

ORIGINAL

NO. 13,461

LAURO H. CHAPA ET AL) IN THE 229TH DISTRICT COURT
VERSUS) OF
REMINGTON ARMS COMPANY ET AL) DUVAL COUNTY, TEXAS

MOTION FOR CONTINUANCE
MOTION FOR PROTECTION
MOTION FOR SANCTIONS
MOTION FOR INDEPENDENT MEDICAL EXAMINATION
MOTION FOR INTERVIEW
JULY 7, 1989

HEARD BY THE HONORABLE
RICARDO H. GARCIA
DISTRICT JUDGE
229TH JUDICIAL DISTRICT

---000---

1 A P P E A R A N C E S:

2
3
4 FOR THE PLAINTIFF:

MR. ROBERT CHAFFIN

5 ABELARDO GARZA
6
7

8 FOR REMINGTON ARMS:

MR. DAVID DEMARS

9 MR. J. A. CANALES
10
11

12 FOR EDELMIRO CHAPA:

MR. DOUGLAS MANN
13
14
15

16 FOR DUPONT:

MR. STEVE HASTINGS
17
18
19
20
21
22
23
24
25

---ooo---

1 BE IT REMEMBERED that on this the 7th day of July, 1989,
2 the hereinabove styled and numbered cause came to be heard
3 before the Honorable Ricardo H. Garcia, as follows, to-wit:

4 THE COURT: Okay the first case that we have for
5 this morning in today's docket is cause number
6 13,461 Lauro Homero Chapa versus Remington Arms
7 Company et al. This is a motion for sanctions.
8 There's two motions for sanctions. Motion for
9 independent medical examination and request for
10 interview. Motion for continuance and motion for
11 protection. Is that correct gentlemen? And
12 ladies? Okay. Who are the movant?

13 MR. DEMARS: Your Honor the first motion for
14 sanctions is by Remington Arms Company against the
15 Plaintiffs, for failure to disclose witnesses,
16 that was filed April 10. I believe the next
17 motion is the defendant's motion for sanctions,
18 Plaintiff's motion for sanctions against Defendant
19 Remington Arms and Mr. Hastings is here on behalf
20 of Dupont and he has filed a motion for
21 continuance and motion for protective order with
22 regard to some depositions next week and Remington
23 has filed a motion for independent medical
24 examination of the plaintiff along with asking the
25 Court's permission to have the plaintiff interview

1 with a vocational counselor.

2 THE COURT: Will you identify yourselves for the

3 record please so that we'll have it on the record.

4 MR. DEMARS: My name is David Demars I am here with

5 Mr. Tony Canales representing Remington Arms.

6 Inc..

7 MR. CHAFFIN: Robert Chaffin with my local counsel

8 Abelardo Garza, representing the Plaintiffs Luis

9 Chapa, Lauro Chapa and Raquel Chapa.

10 MR. MANN: Douglas Mann My co-counsel Rudy Garza

11 was unable to attend but I am here on behalf of the

12 defendant Edelmiro Chapa, no motions before the

13 Court.

14 MR. HASTINGS: My name is Steve hastings on behalf

15 of Dupont.

16 THE COURT: Okay. Douglas Mann?

17 MR. MANN: Yes, sir with Brin and Brin.

18 THE COURT: Okay.

19 MR. CHAFFIN: This is the plaintiff.

20 THE COURT: Okay. Let's go. I'm ready. How long

21 will this hearing take?

22 MR. HASTINGS: On behalf of Dupont I filed a motion

23 for continuance. My part of the proceeding

24 probably won't take 5 minutes. We are set for

25 trial in August on this matter August 7 and my

1 THE COURT: Now, if there's precedence set in law
2 I will consider that at the proper time but don't
3 tell me how somebody, another judge rules and I'm
4 supposed to rule exactly like he ruled?

5 MR. CHAFFIN: No, sir.

6 THE COURT: I won't do it.

7 MR. CHAFFIN: What other Judges say the only
8 reason it's relevant is to show that these people
9 have a pattern of doing the same thing. That is
10 relevant to this hearing. Not that this is an
11 isolated thing. They did it to other people Your
12 Honor. Once you deprive somebody of relevant
13 evidence for over 2 years and I'm able to show
14 definitively now that evidence has been destroyed I
15 can't show what time period it has been, they can't
16 show when it was destroyed or lost either but just
17 that it's gone, you can not say that delay has not
18 prejudiced my right to a fair trial. And that's
19 the crux of why you should grant sanctions in this
20 thing, Your Honor.

21 THE COURT: Okay. What are you requesting; I
22 strike the pleadings?

23 MR. CHAFFIN: I am willing to --

24 THE COURT: Kick them out?

25 MR. CHAFFIN: No, sir. You as the judge obviously

1 have the right to fashion any broad range of
2 sanctions. If striking their pleadings is too
3 harsh I am not arguing with the Court about that
4 excessively. Then we should fashion some other, a
5 monetary sanction, coupled with a finding by the
6 Court that in fact I rightfully requested these
7 records and there was a failure to produce them for
8 over 2 years. So that the jury will know that
9 records were not produced in accordance with the
10 rules of this Court.

11 THE COURT: Is that it?

12 MR. CHAFFIN: Yes, sir.

13 THE COURT: Okay.

14 MR. CHAFFIN: Nothing further, Your Honor.

15 THE COURT: Okay. The Court will grant the
16 sanctions. I will not strike the pleadings, I will
17 not fine them but you can let the jury know.

18 MR. CHAFFIN: Can I draw an order to that effect,
19 Your Honor.

20 THE COURT: Provided that I approve it.

21 MR. CHAFFIN: Yes, sir.

22 MR. CANALES: Let the jury know what Your Honor?
23 Delve into with witnesses why documents weren't
24 produced is that it? Or is he going to be allowed
25 to make a speech?

1 MR. CHAFFIN: The the -- I would just like the
2 order to say that I correctly drew a request for
3 production for those documents, that the documents
4 existed and that --

5 THE COURT: No I am not going to even suggest that
6 the documents existed. You can say that you had
7 requested, properly requested the documents and
8 that they were produced two years or if they were
9 not produced at all. And then I'll allow you to
10 come in and give your reasons why. Okay what
11 else? What other motion do we have? Motion for
12 independent medical exam and request for
13 interview. What's that?

14 MR. CANALES: Your Honor, we want the plaintiff to
15 be examined by an independent orthopedic surgeon
16 and we would also like --

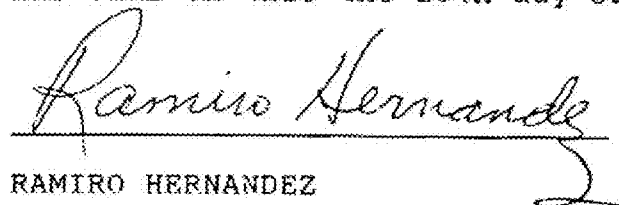
17 THE COURT: And are you going to pay?

18 MR. CANALES: Yes, Your Honor. We'll also pay to
19 have the plaintiff talk to our vocational
20 rehabilitation expert who is someone who councils
21 people with injuries as to what vocations they are
22 best suited for and able to do with their injury
23 and instead of trying to take the boy's deposition
24 again with the expert present whispering in my ear,
25 I would just like to --

1 THE STATE OF TEXAS)
2 COUNTY OF DUVAL)
3

4 I, RAMIRO HERNANDEZ, Certified Shorthand Reporter and
5 Official Court Reporter for the 229th Judicial District of
6 Texas, do hereby certify that the above and foregoing pages
7 contain a full, true and correct transcription of my shorthand
8 notes taken on July 7, 1989, in cause No. 13,461 styled Lauro
9 H. Chapa et al versus Remington Arms Company et al which was
10 heard in Duval County, Texas, before the Honorable Ricardo H.
11 Garcia, Judge of the 229th Judicial District of Texas.

12 WITNESS MY OFFICIAL HAND AND SEAL on this the 28th day of
13 January, 1990.


RAMIRO HERNANDEZ

16
17 **ORIGINAL**

18 OFFICIAL COURT REPORTER
19 229TH JUDICIAL DISTRICT
20 DUVAL, JIM HOGG, STARR COUNTIES
21 CERT. NO. 763, EXPIRE 12-31-90
22 P. O. BOX 185
23 HEBBRONVILLE, TEXAS 78361
24 PHONE NO. 512-527-4778
25

---oOo---