

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
COUNTY DEPARTMENT, LAW DIVISION



**FILED**

MAY 19 1988

CLERK OF THE CIRCUIT COURT

No. 83 L 17606

BARBARA SEYFERTH, or herself,  
as Executor of the Estate of  
DIETER H. SEYFERTH, and as  
representative and next friend  
of her minor child, NORBERT  
SEYFERTH, and DIETER SEYFERTH,  
JR., and GERHARD SEYFERTH,

Plaintiffs,

v.

JOSEF OFFENWANGER AND REMINGTON  
ARMS COMPANY, INC., a foreign  
corporation,

Defendants.

JOSEF OFFENWANGER,

Counterplaintiff,

v.

REMINGTON ARMS COMPANY, INC.,  
a foreign corporation,

Counterdefendant.

90649

3117  
3321  
2870

RESPONSE TO PLAINTIFF'S UNVERIFIED  
MOTION TO COMPEL AND FOR SANCTIONS

Defendant, REMINGTON ARMS COMPANY, INC., ("Remington")  
responds to Plaintiff's UNVERIFIED Motion to Compel and for  
Sanctions and asks the Court to enter an order denying the relief  
requested.

In support of its Response, Remington states as follows:

1. Remington maintains records of its business activity in accordance with an established Records Retention Policy that provides for the orderly maintenance of those records necessary to protect Remington's interests and, in the interest of economy and efficiency, provides for the prompt disposal of records as they cease to have value for administrative, financial, legal, operational or research purposes. Litigation files (files of specific cases) are maintained under the Record Retention Policy for a period of six years after conclusion of the litigation. Customer complaint files which contain gun examination reports not involved in litigation are maintained for three years after resolution of the complaint. In 1984, Remington agreed with the parties to this case to retain, except for explosion cases Model 700 litigation files and Model 700 customer complaint files not involved in litigation during the pendency of this case.

2. Throughout the course of discovery in this case Remington has responded to plaintiffs' interrogatories and requests for production of documents by searching its central files most likely to have relevant information for documents falling within the scope of the interrogatory or request. Copies were then made of all documents covered by the inquiry and those copies were produced to the parties requesting them. (Original documents remain with the company; they are not sent to outside attorneys.) This procedure is the same as followed in responding to discovery in all litigated matters.

3. At the request of the parties in this case and using the procedures outlined above, Remington searched for and produced documents regarding customer complaints and inspections concerning the Model 700 rifle. Production took place in September, 1984 and, after discussions between the parties, in February 1985.

4. In Fall, 1984, Remington also responded to detailed interrogatories concerning claims for personal injury involving the Model 700 rifle (excluding explosions) or alleged accidental discharge thereof. Remington provided specific information about 24 claims going back in at least one case to the early 1970's. In 20 instances, Remington supplied the name of the plaintiff, the name and address of the plaintiffs' attorney, the court where the action was brought, the case number and a summary of facts. In four cases where records were no longer available, Remington supplied such information as was available. Copies of the information supplied concerning other cases is attached as Exhibit A.

5. Plaintiffs' attorneys in various Model 700 cases have accumulated documents from other earlier Model 700 cases and used those documents in the more recent litigation. Plaintiffs' attorneys in this case, as well as counsel for co-defendant, Offenwanger, are believed to have been in contact with various plaintiffs' attorneys in other (pending and closed) Model 700 cases and have obtained documents from them. Indeed exhibits at

various depositions in this case (such as Barrett and Nicol) have been documents plaintiffs' attorneys, or counsel for co-defendant, Offenwanger, obtained directly or indirectly from attorneys involved in earlier Model 700 cases (such as Ahlschlager, Lewy or Thomsen).

6. Plaintiffs' motion specifically refers to the case of Lewy v. Remington Arms Company, Inc., 836 F 2d 1104 (8th Cir. 1988). In that case, Remington responded to discovery and produced documents at approximately the same time as in this case - 1984-1985. In each instance, Remington responded to the specific inquiries propounded to it. In the Lewy case, as in this one, the production of customer complaints and gun examination reports was necessarily limited to such records as existed at the time of production. Plaintiffs' counsel in Lewy obtained documents from other cases (Thomsen) and used them in the Lewy case.

7. Plaintiffs assert that the Court of Appeals in the Lewy case referred to customer correspondence with Remington, dating back to the early 1970's and complaining about Model 700 rifles firing on safety release (FSR). Plaintiffs' claim these documents were produced by Remington in the Lewy case but not in this case.

8. The documents referred to in the Court of Appeals opinion in the Lewy case (Footnote No. 1) did not relate to the

early 1970's, but instead related to the early 1980's. In particular, the references cited in Footnote No. 1 of the Lewy opinion are to four pieces of customer correspondence involving a S. V. Jackson, J. Hooten and C. E. Thomas, Jr. They relate to three Gun Examination Reports (GER's), two of which (J. Hooten and C. E. Thomas, Jr.) have been produced by Remington in this case. Remington cannot presently determine if the Jackson GER or the correspondence referred to in the Lewy opinion footnote No. 1 were produced by Remington or by plaintiffs' counsel in the Lewy or other cases. However, the Gun Examination Reports relating to three of the four pieces of correspondence referred to in footnote No. 1 in Lewy have been produced by Remington in this case. They detail the name and addresses of the consumers involved, the nature of the complaint, the serial number of the firearm and the information reported about the incident. With respect to the Jackson incident, Mr. Jackson has testified as a witness for the plaintiff in See v. Remington Arms Company, Inc., in Oregon in March, 1983 but Remington does not know the source of the Jackson document referred to in the Lewy opinion Footnote No. 1.

9. Contrary to the suggestions in plaintiffs' motion in this case, detailed information about customer complaints referred to in the Lewy opinion was produced in this case. In addition in the Lewy case and this case, Remington produced a memorandum from G. W. Martin to E. F. Barrett dated May 20, 1975 with various attached gunsmith call reports dating back to the

early 1970's This memorandum and the attached gunsmith call reports may have been the source of the Eighth Circuit's confusion in Footnote No. 1 of its opinion.

10. Plaintiffs allege that Remington caused a protective order to be entered in the Lewy case which has prevented their attorneys from identifying the exact documents produced in that case but not in this one. Plaintiffs' allegation is untrue as is the inference it attempts to create. The protective order entered in the Lewy case is attached hereto as Exhibit B. It protects only Remington Operations Committee Minutes and reports or summaries of focus panels (market research) conducted by Remington or hired market analysts. No protective order was ever entered in any case prior to Lewy as the protected documents had not been previously requested, and no protective order in any Remington case has ever prevented disclosure of customer complaints or examination reports. Clearly, the protective order in the Lewy case has not prevented the plaintiffs in this case Lewy case or from having access to or using documents from the Lewy case or earlier Model 700 cases in this action.

WHEREFORE, defendant, REMINGTON ARMS COMPANY, INC. prays the Court to deny Plaintiffs' motion in all respects.

REMINGTON ARMS COMPANY, INC.

By: William E. Kelly  
One of Its Attorneys

OF COUNSEL:

William E. Kelly  
Pope, Ballard, Shepard  
& Fowle, Ltd.  
69 West Washington Street  
Chicago, Illinois 60602  
(312) 630-4200

Verification

James C. Hutton, being duly sworn on oath, states:

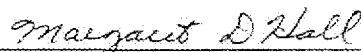
1. He is Senior Staff Engineer, for the Ilion Research Division of Remington Arms Company, Inc., and its representative in this case. He is the person who collected information and documents to respond to Interrogatories and Requests for Production of Documents in this case. He has had similar duties and responsibilities in other such cases involving the Remington Model 700 rifle, including the Lewy case.

He has read the Response of Remington Arms Company, Inc. to Plaintiff's Motion to Compel and For Sanctions and the factual statements contained therein, and states that those statements are true and correct to the best of his knowledge, information and belief.

  
James C. Hutton

STATE OF NEW YORK       )  
                                  ) SS  
COUNTY OF HERKIMER    )

Subscribed and sworn to before  
me on this 18<sup>th</sup> day of May, 1988.

  
Notary Public

MARGARET D. HALL  
4637696  
NOTARY PUBLIC, STATE OF NEW YORK  
REGISTERED IN HERKIMER COUNTY  
MY COMMISSION EXPIRES 1-31-89



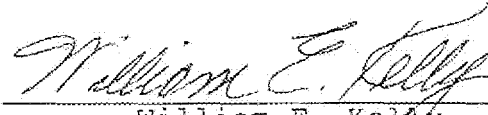
CERTIFICATE OF SERVICE

William E. Kelly, an attorney, hereby certifies that he caused a copy of the foregoing Response to Plaintiffs' Unverified Motion to Compel and for Sanctions served on the attorneys listed below by delivering the same to them at the addresses indicated on May 19, 1988.

Arthur W. Aufmann, Esq.  
Joyce and Kubasiak, P.C.  
Three First National Plaza  
Suite 3900  
Chicago, Illinois 60602

James E. Dahl, Esq.  
James E. Dahl & Associates  
175 North Franklin Street  
Suite 401  
Chicago, Illinois 60606

Michael R. LaBarge, Esq.  
Williams & Montgomery  
20 North Wacker Drive  
Suite 2100  
Chicago, Illinois 60606

  
\_\_\_\_\_  
William E. Kelly

645/SSK/373600518

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
COUNTY DEPARTMENT, LAW DIVISION

#20135

BARBARA SEYFERTH, et al.,

Plaintiff,

v.

JOSEF OFFENWANGER and  
REMINGTON ARMS COMPANY, INC.,

Defendants.

No. 83 L 17606

DEFENDANT REMINGTON ARMS COMPANY, INC.'S  
ANSWERS TO DEFENDANT JOSEF OFFENWANGER'S  
FIRST SET OF INTERROGATORIES

1. State the name and title of the person answering these interrogatories.

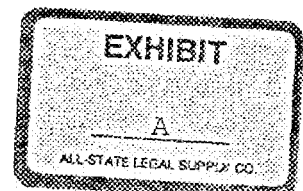
ANSWER: James C. Hutton, Senior Staff engineer.

2. Have any claims for personal injury involving a Remington model 700 rifle, other than the one involved herein, been brought against the Remington Arms Company, Inc.?

ANSWER: Yes.

3. If the answer to number 2, above, is in the affirmative, for each claim state separately:

- a. The name, address, and telephone number of the claimant.
- b. The name, address, and telephone number of the claimant's attorney, if any.
- c. Whether a lawsuit was filed as a result of, or in conjunction with, the claim.



- (1) The court where the suit was filed.
- (2) The court number of the lawsuit.
- d. Whether the lawsuits listed in subparagraph (c), above, are pending.
- e. The verdict in any cases mentioned in subparagraph (c), above, which were tried.
- f. The amount of any settlement reached as a result of the claims.
- g. The facts leading to the injury.
- h. The nature of the claim against Remington or its related company.
- i. The nature of the involved injury.

ANSWER: Remington's knowledge of claims for personal injury involving the Model 700 rifle (excluding explosions) and claims that a Model 700 rifle discharged without the trigger being pulled is summarized in Exhibit A comprised of gun examination reports relating to such alleged incidents. Records of customer complaints are maintained for a three year period, pursuant to the record retention policy of Remington. Remington's knowledge of lawsuits for personal injury involving the Model 700 rifle (excluding explosions) or alleged accidental discharge thereof is summarized in Exhibit "B". Records regarding litigation are maintained for a period of seven years pursuant to the Remington record retention policy. Further answering Remington objects to interrogatory 3f as irrelevant and not likely to lead to the discovery of relevant material and objects to any interrogatory regarding rifles other than the Remington Model 700 as

being irrelevant and not likely to lead to the discovery of relevant material.

4. Have any claims, other than those which may be stated in number 2, above, alleging that Remington Arms Company, Inc. firearms discharged without the trigger being pulled been brought against Remington?

ANSWER: See answer to Interrogatory No. 3 for claims involving Remington model 700 rifles.

5. If the answer to number 4, above, is in the affirmative, for each claim state separately:

- a. The name, address, and telephone number of the claimant.
- b. The name, address, and telephone number of the claimant's attorney, if any.
- c. Whether a lawsuit was filed as a result of, or in conjunction with, the claim.
  - (1) The court where the suit was filed.
  - (2) The court number of the lawsuit.
- d. Whether the lawsuits listed in subparagraph (c), above, are pending.
- e. The verdict in any cases mentioned in subparagraph (c), above, which were tried.
- f. The amount of any settlement reached as a result of the claims.
- g. The facts leading to the injury.
- h. The nature of the claim against Remington or its related company.
- i. The nature of the involved injury.
- j. The model number and year of manufacture of the firearm involved in each claim.

ANSWER: See answer to Interrogatory No. 3.

6. Have any claims, other than those which may be stated in numbers 2 and 4, above, alleging that Remington Arms Company, Inc. firearms discharged in whole or in part due to unreasonably dangerous design or manufacture of a safety been brought against Remington?

ANSWER: See answer to Interrogatory No. 3.

7. If the answer to number 6, above, is in the affirmative, for each claim state separately:

- a. The name, address, and telephone number of the claimant.
- b. The name, address, and telephone number of the claimant's attorney, if any.
- c. Whether a lawsuit was filed as a result of, or in conjunction with, the claim.
  - (1) The court where the suit was filed.
  - (2) The court number of the lawsuit.
- d. Whether the lawsuits listed in subparagraph (c), above, are pending.
- e. The verdict at trial of any cases mentioned in subparagraph (c), above, which were tried.
- f. The amount of any settlement reached as a result of the claim.
- g. The facts leading to the injury.
- h. The nature of the involved injury.
- i. The model number and year of manufacture of the firearm involved in each claim.

ANSWER: See answer to Interrogatory No. 3.

8. Which, if any, of the claims stated in number 6, above, involved a claim that the involved firearm should have been equipped with a three position safety, as opposed to a two position safety?

ANSWER: See answer to Interrogatory No. 3.

9. For each claim listed in numbers 2, 4, and 6, above, state:

- a. The name and last known address of each and every expert witness employed or retained by Remington Arms Company, inc.
- b. Whether the witnesses listed in subparagraph (a), above, rendered any type of written report, or generated or accumulated any notes or documents concerning his or her involvement with the claim in question.
- c. Whether any witness listed in subparagraph (a), above, rendered any testimony, whether by way of trial, deposition, or otherwise, concerning the safety, or lack thereof, of the firearm with which he or she was involved.

ANSWER: (a) Remington has used two outside expert witnesses in the cases set forth on the attached list. R.L. Hillberg, 26 Mount Sanford Rd., Cheshire, Connecticut 06410 and William C. Davis, 13 Cone St., Wellsboro, Pa. 16901. Mr. Hutton, and possibly other Remington employees P.O. Box 179, Ilion, N.Y. 13357 have also been an expert witness in the cases set forth on the attached list.

(b) and (c) Remington objects to interrogatories 9b and 9c to the extent they ask for information which is privileged under the attorney/client privilege or which information can be construed as attorney work product. Without waiving any of the objections set forth above Remington states that witnesses listed in the answer to Interrogatory 9(a) have rendered testimony regarding the safety of the firearm involved.

10. Does the Remington Arms Company, Inc. keep a file(s) or other record of consumer complaints received by it regarding its firearms?

ANSWER: Yes.

11. If the answer to number 10, above, is in the affirmative, state:

- a. The name, address, and title of the person currently in possession of the file or records.
- b. Whether the file or records contain all, or only some, of the complaints received by Remington.
  - (1) If the file or records contain only some of the complaints, state the method by which it is determined which complaints are retained and which are not.

ANSWER: (a) E.F. Sienkiewicz, Manager of Product Services, P.O. Box 179, Ilion, N.Y. 13357.

(b) Remington has a 3 year retention period for all customer complaints containing allegations as to safety. The period is three years from the date of last correspondence.

12. Does Remington Arms Company, Inc. currently have any people, group, committee, or commission (e.g. the Subcommittee on Product Safety), whose job, in whole or in part, is to study or investigate problems (whether real, potential, or alleged) related to the safety of its firearms?

ANSWER: Yes.

13. If the answer to number 12, above, is in the affirmative, state:

- a. The names, addresses, and current titles of all people involved in the study or investigation referred to in number 11, above.
- b. Whether any notes, memoranda, photos, reports, or documents of any nature, were generated or acquired as a result of the study or investigation referred to in number 11, above.
- c. The particular problems(s) or question(s) studied or investigated by the people mentioned in subparagraph (a), above.
- d. The conclusions or recommendations arrived at by the people mentioned in subparagraph (a), above.
  - (1) If a particular individual(s) was responsible for any given conclusion or recommendation, state the name of that individual(s) and the conclusion or recommendation for which he or she was responsible.
- e. The name, if any, of the group, committee, or commission.

ANSWER: As to at least the Model 700, Remington has a body known as the Gun Examination Committee whose function is to investigate matters involving the safety of its firearms. The Gun Examination Committee has produced reports. E.F. Sienkiewicz is chairman of the Gun Examination Committee.

Further Remington has a committee known as the Product Safety Subcommittee whose function is to make policy decisions regarding the safety of Remington firearms.

The current Chairman is R.E. Fielitz. This subcommittee is composed of various corporate staff members.



14. At any time in the past, has Remington Arms Company, Inc. had any people, group, committee, or commission (e.g. the Subcommittee on Product Safety), whose job, in whole or in part, was to study or investigate problems (whether real, potential, or alleged) related to the safety of its firearms?

ANSWER: Yes.

15. If the answer to number 13, [sic] above, is in the affirmative, state:

- a. The names, addresses, and current titled of all people involved in the study or investigation referred to in number 11, above.
- b. Whether any notes, memoranda, photos, reports, or documents of any nature, were generated or acquired as a result of the study or investigation referred to in number 11, above.
- c. The particular problem(s) or question(s) studied or investigated by the people mentioned in subparagraph (a), above.
- d. The conclusions or recommendations arrived at by the people mentioned in subparagraph (a), above.
  - (1) If a particular individual(s) was responsible for any given conclusion or recommendation, state the name of that individual(s) and the conclusion or recommendation for which he or she was responsible.
- e. The name, if any, of the group, committee, or commission.
- f. The year(s) during which any of the groups, committees, or commissions, included in your answers to numbers 13 and 14, subparagraphs (a) through (e) were in existence.

ANSWER: Remington objects to this Interrogatory as overly broad and burdensome since it is limited in neither

time nor scope. Without waiving the obligation stated above Remington states that it has had such groups for at least 15 years. See answer to Interrogatory No. 12.

16. State the names and address of any expert witnesses which you have, or intend to, retain in this matter (excluding those experts retained as consulting experts only who you do not intend to call as a witness at trial.

ANSWER: Undetermined at this time.

Remington Arms Company, Inc.

By: \_\_\_\_\_  
One of its Attorneys

OF COUNSEL:

Pope, Ballard, Shepard & Fowle, Ltd.  
69 West Washington Street  
Suite 3200  
Chicago, Illinois 60602  
(312) 630-4200