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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

TERI SEE and DARREL SEE,)	
wife and husband,)	
Plaintiffs,)	
vs.)	Civil No. 81-886
REMINGTON ARMS COMPANY, INC.,)	
a Delaware corporation,)	
Defendant.)	

TELEPHONE DEPOSITION OF GERALD CUNNINGHAM
Taken in behalf of the Plaintiffs

BE IT REMEMBERED That, pursuant to oral stip-
ulation hereinafter set forth, the telephone deposition of
GERALD CUNNINGHAM was taken in behalf of the Plaintiffs, before
Patricia Williams, a Notary Public for Oregon, on Wednesday,
August 4, 1982, beginning at 5:20 p.m., in the law offices of
Boodyfelt, Mount, Stroup & Chamberlain, 214 Mohawk Building,
708 Southwest 3rd Avenue, Portland, Oregon.

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APPEARANCES :

Mr. Peter R. Chamberlain, appearing in behalf of Plaintiffs
Teri See and Darrel See;
Mr. James D. Huegli, appearing in behalf of Defendant
Remington Arms Company, Inc.

ALSO PRESENT:

Ms. Kathy Janssen

EXAMINATION INDEX

Examination by:	Pages
Mr. Chamberlain	4 & 12
Mr. Huegli	9

COMPUTER ASSISTED TRANSCRIPTION

-BY-

GEESMAN & ASSOCIATES
310 S. W. 4TH, Suite 512
Portland, Oregon 97204
(503) 222-3222

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(At said time and place the following stipulation was entered into between the attorneys present in behalf of the respective parties:)

It is hereby stipulated and agreed by and between the parties hereto, through their respective attorneys of record, that the telephone deposition of GERALD CUNNINGHAM may be taken in behalf of the Plaintiffs at the time and place set forth in the caption hereof, before Patricia Williams, a Notary Public for Oregon, and in stenotype by the said Patricia Williams.

It is further stipulated that the deposition when fully transcribed, may be used in the trial of the above-entitled action as by the law and the Rules of Civil Procedure for District Courts of the United States provided; that all questions as to the notice of the time and place of taking the same are waived; and that all objections as to the form of questions are waived unless objected to at the time the questions are asked, but that all objections as to materiality, relevancy and competency of the questions and answers are reserved to the parties until the time of trial.

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GERALD CUNNINGHAM

was thereupon produced as a witness in behalf of the
Plaintiffs and, having been first duly sworn on oath, was
examined and testified as follows:

EXAMINATION

(BY MR. CHAMBERLAIN):

Q. Mr. Cunningham, could you please spell your first and
last name for the record?

A. The last name is Cunningham, C-u-n-n-i-n-g-h-a-m.

Q. And your first name is Jerry?

A. No, it is Gerald, G-e-r-a-l-d. No middle name.

Q. No middle name?

A. Right.

Q. And your address?

A. 35140 Freedom Road.

Q. And the city?

A. Farmington Hills.

Q. State?

A. Michigan.

Q. Okay. Are you a permanent resident of Michigan?

A. Yes.

Q. Okay. As I told you, my name is Peter Chamberlain and
I represent the plaintiffs in a lawsuit. The

1 plaintiffs' names are Mrs. and Mr. See.

2 They've brought a lawsuit against Remington Arms,
3 so I'm here on behalf of them, and Mr. Huegli is on the
4 line on behalf of Remington Arms. Okay?

5 A. Uh-huh.

6 Q. Could you give us your age, please?

7 A. Fifty-one.

8 Q. Okay. I understand that you own or at one time owned a
9 Remington rifle?

10 A. Yes. I purchased the Remington 700 BDL in September of
11 1978.

12 Q. Okay.

13 A. New.

14 Q. New?

15 A. Yes.

16 Q. Where did you purchase it?

17 A. Northwest Gun Shop in Detroit.

18 Q. Do you still own it?

19 A. Yes.

20 Q. Okay. And you said BDL. Is that "B" as in boy, "D" as
21 in David and "L" as in Larry?

22 A. Correct.

23 Q. Have you done anything to alter the gun?

24 A. Nothing. All I did was, I had the scope mounted by the
25 same shop that sold it to me.

1 Q. Okay. Do you know the serial number of the gun?
2 A. Yes.
3 Q. Could you read that to us?
4 A. Right. Let's see. I had it here. "A" as in Ada,
5 6494029.
6 Q. Okay. And I understand that you experienced some
7 difficulty with the rifle?
8 A. Yes, I did. I was unloading it in 1979. My wife and
9 I, we were in northern Michigan and we had -- we were
10 in our barn in the morning, just the two of us, and
11 just as I was getting ready to unload it, I told my
12 wife to move off to the right. And I said, you know,
13 "I'm going to unload the gun."
14 And so, when I took it off the safety -- it was on
15 safe -- and I, you know, put it in the fire position as
16 the manual says and I started to lift the bolt and it
17 discharged right then, and it went into the ground or
18 the lower part of the barn.
19 Q. You missed your wife, I trust?
20 A. Oh, yes. She was -- I was pointing, you know -- she
21 was to the north and I was pointing it to the south or --
22 yeah, the southwest.
23 Q. Do you know whether or not you had your fingers or any
24 part of your hand or any part of your body on the
25 trigger when this happened?

1 A. No, I've always been very, very careful. It's kind of
2 drummed into me, so I never even, you know, pick up the
3 rifle until, you know, I see something that I'm getting
4 ready to shoot.

5 And I do some revolver shooting, and I just made it
6 a practice to never touch that trigger until I know the
7 time that I want to shoot because I'm a definite shot
8 and it was quite a surprise to us, you know, when this
9 happened.

10 Q. Now, at the time that this first occurred, was there
11 anything near you, any objects other than your body
12 that might have been pressing on the trigger?

13 A. No, and nobody had touched the gun at all once it was
14 loaded. There was nobody there but my wife and myself
15 during the hunting time.

16 Q. Now, did this happen to you again?

17 A. Yes. That was in 1979, and in 1980 -- this was on the
18 18th of November, and we were in the same barn. I have
19 a little shooting room there; I have windows that you
20 can open up. And I told my wife that I was going to,
21 you know, be unloading the gun and I said, "I'm going
22 to fire the one in the chamber."

23 The gun was fully loaded and I -- this is the left-
24 hand model gun. So I touched the safety with my left
25 thumb and the gun fired. I was holding it out the

1 window towards the woods -- and these are private woods
2 where nobody else would be -- and the gun fired and the
3 recoil came back and it put a groove in alongside my
4 thumb, not only a groove but it badly bruised it.
5 Q. Did it break the skin?
6 A. Yes, it did.
7 Q. Okay. Now, the first time -- you've described two
8 occurrences for us. On the first occurrence, how many
9 times had the gun been fired since you had purchased
10 it?
11 A. Twice the previous year, in 1978.
12 Q. And can you tell me what your practice was with this
13 rifle as far as cleaning it?
14 A. I always -- I clean it after the season and just before
15 the season.
16 Q. Would you describe it as being in good condition or
17 not?
18 A. Good condition, yes.
19 Q. Am I correct that this gun is designed such that you
20 cannot unload the ammunition from it without putting
21 the safety to the fire position?
22 A. That's right. The way that the instructions read is
23 that you have it -- first of all, when it's loaded,
24 it's on safe and when you want to unload it, then you
25 take it off of safe, moving it forward, and you lift

1 the bolt, put it back on safe and then pull the bolt
2 all the way back.

3 Q. I see.

4 MR. CHAMBERLAIN: I have no further
5 questions. Mr. Huegli may have a couple for you.

6 EXAMINATION:

7 (BY MR. HUEGLI):

8 Q. You sent that gun back to Remington?

9 A. Yes, I did. First of all, when it happened the first
10 time, I took it back to the gunshop and -- in fact, I
11 called the man from my place up north.

12 Q. Did he check the gun out?

13 A. Yes, he did.

14 Q. Did he find anything wrong with it?

15 A. No. And then I couldn't understand it and I said,
16 "Well, did you put live ammunition in the gun when you
17 checked it?"

18 And he said, "No." That's -- I was kind of
19 surprised. He said his son couldn't find anything
20 wrong; his son is a gunsmith. And then it happened,
21 you know, the next year also.

22 Q. So then you sent it back east to Remington?

23 A. Yes. I called Remington first and told them about the
24 problem. Then I wrote them a letter and told them I
25 was sending the gun.

1 Q. Do you have a copy of your letter?
2 A. No, I'm afraid I don't.
3 Q. All right.
4 A. Remington must have it.
5 Q. So, you sent Remington a letter?
6 A. Yes, I explained what happened. I also explained my
7 physical condition. I told them that I had been in a
8 wheelchair for many, many years with polio and, you
9 know, I had enough problems and didn't want any more
10 and would they please look at the gun.
11 Q. What did they do, do you know?
12 A. No, they never did tell me. They sent me a booklet
13 back, a revised booklet. I have the original booklet
14 that came with my gun and, you know, explaining how it
15 works and everything. And then they sent back a new
16 instruction booklet that had been revised and it had
17 many, many cautions in it with little stop signs that --
18 you know, to stop and be sure to read.
19 Q. What changes did you notice?
20 A. I didn't notice any changes at all.
21 Q. No changes in the booklet?
22 A. In the booklet, yeah. It's a different format in that
23 they really catch your attention with these little red
24 stop signs, you know. Like it says, "Never put your
25 finger on the trigger unless you're going to fire."

1 Well, I never did that anyway. But somebody else,
2 maybe they might do it.

3 Q. Well, let me ask you this. Did they change your gun in
4 any way, put any new parts in it or anything?

5 A. I couldn't tell at all. The serial number is the same.
6 I have checked the serial number, so the barrel is the
7 same but I really couldn't tell. It didn't look like,
8 you know -- I couldn't tell you because the gun is new
9 anyway or, you know, it's in very good shape.

10 The only thing that I could tell, probably, would
11 have been if the barrel had been replaced because I had
12 a little scratch on the bottom of the barrel.

13 Q. Had it been replaced?

14 A. No, it hadn't.

15 Q. Have you had any problem with the gun since?

16 A. No. I used it in, you know, this past year and
17 everything went fine.

18 Q. Okay. Have you ever taken the trigger mechanism out of
19 the gun and soaked it in diesel fuel?

20 A. No, I never touch it at all. I just lubricate, you
21 know, clean the barrel and everything. That's all.

22 No, I never take the gun apart at all. I'd take
23 it to the gunshop if I thought that it needed that.

24 Q. Okay.

25 MR. HUEGLI: Thank you very much.

1 FURTHER EXAMINATION

2 (BY MR. CHAMBERLAIN):

3 Q. Mr. Cunningham?

4 A. Yes.

5 Q. I have a couple of questions I neglected to ask you.
6 Turning your attention to this second occurrence when
7 the gun discharged when you moved the safety, did you
8 have any part of your body; your fingers, hand or
9 anything also near the trigger on that occasion?

10 A. No, I did not.

11 Q. Was there any other foreign object, any part of the
12 room that might have been touching it?

13 A. No.

14 Q. Okay.

15 MR. CHAMBERLAIN: Jim, do you have anything
16 else?

17 MR. HUEGLI: No. Thank you.

18 MR. CHAMBERLAIN: Mr. Cunningham, you have
19 the right to read and sign your deposition if you want
20 to. The idea is that you can read it and if you see
21 any problems or any mistakes that the court reporter
22 made, you have the right to correct those before you
23 sign it, or you may waive that right to read and sign
24 it. I can tell you that the court reporters are
25 generally very accurate, and it doesn't make any

1 difference to me. You can either read and sign or you
2 can waive your right to do so.

3 THE WITNESS: Well, I would like to read it.

4 MR. CHAMBERLAIN: Okay. It may be some time
5 before we get it transcribed but when we do, we will
6 send it to you with a letter and give you thirty days
7 to get it back to us. Okay?

8 THE WITNESS: That will be fine.

9 MR. CHAMBERLAIN: Thank you very much.
10

11 (Deposition concluded at 5:30 p.m.)
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1 STATE OF OREGON)
2) ss
COUNTY OF MULTNOMAH)

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4 I, the undersigned, Patricia Williams, a Notary
5 Public for Oregon, do hereby certify that the telephone depo-
6 sition of GERALD CUNNINGHAM was taken before me at the time
7 and place mentioned in the caption of the foregoing deposition;
8 that Mr. Peter R. Chamberlain appeared in behalf of the
9 Plaintiffs Teri See and Darrel See and that Mr. James D. Huegli
10 appeared in behalf of the Defendant Remington Arms Company, Inc.
11 and the said witness being by me first duly sworn to testify
12 the truth, the whole truth and nothing but the truth, in
13 answer to oral interrogatories, testified as in the fore-
14 going annexed deposition, Pages 1 to 13, both inclusive,
15 set forth.

16 I further certify that all interrogatories pro-
17 pounded to said witness, together with the answers of said
18 witness thereto, and all objections and other oral proceed-
19 ings occurring upon the taking of said deposition, were
20 then and there taken down by me in stenotype and there-
21 after reduced to typewriting under my direction, and that
22 the foregoing annexed transcript, Pages 1 to 13, both
23 inclusive, constitutes a full, true and accurate
24 transcript of said deposition and proceedings, so taken
25 by me in stenotype on said date, as aforesaid, and of the

1 whole thereof; that the deposition, when fully transcribed,
2 was submitted to the witness for examination and reading
3 by him, and that the witness thereafter signed the depo-
4 sition in the presence of a Notary.

5 I further certify that I am not a relative or
6 employee or attorney or counsel for any of the parties,
7 or a relative or employee of such attorney or counsel,
8 or financially interested in said cause.

9 IN WITNESS THEREOF, I have hereunto set my
10 hand and notarial seal this 15th day of September, 1982.

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Patricia Williams
Notary Public for Oregon
My commission expires: 6/9/84