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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.)
)
) REMINGTON ARMS COMPANY, INC.,)
) a Delaware corporation,)
)
) Defendant.)

Civil No. 81-886

TELEPHONE DEPOSITION OF JAMES HEULSTER
Taken in behalf of the Plaintiffs

BE IT REMEMBERED That, pursuant to court order and oral stipulation hereinafter set forth, the telephone deposition of JAMES HEULSTER was taken in behalf of the Plaintiffs, before Susan K. Leedham, a Notary Public for Oregon, on Thursday, August 5, 1982, beginning at 2:30 p.m., in the law offices of Bodyfelt, Mount, Stroup & Chamberlain, 214 Monawk Building, Portland, Oregon.

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APPEARANCES :

Mr. Peter R. Chamberlain, of attorneys, appearing in
behalf of the Plaintiffs;
Mr. James D. Huegli, of attorneys, appearing in behalf
of the Defendant.

EXAMINATION INDEX

Examination by:	Pages
Mr. Chamberlain:	4
Mr. Huegli:	15

COMPUTER ASSISTED TRANSCRIPTION

-BY-

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

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STIPULATION

(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 deposition of JAMES HEULSTER may be taken in behalf of the Plaintiffs at the time and place set forth in the caption hereof, before Susan K. Leedham, a Notary Public for Oregon, and in stenotype by the said Susan K. Leedham.

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 Court 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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JAMES HEULSTER

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. Heulster, could you please spell your first and last name for the record.

A. First name is James, J-a-m-e-s. Last name is Heulster, H-e-u-l-s-t-e-r.

Q. What is your home address, sir?

A. My address is 8254 Del Cadena -- first word, D-e-l, last word is C-a-d-e-n-a in Scottsdale, Arizona.

Q. I didn't get the second half of the street name there.

A. C-a-d-e-n-a.

Q. Cadena?

A. Cadena.

Q. You're in Scottsdale, Arizona. You live there in Scottsdale?

A. Zip 85258 in Scottsdale, Arizona.

Q. Is that your permanent residence?

A. Yes, it is.

1 Q. I understand that today you're on business in Delaware?
2 A. That is correct.
3 Q. Okay. I also understand -- well, let me tell you that
4 my name is Peter Chamberlain. We have talked on the
5 phone before.
6 A. Yes.
7 Q. And I represent Mr. and Mrs. See in a lawsuit that they
8 brought against Remington Arms.
9 A. Yes.
10 Q. Mr. Huegli, who we have introduced to you, represents
11 Remington Arms in this lawsuit.
12 A. Yes.
13 Q. I wanted to ask you some questions about a Remington
14 rifle that you, I guess, still own, don't you?
15 A. Yes, I do.
16 Q. Could you tell me what model Remington that is?
17 A. It's a Model 700 BDL.
18 Q. That's "B" as in boy, "D" as in David and "L" as in
19 Larry?
20 A. That's correct.
21 Q. The caliber?
22 A. 30 aught 6.
23 Q. Did you purchase it new?
24 A. I purchased it new. Yes, I did.
25 Q. Do you remember about the date?

1 A. It was approximately five years ago. Purchased it from
2 J.C. Penney's in Phoenix, Arizona.
3 Q. That would be 1977 then?
4 A. Yeah, I guess so.
5 Q. Okay. You say you purchased it in Arizona?
6 A. Yes, I did.
7 Q. During the time you've owned the gun, can you trace for
8 me your maintenance habits with the gun, what kind of
9 condition you kept it in and that sort of thing?
10 A. Well, fortunately, the atmospheric conditions are quite
11 good for storing anything, being dry. The week after I
12 got the rifle, a friend of mine and I went out in the
13 desert to sight the rifles. He purchased a rifle at
14 the same time or within a day or two of mine.
15 Q. You're jumping ahead of me here a little bit. I know
16 what you're leading up to. I want to ask you a couple
17 of preliminary questions. All right?
18 A. Okay.
19 Q. During the time you owned the gun, did you clean it
20 regularly and oil it and that sort of thing?
21 A. Yes, I've cleaned it. After every time it's been
22 fired, I have cleaned it. Before the beginning of the
23 hunting season, I cleaned and oiled it.
24 Q. Have you done anything to alter the gun in any way?
25 A. In no way.

1 Q. Do you recall what the serial number is on the weapon?
2 A. I don't have it available today, but I have it at home.
3 You can contact my wife and she can read it to you.
4 Q. You only own one Remington 700?
5 A. Yes, I do.
6 Q. And the one that we're talking about then is the same
7 one that you sent back to Remington Arms at some point?
8 A. That is correct.
9 Q. Okay. We have the serial number then from the records
10 that Remington has provided us.
11 A. Okay.
12 Q. If you would, I understand you had some problem with
13 this gun; is that right?
14 A. That's correct.
15 Q. Could you trace for us what those problems were and
16 just tell us generally what happened.
17 A. Okay. The gun has fired three times since I have had
18 it when the safety is released. All three times the
19 conditions were somewhat different, but all three times
20 it has fired, and I -- in at least two of the three
21 times I can say with 100 percent assurance that I in no
22 way touched the trigger or anything like that.
23 Q. By that you mean no part of your body was touching the
24 trigger?
25 A. Absolutely.

1 Q. How about foreign objects?

2 A. There were no foreign objects touching the trigger
3 either in at least two of the three times. I can say
4 that with 100 percent assurance.

5 Q. Let's go through the three times. Why don't you give
6 me the facts of each occurrence and tell me what
7 happened, what you did and what the result was.

8 A. Okay. Fine. Shortly after I purchased the weapon,
9 within a week or two, a friend and I went out in the
10 desert to sight the rifle. We both bought scopes at
11 the same time. We went -- mounted the scopes and took
12 them out to sight our rifles in, placed the target --
13 we measured 100 yards off in a ravine, put a target
14 out, came back to a high spot to fire. And I fired a
15 number of -- or a few rounds, three or four or five
16 rounds, something like that, put my weapon down and he
17 put his down. We both walked down to where the targets
18 were, put up some new targets, came back.

19 I laid down in the prone position, picked the
20 rifle up. There was one shell left in the chamber of
21 the rifle. I released the safety to fire with the gun
22 pointed down, down range, and the weapon fired by
23 itself.

24 I was stunned. You know, "What happened? What
25 did I do?" That's the only time that I can say that I

1 may have had my finger inside the trigger housing. I
2 can't tell you where my index finger was. It just
3 completely surprised me.

4 Q. You didn't intend to fire it at that moment I take it?

5 A. Huh?

6 Q. You weren't intending to fire the weapon?

7 A. Absolutely not. I was just releasing the safety to
8 fire. I was in a prone position. I was sighting on
9 the target, went to roll the safety off, and the thing
10 fired. I was very, very surprised.

11 Q. After that occurrence, you can't say for sure whether
12 you had your finger on the trigger?

13 A. I cannot say for sure that my finger was not on the
14 trigger. I feel in my heart -- I feel 99 percent
15 confident my finger was not on the trigger or even in
16 the trigger housing because of the fact that you don't
17 put your finger on the trigger when you release the
18 safety. However, that's the one occurrence that I can
19 say that my finger could have been in the wrong place.
20 The rifle does not have a hair trigger. It seems to
21 fire with normal pull. You know, seems to fire
22 normally. It doesn't have a hair trigger.

23 Q. Okay.

24 A. That time I credit to my lack of care being something
25 other than 100 percent sure that I didn't touch the

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trigger.

Q. Okay. Then what happened?

A. That same fall, October I believe was the month, October -- pardon me. November, right about Thanksgiving, same friend and I went hunting for elk up in northeast Arizona, up on the Muggian Rim (phonetic). While we were up there -- we were out hunting about the fourth or fifth day of the hunting season and the weather conditions that day were -- it was windy. We had had about 12 inches of snow in the area, and as a result, there was a lot of snow blowing off the pine trees. It was about freezing at that point. Quite cold and windy.

 Around 11:00 o'clock in the morning, my partner decided to stop hunting and come into camp. We had a prearranged signal. He went down the road and blew his horn. I came out of the valley and met him, placed the rifle in the back of his GMC Jimmy Jimmy or whatever the car is called -- whatever the four wheeler is called, without unloading it.

 We went into camp, warmed up, had some soup, had lunch, that sort of thing. We both got up and walked out to the truck and got our weapons out to clean them thinking that maybe we had gotten some water in them in the barrel or something. We wanted to clean them.

1 As I walked into camp, I released the safety. I
2 had a clinched fist and released the safety with my
3 thumb, at which time the gun went off and apparently
4 hit our cook stove which went through the propane
5 bottle, and the bullet and the parts of the propane
6 bottle went through our tent-trailer and just shredded
7 the back of the tent-trailer and put a couple holes in
8 the front of the tent-trailer in the steel door and
9 just made a mess out of everything.

10 Q. No injuries, I trust?

11 A. No injuries. We were again -- again we had -- I try to
12 think at least that I'm a very careful person with a
13 weapon and had it pointed generally towards the ground,
14 and I'm surprised that the weapon kicked up as high as
15 it did when the bullet hit the cook stove because it
16 should have hit the ground as I would have expected.
17 It could have hit the ground and ricocheted off a rock.
18 There was a lot of rocks in the area.

19 Q. Now, on the second occurrence then, can you say with
20 certainty whether or not you had your finger or
21 anything else near the trigger?

22 A. Not only can I say with certainty, but I have proof
23 that my finger was not touching the trigger. I have a
24 scar on my thumb, and the scar on my thumb will
25 indicate that there is absolutely no way -- I'm looking

1 at my thumbnail. It's a little to the left -- oh, it's
2 to the left of my right thumbnail, and there's no way
3 that I could have had my finger on it and have my thumb
4 sustain the injury that it sustained and have -- just
5 cannot reach any of your fingers around to the trigger.

6 Q. I follow you.

7 A. In addition to that, I had a clinched fist when I
8 pushed the safety off, which has been my practice ever
9 since the first time that the gun fired.

10 Q. Because you were being cautious?

11 MR. HUEGLI: Objection to the form of the
12 question.

13 BY MR. CHAMBERLAIN:

14 Q. Why did you after the first occurrence? Why did you
15 always clinch your fist when you moved the safety?

16 A. Because I was, very frankly, frightened of the gun.
17 It's been, you know, in my mind every -- every time I
18 handled that gun since the first time it went off that
19 there was a danger that there was something wrong.

20 Q. What did you do after that?

21 A. After that, I contacted Remington, not that winter. I
22 contacted a local hunting shop, and they said, "Well,
23 Remington really probably is in the busy season. Why
24 don't you wait until next spring or so."

25 I procrastinated a little bit and contacted them

1 probably in June or July, maybe as late as August.

2 Q. Of 1979?

3 A. Again, I -- it was -- it was four years ago.

4 Q. Okay. Let me ask you this. I'll just tell you I have

5 a gun examination report from Remington Arms that

6 indicates an examination date of August 20 of 1979.

7 Does that --

8 A. That was it then.

9 Q. Does that refresh your memory?

10 A. That was it. That is four years ago.

11 Q. Three years ago, isn't it?

12 A. Well, this is August '82. Yes, I guess it is three

13 years ago. Okay. I'm sorry. That's correct.

14 Q. Anyway, you sent it in?

15 A. I sent it in. The gun was serviced. Remington was

16 most cooperative. The gun did not get back to me by

17 the time of deer season that year. It was -- there was

18 some mixup in how it was sent back, and as a result of

19 that, Remington loaned me another 700. I believe it

20 was an ADL from another gun store in Phoenix located on

21 7th Street. They -- I went down there, got a gun and

22 used it that year for hunting.

23 Q. Okay. Now, did you have a third problem with your gun --

24 A. Yes, I have.

25 Q. -- after you got it back from Remington?

1 A. Yes, I have.

2 Q. Why don't you tell us about that?

3 A. This last November, the same -- the same partner and I
4 were out hunting again. We hunted in the opening
5 morning of elk season, came back to the truck, at which
6 time I again put my -- with a clinched fist put my
7 thumb on the safety, pushed the safety to the fire
8 position so I could unload it, at which time it fired.
9 This time I guess I wasn't being as careful, but I had
10 the gun pointing at the sky.

11 Q. Regardless of which way you had it pointed, did you
12 have your hand or any part of your body or any other --

13 A. In no way. I had a clinched fist and did it with my
14 extended thumb.

15 Q. Let me repeat my question. I have to finish the
16 question before you answer or else it comes out wrong
17 in the transcript.

18 A. Okay. I'm sorry.

19 Q. On this third occasion, regardless of where you had the
20 gun pointed, did you have your finger or your hand or
21 any part of your body or any other foreign object
22 touching or within very close proximity of the trigger?

23 A. In no way.

24 Q. Okay. Am I correct in assuming that this Remington
25 rifle that we have been talking about is the type of

1 rifle that you cannot unload without moving the safety
2 from the safe position to the fire position?

3 A. That is correct.

4 Q. Thank you very much, Mr. Heulster. Mr. Huegli will
5 probably want to ask you some questions now and then
6 I'll have one more matter before we hang up.

7 A. Okay. Fine.

8

9

EXAMINATION

10

11 BY MR. HUEGLI:

12 Q. Mr. Heulster, was the weather the last time this
13 happened different than the second time this happened?

14 A. Oh, very much so. The last time it happened, it was a
15 cool morning, probably 40 degrees, very bright, clear
16 and sunny and just a beautiful day.

17 Q. Okay. You were pushing the safety to the fire position
18 and had the gun pointed towards the sky?

19 A. I rested the butt of the gun on my hip and held it up
20 by the barrel with my left hand. I forget what you
21 call it. The forestop I guess it is, with my left hand
22 and pushed the safety off with my thumb.

23 Q. Do you ever take that gun apart?

24 A. I have never taken that gun apart other than removing
25 the bolt and cleaning the gun.

1 Q. You never take the trigger mechanism out and soak it in
2 diesel fuel?
3 A. I don't know how to do that.
4 Q. Do you know how many loads of ammunition --
5 A. I do not.
6 Q. Did Remington write you a letter when they sent the gun
7 back to you?
8 A. May have. I don't remember.
9 Q. Did you ever find out what was causing the problem?
10 A. I presumed it was something with the sear pin or
11 something like that. As I remember -- I don't know.
12 I'm not sure.
13 Q. You never found out what caused it?
14 A. I don't believe so. No.
15 Q. Have you sent the gun back to Remington again?
16 A. No, I haven't.
17 Q. Have you complained again?
18 A. No, I have not.
19 Q. Did you notify them of this third event?
20 A. No, I have not.
21 Q. Have you used the gun since?
22 A. I continued to use the gun for hunting season last
23 year. Yes.
24 Q. Did it happen last year?
25 A. That's when it happened this third time.

1 Q. I thought you said --
2 A. The fall of '81.
3 Q. The fall of '81. Okay. You used it. After it
4 happened, you continued to use it the rest of that
5 year?
6 A. Yes, I did.
7 Q. Did it happen again?
8 A. It did not -- it did not happen a fourth time, no.
9 Q. Have you ever attempted to duplicate that event, you
10 know, with the gun unloaded, if you will, but cocked,
11 by flicking the safety back and forth and back and
12 forth?
13 A. I have released the safety probably -- one time
14 probably 50 times in a row to try to simulate that. I
15 have never been able to duplicate it again. In the
16 time I have been hunting, I have released the safety --
17 well, last year -- I got a deer last year. We got an
18 elk last year. I didn't get the elk. I had been
19 shooting at the same elk my partner shot. It hasn't
20 happened.
21 If anything has happened -- and this is what I
22 was trying to duplicate. All three times when I
23 released the safety and it's fired, it seemed as if I
24 released the safety fairly rapidly. In other words,
25 just sort of released the safety rapidly. Whenever I

1 have sighted on an animal to shoot -- of course, you're
2 being careful, being careful you don't release the
3 safety so fast that you make enough noise for the
4 animal to hear so you're more careful and you push it
5 up very slowly. That's the only difference I can see
6 about trying to simulate that by flipping it open
7 rapidly 50 times.

8 One time I sat and counted. I flipped it open 50
9 times in a row and nothing happened to it. It's one of
10 those cases where the weapon is probably 99.99 percent
11 fine. It's that one one-hundredth of one percent that
12 just scares the hell out of people.

13 MR. HUEGLI: Very good. Thank you very much
14 for your time. I appreciate it.

15 THE WITNESS: Okay. Fine.

16 MR. CHAMBERLAIN: Mr. Heulster?

17 THE WITNESS: Yes, sir.

18 MR. CHAMBERLAIN: Under the federal rules of
19 civil procedure, you have the right to read and review
20 and make any corrections to the transcript of this
21 deposition once it is transcribed and then to sign it,
22 or you have the right to waive the reading and signing
23 of the deposition. It doesn't matter to me which you
24 do. I will tell you that the court reporters are
25 generally very accurate, but it's up to you whether

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you'd like to read and sign it or if you'd rather waive it. You have that right too.

THE WITNESS: I would just as soon waive my right to read it unless either of you gentlemen would prefer for me to read it.

MR. CHAMBERLAIN: That's fine with me. Fine with you, Jim?

MR. HUEGLI: You bet. We have very good court reporters here.

THE WITNESS: Okay. That's fine. I know they are very professional.

(Deposition concluded at 2:50 p.m.)

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STATE OF OREGON)
) ss
COUNTY OF MULTNOMAH)

I, the undersigned, Susan K. Leecham, a Notary Public for Oregon, do hereby certify that the telephone deposition of JAMERS HUELSTER was taken before me at the time and place mentioned in the caption of the foregoing deposition; that Mr. Peter R. Chamberlain appeared in behalf of the Plaintiffs, and that Mr. James D. Huegli appeared in behalf of the Defencant, and the said witness being by me first duly sworn to testify the truth, the whole truth and nothing but the truth, in answer to oral interrogatories, testified as in the foregoing annexed deposition, Pages 1 to 19, both inclusive, set forth.

I further certify that all interrogatories propounded to said witness, together with the answers of said witness thereto, and all objections and other oral proceedings occurring upon the taking of said deposition, were then and there taken down by me in stenotype and thereafter reduced to typewriting under my direction, and that the foregoing annexed transcript, Pages 1 to 19, both inclusive, constitutes a full, true and accurate transcript of said deposition and proceedings, so taken by me in stenotype on said date, as aforesaid, and of the whole thereof.

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

IN WITNESS THEREOF, I have hereunto set my
hand and notarial seal this 16th day of September, 1982.

Susan K. Reedham
Notary Public for Oregon
My commission expires: 1/16/86