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2 IN THE UNITED STATES DISTRICT COURT  
3 FOR THE DISTRICT OF OREGON  
4

5 TERI SEE and DARREL SEE, )  
6 wife and husband, )

7 Plaintiffs, )

8 vs. )

Civil No. 81-886

9 REMINGTON ARMS COMPANY, INC., )  
10 a Delaware corporation, )

11 Defendant. )  
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TELEPHONE DEPOSITION OF GABRIEL A. HERNANDEZ

Taken in behalf of the Plaintiffs

BE IT REMEMBERED That, pursuant to court order  
and oral stipulation hereinafter set forth, the telephone  
deposition of GABRIEL A. HERNANDEZ was taken in behalf of the  
Plaintiffs, before Susan K. Leedham, a Notary Public for  
Oregon, on Tuesday, August 3, 1982, beginning at 4:00 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 and Ms. Kathy Janssen, of attorneys,  
appearing in behalf of the Plaintiffs;  
Mr. James D. Huegli, of attorneys, appearing in behalf  
of the Defendant.

ALSO PRESENT:

Ms. Kathy Auguston.

EXAMINATION INDEX

Examination by:	Pages
Mr. Chamberlain:	4
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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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 GABRIEL A. HERNANDEZ 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 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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GABRIEL A. HERNANDEZ

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. Hernandez, could you please state your entire name  
for the court reporter.

A. My name is Gabriel, G-a-b-r-i-e-l, A. Hernandez,  
H-e-r-n-a-n-d-e-z.

Q. Okay. What is your address, Mr. Hernandez?

A. 6430 Newborn Drive, College Park, Georgia.

Q. That's N-e-w-b-o-r-n?

A. That's correct.

Q. What's the zip code there?

A. 30349.

Q. Your phone number?

A. Area code 409-964-7656.

Q. Okay. Mr. Hernandez, we have been introduced on the  
phone. My name is Peter Chamberlain. I'm the attorney  
for the plaintiffs Mr. and Mrs. See in a lawsuit that  
they brought against Remington Arms Company.

1 A. Okay.

2 Q. This is our opportunity to ask you some questions about

3 a Remington rifle that I believe you have owned; is

4 that right?

5 A. That's correct.

6 Q. As I understand it, you live in the state of Georgia.

7 A. That's correct.

8 Q. Okay. What kind of Remington rifle have you owned or

9 do you own?

10 A. ~~I own a 700 BDL 30 aught 6.~~

11 Q. Those initials BDL are "B" as in boy, "D" as in David

12 and "L" as in Larry?

13 A. That's correct.

14 Q. Okay. Do you still own that gun?

15 A. I do.

16 Q. Do you have it there in the room with you?

17 A. Yes, I do.

18 Q. Do you know where the serial number is on it?

19 A. I do.

20 Q. Could you read that to us.

21 A. Yes, I will. ~~Serial number is A6334914.~~

22 Q. Okay. Now, the first digit of that serial number was

23 the letter "A"?

24 A. That's correct.

25 Q. Okay. Did you purchase that gun new, Mr. Hernandez?

1 A. I did.

2 Q. About what date did you purchase it?

3 A. I purchased it on January the 15th, 1978.

4 Q. Where did you purchase it?

5 A. In Georgia Outdoors.

6 Q. "Georgia" was the first word?

7 A. That's correct.

8 Q. And the second word was?

9 A. Outdoors.

10 Q. Outdoors. Okay. Can tell us a little bit about the

11 condition of the rifle over the time that you've owned

12 it?

13 MR. HUEGLI: Peter, if I might interrupt you

14 for a moment. I think we probably should state on the

15 record that this deposition is being taken pursuant to

16 the order of the court today and that it's for the

17 purpose of discovery, and that all of the objections

18 that we may have will be reserved for a later time by

19 both parties except objections as to the form of the

20 question. Is that agreeable?

21 MR. CHAMBERLAIN: And responsiveness of the

22 answer. Yes.

23 MR. HUEGLI: And responsiveness of the

24 answer.

25 MR. CHAMBERLAIN: So it is the usual

1 stipulation and the court order; right?

2 MR. HUEGLI: Yes. I just wanted to stick  
3 that in there.

4 MR. CHAMBERLAIN: I agree.

5 MR. HUEGLI: Thank you. Excuse me.

6 I'm sorry to interrupt you there, Mr. Hernandez.

7 Go ahead.

8 BY MR. CHAMBERLAIN:

9 Q. The question I was going to ask you is: Could you tell  
10 us a little bit about the condition of the rifle and its  
11 maintenance over the time that you've owned it?

12 A. Okay. I purchased the rifle new --

13 Q. Mr. Hernandez, I'm sorry. Our machine burped there.  
14 Could you start that answer over.

15 A. Okay. I purchased the rifle new, took it on a hunting  
16 trip out west. ~~At one time the gun did misfire in the~~  
17 ~~extent that when you move the safety to the fire~~  
18 ~~position, the gun would discharge.~~ Then I came back to  
19 Georgia. At a later date, the same thing happened.

20 I tried to return it to the Remington authorized  
21 factory dealer here in Atlanta. The name of the  
22 company was Gun Corral. They told me they would not  
23 accept the gun for that type of repair. I would have  
24 to return it to the factory, which I did. And  
25 subsequently I have the correspondence and so forth

1           that I received from the factory in correspondence --  
2   Q.   What?  
3   A.   From the Remington factory.  
4   Q.   From the factory?  
5   A.   Yes. They did repair the gun.  
6   Q.   Now, how many times did this happen to you where you  
7        moved the safety from the safe to the fire position and  
8        the gun discharged?  
9   A.   It happened on two occasions while on the west coast.  
10       It happened once on a hunting trip here in Georgia --  
11   Q.   Okay.  
12   A.   -- as I recall.  
13   Q.   On any of those occasions, did you have your finger or  
14        any other part of your body near the trigger of the  
15        rifle?  
16   A.   No, sir.  
17   Q.   Was there any other object near the trigger of the  
18        rifle on those occasions?  
19   A.   No, sir.  
20   Q.   Now, just for my own information, is this Remington  
21        rifle the type that cannot be unloaded without putting  
22        the safety into the fire position?  
23   A.   Cannot be opened unless the safety is put into the fire  
24        position.  
25   Q.   And you have to open the bolt to load the rifle; right?



1 A. Remove any cartridges from the chamber.  
2 Q. Are you still there?  
3 A. I'm here.  
4 Q. Mr. Hernandez?  
5 A. Yes.  
6 Q. One of the questions I asked you, I'm not sure if you  
7 answered it or not. What did you do during the time  
8 you've owned this rifle to maintain it as far as  
9 cleaning it or oiling it or that sort of thing?  
10 A. The regular normal maintenance. I'm a fifty-year-old  
11 man, and I've been hunting for twenty years, and I take  
12 care of my firing arms.  
13 Q. You said you're a fifty-year-old man?  
14 A. Yes.  
15 Q. You've been hunting since you were --  
16 A. Just a normal routine maintenance as far as cleaning it  
17 properly, oiling it, you know.  
18 MR. CHAMBERLAIN: Thank you very much. Mr. Huegli  
19 now has a chance to ask you some questions if he wants to.  
20  
21 EXAMINATION  
22  
23 BY MR. HUEGLI:  
24 Q. Mr. Hernandez, you've had this firearm for about almost  
25 four years now, three-and-a-half years.

1 A. That's correct.

2 Q. Excuse me. I guess it's four-and-a-half years.

3 A. Since January '78.

4 Q. Yes. And am I correct that you returned this to

5 Remington in February of '80 for this check-up on this

6 problem you were having?

7 A. That sounds right. Yes.

8 Q. Okay. Since you got the gun back from Remington from

9 the factory, have you had any further problems with it?

10 A. None whatsoever.

11 Q. Okay. And have you ever soaked the trigger mechanism

12 in diesel oil?

13 A. No.

14 Q. You say that somewhat emphatically. Why do you?

15 A. I'm amazed why anyone would want to soak a trigger

16 mechanism in the diesel oil.

17 Q. Would you think that would affect the firing ability of

18 the rifle?

19 A. I have no idea whether it would or not. I've never

20 heard of doing such a thing. I'm amazed why anyone

21 would soak the --

22 Q. Am I correct then for about two years while you've had

23 the rifle, you've had this problem on three different

24 occasions?

25 A. That would be correct.

1 Q. I assume that there were numerous other occasions when  
2 you didn't have the problem when you moved the safety  
3 from the safe position to the fire position?  
4 A. That would be also.  
5 Q. Okay. Did you talk to anybody at the Remington  
6 factory?  
7 A. I talked to a Mr. Cole, I believe it was.  
8 Q. Mr. Cole?  
9 A. Uh-huh.  
10 Q. And what did you talk with him about?  
11 A. After the local factory representative wouldn't --  
12 wouldn't receive the gun to correct the problem, as I  
13 recall it; I called, and he was the party that I was  
14 put in touch with, and he told me what to do with the  
15 gun, to ship it to Remington by UPS.  
16 Q. Yes.  
17 A. As I recall, he said they would pay the freight  
18 charges.  
19 Q. Okay. Did you ever adjust the trigger of your rifle?  
20 A. No, sir. I have never adjusted the trigger.  
21 Q. Do you know if anyone outside of the Remington factory  
22 has adjusted the trigger screws?  
23 A. Not to my knowledge. No.  
24 Q. Okay. Has anyone worked on your gun besides you such  
25 as a firearms company or a gun shop itself?

1 A. No, sir.

2 Q. Okay. Have you ever adjusted the trigger pull?

3 A. No, sir. I am not qualified to do that.

4 Q. Has anyone else?

5 A. Not to my knowledge. No, sir.

6 Q. Okay.

7 A. The gun was never opened from the time I bought it

8 until the time I returned it to the factory.

9 Q. When you received it back from the factory, did you

10 receive a letter or any correspondence from the factory

11 as to what they did with the gun?

12 A. I did.

13 Q. You did?

14 A. I did.

15 Q. Do you have that letter?

16 A. I do.

17 Q. Can you read it to me to tell me what it says?

18 A. Okay. I have a letter addressed to me dated March

19 14th, 1980. And you want me to read it to you?

20 Q. Please do because we can't see it here, Mr. Hernandez,

21 and I don't have a copy in front of me.

22 A. Okay. You want me to go ahead now?

23 Q. Yes, please.

24 A. Okay. "Examination has been completed on your model

25 700 BDL 30 aught 6 rifle, serial No. A6334914, which

1 allegedly fired" --

2 MR. CHAMBERLAIN: Mr. Hernandez, the court  
3 reporter is having a little bit of trouble  
4 understanding you. Could you speak up just a bit.

5 THE WITNESS: Yes. You want me to repeat  
6 that?

7 BY MR. HUEGLI:

8 Q. The last paragraph you were reading.

9 A. "Examination has been completed on your model 700 BDL  
10 30 aught 6 caliber rifle, Serial No. A6334914, which  
11 allegedly fired when the safety was pushed to the fire  
12 position.

13 "The return firearm which was produced in July of  
14 1976 has been examined by our firearms experts who  
15 report that it contains our high-pressure proof steel,  
16 gallery test and final inspection."

17 MR. CHAMBERLAIN: Mr. Hernandez --

18 THE WITNESS: Yes.

19 MR. CHAMBERLAIN: Would you repeat it right  
20 after you say you said "our firearms experts" and read  
21 a little bit louder.

22 THE WITNESS: Okay. "Our firearms experts  
23 who report that it contains our high-pressure proof  
24 test, gallery test and final inspection stamping  
25 indicate that it has successfully passed all our

1 necessary tests prior to shipment.

2 "The general condition of the gun appeared to be  
3 somewhat worn, and it was noted that a scope had been  
4 mounted after it originally left our factory. In going  
5 over the individual parts, we found head face normal,  
6 recoil shoulder normal and chamber normal.

7 "Examination of the rifle and trigger assembly  
8 could not duplicate the incidents you have described.  
9 All parts tolerances and dimensions were found to be  
10 normal, including series connector engagement.  
11 However, it appears that the trigger adjustment screws  
12 have been altered outside of the company. It is  
13 evident by the sealant having been removed from there  
14 and over trial was excessive" --

15 Q. "Over" what?

16 A. -- "within our specifications of three-and-a-quarter  
17 pound. Based on our finding, Remington Arms Company,  
18 Inc., cannot accept any liability or responsibility for  
19 the incident. When the safety is in the hold safe  
20 position, sear is drifted off of the trigger  
21 connection. At this time, very little effort is  
22 required to pull the trigger really allowing the  
23 connector to be moved away from under the sear, and in  
24 this position and moving the safety to the fire  
25 position, the rifle will fire if the trigger is

1 touched.

2 "We trust that we have clarified the circumstance  
3 which could possibly have charged the accidental firing,  
4 and as a gesture of good will, even though there's  
5 nothing wrong with your present trigger mechanism, we  
6 have replaced it with another assembly at no charge  
7 to insure that your faith in the rifle is restored or  
8 the rifle can be returned as received. We will await  
9 your decision and reply. Thank you for having afforded  
10 us this opportunity to examine your rifle and to be of  
11 service." Signed "Sincerely, J.A. Stikel," S-t-e-k-e-l,  
12 "Supervisor Firearms Products Services."

13 My reply, which I wrote on the bottom of the  
14 letter: "Gentlemen, please replace the trigger assembly  
15 and return by UPS. Thank you. G.A. Hernandez."

16 Q. And did they do so?

17 A. They did.

18 Q. And the gun has worked fine ever since?

19 A. It has.

20 Q. When you got the gun back, did you try to duplicate the  
21 incident where you released the safety and it fired  
22 again?

23 A. Most assuredly I did, sir.

24 Q. Never was able to do it again?

25 A. It never -- it did not malfunction since then.

1 Q. Is it correct that a scope was put on the rifle after  
2 it left the factory?  
3 A. Oh, yes. Quite a common practice.  
4 Q. Do you know who put it on?  
5 A. Yes. I had it mounted at Oshman's Sporting Goods here  
6 in Atlanta.  
7 Q. Other than putting on the scope, have you done anything  
8 else to the rifle?  
9 A. No.  
10 Q. Do you know how the trigger adjusting screw seals could  
11 have gotten broken?  
12 A. No, sir. I have no idea. The rifle was never opened  
13 since it was in my possession.  
14 Q. Between 1978 when you purchased the rifle and February  
15 of 1980 when you sent it back to Remington,  
16 approximately two years, as best as you can remember,  
17 how many times do you figure that safety was flipped  
18 off and on. Several hundred?  
19 A. That would be a fair assumption. Yes.  
20 MR. HUEGLI: Okay. I believe that's all I  
21 have. Thank you.  
22 THE WITNESS: Okay.  
23 MR. CHAMBERLAIN: I have no further  
24 questions, Mr. Hernandez. Thank you very much.  
25 THE WITNESS: Okay.



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MR. HUEGLI: Thank you.

(Deposition concluded at 4:15 p.m.)

1  
2 STATE OF OREGON       )  
                              ) ss  
3 COUNTY OF MULTNOMAH)

4  
5           I, the undersigned, Susan K. Leedham, a Notary  
6 Public for Oregon, do hereby certify that the telephone  
7 deposition of GABRIEL A. HERNANDEZ was taken before me at the  
8 time and place mentioned in the caption of the foregoing  
9 deposition; that Mr. Peter R. Chamberlain and Ms. Kathy  
10 Janssen appeared in behalf of the Plaintiffs and that Mr.  
11 James D. Huegli appeared in behalf of the Defenant, and  
12 the said witness being by me first duly sworn to testify  
13 the truth, the whole truth and nothing but the truth, in  
14 answer to oral interrogatories, testified as in the fore-  
15 going annexed deposition, Pages 1 to 17, both inclusive,  
16 set forth.

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

1 whole thereof.

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

6 IN WITNESS THEREOF, I have hereunto set my  
7 hand and notarial seal this 16th day of September, 1982.  
8

9  
10 Gordon K. Audham  
11 Notary Public for Oregon  
12 My commission expires: 1/16/86  
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( 5-21 )

DEPOSITION SUMMARY OF  
GABRIEL A. HERNANDEZ

Taken: August 3, 1982  
Re: Terri See and Darrel See v. Remington Arms Co.

Telephone Deposition

Page

- 4           Witness is a resident of College Park, Georgia.
- 5           Witness owns a model 700 BDL 30 0 6 Remington, with a serial number A6334914.
- 6           It was purchased new on January 15, 1978.
- 7-8         Witness states that the gun had discharged when he moved the safety to the fire position on three occasions. Twice while he was on the west coast, and once on a hunting trip in Georgia.
- 7           He tried to return it to the Remington authorized factory dealer in Atlanta, but was told that they could not accept the gun for that type of repair and the gun would have to be returned to the factory. He returned it to the factory and had correspondence from the factory. Remington did repair the gun.
- 8           States that on the occasions where the gun fired, he did not have his finger or any other part of his body near the trigger of the rifle, nor were there any objects near the trigger of the rifle.
- 9           Witness states that he does just normal routine maintenance on his guns, cleaning, oiling.
- 10          Witness says that he has never had any trouble with the rifle after it was returned from the factory after having repairs. Says that he has never soaked the trigger mechanism in diesel oil. States again that he has had the problem three times in the two years that he has had the rifle.
- 11          States that he has never adjusted the trigger of the rifle and no one has ever adjusted the trigger screws, to his knowledge, outside of the Remington factory.
- 11-12       Says that nobody outside of a gun shop has worked on that gun.
- 12          Says that he has never adjusted the trigger pull, and that no one has ever adjusted the trigger pull.
- 13-15       Text, read by the witness, of the letter that he received from Remington when his gun was returned from the factory. The basic

idea is that Remington found nothing wrong with the overall mechanics of the gun, except they claimed the trigger mechanism had been tampered with outside of the factory, that a scope had been added outside of the factory and that it passed most of their tests. The letter states that as a "gesture of goodwill" even though there is nothing wrong with the present trigger mechanism, Remington has replaced it with another assembly at no charge to "insure that your faith in the rifle is restored."

- 15      Witness replied that he did wish them to replace the trigger assembly, which they did and then returned the gun to him.
- 15      Witness says that after he got the gun back he tried to duplicate the incident where he released the safety and the gun fired, but he was not able to duplicate that.
- 16      Says that he had the scope put on at a sporting goods store in Atlanta. Says that he has no idea how the trigger adjusting screw seals could have gotten broken, as Remington claimed they were, since the rifle had never been opened since it was in his possession. States that during the time that he owned the rifle, before he sent it back to Remington, the safety was flipped off and on several hundred times.

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2 IN THE UNITED STATES DISTRICT COURT  
3 FOR THE DISTRICT OF OREGON  
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5 TERI SEE and DARREL SEE,  
6 wife and husband,

7 Plaintiffs,

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9 REMINGTON ARMS COMPANY, INC.,  
a Delaware corporation,

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GEESMAN & ASSOCIATES

310 S. W. 4TH, Suite 512

Portland, Oregon 97204

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EXAMINATION

BY MR. CHAMBERLAIN:

Q. Mr. Hernandez, could you please state your entire name  
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A. My name is Gabriel, G-a-b-r-i-e-l, A. Hernandez,  
H-e-r-n-a-n-d-e-z.

Q. Okay. What is your address, Mr. Hernandez?

A. 6430 Newborn Drive, College Park, Georgia.

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A. That's correct.

Q. What's the zip code there?

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Q. Your phone number?

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Q. Okay. Mr. Hernandez, we have been introduced on the  
phone. My name is Peter Chamberlain. I'm the attorney  
for the plaintiffs Mr. and Mrs. See in a lawsuit that  
they brought against Remington Arms Company.

1 A. Okay.

2 Q. This is our opportunity to ask you some questions about

3 a Remington rifle that I believe you have owned; is

4 that right?

5 A. That's correct.

6 Q. As I understand it, you live in the state of Georgia.

7 A. That's correct.

8 Q. Okay. What kind of Remington rifle have you owned or

9 do you own?

10 A. ~~I own a 700 BDL 30 aught 6.~~

11 Q. Those initials BDL are "B" as in boy, "D" as in David

12 and "L" as in Larry?

13 A. That's correct.

14 Q. Okay. Do you still own that gun?

15 A. I do.

16 Q. Do you have it there in the room with you?

17 A. Yes, I do.

18 Q. Do you know where the serial number is on it?

19 A. I do.

20 Q. Could you read that to us.

21 A. Yes, I will. ~~Serial number is A6334914.~~

22 Q. Okay. Now, the first digit of that serial number was

23 the letter "A"?

24 A. That's correct.

25 Q. Okay. Did you purchase that gun new, Mr. Hernandez?

1 A. I did.

2 Q. About what date did you purchase it?

3 A. I purchased it on January the 15th, 1978.

4 Q. Where did you purchase it?

5 A. In Georgia Outdoors.

6 Q. "Georgia" was the first word?

7 A. That's correct.

8 Q. And the second word was?

9 A. Outdoors.

10 Q. Outdoors. Okay. Can tell us a little bit about the

11 condition of the rifle over the time that you've owned

12 it?

13 MR. HUEGLI: Peter, if I might interrupt you

14 for a moment. I think we probably should state on the

15 record that this deposition is being taken pursuant to

16 the order of the court today and that it's for the

17 purpose of discovery, and that all of the objections

18 that we may have will be reserved for a later time by

19 both parties except objections as to the form of the

20 question. Is that agreeable?

21 MR. CHAMBERLAIN: And responsiveness of the

22 answer. Yes.

23 MR. HUEGLI: And responsiveness of the

24 answer.

25 MR. CHAMBERLAIN: So it is the usual

1 stipulation and the court order; right?

2 MR. HUEGLI: Yes. I just wanted to stick  
3 that in there.

4 MR. CHAMBERLAIN: I agree.

5 MR. HUEGLI: Thank you. Excuse me.

6 I'm sorry to interrupt you there, Mr. Hernandez.  
7 Go ahead.

8 BY MR. CHAMBERLAIN:

9 Q. The question I was going to ask you is: Could you tell  
10 us a little bit about the condition of the rifle and its  
11 maintenance over the time that you've owned it?

12 A. Okay. I purchased the rifle new --

13 Q. Mr. Hernandez, I'm sorry. Our machine burped there.  
14 Could you start that answer over.

15 A. Okay. I purchased the rifle new, took it on a hunting  
16 trip out west. ~~At one time the gun did misfire in the~~  
17 ~~extent that when you move the safety to the fire~~  
18 ~~position, the gun would discharge.~~ Then I came back to  
19 Georgia. At a later date, the same thing happened.

20 I tried to return it to the Remington authorized  
21 factory dealer here in Atlanta. The name of the  
22 company was Gun Corral. They told me they would not  
23 accept the gun for that type of repair. I would have  
24 to return it to the factory, which I did. And  
25 subsequently I have the correspondence and so forth

1           that I received from the factory in correspondence --  
2   Q.   What?  
3   A.   From the Remington factory.  
4   Q.   From the factory?  
5   A.   Yes. They did repair the gun.  
6   Q.   Now, how many times did this happen to you where you  
7        moved the safety from the safe to the fire position and  
8        the gun discharged?  
9   A.   It happened on two occasions while on the west coast.  
10       It happened once on a hunting trip here in Georgia --  
11   Q.   Okay.  
12   A.   -- as I recall.  
13   Q.   On any of those occasions, did you have your finger or  
14        any other part of your body near the trigger of the  
15        rifle?  
16   A.   No, sir.  
17   Q.   Was there any other object near the trigger of the  
18        rifle on those occasions?  
19   A.   No, sir.  
20   Q.   Now, just for my own information, is this Remington  
21        rifle the type that cannot be unloaded without putting  
22        the safety into the fire position?  
23   A.   Cannot be opened unless the safety is put into the fire  
24        position.  
25   Q.   And you have to open the bolt to load the rifle; right?

1 A. Remove any cartridges from the chamber.  
2 Q. Are you still there?  
3 A. I'm here.  
4 Q. Mr. Hernandez?  
5 A. Yes.  
6 Q. One of the questions I asked you, I'm not sure if you  
7 answered it or not. What did you do during the time  
8 you've owned this rifle to maintain it as far as  
9 cleaning it or oiling it or that sort of thing?  
10 A. The regular normal maintenance. I'm a fifty-year-old  
11 man, and I've been hunting for twenty years, and I take  
12 care of my firing arms.  
13 Q. You said you're a fifty-year-old man?  
14 A. Yes.  
15 Q. You've been hunting since you were --  
16 A. Just a normal routine maintenance as far as cleaning it  
17 properly, oiling it, you know.  
18 MR. CHAMBERLAIN: Thank you very much. Mr. Huegli  
19 now has a chance to ask you some questions if he wants to.  
20  
21 EXAMINATION  
22  
23 BY MR. HUEGLI:  
24 Q. Mr. Hernandez, you've had this firearm for about almost  
25 four years now, three-and-a-half years.

1 A. That's correct.

2 Q. Excuse me. I guess it's four-and-a-half years.

3 A. Since January '78.

4 Q. Yes. And am I correct that you returned this to

5 Remington in February of '80 for this check-up on this

6 problem you were having?

7 A. That sounds right. Yes.

8 Q. Okay. Since you got the gun back from Remington from

9 the factory, have you had any further problems with it?

10 A. None whatsoever.

11 Q. Okay. And have you ever soaked the trigger mechanism

12 in diesel oil?

13 A. No.

14 Q. You say that somewhat emphatically. Why do you?

15 A. I'm amazed why anyone would want to soak a trigger

16 mechanism in the diesel oil.

17 Q. Would you think that would affect the firing ability of

18 the rifle?

19 A. I have no idea whether it would or not. I've never

20 heard of doing such a thing. I'm amazed why anyone

21 would soak the --

22 Q. Am I correct then for about two years while you've had

23 the rifle, you've had this problem on three different

24 occasions?

25 A. That would be correct.

1 Q. I assume that there were numerous other occasions when  
2 you didn't have the problem when you moved the safety  
3 from the safe position to the fire position?  
4 A. That would be also.  
5 Q. Okay. Did you talk to anybody at the Remington  
6 factory?  
7 A. I talked to a Mr. Cole, I believe it was.  
8 Q. Mr. Cole?  
9 A. Uh-huh.  
10 Q. And what did you talk with him about?  
11 A. After the local factory representative wouldn't --  
12 wouldn't receive the gun to correct the problem, as I  
13 recall it, I called, and he was the party that I was  
14 put in touch with, and he told me what to do with the  
15 gun, to ship it to Remington by UPS.  
16 Q. Yes.  
17 A. As I recall, he said they would pay the freight  
18 charges.  
19 Q. Okay. Did you ever adjust the trigger of your rifle?  
20 A. No, sir. I have never adjusted the trigger.  
21 Q. Do you know if anyone outside of the Remington factory  
22 has adjusted the trigger screws?  
23 A. Not to my knowledge. No.  
24 Q. Okay. Has anyone worked on your gun besides you such  
25 as a firearms company or a gun shop itself?



1 A. No, sir.  
2 Q. Okay. Have you ever adjusted the trigger pull?  
3 A. No, sir. I am not qualified to do that.  
4 Q. Has anyone else?  
5 A. Not to my knowledge. No, sir.  
6 Q. Okay.  
7 A. The gun was never opened from the time I bought it  
8 until the time I returned it to the factory.  
9 Q. When you received it back from the factory, did you  
10 receive a letter or any correspondence from the factory  
11 as to what they did with the gun?  
12 A. I did.  
13 Q. You did?  
14 A. I did.  
15 Q. Do you have that letter?  
16 A. I do.  
17 Q. Can you read it to me to tell me what it says?  
18 A. Okay. I have a letter addressed to me dated March  
19 14th, 1980. And you want me to read it to you?  
20 Q. Please do because we can't see it here, Mr. Hernandez,  
21 and I don't have a copy in front of me.  
22 A. Okay. You want me to go ahead now?  
23 Q. Yes, please.  
24 A. Okay. "Examination has been completed on your model  
25 700 BDL 30 aught 6 rifle, serial No. A6334914, which

1 allegedly fired" --

2 MR. CHAMBERLAIN: Mr. Hernandez, the court  
3 reporter is having a little bit of trouble  
4 understanding you. Could you speak up just a bit.

5 THE WITNESS: Yes. You want me to repeat  
6 that?

7 BY MR. HUEGLI:

8 Q. The last paragraph you were reading.

9 A. "Examination has been completed on your model 700 BDL  
10 30 aught 6 caliber rifle, Serial No. A6334914, which  
11 allegedly fired when the safety was pushed to the fire  
12 position.

13 "The return firearm which was produced in July of  
14 1976 has been examined by our firearms experts who  
15 report that it contains our high-pressure proof steel,  
16 gallery test and final inspection."

17 MR. CHAMBERLAIN: Mr. Hernandez --

18 THE WITNESS: Yes.

19 MR. CHAMBERLAIN: Would you repeat it right  
20 after you say you said "our firearms experts" and read  
21 a little bit louder.

22 THE WITNESS: Okay. "Our firearms experts  
23 who report that it contains our high-pressure proof  
24 test, gallery test and final inspection stamping  
25 indicate that it has successfully passed all our

1 necessary tests prior to shipment.

2 "The general condition of the gun appeared to be  
3 somewhat worn, and it was noted that a scope had been  
4 mounted after it originally left our factory. In going  
5 over the individual parts, we found head face normal,  
6 recoil shoulder normal and chamber normal.

7 "Examination of the rifle and trigger assembly  
8 could not duplicate the incidents you have described.  
9 All parts tolerances and dimensions were found to be  
10 normal, including series connector engagement.  
11 However, it appears that the trigger adjustment screws  
12 have been altered outside of the company. It is  
13 evident by the sealant having been removed from there  
14 and over trial was excessive" --

15 Q. "Over" what?

16 A. -- "within our specifications of three-and-a-quarter  
17 pounds. Based on our finding, Remington Arms Company,  
18 Inc., cannot accept any liability or responsibility for  
19 the incident. When the safety is in the hold safe  
20 position, sear is drifted off of the trigger  
21 connection. At this time, very little effort is  
22 required to pull the trigger really allowing the  
23 connector to be moved away from under the sear, and in  
24 this position and moving the safety to the fire  
25 position, the rifle will fire if the trigger is

1 touched.

2 "We trust that we have clarified the circumstance  
3 which could possibly have charged the accidental firing,  
4 and as a gesture of good will, even though there's  
5 nothing wrong with your present trigger mechanism, we  
6 have replaced it with another assembly at no charge  
7 to insure that your faith in the rifle is restored or  
8 the rifle can be returned as received. We will await  
9 your decision and reply. Thank you for having afforded  
10 us this opportunity to examine your rifle and to be of  
11 service." Signed "Sincerely, J.A. Stikel," S-t-e-k-e-l,  
12 "Supervisor Firearms Products Services."

13 My reply, which I wrote on the bottom of the  
14 letter: "Gentlemen, please replace the trigger assembly  
15 and return by UPS. Thank you. G.A. Hernandez."

16 Q. And did they do so?

17 A. They did.

18 Q. And the gun has worked fine ever since?

19 A. It has.

20 Q. When you got the gun back, did you try to duplicate the  
21 incident where you released the safety and it fired  
22 again?

23 A. Most assuredly I did, sir.

24 Q. Never was able to do it again?

25 A. It never -- it did not malfunction since then.

1 Q. Is it correct that a scope was put on the rifle after  
2 it left the factory?  
3 A. Oh, yes. Quite a common practice.  
4 Q. Do you know who put it on?  
5 A. Yes. I had it mounted at Oshman's Sporting Goods here  
6 in Atlanta.  
7 Q. Other than putting on the scope, have you done anything  
8 else to the rifle?  
9 A. No.  
10 Q. Do you know how the trigger adjusting screw seals could  
11 have gotten broken?  
12 A. No, sir. I have no idea. The rifle was never opened  
13 since it was in my possession.  
14 Q. Between 1978 when you purchased the rifle and February  
15 of 1980 when you sent it back to Remington,  
16 approximately two years, as best as you can remember,  
17 how many times do you figure that safety was flipped  
18 off and on. Several hundred?  
19 A. That would be a fair assumption. Yes.  
20 MR. HUEGLI: Okay. I believe that's all I  
21 have. Thank you.  
22 THE WITNESS: Okay.  
23 MR. CHAMBERLAIN: I have no further  
24 questions, Mr. Hernandez. Thank you very much.  
25 THE WITNESS: Okay.

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MR. HUEGLI: Thank you.

(Deposition concluded at 4:15 p.m.)

1  
2 STATE OF OREGON       )  
                              ) ss  
3 COUNTY OF MULTNOMAH)

4  
5           I, the undersigned, Susan K. Leedham, a Notary  
6 Public for Oregon, do hereby certify that the telephone  
7 deposition of GABRIEL A. HERNANDEZ was taken before me at the  
8 time and place mentioned in the caption of the foregoing  
9 deposition; that Mr. Peter R. Chamberlain and Ms. Kathy  
10 Janssen appeared in behalf of the Plaintiffs and that Mr.  
11 James D. Huegli appeared in behalf of the Defenant, and  
12 the said witness being by me first duly sworn to testify  
13 the truth, the whole truth and nothing but the truth, in  
14 answer to oral interrogatories, testified as in the fore-  
15 going annexed deposition, Pages 1 to 17, both inclusive,  
16 set forth.

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

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whole thereof.

I further certify that I am not a relative or 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. Audham  
Notary Public for Oregon  
My commission expires: 1/16/86



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whole thereof.

I further certify that I am not a relative or 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. Rudham  
Notary Public for Oregon  
My commission expires: 1/16/86