

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

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

Of 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
)	
v.)	PRETRIAL ORDER
)	
REMINGTON ARMS COMPANY, INC.,)	
a Delaware corporation,)	
)	
Defendant.)	

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

1. Nature of Action.

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

2. Subject Matter Jurisdiction.

Jurisdiction of this Court is based upon diversity of

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 \$1,186.24,
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 * * *


1 proximate and legal cause of the injuries sustained by Teri See.

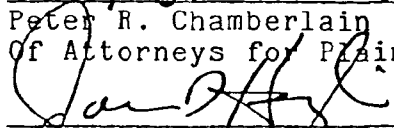
2 h. The jury should be informed as to the existence of
3 plaintiffs' settlement with the Boudreaus and should be
4 instructed in unequivocal language of the reasons for Boudreau
5 not being a participant in this particular lawsuit, including the
6 fact that the covenant entered into between the plaintiff and
7 Boudreau and its legal effect precludes Remington Arms from
8 bringing Mr. Boudreau in as a third party defendant.

9 8. Amendments to Pleadings.

10 a. Plaintiff Teri See seeks to amend her complaint to
11 allege general damages in the sum of \$500,000 rather than the
12 \$250,000 set forth in the complaint as filed.

13 b. Plaintiff Teri See seeks to amend her complaint to
14 allege medical specials in the sum of \$11,789.00 and lost wages
15 in the sum of \$1,187.24.

16
17 
18 Peter R. Chamberlain
Of Attorneys for Plaintiffs

19 
20 James D. Huegli
Of Attorneys for Defendant

21 IT IS ORDERED the foregoing Pretrial Order is

22 _____ Approved as lodged.

23 _____ Approved as amended by interlineation..

24 DATED this _____ day of _____, 19__.

25
26 _____
U.S. DISTRICT JUDGE/MAGISTRATE