOR PLAINTIFF,
HEARTLAND RECREATIONAL
VEHICLES, LLC

CERTIFICATE OF SERVICE

The undersigned counsel for plaintiff Heartland Recreational Vehicles, LLC, hereby certifies that a copy of the foregoing HEARTLAND'S AMENDED NOTICE OF DEPOSITION TO FOREST RIVER, INC. PURSUANT TO RULE 30(b)(6) was served, via U.S. Mail, upon the following, this 19th day of August, 2009:

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

ATTORNEY FOR DEFENDANT
FOREST RIVER, INC.

BAKER & DANIELS


Tab Q

by entering the guests rooms, and then contacted hotel management about the incident and called to warn another hotel involved in the Forest River trade show. See also Trial Exhibit 42. Also, various Forest River employees were told stories and comments about the Hotel Action while the Forest River trade show was in progress. Further, as noted above, Mr. Brady testified that six to ten dealers were drawn from the Forest River event to Heartland as a result of the Hotel Action. That only one (as far as Heartland will admit) such dealer ended up buying products still means that the remaining five to nine dealers were at least also distracted from the Forest River trade show in progress

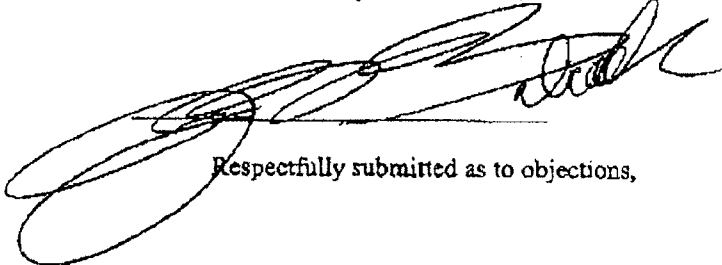
Interrogatory No. 11: Identify all information or documents that support Forest River's counterclaim against Heartland for Criminal Deception.

Response: See the responses to Interrogatory Nos. 8 - 10. Beyond that, no calculation has been made as yet for the special damages permitted by this claim, although it is inherent that such damages will exist in terms of the Forest River employee time involvement. Accordingly, further detail is objected to at this time.

I, Jeff Babcock, Vice President of Forest River, Inc., hereby declare that the facts set forth in the foregoing Responses are true and correct based upon my knowledge, information, and belief.

Dated: 8-16-09

Dated: August 10, 2009



Respectfully submitted as to objections,

Ryan M. Fountain (#8544-71)

Tab R

1 you say you spent preparing to testify today,
2 total?

3 A More gathering than preparing.

4 Q Okay. Well, about how much time did you spend
5 gathering and preparing then?

6 A 50 hours.

7 MR. IRMSCHER: What number are we
8 up to?

9 THE COURT REPORTER: 116.

10 MR. IRMSCHER: Mark this, please.

11 (Deposition Exhibit 116 marked
12 for identification.)

13 BY MR. IRMSCHER:

14 Q Mr. Babcock, let me show you what's been marked
15 for identification as Exhibit 116 and ask if
16 that's the deposition notice that you are
17 prepared to testify under today.

18 A It looks familiar, yes.

19 Q Does that appear to be the notice that you're
20 prepared to testify about?

21 A Yes.

22 Q Okay. And is it your understanding that you are
23 to provide information on behalf of Forest River
24 for all of the topics that are identified in
25 there?

1 MR. FOUNTAIN: Let me answer at
2 least in part. It's my understanding
3 that Topics 3, 4, and 6 are off the
4 table. Is that correct?

5 MR. IRMSCHER: I believe 3, 4,
6 and 6 are off the table to the extent
7 we're talking about invalidity.

8 To the extent we're talking about
9 inequitable conduct, they're not.
10 They're still in the case.

11 MR. FOUNTAIN: For 3 and 4, yes.
12 For 6, the content of opinion is off
13 the table.

14 MR. IRMSCHER: Well, you can --
15 if there is -- I think we know you've
16 got one, and I think you've claimed
17 it's privileged. So, I don't think --

18 MR. FOUNTAIN: Right.

19 MR. IRMSCHER: -- there's much
20 more to talk about.

21 MR. FOUNTAIN: Okay. Apart from
22 that, he is Forest River's designated
23 witness for these topics.

24 MR. IRMSCHER: Okay.

25 BY MR. IRMSCHER:

1 Q Did you review the Interrogatory Answers in
2 connection with preparing to testify today?

3 A Yes. I'm prepared to read the Interrogatory
4 Answers.

5 Q Okay. Did you sign the Interrogatory Answers?

6 A Yes.

7 Q Under oath?

8 A No.

9 Q Why not?

10 A The attorney didn't swear me in to answer them.
11 I guess he gave me the last page. I read them
12 all, went through them. It's part of the time I
13 spent with Ryan, going through the answers, read
14 them, and I signed them and agreed.

15 Q Okay. So, you believe everything in there is
16 truthful and accurate?

17 A I do believe so, yes.

18 Q Okay.

19 MR. IRMSCHER: Ryan, do I have a
20 signed copy of these?

21 MR. FOUNTAIN: Yes. It was faxed
22 to you.

23 MR. IRMSCHER: Okay. There it
24 is.

25 MR. FOUNTAIN: It was a

1 it.

2 A (Witness Complying.)

3 Q I'll -- I'll represent to you it's the same
4 Interrogatories and signature page I just showed
5 it -- showed to you. But you've just got to tell
6 me what -- you've got to say that you identify
7 what it is.

8 A This is my signed statement on the Forest River's
9 Response to Heartland's First Interrogatories to
10 Forest River, Inc.

11 Q Okay. And these are the Interrogatory Answers
12 that you reviewed, and you've sworn on behalf of
13 the company that the information's true and
14 correct?

15 A These are the answers I'm gonna state today.
16 That's correct.

17 Q Yeah. And it's your signature that's swearing
18 they're true and correct, correct?

19 A They are -- they are true and correct.

20 Q Okay.

21 A You want me to say I swear, that I swear to you
22 they're true and correct?

23 Q Yes.

24 A Yes.

25 Q And that's your signature at the back?

1 A Yes.

2 Q Okay. And I think I asked you this, but I've
3 forgotten. What's your title presently at Forest
4 River?

5 A Vice-president of sales.

6 Q Okay. I want to try and take some time here and
7 kind of go through the hotel incident, as it's
8 been called in the -- in the case.

9 And let's start out first of all by, Forest
10 River was having a dealer show in October of last
11 year; is that right?

12 A That is correct.

13 Q Was that the first dealer show that Forest River
14 had held in Elkhart?

15 A No.

16 Q Can you -- can you tell me when was the -- what I
17 want to understand, and just so you can
18 understand this, I was understanding the show
19 that you had was a unique event last year. Is
20 that true or not?

21 A We had one prior, about ten years prior to that,
22 in Elkhart. But we hadn't done it for ten years.

23 Q Okay. So, the event that happened last October
24 here in Elkhart was the first time you had done a
25 show like that in ten years?

1 Q Did you pay for them to travel there?

2 A We did not.

3 Q And how many dealers came, approximately?

4 A Roughly, 350.

5 Q Okay. And how many dealers do you have
6 nationwide, roughly?

7 A In the RV division?

8 Q Yes.

9 A Active current dealers, probably 800 to a
10 thousand.

11 Q Okay. What I -- what I was trying to ask you is
12 how many of the ones that you invited came. So,
13 it's about 40 percent or so?

14 A If you're asking me how many actually RSVP'd and
15 how many showed up, I think we probably had a
16 attrition rate of -- I'm gonna say 15 percent of
17 the dealers that registered probably didn't show.

18 Q So, in rough percentages, you thought you were
19 going to get about half of your dealers, and you
20 had a little less than half that showed? Is
21 that -- is that about right?

22 A We invited them all.

23 Q Yep.

24 A And we invited every dealer we had. And we had
25 about 350 basically RSVP and probably 10 to 15

1 percent that registered to say they were gonna
2 show up that didn't. The rest came. So, we had
3 probably close to an 80 percent turnout of the
4 350.

5 Q So, you had -- doing the math in my head, that's
6 about 300 dealers?

7 A About 260, I think, probably showed up.

8 Q 260 dealers out of how -- how many that you
9 invited? That's all I was trying to ask.

10 A There was probably -- we invited them all.
11 Probably 800 to a thousand.

12 Q Okay. And 260 showed up; is that right?

13 A Roughly.

14 Q Okay. And of these dealers, how many of them
15 sold other products besides just Forest River of
16 the ones that showed up?

17 A Are you asking how many are exclusive?

18 Q Yes.

19 A To Forest River?

20 Q Yes.

21 A Very few dealers are exclusive. I'd say a small
22 percentage.

23 Q Just so we can understand, of the 260 dealers
24 that showed up, you'd say what percentage,
25 roughly, would've been exclusive to you folks?

1 A 3, 4, 5 percent maybe.

2 Q Okay. And why is that rare in the industry or
3 rare for your company, I guess?

4 A So many different products. I think that a
5 dealer likes to balance out his inventory as
6 well. I think that a dealer doesn't necessarily
7 want to be exclusive. If you were an exclusive
8 Fleetwood dealer last year, it's not probably
9 very good. If you were an exclusive Monaco
10 dealer, it probably didn't work out too good for
11 you.

12 I think that the dealers are now starting to
13 realize they have to align themselves with
14 stronger manufacturers just because the cost of a
15 manufacturer going out of business is a huge cost
16 on a dealer.

17 Q And of the dealers that came to your show, do you
18 know which ones of them or which percentage of
19 them were selling your competitors' products?
20 Have you tracked that?

21 A Well, it would be -- be the opposite number I
22 gave you. I mean, if they're not exclusive,
23 they'd be selling other people's stuff. So, it
24 would be --

25 Q I asked a bad question. What I was trying to get

1 Fountain, our attorney.

2 Q And did that envelope, in fact, indicate -- have
3 a big old Heartland logo in the upper corner?

4 A I do believe it did.

5 Q And is it your understanding that all of the
6 envelopes had Heartland logos on them?

7 A I don't know if they all had Heartland --

8 Q Okay.

9 A -- envelopes (Sic) on them.

10 Q Are you aware of --

11 A However --

12 Q I'm sorry.

13 A -- Heartland could be -- it could be a Forest
14 River brand as far as the lady at the front desk
15 knows. How would she actually know the
16 difference? She -- he was -- his case was he was
17 making her feel like he was part of Forest River.
18 Who was she to know the difference on what --
19 what the envelope said?

20 You're assuming she knows this industry and
21 knows these two companies. She does not. She
22 only knows that Forest River is -- is -- is
23 paying for the hotel. So, he played on probably
24 her naiveness, in my opinion.

25 Q Okay. Well, where's -- where's the evidence of

1 Q -- or did he report --

2 A At that time, he reported to Pete.

3 Q To Pete Liegl?

4 A Yeah.

5 Q And in the corporate organization while John was
6 there, were you above him, equal to him, or is
7 that something --

8 A I was -- yeah. I was in charge of sales. I
9 mean, I -- I worked with John. But he didn't
10 have to necessarily report to me.

11 Q And you were responsible for the sales of the
12 products that John was general manager of; is
13 that right?

14 A Yeah. He's -- he's the first guy there that he's
15 gotta -- you know, anything we can do, we -- I
16 approve all the price sheets for the product, go
17 through the pricing exercises with him. It's
18 kind of his job to day to day be watching over
19 the salespeople and trying to gain the sales.

20 Q And did John leave to go to Heartland under good
21 circumstances?

22 A Yeah. He said he had another opportunity.

23 Q Would you say you're friends with John?

24 A Yeah. I'm not -- I'm not -- when I say friends,
25 I see him out for lunch and stuff like that,

1 always talk to him. I think John's a very
2 personable, nice guy, very honest.

3 Q I'm glad you mentioned that because that was
4 gonna be my next question. You don't think he's
5 a liar, do you?

6 A I do not personally have any experience of John
7 ever lying to me or I do not believe he's lied to
8 Forest River.

9 Q Okay. And you don't have any information that
10 tells you that John Rhymer lied to the patent
11 office, do you?

12 A I don't know what John did at the patent office.

13 Q Okay.

14 A I --

15 Q Well --

16 A Again, I would --

17 Q Let's -- let's ask the question a little
18 differently.

19 You don't know what he did, right? Is that
20 what you said?

21 A I don't know what he did at the patent office.

22 Q That's what you said, right?

23 A Yeah. I said I don't know what -- I don't know
24 how he -- I don't know how he filed his patent.

25 Q Okay. And then you don't have any information

1 that John Rhymer lied to the patent office then,
2 do you?

3 A I never said he did lie to the patent office.

4 I --

5 Q Okay.

6 A I guess that's the, you know --

7 Q Do you know Doug Lantz?

8 A No.

9 Q Okay. Never met the man, that you know of?

10 A No.

11 Q And do you know Scott Tuttle?

12 A Yes.

13 Q How do you know Scott Tuttle?

14 A He did work for us at Cornerstone Designs.

15 Q Work for us? Was that Forest River then?

16 A Yeah, it was Forest River.

17 Q Okay. And how long have you known Mr. Tuttle?

18 A I'd probably say 12, 13 years.

19 Q Okay. You friends?

20 A Again, yeah. I mean, I guess we're friends. I

21 mean, we don't see other, never have, outside

22 work socially. I mean, we cross paths and I

23 think Scott's a -- Scott's a nice guy.

24 Q Truthful?

25 A I would say truthful.

1 Q You understand that you're here to talk on behalf
2 of Forest River. And, again, I'm looking at the
3 Notice, which is, I think, this one.

4 Look at Deposition Exhibit 116, if you
5 would. And take a look at the second page, I
6 believe it is. Yeah. There you go.

7 A Which page?

8 Q Second page. You're here to talk about Topic
9 Number 5. And that is that any basis that Forest
10 River contends supports its defense that the
11 Patent in Suit is unenforceable as a result of
12 inequitable conduct. Do you see that?

13 A Which one again? Could you read that one again?

14 Q Sure. Number 5. Any basis that Forest River
15 contends supports its defense that the Patent in
16 Suit is unenforceable as a result of inequitable
17 conduct.

18 You're here to testify about those topics;
19 is that right?

20 A Yes.

21 Q Okay. What information do you have about
22 inequitable conduct and how did you get it?

23 A Okay. Ask your question you're asking.

24 Q Yeah. What information do you have about
25 inequitable conduct and how did you get it?

1 A I think what the -- our stances on it is that
2 they were trying to patent something that was
3 already produced prior to and they did not either
4 at the time know that they were doing it, but at
5 the same time they were still doing it, that
6 there was other products out there prior to their
7 patent that would actually not allow them to
8 actually get a patent if it was provided.

9 Q What's your understanding of what inequitable
10 conduct is?

11 A I'm gonna say that we were saying that they were
12 just outright lying on a patent is what you're
13 asking me. Is that what you're asking me if I
14 think that that is?

15 Q No. I'm asking what your understanding of the
16 term inequitable conduct is. You tell me what it
17 is, what you think it is otherwise.

18 A I think it's passing something off that's
19 untruthful.

20 Q Okay. Which one of the inventors passed
21 something off as untruthful?

22 A Again, I think that the inventors tried to patent
23 something -- again, after even listening to the
24 deposition of Scott yesterday, they were trying
25 to, not knowingly, however at the same time were

1 trying to get a patent for something that they
2 had no right in getting in simple laymen's terms,
3 I guess, is the --

4 Q So, if I'm understanding what you're telling me
5 correctly, you believe that the patent that is at
6 issue in this case, the '650 Patent, should not
7 have been granted, right?

8 A That is correct.

9 Q And why do you believe that?

10 A Because people were using that type of -- that
11 type of frame prior to that.

12 Q Okay. And which frame in particular are you
13 referring to?

14 A Well, we --

15 Q And I'm talking about the frame that you
16 mentioned.

17 A And you said the prior frame?

18 Q No. You said the prior frame. I -- let me back
19 up.

20 You just said you believe that people were
21 using a frame prior to their -- the patent; is
22 that right?

23 A Yeah. I mean, I think that --

24 Q Which frame -- which frame are you referring to?

25 A We had built some of those frames on the cargo

1 A I hate to use the word intentional. That's for
2 sure.

3 Q I -- you need to answer my question.

4 A I think after listening to Scott's deposition
5 yesterday, I don't think people -- I kind of
6 think he was pointing towards the attorney firm
7 that was representing them and maybe they didn't
8 ask all the right questions.

9 Q So, you don't think Scott Tuttle intentionally
10 lied to the patent office, do you?

11 A I think that in the midst of everything there
12 that Scott didn't intentionally go out and say,
13 "We're gonna lie to the patent office here and
14 try to prove something here." I don't think that
15 their scope was broad enough --

16 Q Okay.

17 A -- prior to filing that. Then they should've and
18 their attorney should've probably caught that.

19 Q And you don't have any information that John
20 Rhymer lied to the patent office, do you?

21 A Just for making it shorter, I don't -- I think,
22 again, that would stand probably for John Rhymer
23 as well.

24 Q Same answer?

25 A Same answer for John.

1 Q So, you don't believe he did lie. You think he
2 got excited?

3 A I think that there was not a broad enough scope
4 on that actual patent and it kind of got through
5 the system.

6 Q I need a straight answer. You don't have any
7 information that John Rhymer lied to the patent
8 office, do you?

9 A I do not believe that they were outright trying
10 to lie to them.

11 Q Okay. You understand that you're -- you've made
12 a claim for criminal deception against Heartland;
13 is that correct?

14 A Yes.

15 Q Okay. And can you tell us what you understand
16 the criminal deception to be and what the facts
17 are that support it?

18 A I guess probably the biggest thing, you know, I
19 guess on the -- on the criminal side, they
20 probably should've known what they were -- what
21 they were filing, and they didn't.

22 Q Okay.

23 A Now, whether that's those individuals or their
24 law firm --

25 Q Just so you can understand, the criminal

1 it's -- it's this Page 92 here, if you could
2 direct yourself to that part of it.

3 A (Witness Complying.)

4 Q So, now that you've looked at that, let me
5 rephrase my question.

6 Is it true that you had no idea of what was
7 said to the hotel clerks?

8 A No. That's not true.

9 Q Is it true that you don't know the exact words
10 that were said to any given hotel clerk?

11 A I wasn't there to actually hear the exact words.
12 I'm hearing, I guess, the version of the people
13 that heard at the hotel that were there.

14 Q Okay.

15 A I did not personally hear. I'm hearing the story
16 from our people that heard, that had the -- that
17 heard the -- from the hotel people that actually
18 heard the conversation.

19 Q And is that what you meant on Page 92?

20 A That's what I meant.

21 Q Okay.

22 A Yeah.

23 Q All right. You described this conversation you
24 had with Mr. Esch, okay? And you said at some
25 point you asked him was his name Scott or Eric;

1 some more.

2 You've got statements in these Interrogatory
3 Answers. And they're in Paragraphs 5, 6, and 7
4 on Page 11 if you want to look at them.

5 A I think I got the right one. Do I?

6 Q It's the Interrogatory Answers. It's -- Page 11
7 of the Interrogatory Answers is where I want you
8 to look.

9 A Yep. Okay. I think I got the right one.

10 Q You see there it says Paragraphs 5, 6, and 7?

11 A Yeah.

12 Q Read Paragraph 5 for me and let me know when
13 you've done that. You don't have to read it out
14 loud. Just read it to yourself.

15 A (Witness Complying.) Okay.

16 Q What's the source for that information? Where
17 did that come from?

18 A I can't remember the girl's name from the -- from
19 the hotel. But she had told our people that she
20 was told that that person was from Forest River
21 and needed to get that information out.

22 Q Okay. And who's that person? Who was told that?

23 A Lisel.

24 Q Okay. And she doesn't have the name of the
25 person? She can't tell us which person it was?

1 A Well, I think we gave you a whole list of
2 people's names. I don't know which ones --

3 Q Yeah. But you're trying to accuse my client of
4 stealing something here and doing -- and criminal
5 conduct, and you can't even tell me who it was
6 that was told this. Is that right?

7 A We gave you the names of the people at the Hyatt
8 Hotel. Call them.

9 Q Who was told that? Who was told that in
10 Paragraph 5?

11 A Who was the -- who was --

12 Q Who was the employee at the hotel that was told
13 these things?

14 A You need to do your own investigation on that.
15 We told you --

16 Q No, I don't. That's what I'm doing right now.
17 This is discovery. You're supposed to tell me.

18 A I can't -- I can't tell you who it is. But I
19 told you that -- that -- we identified the people
20 at the Hyatt Hotel. We gave you their names
21 and -- and who they were. So, you're gonna have
22 to find out.

23 Q No. You have to tell us.

24 A Where's that list that says the Hyatt Hotel
25 employees? And I'll tell you which three you can

1 choose from.

2 Q But you can't tell me as you sit here today --

3 A I can't. No, I can't.

4 Q -- which person was told these alleged things in
5 Paragraph 5, correct?

6 A I can't tell you. No. I can't tell you. I can
7 just tell you what was told.

8 Q Okay. And all you know that from -- again, I'm
9 not trying to put words in your mouth -- is Lisel
10 told you this?

11 A Through an investigation, yes.

12 Q No. That's not what I asked you. Is Lisel the
13 only person that told you about what happened,
14 allegedly, at the Hyatt?

15 A Yes.

16 Q Okay. Read Paragraph 6. Let me know when you've
17 finished it.

18 A (Witness Complying.) Okay.

19 Q What person at the Country Inn & Suites was told
20 this information?

21 A Same answer.

22 Q You don't know?

23 A I don't know. We gave you a list of the people's
24 names.

25 Q Do you have it someplace written down that

1 "So-and-so has told me this."?

2 A I'm sure we do somewhere.

3 Q Where?

4 A Probably back at the office.

5 Q Where back at the office?

6 A Probably back at the office, probably at the --
7 probably at Lisel's desk.

8 Q Well, why didn't you put the name in these
9 Interrogatory Answers?

10 A Didn't think that we had to. I mean, we gave you
11 a -- we gave you a list of all the people at the
12 hotels and where they worked at and what their
13 names were and their phone -- and their cell
14 phone numbers.

15 Q And you think that's all you've got to do?

16 A Yeah.

17 Q You think it's unfair for us to specifically ask
18 you which person do you claim was told these
19 things and you don't have to tell us?

20 A We gave you the information we had.

21 Q You didn't give us the name of the person that
22 was told these things in Paragraph 6, did you?

23 A We -- we can certainly try to get you the name.

24 Q But you haven't tried to yet, have you?

25 A Did you ask me last time to get you the name?

1 Q Yes.

2 A I don't remember you asking me. I --

3 Q You said you could get us these names.

4 A Okay.

5 Q And you haven't done that, have you?

6 A Just give me a time, and I'll make sure you get
7 the names.

8 Q Well, how about in your deposition, which has
9 been going on for two weeks now? I mean, didn't
10 you understand --

11 A One -- one -- one day.

12 Q No. But you've had --

13 A Let's be -- let's be clear.

14 Q You've had two weeks.

15 A Did you ask me to bring those names back here
16 today?

17 Q I -- I believe that you said you were going to
18 supplement this information.

19 A You didn't say bring them back today, Dave.

20 Q I don't think I did say that. I --

21 A You did not.

22 Q I agree with that.

23 A Yeah.

24 Q But I thought you agreed you were gonna tell us
25 who these people were.

1 A Did you tell me when I needed to get that
2 information back to you? Don't I have a certain
3 amount of time?

4 Q Have you done that yet? Let's just -- let me ask
5 you this question.

6 With respect to the person at the Country
7 Inn & Suites, you can't tell me who that was that
8 was allegedly told these things, correct?

9 A I think we can, yes.

10 Q Well, do it now. Go ahead.

11 A I can't -- I can't -- what do you want me to do,
12 go back to the office right now?

13 Q Can you tell me who that person was at the
14 Country Inn & Suites that was told -- allegedly
15 told these things?

16 A I can give you the -- I can give you probably a
17 few people at the Country Inn that were -- that
18 are on that list that we can choose from. I can
19 probably narrow it down for you.

20 Q Can you tell me the name?

21 A I can't tell you the name.

22 Q Okay. Same question for Paragraph 7. Can you
23 tell me who was told those things?

24 A Same answer.

25 Q Okay. Where is it -- what's the source for the

1 characterizations of the communications in 5, 6,
2 and 7? Is that Lisel?

3 A Yes.

4 Q Okay. And does she have written records of these
5 things?

6 A Well --

7 Q Did I understand you to say you now have written
8 records and now you know about written records
9 when you said before you didn't?

10 A No. That's not necessarily true. Lisel has
11 information. Scott Richgruber has information.
12 He was also at the hotel. He's the one who gave
13 me Scott Esch's name, Eric Esch's name.

14 Q Where is this written information?

15 A We have it back at the office.

16 Q And you haven't given it to us?

17 A No.

18 Q Why not?

19 A Have you -- do we have to? I mean, what are
20 we -- you didn't tell me to bring it.

21 Q Okay. So, but you have written information?

22 A Yes.

23 Q Even though you said last time you didn't, you do
24 have some?

25 A I think what you asked is do I have it personally

1 myself. No, I don't personally have it. Lisel
2 personally has it.

3 Q Okay. And what does she have?

4 A She has -- she has names and investigations that
5 she's -- that she's had in this -- in this
6 investigation on the hotel.

7 Q Have you seen this stuff before?

8 A Have I had it in my hand?

9 Q Yes.

10 A Yes. I have had it in my hand.

11 Q Okay. What's it look like?

12 A It looks like a piece of paper with information
13 written on it.

14 Q Is it handwriting or typed?

15 A It's handwriting.

16 Q Whose handwriting is it?

17 A Hers.

18 Q How many pages?

19 A I don't know. Probably three pages.

20 Q Does it say the name of the hotel person she was
21 talking to?

22 A I'm sure it does identify them. How else would
23 we get the names?

24 Q And, yet, you don't think you need to tell us
25 that in your Interrogatory Answers?

1 A I think if you give us enough time here, I think
2 we can get that information back to you.

3 Q Well, why are you hiding the names of these
4 people?

5 A Not trying to hide the names.

6 Q So, you do have written records. Forest River
7 has written records of what was said by these --
8 by these hotel employees, correct?

9 A Yes. That is correct.

10 Q And you've not -- you've refused to provide them
11 to us so far; is that right?

12 A We haven't been asked, "Bring them at this date,"
13 Dave.

14 Q Okay. So, that's your excuse? You just haven't
15 been asked?

16 A Not an excuse. It's just you didn't say bring
17 them.

18 Q And last time when I --

19 A If you would've --

20 Q When I asked you in your deposition before about
21 written records, you thought I was asking you
22 personally?

23 A Yeah. I didn't have them in my personal --

24 Q And, so, if you didn't have them in your hands,
25 you didn't have to respond?

1 A Exactly.

2 Q I see. You understood, though, that you were
3 speaking for Forest River, its representative in
4 this deposition. You recall testifying to that,
5 don't you?

6 A I do remember that I am the -- the person. That
7 is correct.

8 Q Okay. Well, what is -- tell me -- do you
9 remember what any of these records that Lisel's
10 got -- what do they say specifically?

11 A It basically just gives you the information that
12 we put in our Interrogatory Answers, is that
13 these people were misled by people from Heartland
14 on information that's not accurate.

15 Q Okay. Well, like Number 6, "Misled the
16 receptionist at Country Inn & Suites," that's
17 what you say.

18 A Uh-huh.

19 Q "Into thinking the packages were to go along with
20 the Forest River party in part by his mannerisms
21 and in part by having the specific dealer's name
22 on the cover."

23 What's -- what's misleading about that?

24 A Well, it's easy to have the dealer's name on the
25 cover, Dave. They stole our dealer list. They

1 got our dealer list from a -- from a third party.

2 Q Well, what's misleading about that?

3 A They made it sound like they were from Forest
4 River. Hey, here's -- this dealer's here. He's
5 got his name on the dealer pack. He's staying at
6 the hotel. Put one and one together. Oh, okay.
7 Yeah. Yep. Okay. What do you think they're
8 gonna do?

9 These people don't know. They don't know
10 if that's a division of Forest River. They don't
11 know if it's a different company. They don't
12 know. They played on their -- their innocence.

13 Q Okay. So, what -- can you tell any specific
14 statements that anybody from Heartland made to
15 any hotel person?

16 A I -- obviously, I wasn't was not there.

17 Q Right.

18 A We're going off of the investigation work, the
19 investigation work that we did after going to the
20 hotels --

21 Q Okay.

22 A -- to get information.

23 Q But tell me what -- tell me what you believe was
24 said.

25 A This is what we told you we believe was said,

1 right here, 5, 6, 7.

2 Q Is there anything else?

3 A You're only asking me 5, 6, 7. I'm only saying
4 5, 6, 7.

5 Q Well, let me ask you this. Do you have records
6 of what was said at every one of the hotels?

7 A She may have more records than -- than these that
8 are identified here. I don't know. We'd have to
9 go back through and look at them.

10 Q So, for example, if somebody was staying at the
11 Varsity Club, you can't sit here and tell us what
12 was said to them, right?

13 A Not right here, not right now, no.

14 Q Okay. But you understood this was one of the
15 topics for your deposition, didn't you, what
16 happened in the hotel incident, what was said,
17 all those things?

18 A We gave you -- we gave you plenty of information
19 there, what was said.

20 Q Well, no, you didn't. All you gave us was these
21 Interrogatory Answers and talk to Lisel.

22 A Yeah.

23 Q That's all you have?

24 A That's all I have here today.

25 Q All right. Who made -- can you tell me who from

1 Heartland was at the Hyatt Place?

2 A I don't know which guy was identified there.

3 Q Okay. But you --

4 A No. But I do know we can identify him.

5 Q Okay. How are you gonna do that?

6 A Well, we got a picture of him at the front desk.

7 Q So, you got that from the Hyatt?

8 A Yes, we did.

9 Q Okay. And who was at the Country Inn & Suites?

10 A Again, we're gonna have to go off the tape.

11 Q Okay. And who was at the Residence Inn?

12 A Off the tape.

13 Q Would it be the same answer if I asked you any of
14 the other hotels?

15 A I'm sure it would be.

16 Q Okay. In Number 6, you say he misled the
17 receptionist in part by his mannerisms and in
18 part by having the specific dealer's name on the
19 cover and asking for a call back to pick up the
20 undeliverable packages.

21 What else did he do that was misleading?

22 A I think the only thing I can speak for is what we
23 put down here in the Interrogatories.

24 Q Okay. And there's nothing misleading about any
25 of that, is there?

1 A Well, he made it sound like, hey, you know, he
2 had the dealer's name on there. He said, "Hey,
3 you know, I gotta get these things to the party,
4 the Forest River party, and I gotta get this
5 material out."

6 What is she to assume? She made -- she did
7 it on an assumption. She assumed that he was
8 from Forest River, thought he had to have this
9 information.

10 Q Why do you -- why do you believe she assumed he
11 was from Forest River?

12 A Well, he was there. He had packets. He made
13 it -- he made it -- made it sound as if he worked
14 for Forest River.

15 Q What did he do that made it sound as if he worked
16 for Forest River?

17 A I mean, the Heartland -- they were from Forest
18 River, needed to be delivered right away.

19 Q I want you to tell me specifically, as
20 specifically as you can, what anybody from
21 Heartland did to indicate they were from Forest
22 River.

23 A The receptionists at the hotel --

24 Q Yeah.

25 A -- in our investigation said they said they were

1 from Forest River and they need to get these
2 packets. That's what it says here. That's what
3 they told them.

4 Q And which hotel did that happen at?

5 A The Hyatt.

6 Q Okay. And you don't know if it happened at any
7 of the others, correct?

8 A I think the County Inn & Suites. Says here
9 Heartland misled the receptionist at the Country
10 Inn into thinking the packages were to go along
11 with the Forest River party in part by his
12 mannerisms and by having the specific dealer's
13 name on the cover and asking for them to call --
14 call back and pick up the undeliverable packages.

15 Q Okay. So, at the Country Inn & Suites, no one
16 said, "I'm from Forest River," correct?

17 A I guess she was playing off of his mannerisms,
18 what he did to make her --

19 Q You need to answer my question. At the Country
20 Inn & Suites, did somebody say, "I'm from Forest
21 River."?

22 A I think she was -- she made -- she made us feel
23 that -- that he made her feel that he was with
24 Forest River.

25 Q No. He had material -- he said he had materials

1 and he wanted them to be delivered to the guests,
2 right?

3 A Uh-huh.

4 Q Is that your basis for your statement that he
5 said he was from Forest River or he indicated he
6 was from Forest River?

7 A It said the mannerisms. Now, exactly what --
8 what he did is, "I gotta get these to the RV -- I
9 gotta get these to the -- I gotta get these to
10 the dealers here for the show."

11 He had -- they had their name -- he had
12 their names on there. They knew they were RV
13 dealers.

14 Q But what's --

15 A That's an assumption.

16 Q That's true, isn't it? Those were RV dealers.
17 They did have their names on the envelope.

18 Correct?

19 A That is correct.

20 Q That was all true, wasn't it?

21 A That they are dealers and they had names on it,
22 yes, that's correct.

23 Q And the Heart -- and Heartland's all over -- all
24 over the envelopes, too, isn't it?

25 A Heartland could be a division of Forest River.

1 Q That's not what I asked you. You need to answer
2 my questions.

3 A Well, you're --

4 Q Is Heartland on the envelopes that were
5 delivered?

6 A I believe that Heartland's name is on the
7 envelope.

8 Q Okay. On all of them that you saw, right?

9 A I only saw the one that we turned over. Yes.

10 Q Can you tell me, at any of the hotels, other than
11 the Hyatt, did anybody say they were from Forest
12 River or is this all just implied?

13 A Obviously, the Hyatt said -- receptionist said
14 that they were from Forest River. The
15 Heartland -- the receptionist at the Country Inn
16 & Suites said the mannerisms. She thought they
17 were from -- from -- from --

18 Q Mr. Babcock, we're gonna be here forever. You
19 need to listen to my questions and answer them,
20 okay? I'm asking you a very specific question.

21 A I got all day, Dave. I can go through this thing
22 as slow as I want.

23 Q That's -- that's right. But you need to listen
24 to what I'm trying to ask you, a very specific
25 question.

1 Did somebody tell a hotel employee other
2 than at the Hyatt that they were from Forest
3 River?

4 A I'm just checking to make sure. I want to make
5 sure I give you the right answer.

6 Q Fair enough.

7 A I don't want to get played on words here.

8 Q I don't -- and I want you to give me the answer
9 that you have. Exactly.

10 A That is correct.

11 Q Okay. So, it's only the Hyatt where somebody
12 came in and said, "I'm from Forest River."?

13 A That is correct.

14 Q Okay. Now, these hotel employees, all the
15 communications you're talking about was with the
16 receptionists; is that -- is that right?

17 A Yes.

18 Q Okay. And then these packets of material were
19 just delivered to the dealers; is that right?

20 A Who delivered them?

21 Q The hotel employees.

22 A I'm assuming that they had their names on them.
23 They -- they delivered them. I don't think they
24 let them go back. I mean, maybe they did. I
25 don't -- I don't know specifically how they got

1 A The ones that received the packets.

2 Q Okay. And who was -- which ones are those?

3 A I can't tell you which ones. I don't know which
4 ones Keystone -- I mean, Heartland put under
5 which doors.

6 Q Okay. And did you talk to any of your dealers?

7 Last time, you said you were gonna perhaps
8 do that and get the names of the dealers that you
9 believe may have bought product from Heartland as
10 a result of this hotel incident. Did you do
11 that?

12 A Over the last two weeks, no, we have not done
13 that.

14 Q Okay. And you didn't talk to any of your
15 dealers?

16 A We did. We --

17 Q About the hotel incident, I mean.

18 A We did not talk about this whole incident
19 whatsoever.

20 Q And why not?

21 A We were busy with our own Forest River trade show
22 at the time and not gonna waste time on talking
23 about that in the past.

24 Q And you said you talked to the Loveall's people
25 or not about the hotel incident?

1 Put that together with the fact that in the
2 deposition out at Catterton that they did say
3 that they did not make money on those trailers.
4 Specifically how much, I'm not privileged to
5 that. But they did say that those trailers were
6 losers as far as profit goes.

7 So, that's why if I was a dealer and I could
8 buy a trailer the same length, same options, same
9 size, apples for apples comparisons, for \$3,000
10 less, why wouldn't you?

11 Q So, you believe -- your information is that the
12 reason Loveall's bought Heartland's products is
13 because the prices were very -- very good; is
14 that right?

15 A Yes. I do believe that's a big part of it, yes.

16 Q Any other reasons why they bought them?

17 A Price.

18 Q Okay. And price is what we just talked about,
19 right?

20 A Price is what we just talked about, price value.

21 Q And you seem to think there's something
22 inherently wrong with discounting to gain market
23 share. Is that -- is that your opinion?

24 A I think that when they're trying to discount and
25 not make profit on it on an ongoing basis

1 underneath the door if they weren't trying to get
2 them to come over?

3 Q Do dealers buy inventory as a result of
4 promotional information?

5 A Yes. Dealers buy because of promotional
6 information.

7 Q Okay. So, it's your testimony that if a dealer
8 would receive a packet of information, that's all
9 you have to do to sell them additional inventory;
10 is that right?

11 A No. That's not all you have to do.

12 Q Okay. What else do you have to do?

13 A You gotta sell them on the product.

14 Q You have to talk to them, right?

15 A You have to talk to the dealer. You have to go
16 through the product. You have to feature benefit
17 the product. You gotta convince that dealer that
18 the product you have sitting in front of him is
19 gonna make him money on his lot.

20 Q And that's what you do when you have these
21 meetings; is that right?

22 A That's what you do every day in the sales world,
23 convince a dealer he can make money on our stuff.

24 Q And the brochure itself doesn't do any of that.
25 It just -- it's just a tool to help, right?

1 A The brochure can be a powerful thing. People
2 read it. And just like anything else; you hear
3 it on the news, you believe it's true. If you
4 read it, you believe it's true.

5 Q And these packets of information that was in the
6 envelopes, all of that was provided to dealers;
7 is that right?

8 And there was no consumers at this show?
9 There was all dealers; is that right?

10 A I think sometimes the -- the packets -- the
11 information they put in those packets is some of
12 the same information they post on the internet,
13 which is very misleading.

14 Q Well, let's back up a step. I'm trying to
15 understand what -- your understanding of the
16 facts.

17 A Uh-huh.

18 Q And the people that were at your show --

19 A Uh-huh.

20 Q -- and the ones that you say got these packets of
21 information --

22 A Uh-huh.

23 Q -- those folks were all dealers, correct?

24 A Yes. They were all dealers.

25 Q Okay. And dealers, of course, are aware that

1 Heartland is not a division of Forest River; is
2 that true?

3 A Dealers know that Heartland's not --

4 Q Right.

5 A -- part of Forest River. But the hotel people
6 may not know that.

7 Q Okay. So, when the dealers got these packages of
8 information, they all knew it was from Heartland
9 and not from Forest River, correct?

10 A That is correct.

11 Q Okay. And the dealers get lots of promotional
12 information like this, don't they?

13 A I don't know.

14 Q Well, you provide it to them, don't you?

15 A If a dealer -- if we send out a dealer pack to
16 that dealer, we usually -- before we would send
17 out a price sheet and a brochure, we would
18 certainly have a conversation with that dealer,
19 know who we're sending -- we just don't send out
20 packets of information without knowing who we're
21 sending it to and why we're sending it to them.

22 Q Okay. And I -- I don't think that's responsive
23 to my question.

24 It's a normal business practice at Forest
25 River to send brochures and packages of

1 A What else?

2 Q Non-competes, goodwill, those kind of things.

3 A Well, goodwill's one.

4 Q How about trade names? Do you depreciate those?

5 A That's more on the accounting side, Dave, than
6 the sales side.

7 Q Do you -- does that mean you don't know?

8 A I don't know.

9 Q Okay. Have you ever valued a trade name or seen
10 a valuation of a trade name?

11 A No.

12 Q Okay. Did you contact -- I think I may have
13 asked this. I apologize if I did.

14 When we last met, you had said you hadn't
15 talked to any of the dealers about whether or not
16 they went over to Heartland or bought Heartland
17 products.

18 Is that still the case? You've still not
19 talked to any of your dealers?

20 A Yeah. I think we talked about that this morning.
21 No, I haven't talked to -- I've talked to our
22 dealers, but I haven't talked to them
23 specifically about that.

24 Q Right. You haven't asked them, "Hey, did you go
25 over to Heartland and buy Heartland product," or

1 anything like that?

2 A Not this time.

3 Q Okay. But not ever, right?

4 A No. We haven't talked about this last year's
5 incident, not at this last event we just had.

6 Q I want to make sure I understand something. Are
7 there two people named Richgruber in this case?

8 A I think they have -- I think there's people who
9 have very similar names. Are they identical? I
10 don't know. They sound identical; but I think
11 there might be something left out in the last
12 name.

13 Q Well, was one of them Scott? Is that right?

14 A Scott Richgruber --

15 Q And who is he?

16 A -- works for us.

17 Q Okay.

18 A He's a sales guy --

19 Q And --

20 A -- who got a packet underneath his door.

21 Q And how did he happen to get a packet under his
22 door?

23 A Your client put it underneath there.

24 Q Because his name was on it?

25 A Was what?

1 A Yeah. It's somewhere around here in a deposition
2 somewhere.

3 Q And have you contacted the two new dealers?

4 A No.

5 Q Why not?

6 A Why should we?

7 Q Because you're supposed to prove that somehow our
8 conduct caused you to lose sales.

9 A I want to get all the information. I want to do
10 it all at once. I want to see all the dealers
11 you signed up and do it -- why do I want to do it
12 twice?

13 Let me have all the information. We've been
14 trying to get the information. You're not giving
15 it to us.

16 Q Who's telling you we're not giving it to you?

17 A Our attorney.

18 Q Okay. What dealers do you think we signed up we
19 didn't tell you about?

20 A What about the five that are scratched off? What
21 about the five -- the dealer numbers that they
22 had scratched off the five -- they only gave us
23 two. It was a huge success. Brian Brady said it
24 himself. He was surprised. He was amazed. Is
25 that two?