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September 28, 1982

Mr. Peter Chamberlain
Bodyfelt, Mount, Stroup
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Attorneys at Law
229 Mohawk Building
Portland, Oregon 97204

Re: See, Teri & Darrel v. Remington Arms Co.

Dear Peter:

I have now had an opportunity to review the Pretrial Order. I have taken the liberty of sending the Pretrial Order off to my client Bob Sperling.

In relationship to the Pretrial Order, I would offer the following:

1. The nature of the action and subject matter jurisdiction are correct.
2. I would agree with agreed facts a through e. Agreed fact f, g, i, j, l and m should be transferred to plaintiffs' contentions of fact. I will not agree to them.
3. I would approve agreed facts under h, k, n, o, p and q.
4. I would offer the following as defendant's contentions of fact.

(1) Defendant denies plaintiffs' contentions of fact

(2) The proximate and legal cause of the injuries sustained by the plaintiff was the negligence of the owner of the gun, Stephen Boudreau.

(3) Stephen Boudreau (hereinafter referred to as owner) was negligent in operating a loaded firearm without first ascertaining that the muzzle was pointed in a safe direction.

(4) Owner was negligent in operating a loaded firearm when he knew or should have known that consuming alcohol could or would interfere with his use of said firearm, causing a dangerous condition to exist for himself and others.

(5) Owner was negligent in failing to read the instruction manual provided by the defendant with said rifle.

(6) Owner was negligent in throwing away the instruction manual provided by the defendant with said rifle.

(7) Owner was negligent in keeping a loaded gun in a house when he knew or should have known that an accidental discharge of said firearm would be more likely to cause serious injury to himself or any third party.

(8) Owner was negligent in misusing and abusing the rifle by improper maintenance and care.

(9) Owner was negligent in failing to follow all the manufacturer's manual instructions regarding the operation of the rifle.

(10) Owner was negligent in pulling the trigger of a loaded rifle while it was pointed at the plaintiff with the safety in the fire position.

(11) Owner was negligent in improperly adjusting the trigger pull contrary to the manufacturer's directions.

(12) Owner was negligent in bringing a loaded gun into a house.

(13) Owner was negligent in failing to keep guns and ammunition stored separately.

I would offer the following as defendant's contentions of law:

- (1) Defendant denies plaintiffs' contentions.
- (2) Evidence of defendant's post-accident design change is inadmissible for any purpose as being unrelated to this accident.
- (3) Evidence of similar complaints from other owners is inadmissible.
- (4) If evidence of other complaints is to be admitted, the plaintiff must first establish that this gun was, in fact, defective.
- (5) Evidence of other similar complaints is inadmissible on the issue of design defect as it has not been shown the guns were substantially identical.
- (6) Evidence of payment of \$25,000.00 by Stephen Boudreau, to the plaintiff, is admissible evidence.

I would also suggest, Peter, that an agreed fact as follows be placed under agreed facts:

"The owner of the rifle Stephen Boudreau has paid to the plaintiffs, \$25,000.00 for a release of his liability in this matter, and the defendant Remington is unable as a matter of law, to bring Stephen Boudreau in as a third-party defendant in this case."

I offer the last comment, Peter, so that we can tell the jury why we have not brought Mr. Boudreau in as a defendant and sued him if we intend to place blame as far as causation on his shoulders.

We would also ask that the following additional contentions of fact be placed under defendant's contentions of fact:

- (1) Any failure to warn the owner of said rifle is irrelevant under any circumstances as the owner did not read any of the material provided.
- (2) This particular rifle was not defectively designed, nor was it defective in any way.

Mr. Peter Thomas
September 28, 1982
Page Four

I am sending a copy of this letter to my client and asking that he respond as soon as possible with his thoughts and comments regarding the Pretrial Order. As you know, Bob Sperling is a well qualified lawyer who will be assisting me in this matter.

In anticipation of his favorable response, would you please redraft the Pretrial Order and send it over.

Very truly yours,

James D. Huegli

JDH:cbs

~~cc: Mr. Robert Sperling~~