NO. 87C2042

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

ORDER REGARDING RECONSIDERATION OF SANCTIONS

On this 29th day of November, 1991, came on for hearing the reconsideration of Plaintiff's Motion for Sanctions against Defendant, Remington Arms Co., Inc. and after careful consideration of the Supreme Court's recent ruling in TransAmerican Natural Gas Corporation v. Powell, 811 S.W.2d 913 (Tex. 1991) the Court rules that its previous ORDER IMPOSING SANCTIONS UPON DEFENDANT REMINGTON ARMS CO., INC. signed on the 21st of March, 1990 is in all things AFFIRMED.

In making such ruling, the Court has carefully considered the Motion for Sanctions; the previous discovery orders of this Court; the Defendant's repeated violations of those orders; the previous orders of this Court; the defendants repeated violations of those orders; the prior course of discovery in this case; the warning given to Defendant in the Court's order signed February 9, 1989; the history of sanctions being imposed upon Defendant in this cause; the previous findings by the Court that Remington has acted in bad faith and has abused the discovery process; the findings pursuant to Rule 171, Tex. R. Civ. P. of the Special Master; the conduct of Remington's counsel; the pleadings and exhibits on file relating to all hearings and trials; and the arguments and authorities provided by counsel.

Specifically, the Court makes the following findings, to wit:

(1) Remington made numerous objections in response to Plaintiff's first set of interrogatories and first request for production, many of which were frivolous and without merit;

(2) Remington's objections to Plaintiffs requests for production numbers 3, 4, 11, 12, 13, 14, 15, 16, 17, 19, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 70, 71, 74 and 96 were overruled and Remington was ordered to produce these items by order of Judge Neil Caldwell signed January 31, 1989. The deadline for this production was February 3, 1989;

(3) Remington acted in bad faith and abused the discovery process in violation of Rule 215 by failing to produce documents pursuant to the January 31, 1989 order;

(4) On February 9, 1989, Remington was ordered to pay Plaintiff's counsel Longley & Maxwell $25,000.00 as a monetary sanction for discovery abuses;

(5) On February 9, 1989, Remington was ordered to pay Special Master Bert Huebner's fees as a sanction for discovery abuse and Remington is in violation of such order in that all such fees have not been paid;

(6) In the February 9, 1989 order, Remington was warned that any further abuse of the discovery process by Remington or any failure of Remington to comply with any order of the Court of any request by the Special Master would result in an order striking Remington's pleadings and rendering a default judgment against Remington and the imposition of such other sanctions as the Court may find are justified;

(7) Remington withheld Operations Committee Minutes after stating that it had produced them all;

(8) Remington withheld Operations Committee Minutes after being ordered by the Court, on January 31, 1989 and February 3, 1989, to produce them all;

(9) Remington's counsel B. Lee Ware falsely claimed he had not received notice of the November 28, 1989 discovery hearing;

(10) Remington abused the discovery process by submitting 6,449 pages in no particular order for in camera inspection by the Special Master;

(11) Remington abused the discovery process by failing to produce photographs taken by Remington's counsel at the Craig family ranch where the injury occurred. Judge Caldwell ordered that these photographs be produced on January 31, 1989. Remington stated in its May 22, 1989 supplemental response to discovery that it had produced all of the photographs. Remington later attempted to offer at trial photographs that had not been produced;

(12) Remington abused the discovery process by attempting to use James C. Hutton to testify on matters for which he was never disclosed as an expert witness;

(13) Remington and its attorneys have violated the Court's order of March 21, 1990 by requesting depositions on written questions from various health care providers on November 26, 1991;

(14) Remington's counsel B. Lee Ware acted in bad faith during the discovery process and has engaged in a callous abuse of the discovery process;

(15) Remington's counsel B. Lee Ware acted in bad faith and displayed improper conduct at trial;

(16) The bad faith conduct of Remington and its counsel in the conduct of the discovery process and the trial of this cause resulted in a denial of a just, fair, equitable and impartial adjudication of the rights of the litigants;

(17) Imposition of lesser sanctions has proved ineffective;

(18) Imposition of severe sanctions was, and is, justified;

(19) Remington's conduct and the conduct of its counsel B. Lee Ware throughout this proceeding in the hindrance of the discovery process justifies a presumption that its claims and defenses lack merit;

(20) A direct relationship exists between Remington's offensive conduct and the severe sanctions imposed; and

(21) Remington's conduct throughout this proceeding has been in flagrant bad faith and its counsel has engaged in a callous abuse of the discovery process. Therefore, sanctions which preclude presentation of the merits of the case are appropriate in this case pursuant to Koepp v. Utica Mutual Ins. Co., No. D-1539 (Tex. Nov. 20, 1991).

(22) The sanctions imposed are not excessive in light of the abuses committed by Remington and the Court finds that such sanctions are just and appropriate pursuant to the standards set forth in TransAmerican Natural Gas Corporation v. Powell, 811 S.W.2d 913 (Tex. 1991).

Accordingly, the imposition of the following sanctions are ORDERED, ADJUDGED and DECREED against Remington, to wit:

(1) The pleadings of Remington Arms Co., Inc. are stricken and a default judgment is hereby rendered against Remington on all issues establishing Remington's liability to David Craig for actual damages and exemplary damages.

(2) The following facts are taken as established against Remington:

(a) The Model 700 rifle in question was defectively designed at the time it was manufactured in that it was unreasonably dangerous as designed taking into consideration the utility of the product and the risk involved in its use.

(b) Remington was negligent in the design of the Model 700 rifle in question and in the other particulars as alleged by Plaintiff;

(c) The defective design and negligence of Remington were a producing and a proximate cause of David Craig's injuries; and

(d) Remington was grossly negligent in the design of the rifle in question and in the other acts of negligence as alleged by Plaintiff sufficient to support an award of exemplary damages.

(3) Remington Arms Co., Inc. shall not be allowed indemnity, contribution or any offset based upon the comparative responsibility of any other party

or person with regard to the injuries sustained by David Craig.

(4) Remington shall not be allowed to produce any evidence nor to support or oppose the issues established by paragraphs (1) and (2) of this order. The only issues that may be contested by Remington upon a trial of this matter are the amount of actual damages sustained by David Craig and the amount of exemplary damages that may be assessed against Remington;

(5) Remington is prohibited from requesting any further discovery in this cause;

(6) All costs of Court are taxed against Remington Arms Co., Inc.

(7) All relief not specifically granted herein is DENIED.

SIGNED this 2nd day of December, 1991.

Honorable Ben Martinez
Judge Presiding