

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION

JUAN LOPEZ,
Plaintiff

VS.

REMINGTON ARMS COMPANY,
INC.,
Defendant

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C. A. NO. C-80-120

MOTION TO COMPEL PRODUCTION

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, Defendant REMINGTON ARMS COMPANY, INC., and pursuant to Rule 37, Federal Rules of Civil Procedure, requests that this Court enter its Order compelling Plaintiff to produce for inspection, testing and copying certain items heretofore requested pursuant to Rule 34, Federal Rules of Civil Procedure, for the following reasons:

I.

On September 6, 1980 and September 15, 1980, respectively, Defendants served on Plaintiff its Request and Supplemental Request For Production, requesting, among other things, the rifle in question in this lawsuit in order that it might undergo non-destructive testing at Defendant's expense.

II.

THEREAFTER, Plaintiff, filed a Response to said Request in which he did not object to producing the rifle and other items requested, but rather requested that the Court enter a Protective Order requiring Defendant to post a bond payable to Plaintiff in an amount sufficient to compensate Plaintiff for all damages alleged herein in the event that the items are lost, damaged or destroyed while in Defendant's possession. In addition, Plaintiff requested that in the event that items were lost, damaged or destroyed that Defendant be deprived of the right to present any evidence

obtained as result of the examination of any of the said items.

III.

It is necessary for this Defendant to have possession of these items, particularly the rifle in question, in order to formulate a defense to Plaintiff's allegations of strict product liability and breach of warranty of fitness. The type of non-destructive testing and examination which Defendant proposes to utilize includes, among other things, microscopic examination and photographing and X-ray photography which can only be accomplished with scientific equipment available to Defendant and its experts outside of Corpus Christi, Texas.

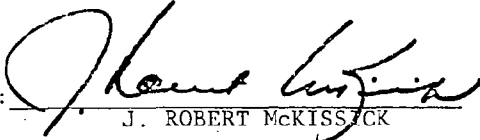
IV.

The protection requested by Plaintiff is unnecessary and unjustly burdensome. Plaintiff's have had opportunity and, it is believed, have had the items inspected and tested by an expert of their own choice and would be able to testify on behalf of Plaintiff's theory of the case regardless of whether the items were present at the time of Trial. However, this Defendant will willingly take any measures to secure the presence and integrity of the items as this Court may deem reasonable. If, despite all precautions, any of the items are in any manner damaged or missing, the Court may at that time determine whether Plaintiff is prejudice thereby and what measures, if any, are necessary to insure that neither party will be prejudice thereby.

WHEREFORE, PREMISES CONSIDERED, Defendant, REMINGTON ARMS COMPANY, INC., prays that this Court set this Motion for Hearing and thereafter that the Court enter its Order compelling Plaintiff to produce the items previously requested

under the terms and conditions set forth in such requests.

Respectfully submitted,

BY: 
J. ROBERT MCKISSICK

ATTORNEY IN CHARGE FOR DEFENDANT,
REMINGTON ARMS COMPANY, INC.,


P. O. Box 2446
Corpus Christi, Texas 78403
(512) 884-3551

Of Counsel:

KLEBERG, DYER, REDFORD, & WEIL

CERTIFICATE OF SERVICE

I hereby certify that true copy of the foregoing Motion has been served on Counsel for Plaintiff, Gerald H. Beckman, P. O. Box 7219, Corpus Christi, Texas 78415, by depositing same with the United States Postal Service properly addressed with proper First Class Return Receipt Postage attached thereto, at the same time the original was transmitted for filing with the Clerk of this Court on this the 15 day of October, 1980.


J. ROBERT MCKISSICK