

1 STATE OF NEW YORK
2 SUPREME COURT COUNTY OF OSWEGO
3 -----
4 JAMES SHUTTS, JR., and PENNY SHUTTS,
5 Plaintiffs,
6 -vs- Testimony of
7 REMINGTON ARMS COMPANY, INC., ~~FREDERICK G.~~ ROBERT SPERLING
8 MATHIS, HAROLD HANEY and DAVID HANEY,
9 Individually and d/b/a MARCELLUS GUN SHOP,
10 Defendants.
11 -----

11 TRIED BEFORE:

12 THE HONORABLE EUGENE F. SULLIVAN, JR.,
13 Justice of the Supreme Court in and for the
14 Fifth Judicial District, State of New York,
15 at a trial term of Supreme Court held at
16 the Oswego County Courthouse, Oswego,
17 New York, commencing February 6, 1984.

15 APPEARANCES:

16 For the Plaintiff: AMDURSKY, DUELL AND PELKY
17 36 E. Oneida Street
18 Oswego, New York 13126
19 By: LEONARD H. AMDURSKY, ESQ.
ROBERT H. DUELL, ESQ.
EARL LEDDEN, ESQ.
20 For the Defendant
21 Remington: SUGARMAN, WALLACE, MANHEIM AND
22 SCHOENWALD
499 S. Warren Street
23 Syracuse, New York 13202
By: GEORGE E. DE MORE, ESQ.

1 APPEARANCES (Continued):

2 For Defendant Mathis:

BOND, SCHOENECK AND KING
One Lincoln Center
Syracuse, New York 13202
By: S. PAUL BATTAGLIA, ESQ.

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5 I N D E X

6 Witness

Direct Cross Redirect Recross

7 Robert Sperling

3

8 Exhibit

9 For the Plaintiffs

ID

Evid

10 15 Brown v. Remington document

7

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11 16 Complaint of Brown v. Remington

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12 17 Interrogatories of Brown v. Remington

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13 18 Answers to interrogatories of
Brown v. Remington

22

14 19 Summons & complaint of Thomas
John Spease, Jr. v. Remington

28

15 20 Letter dated 7/12/78

1 MR. DUELL: I would call Mr. Robert
2 Sperling.
3 R O B E R T S P E R L I N G , called as a witness on
4 behalf of the plaintiffs, being duly sworn, was examined
5 and testified as follows:
6 DIRECT EXAMINATION
7 BY MR. DUELL:
8 Q Mr. Sperling, where do you live?
9 A Monroe, Connecticut.
10 Q And what is your occupation?
11 A I am a lawyer, corporate attorney.
12 Q A corporate attorney?
13 A Right.
14 Q Are you duly licensed to practice in some state
15 or states?
16 A Yes, I am.
17 Q Would you tell us which state or state you are
18 duly licensed to practice in?
19 A New York and California.
20 Q And by whom are you employed as corporate
21 attorney?
22 A Remington Arms Company.
23 Q And how long have you been employed by Remington

1 Arms Company?

2 A Since September of 1970.

3 Q And are you assigned to any particular matters,
4 any particular corporate matters for Remington?

5 A Well, I handle all sorts of corporate problems
6 or matters that come before the corporation. I do handle
7 primarily all of the product liability litigation that
8 comes into the company.

9 Q All product liability litigation?

10 A Yes.

11 Q Is there anyone else in--I will withdraw that.

12 How many attorneys are there in your corporate
13 department?

14 A There are six attorneys.

15 Q Now, is there anyone else who assists you in the
16 handling of the corporate liability matters?

17 A Yes, there is an attorney who was originally a
18 patent attorney but is now handling some of the product
19 liability matters by the name of Bill Ericson.

20 Q And how much would you say of your time you
21 devote for handling the corporate liability matters?

22 MR. DE MORE: I object to the relevancy of
23 that.

1 THE COURT: Sustained.

2 Q Now, when you talk about corporate liability
3 litigation matters, is that in reference to a product
4 liability?

5 A Yes, product liability.

6 Q And what are the products of Remington?

7 A We make firearms, which include shotguns,
8 rifles; ammunition, which includes shot shells, center
9 fire ammunition, rim fire ammunition; we make certain
10 abrasive products. We make certain powder metal
11 components. And we also make clay targets, targets that
12 you shoot, and skeet trap.

13 Q Now, in the handling of the product liability
14 litigation, do you, in the event there is a trial, attend
15 the trials?

16 A The corporate attorney--

17 MR. DE MORE: I object to the relevancy of
18 that.

19 THE COURT: Sustained. Sustained.

20 MR. DUELL: Your Honor, I am trying to
21 show his--

22 THE COURT: I know what you are trying to
23 show, but I am sustaining the objection, Mr.

1 Duell. Whether he attends or not makes no
2 difference.

3 Q As a lawyer, are you familiar with the words
4 "written interrogatories"?

5 A Yes.

6 Q Would you tell the Court and jury what written
7 interrogatories are?

8 A Written interrogatories are questions that are
9 submitted by one party to another party in a lawsuit,
10 civil lawsuit, requesting information from that party
11 about some aspect of the lawsuit. If it was directed
12 toward Remington Arms, for example, they would ask for
13 written information that--about the product that was
14 involved in the suit, things like that, and the party
15 receiving those questions would answer them in written
16 form and send them back to the attorney for the other
17 party who served them.

18 Q Is there anyone else in your corporate
19 department other than you who is involved in the
20 inspection of or assembly of the information which is put
21 into the answers to these written interrogatories by or on
22 behalf of Remington?

23 MR. DE MORE: Objection.

1 THE COURT: Overruled.

2 A Yes.

3 Q And who is that?

4 A Well, there would be a number of people,
5 depending upon the question asked. If it was a technical
6 question concerning a product, there would be people; if
7 the product was a firearm, we would go to the firearm
8 plant at Ilion, New York, and request an answer to the
9 question.

10 And depending upon the question, you would
11 either go to someone in the research department or perhaps
12 in production.

13 Q I don't think I probably asked the question
14 correctly, Mr. Sperling. What I am trying to find out is
15 whether or not there is any corporate department other
16 than you who will approve the final form of the answers to
17 written interrogatories.

18 A Oh, in the legal department?

19 Q Yes.

20 A Yes.

21 Q Who is that?

22 A That would be Bill Ericson.

23 Q And do you very often do it yourself?

1 A Yes.

2 Q And do you ever suggest changes to your counsel?

3 MR. DE MORE: Objection.

4 THE COURT: Sustained.

5 Q In regard to the --

6 THE COURT: Sustained

7 (Plaintiffs' Exhibit 15 marked)

8 Q I show you Exhibit 15 marked for identification
9 and ask you whether or not you recognize it.

10 A It looks like a document that was prepared in
11 connection with a case entitled "Brown v. Remington."

12 Q Do you recall whether or not there were written
13 interrogatories and answers to the written interrogatories
14 by or on behalf of Remington in the action you just
15 mentioned?

16 A No, I don't have any recollection of that.

17 Q Did you ever see that document before?

18 A I don't remember it now, if I had.

19 Q Incidentally, on the 26th day of August, 1982,
20 were you examined before trial by Mr. Amdursky in his
21 office at 26 East Oneida Street, directly across the
22 street from this courthouse, in regard to an action of
23 James Shutts, Jr., and J. Penny Shutts against Remington

1 Arms Company, Inc., et al?

2 A No, I was deposed in Mr. George DeMore's office,
3 I assume the date could be correct.

4 Q I see. So, it was in Mr. DeMore's office rather
5 than Mr. Amdursky's?

6 A Right, in Syracuse.

7 Q And prior to being deposed, were you placed
8 under oath, similar to what you were here in the
9 courthouse?

10 A Yes.

11 Q And were you asked certain questions and did you
12 give certain answers?

13 A Yes.

14 Q And to the best of your knowledge, on that
15 particular date, were the answers that you gave to the
16 questions the truth?

17 A Right.

18 Q Now, to refresh your recollection, Mr. Sperling,
19 on page 17, starting at line 16, were you asked the
20 following questions and did you give the following
21 answers:

22 "QUESTION: I show you Exhibit 15 and is that
23 the letter from counsel to you in the Brown case asking

1 you to prepare the necessary answers?

2 "ANSWER: Yes.

3 "QUESTION: Having examined the interrogatories,
4 did you prepare the necessary answers?

5 "ANSWER: Yes.

6 "QUESTION: If you will take a look at the
7 interrogatories, the interrogatory number 10 asks the
8 following: 'As to the'--

9 MR. DE MORE: Excuse me. I am going to
10 object to that question, your Honor.

11 THE COURT: Sustained.

12 MR. DE MORE: I don't see the relevance.

13 THE COURT: Sustained. Improper use of
14 the examination before trial to refresh
15 recollection.

16 MR. DUELL: That's correct.

17 THE COURT: Generally.

18 BY MR. DUELL:

19 Q Well, didn't you produce, or your attorney, on
20 that particular day produce Exhibit 15 marked for
21 identification?

22 A Well, we--in--in answer to the interrogatories
23 we produced--

LEWY

1 Q No, my question is, didn't you on the date of
2 the examination before trial, either you or your attorney
3 in your presence, produced Exhibit 15, which has been
4 marked for identification?

5 MR. DE MORE: Well, if he would let me take
6 a look at it, your Honor, I may be--

7 THE COURT: Sustained.

8 MR. DE MORE: I have an objection to the
9 question but if you would let me look at it, I
10 may be able to short circuit a lot of these
11 questions.

12 THE COURT: Please. Do you recollect,
13 Mr. Sperling, having produced what's been marked
14 here Exhibit 15 at that examination before
15 trial?

16 THE WITNESS: I don't recollect this
17 particular paper. I do recollect producing
18 interrogatory answers to several cases. And it
19 might very well be part of this package that I
20 delivered. But sitting here with this one page
21 without any signature on it, I can't identify
22 this one page.

23 BY MR. DUELL:

1 Q Does that have at the very bottom the words
2 "Exhibit C"?

3 A Yes.

4 Q Does this refresh your recollection?

5 MR. DE MORE: Objection.

6 THE COURT: Sustained.

7 If you're going to use the
8 examination before trial to refresh
9 recollection, it's improperly done to read it.
10 Let the witness read it and see if it refreshes
11 his recollection.

12 BY MR. DUELL:

13 Q Start at page 17, if you please, Mr. Sperling,
14 and read down through page 19.

15 Then let me know when you are done.

16 A I finished.

17 Q Does it refresh your recollection?

18 A It refreshes my recollection to the point where
19 I did produce interrogatories submitted to us in the case
20 of Brown v. Remington.

21 And apparently, attached to that was an Exhibit
22 C, which was a list of complaints we had received up to
23 the date of the suit and this says Exhibit C. So, it

1 could be that's what I produced to the--

2 Q Is there any doubt in your mind that what
3 Exhibit C is the list of complaints that you produced on
4 August the 26th, 1982?

5 MR. DE MORE: Object to the form.

6 THE COURT: Sustained.

7 Q That is a list of complaints of what?

8 MR. DE MORE: Well, before we get into the
9 document I would ask either he offer it--

10 THE COURT: Are you objecting?

11 MR. DE MORE: I am objecting.

12 THE COURT: Sustained.

13 MR. DUELL: Your Honor, I have to
14 identify the exhibit before I can offer it.

15 THE COURT: Agreed.

16 MR. DUELL: Then I reiterate--

17 THE COURT: Mr. DeMore objected to the
18 form of the question and I sustain the
19 objection.

20 BY MR. DUELL:

21 Q What is Exhibit 15 marked for identification?

22 A It is a list of dates, the date received, and it
23 has dates written in the number form, like 12/7/67. There

1 is several dates listed on that column.

2 And then there is a column stated "from whom."
3 And then there is a list of names and addresses
4 corresponding to the dates received.

5 Q It's a list with names on one side and dates on
6 the other. But it's a list of what, Mr. Sperling?

7 A Well, that--that--that adequately describes this
8 piece of paper. It doesn't say anything else except that
9 it says on the top of the left-hand corner, "Brown versus
10 Remington addendum." It apparently is an answer to some
11 question.

12 If I could see the question that it's
13 in--referred to, then we can tell what this list is
14 responsive to.

15 Q Between December 7, 1967, and March 24, 1972,
16 did Remington ever have any complaints in regard to the
17 operation of its 700 model bolt-action rifle, the one
18 that's the subject of this lawsuit, the type?

19 A Is that a question to me or is that the question
20 that this--

21 Q That's a question to you right now.

22 A Question to me. I don't know.

23 Q You don't know?

1 MR. DE MORE: Object to that, your Honor.

2 THE COURT: Sustained.

3 Q Are you familiar with an action entitled
4 Lightsey against Remington?

5 A Yes.

6 Q What did that involve?

7 MR. DE MORE: Objection.

8 THE COURT: Ground?

9 MR. DE MORE: Well, there hasn't been shown
10 any relevancy at this point.

11 THE COURT: Overruled. Are you familiar
12 with it?

13 THE WITNESS: I am familiar with the case.

14 THE COURT: All right.

15 A The case involved a--I'm not sure of the date of
16 the case, but the case involved a claim by the widow of a
17 person by the name of Bernie Lightsey, who was, I was
18 going to say killed, but was involved in an accident in
19 which he was deceased, became deceased after the shooting
20 accident on an ice flow somewhere outside of Alaska.

21 Rather bizarre shooting circumstances, whereby
22 an enraged Eskimo was attacking a fellow worker, because
23 the fellow worker refused to give him any beer. And the

1 fellow worker became very--afraid for his personal safety
2 and went into his cabin up there in this ice flow and got
3 his Model 700 Remington rifle and sat, hovered in a corner
4 in this cabin, and the Eskimo was pounding upon the door
5 trying to get in.

6 And Mr. Lightsey tried to interfere between the
7 Eskimo and the person in the cabin, and the gun went off
8 through the door and shot and killed Mr. Lightsey. And
9 his widow brought an action against the person who shot
10 him and Remington Arms, as the manufacturer of the Model
11 700 that was involved in the case.

12 Q To refresh your recollection, did that shooting
13 take place on July 16, 1970?

14 A I really don't know the date. It could very
15 well have been.

16 Q Do you recall whether the action was brought in
17 a court in California?

18 A Yes, I believe it was a California court.

19 Q Do you recall that the claim of the plaintiffs
20 at that time was that the--

21 MR. DE MORE: Wait a minute. Objection.

22 THE COURT: Sustained.

23 Q Wasn't the claim one of accidental discharge?

1 A The claim of the plaintiff was a little obscure.
2 I am sure--I am sure the gun handler was claiming
3 accidental discharge.

4 Q And wasn't the claim the fact that the gun
5 discharged without the trigger being pulled?

6 MR. DE MORE: Objection.

7 THE COURT: Sustained.

8 MR. DUELL: On what grounds? May I have
9 the objection?

10 THE COURT: Because what you are doing is
11 suggesting the answer to the very question which
12 is the subject of the issue here.

13 MR. DUELL: I am proving notice--

14 THE COURT: You called the witness.

15 MR. DUELL: I appreciate that.

16 THE COURT: Please, Mr. Duell. You
17 called the witness. Let the witness tell. The
18 nature of the question is direct and precludes
19 the witness from giving full answer, answer the
20 nature of the question.

21 So far I haven't seen any
22 basis upon which the witness should be held to
23 be hostile, biased, or prejudiced, and therefore

1 the question you asked being a leading question
2 is not proper under the circumstances.

3 BY MR. DUELL:

4 Q Well, to refresh--

5 THE COURT: That's the reason for my
6 ruling.

7 Q To refresh your recollection, Mr. Sperling, at
8 the examination before trial, in being examined in regard
9 to the Lightsey against Remington action, do you recall
10 being asked the following question and do you recall--

11 MR. DE MORE: What page? Can I find out
12 what page you are showing him?

13 MR. DUELL: Page 10, line 9.

14 Q Would you read the question at line 9 to
15 yourself and then the answer.

16 A Okay.

17 Q Does that refresh your recollection at all in
18 regard to the allegations in the Lightsey action?

19 A Yes.

20 Q Now, would you tell us anything else after
21 having refreshed your recollection as to what the
22 allegations were?

23 A I said I didn't--I didn't know the--general, the

1 specific allegation of whether it involved the bolt, but
2 it did involve--my general recollection was that it was
3 claimed that the gun fired without the trigger being
4 pulled.

5 Q Thank you. Did you ever hear of a case of
6 Hickman against Remington Arms?

7 A Yes.

8 MR. DUELL: I will withdraw that for a
9 moment.

10 Q The Lightsey action involved the Model 700
11 Remington, did it not?

12 A That's right.

13 Q Did the Hickman against Remington Arms action
14 involve a Model 700?

15 A That's correct.

16 Q What did that involve?

17 A That involved a case down in Texas whereby a
18 woman was loading her Model 700 in a cabin preparing to go
19 out to hunt that morning, and in the process of loading
20 the gun the gun discharged, and I believe she--she shot
21 her husband in the leg or either her husband or someone in
22 the cabin by the name of Hickman, and Hickman sued
23 Remington Arms Company, Inc., because we manufactured the

1 gun that she was attempting to load at the time of the
2 accident.

3 Q Were the allegations in that complaint if you
4 recall, such that it was an accidental firing without
5 pulling the trigger?

6 MR. DE MORE: Objection.

7 THE COURT: Sustained.

8 Q Do you recall whether or not this accident or
9 this claim involved the use of the trigger by the shooter?

10 MR. DE MORE: Objection.

11 THE COURT: Do you recall, was the
12 question, whether or not the claim involved that
13 particular aspect? Do you recall that, is the
14 question.

15 THE WITNESS: Yes, I believe I do.

16 Q Do you recall or are you familiar with an action
17 entitled Thomas John Brown against Remington Arms Company?

18 A I remember the name Brown.

19 Q Would you like to refresh your recollection on
20 that matter?

21 A Yes. That's--all I remember is the name on that
22 one.

23 THE COURT: Where, Mr. Duell?

1 MR. DUELL: Page 14.

2 A I remember giving testimony from the complaint
3 itself that was before me at the time of the deposition
4 that you are referring to. I--I can answer questions only
5 from what I said then, because I don't have any
6 independent recollection of this case.

7 Q That would be fine. Would you, please.

8 A I'm sorry. I didn't catch that question.

9 Q I say, would you please.

10 A Read this?

11 MR. DE MORE: Well, I don't think there is
12 a question on the floor, your Honor.

13 THE COURT: Does the transcript refresh
14 his recollection, is the question.

15 Q Does it refresh your recollection?

16 A It's refreshed my recollection that I did give
17 testimony to you at the deposition when I had the
18 complaint of the Brown case in front of me. It--it
19 doesn't refresh my recollection to have any independent
20 recollection of that case. I would have to either read
21 the questions, the answers that I gave you here, or have
22 the complaint again in front of me.

23 (Plaintiffs' Exhibit 16 marked)

1 Q I show you Exhibit 16 marked for identification
2 and ask you if you've ever seen that before.

3 A This is a--

4 THE COURT: No, the question is, have you
5 seen it, Mr. Sperling?

6 THE WITNESS: Yes.

7 THE COURT: Yes. All right.

8 Q What is it?

9 A This is a complaint in a suit of Thomas John
10 Brown versus the Montgomery Ward and Company and Remington
11 Arms Company, Inc.

12 Q Would you read the complaint to yourself,
13 please.

14 A All right.

15 Q In reading the complaint and your testimony at
16 the examination before trial, has your recollection been
17 refreshed as to how the plaintiff claims that he was
18 injured?

19 A Yes, upon reading the complaint.

20 Q And how did the plaintiff claim that he was
21 injured?

22 A He claimed that--

23 MR. DE MORE: Well, wait a minute. I am

1 going to object to this, your Honor. What the
2 plaintiff is saying as to whether it refreshes
3 his recollection as to the events.

4 THE COURT: Well--

5 MR. DE MORE: As long as it's understood
6 it's just a complaint or claim of this
7 plaintiff.

8 THE COURT: I agree, but you will have an
9 opportunity to point out that during the course
10 of your own examination. The question asked was
11 how does the plaintiff, in this particular suit,
12 claim he was injured?

13 That's the question, Mr.
14 Sperling. Can you tell us the answer?

15 THE WITNESS: Yes.

16 A He claimed that he was a member of a hunting
17 party which involved a Mr. Charles Kuncher, who was
18 attempting to unload his rifle, which was a Model 700
19 rifle. And the gun discharged as a result of a defective
20 condition which existed in the firearm, making it
21 unreasonably dangerous.

22 (Plaintiffs' Exhibits 17 & 18 marked)

23 Q I show you Exhibit 17 marked for identification

1 and ask you whether or not you recognize that.

2 A Yes.

3 Q And what is it?

4 A This is a set of written interrogatories
5 directed to Remington Arms Company by the attorneys for
6 the plaintiff in the Thomas John Brown case.

7 Q Now, is there a question 10 on the written
8 interrogatories?

9 A Yes, there is.

10 Q Would you read that, please, for the Court and
11 jury?

12 MR. DE MORE: Wait a minute. That's not--

13 THE COURT: Sustained.

14 Q I show you Exhibit 18 marked for identification
15 and ask you whether or not you recognize that.

16 A Yes.

17 Q And what is it?

18 A These are Remington's written answers to the
19 questions that were posed by the plaintiff's counsel in
20 Brown versus Remington case.

21 Q Does your signature appear on there in any
22 manner?

23 A Yes.

1 Q And in what manner?

2 A I signed the affidavit saying that I am
3 submitting answers to plaintiff's counsel's questions, and
4 that, the best of my ability, the answers are correct.

5 Q Now, is there an answer to question 10 submitted
6 over your signature on behalf of Remington Arms?

7 A Yes.

8 Q What does it make reference to?

9 A Well, the answer says yes, then there is four
10 subparts. Subpart A says--

11 MR. DE MORE: Wait a minute. I want--I
12 object to him reading the answer.

13 THE COURT: Sustained.

14 Q Does it mention anything about an attachment or
15 an addendum marked Exhibit C?

16 A Yes.

17 Q And is there an Exhibit C at the very end of
18 that?

19 A Yes.

20 Q Now, look at that Exhibit C.

21 A Mm-hmm.

22 Q Look at Exhibit 15 that I marked for
23 identification several minutes ago.

1 A Mm-hmm.

2 Q Are they identical?

3 A Yes.

4 Q So that Exhibit 15 marked for identification is
5 the copy of Exhibit C attached to the interrogatories--
6 answers to the interrogatories, excuse me--which are
7 marked Exhibit 18 for identification, am I not correct?

8 A That's right.

9 Q And over your signature?

10 A Yes.

11 Q Now, would you tell me what Exhibit C is?

12 MR. DE MORE: Objection.

13 Q Or what Exhibit 15 is, marked for
14 identification?

15 MR. DE MORE: I have an objection to that.

16 THE COURT: Well, overruled, if you
17 can--can you answer what Exhibit 15 is?

18 THE WITNESS: It was submitted in answer to
19 question 10 on the interrogatories.

20 Q Tell us what it is.

21 A It's an answer to question 10. If I could see
22 question 10, I could tell you what the list is.

23 Q Sure would like to have you see question 10.

1 THE COURT: I don't know whether it's
2 necessary, Mr. Duell. It wasn't necessary.

3 MR. DUELL: Probably.

4 A All right. This is a list compiled in answer to
5 a question that asked that, "Did Remington Arms, within
6 the last five years, receive any complaints concerning
7 defects in the model"--it says "in rifle, the Model 700,
8 specifically, complaining that the discharge of the
9 rifle--that the rifle discharged when the safety was put
10 in the off position?"

11 Q And how did you answer that question?

12 A I said, "Yes. See attached addendum designated
13 Exhibit C." And Exhibit C lists 14--14 complaints,
14 ranging from the years 1967 through 1972, and from whom
15 the complaints were received.

16 MR. DUELL: I offer Exhibit 15.

17 MR. DE MORE: I have no objection to
18 Exhibit 15.

19 THE COURT: All right. Show Mr.
20 Battaglia.

21 MR. BATTAGLIA: I join in the offer.

22 THE COURT: All right. Exhibit 15
23 offered by Mr. Duell, no objection by Mr.

1 DeMore, no objection by Mr. Battaglia, who
2 joins.

3 Exhibit 15 is received.

4 (Plaintiffs' Exhibit 15 received)

5 THE COURT: Go ahead, Mr. Duell.

6 BY MR. DUELL:

7 Q Are you familiar with a lawsuit entitled Thomas
8 John Spease versus Remington Arms?

9 A The name is familiar, yes.

10 Q Is that all that is familiar to you at this
11 time, Mr. Sperling?

12 A I believe it involved a Model 700.

13 Q Anything else that's familiar to you?

14 A No.

15 THE COURT: What page, Mr. Duell?

16 MR. DUELL: Twenty-seven.

17 THE COURT: Mr. Sperling, there is a copy
18 of the examination before trial that was
19 provided me, if you would go to page 27?

20 MR. DUELL: Twenty-seven.

21 THE COURT: Twenty-seven. If you would
22 be so kind, for the purpose of refreshing your
23 recollection, it may expedite matters.

1 (Plaintiffs' Exhibit 19 marked)

2 Q I show you Exhibit 19 marked for identification
3 and ask you whether or not you recognize it.

4 A Yes, I do.

5 Q And what is it?

6 A This is a complaint--filed in the Federal Court
7 in Kansas by Thomas John Spease against Remington Arms
8 Company.

9 Q All right. Now, would you read, commencing at
10 page 27, so much of the deposition of yourself as you need
11 to and also the Exhibit 19 marked for identification?

12 A Need to, to do what?

13 Q Just read them so it will refresh your
14 recollection, if it does, as to that action.

15 A All right.

16 Q Refresh your recollection, Mr. Sperling?

17 A Yes, I have read the complaint.

18 Q Did it involve a Model 700?

19 A That's right.

20 Q And when did the accident allegedly occur?

21 A January 29, 1972.

22 Q And what were the allegations of the complaint
23 in that particular action?

1 A It was claimed that the plaintiff received
2 severe and permanent and crippling injuries caused by a
3 rifle, the Model 700, and Remington failed to give timely
4 warning concerning the defects in a hair trigger condition
5 of said rifle.

6 Q Anything else?

7 A Well, there is--it alleges that Remington
8 designed, manufactured, tested and sold the rifle that's
9 complained about.

10 Q Anything else?

11 A Well, there is second and third and fourth
12 claims.

13 Q Like breach of warning?

14 MR. DE MORE: Objection.

15 THE COURT: Sustained.

16 MR. DUELL: Withdrawn.

17 THE COURT: Breach of warning?

18 MR. DUELL: Withdrawn.

19 THE WITNESS: Do you want me to read the
20 second?

21 MR. DE MORE: I--

22 THE COURT: Mr. Duell's question--just
23 wait and see.

1 THE WITNESS: There is some more
2 information contained in the complaint, but
3 nothing more on the accident per se

4 Q How about in the minutes of the examination
5 before trial, in your testimony?

6 A I say, generally, he is claiming the trigger
7 mechanism is such that it's defective.

8 Q Are you familiar with a case--

9 THE COURT: Well, we'll take our lunch
10 recess, ladies and gentlemen. Will you step
11 down and be back in the jury room at two
12 o'clock, please.

13 (Court recessed at 12:30 p.m.)

14 (Court reconvened at 2:30 p.m. Jury not
15 present)

16 THE COURT: Ready, Mr. Amdursky--Mr.
17 Duell?

18 MR. DUELL: Yes, your Honor.

19 THE COURT: Mr. DeMore?

20 MR. DE MORE: Yes, sir.

21 THE COURT: Mr. Battaglia?

22 MR. BATTAGLIA: Yes, your Honor.

23 THE COURT: All right. Bring in the

1 jury.

2 (Jury entered the courtroom)

3 THE COURT: All right. Good afternoon,
4 ladies and gentlemen. All right. Mr. Duell.
5 (Plaintiffs' Exhibit 20 marked)

6 BY MR. DUELL:

7 Q Now, Mr. Sperling, I think we left off this
8 morning talking about the Clark case, if I am not
9 mistaken, is that correct, sir?

10 A I don't remember that name.

11 (Plaintiffs' Exhibit 21 marked)

12 Q Over the years since 1970, Mr. Sperling, has
13 Remington had what they called the authorized gunsmiths?

14 A Yes.

15 Q And what are Remington's authorized gunsmiths?

16 A Well, I am not that familiar with the actual
17 duties. There, apparently, is a system by which Remington
18 personnel will go out through the country and--and
19 interview or talk to various gunsmiths throughout the
20 country, and those who want to handle Remington components
21 and repair Remington guns indicate a desire to do so.

22 And we keep what we call the Remington
23 recommended gunsmith list, so that if anyone writes in and

1 says that, for instance, "I am in Boise, Idaho, and I
2 don't want to send my gun back here and I have a trigger
3 problem," we can recommend someone in Boise, Idaho, who is
4 a gunsmith that we feel is competent to repair the gun.

5 Q And does Remington, from time to time, have
6 meetings with their authorized gunsmiths?

7 A I believe they do, yes.

8 Q And as to whether or not you've ever heard,
9 during any of these meetings, that the Remington
10 authorized gunsmiths were removing the bolt locks on the
11 700 model at the request of customers so that the guns
12 could be fired without the necessity of putting them onto
13 the fire position to unload--

14 MR. DE MORE: Objection.

15 THE COURT: Sustained. No evidence that
16 the witness had ever been at one of those
17 meetings.

18 MR. DUELL: That's what I am asking, if
19 he ever--

20 THE COURT: No. Had he ever heard.

21 Q Have you ever attended any of those meetings?

22 A No, I have not.

23 Q Have you ever discussed any of those meetings

1 with anyone at Remington?

2 A I haven't discussed the individual meetings. I
3 have discussed, generally, the meeting--you know, having
4 meetings with gunsmiths.

5 Q And the general conversations with any of the
6 Remington employees, officers, agencies, servants, did you
7 ever hear that the Remington gunsmiths were removing the
8 bolt locks so that the guns did not have to be put on fire
9 position to unload?

10 MR. DE MORE: Objection.

11 THE COURT: Overruled. Had you ever
12 heard that?

13 THE WITNESS: I never heard--

14 MR. DE MORE: Your Honor, as far as the
15 time frame we're talking about, I object to the
16 form of the question without the time frame.

17 THE COURT: Well--

18 MR. DE MORE: There has to be a cut-off
19 date.

20 THE COURT: Well, overruled. The
21 question was had he ever heard that. Your
22 answer was what, Mr. Sperling?

23 THE WITNESS: Well, the direct answer to

1 your specific question, I have never heard it
2 from the employees that I talked to, generally,
3 about the gunsmith meetings. They never told me
4 that.

5 BY MR. DUELL:

6 Q Did you ever hear it from anyone?

7 A Yes, I have.

8 Q Who?

9 MR. DE MORE: Objection.

10 THE COURT: Sustained.

11 Now it would be necessary to
12 establish when and where, certain things.

13 Q When did you hear, first time?

14 A Oh, sometime in the late 1970s.

15 Q How late in the 1970s?

16 A Sometime after 1978, I believe.

17 Q Sometime in 1978?

18 A After '78, '78 and beyond, something like that.

19 Q If I understand you correctly, you did hear it
20 for sometime after 1978, is that correct?

21 A I believe so, yes.

22 (Plaintiffs' Exhibit 22 marked)

23 Q I show you Exhibit 22 marked for identification

1 and ask you whether or not you recognize that.

2 A Yes, I do.

3 Q And what is it?

4 MR. DE MORE: Excuse me. May I see it
5 before he identifies it, your Honor?

6 MR. DUELL: Sure.

7 MR. DE MORE: May I approach the bench?

8 THE COURT: Yes, you may.

9 (Discussion off the record at the bench)

10 THE COURT: All right.

11 BY MR. DUELL:

12 Q Can you identify the document, just what it is?

13 A Yes. These are written interrogatory answers by
14 Remington to counsel for plaintiff.

15 Q And does it bear your signature?

16 A Yes, it does.

17 Q Now, attached to the rear is Attachment A,
18 correct?

19 A That's right.

20 Q Are any of the items written--

21 MR. DUELL: Withdraw that for a moment.

22 Q What is Attachment A? What does it represent?

23 A It looks like a list of names and corporations.

1 Q And do you know what the list was attached for,
2 the reason? Would you like to read it to yourself?

3 (Witness reviewed exhibit)

4 A Yes.

5 Q Do you know what it is?

6 A It's a list of individuals and corporations that
7 we attached to the answer to the question, "Have you ever
8 received notice from anyone alleging that a Remington
9 Model 700 rifle had fired when the bolt was closed?"

10 Q Now, there is one that states a name and next to
11 it is 1979, is that correct?

12 MR. DE MORE: Objection, your Honor.

13 THE COURT: Sustained.

14 MR. DUELL: I offer it.

15 MR. DE MORE: I object, your Honor, as
16 being incompetent, immaterial, and irrelevant.

17 THE COURT: Sustained. Sustained.

18 Q Are you familiar with anyone by the name of Greg
19 E. Hall?

20 A Greg E. Hall?

21 Q Greg E. Hall?

22 A No.

23 Q Never heard of him before?

1 A I don't believe so.

2 Q Are you familiar with an organization called
3 Magic Mart?

4 A No.

5 Q Are you familiar with a person by the name of
6 Robert J. Jones?

7 A No.

8 Q To refresh your recollection, I show you
9 Attachment A to Exhibit 22 marked for identification and
10 ask you whether or not that refreshes your recollection to
11 any of those three names.

12 MR. DE MORE: Your Honor, that's already
13 been ruled out of here as an exhibit.

14 THE COURT: Are you objecting?

15 MR. DE MORE: Yes, sir.

16 THE COURT: Sustained.

17 Q I show you Exhibit 51 that is marked for
18 identification and ask you whether or not you recognize
19 that.

20 THE COURT: Not Exhibit 51, Mr. Duell,
21 couldn't be 51.

22 MR. DUELL: Probably couldn't. 21.

23 THE COURT: Exhibit 21?

LEWY

1 MR. DUELL: Yes.

2 A Yes, I do.

3 Q What is it?

4 A This is a copy of the memorandum written to me
5 by Mr. J. H. Chisnall, dated April 3, 1980 in which he--

6 MR. DE MORE: Wait a minute. Use identify
7 the document. Don't explain what it is.

8 THE COURT: Are you objecting?

9 MR. DE MORE: Yes, sir.

10 THE COURT: Sustained.

11 Q Is it a document kept in the ordinary course of
12 business?

13 A Yes.

14 Q By Remington Arms?

15 A By Remington Arms.

16 MR. DUELL: I offer it.

17 THE COURT: Upon the offer of 21?

18 MR. DE MORE: I am going to object as
19 incompetent and immaterial and irrelevant.

20 MR. BATTAGLIA: Your Honor, may I join in the
21 offer.

22 THE COURT: Do you want to look at the
23 exhibit first, Mr. Battaglia?

1 MR. BATTAGLIA: No, I have a copy, your
2 Honor.

3 THE COURT: Sustained.

4 (Plaintiffs' Exhibit 23 marked)

5 Q I show you Exhibit 23 marked for identification
6 and ask you whether or not you recognize that.

7 A Yes, I do.

8 Q And who was it made out by?

9 A This is a memorandum written by me.

10 Q And to whom?

11 A To Mr. F. Hart.

12 Q Who is Mr. F. Hart?

13 A Mr. Hart is an employee who works at our Ilion
14 firearms plant who has certain responsibilities with
15 respect to the publication of the firearms manuals that we
16 pack with our firearms.

17 Q Was that written to Mr. Hart in the normal
18 course of business?

19 A Yes. This is a memorandum written May 6, 1974,
20 to Mr. Hart by me.

21 Q And what's it in regard to?

22 MR. DE MORE: Objection--well, objection.

23 MR. DUELL: May I have the ground on

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that, your Honor?

THE COURT: No, I will give the grounds
in my ruling. I will overrule the objection as
to what is the nature of it. What does it
relate to, Mr. Sperling?

THE WITNESS: It relates to a modification
to our owner's manual.

THE COURT: All right.

MR. DUELL: Sustained or overruled, your
Honor?

THE COURT: No, he has answered the
question. It relates to a change in the owner's
manual.

MR. DUELL: I offer it.

MR. BATTAGLIA: I would object to--I would
join in the offer.

MR. DE MORE: I object to it as being
incompetent, immaterial and irrelevant.

THE COURT: Well, step down, ladies and
gentlemen, if you will.

There is a matter of law that
we have to discuss.

(Jury left the courtroom)

LEWY

1 THE COURT: It's been offered as proof.
2 Want to read--make an offer of proof, read it
3 into the record, Mr. Duell?

4 MR. DUELL: Yes, if the Court please, I
5 offer Exhibit 23 marked for identification on
6 the grounds that it was a change in the
7 Remington gun manual.

8 THE COURT: What change?

9 MR. DUELL: The change was, "Caution:
10 Safety will be in the fire position during part
11 of this operation, so keep muzzle pointed in
12 safe direction."

13 Now, that was not in the
14 manual which was received by Mr. Mathis. It is
15 my contention that this was a change the reason
16 for which was due to the accident which we have
17 already proved.

18 THE COURT: Which?

19 MR. DUELL: Lightsey against Remington.
20 Hickman against Remington. Brown against
21 Remington. Spease against Remington. Parker
22 against Remington, plus 14 claims that are set
23 forth in Exhibit--I can't tell you the number

1 right off the top of my head.

2 MR. BATTAGLIA: Your Honor--

3 MR. DUELL: I say that, under the
4 circumstances, it now becomes the jury question
5 or can become a jury question as to whether or
6 not this change was necessitated by or brought
7 about by reason thereof, and as to whether or
8 not Remington should not have notified its
9 dealers, at least to notify the purchasers of
10 the 700 model that they should use extreme
11 caution because of the conditions.

12 They thought enough of it to
13 notify them in '74, any future users. It seems
14 to me that they should also notify the previous
15 purchasers.

16 THE COURT: Where in the proof that you
17 have submitted so far has there been a showing
18 that the allegation other than the fact that a
19 suit was brought regarding the unloading
20 procedure of the weapon itself?

21 MR. DUELL: Where?

22 THE COURT: Yes. Which of the actions?
23 You mentioned several. I don't show any of

1 those. I show only--

2 MR. DUELL: Well, for openers--

3 THE COURT: Brown against Remington. I
4 show Spease against Remington. And I show
5 Exhibit 20.

6 MR. DUELL: My recollection is Lightsey
7 against Remington, there was--the gun was
8 discharged without the trigger being pulled. **LEWY**

9 In Brown against Remington,
10 they were attempting to unload the gun when it
11 discharged in and of itself.

12 In Spease against
13 Remington--well, I don't have the notes--claim
14 of discharge, claim of defective manufacture of
15 the gun.

16 Parker against Remington--
17 THE COURT: Parker. I don't have any
18 indication of Parker. Where does Parker appear?

19 MR. DUELL: Beg pardon?

20 THE COURT: I don't have any note here
21 regarding a lawsuit brought by one Parker.

22 MR. DUELL: I haven't gone into the
23 Parker case?

1 THE COURT: I don't know. I don't have
2 any note with regard to it. I hate to say you
3 hadn't.
4 MR. DUELL: I'm sure I did. Where are
5 all the exhibits?
6 THE COURT: Do you have any further
7 argument upon your offer here, Mr. Duell?
8 MR. DUELL: Beg pardon, your Honor?
9 THE COURT: Have any further argument on
10 your offer of proof of a recommended change in
11 the operator's manual of 1974?
12 MR. DUELL: No.
13 THE COURT: And you say the only
14 indication in that exhibit is that there should
15 be added to the instructions as to how to unload
16 the weapon, don't point it in the direction of
17 any people while you're doing so, or words to
18 that effect, cautionary provisions at the end of
19 the paragraph. That's the only change between
20 the manual as it existed in 1973 and the
21 manual--or the recommendations for changes in
22 the manual in 1974?
23 MR. DUELL: Yes. It's my contention--

1 THE COURT: No. I say is that the only
2 basis upon which you make this offer?

3 MR. DUELL: Yeah.

4 THE COURT: All right. Mr. Battaglia,
5 you want to be heard?

6 MR. BATTAGLIA: Yes, your Honor. I think
7 there is a difference that goes beyond what Mr.
8 Duell has indicated. The 1973 manual regarding
9 instructions for unloading, stated as follows:
10 "To unload - pull bolt, bolt rearward, and
11 remove cartridge from rifle. Push bolt forward
12 until next cartridge is released from magazine.
13 Continue until magazine is empty. BDL grade
14 magazine may be unloaded from bottom with bolt
15 closed and safety on safe. Make certain to
16 empty chamber."

17 In the '74 amendment, the
18 instruction now tells the unloader that the
19 safety can be put back on safe after each
20 bolt--after the bolt is raised each time.

21 THE COURT: Why does that have any
22 relevance to your inquiry here?

23 MR. BATTAGLIA: There was testimony from Mr.

1 Fisher that the gun was found with the bolt
2 raised. There is the allegation, I presume,
3 from Mr. DeMore's opening that the trigger was
4 the cause of this gun discharging.

5 THE COURT: If that's the case, then
6 that's the basis upon your argument, I will
7 reserve decision until such time as those
8 various elements that have been raised by Mr.
9 Battaglia can be established in the course of
10 the proof.

11 At this point, it would be
12 speculative with regard to that.

13 Your arguments were really
14 persuasive, but Mr. Battaglia has raised some
15 other issues here which I feel I have to
16 reserve.

17 MR. DUELL: Does the Court say I haven't
18 put anything in about the Parker case?

19 THE COURT: No, I didn't say that at all.
20 I say I just don't show any record of it. If
21 you did, you did.

22 All right. Bring the jury
23 in.

1 (Jury entered the courtroom)

2 BY MR. DUELL:

3 Q Now, I show you Exhibit 20, Mr. Sperling, marked
4 for identification and I want you to listen to my
5 questions, please, and only answer them, don't digress on
6 this one.

7 What is that, a letter?

8 A This is a letter.

9 Q All right. And it's dated what?

10 A July 12, 1978.

11 Q And it's signed by whom?

12 A By myself.

13 Q And is that a copy of a letter which you sent to
14 someone?

15 A Yes, it is.

16 Q And was that copy kept in the normal course of
17 business of the Remington Arms?

18 A Yes, it was.

19 Q All right. Thank you.

20 MR. DUELL: Now, at this time, if the
21 Court please, I offer the letter, of course with
22 the deletion of the recipient of the letter.

23 MR. BATTAGLIA: George, can I see that?

1 THE COURT: You offered it, Mr. Duell?
2 MR. DUELL: I have offered it.
3 THE COURT: Wish to voir dire, Mr.
4 DeMore?
5 MR. DE MORE: I have none.
6 THE COURT: Voir dire, Mr. Battaglia?
7 MR. BATTAGLIA: No, your Honor.
8 THE COURT: On the offer, Mr. DeMore?
9 MR. DE MORE: I object as incompetent and
10 irrelevant.
11 THE COURT: Mr. Battaglia?
12 MR. BATTAGLIA: Join in the offer.
13 THE COURT: Sustained.
14 MR. DUELL: May I be heard on the record
15 after--
16 THE COURT: Step down, ladies and
17 gentlemen.
18 MR. DUELL: No, after I get through.
19 THE COURT: No. Step down, ladies and
20 gentlemen.
21 (Jury left the courtroom)
22 THE COURT: All right, Mr. Duell.
23 MR. DUELL: Now, if the Court please,

1 Exhibit 20 marked for identification is an offer
2 or is a letter written by Mr. Sperling on behalf
3 of Remington Arms kept in the ordinary course of
4 business. It's in regard to a case of Jackson
5 and Pamela Spark against Remington Arms Company,
6 Inc.

7 It states when the accident
8 occurred, it states how it is alleged that the
9 accident occurred, the--it states that the
10 plaintiff was struck in the left leg while his
11 brother was unloading his Model 700. It states
12 that the model fails to incorporate a safety
13 mechanism which would permit the bolt to be
14 operated while the safety was active.

15 I think this letter--and I
16 offer it as notice to Remington, again, of
17 another accident, allegedly by defective design,
18 manufacture of the gun, and during a period when
19 the gun was being unloaded exactly the same
20 situation as in our case.

21 I say that it is notice on
22 July 12, 1978, or a few days prior thereto, when
23 Mr. Sperling heard of this accident, but at

1 least by July 12, 1978, which is prior to the
2 date of our accident.

3 Now, it is my contention that
4 we can show notice to Remington not only up to
5 the date of the Shutts accident--or, excuse me,
6 not only up to the date of the purchase by
7 Mathis of the gun, but also notice up to the
8 date of the accident. Because in our complaint,
9 we have an allegation in addition to improper
10 design, we have an additional cause of action
11 for failure on the part of Remington to notify
12 its gun holders as to the defective condition.

13 And this is proof that prior
14 to the Shutts shooting, Remington had, again,
15 notice that this gun was going off and shooting
16 people when it wasn't intending to go off. And
17 under the circumstances, it becomes a question
18 for a jury to determine on the basis of this
19 evidence whether or not Remington should have
20 given notice to its gun dealers and/or the gun
21 owners.

22 THE COURT: Anything further?

23 MR. DUELL: That's all.

1 THE COURT: Anything further?
2 MR. DUELL: No.
3 THE COURT: Mr. DeMore?
4 MR. DE MORE: Well, your Honor, you have
5 ruled, so I have nothing to add.
6 THE COURT: Mr. Battaglia?
7 MR. BATTAGLIA: Yes, your Honor. I join in
8 Mr. Duell's comments. On the question of
9 Remington's duty to warn, we believe Remington
10 had a duty to warn about the defect in the
11 product. The defects have been placed in
12 evidence by the testimony of Mr. Mathis which
13 was read, indicating that he used this gun in
14 the manner it was intended to be used and at the
15 time that he did so the gun was discharged and
16 caused injury to the plaintiff.
17 We respectfully submit that
18 that foundation raises a trial jury question as
19 to the defects in the gun of--as to the
20 capability of the gun to discharge when the
21 safety is put from safe to fire.
22 We also think that proof
23 raises a triable issue on a separate contention,

1 that is, that the inclusion of a two-position
2 safety as opposed to a three-position safety, in
3 itself is a negligent design of the weapon, and
4 that wholly apart from the capability of the gun
5 to discharge automatically.

6 The knowledge that the gun in
7 the condition in which it was placed in the
8 market, that is, with a two-position safety, was
9 causing substantial harm to individuals in the
10 marketplace created a separate and entirely
11 distinct duty to warn.

12 And on that basis, we think
13 that evidence of accidents and claims prior to
14 the date of injury are competent and admissible
15 for the jury to consider in determining whether
16 their duty to warn has been breached.

17 Thank you, your Honor.

18 THE COURT: Yes. Mr. Battaglia, you have
19 convinced me that I ought to change my ruling.
20 And instead of sustaining the objection, I am
21 going to reserve.

22 Now, the question has come up
23 twice. We have discussed it on several

1 occasions, and I think at this point, unless
2 someone can give me some case law different than
3 that to which I have alluded on several
4 occasions, it is my judgment that the initial
5 showing here must be with regard to defective
6 design in 1973, and, therefore, falls directly
7 within the rule of Voss against Black & Decker,
8 Rainbow against Elia, and Opera against
9 Hyba--it's the ski boot case.

10 Once established, by some
11 competent evidence, that there was a defect in
12 the design, there may be something substantially
13 different with regard to approach the jury, but
14 at this point the fact that a letter or a
15 summons or a notice is received by the company
16 where there is an allegation of the fact that
17 somebody was injured and claims that that injury
18 resulted from a design defect is, in my
19 judgment, insufficient to raise questions of
20 liability.

21 Now, in the event, first of
22 all, because of the nature and the state of the
23 pleadings, at this point Remington has denied

1 that there was a design defect. Therefore, in
2 the state of the pleadings, the plaintiff must
3 establish that in fact there was a design
4 defect.

5 That design defect must be
6 shown as of the date of the manufacture and sale
7 of the weapon, which I understand is the year
8 1973, at least at this point in the evidence.

9 Now, once there is
10 established sufficient proof to make that a
11 question of fact for the jury, and so far there
12 is not, then, under those circumstances, there
13 may be evidence, and I don't see that there is
14 but there may be the basis upon which to offer
15 evidence to show lack of warning.

16 At this point, Remington has
17 maintained that there is nothing wrong with the
18 defect--or there is nothing wrong with the
19 design. There is no defect in the design.
20 Therefore, what obligation do they have to
21 notify their customers of that design, of that
22 defect?

23 Now, the notice that you seek

1 to offer with regard to a change in the manual:
2 In the first place, the manual, the original
3 manual in this matter, although there is a copy
4 of it in evidence, it is not a legible copy.
5 There was some move here underfoot to put in the
6 original manual itself.

7 If there was some change in
8 the manual and the change is related to some
9 incident or if there is some basis for it to go
10 in other than advice by the attorneys within the
11 corporation itself to add that--don't point it
12 at anyone--we have talked about the rules of
13 safety, I don't know why that's relevant to the
14 particular issues here of notice or of knowledge
15 on the part of the--of the company as to a--a
16 design defect.

17 The pleadings are still
18 allegation of design defect and with an
19 allegation of design defect, a denial that there
20 was a design defect. So far, there has been no
21 testimony whatsoever that there was anything
22 defective about the design, notwithstanding at
23 least three theories I have heard at this point

1 as to why the design was defective.

2 One was the state of the art.
3 The second is the removal of the bolt lock. And
4 the third was, as I understand it, warning not
5 to point the gun at anybody else when you are
6 unloading it.

7 MR. DUELL: I can say no more.

8 THE COURT: Either can I. Either can I.

9 MR. BATTAGLIA: Your Honor, just for the
10 record, we would refer the Court to two cases
11 regarding the failure to warn, in particular to
12 the Braniff Airways versus Curtis case, 411 F 2d
13 451, a 1969 Second Circuit case. We have copies
14 for the Court. I realize the Court's ruling
15 addresses foundation as well as the legal
16 issues.

17 But for the record, we would
18 like to note that in that case the Court, Second
19 Circuit, did hold, and I quote--

20 THE COURT: I don't know that this is the
21 time to argue that. I haven't seen the case. I
22 can't intelligently listen to your arguments
23 because I haven't read the case. You told me

1 that in midweek you were going to have a brief
2 with the cases. As each person has submitted
3 briefs to me and citations to me, I have
4 attempted each day to read the cases and reread
5 the cases, Mr. Battaglia.

6 I am not going to hear
7 arguments based upon some case which I have not
8 had an opportunity to read, at least give myself
9 an opportunity to read such other citations as
10 the case may rely on.

11 So--

12 MR. BATTAGLIA: Yes, your Honor.

13 THE COURT: If you would be so kind, I
14 shall be glad to do so between now and Tuesday
15 morning.

16 Let's get on with the
17 lawsuit. Let's not get on with the lawsuit.
18 Let's take a recess right now.

19 (Court recessed at 3:15 p.m.)

20 (Court reconvened at 4:40 p.m. Jury not
21 present)

22 THE COURT: Mr. Duell, you want to place
23 something on the record?

1 MR. DUELL: Yes, your Honor. I would
2 like to make an offer of proof, your Honor.

3 In putting in the action
4 entitled Parker against Remington Arms, which
5 involves a 700 model, which occurred on November
6 21, 1976, at a time when the plaintiff was
7 unloading the gun and it was caused to
8 accidentally discharge--excuse me, in which the
9 defendant--codefendant was unloading a gun, when
10 it automatically discharged and the discharge
11 shot the plaintiff.

12 The claim was, at that
13 particular time, that the gun went off when the
14 individual shooter was moving a position
15 from--of the armature from safe to fire. That's
16 all.

17 MR. DE MORE: Well, your Honor, on the
18 offer of proof, I would like to complete the
19 record. I agree with counsel that the pleadings
20 allege a date of accident of November 21, 1976,
21 but the records of the Remington Arms Company
22 indicate that they first received notice of this
23 proceeding on December 5, 1978, which would be


1 approximately one and a half months--give or
2 take a week--after the accident which is the
3 subject of the lawsuit that we're presently
4 involved in. So I would oppose, ~~that~~ would be
5 my objection to that offer. **LENN**
6 THE COURT: Mr. Battaglia?
7 MR. BATTAGLIA: I join in the offer, your
8 Honor. I have no objection.
9 THE COURT: Reserved. Bring the jury in.
10 (Jury entered the courtroom at 4:44 p.m.)
11 MR. DUELL: No further questions.
12 THE COURT: Mr. DeMore?
13 MR. DE MORE: I have none.
14 THE COURT: Mr. Battaglia,
15 cross-examination?
16 MR. BATTAGLIA: I have no questions, your
17 Honor.
18 THE COURT: Step down, Mr. Sperling.
19 Mr. Sperling, do you intend
20 to be where you can be reached, return to the
21 courtroom if that should be necessary or
22 appropriate?
23 THE WITNESS: Yes, I will.

1 THE COURT: Fine. Thank you, sir.

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4
5 C E R T I F I C A T E

6 I, Ann A. Wade, RPR, an Official Reporter of the
7 Supreme Court, Fifth Judicial District, State of New
8 York, do hereby certify that the foregoing is a true
9 and correct transcript of my stenographic notes taken
10 in the above-entitled matter at the time and place
11 first above mentioned.

12
13 
14 Ann A. Wade, RPR

15 DATED: 5-2-84

LAW OFFICES
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13202-2680

DAVID B. SUGARMAN (1885-1968)
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CHARLES M. MANHEIM
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ALAN J. GOLDBERG
GEORGE E. DE MORE
JAMES G. STEVENS, JR.
SAMUEL M. VULCANO

AREA CODE 315
474-2943
422-1203

October 4, 1984

IN REPLY PLEASE REFER TO

Cynthia Jones
Taylor, Hays, Price, McConn & Pickering
Attorneys at Law
400 Citicorp Center
1200 Smith Street
Houston, Texas 77002

RECEIVED
OCT 9 1984
R.B. SPERLING

Re: Shutts vs. Remington Arms Co, Inc.

Dear Miss Jones:

Please be advised that the trial testimony of Mr. Hillberg was previously forwarded by us to Bob Sperling at Remington. If for some reason he does not have a copy of that we could obtain one for you reasonably soon.

Kindly let us know.

Very truly yours,

George E. DeMore
George E. DeMore

GED/jsk

cc: Mr. Robert Sperling
P.O. Box 1938
Bridgeport, Connecticut 06601

SEE 4353

REMINGTON ARMS COMPANY, INC.

INTER-DEPARTMENTAL CORRESPONDENCE

Remington



BRIDGEPORT, CONNECTICUT

JUNE 6, 1984

CC: H. K. BOYLE
W. H. COLEMAN, II
C. B. WORKMAN
J. P. LINDE
C. A. RILEY
T. W. RAWSON
W. H. FORSON
K. N. WAITE
E. F. SIENKIEWICZ
J. A. STEKL
J. C. HUTTON
W. L. ERICSON
N. S. COSMO
W. E. KIRK-WILM.
R. A. HARRINGTON-WILM.

E. F. BARRETT
E. HOOTON, JR.
R. E. FIELITZ
G. L. EHRENS
C. T. WAGNER

RE: SHUTTS V. REMINGTON, ET AL

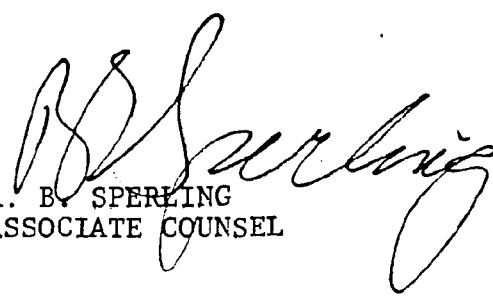
As reported on February 29, 1984, this New York case involving the alleged accidental discharge in 1978 of a Remington Model 700 bolt action rifle, went to trial in a state court in Oswego, before a six person jury, and resulted in a verdict against Remington and Frederick Mathis, the gun handler, in the amount of \$1,650,000. The jury apportioned 70% of this amount to Mr. Mathis, and 30% to Remington. Since Mathis is relatively judgment proof (\$100,000 insurance policy limits), nearly all of the judgment was assigned by the court to Remington in accordance with New York law.

Appeals were filed by Remington, the plaintiffs and Frederick Mathis. Settlement discussions started after the judgment was entered, and on June 1, 1984, after several months of negotiating, all of the parties agreed to the following structured settlement:

The plaintiffs are to receive \$600,000 up front;
\$500,000 from Remington and \$100,000 from Mr. Mathis
(Allstate Insurance). In addition, Remington is to
provide James Shutts with an annuity that will pay
him \$52,500 semi-annually for the rest of his life.
The cost of this annuity policy is \$798,000.

Remington is insured by Liberty Mutual in this case for all
amounts over \$100,000.

RBS/dt


R. B. SPERLING
ASSOCIATE COUNSEL