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Barbara-Ann B. Neznayko, Notary Public
My Commission Expires: March 31, 1984

S. DISTRICT COURT
DISTRICT OF OREGON
FILED

SEP 22 1981

ROBERT M. CHRIST, CLERK
BY *CJ* DEPUTY

1 E. Richard Bodyfelt
2 Peter R. Chamberlain
3 BODYFELT, MOUNT & STROUP
4 229 Mohawk Building
5 222 S.W. Morrison
6 Portland, OR 97204
7 Telephone: (503) 243-1022

8 Of Attorneys for Plaintiff

9 UNITED STATES DISTRICT COURT
10 FOR THE DISTRICT OF OREGON

11 TERI SEE and DARREL SEE,
12 wife and husband,
13 Plaintiffs,

Civil No. 81-886

14 v.

15 REMINGTON ARMS COMPANY, INC.,
16 a Delaware corporation,
17 Defendant.

COMPLAINT
(Civil Action for Personal
Injury and Loss of Consortium)
AND DEMAND FOR JURY TRIAL

18 For her CLAIM FOR RELIEF, plaintiff Teri See alleges:

19 I

20 Plaintiff is an individual who, at all material times,
21 resided within and is a citizen of the State of Oregon.

22 II

23 Defendant is a Delaware corporation and is a citizen of
24 that state.

25 III

26 The amount in controversy, exclusive of costs, exceeds
\$10,000.

///

*

IV

Jurisdiction of this Court is pursuant to 28 USC 1332.

V

Defendant is in the business of designing, manufacturing and selling firearms, including a rifle known as a Remington Model 700.

VI

On or about October 27, 1979, plaintiff suffered personal injury, as more fully set forth below, as a result of the unexpected discharge of a Remington Model 700 rifle designed, manufactured and sold by defendant.

VII

At the time said rifle left defendant's hands, it was in an unreasonably dangerous and defective condition in the following particulars:

(1) The rifle could not be unloaded without disengaging the safety; and

(2) The trigger mechanism could be moved despite the fact that the safety was engaged; and

(3) The trigger mechanism was designed such that it was susceptible to becoming contaminated by dirt and debris; and

(4) The rifle failed to meet the reasonable expectations of the average consumer in that it discharged without warning as the safety was being disengaged; and

(5) The rifle was sold and placed in the stream of commerce without adequate warnings and instructions.

VIII

The rifle was in substantially the same condition at the time it caused plaintiff's injuries as it was when it left defendant's hands and was being handled in a manner foreseeable to defendant.

IX

As a result of the above-described accident, plaintiff suffered injury, including severe and permanent injury to both of her legs, which has required medical care, all to plaintiff's general damages in the sum of \$250,000. In addition, plaintiff has incurred special damage, including lost wages, medical expenses and hospitalization expenses in the sum of \$15,000.

X

Plaintiff will incur additional medical expenses in the future.

XI

Plaintiff's earning capacity has been impaired.
For his CLAIM FOR RELIEF, plaintiff Darrel See alleges:

XII

Plaintiff is an individual who, at all material times, resided within and is a citizen of the State of Oregon.

XIII

Realleges paragraphs II, III, IV, V, VII, and VIII.

XIV

On or about October 27, 1979, plaintiff's wife suffered personal injury, as more fully set forth above, as a result of

1 the unexpected discharge of a Remington Model 700 rifle designed,
2 manufactured and sold by defendant.

3 XV

4 The unreasonably dangerous and defective condition of
5 the rifle caused plaintiff's wife's injuries, more fully
6 described above, and caused plaintiff the loss of companionship,
7 society and services of his wife, all to plaintiff's damages in
8 the sum of \$25,000.

9 WHEREFORE, plaintiff Teri See prays for judgment against
10 defendant as follows:

- 11 1. For \$250,000 general damages;
12 2. \$12,500 for medical expenses and hospitalization
13 expenses incurred to date;
14 3. \$2,500 for lost wages;
15 4. For her costs and disbursements incurred herein;

16 And plaintiff Darrel See prays for judgment against
17 defendant as follows:

- 18 5. For \$25,000 on his claim for relief for loss of consor-
19 tium; and
20 6. For his costs and disbursements incurred herein.

21 BODYFELT, MOUNT & STROUP

22 By Peter R. Chamberlain
23 Peter R. Chamberlain, Of
Counsel for Plaintiffs

24 Plaintiffs demand trial by jury.

25 BODYFELT, MOUNT & STROUP

26 By Peter R. Chamberlain
Peter R. Chamberlain, Of
Counsel for Plaintiffs

United States District Court

FOR THE

DISTRICT OF OREGON

CIVIL ACTION FILE NO. 81-886

TERI SEE and DARREL SEE,
wife and husband,

Plaintiff

v.

REMINGTON ARMS COMPANY, INC.,
a Delaware corporation,

Defendant

SUMMONS

To the above named Defendant :

You are hereby summoned and required to serve upon PETER R. CHAMBERLAIN
of the law firm of BODYFELT, MOUNT & STROUP,

plaintiff's attorney , whose address 222 S.W. Morrison, Room 229, Portland,
Oregon, 97204,

an answer to the complaint which is herewith served upon you, within 20 days after service of this
summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be
taken against you for the relief demanded in the complaint.

ROBERT M. CHRIST

Clerk of Court.

/s/ CINDY L. SHERWOOD

Deputy Clerk.

Date: 9/22/81

[Seal of Court]

NOTE:—This summons is issued pursuant to Rule 4 of the Federal Rules of Civil Procedure.

CIVIL COVER SHEET

81-886

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet.

PLAINTIFFS

TERI SEE and DARREL SEE,
wife and husband

DEFENDANTS

REMINGTON ARMS COMPANY, INC.

COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF Clatsop
(EXCEPT IN U.S. PLAINTIFF CASES)

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT _____
(IN U.S. PLAINTIFF CASES ONLY)
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED

ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

Peter R. Chamberlain
BODYFELT, MOUNT & STROUP
222 S.W. Morrison, Room 229
Portland, OR 97204
Telephone: (503) 243-1022

ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

CLERK, U.S. DISTRICT COURT
DISTRICT OF OREGON

(PLACE AN ☒ IN ONE BOX ONLY)

BASIS OF JURISDICTION

☒ 1 U.S. PLAINTIFF ☐ 2 U.S. DEFENDANT

☐ 3 FEDERAL QUESTION
(U.S. NOT A PARTY)

☒ 4 DIVERSITY

IF DIVERSITY, INDICATE
CITIZENSHIP BELOW.
(28 USC 1332, 1441)

CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE)

28 USC 1332 - Cause of action by plaintiff Teri See for personal injury and cause of action by plaintiff Darrel See for loss of consortium based upon unreasonably dangerous and defect design of rifle.

(PLACE AN ☒ IN ONE BOX ONLY)

NATURE OF SUIT

| CONTRACT | | TORTS | | ACTIONS UNDER STATUTES | |
|---|---|--|--|---|---|
| | | | | CIVIL RIGHTS | PROPERTY RIGHTS |
| <input type="checkbox"/> 110 INSURANCE | PERSONAL INJURY <input type="checkbox"/> 310 AIRPLANE <input type="checkbox"/> 315 AIRPLANE PRODUCT LIABILITY <input type="checkbox"/> 320 ASSAULT, LIBEL & SLANDER <input type="checkbox"/> 330 FEDERAL EMPLOYERS' LIABILITY <input type="checkbox"/> 340 MARINE <input type="checkbox"/> 345 MARINE PRODUCT LIABILITY <input type="checkbox"/> 350 MOTOR VEHICLE <input type="checkbox"/> 355 MOTOR VEHICLE PRODUCT LIABILITY <input type="checkbox"/> 360 OTHER PER- SONAL INJURY <input type="checkbox"/> 362 PERSONAL IN- JURY-MED. MALPRACTICE <input checked="" type="checkbox"/> 365 PERSONAL INJURY PRODUCT LIABILITY PERSONAL PROPERTY <input type="checkbox"/> 370 FRAUD OR TRUTH IN LENDING <input type="checkbox"/> 380 OTHER PERSONAL PROPERTY DAMAGE <input type="checkbox"/> 385 PROPERTY DAMAGE, PRODUCT LIABILITY | <input type="checkbox"/> 441 VOTING | <input type="checkbox"/> 610 AGRICULTURE | <input type="checkbox"/> 820 COPYRIGHT | <input type="checkbox"/> 840 TRADEMARK |
| <input type="checkbox"/> 120 MARINE | | <input type="checkbox"/> 442 JOBS | <input type="checkbox"/> 620 FOOD & DRUG | <input type="checkbox"/> 830 PATENT | |
| <input type="checkbox"/> 130 MILLER ACT | | <input type="checkbox"/> 443 ACCOMMODA- TIONS | <input type="checkbox"/> 630 LIQUOR LAWS | OTHER STATUTES | |
| <input type="checkbox"/> 140 NEGOTIABLE INSTRUMENT | | <input type="checkbox"/> 444 WELFARE | <input type="checkbox"/> 640 R.R. & TRUCK | <input type="checkbox"/> 400 STATE REAP- PORTIONMENT | <input type="checkbox"/> 870 TAXES |
| <input type="checkbox"/> 150 RECOVERY OF OVERPAYMENT & ENFORCEMENT OF JUDGMENT | | <input type="checkbox"/> 448 OTHER CIVIL RIGHTS | <input type="checkbox"/> 650 AIR LINE REGS. | <input type="checkbox"/> 410 ANTI-TRUST | <input type="checkbox"/> 871 IRS-THIRD PARTY |
| <input type="checkbox"/> 151 MEDICARE ACT | | PRISONER PETITIONS | <input type="checkbox"/> 660 OCCUPATIONAL SAFETY/ HEALTH | <input type="checkbox"/> 420 BANKRUPTCY | <input type="checkbox"/> 875 CUSTOMER CHALLENGE 12 USC 3410 |
| <input type="checkbox"/> 160 STOCKHOLDERS SUITS | | <input type="checkbox"/> 510 VACATE SENTENCE (2255) | <input type="checkbox"/> 680 OTHER | <input type="checkbox"/> 421 TRANSFER (9150) | <input type="checkbox"/> 891 AGRICUL- TURAL ACTS |
| <input type="checkbox"/> 190 OTHER CONTRACT | | <input type="checkbox"/> 520 PAROLE COM- MISSION REVIEW | LABOR | <input type="checkbox"/> 422 APPEAL (801) | <input type="checkbox"/> 892 ECONOMIC STABILIZA- TION ACT |
| <input type="checkbox"/> 195 CONTRACT PRODUCT LIABILITY | | <input type="checkbox"/> 530 HABEAS CORPUS | <input type="checkbox"/> 710 FAIR LABOR STANDARDS | <input type="checkbox"/> 430 BANKS AND BANKING | <input type="checkbox"/> 893 ENVIRON- MENTAL MATTERS |
| REAL PROPERTY | | <input type="checkbox"/> 540 MANDAMUS & OTHER | <input type="checkbox"/> 720 LABOR/MGMT. RELATIONS | <input type="checkbox"/> 450 COMMERCE (CC RATES, ETC.) | <input type="checkbox"/> 894 FREEDOM OF INFORMATION ACT |
| <input type="checkbox"/> 210 CONDEMNATION | <input type="checkbox"/> 550 CIVIL RIGHTS | <input type="checkbox"/> 730 LABOR/MGMT. REPORTING & DISCLOSURE ACT | <input type="checkbox"/> 460 DEPORTATION | <input type="checkbox"/> 895 FREEDOM OF INFORMATION ACT | |
| <input type="checkbox"/> 220 FORECLOSURE | | <input type="checkbox"/> 740 RAILWAY LABOR ACT | <input type="checkbox"/> 480 SELECTIVE SERVICE | <input type="checkbox"/> 950 CONSTITU- TIONALITY OF STATE STATUTES | |
| <input type="checkbox"/> 230 RENT LEASE & EJECTMENT | | <input type="checkbox"/> 750 OTHER LABOR LITIGATION | <input type="checkbox"/> 485 SECURITIES COMMODITIES EXCHANGE | <input type="checkbox"/> 970 NARA, TITLE III | |
| <input type="checkbox"/> 240 TORTS TO LAND | | <input type="checkbox"/> 791 EMPL. RET. INC. SECURITY ACT | SOCIAL SECURITY | <input type="checkbox"/> 980 OTHER STATUTORY ACTIONS | |
| <input type="checkbox"/> 245 TORT PRODUCT LIABILITY | | | <input type="checkbox"/> 881 HIA | | |
| <input type="checkbox"/> 250 ALL OTHER REAL PROPERTY | | | <input type="checkbox"/> 882 BLACK LUNG | | |
| | | | <input type="checkbox"/> 883 DIWC | | |
| | | | <input type="checkbox"/> 884 DIWW | | |
| | | | <input type="checkbox"/> 885 SSID TITLE XVI | | |
| | | | <input type="checkbox"/> 886 RSI | | |

(PLACE AN ☒ IN ONE BOX ONLY)

ORIGIN

☒ 1 ORIGINAL PROCEEDING ☐ 2 REMOVED FROM STATE COURT ☐ 3 REMOVED FROM APPELLATE COURT ☐ 4 REINSTITUTED OR REOPENED ☐ 5 TRANSFERRED FROM (SPECIFY DIST.) ☐ 6 MULTIDISTRICT LITIGATION ☐ 7 APPEAL TO DISTRICT JUDGE FROM MAGIS-TRATE JUDGMENT

CITIZENSHIP OF PRINCIPAL PARTIES
(IF DIVERSITY)

CITIZEN OF THIS STATE

PTF DEF
☒ 1 ☐ 1

INCORPORATED THIS STATE

☐ 2 ☐ 2

FOREIGN CORPORATION-PRINCIPAL

PLACE OF BUSINESS IN Delaware

☐ 3 ☒ 3

OTHER NON-CITIZEN
THIS STATE

☐ 4 ☐ 4

Check YES only if demanded in complaint.

JURY DEMAND:

☒ YES ☐ NO

DATE

9/18/81

SIGNATURE OF ATTORNEY OF RECORD

Peter R. Chamberlain

UNITED STATES DISTRICT COURT

RECEIVED
OCT 19 1981

U.S. DISTRICT COURT
DISTRICT OF OREGON
FILED

OCT 20 1981 *NH/d*

ROBERT M. CHRIST, CLERK
BY *DE* DEPUTY

1 E. Richard Bodyfelt
Peter R. Chamberlain
2 BODYFELT, MOUNT & STROUD, U.S. DISTRICT COURT
229 Mohawk Building DISTRICT OF OREGON
3 Portland, Oregon 97204
Telephone: 243-1022
4 Attorneys for Plaintiffs

5 James F. Spiekerman
SCHWABE, WILLIAMSON, WYATT, MOORE & ROBERTS
6 1200 Standard Plaza
Portland, Oregon 97204
7 Telephone: 222-9981
Attorneys for Defendant
8

9 IN THE UNITED STATES DISTRICT COURT

10 FOR THE DISTRICT OF OREGON

11 TERI SEE and DARREL SEE,)
wife and husband,)
12)
Plaintiffs,) Civil No. 81-886
13)
vs.) STIPULATION AND ORDER
14) FOR EXTENSION OF TIME
REMINGTON ARMS COMPANY, INC.,)
15 a Delaware corporation,)
16 Defendant.)

17 IT IS STIPULATED between the plaintiffs and the defendant
18 that the defendant may have up to and including the 18th day of
19 December, 1981 to answer or otherwise appear herein; that no pre-
20 vious extension of time has been requested.

21
22
23 The foregoing is hereby
24 granted this 20 day
of October, 1981.

Peter R. Chamberlain
Peter R. Chamberlain
Of Attorneys for Plaintiffs

James F. Spiekerman
James F. Spiekerman
Of Attorneys for Defendant

25 ROBERT M. CHRIST - Clerk
26 BY: *Robert M. Christ*
Deputy

U. S. DISTRICT COURT
DISTRICT OF OREGON

FILED

SEP 22 1981

ROBERT M. CHRIST, CLERK

BY

DEPUTY

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

Plaintiff,

v.

Defendant.

Civil No. 81-886

O R D E R

Pursuant to the Local Plan for the Disposition of Civil Cases,
it is ordered that:

1. Discovery shall be completed by 2/19/82.

2. A pretrial order shall be lodged by 3/22/82.

Motions for extension of either time limit must be filed not
later than 30 days before the expiration of the established date.
The motion must be supported by an affidavit with sufficient reasons
demonstrating good cause and appropriate use of the prior time.

Dated this 22 day of Sept, 1981.

ROBERT M. CHRIST, CLERK

By:

Cindy L. Sherwood
Deputy Clerk

Barbara-Ann B. Neznayko, Notary Public
My Commission Expires: March 31, 1984

United States District Court

OCT 18 1981

FOR THE

ROBERT M. CHRIST, CLERK
BY *[Signature]* DEPUTY

DISTRICT OF OREGON

CIVIL ACTION FILE NO. 81-886

TERI SEE and DARREL SEE,
wife and husband,

Plaintiff

v.

SUMMONS

REMINGTON ARMS COMPANY, INC.,
a Delaware corporation,

Defendant

To the above named Defendant :

You are hereby summoned and required to serve upon PETER R. CHAMBERLAIN
of the law firm of BODYFELT, MOUNT & STROUP,

plaintiff's attorney , whose address 222 S.W. Morrison, Room 229, Portland,
Oregon, 97204,

an answer to the complaint which is herewith served upon you, within 20 days after service of this
summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be
taken against you for the relief demanded in the complaint.

ROBERT M. CHRIST

Clerk of Court.

Cindy Sherwood
Deputy Clerk.

Date: 9/22/81

[Seal of Court]

NOTE:—This summons is issued pursuant to Rule 4 of the Federal Rules of Civil Procedure.

U. S. DISTRICT COURT
DISTRICT OF OREGON
FILED

DEC 18 1981

ROBERT M. CHRISI, CLERK
BY *Bu* DEPUTY

1 James F. Spiekerman
2 SCHWABE, WILLIAMSON, WYATT,
3 MOORE & ROBERTS
4 1200 Standard Plaza
5 Portland, Oregon 97204
6 Telephone: 222-9981

7 Attorneys for Defendant

8 IN THE UNITED STATES DISTRICT COURT

9 FOR THE DISTRICT OF OREGON

10 TERI SEE and DARREL SEE,
11 wife and husband,

12 Plaintiffs,

13 vs.

14 REMINGTON ARMS COMPANY, INC.,
15 a Delaware corporation,

16 Defendant.

Civil No. 81-886

A N S W E R

17 For answer to plaintiffs' complaint, defendant admits,
18 denies and alleges as follows:

19 I.

20 Admits paragraphs I, II, III, IV, V, and XII of plain-
21 tiffs' complaint, at this time is without sufficient information
22 upon which to form a belief and therefore denies paragraphs VI,
23 VIII and XIV, and denies the balance of plaintiffs' allegations.

24 WHEREFORE, defendant demands judgment.

25 SCHWABE, WILLIAMSON, WYATT, MOORE & ROBERTS

26 BY:

James F. Spiekerman
James F. Spiekerman

Attorneys for Defendant

CERTIFICATE — TRUE COPY

I hereby certify that the foregoing copy of _____
_____ is a complete and exact copy of the original.

Dated _____, 19_____.

Attorney(s) for _____

ACCEPTANCE OF SERVICE

Due service of the within _____ is hereby accepted
on _____, 19_____, by receiving a true copy thereof.

Attorney(s) for _____

CERTIFICATES OF SERVICE

Personal

I certify that on _____, 19_____, I served the within _____
_____ on _____
attorney of record for _____
by personally handing to said attorney a true copy thereof.

Attorney(s) for _____

At Office

I certify that on _____, 19_____, I served the within _____
_____ on _____
attorney of record for _____
by leaving a true copy thereof at said attorney's office with his/her clerk therein, or with a person apparently in
charge thereof, at _____, Oregon.

Attorney(s) for _____

Mailing

I hereby certify that I served the foregoing _____ answer _____
_____ on _____ Peter R. Chamberlain _____
attorney(s) of record for _____ plaintiff _____
on _____ December 17 _____, 1981, by mailing to said attorney(s) a true copy thereof, certified by me
as such, contained in a sealed envelope, with postage paid, addressed to said attorney(s) at said attorney(s) last
known address, to-wit: _____ 229 Mohawk Building, Portland, Oregon 97204 _____

and deposited in the post office at _____ Portland _____, Oregon on said day.

Dated _____ December 17 _____, 19 81

Attorney(s) for _____ Defendant

SCHWABE, WILLIAMSON, WYATT,
MOORE & ROBERTS

ATTORNEYS AT LAW
1200 Standard Plaza
Portland, Oregon 97204
Telephone 222-9981

U.S. DISTRICT COURT
DISTRICT OF OREGON
FILED

JAN 20 1982

ROBERT M. CHRIST, CLERK
BY *Bu* DEPUTY

1 E. Richard Bodyfelt
Peter R. Chamberlain
2 BODYFELT, MOUNT, STROUP & CHAMBERLAIN
229 Mohawk Building
3 222 S.W. Morrison St.
Portland, OR 97204
4 Telephone: (503) 243-1022

5 Of Attorneys for Plaintiffs

8 UNITED STATES DISTRICT COURT
9 FOR THE DISTRICT OF OREGON

10 TERI SEE and DARREL SEE,)
wife and husband,)
11 Plaintiffs,) Civil No. 81-886
12)
13 v.) NOTICE OF DEPOSITIONS
14 REMINGTON ARMS COMPANY, INC.,)
a Delaware corporation,)
15 Defendant.)

16 TO: REMINGTON ARMS COMPANY, INC., and its attorney, JAMES F.
17 SPIEKERMAN:

18 PLEASE TAKE NOTICE that on Tuesday, March 2, 1982, at
19 10:00 a.m. in the office of Philip L. Nelson, 555 Bond, Astoria,
20 Oregon, plaintiffs will take the depositions of Stephen D. Boudreau
21 and Starr Boudreau before a person authorized to administer oaths in
22 the state of Oregon. Copies of subpoenas duces tecum are attached.

23 DATED this 20th day of January, 1982.

24 BODYFELT, MOUNT, STROUP & CHAMBERLAIN

25 By *Peter R. Chamberlain*
26 Peter R. Chamberlain
Of Attorneys for Plaintiffs

Page NOTICE OF DEPOSITIONS

CERTIFICATE — TRUE COPY

I hereby certify that the foregoing copy of _____

_____ is a complete and exact copy of the original.

Dated _____, 19____.

Attorney(s) for _____

ACCEPTANCE OF SERVICE

Due service of the within _____ is hereby accepted
on _____, 19____, by receiving a true copy thereof.

Attorney(s) for _____

CERTIFICATES OF SERVICE

Personal

I certify that on _____, 19____, I served the within _____
on _____

attorney of record for _____

by personally handing to said attorney a true copy thereof.

Attorney(s) for _____

At Office

I certify that on _____, 19____, I served the within _____
on _____

attorney of record for _____

by leaving a true copy thereof at said attorney's office with his/her clerk therein, or with a person apparently in
charge thereof, at _____, Oregon.

Attorney(s) for _____

Mailing

I hereby certify that I served the foregoing Notice of Deposition
on James F. Spiekerman

attorney(s) of record for Defendant

on January 20, 1982, by mailing to said attorney(s) a true copy thereof, certified by me

as such, contained in a sealed envelope, with postage paid, addressed to said attorney(s) at said attorney(s) last
known address, to-wit: 1200 Standard Plaza, Portland, OR 97204

and deposited in the post office at Portland Oregon, on said day

Dated January 20, 1982.

Attorney(s) for Plaintiffs

BODYFELT, MOUNT & STROUP

ATTORNEYS AT LAW
229 Mohawk Building
Portland, Oregon 97204
Telephone (503) 243-1022

c/kc
U.S. DISTRICT COURT
DISTRICT OF OREGON

FILED

JAN 20 1982

1 E. Richard Bodyfelt
Peter R. Chamberlain
2 BODYFELT, MOUNT, STROUP & CHAMBERLAIN
229 Mohawk Building
3 222 S.W. Morrison
Portland, OR 97204
4 Telephone: (503) 243-1022

ROBERT M. CHRIST, CLERK
BY *[Signature]* DEPUTY

5 Of Attorneys for Plaintiffs
6
7

8 UNITED STATES DISTRICT COURT
9 FOR THE DISTRICT OF OREGON

10 TERI SEE and DARREL SEE,)
wife and husband,)
11 Plaintiffs,) Civil No. 81-886
12)
13 v.)
14 REMINGTON ARMS COMPANY, INC.,) MOTION FOR EXTENSION
a Delaware corporation,) OF TIME WITHIN WHICH TO
15 Defendant.) COMPLETE DISCOVERY AND
LODGE PRETRIAL ORDER

16 Plaintiffs move this Court for an order extending by 90
17 days the time for completion of discovery from February 19, 1982,
18 to May 19, 1982, and extending by 90 days the time for lodging of
19 pretrial order from March 22, 1982, to June 22, 1982.

20 POINTS AND AUTHORITIES

21 In support of their motion, plaintiffs will rely upon
22 FRCP 6(b), the District Court Clerk's rules regarding extension
23 of time (set forth in his letter to the Bar dated December 10,
24 1980), and upon the attached affidavit of Peter R. Chamberlain.

25 BODYFELT, MOUNT, STROUP
& CHAMBERLAIN

26 By *[Signature]*
Peter R. Chamberlain, Of
Attorneys for Plaintiffs

1 E. Richard Bodyfelt
Peter R. Chamberlain
2 BODYFELT, MOUNT, STROUP & CHAMBERLAIN
229 Mohawk Building
3 222 S.W. Morrison
Portland, OR 97204
4 Telephone: (503) 243-1022

5 Of Attorneys for Plaintiffs

6

7

8 UNITED STATES DISTRICT COURT

9 FOR THE DISTRICT OF OREGON

10 TERI SEE and DARREL SEE,)
wife and husband,)
11 Plaintiffs,) Civil No. 81-886
12)
v.)
13 REMINGTON ARMS COMPANY, INC.,) AFFIDAVIT OF PETER
14 a Delaware corporation,) R. CHAMBERLAIN
15 Defendant.)

16 STATE OF OREGON)
17) ss.
County of Multnomah)

18 I, PETER R. CHAMBERLAIN, being first duly sworn, on
19 oath, depose and say as follows:

20 1. I have personal knowledge of all the facts set forth
21 herein.

22 2. I am one of the attorneys representing the plaintiffs in
23 the captioned matter.

24 3. I make this affidavit in support of plaintiffs' motion
25 for extension of time within which to complete discovery and
26 lodge pretrial order.

1 4. This action was filed in September, 1981.

2 5. I was first contacted by defendant's attorney and
3 informed of his representation of the defendant in October, 1981.

4 6. Defendant's attorney sought, and I stipulated to, a
5 60-day extension of time for filing of defendant's answer, to
6 December 18, 1981.

7 7. Defendant filed its answer December 18, 1981.

8 8. At the time of service of the summons and complaint on
9 defendant, plaintiffs also served defendant with a request for
10 production of documents.

11 9. Defendant did not file a response to plaintiffs' request
12 for production within the time allowed and, therefore, on Dec-
13 ember 16, 1981, I wrote defendant's attorney seeking production.
14 Since that time, I have been assured that the request has been
15 forwarded to the defendant corporation but, as yet, no documents
16 have been produced.

17 10. Production of the documents requested is necessary
18 before I can proceed with depositions of defendant's employees.

19 11. Defendant has requested my clients' depositions.

20 12. On December 16, 1981, I wrote to defendant's attorney
21 and asked that he provide me with two or three proposed dates for
22 the depositions of my clients and I also put my clients on notice
23 of this fact. To date, defendant's attorney has not supplied me
24 with any proposed deposition dates.

25 13. I have afforded the defendant an opportunity to inspect
26 the weapon which is involved in this accident. That inspection

1 has been conducted.

2 14. Prior to filing of this action, I provided the defendant
3 with copies of Teri See's medical reports and hospital records.

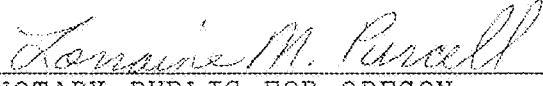
4 15. Further time for discovery is necessary so that inspec-
5 tion of documents in defendant's possession may be conducted and
6 so that depositions of the plaintiffs and of defendant's employ-
7 ees may be had.

8 16. After completion of depositions and document production,
9 plaintiffs may want to serve interrogatories and requests for
10 admissions on defendant to simplify the issues for trial.

11 17. Completion of the items of discovery set forth above
12 will take, at a minimum, 90 days beyond the present deadline for
13 completion of discovery.

14
15 
16 Peter R. Chamberlain

17 SUBSCRIBED and SWORN to before me this 20th day of
18 January, 1982.

19 
20 NOTARY PUBLIC FOR OREGON
21 My Commission Expires: 1/27/82
22
23
24
25
26

CERTIFICATE — TRUE COPY

I hereby certify that the foregoing copy of _____
_____ is a complete and exact copy of the original.

Dated _____, 19_____

Attorney(s) for _____

ACCEPTANCE OF SERVICE

Due service of the within _____ is hereby accepted
on _____, 19_____, by receiving a true copy thereof.

Attorney(s) for _____

CERTIFICATES OF SERVICE

Personal

I certify that on _____, 19_____, I served the within _____
_____ on _____
attorney of record for _____
by personally handing to said attorney a true copy thereof.

Attorney(s) for _____

At Office

I certify that on _____, 19_____, I served the within _____
_____ on _____
attorney of record for _____
by leaving a true copy thereof at said attorney's office with his/her clerk therein, or with a person apparently in
charge thereof, at _____, Oregon.

Attorney(s) for _____

Mailing

I hereby certify that I served the foregoing Motion and Affidavit for Extension
_____ on the following attorneys on the 20th day of January, 1982, by mailing to each a true
copy thereof, certified by me as such, contained in a sealed envelope, with postage paid, addressed to said attorneys
at the last known address of each shown below and deposited in the post office on said day at Portland, Oregon:

James F. Spiekerman
1200 Standard Plaza
Portland, OR 97204



Attorney(s) for Plaintiffs

BODYFELT, MOUNT & STROUP

ATTORNEYS AT LAW
229 Mohawk Building
Portland, Oregon 97204
Telephone (503) 243-1022

UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
CIVIL MINUTES — GENERAL

Case No. 81-886

Date January 21, 1982

Title See, et al v. Remington Arms Co.

DOCKET ENTRY

ORDER - Pltfs' Motion for Extension of Time (#8) for completion of discovery to May 19, 1982, and for lodging pretrial order to June 22, 1992, is allowed.

PRESENT:

HON. Edward Leavy

JUDGE

J. Glenn

Deputy Clerk

Court Reporter

ATTORNEYS PRESENT FOR PLAINTIFFS:

ATTORNEYS PRESENT FOR DEFENDANTS:

PROCEEDINGS:

cc E. Richard Bodyfelt
James F. Spiekerman

U.S. DISTRICT COURT
DISTRICT OF OREGON

FILED

FEB 23 1982

ROBERT M. CHRIST, CLERK
BY *B* DEPUTY

JAMES D. HUEGLI
Schwabe, Williamson, Wyatt,
Moore & Roberts
1200 Standard Plaza
Portland, OR 97204
Telephone: 222-9981

Attorneys for Defendant

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

TERI SEE and DARREL SEE,
wife and husband,

Plaintiffs,

vs.

REMINGTON ARMS COMPANY, INC.,
a Delaware corporation,

Defendant.

Civil No. 81-886

OBJECTION TO MOTION
FOR PRODUCTION PURSUANT
TO FRCP 34(B)

Defendant in the above-captioned matter specifically
objects to plaintiff's Request for Production #7, #9, #11,
#12 and #13, as said Request for Production is irrelevant and
immaterial. There is no allegation contained in any of
plaintiff's pleadings nor is there any allegation of fact
in the record that Remington Model 600 Rifle has any bearing
whatsoever upon the lawsuit in this case. The rifle in
question, according to paragraph 5 of plaintiff's Complaint,
is the Remington Model 700. Said request is cumbersome and
burdensome, and the defendant refuses to comply with this request.

The defendant further objects to Request for Production

#8, as said Request for Production is too broad to enable defendant to adequately produce said documents. If the plaintiff would specifically request which tests they are interested in, the defendant would be more adequately able to analyze this request.

SCHWABE, WILLIAMSON, WYATT,
MOORE & ROBERTS

By:

James D. Huegeli
James D. Huegeli, OSB #72306
Attorney for Defendant

CERTIFICATE — TRUE COPY

I hereby certify that the foregoing copy of
..... is a complete and exact copy of the original.

Dated, 19.....

Attorney(s) for

ACCEPTANCE OF SERVICE

Due service of the within is hereby accepted
on, 19....., by receiving a true copy thereof.

Attorney(s) for

CERTIFICATES OF SERVICE

Personal

I certify that on, 19....., I served the within
..... on
attorney of record for
by personally handing to said attorney a true copy thereof.

Attorney(s) for

At Office

I certify that on, 19....., I served the within
..... on
attorney of record for
by leaving a true copy thereof at said attorney's office with his/her clerk therein, or with a person apparently in
charge thereof, at, Oregon.

Attorney(s) for

Mailing

I hereby certify that I served the foregoing Objection to Motion for Production
..... on Peter R. Chamberlain,
.....
attorney(s) of record for plaintiff
on February 22, 1982, by mailing to said attorney(s) a true copy thereof, certified by me
as such, contained in a sealed envelope, with postage paid, addressed to said attorney(s) at said attorney(s) last
known address, to-wit: 229. Mohawk Building, Portland, OR 97204

and deposited in the post office at Portland, Oregon, on said day.

Dated February 22, 1982.

Attorney(s) for Defendant

SCHWABE, WILLIAMSON, WYATT,
MOORE & ROBERTS
ATTORNEYS AT LAW
1200 Standard Plaza
Portland, Oregon 97204
Telephone 222-9981

U.S. DISTRICT COURT
DISTRICT OF OREGON

FILED

MAR 24 1982

JAMES D. HUEGLI
Schwabe, Williamson, Wyatt,
Moore & Roberts
1200 Standard Plaza
Portland, OR 97204
Telephone: 222-9981

ROBERT M. CHRIST, CLERK
BY *[Signature]* DEPUTY

Attorneys for Defendant

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

TERI SEE and DARREL SEE,
wife and husband,

Plaintiffs,

vs.

REMINGTON ARMS COMPANY, INC.,
a Delaware corporation,

Defendant.

Civil No. 81-886

NOTICE OF DEPOSITIONS

TO: TERI SEE, DARREL SEE and their attorney, PETER CHAMBERLAIN
and PHILLIP NELSON

Please take notice that the defendant will take the
following depositions in the above-entitled action in the law
office of Phillip Nelson, 332 10th Street, Astoria, Oregon 97103,
on Friday, April 2, 1982:

Witness Jim McDermitt : 1:30 p.m.

Witness Daniel Laughman
(Clatsop County Sheriff) : 2:30 p.m.

Defendant Teri See : 3:30 p.m.

.....

1 You are invited to attend and participate in
2 accordance with Rule 30(b) of the Federal Rules of Civil
3 Procedure.

4 SCHWABE, WILLIAMSON, WYATT,
5 MOORE & ROBERTS

6
7 By: 

James D. Huegli
Attorney for Defendant

United States District Court

FOR THE

DISTRICT OF OREGON

U.S. DISTRICT COURT
DISTRICT OF OREGON

FILED

APR 1 1982

CIVIL ACTION FILE NO. 81-886

ROBERT M. CHRIST, CLERK
BY DEPUTYTERI SEE and DARREL SEE,
wife and husband,
vs.
REMINGTON ARMS COMPANY, INC.

TO

Jim McDermitt, c/o Astoria Fire Department, 555 30th, Astoria, Oregon

YOU ARE COMMANDED to appear at Phillip Nelson's office, 332 10th Street,
in the city of
on the 2nd day of April, 1982, at 1:30 o'clock P. M. to testify
on behalf of Remington Arms Company, Inc.at the taking of a deposition in the above entitled action pending in the United States District Court
for the District of Oregon and bring with you

Dated March 23, 1982

James D. Huegli

Attorney for Defendant

1200 Standard Plaza

Address Portland OR 97204

ROBERT M. CHRIST

By

Clerk.

Deputy Clerk.

Any subpoenaed organization not a party to this suit is hereby admonished pursuant to Rule 30 (b) (6), Federal Rules of Civil Procedure, to file a designation with the court specifying one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and shall set forth, for each person designated, the matters on which he will testify or produce documents or things. The persons so designated shall testify as to matters known or reasonably available to the organization.

1. Strike the words "and bring with you" unless the subpoena is to require the production of documents or tangible things, in which case the documents and things should be designated in the blank space provided for that purpose. If testimony by an organization representative or designee is requested, describe with reasonable particularity the matters on which examination is requested.

RETURN ON SERVICE

Received this subpoena at Astoria, Oregon on March 25, 1982
and on March 26, 1982 at Astoria Fire Department, Marine Drive
served it on the within named Jim McDermitt (McDermott)
by delivering a copy to him and tendering to him the fee for one day's attendance and the mileage
allowed by law.

Dated:

, 19

Service Fees

Travel \$
Services \$

Total \$

CARL B. BONDIETTI, SHERIFF

By

Deputy

Subscribed and sworn to before me, a
day of 19

this

United States District Court

FOR THE

DISTRICT OF OREGON

U.S. DISTRICT COURT
DISTRICT OF OREGON

FILED

APR 1 1982

CIVIL ACTION FILE NO. 81-8886

ROBERT M. CHRIST, CLERK
BY
DEPUTYTERI SEE and DARREL SEE,
wife and husband,

vs.

REMINGTON ARMS COMPANY, INC.

TO Sgt. Daniel P. Laughman, Clatsop County Sheriff's Department
c/o Sheriff's Department or home address, Route 5, Box 884-A, Astoria, OregonYOU ARE COMMANDED to appear at Phillip Nelson's office, 332 10th Street,
in the city of
on the 2nd day of April, 1982, at 2:30 o'clock P. M. to testify
on behalf of Remington Arms Companyat the taking of a deposition in the above entitled action pending in the United States District Court
for the District of Oregon and bring with you any and all
accident and investigation reports or documents regarding the shooting accident
on October 27, 1979 at the home of Steven Boudreau, Route 1, Box 893, Astoria.

Dated March 23, 1982

James D. Huegli

Attorney for Defendant

1200 Standard Plaza

Address Portland, OR 97204

ROBERT M. CHRIST

By

Clerk.

Deputy Clerk.

Any subpoenaed organization not a party to this suit is hereby admonished pursuant to Rule 30 (b) (6), Federal Rules of Civil Procedure, to file a designation with the court specifying one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and shall set forth, for each person designated, the matters on which he will testify or produce documents or things. The persons so designated shall testify as to matters known or reasonably available to the organization.

1. Strike the words "and bring with you" unless the subpoena is to require the production of documents or tangible things, in which case the documents and things should be designated in the blank space provided for that purpose. If testimony by an organization representative or designer is requested, describe with reasonable particularity the matters on which examination is requested.

RETURN ON SERVICE

Received this subpoena at Astoria, Oregon on March 25, 1982
and on March 25, 1982 at Clatsop County Sheriff's Office
served it on the within named Daniel P. Laughman
by delivering a copy to him and tendering to him the fee for one day's attendance and the mileage
allowed by law.

Dated:

CARL B. BONDINETTI, SHERIFF

By

Deputy

Service Fees

Travel

Services

Total \$

Subscribed and sworn to before me, a
day of 19

this

2. Fees and mileage need not be tendered to the witness upon service of a subpoena issued in behalf of the United States or an officer or agency thereof, or upon service of a subpoena issued on behalf of a party, authorized to proceed in forma pauperis, where the payment thereof is to be made by the United States marshal, as authorized in section 1825 of title 28, U.S.C.

Note: Affidavit required only if service is made by a person other than a United States Marshal.

GPO 507-528

U.S. DISTRICT COURT
DISTRICT OF OREGON

FILED

APR 9 1982

ROBERT M. CHRIST, CLERK
BY *[Signature]* DEPUTY

1 E. Richard Bodyfelt
Peter R. Chamberlain
2 BODYFELT, MOUNT, STROUP & CHAMBERLAIN
229 Mohawk Building
3 222 S.W. Morrison Street
Portland, Oregon 97204
4 Telephone: (503) 243-1022

5 Attorneys for Plaintiffs

8 IN THE UNITED STATES DISTRICT COURT

9 FOR THE DISTRICT OF OREGON

10 TERI SEE and DARREL SEE,)
wife and husband,)
11 Plaintiffs,) Civil No. 81-886
12)
13 v.) MOTION TO COMPEL PRODUCTION AND
14 REMINGTON ARMS COMPANY, INC.,) REQUEST FOR ORAL ARGUMENT; AND
a Delaware corporation,) AFFIDAVIT OF PETER R. CHAMBERLAIN
15 Defendant.)

16 Pursuant to FRCP 37(a), plaintiffs move this court for
17 an order requiring defendant to produce the following:

- 18 1. All documents which relate in anyway to any recall
19 campaigns for defendant's Model 600 rifle.
20 2. All documents relating to all tests performed by
21 defendant on its Model 600 rifle.
22 3. All memoranda, correspondence, reports, letters or other
23 documents generated as part of defendant's design, manufacture, testing
24 and/or modification of the safety mechanisms on defendant's Model 600
25 rifle.
26 4. All memoranda, correspondence, reports, letters or other

Page 1 - MOTION TO COMPEL PRODUCTION AND REQUEST FOR ORAL ARGUMENT; AND
AFFIDAVIT OF PETER R. CHAMBERLAIN

BODYFELT, MOUNT, STROUP & CHAMBERLAIN
Attorneys at Law
229 Mohawk Building
Portland, Oregon 97204
Telephone (503) 243-1022

12

1 documents generated as a part of defendant's design, manufacture,
2 testing and/or modification of the trigger mechanisms on defendant's
3 Model 600 rifle.

4 5. All manufacturing, trade and governmental standards,
5 codes or regulations with which defendant complied or attempted to
6 comply, whether suggested, voluntary or mandatory in the design,
7 manufacture and sale of the Remington Model 600 rifle.

8 6. All documents relating to all tests performed by the
9 defendant on its Model 700 rifle.

10 Plaintiffs did previously on the 30th day of September,
11 1981, pursuant to FRCP 34, serve a request upon the defendant for
12 the above discovery and inspection. By letter dated February 23, 1982,
13 defendant served upon plaintiffs a written response to the request
14 objecting to the request noted above. Defendant objected to Items 1
15 through 5 above on the basis that the requested documents were
16 irrelevant and immaterial, and that said request was cumbersome and
17 burdensome. Defendant further objected to Item 6 above as being too
18 broad to enable defendant to adequately comply.

19 Plaintiffs' motion is based on the grounds that the requested
20 documents are proper objects of discovery. Although the plaintiffs'
21 complaint alleges damages resulting from a defect in defendant's
22 Model 700 rifle, it is plaintiffs' contention that the defendant's
23 Model 600 has substantially the same history of defects and that there
24 is discoverable material in the documents requested concerning the
25 Model 600 which is relevant and applicable to the alleged defects
26 of the Model 700 rifle.

1 Additionally, defendant, by its untimely objection to the
2 request for production, has waived any right to object to said re-
3 quest. Defendant, through its counsel, continually assured plaintiffs
4 that efforts were being made to comply with the request to produce.
5 As is more fully set forth in the affidavit of Peter R. Chamberlain
6 attached hereto, there was no indication that plaintiffs' request
7 would be objected to.

8 With respect to Item 6 above, if this court finds that the
9 request as stated is too broad, then these plaintiffs move the court
10 for an order compelling production of any inventory of all the tests
11 performed on the Model 700 rifle, which would enable the plaintiffs
12 to determine the tests, about which they desire further discovery.

13 Plaintiffs request oral argument on this motion.

14 BODYFELT, MOUNT, STROUP & CHAMBERLAIN

15
16 By 

Peter R. Chamberlain

17 Of Attorneys for Plaintiffs
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AFFIDAVIT OF PETER R. CHAMBERLAIN

1
2 STATE OF OREGON)
 ss.
3 County of Multnomah)

4 I, Peter R. Chamberlain, being first duly sworn, depose
5 and say:

6 1. I have personal knowledge of all the facts set forth
7 herein.

8 2. I am one of the attorneys representing the plaintiffs
9 in the captioned matter.

10 3. I make this affidavit in support of plaintiffs' motion
11 to compel production of documents pursuant to FRCP 37(a).

12 4. This action was filed in September of 1981.

13 5. This is an action to recover for personal injuries
14 arising out of the discharge of a Remington Model 700 rifle.

15 6. At the time of service of the summons and complaint on
16 defendant, plaintiffs also served defendant with a request for pro-
17 duction of documents. Defendant's attorney sought, and I stipulated
18 to, a 60-day extension of the time for filing of defendant's answer
19 to December 18, 1981.

20 7. Defendant filed its answer on December 18, 1981.
21 Defendant did not respond to plaintiffs' request for production within
22 the time allowed; and therefore, on December 16, 1981, I wrote
23 defendant's attorney seeking production. Since that time I have re-
24 relatedly been assured that the request had been forwarded to the
25 defendant corporation but, as yet, no documents have been produced.

26 8. Production and inspection of said documents is necessary

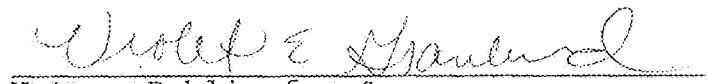
1 for preparation of the case for the plaintiffs.

2 9. I was informed that said documents are in the custody,
3 care and control of the defendant and may constitute or contain evidence
4 relevant to the matters involved in this action.

5 10. On September 30, 1981, I requested defendant's attorney
6 to permit inspection of such documents and to make copies thereof at
7 plaintiffs' expense, but defendant's attorney has not produced any
8 of such documents.

9 
10 Peter R. Chamberlain

11 Subscribed and sworn to before me this 9th day of
12 April, 1982.

13 
14 Notary Public for Oregon
15 My Commission Expires: 9-21-82
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CERTIFICATE — TRUE COPY

I hereby certify that the foregoing copy of _____

_____ is a complete and exact copy of the original.

Dated _____, 19____

Attorney(s) for _____

ACCEPTANCE OF SERVICE

Due service of the within _____ is hereby accepted
on _____, 19____, by receiving a true copy thereof.

Attorney(s) for _____

CERTIFICATES OF SERVICE

Personal

I certify that on _____, 19____, I served the within _____
_____ on _____
attorney of record for _____
by personally handing to said attorney a true copy thereof.

Attorney(s) for _____

At Office

I certify that on _____, 19____, I served the within _____
_____ on _____
_____ attorney of record for _____
by leaving a true copy thereof at said attorney's office with his/her clerk therein, or with a person apparently in
charge thereof, at _____, Oregon.

Attorney(s) for _____

Mailing

I hereby certify that I served the foregoing MOTION TO COMPEL PRODUCTION AND REQUEST FOR
ORAL ARGUMENT; AND AFFIDAVIT OF PETER R. CHAMBERLAIN
on the following attorneys on the 9th day of April, 1982, by mailing to each a true
copy thereof, certified by me as such, contained in a sealed envelope, with postage paid, addressed to said attorneys
at the last known address of each shown below and deposited in the post office on said day at Portland, Oregon:

James D. Huegli
1200 Standard Plaza
1100 S.W. 6th Avenue
Portland, OR 97204



Attorney(s) for Plaintiffs

BODYFELT, MOUNT & STROUP
ATTORNEYS AT LAW
229 Mohawk Building
Portland, Oregon 97204
Telephone (503) 243-1022

UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
CIVIL MINUTES — GENERAL

No. 81-886

Date May 3, 1982

Title TERI SEE, et al v. REMINGTON ARMS CO., INC.

DOCKET ENTRY

Record of hearing pltf's motion to compel production (12).
Counsel for deft not being present, continued to 4 PM in chambers.

ORDERED that the Court will permit discovery of the "600".
ORDERED parties may have until June 22 to close discovery and
lodge pretrial order.

PRESENT:

HON. OWEN M. PANNER

JUDGE

M. Hui

~~xxxxxxHuegli~~ Dale Ray

Deputy Clerk

Court Reporter

ATTORNEYS PRESENT FOR PLAINTIFFS:

ATTORNEYS PRESENT FOR DEFENDANTS:

Peter R. Chamberlain

James Huegli

PROCEEDINGS:

cc: Peter Chamberlain
James Spiekerman

U. S. DISTRICT COURT
DISTRICT OF OREGON
FILED

MAY 17 1982

ROBERT M. CHRIST, CLERK
BY *Bu* DEPUTY

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

TERI SEE, et al ,

PLAINTIFF,

v.

REMINGTON ARMS COMPANY, INC.,

DEFENDANT.

CIVIL No. 81-886

REMINDER TO COUNSEL

THE RECORDS OF OUR COURT INDICATE THAT THE PRETRIAL
ORDER IN THIS CASE IS DUE TO BE LODGED NOT LATER THAN
June 22, 1982.

DATED THIS 17 DAY OF May, 1982.

ROBERT M. CHRIST, CLERK

By:

Bu
DEPUTY CLERK

14

BODYFELT MOUNTSTROUP & HAMBERLAIN

Attorneys at Law

Richard Bodyfelt
Larry M. Mount
Roger K. Stroup
Peter R. Chamberlain

229 Mohawk Building
222 S.W. Morrison St.
Portland, Oregon 97204-3188
Telephone 503 243-1022

May 27, 1982

The Honorable Owen M. Panner
U. S. District Court Judge
602 U. S. Courthouse
620 S.W. Main Street
Portland, OR 97205

Dear Judge Panner:

Re: See v. Remington Arms
Civil No. 81-886

We were last before you on this matter on May 3, at which time you ruled upon plaintiff's motion to compel production of documents. At that same hearing, you extended discovery in this matter to June 22, 1982, which is also the date set for lodging of the pretrial order. Since the May 3 hearing, I have propounded interrogatories to defendant, filed requests for admission, filed a second request for production and requested the depositions of numerous individuals in defendant's employ. I have received some cooperation from defendant's counsel, but am growing increasingly concerned that we are going to run into substantial difficulty with the discovery cut-off deadline.

I do not, necessarily, wish to seek an extension of time in this matter. Rather, I would like to have this matter set down for a further status conference in the near future so that we may discuss progress being made in discovery and so that we may determine whether an extension, or an all-out push to complete discovery, is appropriate. I have informed Mr. Huegli of my request by copy of this letter. Thank you very much for your consideration of this matter.

Very truly yours,


Peter R. Chamberlain

PRC:imp

cc: James D. Huegli

UNITED STATES DISTRICT COURT
DISTRICT OF OREGON

CIVIL MINUTES — GENERAL

Case No. 81-886 Date June 14, 1982

Title Teri See, et al v. Remington Arms Co., Inc.

DOCKET ENTRY

RECORD of conference.
ORDER - extending time for completion of discovery to August 5,
1982, and for lodging pretrial order to August 15, 1982.

PRESENT:

HON. Edward Leavy, JUDGE

J. Glenn
Deputy Clerk

Court Reporter

ATTORNEYS PRESENT FOR PLAINTIFFS:

Peter Chamberlain

ATTORNEYS PRESENT FOR DEFENDANTS:

James Huegli

PROCEEDINGS:

cc: Peter Chamberlain
James Spiekerman

PCW

FILED

JUN 14 4 48 PM '82

CLERK, U.S. DISTRICT COURT
DISTRICT OF OREGON

BY [Signature]

Peter R. Chamberlain
BODYFELT, MOUNT, STROUP
& CHAMBERLAIN
214 Mohawk Building
708 S.W. Third Avenue
Portland, OR 97204
Telephone: (503) 243-1022

Of Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

| | | |
|-------------------------------|---|-----------------------------------|
| TERI SEE and DARREL SEE, |) | |
| wife and husband, |) | |
| |) | |
| Plaintiffs, |) | Civil No. 81-886 |
| |) | |
| v. |) | MOTION TO COMPEL ANSWERS TO |
| |) | INTERROGATORIES |
| REMINGTON ARMS COMPANY, INC., |) | REQUEST FOR ORAL ARGUMENT |
| a Delaware corporation, |) | AFFIDAVIT OF PETER R. CHAMBERLAIN |
| |) | |
| Defendant. |) | |

Pursuant to FRCP 37(a), plaintiffs move this Court for an order requiring defendant to answer plaintiffs' first set of interrogatories to defendant, which interrogatories were served on defendant May 10, 1982. Defendant has filed no response to said interrogatories, nor has defendant filed objections to answering said interrogatories. The information sought in said interrogatories is within the scope of discovery as set forth in FRCP 26. Additionally, by failing to timely file responses to said interrogatories, defendant has waived any right to object to said

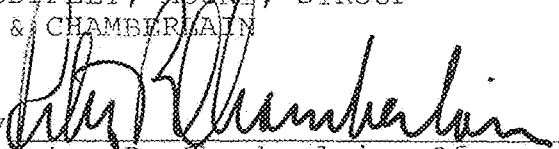
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///

1 interrogatories.

2 Plaintiffs request oral argument of this motion.

3 BODYFELT, MOUNT, STROUP
4 & CHAMBERLAIN

5 By 
6 Peter R. Chamberlain, Of
7 Attorneys for Plaintiffs
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AFFIDAVIT OF PETER R. CHAMBERLAIN

STATE OF OREGON)
) ss.
County of Multnomah)

I, PETER R. CHAMBERLAIN, being first duly sworn, depose
and say:

1. I have personal knowledge of all the facts set forth herein.

2. I am one of the attorneys representing the plaintiffs in
the captioned matter.

3. I make this affidavit in support of plaintiffs' motion to
compel answers to interrogatories, pursuant to FRCP 37(a).

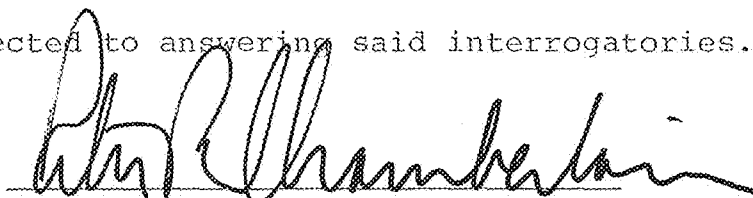
4. Plaintiffs' interrogatories were served on defendant on
May 10, 1982.

5. This is an action to recover for personal injuries arising
out of the discharge of a Remington Model 700 rifle.

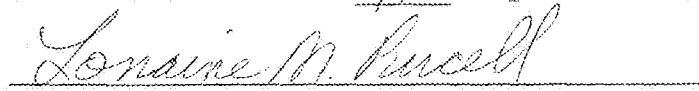
6. No extensions of time have been granted to defendant in which
to file its responses to interrogatories.

7. Defendant has not answered said interrogatories.

8. Defendant has not objected to answering said interrogatories.


Peter R. Chamberlain

SUBSCRIBED and SWORN to before me this 11th day of June,
1982.


Notary Public for Oregon
My Commission Expires: 1/27/84

E. Richard Bodyfelt
 Peter R. Chamberlain
 BODYFELT, MOUNT, STROUP & CHAMBERLAIN
 214 Mohawk Building
 305 S.W. Third Avenue
 Portland, OR 97204
 Telephone: (503) 243-1022

Of Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT
 FOR THE DISTRICT OF OREGON

| | | |
|-------------------------------|---|------------------------------|
| TERI SEE and DARREL SEE, |) | |
| wife and husband, |) | |
| |) | |
| Plaintiffs, |) | Civil No. 81-836 |
| |) | |
| v. |) | |
| |) | |
| REMINGTON ARMS COMPANY, INC., |) | INTERROGATORIES TO DEFENDANT |
| a Delaware corporation, |) | |
| |) | |
| Defendant. |) | |

Plaintiffs propound the following interrogatories to defendant, pursuant to FRCP Rule 33, to be answered within 30 days of service upon defendant, separately and fully:

PREFATORY COMMENT

As used throughout these interrogatories, the term "this rifle" refers to the Model 700 Remington rifle which was involved in the shooting of the plaintiff, Mrs. Teri See; the term "Model 700" refers to the Remington Model 700 rifle designed and manufactured in the period 1976 through 1981; the term "identify" means to state the full name, occupation and present home and business addresses.

INTERROGATORIES

INTERROGATORY NO. 1: State in detail how, if at all, the trigger mechanism of this rifle differs from the trigger mechanism of the Remington 600 rifle as it existed before being recalled.

INTERROGATORY NO. 2: State in detail how the safety mechanism of this rifle differs from the safety mechanism of the Remington 600 rifle as it existed before being recalled.

INTERROGATORY NO. 3: Identify what rifle models defendant has manufactured in the last eight years which could be unloaded (including removal of a live shell from the chamber) without disengaging the weapon's safety?

INTERROGATORY NO. 4: Identify what rifle models defendant has manufactured in the last eight years which could not be unloaded (including removal of a live shell from the chamber) without disengaging the weapon's safety?

INTERROGATORY NO. 5: Identify all experts you intend to call as witnesses in the trial of this matter and state the substance of their testimony.

INTERROGATORY NO. 6: If plaintiffs' request for admission No. 3 is denied, state the number of occasions on which it has been reported to you that a Remington Model 700 rifle fired when the safety was released.

INTERROGATORY NO. 7: Are the Remington Model 700 rifles inspected by you (and mentioned in the 49 gun examination reports produced by you) the same or similar to the gun involved in this

1 case?

2 INTERROGATORY NO. 8: If the answer to Interrogatory No.
3 7 is other than an unqualified "yes," state the ways in which
4 this rifle is different from each of those rifles.

5 INTERROGATORY NO. 9: State, with as much accuracy as
6 possible, the date (or year, if date cannot be determined) of
7 manufacture of each of the rifles examined in the 49 gun exam-
8 ination reports produced by you.

9 INTERROGATORY NO. 10: State, with as much accuracy as
10 possible, the date (or year, if date cannot be determined) of
11 manufacture of this rifle.

12 INTERROGATORY NO. 11: If plaintiffs' request for
13 admission No. 5 is denied, state, with particularity, in what
14 respects you contend the rifle did not meet your manufacturing,
15 design and/or performance specifications on the date of your
16 examination.

17 INTERROGATORY NO. 12: If plaintiffs' request for
18 admission No. 6 is denied, state, with particularity, in what
19 respects you contend the rifle was in a different condition than
20 it was when it left your hands.

21 INTERROGATORY NO. 13: If plaintiffs' request for admis-
22 sion No. 7 is denied, state, with particularity, in what respects
23 you contend that it was not reasonably foreseeable.

24 INTERROGATORY NO. 14: What do you contend caused this
25 rifle to fire at the time of, and on the date of, Mrs. See's
26 injury?

1 INTERROGATORY NO. 15: State whether or not it is true
2 that the side portion of the trigger mechanism on this rifle (and
3 other Remington 700 rifles) is open such that dirt, debris and
4 other foreign material could enter the trigger mechanism.

5 INTERROGATORY NO. 16: If the answer to Interrogatory
6 No. 15 is "yes," or is qualified in any way, explain why the
7 trigger mechanism is designed in that manner and state whether or
8 not it could have been designed in such a manner that such con-
9 tamination could be reduced or eliminated.

10 INTERROGATORY NO. 17: On the date of manufacture of
11 this rifle, how many reports had defendant received of other
12 Remington 700 rifles discharging when the safety was disengaged?

13 INTERROGATORY NO. 18: Since the date of manufacture of
14 this rifle, has the defendant changed the design of the trigger
15 mechanism or the safety mechanism (or both) in any way on its
16 Remington Model 700 rifle? If so, state with particularity what
17 changes have been made and the reason or reasons for each such
18 change.

19 INTERROGATORY NO. 19: Is there any reason that this
20 rifle cannot be redesigned in such a manner that it could be
21 unloaded (including removal of a shell from the chamber) without
22 disengaging the safety?

23 INTERROGATORY NO. 20: If the answer to Interrogatory
24 No. 19 is "yes," state, with particularity, what the reasons are.

25 INTERROGATORY NO. 21: If the answer to Interrogatory
26 No. 19 is "no," estimate what the difference in cost per rifle

1 would be to implement such an alternative design.

2 INTERROGATORY NO. 22: Is it true that you changed the
3 design of your Remington Model 738 from a safety which had to be
4 disengaged to unload the gun to a safety which did not have to be
5 disengaged to unload the gun?

6 INTERROGATORY NO. 23: If the answer to Interrogatory
7 No. 22 is "yes," state your reasons for making such a change.

8 INTERROGATORY NO. 24: If the answer to Interrogatory
9 No. 22 is "no," state whether or not you ever made such a change
10 on any rifle which you manufacture, identify that rifle, and
11 state the date such change was made.

12 DATED this 10th day of May, 1982.

13 BODYFELT, MOUNT, STROUP
14 & CHAMBERLAIN

15 By _____
16 Peter R. Chamberlain, Of
17 Attorneys for Plaintiffs
18
19
20
21
22
23
24
25
26

CERTIFICATE — TRUE COPY

I hereby certify that the foregoing copy of
..... is a complete and exact copy of the original.
Dated, 19.....

Attorney(s) for

ACCEPTANCE OF SERVICE

Due service of the within is hereby accepted
on, 19....., by receiving a true copy thereof.

Attorney(s) for

CERTIFICATES OF SERVICE

Personal

I certify that on, 19....., I served the within
..... on
attorney of record for
by personally handing to said attorney a true copy thereof.

Attorney(s) for

At Office

I certify that on, 19....., I served the within
..... on
attorney of record for
by leaving a true copy thereof at said attorney's office with his/her clerk therein, or with a person apparently in
charge thereof, at, Oregon.

Attorney(s) for

Mailing

I hereby certify that I served the foregoing Motion to Compel
.....
on the following attorneys on the 11th day of June, 19 82, by mailing to each a true
copy thereof, certified by me as such, contained in a sealed envelope, with postage paid, addressed to said attorneys
at the last known address of each shown below and deposited in the post office on said day at Portland, Oregon:

James D. Huegli
1200 Standard Plaza
Portland, OR 97204



Attorney(s) for Plaintiffs

BODYFELT, MOUNT, STROUP & CHAMBERLAIN

ATTORNEYS AT LAW
214 Mohawk Building
708 S. W. Third Avenue
Portland, Oregon 97204
Telephone (503) 243-1022

FILED

JUN 14 4 51 PM '82

CLERK, U.S. DISTRICT COURT
DISTRICT OF OREGON

BY [Signature]

Peter R. Chamberlain
BODYFELT, MOUNT, STROUP
& CHAMBERLAIN
214 Mohawk Bldg.
708 S.W. Third Avenue
Portland, OR 97204
Telephone: (503) 243-1022

Of Attorneys for Plaintiff

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

| | | |
|-------------------------------|---|-----------------------------------|
| TERI SEE and DARREL SEE, |) | |
| wife and husband, |) | |
| |) | |
| Plaintiffs, |) | Civil No. 81-886 |
| |) | |
| v. |) | |
| |) | |
| REMINGTON ARMS COMPANY, INC., |) | MOTION TO COMPEL PRODUCTION |
| a Delaware corporation, |) | REQUEST FOR ORAL ARGUMENT |
| |) | AFFIDAVIT OF PETER R. CHAMBERLAIN |
| Defendant. |) | |

Pursuant to FRCP 37(a), plaintiffs move this Court for an order requiring defendant to produce all documents set forth in plaintiffs' second request for production filed and served upon defendant May 10, 1982. Defendant has filed no response to plaintiffs' request, nor has defendant produced any of the requested documents. All of such documents are within the scope of discovery set forth in FRCP 26. Furthermore, defendant has waived any right to object to said request by its failure to object within the time required.

///

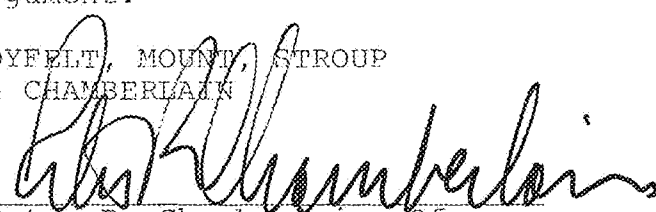
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17

1 Plaintiffs request oral argument.

2 BODYFELT, MOUNT, STROUP
3 & CHAMBERLAIN

4 By


Peter R. Chamberlain, Of
5 Attorneys for Plaintiffs

AFFIDAVIT OF PETER R. CHAMBERLAIN

STATE OF OREGON)
) ss.
County of Multnomah)

I, PETER R. CHAMBERLAIN, being first duly sworn, depose
and say:

1. I have personal knowledge of all the facts set forth
herein.

2. I am one of the attorneys representing the plaintiffs in
the captioned matter.

3. I make this affidavit in support of plaintiffs' motion to
compel production of documents pursuant to FRCP 37(a).

4. This is an action to recover for personal injuries arising
out of the discharge of a Remington Model 700 rifle.

5. On May 10, 1982, plaintiffs served defendant with their
second request for production of documents. No extension of time
has been granted defendant within which to file its response to
said request.

6. Defendant has not responded to plaintiffs' request for
production within the time allowed by law.


Peter R. Chamberlain

SUBSCRIBED and SWORN to before me this 11th day of June,
1982.


Notary Public for Oregon
My Commission Expires: 1/27/84

E. Richard Bodyfelt
 Peter R. Chamberlain
 BODYFELT, MOUNT, STROUP
 & CHAMBERLAIN
 214 Mohawk Building
 308 S.W. Third Avenue
 Portland, OR 97204
 Telephone: (503) 243-1022

Of Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT
 FOR THE DISTRICT OF OREGON

| | | |
|-------------------------------|---|------------------------|
| TERI SEE and DARREL SEE, |) | |
| wife and husband, |) | |
| |) | |
| Plaintiffs, |) | Civil No. 81-986 |
| |) | |
| v. |) | |
| |) | |
| REMINGTON ARMS COMPANY, INC., |) | PLAINTIFFS' SECOND |
| a Delaware corporation, |) | REQUEST FOR PRODUCTION |
| |) | |
| Defendants. |) | |

Pursuant to FRCP 34, plaintiffs request that defendant produce for inspection and copying, within 30 days of the date of service of this request, the documents set forth below. As used in this request, the word "document" shall be given its broadest possible meaning and shall include, but not be limited to, all forms of documents set forth in FRCP 34(a). Production shall be at the offices of Bodyfelt, Mount, Stroup & Chamberlain, Room 214, 708 S.W. Third Avenue, Portland, Oregon.

DOCUMENTS

14. All manufacturing, trade and governmental standards, codes or regulations with which defendant complied or attempted

to comply, whether suggested, voluntary or mandatory, in and related to the design, manufacture and sale of the Remington Model 700 rifle during the period 1975 through 1981.

15. All test procedures and test results for all tests performed on the Remington Model 700 rifles which were the subject of the 49 gun examination reports produced by defendant.

16. The gun examination report for defendant's examination of this rifle.

17. All test procedures and test results for all tests performed on the trigger mechanism of the Remington Model 700 rifle in the design and manufacture of that weapon.

18. All test procedures and test results for all tests performed on the safety mechanism of the Remington Model 700 rifle in the design and manufacture of that weapon.

19. All letters, memoranda, notes or other correspondence which gave rise to the preparation of the 49 gun examination reports previously produced by defendant.

20. All documents in your possession relating to the lawsuits previously produced by defendant.

DATED this 10th day of May, 1982.

BODYFELT, MOUNT, STROUP
& CHAMBERLAIN

By _____
Peter R. Chamberlain, Of
Attorneys for Plaintiffs

CERTIFICATE — TRUE COPY

I hereby certify that the foregoing copy of _____
_____ is a complete and exact copy of the original.

Dated _____, 19____.

Attorney(s) for _____

ACCEPTANCE OF SERVICE

Due service of the within _____ is hereby accepted
on _____, 19____, by receiving a true copy thereof.

Attorney(s) for _____

CERTIFICATES OF SERVICE

Personal

I certify that on _____, 19____, I served the within _____
_____ on _____
attorney of record for _____
by personally handing to said attorney a true copy thereof.

Attorney(s) for _____

At Office

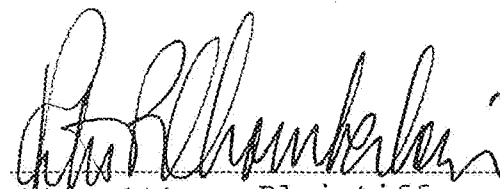
I certify that on _____, 19____, I served the within _____
_____ on _____
attorney of record for _____
by leaving a true copy thereof at said attorney's office with his/her clerk therein, or with a person apparently in
charge thereof, at _____, Oregon.

Attorney(s) for _____

Mailing

I hereby certify that I served the foregoing _____ Motion to Compel _____
_____ on the following attorneys on the 11th day of June, 19 82, by mailing to each a true
copy thereof, certified by me as such, contained in a sealed envelope, with postage paid, addressed to said attorneys
at the last known address of each shown below and deposited in the post office on said day at Portland, Oregon:

James D. Huegli
1200 Standard Plaza
Portland, OR 97204



Attorney(s) for Plaintiffs

BODYFELT, MOUNT, STROUP & CHAMBERLAIN

ATTORNEYS AT LAW
214 Mohawk Building
708 S. W. Third Avenue
Portland, Oregon 97204
Telephone (503) 243-1022

FILED

JUN 18 4 27 PM '82
CLERK, U.S. DISTRICT COURT
DISTRICT OF OREGON
BY *[Signature]*

1 Peter R. Chamberlain
BODYFELT, MOUNT, STROUP & CHAMBERLAIN
2 214 Mohawk Building
708 S.W. Third
3 Portland, OR 97204
Telephone: (503) 243-1022

4 Of Attorneys for Plaintiffs
5
6
7

8 IN THE UNITED STATES DISTRICT COURT

9 FOR THE DISTRICT OF OREGON

10 TERI SEE and DARREL SEE,)
wife and husband,)
11)
Plaintiff,) Civil No. 81-886
12)
v.) NOTICE OF DEPOSITIONS
13)
REMINGTON ARMS COMPANY, INC.,)
14 a Delaware corporation,)
15 Defendant.)

16 TO: REMINGTON ARMS COMPANY, INC., and its attorney, JAMES D.
HUEGLI
17

18 YOU AND EACH OF YOU will please take notice that during
19 the week of July 19 to July 23, 1982 (or as much of said week as
20 is required to complete the below listed depositions), commencing
21 at 9:00 a.m. each day, in the offices of Remington Arms Company,
22 Inc., 939 Barnum Avenue, Bridgeport, Connecticut, plaintiffs
23 will take the depositions of the individuals listed below before
24 a person authorized to administer oaths in the state of
25 Connecticut:

26 1. Mr. M. Hardy.

Page 1 - NOTICE OF DEPOSITIONS

1 2. Mr. R. L. Jay.

2 3. The persons who are identified by their initials
3 only on the 49 gun examination reports produced by defendant.

4 4. The person or persons primarily responsible for
5 interpreting plaintiffs' requests for production and in locating
6 documents and producing the same on behalf of the defendant in
7 this litigation.

8 5. The person or persons primarily responsible for
9 design of the safety and trigger mechanisms on the Remington
10 Model 700 rifle.

11 6. The person or persons primarily responsible for
12 overseeing the manufacture of the Model 700 rifle during the
13 period 1976 to 1981.

14 7. The person or persons primarily responsible for
15 quality assurance ⁱⁿ and the manufacturing of the Model 700 rifle
16 during the period 1976 to 1981.

17 DATED this 17th day of June, 1982.

18 BODYFELT, MOUNT, STROUP & CHAMBERLAIN

19
20 By 
21 Peter R. Chamberlain
22 Of Attorneys for Plaintiffs
23
24
25
26

CERTIFICATE — TRUE COPY

I hereby certify that the foregoing copy of
..... is a complete and exact copy of the original.

Dated, 19.....

Attorney(s) for

ACCEPTANCE OF SERVICE

Due service of the within is hereby accepted
on, 19....., by receiving a true copy thereof.

Attorney(s) for

CERTIFICATES OF SERVICE

Personal

I certify that on, 19....., I served the within
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attorney of record for
by personally handing to said attorney a true copy thereof.

Attorney(s) for

At Office

I certify that on, 19....., I served the within
..... on
attorney of record for
by leaving a true copy thereof at said attorney's office with his/her clerk therein, or with a person apparently in
charge thereof, at, Oregon.

Attorney(s) for

Mailing

I hereby certify that I served the foregoing Notice of Depositions
..... on James D. Huegli
attorney(s) of record for defendant
on June 17 19 82, by mailing to said attorney(s) a true copy thereof, certified by me
as such, contained in a sealed envelope, with postage paid, addressed to said attorney(s) at said attorney(s) last
known address, to-wit: 1200 Standard Plaza, Portland, OR 97204
and deposited in the post office at Portland Oregon, on said day.
Dated June 17 19 82.

Attorney(s) for Plaintiffs

BODYFELT, MOUNT & STROUP

ATTORNEYS AT LAW
229 Mohawk Building
Portland, Oregon 97204
Telephone (503) 243-1022

UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
CIVIL MINUTES -- GENERAL

C No. 81-886

Date June 28, 1982

Title Teri See and Darrel See v. Remington Arms Company

DOCKET ENTRY

Rec. of ORDER striking plaintiff's motions to compel from
July 12, 1982 calendar. Motions are MOOT.

PRESENT:

HON. Owen M. Panner

JUDGE

Tom Carter/law clerk

Deputy Clerk

Court Reporter

ATTORNEYS PRESENT FOR PLAINTIFFS:

ATTORNEYS PRESENT FOR DEFENDANTS:

PROCEEDINGS:

all counsel
chambers

Schwabe, Williamson, Wyatt, Moore & Roberts

WASHINGTON, D.C. 20007

ROBERT B. DUNCAN, RESIDENT PARTNER
THE FLOUR MILL, SUITE 302
1000 POTOMAC ST. N.W.
(202) 965-6300

ATTORNEYS AT LAW
1200 STANDARD PLAZA
1100 S.W. 6TH AVENUE

PORTLAND, OREGON 97204

TELEPHONE (503) 222-9981

DIRECT DIAL*

CABLE ADDRESS: "ROSCAL"

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WAYNE A. WILLIAMSON
JOHN L. SCHWABE
WENDELL WYATT
GORDON MOORE
KENNETH E. ROBERTS
JAMES B. O'HANLON
DOUGLAS M. THOMPSON
JAMES R. MOORE
A. ALLAN FRANZKE
ROLAND F. BANKS, JR.
GINO G. PIERETTI, JR.
DOUGLAS J. WHITE, JR.
ROCKNE GILL
JOHN R. FAUST, JR.
JAMES A. LARPELLEUR, JR.
FORREST W. SIMMONS
OF COUNSEL

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ROBERT G. SIMPSON
RIDGEWAY K. FOLEY, JR.
THOMAS M. TRIPLETT
ROBERT E. JOSEPH, JR.
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RALPH V. G. BAKKENSEN
ELIZABETH K. REEVE**
CHARLES R. MARKLEY
ROBERT A. STOUT
J. STEPHEN WERTS**
DANIEL F. KNOX

JAN K. KITCHEN
PAUL R. BOCCI
GUY C. STEPHENSON
JAMES M. FINN
DENNIS S. REESE
EUGENE L. GRANT
KATHERINE H. O'NEIL
MARC K. SELLERS
ALAN S. LARSEN
ERICH H. HOFFMANN
MARY DAVIS CONDIOTTE
NANCIE POTTER ARELLANO
JOHN J. FENNERTY
ANDREW J. MORROW, JR.
MARY E. EGAN
THOMAS V. DULCICH
BRIAN M. PERKO
GARY D. KEEHN*
RICHARD J. KUHN
JAMES S. RICE
JANET M. SCHROEDER
KEVIN F. KERSTIENS

June 22, 1982

* WASHINGTON STATE BAR ONLY
** OREGON STATE AND WASHINGTON STATE BARS

U.S. District Court
Federal Courthouse
Sixth and Main
Portland, OR 97204

Attention: Judge Leavy

Re: See v. Remington Arms
Civil No. 81-886

Dear Judge Leavy:

In response to the order submitted by Pete Chamberlain I suggest that #4 also state that we need not answer #20 or #21 as they are all tied into #19.

Very truly yours,

James D. Huegli
James D. Huegli

JDH:lr

cc: Peter Chamberlain

Mr. Chamberlain agrees

SCHWABE, WILLIAMSON, WYATT, MOORE & ROBERTS

ATTORNEYS AT LAW

1200 STANDARD PLAZA

1100 S. W. 6TH AVENUE

PORTLAND, OREGON 97204

TELEPHONE (503) 222-9921

DIRECT DIAL*

CABLE ADDRESS "ROBCAL"

TELEX-151563

TELECOPIER-244

June 30, 1982

SEATTLE, WASHINGTON 98101

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SUITE 3301

(206) 621-9166

(503) 242-1532

WASHINGTON, D.C. 20007

ROBERT B. DUNCAN, RESIDENT PARTNER

THE FLOUR MILL, SUITE 302

1000 POTOMAC ST. N.W.

(202) 965-8300

BRUCE SPAULDING
WILLIAM H. KINSEY
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OF COUNSEL

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JANET M. SCHROER
KEVIN F. KERSTIENS

* WASHINGTON STATE BAR ONLY
** OREGON STATE AND WASHINGTON STATE BARS

Peter Chamberlain
Attorney at Law
222 SW Morrison Street
Portland, OR 97204-3188

Re: See v. Remington Arms

81-886

Dear Peter:

On June 29 I had a telephone conference with Mr. Sperling, counsel for Remington Arms. All of the matters regarding the interrogatories and request for production will be in on time.

In relationship to the deposition, we have run into one problem. Remington Arms will be closed the first two weeks of August. Therefore, the first date that is available for these depositions is Monday, August 16 for the rest of that week. Mr. Spurling will make these individuals available on a voluntary basis from Monday, August 16, through Friday, August 20. We would therefore appreciate your cooperation in rearranging the depositions scheduled for that time.

Furthermore, I will be on vacation during the last two weeks of July and I have been asked by Remington Arms to be present and available for these depositions.

Next, the depositions should be taken not in the offices of Remington Arms in Connecticut, but actually at the plant where these people work in Illion, New York. This is about an hour and a half drive from Syracuse where your plane would land.

The individual who actually designed the Remington 700 Rifle is no longer an employee of Remington and is retired. His name is Mike Walker and he lives during the summer, we believe, in Illion, New York.

June 30, 1982

Page 2

Furthermore, Mr. Joy and Mr. Hardy, who you have asked to depose, we believe, would be inappropriate individuals and may simply be a waste of your time. Although these individuals' initials do appear on the gun reports, their involvement was simply to bring the guns physically into the testing laboratory and to check the corresponding serial numbers. They had no responsibility and took no part in the examination or testing of these rifles.

The person primarily responsible for interpreting the requests for production will be Mr. Jim Stekel and he will be available. The rest of the individuals will also be available.

If this is convenient with you, Peter, we would appreciate the depositions commencing on Monday morning, August 16. Since this is vacation time I would appreciate you confirming this as soon as possible so that this matter can move forward.

I am sending a copy of this letter to Judge Leavy and asking that he extend the deadline for completion of discovery to the end of August with a corresponding date for the lodging of the Pretrial Order to the end of August.

Lastly, Bob Sperling, who is counsel for Remington Arms, is not available at all for these depositions during July 19 through July 23, as he is heavily involved in a trial in Connecticut at that time.

May I hear from you?

Very truly yours,

James D. Huegli

JDH:lr

cc: Judge Leavy
Bob Sperling
Chuck Jackson

P.S. Peter, confirming our conversation of June 29, we will commence the depositions in this case Monday, August 16 at 1:30 p.m. in the offices of Remington Arms in Illion, New York. The witnesses will be available.

JDH

FILED
Rec'd

JUN 18 4 27 PM '82

CLERK, U.S. DISTRICT COURT
DISTRICT OF OREGON

FILED

JUL 6 11 00 AM '82

CLERK, U.S. DISTRICT COURT
DISTRICT OF OREGON

1 Peter R. Chamberlain
2 BODYFELT, MOUNT, STROUP & CHAMBERLAIN
3 214 Mohawk Building
4 708 S.W. Third
5 Portland, OR 97204
6 Telephone: (503) 243-1022

Of Attorneys for Plaintiffs

8 IN THE UNITED STATES DISTRICT COURT
9 FOR THE DISTRICT OF OREGON

10 TERI SEE and DARREL SEE,)
11 wife and husband,)
12 Plaintiff,) Civil No. 81-886
13 v.) ORDER
14 REMINGTON ARMS COMPANY, INC.,)
15 a Delaware corporation,)
16 Defendant.)

17 Based upon the stipulation of the parties by and through
18 their attorneys of record, it is hereby ORDERED AS FOLLOWS:

- 19 (1) The time allowed for discovery is extended to
20 August 5, 1982;
21 (2) The pretrial order is to be filed by August 16, 1982;
22 (3) Defendant is to comply with plaintiffs' first and
23 second requests for production on or before July 6, 1982; and
24 (4) Defendant is to answer all of plaintiffs' inter-

25 ***

26 ***

20

1 July 6, 1982.

2 DATED this 6th day of July, 1982.

3
4 
5 Edward Leavy
6 United States Magistrate
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CERTIFICATE — TRUE COPY

I hereby certify that the foregoing copy of _____

_____ is a complete and exact copy of the original.

Dated _____, 19____

Attorney(s) for _____

ACCEPTANCE OF SERVICE

Due service of the within _____ is hereby accepted
on _____, 19____, by receiving a true copy thereof.

Attorney(s) for _____

CERTIFICATES OF SERVICE

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by personally handing to said attorney a true copy thereof.

Attorney(s) for _____

At Office

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_____ on _____
attorney of record for _____
by leaving a true copy thereof at said attorney's office with his/her clerk therein, or with a person apparently in
charge thereof, at _____, Oregon.

Attorney(s) for _____

Mailing

I hereby certify that I served the foregoing Order
_____ on James D. Huegli
attorney(s) of record for defendant
on June 17, 1982, by mailing to said attorney(s) a true copy thereof, certified by me
as such, contained in a sealed envelope, with postage paid, addressed to said attorney(s) at said attorney(s) last
known address, to-wit: 1200 Standard Plaza, Portland, OR 97204
and deposited in the post office at Portland Oregon, on said day.
Dated June 17, 1982

Attorney(s) for Plaintiffs

BODYFELT, MOUNT & STROUP

ATTORNEYS AT LAW
229 Mohawk Building
Portland, Oregon 97204
Telephone (503) 243-1022

RECEIVED

FILED

JUL 7 4 34 PM '82

JUL 8 4 29 PM '82

CLERK, U.S. DISTRICT COURT
DISTRICT OF OREGON

CLERK, U.S. DISTRICT COURT
DISTRICT OF OREGON

BY _____

BY _____

JAMES D. HUEGLI
Schwabe, Williamson, Wyatt,
Moore & Roberts
1200 Standard Plaza
Portland, OR 97204
Telephone: 222-9981

Attorneys for Defendant

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

TERI SEE and DARREL SEE,
wife and husband,

Plaintiff,

vs.

REMINGTON ARMS COMPANY, INC.,
a Delaware corporation,

Defendant.

No. 81-886

MOTION FOR EXTENSION
OF TIME TO FILE PRETRIAL ORDER

Plaintiff and defendant in the above-captioned matter jointly move this court for an order extending the time for the filing of a pretrial order and completion of discovery. Plaintiff and defendant request the discovery cut-off be August 30 and the pretrial order lodging be scheduled for September 13.

Depositions will be taken in New York on August 16 and 17, 1982 which should complete discovery. It was impossible to get depositions scheduled prior to that date due to a closure of the Remington Arms plant and the schedules of counsel.

IT IS SO ORDERED.

SCHWABE, WILLIAMSON, WYATT,
MOORE & ROBERTS

Edward Seavy 7/8/82
Judge Magistrate Date

By: *[Signature]*
James D. Huegli Attorney for
Defendant

CERTIFICATE — TRUE COPY

I hereby certify that the foregoing copy of _____
_____ is a complete and exact copy of the original.

Dated _____, 19____.

Attorney(s) for _____

ACCEPTANCE OF SERVICE

Due service of the within _____ is hereby accepted
on _____, 19____, by receiving a true copy thereof.

Attorney(s) for _____

CERTIFICATES OF SERVICE

Personal

I certify that on _____, 19____, I served the within _____
_____ on _____
attorney of record for _____
by personally handing to said attorney a true copy thereof.

Attorney(s) for _____

At Office

I certify that on _____, 19____, I served the within _____
_____ on _____
attorney of record for _____,
by leaving a true copy thereof at said attorney's office with his/her clerk therein, or with a person apparently in
charge thereof, at _____, Oregon.

Attorney(s) for _____

Mailing

I hereby certify that I served the foregoing Motion for Extention of Time to File
Pretrial Order on Peter Chamberlain
attorney(s) of record for plaintiff
on July 7, 19 82, by mailing to said attorney(s) a true copy thereof, certified by me
as such, contained in a sealed envelope, with postage paid, addressed to said attorney(s) at said attorney(s) last
known address, to-wit: 708 SW Third, Portland, OR 97204

and deposited in the post office at Portland, Oregon, on said day.
Dated July 7, 19 82

Attorney(s) for Defendant

SCHWABE, WILLIAMSON, WYATT,
MOORE & ROBERTS
ATTORNEYS AT LAW
1200 Standard Plaza
Portland, Oregon 97204
Telephone 222-9981

BODYFELT MOUNT STROUP & CHAMBERLAIN

Attorneys at Law

RECEIVED

E. Richard Bodyfelt
Harry M. Mount
Roger K. Stroup
Peter R. Chamberlain

214 Mohawk Building
708 S.W. Third Avenue
Portland, Oregon 97204
Telephone 503-243-1022

JUL 22 4 07 PM '82
CLERK, U.S. DISTRICT COURT
DISTRICT OF OREGON
BY _____

July 21, 1982

Clerk of the Court
516 United States Courthouse
620 S.W. Main Street
Portland, OR 97205

Dear Clerk:

Re: See, et ux v. Remington Arms Company, Inc.
Civil No. ~~81-866~~ *81-886*

I would ask that the enclosed motion be set down for hearing on Monday, August 2, 1982, if it is at all possible. The reason I am requesting that specific date is that this motion deals with depositions which we have scheduled to commence on August 3, 1982. The motion should not be heard before August 2, 1982, because defendant's attorney will be on vacation until the end of July.

I appreciate whatever consideration you can give this matter.

Very truly yours,


Peter R. Chamberlain

PRC/sak
Enclosure

cc: Mr. James D. Huegli (w/enclosure) ²²²⁻⁷⁹⁸¹

C/LE

FILED

JUL 22 4 07 PM '82

CLERK, U.S. DISTRICT COURT
DISTRICT OF OREGON

BY [Signature]

1 Peter R. Chamberlain
2 BODYFELT, MOUNT, STROUP & CHAMBERLAIN
3 214 Mohawk Building
4 708 S.W. Third Avenue
5 Portland, OR 97204
6 Telephone: (503) 243-1022

Of Attorneys for Plaintiffs

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

| | | | |
|----|-------------------------------|---|---------------------------|
| 10 | TERI SEE and DARREL SEE, |) | |
| | wife and husband, |) | |
| 11 | |) | |
| | Plaintiffs, |) | Civil No. 81-886 |
| 12 | |) | |
| | v. |) | MOTION TO TAKE |
| 13 | |) | DEPOSITIONS BY TELEPHONE |
| | REMINGTON ARMS COMPANY, INC., |) | AND NOTICE OF DEPOSITIONS |
| 14 | a Delaware corporation, |) | |
| | |) | |
| 15 | Defendant. |) | |

16 Pursuant to FRCP 30(b)(7), plaintiffs move this Court
17 for an order permitting plaintiffs to take the depositions of the
18 individuals named in the Notice of Depositions filed herewith by
19 telephone.

POINTS AND AUTHORITIES

21 FRCP 30(b)(7). The deponents listed in the attached
22 Notice of Depositions are located throughout the country. The
23 information sought from each deponent is very limited and will
24 only take a short time. All of the deponents are located outside
25 the District of Oregon and are more than 100 miles from the U.S.
26 District Court in Portland. It would be unduly burdensome and

1 expensive to require plaintiffs to travel to the various
2 witnesses' places of residence for the purpose of taking these
3 depositions. Plaintiffs' attorney has requested that defendant
4 stipulate to the taking of these depositions by telephone.
5 Defendant's attorney has not, at the present time, indicated his
6 willingness to so stipulate.

7 Respectfully submitted,

8 BODYFELT, MOUNT, STROUP
9 & CHAMBERLAIN

10 By



11 Peter R. Chamberlain
12 Of Attorneys for Plaintiffs
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1 Peter R. Chamberlain
BODYFELT, MOUNT, STROUP & CHAMBERLAIN
2 214 Mohawk Building
708 S.W. Third Avenue
3 Portland, OR 97204
Telephone: (503) 243-1022

4 Of Attorneys for Plaintiffs
5
6
7

8 IN THE UNITED STATES DISTRICT COURT

9 FOR THE DISTRICT OF OREGON

10 TERI SEE and DARREL SEE,)
wife and husband,)
11 Plaintiffs,) Civil No. 81-886
12 v.) NOTICE OF DEPOSITIONS
13 REMINGTON ARMS COMPANY, INC.,)
14 a Delaware corporation,)
15 Defendant.)

16 TO: REMINGTON ARMS COMPANY, INC., and its attorney,
JAMES D. HUEGLI
17

18 YOU AND EACH OF YOU will please take notice that on
19 the dates and times listed below, in the offices of Bodyfelt,
20 Mount, Stroup & Chamberlain, 214 Mohawk Building, 708 S.W. Third
21 Avenue, Portland, Oregon, plaintiffs will take the depositions
22 of the individuals listed below, by telephone, before a person
23 authorized to administer oaths in the state of Oregon:

24 August 3, 1982:

25 4:00 p.m. - G. A. Hernandez
6430 Newborn Drive
26 College Park, GA

1 August 3, 1982

2 5:00 p.m. - H. G. Bentlin
3 2646 Jackson Drive
4 Falls Church, VA

5 6:00 p.m. - Larry Pucetti
6 4110 Avenue T 1/2
7 Galveston, TX

8 August 4, 1982

9 3:00 p.m. - James Sanders
10 427 Mason Blvd.
11 Jackson, MS

12 4:00 p.m. - Tony Varnum
13 Route 2, Box 223
14 Supply, NC

15 5:00 p.m. - S. V. Jackson
16 411 Connie
17 Los Alamos, NM

18 7:00 p.m. - Jerry Cunningham
19 35140 Freedom
20 Farmington Hills, MI

21 August 5, 1982

22 8:00 a.m. - Fred J. Avila
23 Box 204 Tuttle Road
24 Walton, NY

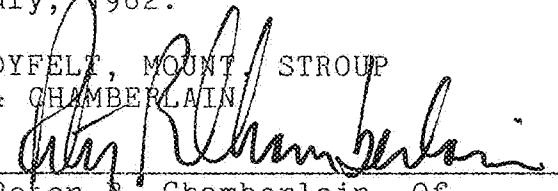
25 9:00 a.m. - Ronald Klosowski
26 1100 Youngs Pitch Road
Bay City, MI

5:00 p.m. - James C. Reddick
920 W. Lake Cannon Drive
Winterhaven, FL

DATED this 21st day of July, 1982.

BODYFELT, MOUNT, STROUP
& CHAMBERLAIN

By


Peter R. Chamberlain, Of
Attorneys for Plaintiffs

CERTIFICATE — TRUE COPY

I hereby certify that the foregoing copy of
..... is a complete and exact copy of the original.

Dated, 19.....

Attorney(s) for

ACCEPTANCE OF SERVICE

Due service of the within is hereby accepted
on, 19....., by receiving a true copy thereof.

Attorney(s) for

CERTIFICATES OF SERVICE

Personal

I certify that on, 19....., I served the within
..... on
attorney of record for
by personally handing to said attorney a true copy thereof.

Attorney(s) for

At Office

I certify that on, 19....., I served the within
..... on
attorney of record for
by leaving a true copy thereof at said attorney's office with his/her clerk therein, or with a person apparently in
charge thereof, at, Oregon.

Attorney(s) for

Mailing

I hereby certify that I served the foregoing motion and notice of depositions
..... on James D. Huegli
attorney(s) of record for defendant
on July 21, 19 82, by mailing to said attorney(s) a true copy thereof, certified by me
as such, contained in a sealed envelope, with postage paid, addressed to said attorney(s) at said attorney(s) last
known address, to-wit: 1200 Standard Plaza, Portland, OR 97204
and deposited in the post office at Portland, Oregon, on said day.

Dated July 21, 19 82.

Attorney(s) for Plaintiffs

BODYFELT, MOUNT & STROUP

ATTORNEYS AT LAW
229 Mohawk Building
Portland, Oregon 97204
Telephone (503) 243-1022

FILED

JUL 26 4 00 PM '82

CLERK, U.S. DISTRICT COURT
DISTRICT OF OREGON

BY JS

Peter R. Chamberlain
BODYFELT, MOUNT, STROUP & CHAMBERLAIN
214 Mohawk Building
708 S.W. Third Avenue
Portland, OR 97204
Telephone: (503) 243-1022

Of Attorneys for Plaintiffs

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

TERI SEE and DARREL SEE,
wife and husband,

Plaintiffs,

v.

REMINGTON ARMS COMPANY, INC.,
a Delaware corporation,

Defendant.

Civil No. 81-886

NOTICE OF DEPOSITION

TO: REMINGTON ARMS COMPANY, INC., and its attorney,
JAMES D. HUEGLI

YOU AND EACH OF YOU will please take notice that on
the 5th day of August, 1982, at 2:00 p.m. in the offices of
Bodyfelt, Mount, Stroup & Chamberlain, 214 Mohawk Building, 708
S.W. Third Avenue, Portland, Oregon, plaintiffs will take the
deposition of J. Huelster, 8323 East Viade Serea, Scottsdale,
Arizona, by telephone before a person authorized to administer

///

///


///

1 oaths in the state of Oregon.

2 DATED this 26th day of July, 1982.

3 BODYFELT, MOUNT, STROUP
4 & CHAMBERLAIN

5 By


6 Peter R. Chamberlain, Of
7 Attorneys for Plaintiffs
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CERTIFICATE — TRUE COPY

I hereby certify that the foregoing copy of _____
_____ is a complete and exact copy of the original.

Dated _____, 19____.

Attorney(s) for _____

ACCEPTANCE OF SERVICE

Due service of the within _____ is hereby accepted
on _____, 19____, by receiving a true copy thereof.

Attorney(s) for _____

CERTIFICATES OF SERVICE

Personal

I certify that on _____, 19____, I served the within _____
_____ on _____
attorney of record for _____
by personally handing to said attorney a true copy thereof.

Attorney(s) for _____

At Office

I certify that on _____, 19____, I served the within _____
_____ on _____
attorney of record for _____
by leaving a true copy thereof at said attorney's office with his/her clerk therein, or with a person apparently in
charge thereof, at _____, Oregon.

Attorney(s) for _____

Mailing

I hereby certify that I served the foregoing **Notice of Deposition**

on the following attorneys on the 26th day of July, 1982, by mailing to each a true
copy thereof, certified by me as such, contained in a sealed envelope, with postage paid, addressed to said attorneys
at the last known address of each shown below and deposited in the post office on said day at Portland, Oregon:

James D. Huegli
1200 Standard Plaza
Portland, OR 97204


Attorney(s) for Plaintiffs

BODYFELT, MOUNT, STROUP & CHAMBERLAIN

ATTORNEYS AT LAW
214 Mohawk Building
708 S. W. Third Avenue
Portland, Oregon 97204
Telephone (503) 243-1022

Reproduced at the National Archives at Seattle
UNITED STATES DISTRICT COURT
DISTRICT OF OREGON

CIVIL MINUTES — GENERAL

81-886

Date August 3, 1982

Teri See and Darrel See v. Remington Arms Co., Inc.

CKET ENTRY

RECORD of hearing on Pltfs' Motion to Take Depositions by Telephone and
Notice of Depositions (#22). ORDER - allowing.

PRESENT:

HON. Edward Leavy, JUDGE

J. Glenn

Deputy Clerk

Tape 853 Pt. 10

Court Reporter

ATTORNEYS PRESENT FOR PLAINTIFFS:

Peter Chamberlain

ATTORNEYS PRESENT FOR DEFENDANTS:

James Huegli

PROCEEDINGS:

cc: Peter Chamberlain
James Spiekerman

BODYFELT MOUNT STROUP & HAMBERLAIN

Attorneys at Law

RECEIVED

Richard Bodyfelt
Larry M. Mount
Roger K. Stroup
Peter R. Chamberlain

214 Mohawk Building
708 S.W. Third Avenue
Portland, Oregon 97204
Telephone 503-243-1022

AUG 4 4 21 PM '82

CLERK, U.S. DISTRICT COURT
DISTRICT OF OREGON

BY _____

August 4, 1982

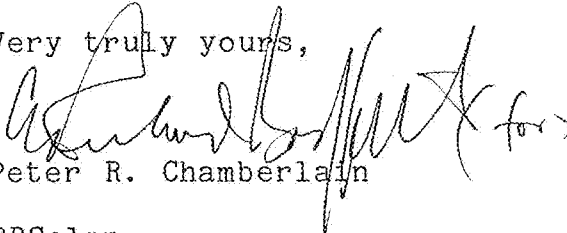
U. S. District Court Clerk
U. S. District Court
U. S. Courthouse
620 S.W. Main Street
Portland, OR 97205

Dear Clerk:

Re: See v. Remington Arms
Civil No. 81-886

Enclosed for filing is plaintiffs' motion for sanctions and supporting affidavit. Out-of-state depositions are scheduled in this case during the week of August 16, 1982. As the matters raised by our motion relate to discovery which was to be had prior to the depositions, I would appreciate it if this motion could be set for hearing before the week of the 16th. Thank you very much for your consideration of this matter.

Very truly yours,


Peter R. Chamberlain

PRC:lm

Enclosure

cc: James D. Huegli

FILED

c/su

AUG 4 4 21 PM '82

CLERK, U.S. DISTRICT COURT
DISTRICT OF OREGON

BY

[Handwritten signature]

Peter R. Chamberlain
BODYFELT, MOUNT, STROUP & CHAMBERLAIN
214 Mohawk Building
708 S.W. Third Avenue
Portland, OR 97204
Telephone: (503) 243-1022

Of Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

TERI SEE and DARREL SEE,
wife and husband,

Plaintiffs,

v.

REMINGTON ARMS COMPANY, INC.,
a Delaware corporation,
Defendant.

Civil No. 81-886

MOTION FOR SANCTIONS AND
AFFIDAVIT OF PETER R.
CHAMBERLAIN

Pursuant to FRCP 37(b), plaintiffs move this Court for
an order imposing upon defendant such sanctions as this Court
deems just. Sanctions sought by plaintiffs include, but are not
necessarily limited to, those set forth in FRCP 37(b)(2)(B), (C)
and (E).

POINTS AND AUTHORITIES

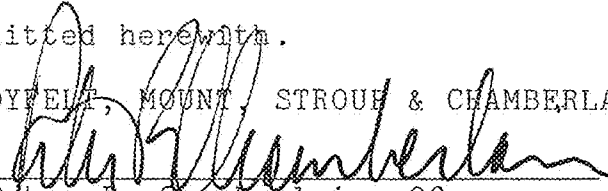
In support of their motion, plaintiffs rely upon FRCP
37(b), the records and files in this case and upon the affidavit
///

///

///

1 of Peter R. Chamberlain, submitted herewith.

2 BODYFELT, MOUNT, STROUP & CHAMBERLAIN

3 By 
4 Peter R. Chamberlain, Of
Attorneys for Plaintiffs

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AFFIDAVIT OF PETER R. CHAMBERLAIN

STATE OF OREGON)
) ss.
County of Multnomah)

I, PETER R. CHAMBERLAIN, being first duly sworn, depose
and say as follows:

1. I have personal knowledge of all the facts set forth
herein.

2. I am one of the attorneys for plaintiffs in the cap-
tioned matter.

3. I make this affidavit in support of plaintiffs' motion
for sanctions against defendant.

4. This action was filed September of 1981.

5. At the time of filing this action, plaintiffs filed
their first request for production, a true copy of which is
attached hereto, marked Exhibit "A."

6. In October of 1981, I was contacted by an attorney
representing defendant. That attorney, Mr. James Spiekerman,
sought a 60-day extension of time and assured me that his client
would cooperate in the production of documents. I stipulated to
the extension of time.

7. On December 16, 1981, no documents had been produced by
defendant, the 60-day extension of time had expired and no
response to my request for production had been filed or served.
Therefore, on that date, I wrote to Mr. Spiekerman and requested
that he file a response to our request for production.

8. On February 22, 1982, defendant filed its objection to

1 production of documents, objecting to Request Nos. 7, 8, 9, 11,
2 12 and 13.

3 9. On April 9, 1982, I filed plaintiffs' motion to compel
4 production.

5 10. On May 3, 1982, at the time set for hearing of plain-
6 tiffs' motion to compel, defendant's attorney delivered documents
7 to me and represented that the documents were all of the docu-
8 ments called for in plaintiffs' first request for production with
9 the exception of the documents relating to the Remington Model
10 600 rifle.

11 11. At the hearing on May 3, 1982, the Court ordered that
12 discovery of documents relating to the Model 600 would be per-
13 mitted.

14 12. Upon review of the documents provided by defendant on
15 May 3, 1982, I discovered that defendant had substantially
16 complied with parts 1 through 4 and 6 of plaintiffs' request for
17 production, but that there had been no compliance with parts 5
18 nor parts 7 through 13. This was pointed out to defendant's
19 counsel by letter dated May 10, 1982. A true copy of that letter
20 is attached, marked Exhibit "B." At the present time, defendant
21 has met my objections as set forth in paragraph (2) of that
22 letter but has not, as yet, produced the documents described in
23 paragraphs (1), (3) and (4). Each of these requests has now been
24 outstanding since September of 1981.

25 13. As a result of my review of the partial document produc-
26 tion on May 3, 1982, I filed plaintiffs' second request for

1 production on May 10, 1982. A true copy of that request is
2 attached, marked Exhibit "C."

3 14. On June 11, 1982, having received no documents in
4 response to plaintiffs' second request for production, I filed
5 another motion to compel production.

6 15. At a conference held June 14, 1982, Magistrate Leavy
7 entered an order requiring defendant to comply with plaintiffs'
8 first and second requests for production on or before July 6,
9 1982. A true copy of that order is attached, marked Exhibit "D."

10 16. On or about July 6, 1982, I received defendant's
11 response to plaintiffs' second request for production, including
12 certain additional documents from defendant's attorney.

13 17. On July 9, 1982, I wrote to defendant's attorney (copy
14 attached, marked Exhibit "E") and pointed out numerous parti-
15 culars in which defendant had still not complied with plaintiffs'
16 requests for production.

17 18. In particular, it was pointed out that:

18 (a) defendant's response to request for production no.
19 14 was inadequate because no documents were produced and because
20 defendant stated therein, without identifying any documents, that
21 "what documents are applicable will be produced and made avail-
22 able at the offices of the defendant when depositions are taken
23 of the defendant's employees on the east coast." Production of
24 these documents was to be made in Portland on or before July 6,
25 1982, pursuant to court order.

26 ///

(b) defendant's attorney indicated that there is correspondence regarding 49 other similar claims. None of this correspondence has been produced.

(c) in request for production nos. 5 and 20, plaintiffs requested production of documents regarding other lawsuits. Several other lawsuits have been identified and one or two documents have been produced as to each such suit.

(d) in request for production no. 7, plaintiffs requested production of documents relating to the Model 600 recall campaign. No such documents have been produced.

(e) in request for production nos. 8 and 9, plaintiffs requested production of test reports. Those requests were further defined by letters to defendant's attorney and have been discussed with him by phone. As yet, no test results have been produced.

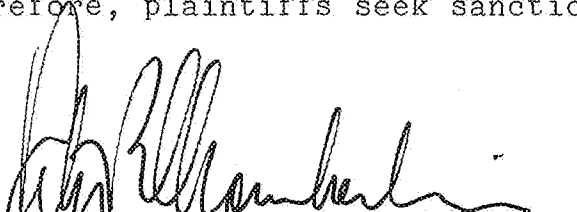
(f) we still have not been provided with copies of defendant's insurance policies. We have been given information regarding policy limits but have not been informed whether Remington's policy is a "consent" policy nor have we been provided with information regarding the cut-off between primary and excess insurance.

(g) defendant has not fully complied with requests for production nos. 11 and 12.

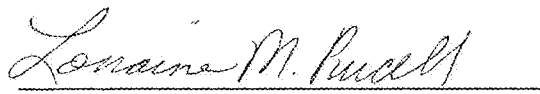
19. On July 14, 1982, defendant's attorney responded to my July 9 letter. That letter, a copy of which is attached marked Exhibit "F," states defendant's position regarding further

1 discovery.

2 20. It is my belief that defendant's attorney is making a
3 good-faith attempt to comply with plaintiffs' requests for pro-
4 duction and with this Court's order. Therefore, plaintiffs do
5 not seek sanctions against him personally. It is also my belief,
6 however, that defendant's attorney is being substantially ham-
7 pered in his effort by an extremely recalcitrant client that is
8 attempting to hamper or completely stifle the plaintiffs' legi-
9 timate discovery efforts. Therefore, plaintiffs seek sanctions
10 against defendant.

11
12 
13 Peter R. Chamberlain

14 SUBSCRIBED and SWORN to before me this 4th day of
15 August, 1982.

16 
17 Notary Public for Oregon
18 My Commission Expires: 1/27/84
19
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1 E. Richard Bodyfelt
 Peter R. Chamberlain
 2 BODYFELT, MOUNT & STROUP
 229 Mohawk Building
 3 222 S.W. Morrison
 Portland, OR 97204
 4 Telephone: (503) 243-1022

5 Of Attorneys for Plaintiff

6
 7
 8 UNITED STATES DISTRICT COURT
 9 FOR THE DISTRICT OF OREGON

10 TERI SEE and DARREL SEE,)
 wife and husband,)
 11)
 Plaintiffs,) Civil No.
 12)
 v.)
 13)
 REMINGTON ARMS COMPANY, INC.,) REQUEST FOR PRODUCTION
 14 a Delaware corporation,)
 15 Defendant.)

16 Pursuant to FRCP 34, plaintiffs request that defendant
 17 produce for inspection and copying, within 45 days from the date
 18 of service of this Request, the documents set forth below. As
 19 used in this Request, the word "document" shall be given its
 20 broadest possible meaning and shall include, but not be limited to,
 21 all forms of documents set forth in FRCP 34(a). Production shall
 22 be at the offices of Bodyfelt, Mount & Stroup, 222 S.W. Morrison,
 23 Room 229, Portland, Oregon, 97204.

24 DOCUMENTS

25 1. Exemplars of all product literature provided or intended
 26 for provision to purchasers of the Remington Model 700 rifle for

Page REQUEST FOR PRODUCTION

Exhibit "A"

BODYFELT, MOUNT & STROUP
 Attorneys at Law
 229 Mohawk Building
 Portland, Oregon 97204

*rec'd field service manuals and owners manuals but nothing else
 this may be all*

D/L
10/79

1 the five-year period preceding October 27, 1979.

2 (2) ^{rec'd field service manuals} All service manuals produced and used or intended for use
3 by defendant in the repair, replacement or servicing of the Rem-
4 ington Model 700 rifle for the five-year period preceding Oct-
5 ober 27, 1979.

6 3. ^{rec'd} All design and manufacturing drawings and specifications
7 relating to any and all safety mechanisms used, intended for use
8 (whether used or not), proposed for use (whether used or not), or
9 deleted from use on defendant's Model 700 rifle.

10 4. All design and manufacturing drawings and specifications
11 relating to any and all trigger mechanisms used, intended for use
12 (whether used or not), proposed for use (whether used or not), or
13 deleted from use on defendant's Model 700 rifle.

14 ✓ 5. All product complaints, claims, notices, lawsuits, letters,
15 memoranda or other information received, or generated, by defendant
16 that claim, indicate, suggest or conclude that defendant's Model 700
17 rifle discharged when the safety was being disengaged.

18 ✓ 6. All documents which relate in any way to any recall cam-
19 paigns for defendant's Model 700 rifle.

20 (7.) All documents which relate in any way to any recall cam-
21 paigns for defendant's Model 600 rifle.

22 (8.) All documents relating to all tests performed by defendant
23 on its Model 700 rifle. — ^{index} ^{+ all tests done on the 49 similar failures}

24 (9.) All documents relating to all tests performed by defendant
25 on its Model 600 rifle.

26 10. All primary and excess insurance policies which do or may

only info provided re the 600
are dwags

1 provide coverage for all or part of plaintiffs' claims.

2 (11.) All memoranda, correspondence, reports, letters or
3 other documents generated as part of defendant's design, manu-
4 facture, testing and/or modification of the safety mechanisms
5 on defendant's Model 600 rifle.

6 (12.) All memoranda, correspondence, reports, letters or
7 other documents generated as part of defendant's design, manu-
8 facture, testing and/or modification of the trigger mechanisms
9 on defendant's Model 600 rifle.

10 (13.) All manufacturing, trade and governmental standards,
11 codes or regulations with which defendant complied or attempted
12 to comply, whether suggested, voluntary or mandatory in the design,
13 manufacture and sale of the Remington Model 600 rifle.

14 DATED this 18th day of September, 1981.

15 BODYFELT, MOUNT & STROUP

16
17 By _____
18 Peter R. Chamberlain, of
19 Counsel for Plaintiffs
20
21
22
23
24
25
26

May 10, 1982

HAND DELIVERED

James D. Huegli
Attorney at Law
1200 Standard Plaza
Portland, OR 97204

Dear Jim:

Re: See v. Remington Arms

Your copies of documents produced May 3, 1982, are being returned with this letter. Based upon my review of these documents, it appears you have substantially complied with parts 1 through 4 and 6 of my request for production, but that you have not complied with part 5, nor parts 7 through 13.

Since you have provided me with drawings for the Model 600 rifle, I am satisfied to wait for further production of documents relating to the Model 600 until such time as my expert has had a chance to review those drawings and tell me if the 600 and 700 rifles are significantly similar.

With that aside, there are still several areas of production where Remington has not complied with my request for production and the court's order compelling production. These areas are as follows:

(1) Request No. 5 - While you have produced 49 gun examination reports and certain litigation documents, there certainly must be other documents underlying these reports and lawsuits. For instance, each gun examination report certainly must be documented by a letter of complaint, transmittals, test records, etc. All such documents are within the scope of my request and the court's order. Similarly, with the lawsuits.

(2) Request No. 4 - The gun examination report for our rifle has not been included. Certainly, we are entitled to that.

(3) Request No. 8 - The court did not sustain your objection to this request. If you truly believe that the request is so broad as to be burdensome, I would be satisfied, for the time being, by a production of the following:

Exhibit "B"

James D. Huegli
May 10, 1982
Page Two

(a) A complete index of all tests performed by Remington on its Model 700 rifle; and

(b) Copies of all test procedures and test results for all tests performed on the guns mentioned in the 49 gun examination reports, plus the reports on our gun; and

(c) All tests performed on the trigger mechanism and safety mechanism of the Model 700 in the design and manufacture of that weapon.

By so agreeing, I do not intend to waive or limit my right to request further test results from the index of tests.

(4) Request No. 10 - I would like to know (and am entitled to know) your policy limits, whether there is excess insurance and, if so, the amounts and whether or not the defendant's policies are consent policies.

In addition to the above, I have requested certain additional documents which are set forth in plaintiffs' second request for production, which is enclosed. Also enclosed are some interrogatories and some requests for admission. Because of the discovery cut-off deadline, I cannot and will not grant extensions of time within which to respond to any of these items.

Lastly, we will want to take a number of depositions. I think we should discuss this before I prepare notices, et cetera. The people I will want to depose include the following:

(1) The person or persons primarily responsible for interpreting my requests for production and in locating documents and producing same.

(2) M. Hardy (checked guns per gun examination reports).

(3) R. L. Jay (checked guns per gun examination reports).

(4) The persons whose initials appear on the 49 gun examination reports (there appear to be five or six such persons).

(5) The person or persons primarily responsible for the design of the Model 700 rifle.

James D. Huegli
May 10, 1982
Page Three

(6) The person or persons primarily responsible for overseeing manufacture of the Model 700 rifle during the period 1976-1981.

(7) The person or persons primarily responsible for quality assurance in the manufacture of the Model 700 during the period 1976-1981.

I have a couple of ideas regarding the taking of these depositions. If you are willing to bring these people to Oregon, at Remington's expense, that would be fine, provided that all document production has been completed prior to their arrival. If that is not agreeable to Remington, I am willing to travel to Connecticut, or wherever else they may be, for purposes of taking the depositions. If we do it that way, I would suggest we set aside a week late this month or during the first part of June. I can be available the weeks of May 17, May 24, June 1 (four-day week) and June 7. If need be, some of the depositions could be taken by phone (such as those under category (1)), but I do not want to take all of them by phone.

Please give me a call when you have had a chance to digest this letter. Even with the court's extension of the discovery deadline, we do not have a great deal of time left and I am anxious to keep this case moving. I will not start arbitrarily noticing depositions unless I don't hear from you by May 14.

Very truly yours,

Peter R. Chamberlain

PRC:imp

Enclosures

cc: Philip L. Nelson

James D. Huegli
July 9, 1982
Page Two

paw through numerous documents on the morning that depositions are scheduled to start.

I am a bit concerned that Remington may be taking a somewhat narrow view as to what depositions we are entitled to take. My concern arises from some of the comments in the communications from Sperling to you, which you have provided to me. So that there is no misunderstanding, I trust you have made it clear to Remington that I intend to take the depositions of all the people listed in my original notice of deposition in this case, with the possible exceptions of Mr. Hardy and Mr. Jay. As to those two, I will not be able to determine whether I want their depositions until I have had a chance to talk with them informally. I do want to take their depositions if I am not afforded the opportunity to talk with them in advance of our trip back east. In addition to the people listed in the notice, as mentioned above, I want to depose the original gun designer, Mr. Walker, and someone from Marketing.

As I mentioned on the phone, I have a number of problems with Remington's compliance with our request for production. I understand from my conversation with you that there is some correspondence involving the 49 other claims that Remington has not, as yet, been able to cull out from their records. I also understand that they will make these documents available to me, in Portland, prior to the August depositions. I would refer you to my request for production numbers 5 and 20. I have asked for all documents relating to other lawsuits. Thus far, I have only been given one or two documents relating to each lawsuit. I find it difficult to believe that there are not additional documents relating to these other lawsuits. Next (reference request for production number 7), no documents have been produced regarding the recall campaign for the Remington Model 600. As you know, the court has entered its order compelling production of those documents.

As to test results, I think that there is a breakdown in communication more than an unwillingness on the part of Remington to produce documents. In request for production numbers 8 and 9, I

James D. Huegli
 July 9, 1982
 Page Three

asked for test documents relating to the 600 and 700 Model rifles. I understand that this may call for a large quantity of information. If that is the case, I am willing to accept, for the time being, an index of such tests so that I may determine what documents I should pursue further. In addition, we have asked for tests in several very specific areas. We have asked for the test results which must have been generated by Remington in the design of the Model 700 trigger, test results for tests conducted during the design of the safety mechanism for the Model 700 and the test results which are recorded in the 49 gun examination reports. I feel that these are very specific requests which should enable Remington to locate the specific documents requested.

In request for production number 10, we requested a copy of Remington's insurance policies. Thus far, the only information I have received is that they have policy limits of \$1,000,000. There is no indication as to excess insurance. Nor is there any indication as to whether or not this policy is a "consent" policy. We are entitled to inspect any and all policies covering this loss. I would ask that those documents be produced.

In request numbers 11 and 12, we asked for documents regarding the redesign of the Model 600 trigger and safety mechanism. I get the impression from some of Remington's responses to requests that they are making a distinction between the trigger/safety problem and a redesign of the "bolt lock." It seems to me that we are getting bogged down in the niceties of what is actually being redesigned. Regardless of which part of the rifle you refer to you know, and I believe Remington knows, that I'm interested in documents relating to the redesign which resulted from the major recall of the Remington 600. I have received no adequate response to my request for documents in this area.

In response to request for production number 16, it appears that Remington has produced another copy of Chisnall's report. I already have that report. What I was asking for was a copy of the gun examination report similar to the other gun examination reports already produced. Perhaps one was not prepared on this gun. If that is the case, I would like to be so informed.

James D. Huegli
July 9, 1982
Page Four

I suppose you, or at least your client, think I am being a pest about all the requests that I have made in this case. I would only remind you (or them) that Remington has been ordered to produce all of the documents that I have requested. I intend to do everything I can to enforce that order. As I consider most of these documents critical to the depositions which are scheduled for August, and since the federal court has already suggested that I employ the "devices" available under the federal rules to obtain the information sought, I will tell you now, and I hope that you will tell your client, that I intend to seek sanctions against them no later than the end of this month if I have not received full compliance of all my requests.

Very truly yours,

Peter R. Chamberlain

PRC:1mp

E. Richard Bodyfelt
Peter R. Chamberlain
BODYFELT, MOUNT, STROUP
& CHAMBERLAIN
214 Mohawk Building
308 S.W. Third Avenue
Portland, OR 97204
Telephone: (503) 243-1022

Of Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

| | | |
|-------------------------------|---|------------------------|
| TERI SEE and DARREL SEE, |) | |
| wife and husband, |) | |
| |) | |
| Plaintiffs, |) | Civil No. 81-886 |
| |) | |
| v. |) | |
| |) | |
| REMINGTON ARMS COMPANY, INC., |) | PLAINTIFFS' SECOND |
| a Delaware corporation, |) | REQUEST FOR PRODUCTION |
| |) | |
| Defendants. |) | |

Pursuant to FRCP 34, plaintiffs request that defendant produce for inspection and copying, within 30 days of the date of service of this request, the documents set forth below. As used in this request, the word "document" shall be given its broadest possible meaning and shall include, but not be limited to, all forms of documents set forth in FRCP 34(a). Production shall be at the offices of Bodyfelt, Mount, Stroup & Chamberlain, Room 214, 708 S.W. Third Avenue, Portland, Oregon.

DOCUMENTS

14. All manufacturing, trade and governmental standards, codes or regulations with which defendant complied or attempted

1 to comply, whether suggested, voluntary or mandatory, in and
2 related to the design, manufacture and sale of the Remington
3 Model 700 rifle during the period 1975 through 1981.

4 15. All test procedures and test results for all tests
5 performed on the Remington Model 700 rifles which were the sub-
6 ject of the 49 gun examination reports produced by defendant.

7 16. The gun examination report for defendant's examination
8 of this rifle.

9 17. All test procedures and test results for all tests
10 performed on the trigger mechanism of the Remington Model 700
11 rifle in the design and manufacture of that weapon.

12 18. All test procedures and test results for all tests
13 performed on the safety mechanism of the Remington Model 700
14 rifle in the design and manufacture of that weapon.

15 19. All letters, memoranda, notes or other correspondence
16 which gave rise to the preparation of the 49 gun examination
17 reports previously produced by defendant.

18 20. All documents in your possession relating to the law-
19 suits previously produced by defendant.

20 DATED this 10th day of May, 1982.

21 BODYFELT, MOUNT, STROUP
22 & CHAMBERLAIN

23 By _____
24 Peter R. Chamberlain, Of
25 Attorneys for Plaintiffs
26

1 Peter R. Chamberlain
 BODYFELT, MOUNT, STROUP & CHAMBERLAIN
 2 214 Mohawk Building
 708 S.W. Third
 3 Portland, OR 97204
 Telephone: (503) 243-1022

4 Of Attorneys for Plaintiffs

8 IN THE UNITED STATES DISTRICT COURT

9 FOR THE DISTRICT OF OREGON

| | | | |
|----|-------------------------------|---|------------------|
| 10 | TERI SEE and DARREL SEE, |) | |
| | wife and husband, |) | |
| 11 | |) | |
| | Plaintiff, |) | Civil No. 81-886 |
| 12 | |) | |
| | v. |) | ORDER |
| 13 | |) | |
| | REMINGTON ARMS COMPANY, INC., |) | |
| 14 | a Delaware corporation, |) | |
| | |) | |
| 15 | Defendant. |) | |

16 Based upon the stipulation of the parties by and through
 17 their attorneys of record, it is hereby ORDERED AS FOLLOWS:

- 18 (1) The time allowed for discovery is extended to
 19 August 5, 1982;
- 20 (2) The pretrial order is to be filed by August 16, 1982;
- 21 (3) Defendant is to comply with plaintiffs' first and
 22 second requests for production on or before July 6, 1982; and
- 23 (4) Defendant is to answer all of plaintiffs' inter-
 24 rogatories, except for interrogatory No. 19, on or before

25 ***

26 ***

Exhibit "D"

1 July 6, 1982.

2 DATED this _____ day of _____, 1982.

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Edward Leavy
United States Magistrate

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24

25

26

July 9, 1982

James D. Huegli
Attorney at Law
1200 Standard Plaza
Portland, OR 97204

Dear Jim:

Re: See v. Remington Arms

This will follow up our telephone conversation of July 8. I understand that you will arrange for the court reporter for the depositions that are to be taken during the week of August 16. This will also confirm that you have made arrangements to produce for deposition, in addition to the people already requested, the person or persons in Remington's Marketing Department who were primarily involved in the decision to discontinue the bolt lock feature on the Model 700. This will also confirm that you will make efforts to locate and produce for deposition Mr. Mike Walker, who I understand is retired from Remington. If he is not available for deposition, I would request that you produce his full name, address, phone number, Social Security Number and any other information in Remington's possession which will aid me in locating Mr. Walker.

I understand that you are obtaining the phone numbers of Mr. Hardy and Mr. Jay and that you are agreeable to my talking with these gentlemen on the phone prior to the August depositions for the purpose of my determining whether or not I need to take their depositions while we are back east. This will also confirm that you have agreed that I need not formally notice the depositions that we are going to take and that those depositions will be taken pursuant to the usual stipulation. Since the court reporter in New York may not know what the usual stipulation is for Oregon, I will provide a copy of that stipulation from one of the prior depositions taken in this case.

We also discussed Sperling's response to your May 19 letter and you indicated you would provide me with a copy of that letter so that I could better understand his responses. Next, I mentioned that Remington's response to my request for production no. 14 was inadequate. Number one, I cannot tell from that response what documents they do or do not have and number two, it is our position that the court has ordered Remington to produce all documents in advance of the depositions. I should not be required to

Exhibit "E"

JUL 16 1982

SCHWABE, WILLIAMSON, WYATT, MOORE & ROBERTS

ATTORNEYS AT LAW
1200 STANDARD PLAZA
1100 S.W. 8TH AVENUE

PORTLAND, OREGON 97204
TELEPHONE (503) 222-9988

DIRECT DIAL*

CABLE ADDRESS "ROBCAL"
TELEX 151563
TELECOPIER-244

SEATTLE, WASHINGTON 98101

1111 THIRD AVENUE BUILDING
SUITE 3301
(206) 421-8166
(509) 242-1532

WASHINGTON, D.C. 20007
ROBERT B. DUNCAN, RESIDENT PARTNER
THE FLOUR MILL, SUITE 302
1000 POTOMAC ST. N.W.
(202) 945-8300

BRUCE SPAULDING
WILLIAM H. KINSEY
WAYNE A. WILLIAMSON
JOHN L. SCHWABE
WENDELL WYATT
GORDON MOORE
KENNETH E. ROBERTS
JAMES B. O'HANLON
DOUGLAS M. THOMPSON
JAMES R. MOORE
A. ALLAN FRANZKE
ROLAND F. BANKS, JR.
GINO G. PIERETTI, JR.
DOUGLAS J. WHITE, JR.
ROCKNE GILL
JOHN R. FAUST, JR.
JAMES A. LARPEUR, JR.
FORREST W. SIMMONS
OF COUNSEL

JAMES F. SPIEKERMAN
ROBERT G. SIMPSON
RICHARD K. FOLEY, JR.
THOMAS M. TRIPLETT
ROBERT E. JOSEPH, JR.
PAUL N. DAIGLE
KENNETH D. RENNER
KENNETH E. ROBERTS, JR.
DONALD JOE WILLIS
J. LAURENCE CABLE
MICHAEL D. HOFFMAN
JAMES D. RUEGLI
HENRY C. WILLENER
TERRY C. HAUCK
MARK H. WAGNER
JOHN G. CRAWFORD, JR.
NEVA T. CAMPBELL
JOHN E. HART
ROGER A. LUEDTKE

ROY D. LAMBERT
W. A. JERRY NORTH
JAMES T. WALDRON
ROBERT D. DAYTON
DAVID W. AXELROD
ANGEL L. HAGGERTY
DELBERT J. BRENNEMAN
ROBERT W. NUNN
JAMES E. BENEDICT
WILLIAM H. REPLOGLE
LAWRENCE L. PAULSON
MILDRED J. CARMACK
STEVEN H. PRATT
DONALD A. HAAGENSEN
RUTH WAXMAN HOOPER
RALPH V. G. BAKKENSEN
ELIZABETH K. REEVE**
CHARLES R. MARKLEY
ROBERT A. STOUT
J. STEPHEN WERTS**
DANIEL F. KNOX

JAN K. KITCHEL
PAUL R. BOCCI
GUY C. STEPHENSON
JAMES M. FINN
DENNIS S. REESE
EUGENE L. GRANT
KATHERINE H. O'NEIL
MARC K. SELLERS
ALAN S. LARSEN
ERICH H. HOFFMANN
MARY DAVIS CONDIOTTE
NANCIE POTTER ARELLANO
JOHN J. FENNERTY
ANDREW J. MORROW, JR.
MARY E. EGAN
THOMAS V. DULCICH
BRIAN M. PERKO
GARY D. KEEHN*
RICHARD J. KUHN
JAMES S. RICE
JANET M. SCHROER
KEVIN F. KERSTIENS

July 14, 1982

Peter Chamberlain
Attorney at Law
708 SW Third Avenue
Portland, OR 97204

Re: See v. Remington Arms

Dear Peter:

Thanks for your letter of July 9. I believe that my client has complied with most, if not all, of your requests. I have asked them to get whatever else they can regarding the "lawsuits" and other "claims" in response to numbers 5, 7 and 20. They, I believe, provided you with all documents regarding the recall of the 600.

As far as the tests are concerned, I have asked them to prepare a brief index if they are able to do that. I don't know whether we are talking about tests as to how much the gun weighs, what the muzzle velocity is, whether it's a marketable product, etc., but I am asking them to use their own judgment as best they can.

They have already provided you with the information in requests numbers 11 and 12 regarding redesign of the Model 600 trigger and in fact, have provided you with diagrams in that regard.

As far as number 16 is concerned, all they have is a copy of Chisnell's report. They don't have a gun examination report similar to the other gun examination reports as I understand it.

Exhibit "F"

* WASHINGTON STATE BAR ONLY
** OREGON STATE AND WASHINGTON STATE BARS

July 14, 1982

Page 2

As far as insurance policies are concerned, your lawsuit is for \$250,000 and we've provided information that we have at least one million dollars worth of liability insurance. No useful purpose can be served going into umbrella and excess policies for Remington Arms, which has been in existence over 100 years.

Very truly yours,

James D. Huegli

JDH:lr

cc: Bob Sperling
Chuck Jackson

CERTIFICATE — TRUE COPY

I hereby certify that the foregoing copy of _____

_____ is a complete and exact copy of the original.

Dated _____, 19____.

Attorney(s) for _____

ACCEPTANCE OF SERVICE

Due service of the within _____ is hereby accepted
on _____, 19____, by receiving a true copy thereof.

Attorney(s) for _____

CERTIFICATES OF SERVICE

Personal

I certify that on _____, 19____, I served the within _____
_____ on _____
attorney of record for _____
by personally handing to said attorney a true copy thereof.

Attorney(s) for _____

At Office

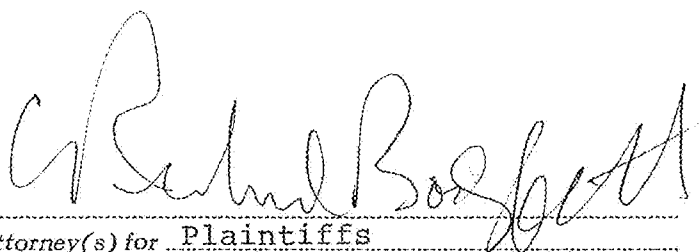
I certify that on _____, 19____, I served the within _____
_____ on _____
attorney of record for _____
by leaving a true copy thereof at said attorney's office with his/her clerk therein, or with a person apparently in
charge thereof, at _____, Oregon.

Attorney(s) for _____

Mailing

I hereby certify that I served the foregoing Motion for Sanctions and Affidavit
_____ on the following attorneys on the 4th day of August, 1982, by mailing to each a true
copy thereof, certified by me as such, contained in a sealed envelope, with postage paid, addressed to said attorneys
at the last known address of each shown below and deposited in the post office on said day at Portland, Oregon:

James D. Huegli
1200 Standard Plaza
Portland, OR 97204



Attorney(s) for Plaintiffs

BODYFELT, MOUNT, STROUP & CHAMBERLAIN

ATTORNEYS AT LAW
214 Mohawk Building
708 S. W. Third Avenue
Portland, Oregon 97204
Telephone (503) 243-1022

Reprinted at the National Archives at Seattle
UNITED STATES DISTRICT COURT
DISTRICT OF OREGON

CIVIL MINUTES – GENERAL

C. No. 81-886

Date August 6, 1982

Title See v. Remington Arms

DOCKET ENTRY

ORDER - setting Plaintiff's Motion for Sanctions #25 Wednesday,
August 11, 1982, 10:00 a.m. before Judge Juba.

PRESENT:

HON. George E. Juba, JUDGE

C. Sherwood

Deputy Clerk

Court Reporter

ATTORNEYS PRESENT FOR PLAINTIFFS:

ATTORNEYS PRESENT FOR DEFENDANTS:

PROCEEDINGS:

cc: Peter Chamberlain
James F. Spiekerman

alsu

FILED

JAMES D. HUEGLI
Schwabe, Williamson, Wyatt, Moore & Roberts
1200 Standard Plaza
Portland, OR 97204
Telephone: 222-9981

AUG 9 4 33 PM '82

CLERK, U.S. DISTRICT COURT
DISTRICT OF OREGON

BY

Attorneys for Defendant.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

| | | |
|-------------------------------|---|-------------------------|
| TERI SEE and DARREL SEE, |) | |
| wife and husband, |) | |
| |) | |
| Plaintiffs, |) | Civil No. 81-886 |
| |) | |
| vs. |) | |
| |) | |
| REMINGTON ARMS COMPANY, INC., |) | DEFENDANT'S RESPONSE TO |
| a Delaware corporation, |) | MOTION FOR SANCTIONS |
| |) | |
| Defendant. |) | |

Defendant in the above-captioned matter files this
reply to plaintiff's Motion for Sanctions.

Defendant has complied and continues to comply
with all of the extensive requests for production of the
plaintiff in this case. Defendant disagrees with the
allegations of plaintiff as to the defendant's noncompliance.

1. Plaintiff has alleged that defendant has
failed to produce "other documents" underlying the gun
examination reports. Plaintiff was notified by letter of
July 14 that the "other correspondence" was located in
numerous areas in the Remington Arms factory and none of it

Page

1 - DEFENDANT'S RESPONSE TO MOTION FOR SANCTIONS

SCHWABE, WILLIAMSON, WYATT, MOORE & ROBERTS
Attorneys at Law
1200 Standard Plaza
Portland, Oregon 97204
Telephone 222-9981

7.7

1 was indexed. He was also advised that it would take an
2 extensive amount of investigation and effort on behalf of
3 Remington to secure any of this material, which they are
4 currently doing.

5 2. A complete index of all tests performed on
6 the Model 700 rifle is being compiled at this time.

7 3. The policy limits are one million dollars
8 on a general liability basis and plaintiff's counsel has
9 been so advised.

10 4. In response to Request for Production #14,
11 this request has been answered. There are no governmental
12 standards, codes, regulations, etc. pertaining to the Model
13 700.

14 5. In regard to correspondence regarding the
15 49 gun reports, we have indicated that Remington is trying
16 to find all of these documents that are located throughout
17 its vast filing system. There is no index or catalog system
18 for any of these letters of complaint. On June 14 we requested
19 that these documents be expedited and expect them from
20 Remington immediately.

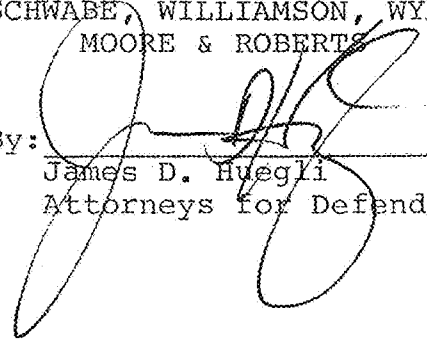
21 6. Requests for Production #5 and #20, to the
22 best of our knowledge, we have provided all documents that are
23 available and in the possession of Remington regarding other
24 lawsuits. We are asking Remington to get in touch with their
25 various attorneys around the county and to provide whatever
26 is not work product. However, all pleadings have been provided

1 regarding lawsuits that have been filed, together with a
2 summary of the results of those lawsuits.

3 We believe all information regarding the model 600
4 recall campaign and the model 600 rifle has been provided
5 to plaintiff's attorney. However, another complete copy
6 of this information has been requested by telephone on August 5,
7 1982 and will be forwarded from Remington Arms. The material
8 that has been specifically requested from Remington Arms
9 regarding the model 600 includes all documents relating
10 to the recall campaign for the model 600 rifle.

11 The material requested by plaintiff's counsel
12 is extensive, complicated and not in any particular order
13 at Remington Arms as they are located in various files in
14 various portions of this company. Remington Arms has complied
15 in good faith with the requests of the plaintiff in all
16 material respects.

17 SCHWABE, WILLIAMSON, WYATT,
18 MOORE & ROBERTS

19 By: 
20 James D. Huegli
21 Attorneys for Defendant
22
23
24
25
26

CERTIFICATE — TRUE COPY

I hereby certify that the foregoing copy of _____
_____ is a complete and exact copy of the original.

Dated _____, 19____

Attorney(s) for _____

ACCEPTANCE OF SERVICE

Due service of the within _____ is hereby accepted
on _____, 19____, by receiving a true copy thereof.

Attorney(s) for _____

CERTIFICATES OF SERVICE

Personal

I certify that on _____, 19____, I served the within _____
_____ on _____
attorney of record for _____
by personally handing to said attorney a true copy thereof.

Attorney(s) for _____

At Office

I certify that on _____, 19____, I served the within _____
_____ on _____
attorney of record for _____
by leaving a true copy thereof at said attorney's office with his/her clerk therein, or with a person apparently in
charge thereof, at _____, Oregon.

Attorney(s) for _____

Mailing

I hereby certify that I served the foregoing Defendant's Response to Motion for
Sanctions on Peter Chamberlain

attorney(s) of record for plaintiff
on August 6, 1982, by mailing to said attorney(s) a true copy thereof, certified by me
as such, contained in a sealed envelope, with postage paid, addressed to said attorney(s) at said attorney(s) last
known address, to-wit: 708 SW Third Avenue, Portland, OR 97204

and deposited in the post office at Portland, Oregon, on said day.
Dated August 6, 1982

Attorney(s) for Defendant

SCHWABE, WILLIAMSON, WYATT,
MOORE & ROBERTS
ATTORNEYS AT LAW
1200 Standard Plaza
Portland, Oregon 97204
Telephone 222-9961

UNITED STATES DISTRICT COURT
DISTRICT OF OREGON

CIVIL MINUTES - GENERAL

Case No. 81-886

Date August 11, 1982

Title SEE v. REMINGTON ARMS

DOCKET ENTRY

RECORD of hearing on Plaintiff's Motion for Sanctions #25.
ORDER granting motion; \$700 attorney fees awarded.

PRESENT:

HON. George E. Juba, JUDGE

C. Sherwood

Deputy Clerk

Tape 934-935

Court Reporter

ATTORNEYS PRESENT FOR PLAINTIFFS:

Peter Chamberlain

ATTORNEYS PRESENT FOR DEFENDANTS:

James D. Huegli

PROCEEDINGS:

cc: Peter Chamberlain
James Spiekerman

PSW

28

FILED

AUG 11 4 16 PM '82

CLERK, U.S. DISTRICT COURT
DISTRICT OF OREGON

BY _____

1 Peter R. Chamberlain
BODYFELT, MOUNT, STROUP & CHAMBERLAIN
2 214 Mohawk Building
708 S.W. Third Avenue
3 Portland, OR 97204
Telephone: (503) 243-1022

4 Of Attorneys for Plaintiffs

5
6
7
8 IN THE UNITED STATES DISTRICT COURT

9 FOR THE DISTRICT OF OREGON

10 TERI SEE and DARREL SEE,)
wife and husband,)
11)
Plaintiffs,) Civil No. 81-886
12)
v.) NOTICE OF DEPOSITIONS
13)
REMINGTON ARMS COMPANY, INC.,)
14 a Delaware corporation,)
15 Defendant.)

16 TO: REMINGTON ARMS COMPANY, INC., and its attorney, JAMES D.
17 HUEGLI

18 YOU AND EACH OF YOU will please take notice that during
19 the week of August 16, 1982, commencing at 1:30 p.m. on the first
20 day and at 9:00 a.m. on each day thereafter in the offices of
21 Remington Arms Company, Inc., Ilion, New York, plaintiffs will take
22 the depositions of the persons listed below before a person author-
23 ized to administer oaths in the state of New York:

- 24 1. Mr. M. Hardy.
25 2. Mr. R. L. Jay.
26 3. The persons who are identified by their initials only

1 on the 49 gun examination reports produced by defendant.

2 4. The person or persons primarily responsible for
3 interpreting plaintiffs' requests for production and in locating
4 documents and producing the same on behalf of the defendant in
5 this litigation.

6 5. The person or persons primarily responsible for
7 design of the safety and trigger mechanisms on the Remington
8 Model 700 rifle.

9 6. The person or persons primarily responsible for
10 overseeing the manufacture of the Model 700 rifle during the
11 period 1976 to 1981.

12 7. The person or persons primarily responsible for
13 quality assurance and the manufacturing of the Model 700 rifle
14 during the period 1976 to 1981.

15 8. Mr. Mike Walker.

16 9. Mr. Linde.

17 10. Mr. Sneddeker.

18 11. Mr. Mr. Stekl.

19 12. Mr. Hill.

20 13. Mr. Sanita.

21 14. Mr. Chisnall.

22 DATED this 10th day of August 1982.

23 BODYFELT, MOUNT, STROUP CHAMBERLAIN

24 BY


Peter R. Chamberlain

Of Attorneys for Plaintiffs

CERTIFICATE — TRUE COPY

I hereby certify that the foregoing copy of _____
_____ is a complete and exact copy of the original.

Dated _____, 19____.

Attorney(s) for _____

ACCEPTANCE OF SERVICE

Due service of the within _____ is hereby accepted
on _____, 19____, by receiving a true copy thereof.

Attorney(s) for _____

CERTIFICATES OF SERVICE

Personal

I certify that on _____, 19____, I served the within _____
_____ on _____
attorney of record for _____
by personally handing to said attorney a true copy thereof.

Attorney(s) for _____

At Office

I certify that on _____, 19____, I served the within _____
_____ on _____
attorney of record for _____
by leaving a true copy thereof at said attorney's office with his/her clerk therein, or with a person apparently in
charge thereof, at _____, Oregon.

Attorney(s) for _____

Mailing

I hereby certify that I served the foregoing Notice of Depositions
_____ on James D. Huegli
attorney(s) of record for defendant
on August 10, 19 82, by mailing to said attorney(s) a true copy thereof, certified by me
as such, contained in a sealed envelope, with postage paid, addressed to said attorney(s) at said attorney(s) last
known address, to-wit: 1200 Standard Plaza, Portland, OR 97204
and deposited in the post office at Portland, Oregon, on said day.

Dated August 10, 19 82

Attorney(s) for Plaintiffs

BODYFELT, MOUNT & STROUP

ATTORNEYS AT LAW
229 Mohawk Building
Portland, Oregon 97204
Telephone (503) 243-1022

James D. Huegli
 SCHWABE, WILLIAMSON, WYATT,
 MOORE & ROBERTS
 1200 Standard Plaza
 Portland, OR 97204
 Telephone: (503) 222-9981

Attorneys for Defendants

IN THE UNITED STATES DISTRICT COURT
 FOR THE DISTRICT OF OREGON

TERI SEE and DARREL SEE,
 wife and husband,

Plaintiffs,

vs.

REMINGTON ARMS COMPANY, INC.,
 a Delaware corporation,

Defendant.

No. 81-886

AFFIDAVIT OF JAMES D. HUEGLI

STATE OF OREGON)
) ss.
 County of Multnomah)

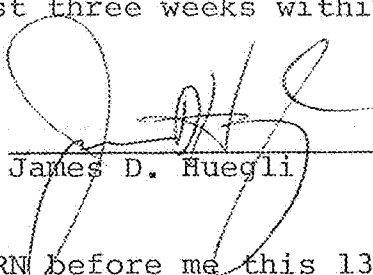
I, James D. Huegli, having been first duly sworn, depose
 and say that I am defense counsel in the above-captioned matter.
 On September 7 I received a Pretrial Order from Peter Chamberlain
 which was due on September 13 in the above-captioned. I was
 unable to prepare the Pretrial Order or to respond to the Pretrial
 Order during the week of September 7 as I was in trial all week.
 I started to work on the Pretrial Order on Saturday, September 11
 and will continue to do so.

This is an extremely complicated products liability

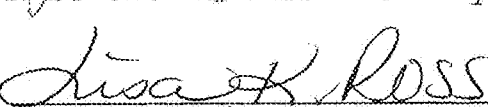
1 case involving a claim of a half million dollars for general
2 damages, as well as about \$12,000 in medical expenses. The
3 case will take approximately one week to try. It is necessary
4 to go over the Pretrial Order submitted by Mr. Chamberlain
5 carefully and to submit my changes, as well as objections to
6 him. It will then be necessary for him to redraft the Pretrial
7 Order and submit the matter back to our office.

8 Furthermore, our expert witness, who we believe
9 we will rely upon in this matter, Mr. Bob Hillberg, has had
10 a serious personal tragedy in that his house burned down
11 on August 23, 1982 and all of his personal effects, as well
12 as all of his evidence from certain trials was destroyed. I
13 have therefore not had an opportunity to discuss this case
14 with our expert, but expect to travel to Connecticut next
15 week to do so.

16 We therefore request three weeks within which to
17 have this matter lodged.

18 
19 James D. Huegli

20 SUBSCRIBED AND SWORN before me this 13th day of
21 September, 1982.

22 
23 Notary Public for Oregon
24 My commission expires: 8-16-85
25
26

CERTIFICATE — TRUE COPY

I hereby certify that the foregoing copy of _____
_____ is a complete and exact copy of the original.

Dated _____, 19____.

Attorney(s) for _____

ACCEPTANCE OF SERVICE

Due service of the within _____ is hereby accepted
on _____, 19____, by receiving a true copy thereof.

Attorney(s) for _____

CERTIFICATES OF SERVICE

Personal

I certify that on _____, 19____, I served the within _____
_____ on _____
attorney of record for _____
by personally handing to said attorney a true copy thereof.

Attorney(s) for _____

At Office

I certify that on _____, 19____, I served the within _____
_____ on _____
attorney of record for _____
by leaving a true copy thereof at said attorney's office with his/her clerk therein, or with a person apparently in
charge thereof, at _____, Oregon.

Attorney(s) for _____

Mailing

I hereby certify that I served the foregoing Motion to Extend Lodging of Pretrial
Order on Peter R. Chamberlain,
attorney(s) of record for plaintiff
on September 13, 1982, 19____, by mailing to said attorney(s) a true copy thereof, certified by me
as such, contained in a sealed envelope, with postage paid, addressed to said attorney(s) at said attorney(s) last
known address, to-wit: 708 SW Third Avenue, Portland, OR 97204

and deposited in the post office at Portland, Oregon, on said day.

Dated September 13, 1982

Attorney(s) for Defendant

SCHWABE, WILLIAMSON, WYATT,
MOORE & ROBERTS
ATTORNEYS AT LAW
1200 Standard Plaza
Portland, Oregon 97204
Telephone 222-9981

FILED

SEP 15 9 34 AM '82

CLERK, U.S. DISTRICT COURT
DISTRICT OF OREGON

BY

1 James D. Huegli
2 SCHWABE, WILLIAMSON, WYATT,
3 MOORE & ROBERTS
4 1200 Standard Plaza
5 Portland, OR 97204
6 Telephone: (503) 222-9981

Attorneys for Defendants

8 IN THE UNITED STATES DISTRICT COURT
9 FOR THE DISTRICT OF OREGON

10 TERI SEE and DARREL SEE,
11 wife and husband,

12 Plaintiffs,

13 vs.

14 REMINGTON ARMS COMPANY, INC.,
15 a Delaware corporation,

Defendant.

No. 81-886

MOTION FOR EXTENSION FOR
LODGING OF PRETRIAL ORDER

16 Defendant in the above-captioned matter moves the
17 court for an additional 21 days for the preparation and lodging
18 of a pretrial order in the above-captioned. This motion is
19 made in good faith and not for the purpose of delay and is
20 supported by the Affidavit of James D. Huegli attached hereto.

21 SCHWABE, WILLIAMSON, WYATT,
22 MOORE & ROBERTS

23 By:

James D. Huegli, OSB #72306
Attorneys for Defendant

UNITED STATES DISTRICT COURT
DISTRICT OF OREGON

CIVIL MINUTES -- GENERAL

C. No. 81-886 Date September 15, 1982
Title Teri See & Darrel See v. Remington Arms Co., Inc.

DOCKET ENTRY

ORDER - Deft's Motion for Extension for Lodging of Pretrial Order to
October 4, 1982, is allowed.

PRESENT:

HON. Edward Leavy, JUDGE

J. Glenn

Deputy Clerk

Court Reporter

ATTORNEYS PRESENT FOR PLAINTIFFS:

ATTORNEYS PRESENT FOR DEFENDANTS:

PROCEEDINGS:

cc James Huegli
Peter Chamberlain

SCHWABE, WILLIAMSON, WYATT, MOORE & ROBERTS

WASHINGTON, D.C. 20007

ROBERT B. DUNCAN, RESIDENT PARTNER
THE FLOUR MILL, SUITE 302
1000 POTOMAC ST. N.W.
(202) 965-8300

ATTORNEYS AT LAW

1200 STANDARD PLAZA

1100 S.W. 8TH AVENUE

PORTLAND, OREGON 97204

TELEPHONE (503) 222-9981

SEATTLE, WASHINGTON 98101

1111 THIRD AVENUE BUILDING

SUITE 3301

(206) 621-9169

(206) 242-1532

DIRECT DIAL #

CABLE ADDRESS: "ROBCAL"

TELEX-151563

TELECOPIER-244

ROY D. LAMBERT
W. A. JERRY NORTH
JAMES T. WALDRON
ROBERT D. DAYTON
DAVID W. AXELROD
ANCER L. HAGGERTY
DELBERT J. BRENNEMAN
ROBERT W. NUNN
JAMES E. BENEDICT
WILLIAM H. REPOGLE
LAWRENCE L. PAULSON
MILDRED J. CARMACK
STEVEN H. PRATT
DONALD A. HAAGENSEN
RUTH WAXMAN HOOPER
RALPH V. G. BAKKENSEN
ELIZABETH K. REEVE**
CHARLES R. MARKLEY
ROBERT A. STOUT
J. STEPHEN WERTS**
DANIEL F. KNOX

JAN K. KITCHEL
PAUL R. BOCCI
GUY C. STEPHENSON
JAMES M. FINN
DENNIS S. REESE
EUGENE L. GRANT
KATHERINE H. O'NEIL
MARC K. SELLERS
ALAN S. LARSEN
ERICH H. HOFFMANN
MARY DAVIS CONDIOTTE
NANCIE POTTER ARELLANO
JOHN J. FENNERTY
ANDREW J. MORROW, JR.
MARY E. EGAN
THOMAS V. DULCICH
BRIAN M. PERKO
GARY D. KEEHN*
RICHARD J. KUHN
JAMES S. RICE
JANET M. SCHROEDER
KEVIN F. KERSTIENS

* WASHINGTON STATE BAR ONLY
** OREGON STATE AND WASHINGTON STATE BARS

October 4, 1982

Mr. Peter R. Chamberlain
Attorney at Law
214 Mohawk Building
708 S.W. Third Street
Portland, Oregon 97204

Re: See v. Remington 81-886

Dear Peter:

I have approved the pretrial order as drafted, but would make the following comments.

First, I want to make certain that by not including under contentions of law of the defendant that we are not waiving the contention of law as raised in subsection C of your contentions of law nor subsection E. In otherwords, I would add a defendant's contention of law as follows:

"Defendant contends that facts B through M inclusive do allege facts constituting a defense to plaintiff's claim. Defendant raises the negligence of a third party, who was aiming the rifle when it discharged injuring plaintiff, Teri See. As a matter of law, the negligence of this third party was the direct, proximate and legal cause of the injuries sustained by Teri See."

I would also suggest adding the following defendant's contention of law:

"The jury should be informed as to the existence of plaintiff's settlement with the Boudreaus and

Mr. Peter R. Chamberlain
October 4, 1982
Page 2

should be instructed in unequivocal language of the reasons for Boudreaus not being a participant in this particular lawsuit including the fact that the covenant entered into between the plaintiff and Boudreau and it's legal effect precludes Remington Arms from bringing Mr. Boudreau in as a third party defendant."

It would seem appropriate that the pretrial order should be changed in accordance with these contentions and I would ask that you include them in the pretrial order as defendant's contentions of law.

Would you please prepare the final draft of the pretrial order and forward it to our office for approval. I am sending a copy of this letter to the court to advise them that the pretrial order is in it's final days of preparation, and although it will not be filed on October 4th it will be filed within days thereafter.

Very truly yours,

James D. Huegli

JDH/djr

cc: David Gribskov
Bob Sperling
Honorable Judge Leavy

FILED

repl

OCT 14 11 40 AM '82

CLERK, U.S. DISTRICT COURT
DISTRICT OF OREGON

BY

[Signature]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

TERI SEE and DARREL SEE,)
wife and husband,)
Plaintiffs,)
v.)
REMINGTON ARMS COMPANY, INC.,)
a Delaware corporation,)
Defendant.)

Civil No. 81-886

ORDER

IT IS ORDERED that plaintiffs are awarded \$700 in
attorneys fees.

Dated this 14 day of Oct, 1982.

[Signature]
United States Magistrate

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UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
CIVIL MINUTES -- GENERAL

Case No. Civ. 81-886-LE

Date October 29, 1982

Title TERI SEE, et al v REMINGTON ARMS COMPANY, INC.

DOCKET ENTRY

ORDER THAT THIS CASE IS ASSIGNED ~~(REASSIGNED)~~ TO JUDGE LEAVY. FOR TRIAL AND ALL FURTHER PROCEEDINGS. THIS ASSIGNMENT IS MADE PURSUANT TO THE COURT'S ASSIGNMENT PLAN.

NOTE: All counsel have ~~(have been)~~ orally stipulated to trial by a U.S. Magistrate.

PRESENT:

HON. CALENDAR MANAGEMENT COMMITTEE, JUDGE

Robert M. Christ, Clerk

Deputy Clerk

Court Reporter

ATTORNEYS PRESENT FOR PLAINTIFFS:

ATTORNEYS PRESENT FOR DEFENDANTS:

PROCEEDINGS:

THIS CASE HAS BEEN ASSIGNED TO JUDGE EDWARD LEAVY FOR TRIAL AND ALL FURTHER PROCEEDINGS. PLEASE NOTE THAT THE CASE NUMBER HAS BEEN MODIFIED TO INCLUDE THE FIRST TWO LETTERS OF THE JUDGE'S LAST NAME. THE NEW CASE NUMBER IS 81-886-LE. YOU MUST USE THIS NEW CASE NUMBER ON ALL DOCUMENTS OR COMMUNICATIONS WHICH YOU FILE.

WHEN ANY DOCUMENT IS SUBMITTED HEREAFTER FOR FILING, THE ORIGINAL SHOULD BE FILED WITH THE CLERK'S OFFICE. THE COPY OF THE DOCUMENT REQUIRED BY LOCAL RULES MUST BE SENT OR DELIVERED DIRECTLY TO THE CHAMBERS OF JUDGE LEAVY. THESE CHAMBERS ARE LOCATED IN ROOM 539. DO NOT LEAVE THE COPY WITH THE CLERK'S OFFICE. THIS SERVICE WILL NOT COMPLY WITH THE LOCAL RULES.

QUESTIONS REGARDING MATTERS IN THIS CASE SHOULD BE DIRECTED TO THE JUDGE'S COURTROOM DEPUTY CLERK, VIRGINIA WIDERSTROM. THE COURTROOM DEPUTY CLERK'S TELEPHONE NUMBER IS 221-3800. QUESTIONS REGARDING DOCKET ENTRIES OR CALENDAR SETTING MAY ALSO BE DIRECTED TO JANE GLENN, THE JUDGE'S DOCKET CLERK AT 294-5350.

cc: Peter Chamberlain
James Spiekerman
Chambers

Rep. 11-1 at the National Archives at Seattle
**UNITED STATES DISTRICT COURT
DISTRICT OF OREGON**

CIVIL MINUTES – GENERAL

Case No. 81-886LE

Date Nov. 3, 1982

Title See v. Remington Arms

DOCKET ENTRY

ORDER-setting for preliminary pretrial conf. Tuesday, Nov. 23, 1982
at 8:30 a.m.

PRESENT:

HON. Edward LEavy, JUDGE

gw

Deputy Clerk

Court Reporter

TORNEYS PRESENT FOR PLAINTIFFS:

ATTORNEYS PRESENT FOR DEFENDANTS:

PROCEEDINGS:

cc: Peter Chamberlain

James Huegli

FILED

Nov 23 10 20 AM '82

CLERK, U.S. DISTRICT COURT
DISTRICT OF OREGON

BY JZ

UNITED STATES DISTRICT COURT
DISTRICT OF OREGON

TERI SEE and DARREL SEE,

Plaintiff,

v.

REMINGTON ARMS COMPANY, INC.,

Defendant.

Civil No. 81-886 LE

STIPULATION FOR ALL PROCEEDINGS
BEFORE A UNITED STATES
MAGISTRATE

The parties by counsel stipulate that the trial may be conducted by and all pretrial and post-trial motions may be heard and decided by a United States Magistrate. Any decision by a magistrate will have the same effect as if made by a United States District Judge.

John R. Chamberlain
PLAINTIFF

James H. [Signature]
DEFENDANT

UNITED STATES DISTRICT COURT
DISTRICT OF OREGON

CIVIL MINUTES — GENERAL

Case No. 81-886LE

Date Nov. 23, 1982

Title SEE v. REMINGTON ARMS

DOCKET ENTRY

Record of preliminary pretrial conference

ORDER-setting for 4 day jury trial to begin March 1, 1983 at 9:30 a.m.
pretrial conference set for 10:00 a.m. February 21, 1983

Exhibit lists due January 14, 1983

Pltf's witness list due Feb. 1/83 Deft's witness list Feb. 14, 1983

PRESENT:

HON. Edward Leavy, JUDGE

gw

Deputy Clerk

Court Reporter

ATTORNEYS PRESENT FOR PLAINTIFFS:

Peter Chamberlain

ATTORNEYS PRESENT FOR DEFENDANTS:

James Huegli
Jerry North

PROCEEDINGS:

Long range calendar
Jury clerk

cc: Peter Chamberlain
James Huegli

Reproduced at the National Archives at Seattle
UNITED STATES DISTRICT COURT
DISTRICT OF OREGON

CIVIL MINUTES -- GENERAL

Case No. 81-886 LE

Date December 29, 1982

Title See, et al v. Remington Arms Co., Inc.

DOCKET ENTRY

ORDER - striking pretrial conference set February 21, 1983, and resetting pretrial conference February 14, 1983, at 10:00 a.m.

PRESENT:

HON. Edward Leavy, JUDGE

J. Glenn

Deputy Clerk

Court Reporter

ATTORNEYS PRESENT FOR PLAINTIFFS:

ATTORNEYS PRESENT FOR DEFENDANTS:

PROCEEDINGS:

cc Peter Chamberlain
James Huegli

FILED

JAN 14 4 10 PM '83

CLERK, U.S. DISTRICT COURT
DISTRICT OF OREGON

BY [Signature]

Peter R. Chamberlain
BODYFELT, MOUNT, STROUP & CHAMBERLAIN
214 Mohawk Building
708 S.W. Third Avenue
Portland, OR 97204
Telephone: (503) 243-1022

Of Attorneys for Plaintiffs

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

| | | |
|-------------------------------|---|---------------------|
| TERI SEE and DARREL SEE, |) | |
| wife and husband, |) | |
| |) | |
| Plaintiffs, |) | Civil No. 81-886-LE |
| |) | |
| v. |) | PLAINTIFFS' EXHIBIT |
| |) | LIST |
| REMINGTON ARMS COMPANY, INC., |) | |
| a Delaware corporation, |) | |
| |) | |
| Defendant. |) | |

| | |
|--------------------|--------------------|
| <u>Exhibit No.</u> | <u>Description</u> |
|--------------------|--------------------|

- | | |
|-----|--|
| R1. | Gun Examination Report No. 599. |
| R2. | Remington Model 700 Bolt-Action Rifle that was involved in the shooting of plaintiff, Teri See. |
| R3. | Gun Examination Report No. 62. |
| R4. | Remington Field Service Manual for Model 700 dated 3/76. |
| R5. | Gun Examination Report No. 530. |
| R6. | Gun Examination Report No. 110. |
| R7. | Gun Examination Report No. 209. |

- 1 R 8. Gun Examination Report No. 244.
- 2 R 9. Gun Examination Report No. 234.
- 3 R 10. Model 700 Bolt-Action Rifle Owner's Manual dated
- 4 11/75.
- 5 R 11. Gun Examination Report No. 639.
- 6 R 12. Gun Examination Report No. 644.
- 7 R 13. Gun Examination Report No. 500.
- 8 R 14. Gun Examination Report No. 566 with receiving and
- 9 estimate report and purchase order attached.
- 10 R 15. Gun Examination Report No. 217 with all related
- 11 documents attached (as produced by defendant).
- 12 R 16. Gun Examination Report No. 52.
- 13 R 17. Gun Examination Report No. 209 with all related
- 14 documents attached (as produced by defendant).
- 15 ~~R 18.~~ Transmittal of drawings/parts list (3 pages).
- 16 R 19. Gun Examination Report No. 623 with all related
- 17 documents attached (as produced by defendant).
- 18 R 20. Gun Examination Report No. 431 with all related
- 19 documents attached (as produced by defendant).
- 20 R 21. Gun Examination Report No. 500 with all related
- 21 documents attached (as produced by defendant).
- 22 R 22. Gun Examination Report No. 592 with all related
- 23 documents attached (as produced by defendant).
- 24 R 23. Gun Examination Report No. 244 with all related
- 25 documents attached (as produced by defendant).
- 26 R 24. Gun Examination Report No. 106 with all related

- 1 documents attached (as produced by defendant).
- 2 R 25. Gun Examination Report No. 52 with all related
- 3 documents attached (as produced by defendant).
- 4 R 26. Gun Examination Report No. 639 with all related
- 5 documents attached (as produced by defendant).
- 6 R 27. Gun Examination Report No. 585 with all related
- 7 documents attached (as produced by defendant).
- 8 R 28. Gun Examination Report No. 110 with all related
- 9 documents attached (as produced by defendant).
- 10 R 29. Gun Examination Report No. 62 with all related
- 11 documents attached (as produced by defendant).
- 12 R 30. Letter dated April 4, 1979, from J. A. Stekl to
- 13 Ray Harrison, and related correspondence
- 14 including Gun Examination Report No. 87.
- 15 R 31. Remington Model 788 Rifle.
- 16 32. Remington Model 700 Bolt-Action Rifle Owner's
- 17 Manual dated 9/74.
- 18 R 33. October 27, 1979 Clatsop County Sheriff's
- 19 Department Officer's Report (Laughman deposition
- 20 Exhibit 1).
- 21 R 34. Drawing of gun (Beaudreau deposition Exhibit 1).
- 22 35. Statement of Mr. Beaudreau (unsigned) (Beaudreau
- 23 deposition Exhibit 2).
- 24 36. Sheriff's Report (Beaudreau deposition Exhibit 3).
- 25 37. Beaudreau recorded statement (Beaudreau deposition
- 26 Exhibit 4).

- 1 38. Starr Beaudreau handwritten statement (Starr
- 2 Beaudreau deposition Exhibit 5).
- 3 R 39. Gun Examination Report No. 406.
- 4 R 40. Gun Examination Report No. 528 with all related
- 5 documents attached (as produced by defendant).
- 6 R 41. Gun Examination Report No. 46.
- 7 R 42. Gun Examination Report No. 140.
- 8 with 43. German Mauser Rifle.
- 9 R 44. Winchester Model 70 Rifle.
- 10 R 45. Remington Model 700 Rifle (with automatic safety,
- 11 as installed by L. S. Martin).
- 12 R 46. Springfield '03 Rifle.
- 13 R 47. Martin photograph No. 1 (trigger assembly) (and
- 14 blowup of same photograph).
- 15 R 48. Martin photograph No. 2 (trigger assembly) (and
- 16 blowup of same photograph).
- 17 R 49. Martin photograph No. 3 (trigger assembly) (and
- 18 blowup of same photograph).
- 19 R 50. Martin photograph No. 4 (trigger assembly).
- 20 R 51. January, 1980 photograph - Teri See's left thigh.
- 21 R 52. January, 1980 photograph - Teri See's right thigh.
- 22 R 53. January, 1980 photograph - Teri See's thighs (rear
- 23 view).
- 24 R 54. Columbia Memorial Hospital ^{records} chart.
- 25 R R R 55. A, B, C Medical illustration (leg muscles).
- 26 56. Medical bills.

- 1 57. ~~withdrawn~~ Remington Model 700 trigger assembly (current
- 2 design).
- 3 58. ~~withdrawn~~ Remington Model 700 trigger assembly (pre-1982
- 4 design).
- 5 59. ^{R R}_{A B} Drawings of trigger mechanism.
- 6 60. Deposition of James B. McDermott.
- 7 61. Deposition of Daniel P. Laughman.
- 8 62. Deposition of Steven D. Beaudreau.
- 9 63. Deposition of Starr Beaudreau.
- 10 64. Deposition of G. A. Hernandez.
- 11 65. Deposition of H. G. Bentlin.
- 12 66. ~~withdrawn~~ Deposition of Lawrence Pucetti.
- 13 67. Deposition of James Sanders.
- 14 68. Deposition of Tony Varnum.
- 15 69. Deposition of Sidney V. Jackson.
- 16 70. Deposition of Gerald Cunningham.
- 17 71. Deposition of Fred J. Avila.
- 18 72. Deposition of Ronald Klosowski.
- 19 73. Deposition of J. Huelster.
- 20 74. Deposition of James C. Reddick.
- 21 75. ~~Rejected~~ Deposition of Marshall R. Hardy.
- 22 76. Deposition of Robert L. Joy.
- 23 77. Deposition of James R. Sneddeker.
- 24 78. ~~Rejected~~ Deposition of Gerald A. Hill.
- 25 79. ~~Rejected~~ Deposition of James A. Stekl.
- 26 80. Deposition of John Linde.

- 1 81. *withdrawn* Deposition of Dennis Sanita.
- 2 82. *Rejected* Deposition of John W. Brooks.
- 3 83. Deposition of Paul Holmberg.
- 4 84. *withdrawn* Covenant Not to Sue.
- 5 85. Warning tags.
- 6 86. Dr. Patrick's office chart.
- 7 87. Dr. Perrin's office chart.
- 8 88. Exemplar 30.06 shell.
- 9 89. *Rejected* Defendant's answers to plaintiffs' first and second
- 10 sets of interrogatories.
- 11 90. *Rejected* Defendant's answers to plaintiffs' requests for
- 12 admissions.
- 13 91. *Rejected* January 18, 1982 memo from C. E. Ritchie to C. B.
- 14 Workman regarding evaluation of lubricants on
- 15 firearms.
- 16 92. *Rejected* Memo from A. J. Long to J. H. Hennings dated
- 17 April 8, 1981.
- 18 93. *Rejected* Impeachment - Booklet published by Saami
- 19 94 A-B *Impeachment* through 95 *Rejected* Kelmington's product literature (brochure) to promote sales
- 20 96 A-E *Impeachment* 110-7 *Impeachment* Reserved (Impeachment and rebuttal).
- 21 98 *Impeachment* BODYFELT, MOUNT, STROUP
- 22 99 *Impeachment* & CHAMBERLAIN
- 23 100 *Impeachment* By *Peter R. Chamberlain*
- 24 101 *Impeachment* Peter R. Chamberlain
- 25 102 *Impeachment* Of Attorneys for Plaintiffs
- 26 103 *Impeachment* - Letter from Hillberg to Ruger
- 104 *Impeachment* - Instruction Manual for Colt

FILES

JAN 14 4 10 PM '83

CLERK, U.S. DISTRICT COURT
DISTRICT OF OREGON

BY 

Peter R. Chamberlain
BODYFELT, MOUNT, STROUP & CHAMBERLAIN
214 Mohawk Building
708 S.W. Third Avenue
Portland, OR 97204
Telephone: (503) 243-1022

Of Attorneys for Plaintiffs

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

| | | |
|-------------------------------|---|---------------------|
| TERI SEE and DARREL SEE, |) | |
| wife and husband, |) | |
| |) | |
| Plaintiffs, |) | Civil No. 81-886-LE |
| |) | |
| v. |) | PLAINTIFFS' EXHIBIT |
| |) | LIST |
| REMINGTON ARMS COMPANY, INC., |) | |
| a Delaware corporation, |) | |
| |) | |
| Defendant. |) | |

Exhibit No. Description

1. Gun Examination Report No. 599.
2. Remington Model 700 Bolt-Action Rifle that was
involved in the shooting of plaintiff, Teri See.
3. Gun Examination Report No. 62.
4. Remington Field Service Manual for Model 700
dated 3/76.
5. Gun Examination Report No. 530.
6. Gun Examination Report No. 110.
7. Gun Examination Report No. 209.

- 1 8. Gun Examination Report No. 244.
- 2 9. Gun Examination Report No. 234.
- 3 10. Model 700 Bolt-Action Rifle Owner's Manual dated
- 4 11/75.
- 5 11. Gun Examination Report No. 639.
- 6 12. Gun Examination Report No. 644.
- 7 13. Gun Examination Report No. 500.
- 8 14. Gun Examination Report No. 566 with receiving and
- 9 estimate report and purchase order attached.
- 10 15. Gun Examination Report No. 217 with all related
- 11 documents attached (as produced by defendant).
- 12 16. Gun Examination Report No. 52.
- 13 17. Gun Examination Report No. 209 with all related
- 14 documents attached (as produced by defendant).
- 15 18. Transmittal of drawings/parts list (3 pages).
- 16 19. Gun Examination Report No. 623 with all related
- 17 documents attached (as produced by defendant).
- 18 20. Gun Examination Report No. 431 with all related
- 19 documents attached (as produced by defendant).
- 20 21. Gun Examination Report No. 500 with all related
- 21 documents attached (as produced by defendant).
- 22 22. Gun Examination Report No. 592 with all related
- 23 documents attached (as produced by defendant).
- 24 23. Gun Examination Report No. 244 with all related
- 25 documents attached (as produced by defendant).
- 26 24. Gun Examination Report No. 106 with all related

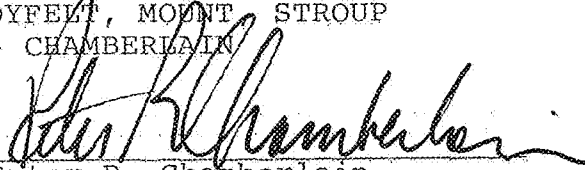
- 1 documents attached (as produced by defendant).
- 2 25. Gun Examination Report No. 52 with all related
- 3 documents attached (as produced by defendant).
- 4 26. Gun Examination Report No. 639 with all related
- 5 documents attached (as produced by defendant).
- 6 27. Gun Examination Report No. 585 with all related
- 7 documents attached (as produced by defendant).
- 8 28. Gun Examination Report No. 110 with all related
- 9 documents attached (as produced by defendant).
- 10 29. Gun Examination Report No. 62 with all related
- 11 documents attached (as produced by defendant).
- 12 30. Letter dated April 4, 1979, from J. A. Stekl to
- 13 Ray Harrison, and related correspondence
- 14 including Gun Examination Report No. 87.
- 15 31. Remington Model 788 Rifle.
- 16 32. Remington Model 700 Bolt-Action Rifle Owner's
- 17 Manual dated 9/74.
- 18 33. October 27, 1979 Clatsop County Sheriff's
- 19 Department Officer's Report (Laughman deposition
- 20 Exhibit 1).
- 21 34. Drawing of gun (Beaudreau deposition Exhibit 1).
- 22 35. Statement of Mr. Beaudreau (unsigned) (Beaudreau
- 23 deposition Exhibit 2).
- 24 36. Sheriff's Report (Beaudreau deposition Exhibit 3).
- 25 37. Beaudreau recorded statement (Beaudreau deposition
- 26 Exhibit 4).

- 1 38. Starr Beaudreau handwritten statement (Starr
- 2 Beaudreau deposition Exhibit 5).
- 3 39. Gun Examination Report No. 406.
- 4 40. Gun Examination Report No. 528 with all related
- 5 documents attached (as produced by defendant).
- 6 41. Gun Examination Report No. 46.
- 7 42. Gun Examination Report No. 140.
- 8 43. German Mauser Rifle.
- 9 44. Winchester Model 70 Rifle.
- 10 45. Remington Model 700 Rifle (with automatic safety,
- 11 as installed by L. S. Martin).
- 12 46. Springfield '03 Rifle.
- 13 47. Martin photograph No. 1 (trigger assembly) (and
- 14 blowup of same photograph).
- 15 48. Martin photograph No. 2 (trigger assembly) (and
- 16 blowup of same photograph).
- 17 49. Martin photograph No. 3 (trigger assembly) (and
- 18 blowup of same photograph).
- 19 50. Martin photograph No. 4 (trigger assembly).
- 20 51. January, 1980 photograph - Teri See's left thigh.
- 21 52. January, 1980 photograph - Teri See's right thigh.
- 22 53. January, 1980 photograph - Teri See's thighs (rear
- 23 view).
- 24 54. Columbia Memorial Hospital chart.
- 25 55. Medical illustration (leg muscles).
- 26 56. Medical bills.

- 1 57. Remington Model 700 trigger assembly (current
- 2 design).
- 3 58. Remington Model 700 trigger assembly (pre-1982
- 4 design).
- 5 59. Drawings of trigger mechanism.
- 6 60. Deposition of James B. McDermott.
- 7 61. Deposition of Daniel P. Laughman.
- 8 62. Deposition of Steven D. Beaudreau.
- 9 63. Deposition of Starr Beaudreau.
- 10 64. Deposition of G. A. Hernandez.
- 11 65. Deposition of H. G. Bentlin.
- 12 66. Deposition of Lawrence Pucetti.
- 13 67. Deposition of James Sanders.
- 14 68. Deposition of Tony Varnum.
- 15 69. Deposition of Sidney V. Jackson.
- 16 70. Deposition of Gerald Cunningham.
- 17 71. Deposition of Fred J. Avila.
- 18 72. Deposition of Ronald Klosowski.
- 19 73. Deposition of J. Huelster.
- 20 74. Deposition of James C. Reddick.
- 21 75. Deposition of Marshall R. Hardy.
- 22 76. Deposition of Robert L. Joy.
- 23 77. Deposition of James R. Sneddeker.
- 24 78. Deposition of Gerald A. Hill.
- 25 79. Deposition of James A. Stekl.
- 26 80. Deposition of John Linde.

- 1 81. Deposition of Dennis Sanita.
2 82. Deposition of John W. Brooks.
3 83. Deposition of Paul Holmberg.
4 84. Covenant Not to Sue.
5 85. Warning tags.
6 86. Dr. Patrick's office chart.
7 87. Dr. Perrin's office chart.
8 88. Exemplar 30.06 shell.
9 89. Defendant's answers to plaintiffs' first and second
10 sets of interrogatories.
11 90. Defendant's answers to plaintiffs' requests for
12 admissions.
13 91. January 18, 1982 memo from C. E. Ritchie to C. B.
14 Workman regarding evaluation of lubricants on
15 firearms.
16 92. Memo from A. J. Long to J. H. Hennings dated
17 April 8, 1981.
18 93.
19 through
20 110. Reserved (impeachment and rebuttal).

BODYFELT, MOUNT, STROUP
& CHAMBERLAIN

By 
Peter R. Chamberlain
Of Attorneys for Plaintiffs

CERTIFICATE — TRUE COPY

I hereby certify that the foregoing copy of _____
_____ is a complete and exact copy of the original.

Dated _____, 19____.

Attorney(s) for _____

ACCEPTANCE OF SERVICE

Due service of the within _____ is hereby accepted
on _____, 19____, by receiving a true copy thereof.

Attorney(s) for _____

CERTIFICATES OF SERVICE

Personal

I certify that on _____, 19____, I served the within _____
_____ on _____
attorney of record for _____
by personally handing to said attorney a true copy thereof.

Attorney(s) for _____

At Office

I certify that on _____, 19____, I served the within _____
_____ on _____
attorney of record for _____
by leaving a true copy thereof at said attorney's office with his/her clerk therein, or with a person apparently in
charge thereof, at _____, Oregon.

Attorney(s) for _____

Mailing

I hereby certify that I served the foregoing _____ Plaintiffs' Exhibit List
_____ on _____ James D. Huegli
attorney(s) of record for _____ defendant
on _____ January 13 _____, 19 83, by mailing to said attorney(s) a true copy thereof, certified by me
as such, contained in a sealed envelope, with postage paid, addressed to said attorney(s) at said attorney(s) last
known address, to-wit: _____ 1200 Standard Plaza, Portland, OR 97204

and deposited in the post office at _____ Portland _____, Oregon, on said day.

Dated _____ January 13 _____, 1983

[Signature]
Attorney(s) for Plaintiffs

BODYFELT, MOUNT & STROUP

ATTORNEYS AT LAW
229 Mohawk Building
Portland, Oregon 97204
Telephone (503) 243-1022

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FEB 1 4 22 PM '83

CLIE

CLERK, U.S. DISTRICT COURT
DISTRICT OF OREGON

BY [Signature]

1 Peter R. Chamberlain
2 BODYFELT, MOUNT, STROUP & CHAMBERLAIN
3 214 Mohawk Building
4 708 S.W. Third Avenue
5 Portland, OR 97204
6 Telephone: (503) 243-1022

Of Attorneys for Plaintiffs

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

| | | | |
|----|-------------------------------|---|---------------------|
| 10 | TERI SEE and DARREL SEE, |) | |
| | wife and husband, |) | |
| 11 | |) | |
| | Plaintiffs, |) | Civil No. 81-886-LE |
| 12 | |) | |
| | v. |) | PLAINTIFFS' WITNESS |
| 13 | |) | LIST |
| | REMINGTON ARMS COMPANY, INC., |) | |
| 14 | a Delaware corporation, |) | |
| | |) | |
| 15 | Defendant. |) | |

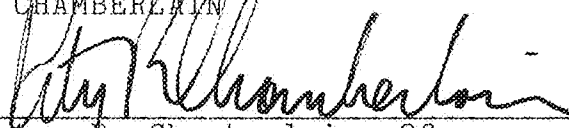
- 16 1. Teri See, DR Star Route Box 769, Naselle, WN, 98638
- 17 2. Darrell See, same address as No. 1
- 18 3. Stephen Boudreau, Rt. 1, Box 893, Astoria, OR, 97103
- 19 4. Starr Boudreau, same address as No. 3
- 20 5. L. S. Martin, 918 Rock Spring Road, Bel Air, MD, 21014
- 21 6. Timothy Patrick, M.D., 2200 Exchange St., Astoria, OR, 97103
- 22 7. Eugene R. Perrin, M.D., 2363 N.W. Flanders, Portland, OR, 97210
- 23 8. Daniel P. Laughman, Route 5, Box 884-A, Astoria, OR, 97103
- 24 9. James M. McDermott, Route 3, Box 170-A, Astoria, OR, 97103

25 In addition, plaintiffs intend to read from the depositions
26 listed below. Some of these witnesses may be called to testify in

1 person if defendant voluntarily produces them:

- 2
- 3 1. G. A. Hernandez
- 4 2. H. G. Bentlin
- 5 3. James Sanders
- 6 4. Tony Varnum
- 7 5. Sidney V. Jackson
- 8 6. Gerald Cunningham
- 9 7. Fred J. Avila
- 10 8. Ronald Klosowski
- 11 9. J. Huelster
- 12 10. James C. Reddick
- 13 11. Marshall R. Hardy
- 14 12. Robert L. Joy
- 15 13. James R. Sneddeker
- 16 14. Gerald A. Hill
- 17 15. James A. Stekl
- 18 16. John Linde
- 19 17. Dennis Sanita
- 20 18. John W. Brooks
- 21 19. Paul Holmberg
- 22

23 BODYFELT, MOUNT, STROUP
24 & CHAMBERLAIN

25 By 
26 Peter R. Chamberlain, Of
Attorneys for Plaintiffs

CERTIFICATE — TRUE COPY

I hereby certify that the foregoing copy of _____
_____ is a complete and exact copy of the original.

Dated _____, 19____.

Attorney(s) for _____

ACCEPTANCE OF SERVICE

Due service of the within _____ is hereby accepted
on _____, 19____, by receiving a true copy thereof.

Attorney(s) for _____

CERTIFICATES OF SERVICE

Personal

I certify that on _____, 19____, I served the within _____
_____ on _____
attorney of record for _____
by personally handing to said attorney a true copy thereof.

Attorney(s) for _____

At Office

I certify that on _____, 19____, I served the within _____
_____ on _____
attorney of record for _____
by leaving a true copy thereof at said attorney's office with his/her clerk therein, or with a person apparently in
charge thereof, at _____, Oregon.

Attorney(s) for _____

Mailing

I hereby certify that I served the foregoing Plaintiffs' Witness List
_____ on James D. Huegli
_____ attorney(s) of record for _____ defendant _____
on February 1, 19 83, by mailing to said attorney(s) a true copy thereof, certified by me
as such, contained in a sealed envelope, with postage paid, addressed to said attorney(s) at said attorney(s) last
known address, to-wit: 1200 Standard Plaza, Portland, OR 97204

and deposited in the post office at Portland, Oregon, on said day.
Dated February 1, 19 83.

Attorney(s) for Plaintiffs

BODYFELT, MOUNT & STROUP

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229 Mohawk Building
Portland, Oregon 97204
Telephone (503) 243-1922

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MARK A. LONG

STEPHEN J. DOYLE

MARK M. LECOQ

ALLAN M. MUIR

LISA L. HERSHEY

BENJAMIN SPAULDING

V. M. H. KINSEY, PC

V. A. WILLIAMSON, PC

JOHN L. SCHWABE, PC

WENDELL WYATT

GORDON MOORE, PC

KENNETH E. ROBERTS, PC

JAMES B. O'HANLON, PC

DOUGLAS M. THOMPSON, PC

JAMES R. MOORE

A. ALLAN FRANZKE, PC

ROLAND F. BANKS, JR., PC

GINO G. PIERETTI, JR.

DOUGLAS J. WHITE, JR.

ROCKNE GILL

JOHN R. FAUST, JR.

JAMES A. LARPEUR, JR.

JAMES F. SPIEKERMAN

FORREST W. SIMMONS

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RIDGWAY K. FOLEY, JR., PC

THOMAS M. TRIPLETT

ROBERT E. JOSEPH, JR.

PAUL N. DAIGLE, PS **

KENNETH D. RENNER

KENNETH E. ROBERTS, JR.

DONALD JOE WILLIS

J. LAURENCE CABLE

MICHAEL D. HOFFMAN **

JAMES D. HUEGLI

HENRY C. WILLENER

TERRY C. HAUCK

MARK H. WAGNER

JOHN G. CRAWFORD, JR.

NEVA T. CAMPBELL

JOHN E. HART

ROGER A. LUEDTKE

ROY D. LAMBERT

W. A. JERRY NORTH

JAMES T. WALDRON

ROBERT D. DAYTON

DAVID W. AXELROD

ANCER L. HAGGERTY

February 2, 1983

U.S. District Court
Attention: Judge Leavy
Federal Courthouse
6th and Main
Portland, OR 97204

Re: See v. Remington Arms
Civil No. 81-886-LE

Dear Judge Leavy:

Please accept this letter as the Defendant's
Witness List in the above-captioned matter. The
defendant intends to call the following individuals:

1. Mr. William C. Davis
2. Mr. Paul Holmberg
3. Mr. James A. Stekl
4. Mr. John Linde
5. Mr. Bob Hillberg
6. Steven Boudreau
7. Starr Boudreau
8. Daniel P. Laughman
9. James N. McDermott

Very truly yours,

James D. Huegli

JDH:lr

cc: Peter Chamberlain

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FEB 4 9 07 AM '83
CLERK, U.S. DISTRICT COURT
DISTRICT OF OREGON
BY

SCHWABE, WILLIAMSON, WYATT, MOORE & ROBERTS

ATTORNEYS AT LAW

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MARK A. LONG

STEPHEN J. DOYLE

MARK M. LECOQ

ALLAN M. MUIR

LISA L. HERSHEY

* WASHINGTON STATE BAR ONLY

** OREGON STATE AND WASHINGTON STATE BARS

January 12, 1983

The Honorable Edward Leavy
U.S. District Court Judge
Federal Courthouse
6th and Main
Portland, OR 97204

Re: See v. Remington Arms
Civil No. 81-886-LE

Dear Judge Leavy:

The Court has ordered that the defendant prepare an index of exhibits it intends to produce at the time of trial.

The defendant intends to introduce at the time of trial the following exhibits:

1. A cut-out of the fire control of the Model 700;
2. A plastic mock-up of the Model 700 fire control;
3. The National Rifle Association Gun Handler's Safety Manual;
4. A certified true copy of the Astoria weather report for October 27, 1979 showing temperature variations;
5. Written test results done by Remington on the rifle in question;
6. A copy of the owner's manual given to Mr. Boudreau, including the Remington Peter's Hunters Pocket Guide;

41

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CLERK OF DISTRICT COURT
BY

January 12, 1983
Page 2

7. Five additional bolt action rifles that are not Remington manufactured;
8. The Gediman Research Report.

This is the current list of exhibits which we plan to introduce. I have not had an opportunity to discuss the additional exhibits, if any, that our expert may intend to introduce. That documentation or additional exhibit lists will be provided as soon as we have any additional knowledge of additional exhibits we intend to offer.

Very truly yours,


James D. Haegli

JDH:lr

cc: Peter Chamberlain
Dave Gribskov
Bob Sperling

P.S. We will also have photographs of the rifle which we intend to introduce.

JDH

9) Commercial bolt action rifle study.

SCHWABE, WILLIAMSON, WYATT, MOORE & ROBERTS

ATTORNEYS AT LAW
1200 STANDARD PLAZA
1100 S.W. 6TH AVENUE

PORTLAND, OREGON 97204
TELEPHONE (503) 222-9981

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LISA L. HERSHEY

* WASHINGTON STATE BAR ONLY
** OREGON STATE AND WASHINGTON STATE BARS

January 12, 1983

The Honorable Edward Leavy
U.S. District Court Judge
Federal Courthouse
6th and Main
Portland, OR 97204

Re: See v. Remington Arms
Civil No. 81-886-LE

Dear Judge Leavy:

The Court has ordered that the defendant prepare an index of exhibits it intends to produce at the time of trial.

The defendant intends to introduce at the time of trial the following exhibits:

201. A cut-out of the fire control of the Model 700;
202. A plastic mock-up of the Model 700 fire control;
203. The National Rifle Association Gun Handler's Safety Manual;
- R 204. A certified true copy of the Astoria weather report for October 27, 1979 showing temperature variations;
205. Written test results done by Remington on the rifle in question;
- R 206. A copy of the owner's manual given to Mr. Boudreau, including the Remington Peter's Hunters Pocket Guide;

41

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CLERK OF DISTRICT COURT
PORTLAND, OREGON

January 12, 1983
Page 2

207. Five additional bolt action rifles that are not Remington manufactured;

208. The Gediman Research Report.

This is the current list of exhibits which we plan to introduce. I have not had an opportunity to discuss the additional exhibits, if any, that our expert may intend to introduce. That documentation or additional exhibit lists will be provided as soon as we have any additional knowledge of additional exhibits we intend to offer.

Very truly yours,

James D. Haegli

JDH:lr

cc: Peter Chamberlain
Dave Gribskov
Bob Sperling

P.S. We will also have photographs of the rifle which we intend to introduce.

R 209 ~~statement given in lawyers office~~ ^{JDH} by Stephen Boudreau

209A - originally part of 209 & excluded

R 210 Drawing of Boudreau house by Teri Lee and Stan Boudreau

returned 211 Winchester rifle model 94

R 212 Training aide

R 213 sketch model 700 rifle

R 214 photo

R 215 photo

R 216 " "

R 217 " "

R 218 " "

R 219 " "

R 220 " "

R 221 " "

R 222 " "

R 223 " "

R 224 " "

R 225 " "

R 226 Caliber 308 Winchester empty primed cartridge case

R 227 Caliber rim fire blank cartridge

R 228 Rifle 270 mark x

R 229 Gun

R 230 Weatherby mark 5

231 Impachment

FILED

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CLERK, U.S. DISTRICT COURT
DISTRICT OF OREGON

BY

1 James D. Huegli
2 SCHWABE, WILLIAMSON, WYATT,
3 MOORE & ROBERTS
4 1200 Standard Plaza
5 1100 S.W. Sixth Avenue
6 Portland, Oregon 97204
7 Telephone: (503) 222-9981

Attorneys for Defendants

8 IN THE UNITED STATES DISTRICT COURT
9 FOR THE DISTRICT OF OREGON

| | | | |
|----|-------------------------------|---|-------------------|
| 10 | TERI SEE and DARREL SEE, |) | |
| 11 | husband and wife, |) | |
| | |) | No. 81-886-LE |
| 12 | Plaintiffs, |) | |
| | |) | MOTION TO EXCLUDE |
| 13 | v. |) | EVIDENCE |
| | |) | |
| 14 | REMINGTON ARMS COMPANY, INC., |) | |
| 15 | A Delaware corporation, |) | |
| | |) | |
| 16 | Defendant. |) | |

16 Defendant in the above-captioned matter moves the court
17 for an order preventing the presentation at the time of trial by
18 the plaintiff of other incidences involving Remington rifles.

19 The evidence should be excluded on three grounds.

20 First, such evidence would be in the form of hearsay
21 statements made by declarants whose interests were adverse to
22 those of the defendant.

23 Second, evidence of other incidents is not probative of
24 the condition or reliability of design of the gun involved in this
25 case. Further, the evidence should not be allowed to establish
26

42

1 the defendant's state of knowledge, since that issue is not of
2 consequence to the determination of this suit.

3 Third, even should the court find the offered evidence
4 to be relevant, it should be excluded as unfairly prejudicial to
5 the defendant because it would suggest to the trier of fact an
6 improper basis upon which to decide this case.

7 Fourth, the court should exclude the proposed evidence
8 on the grounds that it will open collateral issues and compel the
9 defendant to fairly meet the prejudice of the evidence by lengthy
10 rebuttal.

11 Since the proposed evidence has little or no probative
12 value, but possesses the danger of hearsay, prejudice, delay and
13 confusion, it should be excluded.

14 ARGUMENT

15 1. The Proposed Evidence is Hearsay.

16 Hearsay evidence is excluded by Federal Rule of
17 Evidence 802. The Federal Rules define hearsay as follows:

18 "'Hearsay' is a statement, other than one
19 made by the declarant while testifying at the
20 trial or hearing, offered in evidence to prove
the truth of the matter asserted." FRE 801(c).

21 Evidence of the 49 other incidents involving Remington
22 Rifles constitutes hearsay since the evidence consists of out of
23 court statements made by declarants with personal interests
24 adverse to those of the defendant herein. Further, these state-
25 ments would be offered for the truth of the matter asserted: that
26 the Remington 700 is defectively designed. In products liability

1 cases, courts have consistently found this type of evidence to be
2 inadmissible as hearsay. See *Melville v. American Home Assurance*
3 *Co.*, 584 F.2d 1306, 1315 (3d Cir. 1978); *John McShain, Inc. v.*
4 *Cessna Aircraft Co.*, 563 F.2d 632, 636 (3d Cir. 1977); *Uitts v.*
5 *General Motors Corp.*, 411 F. Supp. 1380, 1381 (E.D. Pa. 1974),
6 *aff'd* 513 F.2d 626 (3d Cir. 1975).

7 This hearsay evidence should not be made admissible by
8 an allegation that it would prove notice or knowledge on the part
9 of the defendant. As discussed below, evidence on that point is
10 not relevant to this case.

11 2. The Proposed Evidence is Irrelevant: It Lacks Probative
12 Value on any Material Issue.

13 A. Standard of Probative Value.

14 Only relevant evidence is admissible in this court.

15 FRE 402. Relevancy is defined in the immediately preceding rule.

16 "'Relevant evidence' means evidence
17 having any tendency to make the existence of
18 any fact that is of consequence to the deter-
19 mination of the action more probable or less
20 probable than it would be without the evi-
21 dence." FRE 401.

22 The Advisory Committee Note to Rule 401 makes clear that
23 the relevancy of an item of evidence hinges on the contents of the
24 substantive law which governs the case; relevancy "exists only as
25 a relation between an item of evidence and a matter properly
26 provable in the case." The substantive law of Oregon governs this
diversity action. *Erie R. Co. v. Tompkins*, 304 U.S. 64, 74-7, 58

1 S. Ct. 817, 82 L. Ed. 1188 (1938); *Forsyth v. Cessna Aircraft Co.*,
2 520 F.2d 608 (9th Cir. 1975).

3 The trial court enjoys substantial discretion when
4 determining whether a given item of evidence has probative value
5 on a material issue. *United States v. Brannon*, 616 F.2d 413, 418
6 (9th Cir. 1980); *Hill v. Roller*, 615 F.2d 886, 891 (9th Cir.
7 1980).

8 When a party offers evidence of "similar incidents", as
9 the plaintiff does in the instant case, the trial court receives
10 general guidance from Federal Rule 404(b), though the court
11 retains its discretion.

12 "Evidence of other crimes, wrongs, or
13 acts is not admissible to prove the character
14 of a person in order to show that he acted in
15 conformity therewith. It may, however, be
16 admissible for other purposes, such as proof
17 of motive, opportunity, intent, preparation,
18 plan, knowledge, identity, or absence of
19 mistake or accident." FRE 404(b).

20 Thus, relevancy should be determined in the court's
21 discretion, by reference to the materiality of the issue sought to
22 be proven and the probative value of the offered evidence on that
23 issue.

24 B. The Offered Evidence is not Probative on Any Material
25 Issue.

26 Conceivably, the plaintiff offers this evidence of other
incidents involving Remington Rifles to establish two points: the

1 rifle involved in this case was defective or designed defectively;
2 or Remington had notice of a defect in this model of rifle. The
3 evidence should be found irrelevant on both points.

4 Evidence of other incidents does not make it more
5 probable that the particular rifle in this case was defective or
6 designed defectively. Before evidence of other incidents is
7 probative of this point, the plaintiff must show that the other
8 incidents occurred under circumstances very similar to those
9 involved in this case. The age, the care taken, the number of
10 uses, the expertise of the user, and many other factors contribute
11 to the performance of a rifle. Only by showing that the 49
12 incidents occurred in a similar confluence of factors can the
13 plaintiff establish the value of the offered evidence. When the
14 plaintiff attempts use of this evidence to show a defect in a
15 product, "[t]he requirement of similarity of conditions is
16 probably at its strictest * * *." McCormick, Law of Evidence
17 (1972) § 200.

18 Federal appellate courts have consistently held that
19 "other incident" evidence lacks probative value in the absence of
20 a showing of highly similar circumstances. In the leading
21 products case of *Prashker v. Beech Aircraft Corp.*, 258 F.2d 602
22 (3d Cir.) cert. denied 358 U.S. 910, 79 S. Ct. 236, 3 L. Ed. 2d
23 230 (1958), the Third Circuit held inadmissible 45 reports of
24 other accidents involving the defendant's aircraft. The panel
25 noted that many factors can cause accidents and that admitting
26 this evidence to show defect or causation would be tantamount to

1 holding the plane responsible for adverse weather and "the factor
2 of human fallibility known inevitably to occur in such
3 circumstances * * *." *Id.* at 258 F.2d 608-9 [emphasis added].

4 More recent cases have also refused admission of "other
5 incident" evidence. Of particular note is *McKinnon v. Skil Corp.*,
6 638 F.2d 270 (3d Cir. 1981). The appellate panel upheld the
7 exclusion of the defendant's answers to interrogatories which
8 identified six other complaints it had received from power saw
9 customers. The panel reasoned:

10 "Evidence of prior accidents is admis-
11 sible on the first four issues [knowledge,
12 defect, causation and negligent design] only
13 if the proponent of the evidence shows that
14 the accidents occurred under circumstances
15 substantially similar to those at issue in the
16 case at bar." *Id.* at 638 F.2d 277.

17 The appellate panel went further -- reversing a trial
18 court ruling which had admitted evidence of other accidents -- in
19 *Julander v. Ford Motor Co.*, 488 F.2d 839 (10th Cir. 1973). The
20 disputed exhibit consisted of seven complaints filed against the
21 defendant, all of which alleged steering failures in Ford Broncos.
22 This was also the gravamen of the case under consideration. The
23 panel held squarely that admission of this evidence was error.

24 "Counsel also suggests that exhibit 32 is
25 itself probative evidence of negligent design
26 on the part of Ford in its design of the 1968
Bronco. Evidence of 'other accidents' is
sometimes admissible to prove primary negli-
gence, but such evidence should be carefully
examined before being received to the end that
the circumstances of the 'other accidents'
bear similarity to the circumstances surround-
ing the accident which is the subject matter
on trial. Such evidence in the instant case

1 is singularly lacking." *Id.* at 488 F.2d
2 846-7.

3 These cases establish the proposition that a plaintiff
4 cannot simply offer evidence that similar occurrences have taken
5 place in the hope of persuading the trier of fact that a product
6 was defective or dangerous. Especially where age, maintenance and
7 "human fallibility" are involved, the plaintiff has been required
8 to show a strong identity of circumstances; absent that showing,
9 the offered evidence lacks probative value on this issue.

10 Nor is the offered evidence relevant on an issue of
11 notice. The evidence is not probative of a fact "that is of
12 consequence." FRE 401. The state of mind of this defendant,
13 and the state of its knowledge of other complaints, is not of
14 consequence to the determination of this suit. The substantive
15 Oregon law is clear: notice or knowledge is irrelevant in a
16 strict liability products case. The Oregon Supreme Court has
17 defined this cause of action *in terms of presumed or constructive*
18 *knowledge.*

19 "A test for unreasonable danger is there-
20 for vital. A dangerously defective article
21 would be one which a reasonable person would
22 not put into the stream of commerce *if he had*
23 *knowledge of its harmful character.* The test,
24 therefor, is whether the seller would be
25 negligent if he sold the article *knowing of*
26 *the risk involved.* Strict liability imposes
what amounts to constructive knowledge of the
condition of the product." *Phillips v.*
Kimwood Machine Co., 269 Or. 485, 492, 525
P.2d 1033 (1974) [emphasis added].

1 The Oregon Supreme Court reached this conclusion after
2 having drawn a clear distinction between products liability cases
3 and negligence actions:

4 " * * * it is generally recognized that
5 the basic difference between negligence on the
6 one hand and strict liability for a design
7 defect on the other is that in strict lia-
8 bility we are talking about the condition
9 (dangerousness) of an article which is
10 designed in a particular way, while in negli-
11 gence we are talking about the reasonableness
12 of the manufacturer's actions in designing and
13 selling the article as he did * * * the law
14 assumes he [the manufacturer] has knowledge of
15 the article's dangerous propensity * * *."
16 *Roach v. Kononen, Ford Motor Co.*, 269 Or. 457,
17 465, 525 P.2d 125 (1974) [emphasis added].

18 The Oregon Supreme Court has consistently cited these
19 two cases and quoted from them, establishing and applying the
20 principle that a defendant in a products liability case is
21 presumed to be on notice of the dangers of his product. See
22 *Baccelleri v. Hyster Co.*, 287 Or. 3, 5-6, 597 P.2d 351 (1979);
23 *Newman v. Utility Trailer & Equipment Co., Inc.*, 278 Or. 395,
24 397-9, 564 P.2d 674 reh. den. (1977); *Johnson v. Clark Equipment*
25 *Co.*, 274 Or. 403, 416-7, 547 P.2d 132 (1976).

26 The offered evidence, if intended to show the defen-
dant's state of mind or knowledge, lacks relevancy. Plaintiffs
have not pled an intentional tort nor do they pray for punitive
damages.

The offered evidence is not relevant either to show
defect or to show notice.

1 3. The Proposed Evidence is Unfairly Prejudicial.

2 The Federal Rules of Evidence make clear that evidence,
3 even evidence which may possess some probative value, should be
4 excluded nonetheless "if its probative value is substantially
5 outweighed by the danger of unfair prejudice * * *." FRE 403.
6 The Advisory Committee stressed the importance of this rule in its
7 definition of unfair prejudice:

8 "Unfair prejudice' within its context
9 means an undue tendency to suggest decision on
10 an improper basis, commonly, though not neces-
11 sarily, an emotional one."

12 The rule, in practice, calls upon the trial court to
13 weigh the probative value of evidence of prior incidents against
14 its obvious prejudicial impact in products liability cases: the
15 thought of different individuals receiving injuries from incidents
16 involving the products of a large corporation. The substantive
17 law requires more than just an incident or injury; the Oregon
18 Supreme Court has made clear that the product must be proven
19 "dangerously defective" lest strict liability be turned into
20 "absolute liability." *Phillips v. Kimwood Machine Co., supra*
21 at 269 Or. 491-2. To encourage the trier of fact to find
22 liability based on other incidents without a primary showing of
23 defect would be to allow undue prejudice. As one appellate panel
24 struck the balance:

25 "The most that these items [lists of
26 similar complaints and lawsuits against the
defendant] could have indicated was that
absent third parties had made this claim to or
against [defendant-manufacturer] from time to
time. To exclude evidence of *such faint*

1 *probative value and high potential for unfair*
 2 *prejudice was well within the trial court's*
 3 *discretion." Yellow Bayou Plantation, Inc. v.*
 Shell Chemical, Inc., 491 F.2d 1239, 42-3 (5th
 Cir. 1974).

4 The trial court in a products liability case should
 5 weight the slight (or lack of) probative value of this type of
 6 evidence against its prejudicial effects. FRE 403. In the
 7 instant case, this balance favors clearly exclusion of the
 8 evidence.

9 4. The Proposed Evidence is Confusing and Misleading, and will
 10 Cause Undue Delay.

11 Even should the trial court find that the proposed
 12 evidence has some probative value and that the probative value
 13 outweighs its prejudicial effects, the court should exclude the
 14 evidence on the ground that it will confuse and mislead the jury
 15 and necessitate lengthy attempts to prove various collateral
 16 issues. FRE 403. The trial court has broad discretion to exclude
 17 such collateral evidence. *Morita v. Southern California*
 18 *Permanente Medical Group, 541 F.2d 217, 220 (9th Cir. 1976);*
 19 *United States v. Manning, 503 F.2d 1230, 1234 (9th Cir. 1974).*

20 Evidence of other incidents has often been excluded on
 21 these grounds, including evidence where a much higher degree of
 22 similarity of circumstances has been present. See, e.g., *McKinnon*
 23 *v. Skil Corp, supra at 638 F.2d 277; Yoham v. Rosecliff Realty*
 24 *Co., 267 F.2d 9, 10 (3d Cir. 1959) (upholding exclusion of*
 25 *evidence of similar accidents on same rollercoaster as "diligent*
 26 *effort to keep the issues before the jury from being obfuscated);*

1 *Uitts v. General Motors Corp.*, 411 F. Supp. 1380, 1383, *aff'd.* 513
2 F.2d 626 (3d Cir. 1975) (reports of prior, similar steering
3 malfunctions in same model of car excluded to avoid "unfair
4 prejudice, consumption of time and distraction of the jury to
5 collateral matters").

6 The reason for excluding the evidence offered in the
7 instant case is the same. These other incidents, though not
8 probative, are highly prejudicial to defendant's case. Defendant
9 would be forced to try not only the case at bar, but also each
10 case suggested by each other incident admitted into evidence. It
11 would be necessary, for example, to determine which of the other
12 rifle owners soaked gun parts in diesel oil, and, more generally,
13 the age and condition of each rifle. The credibility of each
14 report would have to be questioned, in each instance requiring the
15 defendant to point out the legal action, if any, that the gun
16 owner took or is in the process of taking against the defendant.

17 One court has described this situation:

18 "Defendant, in order to minimize the pre-
19 judicial effect of these reports, would have
20 had to go through each one individually with
21 the jury. The result would have been a mini-
22 trial on each of the thirty-five reports
23 offered by plaintiffs. This would lengthen
24 the trial considerably and the minds of the
25 jurors would be diverted from the claim of the
26 plaintiffs to the claims contained in these
reports." *Uitts v. General Motors Corp.*,
supra at 411 F. Supp. 1383.

24 In effect, admission of the proposed evidence will
25 require the defendant to try the instant case and 49 others. The
26

1 issues at trial would thereby be confused and the rights of the
2 defendant prejudiced.

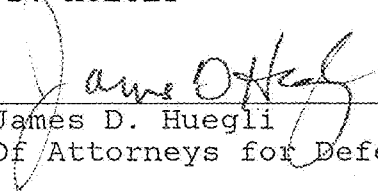
3 CONCLUSION

4 For these reasons, the proposed evidence should be
5 excluded.

6 Respectfully submitted,

7 SCHWABE, WILLIAMSON, WYATT,
8 MOORE & ROBERTS
9 JAMES D. HUEGLI

10 By:


James D. Huegli
Of Attorneys for Defendants

CERTIFICATE — TRUE COPY

I hereby certify that the foregoing copy of
 is a complete and exact copy of the original.
 Dated, 19.....

Attorney(s) for

ACCEPTANCE OF SERVICE

Due service of the within is hereby accepted
 on, 19....., by receiving a true copy thereof.

Attorney(s) for

CERTIFICATES OF SERVICE

Personal

I certify that on February 14, 1983, I served the within Motion to
Exclude Evidence on Peter Chamberlain
 attorney of record for plaintiff
 by personally handing to said attorney a true copy thereof.

James D. Hays
 Attorney(s) for defendant

At Office

I certify that on, 19....., I served the within
 on
 attorney of record for
 by leaving a true copy thereof at said attorney's office with his/her clerk therein, or with a person apparently in
 charge thereof, at, Oregon.

Attorney(s) for

Mailing

I hereby certify that I served the foregoing
 on
 attorney(s) of record for
 on, 19....., by mailing to said attorney(s) a true copy thereof, certified by me
 as such, contained in a sealed envelope, with postage paid, addressed to said attorney(s) at said attorney(s) last
 known address, to-wit:

and deposited in the post office at, Oregon, on said day.

Dated, 19.....

Attorney(s) for

SCHWABE, WILLIAMSON, WYATT,
 MOORE & ROBERTS

ATTORNEYS AT LAW
 1200 Standard Plaza
 Portland, Oregon 97204
 Telephone 222-9981

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UNITED STATES DISTRICT COURT
DISTRICT OF OREGON

CIVIL MINUTES - GENERAL

C No. 81-886 LE Date February 14, 1983
Title See v. Remington Arms

DOCKET ENTRY

RECORD of pretrial conference.
Deft has no objection to pltf Teri See's amendments to pleadings in the PTO.
ORDER - setting Deft's Motion to Exclude Evidence for oral argument before
Judge Leavy February 16, 1983, at 10:00 a.m. Pltfs' reply due by 4:00 p.m.
February 15, 1983. Any additional motions also to be heard February 16, 1983,
at 10:00 a.m.
ORDER - requested jury instructions, trial memos and voir dire questions to be
filed by the morning of February 28, 1983.

PRESENT:

HON. Edward Leavy, JUDGE
J. Glenn Deputy Clerk
Viola Joyner Court Reporter

ATTORNEYS PRESENT FOR PLAINTIFFS:

ATTORNEYS PRESENT FOR DEFENDANTS:

Peter Chamberlain
Kathryn Janssen
James Huegli

PROCEEDINGS:

cc Peter Chamberlain
James Huegli


LODGED

FILED

OCT 8 4 05 PM '82

FEB 14 11 42 AM '83

CLERK OF DISTRICT COURT
DISTRICT OF OREGON

BY 

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Of Attorneys for Defendant

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

13 TERI SEE and DARREL SEE,
14 wife and husband,

Plaintiffs,

v.

16 REMINGTON ARMS COMPANY, INC.,
17 a Delaware corporation,

Defendant.

Civil No. 81-886

PRETRIAL ORDER

19 The following proposed Pretrial Order is lodged with the
20 Court pursuant to L.R. 235-2.

21 1. Nature of Action.

22 This is a civil action for personal injury and loss of
23 consortium based upon strict liability in tort. A jury was
24 timely requested. This case will be tried before a jury.

25 2. Subject Matter Jurisdiction.

26 Jurisdiction of this Court is based upon diversity of

44

1 citizenship and an amount in controversy in excess of \$10,000,
2 exclusive of interest and costs. 28 USC 1332 (1976).

3 3. Agreed Facts as to Which Relevance is Not Disputed.

4 The following facts have been agreed upon by the parties
5 and require no proof:

6 a. Plaintiffs are individuals who, at all material
7 times, resided within and were citizens of the state of Oregon.

8 b. Defendant is a Delaware corporation and is a citizen
9 of that state.

10 c. The amount in controversy, exclusive of costs,
11 exceeds \$10,000.

12 d. Defendant is in the business of designing,
13 manufacturing and selling firearms, including a rifle known as
14 the Remington Model 700. Defendant designed, manufactured and
15 sold the Remington Model 700 that is involved in this action and
16 that is marked as plaintiffs' Exhibit 2 (hereinafter referred to
17 as "this rifle").

18 e. This rifle is a Remington Model 700 BDL Varmint
19 Special, Serial No. A6391951, and was manufactured by defendant
20 in December, 1976.

21 f. This rifle, as designed, manufactured and sold by
22 defendant, had a two-position, manually operated safety.

23 g. As a result of the injuries sustained when this
24 rifle discharged, plaintiff Teri See incurred necessary medical
25 expenses, including the charges of doctors and a hospital, in the
26 reasonable sum of \$11,789.

1 h. From the date of her accident through March 17,
2 1980, plaintiff Teri See lost wages from part-time work totaling
3 \$1,187.24.

4 i. Plaintiff Darrel See is and at all material times
5 has been, the husband of plaintiff Teri See.

6 4. Agreed Facts as to Which Relevance is Disputed.

7 Teri See and Darrel See, on the one hand, and Stephen
8 Boudreau and Starr Boudreau, on the other hand, entered into a
9 COVENANT NOT TO SUE, on or about April 8, 1980. A copy of the
10 COVENANT NOT TO SUE will be marked as an exhibit in the trial of
11 this case. The relevance of said exhibit, and the relevance of
12 the facts recited therein, is disputed.

13 5. Facts Not to be Controverted.

14 The following facts, although not admitted, will not be
15 controverted at trial by any evidence, but each party reserves
16 objections as to relevance.

17 6. Contentions of Fact.

18 PLAINTIFFS

19 a. The design of the bolt and firing mechanism and
20 safety mechanism on this rifle is the same as the design on all
21 Remington Model 700 rifles, regardless of caliber, including all
22 ADL models, BDL models and Varmints manufactured between January,
23 1971 and January, 1982.

24 b. This rifle, as designed, manufactured and sold by
25 defendant, could not be unloaded without moving the safety from
26 the "on safe" position to the "fire" position.

1 c. The trigger on this rifle, as designed, manufactured
2 and sold by defendant, was capable of being moved when the safety
3 was engaged.

4 d. The trigger mechanism on this rifle, as designed,
5 manufactured and sold by defendant, was designed such that it
6 could become contaminated by dirt and debris.

7 e. At the time it caused plaintiff Teri See's injuries,
8 this rifle was being used and handled in a reasonably foreseeable
9 and intended manner.

10 f. Before its manufacture and sale of this rifle,
11 defendant was on notice that some customers had complained to
12 Remington Arms Company that their substantially identical Model
13 700 Remington rifles had fired when the safety lever was pushed
14 from the "on safe" position to the "fire" position, without their
15 touching the trigger.

16 g. At the time the Remington Model 700 rifle that
17 caused injury to plaintiff Teri See left Remington's hands, it
18 was unreasonably dangerous and defective in one or more of the
19 following particulars:

20 (1) Defendant designed and manufactured this rifle
21 such that the bolt could not be opened when the safety was in the
22 "on safe" position and, therefore, the rifle could not be
23 unloaded without moving the safety from the "on safe" position to
24 the "fire" position.

25 (2) The trigger mechanism, as designed and
26 manufactured by defendant, did not contain a trigger lock and

1 very little effort was required to pull the trigger rearward even
2 when the safety was in the "on safe" position. With a design
3 such as this, any time there is any condition of the rifle which
4 causes the trigger to stay in the pulled position, the rifle will
5 fire when the safety is later moved from the "on safe" position
6 to the "fire" position, even though the trigger is not being
7 pulled at the time.

8 ~~(3) Defendant designed and manufactured this rifle~~
9 ~~such that the rifle's safety mechanism fails to immobilize the~~
10 ~~firing pin when the safety is put in the "on safe" position.~~

11 (4) Defendant designed this rifle such that
12 lubrication of the trigger assembly could result in the rifle
13 unexpectedly firing when the safety was moved from the "on safe"
14 position to the "fire" position despite the fact that the trigger
15 was not being pulled at the time.

16 (5) The rifle was designed such that there were
17 numerous ports through which dirt, dust and debris could enter
18 and contaminate the trigger mechanism and safety mechanism and
19 related parts. This contamination could cause the rifle to
20 unexpectedly fire when the safety was moved from the "on safe"
21 position to the "fire" position despite the fact that the trigger
22 was not being pulled at the time.

23 (6) The rifle was designed such that cold weather
24 could cause the trigger and safety mechanisms to malfunction,
25 resulting in the rifle unexpectedly firing when the safety was
26 moved from the "on safe" position to the "fire" position despite

1 the fact that the trigger was not being pulled at the time.

2 (7) The rifle was designed without an automatic
3 safety or three-position safety or other similar positive safety
4 device.

5 (8) Defendant failed to warn users of this rifle
6 that, under certain circumstances, the rifle could unexpectedly
7 fire when the safety was moved from the "on safe" position to the
8 "fire" position despite the fact that the trigger was not being
9 pulled at the time.

10 (9) Defendant failed to warn users of the rifle
11 that lubrication of the trigger assembly could cause the rifle to
12 unexpectedly fire when the safety was moved from the "on safe" to
13 the "fire" position despite the fact that the trigger was not
14 being pulled at the time.

15 (10) Defendant failed to warn users of this rifle
16 that failing to adequately clean certain parts of the rifle could
17 cause an accumulation of gun oil or dried oil, which could build
18 a film that could cause the rifle to unexpectedly fire when the
19 safety was moved from the "on safe" position to the "fire"
20 position despite the fact that the trigger was not being pulled
21 at the time.

22 (11) Defendant failed to warn users of the rifle
23 that cleaning of the trigger mechanism with certain petroleum
24 products could cause the rifle to unexpectedly fire when the
25 safety was moved from the "on safe" position to the "fire"
26 position despite the fact that the trigger was not being pulled

1 at the time.

2 (12) Defendant failed to warn users of the rifle
3 that use of the rifle in cold temperatures could cause the rifle
4 to unexpectedly fire when the safety was moved from the "on safe"
5 position to the "fire" position despite the fact that the trigger
6 was not being pulled at the time.

7 (13) Defendant designed the rifle such that dampners
8 or condensation could form on the internal parts of the trigger,
9 could freeze and could cause the internal parts of the trigger to
10 hang up such that the rifle would unexpectedly fire when the
11 safety was moved from the "on safe" position to the "fire"
12 position despite the fact that the trigger was not being pulled
13 at the time.

14 (14) Defendant failed to warn users of the rifle
15 that dampers or condensation in conjunction with cold weather
16 could cause the internal parts of the trigger of the rifle to
17 hang up such that the rifle would fire unexpectedly when the
18 safety was moved from the "on safe" position to the "fire"
19 position despite the fact that the trigger was not being pulled
20 at the time.

21 (15) The rifle failed to meet the reasonable expect-
22 tations of the average consumer in that it discharged without
23 warning, unexpectedly, when the safety was moved from the "on
24 safe" position to the "fire" position.

25 h. At the time of plaintiff Teri See's injury, this
26 rifle was in substantially the same condition as it was when it

1 left defendant's hands, and it was being used and handled in a
2 manner foreseeable to defendant.

3 i. The unreasonably dangerous and defective condition
4 of defendant's product was the legal cause of injuries suffered
5 by plaintiff Teri See when, on October 27, 1979, she received a
6 gunshot wound from this rifle, which one Stephen Boudreau was
7 attempting to unload.

8 j. As a result of the above mentioned gunshot wound,
9 plaintiff Teri See suffered injury, including severe and
10 permanent injury to both of her legs. The injury was a blast
11 injury to the medial aspect of both thighs. It damaged the skin,
12 subcutaneous tissues of both thighs and the muscles of the right
13 thigh. Each such wound was 8" to 10" in diameter. Plaintiff
14 Teri See has suffered permanent muscle damage, and her injuries
15 have required 6 surgical procedures, including a split thickness
16 skin graft. The wounds caused permanent disfigurement and
17 scarring of both of plaintiff's legs and caused residual muscle
18 weakness in plaintiff's right leg, including her knee.

19 k. As a result of plaintiff Teri See's injuries, she
20 has lost wages from her part-time work in the sum of \$1,186⁷.24,
21 and her earning capacity has been impaired.

22 l. As a result of plaintiff Teri See's injuries, she
23 will incur medical expenses and will need further surgery in the
24 future.

25 m. As a result of Teri See's injuries, she has endured
26 pain and suffering and has received permanent injuries to both of

1 her legs, all to her general damage in the sum of \$500,000.

2 n. The above described injuries to plaintiff Teri See
3 caused her husband, plaintiff Darrel See, the loss of
4 companionship, society and services of his wife, all to his
5 damage in the sum of \$25,000.

6 o. The trigger adjusting screws on this rifle had not
7 been adjusted since before the rifle left Remington's hands.

8 p. Plaintiff Teri See's life expectancy is 49.5 years.

9 q. Plaintiffs deny defendant's contentions of fact.

10

11

DEFENDANT

12 a. Defendant denies plaintiffs' contentions of fact.

13 b. The proximate and legal cause of the injuries
14 sustained by the plaintiff was the negligence of the owner of the
15 gun, Stephen Boudreau.

16 c. Stephen Boudreau (hereinafter referred to as owner)
17 was negligent in operating a loaded firearm without first
18 ascertaining that the muzzle was pointed in a safe direction.

19 d. Owner was negligent in operating a loaded firearm
20 when he knew or should have known that consuming alcohol could or
21 would interfere with his use of said firearm, causing a dangerous
22 condition to exist for himself and others.

23 e. Owner was negligent in failing to read the
24 instruction manual provided by the defendant with said rifle.

25 f. Owner was negligent in throwing away the instruction
26 manual provided by the defendant with said rifle.

1 g. Owner was negligent in keeping a loaded gun in a
2 house when he knew or should have known that an accidental
3 discharge of said firearm would be more likely to cause serious
4 injury to himself or any third party.

5 h. Owner was negligent in misusing and abusing the
6 rifle by improper maintenance and care.

7 i. Owner was negligent in failing to follow all the
8 manufacturer's manual instructions regarding the operation of the
9 rifle.

10 j. Owner was negligent in pulling the trigger of a
11 loaded rifle while it was pointed at the plaintiff with the
12 safety in the fire position.

13 k. Owner was negligent in improperly adjusting the
14 trigger pull contrary to the manufacturer's directions.

15 l. Owner was negligent in bringing a loaded gun into a
16 house.

17 m. Owner was negligent in failing to keep guns and
18 ammunition stored separately.

19 n. Any failure to warn the owner of said rifle is
20 irrelevant under any circumstances as the owner did not read any
21 of the material provided.

22 o. This particular rifle was not defectively designed,
23 nor was it defective in any way.

24 7. Contentions of Law.

25 PLAINTIFFS

26 a. Evidence of defendant's post-accident design change

1 is admissible as substantive evidence that defendant's prior
2 design was defective and unreasonably dangerous.

3 b. Evidence of other similar complaints from other
4 owners of substantially identical Remington Model 700 rifles is
5 admissible as substantive evidence that defendant's design was
6 defective and unreasonably dangerous.

7 c. Defendant's contentions of fact b. through m.,
8 inclusive, do not allege facts constituting defenses to
9 plaintiffs' claims. Defendant is attempting to raise, as
10 affirmative defenses, the alleged negligence of a third party,
11 the person who was attempting to unload the rifle that dis-
12 charged, injuring plaintiff Teri See. As a matter of law, no
13 such defense exists.

14 d. No evidence is admissible as to the existence or the
15 amount of the plaintiffs' settlement with the Boudreaus.

16 e. In the event that the Court rules that the jury
17 should be informed as to the existence of the plaintiffs' set-
18 tlement with the Boudreaus, the Court should then instruct the
19 jury in unequivocal language to disregard the settlement and to
20 return a verdict for the full amount of the plaintiffs' damages.
21 The jury should also be instructed that the settlement credit
22 function is for the Court, not the jury, and that the Court will
23 reduce the jury's verdict by an amount equal to the settlement
24 amount.

25 f. Defendant's contentions of fact b. through o. all
26 allege facts which are provable, if at all, under a general

1 denial. To repeat these contentions in the pretrial order does
2 not raise them to the level of affirmative defenses. The jury
3 should not be informed as to these contentions nor should it be
4 instructed regarding these contentions.

5 g. Plaintiffs deny defendant's contentions of law.

6
7 DEFENDANT

8 a. Defendant denies plaintiffs' contentions.

9 b. Evidence of defendant's post-accident design change
10 is inadmissible.

11 c. Evidence of similar complaints from other owners is
12 inadmissible.

13 d. If evidence of other complaints is to be admitted,
14 the plaintiff must first establish that this gun was, in fact,
15 defective.

16 e. Evidence of other similar complaints is inadmissible
17 on the issue of design defect as it has not been shown the guns
18 were substantially identical.

19 f. Evidence of payment of \$25,000.00 by Stephen
20 Boudreau, to the plaintiffs, is admissible evidence.

21 g. Defendant contends that facts B through M inclusive
22 do allege facts constituting a defense to plaintiffs' claim.
23 Defendant raises the negligence of a third party, who was aiming
24 the rifle when it discharged, injuring plaintiff Teri See. As a
25 matter of law, the negligence of this third party was the direct,

26 * * *

proximate and legal cause of the injuries sustained by Teri See.

h. The jury should be informed as to the existence of plaintiffs' settlement with the Boudreaus and should be instructed in unequivocal language of the reasons for Boudreau not being a participant in this particular lawsuit, including the fact that the covenant entered into between the plaintiff and Boudreau and its legal effect precludes Remington Arms from bringing Mr. Boudreau in as a third party defendant.

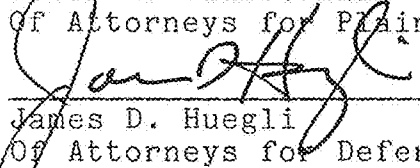
8. Amendments to Pleadings.

a. Plaintiff Teri See seeks to amend her complaint to allege general damages in the sum of \$500,000 rather than the \$250,000 set forth in the complaint as filed.

b. Plaintiff Teri See seeks to amend her complaint to allege medical specials in the sum of \$11,789.00 and lost wages in the sum of \$1,187.24.



Peter R. Chamberlain
Of Attorneys for Plaintiffs



James D. Huegli
Of Attorneys for Defendant

IT IS ORDERED the foregoing Pretrial Order is

X Approved as lodged.

 Approved as amended by interlineation.

DATED this 14th day of February, 1983.


U.S. DISTRICT JUDGE/MAGISTRATE

FILED
FEB 15 3 43 PM '83
CLERK OF DISTRICT COURT
BY

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7

8

IN THE UNITED STATES DISTRICT COURT

9

FOR THE DISTRICT OF OREGON

10 TERI SEE and DARREL SEE,)
wife and husband,)
11 Plaintiffs,) Civil No. 81-886-LE
12 v.)
13 REMINGTON ARMS COMPANY, INC.,) PLAINTIFFS' MEMORANDUM
14 a Delaware corporation,) REGARDING EVIDENCE ISSUES
15 Defendant.)

16 FACTS

17 This is a products liability action based upon strict
18 liability in tort. The main thrust of plaintiffs' claims is that
19 defendant's product was defective in its design and that this
20 defect was made all the more hazardous by defendant's failure to
21 warn.

22 Plaintiffs will offer evidence at trial that Teri See
23 was seriously injured by a gunshot wound when a third person,
24 handling a Remington Model 700 rifle, moved the rifle's safety
25 from the "safe" position to the "fire" position. Through
26 production of documents, plaintiffs have received documents (Gun

Page 1 - MEMORANDUM

45

Examination Reports) which reflect 49 instances where owners of substantially similar Remington rifles have complained to Remington of an identical product defect. Part I of this memorandum addresses the admissibility of these 49 reports.

I. Evidence of other similar incidents is admissible to prove defect.

Reiger v. Toby Enterprises, 45 Or App 679, 609 P2d 402 (1980), was a products liability action wherein the plaintiff contended defendant's meat slicer was unreasonably dangerous. Defendant offered evidence of the slicer's prior safe use. The Oregon Court of Appeals held that proof of the frequency or infrequency of use of a product with or without mishap is relevant to proving a defective design. Thus, proof of other occurrences involving rifles substantially similar to the rifle involved in this case should be admissible to prove that the design of the accident rifle is defective and unreasonably dangerous.

In Croft v. Gulf & Western Industries, Inc., 12 Or App 507, 506 P2d 541 (1973), the plaintiff brought an action under the Oregon Tort Claims Act to recover for personal injuries received in a motor vehicle collision at an intersection where the traffic signal malfunctioned, showing green in both directions. Testimony of a police officer that, on two prior occasions, he had seen and reported malfunctions of that particular light was held to be admissible. The prior malfunctions were not the same as on the date of the accident.

1 On one occasion, the signal was completely out, and on the other
2 it was locked on green in one direction. The similarity of
3 conditions which made the testimony admissible was that it was
4 the same signal and that the malfunctions occurred under similar
5 wet-weather conditions.

6 The Oregon Court of Appeals is in agreement with a
7 majority of other jurisdictions in allowing evidence of other
8 similar incidents to prove defect. Vlahovich v. Betts Machine
9 Co., 260 NE2d 230 (Ill 1970), was an action against a manu-
10 facturer by a truck driver seeking recovery for injuries to his
11 eye which he sustained when a plastic clearance light lens shat-
12 tered as he was attempting to remove it. The court held,
13 reversing the trial court, that evidence of other instances of
14 lens breakages in similar cases was admissible.

15 In Ginnis v. Mapes Hotel Corporation, 470 P2d 135 (Nev
16 1970), plaintiff brought suit against the defendant hotel after
17 being caught and injured in an automatic door on defendant's
18 premises. At trial, plaintiff offered in evidence 19 repair
19 orders for the automatic doors at the defendant's hotel. The
20 trial court allowed in evidence only three repair orders relating
21 to the very door which injured plaintiff. On appeal, the Nevada
22 Supreme Court held that upon retrial, when the case was tried
23 under a strict liability theory, the repair orders would be
24 admissible to prove faulty design. The court went on to state
25 that whether such repairs were before or after the accident in
26 question did not affect their admissibility.

1 Rucker v. Norfolk & W. Ry. Co., 396 NE2d 534 (Ill 1979),
 2 was an action for wrongful death and personal injuries based upon
 3 strict liability against the manufacturer and lessor of liquified
 4 gas tank cars. There, the trial court admitted evidence of 42
 5 prior accidents involving punctures of tank cars for the purpose
 6 of showing the danger of the design. Only 26 of the accidents
 7 involved the same situation as was presented in Rucker (puncture
 8 of the tank by a coupler). The Illinois Supreme Court held that
 9 whether the puncture was by coupler or by other means was
 10 irrelevant. If the trial court determined that all 42 accidents
 11 were sufficiently similar and relevant to the issue of whether
 12 the car was dangerous then it need not be shown that the
 13 accidents occurred in an identical manner. Substantial
 14 similarity is all that is required.

15 As pointed out in Ginnis, supra, whether the other
 16 similar incidents occurred before or after the accident in
 17 question does not affect the admissibility of the evidence. See,
 18 e.g., Independent Sch. Dist. No. 181 v. Celotex Corp., 244 NW2d
 19 264 (Minn 1966) and Uitts v. General Motors Corporation, 58 FRD
 20 450 (E D Pa 1972).

21 During the recent pretrial conference in this case, the
 22 Court indicated that Meyer v. G. M. Corp. (unpublished opinion
 23 dated April 16, 1982) was in point. Plaintiffs have reviewed the
 24 cited case and certainly agree that it is supportive of
 25 plaintiffs' position that the evidence of other similar incidents
 26 is admissible to prove defects.

Defendant has admitted that the accident rifle and the rifles described in the 49 gun examination reports were all the same or substantially similar (see, interrogatory answer Nos. 7, 8, 28, 29, 30, 34 and 35, attached). They all involved Remington Model 700s manufactured between 1972 and 1982. The trigger mechanism, bolt and safety mechanism design is the same on all the rifles. Therefore, evidence of other similar incidents should be admissible to prove the defective design of the accident rifle. The next four subsections of this memorandum address four potential forms that this evidence may take:

Depositions.

Eleven depositions were taken of individuals identified through the gun examination reports produced by defendant. Of these depositions, nine involve substantially identical rifles and identical functioning of the rifles resulting in the rifle firing when the safety was moved from the "on safe" position to the "fire" position while the gun handler was making no contact with the trigger. The depositions can be summarized as follows:

(1) Fred J. Avila - Twice the rifle fired when safety was pushed from "on safe" position to "fire" position. Nothing was touching the trigger.

(2) Helmut G. Bentlin - Three times the owner pushed the safety from the "on safe" position to the "fire" position and the rifle fired despite the fact that nothing was touching the trigger.

(3) Gerald Cunningham - Touched safety and rifle fired.

(4) Gabriel A. Hernandez - Moved safety from "safe" to "fire" and gun discharged. Happened on three occasions.

(5) James Heulster - On three occasions, rifle fired when safe released despite no touching of the trigger.

(6) Sidney V. Jackson - Fired when safe released--three times.

(7) Ronald Klosowski - Fired when safe released.

(8) James Sanders - Fired when safe released--six or seven times.

(9) Tony Varnum - Fired when safe released.

Plaintiffs seek to read the above referenced depositions at the time of trial. For that purpose, the corresponding gun examination reports (Trial Exhibits 7, 8, 13, 19, 22, 24, 39, 41 and 42) would establish that the deponents' rifles were, in fact, substantially similar to the accident rifle and for giving context to their deposition testimony.

In summary, plaintiffs should be entitled to read the above referenced depositions to prove, under Reiger v. Toby, supra, that the accident rifle was defective in its design.

Gun Examination Reports.

Plaintiffs are entitled to put into evidence the gun examination reports referenced above and all gun examination reports which contain admissions by Remington that there is a problem with the design of this rifle. This latter group includes:

1 (1) Exhibit 3: "Malfunction appears to have been
2 caused by excessive oil in trigger mechanism."

3 (2) Exhibit 6: "Excessive molycote in action."

4 (3) Exhibit 8: "Fails trick test."

5 (4) Exhibit 11: "Malfunction possibly caused by
6 gummed-up fire control."

7 (5) Exhibit 12: "Apparent cause of malfunction due to
8 gummed-up fire control."

9 (6) Exhibit 13: "Sear-safety cam sticks in downward
10 position because of accumulation of dirt and oil."

11 (7) Exhibit 14: Could not duplicate complaint but
12 replaced fire control without charge.

13 (8) Exhibit 16: "Excessive oil and fire control could
14 cause impaired mechanism function."

15 (9) Exhibit 29: "The malfunction appears to have been
16 caused by excessive oil in trigger mechanism."

17 (10) Exhibit 39: Gun replaced at no charge.
18

19 Exhibit 1 (Gun Examination Report 599) should be
20 admitted into evidence for illustrative purposes because it was
21 used, without objection, during Marshall Hardy's deposition
22 (which will be read at trial) to explain the function of the gun
23 examination reports.

24 Finally, plaintiffs should be permitted to put into
25 evidence all gun examination reports where the customer complaint
26 is that the rifle fires when the safe was released and

1 Remington's examination indicated that it could not duplicate the
2 incident. These gun examination reports should come in because,
3 as demonstrated by a comparison of the above referenced deposi-
4 tions with their corresponding gun examination reports, Remington
5 frequently cannot duplicate legitimate customer complaints. The
6 fact finder should be entitled to consider these claims along
7 with the others, in determining if the rifle is defective in
8 design such that it intermittently will fire when the safety is
9 released. This evidence is admissible under FRCP 803(24). The
10 "circumstantial guarantees of trustworthiness" required by the
11 rule are provided by the fact that there are numerous other
12 similar complaints and by the fact that gun owners would not
13 intentionally make unfounded claims as to the condition of their
14 rifles, especially where no personal injury nor substantial
15 property damage is involved.

16 Correspondence.

17 Several of Remington's written responses to complaining
18 customers contain admissions which should be admissible under
19 FREV 801(d)(2). These admissions are generally found in cor-
20 respondence attached to particular gun examination reports
21 produced by the defendant. The gun examination reports in
22 question should be admitted with the correspondence containing
23 admissions if, for no other reason, to put into context each such
24 admissions.

25 The admissions referred to are as follows:

26 (1) Exhibit 14: "Main fault--bad fire control."

1 (2) Exhibit 15: "Main fault--fails trick test."

2 (3) Exhibit 19: Replaced trigger assembly at no
3 charge. Defendant suggests that the malfunction was caused by a
4 finger on the trigger. The jury should be entitled to balance
5 this contention versus the deposition of the gun owner (Sanders).

6 (4) Exhibit 21: "Sear-safety cam stuck in downward
7 position because of accumulation of dirt and oil."

8 (5) Exhibit 22: Rust, dampners, condensation could
9 cause accidental firing.

10 (6) Exhibit 25: Defendant could not duplicate customer
11 complaint but stated, "It was discovered . . . that the trigger
12 assembly contained an excessive amount of heavy oil. It is
13 possible that an accumulation of this nature, coupled with cold
14 temperatures could, possibly, cause the trigger mechanism to hang
15 up and result in an accidental discharge when the safety is
16 released."

17 (7) Exhibit 26: "We can only assume that the oil
18 accumulation, under certain circumstances, caused the internal
19 parts to hang-up and caused the accidental discharge."

20 (8) Exhibit 29: " . . . the trigger assembly contained
21 an excessive amount of heavy oil. It is possible that the oil
22 accumulation, coupled with the cold temperature did, in fact,
23 cause the trigger mechanism to hang up, resulting in the
24 accidental discharge when the safety was released."

25 * * *

26 * * *

1 II. Defendant should not be permitted to impeach Mr.
2 Boudreau by proof of conviction for larceny.

3 FREV 609(a)(2) limits impeachment to crimes involving
4 dishonesty or false statements. Certainly, larceny does not
5 involve a false statement. Defendant will argue that larceny
6 involves dishonesty and, at first blush, that argument has a
7 measure of logical, moral appeal. Under that logic, however,
8 impeachment could be by any criminal conviction because it could
9 always be argued that commission of any crime involves
10 dishonesty. A review of the legislative history of the rule (set
11 forth in the Federal Rules of Evidence) makes clear that such a
12 broad interpretation was not intended. It is clear from the
13 legislative history that the phrase "dishonesty or false state-
14 ment" was intended to mean crimes such as perjury or subornation
15 of perjury, false statement, criminal fraud, embezzlement or
16 false pretense, or any other offense in the nature of crimen
17 falsi, the commission of which involves some element of deceit,
18 untruthfulness or falsification bearing on the witness's
19 propensity to testify truthfully.

20 Clearly, larceny does not fall within the ambit of the
21 rule. Defendant should not be entitled to impeach by use of the
22 above referenced conviction.

23
24 III. Post-accident design change.

25 Plaintiffs are entitled to offer evidence of defendant's
26 post-accident design change to prove the defective, unreasonably

1 dangerous condition of the rifle on the day of the accident.

2 Van Gordon v. PGE Co., 59 Or App 740, _____ P2d _____
 3 (1982), makes clear that the issue is an open question in strict
 4 liability cases in this state. If this issue were before the
 5 Oregon Supreme Court, that court would adopt the rule urged by
 6 plaintiffs and first recognized in Ault v. International
 7 Harvest Co., 117 Cal Rptr 812, 528 P2d 1148 (1975).

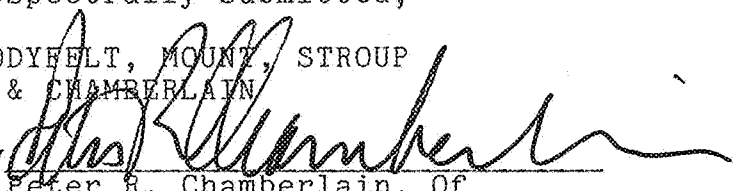
8 That rule, succinctly stated, is that a plaintiff is
 9 entitled to present evidence of the defendant's post-accident
 10 design change as substantive evidence of the defectiveness of the
 11 product. The evidence in this case will support such a proposi-
 12 tion. Defendant's 1982 design change, if in effect in 1976,
 13 would have prevented this accident.

14 Defendant may contend that FREV 407 bars evidence of
 15 post-accident design changes. However, as is clear from a
 16 careful reading of that rule, it excludes evidence of subsequent
 17 remedial measures only if offered to prove negligence or other
 18 culpable conduct. Plaintiffs' claim is based upon strict
 19 liability in tort. It is not necessary to prove defendant's
 20 negligence or other fault.

21 This Court should follow Ault, supra, and allow plain-
 22 tiffs to prove the defendant's post-accident design change.

23 Respectfully submitted,

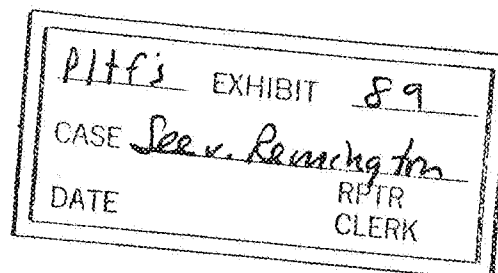
24 BODYFELT, MOUNT, STROUP
 25 & CHAMBERLAIN

26 By 
 Peter R. Chamberlain, Of
 Attorneys for Plaintiffs

JUL 16 1982

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

TERI SEE and DARREL SEE,
wife and husband,

Plaintiffs,

vs.

REMINGTON ARMS COMPANY, INC.,
a Delaware corporation,

Defendants.

No. 81-886

DEFENDANT'S
ANSWERS TO INTERROGATORIES
(FIRST AND SECOND SETS)

In response to Plaintiff's Interrogatories to Defendant,
Defendant Remington Arms Company, Inc. offers the following:

INTERROGATORY #1: State in detail how, if at all, the trigger
mechanism of this rifle differs from the trigger mechanism of the
Remington 600 rifle as it existed before being recalled.

ANSWER: See attached.

INTERROGATORY #2: State in detail how the safety mechanism of this
rifle differs from the safety mechanism of the Remington 600 rifle
as it existed before being recalled.

ANSWER: Functionally the same, but the shape is different.

INTERROGATORY #3: Identify what rifle models defendant has

1 manufactured in the last eight years which could be unloaded
2 (including removal of a live shell from the chamber)
3 without disengaging the weapon's safety.

4 ANSWER: M/788 and M/700.

5 INTERROGATORY #4: Identify what rifle models defendant
6 has manufactured in the last eight years which could not be
7 unloaded (including removal of a live shell from the chamber)
8 without disengaging the weapon's safety.

9 ANSWER: M/788, M/700 and M/600.

10 INTERROGATORY #5: Identify all experts you intend to call
11 as witnesses in the trial of this matter and state the substance
12 of their testimony.

13 ANSWER: Unknown.

14 INTERROGATORY #6: If plaintiff's request for admission #3 is
15 denied, state the number of occasions on which it has been reported
16 to you that a Remington Model 700 rifle fired when the safety
17 was released.

18 ANSWER: Request for Admission #3 admitted.

19 INTERROGATORY #7: Are the Remington Model 700 rifles inspected
20 by you (and mentioned in the 49 gun examination reports
21 produced by you) the same or similar to the gun involved in this case?

22 ANSWER: Yes.

23 INTERROGATORY #8: If the answer to Interrogatory No. 7 is other
24 than an unqualified "yes," state the ways in which this rifle
25 is different from each of those rifles.

26 ANSWER: Not applicable.

INTERROGATORY #9: State, with as much accuracy as possible, the date (or year, if date cannot be determined) of manufacture of each of the rifles examined in the 49 gun examination reports produced by you.

ANSWER:

| | | | |
|-------|-------|-------|-------|
| 3/77 | 10/68 | 7/66 | 7/76 |
| 2/72 | 5/74 | 1/72 | 6/79 |
| 9/76 | 9/78 | 2/79 | 10/72 |
| 5/76 | 7/76 | 7/77 | 6/77 |
| 2/77 | 9/71 | 7/68 | 2/72 |
| 7/77 | 1/80 | 11/76 | 10/80 |
| 12/77 | 6/80 | 11/74 | 7/74 |
| 5/76 | 4/81 | 7/78 | 8/76 |
| 6/76 | 2/71 | 10/69 | 3/75 |
| 4/73 | 8/77 | 10/79 | 8/70 |
| 3/79 | 7/79 | 12/74 | 12/70 |
| 7/77 | 8/75 | 11/80 | 8/73 |

INTERROGATORY #10: State, with as much accuracy as possible, the date (or year, if date cannot be determined) of manufacture of this rifle.

ANSWER: December, 1976.

INTERROGATORY #11: If plaintiffs' request for admission No. 5 is denied, state, with particularity, in what respects you contend the rifle did not meet your manufacturing, design and/or performance specifications on the date of your examination.

ANSWER: As far as we could see without running tests, the gun met all design and performance specifications.

INTERROGATORY #12: If plaintiffs' request for admission No. 6 is denied, state, with particularity, in what respects you contend the rifle was in a different condition than it was when it left your hands.

1 ANSWER: Dirty and not well kept.

2 INTERROGATORY #13: If plaintiff's request for admission No. 7
3 is denied, state, with particularity, in what respects you contend
4 that it was not reasonably foreseeable.

5 ANSWER: We would expect owners of such rifles to take reasonable
6 care of the physical and mechanical portions of these rifle.

7 INTERROGATORY #14: What do you contend caused this rifle to
8 fire at the time of, and on the date of, Mrs. See's injury?

9 ANSWER: The trigger was pulled.

10 INTERROGATORY #15: State whether or not it is true that the side
11 portion of the trigger mechanism on this rifle (and other Remington
12 700 rifles) is open such that dirt, debris and other foreign
13 material could enter the trigger mechanism.

14 ANSWER: Yes, however, we are not certain as to how much dirt,
15 debris or foreign material could enter the trigger mechanism --
16 it would depend on the care of the rifle.

17 INTERROGATORY #16: If the answer to Interrogatory No. 15 is "yes,"
18 or is qualified in any way, explain why the trigger mechanism is
19 designed in that manner and state whether or not it could have been
20 designed in such a manner that such contamination could be reduced
21 or eliminated.

22 ANSWER: To examine the sear -- trigger engagement. The mechanism is
23 designed for movement and could be redesigned in several ways, all
24 of which are unknown at this time.

25 INTERROGATORY #17: On the date of manufacture of this rifle,
26 how many reports had defendant received of other Remington 700 rifles

1 discharging when the safety was disengaged?

2 ANSWER: Unknown. Records that far back are no longer available
3 due to compliance with company record retention schedules.

4 INTERROGATORY #18: Since the date of manufacture of this rifle, has
5 the defendant changed the design of the trigger mechanism or the
6 safety mechanism (or both) in any way on its Remington Model 700
7 rifle? If so, state with particularity what changes have been made
8 and the reason or reasons for each such change.

9 ANSWER: Yes. Bolt lock feature has been removed. Marketing
10 Department determined that bolt lock was no longer a feature that
11 many consumers desired.

12 (Interrogatories No. 19, 20 and 21 deleted)

13 INTERROGATORY #22: Is it true that you changed the design of
14 your Remington Model 788 from a safety which had to be disengaged
15 to unload the gun to a safety which did not have to be disengaged
16 to unload the gun?

17 ANSWER: No. (Changed bolt lock). We removed the bolt lock and
18 one of the consequences is that you can raise the bolt without
19 moving the safety.

20 INTERROGATORY #23: If the answer to Interrogatory No. 22 is "yes,"
21 state your reasons for making such a change.

22 ANSWER: Consumer desire for a bolt lock has been questioned. The
23 bolt lock was removed in 1974 on one bolt action model (Model 788)
24 to test consumer impact.

25 INTERROGATORY #24: If the answer to Interrogatory No. 22 is "no,"
26 state whether or not you ever made such a change

1 on any rifle which you manufacture, identify that rifle, and
2 state the date such change was made.

3 ANSWER: M/788, M/700.

4 In answer to Plaintiffs' Second Set of Interrogatories
5 to Defendant, Defendant Remington Arms offers the following:

6 INTERROGATORY #25: List all parts in the bolt and firing mechanism
7 for the Model 700 that are or were interchangeable with the parts
8 in the bolt and firing mechanism for the Model 600.

9 ANSWER: See attached drawings.

10 INTERROGATORY #26: List all parts in the safety mechanism on the
11 Model 700 which are or were interchangeable with the parts in
12 the safety mechanism on the Model 600.

13 ANSWER: See answer to #25 above.

14 INTERROGATORY #27: List all types of Model 700's defendant
15 manufactured during the time period from 1976 through 1981 (such
16 as ADL, BDL or VAR).

17 ANSWER: ADL, BDL, VAR, CLASSIC, C Grade, D Grade and F Grade.

18 INTERROGATORY #28: For each of the Model 700 types listed in
19 the response to Interrogatory No. 27 state, with particularity,
20 in what way the particular model type varied from the other model
21 types.

22 ANSWER: The bolt and firing mechanisms and safety mechanisms are
23 the same.

24 INTERROGATORY #29: For each of the Model 700 types listed in the
25 response to Interrogatory No. 27 state whether or not there were
26 any differences whatsoever in the trigger mechanism between each

1 such model type identified.

2 ANSWER: No difference.

3 INTERROGATORY #30: For each of the Model 700 types listed in the
4 response to Interrogatory No. 27 state whether or not there were
5 any differences whatsoever in the safety mechanism between each
6 such model type identified.

7 ANSWER: No difference.

8 INTERROGATORY #31: Describe each of the trigger mechanism differences
9 referenced in your response to Interrogatory No. 29 describing,
10 with particularity, each such difference.

11 ANSWER: Not applicable.

12 INTERROGATORY #32: Describe each of the safety mechanism differences
13 referenced in your response to Interrogatory No. 30 describing
14 with particularity, each such difference.

15 ANSWER: Not applicable.

16 INTERROGATORY #33. State whether the drawings of the Model 600
17 previously provided by defendant to plaintiffs depict the Model 600
18 design as it existed before, or after, its major recall.

19 ANSWER: Before its major recall.

20 INTERROGATORY #34: For each of the 49 Gun Examination Reports
21 previously produced by defendant, indicate which reports relate
22 to rifles that are substantially the same in design and manufacture
23 as this rifle.

24 ANSWER: All 49 are the same design and manufacture.

25 INTERROGATORY ³⁵~~34~~: For each of the 49 Gun Examination Reports
26 previously reported by defendant which relate to rifles which are

1 not substantially the same as this rifle, indicate with
2 particularity, how each such rifle differed from this rifle.

3 ANSWER: Not applicable.

4 INTERROGATORY #36: Based upon your examination of this rifle,
5 indicate what the date of manufacture of this rifle is, with
6 as much specificity as possible.

7 ANSWER: Previously answered. 12/76.

8 SCHWABE, WILLIAMSON, WYATT,
9 MOORE & ROBERTS

10 By: 

11 James D. Huegli
12 Attorneys for Defendant
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CERTIFICATE — TRUE COPY

I hereby certify that the foregoing copy of _____
_____ is a complete and exact copy of the original.

Dated _____, 19____.

Attorney(s) for _____

ACCEPTANCE OF SERVICE

Due service of the within _____ is hereby accepted
on _____, 19____, by receiving a true copy thereof.

Attorney(s) for _____

CERTIFICATES OF SERVICE

Personal

I certify that on _____, 19____, I served the within _____
_____ on _____
attorney of record for _____
by personally handing to said attorney a true copy thereof.

Attorney(s) for _____

At Office

I certify that on _____, 19____, I served the within _____
_____ on _____
attorney of record for _____
by leaving a true copy thereof at said attorney's office with his/her clerk therein, or with a person apparently in
charge thereof, at _____, Oregon.

Attorney(s) for _____

Mailing

I hereby certify that I served the foregoing _____ plaintiffs' memorandum
_____ on _____ James D. Huegli
_____ by hand delivery
attorney(s) of record for _____ defendant
on _____ February 15 _____, 19 83, by mailing to said attorney(s) a true copy thereof, certified by me
as such, contained in a sealed envelope, with postage paid, addressed to said attorney(s) at said attorney(s) last
known address, to-wit: _____ 1200 Standard Plaza, Portland, OR 97204

and deposited in the post office at _____ Portland, Oregon on said day
Dated _____ February 15 _____, 19 83

Attorney(s) for _____ Plaintiffs


BODYFELT, MOUNT & STROUP

ATTORNEYS AT LAW
229 Mohawk Building
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FILED

FEB 15 3 46 PM '83

CLERK OF DISTRICT COURT
DISTRICT OF OREGON

BY 

JAMES D. HUEGLI
W. A. JERRY NORTH
SCHWABE, WILLIAMSON, WYATT, MOORE & ROBERTS
1200 Standard Plaza
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Attorneys for Defendant

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF OREGON

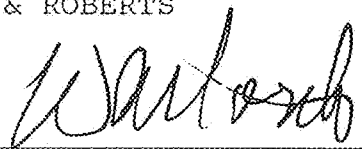
| | | |
|--------------------------------|---|-------------------------|
| TERI SEE & DARREL SEE, wife |) | |
| and husband, |) | No. Civil No. 81-886 LE |
| Plaintiffs, |) | |
| |) | MOTION TO EXCLUDE |
| v. |) | EVIDENCE |
| |) | |
| REMINGTON ARMES COMPANY, INC., |) | |
| a Delaware corporation, |) | |
| |) | |
| Defendant. |) | |

Defendant moves to exclude any evidence of subsequent
remedial measures, pursuant to Federal Rule of Evidence 407.

Respectfully submitted,

SCHWABE, WILLIAMSON, WYATT,
MOORE & ROBERTS

By:


W. A. JERRY NORTH, OSB #75279
Trial Attorney
Of Attorneys for Defendant

CERTIFICATE OF SERVICE

I hereby certify that on February 15, 1983, I served
the within MOTION TO EXCLUDE EVIDENCE on:

PETER R. CHAMBERLAIN
229 Mohawk Building
222 SW Morrison Street
Portland, OR 97204

Attorney for Plaintiffs

by leaving a true copy thereof at said attorney's office with
his clerk therein, or with a person apparently in charge thereof,
at the above address.

DATED this 15th day of February, 1983.



W. A. JERRY NORTH
Of Attorneys for Defendant

FILED

FEB 15 3 46 PM '83

CLERK, U.S. DISTRICT COURT
DISTRICT OF OREGON

BY

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Attorneys for Defendant

5
6
7
8 IN THE UNITED STATES DISTRICT COURT
9 DISTRICT OF OREGON

| | | | |
|----|--------------------------------|---|--------------------------|
| 10 | TERI SEE & DARREL SEE, wife |) | |
| | and husband, |) | No. Civil No. 81-886 LE |
| 11 | |) | |
| | Plaintiffs, |) | |
| 12 | |) | MEMORANDUM IN SUPPORT OF |
| | v. |) | MOTION TO EXCLUDE |
| | |) | EVIDENCE |
| 13 | REMINGTON ARMES COMPANY, INC., |) | |
| | a Delaware corporation, |) | |
| 14 | |) | |
| | Defendant. |) | |

15
16 I.

17 BACKGROUND

18 On October 27, 1979, Mrs. See was accidentally shot
19 through both legs by Mr. Boudreau as he attempted to unload his
20 Model 700 Remington rifle (hereafter "the gun") inside his house
21 with the muzzle pointed at Mrs. See and with his finger possibly
22 on the trigger.

23 The design of the safety mechanism on the gun was in-
24 tended to accomplish several "risk reduction" functions, one of
25 which was to lock the bolt in the closed position. Remington had
26 arrived at this design choice after carefully reviewing various

1 alternatives and considering the safety trade-offs of each.
2 Therefore, in order to open the bolt so as to unload the gun, it
3 was necessary for Mr. Boudreau to release the bolt lock by
4 flipping the safety mechanism from the "on safe" position to the
5 "fire" position.

6 Several years after the original design of the gun was
7 made, the Remington designers again considered the question of
8 whether or not to continue to offer the "bolt lock" feature on the
9 Model 700 Remington rifle. The decision was made by Remington de-
10 signers to eliminate the "bolt lock" feature, and the design
11 change was implemented after the accident in this case.

12 Plaintiffs have indicated that they intend to offer
13 evidence of this design change. The defendant manufacturer has
14 moved to exclude this evidence of a subsequent design change
15 pursuant to Federal Rule of Evidence 407.

16 II.

17 ARGUMENT

18 (A) The Rule.

19 Rule 407 of the Federal Rules of Evidence states as
20 follows:

21 "When, after an event, measures are taken
22 which, if taken previously, would have made
23 the event less likely to occur, evidence of
24 the subsequent measures is not admissible to
25 prove negligence or culpable conduct in con-
26 nection with the event. This rule does not
require the exclusion of evidence of
subsequent measures when offered for another
purpose, such as proving ownership, control or
feasibility of precautionary measures, if
controverted, or impeachment.

1 The two bases for this general exclusionary rule are as
2 follows:

3 (1) The prejudicial effect of such evidence overweighs
4 the relevance of that proof; and

5 (2) The exclusionary rule encourages the reduction of
6 risks and promotes product improvements.

7 Defendant contends that the rule requires the exclusion
8 of evidence regarding the design change.

9 (B) *The Rule Applies in a Strict Liability Design Case.*

10 Undoubtedly, the plaintiffs will argue that, although
11 the rule would apply in a negligence case, it does not apply to a
12 strict liability in tort case since the issue is the condition of
13 the product and not the conduct of the manufacturer. There is a
14 split of authority on this issue, and the various cases on both
15 sides are collected in the annotation "Admissibility of Evidence
16 of Subsequent Remedial Measures Under Rule 407 of Federal Rules of
17 Evidence", 50 ALR Fed 935 (1980) and the annotation "Admissibility
18 of Evidence of Subsequent Repairs or Other Remedial Measures in
19 Products Liability cases", 74 ALR 3d 1001 (1976).

20 The principal case holding that Rule 407 does not apply
21 to strict liability in tort is *Farner v. Paccar, Inc.* 562 F.2d 518
22 (8th Cir. 1977). The principal cases which hold that Rule 407
23 does apply to strict liability in tort are *Werner v. Upjohn Co.*,
24 628 F.2d 848 (4th Cir. 1980), cert denied 449 U.S. 1080 (1981);
25 *Cann v. Ford Motor Co.*, 658 F.2d 54 (2nd Cir. 1981); and *Oberst v.*
26 *International Harvester Co.*, 640 F.2d 863 (7th Cir. 1980).

1 Since Rule 407 is essentially a codification of the
2 common law general exclusionary rule which has long been followed
3 in virtually every state in the union, the principal cases which
4 apply the common law general exclusionary rule are also of
5 interest. In *Caprara v. Chrysler Corp.*, 417 N.E.2d 545
6 (N.Y. 1981), the court concluded that the general exclusionary
7 rule does not apply to a strict liability in tort action.
8 However, in *Rainbow v. Albert Elia Building Co., Inc.*, 436
9 N.Y.S.2d 480 (1981), the court concluded that the rule does apply
10 to strict liability in tort.

11 Despite the fact that the courts are in general dis-
12 agreement on this issue, we are fortunate that there is one common
13 thread in the various cases on both sides of this issue that
14 applies with full force to the instant case. Even the cases which
15 hold that the general exclusionary rule (or Rule 407) does not
16 apply to a strict liability in tort action based on a defect in
17 manufacturing theory recognize that a different problem exists
18 when the plaintiff is contending that the product was defectively
19 designed. *Comprara v. Chrysler Corp.*, *supra*. The rationale for
20 this distinctive treatment of a strict liability in tort claim for
21 defective design or for failure to warn is discussed in *Werner v.*
22 *Upjohn Co.*, *supra*, and in *Rainbow v. Elia Building Co.*, *supra*.

23 In the *Werner* case, the Fourth Circuit explicitly
24 responded as follows to the argument that the exclusionary rule
25 should not apply to strict liability in tort cases since those
26 cases focus on the condition of the product and not on the conduct

1 of the manufacturer:

2 "The reasoning behind this asserted
3 distinction we believe to be hypertechnical,
4 for the suit is against the manufacturer, not
against the product." *Werner, supra*, at 857.

5 The *Werner* court also noted that the application of the
6 exclusionary rule to a strict liability in tort case was supported
7 by the close similarity between negligence and strict liability.
8 *Id* at 8158. The similarity is even stronger in a defective design
9 case or a failure to warn case. *Id*.

10 In our brief in the *Callaham v. Chrysler Motors Corp.*
11 action in the Ninth Circuit, another attorney in this firm argued
12 that the rule should not apply in a strict liability in tort case.
13 The basis for that argument was the case of *Roach v. Kononen/Ford*
14 *Motor Co.*, 269 Or. 457, 525 P.2d 125 (1974) and the balancing test
15 advocated by Professor Wade in "Products Liability and Evidence of
16 Subsequent Repairs", 1972 Duke L.J. 837.

17 However, Professor Wade's seven criteria (*see Meyer v.*
18 *G.M. Corp.*, unpublished, 9th Cir. 1982) and *Roach v. Kononen*,
19 *supra*, are no longer the Oregon law of strict liability in tort.
20 The Oregon legislature has now codified Section 402A of the
21 Restatement (Second) of Torts, together with Comment a through m,
22 and those standards must be applied to measure plaintiff's conten-
23 tions - not Professor Wade's criteria. ORS 30.920. Therefore, the
24 arguments advanced by the court in *Werner* apply since the language
25 of the Restatement itself is the law.

26

1 IV.


2 CONCLUSION

3 Defendant's motion to exclude plaintiff's evidence of a
4 design change should be granted.

5 Respectfully submitted,

6 SCHWABE, WILLIAMSON, WYATT,
7 MOORE & ROBERTS

8
9 By:


10 W. A. JERRY NORTH, OSB #75279
11 Trial Attorney
12 Of Attorneys for Defendant
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CERTIFICATE OF SERVICE

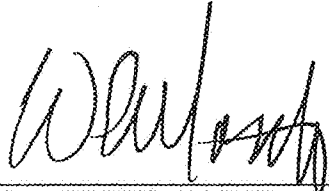
I hereby certify that on February 15, 1983, I served
the within MEMORANDUM IN SUPPORT OF MOTION TO EXCLUDE
EVIDENCE on:

PETER R. CHAMBERLAIN
229 Mohawk Building
222 SW Morrison Street
Portland, OR 97204

Attorney for Plaintiffs

by leaving a true copy thereof at said attorney's office with
his clerk therein, or with a person apparently in charge thereof,
at the above address.

DATED this 15th day of February, 1983.



W. A. JERRY NORTH
Of Attorneys for Defendant

FILED

FEB 15 3 45 PM '83
CLERK, U.S. DISTRICT COURT
DISTRICT OF OREGON
BY JS

1 JAMES D. HUEGLI
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6 Attorneys for Defendant
7

8 IN THE UNITED STATES DISTRICT COURT
9 DISTRICT OF OREGON

| | | | |
|----|---------------------------------|---|--------------------------|
| 10 | TERI SEE & DARREL SEE, wife and |) | |
| 11 | husband, |) | |
| | |) | Civil No. 81-886 LE |
| 12 | Plaintiffs, |) | |
| | |) | DEFENDANT'S MOTION FOR |
| 13 | v. |) | PARTIAL SUMMARY JUDGMENT |
| | |) | (AND REQUEST FOR ORAL |
| 14 | REMINGTON ARMS COMPANY, INC., |) | ARGUMENT) |
| 15 | a Delaware corporation, |) | |
| | |) | |
| 16 | Defendant. |) | |

16 Pursuant to Rule 56 of the Federal Rules of Civil
17 Procedure, defendant moves for partial summary judgment against
18 plaintiffs' contentions of fact e, f, g(1) through g(3), g(8)
19 through g(12), g(14), g(15) and h contained in the pretrial order.


20 Defendant asserts that there is no material issue of
21 fact with regard to each of the above-listed contentions, and that
22 the defendant is entitled to judgment against each of these conten-
23 tions as a matter of law. Defendant will rely on its memorandum
24
25
26

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1 of law in support of this motion, together with the various
2 deposition excerpts attached thereto.

3 SCHWABE, WILLIAMSON, WYATT,
4 MOORE & ROBERTS

5
6 By:


W.A. JERRY NORTH
Of Attorneys for Defendant

CERTIFICATE OF SERVICE


I hereby certify that on February 15, 1983, I served the within DEFENDANT'S MOTION FOR PARTIAL SUMMARY JUDGMENT (AND REQUEST FOR ORAL ARGUMENT) on:

PETER R. CHAMBERLAIN
229 Mohawk Building
222 SW Morrison Street
Portland, OR 97204

Attorney for Plaintiffs

by leaving a true copy thereof at said attorney's office with his clerk therein, or with a person apparently in charge thereof, at the above address.

DATED this 15th day of February, 1983.


W. A. JERRY NORTH
Of Attorneys for Defendant

FILED

FEB 15 3 46 PM '83

CLERK, U.S. DISTRICT COURT
DISTRICT OF OREGON

BY [Signature]

1 JAMES D. HUEGLI
W.A. JERRY NORTH
2 SCHWABE, WILLIAMSON, WYATT,
MOORE & ROBERTS
3 1200 Standard Plaza
1100 S.W. Sixth Avenue
4 Portland, Oregon 97204
Telephone: (503) 222-9981

5
6 Attorneys for Defendant
7

8 IN THE UNITED STATES DISTRICT COURT

9 DISTRICT OF OREGON

10 TERI SEE & DARREL SEE, wife and)
husband,)

11 Plaintiffs,)

12 v.)

13 REMINGTON ARMS COMPANY, INC.,)
14 a Delaware corporation,)

15 Defendant.)

16 I.

17

BACKGROUND

18 Plaintiffs' products liability action against the

19 defendant gun manufacturer is based solely on the theory of strict

20 liability in tort. Plaintiffs seek to recover damages for

21 personal injury to Mrs. See and for loss of consortium to Mr. See.

22 The injury to Mrs. See occurred on October 27, 1979,

23 when she was accidentally shot through both legs by Stephen

24 Boudreau. Mr. Boudreau was attempting to unload a gun in the

25 living room of his house at the time the accident occurred.

26

1 Mr. and Mrs. Boudreau, Mr. and Mrs. See (the
2 plaintiffs), and Mr. McDermott had been deer hunting all day on
3 October 27, 1979. They had left the Boudreaus' house about
4 3:00 a.m. that morning and returned there about 5:00 p.m. that
5 evening. Mr. Boudreau carried his three guns into the house, even
6 though he knew all three guns were still loaded (Mr. Boudreau's
7 Depo. 28). He first attempted to unload the model 700 Remington
8 rifle (hereafter called "the gun") by opening the bolt. One of
9 the functions of the safety mechanism on this gun is to lock the
10 bolt. Therefore, since the safety was on, he was unable to open
11 the bolt. Next, he pushed the safety forward to the "fire"
12 position to release the bolt. At that time, the gun fired. He
13 does not know whether or not his finger was on the trigger at the
14 time the gun fired (Mr. Boudreau's Depo. 32, 56, 57). Only a
15 small effort was required to pull the trigger on this gun since it
16 had a light trigger pull (Mr. Boudreau's Depo. 39).

17 II.

18 ARGUMENT

19 A. Introduction:

20 In the pretrial order, plaintiffs have alleged various
21 contentions of fact in which plaintiffs attempt to allege that at
22 the time of this accident the gun was in a defective condition,
23 unreasonably dangerous to the plaintiffs. These various
24 contentions of fact allege that the gun was dangerously defective,
25 both as a result of the defendant's misdesign of the gun and the
26 defendant's failure to warn the user of certain defects.

1 B. Misdesign

2 1. Contention g(1).

3 In their contention of fact g(1), plaintiffs allege that
4 the gun was dangerously defective in that the design of the gun
5 prevented it from being unloaded with the safety in the "on safe"
6 position.

7 Oregon products liability law requires that any claim
8 based on the theory of strict liability in tort must pass muster
9 under Comments a through m of Restatement (Second) of Torts
10 § 402A. ORS 30.920(3). Under Oregon law, in order for a product
11 to be dangerously defective, it must be "* * * in a condition not
12 contemplated by the ultimate consumer [or actual user] which will
13 be unreasonably dangerous to him". (Comment g to § 402A). In
14 order for a product to be unreasonably dangerous, it must be
15 "* * * dangerous to an extent beyond that which would be
16 contemplated by the ordinary consumer who purchases it, with the
17 ordinary knowledge common to the community as to its
18 characteristics". (Comment i to § 402A).

19 Plaintiffs' claim under Contention g(1) does not pass
20 muster under the requirements of comments g and i. Mr. Stephen
21 Boudreau, the "ultimate consumer" or "actual user" of this gun,
22 was well aware of the fact that one of the functions of the safety
23 mechanism on this gun was to serve as a bolt lock. He was also
24 well aware that the gun could not be unloaded with the safety in
25 the "on safe" position. Furthermore, he was well aware that, if
26 someone touches the trigger while the gun is loaded and the safety

1 is in the "fire" position, the gun will fire (Mr. Boudreau's
2 Depo. 29-32).

3 Therefore, the fact that the gun was designed so that
4 the safety operated as a bolt lock and that the bolt could not be
5 opened to unload the gun without placing the safety in the "fire"
6 position did not result in the gun being dangerously defective.
7 Since this allegation of misdesign by the plaintiffs did not
8 result in the gun being "in a condition not contemplated by the
9 ultimate consumer", defendant is entitled to summary judgment
10 against this contention. Defendant will rely on ORS 30.920,
11 Restatement (Second) of Torts § 402A comment g, *Askew v.*
12 *Howard-Cooper Corp.*, 263 Or. 184, 502 P.2d 210 (1972), and *Bemis*
13 *Co., Inc. v. Rubush*, ___ Ind. ___, 427 N.E.2d 1058 (1981).

14 2. Contention g(2).

15 In their contention of fact g(2), plaintiffs allege that
16 the gun was dangerously defective in that the design of the gun
17 did not include a "trigger lock". However, as Mr. Boudreau (the
18 owner of the gun) testified, this gun did have a mechanical
19 trigger stop which was a solid stop and prevented significant
20 trigger movement when the safety was in the "on safe" position
21 (Mr. Boudreau's Depo. 40). There is no evidence to the contrary.
22 Again, the "ultimate consumer" was aware of the condition of the
23 gun in this regard. Therefore, since the gun was not in a
24 condition not contemplated by the "ultimate consumer", it cannot
25 be dangerously defective (comment g to § 402A).

26

1 3. Contention g(3).

2 In their contention of fact g(3), plaintiffs allege that
3 the defendant misdesigned the gun in that the safety mechanism,
4 when placed in the "on safe" position, does not immobilize the
5 firing pin.

6 Plaintiffs do not allege that this misdesign caused the
7 accident. In fact, plaintiffs allege that the accident occurred
8 when the safety was positioned in the "fire" position. Therefore,
9 what features may or may not have been included in the design of
10 the safety mechanism while in the "on safe" position are not
11 relevant to this action.

12 C. Failure to Warn - Contentions g(8) through g(12) and g(14).

13 In these contentions of fact, plaintiffs attempt to
14 allege that the gun was dangerously defective as the result of the
15 defendant's failure to warn the ultimate consumer (Mr. Boudreau)
16 of certain dangerous conditions of the gun.

17 Under Oregon law, a product cannot be defective if it is
18 safe for normal handling and use (Comment h to § 402A). Where
19 directions for use and warnings are given by the seller, then the
20 seller is entitled to assume that such directions and warnings
21 will be read and heeded (Comment j to § 402A). Here, Mr. Boudreau
22 admits that he discarded the directions and warnings without
23 reading them (Mr. Boudreau's Depo. 19, 85).

24 In the recent case of *Kyser Indus. Corp. v. Frazier*, ____
25 Colo. ____, 642 P.2d 908 (1982), the Colorado Supreme Court
26 reversed a jury verdict for the plaintiff and held as a matter of

1 law that the defendant manufacturer had no duty to warn as alleged
2 by the plaintiff. The court carefully analyzed the interaction of
3 the various comments to § 402A in an action based on an alleged
4 breach of a duty to warn. The court concluded that the product
5 was not in a defective condition because of lack of warning, as a
6 matter of law. Likewise, in the instant case, plaintiff has no
7 evidence of a failure to warn as a cause of the accident. Rather,
8 plaintiffs have simply alleged as speculation various failures to
9 warn which they have not tied in to any allegation of defect which
10 caused the accident. Defendant is entitled to partial summary
11 judgment.

12 D. Inferred Defect - Contention g(15).

13 In this contention of fact, plaintiffs attempt to allege
14 an "inferred defect." However, Oregon has not adopted the Cali-
15 fornia position that the plaintiff may infer a defect simply from
16 the fact that an accident occurred in which the plaintiff was
17 injured by the product. In *Wilson v. Piper Aircraft Corporation*,
18 282 Or. 411, 579 P.2d 1287 (1978), the Oregon Supreme Court
19 rejected the California position enunciated in *Barker v. Lull*
20 *Engineering Co., Inc.*, 20 Cal. 3d 413, 143 Cal. Rptr. 205, 573
21 P.2d 1443 (1978).

22 In *Weems v. CBS Imports*, 46 Or. App. 539, 612 P.2d 323
23 (1980), *rev den*, 389 Or. 659, the court reversed a jury verdict
24 for the plaintiff where the trial court submitted to the jury the
25 issue of an "inferred defect." In that case, as in the instant
26 case, the plaintiff contended that the product was defective due

1 to misdesign. In that case, as in the instant case, plaintiff
2 made no contention that there was a defect which the plaintiff was
3 unable to identify. Defendant is entitled to partial summary
4 judgment.

5 E. Same Condition, Intended and Foreseeable Use - Contention h
6 and e.

7 In these contentions of fact, plaintiffs allege that the
8 gun was in substantially the same condition at the time of the
9 accident as it was when it left the hands of the defendant
10 manufacturer, and that it was being used and handled in a
11 foreseeable and intended manner.

12 The only evidence as to the condition of the gun at the
13 time of the accident is to that it was essentially worn out and in
14 very poor condition (Mr. Boudreau's Depo. 87, Mr. John Stekl's
15 Depo. 11, 16). The gun clearly was not serviced or maintained in
16 accordance with the instructions from the manufacturer. Likewise,
17 the attempt to unload the gun inside the house while pointed at
18 Mrs. See with the owner's finger possibly on the trigger was not a
19 foreseeable and intended use.

20 F. Notice - Contention f.

21 In this contention of fact, plaintiffs allege that the
22 defendant had notice of similar accidents prior to the manufacture
23 and sale of this gun.

24 Notice is not an issue in a strict liability in tort
25 action. *Phillips v. Kimwood Machine Co.*, 269 Or. 485, 525 P.2d
26 1033 (1974).

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III.

CONCLUSION

For these reasons, defendant's motion for partial summary judgment should be granted.

SCHWABE, WILLIAMSON, WYATT,
MOORE & ROBERTS

By:


W.A. JERRY NORTH
Of Attorneys for Defendants

CERTIFICATE OF SERVICE

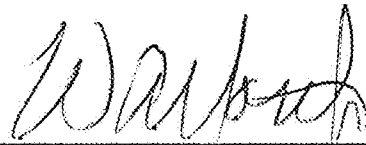
I hereby certify that on February 15, 1983, I served
the within MEMORANDUM IN SUPPORT OF MOTION FOR PARTIAL SUMMARY
JUDGMENT on:

PETER R. CHAMBERLAIN
229 Mohawk Building
222 SW Morrison Street
Portland, OR 97204

Attorney for Plaintiffs

by leaving a true copy thereof at said attorney's office with
his clerk therein, or with a person apparently in charge thereof,
at the above address.

DATED this 15th day of February, 1983.



W. A. JERRY NORTH
Of Attorneys for Defendant

FILED

FEB 16 11 39 AM '83

CLERK, U.S. DISTRICT COURT
DISTRICT OF OREGON

BY JS

James D. Huegli
SCHWABE, WILLIAMSON, WYATT,
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1100 SW Sixth Avenue
Portland, OR 97204
Telephone: 222-9981

Attorneys for Defendant

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

| | | |
|-------------------------------|---|-------------------------|
| TERI SEE and DARREL SEE, |) | |
| wife and husband, |) | |
| |) | |
| Plaintiffs, |) | Civil No. 81-886-LE |
| |) | |
| vs. |) | |
| |) | |
| REMINGTON ARMS COMPANY, INC., |) | RESPONSE TO PLAINTIFF'S |
| a Delaware corporation, |) | MEMORANDUM REGARDING |
| |) | EVIDENCE ISSUES |
| Defendant. |) | |

Plaintiff's argument regarding other events and
plaintiff's citation of cases is misleading.

Reiger v. Toby Enterprises, 45 Or.App. 679, does
not stand for the proposition that the frequency or infrequency
of mishaps of other products (not the trial product) is
relevant in proving a defective design. The Court in Toby
was addressing only the lack of similar accidents of
this particular slicer as to whether or not that particular
slicer was dangerously defective.

In Croft v. Gulf & Western Industries, Inc.,
12 Or.App. 507, the same issue was raised -- whether that

1 particular light had malfunctioned in the past.

2 The Oregon courts have not made the broad
3 sweeping statement that plaintiff would ask this court to
4 believe.

5 In Ginnis v. Mapes Hotel Corporation, 470 P.2d 135,
6 the court limited the repair orders to the very door which
7 injured the plaintiff. On appeal, the Nevada Supreme
8 Court did not say that evidence of 19 repair orders of
9 other automatic doors was admissible. It only addressed itself
10 to the repair orders of the particular door in question.

11 In Meyer v. G.M. Corp., which we have also reviewed,
12 the issue of similar accidents was admissible for rebuttal
13 only. In that case, G.M. took the position that it was
14 impossible for the roof of the car to collapse under those
15 circumstances. The court on appeal indicated that other
16 accidents were admissible as rebuttal only and not to
17 prove the plaintiff's case in chief.

18 Depositions.

19 The depositions are going to be offered to prove
20 that Mr. Boudreau's gun was dangerously defective. A distinction
21 must be drawn between the design defect and a manufacturing
22 defect. The fact that these other individuals may have had
23 complaints of a similar occurrence could be the result of
24 numerous things. However, this is not a manufacturing
25 defect case. It is a design defect case.

26 We also point out Mr. Chamberlain's comments at

his Memorandum, page 6, line 18:

"In summary, plaintiffs should be entitled to read the above referenced depositions to prove, under Reiger v. Toby, supra, that the accident rifle was defective in its design."

The misinterpretation of this case shows the court that we are not talking about prior accidents with the same rifle. In Reiger v. Toby it was the same meat slicer. The error of plaintiff's argument is outlined in his own Memorandum.

Gun Examination Reports.

Mr. Chamberlain would lead the court to believe that each gun examination report is identical. However, as we have argued and must emphasize to the court, the gun examination reports will be put into evidence by Mr. Chamberlain to show in fact that Mr. Boudreau's gun was defective. In reviewing those exhibits, we would point out to the court that these gun examination reports show on their face that the guns were misused, abused, modified, and were not in the same condition as when they left the hands of the manufacturer:

1. Exhibit #3: In this case the trigger mechanism had been adjusted outside the Remington specifications as evidenced by black lacquer on the adjusting screws.

2. Exhibit #6 simply states that there was excessive molybdate in the action. It does not show the gun was defective in any way. It does not show that the gun was

1 dangerously defective in any fashion.

2 3. Exhibit #8 once again shows that the trigger
3 adjusting screw seals were broken and adjusted outside
4 factory specifications.

5 4. Exhibit #11 only shows that the malfunction
6 could possibly be caused by a gummed up fire control. Once
7 again, we do not know what was inside the fire control
8 or what was "gumming it up." There is no evidence that
9 it's substantially similar to Mr. Boudreau's gun.

10 5. The same argument is true for Exhibit #12.

11 6. Exhibit #13 shows that Remington found
12 the sear-safety cam stuck in a downward position because of
13 an accumulation of dirt and oil. Once again, we do not know
14 how much dirt and oil and why the dirt and oil was inside
15 the rifle. The jury's going to have to speculate. Once
16 again, the rifle was not in the same condition as when it
17 left the factory.

18 7. In Exhibit #14 Remington replaced the fire
19 control at no charge. By simply doing so, this is not an
20 admission of liability but it will be argued by Mr. Chamberlain
21 that it was an admission that the fire control was defective.

22 8. Exhibit #16 bears the same arguments as above.
23 Once again, we do not know what's in the fire control of
24 this rifle and there is no evidence beyond speculation by
25 the jury as to what's causing the fire control to be gummed
26 up. Once again, the fire control is not in the same condition

1 as when it left the factory.

2 9. Exhibit #29 once again shows that the trigger
3 has been adjusted outside Remington's factory specifications.
4 Please note that Exhibit 29 is the same as Exhibit 3.

5 10. Exhibit #39 shows that the sear engagement
6 was adjusted outside of Remington's specifications. The
7 gun was replaced at no charge. By simply doing so, Remington
8 has not admitted any liability. However, it will be argued
9 that when Remington provides this service to an owner, they
10 are admitting that there was something wrong with their
11 rifle, which they have not done.

12 Exhibit 1 may have been admitted without objection
13 in the discovery deposition, but it must be noted that these
14 depositions reserved all objections until the time of trial.
15 Exhibit 1 is merely a complaint. The same objections must
16 be raised to Exhibit 1 as the other exhibits and as raised
17 in our trial brief.

18 Mr. Chamberlain would also have the court admit
19 exhibits of other problems with other rifles in an attempt
20 to show a defect in Mr. Boudreau's rifle. We would offer
21 the following comments in relationship to those exhibits:

22 1. Exhibit 14 apparently had a bad fire control.
23 This might have been a manufacturing defect. This has nothing
24 to do with Mr. Boudreau's rifle.

25 2. Exhibit 15 shows that this rifle apparently
26 "failed the trick test." Once again, this might be a manufacturing

1 defect, but it will be argued that it is proof that Mr.
2 Boudreau's rifle was defective. Are we now arguing a
3 manufacturing defect case?

4 3. In Exhibit 19 Remington replaced the trigger
5 assembly as a gesture of customer good faith and good will.
6 Our manufacturer is now faced with this being an admission
7 from some type of fault? It certainly will be argued.

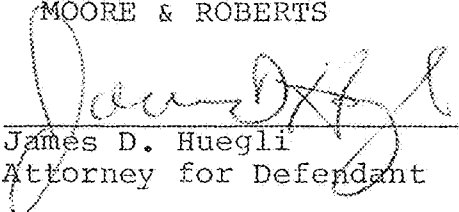
8 4. Exhibit 22 reflects internal rust on this
9 rifle. There is no evidence of rust, dampness or condensation
10 in the Boudreau rifle. Once again, we're trying another
11 lawsuit.

12 All of the gun examination reports address the
13 same issue. Every rifle was different. The internal
14 lubrication of the rifles is not available for the jury
15 to determine. There is no evidence that any of these
16 rifles were soaked in diesel fuel. Please note Mr.
17 Boudreau seemed to feel that this was a good idea.

18 The prejudicial effect of this type of evidence
19 which will confuse and mislead the jury far outweighs
20 its probative value. There is no reason why the plaintiff
21 cannot try his lawsuit in a direct fashion. If Remington's
22 witnesses on the witness stand state that it is impossible
23 for a rifle to discharge accidentally in this fashion, then
24 it may very well be appropriate for these gun examination
25 reports to come in as rebuttal evidence. However, that door
26 has not been opened for rebuttal. Please note in Meyer and

1 Reiger the court limited this type of evidence to that
2 of rebuttal.

3 SCHWABE, WILLIAMSON, WYATT,
4 MOORE & ROBERTS

5 By: 
6 James D. Huegli
7 Attorney for Defendant
8
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CERTIFICATE — TRUE COPY

I hereby certify that the foregoing copy of _____
_____ is a complete and exact copy of the original.
Dated _____, 19_____

Attorney(s) for _____

ACCEPTANCE OF SERVICE

Due service of the within _____ is hereby accepted
on _____, 19_____, by receiving a true copy thereof.

Attorney(s) for _____

CERTIFICATES OF SERVICE

Personal
I certify that on February 16, 19⁸³, I served the within Response to
Plaintiff's Memorandum on Peter Chamberlain
attorney of record for plaintiff
by personally handing to said attorney a true copy thereof.

Attorney(s) for Defendant

At Office
I certify that on _____, 19_____, I served the within _____
_____ on _____
_____ attorney of record for _____
by leaving a true copy thereof at said attorney's office with his/her clerk therein, or with a person apparently in
charge thereof, at _____, Oregon.

Attorney(s) for _____

Mailing
I hereby certify that I served the foregoing _____
_____ on _____
_____ attorney(s) of record for _____
on _____, 19_____, by mailing to said attorney(s) a true copy thereof, certified by me
as such, contained in a sealed envelope, with postage paid, addressed to said attorney(s) at said attorney(s) last
known address, to-wit: _____

and deposited in the post office at _____, Oregon, on said day.
Dated _____, 19_____

Attorney(s) for _____

SCHWABE, WILLIAMSON, WYATT,
MOORE & ROBERTS
ATTORNEYS AT LAW
1200 Standard Plaza
Portland, Oregon 97204
Telephone 222-9981

RECEIVED

FEB 15 11 39 AM '83

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214 Mohawk Building
708 S.W. Third Avenue
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Telephone: (503) 243-1022

Of Attorneys for Plaintiffs

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

TERI SEE and DARREL SEE,)
wife and husband,)
Plaintiffs,) Civil No. 81-886-LE
v.) PLAINTIFFS' SUPPLEMENTAL
REMINGTON ARMS COMPANY, INC.,) EXHIBIT LIST
a Delaware corporation,)
Defendant.)

No. R111 - Mossberg Model 800A Cal. 308 Win.

No. R112 - Stevens (Savage Arms) Model 34

No. R113 - Remington Model 591M

R114 - St. Vincent Hospital medical records
BODYFELT, MOUNT, STROUP

Rejected R115 - Enlargement of the lubrication section of exhibit 10
& CHAMBERLAIN

R116 - Photo

R117 - Photo

R118 - Photo

R119 - Photo

By /s/ PETER R. CHAMBERLAIN
Peter R. Chamberlain, Of
Attorneys for Plaintiffs

FILED

FEB 16 11 33 AM '83

CLERK U.S. DISTRICT COURT
DISTRICT OF OREGON

BY *[Signature]*

Peter R. Chamberlain
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Of Attorneys for Plaintiffs

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

TERI SEE and DARREL SEE,)
wife and husband,)
Plaintiffs,)
v.)
REMINGTON ARMS COMPANY, INC.,)
a Delaware corporation,)
Defendant.)

Civil No. 81-886-LE

PLAINTIFFS' SUPPLEMENTAL
EXHIBIT LIST

No. 111 - Mossberg Model 800A Cal. 308 Win.

No. 112 - Stevens (Savage Arms) Model 34

No. 113 - Remington Model 591M

BODYFELT, MOUNT, STROUP
& CHAMBERLAIN

By *[Signature]*
Peter R. Chamberlain, Of
Attorneys for Plaintiffs

CERTIFICATE — TRUE COPY

I hereby certify that the foregoing copy of
..... is a complete and exact copy of the original.

Dated, 19.....

Attorney(s) for

ACCEPTANCE OF SERVICE

Due service of the within is hereby accepted
on, 19....., by receiving a true copy thereof.

Attorney(s) for

CERTIFICATES OF SERVICE

Personal

I certify that on February 16, 19 83, I served the within Plaintiffs'
Supp. Exhibit List on James D. Huegli
attorney of record for defendant
by personally handing to said attorney a true copy thereof.

Attorney(s) for Plaintiffs

At Office

I certify that on, 19....., I served the within
..... on
..... attorney of record for
by leaving a true copy thereof at said attorney's office with his/her clerk therein, or with a person apparently in
charge thereof, at, Oregon.

Attorney(s) for

Mailing

I hereby certify that I served the foregoing
..... on
..... attorney(s) of record for
on, 19....., by mailing to said attorney(s) a true copy thereof, certified by me
as such, contained in a sealed envelope, with postage paid, addressed to said attorney(s) at said attorney(s) last
known address, to-wit:

and deposited in the post office at, Oregon, on said day.

Dated, 19.....

Attorney(s) for

BODYFELT, MOUNT & STROUP

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Portland, Oregon 97204
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UNITED STATES DISTRICT COURT
DISTRICT OF OREGON

CIVIL MINUTES - GENERAL

Case No. 81-886 LE Date February 16, 1983
Title See, et al v. Reminton Arms Co., Inc.

DOCKET ENTRY

RECORD of hearing on Deft's Motion to Exclude Evidence (42), Deft's Motion to Exclude Evidence (46), Deft's Motion for Partial Summary Judgment (48) and Pltfs' oral motion to exclude evidence of the criminal conviction of Stephen Boudreau. Refer to the record made on tape.

PRESENT:
HON. Edward Leavy, JUDGE
J. Glenn Tape 928 Pt. 2
Deputy Clerk Court Reporter

ATTORNEYS PRESENT FOR PLAINTIFFS:

Peter Chamberlain
Kathryn Janssen

ATTORNEYS PRESENT FOR DEFENDANTS:

James Huegli
Jerry North

PROCEEDINGS:

cc Peter Chamberlain
James Huegli

52

UNITED STATES DISTRICT COURT
DISTRICT OF OREGON

CIVIL MINUTES -- GENERAL

Case No. 81-886 LE

Date February 16, 1983

Case Title See, et al v. Remington Arms Co., Inc.

DOCKET ENTRY

ORDER - Deft's Motion to Exclude Evidence (42) in pltfs' case in chief of other instances involving Remington rifles is denied.

ORDER - Deft's Motion to Exclude Evidence (46) of subsequent design change is allowed.

ORDER - Deft's Motion for Partial Summary Judgment against pltfs' contentions of fact: E is denied, F is moot, G(1) is denied, G(2) is denied, G(3) is moot, G(8) through 12 and 14 denied, and G(15) withdrawn by pltf.

ORDER - Pltf's oral motion to exclude evidence of the criminal conviction of Stephen Boudreau is allowed.

PRESENT:

HON. Edward Leavy, JUDGE

J. Glenn

Deputy Clerk

Court Reporter

ATTORNEYS PRESENT FOR PLAINTIFFS:

ATTORNEYS PRESENT FOR DEFENDANTS:

PROCEEDINGS:

cc Peter Chamberlain
James Huegli

FILED

FEB 28 12 21 PM '83

CLERK OF DISTRICT COURT
DISTRICT OF OREGON

BY [Signature]

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Kathryn R. Janssen
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214 Mohawk Building
3 708 SW. Third Avenue
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4 Telephone: 503) 243-1022
Attorneys for Plaintiffs

5

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7

8

IN THE UNITED STATES DISTRICT COURT

9

FOR THE DISTRICT OF OREGON

10 TERI SEE and DARREL SEE,)
wife and husband,)

11 Plaintiffs,)

12)

13 vs.)

14 REMINGTON ARMS COMPANY, INC.,)
a Delaware corporation,)

15)

16 Defendant.)

Civil No. 81-886-LE

PLAINTIFFS' PROPOSED
VOIR DIRE QUESTIONS

17

1. Where do you live?

18

2. How long have you lived in Oregon?

19

3. What do you do for a living?

20

4. Are you married?

21

5. If so, what does your spouse do?

22

6. Do you have any children?

23

7. If so, where are they and what do they do?

24

8. If children are married, what do their spouses

25 do?

26

9. Have you ever, or has any member of your immediate family

1 ever sustained a serious injury?

2 10. How was that injury sustained?

3 11. Did the injury require surgery?

4 12. Did it heal satisfactorily?

5 13. Have you ever been involved in a lawsuit, either as
6 a plaintiff or defendant?

7 14. If so, who were the parties and how did the suit resolve
8 itself?

9 15. Was the result(s) to your satisfaction?

10 16. Has a claim for personal injury every been made
11 against you?

12 17. Have you ever made a claim for personal injury?

13 18. Have you ever served on a jury before?

14 19. In what kinds of cases?

15 20. Do you feel imposed upon by this jury service?

16 21. If so, will it affect your judgment?

17 22. On what types of cases have you served as a juror?

18 23. Do you now, or have you ever, owned any firearms?

19 24. If so, identify brand, model, etc.

20 25. Have you ever handled a gun or rifle?

21 26. If so, for how long a period of time have you handled
22 firearms?

23 27. Have you ever participated in hunting?

24 28. Does your spouse or other family members hunt, target
25 shoot, etc.?

26

1 29. If you have handled a gun or rifle could you briefly
2 explain your experience and training.

3 30. Have you, or has any family member, friends, etc.,
4 suffered a gunshot injury?

5 31. Have you ever been present when a rifle or gun fired when
6 it wasn't supposed to?

7 32. If so, could you explain the circumstances?

8 33. Are you a member of any gun clubs or associations,
9 either on the local or national level?

10 34. Do you subscribe to any gun-enthusiast publications?

11 35. Do you have any strong feelings about the use of
12 guns or rifles?


13 36. Do you own stock in the Dupont Company (which is the
14 parent company of Remington Arms)?

15 37. Do you know (list witnesses, parties, counsel)?

16 38. Have you ever had an experience associated with gun or
17 rifle use that would influence your decision or affect your
18 judgment in this case?

19 BODYFELT MOUNT STROUP & CHAMBERLAIN

20
21 BY


Peter R. Chamberlain, OSB No. 78166
Attorneys for Plaintiffs

FILED

FEB 28 12 21 PM '83

CLERK OF DISTRICT COURT
DISTRICT OF OREGON

BY

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2 Kathryn R. Janssen
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5 708 S.W. Third Avenue
6 Portland, OR 97204
7 Telephone: (503) 243-1022

8 Of Attorneys for Plaintiffs

9

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

| | | | |
|----|-------------------------------|---|-----------------------|
| 13 | TERI SEE and DARREL SEE, |) | |
| 14 | wife and husband, |) | |
| 15 | |) | |
| 16 | Plaintiffs, |) | Civil No. 81-886-LE |
| 17 | |) | |
| 18 | v. |) | PLAINTIFFS' REQUESTED |
| 19 | |) | JURY INSTRUCTIONS |
| 20 | REMINGTON ARMS COMPANY, INC., |) | |
| 21 | a Delaware corporation, |) | |
| 22 | |) | |
| 23 | Defendant. |) | |

24 Plaintiffs respectfully request the Court to instruct
25 the jury as follows:
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1 REQUESTED INSTRUCTION NO. 1

2
3 PRELIMINARY INSTRUCTIONS

4 Ladies and gentlemen, the law which applies to this case
5 will be given to you in part in these preliminary instructions,
6 and then in other instructions which you will receive after you
7 have heard the evidence and the argument of the attorneys. It is
8 your duty as jurors to follow all of the court's instructions.
9 Your task, as a juror, will be to determine the facts from the
10 evidence, and the reasonable inferences which arise from that
11 evidence. In doing so, you must not engage in guesswork or
12 speculation.

13 The evidence which you are to consider in this case
14 consists of testimony of the witnesses, those exhibits which are
15 admitted into evidence, and legal presumptions where they apply.

16 The admission of any evidence is governed by certain
17 rules of law. From time to time, it may be the duty of one or
18 the other of the attorneys to make an objection or to move to
19 strike certain evidence, and it will be my duty as judge to rule
20 on those objections and motions and to decide whether or not it
21 is proper under the law for you to be permitted to consider
22 certain evidence. You should not concern yourself with the
23 objections or motions, or with the court's reasons for its
24 rulings. However, you are not to consider testimony or exhibits
25 to which an objection has been sustained or which has been
26 ordered stricken.

1 The opening statements and the closing arguments of the
2 attorneys are intended to help you in understanding the evidence
3 and applying the law to that evidence. But those statements and
4 arguments are not a part of the evidence.

5 In order for you to be an effective juror, it is impor-
6 tant that you not be influenced in any degree by personal
7 feelings or sympathy for, or prejudice against, any party to this
8 case.

9 I want you to understand that no statement or ruling or
10 remark which I may make during the course of this trial is
11 intended to indicate to you my opinion as to what the facts are.
12 You are to determine the facts. In this determination you,
13 alone, must decide upon the believability of the evidence and
14 upon its weight and value.

15 During the trial, you should avoid any communication
16 with the attorneys, witnesses or parties involved in the case.
17 Do not discuss this case with anyone, even members of your
18 family. You must not make your own investigation of the facts or
19 communicate any private knowledge or information that you may
20 have regarding the matter in controversy to your fellow jurors.
21 It is important for you to keep an open mind during the entire
22 presentation of the evidence. You should not attempt to reach a
23 decision or deliberate or discuss the evidence with your fellow
24 jurors until you have heard all of the evidence and I have

25 * * *

26 * * *

1 instructed you on the law.

2

3 NOTE: To be given after the jury is impaneled.

4

5 Oregon Uniform Jury Instruction No. 1.00.

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REQUESTED INSTRUCTION NO. 2

PRELIMINARY INSTRUCTION REGARDING BOUDREAU SETTLEMENT

[To be given before opening statements.]

This lawsuit involves a claim by Teri See and Darrel See arising out of a shooting incident which occurred in October of 1979. The undisputed facts are that Teri See was shot through both legs by a rifle manufactured by the defendant Remington Arms Company. At the time of the shooting, the rifle was being handled by a person named Stephen Boudreau. The shooting occurred in the home of Mr. Boudreau shortly after he, the Sees and several other people had returned from a hunting trip.

In addition to their claim against Remington, the Sees made a claim against Mr. Boudreau. Their claim against Mr. Boudreau was that the shooting was caused, in part, by his negligence. The Sees' claim against defendant Remington Arms Company is that the shooting was caused, in part, by a defective, unreasonably dangerous condition of Remington's rifle.

In this regard, I instruct you that many factors, or the conduct of two or more persons, including corporations such as the defendant, may operate concurrently, either independently or together, to cause an injury; and in such case, each may be a cause of the damage even though other factors or conduct would of themselves have been sufficient to cause the same damage.

The lawsuit now before you for trial is only against Remington Arms Company. The reason that Stephen Boudreau is not

1 also a defendant in this case is that he settled the plaintiffs'
2 claims against him before this lawsuit was filed.

3 In considering the Sees' claims against defendant
4 Remington Arms Company you are to disregard the fact that the
5 Sees also made a claim against Mr. Boudreau. You are not to
6 concern yourselves with the fact that a sum was paid to the Sees
7 by Mr. Boudreau.

8 Should your verdict be for the plaintiffs, or one of
9 them, and against defendant Remington Arms Company in this case,
10 you are to award the plaintiffs the full amount of their damages.
11 In other words, you are specifically instructed to disregard the
12 settlement in arriving at your verdict. You are not to reduce
13 your award in any way whatsoever. Then, after you return your
14 verdict, the court will reduce your verdict by an amount equal to
15 the amount paid to the plaintiffs by Mr. Boudreau. In this way,
16 the plaintiffs will not be overcompensated for their injuries.

17 Since the reduction of your verdict will be carried out
18 by the court, you do not need to know the amount Mr. Boudreau
19 paid the Sees. Nor may you speculate as to what such amount was
20 or should have been, or let that enter into your deliberations in
21 any way whatsoever.

22
23 Yardley v. Rucker Brothers Trucking, Inc., 42 Or App
24 239, 600 P2d 485 (1979);

25 Oregon Uniform Jury Instruction 15.01.
26

REQUESTED INSTRUCTION NO. 3

PRELIMINARY INSTRUCTION REGARDING DEPOSITION TESTIMONY

During the trial of this case, several witnesses will testify in the form of depositions which will be read to you rather than by the witnesses appearing in person. This is necessary because these witnesses are from a number of other states and are not subject to this Court's subpoena power. The depositions were taken under oath, in question and answer form, and both the plaintiffs' attorney and the defendant's attorney had the opportunity to question each such witness. Accordingly, you are to consider these questions and answers as part of the evidence in this case and give to such evidence the same weight and consideration as you would have given had the witnesses personally appeared on the stand and testified before you.

Adapted from 8 Am Jur Pl & Pr Forms (Rev) Depositions and Discovery form 64 (1969)

REQUESTED INSTRUCTION NO. 4

FUNCTIONS OF THE COURT AND JURY

It is now the duty of the Court to instruct you as to the law. Under our legal system, the Court decides all questions of law and procedure arising during a trial and it is the jury's duty to follow the Court's instructions in these matters.

On the other hand, the jury is the sole and exclusive judge of the facts and of the reliability of the evidence. The jury's power, however, is not arbitrary and if the Court instructs you as to the law on a particular subject or how to judge the evidence, you must follow such instructions.

Oregon Uniform Jury Instruction No. 1.01.

1 REQUESTED INSTRUCTION NO. 5

2
3 CALM AND DISPASSIONATE CONSIDERATION

4 Your verdict should be based only upon these instruc-
5 tions and upon the evidence in this case. It is your duty to
6 weigh the evidence calmly and dispassionately and to decide the
7 questions upon their merits. You are not to allow bias, sympathy
8 or prejudice any place in your deliberations, for all parties are
9 equal before the law. Neither are you to based your decisions on
10 guesswork, conjecture or speculation.

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12 Oregon Uniform Jury Instruction No. 1.02.
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REQUESTED INSTRUCTION NO. 6

You are not to single out any one instruction alone as stating the law, but you must consider the instructions as a whole.

Neither are you to be concerned with the wisdom of any rule of law stated by the Court. Regardless of any opinion you may have as to what the law ought to be, it would be a violation of your sworn duty to base a verdict upon any other view of the law than that given in the instructions of the Court, just as it would be a violation of your sworn duty, as judges of the facts, to base a verdict upon anything but the evidence in the case.

Justice through trial by jury must always depend upon the willingness of each individual juror to find the truth as to the facts from the same evidence presented to all the jurors, and to arrive at a verdict by applying the same rules of law, as given in the instructions by the Court.

Adapted from Federal Jury Practice and Instructions, Civil and Criminal,
§7.01 - Province of the Court.

REQUESTED INSTRUCTION NO. 7

Numerous objections have been made by the attorneys involved in the trial of this case.

It is the duty of an attorney to object to evidence which the attorney believes is not properly admissible. You should not draw any inference against or show any prejudice against a lawyer or his client because of the making of an objection for, as I have stated, that is the duty of the lawyer.

Devitt & Blackmar, Federal Jury and Practice
Instructions, §80.08.

REQUESTED INSTRUCTION NO. 8

Some of the objections made by the attorneys have been sustained; others have been overruled.

When the Court has sustained an objection to a question addressed to a witness, you must disregard the question entirely. You should draw no inference from the wording of the question, or speculate as to what the witness would have said if permitted to answer the question. And, when testimony or other evidence is received over the objection of an attorney, you should know that the Court has no opinion as to the weight or effect of such evidence. The Court has merely ruled that such evidence is admissible in this case for you to consider, if you should desire to do so. You are the sole judge of the credibility of the witnesses and the weight and the effect of all evidence.

Other times during the trial, I directed that certain testimony or other evidence be stricken from the record. Such evidence should be entirely disregarded by you and should not be considered, in any way, in reaching your verdict.

Adapted from Devitt & Blackmar, Federal Jury Practice and Instructions, §80.08.

REQUESTED INSTRUCTION NO. 9

CONSIDER ALL OF THE EVIDENCE

The term "evidence" refers to testimony, exhibits and legal presumptions where they apply. In deciding this case, you are to consider and weigh all of the evidence which you find worthy of belief.

The statements and arguments which you have heard from the attorneys are not evidence. They are intended to be helpful to you, and I trust they have been helpful to you, but if your recollection of the evidence differs from the attorneys', rely upon your own memory.

Oregon Uniform Jury Instruction No. 2.01.

1 REQUESTED INSTRUCTION NO. 10

2
3 WITNESS PRESUMED TO SPEAK THE TRUTH

4 Every person who testifies is presumed to speak
5 truthfully. However, this presumption may be overcome by the
6 person's manner of testifying, the nature of the testimony, by
7 evidence concerning the character, interest or motives of the
8 witness, or by contradictory evidence which you find to be more
9 probably true.

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11 Oregon Uniform Jury Instruction No. 2.03.
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1 REQUESTED INSTRUCTION NO. 11

2
3 NUMBER OF WITNESSES

4 The testimony of one witness, whom you believe, is
5 sufficient to prove any fact in dispute.

6 In other words, you are not simply to count the
7 witnesses on each side, but you are to weigh the evidence.

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9 Oregon Uniform Jury Instruction No. 2.06.
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REQUESTED INSTRUCTION NO. 12

EXPERT WITNESS

A witness who has special knowledge, skill, experience, training or education in a particular field may give an opinion as to any matter in which the witness is so skilled. In determining the weight to be given such an opinion, you should consider the qualifications and credibility of the witness and the reasons given for the opinion. You are not bound by such opinion. Give it the weight, if any, to which you deem it entitled.

Oregon Uniform Jury Instruction No. 2.07.

REQUESTED INSTRUCTION NO. 13

Questions have been asked in which an expert witness was requested to assume that certain facts were true, and to give his opinion based upon that assumption. These are called hypothetical questions. If you find that a material fact assumed and relied upon by the expert witness in forming his opinion is untrue or not established by the evidence, you must disregard that opinion.

Adapted from Oregon Uniform Jury Instructions
for Civil Cases - No. 2.08 - Hypothetical
Questions.

1 REQUESTED INSTRUCTION NO. 14

2
3 CIRCUMSTANTIAL EVIDENCE

4 There are two types of evidence. One is direct
5 evidence--such as the testimony of an eyewitness. The other is
6 circumstantial evidence--the proof of a chain of circumstances
7 pointing to the existence or non-existence of a certain fact.
8 Proof may be either type or both.

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10 Oregon Uniform Jury Instruction No. 2.09.
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1 REQUESTED INSTRUCTION NO. 15

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3 CAUSATION

4 An act or omission is a cause of damage when, in a
5 direct and unbroken sequence, it produces the damage.

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7 Oregon Uniform Jury Instruction No. 15.01.
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REQUESTED INSTRUCTION NO. 16

BURDEN OF PROOF

A party has the burden of proving by a preponderance of the evidence any claim made by that party. In the absence of such proof, the party cannot prevail as to that claim.

Adapted from Oregon Uniform Jury Instruction No. 21.01.

1 REQUESTED INSTRUCTION NO. 17

2
3 PREPONDERANCE OF EVIDENCE

4 "Preponderance of the evidence" means the greater weight
5 of evidence. It is such evidence that, when weighed with that
6 opposed to it, has more convincing force and is more probably
7 true and accurate. If, upon any question in the case, the
8 evidence appears to be equally balanced, or if you cannot say
9 upon which side it weighs heavier, you must resolve that question
10 against the party upon whom the burden of proof rests.

11 (ORS 17.250 sub. (5).)

12
13 Oregon Uniform Jury Instruction No. 21.02.
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REQUESTED INSTRUCTION NO. 18

This is a strict products liability action brought by the plaintiffs against the defendant for damages sustained by plaintiffs arising out of the alleged unreasonably dangerous condition of defendant's product due to a design defect in the product; and due to the defendant's failure to warn users of the product regarding the condition of the product.

In particular, the plaintiffs have made the following claims of defect as to the defendant's Model 700 Remington rifle:

1. Defendant designed and manufactured this rifle such that the bolt could not be opened when the safety was in the "on safe" position and, therefore, the rifle could not be unloaded without moving the safety from the "on safe" position to the "fire" position.

2. The trigger mechanism, as designed and manufactured by defendant, did not contain a trigger lock and very little effort was required to pull the trigger rearward even when the safety was in the "on safe" position. With a design such as this, anytime there is any condition of the rifle which causes the trigger to stay in the pulled position, the rifle will fire when the safety is later moved from the "on safe" position to the "fire" position, even though the trigger is not being pulled at the time.

3. Defendant designed this rifle such that lubrication in the trigger assembly could result in the rifle unexpectedly firing when the safety was moved from the "on safe" position to

1 the "fire" position despite the fact that the trigger was not
2 being pulled at the time.

3 4. The rifle was designed such that there were numerous
4 ports through which dirt, dust and debris could enter and
5 contaminate the trigger mechanism and safety mechanism and
6 related parts. This contamination could cause the rifle to
7 unexpectedly fire when the safety was moved from the "on safe"
8 position to the "fire position" despite the fact that the trigger
9 was not being pulled at the time.

10 5. The rifle was designed such that cold weather could
11 cause the trigger and safety mechanisms to malfunction, resulting
12 in the rifle unexpectedly firing when the safety was moved from
13 the "on safe" position to the "fire" position despite the fact
14 that the trigger was not being pulled at the time.

15 6. The rifle was designed without an automatic safety
16 or a three-position safety or other similar positive safety
17 device.

18 7. Defendant failed to warn users of this rifle that,
19 under certain circumstances, the rifle could unexpectedly fire
20 and the safety would move from the "on safe" position to the
21 "fire" position despite the fact that the trigger was not being
22 pulled at the time.

23 8. Defendant failed to warn users of this rifle that
24 lubrication of the trigger assembly could cause the rifle to
25 unexpectedly fire when the safety was moved from the "on safe"
26 position to the "fire" position despite the fact that the trigger

1 was not being pulled at the time.

2 9. Defendant failed to warn users of this rifle that
3 failing to adequately clean certain parts of the rifle could
4 cause an accumulation of gun oil or dried oil, which could build
5 a film that could cause the rifle to unexpectedly fire when the
6 safety was moved from the "on safe" position to the "fire"
7 position despite the fact that the trigger was not being pulled
8 at the time.

9 10. Defendant failed to warn users of the rifle that
10 cleaning of the trigger mechanism with certain petroleum products
11 could cause the rifle to unexpectedly fire when the safety was
12 moved from the "on safe" position to the "fire" position despite
13 the fact that the trigger was not being pulled at the time.

14 11. Defendant failed to warn users of the rifle that use
15 of the rifle in cold temperatures could cause the rifle to
16 unexpectedly fire when the safety was moved from the "on safe"
17 position to the "fire" position despite the fact that the trigger
18 was not being pulled at the time.

19 I will now instruct you as to the law of strict products
20 liability.

REQUESTED INSTRUCTION NO. 19

One who designs, manufactures or sells a dangerously defective product is strictly liable to the user or a bystander for physical harm caused thereby, if the seller is engaged in the business of manufacturing or selling such products, and if the product reaches the user without substantial change in the condition in which it is sold.

A product is dangerously defective when it is in a condition unreasonably dangerous to the user or a bystander. Unreasonable, in this regard, means dangerous to an extent beyond that which would be contemplated by the ordinary purchaser of this type of product in the community where it was purchased, with the knowledge common to that community in 1976, when this product was manufactured.

Adapted from Oregon Uniform Jury Instructions for Civil Cases - No. 170.01 - Liability of Seller of Dangerously Defective Product;

ORS 30.920(1),(3);

Restatement (Second) of Torts, §402A, Comments g, h and i.

REQUESTED INSTRUCTION NO. 20

In this connection, I instruct you that manufacturers and sellers of products, such as the rifle manufactured by the defendant in this case, have a duty to design, manufacture and sell rifles in such a manner that they are reasonably safe for all intended or reasonably foreseeable uses.

Adapted from Oregon Uniform Jury Instructions for Civil Cases - 170.04 - Seller Not Insurer;

ORS 30.920;

Restatement (Second) of Torts, §402A, Comments g, h and i;

Newman v. Utility Trailer, 278 Or 395, 399 (1977).

REQUESTED INSTRUCTION NO. 21

The manufacturer of a product which is dangerously defective is liable to a person injured thereby even though the manufacturer has exercised all possible care in the design, manufacture and sale of the product.

The manufacturer is presumed to know of any dangers in the condition of its products. That is, strict products liability imposes upon the manufacturer what amounts to constructive knowledge of the dangerous condition of the product.

Phillips v. Kimwood Machine Co., 269 Or 485, 525 P2d 1033 (1974).

REQUESTED INSTRUCTION NO. 22

In determining whether or not the defendant's rifle was dangerously defective, you should consider whether a reasonably prudent manufacturer would have so designed, manufactured and sold the product in question had the manufacturer known of the risk which injured the plaintiffs.

Phillips v. Kimwood Machine Company, 269 Or 485, 525 P2d 1033(1974);

Wilson v. Piper Aircraft Corporation, 282 Or 61, 577 P2d 1322 (1978).

REQUESTED INSTRUCTION NO. 23

There is evidence in this case concerning the commercial and industry standards and customs prevailing in the rifle manufacturing industry when this rifle was designed and manufactured. What other rifle manufacturers were doing before and during that period of time is evidence which may be considered by you, along with all the other evidence, in determining whether or not defendant's product was unreasonably dangerous.

Wilson v. Piper Aircraft Corporation, 282 Or
61, 70 (1978).

REQUESTED INSTRUCTION NO. 24

In order to prevent the product from being unreasonably dangerous, the manufacturer or seller may be required to give reasonable warnings as to its use. In this regard, you may consider both the content of any warnings given and the form of the warnings, in determining whether the warnings were sufficient to prevent the product from being unreasonably dangerous.

ORS 30.920;

Restatement (Second) of Torts, §402A, Comment j.

REQUESTED INSTRUCTION NO. 25

In determining whether the design of defendant's rifle was, or was not, unreasonably dangerous, you may consider the following factors:

- (1) The usefulness and the utility of the design;
- (2) The likelihood, if any, that the design will cause injury and, if so, the probable seriousness of the injury;
- (3) The availability of a substitute design which would meet the same need and which would lessen the likelihood, if any, of injury;
- (4) The ability to eliminate any unsafe aspects of the design without impairing its usefulness, without making it more dangerous, or without making it too expensive or otherwise unreasonably impairing its utility.

Roach v. Kononen, et ux, & Ford Motor Co., 269 Or 457,
525 P2d 125 (1974).

REQUESTED INSTRUCTION NO. 26

The defendant contends that the negligence of the gun handler--Stephen Boudreau--was the sole cause of the plaintiffs' injuries. In this regard, I instruct you that if you find that Stephen Boudreau's conduct was the sole cause of the plaintiffs' injuries, you would be warranted in returning your verdict for the defendant. However, if you find that the plaintiffs' injuries were caused in part by Mr. Boudreau's conduct and in part by a dangerously defective condition in the defendant's product (or that the plaintiffs' injuries were caused totally by such condition of defendant's product), then you would be warranted in returning your verdict for the plaintiffs. In that event, as I instructed you at the outset of this case, you should determine the full amount of the plaintiffs' damages and return your verdict in that amount. The Court will then reduce your verdict by an amount equal to the amount paid by Mr. Boudreau in settlement of the plaintiffs' claims against him.

REQUESTED INSTRUCTION NO. 27

The law recognizes certain generalizations concerning human conduct. These generalizations are called disputable presumptions and are to be considered by you as evidence along with other evidence in this case. Thus, the law presumes that all persons have obeyed the law and have been free from negligence.

Adapted from Oregon Uniform Jury Instructions 2.02 and 10.01.

REQUESTED INSTRUCTION NO. 28

If you find from the evidence and the instructions that plaintiffs' are entitled to prevail, then it becomes your duty to decide whether the plaintiffs have been damaged, and if so, the amount of their damages.

In determining the amount of any such damages, you shall determine each of the items of plaintiffs' damage which I am now about to mention, provided you find them to have been suffered as a result of the defendant's dangerously defective product, bearing in mind that the plaintiffs must prove each item of damage by a preponderance of the evidence (except where the parties agree as to the actual dollar amount).

The mere fact that I am instructing you with regard to the measure of damages is not to be considered by you as any attempt by the Court to suggest or indicate that you should or should not award damages.

There are two types of damages that can be recovered in this type of case, general damages and special damages, which I will now explain to you.

1 REQUESTED INSTRUCTION NO. 29

2
3 DAMAGES, GENERAL

4 If you find that plaintiff Teri See is entitled to
5 recover, you will first determine the amount of general damages
6 caused by the defendant.

7 The law does not furnish you with any fixed standard by
8 which to measure the exact amount of general damages. The law
9 does require that the compensation allowed be reasonable. You
10 must apply your own judgment to determine the amount.

11 The items of general damages which you may consider are:

12 1. The sum which will reasonably compensate plaintiff
13 for any pain, anxiety and discomfort which she has suffered in
14 the past.

15 2. The sum which will reasonably compensate plaintiff
16 for the pain, anxiety and discomfort which it is reasonably
17 probable she will suffer in the future.

18 3. The sum which will reasonably compensate plaintiff
19 for any impairment of earning capacity she has sustained in the
20 past and which it is reasonably probable she will sustain in the
21 future.

22 4. The sum which will reasonably compensate the plain-
23 tiff for any interference with normal and usual activities, apart
24 from activities in a gainful occupation, which you find has been
25 sustained and which it is reasonably probable will be sustained
26 in the future.

1 5. The sum which will compensate plaintiff for the
2 reasonable value of medical care and services which it is
3 reasonably probable will be sustained by plaintiff in the future.
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REQUESTED INSTRUCTION NO. 30

If you find that the plaintiffs are entitled to general damages, you should then award the amount of special damages caused by the defendant.

Special damages include the following items:

1. The reasonable value of medical care and services furnished in the treatment of the plaintiff. The parties are in agreement that this amount is \$14,384.75.

2. The amount of the earnings lost by plaintiff. The parties are in agreement that this amount is \$1,187.24.

As the parties are in agreement as to the amount of the plaintiff's medical expenses and lost wages, if your verdict is for the plaintiff Teri See, I direct you to find her medical expenses in the agreed upon sum of \$14,384.75 and to find her lost earnings in the agreed upon sum of \$1,187.24.

REQUESTED INSTRUCTION NO. 31

DAMAGES, LIFE EXPECTANCY, MORTALITY TABLES

According to the standard mortality tables, the life expectancy of a person aged 31 years is 48.5 years.

This fact should be considered by you in arriving at the amount of damages if you find that the plaintiff Teri See is entitled to a verdict in her favor.

Life expectancy shown by the mortality tables is an estimate of the probable average remaining length of life of all persons in our country of a given age and it is for you to determine the probable life expectancy of Teri See from the evidence in this case, taking into consideration all other evidence bearing on the same issue such as that pertaining to her occupation, sex, health, habits and activities.

Oregon Uniform Jury Instruction No. 34.01

REQUESTED INSTRUCTION NO. 32

LOSS OF CONSORTIUM

If your verdict is for the plaintiff Teri See on her claim against the defendant, and if you further find that as a result of Teri See's injuries, her husband, Darrel See, suffered any loss of his wife's services, society and/or companionship, then you would be warranted in returning your verdict in favor of plaintiff Darrel See on his claim for loss of consortium.

1 REQUESTED INSTRUCTION NO. 33

2
3 DAMAGES, LOSS OF CONSORTIUM, GENERAL

4 If, under the Court's instructions, you find plaintiff
5 Darrel See is entitled to damages, you must determine the amount
6 of general damages sustained by him.

7 In determining such damage, you shall award him such sum
8 as will reasonably compensate him for any loss of his wife's
9 services, society and companionship which he has suffered and it
10 is reasonably probable will suffer in the future as the result of
11 the injury.

12 In determining that amount, your object shall be to fix
13 the pecuniary value of such services, society and companionship
14 which have been lost and of any such future loss.

15 The law does not furnish you with any fixed standard by
16 which to measure the exact amount of general damages to which a
17 person is entitled. The law does require the compensation
18 allowed be reasonable. You must apply your own considered
19 judgment to determine the amount thereof.

20
21 Oregon Uniform Jury Instruction No. 32.01.
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February 15, 1983

Judge Edward Leavy
U.S. District Court
Federal Courthouse
Portland, OR 97204

Re: See v. Remington Arms

Dear Judge Leavy:

In response to your inquiry regarding conviction of a crime as impeachment, we would offer the following cases:

1. In Hendricks v. Portland Electric Power Company, 134 Or. 366, 289 P. 369, the court held that in a personal injury action record of the plaintiff's prior conviction for liquor violation was relevant, but only as regards to her credibility as a witness.

2. In Addicks v. Cup, 54 Or.App. 830, 636 P.2d 454 the Oregon court held that a witness may be impeached by proof of a conviction of a crime.

Very truly yours,

James D. Huegli

JDH:lr
cc: Peter Chamberlain

FILED

FEB 28 12 30 PM '83

CLERK, U.S. DISTRICT COURT
DISTRICT OF OREGON

BY JJ

Peter R. Chamberlain
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Of Attorneys for Plaintiffs

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

| | | |
|-------------------------------|---|---------------------|
| TERI SEE and DARREL SEE, |) | |
| wife and husband, |) | |
| |) | |
| Plaintiffs, |) | Civil No. 81-886 LE |
| |) | |
| v. |) | PLAINTIFFS' TRIAL |
| |) | MEMORANDUM |
| REMINGTON ARMS COMPANY, INC., |) | |
| a Delaware corporation, |) | |
| |) | |
| Defendant. |) | |

I

PRELIMINARY MATTERS

A. Pretrial Order Amendments

Since the pretrial conference, the parties have stipulated to the following change in the pretrial order:

Page 2 - Agreed Fact 3(g) should reflect that plaintiff Teri See's reasonable and necessarily incurred medical expenses resulting from this incident are \$14,384.75.

Plaintiffs are, at this time, withdrawing Contentions of Fact g (13) and g (14) which appear at page 7 of the pretrial order.

1 B. Further Exhibits

2 Since the pretrial conference, the parties have
3 identified and marked the following additional exhibits:

4 Exhibit 95 - previously marked as an impeachment exhibit
5 has been disclosed to defendant's counsel and should no longer be
6 classified as purely impeachment.

7 Exhibit 114 - Hospital records from St. Vincent Hospital
8 (admission date July 15, 1980 through July 22, 1980).

9 Exhibit 115 - Enlargement of the lubrication section of
10 Exhibit 10.

11 Plaintiffs withdraw the following exhibits:

12 Exhibit 43 - German Mauser rifle (unable to obtain).

13 Exhibits 57 and 58 - (unable to obtain trigger
14 mechanisms from defendant).

15 Exhibits 66, 81 and 84.

16 II

17 SUMMARY OF FACTS

18 On October 27, 1979, Teri See, Darrel See, Jim
19 McDermott, Stephen Boudreau and Star Boudreau returned to the
20 Boudreaus' home after a day of hunting. They entered the house,
21 and Stephen Boudreau brought in three rifles, including a
22 Remington Model 700 which his wife had been using that day. He
23 set all three rifles down on a chair. The rifles were not
24 touching one another. Noticing that the bolt was closed on the
25 Remington Model 700, Mr. Boudreau proceeded to attempt to unload
26 the rifle by opening the bolt (which is the only way to remove a

1 live round from the rifle's chamber). The bolt would not open
2 because the rifle's safety was in the "on safe" position (the
3 rifle's safety locks the bolt closed when the safety is in the
4 "on safe" position). Mr. Boudreau then proceeded to push the
5 rifle's safety lever from the "on safe" position to the "fire"
6 position. As he did so, the rifle discharged.

7 At the moment the rifle discharged, Teri See had
8 entered the house and was walking toward the kitchen. The
9 bullet, a 30.06 went through her right thigh and then through her
10 left thigh, taking large amounts of tissue and muscle with it.
11 The bullet missed the leg bones and the major arteries.

12 Mrs. See was taken to the hospital by ambulance where
13 she remained for nearly a month. During that time, she underwent
14 surgical procedures which included debriding the wounds numerous
15 times and split thickness skin grafts.

16 Teri See was well enough by March of 1980 that she could
17 have resumed gainful employment (had the economy been better).
18 Therefore, no claim for lost wages is made for unemployment which
19 occurred after March of 1980.

20 In July of 1980, Teri See entered St. Vincent Hospital
21 in Portland for reconstructive plastic surgery. That surgery
22 improved the appearance of her leg scars but by no means fully
23 corrected her condition. Further surgery, at a cost of \$25,000
24 to \$30,000, will further improve her condition, but she will
25 always have some permanent scarring and the muscles which were
26 destroyed cannot be revitalized. She, thus, has severe permanent

1 injuries.

2 Darrel See, Teri's husband, seeks damages for loss of
3 consortium. The evidence on this issue will demonstrate Darrel
4 See's loss of society, services and companionship. At the plain-
5 tiffs' request, the evidence will not touch on any damage to the
6 sexual aspects of the plaintiffs' relationship.

7 III

8 ALLEGATIONS OF DEFECT

9 Plaintiffs' eleven allegations of defect fall into three
10 general categories.

11 (1) The design of the rifle's safety was dangerously
12 defective in that it locked the bolt, had no trigger lock and/or
13 did not incorporate an automatic safety, three-position safety or
14 other similar positive safety device.

15 (2) The trigger assembly was dangerously defective in
16 that the rifle will unexpectedly fire when the safety is moved
17 from the "on safe" position to the "fire" position. This defect
18 is caused or contributed to by lubrication or solvent in the
19 trigger assembly, dirt and debris which can enter the trigger
20 assembly from numerous ports, and cold weather which tends to
21 thicken any substance in the trigger mechanism and increases the
22 likelihood of malfunction.

23 (3) The rifle was dangerously defective in that the
24 defendant failed to warn of any of the above described defects,
25 and the warnings given were woefully inadequate in form as well
26 as in content.

IV

CAUSATION

Any one of the alleged defects, when supported by competent evidence, is sufficient to establish that the dangerously defective condition of this rifle was a cause of the plaintiffs' injuries.

Under category (1) above, use of any of the devices suggested by plaintiffs would have prevented this accident because the gun handler would not have been required to move the safety from the "on safe" position to the "fire" position. This defect is, thus, a cause of the accident regardless of whether the rifle fired when the safety was released or whether the handler was himself partially at fault in advertently touching the trigger.

Under category (2) above, causation is based on physical phenomena which the defendant has largely admitted. When the trigger assembly of the Model 700 rifle becomes gummed up with solidified solvent and/or lubricants, it will unexpectedly fire when the safety is released. The presence of dust or debris makes the problem worse. The problem is still more severe in cold weather.

Under category (3) above, it is apparent that the chance of the rifle firing when the safety is released is lessened if the rifle is thoroughly cleaned, if no lubricants are used on the trigger assembly, and if only certain particular solvents are used in cleaning the rifle. Because the defendant failed to give

adequate warnings of these facts (and the malfunctions that can occur), there is a jury-submissible issue as to whether the defendant's failure in this regard was a legal cause of plaintiffs' injuries.

V

REMINGTON'S DEFENSES-BOUDREAU'S CAREFULNESS

In its Contentions of Fact (Pretrial Order at 9), defendant contends that the "proximate and legal" cause of plaintiffs' injuries was the negligence of Stephen Boudreau, the person handling the defendant's rifle at the time it malfunctioned. Defendant then goes on to allege 11 separate specifications of negligence. By so doing, defendant has attempted to raise Boudreau's conduct as an affirmative defense to this action.

Comparative fault is the law of this state. Sanford v. Chev. Div. Gen. Motors, 292 Or 590, 642 P2d 624 (1982). However, Sanford does not stand for the proposition (nor is there any authority to support the proposition) that the negligence of a product user can be raised as a partial or total defense to an action by an injured third party against a product manufacturer.

Under a general denial, defendant is entitled to attempt to prove that the sole case of the plaintiffs' injuries was the conduct of the product user. However, if the manufacturer fails in that attempt (for example, if the jury concludes that the accident was caused in part by the dangerously defective condition of the product and in part by the user's conduct), then the jury must return its verdict for all of the plaintiffs' damages

1 against the only defendant in the case--the product manufacturer.
2 The jury is not entitled to discount or compare fault. This
3 being so, the defendant is not entitled to raise Boudreau's
4 conduct affirmatively. Nor is it entitled to jury instructions
5 reciting its affirmative contentions.

6 VI

7 PRELIMINARY JURY INSTRUCTIONS

8 Plaintiffs have requested two preliminary jury instruc-
9 tions in addition to Oregon Uniform Jury Instruction 1.00. These
10 additional requested instructions cover topics which should be
11 brought to the jury's attention prior to its hearing any evi-
12 dence.

13 The first instruction relates to the Boudreau settle-
14 ment. It is based upon Yardley v. Rucker Brothers Trucking,
15 Inc., 42 Or App 239, 600 P2d 485 (1979), and Oregon Uniform Jury
16 Instruction 15.02. In essence, plaintiffs seek to have the jury
17 told about the fact of the settlement but not the amount and to
18 have the jury instructed that they are to disregard the settle-
19 ment in deciding this case.

20 The second preliminary instruction sought by plaintiffs
21 relates to the fact that there will be a number of depositions
22 read to the jury during trial. It is important that the jury
23 recognize that these depositions constitute substantive evidence
24 for their consideration along with the testimony from live


25 * * *

26 * * *

witnesses.

Respectfully submitted,

BODYFELT, MOUNT, STROUP
& CHAMBERLAIN

By 
Peter R. Chamberlain, Of
Attorneys for Plaintiffs

CERTIFICATE — TRUE COPY

I hereby certify that the foregoing copy of
 is a complete and exact copy of the original.
 Dated, 19.....

Attorney(s) for

ACCEPTANCE OF SERVICE

Due service of the within is hereby accepted
 on, 19....., by receiving a true copy thereof.

Attorney(s) for

CERTIFICATES OF SERVICE

Personal

I certify that on February 28, 19 83, I served the within Plaintiffs'
 Trial Memorandum on James D. Huegli
 attorney of record for defendant
 by personally handing to said attorney a true copy thereof.

Attorney(s) for Plaintiffs

At Office

I certify that on, 19....., I served the within
 on
 attorney of record for
 by leaving a true copy thereof at said attorney's office with his/her clerk therein, or with a person apparently in
 charge thereof, at, Oregon.

Attorney(s) for

Mailing

I hereby certify that I served the foregoing
 on
 attorney(s) of record for
 on, 19....., by mailing to said attorney(s) a true copy thereof, certified by me
 as such, contained in a sealed envelope, with postage paid, addressed to said attorney(s) at said attorney(s) last
 known address, to-wit:

 and deposited in the post office at, Oregon, on said day.
 Dated, 19.....

Attorney(s) for

BODYFELT, MOUNT & STROUP

ATTORNEYS AT LAW
 229 Mohawk Building
 Portland, Oregon 97204
 Telephone (503) 243-1022

Reported at the National Archives at Seattle
UNITED STATES DISTRICT COURT
DISTRICT OF OREGON

CIVIL MINUTES – GENERAL

C No. 81-886 LE Date February 28, 1983
Title See, et al v. Remington Arms Co., Inc.

DOCKET ENTRY

RECORD of hearing on objections to portions of the depositions to be read at trial. Refer to the stenographic record for rulings on the objections.
ORDER – Bob Spurling admitted to practice for the trial of this case.

PRESENT:

HON. Edward Leavy, JUDGE

J. Glenn

Deputy Clerk

Viola Joyner

Court Reporter

ATTORNEYS PRESENT FOR PLAINTIFFS:

ATTORNEYS PRESENT FOR DEFENDANTS:

Peter Chamberlain
Kathryn Janssen

James Huegli
Bob Spurling

PROCEEDINGS:

Reprinted from the National Archives at Seattle
UNITED STATES DISTRICT COURT
DISTRICT OF OREGON

CIVIL MINUTES – GENERAL

Case No. 81-886 LE

Date March 1, 1983

Title See, et al v. Remington Arms Co., Inc.

DOCKET ENTRY

RECORD of Jury Trial, 1st day. *jury selected and sworn. Evidence adduced. ORDER - case continued to March 2, 1983, at 9:30 a.m.*

PRESENT:

HON. Edward Leavy, JUDGE

J. Glenn

Deputy Clerk

Viola Joyner

Court Reporter

ATTORNEYS PRESENT FOR PLAINTIFFS:

Peter Chamberlain

Kathryn Janssen

ATTORNEYS PRESENT FOR DEFENDANTS:

James Huegli

Bob Spurling

PROCEEDINGS:

FILED

MAR 2 12 41 PM '83

CLERK, U.S. DISTRICT COURT
DISTRICT OF OREGON

BY

JAMES D. HUEGLI
Schwabe, Williamson, Wyatt,
Moore & Roberts
1200 Standard Plaza
1100 SW Sixth Avenue
Portland, OR 97204
Telephone: (503) 222-9981

Attorneys for Defendant

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

TERI SEE and DARREL SEE, wife
and husband,

Plaintiffs,

vs.

REMINGTON ARMS COMPANY, INC.,
a Delaware corporation,

Defendant.

No. 81-886 LE

REQUESTED VOIR DIRE
QUESTIONS BY DEFENDANT

1. Do you or any members of your family hunt?

2. Do you or any members of your family own a

Remington Rifle or any other rifle?

3. Do you or any members of your family own any

firearm?

4. Have you or any members of your family been

injured by a firearm?

5. Have you or any members of your family taken

hunter's safety courses?

6. Are you or any members of your family a member

of the National Rifle Association?

1 7. Do you feel it is dangerous to own a firearm
2 even if it's handled safely?

3 8. Do you feel ownership and possession of firearms
4 should be prohibited by law?

5 9. Do you feel ownership of firearm's should
6 be controlled by the Federal government?

7 10. Are you opposed to hunting?

8 11. Do you have an opinion as to whether it is
9 safe or unsafe to take a loaded high powered deer rifle
10 into a private home?

11 12. Do you have an opinion as to whether it is
12 safe or unsafe to consume alcoholic beverages while handling
13 loaded high-powered firearms?

14 13. All parties are equal before the law. The
15 defendant Remington should be granted equal justice and
16 consideration as the plaintiff in this case. Will you return
17 your verdict in this matter by giving each party equal consideration
18 without allowing sympathy, prejudice or bias to enter into
19 your deliberation?

20 14. Will you base your verdict on the facts as
21 you hear them and not upon speculation, conjecture or guess-work?

22 Respectfully submitted,

23 SCHWABE, WILLIAMSON, WYATT,
24 MOORE & ROBERTS

25 By: _____
26 James D. Huegli
 Attorney for Defendant

SCHWABE, WILLIAMSON, WYATT, MOORE & ROBERTS

ATTORNEYS AT LAW
1200 STANDARD PLAZA
100 S.W. 6TH AVENUE

PORTLAND, OREGON 97204
TELEPHONE (503) 222-9981

DIRECT DIAL #

CABLE ADDRESS: "ROSCAL"
TELEX - 151563
TELECOPIER - (503) 242-0287

WASHINGTON, D.C. 20007

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MILDRED J. CARMACK
DONALD A. HAAGENSEN
RUTH J. HOOPER
RALPH V. G. BAKKENSEN
ELIZABETH K. REEVE **
CHARLES R. MARKLEY
ROBERT A. STOUT
J. STEPHEN WERTS **
DANIEL F. KNOX
JAN K. KITCHEL
PAUL R. BOCCI
GUY C. STEPHENSON
WILLIAM W. YOUNGMAN
JAMES M. FINN
DENNIS S. REESE
EUGENE L. GRANT
KATHERINE H. O'NEIL
MARC K. SELLERS
ALAN S. LARSEN

ERICH H. HOFFMANN
MARY DAVIS CONDIOTTE
NANCIE POTTER ARELLANO
JOHN J. FENNERTY
ANDREW J. MORROW, JR.
MARY E. EGAN
THOMAS V. DULCICH
BRIAN M. PERKO
GARY D. KEEHN *
J. P. GRAFF
BERNARD M. RYAN
RICHARD J. KUHN
JAMES S. RICE
JANET M. SCHROER
KEVIN P. KERSTIENS
RONALD C. HOLLOWAY
CURT B. GLEAVES
DAVID K. MILLER
DAVID F. BARTZ, JR.
MARK A. LONG
STEPHEN J. DOYLE
MARK M. LECOQ
ALLAN M. MUIR
LISA L. HERSHEY

* WASHINGTON STATE BAR ONLY

** OREGON STATE AND WASHINGTON STATE BARS

February 25, 1983

HAND DELIVER

Judge Edward Leavy
U.S. District Court
Federal Courthouse
6th and Main
Portland, OR 97204

Re: See v. Remington Arms
Civil No. 81-886 LE

Dear Judge Leavy:

Please find enclosed the proposed Jury Instructions
by Remington Arms.

Very truly yours,

James D. Huegli

JDH:lr
Enclosure

cc: Peter Chamberlain

FILED

MAR 2 12 40 PM '83

CLERK OF DISTRICT COURT
DISTRICT OF OREGON

BY

JAMES D. HUEGLI
W. A. JERRY NORTH
SCHWABE, WILLIAMSON, WYATT, MOORE & ROBERTS
1200 Standard Plaza
Portland, OR 97204
Telephone: (503) 222-9981

Attorneys for Defendant

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

| | | |
|-------------------------------|---|---------------------------|
| TERI SEE and DARREL SEE, |) | |
| wife and husband, |) | |
| |) | |
| Plaintiffs, |) | Civil No. 81 886 LE |
| |) | |
| vs. |) | DEFENDANT REMINGTON ARM'S |
| |) | REQUESTED JURY |
| REMINGTON ARMS COMPANY, INC., |) | INSTRUCTIONS |
| a Delaware corporation, |) | |
| |) | |
| Defendant. |) | |

Defendant Remington Arms requests that the court instruct the jury as follows:

60

I.

CALM & DISPASSIONATE CONSIDERATION

Your verdict should be based only upon these instructions and upon the evidence in this case. It is your duty to weigh the evidence calmly and dispassionately and to decide the questions upon the merits. You are not to allow bias, sympathy or prejudice anyplace in your deliberations, for all parties are equal before the law. Neither are you to base your decisions on guesswork, conjecture or speculation.

"Oregon State Bar Uniform Instruction No. 1.02"

II.

DISPUTABLE PRESUMPTIONS

The law provides for certain disputable presumptions which are to be considered as evidence.

A presumption is a deduction which the law expressly directs to be made from particular facts and is to be considered by you along with the other evidence. However, since these presumptions are disputable presumptions only, they may be equalled or outweighed by other evidence. Unless equalled or outweighed, they are to be accepted by you as true.

The following disputable presumption is applicable in this case:

The law presumes that the gun in question was not in a defective condition, unreasonably dangerous to the user at the time it was supplied by the defendant.

"Oregon State Bar Uniform Instruction 2.02;
ORS 30.910"

IV.

BURDEN OF PROOF

Plaintiffs have the burden of proving by a preponderance of the evidence any claim of contention which they have made in this case, and in the absence of such proof, they cannot prevail as to that claim.

"Oregon State Bar Uniform Instruction 21.1"

V.

PREPONDERANCE OF EVIDENCE

"Preponderance of the evidence" means the greater weight of evidence. It is such evidence that, when weighed with that opposed to it, has more convincing force and is more probably true and accurate. If, upon any question in the case, the evidence appears to be equally balanced, or if you cannot say upon which side it weighs heavier, you must resolve that question against the plaintiffs.

"Oregon State Bar Uniform Instruction 21.02"

VI.

EXPERT WITNESS

A witness who has special knowledge, skill, experience, training or education in a particular field may give an opinion as to any matter in which the witness is so skilled. In determining the way to be given such an opinion, you should consider the qualifications and credibility of the witness and the reasons given for the opinion. You are not bound by such opinion. Give it the weight, if any, to which you deem it entitled.

"Oregon State Bar Uniform Instruction 2.07"

VII.

WITNESS FALSE IN PART

If you find that any person has intentionally given false testimony in some part, you should distrust the rest of that person's testimony.

"Oregon State Bar Uniform Instruction 2.04"

VIII.

CIRCUMSTANTIAL EVIDENCE

There are two types of evidence. One is direct evidence - such as the testimony of an eye witness. The other is circumstantial evidence - the proof of a chain of circumstances pointed to the existence or non-existence of a certain fact. Proof may be either type or both.

"Oregon State Bar Uniform Instruction 2.09"

IX.

FAULT & CAUSATION

The law presumes that all persons have obeyed the law and have been free from fault. Accordingly, the mere fact that an accident occurred or that a party sustained injury or damage is no indication of fault on the part of anyone.

In order to recover, it is necessary that the plaintiffs prove by a preponderance of the evidence that the defendant was at fault in at least one respect charged in their complaint which was the cause of damage to the plaintiffs.

"Oregon State Bar Uniform Instruction 10.01"

X.

In this case, the plaintiffs claim that the defendant is liable to them for damages in that Remington sold a gun which was in a defective condition, unreasonably dangerous either as a result of one or more alleged defects in the design of the gun, or in one or more allegations of failure to warn of the dangerously defective condition of the gun. The plaintiffs claim that one or more of these alleged defective conditions caused their injury. Defendant denies that the gun as supplied was defective or unreasonably dangerous.

I will now instruct you concerning the law which is applicable to these claims in which defines these terms. In determining whether plaintiffs are entitled to recover from the defendant, you must follow these instructions as to the law.

XI.

The law in Oregon states that a defendant who sells any product in a defective condition, unreasonably dangerous to the user or consumer, is subject to liability for physical harm caused by that condition if the seller is engaged in the business of selling such a product and if the product reaches the user without substantial change in the condition in which it is sold.

"ORS 30.920"

XII.

By defective condition, it is meant that at the time the product left the hands of the seller, it was in a condition that was not contemplated by the ultimate user, which condition made the product unreasonably dangerous to the user, as I will define that term to you in a moment.

The seller is not, however, an insurer against all harm caused by the product. The seller is not liable when it delivers the product in a safe condition, and subsequent mishandling or other causes make it harmful when used.

The burden of proof, as I define that term to you, is upon the plaintiffs to establish that the product was defective and unreasonably dangerous when it left the hands of the seller.

"ORS 30.920(3); 2 Restatement of Torts 2nd,
§402A, Comment g."

XIII.

As pointed out before, the plaintiffs must not only prove that the product was in a defective condition in one or more of the particulars alleged, but also that the condition rendered the product unreasonably dangerous. By "unreasonably dangerous", it is meant that the product must be found to be dangerous to an extent beyond that which would be contemplated by the ordinary user who buys the product, with the ordinary knowledge common to the community as to the product's characteristics. In other words, if the conditions in the product about which the plaintiffs complain are open and obvious and known to the ordinary consumer under this definition, the product is not unreasonably dangerous, and the defendant is not liable under this theory.

"ORS 30.920(3); 2 Restatement of Torts 2d, §402A, Comment i; Brown v. Linkbelt Corp., 565 F2d 1107 (9th Cir. 1977) "Construing Oregon Law".

XIV.

I instruct you that a product is not in a defective condition when it is safe for normal handling. If you find that the plaintiffs' injuries resulted from abnormal handling of the product, then the seller is not liable.

"ORS 30.920(3); 2 Restatement of Torts 2d, §402A, Comment h."

XV.

The plaintiffs cannot recover against defendant Remington unless they prove that the gun was in a defective condition, unreasonably dangerous to them as alleged in their contentions, and that such condition was the cause of their injuries. In this connection, you are instructed that if the evidence indicates that there are two or more possible causes for the plaintiffs' injuries, and that the defendant was not responsible for one or more of the possible causes, then the plaintiffs must prove by a preponderance of evidence that their injuries were the result of a cause which would render defendant Remington liable. If the evidence leaves it just as probable that their injuries were the result of one of the causes for which defendant Remington is not responsible, the plaintiffs cannot recover herein against defendant Remington.

"Landers v. Safeway Stores, Inc., 172 Or 116, 139 P2d 788 (1943)."

XVI.

The plaintiffs contend that the defendant had a duty to warn of certain risks with regard to the gun. I instruct you that the seller is not required to warn with respect to products when the danger, or potentiality of danger, is generally known and recognized.

I further instruct you that where the seller has given a warning, the seller may reasonably assume that it will be read and heeded. Where a seller has supplied a warning with its product such that the product is safe for use if the warning is followed, then I instruct you that such a product is not in a defective condition, nor is it unreasonably dangerous on the basis of failure to warn.

"ORS 30.920(3); 2 Restatement of Torts 2d, §402A, Comment j."

XVII.

If you find that the user of the gun, Mr. Stephen Boudreau, was aware of the risk of serious injury if he positioned the safety mechanism in the "fire" position with his finger on the trigger, then you cannot find that the accident was caused by any deficiency in the instructions and warnings.

"Nelson v. Brunswick Corp., 503 F2d
376, 379 (9th Cir. 1974)"
"Applying Washington Law".

XVIII.

In designing, manufacturing and selling a product, a defendant is entitled to expect or foresee normal use of the product, and the defendant is not liable if the product was being used in a way other than it was intended to be used.

"Newman v. Utility Trailer, 278 Or
395, 564 P2d 674 (1977)"

XIX.

The fact that other manufacturers may design guns in a different manner, which one or more witnesses may have claimed to be better or safer, standing alone, is not proof that the gun in question was defectively designed.

"Quirk v. Ross, 257 Or 80, 87, 476
P2d 559 (1970)."

1 XX.

2 I further instruct you that the fact that other
3 complaints were made to Remington Arms by customers in and
4 of itself is not to be considered any evidence that their
5 guns were defective or dangerous in any way.
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81-8862E

Def't's Requested Jury Instruction

FILED

XXI.

MAR 2 5 10 PM '83

CLERK, U.S. DISTRICT COURT

BY

JS

There are two types of product defects which you have heard today. The first type of defect is called a defect of design. The second defect is a defect in the manufacturing process. In the case you are to consider, I instruct you that there is no manufacturing defect in the rifle which shot Teri See.

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UNITED STATES DISTRICT COURT
DISTRICT OF OREGON

CIVIL MINUTES - GENERAL

C No. 81-886 LE Date March 2, 1983
Title Lee, et al V. Remington Arms

DOCKET ENTRY

RECORD of jury trial, 2nd day. Evidence adduced. ORDER - case
continued to March 3, 1983, at 9:00 a.m.

PRESENT:

HON. Edward Leary, JUDGE
J. Glenn Deputy Clerk Viola Joyner Court Reporter

ATTORNEYS PRESENT FOR PLAINTIFFS:

Peter Chamberlain
Kathryn Janssen

ATTORNEYS PRESENT FOR DEFENDANTS:

James Kuegli
Bob Spurling

PROCEEDINGS:

FILED

81-886 LE

REQUESTED INSTRUCTION NO.

MAR 3 10 03 AM '83

"Misuse," "abuse," or "abnormal use," is ~~an~~ use so

CLERK OF COURT

BY

unusual that the average user would not have reason to expect the product to continue to perform safely.

Findlay v. Copeland Lumber, 265 Or 300 (1973);

Restatement (Second) of Torts, §402A, Comment h.

Page

- PLAINTIFFS' REQUESTED JURY INSTRUCTIONS

BODYFELT, MOUNT, STROUP & CHAMBERLAIN
Attorneys at Law
214 Mohawk Building
Portland, Oregon 97204
Telephone (503) 243-1022

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UNITED STATES DISTRICT COURT
DISTRICT OF OREGON

CIVIL MINUTES - GENERAL

Case No. 81-886 LE Date March 3, 1983
Title See V. Remington Arms

DOCKET ENTRY

RECORD of Jury Trial, 3rd day. Evidence adduced. ORDER - def's
oral motions for partial directed verdict denied. ORDER - case
continued to March 4, 1983, at 9:00 a.m.

PRESENT:

HON. Edward Leary, JUDGE
J. Glenn Viola Joyner
Deputy Clerk Court Reporter

ATTORNEYS PRESENT FOR PLAINTIFFS:

Peter Chamberlain
Kathryn Jansen

ATTORNEYS PRESENT FOR DEFENDANTS:

James Mugli
Bob Sparling

PROCEEDINGS:

UNITED STATES DISTRICT COURT
DISTRICT OF OREGON

CIVIL MINUTES - GENERAL

Case No. 81-886 LE

Date March 4, 1983

Title See, et al v. Remington Arms

DOCKET ENTRY

RECORD of Jury Trial, 4th day. Evidence adduced. ORDER - Pltf's oral motion to amend contention G1 is allowed. ORDER - refer to the stenographic record for rulings on Deft's oral motions for directed verdict. ORDER - refer to stenographic record for ruling on Pltf's oral motion to strike contentions of fact. Jury instructed and bailiff sworn. Jury retires to deliberate at 7:25 p.m. ORDER - jury be furnished with a meal. Jury returns at 10:30 p.m. with verdict for the deft and against pltf. Jury polled and discharged. Judgment for deft.

(List of exhibits & witnesses and jury list attached.)

ORDER - the following exhibits returned to counsel: 2, 31, 44, 45, 46, 111, 112, 113, 211, 228, 229, 230 and 104 and 212.

PRESENT:

HON, Edward Leavy, JUDGE

J. Glenn

Deputy Clerk

Viola Joyner

Court Reporter

TORNEYS PRESENT FOR PLAINTIFFS:

Peter Chamberlain
Kathryn Janssen

ATTORNEYS PRESENT FOR DEFENDANTS:

James Huegli
Bob Spurling

PROCEEDINGS:

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JURY LIST

Teri See and Darrel See,

PLAINTIFF

AGAINST

Remington Arms Company, Inc.,

DEFENDANT

Civil No. 81-886 LE

Reprinted from the National Archives at Seattle

| NAMES OF JURORS | EXCUSED BY | | | | |
|-----------------------|------------|-----|-----------|-----|-------|
| | PLAINTIFF | | DEFENDANT | | COURT |
| | C | PER | C | PER | |
| ① 1 Diane Ackersonman | | | | | |
| 2 John Adams | | ✓ | | | |
| 3 John De Lacy | | | | ✓ | |
| ② 4 Bruce Skurdahl | | | | | |
| ③ 5 Gregory Casich | | | | | |
| 6 Ambrose Fieber | | ✓ | | | |
| 7 Calvin Rogers | | ✓ | | | |
| ④ 8 Edward Mattingly | | | | | |
| 9 Shirley Unger | 1 | | ✓ | ✓ | |
| ⑤ 10 Terri Wilkerson | | | | | |
| ⑥ 11 Donna Gates | | | | | |
| 12 Gary Tenhand | | | | | |
| 13 | | | | | |
| 14 | | | | | |
| 15 Merle Scribner | | ✓ | | | |
| 16 David Printz | | | | ✓ | |
| ① 17 Frank Collins | | | | | |
| 18 | | | | | |
| 19 Pity Waived | 1 | | | | |
| 20 | 2 | | | | |
| 21 | 3 | | | | |
| 22 | | | | | |
| 23 Deft Waived | 1 | | | | |
| 24 | 2 | | | | |
| 25 | 3 | ✓ | | | |
| 26 Alternates | | | | | |
| 27 Pity Waived | | | | | |
| 28 Deft Waived | | | | | |

LIST OF EXHIBITS AND WITNESSES
Continued

Case No. 81-886 LE

Title See v. Remington Arms

| Plf-Label | | | Dft-Respt | | | DATE | EXHIBITS/ WITNESSES | Called by |
|-----------|-----|-----|-----------|-----|-----|--------|--|-----------|
| Ex. No. | Id. | ev. | Ex. No. | Id. | ev. | | | |
| | | | | | | | Gerald Cunningham (deposition read) | Plt |
| | | | | | | | Gabriel A. Kennedy (deposition read) | Plt |
| | | | | | | | Sidney Vern Jackson (deposition read) | Plt |
| | | | | | | | Ronald Klossowski (deposition read) | Plt |
| | | | | | | | James Sanders (deposition read) | Plt |
| | | | | | | | Gerald Hill (deposition read) | Plt |
| 1 | R | | | | | | Gun examination report #599 | |
| 11 | R | | | | | | Gun examination report | |
| 13 | R | | | | | | Gun exam. report | |
| 14 | R | | | | | | Gun exam report | |
| 15 | R | | | | | | Gun exam. report | |
| 6 | R | | | | | | Gun exam. report | |
| | | | | | | 3/2/83 | | |
| 3 | R | | | | | | Gun exam. report | |
| 12 | R | | | | | | Gun exam. report | |
| 16 | R | | | | | | Gun exam. report | |
| | | | | | | | Marshall Hardy (deposition read) | Plt |
| | | | | | | | Robert F. Joy (deposition read) | Plt |
| 8 | R | | | | | | Gun exam. report | |
| 9 | R | | | | | | Gun exam. report | |
| | | | | | | | James Suddaker (deposition read) | Plt |
| | | | | | | | James Stetel | Plt |
| 17 | R | | | | | | Chart - enlargement of the lubrication section of ex. 10 | |
| 20 | R | | | | | | Gun exam report | |
| 19 | R | | | | | | Gun exam report | |
| 23 | R | | | | | | Gun exam report | |
| 42 | R | | | | | | Gun exam report | |
| 17 | R | | | | | | Gun exam report | |
| 41 | R | | | | | | " " | |
| 21 | R | | | | | | " " | |
| 39 | R | | | | | | " " | |
| 22 | R | | | | | | " " | |
| 40 | R | | | | | | " " | |
| 24 | R | | | | | | " " | |

Referenced in the National Archives at Seattle

LIST OF EXHIBITS AND WITNESSES
Continued

Case No. 81-886 LE

Title See v. Remington Arms

| Plf-Def/Int | | | Def-Respdt | | | DATE | EXHIBITS/ WITNESSES | Called by |
|-------------|-----|-----|------------|-----|----------|--------|--|-----------|
| Ex. No. | id. | ev. | Ex. No. | id. | ev. | | | |
| 26 | | R | | | | | Gun exam. report | |
| 25 | | R | | | | | Gun exam. report | |
| 113 | | R | | | | | Remington Model 591M | |
| 31 | | R | | | | | Remington Model 788 rifle | |
| | | | | | | | Stephen Boudreau | Pltf |
| | | | 206 | | R | | Owner's Manual | |
| | | | 209 | | R | | Statement by Stephen Boudreau | |
| 34 | | R | | | | | Drawing of gun | |
| | | | | | | | Eugene Perrin, M.D. | Pltf |
| 114 | | R | | | | | St. Vincent Hosp. med. records | |
| | | | | | | | Starr Boudreau | Pltf |
| | | | 210 | | R | | Drawing of Boudreau house | |
| | | | | | | | Tony Varnum (deposition read) | Pltf |
| 89 | | R | | | | | Defts ans. to pltf's 1st & 2nd sets of interrogatories | |
| 5 | | R | | | | | Gun exam report | |
| 7 | | R | | | | | Gun exam report | |
| 27 | | R | | | | | " " | |
| 28 | | R | | | | | " " | |
| 29 | | R | | | | | " " | |
| 30 | | R | | | | | " " | |
| 33 | | R | | | | | Sheriff's Dept. Officer's Report | |
| 95 | | R | | | | | Remington's brochure to promote sales | |
| | | | | | | | Tanna S. Martin | Pltf |
| 48 | | R | | | | | Photograph blowup of trigger assembly | |
| 49 | | R | | | | | " " | |
| 50 | | R | | | | | " " | |
| 59A | | R | | | | | Drawing of trigger mechanism | |
| 59B | | R | | | | | " " | |
| | | | 209A | | excluded | 3/3/83 | originally part of defts 209 & excluded | |
| | | R | | | | | Remington Model 700 rifle (auto. safety installed by Martin) | |
| 111 | | R | | | | | Mossberg Model 800A Cal. 308 Win. | |
| 112 | | R | | | | | Stevens (Savage Arms) Model 34 | |
| 44 | | R | | | | | Winchester Model 70 rifle | |

Ref: Am. Nat. Archives at Seattle

LIST OF EXHIBITS AND WITNESSES

| | | | |
|-----------------|--|-------|--------------|
| Civil No. | Civil No. 81-886 LE | Judge | Edward Leavy |
| Title | Teri See and Darrel See vs. Remington Arms Co., Inc. | | |
| Dates of Trial | March 1, 1983 | | |
| Court Reporters | Viola Joyner | | |
| Deputy Clerk | Jane Glenn | | |

| | | | | |
|--|---------------------------|--------------------|--------------------------|--|
| Representative of the National Archivist | Attorneys for Plf-Libelnt | | Attorneys for Dft-Respdt | |
| | Peter Chamberlain | | James Huegli | |
| | Kathryn Janssen | | | |
| | Jurors: | | | |
| | 1. Duane Ackermann | 5. Tress Wilkerson | | |
| | 2. Bruce Skurdahl | 6. Donna Hates | | |
| | 3. Gregory Carich | Alternate | | |
| | 4. Edward Mattingly | Frank Collins | | |

| Plf-Libelnt | | | Dft-Respdt | | | EXHIBITS | WITNESSES | Called by |
|-------------|-----|-----|------------|-----|-----|---|-----------|-----------|
| Ex. No. | Id. | ev. | Ex. No. | Id. | ev. | | | |
| 52 | R | | | | | Photo | | |
| 51 | R | | | | | Photo | | |
| 53 | R | | | | | Photo | | |
| 2 | R | | | | | Rem - Remington Model 700 (involved in shooting of pty) | | |
| 47 | R | | | | | Photograph blowup trigger assembly | | |
| 10 | R | | | | | owner's manual | | |
| | | | | | | Teri See | | Pety |
| | | | | | | Darrel See | | Pety |
| 117 | R | | | | | Photo | | |
| 118 | R | | | | | Photo | | |
| 119 | R | | | | | Photo | | |
| | | | | | | James Henderson (deposition read) | | Pety |
| | | | | | | Dr. Timothy A. Patrick | | Pety |
| 55A | R | | | | | Chart - left leg muscle | | |
| 55B | R | | | | | Chart - leg muscle | | |
| 55C | R | | | | | Chart - leg muscle | | |
| 54 | R | | | | | Columbia Mem. Hosp. records | | |
| | | | | | | Fred Avila (deposition read) | | Pety |
| | | | | | | Helmut G. Bentlin (deposition read) | | Pety |

LIST OF EXHIBITS AND WITNESSES
Continued

| Case No. 81-886LE | | | Title Lee, et al v. Remington Arms | | | | | |
|-------------------|----------|-----|------------------------------------|-----|-----|--------|--|-----------|
| Plf-Labelnt | | | Dft-Respdnt | | | DATE | EXHIBITS/ WITNESSES | Called by |
| Ex. No. | id. | ev. | Ex. No. | id. | ev. | | | |
| 46 | R | | | | | | Springfield '03 rifle | |
| 85 | | | | | | | Tag | |
| | | | 211 | | | | Winchester rifle model 94 | |
| 18 | Rejected | | | | | | | |
| 90 | Rejected | | | | | | | |
| 91 | Rejected | | | | | | | |
| 92 | Rejected | | | | | | | |
| 82 | Rejected | | | | | | | |
| 75 | Rejected | | | | | | | |
| 78 | Rejected | | | | | | | |
| 79 | Rejected | | | | | | | |
| | | | | | | | It. Daniel Laughman | Deft |
| | | | | | | | John Linde | Deft |
| | | | 212 | R | | | Training aids | |
| | | | 213 | R | | | Sketch model 700 rifle | |
| 93 | Rejected | | | | | | Booklet published by Iarnie | |
| 4 | R | | | | | | Remington Field Service Manual for Model 700 | |
| | | | | | | | William Davis | Deft |
| | | | 217 | R | | | Photo of thermometer in cold box | |
| | | | 218 | R | | | Photo of gun inside cold box | |
| | | | 219 | R | | | Photo Davis removing gun from cold box | |
| | | | 220 | R | | | Photo of gun in cradle | |
| | | | 221 | R | | | Photo of hand trying to disengage safety | |
| | | | 216 | R | | | Photo | |
| | | | 214 | R | | | Photo enlarged form of 215 | |
| | | | 215 | R | | | Photo trigger assembly w/ rear pin removed | |
| | | | 222 | R | | | Photo | |
| | | | 223 | R | | | Photo | |
| | | | 224 | R | | | Photo | |
| | | | 225 | R | | | Photo of trigger | |
| | | | | | | 3/4/83 | | |
| | | | 204 | R | | | Weather Report | |
| | | | 226 | R | | | Caliber 308 empty primed cartridge | |
| | | | 227 | R | | | Caliber 22 rim fire blank cartridge | |

Reported to the National Archives at Seattle

6

Tide

See, et al. v. Remington Arms

Representative of the National Archives at Seattle

U.S. DISTRICT COURT
DISTRICT OF OREGON

FILED

MAR -4 1983

ROBERT M. CHRIST, CLERK
BY *[Signature]* DEPUTY

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

TERI SEE and DARREL SEE,
wife and husband,

Plaintiffs,

vs.

REMINGTON ARMS COMPANY, INC.,
a Delaware corporation,

Defendant.

No. 81-886-LE

VERDICT FOR DEFENDANT
REMINGTON ARMS

We, the jury, first being duly impaneled and
sworn, find our verdict for the defendant, Remington Arms
Company, Inc.

DATED this 4th day of March, 1983.

Gregory L. Carich
Foreperson

FILED

MAR 7 4 36 PM '83 *myd*

CLERK OF DISTRICT COURT
DISTRICT OF OREGON

BY *[Signature]*

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

TERI SEE and DARREL SEE,
wife and husband,

Plaintiffs,

v.

REMINGTON ARMS COMPANY, INC.,
a Delaware corporation,

Defendant.

Civil No. 81-886 LE

JUDGMENT

This action came on for trial before the Court and a jury, Honorable Edward Leavy, Magistrate, presiding, and the issues having been duly tried and the jury having duly rendered its verdict,

IT IS ORDERED AND ADJUDGED that the plaintiffs take nothing and that the action be dismissed on the merits.

Dated this 27 day of March, 1983.

[Signature]
Clerk of Court

AO 133
(Rev 7/82)

BILL OF COSTS

FILED

| | |
|---|---|
| <p style="text-align: center; font-size: 1.2em; font-weight: bold;">United States District Court</p> <p>TERI SEE AND DARREL SEE, wife and husband,</p> <p style="text-align: center;">v.</p> <p>REMINGTON ARMS COMPANY, INC., a Delaware corporation,</p> | <p>DISTRICT OF OREGON</p> <p>DOCKET NO. <u>MAR 16 11 18 AM '83</u></p> <p>CLERK, U.S. DISTRICT COURT DISTRICT OF OREGON</p> <p>MAGISTRATE CASE NO. <u>81-886 LE</u> BY <u>[Signature]</u></p> |
|---|---|

Judgment having been entered in the above entitled action on March 7, 1983 against Teri See and Darrel See
date the clerk is requested to tax the following as costs:

BILL OF COSTS

| | |
|---|-------------|
| Fees of the clerk | \$ |
| Fees for service of summons and complaint | |
| Fees of the court reporter for all or any part of the transcript necessarily obtained for use in the case | 846.80 |
| Fees and disbursements for printing | 5,107.00 |
| Fees for witnesses (itemized on reverse side) | |
| Fees for exemplification and copies of papers necessarily obtained for use in case | 17.00 |
| Docket fees under 28 U.S.C. § 1923 | 20.00 |
| Costs incident to taking of depositions | 89.00 |
| Costs as shown on Mandate of Court of Appeals | |
| Other costs (Please itemize) (see Affidavit) | 502.40 |
| | |
| TOTAL | \$ 6,582.20 |

SPECIAL NOTE: Attach to your bill an itemization and documentation for requested costs in all categories. Briefs should also be submitted supporting the necessity of the requested costs and citing cases supporting taxation of those costs.

DECLARATION

I declare under penalty of perjury that the foregoing costs are correct and were necessarily incurred in this action and that the services for which fees have been charged were actually and necessarily performed. A copy hereof was this day mailed with postage fully prepaid thereon to:

SIGNATURE OF ATTORNEY

[Signature]

Remington Arms Company, Inc.

DATE 3/15/83

Please take notice that I will appear before the clerk who will tax said costs on the following day and time:

DATE AND TIME

Costs are hereby taxed in the following amount and included in the judgment:

AMOUNT TAXED

\$ 6,582.20

CLERK OF COURT

[Signature]

(BY) DEPUTY CLERK

DATE

April 5, 1983

James D. Huegli
 SCHWABE, WILLIAMSON, WYATT,
 MOORE & ROBERTS
 1200 Standard Plaza
 1100 SW Sixth Avenue
 Portland, OR 97204
 Telephone: (503)222-9981

Attorneys for Defendant

UNITED STATES DISTRICT COURT
 FOR THE DISTRICT OF OREGON

TERI SEE and DARREL SEE, wife
 and husband,

Plaintiffs,

v.

REMINGTON ARMS COMPANY, INC.,
 a Delaware corporation,

Defendant.

Civil No. 81-886 LE

AFFIDAVIT OF JAMES D. HUEGLI
 IN SUPPORT OF COST BILL

STATE OF OREGON)
) ss.
 COUNTY OF MULTNOMAH)

I, JAMES D. HUEGLI, being first duly sworn, depose and say:

That I am one of the attorneys for Remington Arms Company,
 Inc., the Defendant herein, and if called to testify in a court of
 law, could and would testify from my own personal knowledge as
 follows:

I have been admitted to the Oregon State Bar since 1972 and
 am presently a partner in the law firm of Schwabe, Williamson, Wyatt,
 Moore & Roberts, Portland, Oregon. With respect to the costs incurred
 in this case, I have kept careful records of all necessary expenditures

1 incurred by Defendant, Remington Arms Company, Inc. in defense of
2 this case.

3 In the Bill of Cost, the total fees of the court reporter
4 for transcripts necessarily obtained for use in this case are broken
5 down as follows:

6 Martin Murphy (Transcripts of depositions
7 of John Linde, James Stekl, Marshall Hardy,
8 Gerald Hill, Robert Joy, James Snedeker,
taken August 16, 17 & 18, 1982 in Ilion,
New York) \$796.50

9 Geesman & Associates (transcripts of
10 depositions of Sydney Jackson, Gerald
Cunningham and James Reddick taken August
4 & 5, 1982) 49.30

11 TOTAL: \$846.80

12
13 Under the category "Fees for Witnesses" as itemized on the
14 reverse side of the Bill of Costs, the subsistence and mileage
15 figures are true and accurate to the best of my knowledge.

16 Description of the "Costs Incident to Taking of Depositions"
17 is as follows:

18 Deposition of James McDermott, April 2, 1982,
19 witness and mileage fees \$ 32.00

20 Deposition of Daniel Laughman, April 2, 1982,
21 witness and mileage fees 32.00

22 Clatsop County Sheriff, service fee (3/24/82) 25.00

23 TOTAL: \$ 89.00

24 Under the category "Fees for Copies of Papers . . ." Defendant
25 Remington Arms Company, Inc. has incurred the following cost:

26 Weather report used as exhibit from the
National Climatic Center \$ 17.00

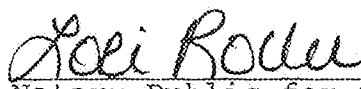
Under the category "Other Costs," Defendant Remington Arms Company, Inc. has incurred the following costs:

| | |
|--|---------------|
| Shipping bill to transport one scale model 700 trigger housing assembly from Remington Arms in Ilion, New York to the trial and back to Remington Arms (used as exhibit in trial.) | \$268.00 |
| Rental of five rifles used as exhibits | <u>234.40</u> |
| TOTAL: | \$502.40 |

I believe that these costs are ordinary and reasonable and verily state that they have been incurred by the Defendant, Remington Arms Company, Inc.


JAMES D. HUEGLI

SUBSCRIBED AND SWORN to before me this 16th day of March, 1983.


Notary Public for Oregon.
My Commission Expires: 7/4/83

CERTIFICATE — TRUE COPY

I hereby certify that the foregoing copy of is a complete and exact copy of the original.

Dated, 19.....

Attorney(s) for

ACCEPTANCE OF SERVICE

Due service of the within is hereby accepted on, 19....., by receiving a true copy thereof.

Attorney(s) for

CERTIFICATES OF SERVICE

Personal

I certify that on, 19....., I served the within on attorney of record for by personally handing to said attorney a true copy thereof.

Attorney(s) for

At Office

I certify that on, 19....., I served the within on attorney of record for by leaving a true copy thereof at said attorney's office with his/her clerk therein, or with a person apparently in charge thereof, at, Oregon.

Attorney(s) for

Mailing

I hereby certify that I served the foregoing Bill of Costs and Affidavit in Support on Peter R. Chamberlain

attorney(s) of record for Plaintiffs on March 16, 19 83, by mailing to said attorney(s) a true copy thereof, certified by me as such, contained in a sealed envelope, with postage paid, addressed to said attorney(s) at said attorney(s) last known address, to-wit: 214 Mohawk Building, 708 SW Third Avenue, Portland, OR 97204

and deposited in the post office at Portland, Oregon, on said day.
Dated March 16, 19 83

Attorney(s) for Defendant

SCHWABE, WILLIAMSON, WYATT,
MOORE & ROBERTS
ATTORNEYS AT LAW
1200 Standard Plaza
Portland, Oregon 97204
Telephone 222-9981

April 5, 1983

Mr. Richard Bodyfelt
Bodyfelt, Mount & Stroup
Attorneys at Law
229 Mohawk Building
222 SW Morrison Street
Portland, Oregon 97204

Mr. James F. Spiekerman
Schwabe, Williamson, Wyatt,
Moore & Roberts
Attorneys at Law
1200 Standard Plaza
1100 SW Sixth Avenue
Portland, Oregon 97204

Dear Messrs. Bodyfelt & Spiekerman:

Re: See v. Remington Arms Company
Civil No. 81-886-LE

Costs in the above case have been taxed against
plaintiff and in favor of defendant in the amount of \$6,582.20.
These sums have been entered in the records of the court
today.

Very truly yours,

Robert M. Christ, Clerk

pj

FILED

APR 12 4 51 PM '83

CLERK, U.S. DISTRICT COURT
DISTRICT OF OREGON

BY 

ld 7 extra pg 6

JAMES D. HUEGLI
Schwabe, Williamson, Wyatt,
Moore & Roberts
1200 Standard Plaza
1100 SW Sixth Avenue
Portland, OR 97204
Telephone: (503) 222-9981

Attorneys for Defendant

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

TERI SEE and DARREL SEE, wife
and husband,

Plaintiffs,

vs.

REMINGTON ARMS COMPANY, INC.,
a Delaware corporation,

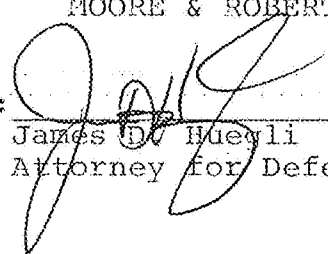
Defendant.

No. 81-886 LE

SATISFACTION OF COST BILL

Defendant Remington Arms Company hereby represents
to the Court that defendant's Cost Bill of \$6,582.20 has been
satisfied in full by plaintiff.

SCHWABE, WILLIAMSON, WYATT,
MOORE & ROBERTS

By: 
James D. Huegli
Attorney for Defendant.

SATISFACTION OF COST BILL

SCHWABE, WILLIAMSON, WYATT, MOORE & ROBERTS
Attorneys at Law
1200 Standard Plaza
Portland, Oregon 97204
Telephone 222-9981

69

CERTIFICATE — TRUE COPY

I hereby certify that the foregoing copy of _____
_____ is a complete and exact copy of the original.

Dated _____, 19____.

Attorney(s) for _____

ACCEPTANCE OF SERVICE

Due service of the within _____ is hereby accepted
on _____, 19____, by receiving a true copy thereof.

Attorney(s) for _____

CERTIFICATES OF SERVICE

Personal

I certify that on _____, 19____, I served the within _____
_____ on _____
attorney of record for _____
by personally handing to said attorney a true copy thereof.

Attorney(s) for _____

At Office

I certify that on _____, 19____, I served the within _____
_____ on _____
attorney of record for _____
by leaving a true copy thereof at said attorney's office with his/her clerk therein, or with a person apparently in
charge thereof, at _____, Oregon.

Attorney(s) for _____

Mailing

I hereby certify that I served the foregoing Satisfaction of Cost Bill
_____ on Peter R. Chamberlain,
_____ attorney(s) of record for Plaintiff
on April 12, 1983, by mailing to said attorney(s) a true copy thereof, certified by me
as such, contained in a sealed envelope, with postage paid, addressed to said attorney(s) at said attorney(s) last
known address, to-wit: 708 SW Third Avenue, Portland, OR 97204

and deposited in the post office at Portland, Oregon, on said day.

Dated April 11, 1983.


Attorney(s) for Defendant

SCHWABE, WILLIAMSON, WYATT,
MOORE & ROBERTS

ATTORNEYS AT LAW
1200 Standard Plaza
Portland, Oregon 97204
Telephone 222-9981

U. S. DISTRICT COURT
DISTRICT OF OREGON
E A L E D N

APR 2 1983

ROBERT M. CHAMBERLAIN, CLERK
BY  DEPUTY

UNITED STATES DISTRICT COURT
DISTRICT OF OREGON

SEE, et al

Plaintiff(s)

vs.

REMINGTON ARMS

Defendant(s)


CRIMINAL OR
CIVIL NO. 81-806 LE

RECEIPT FOR EXHIBITS

I hereby receipt for the following exhibits:

All Plaintiff's Exhibits in the above titled case.

Dated: 4/27/83


Attorney for: Peter R. Chamberlain

Deputy Clerk: 