

Ryan Fountain

From: Ryan Fountain [RyanFountain@aol.com]
Sent: Tuesday, September 22, 2009 10:22 AM
To: 'Butler, Abigail M.'
Cc: 'Irmscher, David P.'
Subject: RE: Heartland/Forest River - Proposed Protective Order (using Fountain's format).DOCX

Abi,

I have been out of the office since Saturday and expect to return tomorrow, so I will review the proposed protective order and call you about it later this week.

As for disclosure of the identity of experts, that is required under Rule 26 at the point in time when you select the person you expect to testify. If by "disclose experts and serve experts reports" you mean to disclose the identity of experts at the same time as their report, you are mistaken. The identity of the expert should be disclosed in advance of the report.

All expert rebuttal testimony or reports were due Sept 21, and that deadline I agreed to extend for a month. However, as we have discussed in the past, since most of the financial records have been withheld by Heartland, any expert report on financial issues by Forest River is not possible at this time anyway. Accordingly, as a practical matter you are likely to have even longer time than October 21 to file your rebuttal report on the financial issues since you will need fair time after we give you our expert financial report.

Beyond that financial topic, since Forest River provided no other expert reports on other topics, any rebuttal report by Heartland is likely to be irrelevant: there is nothing to rebut. That is one of the reasons why, at the time I agree to the extension of time, I informed Dave that while I had no objection to extending that time deadline, I did not agree that such reports would be admissible. Accordingly, if you are planning to use an expert to "rebut" non-expert evidence on some other issue for which you did not receive an expert report from Forest River, you may be wasting your client's money.

Ryan

From: Butler, Abigail M. [mailto:Abigail.Butler@bakerd.com]
Sent: Tuesday, September 22, 2009 8:44 AM
To: ryanfountain@aol.com
Cc: Irmscher, David P.
Subject: FW: Heartland/Forest River - Proposed Protective Order (using Fountain's format).DOCX

Ryan,

Dave asked me to forward this to you again. Would you please review and let us know if you have any comments?

Also, thank you for agreeing to a 30 day extension to our expert disclosure deadline. By my calculation, our new deadline to disclose experts and serve expert reports is Oct. 21. Please let me know immediately if you have any disagreement with this.

Thank you,
 Abi

From: Butler, Abigail M.
Sent: Thursday, August 20, 2009 3:56 PM
To: 'Ryan Fountain'

1/14/2010