

NO. 13,461

LAURO HOMER CHAPA and	\$	IN THE DISTRICT COURT OF
RAQUEL LOPEZ CHAPA,	\$	
Individually and As	\$	
Next Friend of	\$	
LUIS RICARDO CHAPA, a Minor	\$	
VS.	\$	DUVAL COUNTY, T E X A S
	\$	
REMINGTON ARMS CO.,	\$	
EDELMIRO CHAPA, and	\$	
E. I. DU PONT DE NEMOURS	\$	
AND COMPANY	\$	229TH JUDICIAL DISTRICT

MOTION FOR SANCTIONS

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW Plaintiffs, LAURO CHAPA and RAQUEL LOPEZ CHAPA, and file this Motion for Sanctions, and in support thereof would respectfully show unto the Court the following:

I.

This is a products liability case arising out of the accidental shooting of Luis Chapa which occurred in December of 1985. Mr. Chapa was shot in the left leg when the rifle his uncle was using discharged without the trigger having been touched. The defective product involved in this case is a Remington Model 700 bolt action center fire rifle. This particular model rifle has been the subject of extensive litigation for some number of years as a result of two defects found in the design of the rifle. First, the fire control system of the rifle is unreasonably dangerous because of the inherently defective internal design of the fire control system which causes it to intermittently misfire.

Second, in order to load or unload the Model 700 rifle it is necessary that the safety be placed in the fire position thereby creating an unnecessary risk of harm. At least 30 lawsuits have been filed against REMINGTON as a result of the defective design of the Model 700 series rifle.

II.

On February 18, 1987, the Plaintiffs served their Request for Production of Documents upon the Defendant, REMINGTON ARMS CO. On April 29, 1987, REMINGTON ARMS CO. filed a response to the Plaintiffs' Request for Production which has subsequently proved to be patently false and fraudulent in that documents clearly included within the request were intentionally concealed from the Plaintiffs. The Plaintiffs had requested that all minutes of REMINGTON's Operations Committee that relate to the Model 700 series rifle be produced as well as all documents of any sort relating to alternative designs for the safety system and fire control system of the Model 700 series rifle. Numerous documents existed that fit this description, yet these documents were intentionally withheld by REMINGTON for a period in excess of two years. In April of 1989 and again in the first week of May of 1989, additional documents were produced by the Defendant which met the description of the documents first asked for by the Plaintiffs in February of 1987. These documents were produced solely as a result of discovery being conducted in another case against REMINGTON involving a Model 700 series rifle. The style of that

case is Cause No. 87-C-2042; *David T. Craig v. Remington Arms Co., Inc. and Debbie James*, In the 23rd Judicial District Court of Brazoria County, Texas. It was clearly the intention of REMINGTON to intentionally conceal these documents from the Plaintiffs for a period in excess of two years in an attempt to deprive the Plaintiffs of their right to a fair trial. Given this type of intentional conduct and the history of REMINGTON in perpetrating discovery abuses, it is mandated that this Court strike the pleadings of REMINGTON as the only appropriate sanction.

A trial court may impose sanctions on any party that abuses the discovery process. Tex. R. Civ. P. 215. The discovery sanctions imposed by a trial court are within the court's discretion and will be set aside only if the court clearly abuses its discretion. A trial court abuses its discretion only if the sanctions it imposes do not further one of the purposes that discovery and sanctions were intended to further. The purposes of discovery sanctions are as follows: (1) secure the parties compliance with the rules of discovery; (2) deter other litigants from violating the discovery process; and, (3) punish parties that violate the rules of discovery. See *Bodnow Corp. v. City of Hondo*, 721 S.W.2d 839 (Tex. 1986). A trial court's ability to impose discovery sanctions is limited only by the requirement that the trial court's order be just and that the sanctions imposed be specifically related to the harm done by the condemned conduct. *Ray v. Beene*, 721 S.W.2d 876, 879 (Tex. App. - Houston [1st Dist.]

1986). It is appropriate to strike the recalcitrant party's pleadings if that party has acted in bad faith and particularly if there is a history of such conduct. In this case, it is clear that REMINGTON intentionally withheld documents from the Plaintiffs in an effort to deprive the Plaintiffs of a fair trial. The only appropriate remedy for such bad faith conduct, especially against a party who has exhibited the same conduct in the past, is that their pleadings be struck.

III.


Striking pleadings is an extreme sanction which should be imposed only when the failure to answer discovery requests is willful, in bad faith, or due to some fault of the disobedient party. See Kilgarlan and Jackson, Sanctions for Discovery Abuse Under New Rule 215, 15 St. Mary's Law Journal 767 (1984). As previously stated, the purpose of sanctions is not only to assure compliance with discovery procedures but also to deter abuse of the process and to punish parties that willfully violate the discovery rules. In this particular case, REMINGTON has willfully violated discovery rules and intentionally concealed crucial documents from the Plaintiffs in a clear effort to deprive the Plaintiffs of a right to fair trial. The effect of striking REMINGTON's answer is that there is no answer. With no supportive pleadings, REMINGTON will be prohibited from presenting any ground of defense at the trial. It is only fair that a party that intentionally attempts to deprive another party of a fair trial be saddled with the same

burden that they have attempted to impose upon the innocent party. The fraud which REMINGTON has attempted to perpetuate in this case must be looked upon in light of the fact that REMINGTON has attempted to conceal the same evidence from numerous other plaintiffs in other cases involving Model 700 rifles. It is the practice of REMINGTON to abuse the discovery process and conceal evidence at every step of the proceedings. Such a practice cannot and should not be tolerated by this or any other court.

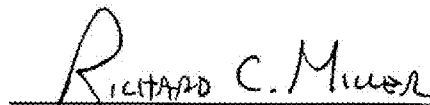
WHEREFORE, PREMISES CONSIDERED, Plaintiffs pray that upon hearing this Motion, this Honorable Court grant this Motion and strike the pleadings of Defendant, REMINGTON ARMS CO., and for such other and further relief as this Honorable Court may deem appropriate.

Respectfully submitted,

THE CHAFFIN LAW FIRM


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O R D E R

On this day came on to be heard the Plaintiffs' Motion for Sanctions and the Court, after careful consideration of same and being of the opinion that said Motion should be in all things granted, it is therefore,

ORDERED, ADJUDGED and DECREED that Plaintiffs' Motion for Sanctions is hereby GRANTED. It is further,

ORDERED, ADJUDGED and DECREED that the pleadings of Defendant, REMINGTON ARMS CO. is hereby stricken.

SIGNED this _____ day of _____, 1989.

PRESIDING JUDGE

THE CHAFFIN LAW FIRM
A Professional Corporation

ROBERT A. CHAFFIN
ANA ARANGO CHAFFIN*
PAUL R. MILLER**

*Licensed in Texas and New York
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May 5, 1989

Hon. Antonio Salinas, Dist. Clerk
PO Box 487
San Diego, TX 78384

Re: No. 13,461
Lauro Homer Chapa, et al v. Remington Arms Co., et al
229th Judicial District Court of Duval County, Texas

Dear Sir:

Enclosed for filing in the above styled and numbered cause is Plaintiffs' Motion and Order for Sanctions. Please acknowledge receipt and filing by placing your file mark on the attached copy of this letter and returning to us in the self-addressed, stamped envelope which we have enclosed for your convenience.

A copy of said documents has been forwarded to all counsel of record as noted below.

Thank you for your assistance in this matter.

Sincerely,

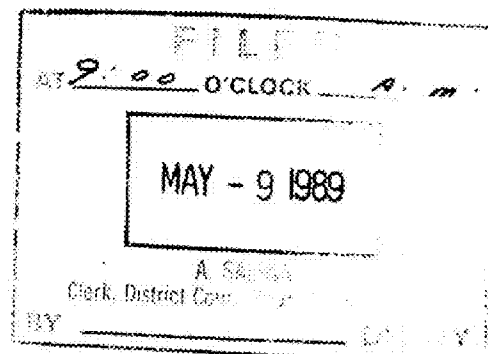
THE CHAFFIN LAW FIRM

Robert A. Chaffin

Robert A. Chaffin

RAC:pb

cc: Mr. David J. Demars
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