

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
PORTLAND DIVISION**

TERI SEE and DARREL SEE,

No. 3:13-cv-01765-BR

Petitioners ,

vs.

**REMINGTON ARMS COMPANY,
LLC.,** A Delaware Limited Liability
Company, and **SPORTING GOODS
PROPERTIES, INC.,** A Delaware
Corporation

**PETITION FOR RELIEF FROM
JUDGMENT TO REMEDY FRAUD ON
THE COURT**

Defendants.

**EXHIBIT 26
ALEKSICH – EXHIBIT C – THE NEW DOCUMENTS**

Mr. John W. Whelan and
Mr. William P. Joyce
BURGESS, JOYCE & WHELAN
2801 South Montana Street
Butte, MO 59701
Telephone: 406-782-0484

Mr. William H. McDonald
Mr. Richard C. Miller
WOOLSEY, FISHER, WHITEAKER & McDONALD
P.O. Box 1245
Springfield, MO 65801
Telephone: 417-869-0581

ATTORNEYS FOR PLAINTIFFS

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BUTTE DIVISION

LOUIS ALEKSICH, RAINELLE ALEKSICH,
and BRENT ALEKSICH,

Plaintiffs,

vs.

REMINGTON ARMS COMPANY, INC.,
and
E. I. DuPONT DE NEMOURS AND COMPANY,

Defendants.

Cause No. CV-91-5-BU-PGH

PLAINTIFFS' MOTION FOR SANCTIONS: EXHIBIT C - THE NEW DOCUMENTS

In an effort to provide a clear explanation and record of the significance of these new documents, Plaintiffs have selected some exemplars from their exhibit list and organized them into various categories which are subject to Plaintiffs' discovery and the Court's Order requiring same. Each category and its exemplars will be discussed separately after referencing Plaintiffs' discovery and the Court Order to which the documents are responsive.

A. CUSTOMER COMPLAINT INFORMATION.

The most egregious example of Defendants' flagrant abuse of the discovery process is their failure to produce customer complaint information which contains the same allegations of firing on safety release and Defendants' admissions, in non-injury incidents, that this occurred due to product defects. Customer complaint information was requested in Interrogatory number 20 and Request For Production number 2. In its Order of October 29, 1991, the Court ordered the Defendants to provide the information requested in Interrogatory number 20 stating that it would be acceptable to produce the complaint documents themselves. Request For Production number 2 was denied consistent with the ruling on Interrogatory number 20.

On Page 24 of the transcript of the Motion to Compel hearing, the Court stated on Interrogatory number 20: "I don't care. Discover it. It will be answered, and it's acceptable to produce the actual complaint.... I used the word complaint in its generic sense, gentlemen, it doesn't mean necessarily a Court complaint. I am talking about however it came, postcard with I just shot my Aunt Sally." On Page 33 of the same transcript Mr. Shaw stated with respect to Request For Production number 2: "As I understand it, because of the ruling with regard to the Interrogatory where you said you'd take the documents in lieu of an answer, that those documents would be responsive to that Request For Production. So we don't need to rehash it." And the Court confirmed this requirement stating "Let me get this. We'll produce documents per answer to Interrogatory number 20." Mr. Miller, Plaintiffs' counsel made sure that documents would be produced by asking on Page 34: "They will produce documents in response to Request For Production number 2." And the Court said: "Yes, and they will be consistent with Interrogatory number 20 about it." The transcript

of the October 28, 1991 hearing on Plaintiffs' Motion To Compel is filed as Exhibit 14 to the subject Motion for Sanctions. To date, no interrogatory answer has been filed identifying any of the customers referenced in the literally hundreds of complaint documents contained in this recent production, nor until that production had any of these documents ever been produced.

1. One group of customer complaint documents jumps out at you because of their clear admissions of defect and causation in similar incidents. They have been segregated and organized into a separate file entitled "M/700 Customer Complaints" which contains approximately 150 separate complaints dating from 1969-1973 and authored by the same individual, "C. Prosser". This file explains the Process Record Change Authorization number 271645 dated February 2, 1973, by the same individual which Plaintiffs' counsel found only after looking through 22 boxes of process record documents. This process record states: "Add element to final inspection to check for possible connector-sear interference. At least twenty in 1972 and four so far in 1973 customer complaints including one personal injury are attributed to this interference." Clearly, Mr. Prosser was tasked with examining Model 700's returned from customers with allegations of firing without pulling the trigger, including FSRs. His findings contained on gun examination reports are different from later GERs because of their clear admission of defect and causation, and ultimately Defendants' actual knowledge of this dangerous problem. Customer complaints from years later which have been produced by Defendants always state they were "unable to duplicate the customer complaint" if they cannot find a customer modification they can blame for the malfunction. Defendants instead blame their customers by claiming they must have "inadvertently" pulled the trigger. There are literally thousands of complaints from 1979 on which blame the customer, one way or another, for these

malfunctions. Until now there were none which clearly admitted these malfunctions were the Defendants' fault.

This evidence bears directly on Defendants' state of mind and the nature of their conduct with respect to this problem. Between 1973 (C. Prosser's admissions) and 1979 (Mr. Hardy, his successor's denials) Defendants consciously decided to hide their problems behind a wall of silence. This is also the period in which Defendants: discovered 80% of their Model 600s would malfunction (1975); began serious efforts to redesign the Walker fire control system (1976/1977); settled the Coates case for \$6.8 million (1978) and later lost their insurance, recalled the Model 600 series (October, 1978), only days after the Coates' settlement and discussed of management recalling the Model 700 at the highest levels (January 2, 1979) but decided not to because of cost (despite admissions that 1% of the Model 700 or 20,000 of the 2,000,000 in the public's hands would similarly malfunction).

Defendants certainly had to be aware of the existence of these documents because process records are not changed without reason and Plaintiffs have repeatedly used C. Prosser's process record change authorization at trial and deposition. The reason Defendants withheld the underlying documents is apparent on their face--they admit the existence of defect and how it causes the different malfunctions associated with Remington bolt action rifles. For instance, Mr. Prosser explains that malfunctions in the Walker fire control systems he examined (most of them Model 700s) can occur for any of the following reasons:

a. Dried lubrication, condensation or other liquid in the fire control system (Exhibits 3176, 3179, 3181, 3182, 3183, 3185, 3186, 3187, 3188, 3190, 3191, 3195, 3212, 3219, 3234, 3238, 3240, 3241, 3245, 3247, 3254, 3260, 3261, 3276, 3281, 3282, 3284);

b. Cold climates, such as the 6-10°F weather experienced by Brock Aleksich on the day of this accident (Exhibits 3234 and 3276).

c. Contaminants such as burrs, from the manufacturing process, pierced primer residue, burnt powder, wood chips from the stock, and dirt and debris which accumulate in the fire control system housing (Exhibits 3178, 3179, 3182, 3183, 3189, 3190, 3191, 3192, 3193, 3196, 3197, 3201, 3203, 3206, 3208, 3211, 3213, 3214, 3217, 3221, 3228, 3230, 3233, 3258, 3259, 3261, 3264, 3265, 3271, 3272, 3275);

d. Binding of the internal components, i.e. the sear, trigger or trigger connector on the housing or each other (Exhibits 3178, 3181, 3182, 3183, 3186, 3188, 3190, 3195, 3196, 3200, 3204, 3212, 3214, 3219, 3223, 3225, 3241, 3252, 3253, 3255, 3257, 3260, 3263, 3267, 3268, 3299)

e. Mismatched parts including the trigger, trigger connector and sear which interfere with each other (Exhibits 3176, 3177, 3178, 3184, 3185, 3189, 3192, 3193, 3194, 3196, 3197, 3199, 3201, 3205, 3206, 3207, 3208, 3210, 3213, 3216, 3217, 3221, 3222, 3226, 3227, 3228, 3239, 3243, 3244, 3246, 3247, 3249, 3250, 3256, 3258, 3259, 3261, 3262, 3276, 3277, 3282, 3283, 3284, 3291, 3293, 3294, 3295, 3297) or;

f. Or any combination of the above. (Exhibits 3176, 3178, 3179, 3181, 3182, 318, 3186, 3188, 3189, 3190, 3191, 3192, 3193, 3195, 3196, 3197, 3200, 3201, 3206, 3208, 3212, 3213, 3214, 3219, 3228, 3241, 3258, 3260, 3263).

In all of the previously referenced exhibits Mr. Prosser blames the malfunction (fire on safety release, fire on bolt movement and jar offs) on design defects, sometimes enhanced by manufacturing defects, in which the trigger connector, sear or trigger are mispositioned resulting in a discharge without pulling the trigger. These are the types of admissions of which summary

judgment motions on the issue of defect are granted. They also go a long way toward establishing the cause of not only this accident but many others which have already been litigated or are yet to arise.

2. Defendants not only received complaints from individual customers but also from their own retailers including Les Freer, a "Remington Recommended Gunsmith." In his purchase orders of January 28 and 29, 1975, Mr. Freer describes two (2) "hang fire" incidents on different rifles in which a delayed fire occurred because of the same interference between internal components. He states it is not the same as earlier complaints made to Defendants, but it is "closely related to the overall problem." AL 29694, AL 29695 (Exhibits 3172 and 3173). No "earlier complaints" from Fred Woodrick have ever been produced, but they should be.

3. Fred Woodrick, a Remington field service representative, reported on February 26, 1980 that a gunsmith in Waco, Texas had encountered eight (8) to ten (10) Model 700 rifles with similar safety related complaints which were attributed to gum up of the fire control system AL 17509 (Exhibit 3365). This gunsmith has never been contacted or deposed in this or any other case.

4. Another complaint from Sportsmen's Equipment Company explains that one customer experienced fire upon safety release only when the temperature was very cold. He had been hunting in Colorado at high altitude--the same factual scenario is in the case at hand. AL 17505 (Exhibit 3030).

5. It also apparent from the documents produced that yet other crucial information has not yet surfaced. For instance, as a result of the Model 600 recall, thousands of Model 700 rifles were returned to Remington with similar complaints of fire on safety release and other typical problems, 669 of which are referenced in a memo dated November 29, 1978 from J. J. Burns to J.P. Linde and

a memo dated February 7, 1980 from R.B. Sperling to J. P. McAndrews and E.F. Barrett. The memo states that all of these rifles were checked to see if they would fire upon safety release and if they did a cause was determined, yet none of the gun examination reports for these rifles have ever been produced. AL 14759, AL 14947 (Exhibits 3022 and 3025).

6. It also appears from the documents produced that the customer complaints date back to the very genesis of the Walker fire control system and have continued ever since. A memo dated November 21, 1952, AL 22407 (Exhibit 3047) referring to 1950 through 1952 records identifying 14 individual instances of jar off states: "Brief quarterly complaint report" dated October 23, 1952, which reported "that 'the M/721 jars off occasionally', and calling our attention to the seriousness of this condition." Binding of the sear, another cause of malfunction, is mentioned with respect to the Model 721 in a summary of complaints from the month of August of 1948. (AL22495)

This list of new complaint evidence could go on and on. A lot of other customer complaint information was produced for the first time in this recent production but was not included on Plaintiffs' Supplemental Exhibit List due to time and space. Defendants' discovery obligation was to produce all such documents when ordered, not within a month of trial. This duty was clearly breached when Defendants failed to produce any of these damaging customer complaints for over three (3) years in this case and at least a decade in numerous other bolt action rifle cases.

B. DESIGN INFORMATION.

Request for Production number 7 and 8, both of which were granted by the Court in its Order of October 29, 1991, seek relevant design information regarding the Walker fire control system unique to the Remington bolt action

firearms listed. In response to Request number 7, Defendants were ordered to produce the complete product file with respect to those Remington bolt action rifles utilizing the Walker fire control system. Models 700, 721, 722, 725, 600, 660, Mohawk 600 and XP 100) To date, no product file with respect to any of the models utilizing the Walker fire control system has been produced in this litigation. Remington's product file contains all important documents including Committee Minutes, reports, memoranda and other evidence regarding design, manufacture, quality control and sales with respect to a particular line or firearm. In an earlier case in which a product file was allegedly produced, neither NBAR nor any documents recently produced were present. Plaintiffs discovered a single NBAR document that Defendants had failed to cull from the file. First Defendants hid NBAR, now someone discloses volumes of additional evidence, much of which should have been in the product file--what else is missing?

Pursuant to Request number 8, Defendants had an obligation to produce all design documents with respect to the Remington Model 700 fire control system. Again no responsive documents whatsoever were produced in the litigation until this recent disclosure. Please note that a separate Motion to Compel production of NBAR documents was presented to Magistrate Holter at the same time as Plaintiffs' Motion to Compel. Magistrate Holter ordered Defendants to produce NBAR, this Court sustained his order pursuant to F.R.C.P. 72(e) and after substantial additional efforts by Defendants to change the Court's protective order, the Defendants finally produced NBAR. While NBAR documents were contained in the recent production, Plaintiffs have not had an opportunity to compare them to the NBAR documents previously produced to see if they are new also. Between the Court orders to produce to these three (3) items, i.e. Request No. 7, Request

No. 8, and NBAR, Defendants had an obligation to produce all relevant information with respect to the Walker fire control system. With the exception of the alternative design documents contained in the NBAR program which began in the early 1980s, no other design documents were produced in this case until recently.

While Plaintiffs have not had an opportunity to compare all of their supplement exhibits to previously produced documents (In other words there may be a few duplicates of which we are not aware at the present time), Plaintiffs believe that the following documents represent new evidence:

1. AL 14774 (Exhibit 3023)-A memo entitled "Bolt Action Fire Control-Design Review 11-14-78" dated November 16, 1978. This document imposes a design requirement for a new bolt action fire control that eliminates the "trick" condition by adding a trigger block to the safety mechanism to prevent the trigger from moving on safety thereby setting up a FSR. Fred Martin testified that the reason for this design change had nothing to do with the "trick" condition or firing on safety release, but instead resulted from customer preference for "unwanted trigger movement."

2. AL16119 and 16410 (Exhibit 3027) - Two minutes resulting from research meetings dated November 6 and 7, 1978 entitled "Bolt Action Fire Control." These minutes discuss changing in the safety design, so that rifles can be unloaded on safe. This was eventually done on all rifles manufactured after February, 1982 (such as the Aleksich rifle) but the memo is relevant as to why the change was made--to reduce the number of FSR occurring because previously the safety had to be released to unload the rifle (causing FSRs). The first memo states that the new safety must allow unloading in the "on safe" position but raises a question whether the user merely "can" or "must" unload in this fashion. The second memo states that a "majority" of those in the research meeting feel that the safety

"must" be designed so that the rifle must be unloaded in the "on safe" position. Defendants wanted a new design in which the customer "must" load and unload on safe to reduce the occurrence of FSRs. By the way, these two (2) meetings occurred only days after recall of the Model 600 in late 1978.

3. AL 17610 (Exhibit 3033)-A memo entitled "Model 700 Trigger Assembly" dated June 18, 1981. This memo is probative of punitive damages because it is determined that it would cost 15¢ per gun to both add a trigger block and allow the rifle to be unloaded in the safe condition. A trigger block prevents movement of the trigger on safe which sets up the FSR condition. Unloading on safe does not require putting the rifle in the fire mode to unload it, which avoids the possibility of an FSR.

4. AL 22822 (Exhibit 3073)-A memo entitled "Model 700" dated June 14, 1974. It states that Defendants are working on a three (3) position safety for the Model 700 which would allow unloading on safe because of three (3) lawsuits, two (2) of which involved the Walker fire control system. This is also relevant to Defendants' state of mind as their author blames customers for malfunctions stating they were "chargeable to poor gun handling."

5. AL 22932 (Exhibit 3078)-A memo from Mike Walker re "M/721 Modification of Safety Design" dated August 16, 1948. This memo indicates that Mr. Walker considered a trigger block over 40 years ago which would have prevented FSRs, yet it was never incorporated into his fire control system.

6. AL 23567 and 23568 (Exhibit 3101)-A research presentation dated July 11, 1977 entitled "Model 700-600 Fire Control Improvements." This memo refers to "deficiencies" in the fire control system and lists a number of changes to the Model 600 and Model 700 fire control systems to correct them.

7. AL 0023597 (Exhibit 3108)-"Notes for Operations Committee, Model 600, Model 700 Fire Control Review" dated April 25, 1977 for "Limited Distribution." This memo states that the Mohawk 600 sear and safety lever were altered to increase the "disconnecting clearance" between trigger connector and sear. The purpose of this change was to avoid interference between trigger connector and sear as admitted in the previously referenced Prosser gun examination reports discussing Model 700 malfunctions.

8. AL 23984(Exhibit 3124)-The first document entitled "NBAR Fire Control Design Objective" from DSF dated 10/22/93 which is clearly part of the NBAR program but was not produced in this case with the NBAR file. This appears to be a summary of objectives taken from prior handwritten documents by NAW giving different points of view (Research, Production, Marketing, etc.) with respect to Defendants' bolt action rifle fire control. One such point of view is contained on the second document dated 10/15/93, entitled "Liability Point of View." One aspect of the "Liability point of view" is a "Sealed unit; requiring no original or field lubrication." This would have prevented condensation in the Aleksich rifle and later, after exposure to the cold hunting conditions, ice which resulted in an FSR, not to mention numerous instances of lubricant gum-up. It is interesting to note that among various changes made to prevent malfunctions, one of the objectives listed is that "rifle will not fire if trigger pulled and held as safety is moved from "S" to "F"." This is exactly what Defendants allege Brock Aleksich did at the time of his accident due to "buck fever."

9. AL 28745(Exhibit 3155)-A letter received by Remington on March 16, 1982, from Mike Walker, the father of the Model 700 asking "Has anyone tried a floating wedge in front of the present 700 trigger as an additional element to the safety?" The purpose would be to block the trigger on safe, preventing the set

up of an FSR, just as he suggested 30 years earlier as discussed in Paragraph 5 above.

10. AL29558 (Exhibit 3164) A page taken from Fred Martin's designer notebook dated January 11, 1980 with respect to "M-700 Fire Control Design." He discusses a trigger block and sear block, a bolt lock (but one that allows opening the bolt on safe), and an interceptor to prevent malfunctions. This designer notebook of Fred Martin, the main individual working on the Model 700 fire controls over the last 15 years, had never been previously produced. The original designer notebook of M.H. Walker dated 9/10/43 was also produced for the first time in these four (4) boxes of documents. Even now no other designer notebooks with respect to other aspects of Remington bolt action fire control systems by Mr. Walker, Mr. Martin or any other designer have been produced. Certainly Defendants knew of the existence of "Designer Notebooks" because this is how they document and protect designs for patent purposes. They also knew how to find these notebooks because they are indexed by Model, component and author.

10. AL 29877-29902 (Exhibit 3315)- This exhibit is a report by Wayne E. Leek, one of the two principal designers of Remington bolt action fire controls. It was forwarded by cover letter dated January 25, 1982 to Clark Workman pursuant to his request for recommendations by Mr. Leek and Mr. Walker, (both of whom had retired) regarding their ideas about designs for new bolt action firearms. On page 7 of his letter, Mr. Leek states:

"Remington's manual safety block is sear mechanism. The manual motion is in the same plane as the trigger movement and allows a dangerous [Emphasis Added] condition to exist. Pulling the trigger at the same time the manual safety is moved off, fires the rifle! ... A manual safety should never be allowed to function in the same plane with the trigger unless a disconnecter is provided preventing firing if movement of the safety takes place while the trigger is pulled! A safer and more reliable manual safety is a three position type located on the cocking piece. It is recommended that these ideas be considered."

Mr. Leek's criticism of Remington bolt action fire controls as "dangerous" is important not as it relates to Plaintiffs' claims but instead because it directly contradicts Remington's defense in this case. In literally hundreds of other incidents in which they cannot blame malfunctions or customer modification. Defendants typical response is to place blame on the consumer by stating that he must have "inadvertently" pulled the trigger. Yet in early 1982, Mr. Leek in response to inquiries by Remington regarding design improvements calls Remington's safety/trigger design "dangerous" because it allows this to occur.

While this exhibit had never been produced before, a letter from Mr. Leek AL 29868 (Exhibit 3313) dated January 15, 1982, ten (10) days earlier had been produced in prior litigation. This letter sets forth the contents of his report which followed ten (10) days later with the heading "Suggestions To Support New Bolt Action Rifle Design--I. Analysis of M700 C.F. Rifle-B. Negative Feature-6. Manual Safety (Inadequate)." The clear implication is that Remington produced the January 15, 1982 letter which gives the topics discussed in Mr. Leek's report withheld the report itself, mailed ten (10) days later to the same individual, Clark Workman, because of the above language.

11. AL 29957-29958 (Exhibit 3316)- Not to be outdone, Mike Walker, the other retired primary designer of Remington bolt action fire controls (At Remington, Mr. Walker proverbially, "Walked on Water.") sent his response to Clark Workman by way of letter dated March 12, 1982. The very first recommendation is "1. Please don't bring out a new bolt action rifle without a fool [emphasis added] proof safety which is capable of locking the bolt. Make it at least as good as the present Model 70, better if possible." The present Winchester Model 70 has a three (3) position safety which allows both a bolt lock on safe as well as a safety position which allows you to open the bolt to load and unload the rifle

on safe. This design has long been advocated by Plaintiffs' experts in these cases. This is the same letter that suggests a "floating wedge" in front of the trigger in the Walker fire control system to block it so that the trigger cannot be pulled while the safety is engaged, thereby setting up an FSR upon its release.

12. AL 23392 (Exhibit 3086)- This progress report dated December 1, 1975, is from J. P. Linde who from 1975 to the early 1980s was intimately involved in redesigning the Model 600 and Model 700 fire control systems. He indicates that Remington is considering a one piece trigger achieved here by screwing the two (2) parts together so the connector does not function independently. By eliminating the separate functioning of the "resiliently mounted" trigger connector, the biggest cause of malfunctions in the Walker fire control system-poor control of the trigger connector is eliminated. This test foreshadows Defendants' opinion throughout the course of the NBAR program that the trigger connector should be "eliminated" from any new bolt action fire control system design AL 27947 (Exhibit 3146). It also proves that Remington knew the resiliently mounted trigger connector was causing malfunctions over five (5) years before NBAR allegedly began.

13. AL 18472 (Exhibit 3036), AL 20201 (Exhibit 3038), AL 22785(Exhibit 3065), and AL 30562 (Exhibit 3363) - These four (4) documents are all results from tests in which Defendants "drop" a rifle from a known height to see if it will "jar-off." They confirm that Remington had knowledge in 1964, 1966, 1983 and 1984 that its bolt action rifle fire control system as contained in both the Model 600 and Model 700 rifles would jar off when dropped from heights of as little as two (2) to three (3) feet, a common experience in the field.

15. AL 175002, 23545, 24608, 24651 (Exhibits 3030, 3099, 3131, 3121). These four (4) documents admit failures on the part of Defendants to warn of the above design and manufacturing problems, including 1.) "Gummed Triggers;" 2.) The absence of cleaning and lubrication instructions; 3.) Changing the owners manual which "invited" customers to adjust their trigger to strongly warn against any adjustments; and 4.) Failure to warn customers of the malfunction propensity itself, instead hiding it by requiring all repairs be made at the factory.

C. THE SAME CATEGORIES--BUT ACUTELY RELEVANT TO THIS CASE.

While all of the above referenced documents are relevant to either Plaintiffs' claims or disprove Defendants' affirmative defenses, the following documents are particularly acute to this case. They are segregated out because they take the customer complaints about and the design criticism of the Walker fire control system one step further.

1. AL 16398, 16401, 16403 (Exhibit 3029) - This report discusses alternative methods in which a safety acts on a fire control system admitting by blocking different parts. It is common knowledge among gun designers that a safety which does not block the trigger such as the Model 700, may fire on safety releases if the customer "fidgets" with the trigger while the safety is engaged. Without accepting the term "fidget," this is exactly what happened to Brock Aleksich in that prior to the accident he pulled the trigger as he was taught to make sure that the safety was on, thereby unknowingly setting up the fire on safety release which occurred 15 minutes later.

2. AL 16407 (Exhibit 3029) - This document entitled "Fire Control Design Considerations For Bolt Action Rifles" dated January 19, 1977, states that with a "lift sear safety", as found in the Model 700, "Problems can occur with the safety if the trigger binds. Foreign material in the fire control or a bad

trigger fit, can cause the trigger to stick in the 'pulled' position. When the safety is released, there is nothing to support the sear so the rifle fires off safe." This is yet another description of Brock's accident which state that foreign material in the fire control which would include ice.

3. AL 21875 (Exhibit 3045) - This letter from R.A. Partnoy, General Counsel of Remington Arms Company, Inc., dated January 15, 1979, to the editorial office of Dun's Review states that Remington rifles containing the Walker fire control system will not fire without pulling the trigger. But he admits that "under unusual circumstances the safety selector and trigger of certain of these rifles can be manipulated in such a way that subsequent moving of the selector to the fire position could result in accidental discharge." While these statements appear contradictory, he is correct in that something must misposition the trigger while the safety is on, i.e. pulling it, but this can occur minutes, hours, days or even years before if the rifle is not otherwise cycled. Brock Aleksich pulled the trigger on his rifle some 15 minutes before the accident to make sure the safety was on. This set up his FSR, unknown to him. Admissions do not get closer to the truth. Remington's General Counsel admits that fire on safety release will occur on the Walker fire control system. Now he needs to be deposed.

4. AL 23239 (Exhibit 3083)- On April 9, 1947 while inspecting Model 721 rifles a "very dangerous situation from a safety and functional point of view" was noted. This situation involved the typical malfunctions of which customers have complained, over the decades: fire on bolt closure (point number 1 and 3 on the list) and fire on safety release as alleged by Brock Aleksich (number 2 on the list). Wayne Leek, the retired engineer, who criticized the Remington bolt action rifle's safety/trigger combination was the author of this document.

5. AL 31905 and AL 31908 (Exhibit 3366)- Two (2) "Interim and Progress Reports," the first of which is dated September 15, 1948 a little over a year after the document discussed above, states that customers had been complaining of Model 721 rifles firing when the safety is moved to the off position. The second document admits that it is "theoretically possible under very remote conditions to experience this problem...." The conditions are not nearly as "remote" or "unusual" as Remington would leave you to believe in that they have received literally thousands of complaints of this problem yet today still make the same rifle which will malfunction in the same way.

6. AL14712 (Exhibit 3015), 18695 (Exhibit 3037), 23221 (Exhibit 3080), 23222 (Exhibit 3081), 23234 (Exhibit 3082), 28926 (Exhibit 3156), 31452 (Exhibit 3369). All of these documents make reference to the problems encountered by the Walker fire control system under cold weather conditions due to lubrication, moisture or other contaminants in the fire control system. On August 26, 1947 in a memo designated "Classified, Confidential" authored by Mr. Leek, components of the Walker fire control system present in Model 721 rifles were found to freeze due to icing. On August 29, 1947, Mr. G. K. Pickney asked Mr. Leek whether he had tried using powdered graphite or even Remington oil on fire control components in extremely low temperatures and requested a minimum temperature at which these parts will work without freezing. Mr. Leek responded in September of 1947 by merely stating in paragraph 3 of his memo to Mr. Pickney "I would not guarantee that the gun would not freeze under 32°F." Brock Aleksich was hunting at temperatures considerably below this point and that is exactly what Plaintiffs allege happened to his Model 700 rifle. Defendants knew about it over 40 years before his accident.

While Remington did not do anything to correct the problem or provide minimum temperature recommendations, it did not forget the problem. Several memos from 1979 discuss the fact that "Molykote G-N" placed on the rifle during manufacture will harden in cold weather warning: "One thing that bears investigation (I initiated the same several months back, but no answer to date) is a cold test, an accelerated storage of the old oil-lube-protective materials used by the plant on new guns. Several reports from the field indicate a varnishing effect accrues after a period of time causing a malfunction of trigger components. Cold temperature would induce a more severe condition." While this does not address condensation in the fire control system everyone knows what happens when water is exposed to temperatures well under 32°F. Clearly there are 40 years of continuous knowledge on the part of Defendants that any liquid present in the fire control system, lubricant, water or otherwise, that is susceptible to freezing at the temperatures in which the rifle is used may cause it to malfunction. Yet there has never been a minimum temperature specification established or any warning of this hazard given to consumers.

7. AL15563 (Exhibits 3026), 16246 (Exhibit 3028), 20736 (Exhibit 3039), 22736 (Exhibit 3061), 23959 (Exhibit 3121), and 26172 (Exhibit 3140) - These documents in conjunction with the 1982 letter from Wayne Leek previously discussed clearly establish that Remington was also aware of the "dangerous" nature of its safety/trigger combination. Because both are operated in the same plane of movement it was clearly foreseeable that a consumer will pull the trigger of a Model 700 at the same time he is releasing the safety. While Plaintiffs deny this occurred in the case at hand, Defendants knew about this possibility and considered their own defense in this case another defect in the rifle. On January 28, 1982, in a patent review meeting, Jim and Fred Martin discussed

relocation of the safety switch to the bolt plug which takes it out of the same "plane of operation" making it virtually impossible to operate at the same time the trigger was pulled. This NBAR document became part of the Model 7 design specification. The Model 7 which is a carbine version of the Model 700 rifle utilizing the same Walker fire control system. Another alternative would be use of a cross bolt safety at the rear of the trigger guard which makes the motion of the safety perpendicular to that of the trigger and unlikely to be operated simultaneously. Les Freer, (Remington Recommended Gunsmith) in a letter to Remington dated July 12, 1979 stated that while the Model 700 safety-trigger configuration is convenient and comfortable, "at the same time, this very convenience naturally places the index finger on the trigger and the thumb on the safety simultaneously and any effort to push the safety forward induces some support by the index finger resting on the trigger. A very desirable, yet safe, trigger then becomes a liability as the sear is released unintentionally." While Mr. Freer and Remington in this case try to explain thousands of complaints on inadvertent trigger pull, they admit that this situation is certainly foreseeable, particularly with inexperienced hunters.

Remedy of this problem found its way into the "NBAR Fire Control Design Objectives" wherein one goal is: "Rifle will not fire if trigger pulled and held as safety is moved from 'S' to 'F'." Yet the NBAR rifle has never been produced whereas the Model 700 continues to be sold to unwary, and in many instances unskilled consumers.

MISCELLANEOUS OTHER RELEVANT DOCUMENTS NOT PRODUCED.

The following list contains exemplars of other documents which are relevant to various issues in this case as well as Remington bolt action rifle litigation in general. They are discussed only in summary form only:

1. AL14724 (Exhibit 3018), 14745 (Exhibit 3023), 23763 (Exhibit 3119), and 30137 (Exhibit 3352) - Defendants have successfully excluded evidence of the Model 600 recall in past Model 700 cases based on appellate opinions, despite trial judges' opinions to the contrary. These documents are probative of the fact that the fire control system in all Remington bolt action rifles utilizing the Walker patent, i.e. the Model 600 series and the Model 700 series are extremely similar and are treated the same. The trick test, failure of which was allegedly the sole cause of for recall of the Model 600 series was performed on the Model 700 series before and after the recall. A "History of Problem" with respect to the Model 600 describes fire on safety release with no mention of an intermediate "trick" position, the same malfunction which Brock Aleksich and thousands of other customers have experienced with Model 700s. And the screwdriver test which checks for interference between trigger connector and sear was performed on both series of rifles, because they have the same defects. These are just a few of the instances of identical treatment of these two (2) models since their introduction in 1962. Many others appear in these recently produced documents.

2. It is interesting to note that James C. Hutton, Defendants' primary liability expert, appears on some of the documents recently produced, authoring for example Exhibit AL16424 entitled "M-700 Bolt Latch Mechanism" on October 24, 1980. He has previously testified that Model 700 trigger connectors will not move vertically to interfere with the sear and produce an FSR--contrary to C. Prosser's findings in gun examinations many years ago. Fred Martin, despite repeated testimony to the contrary, did examine a number of Model 700 rifles returned as a result of customer complaints of accidental discharge while he was redesigning the Walker fire control leading up to NBAR. He is clearly impeachable

based on his prior deposition testimony regarding NBAR. Plaintiffs do not anticipate that either of these individuals, identified as witnesses in this case, will appear for trial. AL 23422 (Exhibit 3089), 23425 (Exhibit 3090), 23587 (Exhibit 3104), 23588 (Exhibit 3105), and 23594 (Exhibit 3107).

3. Finally, Remington's attitude toward this problem can be seen in AL22714 (Exhibit 3058) wherein J.A. Stekl, responsible for examining returned firearms, asked E. G. Larson in a memo entitled "Don't Say It--Write It" the following: "Basically, are we accepting liability for incidents involving recall rifles, when examination indicates no problems exist with the rifle, even though it contains the original fire control? Please advise." No document giving that advice has been found although it is clear from Remington's "spin" on the Model 600 recall that they did not "accept liability" despite admitting the rifle would fire upon safety release. This is further confirmed by another letter from Wayne Leek dated January 4, 1982 reciting the company line, i.e. Remington was "not at fault with respect to the alleged safety mechanism of the Model 600 rifle" which had been recalled several years earlier.

4. Other documents show DuPont's involvement in Remington's design efforts such as AL29472 (Exhibit 3160) in which it is stated " Mr. Allen Hughes from the DuPont Lubrication Lab will be here Wednesday, August 26th at 9:00 a.m. to give us the information he has come up with during his investigation of a cleaner and lubricant for the Model 700 fire control." Apparently, Remington asked DuPont to look into an appropriate method to clean and lubricate its bolt action rifles so that contaminant buildup would not cause malfunctions. Did DuPont participate in the design or redesign of the Walker bolt action rifle fire control beyond this? No one knows. What DuPont learned and advised Remington would have direct relevance on this case.

5. AL29592 (Exhibit 3165) is a particularly interesting document because it shows that Remington maintains a much better record keeping system than Plaintiffs anticipate it will allege in the response to this Motion For Sanctions. This document sets forth a numerical list of Research Notebooks by number also stating the individual designer responsible for same and the topic of the notebook. One of which is Notebook number 2040 assigned to Fred Martin regarding Bolt Action Rifles -- Misc. Design Projects. Until this particular notebook was recently produced, Plaintiffs had no idea research notebooks even existed much less an index to same, one page of which was produced. The obvious inquiry now is whether or not any other research notebooks have ever dealt with Remington bolt action rifle fire control systems over the last 50 plus years. Plaintiffs suspect the answer is yes but then again, they do not have the rest of the index to confirm this. But this document, the remainder of the Designer Notebook index, does exist. Defendants should produce it.

Plaintiffs have asked Defense counsel to confirm that no other documents or other evidence is being withheld, be it designer notebooks or the other four (4) to eight (8) boxes of documents originally disclosed. We have received no written response as of this writing.

Respectfully submitted,

WOOLSEY, FISHER, WHITEAKER & McDONALD
A Professional Corporation

By Richard C. Miller
Richard C. Miller
Bar No. 29595

BURGESS, JOYCE & WHELAN

By FRANK BURGESS BY ROE
Frank Burgess

WOOLSEY, FISHER, WHITEAKER & McDONALD, P.C.
P. O. Box 1245
300 S. Jefferson, Suite 600
Springfield, MO 65801
Telephone: (417) 869-0581
Facsimile: (417) 831-7852

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing was hand delivered via UPS Next Day Air to all attorneys of record by placing same in the United States Mail, postage prepaid, duly addressed to their business address on the 23rd day of March, 1995.

Mr. Frank Burgess
Burgess, Joyce & Whelan
2801 South Montana Street
Butte, MT 59701

Mr. A. Lance Tonn
Lucas & Monaghan, P.C.
P. O. Box 728
Miles City, MT 59301

Mr. John Shaw (hand delivered)
Bryan Cave
3300 One Kansas City Place
1200 Main Street
P.O. Box 419914
Kansas City, MO 64141-6914

Mr. Robert Carlson
Coretti, Pohlman, Allen, Black
& Carlson
P. O. Box 5090
Butte, MT 59703-0509


Richard C. Miller

WOOLSEY, FISHER, WHITEAKER & McDONALD
P. O. Box 1245
300 S. Jefferson, Suite 600
Springfield, MO 65801
Telephone: (417) 869-0581
Telefax: (417) 831-7852

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