

NO. 7417

PATRICIA MUÑOZ, Individually	§	IN THE DISTRICT COURT OF
and On Behalf of the Estate	§	
of José Muñoz, Deceased,	§	
and As Next Friend of	§	
MONICA MUÑOZ and LOUIS MUÑOZ,	§	
Minors	§	CHILDRESS COUNTY, TEXAS
	§	
VS.	§	
	§	
REMINGTON ARMS COMPANY, INC.,	§	
E. I. DU PONT DE NEMOURS	§	
AND COMPANY, and VEE BAR, LTD.	§	100TH JUDICIAL DISTRICT

**PLAINTIFFS' MOTION FOR SANCTIONS**

COME NOW Plaintiffs in the above numbered and titled cause, and move this Court to issue an order compelling the production of Remington President Bobby Brown for deposition in Jim Wells County, and an order awarding sanctions. In support thereof Plaintiffs would respectfully show the following:

I.

**DELIBERATE VIOLATION OF RULE 11 AGREEMENT**

Pursuant to their Rule 11 agreement, the parties hereto gathered on September 2, 1993 to take the deposition of Mr. Bobby Brown, President of Defendant Remington Arms Company, Inc. (Ex. A). The deposition commenced at 8:30 a.m. and was to run for one day only. Plaintiffs' counsel Robert Chaffin and Richard Miller were present to question Mr. Brown. Mr. Chaffin and Mr. Miller are both counsel in the case at bar, as well as in numerous other cases. Further, each is counsel in cases which do not involve the other.

After approximately two hours of actual deposition examination, Defense Counsel Mr. B. Lee Ware stopped the deposition and instructed Mr. Brown to leave the room. Mr. Ware objected to Mr. Chaffin's questioning Mr. Brown on damages issues. Stopping a deposition is an improper way to prevent the discovery of disputed issues. Mr. Ware's

actions were even more reproachable because Plaintiffs' counsel had incurred the expense to fly to Pittsburgh so that Mr. Brown's deposition could be taken at his convenience.

## II.

### REMINGTON'S HISTORY OF DISCOVERY ABUSE IN MODEL 700 CASES

This conduct by Remington is merely a continuation of their long standing practice of abusively disrupting discovery abuses in Model 700 cases. Such abuses have been perpetrated by various Remington attorneys, including counsel in this case, Mr. B. Lee Ware. Remington has been sanctioned for unacceptable conduct in cases other than the one at bar. In Craig v. Remington, et al., out of the 23rd District Court of Brazoria County Texas, and in which B. Lee Ware is counsel of record for Remington, the court found that Remington had acted in bad faith, abusing the discovery process, and violating Rule 215, by failing to produce court ordered documents. The court sanctioned Remington by ordering it to pay \$25,000.00 restitution to the Plaintiffs attorneys, pay all fees and expenses of the special master appointed to the case and produce documents at the risk of having pleadings stricken for failure to so do (Ex. B). In Nigro v. Remington, out of the Court of Common Pleas in Pennsylvania, the court found that Remington wilfully failed to comply with discovery requests and court orders. The court sanctioned Remington's actions by granting a default judgment against it on the issue of liability and again ordered Remington to produce the requested documents (Ex. C). In Thompson v. Messer, out of the Superior Court of the state of California, the court found that Remington's inexcusable non-compliance with legitimate discovery requests constituted a flagrant disregard of the law. The court further found that such disregard caused a waste of judicial and legal time, was

obstructive and offensive to the administration of justice, and was unfair to other litigants therein. The court stated that it would consider severe sanctions against Remington (Ex. D). In Seyferth v. Offenwanger, out of the Circuit Court of Cook County, Illinois, the court found that Remington had unjustifiably and purposefully failed to comply with its discovery obligations (Ex. E).

### III.

#### BACKGROUND FACTS

Mr. Brown testified, as President of Remington, that if a Remington 700 discharges, absent the trigger being pulled, then the gun is defective and Remington is responsible for the particular Plaintiff's damages (Ex. F, Brown Dep., p. 184, 249). Mr. Brown also testified that he is the "head man" at Remington in charge of product liability (Ex. G, Brown Dep., pp. 249-250). A witness may render a lay opinion about the value of a case if the witness has personal knowledge of facts forming the opinion and a rational connection exists between the opinion and fact. Laprade v. Laprade, 784 S.W.2d 490, 492-493 (Tex.App.-Ft. Worth 1990, writ denied). Further, Texas Rule of Civil Evidence 701 allows lay witness opinion testimony if the witness bases his opinion on his perception and if his opinion is helpful in determining a fact in issue. The party attacking the witnesses' qualifications to render an opinion must examine the witness and test the basis of his knowledge. McMahon v. Musgrave, 229 S.W.2d 894, 898 (Tex.Civ.App.-Eastland 1950, writ dismissed).

Mr. Chaffin presented to Mr. Brown a photograph showing the injuries sustained by Luis Chapa, one of the Plaintiffs involved in a Texas Case. When attempting to cross-examine Mr. Brown, regarding his impression of the injury and his assessment of monetary

damages, Mr. Ware strenuously objected to the questions. Ware threatened to shut down the deposition unless Mr. Chaffin moved to another line of questioning. Mr. Chaffin refused and reminded Mr. Ware that he could instruct Mr. Brown not to answer the questions but that they would be asked for purposes of the record (Ex. H, Brown Dep., pp. 252-255). Upon Chaffin's questioning Mr. Brown, Mr. Ware originally instructed Brown not to answer the questions.

Messrs. Chaffin and Ware discussed the propriety of the questions posed to Mr. Brown (Ex. I, Brown Dep., pp. 255-258). Mr. Ware threatened to close down the deposition if Mr. Chaffin asked any more damages questions. Mr. Chaffin responded that he had the right to ask the questions and informed that he would seek sanctions if Ware walked out (Ex. J., Brown Dep., pp. 258-259). Further, Mr. Ware argued that Mr. Chaffin was asking his questions for the express purpose of attempting to embarrass Mr. Brown, which allegation Mr. Chaffin denied (Ex. K, Brown Dep., pp. 259-260). Mr. Ware's position was that Mr. Chaffin's questions were improper for two reasons: 1) "our evaluation of the case and our position in the case is set forth in the pleadings", and 2) because "He [Mr. Brown] is not the one who is going to evaluate the cases for the record." (Ex. L, Brown Dep., p. 264). Mr. Chaffin countered, arguing that 1) Mr. Brown is the president of the company, 2) is in charge of products liability, and 3) writes the checks (Ex. L, Brown Dep., p. 264). Mr. Chaffin then asked Mr. Brown to whether, without assigning a dollar value to the case, he would agree that the Plaintiff suffered a devastating injury (Ex. L, Brown Dep., p. 264). Ware's response was to close down the deposition and instruct Mr. Brown to leave the premises, even though Messrs. Chaffin and Miller protested that they had not completed

their cross-examinations (Ex. M, Brown Dep., pp. 265-266). Shortly thereafter, the remaining attorneys present for Defendant Remington departed (Ex. N, Brown Dep., 267-268).

#### IV.

#### SANCTIONS REQUESTED

Defendants' conduct at the deposition was an obstruction of justice and denied the Plaintiffs the right to examine Mr. Brown. Plaintiffs incurred substantial expenses in both preparing to take this crucial deposition and traveling to Pittsburgh. Plaintiffs' pains have met with utter abuse of the discovery process. Such abuse is not an isolated incident, as Remington has a history of and has consistently been sanctioned for, discovery abuses. Defendants' willful abuse warrants severe sanctions. By stopping the deposition, Defendants denied Plaintiffs their right to examine a critical witness. Therefore, Plaintiffs request that this Court strike all of the expert witnesses designated by Remington or Du Pont regarding the issues of liability and alter ego.

WHEREFORE, PREMISES CONSIDERED, Plaintiffs respectfully request that this Court Sanction Remington's conduct as detailed above and that Remington be ordered to pay sanctions in the amount of \$25,000.00 to reimburse Plaintiffs for the costs and expenses incurred in preparing for the deposition and travel to Pittsburgh.

Respectfully submitted,

THE CHAFFIN LAW FIRM