NO. 87C2042

DAVID T. CRAIG	§	IN THE DISTRICT COURT OF
	§	
VS.	§	BRAZORIA COUNTY, TEXAS
	§	
REMINGTON ARMS CO., INC. and DEBBIE JAMES	§	23RD JUDICIAL DISTRICT

PLAINTIFF'S SUMMARY OF DISCOVERY ABUSES COMMITTED BY REMINGTON

TO THE HONORABLE SPECIAL MASTER:

This summary is filed on behalf of Plaintiff, David T. Craig, to state for the Special Master the discovery proceedings and discovery abuses committed by Remington, which led to the Court's sanctions ruling from the bench on February 6, 1989, and the Court's sanctions order signed February 9th.

I. BACKGROUND OF THE CASE

This is a products liability suit filed by David Craig because of severe injuries he suffered when a defective Remington Model 700 bolt-action rifle discharged and shot him in the thigh. This suit is like many others where Remington Model 700 rifles unexpectedly fire without anyone touching the trigger, when the safety lever is moved from the safe position to the fire position. The rifle was designed with a two-position safety and a bolt lock. The bolt lock requires the user to put the safety in the fire position in order to lift the bolt to begin unloading. For a number of reasons, the design of the trigger assembly is susceptible to firing when the safety is released. This occurrence is commonly referred to as an "FSR."

Craig filed suit against Remington and the person holding the rifle when it went off, Debbie James. The claim against Ms. James is based on the theory that she may have been negligent to

some degree by pointing the rifle in direction where David Craig could be hit.

II. PRIOR LITIGATION

Plaintiff's counsel, Longley & Maxwell, have been in three other suits against Remington involving similar claims. Two cases involved Model 700 rifles. They were styled, *Muzyka v. Remington Arms Co., Inc.*, No. W-82-CA-226 (W.D. Tex., Waco Div.), and *Moore v. Remington Arms Co., Inc.*, No. A-85-CA-549 (W.D. Tex., Austin Div.). Both cases resulted in jury verdicts for Remington.

The third case involved a Remington Model 600 rifle, which involved the same defects in a much larger percentage of the rifles. The case was styled *Castleberry v. Remington Arms Co., Inc.*, No. C-85-357 (S.D. Tex., Corpus Christi Div.). This case involved the same type of rifle that paralyzed for life Austin attorney John Coates when the defective Remington firearm discharged and shot him in the back. His injury and the resulting lawsuit prompted Remington to recall that series of firearms, a step Remington has refused to take with respect to the Model 700 series.

The *Castleberry* case settled on the day of trial after Judge Hayden Head indicated he was going to impose sanctions against Remington and its attorneys for discovery abuses that included failing to produce complaints of other, similar incidents. One of the incidents Plaintiff's counsel learned of occurred right in Corpus Christi, where the suit was filed, but Remington failed to produce documents relating to that incident. Remington's failure

was made worse by the fact that, as in this case, Remington had agreed to produce the documents, Remington had been ordered to produce the documents, and Remington had already been subjected to monetary sanctions for opposing the plaintiffs' discovery requests.

The discovery abuses committed by Remington in *Castleberry* were not unique. In an earlier case, *Thomsen v. Remington Arms Co., Inc.*, No. 10718 (Superior Court of Calaveras County, California), the trial court found Remington in contempt for failing to comply with court orders relating to discovery. Similarly, the court in *Moore* granted the plaintiffs' motion to compel discovery, finding Remington had waived its numerous objections. These events will be documented below.

III. DISCOVERY IN THIS CASE

A. Plaintiff's Requests

One point needs to be made at the outset, to dispel a false notion Remington has fostered. Plaintiff David T. Craig is entitled to his day in court and full discovery, the same as any other litigant. The fact that two of his attorneys of record have been involved in similar litigation is irrelevant to Remington's obligation to provide complete discovery in this case.

Discovery requests were sent to Remington on behalf of Plaintiff David T. Craig on December 1, 1989. Remington has complained loudly and often about these so-called "late" requests. There should be an end to this complaining, or at least an end to the Master's hearing of it.

First, the requests were sent far enough in advance of trial to give Remington more than twice the thirty days response time required by Rules 167 and 168. Furthermore, given the number of cases against Remington spanning more than a decade and involving similar discovery requests, responses to these request should have been nearly automatic. Instead, what was automatic were Remington's customary frivolous objections and stubborn refusals to comply.

Remington ascribes some evil motive to the timing of Plaintiff's discovery requests. There was no such intent. Plaintiff's counsel, Longley & Maxwell, purposely delayed discovery requests in this case while discovery was being pursued in the *Moore* and *Castleberry* cases. *Moore* was tried in July of 1988, and *Castleberry* was settled on the day of trial in August 1988. It only made sense to learn from the discovery in those cases before drafting requests in this case.

After those cases were resolved, discovery in this case was delayed because Plaintiff's counsel, Mark L. Kincaid, who had been responsible for discovery in the other cases, was occupied for the remainder of July and all of August with another products liability trial. He was then absent the month of September on a paternity leave of absence. The discovery requests were drafted and sent within two months of his return.

When the discovery requests were sent, Plaintiff's counsel hoped, perhaps naively, that discovery in this case could be streamlined case by an agreement that Remington's counsel could look at documents already in the possession of Plaintiff's

counsel and then simply assure Plaintiff's counsel that they already had all responsive documents. This agreement would have avoided the need for Remington to reproduce documents already produced. This is the "agreement" the Master has heard so much about. Plaintiff's counsel extended the offer, but it was not accepted.

B. **Remington's Responses and Objections**

Remington sent its discovery responses on January 4, 1989. Copies of Remington's responses and objections to Plaintiff's interrogatories and requests for production are attached. These responses also contain the text of Plaintiff's requests.

Remington has complained about the large number of requests and interrogatories. What Remington fails to point out is that the number is a reflection of deviousness Remington has shown in trying to weasel out of direct, honest answers. To counter this evasiveness, Plaintiff's counsel were forced to ask questions a number of different ways. One straightforward answer to a single request, in many instances, would answer several. The Master can plainly see that the discovery requests themselves inquire into areas about which any products liability Plaintiff is entitled to know.

C. **Pre-trial Hearing and Appointment of Special Master**

Remington's objections were initially set to be heard on January 23rd, but this date was moved one week closer to trial at the request of Remington's counsel. A copy of the letter agreeing to reset the hearing is being provided.

At the hearing on January 30th, most of the discovery issues were resolved by agreements, which were stated on the record in open court before Judge Neil Caldwell. A copy of the January 30th transcript is being provided. As the transcript clearly shows, Remington's counsel, Lee Ware, agreed that most of the documents requested would be produced by February 3rd, the Friday before trial.

The Court appointed the Special Master to make preliminary findings on the issues where the parties could not agree, and the parties agreed to this appointment. The Master overruled most of Remington's objections and required Remington to produce additional information by February 3rd, including original minutes of the Operations Committee and Product Safety Subcommittee.

D. Court's Order and Revised Order

The Court signed an order on January 31, which required Remington to comply with all agreements stated on the record on January 30, and the Court adopted the Master's rulings.

A revised order was signed on February 3, which clarified certain rulings. However, the revised order stated, "Nothing in this order shall be construed to relieve Defendant of any duty or to extend any deadline imposed by the prior order."

Copies of the orders are enclosed.

E. Remington's Motion to Extend Time and for Protective Order

After agreeing to, and being ordered to, provide discovery by 5:00 p.m. on Friday, February 3, Remington filed on Thursday, February 2, a motion asking for more time. This motion, along

with several other pleadings, was sent to Plaintiff's counsel at 5:38 p.m. Remington included a notice that the motion would be heard in Angleton at 9:00 a.m. the next morning. Copies are enclosed.

An important part of this motion is the prayer, which states:

> Remington urges the Court to extend the time by which it must respond to Plaintiff's discovery of December 1, 1988, to and including either (1) Wednesday, February 8, 1989 at 5:00 p.m. (if the requests are limited to Model 600 and Model 700); or (2) Friday, February 17, 1989 at 5:00 p.m. (if the requests are not so limited) and for such other and further relief to which it may show itself justly entitled.

(emphasis added). Remington has apparently forgotten that only one week ago it filed this pleading specifying the date by which it could provided all discovery.

Remington has likewise forgotten its promises made when the motion was heard in chambers by Judge Caldwell on February 3rd. The proceedings were not recorded, and counsel disagree over what was said. Those proceedings are now moot, because the trial setting was continued and a new deadline has been set by the Master. It bears noting, however, that Judge Caldwell's recollection at the hearing on Plaintiff's motion for sanctions on Monday, February 6th, certainly differed from the recollections of Remington's counsel.

F. Remington's failure to produce documents

The Court ordered and agreed deadline of 5:00 p.m. on Friday, February 3rd, came and went. Remington produced only a handful of documents. Not a single original minute was produced.

The production of documents coincided with the deposition of James C. Hutton, a Remington employee who testifies as an expert in these cases and is usually responsible for providing the Remington's discovery responses. Following a now familiar pattern, Remington's counsel undertook once again to go through each of the requests for production and to state on the deposition record what would be produced and when. These statements are enclosed. Of course this belated discourse on discovery ignored the fact that the Court had already signed an order and a revised order stating what and when.

G. Plaintiff's motion for sanctions

Remington's failure to comply with the prior agreements of its counsel and the Court's orders led Plaintiff's counsel to file a motion for sanctions, which was heard by the Court on Monday, February 6th. A copy of the motion is attached.

Plaintiff's counsel offered a number of exhibits, all of which the Court admitted without objection, documenting Remington's bad faith abuse of the discovery process. Copies of these exhibits are enclosed and include the following:

S-1 Request for Production, Transcript of Agreements made on January 30, 1989

S-2 Order dated January 31, 1989

S-3 Letter of January 17, 1989, resetting pre-trial hearing

S-4 Plaintiff's Motion to Compel Discovery

S-5 Plaintiff's Brief in Support of Motion to Compel

S-6 Remington Arms Co., Inc.'s Objections and Responses to Plaintiff's First Request for Production of Documents and Tangible Things

S-7 Letter of January 31, 1989, transmitting proposed order

S-8 *Castleberry v. Remington*, Plaintiffs' Motion for Sanctions, filed August 4, 1988

S-9 *Castleberry v. Remington*, Amended Order of February 17, 1987

S-10 *Castleberry v. Remington*, Order of March 20, 1987

S-11 *Moore v. Remington*, Order of April 12, 1988

S-12 *Thomsen v. Remington*, Decision on Motion for Sanctions and/or Contempt for Failure to Comply with Order Filed September 28, 1983 (dated November 4, 1983)

S-13 *Thomsen v. Remington*, Response to Court's Request for Factual Summary of Instances Which Support Imposition of Severe Sanctions and Argument and Authority for the Nature of Those Sanctions Which are Justified

S-14 *Thomsen v. Remington*, Declaration of Christopher M. Ames in Support of Memorandum Re Sanctions to be Imposed, November 15, 1983

S-15 *Thomsen v. Remington*, Declaration of Peter A. Viri in Support of Sanctions

These sanctions exhibits include most of the pleadings and documents referred to in this summary.

The Court declined to strike Remington's pleadings, but the Court did specifically find Remington had acted in bad faith and abused the discovery process. The Court awarded sanctions of $25,000.00 and warned Remington that any further abuse of discovery would result in an order striking Remington's pleadings. The Court then granted Remington's Monday morning motion for continuance and decided that the Master should be retained for additional discovery issues that might arise.

The proceedings were recorded, but the transcript is not yet available. The Court's sanctions order signed February 9th is enclosed.

VI. CONCLUSION

Remington is the party found to have acted in bad faith, in this case and many others. The sanctions order and reappointment of the Special Master clearly were intended to force compliance by Remington, not to provide Remington a shield. The Master has already been treated to one exhibition, on February 9th, of Remington's attempts to use the Master as a shield, to deny its representation that all discovery could be made by February 17th, and to use its review of documents already in the possession of Plaintiff's counsel as a limit on what Remington will produce. Plaintiff respectfully submits that the Master's rulings are proper, and Plaintiff prays that all future requests by Remington be viewed in light of Remington's past misconduct and the Court's sanctions order to redress that conduct.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing instrument has been forwarded to each party on this 10th day of February, 1989.

Mark L. Kincaid