

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION

FILED
MAY 18 PM 2 07
LAW DIVISION
MORGAN M. FINLEY

BARBARA SEYFERTH, for herself,
as Executor of the Estate of
DIETER H. SEYFERTH, and as
representative and next friend
of her minor child, NORBERT
SEYFERTH and DIETER SEYFERTH
JR., and GERHARD SEYFERTH,

Plaintiff,

v.

JOSEF OFFENWANGER and REMINGTON
ARMS COMPANY, INC., a foreign
corporation,

Defendants.

NO. 83 L 17606

JOSEF OFFENWANGER,

Counter-Plaintiff,
Counter-Defendant,

v.

REMINGTON ARMS COMPANY, INC.,
a foreign corporation,

Counter-Defendant,
Counter-Plaintiff.

PLAINTIFF'S MOTION TO COMPEL DISCOVERY AND FOR
SANCTIONS AGAINST DEFENDANT REMINGTON

Plaintiff, Barbara Seyferth, by her attorneys, Joyce
and Kubasiak, P.C., and pursuant to Supreme Court Rule 219,
respectfully requests that this court enter an order compelling
defendant Remington Arms Co. ("Remington") to comply with
outstanding discovery. Plaintiff also requests that sanctions
be imposed against Remington for repeatedly failing to comply
with discovery proceedings. In support of this motion, plaintiff
states as follows:

1. This case concerns a shooting incident which resulted in the death of plaintiff's deceased, Dieter Seyferth.

2. The incident occurred while defendant Offenwanger was handling a Remington Model 700 rifle. According to Offenwanger, the Model 700 fired when he moved the safety switch from the "safe" position to the "fire" position without touching the trigger.

3. During the first wave of discovery, plaintiff and defendant Offenwanger requested very broad, general categories of documents from Remington. Remington produced a large volume of documents and objected to the production of others on the grounds of relevancy. In those instances where Remington objected, however, Remington never indicated that there were other documents available for production which it knew to be relevant.

4. Remington has known throughout the course of this case that it has possession and/or control over a large volume of documents pertaining to an occurrence which it labels "firing on safety release" or "FSR". This is the exact occurrence which Offenwanger claims to have happened with his Model 700 rifle. Plaintiff only recently learned that most of these "FSR" documents were generated in the mid-1970's from studies, tests and research conducted under the supervision and review of Remington's Operations Committee and its Product Safety Subcommittee. Remington has known that these documents are relevant to this FSR case because Remington has produced

these same documents to opposing counsel in many of the other cases around the country involving claims of FSR on Model 700 rifles.

5. Until recently, neither plaintiff nor Offenwanger made specific requests for many of these FSR documents because neither knew that the documents existed. However, as far back as January, 1984, plaintiff and Offenwanger asked for what would have constituted the threshold FSR documents; i.e., the documents regarding committee studies of problems relating to the safety of Remington firearms. (See Exhibits A and B.) Clearly, if Remington had not held back production of these threshold documents, plaintiff and Offenwanger would have learned much earlier of the FSR problem and would have made earlier supplemental requests for the specific follow-up FSR documents. Therefore, Remington has substantially delayed the progress of discovery.

6. Remington's abuses of discovery do not stop with the concealment of documents. Even though plaintiff and Offenwanger here gradually learned of the existence and identity of various FSR documents over the course of discovery, and even though they have made specific requests for these documents, Remington has continued to withhold production.

7. Specifically, over the past year Remington has not responded to plaintiff's supplemental interrogatories and document requests which were filed in June 1986.

8. Specifically, Remington has not responded to plaintiff's letter of November 12, 1986 requesting production of FSR

documents identified during a deposition of a former Remington employee. (See Exhibit C.)

9. Specifically, Remington has not responded to plaintiff's letter of February 11, 1987, requesting additional FSR documents. (See Exhibit D.)

10. Specifically, Remington has not responded to plaintiff's letter of February 13, 1987, requesting FSR documents. (See Exhibit E.)

11. Specifically, Remington has not responded to plaintiff's letter of March 19, 1987, which summarizes the status of discovery and demands prompt compliance. (See Exhibit F.)

12. Instead, Remington has deliberately continued to hold back these important documents despite repeated requests for production and even though Remington's counsel has used these documents to prepare at least one witness for a deposition.

13. Most recently, one of plaintiff's attorneys, Arthur Aufmann, took the deposition of former Remington employee, Edward Barrett. Mr. Barrett was represented at the deposition by one of Remington's attorneys, William Kelly. Just prior to the start of the deposition, Mr. Aufmann asked Mr. Kelly to produce the documents which had been requested in the letters attached hereto as Exhibits A through F. Mr. Kelly stated that he did not have the documents.

14. Later, near the end of Mr. Barrett's deposition, Mr. Barrett was asked if he had reviewed any documents in preparation for the deposition. Mr. Barrett stated that he had reviewed some minutes of Product Safety Subcommittee meetings and that he had reviewed these important documents

at Mr. Kelly's office before the deposition.

15. Having already stated that he did not have the documents, Mr. Kelly now explained that what he "meant" to say was that he did not have the documents "with him" at the deposition. Then, when asked why he did not bring the requested documents with him to the deposition, Mr. Kelly offered the ridiculous excuse that he did not bring the documents because he had not yet compiled all of the requested documents. Consequently, plaintiff was unable to depose Mr. Barrett about any of the requested documents.

16. In the six weeks that have passed since Mr. Barrett's deposition, Remington has still not produced any of the requested documents and has not even offered any explanation why.

17. There is no question that the non-expert discovery in this case could have been completed by now if not for Remington's clear abuses of discovery. Plaintiff has had the unenviable choice of taking depositions without all of the necessary documents or foregoing the depositions entirely. As a result, there may be several witnesses who need to be questioned further once the FSR documents are finally produced.

WHEREFORE, plaintiff respectfully requests that this court enter an order stating that:

1. Remington comply with all outstanding discovery within 14 days;
2. If necessary, Remington produce at its expense those employees and former employees who were previously

deposed so that plaintiff can pursue further questioning on the subjects reflected in the documents that have been withheld;

3. Plaintiff be awarded the attorneys fees incurred in obtaining compliance with the outstanding discovery; and
4. Plaintiff be allowed to advise the jury at trial that the documents Remington has been holding back were produced only after plaintiff filed a motion to compel and the court ordered Remington to produce the documents.

Respectfully submitted,

Barbara Seyferth

By: Arthur W. Aufmann
One of her Attorneys

Joyce and Kubasiak, P.C.
Three First National Plaza
Suite 3900
Chicago, Illinois 60602
(312) 641-2600
#20135

Of Counsel:

Arthur W. Aufmann

Dahl & Moirano
175 N. Franklin St.
Suite 401
Chicago, Illinois 60606
(312) 641-2345

Of Counsel:

James E. Dahl

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Court No. 83 L 17606

I am informed that Remington at some time in the fairly recent past convened a committee to study certain problems relating to the safety of its firearms. Most, or all, of the committee members, I am told, are located in New York. Please furnish me with the names and titles of the committee members, or if some or all of them no longer work for Remington, their last known addresses and employers.

BLM:CMC

JACOBS, WILLIAMS and MONTGOMERY, LTD.

DEFENDANT'S
EXHIBIT
NO. A

EXHIBIT A

443-3279

9930-1blm

January 26, 1984

Mr. William E. Kelly
Pope, Ballard, Shepard & Fowle, Ltd.
69 West Washington Street
Chicago, IL 60602

Re: Seyferth v. Offenwanger
Court No. 83 L 17606

Dear Mr. Kelly:

You will note that interrogatories 9(b), 10, 13(b), and 15(b) from my first set of interrogatories to Remington may require you to reveal the existence of certain documents. To the extent that Remington is in possession or control of any of the described documents, I hereby request that said documents be produced for my inspection.

Very truly yours,

JACOBS, WILLIAMS and MONTGOMERY, LTD.

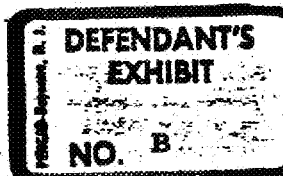
By: Byron L. Matten

BLM:cmc

Enclosures

cc: Joyce and Kubasiak, P.C.
3 First National Plaza
Suite 3900
Chicago, IL 60602

Exhibit B



LAW OFFICES

JOYCE AND KUBASIAK

PROFESSIONAL CORPORATION

THREE FIRST NATIONAL PLAZA

SUITE 3800

CHICAGO, ILLINOIS 60602-4278

312. 841-2800

TELECOPIER (312) 283-0571

EDWARD T. JOYCE
GERALD E. KUBASIAK
RICHARD J. CREMIEUX
STEVEN J. ROTUNDO

ARLYN S. AFRENDW
VYTAŠ P. AMBUTAS
ARTHUR W. AUFMANN
JOHN T. BOYLE
DIANE MACARTHUR
PETER ORDOWER
RICHARD S. REIZEN
MARK E. RESNIK
COLLEEN T. TYREE

OF COUNSEL
PETER B. CAREY
DANIEL J. KUBASIAK

CABLE ADDRESS
JOYKUB

LONDON OFFICE
OF COUNSEL
JOHN McFADDEN
21 UPPER BROOK STREET
W1Y 1PD
01 528-1078

November 12, 1986

Charles Joern, Jr., Esq.
Pope, Ballard, Shepard & Fowle, Ltd.
69 West Washington Street
Suite 3200
Chicago, Illinois 60602

Re: Seyferth v. Offenwager and Remington

Dear Chuck:

During the depositions in Utica, New York, the following categories of documents were requested to be produced at your earliest convenience. This letter will serve to reconfirm those production requests:

1. The minutes of the Operations Committee Meeting(s) which concern design change request 11486;
2. The minutes of product safety subcommittee meeting(s) which concern design change request 11486;
3. Descriptions of the features of the prototype rifles which were surveyed in the Gediman Research Group survey (Workman Group Exhibit 5); and
4. All other market studies, surveys or focus panels regarding bolt action rifles, and any written reports pertaining to the above.

Thank you for your attention to this matter.

Very truly yours,

JOYCE AND KUBASIAK, P.C.

Aufmann
Arthur W. Aufmann

EXHIBIT C

AWA:lrc

cc: Jim Dahl, Esq.

Mike LaBerge, Esq.

LAW OFFICES

JOYCE AND KUBASIAK

PROFESSIONAL CORPORATION

THREE FIRST NATIONAL PLAZA

SUITE 3000

CHICAGO, ILLINOIS 60602-4278

(312) 641-2800

TELECOPIER (312) 263-0871

EDWARD T. JOYCE
GERALD E. KUBASIAK
RICHARD J. CREMIEUX
STEVEN J. ROTUNNO

ARLYN S. AFRENDOW
VYTA S. AMBUTAS
ARTHUR W. AUFMANN
JOHN T. BOYLE
DIANE MACARTHUR
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MARK E. RESNIK
COLLEEN T. TYREE

OF COUNSEL
PETER S. CAREY
DANIEL J. KUBASIAK

CABLE ADDRESS
JOYRUB

LONDON OFFICE
OF COUNSEL
JOHN McFADDEN
21 UPPER BROOK STREET
W1T 1PD
DI: 828-1076

February 11, 1987

Charles E. Joern, Jr., Esq.
Pope, Ballard, Shepard & Fowle, Ltd.
69 W. Washington Street
Chicago, IL 60602

Re: Seyferth v. Offenwanger and Remington

Dear Chuck:

In reviewing the transcript of the Clark Workman deposition, specifically pages 113 and 114, I came across a supplemental request for production of certain documents which is not reflected in my follow-up to you of November 12, 1986. Therefore, I would like to repeat the request I made at that time for copies of all test lab reports on the change in the safety mechanism for the Model 700, and I would like to receive those reports prior to the next deposition on February 19. Thank you for your prompt attention to this matter.

Very truly yours,

JOYCE AND KUBASIAK, P.C.



Arthur W. Aufmann

AWA:ps

cc: James E. Dahl, Esq.
Michael LaBarge, Esq.

1 Q And you would expect that report to have some
2 type of analysis in there as to how the DCR measures up
3 to the concept of safety, is that right?

4 A If it involves safety.

5 Q Is there a certain type of name for those
6 reports, or category that these -- in other words, if
7 we were to ask Remington for these types of reports, is
8 there a buzz word or name we could attach to those
9 reports?

10 A The only thing I could think of would be a
11 test lab report and the subject, whatever it is, or
12 test lab report on the 700 safety.

13 Q Have you ever seen test lab reports on the
14 change in the safety of the Model 700?

15 A Sure I have.

16 Q Do you know who authored those reports?

17 A I couldn't tell you right now.

18 Q Do you know whether it was at least one of
19 these three individuals?

20 A I would think it was.

21 MR. LaBARGE: Was that, you would
22 not?

23 THE WITNESS: I would.

24 MR. AUFMANN: Chuck, I'd like to
25 make the request to see if those are

1 still in existence.

2 MR. JOERN, JR.: Okay.

3 BY MR. AUFMANN:

4 Q I would like to go back to just general
5 questions about DCRs again. Let's assume that a
6 component, there's a proposed design change for a
7 component and the change is approved.

8 Now, on the date -- if, on the date the
9 change is approved, if there's a stored-up inventory of
10 the old component, is the inventory ever used until it
11 is depleted and then go with the new component? Does
12 that ever happen?

13 A At times, yes.

14 Q Is there a set of factors or criteria used to
15 determine whether to use the inventory up before
16 starting with the new component?

17 A If the old component can be used and it will
18 do the job as designed to do, and it doesn't adversely
19 affect safety, the chances are it will be used.

20 If the old component does not perform as
21 designed to perform or if it adversely affects safety,
22 it will be stopped or modified so that it does so. You
23 can either use the -- you can modify it and use it or
24 you can scrap it.

25 Q And when you were using the word "safety," in

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JOYCE AND KUBASIAK

PROFESSIONAL CORPORATION

THREE FIRST NATIONAL PLAZA

SUITE 3800

CHICAGO, ILLINOIS 60602-4278

(312) 841-2800

TELECOPIER (312) 283-0871

EDWARD T. JOYCE
GERALD E. KUBASIAK
RICHARD J. CREMIEUX
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ARLYN S. AFRENDOW
VYTAŠ P. AMBUTAS
ARTHUR W. AUFMANN
JOHN T. BOYLE
DIANE MACARTHUR
PETER ORDOVER
RICHARD S. REIZEN
MARK E. RESNIK
COLLEEN T. TYREE

OF COUNSEL
PETER S. CAREY
DANIEL J. KUBASIAK

CABLE ADDRESS
JOYTRUB

LONDON OFFICE
OF COUNSEL
JOHN McFADDEN
21 UPPER BROOK STREET
W1T 1PD
GB 020-1078

February 13, 1987

Charles Joern, Jr., Esq.
Pope, Ballard, Shepard & Fowle, Ltd.
69 W. Washington St.
Suite 3200
Chicago, Illinois 60602

Re: Seyferth v. Offenwanger v. Remington

Dear Chuck:

Please find enclosed a copy of a memorandum dated May 20, 1975 regarding bolt action rifle safeties. This letter shall serve as a formal request for production by Remington of the following documents referred to in the memorandum.

1. The "Computer Report", including its three subparts regarding: a) safety malfunctions in the gallery, (b) complaints coming into arm service and (c) actual justified complaints.
2. The gunsmith call reports dating back to 1970, including the call report of Fred Woodrick.
3. The Arms Service Usage Report; and
4. The Model 700 Safety Function Test Preliminary Survey as of May 19, 1975.

Additionally, if any of these reports have been up dated over the years, or new studies or surveys have been performed, I would also request that those documents be produced. I am also enclosing a copy of a June 20, 1979 letter from R. L. St. John to all Remington Recommended Gunsmiths. This letter

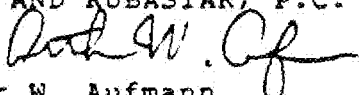
Charles Joern, Jr., Esq.
February 13, 1987
Page 2

refers to an "in depth study to determine the cause of all complaints on Remington firearms that are safety related". To date, Remington has not produced in this case any documents regarding research, analysis or "in depth studies" regarding safety related malfunctions. Therefore, this letter shall also serve as a formal request that all such documents be produced within the next 28 days.

Thank you for your prompt attention to this matter, and I would suggest that you check with your people at Remington to see if they have been holding back any other documents which clearly fall within prior document requests that I have served upon you. I believe that a full explanation is warranted as to why all of the above mentioned documents have not been produced to this point.

Very truly yours,

JOYCE AND KUBASIAK, P.C.


Arthur W. Aufmann
AWA:ps
Enclosures

REIMINGTON ARMS COMPANY, INC.

INTER-DEPARTMENTAL CORRESPONDENCE

Remington
SUPER

PETERS
HEAD

"CONFINE YOUR LETTER TO ONE SUBJECT ONLY"

Ilion, New York
May 20, 1975

Model 600
file
RECEIVED
MAY 22 1975
E. G. LARSON

TO: E.F. BARRETT

FROM: G.W. MARTIN

SUBJECT: BOLT ACTION RIFLE SAFETIES

Since your last visit, and per your request, we have had the opportunity to look into three (3) different areas for information. The three (3) areas are as follows:

1. The computer
2. All available Gunsmith Call Reports
3. Arms Service Usage Report

The Computer Report is broken down into three (3) parts.

1. Safety malfunctions found in our gallery on new rifles.
2. The number of complaints coming into Arms Service
3. The number of actual justified complaints from number 2, preceeding. A copy of these reports are attached.

The Gunsmith Call Reports date back as far as 1970. In these reports we find one (1) Model 600, two (2) Model 788, and thirteen (13) Model 700's with some sort or another of justified or unjustified malfunctions. The one that is the most concerning is Fred Woodrick's Call Report of March 5th. on Ewell Cross Gunshop, Ft. Worth, Texas. I personally called Malcom Cross to confirm that he did encounter six (6) Model 700's that were malfunctioning. He did verify that it was the Model 700, but that it was an educated guess on the number. He did say that this is the first that he had encountered this on the Model 700. He stated that it was because there was not enough clearance between the sear and the connector. He did not seem concerned, but promised to send us the very next one he gets into his Shop. Copies of these Gunsmith Call Reports are attached.

We are also enclosing the Arms Service Usage Report. Truthfully, I don't think we can get much meat from this report for our particular purpose. It would be too difficult to get factually why the various components parts were needed.

We are attaching, also, a copy of the Model 700 Safety Function Test Preliminary Survey as of May 19th. In addition to the guns already tested, we received, today, 220 additional rifles from Carter's Country in Houston, Texas.

ington.
339

Exhibit 1

REMINGTON ARMS COMPANY, INC.

PETERS
339

MANUFACTURERS OF
SPORTING FIREARMS, AMMUNITION

SPORTING FIREARMS, TRAPS, RIFLES, NEW YORK
AMMUNITION, BRIDGEPORT, CONNECTICUT

TRAPS

TARGETS

PETERS CARTRIDGE DIVISION
BRIDGEPORT, CONNECTICUT

IONOKE, ARKANSAS

BRIDGEPORT, CONNECTICUT 06602

TARGETS, INDIAN, OHIO

CABLE—HARTLEY, BRIDGEPORT

ADA, OKLAHOMA
ATHENS, GEORGIA

TELE: 94-201 STATION, CONN.

R. L. ST. JOHN
SUPERVISOR, FIELD SERVICE
FIREARMS

REMINGTON ARMS COMPANY, INC.
ILION, NEW YORK 13357

June 20, 1979

TO: REMINGTON RECOMMENDED GUNSMITHS

We have been making an in depth study to determine the cause of all complaints on Remington firearms that are safety related. To make this study as complete as possible, we seek your cooperation.

In the future, would you please not attempt any repairs on a Remington firearm returned to your shop with a safety related complaint. Instead, please return, at our expense, the firearm in question to:

Arms Service Section
Remington Arms Company, Inc.
Ilion, New York 13357
Attn: Mr. Dennis J. Sanita

Please include a note with each firearm, fully explaining the customer's complaint. The type of complaint involved would be anything relative to the gun's safety, or any complaint which would bear on the shooter's or a bystander's safety, such as jar off, firing on closing, automatic firing, etc.

If there is any question as to whether or not a gun should be returned to us for examination, please call Mr. James A. Stekl on our toll free numbers:

Outside N.Y. State 1-800-448-5790
N.Y. State only 1-800-962-7211

for a final decision. When our examination has been completed, you will be advised immediately as to our findings by Mr. Stekl, and arrangements made at that time for any repair required.

Again, we ask for your fullest cooperation, and if you have any questions, please call immediately.

Cordially,

R.L. St. John, Supervisor
Field Service

COPY

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JOYCE AND KUBASIAK

PROFESSIONAL CORPORATION

THREE FIRST NATIONAL PLAZA

SUITE 3900

CHICAGO, ILLINOIS 60602-4276

(312) 641-2600

TELECOPIER (312) 263-0571

EDWARD T. JOYCE
GERALD E. KUBASIAK
RICHARD J. CREMIEUX
STEVEN J. ROTUNDO

ARLYN G. AFREMOW
VYTAŠ P. AMBUTAS
ARTHUR W. AUFMANN
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PETER ORDOWER
RICHARD S. REIZEN
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COLLEEN T. TYREE

OF COUNSEL
PETER B. CAREY
DANIEL J. KUBASIAK

CABLE ADDRESS
JOYKUB

LONDON OFFICE
OF COUNSEL
JOHN McFADDEN
21 UPPER BROOK STREET
W1T 1PD
01 629-1076

March 19, 1987

William E. Kelly, Esq.
Pope, Ballard, Shepard & Fowle Ltd.
69 W. Washington St.
32nd Fl.
Chicago, Illinois 60602

Re: Seyferth v. Remington and Offenwanger

Dear Bill:

Since the Clark Workman deposition in Utica, New York last Fall, I have been continually learning about the existence of documents which have never been produced by Remington in this case. I have made specific requests for some of these documents by letters dated November 12, 1986, February 11, 1987 and February 13, 1987 (see copies enclosed), but each of these requests have been ignored. This is not surprising considering the fact that I filed supplemental interrogatories and documents requests on June 30, 1986 which have still never been answered. (See also correspondence from Mike LaBarge requesting documents.)

The most irritating part of this situation is that it should never have become necessary for me to have to submit letters requesting these specific categories of documents. Clearly, all of these documents directly relate to the operation of the fire control/safety of the Model 700 and are therefore covered by Plaintiff's First Request for Documents which was filed in March 1984. Moreover, any contention by Remington that the recent requests for specific documents (e.g. Operation Committee minutes and Product Safety Subcommittee minutes) relate only to the Model 600 would be misplaced because discovery in this case has been expanded to include the Model 600 since Judge Rakowski's order of June 4, 1986.

Therefore, I am renewing plaintiff's request for immediate production of all documents previously requested, and to reduce

the chance of misunderstanding or confusion, that request should now include:

1. All minutes of the Operations Committee (not just those which concern design change request 11486);
2. All minutes of the Product Safety Subcommittee;
3. All Gediman Research Group reports;
4. All other market studies, surveys or focus panels regarding bolt action rifles, and any other written reports pertaining to the above;
5. All test lab reports regarding changes to the fire control or safety of the Model 600 or 700;
6. The "computer report", including its three subparts regarding: a) safety malfunctions in the gallery, (b) complaints coming into arm service and (c) actual justified complaints;
7. All gunsmith call reports dating back to 1970;
8. The "arms service usage report";
9. The "Model 700 safety function test preliminary survey as of May 19, 1975";
10. The "in depth study to determine the cause of all complaints on Remington firearms that are safety related";
11. All "research test and measurement lab work requests" regarding Model 600 and 700 fire controls and safety mechanisms;
12. All "research test and management reports" regarding Model 600 and 700 fire controls and safety mechanisms;
13. All test reports and evaluations regarding the Model 600 and 700;
14. All Remington internal memoranda regarding evaluations of Model 600 and 700 fire controls and safety mechanisms;

15. All safety malfunction gallery reports;
16. All internal memoranda regarding Operations Committee meetings and Product Safety Subcommittee meetings;
17. All internal memoranda regarding Model 600 and 700 fire control and safety mechanism tests and studies.
18. All documents pertaining to the decision to recall the Model 600.
19. All documents pertaining to considerations to recall the Model 700, and any decisions regarding a possible recall.
20. All documents describing the condition of "fire on safety release" or "FSR", and all documents describing and/or explaining the causes of FSR.
21. All documents which reflect the dimensional specifications of the trigger connector, trigger housing side plates, the allowable "play" between the trigger and trigger connector, the amount of required sear lift and the allowable amount of lubrication for Model 600's and 700's.
22. All documents which reflect the possible causes of the trigger connector being "hung-up" or "bound-up" in the forward position, thus preventing it from returning underneath the sear.
23. All internal reports and memoranda regarding the examination and testing that was done on Joseph Offenwanger's Model 700.
24. All documents which reflect the purpose of utilizing a trigger connector.

Very truly yours,

JOYCE AND KUBASIAK, P.C.


Arthur W. Aufmann

AWA:ps
Enclosures

cc: James Dahl -w/encl.
Michael LaBarge - w/encl.